

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	Case No. 1:02CV00946
SIERRA CLUB	)	(consolidated with
Plaintiff,	)	Case No. 1:02CV00947, and
	)	Case No. 1:03CV02410)
v.	)	
	)	
MICHAEL O. LEAVITT, <sup>1</sup> Administrator,	)	
U.S. Environmental Protection Agency	)	
	)	
Defendant.	)	Judge Emmet G. Sullivan
_____	)	

CONSENT DECREE

WHEREAS, Plaintiff Sierra Club filed these consolidated actions in May 2002 (Case Nos. 02-946 and 02-947) and November 2003 (Case No. 03-2410), against Defendant Michael O. Leavitt, Administrator, U.S. Environmental Protection Agency ("EPA");

WHEREAS, this action involves allegations concerning EPA's obligations under sections of the Clean Air Act, as amended in 1990, see Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399;

WHEREAS, Sierra Club and EPA agree that this Court has jurisdiction under Clean Air Act § 304(a)(2), 42 U.S.C. § 7604(a)(2) over the claims settled herein;

WHEREAS, it is in the interests of the public, the parties, and judicial economy to resolve Sierra Club's claims without further litigation;

<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d)(1), Michael O. Leavitt is substituted for former Administrator Christine T. Whitman

WHEREAS, Sierra Club and EPA have agreed to a settlement of Sierra Club ' s claims, without any admission or adjudication of fact or law, which they consider to be a just, fair, adequate and equitable resolution of said claims;

WHEREAS, the Court finds and determines that the settlement represents a just, fair, adequate and equitable resolution of the claims stated in these cases;

WHEREAS, by entering into this Consent Decree, Sierra Club does not waive any claims and EPA does not waive any defenses, on any grounds, related to any matters that are not resolved by this Decree;

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

Definition of Terms

1. As used in this Consent Decree, the following terms shall have the following meanings:

(a) "Administrator" means the Administrator of EPA (or the Administrator's authorized representative).

(b) "Action Dates" means the signature dates set forth in Paragraph 2 below.

Claims Resolved and Agency Actions To Be Taken

2. The claims in these consolidated cases shall be resolved and the Administrator shall take certain actions, as follows:

(a) As required by Clean Air Act § 112(d)(6), 42 U.S.C. § 7412(d)(6); EPA shall conduct a rulemaking to review, and to revise as necessary (taking into account developments in practices, processes, and control technologies), the existing emission standards for coke oven batteries

that were promulgated pursuant to Clean Air Act §§ 112(d)(8)(A) and (B), 42 U.S.C. §§ 7412(d)(8)(A) and (B). The standards for coke oven batteries to be reviewed and revised as necessary under Clean Air Act § 112(d)(6) do not include those standards which were promulgated pursuant to Clean Air Act §§ 112(i)(8)(B) and 112(d)(8)(C), 42 U.S.C. §§ 7412(i)(8)(B) and 7412(d)(8)(C). Not later than March 31, 2005, the EPA Administrator shall sign a final rule adopting revisions to the emission standards for coke oven batteries which are subject to review under Section 112(d)(6) or, in the alternative, determining that no revisions are necessary.

(b) As required by Clean Air Act § 112(d)(6), 42 U.S.C. § 7412(d)(6), EPA shall conduct a rulemaking to review, and to revise as necessary (taking into account developments in practices, processes, and control technologies), the existing emission standards for dry cleaning facilities (including major sources and area sources of hazardous air pollutants) that were promulgated pursuant to Clean Air Act § 112(d), 42 U.S.C. § 7412(d). No later than April 28, 2006, the EPA Administrator shall sign a final rule adopting revisions to the emission standards for dry cleaning facilities or, in the alternative, determining that no revisions are necessary.

(c) Pursuant to Clean Air Act § 112(f)(2), 42 U.S.C. § 7412(f)(2), the Administrator shall sign a final rule establishing emission standards for coke oven batteries subject to Clean Air Act § 112(d)(8)(A), 42 U.S.C. § 7412(d)(8)(A), no later than March 31, 2005, or, in the alternative, make a final determination by that date that such standards are not required.

(d) Pursuant to Clean Air Act § 112(f)(2), 42 U.S.C. § 7412(f)(2), the Administrator shall sign a final rule establishing emission standards for dry cleaning facilities, no later

than April 28, 2006, or, in the alternative, make a final determination by that date that such standards are not required.

Publication in Federal Register and Distribution

3. EPA shall deliver to the Office of the Federal Register for prompt publication the final rules covered by this Decree no later than five business days after signature of said rules. Following such delivery, EPA shall not take any action (other than as necessary to correct any typographical error or other errors in form) to delay or otherwise interfere with publication of such notices in the Federal Register. In addition, EPA shall make available to Sierra Club, two business days following signature, copies of said standards.

Modification of the Decree

4. Any provision of this Decree may be modified by (a) written stipulation of Sierra Club and EPA with notice to the Court, or (b) by the Court following motion of any party to this Decree, for good cause shown, and upon consideration of any response by the non-moving party.

5. EPA may request modification of an Action Date in accordance with the following procedures:

(a) If EPA seeks to modify an Action Date established by this Decree, and provides notice to Sierra Club of said modification and of the reasons then known for said modification at least 60 days prior to the Action Date sought to be modified and files the motion at least 45 days prior to the Action Date sought to be modified, then the filing of such motion shall, upon request by EPA, stay the Action Date for which modification is sought. Such stay shall remain in effect until the earlier of (i) a

dispositive ruling by this Court on such motion, or (ii) the date 30-days after the Action Date sought to be modified.

