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20 **IN THE UNITED STATES DISTRICT COURT**
21 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
22 **OAKLAND DIVISION**

23 CENTER FOR BIOLOGICAL DIVERSITY
24 *et al.*,

25 Plaintiffs,

26 v.

27 ANDREW R. WHEELER, in his official
28 capacity as the Administrator of the United
States Environmental Protection Agency,

Defendant.

Case No. 4:18-cv-03544-YGR

~~PROPOSED~~ CONSENT DECREE

1 WHEREAS, on June 14, 2018, Plaintiffs Center for Biological Diversity, Center
2 for Environmental Health, and Sierra Club (collectively, “Plaintiffs”) filed the above-
3 captioned matter against Andrew R. Wheeler, in his official capacity as the Administrator
4 of the United States Environmental Protection Agency (hereinafter “EPA” or
5 “Defendant”) (Dkt. No. 1);

6 WHEREAS, on December 17, 2018, Plaintiffs filed a First Amended Complaint
7 (Dkt. No. 25) (the “First Am. Compl.”);

8 WHEREAS, Plaintiffs allege that EPA has failed to undertake certain non-
9 discretionary duties under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and
10 that such alleged failure is actionable under CAA section 304(a)(2), 42
11 U.S.C. § 7604(a)(2);

12 WHEREAS, on April 28, 1971, pursuant to CAA section 109(a)(1), 42 U.S.C.
13 § 7409(d)(1), the EPA Administrator signed a notice promulgating a rule establishing the
14 primary National Ambient Air Quality Standards for sulfur dioxide (the “1971 SO₂
15 NAAQS”), *Final Rule*, 36 Fed. Reg. 8186 (Apr 30, 1971);

16 WHEREAS, on December 22, 1987, pursuant to CAA section 107(d), 42 U.S.C.
17 § 7407(d), the EPA Administrator signed a notice designating the New Jersey portion of
18 the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control
19 Region (part) nonattainment for the 1971 SO₂ NAAQS, *Final Rule*, 52 Fed. Reg. 49,408
20 (Dec. 31, 1987); *see also Final Rule*, 53 Fed. Reg. 8182 (Mar. 14, 1988) (correcting
21 clerical error in designation);

22 WHEREAS, the designation of the New Jersey portion of the Northeast
23 Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (part) area
24 nonattainment for the 1971 primary SO₂ NAAQS became effective on February 1, 1988,
25 52 Fed. Reg. at 49,408;

26 WHEREAS, on June 2, 2010, pursuant to CAA section 109(a)(1), 42 U.S.C.
27 § 7409(d)(1), the EPA Administrator signed a notice promulgating a final rule revising
28

1 the primary National Ambient Air Quality Standards for sulfur dioxide, *Final Rule*, 75
2 Fed. Reg. 35,520 (June 22, 2010) (the “2010 SO₂ NAAQS”);

3 WHEREAS, on July 25, 2013, pursuant to CAA section 107(d), 42 U.S.C. §§
4 7407(d), the EPA Administrator signed a notice promulgating a final rule to establish
5 initial air quality designations for the 2010 SO₂ NAAQS, *Final Rule*, 78 Fed. Reg. 47,191
6 (Aug. 5, 2013) (the “initial 2010 SO₂ designations”);

7 WHEREAS, the initial 2010 SO₂ NAAQS designations became effective on
8 October 4, 2013, *id.* at 47,191;

9 WHEREAS, on June 30, 2016, pursuant to CAA section 107(d), 42 U.S.C. §§
10 7407(d), the EPA Administrator signed a notice promulgating a final rule to establish
11 additional air quality designations for the 2010 SO₂ NAAQS, *Final Rule*, 81 Fed. Reg.
12 45,039 (July 12, 2016) (the “Round 2 2010 SO₂ designations”);

13 WHEREAS, the Round 2 2010 SO₂ designations became effective on September
14 12, 2016, *id.* at 45,039;

15 WHEREAS, pursuant to CAA section 191(b), 42 U.S.C. § 7514(b), New Jersey
16 was required to provide a State implementation plan (“SIP”) submission to EPA within
17 18 months of November 15, 1990, for the New Jersey portion of the Northeast
18 Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (part)
19 nonattainment area for the 1971 primary SO₂ NAAQS;

