

US EPA ARCHIVE DOCUMENT

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between the following groups of Petitioners:

(1) the States of New York, California, Connecticut, Delaware, Maine, New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York (collectively “State Petitioners”); (2) Natural Resources Defense Council (NRDC), Sierra Club, and Environmental Integrity Project (EIP) (collectively “Environmental Petitioners”); and (3) Respondent, the U.S. Environmental Protection Agency (“EPA”) (collectively “the Parties”).

WHEREAS, the State and Environmental Petitioners filed petitions for judicial review of the final action under the Clean Air Act (“CAA”) Section 111, 42 U.S.C. § 7411, entitled, “Standards of Performance for Petroleum Refineries, Final Rule,” published at 73 Fed. Reg. 35,838 (June 24, 2008) (“Final Rule”). These petitions for review currently are pending before the U.S. Court of Appeals for the District of Columbia Circuit in consolidated cases under the lead case *American Petroleum Institute, et al. v. EPA*, No. 08-1277;

WHEREAS, the Final Rule includes amendments to the current standards of performance (40 CFR part 60, subpart J) and separate standards of performance for new process units (40 CFR part 60, subpart Ja) at petroleum refineries;

WHEREAS, in connection with this Final Rule, EPA declined to establish standards of performance for greenhouse gas emissions (“GHGs”);

WHEREAS, the Environmental Petitioners also filed a petition for administrative reconsideration pursuant to CAA section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), and EPA granted reconsideration with respect to some of the issues raised in that petition for

reconsideration. *See* “Standards of Performance for Petroleum Refineries,” 73 Fed. Reg. 55,751 (Sept. 26, 2008).

WHEREAS, on December 22, 2008, EPA published a proposed rule concerning issues that were raised in the Environmental Petitioners’ administrative petition for reconsideration. *See* “Standards of Performance for Petroleum Refineries; Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced after May 14, 2007,” 73 Fed. Reg. 78,522 (Dec. 22, 2008) (“Proposed Rule”). EPA has accepted public comment on the Proposed Rule;

WHEREAS, starting on December 15, 2008, the Court has held the consolidated cases in abeyance pending further order;

WHEREAS, on December 29, 2009, EPA granted reconsideration of all remaining issues that were raised in the petitions for administrative reconsideration, including the failure to regulate GHGs. *See* Letter from Gina McCarthy, Assistant Administrator, Office of Air and Radiation, U.S. EPA to petitioners’ counsel (Dec. 29, 2009);

WHEREAS, refineries are estimated to be the second largest direct stationary source category of GHGs in the United States, according to a recent EPA analysis (based on data in Table 5-1, Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions, Final Report, September 2009.);

WHEREAS, EPA’s initial evaluation of available GHG control strategies indicates that there are cost-effective control strategies for reducing GHGs from refineries;

WHEREAS, based on current knowledge, EPA believes that it is appropriate for it to set standards of performance for GHGs from refineries;

WHEREAS, EPA believes it will be more effective to address GHGs and various other pollutants from refineries in a comprehensive manner rather than just addressing such pollutants from those affected facilities that are subject to regulation under NSPS subparts J and Ja;

WHEREAS, EPA believes that if it sets standards of performance for GHGs, it is also appropriate for it to concurrently issue emissions guidelines for GHGs from existing affected facilities at refineries pursuant to CAA section 111(d), 42 U.S.C. § 7411(d), and 40 C.F.R. § 60.22;

WHEREAS, this comprehensive approach of simultaneously addressing all affected facilities at refineries will require more time than would be required were EPA only addressing the pending issues on reconsideration;

WHEREAS, the State and Environmental Petitioners desire that EPA complete its reconsideration of GHG standards of performance for refineries as expeditiously as possible, but agree that allowing additional time for EPA to complete a rulemaking that follows the comprehensive approach discussed above is warranted in light of the potentially greater emissions reductions possible through such an approach, when compared to a rulemaking addressing only the remaining issues on reconsideration for NSPS subparts J and Ja;

WHEREAS, the Parties wish to implement this Settlement Agreement resolving the State and Environmental Petitioners' challenges to the Final Rule and the issues raised in the Environmental Petitioners' administrative petition for reconsideration and thereby avoid protracted litigation, and to preserve judicial resources, without any admission or adjudications of fact or law;

NOW THEREFORE, the Parties, intending to be bound by this Settlement Agreement, hereby stipulate and agree as follows:

1. Within three business days after this Settlement Agreement is executed by the Parties, but before finalization pursuant to Paragraph 14 of this Settlement Agreement, the Parties shall file a joint motion with the Court notifying it of this Settlement Agreement and requesting that the State and Environmental Petitioners' petitions for review be held in abeyance pending completion of the process under CAA section 113(g) as set forth in Paragraph 14 and the actions described in Paragraphs 2 and 3 below.

