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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

FRANK GEARHART, CITIZENS )  
INTERESTED IN BULL RUN, INC., an )  
Oregon Corporation, KATHY WILLIAMS, )  
FRANCES PRICE COOK, )  
)

Civil No. 89-6266-HO

Joint Stipulation Regarding Extension  
of Consent Decree Deadlines

Plaintiffs,	)	
	)	JOINT STIPULATION
	)	REGARDING
v.	)	EXTENSION OF CONSENT
	)	DECREE DEADLINES
CHRISTINE TODD WHITMAN <sup>1</sup>	)	
Administrator, United States Environmental	)	
Protection Agency,	)	
	)	
<u>Defendant.</u>	)	

WHEREAS, this Court entered a Consent Decree in these proceedings on September 5, 1990, which was subsequently modified by the Court;

WHEREAS, paragraphs 9a and 9b of the Consent Decree provide among other things that EPA shall, pursuant to 33 U.S.C. § 1345(d)(2)(B)(i), sign a notice for publication in the Federal Register proposing regulations (referred to as “Round Two” regulations) no later than December 15, 1999;

WHEREAS, EPA signed a notice for publication in the Federal Register on December 15, 1999 proposing the Round Two regulations, see 64 Fed. Reg. 72045 (Dec. 23, 1999);

WHEREAS, paragraphs 9a and 9b of the Consent Decree originally provided that EPA shall, pursuant to 33 U.S.C. § 1345(d)(2)(B)(ii), sign a notice for publication in the Federal Register taking final action on the proposed Round Two regulations no later than December 15, 2001;

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<sup>1</sup> Pursuant to Fed.R.Civ.P. 25(d)(1), Christine Todd Whitman, current Administrator of EPA, is substituted as a defendant.

WHEREAS, EPA met the December 15, 2001 deadline for taking final action with respect to the incineration and surface disposal portions of the December 15, 1999 proposal;

WHEREAS, plaintiffs, EPA and intervenors Association of Metropolitan Sewerage Agencies (“AMSA”) and the Natural Resources Defense Council (“NRDC”) previously filed a stipulation to extend the Consent Decree deadline for taking final action on the land application portion of the proposed regulations until April 1, 2002 because the parties were engaged in discussions that included the possibility of seeking a significant extension of that deadline;

WHEREAS, the Court entered an order extending those deadlines to March 1, 2002 on November 13, 2001;

WHEREAS, the parties have agreed to extend the Consent Decree deadline for the land application portion of the proposed Round Two regulations to October 17, 2003;

WHEREAS, plaintiffs and NRDC have agreed to this extension of the Consent Decree deadline in recognition of, inter alia, the commitments EPA has made in an Agreement dated March 29, 2002; the terms of the Agreement are not incorporated into this Consent Decree; and

WHEREAS, EPA intends to publish a Notice of Data Availability (“NODA”) in the Federal Register related to the Round Two regulations for land application of sewage sludge prior to taking final action on the proposed land application rule.

NOW, THEREFORE, pursuant to paragraph 4 of the Consent Decree, the parties hereby stipulate, and request the Court's approval, to modify the Consent Decree as follows:

1. The April 1, 2002 deadlines in paragraphs 9a and 9b of the Consent Decree relating to final action on Round Two regulations for land application of sewage sludge are hereby extended to October 17, 2003, except as provided in paragraphs 3-4.

2. Final Dioxin Reassessment Report after NODA but before May 16, 2003; EPA determines that no additional public comment is needed: If EPA issues a final Dioxin Reassessment Report after the NODA is signed but before May 16, 2003, and EPA determines that the final Dioxin Reassessment Report does not require EPA to seek additional public comment on the Round Two regulations for dioxins in sewage sludge that is land applied, the deadline for EPA to take final action on such regulations shall remain October 17, 2003. The plaintiffs and intervenors specifically reserve their rights to argue that additional public comment was required under the Administrative Procedure Act, and EPA reserves all of its defenses.

3. Final Dioxin Reassessment Report after NODA, on or after May 16, 2003 and on or before October 17, 2003; EPA determines that no additional public comment is needed: If EPA issues a final Dioxin Reassessment Report after the NODA is signed, on or after May 16, 2003 and on or before October 17, 2003, and EPA determines that the final Dioxin Reassessment Report does not require EPA to seek additional public comment on the Round Two regulations for dioxins in sewage sludge that is land applied, the deadline for EPA to take final action on the such regulations shall be 150 days from

the date the final Dioxin Reassessment Report is issued. The plaintiffs and intervenors specifically reserve their rights to argue that additional public comment was required under the Administrative Procedure Act, and EPA reserves all of its defenses.

4. Final Dioxin Reassessment after NODA and on or before October 17, 2003; EPA determines that additional public comment is needed: If EPA issues a final Dioxin Reassessment Report after EPA signs a NODA for publication in the Federal Register relating to the Round Two rulemaking for land application of sewage sludge and on or before October 17, 2003, and EPA determines that the final Dioxin Reassessment Report requires EPA to seek additional public comment on the Round Two regulations for dioxins in sewage sludge that is land applied, and EPA believes at that time that seeking additional public comment will require modification of the existing deadline, then EPA shall notify the Court and the other parties to this Consent Decree that such modification is required. In such event, the deadline for taking final action on such regulations shall be extended to January 16, 2004, and EPA and the other parties to this Consent Decree shall then make a good-faith effort to agree upon a new deadline for EPA to take final action on the Round Two regulations for land application of sewage sludge. If the parties are unable to agree upon such a deadline for EPA to take final action on the Round Two regulations for land application of sewage sludge within ninety (90) days from the date that EPA notifies the Court and the other parties that modification of the deadline is required, the parties shall file within 105 days of such notification a status report regarding the status of their settlement discussions.

5. Final Dioxin Reassessment after October 17, 2003: If EPA has not issued a final Dioxin Reassessment Report by October 17, 2003, the deadline for EPA to take final action on the Round Two regulations for dioxins in sewage sludge that is land applied shall be October 17, 2003.

6. EPA will send quarterly reports to the parties regarding the Agency's progress toward taking final action under this Consent Decree on Round Two regulations for land application of sewage sludge. Each report will be provided in writing within 30 days after the conclusion of the calendar quarter to which it relates and will contain, at a minimum:

(a) a description of the actions taken by the Agency during the immediately preceding quarterly period with respect to progress toward taking final action on Round Two regulations for land application of sewage sludge under this Consent Decree;

(b) a description of the Agency's future steps toward taking final action on Round Two regulations for land application of sewage sludge, including a representation to the best of the Agency's ability as to whether the Agency is "on schedule," "ahead of schedule" or "behind schedule" with respect to taking final action on Round Two regulations for land application of sewage sludge; and

(c) an explanation of any delays or obstacles EPA has encountered or expects to encounter and plans for overcoming them.

7. Plaintiffs, AMSA and NRDC are entitled to costs of litigation (including reasonable attorney fees) under CWA section 505(d), 33 U.S.C. § 1365(d), expended in

connection with negotiating the terms of this extension. The parties shall make a good-faith effort to resolve the amount of such reasonable fees without involvement of the Court. In the event that the plaintiffs or a plaintiff-intervenor is unable to settle the fee issue after a good-faith effort, that party shall petition the Court to establish the amount of such fees. Any such petition shall be filed by the date 90 days after the date of entry of this modification to the Consent Decree unless EPA and the party seeking the fees stipulate to an extension of that deadline in order to continue good-faith negotiations. EPA shall have no less than twenty-one (21) days to respond to any such petition.

Respectfully submitted,

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