

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

PARTNERSHIP FOR POLICY INTEGRITY,)	
)	CIVIL No. 5:16-cv-00038-CAR
Plaintiff,)	
)	[PROPOSED] CONSENT
v.)	DECREE
)	
GINA McCARTHY, in her official capacity)	
as Administrator of the United States)	
Environmental Protection Agency,)	
)	
Defendant.)	
_____)	

WHEREAS, on January 25, 2016 Plaintiff Partnership for Policy Integrity filed this action pursuant to section 304(a)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(a)(2), alleging that Defendant Gina McCarthy, in her official capacity as Administrator, United States Environmental Protection Agency (“EPA”), failed to perform a non-discretionary duty under CAA § 505(b)(2), 42 U.S.C. § 7661d(b)(2), to grant or deny within 60 days of the submittal date a Title V Petition submitted by Partnership for Policy Integrity (“PFPI”) on May 26, 2015 (“PFPI’s Title V Petition”), requesting that EPA object to the renewal of a Title V operating permit No. 4911-171-0014-02-0 (“Permit”) issued by the Environmental Protection Division (“EPD”), of the Georgia Department of Natural Resources for a 60.5-megawatt (MW) biomass steam-turbine generator owned and operated by Piedmont Green Power and located in the City of Barnesville, Lamar County, Georgia.

WHEREAS, PFPI and EPA (collectively “the Parties”) wish to settle the above-captioned matter without expensive and protracted litigation;

WHEREAS, the Parties consider this Consent Decree to be an adequate and equitable resolution of the claims in the above-captioned matter;

WHEREAS, the Court, by entering this Consent Decree, finds that the Consent Decree is fair, reasonable, in the public interest, and consistent with the CAA, 42 U.S.C. §§ 7401 et seq.;

NOW THEREFORE, before the taking of testimony, without trial or determination of any issue of fact or law, and upon the consent of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. This Court has subject matter jurisdiction over the claims set forth in the Complaint related to Plaintiff's administrative Petition on the Permit dated May 26, 2015, and to order the relief contained in this Decree. Venue is proper in the United States District Court, Middle District of Georgia.

2. On or before December 16, 2016, EPA shall sign a response to PFPI's Title V Petition on the Permit, pursuant to 42 U.S.C. § 7661d(b)(2).

3. Following signature of such response to PFPI's Title V Petition, EPA shall expeditiously deliver notice of EPA's response to the Office of the Federal Register for publication. EPA shall also promptly transmit a copy of its determination to Plaintiffs through undersigned counsel.

4. If EPA's response to PFPI's Title V Petition includes the granting of any portion of the petition, EPA shall promptly transmit its response to the EPD of the Georgia Department of Natural Resources.

5. The deadline for filing a motion for costs of litigation, including attorneys' fees, incurred prior to entry of this Consent Decree is hereby extended until ninety (90) days after the entry of this Consent Decree by this Court. During this time, the Parties shall seek to resolve informally any claim for costs of litigation, including attorneys' fees, and if they cannot, will

submit that issue to this Court for resolution. The United States does not waive or limit any defenses it may have to such claim. This Court shall retain jurisdiction to resolve any requests for costs of litigation, including attorneys' fees.

6. Extension of the deadlines set forth herein may be effectuated by (a) written stipulation of the Parties with notice to the Court, or (b) by the Court following motion of any party to this Consent Decree, pursuant to the Federal Rules of Civil Procedure, and upon consideration of any response by the non-moving party.

7. The Parties recognize that the possibility exists that a lapse in the appropriations that fund EPA could delay compliance with the timetables contained in this Consent Decree. Should a delay occur due to a lapse in appropriations, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Consent Decree, and any deadlines occurring within one hundred twenty (120) days of the termination of the delay shall be automatically extended one day for each day of the delay. Nothing in this paragraph shall preclude EPA from seeking an additional extension through stipulation of the parties or modification of this Consent Decree pursuant to Paragraph 6. In the event of any delayed compliance based on a lapse of appropriations, EPA shall, within a reasonable time after the termination of the delay, notify Plaintiff of the number of days of such delay and the revised compliance deadline.

