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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SIERRA CLUB,	)	Case No. 09-cv-00152 SBA
	)	
<i>Plaintiff,</i>	)	<b>NOTICE OF LODGING OF</b>
	)	<b>PROPOSED CONSENT DECREE</b>
v.	)	
	)	
LISA P. JACKSON, Administrator, United	)	
States Environmental Protection Agency, in her	)	
official capacity,	)	
	)	
<i>Defendant.</i>	)	

1 Defendant Lisa P. Jackson, in her official capacity as Administrator of the United States  
2 Environmental Protection Agency (“EPA”), hereby lodges with the Court a proposed consent  
3 decree to be noticed for public comment that contains the terms of a proposed settlement of this  
4 action. *See* Attachment 1, Consent Decree.

5 **The proposed consent decree should not be signed or entered by the Court at this**  
6 **time.** Pursuant to section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), the EPA  
7 Administrator must provide “a reasonable opportunity by notice in the Federal Register to  
8 persons who are not named as parties or intervenors to the action or matter to comment in  
9 writing” upon the proposed consent decree. Accordingly, EPA will publish in the Federal  
10 Register a notice of the proposed consent decree and request public comments. After a  
11 reasonable comment period, the EPA Administrator will promptly consider any written  
12 comments received and, if none of the comments disclose facts or considerations which indicate  
13 that the proposed consent decree is inappropriate, improper, inadequate, or inconsistent with the  
14 requirements of the Clean Air Act, EPA will move for entry of the decree.

15 Respectfully submitted,

16 Dated: July 6, 2010

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Environment & Natural Resources Division

17 /s/ Rochelle L. Russell  
18

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27 UNITED STATES DISTRICT COURT  
 28 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

22 SIERRA CLUB,	)	Case No. 09-cv-00152 SBA
	)	
23 <i>Plaintiff,</i>	)	<b>CONSENT DECREE</b>
	)	
24 v.	)	
	)	
25 LISA P. JACKSON, Administrator, United	)	
26 States Environmental Protection Agency, in her	)	
official capacity,	)	
27 <i>Defendant.</i>	)	
	)	

1           WHEREAS, on January 13, 2009, Plaintiff Sierra Club filed the above-captioned matter  
2 against Lisa P. Jackson, in her official capacity as Administrator of the United States  
3 Environmental Protection Agency (hereinafter “EPA” or “Defendant”);<sup>1/</sup>

4           WHEREAS, Plaintiff alleges that EPA failed to perform its obligations under Clean Air  
5 Act (“CAA”) section 112(d)(6), 42 U.S.C. § 7412(d)(6), to “review, and revise as necessary  
6 (taking into account developments in practices, processes, and control technologies)” the section  
7 112(d) emission standards identified in Paragraph 1 of the Complaint within 8 years of the  
8 promulgation of such standards, *see* Compl. ¶¶ 1, 26 (Dkt. No. 1);

9           WHEREAS, Plaintiff alleges that for each source category identified in the Complaint,  
10 EPA failed to perform its obligations under CAA section 112(f)(2), 42 U.S.C. § 7412(f)(2),  
11 within 8 years of the promulgation of the section 112(d) emission standards identified in  
12 Paragraph 1 of the Complaint, to “promulgate standards [under section 112(f)(2)] for such  
13 category or subcategory if promulgation of such standards is required in order to provide an  
14 ample margin of safety to protect public health . . . or to prevent, taking into consideration costs,  
15 energy, safety, and other relevant factors, an adverse environmental effect,” *see* Compl. ¶¶ 1, 27;

16           WHEREAS, the Complaint identifies 28 source categories for which EPA has allegedly  
17 failed to complete its CAA section 112(d)(6) and (f)(2) obligations, *see* Compl. ¶¶ 1, 13;

18           WHEREAS, the emission standards for these 28 source categories are set forth in 27  
19 different National Emission Standards for Hazardous Air Pollutants (“NESHAP”), which are  
20 listed in the Complaint by the relevant Federal Register notice, and include the following, *see*  
21 Compl. ¶¶ 1, 13:

22           (1) Marine Tank Vessel Loading Operations, 60 Fed. Reg. 48,388 (Sept. 19, 1995) (40  
23 C.F.R. pt. 63 subpt. Y), Compl. ¶ 13(6);

24           (2) Pharmaceuticals Production, 63 Fed. Reg. 50,280 (Sept. 21, 1998) (40 C.F.R. pt. 63  
25 subpt. GGG), Compl. ¶ 13(10);

26  
27  
28 <sup>1/</sup> Lisa P. Jackson has been substituted for Stephen L. Johnson as Defendant in this matter  
pursuant to Federal Rule of Civil Procedure 25(d).

1 (3) Printing and Publishing Industry, 61 Fed. Reg. 27,132 (May 30, 1996) (40 C.F.R. pt.  
2 63 subpt. KK), Compl. ¶ 13(19);

3 (4) Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, 60  
4 Fed. Reg. 4,948 (Jan. 25, 1995) (40 C.F.R. pt. 63 subpt. N), Compl. ¶ 13(2);

5 (5) Steel Pickling – HCl Process Facilities and Hydrochloric Acid Regeneration Plants,  
6 64 Fed. Reg. 33,202 (June 22, 1999) (40 C.F.R. pt. 63 subpt. CCC), Compl. ¶ 13(24);

7 (6) Group I Polymers and Resins, 61 Fed. Reg. 46,906 (Sept. 5, 1996) (40 C.F.R. pt. 63  
8 subpt. U), Compl. ¶ 13(13);

9 (7) Shipbuilding and Ship Repair (Surface Coating) Operations, 60 Fed. Reg. 64,330  
10 (Dec. 15, 1995) (40 C.F.R. pt. 63 subpt. II), Compl. ¶ 13(23);