20 WHEREAS, pursuant to CAA section 191(a), 42 U.S.C. § 7514(a), states that
21 contain areas that are designated nonattainment after November 15, 1990, are required to
22 provide SIP submissions to EPA within 18 months of the effective date of designations,
23 i.e. by April 4, 2015 for the initial 2010 SO₂ designations, and by March 12, 2018 for the
24 Round 2 2010 SO₂ designations;

25 WHEREAS, pursuant to CAA section 110(k)(1)(B), 42 U.S.C. § 7410(k)(1)(B),
26 EPA must then determine whether a State’s submittal is complete within six months after
27 EPA receives the submission, and if EPA does not determine completeness of the plan or
28

1 revision within six months, then the submittal is deemed complete by operation of law
2 after six months, *id.*;

3 WHEREAS, pursuant to CAA section 110(k)(2)-(4), 42 U.S.C. § 7410(k)(2)-(4),
4 EPA is required to approve in whole or in part, disapprove, or conditionally approve in
5 whole or in part, each plan or revision, within 12 months of a determination of
6 completeness by EPA or a submittal deemed by operation of law to be complete;

7 WHEREAS, in Claim 1, Plaintiff alleges that EPA has failed to perform a duty
8 mandated by CAA sections 110(k)(2)-(4), 42 U.S.C. §§ 7410(k)(2)-(4), to take final
9 action to approve or disapprove, in whole or in part, certain 2010 primary SO₂ NAAQS
10 nonattainment SIP submissions addressing the following element or elements under 42
11 U.S.C. §§ 7502 or 7514a, from the areas and states listed below, *see* First Am. Compl. ¶¶
12 6, 30-33 & tbl. 1 (Dkt. No. 25) (“Claim 1”):

State	Nonattainment Area	Element(s) Addressed in State Implementation Plan
Indiana	Indianapolis, IN (Marion County (part)) nonattainment area	(1) Attainment demonstration pursuant to 42 U.S.C. § 7502(c) (“Attainment Demonstration”); (2) Contingency measure requirements pursuant to 42 U.S.C. § 7502(c)(9) (“Contingency Measures”); (3) Base year emissions inventory requirements pursuant to 42 U.S.C. § 7502(c)(3) (“Emissions Inventory”); (4) Nonattainment new source review plan requirements pursuant to 42 U.S.C. § 7502(c)(5) (“NNSR”); (5) Reasonably available control technology and reasonably available control measures pursuant to 42 U.S.C. § 7502(c)(1) (“RACT/RACM”); and (6) Reasonable further progress requirements pursuant to 42 U.S.C. § 7502(c)(2) (“RFP”).
Indiana	Morgan County, IN (Morgan County (part)) nonattainment	(1) Attainment Demonstration; (2) Contingency Measures;

State	Nonattainment Area	Element(s) Addressed in State Implementation Plan
	area	(3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
Indiana	Southwest Indiana, IN (Davies County (part) and Pike County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
Indiana	Terre Haute, IN (Vigo County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
Iowa	Muscatine, IA (Muscatine County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
Michigan	Detroit, MI (Wayne County (part))	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
Missouri	Jackson County, MO (Jackson County (part)) nonattainment area	(1) Emissions Inventory.
Ohio	Lake County, OH nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
Ohio	Muskingum River, OH	(1) Attainment Demonstration;

State	Nonattainment Area	Element(s) Addressed in State Implementation Plan
	(Morgan County (part) and Washington County (part)), nonattainment area	(2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
Ohio	Ohio portion of the Steubenville OH–WV (Jefferson County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
West Virginia	West Virginia portion of the Steubenville, OH–WV (Brooke County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
Wisconsin	Rhineland, WI (Oneida County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; and (5) RFP.
Arizona	Hayden, AZ (Gila County (part) and Pinal County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) RACT/RACM; and (5) RFP.
Arizona	Miami, AZ (Gila County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) RACT/RACM; and (5) RFP.
Kentucky	Jefferson County, KY (Jefferson County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.

