

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 31 1992

Clerk, U.S. District Court
District of Columbia

NATURAL RESOURCES DEFENSE COUNCIL,
INC.; PUBLIC CITIZEN, INC.,

Plaintiffs,

v.

WILLIAM K. REILLY, ADMINISTRATOR,
U.S. ENVIRONMENTAL PROTECTION AGENCY,

Defendant,

and

AMERICAN PAPER INSTITUTE; NATIONAL
FOREST PRODUCTS ASSOCIATION; et al.,

Intervenor-Defendants,

Civ. No. 89-2980
(RCL)
(Lamberth, J.)

CONSENT DECREE

WHEREAS, plaintiffs Natural Resources Defense Council, Inc., and Public Citizen, Inc. (collectively, "plaintiffs"), filed this action on October 30, 1989, against defendant William K. Reilly, Administrator, U.S. Environmental Protection Agency ("EPA" or "Agency");

WHEREAS, this action involves plaintiffs' allegations concerning (a) EPA's obligations under section 304(m) of the Clean Water Act, as amended, 33 U.S.C. § 1314(m) (the "First Claim for Relief"), and (b) EPA's obligations under section

3018(b) of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6939(b) (the "Second Claim for Relief");

WHEREAS, plaintiffs and EPA agree that this Court has jurisdiction over the First Claim for Relief;

WHEREAS, by Order filed April 23, 1991, this Court granted plaintiffs' motion for partial summary judgment as to the First Claim for Relief, and declared that EPA is in violation its statutory responsibilities under 33 U.S.C. § 1314(m);

WHEREAS, the parties enter into this Consent Decree in settlement of the First Claim for Relief;

WHEREAS, by Order filed April 23, 1991, this Court held that plaintiffs had filed the Second Claim for Relief in a court that lacked subject matter jurisdiction to hear the claim, and accordingly dismissed the Second Claim for Relief;

WHEREAS, plaintiffs have agreed not to appeal this Court's dismissal of the Second Claim for Relief, if this Consent Decree is entered by the Court;

WHEREAS, as of the date hereof, plaintiffs have agreed to seek the dismissal of their petitions for review in NRDC v. Reilly, No. 90-1228 (D.C. Cir.), and NRDC v. Reilly, No. 90-1497 (D.C. Cir.), if this Consent Decree is entered by the Court;

WHEREAS, EPA wishes to take advantage of the best opportunities for reducing risks to human health and the environment across all environmental media;

WHEREAS, the parties agree that recommendations from a special task force may be helpful to EPA in developing and revising effluent guidelines on a more expedited basis;

WHEREAS, it is in the interest of the public, the parties and judicial economy to resolve the remaining issues in this action without protracted litigation;

WHEREAS, plaintiffs and EPA have agreed to a settlement of this action, without any admission or adjudication of fact or law, which they consider to be a just, fair, adequate and equitable resolution of the claims raised in this action;

WHEREAS, the Court finds and determines that the settlement represents a just, fair, adequate and equitable resolution of the claims raised in this action; and

WHEREAS, by entering into this Consent Decree, plaintiffs and EPA do not waive any claim or defense, on any grounds, related to any final agency action taken pursuant to this Decree.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that:

Definition of Terms

1. As used in this Consent Decree, the following terms shall have the following meanings:

(a) "Administrator" shall mean the Administrator of EPA (or the Administrator's authorized representative).

(b) "Effluent guidelines" shall mean, as appropriate for the point source category at issue: (i) for existing direct dischargers, the guidelines described in section 304(b) of the Clean Water Act, 33 U.S.C. § 1314(b), (ii) for new direct dischargers, the standards described in section 306 of the Clean Water Act, 33 U.S.C. § 1316, and (iii) for new and existing indirect dischargers, the pretreatment standards described in section 307 of the Clean Water Act, 33 U.S.C. § 1317.

(c) "Propose" shall mean signature by the Administrator of a proposed effluent guideline. EPA shall promptly submit each effluent guideline proposed under this Decree to the Federal Register and make a copy available to plaintiffs.