11 (8) Wood Furniture Manufacturing Operations, 60 Fed. Reg. 62,930 (Dec. 7, 1995) (40  
12 C.F.R. pt. 63 subpt. JJ), Compl. ¶ 13(25);

13 (9) Primary Lead Smelting, 64 Fed. Reg. 30,194 (June 4, 1999) (40 C.F.R. pt. 63 subpt.  
14 TTT), Compl. ¶ 13(18);

15 (10) Secondary Lead Smelting, 60 Fed. Reg. 32,587 (June 23, 1995) (40 C.F.R. pt. 63  
16 subpt. X), Compl. ¶ 13(22);

17 (11) Pulp and Paper Production Industry, 63 Fed. Reg. 18,504 (Apr. 15, 1998) (40 C.F.R.  
18 pt. 63 subpt. S), Compl. ¶ 13(20);

19 (12) Aerospace Manufacturing and Rework Facilities, 60 Fed. Reg. 45,948 (Sept. 1,  
20 1995) (40 C.F.R. pt. 63 subpt. GG), Compl. ¶ 13(1);

21 (13) Mineral Wool Production, 64 Fed. Reg. 29,490 (June 1, 1999) (40 C.F.R. pt. 63  
22 subpt. DDD), Compl. ¶ 13(7);

23 (14) Primary Aluminum Reduction Plants, 62 Fed. Reg. 52,384 (Oct. 7, 1997) (40 C.F.R.  
24 pt. 63 subpt. LL), Compl. ¶ 13(17);

25 (15) Ferroalloys Production: Ferromanganese and Silicomanganese, 64 Fed. Reg. 27,450  
26 (May 20, 1999) (40 C.F.R. pt. 63 subpt. XXX), Compl. ¶ 13(3);

27 (16) Wool Fiberglass Manufacturing, 64 Fed. Reg. 31,695 (June 14, 1999) (40 C.F.R. pt.  
28 63 subpt. NNN), Compl. ¶ 13(26);

1 (17) Secondary Aluminum Production, 65 Fed. Reg. 15,690 (Mar. 23, 2000) (40 C.F.R.  
2 pt. 63 subpt. RRR), Compl. ¶ 13(21);

3 (18) Pesticide Active Ingredient Production, 64 Fed. Reg. 33,550 (June 23, 1999) (40  
4 C.F.R. pt. 63 subpt. MMM), Compl. ¶ 13(9);

5 (19) Polyether Polyols Production, 64 Fed. Reg. 29,420 (June 1, 1999) (40 C.F.R. pt. 63  
6 subpt. PPP), Compl. ¶ 13(12);

7 (20) Group IV Polymers and Resins, 61 Fed. Reg. 48,208 (Sept. 12, 1996) (40 C.F.R. pt.  
8 63 subpt. JJJ), Compl. ¶ 13(15);

9 (21) Flexible Polyurethane Foam Production, 63 Fed. Reg. 53,980 (Oct. 7, 1998) (40  
10 C.F.R. pt. 63 subpt. III), Compl. ¶ 13(4);

11 (22) Generic MACT- Acrylic and Modacrylic Fibers Production, 64 Fed. Reg. 34,854  
12 (June 29, 1999) (40 C.F.R. pt. 63 subpt. YY), Compl. ¶ 13(5);

13 (23) Generic MACT- Polycarbonate Production, 64 Fed. Reg. 34,854 (June 29, 1999) (40  
14 C.F.R. pt. 63 subpt. YY), Compl. ¶ 13(5);

15 (24) Off-Site Waste and Recovery Operations, 61 Fed. Reg. 34,140 (July 1, 1996) (40  
16 C.F.R. pt. 63 subpt. DD), Compl. ¶ 13(8);

17 (25) Phosphoric Acid Manufacturing, 64 Fed. Reg. 31,358 (June 10, 1999) (40 C.F.R. pt.  
18 63 subpt. AA), Compl. ¶ 13(11);

19 (26) Phosphate Fertilizers Production Plants, 64 Fed. Reg. 31,358 (June 10, 1999) (40  
20 C.F.R. pt. 63 subpt. BB), Compl. ¶ 13(11);

21 (27) Group III Polymers and Resins—Manufacture of Amino/Phenolic Resins, 65 Fed.  
22 Reg. 3,276 (Jan. 20, 2000) (40 C.F.R. pt. 63 subpt. OOO), Compl. ¶ 13(14);

23 (28) Portland Cement Manufacturing Industry, 64 Fed. Reg. 31,898 (June 14, 1999) (40  
24 C.F.R. pt. 63 subpt. LLL), Compl. ¶ 13(16).<sup>2/</sup>

25 \_\_\_\_\_  
26 <sup>2/</sup> The emission standards for the source categories identified in items 22-23 and 25-26 were  
27 addressed in the same Federal Register notices, 64 Fed. Reg. 34,854 (June 29, 1999) and 64 Fed.  
28 Reg. 31,358 (June 10, 1999), respectively, and thus were addressed in the same paragraphs of the  
Complaint, as cited above. For clarity, this Consent Decree identifies each source category by  
separate paragraph.