(b) If EPA seeks to modify an Action Date established by this Decree by 30 days or less, and provides notice to Sierra Club of said modification and of the reasons then known for said modification at least 20 days prior to the Action Date sought to be modified and files the motion at least 15 days prior to the Action Date sought to be modified, then the filing of such motion shall, upon request by EPA, stay the Action Date for which modification is sought. Such stay shall remain in effect until the earlier of (i) a dispositive ruling by this Court on such motion, or (ii) the date sought in the motion.

(c) If EPA seeks a modification of an Action Date and does not provide notice pursuant to subparagraphs (a) or (b) above, then any such request for modification shall demonstrate why EPA could not have utilized the notification procedures set forth in subparagraphs (a) or (b) above. The filing of a request pursuant to this subparagraph shall not act to stay the Action Date sought to be modified.

(d) After following the procedures of subparagraphs (a), (b) or (c) above, EPA may move for additional relief, including stays of Action Dates that are the subject of pending motions to modify this Decree.

(e) Any motion to modify the schedule established in this Decree shall be accompanied by a motion for expedited consideration. All parties to this Decree shall join in any motion for expedited

consideration associated with a motion to modify filed pursuant to the provisions of subparagraphs (a) or (b) above.

#### Retention of Jurisdiction

6. The Court shall retain jurisdiction to effectuate compliance with this Decree and to consider any requests for costs of litigation (including attorney's fees).

#### Savings Provisions

7. Nothing in the terms of this Decree shall be construed either (a) to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals under Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1) or, (b) to waive any remedies Sierra Club may have under Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1).

8. Nothing in this Decree shall be construed to limit or modify any discretion EPA may have to alter, amend or revise regulations promulgated pursuant to this Decree, from time to time, or to promulgate superseding regulations.

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

10. Nothing in this Decree relieves EPA of the obligation to act in a manner consistent with the Clean Air Act and other applicable statutes. The obligations imposed on EPA under Paragraph 2 of this Consent Decree can only be undertaken using appropriated funds. No provision of

this Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal statute.

Section 113(g)

11. The parties agree and acknowledge that final approval and entry of this proposed Decree are subject to the requirements of Clean Air Act § 113(g), 42 U.S.C. § 7413(g). That subsection provides that notice of this proposed Decree be given to the public, that the public shall have a reasonable opportunity to make any comments, and that the Administrator or the Attorney General, as appropriate, must consider those comments in deciding whether to consent to this Decree.

Dispute Resolution

12. In the event of a disagreement between the parties concerning the interpretation of any aspect of this Consent Decree, the dissatisfied party shall provide the other party with written notice of the dispute and a request for negotiations. The parties shall meet and confer in order to attempt to resolve the dispute. If the parties are unable to resolve the dispute, then either party may petition the Court to resolve the dispute.

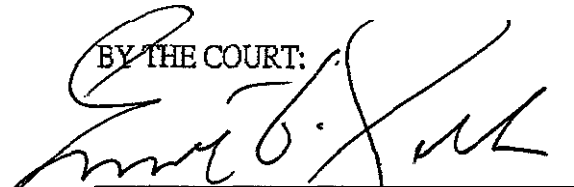
Signature of the Parties

13. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to consent to the Court's entry of the terms and conditions of this Decree.

Costs of Litigation (Including Attorney's Fees)

14. Notwithstanding Local Rule 215(a) and Fed. R. Civ. P. 54, the parties shall seek to resolve informally any claim for costs of litigation (including attorney ' s fees), and if they cannot, will submit that issue to the Court for resolution. The Court will retain jurisdiction to resolve any such request for the costs of litigation (including attorney ' s fees) notwithstanding any dismissal pursuant to paragraph 6 above.

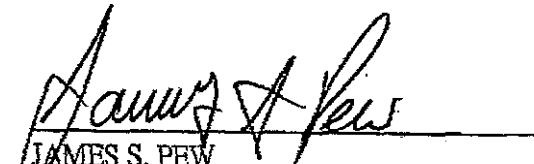
Date: 1/31/05

BY THE COURT:  
  
United States District Judge

Approved by Counsel for the Parties:

For Plaintiff SIERRA CLUB


Date: September 1, 2004

  
\_\_\_\_\_  
JAMES S. PEW  
Earthjustice Legal Defense Fund  
1625 Massachusetts Ave., N.W.,  
Washington, DC 20036  
(202) 667-4500

For Defendant MICHAEL O. LEAVITT, ADMINISTRATOR  
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: SEPT. 17, 2004

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division

  
\_\_\_\_\_  
SCOTT J. JORDAN, Attorney  
Environmental Defense Section  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 514-9365

Of Counsel:

STEVEN SILVERMAN  
Office of General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

CERTIFICATE OF SERVICE

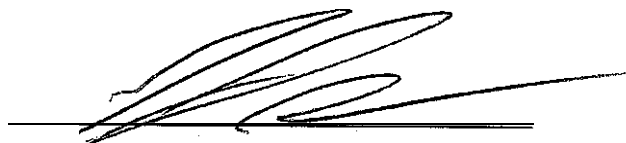
I, Scott J. Jordan, hereby certify that on September 17, 2004, I caused to be served a true and accurate copy of the foregoing STATUS REPORT AND NOTICE OF LODGING OF PROPOSED CONSENT DECREE by electronic transmission upon:

James Pew  
Earthjustice Legal Defense Fund  
1625 Massachusetts Ave., NW  
Suite 702  
Washington, DC 20036-2212  
email: [jpew@earthjustice.org](mailto:jpew@earthjustice.org)

Attorney for Plaintiff Sierra Club

Peter Robertson  
Patton Boggs  
2550 M Street, N.W.  
Washington, DC 20037  
email: [probertson@pattonboggs.com](mailto:probertson@pattonboggs.com)

Attorney for Intervenor  
International Fabricare Institute

A handwritten signature in black ink, consisting of several overlapping, fluid strokes, positioned above a horizontal line.