

WHEREAS, pursuant to Section 111(a)(1) of the Act, 42 U.S.C. § 7411(a)(1), the term “standard of performance” means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator of EPA determines has been adequately demonstrated;

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

WHEREAS, the Court finds and determines that the settlement represents a just, fair, adequate and equitable resolution of all claims raised in this action except for the amount of plaintiffs’ costs of litigation, including attorneys’ fees.

NOW THEREFORE, 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.
2. Venue lies in the Northern District of California.
3. Plaintiffs and EPA shall not challenge the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree. Upon entry, no party shall challenge the terms of this Consent Decree.
4. Within twelve months of entry of this Consent Decree the appropriate EPA official shall sign and promptly forward to the Federal Register for

publication proposed revisions to all standards in NSPS Subparts VV and GGG, except to the extent at that time (a) EPA sets forth a proposed determination under CAA section 111(b)(1)(B) that a review and/or revision of any Subpart VV or GGG standard is not appropriate in light of readily available information on the efficacy of such standards or (b) EPA sets forth a proposed determination that review and/or revision is not appropriate for any other reason. In the review and revision process for Subparts VV and GGG described by this decree, EPA shall also consider and address the application of Subpart A to such Subparts.

5. Within twenty-four months from the date of entry of this Consent Decree the appropriate EPA official shall sign and promptly forward to the Federal Register for publication as a final rule a revision to all standards in NSPS Subparts VV and GGG, except to the extent at that time (a) EPA sets forth its final determination that review and/or revision of any standard was not appropriate in light of readily available information on the efficacy of such standard or (b) EPA sets forth its final determination that review and/or revision was not appropriate for any other reason.

6. Within eighteen months of entry of this Consent Decree the appropriate EPA official shall sign and promptly forward to the Federal Register for publication proposed revisions to all standards in NSPS Subpart J, except to the extent at that time (a) EPA sets forth a proposed determination under CAA section 111(b)(1)(B) that a review and/or revision of any Subpart J standard is not appropriate in light of readily available information on the efficacy of such

standard or (b) EPA sets forth a proposed determination that review and/or revision is not appropriate for any other reason. In the review and revision process for Subpart J described by this decree, EPA shall also consider and address the application of Subpart A to such Subpart.

7. Within thirty months from the date of entry of this Consent Decree the appropriate EPA official shall sign and promptly forward to the federal register for publication as a final rule a revision to all standards in NSPS Subpart J, except to the extent at that time (a) EPA sets forth its final determination that review and/or revision of any Subpart J standard was not appropriate in light of readily available information on the efficacy of such standard or (b) EPA sets forth its final determination that review and/or revision was not appropriate for any other reason.

8. The deadlines in paragraphs 4 through 7 may be extended for a period of 60 days or less by written stipulation executed by counsel for plaintiffs and EPA and filed with the Court. Any other modification to this decree must be approved by the Court upon motion by any party to this Consent Decree and upon consideration of any response by the non-moving party.

9. EPA shall notify in writing counsel for plaintiffs within ten days of the publication of any Federal Register notice regarding the requirements of this decree.

10. The Court shall retain jurisdiction to determine and effectuate

compliance with this Decree. Upon EPA's demonstration that it has satisfied all of the obligations of this Decree it may move to have this decree terminated.

Plaintiffs shall have twenty days in which to respond to such motion.

11. Except as provided herein, nothing in this 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 Decree.

12. The parties agree and acknowledge that final approval and entry of this proposed Decree are subject to the requirements of Clean Air Act § 113(g), 42 U.S.C. § 7413(g). That subsection provides that notice of this proposed 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 Decree.

13. Nothing in the terms of this Consent Decree shall be construed to waive any remedies plaintiff may have under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

14. 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 contact the other party to confer and attempt to reach an agreement on the disputed issue. If the parties cannot reach an agreed-upon resolution, then either party may move the Court to resolve the dispute.

15. EPA's commitments in this Decree are subject to the availability of appropriated funds. No provision of this 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.

16. EPA agrees that, pursuant to 42 U.S.C. §7604(d), plaintiffs are both eligible and entitled to recover their costs of litigation in this action, including reasonable attorney and expert witness fees. The parties also agree that plaintiffs, by accepting certain litigation costs and fees for work performed prior to the entry of this decree, are not precluded from requesting and being awarded litigation costs and fees pursuant to 42 U.S.C. § 7604(d) for work performed after the entry of this decree.

17. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to consent to the Court's entry of the terms and conditions of this Consent Decree.

For Our Children's Earth Foundation and
Sierra Club

Dated: 7/15/05

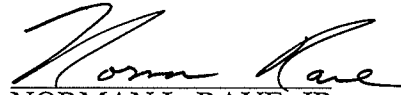
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Dated: July 22, 2005



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Counsel for Defendants

IT IS SO ORDERED.

Dated: _____

The Honorable Claudia Wilken
United States District Judge