(d) "Take final action" shall mean a final decision by the Administrator on the issuance of an effluent guideline. As required by the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, EPA will fully consider and respond to public comments before making a final decision on the scope and substance of any final effluent guideline.

(e) "Section 304(m)" shall mean section 304(m) of the Clean Water Act, as amended, 33 U.S.C. § 1314(m); and

(f) "304(m) Plan" shall mean the biennial plan described in Section 304(m).

Effluent Guidelines Currently Under Development

2. (a) EPA shall propose and take final action with respect to effluent guidelines for the following point source categories according to the following schedules:

<u>Point Source Category</u>	<u>Proposal</u>	<u>Final Action</u>
1. Pesticide Manufacturing	March, 1992	July, 1993
2. Pesticide Formulating and Packaging	January, 1994	August, 1995
3. Centralized Waste Treatment-Phase I	April, 1994	January, 1996
4. Machinery Manufacturing and Rebuilding - Phase I	November, 1994	May, 1996
5. Pharmaceutical Manufacturing	August, 1994	February, 1996
6. Organic Chemicals, Plastics & Synthetic Fibers - Response to Remand in <u>CMA v. EPA</u>, 870 F.2d 177, rehearing granted in part, 885 F.2d 253 (5th Cir. 1989)	(published December, 1991)	May, 1993
7. Coastal Oil and Gas	January, 1995	July, 1996

(b) Revision of effluent guidelines for the Pulp, Paper and Paperboard point source category is the subject of litigation in EDF v. Thomas, Civ. No. 85-0973 (D.D.C.). Revision of effluent guidelines for the Offshore Oil and Gas point source category is the subject of litigation in NRDC v. EPA, Civ. No. 79-3442 (D.D.C.). The schedules for proposal and final action for those guidelines are the subject of those proceedings, and are not the subject of this Decree.

Studies

3. (a) EPA shall conduct studies according to the following schedules, which shall be reflected in the next 304(m) Plan:

<u>Point Source Category</u>	<u>Start</u>	<u>Complete</u>
1. Petroleum Refining	1992	1993
2. Metal Finishing	1992	1993
3. Iron and Steel	1993	1994
4. Inorganic Chemicals	1993	1994
5. Leather Tanning	1994	1995
6. Coal Mining	1994	1995
7. Onshore/Stripper Oil & Gas	1995	1996
8. Textiles	1995	1996
9. Study Category #9	1996	1997
10. Study Category #10	1996	1997
11. Study Category #11	1996	1997

(b) Notwithstanding the provisions of Paragraph 3(a), EPA may replace any or all of the eight (8) point source categories specifically identified in Paragraph 3(a) with other point source categories, provided EPA notifies plaintiffs within thirty (30) days following a decision to make such a replacement. EPA shall determine which point source categories shall be the subject of study categories Nos. 9 - 11 referenced in Paragraph 3(a).

Additional Effluent Guidelines

4. (a) EPA shall comply with the following schedules, which shall be reflected in the next 304(m) Plan:

<u>Point Source Category</u>	<u>Start</u>	<u>Proposal</u>	<u>Final Action</u>
Centralized Waste Treatment - Phase II (landfills and incinerators)	1993	1995	1997
Industrial Laundries	1993	1996	1998
Transportation Equipment Cleaning	1993	1996	1998
Machinery Manufacturing and Rebuilding-Phase II	1995	1997	1999

(b) Notwithstanding the provisions of Paragraph 4(a), EPA may replace any or all of the four (4) point source categories identified in Paragraph 4(a) with other point source categories, provided EPA notifies plaintiffs within thirty (30) days following a decision to make such a replacement.

5. (a) In addition, EPA shall comply with the following schedules, which shall be published in the next 304(m) Plan:

<u>Point Source Category</u>	<u>Start Action</u>	<u>Proposal</u>	<u>Final Action</u>
New or Revised Rule #5	1996	1998	2000
New or Revised Rule #6	1996	1998	2000
New or Revised Rule #7	1997	1999	2001
New or Revised Rule #8	1997	1999	2001
New or Revised Rule #9	1998	2000	2002

<u>Point Source Category</u>	<u>Start Action</u>	<u>Proposal</u>	<u>Final Action</u>
New or Revised Rule #10	1998	2000	2002
New or Revised Rule #11	1999	2001	2003
New or Revised Rule #12	1999	2001	2003

(b) EPA will determine which point source categories will be the subject of effluent guidelines described in Paragraph 5(a). These point source categories will be selected on the basis of the studies already completed or in progress as of the date of this Decree, the additional studies described in Paragraph 3, and such other information as may be available.

