



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0307; FRL-11027-01-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 the Clean Air Act, as amended (CAA or the Act), the Environmental Protection Agency (EPA or the Agency) is providing notice of a proposed consent decree in *Environmental Defense Fund, et al. v. EPA*, No. 3:22-cv-7731-WHO (N.D. Cal.). On December 7, 2022, Plaintiffs Environmental Defense Fund and Sierra Club filed a complaint in the United States District Court for the Northern District of California alleging that EPA has failed to perform its nondiscretionary duty to “review and, if appropriate, revise” New Source Performance Standard (“NSPS”) emission limits for new stationary combustion turbines, at least every 8 years. The proposed consent decree would establish deadlines for EPA to sign a proposed and final rule for this action.

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 No. EPA-HQ-OGC-2023-0307, online at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Schramm, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564-3377; email address Schramm.Daniel@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2023-0307) 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.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://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.”

II. Additional Information about the Proposed Consent Decree

On December 7, 2022, Plaintiffs Environmental Defense Fund and Sierra Club (collectively “Plaintiffs”) filed a complaint in the United States District Court for the Northern District of California alleging that EPA has failed to perform its nondiscretionary duty under CAA section 111(b)(1)(B) to “review and, if appropriate, revise” New Source Performance Standard (“NSPS”) nitrogen oxides (NO_x) limits for new stationary combustion turbines, 40 CFR part 60, subpart KKKK (“NSPS Subpart KKKK”), at least every 8 years. The proposed consent decree, would require that EPA: (i) sign a determination under CAA section

111(b)(1)(B), 42 U.S.C. 7411(b)(1)(B) that “review” of NSPS Subpart KKKK “is not appropriate in light of readily available information on the efficacy of [the] standard”; or (ii) review NSPS Subpart KKKK under CAA section 111(b)(1)(B), 42 U.S.C. 7411(b)(1)(B), and sign either: (A) a proposed rulemaking containing revisions to NSPS Subpart KKKK; or (B) a proposed determination not to revise NSPS Subpart KKKK by November 7, 2024. In addition, the proposed consent decree would require EPA to sign one or a combination of the following: (i) a final rule containing revisions to NSPS Subpart KKKK pursuant to 42 U.S.C. 7411(b)(1)(B); or (ii) a final determination pursuant to 42 U.S.C. 7411(b)(1)(B) not to revise Subpart KKKK by November 12, 2025.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. 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.

III. Additional Information about Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0307, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> 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. EPA will generally 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, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

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. 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 <https://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.

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.

Gautam Srinivasan,
Associate General Counsel.