



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2024-0098; FRL-11789-01-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”), notice is given of a proposed consent decree to address lawsuits filed by Our Children’s Earth Foundation (“Plaintiff”) in the United States District Court for the Northern District of California: *Our Children’s Earth Foundation v. Michael S. Regan*, No. 3:23-cv-04955-WHA (N.D. Cal.). Plaintiff filed a complaint alleging that the Administrator failed to perform certain non-discretionary duties in accordance with the Act to take final action on state implementation plan (“SIP”) revisions submitted by the States of Arizona, New Mexico, Colorado, and Utah. Certain claims included in the Complaint were acted upon by Environmental Protection Agency (EPA) or were withdrawn by the State during the pendency of the suit, and the proposed consent decree would establish deadlines for EPA to sign a notice of final rulemaking on the remaining claims.

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-2024-0098, 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: Kyle Durch, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564-1809; email address Durch.Kyle@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-2024-0098) 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

The proposed consent decree would establish deadlines for EPA to take final action pursuant to CAA section 110(k) on certain SIP submissions by the States of Arizona, Colorado, and Utah. First, the proposed consent decree would require EPA to take final action on six SIP revisions submitted by the State of Arizona by December 15, 2024: (1) Arizona’s Redesignation Request/Maintenance Plan addressing the 1971 sulfur dioxide NAAQS in the Hayden planning

area, submitted on or around June 27, 2002; (2) Maricopa County Air Quality District's Rule 350 Storage and Transfer of Organic Liquids (Non-Gasoline) at an Organic Liquid Distribution Facility, submitted on or around December 3, 2020; (3) Maricopa County Air Quality District's Rule 351 Storage and Loading of Gasoline at Bulk Gasoline Plants and at Bulk Gasoline Terminals, submitted on or around December 3, 2020; (4) Maricopa County Air Quality District's Rule 352 Gasoline Cargo Tank Testing and Use, submitted on or around December 3, 2020; (5) Maricopa County Air Quality District's Rule 353 Storage and Loading of Gasoline at a Gasoline Dispensing Facility, submitted on or around December 3, 2020; and (6) Arizona's Infrastructure SIP addressing the 2015 ozone NAAQS, submitted on or about September 24, 2018.

Second, the proposed consent decree would require EPA to take final action on eight SIP revisions submitted by the State of Arizona by December 15, 2025: (1) Hayden PM₁₀ Plan, Arizona's attainment plan, submitted on or about October 16, 1989; (2) Arizona's AAC Title 18, Permits, submitted on or about October 29, 2012; (3) Arizona's Infrastructure SIP addressing the 2012 PM_{2.5} NAAQS, submitted on or about December 11, 2015; (4) Maricopa County Rulebook Recodification Project, submitted on or about September 13, 2017; (5) Arizona's SIP revision for updates to the Cleaner Burning Gasoline Program, submitted on or about June 17, 2021; (6) Arizona's Reasonably Available Control Technology certification of Maricopa County Air Quality District's Rule 348 pertaining to the 2008 8-hour ozone NAAQS, submitted on or about June 30, 2021; (7) Maricopa County Air Quality District's Rule 336 Surface Coating Operations, submitted on or about September 17, 2021; and (8) Maricopa County Air Quality District's Rule 600 Emergency Episodes, submitted on or about December 17, 2021.

Third, on or around July 27, 2020, the State of Colorado made a SIP submission addressing the 2015 Ozone Marginal Area Certification (Base year inventory and Emission Statement). The proposed consent decree would require EPA to sign a notice of final rulemaking by December 15, 2025.

Fourth, the State of Utah made 11 SIP submissions regarding nonattainment planning requirements such as BACT, BACM, control measures, as well as redesignation requests and maintenance plans, for the Salt Lake City and Provo PM_{2.5} Moderate and Serious nonattainment areas.¹ The proposed consent decree would require EPA to sign final notices of rulemaking on these SIP submissions, as well as on the following SIP submission, by December 15, 2025: Utah's SIP revision addressing Interstate Transport for 2008 Ozone – Prong 2 SIP, submitted on or around January 29, 2020.

In accordance with section 113(g) of the CAA, for a period of 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-2024-0098, 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

¹ Utah's Salt Lake City and Provo PM_{2.5} Moderate SIP submissions under the 2006 24-hour PM_{2.5} NAAQS, submitted on December 23, 2014 and January 19, 2017; Utah's Salt Lake City and Provo PM_{2.5} Serious SIP submissions under the 2006 24-hour PM_{2.5} NAAQS, submitted on April 19, 2018, January 14, 2019, and February 15, 2019; Utah's Salt Lake City and Provo PM_{2.5} redesignation requests under the 2006 24-hour PM_{2.5} NAAQS, submitted on January 13, 2020; Utah's SIP revision addressing R307-208 Outdoor Wood Boilers and R307-230 Water Heaters, submitted on July 21, 2020; and Utah's Part H Removal of SSM for Kennecott Power Plant Parallel Processing, submitted on December 17, 2020.

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.

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