6.(a) The parties disagree with respect to what discretion, if any, EPA has under applicable law to decide not to proceed with an effluent guideline. Accordingly, the Court has determined that the following provisions shall govern in the event that EPA decides not to proceed with an effluent guideline for a particular point source category. For such purposes, "decide not to proceed with an effluent guideline" shall mean to make a final, affirmative decision prior to proposal that an effluent guideline is not appropriate for the point source category under consideration, and shall not include making a decision to defer development of such guideline.

(1) Notwithstanding the provisions of Paragraphs 4 and 5, EPA reserves the discretion to decide not to proceed with any one or more effluent guidelines where the Administrator determines,

pursuant to any discretion the Administrator has under the Clean Water Act, 33 U.S.C. §§ 1251-1387, or any other legal authority, that an effluent guideline is not appropriate for the point source category under consideration. In EPA's view, such discretion includes the discretion not to proceed with an effluent guideline where the Administrator determines (taking into account the range of environmental issues confronting the Agency) that promulgating the guideline would not have the potential to significantly reduce risk to human health or the environment, or that another approach would accomplish a comparable reduction in risk. In EPA's view, such discretion also includes the discretion not to proceed with an effluent guideline on the basis of cost considerations.

(2) Plaintiffs do not necessarily agree that EPA has the discretion, under the Clean Water Act or any other legal authority, to decide not to proceed with an effluent guideline as described in Paragraph 6(a)(1), and thus reserve the right to contest any determination made pursuant to such paragraph.

(3) In the event EPA decides not to proceed with an effluent guideline with respect to any point source category described in Paragraphs 4(a) or 5(a), EPA shall notify plaintiffs within thirty (30) days of the date such discretion is exercised. Plaintiffs shall have sixty (60) days from receipt of such notice to provide EPA with a written statement of plaintiffs' intent to challenge such decision, and one hundred eighty (180) days from

receipt of such notice to file any and all motions contesting such decision with the Court.

(4) In the event EPA decides not to proceed with an effluent guideline with respect to any point source category described in Paragraphs 4(a) or 5(a), and either (i) plaintiffs do not challenge such decision pursuant to the procedures and within the time frames described in Paragraph 6(a)(3) above, or (ii) the Court holds that, in making such decision, EPA properly exercised its discretion under applicable law, then such decision shall satisfy any and all obligations of EPA under this Decree with respect to such point source category.

(b) Any decision by the Administrator not to proceed with an effluent guideline pursuant to Paragraph 6(a)(1) above shall be included in the first 304(m) Plan proposed following such determination.

(c) (1) Notwithstanding the provisions of Paragraph 6(a), EPA will take final action with respect to twelve (12) effluent guidelines (in addition to those listed in Paragraph 2) before December 31, 2003 unless, after analysis of the eleven (11) studies undertaken pursuant to Paragraph 3 and the seven (7) studies already completed, the Administrator determines, pursuant to any discretion the Administrator has under the Clean Water Act, 33 U.S.C. §§ 1251 - 1387, or any other legal authority, that fewer than twelve (12) of the eighteen (18) total point-source categories studied merit proposal of effluent guidelines pursuant to the standards set forth in Paragraph 6(a)(1). In such case,

EPA will undertake studies of additional categories of point sources to determine whether the promulgation of additional effluent guidelines is appropriate. EPA will state its intention to conduct any such additional studies in 304(m) Plans.

(2) EPA will notify plaintiffs within thirty (30) days after any decision pursuant to Paragraph 6(c)(1) not to take final action with respect to twelve (12) effluent guidelines (in addition to those effluent guidelines listed in Paragraph 2) before December 31, 2003. Plaintiffs may challenge such decision by following the procedures set forth in Paragraph 6(a)(3) above. In the event the Court holds that EPA lacks the authority to make such a decision, the Court will establish a new schedule for taking final action on the remaining effluent guidelines.

