

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL, INC.,	)	
	)	
Petitioner,	)	No. 09-1089
	)	
v.	)	Consolidated with Nos. 09-1131, 1135, 1162 & 1163
	)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	
	)	

**RESPONDENTS' NOTICE OF FILING OF SETTLEMENT AGREEMENT  
MODIFICATIONS**

Respondents in these consolidated cases – Lisa Jackson, Administrator of the United States Environmental Protection Agency (“EPA”), and EPA – hereby notify the Court that the parties in these consolidated cases, at EPA’s request, have entered into certain Modifications of the two Settlement Agreements previously submitted to the Court in this case. The parties do not request that the Court take any action in connection with this filing.

1. This matter involves four consolidated and transferred petitions for review pursuant to section 509(b)(1) of the Federal Water Pollution Control Act, 33 U.S.C. § 1369(b)(1), which challenge EPA’s final general permit titled “Final

National Pollutant Discharge Elimination System (“NPDES”) General Permit for Discharges Incidental to the Normal Operation of a Vessel,” 73 Fed. Reg. 79,473 (Dec. 29, 2008).

2. After EPA and the four Petitioners in these consolidated cases – Natural Resources Defense Council, Inc., National Wildlife Federation, et al., and Northwest Environmental Advocates, et al. (“Environmental Petitioners”), and the State of Michigan – finalized settlement agreements in these cases (one with Michigan and a second with the remaining three petitioners), they requested that the cases continue to be held in abeyance until such time as the settlement agreements are terminated. On March 8, 2011, this Court granted the parties’ motion, and directed EPA to file status reports at 120-day intervals beginning July 6, 2011.

3. In their most recent Status Report, EPA advised that it was proceeding apace to take final action on the Draft Next Vessel General Permit (as defined in the settlement agreements). Subsequently, EPA and Petitioners have modified the settlement agreements to allow EPA additional time to complete work on the Permit. The Modifications (set forth in Exhibits 1 and 2 hereto) extend the date for taking final action on the Permit from November 30, 2012 to March 15, 2013. EPA will file its next Status Report according to the schedule set

forth by the Court in its March 8, 2011 Order.

Respectfully submitted Nov. 30, 2012:

*s/ Martin F. McDermott*

MARTIN F. MCDERMOTT

United States Department of Justice

Environmental & Natural Resources

Division

Environmental Defense Section

P.O. Box 23986

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*Attorney for EPA*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30th day of November, 2012, a copy of the foregoing **NOTICE OF FILING OF SETTLEMENT AGREEMENT MODIFICATIONS** was filed and served through the Court's *CM/ECF* system and a copy was served by regular mail upon the following:

ROBERT P. REICHEL  
Assistant Attorney General  
Environment, Nat. Resources & Agri. Div.  
525 West Ottawa Street, 6th Floor  
P.O. Box 30755  
Lansing, MI 48909

*s/ Martin F. McDermott*

***SETTLEMENT AGREEMENT MODIFICATION***

WHEREAS certain Petitioners in Case No. 09-1089 (D.C. Cir.) -- Natural Resources Defense Council, Inc., National Wildlife Federation, et al., and Northwest Environmental Advocates, et al. ("Environmental Petitioners") -- entered into a Settlement Agreement with Respondent in that case, United States Environmental Protection Agency ("EPA"), a copy of which agreement was filed with the Court on March 8, 2011;

WHEREAS said Settlement Agreement provided in Paragraph 5 that: "EPA will take final action on the Draft Next VGP by November 30, 2012. If EPA does not issue (i.e., obtain final signatures of appropriate EPA officials on) a final Next VGP by November 30, 2012, Petitioners may invoke their rights under the dispute resolution and remedy for non-compliance provisions in Paragraphs 29 and 30 of this Agreement."

WHEREAS EPA has requested, and Environmental Petitioners have agreed pursuant to the modification provision in Paragraph 33 of said Agreement, to modify said Paragraph 5 to read as follows: "EPA will take final action on the Draft Next VGP by March 15, 2013. If EPA does not issue (i.e., obtain final signatures of appropriate EPA officials on) a final Next VGP by March 15, 2013, Petitioners may invoke their rights under the dispute resolution and remedy for non-compliance provisions in Paragraphs 29 and 30 of this Agreement."

And,

WHEREAS, each undersigned representative of the parties to the Settlement Agreement represents that he or she is fully authorized to enter into, execute, and bind such party or parties to this Settlement Agreement Modification.

NOW THEREFORE, said Settlement Agreement is hereby modified as set forth hereinabove.

Nov. 28, 2012:

*s/ Martin F. McDermott*  
MARTIN F. MCDERMOTT  
United States Department of Justice  
Environment & Natural Resources

Division  
Environmental Defense Section  
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(202) 514-4122  
*Attorney for Respondents*

Nov. 28, 2012:

s/ Rebecca Riley  
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*Attorney for Petitioner Natural  
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(Case No. 09-1089)*

Nov. 28, 2012:

s/ Allison M. LaPlante  
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(Case Nos. 09-1162 & 1163)*

Nov. 28, 2012:

s/ Neil S. Kagan  
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*Attorney for Petitioners National  
Wildlife Federation et al. (Case No.  
09-1135)*

***SETTLEMENT AGREEMENT MODIFICATION***

WHEREAS the State of Michigan (“Michigan”), a Petitioner in Case No. 09-1089 (D.C. Cir.), entered into a Settlement Agreement with Respondent in that case, United States Environmental Protection Agency (“EPA), a copy of which agreement was filed with the Court on March 8, 2011;

WHEREAS said Settlement Agreement provided in Paragraph 5 that: “EPA will take final action on the Draft Next VGP by November 30, 2012. If EPA does not issue (i.e., obtain final signatures of appropriate EPA officials on) a final Next VGP by November 30, 2012, Michigan may invoke its rights under the dispute resolution and remedy for non-compliance provisions in Paragraphs 29 and 30 of this Agreement.”

WHEREAS EPA has requested, and Michigan has agreed pursuant to the modification provision in Paragraph 33 of said Agreement, to modify said Paragraph 5 to read as follows: “EPA will take final action on the Draft Next VGP by March 15, 2013. If EPA does not issue (i.e., obtain final signatures of appropriate EPA officials on) a final Next VGP by March 15, 2013, Michigan may invoke its rights under the dispute resolution and remedy for non-compliance provisions in Paragraphs 29 and 30 of this Agreement.”

And,

WHEREAS, each undersigned representative of the parties to the Settlement Agreement represents that he or she is fully authorized to enter into, execute, and bind such party or parties to this Settlement Agreement Modification.

NOW THEREFORE, said Settlement Agreement is hereby modified as set forth hereinabove.

Nov. 28, 2012:

s/ Martin F. McDermott  
MARTIN F. MCDERMOTT  
United States Department of Justice  
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