

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**  
NOV 22 2019

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

SIERRA CLUB,

*Plaintiff,*

v.

RICK PERRY, Secretary,  
United States Department of Energy,

*Defendant.*

Civil Action No. 17-2700-EGS

**CONSENT DECREE**

WHEREAS, Plaintiff Sierra Club filed this action pursuant to the Administrative Procedure Act, 5 U.S.C. § 702, against Defendant Rick Perry, Secretary of the United States Department of Energy (“DOE” or the “Department”);

WHEREAS, Sierra Club’s First Amended Complaint alleges that DOE’s failure to issue a final rule establishing standards for energy efficiency in manufactured housing in satisfaction of 42 U.S.C. § 17071(a)(1) constitutes agency action unlawfully withheld under the Administrative Procedure Act, 5 U.S.C. § 706(1);

WHEREAS, DOE has not admitted or conceded any legal liability for the claims alleged in Sierra Club’s First Amended Complaint;

WHEREAS, the relief requested in Sierra Club’s First Amended Complaint includes, among other things, an order from this Court to establish a date certain by when DOE must fulfill its obligations under 42 U.S.C. § 17071(a)(1);

WHEREAS, DOE moved to dismiss Sierra Club’s First Amended Complaint, and the Court denied DOE’s motion, *Sierra Club v. Perry*, 373 F. Supp. 3d 128 (D.D.C. 2019);

WHEREAS, it is in the interest of the public, the Parties, and judicial economy to resolve claims without further litigation;

WHEREAS, the Parties have agreed to a settlement of all claims asserted by Sierra Club in its First Amended Complaint, without any admission or adjudication of fact or law, which they consider to be a just, fair, adequate and equitable resolution of said claims;

WHEREAS, by entering into this Consent Decree, Sierra Club does not waive any claims and DOE does not waive any defenses, on any grounds, related to any matters asserted in this action that are not resolved by this Decree;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the claims set forth in Sierra Club's First Amended Complaint and may order the relief contained in the Consent Decree. Venue is proper in the District of Columbia.

2. Not later than May 14, 2021, DOE shall sign a Federal Register notice proposing standards for energy efficiency in manufactured housing pursuant to 42 U.S.C. § 17071. Within five business days after the signing of this notice, DOE shall post a copy of the notice on the Department's website, thereby making that document publicly available. Further, DOE shall deliver the notice within 30 days after signing the notice to the Office of the Federal Register for publication. Following delivery of the notice to the Office of the Federal Register, DOE shall not take any action (other than as necessary to correct any typographical error or other errors in form) to delay publication of the notice or withdraw the notice from publication in the Federal Register.

3. Not later than February 14, 2022, DOE shall sign a Federal Register notice taking final action to establish standards for energy efficiency in manufactured housing pursuant to 42 U.S.C. § 17071. Within five business days after the signing of this notice, DOE shall post a

copy of the notice on the Department's website, thereby making that document publicly available. Further, DOE shall deliver the notice within 30 days after signing the notice to the Office of the Federal Register for publication. Following delivery of the notice to the Office of the Federal Register, DOE shall not take any action (other than as necessary to correct any typographical error or other errors in form) to delay publication of the notice or withdraw the notice from publication in the Federal Register.

4. The terms of this Consent Decree may be modified by written stipulation executed by counsel for DOE and Sierra Club and filed with the Court, or by the Court upon motion made pursuant to the Federal Rules of Civil Procedure by DOE or Sierra Club and upon consideration of any response by the non-moving Party and reply by the moving Party.

5. Sierra Club and DOE agree that this Consent Decree shall constitute a complete and final settlement of all claims that Sierra Club asserted against the United States, including DOE, under any provision of law, in this action. Sierra Club therefore discharges and covenants not to sue the United States, including DOE, for such claims. The Parties agree that this discharge and covenant not to sue shall not apply to any claim that may arise if any final rule signed pursuant to Paragraph 3 is vacated or withdrawn.

