

v. Alcan Aluminum Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985), (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459. Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As confirmed in *SBC Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11.⁶

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA

⁶ See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 20, 2009.

Respectfully submitted,
By: _____/s/_____
Lowell R. Stern, Attorney for Plaintiff.

Certificate of Service

I hereby certify that on the 20th day of August, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Brett J. Williamson,
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Lowell R. Stern,
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DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Solar Photovoltaic (PV) Project located at Westover Job Corp Center, 103 Johnson Drive, Chicopee, MA

AGENCY: Office of the Secretary, Department of Labor.

Recovery: This project will be wholly funded under the American Recovery and Reconstruction Act of 2009.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for Solar PV Panel Installation to be located at the Westover Job Corp Center, 103 Johnson Drive, Chicopee, Massachusetts.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500-08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed Solar PV Project to be located at the Westover Job Corp Center, 103 Johnson Drive, Chicopee, Massachusetts, and that the proposed plan for the construction of solar PV panels at the Westover Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for

public review and comment for a period of 30 days.

DATES: Comments must be submitted by October 1, 2009.

ADDRESSES: Any comment(s) are to be submitted to William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N-4460, Washington, DC 20210, (202) 693-2867 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

Copies of the EA are available to interested parties by contacting William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N-4460, Washington, DC 20210, (202) 693-2867 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This EA summary addresses the proposed construction of approximately 1.5 acres of stationary solar photovoltaic (PV) panels to create a 150 to 200 kilowatt system connected to the closest electrical terminal at the Westover Job Corps Center. The solar panels will produce clean energy for the Westover Job Corps Center, demonstrate renewable energy capabilities to Job Corps Students and help the program meet Federal requirements in Executive Order 13423 for renewable energy production. This project is not expected to have a negative impact on population demographics, the surrounding area, environmental quality, or natural systems and heritage.

Based on the information gathered during the preparation of the EA, the construction of the Solar PV Project at Westover Job Corp Center, 103 Johnson Drive, Chicopee, Massachusetts will not create any significant adverse impacts on the environment.

Dated: August 25, 2009.

Lynn Intrepidi,

Interim National Director of Job Corps.

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DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Edison Job Corps Center Solar PV Project located at the Edison Job Corps Center

AGENCY: Office of the Secretary, Department of Labor.