State	Nonattainment Area	Element(s) Addressed in State Implementation Plan
Pennsylvania	Allegheny, PA (Allegheny County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
Pennsylvania	Beaver, PA (Beaver County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
Pennsylvania	Indiana, PA Indiana County (Armstrong County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.
West Virginia	Marshall, WV (Marshall County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP;

WHEREAS, on July 20, 2015, the Regional Administrator for EPA Region III signed a notice approving an element of a West Virginia nonattainment SIP submission addressing the Emissions Inventory element for the Marshall, WV (Marshall County (part)) nonattainment area for the 2010 primary SO₂ NAAQS. *Direct Final Rule*, 80 Fed. Reg. 45,613 (July 31, 2015). Claim 1 is therefore moot as to the Marshall, WV (Marshall County (part)) nonattainment area for the Emissions Inventory element;

WHEREAS, on December 28, 2018, the Regional Administrator for EPA Region 7 signed a notice approving elements of a Missouri nonattainment SIP submission addressing the Emissions Inventory element for the Jackson County, MO (Jackson

1 County (part)) nonattainment area for the 2010 primary SO₂ NAAQS. *Final Rule*, 84
2 Fed. Reg. 3703 (Feb. 13, 2019). Claim 1 is therefore moot as to the Jackson County, MO
3 (Jackson County (part)) nonattainment area for the Emissions Inventory element;

4 WHEREAS, on January 29, 2019, the Regional Administrator for EPA Region 5
5 signed a notice approving elements of an Ohio nonattainment SIP submission addressing
6 the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR,
7 RACT/RACM, and RFP elements for the Lake County, OH nonattainment area for the
8 2010 primary SO₂ NAAQS. *Final Rule*, 84 Fed. Reg. 3986 (Feb. 14, 2019). Claim 1 is
9 therefore moot as to the Lake County, OH nonattainment area for the Attainment
10 Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and
11 RFP elements;

12 WHEREAS, on February 21, 2019, the Acting Regional Administrator for EPA
13 Region IX signed a notice approving elements of an Arizona nonattainment SIP
14 submission addressing the Attainment Demonstration, Contingency Measures, Emissions
15 Inventory, RACT/RACM, and RFP elements for the Miami (Gila County (Part)), AZ
16 nonattainment area for the 2010 primary SO₂ NAAQS. *Final Rule*, 84 Fed. Reg. 8,813
17 (Mar. 12, 2019). Claim 1 is therefore moot as to the Miami (Gila County (Part)), AZ
18 nonattainment area for the Attainment Demonstration, Contingency Measures, Emissions
19 Inventory, RACT/RACM, and RFP elements;

20 WHEREAS, on March 11, 2019, the Acting Regional Administrator for EPA
21 Region 5 signed a notice approving elements of Indiana nonattainment SIP submissions
22 addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory,
23 NNSR, RACT/RACM, and RFP elements for the Indianapolis (Marion County (Part)),
24 and Terre Haute (Vigo County (Part)), IN nonattainment areas for the 2010 primary SO₂
25 NAAQS. *Final Rule*, 84 Fed. Reg. 10,692 (Mar. 22, 2019). Claim 1 is therefore moot as
26 to the Indianapolis (Marion County (Part)) and Terre Haute (Vigo County (Part)), IN
27 nonattainment areas for the Attainment Demonstration, Contingency Measures,
28 Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

1 WHEREAS, on May 28, 2019, the Regional Administrator for EPA Region 4
2 signed a notice approving elements of a Kentucky nonattainment SIP submission
3 addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory,
4 NNSR, RACT/RACM, and RFP elements for the Jefferson County (Jefferson County
5 (Part)), KY nonattainment area. *Final Rule*, 84 Fed. Reg. 30,920 (June 28, 2019). Claim
6 1 is therefore moot as to the Jefferson County (Jefferson County (Part)), KY
7 nonattainment area for the Attainment Demonstration, Contingency Measures, Emissions
8 Inventory, NNSR, RACT/RACM, and RFP elements;

9 WHEREAS, on September 4, 2019, the Acting Regional Administrator for EPA
10 Region 5 signed a notice approving elements of an Indiana nonattainment SIP submission
11 addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory,
12 NNSR, RACT/RACM, and RFP elements for the Morgan County (Morgan County
13 (Part)) IN nonattainment area for the 2010 primary SO₂ NAAQS. *Final Rule*, 84 Fed.
14 Reg. 49,659 (Sept. 23, 2019). Claim 1 is therefore moot as to the Morgan County
15 (Morgan County (Part)), IN nonattainment area for the Attainment Demonstration,
16 Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