6. Nothing in this Consent Decree shall be construed to limit or modify any discretion accorded DOE by 42 U.S.C. § 17071 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 contemplated by this Consent Decree. DOE's obligation to perform the actions specified by Paragraphs 2 and 3 does not constitute a limitation or modification of DOE's discretion within the meaning of this paragraph.

7. Nothing in this Consent Decree shall be construed as an admission of any issue of fact or law or to waive or limit any claim or defense, on any grounds, related to any final action DOE may take with respect to the rulemaking identified in Paragraph 3 of this Consent Decree.

8. Nothing in this Consent Decree shall be construed to waive any claims or defenses the Parties may have regarding the judicial review of any final rule issued by DOE pursuant to this Consent Decree.

9. The Parties recognize and acknowledge that the obligations imposed upon DOE 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 DOE obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

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

For Plaintiff:

Timothy D. Ballo  
Earthjustice  
1625 Massachusetts Avenue, NW  
Suite 702  
Washington, DC 20036  
Email: [tballo@earthjustice.org](mailto:tballo@earthjustice.org)

For Defendant:

Johnny H. Walker  
Assistant United States Attorney  
555 4th Street, NW  
Washington, DC 20530  
Email: [johnny.walker@usdoj.gov](mailto:johnny.walker@usdoj.gov)

11. In the event of a dispute among 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. The Parties shall meet and confer to attempt to resolve the dispute. If the Parties cannot reach an agreed-upon resolution after ten business days (which period may be extended by mutual agreement of the Parties in writing) following receipt of the written notice, any Party may move the Court to resolve the dispute.

12. No motion or other proceeding seeking to enforce this Consent Decree or for contempt of court shall be properly filed unless the Party seeking to enforce this Consent Decree has followed the procedure set forth in Paragraph 11.

13. The Court shall retain jurisdiction to determine and effectuate compliance with this Consent Decree and to resolve any disputes thereunder. The expression of a dispute regarding, or the filing of a separate legal action to challenge, the legal validity under 42 U.S.C. § 17071(a)(1) or the Administrative Procedure Act, 5 U.S.C. § 706(1), of the final action required by Paragraph 3, even if such a challenge results in the final action required by Paragraph 3 being vacated by the final judgment of any court, shall not, by itself, constitute a violation of this Consent Decree by DOE.

14. After DOE's obligations under Paragraphs 2 and 3 have been completed and after publication of notice of the final action required by Paragraph 3 in the Federal Register, DOE may move to have this Consent Decree terminated. Sierra Club shall have 14 days in which to respond to such motion.

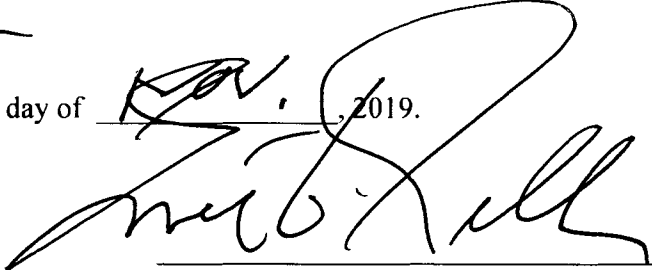
15. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by the Parties and that any and all rules of construction to the effect that ambiguity is

construed against the drafting Party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

16. The undersigned certify that they are fully authorized by the Party they represent to bind that Party to the terms of this Consent Decree.

17. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument, and photographic, facsimile, or digital copies of such signed counterparts may be used in lieu of the original.

SO ORDERED this 21<sup>st</sup> day of Nov., 2019.



HON. EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE

SO AGREED:

For Plaintiff:

/s/ Timothy D. Ballo  
Timothy D. Ballo  
Earthjustice  
1625 Massachusetts Avenue, NW  
Suite 702  
Washington, DC 20036  
tballo@earthjustice.org

For Defendant:

Jessie K. Liu  
United States Attorney

Daniel F. Van Horn  
Chief, Civil Division

/s/ Johnny H. Walker  
Johnny H. Walker  
Assistant United States Attorney  
555 4th Street, NW  
Washington, DC 20530  
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