

MODIFICATION TO SETTLEMENT AGREEMENT

WHEREAS, on December 21, 2010, the following parties executed a "Settlement Agreement:" (1) the States of New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York (collectively "State Petitioners"); and (2) Natural Resources Defense Council (NRDC), Sierra Club, and Environmental Defense Fund (EDF) (collectively "Environmental Petitioners"), and Respondent, the U.S. Environmental Protection Agency ("EPA") (collectively "the Parties");

WHEREAS, the Settlement Agreement became final on March 2, 2011;

WHEREAS, on September 24, 2007, in a case entitled *State of New York, et al. v. EPA*, No. 06-1322, the United States Court of Appeals for the District of Columbia Circuit remanded to EPA a final action entitled "Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units," 71 Fed. Reg. 9,866 (Feb. 27, 2006) (the "Final Rule");

WHEREAS, Petitioners subsequently notified EPA of their potential claims to compel EPA to take action pursuant to the remand of the Final Rule;

WHEREAS, the Settlement Agreement resolves those potential claims;

WHEREAS, Paragraph 1 of the Settlement Agreement provided that: "EPA will sign by July 26, 2011, and will transmit to the Office of the Federal Register within five business days, a proposed rule under section 111(b) that includes standards of performance for GHGs for new and modified EGUs that are subject to 40 C.F.R. part 60, subpart Da. EPA shall provide the State and Environmental Petitioners a copy of the proposed rule within five business days of signature;"

WHEREAS, Paragraph 2 of the Settlement Agreement provided that: “EPA will also sign by July 26, 2011, and will transmit to the Office of the Federal Register within five business days, a proposed rule under section 111(d) that includes emissions guidelines for GHGs from existing EGUs that would have been subject to 40 C.F.R. part 60, subpart Da if they were new sources. EPA shall provide the State and Environmental Petitioners a copy of the proposed rule within five business days of signature;”

WHEREAS, Paragraph 10 of the Settlement Agreement provided that: “The provisions of this Settlement Agreement can be modified at any time by written mutual consent of the Parties;”

WHEREAS, EPA has engaged in an extensive public process in preparation of proposed rules that would satisfy its obligation under Paragraphs 1 and 2 of the Settlement Agreement, including five public “listening sessions” as well as additional meetings and discussions with a wide variety of public stakeholders;

WHEREAS, in the course of that public process, EPA has received a significant amount of useful information and ideas from a range of public stakeholders concerning issues relevant to the proposed rule;

WHEREAS, EPA requires additional time to consider the information and ideas presented by the public stakeholders to EPA;

WHEREAS, the Parties desire to enable EPA to give due attention and consideration to all information and ideas presented to EPA in the public process leading to the proposed rules, without any change to the date for taking final action as specified in Paragraphs 3 and 4 of the Settlement Agreement;

WHEREAS, the Parties now desire to modify Paragraphs 1 and 2 of the Settlement Agreement;

NOW THEREFORE, without any change to any other part of the Settlement Agreement, the parties hereby agree as follows:

1. Paragraph 1 of the Settlement Agreement shall be stricken, and replaced with the following: "EPA will sign by September 30, 2011, and will transmit to the Office of the Federal Register within five business days, a proposed rule under section 111(b) that includes standards of performance for GHGs for new and modified EGUs that are subject to 40 C.F.R. part 60, subpart Da. EPA shall provide the State and Environmental Petitioners a copy of the proposed rule within five business days of signature."
2. Paragraph 2 of the Settlement Agreement shall be stricken, and replaced with the following: "EPA will also sign by September 30, 2011, and will transmit to the Office of the Federal Register within five business days, a proposed rule under section 111(d) that includes emissions guidelines for GHGs from existing EGUs that would have been subject to 40 C.F.R. part 60, subpart Da if they were new sources. EPA shall provide the State and Environmental Petitioners a copy of the proposed rule within five business days of signature."

DATE:

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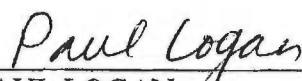
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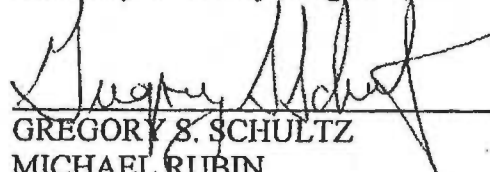
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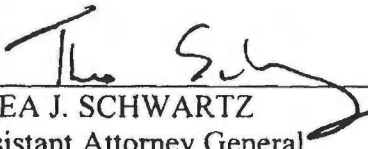
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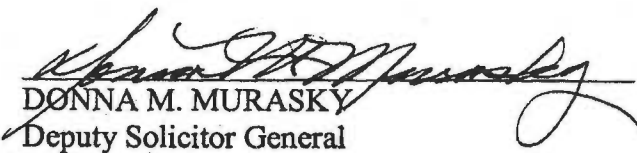
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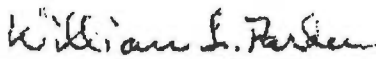
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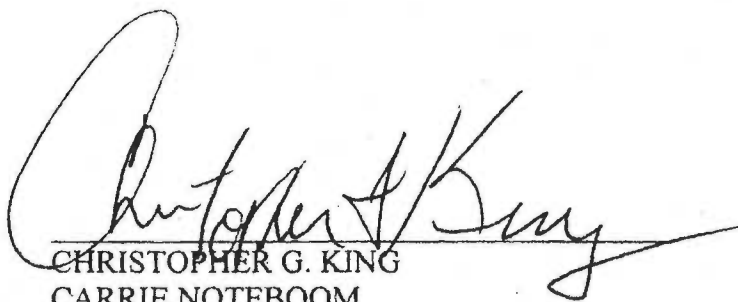


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