

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

_____)		
GROWTH ENERGY,)	
)	
Plaintiff,)	
)	
v.)	
)	No. 1:22-cv-00347-RCL
MICHAEL S. REGAN, in his official capacity as)	
Administrator, U.S. Environmental Protection)	
Agency, and ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Defendants.)	
_____)		

JOINT MOTION TO ENTER CONSENT DECREE

The parties jointly move the Court to sign and enter the attached proposed consent decree.

BACKGROUND

Growth Energy filed a complaint on February 8, 2022, alleging that the EPA Administrator failed to perform nondiscretionary duties mandated by the Clean Air Act to establish renewable fuel obligations for the 2021 and 2022 compliance years under the Renewable Fuel Standard program. ECF No. 1.

The parties have been engaged in settlement negotiations since before the filing of Growth Energy’s complaint. Notice of a proposed consent decree was published in the Federal Register. 87 Fed. Reg. 10,196 (Feb. 23, 2022). In accordance with section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), EPA sought comments on the proposed consent decree for a thirty-day period following publication of the Federal Register notice. 87 Fed. Reg. at 10,197. The public comment period concluded on March 25, 2022. EPA received three comments. EPA and

the Department of Justice have determined that none of the comments disclosed facts or considerations that indicate that EPA or the Department of Justice should withhold consent under section 113(g) of the Clean Air Act.

Under the proposed consent decree, EPA agrees to sign final rules establishing the 2021 and 2022 renewable fuel obligations by June 3, 2022. Proposed Consent Decree ¶¶ 4–5. Those deadlines may be extended only by agreement of the parties or upon motion to the court. *Id.* ¶ 6. Those deadlines are also automatically extended if there is a lapse in EPA’s appropriations prior to the deadlines. *Id.* ¶ 12. Each party would bear its own costs and attorney fees in this action. *Id.* ¶ 14.

DISCUSSION

Entry of a consent decree is appropriate where a consent decree “fairly and reasonably resolves the controversy in a manner consistent with the public interest.” *Citizens for a Better Env’t v. Gorsuch*, 718 F.2d 1117, 1128 (D.C. Cir. 1983). In performing this inquiry, “the function of the reviewing court is not to substitute its judgment for that of the parties to the decree.” *United States v. D.C.*, 933 F. Supp. 42, 46–47 (D.D.C. 1996); *United States v. Harley Davidson, Inc.*, No. 16-CV-1687(EGS), 2020 WL 5518466, at *3 (D.D.C. Sept. 14, 2020).

The proposed consent decree is procedurally fair. The proposed consent decree was negotiated in good faith, and at arm’s length, by experienced counsel in negotiations that commenced even before the complaint was filed. *See United States v. Daimler AG*, No. CV 20-2564 (EGS), 2021 WL 878894, at *5 (D.D.C. Mar. 9, 2021). A thirty-day opportunity for public comment was provided, and EPA and the Department of Justice considered the public comments. The proposed consent decree is also substantively fair and in the public interest because it establishes judicially enforceable deadlines by which EPA will complete the

rulemaking at issue. The deadlines reasonably take into account EPA's available resources and competing priorities. Both parties achieve certainty, and this certainty outweighs the possibility that either party might achieve a better result after protracted and costly litigation.

CONCLUSION

The Court should find that the proposed consent decree is fair, reasonable, and in the public interest. The Court should therefore sign and enter the attached proposed consent decree.

Respectfully submitted,

/s/ Seth P. Waxman

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CERTIFICATE OF SERVICE

I certify that on April 14, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all counsel of record.

/s/ Tsuki Hoshijima