1 WHEREAS, the relief requested in the Complaint includes, among other things, an order  
2 from this Court to establish a date certain by which EPA must fulfill each of its listed obligations  
3 for each of the source categories listed herein;

4 WHEREAS, EPA has not taken final action pursuant to CAA sections 112(d)(6) or  
5 112(f)(2) with respect to the source categories identified in the Complaint, *see* EPA Answer ¶ 13  
6 (Dkt. No. 43);

7 WHEREAS, Plaintiff and EPA have agreed to a settlement of this action without  
8 admission of any issue of fact or law, except as expressly provided herein;

9 WHEREAS, Plaintiff and EPA, by entering into this Consent Decree, do not waive or  
10 limit any claim, remedy, or defense, on any grounds, related to any final EPA action;

11 WHEREAS, Plaintiff and EPA consider this Consent Decree to be an adequate and  
12 equitable resolution of all the claims in this matter and therefore wish to effectuate a settlement;

13 WHEREAS, it is in the interest of the public, Plaintiff Sierra Club, Defendant EPA, and  
14 judicial economy to resolve this matter without protracted litigation;

15 WHEREAS, Plaintiff and EPA agree that this Court has jurisdiction over this matter  
16 pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2), and that  
17 venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(e) and N.D.  
18 Cal. Civ. Local Rule 3-2(c)-(d);

19 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent Decree is  
20 fair, reasonable, in the public interest, and consistent with the Clean Air Act;

21 NOW THEREFORE, before the taking of testimony, without trial or determination of  
22 any issues of fact or law, and upon the consent of Plaintiff Sierra Club and Defendant EPA, it is  
23 hereby ordered, adjudged and decreed that:

24 1. For the Marine Tank Vessel Loading Operations source category, the EPA  
25 Administrator shall:

26 (a) no later than September 14, 2010,

27 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart Y

28 (“NESHAP subpart Y”) under CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6), or

1 sign a proposed determination that revision of NESHAP subpart Y is not  
2 necessary under CAA section 112(d)(6); and

3 (ii) sign a proposed rule containing residual risk standards for this source category  
4 under CAA section 112(f)(2), 42 U.S.C. § 7412(f)(2), or sign a proposed  
5 determination that promulgation of such standards is not required under CAA  
6 section 112(f)(2); and

7 (b) no later than March 31, 2011,

8 (i) sign a final rule promulgating revisions to NESHAP subpart Y under CAA  
9 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
10 Y is not necessary under CAA section 112(d)(6); and

11 (ii) sign a final rule promulgating residual risk standards for this source category  
12 under CAA section 112(f)(2) or sign a final determination that promulgation of  
13 such standards is not required under CAA section 112(f)(2).

14 2. For the Pharmaceuticals Production source category, the EPA Administrator shall:

15 (a) no later than September 14, 2010,

16 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart GGG  
17 (“NESHAP subpart GGG”) under CAA section 112(d)(6) or sign a proposed  
18 determination that revision of NESHAP subpart GGG is not necessary under  
19 CAA section 112(d)(6); and

20 (ii) sign a proposed rule containing residual risk standards for this source category  
21 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
22 of such standards is not required under CAA section 112(f)(2); and

23 (b) no later than March 31, 2011,

24 (i) sign a final rule promulgating revisions to NESHAP subpart GGG under CAA  
25 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
26 GGG is not necessary under CAA section 112(d)(6); and



1 (ii) sign a final rule promulgating residual risk standards for this source category  
2 under CAA section 112(f)(2) or sign a final determination that promulgation of  
3 such standards is not required under CAA section 112(f)(2).

4 3. For the Printing and Publishing Industry source category, the EPA Administrator  
5 shall:

6 (a) no later than September 14, 2010,

7 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart KK  
8 (“NESHAP subpart KK”) under CAA section 112(d)(6) or sign a proposed  
9 determination that revision of NESHAP subpart KK is not necessary under CAA  
10 section 112(d)(6); and

11 (ii) sign a proposed rule containing residual risk standards for this source category  
12 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
13 of such standards is not required under CAA section 112(f)(2); and

14 (b) no later than March 31, 2011,

15 (i) sign a final rule promulgating revisions to NESHAP subpart KK under CAA  
16 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
17 KK is not necessary under CAA section 112(d)(6); and

18 (ii) sign a final rule promulgating residual risk standards for this source category  
19 under CAA section 112(f)(2) or sign a final determination that promulgation of  
20 such standards is not required under CAA section 112(f)(2).

21 4. For the Hard and Decorative Chromium Electroplating and Chromium Anodizing  
22 Tanks source category, the EPA Administrator shall:

23 (a) no later than September 14, 2010,

24 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart N  
25 (“NESHAP subpart N”) under CAA section 112(d)(6) or sign a proposed  
26 determination that revision of NESHAP subpart N is not necessary under CAA  
27 section 112(d)(6); and

28

1 (ii) sign a proposed rule containing residual risk standards for this source category  
2 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
3 of such standards is not required under CAA section 112(f)(2); and

4 (b) no later than June 30, 2011,

5 (i) sign a final rule promulgating revisions to NESHAP subpart N under CAA  
6 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
7 N is not necessary under CAA section 112(d)(6); and

8 (ii) sign a final rule promulgating residual risk standards for this source category  
9 under CAA section 112(f)(2) or sign a final determination that promulgation of  
10 such standards is not required under CAA section 112(f)(2).

11 5. For the Steel Pickling–HCl Process Facilities and Hydrochloric Acid Regeneration  
12 Plants source category, the EPA Administrator shall:

13 (a) no later than September 14, 2010,

14 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart CCC  
15 (“NESHAP subpart CCC”) under CAA section 112(d)(6) or sign a proposed  
16 determination that revision of NESHAP subpart CCC is not necessary under CAA  
17 section 112(d)(6); and

18 (ii) sign a proposed rule containing residual risk standards for this source category  
19 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
20 of such standards is not required under CAA section 112(f)(2); and

21 (b) no later than June 30, 2011,

22 (i) sign a final rule promulgating revisions to NESHAP subpart CCC under CAA  
23 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
24 CCC is not necessary under CAA section 112(d)(6); and

25 (ii) sign a final rule promulgating residual risk standards for this source category  
26 under CAA section 112(f)(2) or sign a final determination that promulgation of  
27 such standards is not required under CAA section 112(f)(2).