8. PFPI and EPA shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

9. PFPI and EPA agree that this Consent Decree shall constitute a complete and final settlement of all claims that PFPI has asserted against the United States, including EPA, under

any provision of law in connection with Partnership for Policy Integrity v. McCarthy, Civil Case No. 5:16-cv-00038-CAR (M.D. Ga.), except as provided in Paragraph 5 of this Consent Decree. PFPI therefore discharges and covenants not to sue the United States, including EPA, for any such claims.

10. 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 that are the subject of this Consent Decree, including discretion to alter, amend, or revise any responses or final actions contemplated by this Consent Decree. EPA's obligation to perform the actions specified in Paragraphs 2, 3, and 4 of this Consent Decree by the time specified therein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

11. Nothing in this Consent Decree shall be construed as an admission of any issue of fact or law nor as a waiver or limitation regarding any claim or defense, on any grounds, related to any final action EPA may take with respect to the Permit.

12. Nothing in this Consent Decree shall be construed to confer upon the District Court jurisdiction to review any final decision made 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 CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1). Nothing in the terms of this Consent Decree shall be construed to waive any remedies or defenses the Parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

13. The obligations imposed upon EPA under this Consent Decree can only be undertaken using appropriated funds. 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.

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

For Plaintiff:

Robert Jackson, Esq.
260 Peachtree Street – Suite 2200
Atlanta, GA 30303
Tel: (404) 313-2039
Email: rbj4law@gmail.com

With Copy to:

Marc Chytilo, Esq.
LAW OFFICE OF MARC CHYTILO
Post Office Box 92233
Santa Barbara, California 93190
Tel: (805) 682-0585
Email: Marc@lomcsb.com

For Defendants:

Chief, Environmental Defense Section
Re: DJ # 90-5-2-4-20732
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044
Tel: (202) 514-2640
Fax: (202) 514-8865

John T. Krallman
Office of General Counsel
United States Environmental Protection Agency

William Jefferson Clinton Building, North
1200 Pennsylvania Avenue, N.W.
Mail Code: 2344A
Washington, D.C. 20406
Tel: (202) 564-0904

15. 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 provide the other Party with a written notice outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution within twenty (20) business days after receipt of the notice, any party may move the Court to resolve the dispute.

16. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of Court shall be filed unless PFPI has followed the procedure set forth in Paragraph 15.

17. The Court shall retain jurisdiction to determine and effect compliance with this Consent Decree. When EPA's obligations under Paragraphs 2 through 4 of this Consent Decree have been completed, and PFPI's claim for costs of litigation has been resolved pursuant to Paragraph 5, the above-captioned matter shall be dismissed with prejudice. The Parties may either jointly notify the Court that the Consent Decree should be terminated and the case dismissed, or EPA may so notify the Court by motion. If EPA notifies the Court by motion, then PFPI shall have twenty (20) days in which to respond.

18. The Parties agree and acknowledge that before this Consent Decree can be finalized and entered by the Court, EPA must provide notice in the Federal Register and an opportunity for comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). EPA shall promptly submit a public notice of this Consent Decree to the Federal Register for publication

and public comment after lodging this Consent Decree with the Court. After this Consent Decree 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 consent to this Consent Decree, in accordance with section 113(g) of the CAA. If the federal government elects not to withdraw or withhold consent to this Consent Decree, the Parties promptly shall file a motion that requests the Court to enter this Consent Decree. If for any reason the Court does not enter the Consent Decree, the obligations set forth in this Consent Decree are null and void.

19. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by PFPI and EPA 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.

20. The undersigned representative of each Party certifies that he or she is fully authorized to bind that Party to the terms of this Consent Decree.

SO ORDERED on this ____ day of _____, 2016.

HON. C Ashley Royal
United States District Judge

SO AGREED:

FOR PLAINTIFF

Robert Jackson – GA Bar No. 387750
260 Peachtree Street – Suite 2200
Atlanta, GA 30303
e-mail: rbj4law@gmail.com
Phone: (404) 313-2039

Dated: _____

FOR DEFENDANT

JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division

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Environmental Defense Section
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debra.carfora@usdoj.gov

Dated: _____