

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Plaintiff,

-against-

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

USDC SDNY
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DATE FILED: 12/11/18

ORDER

16 Civ. 1251 (ER)

Ramos, D.J.:

On October 18, 2016, the Court approved a Consent Decree requiring the U.S. Environmental Protection Agency and its Administrator (collectively, “EPA”) to issue regulations for the chemical perchlorate, specifically a maximum contaminant level goal (“MCLG”) and national primary drinking water regulation (“NPDWR”). Consent Decree ¶¶ 4–5, Doc. 38. Under the Consent Decree, the EPA was required to publish a proposed MCLG and NPDWR for perchlorate by October 31, 2018. *Id.* ¶ 4. The EPA has moved to modify the Consent Decree to extend this deadline by six months, until April 30, 2019. Doc. 42.¹

“On motion and just terms, the court may relieve a party” from a consent decree if “applying it prospectively is no longer equitable.” Fed. R. Civ. P. 60(b)(5). Modification of a consent decree may be warranted by a “significant change” in circumstances, such as when (1) “changed factual conditions make compliance with the decree substantially more onerous,” (2) “a decree proves to be unworkable because of unforeseen obstacles,” or (3) “enforcement of the

¹ The EPA’s motion automatically extended the October 31, 2018 deadline to the earlier of (1) the Court’s ruling on the motion or (2) 90 days after the original deadline (i.e., January 29, 2019). Consent Decree ¶ 7(a). That automatic extension is now terminated and superseded by this Order. In addition, the EPA has moved to expedite consideration of its motion. Doc. 45.

decree without modification would be detrimental to the public interest.” *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 384–85 (1992). “[A] party seeking modification of a consent decree bears the burden of establishing that a significant change in circumstances warrants revision of the decree. If the moving party meets this standard, the court should consider whether the proposed modification is suitably tailored to the changed circumstance.” *Id.* at 383.

The EPA claims that it needs an additional six months to publish the proposed regulations due to unforeseen delays in addressing revisions recommended in its peer review process, which altogether took six months longer than anticipated. Doc. 43, at 1–2. After deposing the EPA official with primary responsibility for the proposed regulations about the status of its work, the Natural Resources Defense Council, Inc. (“NRDC”) determined that it would not oppose the EPA’s motion to modify the Consent Decree. Doc. 55, at 1. Although the NRDC disputes that the delays were unforeseeable or unavoidable, it acknowledges that the EPA has not completed its work, and holding it to the original deadline would be futile or even harmful to the quality of the proposed regulations. *Id.* at 1–3.

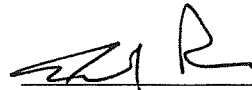
“[R]egardless of the reasons” given for it, “the delay is now a reality, and EPA has demonstrated that it [cannot] meet the current deadline.” *Cronin v. Browner*, 90 F. Supp. 2d 364, 373 (S.D.N.Y. 2000). While the public certainly has an interest in “the prompt issuance of a [r]egulation,” under the circumstances this interest “is outweighed in the short term by the need to prepare a regulation” that is scientifically and environmentally sound. *Id.* at 374. Thus, “the public interest . . . require[s] that the Decree be modified to enable EPA to produce a sound [r]egulation.” *Id.* at 373. The Court further concludes that a six-month extension is suitably tailored to the delays that the EPA has experienced. The Court expects that the EPA will work diligently to meet its revised deadline.

Accordingly, the Court GRANTS the motion to modify the Consent Decree to extend the deadline to publish a proposed MCLG and NPDWR for perchlorate by six months. The deadline set forth in Paragraph 4 of the Consent Decree is hereby extended from October 31, 2018, to April 30, 2019.

The Clerk of the Court is respectfully directed to terminate the motions, Docs. 42, 45.

It is SO ORDERED.

Dated: December 10, 2018
New York, New York



Edgardo Ramos, U.S.D.J.