304(m) Plans

7. (a) EPA will propose the next 304(m) Plan no later than ninety (90) days after entry of this Consent Decree by the Court. EPA will publish final notice of the next 304(m) Plan no later than two hundred ten (210) days after entry of this Consent Decree by the Court. EPA will publish final notices of subsequent 304(m) Plans every second year after final notice of the next 304(m) Plan; proposed notices will be published within the year preceding publication of the corresponding final notice.

(b) 304(m) Plans issued subsequent to this Decree that are consistent with its terms shall satisfy EPA's obligations under Section 304(m) with respect to the publication of such plans.

The foregoing sentence shall (i) not apply with respect to any obligations that may arise after December 31, 2003, and (ii) not be construed to affect plaintiffs' right to seek modification of this Decree for good cause pursuant to Paragraph 9(a).

Special Task Force

8. No later than six (6) months from the entry of this Decree by this Court, EPA shall establish a special task force to assist the Agency in discharging its responsibility to implement the Clean Water Act. This task force shall be established, if possible, under the auspices of an existing advisory group established under the Federal Advisory Committee Act, 5 U.S.C. App. §§ 1-15. EPA shall seek representatives to serve on the task force from EPA Regions, State and local government (including publicly owned treatment works), industry, citizen groups, and the scientific community. EPA shall specifically request that the task force (i) provide recommendations with respect to a process for expediting the promulgation of effluent guidelines by a date no later than twelve (12) months from the date the task force is formally established, and (ii) in doing so, consider, among other pertinent matters, EPA's experience in issuing regulations under the Clean Air Act and any other regulations subject to expedited promulgation procedures. EPA will request that the task force provide supplemental recommendations regarding a process for expediting the promulgation of effluent guidelines at least annually during the

period the task force remains in existence. In addition, EPA shall request recommendations from the task force with respect to:

- (a) a process for deciding which additional point source categories to regulate by means of effluent guidelines, based on potential for risk reduction, the utility of regulation and the schedule for promulgation of such rules;
- (b) a process and schedule for reviewing and determining whether to revise additional existing effluent guidelines;
- (c) new technologies and control methods, including methods to achieve zero discharge;
- (d) the minimum components of new and revised effluent guidelines to ensure that they are adequate in scope and coverage;
- (e) minimum requirements for surveys under section 308 of the Clean Water Act, 33 U.S.C. § 1318; and
- (f) a process for promoting effective co-regulation of point source categories to eliminate or minimize cross-media transfer of pollution.

Modification of this Decree

9. (a) The provisions of this Decree shall be modified for good cause shown.

(b) The provisions relating to dates established by this Decree shall be modified according to the procedures set forth in Paragraph 10. All other provisions of this Decree may be *

modified by written consent of plaintiffs and EPA, or by the Court upon request of either party.

(c) In EPA's view, the schedules for effluent guidelines and studies incorporated into this Decree assume the following: (i) that Congress will appropriate funds for the effluent guideline program at the levels requested by the Administration, (ii) that sufficient qualified personnel will be available to staff the effluent guidelines program, (iii) that no rule subject to the schedules set forth in this Decree will require either (A) more than one Notice of Proposed Rulemaking, or (B) a Notice of Data Availability subsequent to publication of a Notice of Proposed Rulemaking. In EPA's view, the failure of any one of these assumptions to be true with respect to an effluent guideline or study which is the subject of this Decree would constitute "good cause" for modification of the schedule with respect to such effluent guideline or study. Plaintiffs do not necessarily agree that the above factors constitute good cause to modify the Decree.

10. Modification of the dates set forth in this Decree shall be by written consent of plaintiffs and EPA, or in accordance with the procedures specified below.

(a) If a party files a motion requesting modification of a date or dates established by this Decree and provides notice to the other party at least thirty (30) days prior to filing such motion, and files the motion at least sixty (60) days prior to the date for which modification is sought, then the filing of

such motion shall, upon request, stay the date for which modification is sought. Such stay shall remain in effect until the earlier to occur of (i) a dispositive ruling by this Court on such motion, (ii) the date sought in the modification, or (iii) the date which is one hundred eighty (180) days after the date such motion is filed. Only one such automatic stay shall be permitted for each deadline for which modification is sought.

