



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2016-0776; FRL 9957-83-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 Citizens for Clean Air and Sierra Club (“Plaintiffs”) in the United States District Court for the Western District of Washington: Citizens for Clean Air, et al. v. McCarthy, et al. No. 2:16-cv-01594-RAJ (W.D. WA.). On October 11, 2016, Plaintiffs filed a lawsuit alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency and Dennis McLerran, in his official capacity as Regional Administrator of the United States Environmental Protection Agency, Region 10 (collectively, “EPA”), failed to perform a duty mandated by CAA to make a determination as to whether the Fairbanks North Star Borough nonattainment area in Alaska attained the 2006 24-hour PM_{2.5} NAAQS by December 31, 2015, and to publish a notice of that determination within six months of that date. If EPA determines that the area did not attain the 2006 24-hour PM_{2.5} NAAQS by December 31, 2015, then the nonattainment area will be reclassified from “moderate” to a “serious” for these NAAQS. The proposed consent decree would establish deadlines for EPA to take certain specified actions.

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

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2016-0776, 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: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-5601; fax number: (202) 564-5603; email address: wilcox.geoffrey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed consent decree.

The proposed consent decree would resolve a lawsuit filed by the Plaintiffs seeking to compel EPA to make a determination required under CAA section 188(b)(2), as to whether the

Fairbanks North Star Borough nonattainment area in Alaska attained the 2006 24-hour PM_{2.5} NAAQS by December 31, 2015. Under the terms of the proposed consent decree, no later than April 28, 2017, EPA will be required to sign a notice of final rulemaking determining whether the Fairbanks North Star Borough area attained the 2006 24-hour PM_{2.5} NAAQS by December 31, 2015. If EPA determines that the area did not attain the NAAQS by that date, then EPA must reclassify the area as a “serious” nonattainment area for the 2006 24-hour PM_{2.5} NAAQS pursuant to CAA section 188(b)(2). By statute, reclassification from “moderate” to “serious” is required by operation of law for an area that fails to attain the NAAQS by the outermost permissible attainment date for moderate nonattainment areas. This reclassification would obligate the State of Alaska to submit an attainment plan for the area that meets statutory and regulatory requirements applicable to a serious nonattainment area for these NAAQS. Under the proposed consent decree, EPA will also be required to deliver the signed final notice to the Office of Federal Register for review and publication within 15 business days after signature. See the proposed consent decree for the specific details.

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 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-2016-0776) 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: December 22, 2016.

Gautam Srinivasan
Acting Associate General Counsel
[FR Doc. 2016-31822 Filed: 12/30/2016 8:45 am; Publication Date: 1/3/2017]