UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, et al.,	)	
	)	
Plaintiffs,	)	Civil Action
	)	No. 13 -1553 (GK)
v.	)	
	)	and consolidated case
GINA MCCARTHY, Administrator,	)	
Environmental Protection Agency, and	)	Civil Action
ENVIRONMENTAL PROTECTION AGENCY,	)	No. 13 -1555 (GK)
	)	
Defendants.	)	
	)	

PARTIAL CONSENT DECREE

WHEREAS, Plaintiffs, the States of New York, Connecticut, Maryland, Oregon, Rhode Island, and Vermont; the Commonwealth of Massachusetts; and Puget Sound Clean Air Agency (jointly referred to as "State Plaintiffs"), filed Civil Action No. 13-1553 (GK) pursuant to Clean Air Act ("CAA") section 304(a)(2), 42 U.S.C. § 7604(a)(2), against Defendants Gina McCarthy, Administrator, and the United States Environmental Protection Agency (jointly referred to as "EPA");

WHEREAS, Plaintiffs, American Lung Association; Environmental Defense Fund; Clean Air Council; and Environment and Human Health, Inc. (jointly referred to as "Environmental Plaintiffs"), filed Civil Action No. 13-1555 (GK) pursuant to Clean Air Act ("CAA") section 304(a)(2), 42 U.S.C. § 7604(a)(2), against EPA;

WHEREAS, the Court consolidated Civil Action Nos. 13-1553 and 13-1555 (GK);

WHERAS, the Court granted the motion to intervene as Plaintiff filed by the Hearth, Patio & Barbecue Association ("Association Plaintiff");

WHEREAS, the complaints filed by the State, Environmental, and Association Plaintiffs each allege that EPA failed to perform a nondiscretionary duty under CAA section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B) to, at least every 8 years, review and, if appropriate, revise the new performance standards for new residential wood heaters that were promulgated by EPA in 1988. 40 C.F.R. Part 60, Subpart AAA ("Wood Heater NSPS Standards");

WHEREAS, the relief requested in the Complaints filed by the State, Environmental, and Association Plaintiffs includes, among other things, an order from this Court to establish a date certain by when EPA must fulfill its obligations under CAA section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), with respect to the Wood Heater NSPS Standards;

WHEREAS, it is in the interest of the public, the parties, and judicial economy to resolve claims without further litigation;

WHEREAS, the State and Environmental Plaintiffs and EPA (jointly referred to as "Parties") have agreed to a settlement of all claims asserted by the State and Environmental Plaintiffs in their Complaints, without any admission or adjudication of fact or law, which they consider to be a just, fair, adequate and equitable resolution of said claims;

WHEREAS, the Association Plaintiff has not agreed to settle its claims against EPA and does not join in this Consent Decree;

WHEREAS, the Court finds and determines that the settlement represents a just, fair, adequate and equitable resolution of the claims asserted by the State and Environmental Plaintiffs;

WHEREAS, by entering into this Consent Decree, the State and Environmental Plaintiffs do not waive any claims and EPA does not waive any defenses, on any grounds, related to any matters asserted in this action that are not resolved by this Decree;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the claims set forth in the Complaints of the State and Environmental Plaintiffs in these consolidated actions and may order the relief contained in the Consent Decree. Venue is proper in the District of Columbia.

2. No later than February 3, 2015, EPA shall sign a Federal Register notice taking final action with respect to the Wood Heater NSPS Standards, 40 C.F.R. Part 60, Subpart AAA, with such modifications as EPA deems appropriate under CAA section 111(b)(1)(B), 42 U.S.C. § 7411(b)(l)(B).

3. EPA shall deliver to the Office of the Federal Register for publication the notice of final rulemaking described in Paragraph 2 no later than ten business days after signature of such notice. Following such delivery, EPA shall not take any action (other than as necessary to correct any typographical error or other errors in form) to delay or otherwise interfere with publication of such notice in the Federal Register. In addition, EPA shall make available copies of said notice to the State and Environmental Plaintiffs within five business days after signature.

4. The deadlines in Paragraphs 2 and 3 above may be extended by written stipulation executed by counsel for EPA and the State and Environmental Plaintiffs and filed with the Court, or by the Court upon motion made pursuant to the Federal Rules of Civil Procedure by EPA and upon consideration of any response by these Plaintiffs and reply by EPA.

