



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2016-0693; FRL-9956-37-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

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

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), notice is hereby given of a proposed consent decree to address a lawsuit filed by Center for Biological Diversity, Center for Environmental Health, and Clean Air Council (collectively “Plaintiffs”) in the United States District Court for the Northern District of California: Center for Biological Diversity, et al. v. McCarthy, et al. No. 4:16-cv-04092-PJH (N.D. Cal.). On July 21, 2016, Plaintiffs filed a complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”) failed to perform certain duties mandated by the CAA in relation to implementation of the 1997 and 2008 National Ambient Air Quality Standard (“NAAQS”) for ozone, respectively. Specifically, Plaintiffs allege that EPA failed to make required findings of failure to submit, and to take final action on State Implementation Plan (“SIP”) submittals. On November 14, 2016, Plaintiffs filed a first amended complaint. The proposed consent decree would establish deadlines for EPA to take certain specified actions related to implementation of the 1997 and 2008 ozone standards, respectively.

DATES: Written comments on the proposed consent decree must be received by [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2016-0693, online at *www.regulations.gov*. For comments submitted at *www.regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (“CBI”) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Derek Mills, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-3341; fax number: (202) 564-5603; email address: Mills.Derek@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed consent decree.

This proposed consent decree would resolve a lawsuit filed by Plaintiffs seeking to compel the Administrator to take actions under CAA section 110(k). Under the terms of the

proposed consent decree, EPA would agree to sign a notice addressing the alleged failure to issue a finding of failure to submit for certain 2008 ozone NAAQS nonattainment and OTR SIP submissions addressing elements from the areas and states listed in the proposed consent decree no later than January 19, 2017. If any State makes a listed SIP submittal, and EPA makes a completeness determination as to that submittal, prior to January 19, 2017, then EPA's obligation to address that submittal in the aforementioned notice is automatically terminated. EPA would also agree to take certain final actions to address certain submitted plans pursuant to sections 110(k)(2)-(4) of the CAA no later than the dates indicated in the proposed consent decree for the 1997 and 2008 ozone NAAQS, respectively. If any State withdraws a listed submittal, then EPA's obligation to address that submittal through the aforementioned action is automatically terminated. Please see the proposed consent decree, located in the docket for this notice, for specific dates and additional details.

Under the terms of the proposed consent decree, EPA will send notice of each action to the Office of the Federal Register for review and publication within 15 days of signature. In addition, the proposed consent decree outlines the procedure for the Plaintiff to request costs of litigation, including attorney fees.

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 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 proposed consent decree should be withdrawn, 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 Proposed Consent Decree?

The official public docket for this action (identified by EPA-HQ-OGC-2016-0693) 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 through *www.regulations.gov*. You may use *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* without change, unless the comment contains copyrighted material, 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* 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*, 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: November 30, 2016.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2016-29581 Filed: 12/8/2016 8:45 am; Publication Date: 12/9/2016]