

WHEREAS, EPA proposed a federal plan for existing CISWI facilities in 2017, and to date EPA has not promulgated a final federal plan implementing CISWI standards under 42 U.S.C. § 7429(b)(3);

WHEREAS the Consolidated Appropriations Act of 2024, H.R. 4366, Sec. 432, precludes EPA from expending funds to implement or enforce 40 CFR part 60 subpart DDDD with respect to units in the State of Alaska that are defined as “small remote incinerator” units until a subsequent regulation is issued;

WHEREAS, EPA promulgated emission guidelines for existing OSWI facilities in December 2005 at 40 CFR subpart FFFF;

WHEREAS, EPA proposed to review and revise the OSWI emission guidelines in August 2020, and is subject to a court-ordered deadline to issue a final action by June 30, 2025;

WHEREAS, to date EPA has not finalized a federal plan implementing standards for existing OSWI facilities under 42 U.S.C. § 7429(b)(3);

WHEREAS, more than sixty days have passed since Sierra Club, under 42 U.S.C. § 7604(b)(2), notified EPA of its intent to bring this action;

WHEREAS, the relief requested in the Complaint includes, among other things, an order from this Court to establish dates certain by which EPA must fulfill its alleged obligations under 42 U.S.C. § 7429(b)(3);

WHEREAS, the Parties have agreed to a settlement of all claims in Sierra Club’s Complaint without admission of any issue of fact or law, except for the claim of unreasonable delay in issuing a final federal implementation plan for CISWI standards under Clean Air Act Section 129(b)(3) as to facilities located in the State of Alaska defined as “small, remote

incinerators” pursuant to 40 C.F.R. Part 60, subpart DDDD, which the parties stipulated to dismiss;

WHEREAS, the Parties consider this Consent Decree to be an adequate and equitable resolution of all the remaining claims in this matter, and therefore wish to effectuate this settlement;

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

WHEREAS, the Parties, by entering into this Consent Decree, do not waive or limit any claim, remedy, or defense, on any grounds, related to any final EPA action required by this Consent Decree;

WHEREAS, the Court finds and determines that the settlement represents a just, fair, adequate and equitable resolution of all claims raised in this action.

NOW THEREFORE, before the taking of testimony, without trial or determination of any undecided issues of fact or law, and upon the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over the claims set forth in the complaint and to order the relief contained in this Consent Decree.
2. Venue is proper in the United States District Court for the District of Columbia.
3. The Parties to this Consent Decree are Sierra Club and EPA.
4. Sierra Club and EPA shall not challenge the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.
5. With respect to the CISWI emission guidelines at 40 CFR subpart DDDD, no later than September 16, 2024, the appropriate EPA official shall sign a final rule establishing a

federal plan under 42 U.S.C. § 7429(b)(3) for existing CISWI facilities—located in any state which has not submitted an approvable state plan, with the exception of facilities located in the State of Alaska defined as “small, remote incinerators” pursuant to subpart DDDD.

6. With respect to the OSWI emission guidelines at 40 CFR subpart FFFF:

a. No later than June 30, 2026, the appropriate EPA official shall sign a proposed rule proposing a federal plan under 42 U.S.C. § 7429(b)(3) for existing OSWI facilities located in any state which has not submitted an approvable state plan, and

b. No later than June 30, 2027, the appropriate EPA official shall sign a final rule establishing a federal plan under 42 U.S.C. § 7429(b)(3) for existing OSWI facilities located in any state which has not submitted an approvable state plan.

7. Following signature on any action required by paragraphs 5 and 6, the appropriate EPA official shall, within five (5) business days of signature, deliver notice of such action to the Office of the Federal Register for review and publication in the Federal Register. 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 each such notice in the *Federal Register*.

8. Within seven (7) business days after forwarding the documents described in Paragraphs 5 and 6 to the Office of the Federal Register, EPA shall send copies of such documents to Sierra Club.

9. The deadlines in Paragraphs 5 and 6 may be extended by written stipulation of the Parties with notice to the Court. Any provision of this Consent Decree also may be modified by the Court upon motion by 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.

10. The deadline for filing a motion for costs of litigation (including attorney's fees) incurred prior to the execution of this Consent Decree is hereby extended until 90 days after this Consent Decree is entered by the Court. During this time, 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. Nothing in this Paragraph shall be construed as an admission or concession by EPA that Sierra Club is entitled to or eligible for recovery of any costs or attorney's fees.

11. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree. When EPA's obligations under Paragraphs 5 and 6 of this Consent Decree have been completed, and Sierra Club's claims for costs of litigation have been fully resolved pursuant to the process described in Paragraph 10 hereof, EPA may move to have this Consent Decree terminated and this case dismissed. Plaintiff shall have thirty (30) days in which to respond to such a motion, unless the Parties stipulate to a longer time for Plaintiff to respond.