28 6. For the Group I Polymers and Resins source category, the EPA Administrator shall:

1 (a) no later than September 14, 2010,

2 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart U  
3 (“NESHAP subpart U”) under CAA section 112(d)(6) or sign a proposed  
4 determination that revision of NESHAP subpart U is not necessary under CAA  
5 section 112(d)(6); and

6 (ii) sign a proposed rule containing residual risk standards for this source category  
7 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
8 of such standards is not required under CAA section 112(f)(2); and

9 (b) no later than June 30, 2011,

10 (i) sign a final rule promulgating revisions to NESHAP subpart U under CAA  
11 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
12 U is not necessary under CAA section 112(d)(6); and

13 (ii) sign a final rule promulgating residual risk standards for this source category  
14 under CAA section 112(f)(2) or sign a final determination that promulgation of  
15 such standards is not required under CAA section 112(f)(2).

16 7. For the Shipbuilding and Ship Repair (Surface Coating) Operations source category,  
17 the EPA Administrator shall:

18 (a) no later than October 29, 2010,

19 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart II  
20 (“NESHAP subpart II”) under CAA section 112(d)(6) or sign a proposed  
21 determination that revision of NESHAP subpart II is not necessary under CAA  
22 section 112(d)(6); and

23 (ii) sign a proposed rule containing residual risk standards for this source category  
24 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
25 of such standards is not required under CAA section 112(f)(2); and

26 (b) no later than October 31, 2011,  
27  
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1 (i) sign a final rule promulgating revisions to NESHAP subpart II under CAA  
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
3 II is not necessary under CAA section 112(d)(6); and

4 (ii) sign a final rule promulgating residual risk standards for this source category  
5 under CAA section 112(f)(2) or sign a final determination that promulgation of  
6 such standards is not required under CAA section 112(f)(2).

7 8. For the Wood Furniture Manufacturing Operations source category, the EPA  
8 Administrator shall:

9 (a) no later than October 29, 2010,

10 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart JJ  
11 (“NESHAP subpart JJ”) under CAA section 112(d)(6) or sign a proposed  
12 determination that revision of NESHAP subpart JJ is not necessary under CAA  
13 section 112(d)(6); and

14 (ii) sign a proposed rule containing residual risk standards for this source category  
15 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
16 of such standards is not required under CAA section 112(f)(2); and

17 (b) no later than October 31, 2011,

18 (i) sign a final rule promulgating revisions to NESHAP subpart JJ under CAA  
19 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
20 JJ is not necessary under CAA section 112(d)(6); and

21 (ii) sign a final rule promulgating residual risk standards for this source category  
22 under CAA section 112(f)(2) or sign a final determination that promulgation of  
23 such standards is not required under CAA section 112(f)(2).

24 9. For the Primary Lead Smelting source category, the EPA Administrator shall:

25 (a) no later than January 31, 2011,

26 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart TTT  
27 (“NESHAP subpart TTT”) under CAA section 112(d)(6) or sign a proposed  
28

1 determination that revision of NESHAP subpart TTT is not necessary under CAA  
2 section 112(d)(6); and

3 (ii) sign a proposed rule containing residual risk standards for this source category  
4 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
5 of such standards is not required under CAA section 112(f)(2); and

6 (b) no later than October 31, 2011,

7 (i) sign a final rule promulgating revisions to NESHAP subpart TTT under CAA  
8 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
9 TTT is not necessary under CAA section 112(d)(6); and

10 (ii) sign a final rule promulgating residual risk standards for this source category  
11 under CAA section 112(f)(2) or sign a final determination that promulgation of  
12 such standards is not required under CAA section 112(f)(2).

13 10. For the Secondary Lead Smelting source category, the EPA Administrator shall:

14 (a) no later than April 29, 2011,

15 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart X  
16 (“NESHAP subpart X”) under CAA section 112(d)(6) or sign a proposed  
17 determination that revision of NESHAP subpart X is not necessary under CAA  
18 section 112(d)(6); and

19 (ii) sign a proposed rule containing residual risk standards for this source category  
20 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
21 of such standards is not required under CAA section 112(f)(2); and

22 (b) no later than December 16, 2011,

23 (i) sign a final rule promulgating revisions to NESHAP subpart X under CAA  
24 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
25 X is not necessary under CAA section 112(d)(6); and

26 (ii) sign a final rule promulgating residual risk standards for this source category  
27 under CAA section 112(f)(2) or sign a final determination that promulgation of  
28 such standards is not required under CAA section 112(f)(2).

1 11. For the Pulp and Paper Production Industry source category, the EPA Administrator  
2 shall:

3 (a) no later than June 15, 2011,

4 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart S  
5 (“NESHAP subpart S”) under CAA section 112(d)(6) or sign a proposed  
6 determination that revision of NESHAP subpart S is not necessary under CAA  
7 section 112(d)(6); and

8 (ii) sign a proposed rule containing residual risk standards for this source category  
9 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
10 of such standards is not required under CAA section 112(f)(2); and

11 (b) no later than December 16, 2011,

12 (i) sign a final rule promulgating revisions to NESHAP subpart S under CAA  
13 section 112(d)(6) or sign a final determination that revision of NESHAP subpart S  
14 is not necessary under CAA section 112(d)(6); and

15 (ii) sign a final rule promulgating residual risk standards for this source category  
16 under CAA section 112(f)(2) or sign a final determination that promulgation of  
17 such standards is not required under CAA section 112(f)(2).

18 12. For the Aerospace Manufacturing and Rework Facilities source category, the EPA  
19 Administrator shall:

20 (a) no later than August 31, 2011,

21 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart GG  
22 (“NESHAP subpart GG”) under CAA section 112(d)(6) or sign a proposed  
23 determination that revision of NESHAP subpart GG is not necessary under CAA  
24 section 112(d)(6); and

25 (ii) sign a proposed rule containing residual risk standards for this source category  
26 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
27 of such standards is not required under CAA section 112(f)(2); and

28 (b) no later than June 29, 2012,

1 (i) sign a final rule promulgating revisions to NESHAP subpart GG under CAA  
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
3 GG is not necessary under CAA section 112(d)(6); and

4 (ii) sign a final rule promulgating residual risk standards for this source category  
5 under CAA section 112(f)(2) or sign a final determination that promulgation of  
6 such standards is not required under CAA section 112(f)(2).

