

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

_____)	
LOUISIANA ENVIRONMENTAL)	
ACTION NETWORK, and SIERRA)	
CLUB,)	
)	
Plaintiffs,)	
)	
v.)	Civil Case No. 3:15-CV-858-JJB-RLB
)	
GINA MCCARTHY, in her official)	
capacity as Administrator, United States)	
Environmental Protection Agency,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

WHEREAS, Plaintiffs Louisiana Environmental Action Network and Sierra Club (collectively, "Plaintiffs") filed this action pursuant to section 304(a)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7604(a)(2), alleging that Defendant Gina McCarthy, in her official capacity as Administrator, United States Environmental Protection Agency ("EPA"), failed to perform a non-discretionary duty under CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2), to grant or deny an administrative petition submitted by Plaintiffs in May 2015 ("Petition") requesting that EPA object to a CAA Title V permit ("Permit") issued by the Louisiana Department of Environmental Quality to Yuhuang Chemical, Inc. for operation of a new methanol manufacturing plant in St. James, Louisiana;

WHEREAS, Plaintiffs and EPA (collectively, "the Parties") wish to effect a settlement of the above-captioned matter without expensive and protracted litigation;

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

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, 42 U.S.C. §§ 7401 et seq.;

NOW THEREFORE, before the taking of testimony, and upon the consent of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. This Court has subject matter jurisdiction over the claims set forth in the Complaint and to order the relief contained in this Consent Decree. Venue is proper in the United States District Court for the Middle District of Louisiana.
2. On or before September 1, 2016, EPA shall sign a response granting or denying the Petition, pursuant to 42 U.S.C. § 7661d(b)(2). EPA shall promptly provide a copy of its response to the Plaintiffs.
3. Following signature of such response to the Petition, EPA shall expeditiously deliver notice of EPA's response to the Office of the Federal Register for review and publication.
4. If EPA's response to the Petition includes the granting of any portion of the Petition in whole or in part, EPA shall promptly transmit its response to the Louisiana Department of Environmental Quality.
5. The deadline for filing a motion for costs of litigation, including attorneys' fees, incurred prior to entry of this Consent Decree is hereby extended until sixty (60) days after the entry of this Consent Decree by this Court. During this time, 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 this Court for resolution. The United States does not waive or limit any defenses it may have to such claim. This Court shall retain jurisdiction to resolve any requests for costs of litigation, including attorneys' fees.

6. Any provision of this Consent Decree may be modified by (a) written stipulation of the Parties with notice to the Court, or (b) by the Court following motion of any party to this Consent Decree, pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by the non-moving party.

7. The Parties recognize that the possibility exists that a lapse in the appropriations that fund EPA could delay compliance with the timetables contained in this Consent Decree. Should a delay occur due to a lapse in appropriations, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Consent Decree, and any deadlines occurring within one hundred twenty (120) days of the termination of the delay shall be automatically extended one day for each day of the delay. Nothing in this paragraph shall preclude EPA from seeking an additional extension through modification of this Consent Decree pursuant to Paragraph 6.

8. Plaintiffs and EPA shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

9. Plaintiffs agree that this Consent Decree shall constitute a complete and final settlement of all claims that Plaintiffs have asserted against the United States, including EPA, under any provision of law in Louisiana Environmental Action Network, et al. v. McCarthy, Civil Case No. 3:15-CV-858-JJB-RLB (M.D. La.), except as provided in Paragraph 5 of this Consent Decree. Plaintiffs therefore discharge and covenant not to sue the United States, including EPA, for any such claims.

10. Nothing in this Consent Decree shall be construed to limit or modify any discretion accorded EPA by the CAA or by general principles of administrative law in taking the actions that are the subject of this Consent Decree, including discretion to alter, amend, or revise any responses or final actions contemplated by this Consent Decree. EPA's obligation to perform the actions specified in Paragraphs 2, 3 and 4 of this Consent Decree by the time specified therein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

11. Except for paragraph 1, 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 EPA may take with respect to the Permit.

12. Nothing in this Consent Decree shall be construed to confer upon the District Court jurisdiction to review any final decision made by EPA pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to 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 CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1). Nothing in the terms of this Consent 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).

13. The obligations imposed upon EPA under this Consent Decree can only be undertaken using appropriated funds. No provision of this Consent 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 any other applicable provision of law.

14. Any notices required or provided for by this Consent Decree shall be made in writing and sent to each of the following:

For Plaintiffs:

Corinne Van Dalen, Supervising Attorney
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, Louisiana 70118
Phone: (504) 865-8814
Fax: (504) 862-8721
Email: cvandale@tulane.edu

For Defendants:

Chief, Environmental Defense Section
Re: DJ # 90-5-2-4-20575
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044
Tel: (202) 514-2219
Fax: (202) 514-8865

John T. Krallman
Office of the General Counsel
U.S. Environmental Protection Agency
WJC North, MC 2344A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Tel: (202) 564-0904
krallman.john@epa.gov

15. In the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this Consent 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 twenty (20) business days after receipt of the notice, any party may move the Court to resolve the dispute.

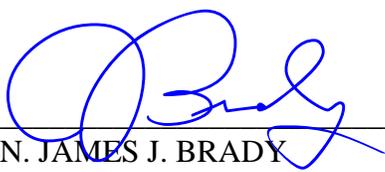
16. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of Court shall be filed unless the Plaintiffs have followed the procedure set forth in Paragraph 15.

17. The Court shall retain jurisdiction to determine and effect compliance with this Consent Decree. When EPA's obligations under Paragraphs 2 through 4 of this Consent Decree have been completed, and Plaintiffs' claim for costs of litigation has been resolved pursuant to Paragraph 5, the above-captioned matter shall be dismissed with prejudice. The Parties may either jointly notify the Court that the Consent Decree should be terminated and the case dismissed, or either party may so notify the Court by motion. If either party notifies the Court by motion, then the other party shall have twenty (20) days in which to respond.

18. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiffs and EPA and 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.

19. The undersigned representatives of each Party certify that they are fully authorized by the Party they represent to bind that Party to the terms of this Consent Decree.

SO ORDERED on this 23rd day of August, 2016.



HON. JAMES J. BRADY
United States District Judge

SO AGREED:

FOR PLAINTIFFS

/s/ Corinne Van Dalen
Supervising Attorney (La. Bar No. 2117)
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Fax: (504) 862-8721
Email: cvandale@tulane.edu

*Counsel for Louisiana Environmental Action
Network and Sierra Club*

Dated: July 15, 2016

FOR DEFENDANT

JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division

/s/ Eileen T. McDonough
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
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eileen.mcdonough@usdoj.gov
Counsel for Gina McCarthy

Dated: July 15, 2016