5. EPA agrees that the State and Environmental Plaintiffs are entitled to recover costs of litigation (including attorneys' fees) ("litigation costs") incurred in this matter pursuant to 42 U.S.C. § 7604(d). The deadline for the filing of any motion for litigation costs for activities performed prior to the lodging of this decree with the Court is hereby extended for a

period of 120 days. During this time the Parties shall seek to resolve informally any claim for litigation costs, and if they cannot reach a resolution, the State and Environmental Plaintiffs may seek such litigation costs from the Court. The Court shall retain jurisdiction to resolve any request for litigation costs. The State and Environmental Plaintiffs reserve their right to seek litigation costs for any work performed after the lodging of this Consent Decree. EPA does not concede that the State and Environmental Plaintiffs will be entitled to fees for any work performed after the lodging of the Consent Decree, and the parties reserve all claims and defenses with respect to any future costs of litigation claim.

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

7. Except for claims for litigation costs pursuant to Paragraph 5 above, the State and Environmental Plaintiffs and EPA agree that this Consent Decree shall constitute a complete and final settlement of all claims that the State and Environmental Plaintiffs asserted against the United States, including EPA, under any provision of law, in State of New York, *et al.* v. EPA, Case No. 1:13-cv-1553-GK (and consolidated case). The State and Environmental Plaintiffs therefore discharge and covenant not to sue the United States, including EPA, for such claims. The Parties agree that this discharge and covenant not to sue shall not apply to any claim that may arise if any final rule signed pursuant to Paragraph 2 is vacated or withdrawn. EPA retains all rights and defenses, including jurisdictional challenges, in the event any such claim is filed by the State or Environmental Plaintiffs.

8. 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 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 the actions specified by Paragraph 2 and 3 does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

9. Nothing in this Consent Decree shall be construed as an admission of any issue of fact or law or to waive or limit any claim or defense, on any grounds, related to any final action EPA may take with respect to the rulemaking identified in Paragraph 2 of this Consent Decree.

10. Nothing in this Consent Decree shall be construed to confer upon the district court jurisdiction to review any final rule issued 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 42 U.S.C. § 7607(b)(1). Nothing in this Consent Decree shall be construed to waive any claims or defenses the Parties may have under 42 U.S.C. § 7607(b)(1).

11. The Parties recognize and acknowledge that the obligations imposed upon EPA under this Consent Decree can only be undertaken using 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 or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

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

<u>For State Plaintiffs</u>:

Michael J. Myers
New York State Attorney General
Environmental Protection Bureau
The Capitol

Albany, NY 12224
Email:Michael.Myers@ag.ny.gov

Scott N. Koschwitz
State of Connecticut
Office of the Attorney General
P.O. Box 120
55 Elm Street
Hartford, CT 06141-0120
Email:Scott.Koschwitz@ct.gov

Mary E. Raivel
Office of the Attorney General of Maryland
Maryland Department of the Environment
1800 Washington Boulevard Suite 6048
Baltimore, MD 21230
Email:Mary.Raivel@maryland.gov

Frederick D. Augenstern
Office of the Attorney General
1 Ashburton Place 18th Floor
Boston, MA 02108
Email:Fred.Augenstern@state.ma.us

Paul A. Garrahan
Oregon Department of Justice
Natural Resources Section, General Counsel Division
1515 SW Fifth Avenue Suite 400
Portland, OR 97239
Email:Paul.Garrahan@doj.state.or.us

Gregory S. Schultz
Rhode Island Department of Attorney General
Civil Unit 150 South Main Street
Providence, RI 02903
Email:Gschultz@riag.ri.gov

Thea Schwartz
State of Vermont
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
Email:Tschwartz@atg.state.vt.us

Laurie Halvorson

Puget Sound Clean Air Agency
1904 Third Avenue Suite 105
Seattle, WA 98101
Email:Laurieh@pscleanair.org

For Environmental Plaintiffs:

Timothy D. Ballo
Earthjustice
1625 Massachusetts Avenue, NW Suite 702
Washington, DC 20036
Email:Tballo@earthjustice.org

Tomás Carbonell
Environmental Defense Fund
1875 Connecticut Ave., NW
Sixth Floor
Washington, DC 20009
Email:Tcarbonell@edf.org

For Defendant:

Eileen T. McDonough
Environmental Defense Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
eileen.mcdonough@usdoj.gov

Scott Jordan
U.S. Environmental Protection Agency
William Jefferson Clinton North Building
1200 Pennsylvania Avenue, NW
Mail Code: 2344A
Washington, D.C. 20460
jordan.scott@epa.gov

13. In the event of a dispute among 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. The Parties shall meet and confer to attempt to resolve the dispute. If the Parties

cannot reach an agreed-upon resolution after ten (10) business days following receipt of the written notice, any Party may move the Court to resolve the dispute.

14. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of court shall be properly filed unless the Party seeking to enforce this Consent Decree has followed the procedure set forth in Paragraph 13.

15. 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). After EPA's obligations under Paragraphs 2 and 3 have been completed and after publication of notice of the final action required by Paragraph 2 in the Federal Register, EPA may move to have this Consent Decree terminated. The State and Environmental Plaintiffs shall have 14 days in which to respond to such motion.

16. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by the Parties 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.

17. The Parties agree and acknowledge that before this Consent Decree is entered by the Court, EPA must provide notice of this Consent Decree in the Federal Register and an opportunity for public comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). EPA will deliver a public notice of this Consent Decree to the Office of the Federal Register for publication and public comment within twenty-one (21) days after lodging this Consent Decree with the Court. After this Consent Decree has undergone notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any written comments received in determining whether to withdraw or withhold their consent to the Consent Decree, in

accordance with CAA section 113(g). If the Administrator and 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. If a motion to enter the Consent Decree is not filed within ninety (90) days after the notice is published in the Federal Register, any party may file dispositive motions in this matter.

18. The undersigned certify that they are fully authorized by the Party or Parties they represent to bind that Party or those Parties to the terms of this Consent Decree.

SO ORDERED this ___ day of _____, 2014.

_____
HON. GLADYS KESSLER
UNITED STATES DISTRICT JUDGE

SO AGREED:

For State Plaintiffs:

/s/ *Michael J. Myers*
Michael J. Myers
New York State Attorney General
Environmental Protection Bureau
The Capitol
Albany, NY 12224
Email:Michael.Myers@ag.ny.gov

/s/ *Scott N. Koschwitz*
Scott N. Koschwitz
State of Connecticut
Office of the Attorney General
P.O. Box 120
55 Elm Street
Hartford, CT 06141-0120
Email:Scott.Koschwitz@ct.gov

/s/ *Mary E. Raivel*
Mary E. Raivel
Office of the Attorney General of Maryland
Maryland Department of the Environment

1800 Washington Boulevard Suite 6048
Baltimore, MD 21230
Email:Mary.Raivel@maryland.gov

/s/ *Frederick D. Augenstern*
Frederick D. Augenstern
Office of the Attorney General
1 Ashburton Place 18th Floor
Boston, MA 02108
Email:Fred.Augenstern@state.ma.us

/s/ *Paul A. Garrahan*
Paul A. Garrahan
Oregon Department of Justice
Natural Resources Section, General Counsel Division
1515 SW Fifth Avenue Suite 400
Portland, OR 97239
Email:Paul.Garrahan@doj.state.or.us

/s/ *Gregory S. Schultz*
Gregory S. Schultz
Rhode Island Department of Attorney General
Civil Unit 150 South Main Street
Providence, RI 02903
Email:Gschultz@riag.ri.gov

/s/ *Thea Schwartz*
Thea Schwartz
State of Vermont
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
Email:Tschwartz@atg.state.vt.us

/s/ *Laurie Halvorson*
Laurie Halvorson
Puget Sound Clean Air Agency
1904 Third Avenue Suite 105
Seattle, WA 98101
Email:Laurieh@pscleanair.org

For Environmental Plaintiffs:

/s/ *Timothy D. Ballo*
Timothy D. Ballo
Earthjustice
1625 Massachusetts Avenue, NW Suite 702
Washington, DC 20036
Email:Tballo@earthjustice.org

For Defendant:

Robert G. Dreher
Acting Assistant Attorney General

/s/ *Eileen T. McDonough*
Eileen T. McDonough
Environmental Defense Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
eileen.mcdonough@usdoj.gov

Scott Jordan
U.S. Environmental Protection Agency
William Jefferson Clinton North Building
1200 Pennsylvania Avenue, NW
Mail Code: 2344A
Washington, D.C. 20460
jordan.scott@epa.gov