7 13. For the Mineral Wool Production source category, the EPA Administrator shall:

8 (a) no later than October 31, 2011,

9 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart DDD  
10 (“NESHAP subpart DDD”) under CAA section 112(d)(6) or sign a proposed  
11 determination that revision of NESHAP subpart DDD is not necessary under  
12 CAA section 112(d)(6); and

13 (ii) sign a proposed rule containing residual risk standards for this source category  
14 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
15 of such standards is not required under CAA section 112(f)(2); and

16 (b) no later than June 29, 2012,

17 (i) sign a final rule promulgating revisions to NESHAP subpart DDD under CAA  
18 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
19 DDD is not necessary under CAA section 112(d)(6); and

20 (ii) sign a final rule promulgating residual risk standards for this source category  
21 under CAA section 112(f)(2) or sign a final determination that promulgation of  
22 such standards is not required under CAA section 112(f)(2).

23 14. For the Primary Aluminum Reduction Plants source category, the EPA Administrator  
24 shall:

25 (a) no later than October 31, 2011,

26 (i) sign a proposed rule containing revisions to the 40 C.F.R. part 63, subpart LL  
27 (“NESHAP subpart LL”) under CAA section 112(d)(6) or sign a proposed  
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1 determination that revision of NESHAP subpart LL is not necessary under CAA  
2 section 112(d)(6); and

3 (ii) sign a proposed rule containing residual risk standards for this source category  
4 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
5 of such standards is not required under CAA section 112(f)(2); and

6 (b) no later than June 29, 2012,

7 (i) sign a final rule promulgating revisions to NESHAP subpart LL under CAA  
8 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
9 LL is not necessary under CAA section 112(d)(6); and

10 (ii) sign a final rule promulgating residual risk standards for this source category  
11 under CAA section 112(f)(2) or sign a final determination that promulgation of  
12 such standards is not required under CAA section 112(f)(2).

13 15. For the Ferroalloys Production: Ferromanganese and Silicomanganese source  
14 category, the EPA Administrator shall:

15 (a) no later than October 31, 2011,

16 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart XXX  
17 (“NESHAP subpart XXX”) under CAA section 112(d)(6) or sign a proposed  
18 determination that revision of NESHAP subpart XXX is not necessary under  
19 CAA section 112(d)(6); and

20 (ii) sign a proposed rule containing residual risk standards for this source category  
21 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
22 of such standards is not required under CAA section 112(f)(2); and

23 (b) no later than June 29, 2012,

24 (i) sign a final rule promulgating revisions to the NESHAP subpart XXX under  
25 CAA section 112(d)(6) or sign a final determination that revision of NESHAP  
26 subpart XXX is not necessary under CAA section 112(d)(6); and



1 (ii) sign a final rule promulgating residual risk standards for this source category  
2 under CAA section 112(f)(2) or sign a final determination that promulgation of  
3 such standards is not required under CAA section 112(f)(2).

4 16. For the Wool Fiberglass Manufacturing source category, the EPA Administrator  
5 shall:

6 (a) no later than October 31, 2011,

7 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart NNN  
8 (“NESHAP subpart NNN”) under CAA section 112(d)(6) or sign a proposed  
9 determination that revision of NESHAP subpart NNN is not necessary under  
10 CAA section 112(d)(6); and

11 (ii) sign a proposed rule containing residual risk standards for this source category  
12 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
13 of such standards is not required under CAA section 112(f)(2); and

14 (b) no later than June 29, 2012,

15 (i) sign a final rule promulgating revisions to NESHAP subpart NNN under CAA  
16 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
17 NNN is not necessary under CAA section 112(d)(6); and

18 (ii) sign a final rule promulgating residual risk standards for this source category  
19 under CAA section 112(f)(2) or sign a final determination that promulgation of  
20 such standards is not required under CAA section 112(f)(2).

21 17. For the Secondary Aluminum Production source category, the EPA Administrator  
22 shall:

23 (a) no later than November 30, 2011,

24 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart RRR  
25 (“NESHAP subpart RRR”) under CAA section 112(d)(6) or sign a proposed  
26 determination that revision of NESHAP subpart RRR is not necessary under CAA  
27 section 112(d)(6); and  
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1 (ii) sign a proposed rule containing residual risk standards for this source category  
2 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
3 of such standards is not required under CAA section 112(f)(2); and

4 (b) no later than August 31, 2012,

5 (i) sign a final rule promulgating revisions to NESHAP subpart RRR under CAA  
6 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
7 RRR is not necessary under CAA section 112(d)(6); and

8 (ii) sign a final rule promulgating residual risk standards for this source category  
9 under CAA section 112(f)(2) or sign a final determination that promulgation of  
10 such standards is not required under CAA section 112(f)(2).