17 WHEREAS, on September 13, 2019, the Acting Regional Administrator for EPA
18 Region III signed a notice approving elements of a Pennsylvania nonattainment SIP
19 submission addressing the Attainment Demonstration, Contingency Measures, Emissions
20 Inventory, NNSR, RACT/RACM, and RFP elements for the Beaver (Beaver County
21 (Part)) PA nonattainment area for the 2010 primary SO₂ NAAQS. *Final Rule*, 84 Fed.
22 Reg. 51,988 (Oct. 1, 2019). Claim 1 is therefore moot as to the Beaver (Beaver County
23 (Part)), PA nonattainment area for the Attainment Demonstration, Contingency
24 Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

25 WHEREAS, on September 23, 2019, the Regional Administrators for EPA
26 Regions III and V signed a notice approving elements of an Ohio nonattainment SIP
27 submission and a West Virginia nonattainment SIP submission addressing the Attainment
28 Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and

1 RFP elements for the Ohio and West Virginia portions of the Steubenville OH-WV
 2 (Jefferson County (Part) and Brooke County (Part)) nonattainment area for the 2010
 3 primary SO₂ NAAQS. *Final Rule*, 84 Fed. Reg. 56,385 (Oct. 22, 2019.) Claim 1 is
 4 therefore moot as to the Steubenville OH-WV (Jefferson County (Part) and Brooke
 5 County (Part)) nonattainment area for the Attainment Demonstration, Contingency
 6 Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

7 WHEREAS, in Claim 2, Plaintiffs allege that EPA has failed to perform a duty
 8 mandated by CAA section 110(k)(1)(B), 42 U.S.C. § 7410(k)(1)(B), to make a finding of
 9 failure to submit a nonattainment SIP for various states and nonattainment areas for the
 10 1971 or 2010 primary SO₂ NAAQS addressing the following element or elements under
 11 42 U.S.C. §§ 7502 or 7514a, from the areas and states listed below, *see* First Am. Compl.
 12 ¶¶ 7, 35-40 & tbl. 2 (“Claim 2”):

State/Area	Nonattainment Area	Element(s)
New Jersey	New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (part) nonattainment area	Nonattainment SIP for the 1971 SO ₂ NAAQS, 36 Fed. Reg. 8186.
Illinois	Alton Township, IL (Madison County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM, and (6) RFP.
Illinois	Williamson County, IL nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM, and (6) RFP.
Maryland	Anne Arundel County and Baltimore County, MD (Anne Arundel County (part) and Baltimore County (part)),	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR;

State/Area	Nonattainment Area	Element(s)
	nonattainment area	(5) RACT/RACM, and (6) RFP.
Michigan	St. Clair, MI (St. Clair County (part)) nonattainment area	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM, and (6) RFP;

WHEREAS, on February 19, 1993, New Jersey submitted to EPA NNSR rule revisions, which apply to the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (part) nonattainment area and to the 1971 SO₂ NAAQS, for which on May 31, 1996, the Acting Regional Administrator for EPA Region 2 signed a notice approving such revisions into New Jersey's SIP. *Final Rule*, 61 Fed. Reg. 38,591 (July 25, 1996); *see also* Letter from Francis C. Steitz, Director, Division of Air Quality, New Jersey Department of Environmental Protection, to Rick A. Ruvo, Chief, Air Programs Branch, USEPA Region 2 (July 23, 2019);

WHEREAS, on June 11, 2015, New Jersey submitted to EPA another SIP revision which included New Jersey's Emissions Inventory for 2011, including for SO₂, for which on September 6, 2017, the Acting Regional Administrator for EPA Region 2 signed a notice approving such revision into New Jersey's SIP. *Final Rule*, 82 Fed. Reg. 44,099 (Sept. 21, 2017); *see also* Letter from Francis C. Steitz, Director, Division of Air Quality, New Jersey Department of Environmental Protection, to Rick A. Ruvo, Chief, Air Programs Branch, USEPA Region 2 (July 23, 2019);

WHEREAS, on August 8, 2019, the Regional Administrator for EPA Region 2 signed a notice issuing a final Clean Data Determination that the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region has attained the 1971 SO₂ primary and secondary NAAQS. 84 Fed. Reg. 43,504 (Aug. 21, 2019). Claim 2 is therefore moot as to the Northeast Pennsylvania-Upper

1 Delaware Valley Interstate Air Quality Control Region (part) nonattainment area for
2 1971 SO₂ primary and secondary NAAQS;

