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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON ENVIRONMENTAL
COUNCIL and SIERRA CLUB
WASHINGTON STATE CHAPTER,

Plaintiff,

v.

THEODORE (“TED”) L.
STURDEVANT, DIRECTOR,
WASHINGTON STATE DEPARTMENT
OF ECOLOGY, in his official capacity,
et. al.,

Defendants

and

WESTERN STATES PETROLEUM
ASSOCIATION,

Intervenor-Defendant

CASE NO. C11-417 MJP
ORDER ON REMEDIES

This matter comes before the Court as part of the Remedies Phase of this lawsuit.

Having reviewed the parties’ opening briefs (Dkt. Nos. 81, 83, and 88), the responses (Dkt. Nos.

1 91, 93, and 95), and all related filings, the Court ORDERS Defendants to complete the RACT
2 process no later than 26 months from the date of this Order and ORDERS Defendants provide
3 status updates every six months until the RACT process is finalized.

4 **Background**

5 Plaintiffs Washington Environmental Council and Sierra Club are suing the Department
6 of Ecology and other regional regulatory agencies (collectively referred to as the “Agencies”)
7 under the Clean Air Act. Plaintiffs allege the Agencies are not enforcing Washington’s State
8 Implementation Plan (“SIP”), which requires the Agencies to define reasonably available control
9 technology (“RACT”) for greenhouse gases (“GHGs”) and apply the RACT standards to oil
10 refineries. In December 2011, the Court ruled in favor of Plaintiffs and set a briefing schedule
11 regarding the appropriate remedy. (Dkt. No. 72.)

12 **Analysis**

13 Plaintiffs request the Court order the Agencies to make RACT determinations within 5.5
14 months of the Court’s order. The Agencies, in contrast, propose a 26 month schedule for
15 determining RACTs.

16 RCW 70.94.154 states, “[i]n establishing or revising RACT requirements, ecology and
17 local authorities shall address, where practicable, all air contaminants deemed to be of concern
18 for that source or source category.” In determining RACT, Agencies must consider “the impact
19 of the source upon air quality, the availability of additional controls, the emission reduction to be
20 achieved by additional controls, the impact of additional controls on air quality, and the capital
21 and operating costs of the additional controls.” RCW 70.94.030(20) (defining RACT).

22 In reviewing the parties’ proposal, the Court finds the Agencies’ proposal more
23 reasonable. RACT determinations will require the Agencies collect information for air
24


1 | contaminants of concern, review available RACTs, conduct a human health risk analysis,
 2 | develop a matrix for each emission unit, and complete the statutory requirements for rulemaking.
 3 | While Plaintiffs argue (1) these steps are redundant and (2) the Agencies should focus on RACTs
 4 | for GHGs instead of all air contaminants, the Court finds Plaintiffs’ arguments unpersuasive.
 5 | Plaintiffs rely on the declaration of a single person, Dr. Ranajit Sahu. However, it is within the
 6 | Agencies’ discretion to consider “all contaminants” when creating a RACT schedule for GHGs.
 7 | Here, the Agencies believe focusing on GHGs in a vacuum would be inefficient because controls
 8 | for GHGs may impact emissions for other pollutants. The Court will not substitute the
 9 | Agencies’ expertise regarding the RACT process for a person does not work with the particular
 10 | Washington refineries at issue.

11 | **Conclusion**

12 | The Court ORDERS Defendants to complete the RACT process no later than 26 months
 13 | from the date of this Order. Until the RACT process is finished, the Court ORDERS Defendants
 14 | to provide updates as to the RACT process and progress every six months.

15 | The clerk is ordered to provide copies of this order to all counsel.

16 | Dated this 27th day of March, 2012.

17 | 
 18 | _____
 19 | Marsha J. Pechman
 20 | United States District Judge