2. EPA agrees that it will sign by December 10, 2011, and transmit to the Office of the Federal Register within five business days, a proposed rule that includes, at a minimum, the following: (A) standards of performance for GHGs pursuant to 42 U.S.C. § 7411(b) for affected facilities at refineries that are subject to the following NSPS: (1) subparts J and Ja, (2) subpart Db, (3) subpart Dc, (4) subpart GGG, and (5) subpart QQQ, and emissions guidelines for GHGs pursuant to 42 U.S.C. § 7411(d) and 40 C.F.R. § 60.22 from existing affected facilities at refineries in the source categories covered by those NSPS subparts; (B) a review of the emission standards set forth in 40 C.F.R. Part 63, subpart UUU, pursuant to CAA sections 112(d)(6) and (f)(2), 42 U.S.C. §§ 7412(d)(6) and (f)(2); and (C) a proposed resolution of all other issues raised in Environmental Petitioners' August 25, 2008 petition for administrative reconsideration. EPA shall provide the State and Environmental Petitioners a copy of the proposed rule within five business days of signature.

3. After considering any public comments received concerning the proposed rule addressed in Paragraph 2, EPA will sign by November 10, 2012, and transmit to the Office of the Federal Register within five business days, a final rule that includes final determinations with regard to each of the elements, including all proposed standards and guidelines, listed in

Paragraph 2. EPA shall provide the State and Environmental Petitioners with a copy of this final rule within five business days of signature.

4. If EPA signs a final rule by November 10, 2012, as described in Paragraph 3 above, the State and Environmental Petitioners and EPA shall, no later than five business days after the date on which that final rule takes effect, file an appropriate pleading seeking the dismissal of Petitions for Review Nos. 08-1279 and 08-1281, with prejudice, in accordance with Rule 42(b) of the Federal Rules of Appellate Procedure. The State and Environmental Petitioners reserve their right to seek attorneys' fees and costs relating to this litigation, and EPA reserves any defenses it may have relating to such claims.

5. The State and Environmental Petitioners agree that performance of the obligations described in Paragraphs 2 and 3 shall constitute full and complete settlement of all claims they have or could have asserted under any provision of law in connection with this case, excluding any claims for attorneys' fees or other litigation costs as a result of this case.

6. EPA agrees that it will make staff available by telephone on at least a monthly basis to update the State and Environmental Petitioners on EPA's progress in completing the actions described in Paragraphs 2 and 3 and will recommend to the Court that EPA be ordered to file written status reports with the Court every 90 days starting from the date these cases are stayed under Paragraph 1, to inform the Court of EPA's progress in completing the actions described in Paragraphs 2 and 3. Such written status reports shall include an affirmative statement of whether EPA believes it will timely complete all actions described in Paragraphs 2 and 3. If the Court does not require written status reports every 90 days, EPA shall provide written status reports that otherwise meet the requirements of this paragraph directly to the State

and Environmental Petitioners every 90 days starting from the date these cases are stayed under Paragraph 1.

7. If EPA does not sign a proposed rule by December 10, 2011, as described above in Paragraph 2, or a final rule by November 10, 2012, as described above in Paragraph 3, or does not transmit those documents to the Federal Register within the time allotted in Paragraphs 2 and 3, or if the written status reports described in Paragraph 6 do not state that EPA will timely complete all actions described in Paragraphs 2 or 3, or if the Administrator and/or the Attorney General determines to withdraw or withhold his/her consent to this Settlement Agreement as described in Paragraph 14, then the State and Environmental Petitioners' sole remedy with respect to the Final Rule at issue in these consolidated cases shall be the right to ask the Court to lift the stay of proceedings and establish a schedule for briefing and oral argument of the pending petitions for judicial review.