11 18. For the Pesticide Active Ingredient Production source category, the EPA

12 Administrator shall:

13 (a) no later than November 30, 2011,

14 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart MMM  
15 (“NESHAP subpart MMM”) under CAA section 112(d)(6) or sign a proposed  
16 determination that revision of NESHAP subpart MMM is not necessary under  
17 CAA section 112(d)(6); and

18 (ii) sign a proposed rule containing residual risk standards for this source category  
19 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
20 of such standards is not required under CAA section 112(f)(2); and

21 (b) no later than November 30, 2012,

22 (i) sign a final rule promulgating revisions to NESHAP subpart MMM under  
23 CAA section 112(d)(6) or sign a final determination that revision of NESHAP  
24 subpart MMM is not necessary under CAA section 112(d)(6); and

25 (ii) sign a final rule promulgating residual risk standards for this source category  
26 under CAA section 112(f)(2) or sign a final determination that promulgation of  
27 such standards is not required under CAA section 112(f)(2).  
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1 19. For the Polyether Polyols Production source category, the EPA Administrator shall:

2 (a) no later than November 30, 2011,

3 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart PPP  
4 (“NESHAP subpart PPP”) under CAA section 112(d)(6) or sign a proposed  
5 determination that revision of NESHAP subpart PPP is not necessary under CAA  
6 section 112(d)(6); and

7 (ii) sign a proposed rule containing residual risk standards for this source category  
8 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
9 of such standards is not required under CAA section 112(f)(2); and

10 (b) no later than November 30, 2012,

11 (i) sign a final rule promulgating revisions to NESHAP subpart PPP under CAA  
12 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
13 PPP is not necessary under CAA section 112(d)(6); and

14 (ii) sign a final rule promulgating residual risk standards for this source category  
15 under CAA section 112(f)(2) or sign a final determination that promulgation of  
16 such standards is not required under CAA section 112(f)(2).

17 20. For the Group IV Polymers and Resins source category, the EPA Administrator

18 shall:

19 (a) no later than November 30, 2011,

20 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart JJJ  
21 (“NESHAP subpart JJJ”) under CAA section 112(d)(6) or sign a proposed  
22 determination that revision of NESHAP subpart JJJ is not necessary under CAA  
23 section 112(d)(6); and

24 (ii) sign a proposed rule containing residual risk standards for this source category  
25 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
26 of such standards is not required under CAA section 112(f)(2); and

27 (b) no later than November 30, 2012,

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1 (i) sign a final rule promulgating revisions to NESHAP subpart JJJ under CAA  
2 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
3 JJJ is not necessary under CAA section 112(d)(6); and

4 (ii) sign a final rule promulgating residual risk standards for this source category  
5 under CAA section 112(f)(2) or sign a final determination that promulgation of  
6 such standards is not required under CAA section 112(f)(2).

7 21. For the Flexible Polyurethane Foam Production source category, the EPA  
8 Administrator shall:

9 (a) no later than October 31, 2012,

10 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart III  
11 (“NESHAP subpart III”) under CAA section 112(d)(6) or sign a proposed  
12 determination that revision of NESHAP subpart III is not necessary under CAA  
13 section 112(d)(6); and

14 (ii) sign a proposed rule containing residual risk standards for this source category  
15 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
16 of such standards is not required under CAA section 112(f)(2); and

17 (b) no later than October 31, 2013,

18 (i) sign a final rule promulgating revisions to NESHAP subpart III under CAA  
19 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
20 III is not necessary under CAA section 112(d)(6); and

21 (ii) sign a final rule promulgating residual risk standards for this source category  
22 under CAA section 112(f)(2) or sign a final determination that promulgation of  
23 such standards is not required under CAA section 112(f)(2).

24 22. For the Acrylic and Modacrylic Fibers Production source category, the EPA  
25 Administrator shall:

26 (a) no later than October 31, 2012,

27 (i) sign a proposed rule containing revisions to the standards for this source  
28 category in 40 C.F.R. part 63, subpart YY (“NESHAP subpart YY”) under CAA

1 section 112(d)(6) or sign a proposed determination that revision to the standards  
2 for this source category in NESHAP subpart YY is not necessary under CAA  
3 section 112(d)(6); and

4 (ii) sign a proposed rule containing residual risk standards for this source category  
5 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
6 of such standards is not required under CAA section 112(f)(2); and

7 (b) no later than October 31, 2013,

8 (i) sign a final rule promulgating revisions to the standards for this source  
9 category in NESHAP subpart YY under CAA section 112(d)(6) or sign a final  
10 determination that revision of the standards for this source category in NESHAP  
11 subpart YY is not necessary under CAA section 112(d)(6); and

12 (ii) sign a final rule promulgating residual risk standards for this source category  
13 under CAA section 112(f)(2) or sign a final determination that promulgation of  
14 such standards is not required under CAA section 112(f)(2).

15 23. For the Polycarbonate Production source category, the EPA Administrator shall:

16 (a) no later than October 31, 2012,

17 (i) sign a proposed rule containing revisions to the standards for this source  
18 category in 40 C.F.R. part 63, subpart YY (“NESHAP subpart YY”) under CAA  
19 section 112(d)(6) or sign a proposed determination that revision of the standards  
20 for this source category in NESHAP subpart YY is not necessary under CAA  
21 section 112(d)(6); and

22 (ii) sign a proposed rule containing residual risk standards for this source category  
23 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
24 of such standards is not required under CAA section 112(f)(2); and

25 (b) no later than October 31, 2013,

26 (i) sign a final rule promulgating revisions to the standards for this source  
27 category in NESHAP subpart YY under CAA section 112(d)(6) or sign a final  
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1 determination that revision of the standards in NESHAP subpart YY for this  
2 source category is not necessary under CAA section 112(d)(6); and  
3 (ii) sign a final rule promulgating residual risk standards for this source category  
4 under CAA section 112(f)(2) or sign a final determination that promulgation of  
5 such standards is not required under CAA section 112(f)(2).

6 24. For the Off-Site Waste and Recovery Operations source category, the EPA  
7 Administrator shall:

8 (a) no later than October 31, 2012,

9 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart DD  
10 (“NESHAP subpart DD”) under CAA section 112(d)(6) or sign a proposed  
11 determination that revision of NESHAP subpart DD is not necessary under CAA  
12 section 112(d)(6); and

13 (ii) sign a proposed rule containing residual risk standards for this source category  
14 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
15 of such standards is not required under CAA section 112(f)(2); and

16 (b) no later than October 31, 2013,

17 (i) sign a final rule promulgating revisions to NESHAP subpart DD under CAA  
18 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
19 DD is not necessary under CAA section 112(d)(6); and

20 (ii) sign a final rule promulgating residual risk standards for this source category  
21 under CAA section 112(f)(2) or sign a final determination that promulgation of  
22 such standards is not required under CAA section 112(f)(2).

