



## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9916-68-OGC]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), notice is hereby given of a proposed consent decree, to address a lawsuit filed by WildEarth Guardians: WildEarth Guardians v. McCarthy, Civil Action No. 1:13-dv-02748-RBJ (D. Co.). On October 28, 2013, WildEarth Guardians filed a complaint alleging that the Environmental Protection Agency (EPA) had failed to perform its nondiscretionary duties to make findings that certain states had failed to submit required State Implementation Plans (SIPs) regarding the National Ambient Air Quality Standard (NAAQS) adopted by EPA for nitrogen dioxide (NO<sub>2</sub>) in January 2010. On January 24, 2014, WildEarth Guardians filed an amended complaint adding two additional states to the list for which it claimed EPA had failed to perform this nondiscretionary duty. The complaint requested that the court order EPA to make such findings. Under the terms of the proposed consent decree, EPA would agree to make those findings by November 15, 2014.

**DATES:** Written comments on the proposed consent decree must be received by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2014-0644, online at [www.regulations.gov](http://www.regulations.gov) (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand

delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Susmita Dubey, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-5577; fax number (202) 564-5603; email address: [dubey.susmita@epa.gov](mailto:dubey.susmita@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Additional information about the proposed consent decree.**

The amended complaint alleges that EPA has failed to perform its nondiscretionary duty to make findings that the following states have failed to submit SIPs to meet the requirement in certain subsections of section 110(a)(2): Alaska, Colorado, Hawaii, Idaho, New Mexico, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. Under the terms of the proposed consent decree, EPA would agree to make findings by November 15, 2014, for those states in this group which have not made submissions at that time.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of

Justice determines that consent to this consent decree should be withdrawn or withheld, the terms of the consent decree will be affirmed.

## **II. Additional information about commenting on the proposed consent decree.**

### *A. How Can I Get A Copy Of the Consent Decree?*

The official public docket for this action (identified by EPA-HQ-OGC-2014-0644) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available on the internet (online) through the website [www.regulations.gov](http://www.regulations.gov). You may use [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public

comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous

access” system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket.

Dated: September 8, 2014.

Lorie J. Schmidt,  
Associate General Counsel.

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