8. This Settlement Agreement constitutes the sole and entire understanding of EPA and the State and Environmental Petitioners and no statement, promise or inducement made by any Party to this Settlement Agreement, or any agent of such Parties, that is not set forth in this Settlement Agreement shall be valid or binding.

9. Except as expressly provided in this Settlement Agreement, none of the Parties waives or relinquishes any legal rights, claims or defenses it may have. In the event of further litigation, the dates stated in Paragraphs 2 and 3 shall be construed to represent only the parties' attempt to compromise claims in litigation, and not to represent agreement that any particular schedule for further agency action is reasonable or otherwise required by law.

10. The provisions of this Settlement Agreement can be modified at any time by written mutual consent of the Parties.

11. Except as expressly provided herein, nothing in the terms of this Settlement Agreement shall be construed to limit or modify the discretion accorded EPA by the CAA or by general principles of administrative law.

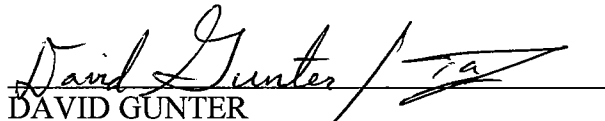
12. The commitments by EPA in this Settlement Agreement are subject to the availability of appropriated funds. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate, expend or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. 1341, or any other applicable appropriations law or regulation, or otherwise take any action in contravention of those laws or regulations.

13. Nothing in the terms of this Settlement Agreement shall be construed to limit EPA's authority to alter, amend or revise any final rule EPA may issue pursuant to Paragraph 3, or to promulgate superseding regulations.

14. The Parties agree and acknowledge that before this Settlement Agreement is final, EPA must provide notice in the Federal Register and an opportunity for public comment pursuant to CAA Section 113(g), 42 U.S.C. 7413(g). After this Settlement Agreement has undergone an opportunity for notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold her/his consent to the Settlement Agreement, in accordance with section 113(g) of the CAA. Within 30 days of the close of the public comment period, EPA shall provide written notice to State and Environmental Petitioners of any decision to withdraw or withhold consent or shall provide written notice of finality. This Settlement Agreement shall become final on the date that EPA provides written notice of such finality to the State and Environmental Petitioners.

15. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that respective Party to the terms of this Settlement Agreement. This Settlement Agreement will be deemed to be executed when it has been signed by the representatives of the Parties set forth below, subject to final approvals pursuant to Paragraph 14.

DATE: 12/21/10


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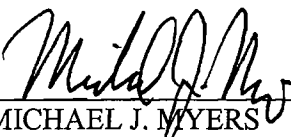
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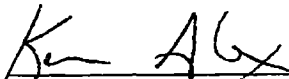
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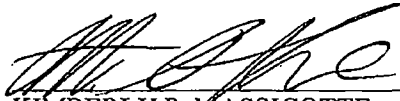
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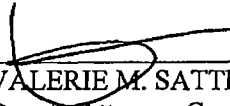
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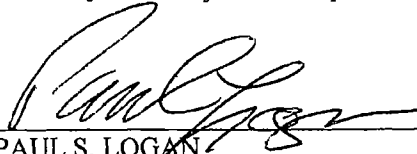
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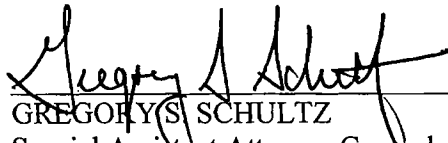
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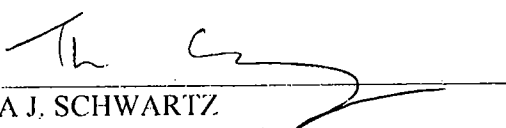
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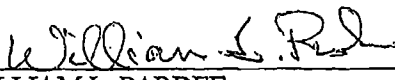
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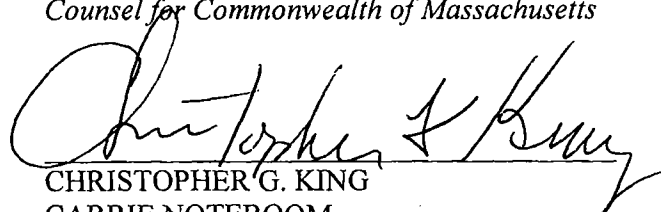
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