23 25. For the Phosphoric Acid Manufacturing source category, the EPA Administrator  
24 shall:

25 (a) no later than October 31, 2012,

26 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart AA  
27 (“NESHAP subpart AA”) under CAA section 112(d)(6) or sign a proposed  
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1 determination that revision of NESHAP subpart AA is not necessary under CAA  
2 section 112(d)(6); and

3 (ii) sign a proposed rule containing residual risk standards for this source category  
4 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
5 of such standards is not required under CAA section 112(f)(2); and

6 (b) no later than October 31, 2013,

7 (i) sign a final rule promulgating revisions to NESHAP subpart AA under CAA  
8 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
9 AA is not necessary under CAA section 112(d)(6); and

10 (ii) sign a final rule promulgating residual risk standards for this source category  
11 under CAA section 112(f)(2) or sign a final determination that promulgation of  
12 such standards is not required under CAA section 112(f)(2).

13 26. For the Phosphate Fertilizers Production Plants source category, the EPA

14 Administrator shall:

15 (a) no later than October 31, 2012,

16 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart BB  
17 (“NESHAP subpart BB”) under CAA section 112(d)(6) or sign a proposed  
18 determination that revision of NESHAP subpart BB is not necessary under CAA  
19 section 112(d)(6); and

20 (ii) sign a proposed rule containing residual risk standards for this source category  
21 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
22 of such standards is not required under CAA section 112(f)(2); and

23 (b) no later than October 31, 2013,

24 (i) sign a final rule promulgating revisions to NESHAP subpart BB under CAA  
25 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
26 BB is not necessary under CAA section 112(d)(6); and

27  
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1 (ii) sign a final rule promulgating residual risk standards for this source category  
2 under CAA section 112(f)(2) or sign a final determination that promulgation of  
3 such standards is not required under CAA section 112(f)(2).

4 27. For the Group III Polymers and Resins – Manufacture of Amino/Phenolic Resins  
5 source category, the EPA Administrator shall:

6 (a) no later than October 31, 2012,

7 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart OOO  
8 (“NESHAP subpart OOO”) under CAA section 112(d)(6) or sign a proposed  
9 determination that revision of NESHAP subpart OOO is not necessary under  
10 CAA section 112(d)(6); and

11 (ii) sign a proposed rule containing residual risk standards for this source category  
12 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
13 of such standards is not required under CAA section 112(f)(2); and

14 (b) no later than October 31, 2013,

15 (i) sign a final rule promulgating revisions to NESHAP subpart OOO under CAA  
16 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
17 OOO is not necessary under CAA section 112(d)(6); and

18 (ii) sign a final rule promulgating residual risk standards for this source category  
19 under CAA section 112(f)(2) or sign a final determination that promulgation of  
20 such standards is not required under CAA section 112(f)(2).

21 28. For the Portland Cement Manufacturing Industry source category, the EPA  
22 Administrator shall:

23 (a) no later than June 15, 2017,

24 (i) sign a proposed rule containing revisions to 40 C.F.R. part 63, subpart LLL  
25 (“NESHAP subpart LLL”) under CAA section 112(d)(6) or sign a proposed  
26 determination that revision of NESHAP subpart LLL is not necessary under CAA  
27 section 112(d)(6); and  
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1 (ii) sign a proposed rule containing residual risk standards for this source category  
2 under CAA section 112(f)(2) or sign a proposed determination that promulgation  
3 of such standards is not required under CAA section 112(f)(2); and

4 (b) no later than June 15, 2018,

5 (i) sign a final rule promulgating revisions to NESHAP subpart LLL under CAA  
6 section 112(d)(6) or sign a final determination that revision of NESHAP subpart  
7 LLL is not necessary under CAA section 112(d)(6); and

8 (ii) sign a final rule promulgating residual risk standards for this source category  
9 under CAA section 112(f)(2) or sign a final determination that promulgation of  
10 such standards is not required under CAA section 112(f)(2).

11 29. Within fifteen (15) business days of signing a proposed or final rule or proposed or  
12 final determination as described in Paragraphs 1 through 28 of this Consent Decree, EPA shall  
13 deliver it to the Office of the Federal Register for prompt publication. In addition, EPA shall  
14 provide notice and make available to Plaintiff a copy of each such rule or determination within  
15 five (5) business days of delivery to the Office of the Federal Register.

16 30. Once EPA has completed all of the actions set forth in Paragraphs 1 through 29 of  
17 this Consent Decree, EPA may move to have this Decree terminated. Plaintiff shall have  
18 fourteen (14) days in which to respond to such motion.

19 31. The deadlines established in Paragraphs 1 through 28 may be extended (a) by written  
20 stipulation of Plaintiff and EPA with notice to the Court, or (b) by the Court upon motion of EPA  
21 for good cause shown and upon consideration of any response by Plaintiff. Any other provision  
22 of this Consent Decree may be modified by the Court following motion of either Plaintiff or EPA  
23 for good cause shown and upon consideration of any response by the non-moving party.

24 32. In the event of a dispute between Plaintiff and EPA concerning the interpretation or  
25 implementation of any aspect of this Consent Decree, the disputing party shall provide the other  
26 party with a written notice outlining the nature of the dispute and requesting informal  
27 negotiations. These parties shall meet and confer in order to attempt to resolve the dispute. If  
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1 these parties are unable to resolve the dispute within ten (10) business days after receipt of the  
2 notice, either party may petition the Court to resolve the dispute.