3 WHEREAS, on June 5, 2019, the EPA Region 5 Director of the Air and Radiation
4 Division signed and sent a letter to the Director of the Illinois Environmental Protection
5 Agency explaining that the State's December 3, 2018, submittal of "Attainment
6 Demonstration State Implementation Plan Revision for the Alton Township SO₂
7 Nonattainment Area" was found complete by operation of law on June 3, 2019, and that
8 the Region performed a completeness review of the submittal and determined that it
9 satisfies the completeness criteria set forth at 40 C.F.R. Part 51, Appendix V. Letter from
10 Edward Nam, Director, Air and Radiation Division, to Mr. John Kim, Director, Illinois
11 Environmental Protection Agency (June 5, 2019). Claim 2 is therefore moot as to the
12 Alton Township, IL (Madison County (part)) nonattainment area for the Attainment
13 Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and
14 RFP elements;

15 WHEREAS, on September 5, 2019, the EPA Administrator signed a notice that
16 reconsidered and changed to attainment/unclassifiable the designation under the 2010
17 primary SO₂ NAAQS for the Williamson County, IL SO₂ nonattainment area. *Final*
18 *Rule*, 84 Fed. Reg. 48,286 (Sept. 13, 2019). Claim 2 is therefore moot as to the former
19 Williamson County, IL nonattainment area for the Attainment Demonstration,
20 Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

21 WHEREAS, on September 9, 2019, the EPA Acting Assistant Administrator
22 signed a notice issuing findings of failure to submit SIPs required for attainment of the
23 2010 primary SO₂ NAAQS to Maryland and Michigan, respectively, for the Anne
24 Arundel and Baltimore County SO₂ nonattainment area and for the St. Clair SO₂
25 nonattainment area. *Final Rule*, 84 Fed. Reg. 49,462 (Sept. 20, 2019). Claim 2 is
26 therefore moot as to the Anne Arundel County and Baltimore County, MD (Anne
27 Arundel County (part) and Baltimore County (part)), nonattainment area and the St.
28

1 Clair, MI (St. Clair County (part)) nonattainment area for the Attainment Demonstration,
2 Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

3 WHEREAS, the relief requested in the First Amended Complaint includes, among
4 other things, an order from this Court to establish a date certain by which EPA must
5 fulfill its obligations;

6 WHEREAS, Plaintiffs and EPA have agreed to a settlement of this action without
7 admission of any issue of fact or law, except as expressly provided herein;

8 WHEREAS, Plaintiffs and EPA, by entering into this Consent Decree (the
9 “Consent Decree”), do not waive or limit any claim, remedy, or defense, on any grounds,
10 related to any final EPA action;

11 WHEREAS, Plaintiffs and EPA consider this Consent Decree to be an adequate
12 and equitable resolution of Claim 1 in this matter and therefore wish to effectuate a
13 settlement;

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

16 WHEREAS, Plaintiffs and EPA agree that this Court has jurisdiction over the
17 matters resolved in this Consent Decree pursuant to the citizen suit provision in CAA
18 section 304(a)(2), 42 U.S.C. § 7604(a)(2), and that venue is proper in the Northern
19 District of California pursuant to 28 U.S.C. § 1391(e) and Civil L.R. 3-2(c)-(d); and

20 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent
21 Decree is fair, reasonable, in the public interest, and consistent with the CAA;

22 NOW THEREFORE, before the taking of testimony, without trial or
23 determination of any issues of fact or law, and upon the consent of Plaintiffs and
24 Defendant EPA, it is hereby ordered, adjudged and decreed that:

25 1. The appropriate EPA official shall:

26 sign a notice of final rulemaking to approve, disapprove, conditionally
27 approve, or approve in part and conditionally approve or disapprove in part, certain
28 nonattainment SIP submissions plans pursuant to sections 110(k)(2)-(4) of the CAA, 42

1 U.S.C. §§ 7410(k)(2)-(4), no later than the date indicated below for the following states
 2 and elements of sections 172(c) and 192, 42 U.S.C. §§ 7502(c) or 7514a, for the 2010
 3 SO₂ NAAQS:

	State	Nonattainment Area	Element(s) Addressed in State Implementation Plan	Deadline
i.	Indiana	Southwest Indiana, IN (Daviss County (part) and Pike County (part)) nonattainment area, 78 Fed. Reg. at 47,199	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.	October 30, 2020
ii.	Iowa	Muscatine, IA (Muscatine County (part)) nonattainment area, 78 Fed. Reg. at 47,199	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.	October 30, 2020
iii.	Michigan	Detroit, MI (Wayne County (part)), 78 Fed. Reg. at 47,201	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.	October 30, 2020
iv.	Ohio	Muskingum River, OH (Morgan County (part) and Washington County (part)), nonattainment area, 78 Fed. Reg. at 47,203	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.	October 30, 2020
v.	Wisconsin	Rhineland, WI (Oneida County (part)) nonattainment area, 78 Fed. Reg. at 47,205	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; and (5) RFP.	October 30, 2020

	State	Nonattainment Area	Element(s) Addressed in State Implementation Plan	Deadline
vi.	Arizona	Hayden, AZ (Gila County (part) and Pinal County (part)) nonattainment area, 78 Fed. Reg. at 47,197-98	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) RACT/RACM; and (5) RFP.	October 30, 2020
vii.	Pennsylvania	Allegheny, PA (Allegheny County (part)) nonattainment area, 78 Fed. Reg. at 47,203	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.	April 30, 2020
viii.	Pennsylvania	Indiana, PA (Indiana County (part)) nonattainment area, 78 Fed. Reg. at 47,203	(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.	October 30, 2020
ix.	West Virginia	Marshall, WV (Marshall County (part)) nonattainment area, 78 Fed. Reg. at 47,204	(1) Attainment Demonstration; (2) Contingency Measures; (3) NNSR (4) RACT/RACM; and (5) RFP.	October 30, 2020

2. If EPA issues a clean data determination for any nonattainment area listed above in Paragraph 1, then EPA's obligation to take action on a nonattainment SIP submission addressing the Attainment Demonstration, Contingency Measures, RACT/RACM, and RFP elements, is automatically terminated. If EPA issues a redesignation to attainment for any nonattainment area listed above in Paragraph 1, then EPA's obligation to take action on a nonattainment SIP submission addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements, is automatically terminated.

1 3. If any State withdraws a SIP submission addressing any or all of the elements
2 listed above in Paragraph 1, then EPA’s obligation to take the action required by
3 Paragraph 1 with respect to those elements is automatically terminated unless Plaintiffs
4 move the Court to address EPA’s obligation in light of the withdrawn submittal. If
5 Plaintiffs file such a motion, EPA’s obligation to act on the withdrawn portion of the
6 submittal is stayed pending resolution of said motion. EPA shall notify Plaintiffs within
7 fifteen business days of receiving a written request from a state to withdraw a SIP
8 submission addressing any or all of the elements listed in Paragraph 1 for that state.
9 Nothing in this Consent Decree shall be construed as an admission of any issue of fact or
10 law nor to waive or limit any claim, remedy, or defense, on any grounds, related to EPA’s
11 obligation in the event that any State withdraws a SIP submission addressing any or all of
12 the elements listed above in Paragraph 1 and Plaintiffs file a motion pursuant to this
13 Paragraph. If EPA signs a finding of failure to submit for the withdrawn submittal while
14 such a motion is pending, Plaintiffs shall withdraw its motion.

15 4. EPA shall, within 15 business days of signature, send the rulemaking package
16 for each action taken pursuant to Paragraph 1 of this Consent Decree to the Office of the
17 Federal Register for review and publication in the *Federal Register*.

18 5. After EPA has completed the actions set forth in Paragraph 1 of this Consent
19 Decree, after notice of each final action required by Paragraph 4 have been published in
20 the *Federal Register*, and the issue of costs of litigation (including reasonable attorney
21 fees) has been resolved, EPA may move to have this Decree terminated. Plaintiffs shall
22 have fourteen (14) days in which to respond to such motion, unless the parties stipulate to
23 a longer time for Plaintiffs to respond.

24 6. The deadlines established by this Consent Decree may be extended (a) by
25 written stipulation of Plaintiffs and EPA with notice to the Court, or (b) by the Court
26 upon motion of EPA for good cause shown pursuant to the Federal Rules of Civil
27 Procedure and upon consideration of any response by Plaintiffs and any reply by EPA.
28 Any other provision of this Consent Decree also may be modified by the Court following

1 motion of an undersigned party for good cause shown pursuant to the Federal Rules of
2 Civil Procedure and upon consideration of any response by a non-moving party and any
3 reply.

4 7. If a lapse in EPA appropriations occurs within ninety (90) days prior to a
5 deadline in Paragraphs 1 or 4 in this Decree, that deadline shall be extended
6 automatically one day for each day of the lapse in appropriations. Nothing in this
7 Paragraph shall preclude EPA from seeking an additional extension of time through
8 modification of this Consent Decree pursuant to Paragraph 6.

9 8. Plaintiffs and EPA agree that this Consent Decree constitutes a complete
10 settlement of Claim 1 as described in Paragraph 1.

11 9. In the event of a dispute between Plaintiffs and EPA concerning the
12 interpretation or implementation of any aspect of this Consent Decree, the disputing party
13 shall provide the other party with a written notice, via electronic mail or other means,
14 outlining the nature of the dispute and requesting informal negotiations. These parties
15 shall meet and confer in order to attempt to resolve the dispute. If these parties are
16 unable to resolve the dispute within ten (10) business days after receipt of the notice,
17 either party may petition the Court to resolve the dispute.

18 10. No motion or other proceeding seeking to enforce this Consent Decree or for
19 contempt of Court shall be properly filed unless the procedure set forth in Paragraph 9
20 has been followed, and the moving party has provided the other party with written notice
21 received at least ten (10) business days before the filing of such motion or proceeding.

22 11. The deadline for filing a motion for costs of litigation (including attorney
23 fees) for activities performed prior to entry of the Consent Decree is hereby extended
24 until ninety (90) days after this Consent Decree is entered by the Court. During this
25 period, the Parties shall seek to resolve any claim for costs of litigation (including
26 attorney fees), and if they cannot, Plaintiffs will file a motion for costs of litigation
27 (including attorney fees) or a stipulation or motion to extend the deadline to file such a
28

1 motion. EPA reserves the right to oppose any such request. The Court shall retain
2 jurisdiction to resolve any requests for costs of litigation, including attorney fees.

3 12. This Court shall retain jurisdiction over this matter to enforce the terms of
4 this Consent Decree and to consider any requests for costs of litigation (including
5 attorney fees).

6 13. Nothing in the terms of this Consent Decree shall be construed (a) to confer
7 upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction
8 of the United States Courts of Appeals under CAA section 307(b)(1),
9 42 U.S.C. § 7607(b)(1), including final action take pursuant to section 110(k) of the
10 CAA, 42 U.S.C. § 7410(k), approving, disapproving, or approving in part and
11 disapproving in part a SIP submittal, or (b) to waive any claims, remedies, or defenses
12 that the parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

13 14. Nothing in this Consent Decree shall be construed to limit or modify any
14 discretion accorded EPA by the Clean Air Act or by general principles of administrative
15 law in taking the actions which are the subject of this Consent Decree, including the
16 discretion to alter, amend, or revise any final actions promulgated pursuant to this
17 Consent Decree. EPA's obligation to perform each action specified in this Consent
18 Decree does not constitute a limitation or modification of EPA's discretion within the
19 meaning of this paragraph.

20 15. Except as expressly provided herein, nothing in this Consent Decree shall be
21 construed as an admission of any issue of fact or law nor to waive or limit any claim,
22 remedy, or defense, on any grounds, related to any final action EPA takes with respect to
23 the actions addressed in this Consent Decree.

24 16. Plaintiff reserves the right to seek additional costs of litigation (including
25 reasonable attorney fees) incurred subsequent to entry of this Consent Decree. EPA
26 reserves the right to oppose any such request for additional costs of litigation (including
27 attorney fees).

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4 For Defendant EPA:

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14 20. EPA and Plaintiffs recognize and acknowledge that the obligations imposed
15 upon EPA under this Consent Decree can only be undertaken using appropriated funds
16 legally available for such purpose. No provision of this Consent Decree shall be
17 interpreted as or constitute a commitment or requirement that the United States obligate
18 or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
19 applicable provision of law.

20 21. If for any reason the Court should decline to approve this Consent Decree in
21 the form presented, this agreement is voidable at the sole discretion of either party and
22 the terms of the proposed Consent Decree may not be used as evidence in any litigation
23 between the parties.

24 22. The undersigned representatives of Plaintiffs and Defendant EPA certify that
25 they are fully authorized by the party they represent to consent to the Court's entry of the
26 terms and conditions of this Decree.

27 IT IS SO ORDERED on this 26th day of November, 2019.

28 
YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

1 COUNSEL FOR PLAINTIFF:
2

3 /s/ Robert Ukeiley (email auth. 11/20/19)

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