

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

SIERRA CLUB, et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:23-cv-01744-JDB
)	
)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,)	
)	
Defendants.)	
)	

CONSENT DECREE

WHEREAS, on June 15, 2023, Plaintiffs Sierra Club, National Parks Conservation Association, and Environmental Integrity Project (collectively “Plaintiffs”) filed Case No. 1:23-cv-01744 against Defendants the United States Environmental Protection Agency and Michael Regan, in his official capacity as Administrator, U.S. Environmental Protection Agency (collectively “EPA”);

WHEREAS, on November 10, 2023, Plaintiffs filed an Amended Complaint (ECF 15);

WHEREAS, Plaintiffs allege that EPA has failed to undertake certain non-discretionary duties under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and that such alleged failure is actionable under CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2);

WHEREAS under section 169A of the CAA, 42 U.S.C. § 7491, and EPA’s Regional Haze Rule, 40 C.F.R. § 51.308, states are required to submit State Implementation Plans (“SIPs”) addressing visibility impairment from manmade air pollution in “Federal Class I areas” (as defined in the CAA);

WHEREAS, under the Regional Haze Rule, the first state SIPs were due in 2007, 40 C.F.R. § 51.308(b), and states were required to submit revisions to their SIPs by July 31, 2021. *Id.* § 51.308(f);

WHEREAS CAA section 110(k) sets forth the process by which EPA reviews state implementation plans (“SIP”) submittals. 42 U.S.C. § 7410(k);

WHEREAS, in accordance with that process, EPA must determine whether a SIP submission or revision is complete within six months after EPA receives the submission, and if EPA does not determine completeness of the plan or revision within six months, then the submittal is deemed complete by operation of law, *id.* § 7410(k)(1)(B);

WHEREAS, pursuant to CAA sections 110(k)(2)-(4), 42 U.S.C. §§ 7410(k)(2)-(4), EPA is required to approve, disapprove, or conditionally approve, in whole or in part, each plan or plan revision, within 12 months of a determination of completeness by EPA or a submittal being deemed complete by operation of law;

WHEREAS, Plaintiffs allege that EPA has not taken final action on the following Regional Haze Plan revisions for the Second Planning Period and that more than 12 months have passed since EPA made a completeness determination or the submission was deemed complete by operation of law, Am. Compl. ¶¶ 14-115.

State	SPeCS¹ Submission Date of Regional Haze Plan revision	Completion Mechanism and Date
Alaska	July 25, 2022	Completeness determination: August 3, 2022.
Arkansas	August 8, 2022	Completeness determination: August 18, 2022
Arizona	August 15, 2022	Completeness determination: August 16, 2022

¹ The State Plan Electronic Collection System (“SPeCS”) for SIPs is a web-based system that enables state air agencies to officially submit SIPs and associated information electronically for review and approval to meet their CAA obligations related to attaining and maintaining the national ambient air quality standards (“NAAQS”).

California	August 9, 2022	Completeness determination: August 16, 2022
Colorado	May 20, 2022	Completeness determination: August 23, 2022
Connecticut	January 6, 2022	Complete by operation of law: July 6, 2022
Delaware	August 8, 2022	Completeness determination: August 18, 2022
Florida	October 8, 2021	Complete by operation of law: April 8, 2022
Georgia	August 11, 2022	Completeness determination: August 15, 2022
Hawaii	August 12, 2022	Completeness determination: August 16, 2022
Idaho	August 5, 2022	Completeness determination: August 11, 2022
Indiana	December 29, 2021	Complete by operation of law: June 29, 2022
Kansas	July 28, 2021	Complete by operation of law: January 28, 2022
Maryland	February 10, 2022	Complete by operation of law: August 10, 2022
Massachusetts	July 22, 2021	Complete by operation of law: January 22, 2022
Michigan	August 24, 2021	Complete by operation of law: February 24, 2022
Montana	August 10, 2022	Completeness determination: August 23, 2022
Nevada	August 12, 2022	Completeness determination: August 16, 2022
New Hampshire	May 5, 2022	Completeness determination: August 15, 2022
New York	May 12, 2020	Complete by operation of law: November 12, 2020
North Carolina	April 4, 2022	Completeness determination: August 15, 2022
North Dakota	August 11, 2022	Completeness determination: August 23, 2022
Ohio	July 30, 2021	Complete by operation of law: January 30, 2022
Oklahoma	August 9, 2022	Completeness determination: August 18, 2022
Oregon	April 29, 2022	Completeness determination: July 22, 2022
South Carolina	March 4, 2022	Completeness determination: August 15, 2022

South Dakota	July 29, 2022	Completeness determination: August 23, 2022
Tennessee	February 23, 2022	Complete by operation of law: August 23, 2022
Texas	July 20, 2021	Complete by operation of law: January 20, 2022
Utah	August 2, 2022	Completeness determination: August 23, 2022
Washington	January 28, 2022	Complete by operation of law: July 28, 2022
West Virginia	August 12, 2022	Completeness determination: August 18, 2022
Wisconsin	July 30, 2021	Complete by operation of law: January 30, 2022
Wyoming	August 10, 2022	Completeness determination: August 23, 2022

WHEREAS, on March 21, 2024, the Region 3 Regional Administrator signed a final action on the Maryland Regional Haze second planning period SIP, submitted on February 10, 2022. The claim regarding this SIP is therefore moot.

