

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<p>ENVIRONMENTAL INTEGRITY PROJECT and SIERRA CLUB,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LISA JACKSON, in her official capacity as Administrator of the United States Environmental Protection Agency,</p> <p style="text-align: right;">Defendants.</p>	<p>Civil No. 1:09-CV-00218</p> <p>Hon. Emmett G. Sullivan</p> <p style="text-align: center;"><b>CONSENT DECREE</b></p>
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WHEREAS, Plaintiffs Environmental Integrity Project and Sierra Club (collectively “Plaintiffs”) filed their Complaint on February 4, 2009, against Defendants the United States Environmental Protection Agency (“EPA”) and EPA Administrator Lisa Jackson (collectively “Defendants”), pursuant to section 304(a)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(a)(2);

WHEREAS, EPA issued New Source Performance Standards for nitric acid plants that are set forth in 40 C.F.R. Part 60, Subpart G (“NSPS”);

WHEREAS, Plaintiffs allege that Defendants have failed to perform a non-discretionary duty to review, and if appropriate revise, the NSPS for nitric acid plants at least every 8 years pursuant to 42 U.S.C. § 7411 (b)(1)(B);

WHEREAS, Plaintiffs and Defendants (collectively “the Parties”) wish to effectuate a settlement of the above-captioned matter without expensive and protracted litigation;

WHEREAS, the Parties consider this Decree to be an adequate and equitable resolution of the claims in the above-captioned matter; and

WHEREAS, the Court, by entering this Decree, finds that the Decree is fair, reasonable, in the public interest, and consistent with the CAA, 42 U.S.C. §§ 7401 et seq.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the claims set forth in the Complaint and to order the relief contained in this Decree. Venue is proper in the United States District Court for the District of Columbia.

2. On or before November 15, 2010, the appropriate EPA official shall sign, and within 10 business days of signing, forward to the Federal Register for publication one or a combination of the following: (a) a proposed rule containing revisions to NSPS Subpart G pursuant to CAA 111(b)(1)(B); and/or (b) a proposed and/or final determination under CAA 111(b)(1)(B) not to revise NSPS Subpart G.

3. If EPA signed a proposed rule or proposed determination pursuant to Paragraph 2 hereof, then the appropriate EPA official shall sign on or before November 15, 2011, and within 10 business days of signing forward to the Federal Register for publication, one or a combination of the following: (a) a final rule containing revisions to NSPS Subpart G pursuant to CAA 111(b)(1)(B); and/or (b) a final determination under CAA 111(b)(1)(B) not to revise NSPS Subpart G. If pursuant to Paragraph 2 hereof EPA signed a final determination under CAA 111(b)(1)(B) not to revise NSPS Subpart G, then EPA shall have no obligation to take action pursuant to this Paragraph 3.

4. Within five (5) business days after forwarding the materials described in Paragraphs 2

and 3 hereof to the Federal Register, EPA shall send copies of such materials to Plaintiffs.

5. The deadlines set forth in Paragraphs 2 and 3 hereof may be modified only by: (a) written stipulation of the Parties with notice to the Court; or (b) the Court following motion of any party to this Decree, pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by the non-moving party.

6. The deadline for filing a motion for costs of litigation (including attorneys' fees) for activities performed prior to execution of this Decree is hereby extended until 60 days after this Decree is entered by the Court. During this 60-day period, the Parties shall seek to resolve informally any claim for costs of litigation (including attorneys' fees), and if they cannot, will submit that issue to the Court for resolution. Nothing in this paragraph shall be construed as an admission or concession by EPA that Plaintiffs are entitled to or eligible for recovery of any costs or attorneys' fees.

7. The Parties shall not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree. Upon entry, no party shall challenge the terms of this Decree.

8. Nothing in this decree shall be construed as an admission of any issue of fact or law.

9. Except as provided herein, nothing in this Decree shall be construed to limit or modify any discretion accorded the EPA Administrator by the CAA or by general principles of administrative law in taking the actions that are the subject of this Decree.

10. Nothing in this Decree shall be construed to confer upon this Court jurisdiction to review: (a) any final decision made by the Administrator of the EPA pursuant to this Decree; or (b) any issues that are within the exclusive jurisdiction of the United States Courts of Appeals pursuant to CAA Section 307(b)(1), 42 U.S.C. § 7607(b)(1). Nothing in the terms of this Decree

shall be construed to waive any remedies or defenses the Parties may have under CAA Section 307(b)(1), 42 U.S.C. § 7607(b)(1).

11. The obligations imposed on Defendants under this Decree can only be undertaken using appropriated funds. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that the Defendants obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal statute.

12. Any notices required or provided for by this Decree shall be made in writing, via facsimile or other means, and sent to the following:

For Plaintiffs:

Teresa B. Clemmer  
Patrick A. Parenteau  
Environmental and Natural Resources Law Clinic  
Vermont Law School  
P.O. Box 96, Chelsea Street  
South Royalton, VT 05068

For Defendant:

Heather E. Gange  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Fax (202) 514-4206

Scott Jordan  
U.S. Environmental Protection Agency  
Office of General Counsel  
ARN: MC-2344A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
Fax: (202) 564-5603

13. In the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this Decree, the disputing party shall provide the other party

with a written notice outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution within ten (10) business days after receipt of the notice, any party may move the Court to resolve the dispute.

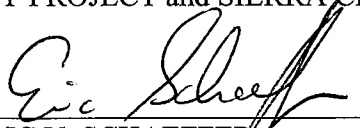
14. The Parties agree and acknowledge that, before this Decree can be finalized and entered by the Court, the Administrator must provide notice of this Decree in the Federal Register and an opportunity for public comment pursuant to the Clean Air Act, 42 U.S.C. § 7413(g). After this Decree has undergone notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold their consent to the Decree, in accordance with 42 U.S.C. § 7413(g). Once the Administrator and/or the Attorney General elect whether or not to withdraw or withhold their consent to this Decree, the Administrator shall provide written notice of that election to Plaintiffs as expeditiously as possible. If the Administrator and/or the Attorney General do not elect to withdraw or withhold their consent, the Parties shall promptly file a motion that requests that the Court enter this Decree.

15. The Court shall retain jurisdiction to determine and effectuate compliance with this Decree. When Defendants' obligations under Paragraph 2 and 3 have been completed, and the Plaintiffs' claims for costs of litigation have been resolved pursuant to the process described in Paragraph 6, the above-captioned matter shall be dismissed with prejudice. Defendants shall file the appropriate notice with the Court so that the Clerk may close the file.

16. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to bind that Party to the terms of this Decree.

For Plaintiffs ENVIRONMENTAL INTEGRITY PROJECT and SIERRA CLUB


Dated: 8/20, 2009

  
ERIC V. SCHAEFFER  
Environmental Integrity Project  
1920 L St., NW  
Washington, DC 20036  
(202) 296-8800

For Defendants U.S. ENVIRONMENTAL PROTECTION AGENCY and LISA JACKSON.

Dated: Nov 2, 2009

JOHN CRUDEN  
Acting Assistant Attorney General  
Environmental & Natural Resources Division

  
HEATHER E. GANGE  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Phone: (202) 514-4206  
Fax: (202) 514-8865  
Heather.Gange@usdoj.gov

SO ORDERED:

Date: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge