

BRANDON N. ADKINS  
U.S. Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington, D.C. 20044  
Tel: (202) 616-9174  
Fax: (202) 514-8865  
Email: brandon.adkins@usdoj.gov

*Attorney for Defendants*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

CENTER FOR ENVIRONMENTAL  
HEALTH, et al.,

Plaintiffs,

v.

MICHAEL S. REGAN, Administrator of the  
United States Environmental Protection  
Agency, and the UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY,

Defendants.

Case No. 4:21-cv-01535-PJH

**STIPULATION AND [PROPOSED]  
ORDER TO GOVERN  
FUTURE PROCEEDINGS**

Plaintiffs Center for Environmental Health, Cape Fear River Watch, Clean Cape Fear, Democracy Green, The NC Black Alliance, and Toxic Free NC (“Plaintiffs”) and Defendants Michael S. Regan, in his official capacity as the Administrator of the United States Environmental Protection Agency, and the United States Environmental Protection Agency (“Defendants,” and together with Plaintiffs, the “Parties”) stipulate as follows:

WHEREAS, on March 3, 2021, Plaintiffs initiated this action by filing a Complaint for Declaratory and Injunctive Relief to challenge the January 7, 2021 denial of their October 14, 2020 petition to EPA under section 21 of the Toxic Substances Control Act (“TSCA”), ECF No. 1;

WHEREAS, on March 4, 2021, Plaintiffs submitted to Defendants a request to reconsider the January 7, 2020 petition denial for which Plaintiffs sought review in this matter (“Administrative Request for Reconsideration”) and to grant the October 14, 2020 petition;

1 WHEREAS, in September 2021, EPA granted Plaintiffs' Administrative Request for  
2 Reconsideration and, upon stipulation of the Parties, the Court held this case and all associated deadlines  
3 in abeyance for 90 days (that is, through December 28, 2021), while EPA completed its reconsideration  
4 of the challenged Agency action and decided whether to grant or deny Plaintiffs' petition, ECF No. 25;

5 WHEREAS, the Court further ordered the Parties to submit a joint motion or separate motions  
6 to govern future proceedings by the same 90-day deadline, ECF No. 25;

7 WHEREAS, upon stipulation of the Parties, the Court enlarged the deadline for motions to  
8 govern future proceedings to January 28, 2022, to allow Plaintiffs to review EPA's decision once issued  
9 and for the Parties to consider what further proceedings are appropriate, if any, and confer regarding a  
10 schedule, ECF No. 27;

11 WHEREAS, on December 28, 2021, EPA wrote a letter to counsel for Plaintiffs explaining that  
12 after reconsidering the Agency's prior January 2021 denial, EPA determined to grant the petition;

13 WHEREAS, it is plaintiffs' position that the December 28, 2021 petition response in fact rejects  
14 virtually all the requests in plaintiffs' petition and therefore "denies" the petition;

15 WHEREAS, Plaintiffs wish to continue this civil action and intend to seek leave to amend or  
16 supplement the Complaint to reflect EPA's actions regarding the Administrative Request for  
17 Reconsideration and the December 28, 2021 decision on the October 14, 2020 petition, all of which  
18 occurred after the date of the Complaint;

19 WHEREAS, EPA intends to file a motion to transfer this civil action to the United States District  
20 Court for the Eastern District of North Carolina pursuant to 28 U.S.C. § 1404(a);

21 WHEREAS, counsel for the Parties have conferred regarding Plaintiffs' proposed motion to  
22 amend or supplement the Complaint, EPA's proposed motion to transfer, and scheduling;

23 WHEREAS, Defendants consent to Plaintiffs amending their Complaint pursuant to Federal Rule  
24 of Civil Procedure 15(a)(2) to reflect EPA's actions regarding the Administrative Request for  
25 Reconsideration and December 28, 2021 decision on the petition and expressly reserve all of their rights  
26 and defenses with respect to Plaintiffs' amended pleading and to challenge any aspect of Plaintiffs'  
27 amended pleading;  
28

1 WHEREAS, the Parties agree that EPA's intended motion to transfer this civil action should be  
2 briefed and decided before EPA responds to Plaintiffs' amended pleading or any other deadlines in  
3 this case;

4 WHEREAS, the Parties agree to a briefing schedule for EPA's intended motion to transfer this  
5 civil action, which Plaintiffs will oppose; and

6 WHEREAS, the Parties also agree to extend EPA's time to respond to the Complaint and any  
7 amendment thereto until 45 days after a decision on EPA's intended motion to transfer.

8 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among the  
9 Parties:

10 1. Plaintiffs may file their amended Complaint pursuant to Federal Rule of Civil Procedure  
11 15(a)(2) to reflect EPA's action regarding the Administrative Request for Reconsideration and granting  
12 the October 14, 2020 petition;

13 2. EPA may file a motion to transfer this civil action within 30 days of Plaintiffs' filing an  
14 amended Complaint;

15 3. Plaintiffs may file an opposition to EPA's motion to transfer this civil action within  
16 twenty-one days after the motion is filed;

17 4. EPA may file a reply to Plaintiffs' opposition to the motion to transfer this civil action  
18 within ten days after the opposition was due; and

19 5. EPA's deadline to respond to the Complaint and any amendment thereto is extended until  
20 45 days after a decision on EPA's motion to transfer.

1  
2 Date: January 27, 2022

Respectfully Submitted,

3 /s/ Robert M. Sussman (with permission)  
4 ROBERT M. SUSSMAN (D.C. Bar No. 226746)  
5 Sussman & Associates  
6 3301 Garfield Street, NW  
7 Washington, D.C. 20008  
8 Tel: (202) 716-0118  
9 Email: Bobsussman1@comcast.net

10 MICHAEL CONNETT (CA Bar No. 300314)  
11 Waters, Kraus & Paul  
12 222 North Pacific Coast Highway  
13 Suite 1900  
14 El Segundo, California 90245  
15 Tel: (310) 414-8146

*Attorneys for Plaintiffs*

16 Date: January 27, 2022

Respectfully Submitted,

17 /s/ Brandon N. Adkins  
18 BRANDON N. ADKINS (D.C. Bar No. 1010947)  
19 United States Department of Justice  
20 Environment & Natural Resources Division  
21 P.O. Box 7611  
22 Washington, D.C. 20044  
23 Tel: (202) 616-9174  
24 Fax: (202) 514-8865  
25 Email: brandon.adkins@usdoj.gov

*Attorney for Defendants*

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27 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

28 DATED:

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PHYLLIS J. HAMILTON  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of January, 2022, a true and correct copy of the foregoing Stipulation and Proposed Order to Govern Future Proceedings was filed electronically with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Brandon N. Adkins

Brandon N. Adkins

United States Department of Justice