

NOW THEREFORE, EPA and Earth Island, intending to be bound, agree as follows:

1. No later than April 30, 2002, EPA shall issue a notice of proposed rulemaking under Clean Air Act section 213(a)(3) that will propose a NOx emission standard for new Category 3 marine compression-ignition engines. EPA will also invite public comment on the issue of whether Category 3 engines installed on vessels flagged in another country that come into United States territorial waters temporarily should be subject to emission standards under section 213(a)(3). After considering any public comments received, EPA shall no later than January 31, 2003, take final action on the proposed rulemaking. EPA staff shall meet with Petitioner according to the following schedule: no later than February 28, 2001; June 29, 2001; October 31, 2001; and January 15, 2002, and September 20, 2002. At such meetings, EPA staff shall provide information to Petitioner on the status of the rulemaking, including activities conducted to date and expected future activities.

2. In issuing a proposed rule and taking final action under Paragraph 1, if EPA gives consideration to factors other than those expressly listed in section 213(a)(3), EPA shall state that it considered such factor(s), identify the additional factors, and explain how such factor(s) were taken into consideration, including how the factor(s) impacted the level of the proposed standards (or final action).

3. If, by April 30, 2002, at least fifteen nations, including the United States, representing at least 50% of the world's merchant shipping gross tonnage, have become parties to MARPOL Annex VI pursuant to Article 5 of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto, then the commitments in Paragraphs 1 and 2 shall be void.

4. If subsequent legislation alters or relieves EPA of its obligations or authority with respect to the subsection 213(a)(3), then the commitments in Paragraphs 1 and 2 shall be void.

5. The parties may extend the dates set forth in Paragraph 1, or otherwise modify this Agreement, by written stipulation executed by counsel for each of the parties.

6. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

7. Nothing in the terms of this Agreement shall be construed to limit, expand, or modify any discretion accorded EPA under the Clean Air Act or by general principles of administrative law.

8. Nothing in this Agreement shall be construed to limit, expand, or modify EPA's discretion to alter, amend, or revise the

regulations identified in Paragraph 1 from time to time, or to promulgate superseding regulations.

9. Upon execution of this Agreement by the parties, the parties shall file a joint motion with the court to stay all proceedings pending completion of the items set forth in Paragraph 1 above. The Agreement shall be appended to the joint motion.

10. If EPA accomplishes the items specified in Paragraphs 1 and 2, Earth Island shall promptly stipulate to the dismissal with prejudice of its petition for review in accordance with Rule 42 of the Federal Rules of Appellate Procedure.

11. The parties agree that the issue of costs (including reasonable attorneys' fees) pursuant to 42 U.S.C. § 9607(f) will be resolved separately after the final resolution of this litigation, and agree that they will make a good-faith effort to reach agreement on this issue. If the parties are unable to reach agreement on this issue within 60 days after the final resolution of this litigation, Petitioner reserves the right to file a motion for fees and costs with the Court. EPA agrees that if EPA issues a final NOx emission standard for new Category 3 engines pursuant to Paragraph 1 of this Agreement, Petitioner shall be considered a prevailing party on at least one claim raised in its petition.

12. In the event that EPA does not accomplish one or more of the items specified in Paragraphs 1 and 2, or if EPA's commitments under Paragraphs 1 and 2 become void under the terms

of Paragraph 3, petitioner shall have the right to reactivate this litigation, and that right shall constitute petitioner's exclusive remedy. EPA reserves all defenses to the petition in the event the litigation is reactivated, including the argument that the petition is moot if EPA has issued a final rule under Paragraph 1. Petitioner agrees to give EPA twenty (20) days written notice prior to exercising its' rights under this paragraph. In the event that Petitioner exercises the right to reactivate this litigation, the parties agree to jointly move the court for entry of a briefing schedule pursuant to which: (1) Petitioner shall file a revised opening brief 30 days after the date of the notice, (2) EPA shall have 60 days from the date of Petitioner's revised opening brief to file its responsive brief, and (3) Petitioner shall have 14 days from the date of EPA's responsive brief to file its reply brief. The parties further agree to jointly seek to enter the Court's stipulated stand-by pool for oral argument.

13. Except as expressly provided in this Settlement Agreement, neither of the parties waives or relinquishes any legal rights, claims, or defenses they may have.

14. The parties agree and acknowledge that final approval of this Settlement Agreement is subject to the requirements of section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g). That section requires that the Administrator provide notice of any proposed settlement agreement in the Federal Register and provide a period of at least thirty days following publication to allow persons who are not parties or intervenors in the litigation to

comment in writing. The Administrator or the Attorney General, as appropriate, must consider those comments and may withdraw or withhold her consent to the Settlement Agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate or inconsistent with the requirements of the Act.

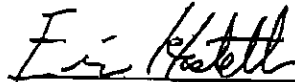
15. Any notice required under Paragraph 12 of this Agreement shall be in writing, effective upon receipt, and sent to the following:

Associate General Counsel, Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Attn: Mark Kataoka (2344A)

Chief
Environmental Defense Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Attn: Eric Hostetler, DJ # 90-5-2-3-05860,

16. The undersigned representatives of each party certify that they are fully authorized by the party they represent to bind the respective parties to the terms of this Agreement. This Agreement will be deemed to be executed when it has been signed by the representatives of the parties set forth below, subject to final approvals pursuant to paragraph 14.

DATED: 26 October 2000

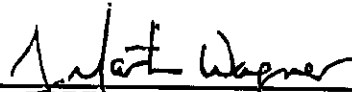


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ATTORNEYS FOR RESPONDENT UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

DATED: 25 October 2000



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