

Settlement Agreement

This Agreement is made by and between Sierra Club and the U.S. Environmental Protection Agency ("EPA").

WHEREAS, Sierra Club has filed a petition for judicial review of the final action entitled "Revisions to the Definition of Solid Waste," and published at 73 Fed. Reg. 64,668 (Oct. 30, 2008) ("DSW Rule"), which petition is currently pending before the U.S. Court of Appeals for the District of Columbia Circuit in *Sierra Club v. EPA*, No. 09-1041, consolidated under the lead case *American Petroleum Institute v. EPA*, No. 09-1038;

WHEREAS, the DSW Rule revises the definition of solid waste under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6912 et seq., and conditionally excludes from that definition, and therefore from regulation as hazardous waste, certain "hazardous secondary materials." 73 Fed. Reg. at 64,688-89;

WHEREAS, in January 2009, Sierra Club filed an administrative petition requesting EPA to reconsider and repeal the DSW Rule;

WHEREAS, on March 9, 2009, the Court held the consolidated cases in abeyance pending further order;

WHEREAS, on June 30, 2009, EPA held a public meeting regarding potential changes to the definition of solid waste. See 74 Fed. Reg. 25,200 (May 27, 2009);

WHEREAS, in the public notice announcing the June 2009 public meeting, EPA listed as the following areas in which EPA is particularly interested in obtaining public feedback on possible changes to the definition of solid waste:

- (A) the definition of "contained"
- (B) notification before operating under the exclusion

(C) the definition of "legitimacy"

(D) the transfer-based exclusion

WHEREAS, on February 1, 2010, the Court removed the consolidated cases from abeyance and ordered the parties to submit proposed briefing formats by April 2, 2010; and

WHEREAS, the Court has ordered Sierra Club to file its opening brief by September 16, 2010;

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

1. EPA agrees that it will prepare a notice of proposed rulemaking which will address, at a minimum, the issues raised in Sierra Club's administrative petition including the four issues listed in the May 27, 2009, Federal Register notice, 74 Fed. Reg. 25,200.
2. No later than June 30, 2011, EPA agrees that the EPA Administrator will sign and promptly transmit to the Office of the Federal Register the notice of proposed rulemaking described in Paragraph 1. EPA shall provide Sierra Club with a copy of this notice of proposed rulemaking within five business days of signature.
3. After considering any public comments received concerning the proposed rule addressed in Paragraph 1, the EPA Administrator will sign and promptly submit to the Office of the Federal Register a notice taking final administrative action concerning the notice of proposed rulemaking no later than December 31, 2012. EPA shall provide Sierra Club with a copy of this notice regarding final administrative action within five business days of signature.
4. This Agreement constitutes the sole and entire understanding of EPA and Sierra Club and no statement, promise or inducement made by any Party to this Agreement, or any agent of such Parties, that is not set forth in this Agreement shall be valid or binding. The

provisions of this Agreement can be modified at any time by written mutual consent of Sierra Club and EPA.

5. After this Agreement is executed by counsel for the Parties, Sierra Club shall promptly withdraw its petition for administrative rulemaking and the Parties shall promptly lodge this Agreement with the Court, along with a joint motion requesting that the Court enter an order severing Case No. 09-1041 and holding Case No. 09-1041 in abeyance during the period required to effectuate the terms of this Agreement, with joint status reports to be filed every 90 days.

6. If EPA fails to satisfy any provision of this Agreement, Sierra Club may withdraw its consent to any order holding this case in abeyance and move the Court immediately to vacate any such order. The filing of such a motion shall constitute Sierra Club's sole remedy under this Agreement in the event any provision set forth in this Agreement is not met. Sierra Club agrees to give EPA fifteen (15) days written notice prior to exercising its right under this paragraph to file a motion. Nothing in this Agreement shall be construed to limit any right that Sierra Club may otherwise have to seek review of any final action pursuant to RCRA Section 7006(a), 42 U.S.C. § 6976(a).

7. If EPA takes final agency action pursuant to Paragraph 3 of this Agreement, which final agency action revises the DSW Rule with respect to the issues raised in Sierra Club's administrative petition, Sierra Club shall within fifteen (15) days thereafter stipulate to the dismissal with prejudice of Case No. 09-1041, in accordance with Rule 42 of the Federal Rules of Appellate Procedure.

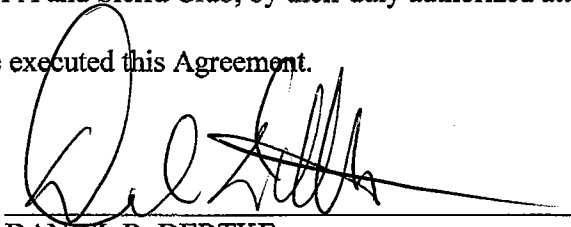
8. Except as expressly provided in this Settlement Agreement, none of the parties waives or relinquishes any legal rights, claims, or defenses it may have.

9. Nothing in the terms of this Agreement shall be construed to limit or modify the discretion accorded EPA under RCRA or by general principles of administrative law.

10. The commitments by EPA in this Agreement are subject to the availability of appropriated funds. No provision of this 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.

IN WITNESS WHEREOF, EPA and Sierra Club, by their duly authorized attorneys, whose signatures appear below, have executed this Agreement.

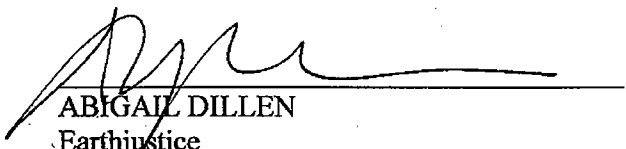
DATE: 9/7/10



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