(b) If a party files a motion requesting modification of a date or dates established by this Decree totalling thirty (30) days or less and provides notice to the other party at least thirty (30) days prior to the filing of such motion, and files the motion at least seven (7) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, stay the date for which modification is sought. Such stay shall remain in effect until the earlier to occur of (i) a dispositive ruling by this court on such motion, or (ii) the date sought in the modification. Only one such automatic stay shall be permitted for each deadline for which modification is sought.

(c) If a party seeking modification does not provide notice pursuant to subparagraphs (a) or (b) above, that party may move the Court for a stay of the date for which modification is sought. The party seeking modification under this subparagraph (c) shall give notice to the other party as soon as possible of its intent to seek a modification and/or stay of the date sought to be modified. The notice provided under this Paragraph 10(c)

and any motion for stay shall demonstrate why the party could not have utilized the notification procedures set forth in subparagraphs (a) and (b) above.

(d) If the Court denies a motion by EPA to modify a date established by this Decree, then the date for which modification had been requested shall be such date as the Court may specify.

(e) Any motion to modify the schedule established in this Decree shall be accompanied by a motion for expedited consideration. All parties to this Decree shall join in any such motion for expedited consideration.

11. Nothing in this Decree, or in the parties' agreement to its terms, shall be construed to limit the equitable powers of the Court to modify those terms upon a showing of good cause by any party.

Termination of this Decree

12. The Court shall retain jurisdiction to determine and effectuate compliance with this Decree. When EPA's obligations under this Decree have been completed, this case shall be dismissed.

Savings provisions

13. Nothing in the terms of this Decree shall be construed to confer upon this Court jurisdiction to review any decision, either procedural or substantive, to be made by the Administrator

pursuant to this Decree, except for the purpose of determining EPA's compliance with this Decree.

14. Nothing in this Decree shall be construed to limit or modify EPA's discretion to alter, amend, or revise the regulations promulgated pursuant to this Decree, from time to time, or to promulgate superseding regulations.

15. Except as expressly provided herein, nothing in this Decree shall be construed to limit or modify the discretion accorded EPA by the Clean Water Act, 33 U.S.C. §§ 1251-1387, or by general principles of administrative law in taking the actions which are the subject of this Decree.

16. Nothing in this Decree relieves EPA of the obligation to act in a manner consistent with other applicable law, including the notice and comment and other provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706; Section 304(m)(2) of the Clean Water Act, 33 U.S.C. § 1314(m)(2), the Anti-Deficiency Act, 5 U.S.C. § 1341, and other applicable appropriations law. Provided, that if EPA believes that compliance with any applicable law may lead to noncompliance with the terms of this Decree, EPA shall utilize the above-specified procedures for modification of this Decree.

17. EPA agrees that plaintiffs are entitled to reasonable attorneys' fees and costs accrued as of the date of this Decree on at least some of their claims. The parties will attempt to reach agreement as to the appropriate amount of the recovery. If

they are unable to do so, plaintiffs will file an application with the Court for the recovery of fees and costs.

Signature of the Parties

18. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to consent to the Court's entry of the terms and conditions of this Consent Decree.

Done this 31st day of January, 1992.

BY THE COURT:

Raymond L. Lankford

District Judge

Approved by Counsel for the Parties:

WILLIAM K. REILLY, ADMINISTRATOR,
U.S. ENVIRONMENTAL PROTECTION AGENCY

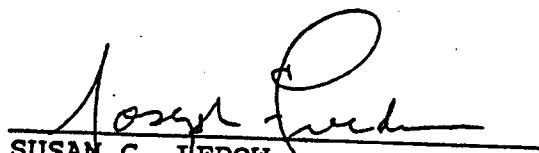
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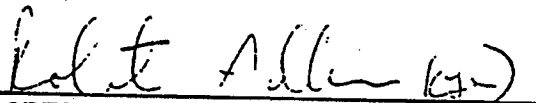
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Date: 1/30/92



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