12. 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 contemplated by this Consent Decree. EPA's obligation to perform one or more of the actions specified in Paragraphs 5 and 6 by the time specified therein does not constitute a modification of EPA's discretion within the meaning of this Paragraph.

13. Nothing in this Consent Decree shall be construed to resolve, waive, or limit Sierra Club's claim of unreasonable delay in issuing a final federal implementation plan for

CISWI standards under Clean Air Act Section 129(b)(3) as to facilities located in the State of Alaska defined as “small, remote incinerators” pursuant to 40 C.F.R. Part 60, subpart DDDD, which was dismissed without prejudice by stipulation of the Parties.

13. The Parties agree and acknowledge that final approval and entry of this proposed Consent Decree are subject to the requirements of Clean Air Act section 113(g), 42 U.S.C. § 7413(g). That subsection provides that notice of this proposed Consent 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 Consent Decree. If the Administrator and/or the Attorney General withdraw or withhold consent pursuant to CAA section 113(g), this agreement shall be void and its terms may not be used as evidence in any litigation between the parties. If the Administrator and/or the Attorney General do not elect to withdraw or withhold consent, EPA shall promptly file a motion that requests that the Court enter this Consent Decree.

14. Nothing in this Consent Decree shall be construed to: (a) confer on the District Court jurisdiction to review any final action taken by EPA pursuant to this Consent Decree; (b) confer upon the District Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Court of Appeals pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1); or (c) waive, limit, or modify any remedies, rights to seek judicial review, claims, or defenses that the Parties may have under section 307(b)(1) of the Clean Air Act, *id.*

15. 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 or defense, on any grounds, related to any final action that EPA may take pursuant to this Consent Decree.

16. In the event of a dispute between the parties concerning the interpretation of any aspect of this Consent Decree, the disputing party shall provide the other party with a written notice, via electronic mail, outlining the nature of the dispute and requesting to confer and attempt to reach an agreement on the disputed issue. If the parties cannot reach an agreed-upon resolution within fifteen (15) days after receipt of the notice, then either party may move the Court to resolve the dispute. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of Court shall be properly filed unless Sierra Club has followed the procedure set forth in this Paragraph.

17. EPA's commitments in this Consent Decree are subject to the availability of appropriated funds legally available for such purpose. No provision of this Consent 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 law or regulation.

18. If a lapse in EPA appropriations occurs within 120 days before any deadline in Paragraph 5 or 6, that deadline shall be extended automatically by one calendar day for each calendar day of delay caused by the lapse in appropriations. Nothing in this paragraph shall preclude EPA from seeking an additional extension through stipulation of the Parties or modification of this Consent Decree under Paragraph 9.

19. If for any reason the Court declines to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either Party and the Proposed Consent Decree's terms may not be used as evidence in any litigation between the Parties.

20. The Parties treat this Consent Decree as jointly drafted, and any rules of construction that construe ambiguities in this document against the drafting party shall be inapplicable in any dispute concerning the interpretation of this Consent Decree.

21. This Consent Decree applies to, is binding upon, and inures to the benefit of the Parties and their successors, assigns, and designees. This Consent Decree shall not be construed to create any rights in, or grant any cause of action to, any third party that is not a party to this Consent Decree.

22. Any notices required or provided for by this Consent Decree shall be made in writing via electronic mail and other means, and sent to the following or such other person as either Party may subsequently identify in writing to the other Party:

For Plaintiff:

Deena Tumeh
Neil Gormley
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1001 G Street NW, Suite 1000
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For Defendant:

Section Chief
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Attn: DJ # 90-5-2-4-22342
Telephone: (202) 514-4206
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Associate General Counsel, Air and Radiation Law Office
Office of General Counsel

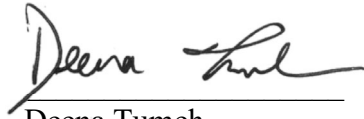
U.S. Environmental Protection Agency
WJC: MC-2344A
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Tel.: (202) 564-7606
Fax: (202) 564-5603

23. The undersigned representatives of each Party certify that they are fully authorized to consent to the Court's entry of the terms and conditions of this Consent Decree.

SO ORDERED on this _____ day of _____, 202__.

HON. ROYCE C. LAMBERTH
United States District Court Judge

FOR SIERRA CLUB:

A handwritten signature in black ink, appearing to read "Deena Tumeh", written over a horizontal line.

Deena Tumeh

Neil Gormley

EARTHJUSTICE

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Date: March 12, 2024

FOR EPA:

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Date: _____, 2024