WHEREAS, Plaintiffs served prior notice on EPA via certified letter alleging that EPA had failed to take final action on the Regional Haze Plan revisions for the following states:

Date notice received by EPA:	States
April 7, 2023	Kansas, Massachusetts, Michigan, New York, Ohio, Texas, Wisconsin
July 17, 2023	Florida, Indiana
August 28, 2023	Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Maryland, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, Wyoming

WHEREAS, the specific relief requested in the Amended Complaint includes, among other things, an order from this Court to establish a date certain by which EPA must fulfill its obligations;

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

WHEREAS, Plaintiffs and EPA, by entering into this Consent Decree (the “Consent Decree”), do not waive or limit any claim, remedy, or defense, on any grounds, related to any final EPA action;

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

WHEREAS, it is in the interest of the public, Plaintiffs, EPA, and judicial economy to resolve this matter without protracted litigation; and

WHEREAS, the Court, by entering this Consent Decree, finds that the Consent Decree is fair, reasonable, in the public interest, and consistent with the CAA;

NOW THEREFORE, before the taking of testimony, without trial or determination of any issues of fact or law, and upon the consent of Plaintiffs and EPA, it is hereby ordered, adjudged and decreed that:

1. This Court has subject matter jurisdiction pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2).

2. Venue is proper in the United States District Court for the District of Columbia.

3. Schedule:

a. No later than the dates set forth in the table below in the column headed “Proposed Action Date”, the Administrator or appropriate EPA official with delegated authority shall sign a notice of proposed rulemaking to approve, disapprove, conditionally approve, or approve in part and disapprove in part, pursuant to sections 110(k)(2)-(4) of the CAA, 42 U.S.C.

§§ 7410(k)(2)-(4), the following SIP submittals:

	State Implementation Plan Submittal	Proposed Action Date
1.	Ohio Regional Haze Plan revision	August 30, 2024

2.	Texas Regional Haze Plan revision	September 30, 2024
3.	Arkansas Regional Haze Plan revision	August 31, 2025
4.	Oklahoma Regional Haze Plan revision	December 31, 2025

b. No later than the dates set forth in the table below in the column headed “Final Action Date”, the Administrator or appropriate EPA official with delegated authority shall sign a notice of final rulemaking to approve, disapprove, conditionally approve, or approve in part and disapprove in part, pursuant to sections 110(k)(2)-(4) of the CAA, 42 U.S.C. §§ 7410(k)(2)-(4), the following SIP submittals:

	State Implementation Plan Submittal	Final Action Date
1.	Massachusetts Regional Haze Plan revision	June 28, 2024
2.	Kansas Regional Haze Plan revision	July 30, 2024
3.	New York Regional Haze Plan revision	August 15, 2024
4.	Connecticut Regional Haze Plan revision	November 15, 2024
5.	New Hampshire Regional Haze Plan revision	November 15, 2024
6.	Delaware Regional Haze Plan revision	November 15, 2024
7.	Wisconsin Regional Haze Plan revision	November 19, 2024
8.	Georgia Regional Haze Plan revision	November 22, 2024
9.	North Carolina Regional Haze Plan revision	November 22, 2024
10.	North Dakota Regional Haze Plan revision	November 22, 2024
11.	Utah Regional Haze Plan revision	November 22, 2024
12.	Wyoming Regional Haze Plan revision	November 22, 2024

13.	West Virginia Regional Haze Plan revision	March 30, 2025
14.	Arizona Regional Haze Plan revision	March 30, 2025
15.	Ohio Regional Haze Plan revision	March 30, 2025
16.	Florida Regional Haze Plan revision	March 31, 2025
17.	Idaho Regional Haze Plan revision	May 30, 2025
18.	Michigan Regional Haze Plan revision	May 30, 2025
19.	Texas Regional Haze Plan revision	May 30, 2025
20.	California Regional Haze Plan revision	May 31, 2025
21.	Oregon Regional Haze Plan revision	June 30, 2025
22.	Colorado Regional Haze Plan revision	July 31, 2025
23.	South Carolina Regional Haze Plan revision	July 31, 2025
24.	South Dakota Regional Haze Plan revision	July 31, 2025
25.	Tennessee Regional Haze Plan revision	July 31, 2025
26.	Indiana Regional Haze Plan revision	August 1, 2025
27.	Washington Regional Haze Plan revision	September 25, 2025
28.	Hawai'i Regional Haze Plan revision	September 30, 2025
29.	Montana Regional Haze Plan revision	November 30, 2025
30.	Nevada Regional Haze Plan revision	December 15, 2025
31.	Alaska Regional Haze Plan revision	December 31, 2025
32.	Arkansas Regional Haze Plan revision	August 31, 2026
33.	Oklahoma Regional Haze Plan revision	December 31, 2026

4. EPA shall, within 10 business days of signature of the actions set forth in Paragraph 3, send notice of the action to the Office of the Federal Register for review and prompt publication in the *Federal Register*. Not later than three business days following signing of the notices of final rulemaking required under Paragraph 3, EPA shall send copies of such notice by email to the representatives of Plaintiffs in Paragraph 18.