3 33. No motion or other proceeding seeking to enforce this Consent Decree or for  
4 contempt of Court shall be filed unless the procedure set forth in Paragraph 32 has been  
5 followed.

6 34. This Court shall retain jurisdiction over this matter to enforce the terms of this  
7 Consent Decree and to consider any requests for costs of litigation, including attorney fees.

8 35. Nothing in the terms of this Consent Decree shall be construed (a) to confer upon this  
9 Court jurisdiction to review any final rule or determination issued by EPA pursuant to this  
10 Consent Decree, (b) to confer upon this Court jurisdiction to review any issues that are within the  
11 exclusive jurisdiction of the United States Courts of Appeals under CAA section 307(b)(1), 42  
12 U.S.C. § 7607(b)(1), or (c) to waive any claims, remedies, or defenses that the parties may have  
13 under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

14 36. Nothing in this Consent Decree shall be construed to limit or modify any discretion  
15 accorded EPA by the Clean Air Act or by general principles of administrative law in taking the  
16 actions which are the subject of this Consent Decree, including the discretion to alter, amend, or  
17 revise any final actions promulgated pursuant to this Consent Decree. EPA's obligation to  
18 perform each action specified in this Consent Decree does not constitute a limitation or  
19 modification of EPA's discretion within the meaning of this paragraph.

20 37. Except as expressly provided herein, nothing in this Consent Decree shall be  
21 construed as an admission of any issue of fact or law nor to waive or limit any claim, remedy, or  
22 defense, on any grounds, related to any final action EPA takes with respect to the actions  
23 addressed in this Consent Decree.

24 38. EPA and Plaintiff agree that, pursuant to CAA section 304(d), 42 U.S.C. § 7604(d),  
25 Plaintiff is both eligible and entitled to recover its costs of litigation in this action, including  
26 reasonable attorney fees, incurred prior to entry of this Consent Decree. The deadline for filing a  
27 bill of costs pursuant to Local Rule 54-1 and a motion for costs of litigation, including  
28 reasonable attorney fees, pursuant to Local Rule 54-6 for activities performed in this case prior to

1 entry of this Consent Decree, is hereby extended until 90 days after the date on which the Court  
2 enters this Consent Decree. During this time the parties shall seek to resolve informally any  
3 claim for costs of litigation, including reasonable attorney fees.

4 39. Plaintiff reserves the right to seek additional costs of litigation, including reasonable  
5 attorney fees, incurred subsequent to entry of this Consent Decree and arising from Plaintiff's  
6 need to enforce or defend against efforts to modify its terms or the underlying schedule outlined  
7 herein, or for any other unforeseen continuation of this action. EPA reserves the right to oppose  
8 any such request for additional costs of litigation, including reasonable attorney fees.

9 40. It is hereby expressly understood and agreed that this Consent Decree was jointly  
10 drafted by Plaintiff and EPA. Accordingly, the parties hereby agree that any and all rules of  
11 construction to the effect that ambiguity is construed against the drafting party shall be  
12 inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent  
13 Decree.

14 41. The parties agree and acknowledge that before this Consent Decree is entered by the  
15 Court, EPA must provide notice of this Consent Decree in the Federal Register and an  
16 opportunity for public comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). After  
17 this Consent Decree has undergone notice and comment, the Administrator and/or the Attorney  
18 General, as appropriate, shall promptly consider any such written comments in determining  
19 whether to withdraw or withhold their consent to the Consent Decree, in accordance with CAA  
20 section 113(g). If the Administrator and/or the Attorney General do not elect to withdraw or  
21 withhold consent, EPA shall promptly file a motion that requests that the Court enter this  
22 Consent Decree.

23 42. Any notices required or provided for by this Consent Decree shall be in writing, via  
24 electronic mail or other means, and sent to the following (or to any new address of counsel as  
25 filed and listed in the docket of the above-captioned matter, at a future date):

26 For Plaintiff Sierra Club: Emma C. Cheuse  
27 James S. Pew  
28 Earthjustice  
1625 Massachusetts Avenue, N.W., Suite 702  
Washington, D.C. 20036

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Sarah H. Burt  
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426 17th Street, 6th Floor  
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For Defendant EPA: Rochelle L. Russell  
U.S. Department of Justice  
Environment & Natural Resources Division  
301 Howard Street, Suite 1050  
San Francisco, CA 94105  
Tel: (415) 744-6566  
Email: rochelle.russell@usdoj.gov

43. EPA and Plaintiff recognize and acknowledge that the obligations imposed upon EPA under this Consent Decree can only be undertaken using appropriated funds legally available for such purpose. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

44. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the proposed Consent Decree may not be used as evidence in any litigation between the parties.

45. The undersigned representatives of Plaintiff Sierra Club and Defendant EPA certify that they are fully authorized by the party they represent to consent to the Court's entry of the terms and conditions of this Decree.

SO ORDERED on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 COUNSEL FOR PLAINTIFF:

2 Date: July 6, 2010

/s/ Emma C. Cheuse  
EMMA C. CHEUSE  
(Appearing *Pro Hac Vice*, D.C. Bar No. 488201 )  
JAMES S. PEW  
(Appearing *Pro Hac Vice*, D.C. Bar No. 448830)  
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9 SARAH H. BURT (Cal. Bar No. 250378)  
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Email: sburt@earthjustice.org

*Attorneys for Plaintiff Sierra Club*

15 COUNSEL FOR DEFENDANT:

16 IGNACIA S. MORENO  
Assistant Attorney General  
Environment & Natural Resources Division

18 Date: July 6, 2010

/s/ Rochelle L. Russell  
ROCHELLE L. RUSSELL  
Attorney, U.S. Department of Justice  
Environmental Defense Section  
301 Howard Street, Suite 1050  
San Francisco, CA 94105  
Tel: (415) 744-6566  
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*Attorneys for Defendant EPA*