

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

STATEWIDE ORGANIZING FOR  
COMMUNITY EMPOWERMENT et al.,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY et al.,

Defendants.

Civil Action No. 22-cv-2562  
Hon. Judge Bates

**JOINT MOTION FOR ENTRY OF CONSENT DECREE**

Plaintiffs Statewide Organizing for Community eMpowerment, Hoosier Environmental Council, Indiana State Conference and LaPorte County Branch of the National Association for the Advancement of Colored People, Sierra Club, Clean Power Lake County, and Environmental Integrity Project (collectively, “Plaintiffs”), and Defendants United States Environmental Protection Agency (“EPA”) and Michael S. Regan, in his official capacity as Administrator of EPA, by and through the undersigned counsel, hereby jointly move the Court to enter the attached Consent Decree. In support of this motion, Plaintiffs and Defendants (collectively, the “Parties”) state as follows:

1. On August 25, 2022, Plaintiffs filed this Resource Conservation and Recovery Act (“RCRA”) citizen suit under 42 U.S.C. § 6972(a)(2) alleging that EPA violated Section 2002(b) of RCRA by failing to perform its non-discretionary duty under 42 U.S.C. § 6912(b) to review and revise a regulation exempting inactive coal combustion residuals landfills, 40 C.F.R. § 257.50(d).

2. The Parties reached agreement on a proposed Consent Decree, which was published on February 3, 2023 for public comment in the Federal Register, in accordance with the EPA Administrator’s March 18, 2022, memorandum regarding “Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency.” *Proposed Consent Decree, Resource Conservation and Recovery Act Citizen Suit*, 88 Fed. Reg. 7443 (Feb. 3, 2023). The comment period closed on March 6, 2023, and after reviewing the comments received, Defendants determined not to withdraw from the Consent Decree. In accordance with paragraph 20 of the Consent Decree, the parties may now move for entry of the Consent Decree.

3. “The ‘generally applicable’ standard for the review of a consent decree in the District of Columbia Circuit is whether the consent decree ‘fairly and reasonably resolves the controversy in a manner consistent with the public interest.’” *United States v. Daimler AG*, No. CV 20-2564 (EGS), 2021 WL 878894, at \*3 (D.D.C. Mar. 9, 2021) (quoting *Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1206 n.1 (D.C. Cir. 2004)). Here, the Court should enter the Consent Decree because it is fair, reasonable, in the public interest, and an appropriate resolution of Plaintiffs’ claims. Each party was represented by separate counsel and engaged in arms-length negotiations. The substantive provisions of the Consent Decree merely set forth a reasonable schedule for EPA to complete its mandatory duties under 42 U.S.C. § 6912(b). The Consent Decree requires EPA, by May 5, 2023, to either complete its review of 40 C.F.R. § 257.50(d) and determine that no revision is necessary or sign a proposed rule to revise 40 C.F.R. § 257.50(d). If EPA issues a proposed rule, it must sign for publication in the Federal Register a notice taking final action by May 6, 2024. The Consent Decree benefits the public by

saving time and money by resolving Plaintiffs' claims without further litigation. The Court should therefore enter the attached Consent Decree.

WHEREFORE, the Parties respectfully move the Court to enter the attached Consent Decree.

Dated: April 20, 2023

Respectfully submitted,

/s/ Charles McPhedran  
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