

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED REFINING COMPANY,

Plaintiff,

v.

MICHAEL REGAN,

Defendant.

Civil Action No. 20-cv-1956  
Hon. Judge Boasberg

**CONSENT DECREE**

WHEREAS, on July 20, 2020, Plaintiff United Refining Company filed the above-captioned matter against Andrew R. Wheeler, in his then official capacity as the Administrator of the United States Environmental Protection Agency (hereinafter “EPA” or “Defendant”). ECF No. 1;

WHEREAS, Plaintiff alleges that EPA failed to undertake a non-discretionary duty to grant or deny Plaintiff’s petition for a small refinery hardship exemption from the Renewable Fuel Standard (RFS) program within the timeframe mandated under the Clean Air Act, 42 U.S.C. § 7545 (the “CAA”), and that such alleged failure is actionable under 42 U.S.C. § 7604(a), Compl. ¶¶ 24–31;

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

WHEREAS, EPA contends that the Supreme Court’s adjudication of *HollyFrontier Cheyenne Refining Co. v. Renewable Fuels Association*, Case No. 20-472 (U.S.), must be taken into consideration by EPA when taking action on Plaintiff’s petition for a small refinery hardship exemption from the RFS program;

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

WHEREAS, Plaintiff and EPA, by entering into this Consent Decree, do not waive or limit any claim, remedy, or defense, on any grounds, related to any final EPA action;

WHEREAS, Plaintiff and EPA consider this Consent Decree to be an adequate and equitable resolution of all the claims in this matter and therefore wish to effectuate a settlement;

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

WHEREAS, Plaintiff and EPA agree that this Court has jurisdiction over this matter pursuant to the citizen suit provision in CAA section 304(a)(2), 42 U.S.C. § 7604(a);

WHEREAS, Plaintiff and EPA agree that EPA has provided notice of this Consent Decree in the Federal Register, Docket No. EPA-HQ-OGC-2020-0652, and has reviewed and considered the public comments received pursuant to CAA section 113(g), 42 U.S.C. § 7413(g); and

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.

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

1. The appropriate EPA official shall issue a decision granting or denying Plaintiff's petition for a 2019 small refinery exemption by no later than sixty days after the United States Supreme Court renders a decision in *HollyFrontier Cheyenne Refining Co. v. Renewable Fuels Association*, Case No. 20-472 (U.S.).

2. After EPA has completed the actions set forth in Paragraph 1 of this Consent Decree and the issue of Plaintiff's costs of litigation, including attorneys' fees, has been resolved, EPA may move to have this Consent Decree terminated. Plaintiff shall have fourteen (14) days in which to respond to such a motion, unless the parties stipulate to a longer time for Plaintiff to respond.

3. The deadlines established by this Consent Decree may be extended (a) by written stipulation of Plaintiff and EPA with notice to the Court, or (b) by the Court upon motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure and upon consideration of any response by Plaintiff and any reply by EPA. Any other provision of this Consent Decree also may be modified by the Court following motion of an undersigned party for good cause shown pursuant to the Federal Rules of Civil Procedure and upon consideration of any response by the non-moving party and any reply.

4. If a lapse in EPA appropriations occurs prior to a deadline in Paragraph 1 or 2 in this Consent Decree, that deadline shall be extended automatically one day for each day of the lapse in appropriations. Nothing in this Paragraph shall preclude EPA from seeking an additional extension of time through modification of this Consent Decree pursuant to Paragraph 3.

5. Plaintiff and EPA agree that this Consent Decree shall constitute a complete and final settlement of all claims in the Complaint.

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

7. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of Court shall be filed unless the procedure set forth in Paragraph 6 has been followed.

8. The deadline for filing a motion for Plaintiff's costs of litigation (including reasonable attorneys' fees) for activities performed prior to entry of the Consent Decree is hereby extended until ninety (90) days after this Consent Decree is entered by the Court. During this period, the Parties shall seek to resolve informally any claim for costs of litigation (including reasonable attorneys' fees), and if they cannot, Plaintiff will file a motion for costs of litigation (including reasonable attorneys' fees) or a stipulation or motion to extend the deadline to file such a motion. EPA reserves the right to oppose any such request.

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

10. Nothing in the terms of this Consent Decree shall be construed (a) to confer upon this Court jurisdiction to review any final rule or determination issued by EPA pursuant to this Consent Decree, (b) to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1), or (c) to waive any claims, remedies, or defenses that the parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

11. Nothing in this Consent 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 Consent Decree, including the discretion to alter, amend, or revise any final actions promulgated pursuant to this Consent Decree. EPA's obligation to perform each action specified in this Consent Decree does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

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

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

14. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiff and EPA. Accordingly, the parties hereby agree 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.

15. Any notices required or provided for by this Consent Decree shall be in writing, via electronic mail or other means, and sent to the following (or to any new address of counsel as filed and listed in the docket of the above-captioned matter, at a future date):

For Plaintiff United Refining Company:

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For Defendant EPA:

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Environment & Natural Resources Division  
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16. EPA and Plaintiff 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 the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

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

18. The undersigned representatives of Plaintiff and Defendant EPA certify that they are fully authorized by the party they represent to consent to the Court's entry of the terms and conditions of this Consent Decree.

SO ORDERED on this 31st day of March, 2021.



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James E. Boasberg  
United States District Judge

COUNSEL FOR PLAINTIFF:

*/s/ Mark DeLaquil* \_\_\_\_\_

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COUNSEL FOR DEFENDANT:

*/s/ Sarah Izfar* \_\_\_\_\_

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