

1 SAM HIRSCH  
2 Acting Assistant Attorney General  
3 Environment & Natural Resources Division  
4 United States Department of Justice  
5 LESLIE M. HILL (D.C. Bar No. 476008)  
6 Leslie.Hill@usdoj.gov  
7 Environmental Defense Section  
8 601 D Street N.W., Suite 8000  
9 Washington D.C. 20004  
10 Telephone (202) 514-0375  
11 Facsimile (202) 514-8865

12 Attorneys for Defendant

13 ROBERT UKEILEY, Admitted Pro Hac Vice  
14 Law Office of Robert Ukeiley  
15 255 Mountain Meadows Road  
16 Boulder, CO 80302  
17 Telephone: 303-442-4033  
18 rukeiley@igc.org

19 [additional attorney for Plaintiff included in signature block]

20 Attorneys for Plaintiff

21 **IN THE UNITED STATES DISTRICT COURT**  
22 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
23 **OAKLAND DIVISION**

24 CENTER FOR BIOLOGICAL  
25 DIVERSITY,

26 Plaintiff,

27 v.

28 GINA McCARTHY, in her official capacity  
as the Administrator of the United States  
Environmental Protection Agency,

Defendant.

Case No. 4:13-cv-5142-SBA

**JOINT MOTION TO ENTER  
CONSENT DECREE**

1 Defendant Gina McCarthy, in her official capacity as Administrator of the United  
 2 States Environmental Protection Agency (“EPA”), and Plaintiff Center for Biological  
 3 Diversity (“CBD”), by and through the undersigned counsel (the “Parties”), hereby  
 4 jointly move the Court to enter the attached Consent Decree (attached as Exhibit A). In  
 5 support of this motion, the Parties state as follows:

6 1. Plaintiff’s Second Amended Complaint (the “Complaint”) in this action  
 7 was filed pursuant to section 304(a)(2) of the Clean Air Act (“CAA”), 42 U.S.C. §  
 8 7604(a)(2), alleging that, *inter alia*, EPA failed to fulfill a nondiscretionary duty under  
 9 CAA section 110(k)(1)(B), 42 U.S.C. § 7410(k)(1)(B), to find that certain states failed to  
 10 submit nonattainment state implementation plans (“SIPs”) for certain areas designated  
 11 nonattainment for the 2006 fine particulate matter, or PM<sub>2.5</sub>, National Ambient Air  
 12 Quality Standard (“NAAQS”), *see* 2nd Am. Compl. ¶ 1 (Dkt. No. 22).

13 2. EPA finalized a rule, *Identification of Nonattainment Classification and*  
 14 *Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997*  
 15 *Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) and 2006 PM<sub>2.5</sub>*  
 16 *NAAQS*, 79 Fed. Reg. 31,566 (June 2, 2014), which establishes a deadline of December  
 17 31, 2014, by which states must submit SIPs complying with Subpart 4 of Part D, title I of  
 18 the CAA requirements, and therefore, solely for the purpose of resolving this case, the  
 19 parties agree that Claim 1 is moot.

20 3. Plaintiff also alleges that EPA failed to fulfill a nondiscretionary duty  
 21 under CAA sections 110(k)(2)-(4), 42 U.S.C. §§ 7410(k)(2)-(4), to take final action to  
 22 approve or disapprove, in whole or in part, certain 2006 PM<sub>2.5</sub> NAAQS nonattainment  
 23 SIP submissions addressing nonattainment new source review from states for the five  
 24 areas listed below, *see* 2nd Am. Compl. ¶ 1 (Dkt. No. 22):

AREA/STATE
Los Angeles – South Coast, California
Charleston, West Virginia

AREA/STATE
Steubenville, Ohio-Weirton, West Virginia
San Joaquin Valley, California
Fairbanks, Alaska

4. EPA took final action to redesignate two of the five nonattainment areas to attainment, *Final Rule*, 79 Fed. Reg. 17,884 (Mar. 31, 2014) (Charleston, West Virginia); *Final Rule*, 79 Fed. Reg. 15,019 (Mar. 18, 2014) (Steubenville, Ohio-Weirton, West Virginia), and therefore Claim 2 is moot as to these two areas.

5. The Parties negotiated and on July 17, 2014 lodged with the Court a proposed Consent Decree resolving the then remaining substantive claims in this suit (Dkt No. 36).

6. Clean Air Act section 113(g), 42 U.S.C. § 7413(g), requires EPA to provide notice to the general public and an opportunity for comment before any settlement is finalized or entered by the Court. That notice and comment process is now complete, and EPA received one public comment. That comment was not adverse to entry of the Consent Decree.

7. During the public comment period, on August 11, 2014, EPA took final action approving California's SIP revision addressing nonattainment new source review for 2006 PM<sub>2.5</sub> NAAQS for the San Joaquin Valley, *Final Rule*, 79 Fed. Reg. 55,637 (Sept. 17, 2014), and therefore Claim 2 is moot as to that area. The Consent Decree has been revised to address this change.

8. The revised Consent Decree resolves Plaintiff's claims with respect to the remaining two areas identified in the Complaint.

9. The Parties now request that the Court enter the revised Consent Decree.

10. In the revised Consent Decree, EPA and the Plaintiff state their agreement that the Consent Decree is fair, reasonable, and in the public interest. The Court should therefore enter the attached Consent Decree.



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COUNSEL FOR DEFENDANT: SAM HIRSCH  
Acting Assistant Attorney General  
Environment & Natural Resources Division

/s/ Leslie M. Hill  
LESLIE M. HILL (D.C. Bar No. 476008)  
Environmental Defense Section  
601 D Street N.W., Suite 8000  
Washington D.C. 20004  
Tel. (202) 514-0375  
Email: Leslie.Hill@usdoj.gov

*Attorneys for Defendant EPA*

Of counsel:

Stephanie Hogan  
Karen Bennett Bianco  
Office of General Counsel  
U.S. Environmental Protection Agency

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~~PROPOSED~~ ORDER

Before the Court is the Parties' **JOINT MOTION TO ENTER CONSENT DECREE**. Upon due consideration, and for good cause shown, the motion is hereby **GRANTED**.

**IT IS SO ORDERED.**

DATED this 14th day of October, 2014.

  
SAUNDRA BROWN ARMSTRONG  
UNITED STATES DISTRICT JUDGE