5. Following such delivery to the Office of the Federal Register, EPA shall not take any action, other than is necessary to correct any typographical errors or other errors in form, to delay or otherwise interfere with the publication of such notices in the Federal Register.

6. After EPA has completed the actions set forth in Paragraph 3 of this Consent Decree, the notices of each proposed and final action required by Paragraphs 3.a and 3.b, respectively, have been published in the *Federal Register*, and the issue of costs of litigation, including reasonable attorneys' fees, has been resolved, EPA may move to have this Consent Decree terminated.

7. The deadlines established by this Consent Decree may be extended (a) by written stipulation of Plaintiffs and EPA with notice to the Court, or (b) by the Court upon motion of any party to this Consent Decree for good cause shown pursuant to the Federal Rules of Civil Procedure and upon consideration of any response by the non-moving party and any reply. Any other provision of this Consent Decree also may be modified by the Court following the filing of a motion by an undersigned party for good cause shown pursuant to the Federal Rules of Civil Procedure and upon consideration of any response by a non-moving party and any reply.

8. The parties acknowledge that the obligations imposed on EPA under this Consent Decree can only be undertaken using appropriated funds legally available for such purpose. No provision of this decree shall be interpreted as or constitute a commitment or requirement that EPA

obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or another applicable provision of law.

9. If a lapse in EPA appropriations occurs within one hundred twenty (120) days prior to a deadline in Paragraphs 3 or 4 in this Consent Decree, that deadline shall be extended automatically one day for each day of the lapse in appropriations. Nothing in this Paragraph shall preclude EPA from seeking an additional extension of time through modification of this Consent Decree pursuant to Paragraph 7.

10. Plaintiffs and EPA agree that this Consent Decree constitutes a complete settlement of all Plaintiffs' claims in this case.

11. In the event of a dispute between Plaintiffs and EPA concerning the interpretation or implementation of any aspect of this Consent Decree, the disputing party shall provide the other party with a written notice, via electronic mail or other means, outlining the nature of the dispute and requesting informal negotiations. These parties shall meet and confer in order to attempt to resolve the dispute. If these parties are unable to resolve the dispute within ten (10) business days after receipt of the notice or within such other time as the parties agree, either party may petition the Court to resolve the dispute.

- a. In the event a state withdraws a SIP submittal identified in Paragraph 3b, and the Parties disagree on the effect of the withdrawal on EPA's obligations under this Consent Decree, the Parties will follow the procedures in Paragraph 11. If the Parties are unable to resolve the dispute, the sole remedy in this proceeding available to either party is to file a motion to enforce this Consent Decree, including but not limited to seeking to require EPA to issue a federal implementation plan or a finding of failure to submit, to the extent required by

law. The moving party must provide the other party with written notice received at least ten (10) business days before the filing of such motion. The non-moving party reserves its right to respond to and oppose any such motion.

12. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of Court shall be filed unless the procedure set forth in Paragraph 11 has been followed, and the moving party has provided the other party with written notice received at least ten (10) business days before the filing of such motion or proceeding.

13. The deadline for plaintiffs to file a motion seeking costs of litigation (including attorney's fees) for activities performed prior to entry of the Consent Decree is hereby extended until ninety (90) days after this Consent Decree is entered by the Court. During this period, the Parties shall seek to resolve informally any claim for costs of litigation (including attorney fees), and if they cannot, Plaintiffs will file a motion for costs of litigation (including attorney fees) or a stipulation or motion to extend the deadline to file such a motion. EPA reserves the right to oppose any such request and shall have sixty (60) days to respond to any motion. Plaintiffs shall have thirty (30) days to file a reply in support of its motion.

14. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree, to resolve any disputes thereunder, and to consider any requests for costs of litigation (including reasonable attorneys' fees). Nothing in the terms of this Consent Decree shall be construed (a) to confer upon this Court jurisdiction to review any final rule or determination issued by EPA pursuant to this Consent Decree, (b) to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1), or (c) to waive any claims, remedies, or defenses that the parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

15. Nothing in this Consent 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 Consent Decree, including the discretion to alter, amend, or revise any final actions promulgated pursuant to this Consent Decree. EPA's obligation to perform each action specified in this Consent Decree does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

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

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

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

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19. 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.

20. The undersigned representatives of Plaintiffs and Defendants 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.

IT IS SO ORDERED on this ____ day of _____, 2024.

JOHN D. BATES
UNITED STATES DISTRICT JUDGE

DRAFT

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