



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2024-0166; FRL-11871-01-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 *Sierra Club v. Michael S. Regan*, No. 1:23-cv-00424-RCL (D.D.C.). On February 15, 2023, Plaintiff Sierra Club filed a complaint in the United States District Court for the District of Columbia alleging that EPA’s failure to issue final Federal plans implementing emissions guidelines for commercial and industrial solid waste incinerators (“CISWI”), and other solid waste incinerators (“OSWI”) in states which had not submitted approvable state plans constituted agency action unreasonably delayed.

**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-2024-0166, 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:** Grace Weatherall, Air and Radiation Law

Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564-1067; email address: Weatherall.Grace@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-2024-0166) 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.**

Plaintiffs filed a complaint in the United States District Court for the District of Columbia alleging that the EPA’s failure to issue final Federal plans implementing emissions guidelines for CISWI and OSWI facilities in states which had not submitted approvable state plans constituted “agency action unreasonably delayed” within the meaning of section 304(a)(2) of the Clean Air Act, 42 U.S.C. 7604(a).

EPA promulgated revised CISWI emission guidelines for existing facilities at 40 CFR subpart DDDD in 2011 and further revised them in February 2013, June 2016, and April 2019.

EPA proposed a Federal plan for existing CISWI facilities in 2017, and to date, EPA has not promulgated a final Federal plan implementing CISWI standards under 42 U.S.C. 7429(b)(3).

EPA promulgated emission guidelines for existing OSWI facilities in December 2005 at 40 CFR subpart FFFF. To date, EPA has not finalized a Federal plan implementing standards for existing OSWI facilities under 42 U.S.C. 7429(b)(3).

Under the terms of the consent decree, with respect to the CISWI emission guidelines at 40 CFR subpart DDDD, no later than September 16, 2024, the appropriate EPA official would be required to sign a final rule establishing a Federal plan under 42 U.S.C. 7429(b)(3) for existing CISWI facilities located in any state which has not submitted an approvable state plan.

Under the terms of the consent decree, with respect to the OSWI emission guidelines at 40 CFR subpart FFFF, (1) no later than June 30, 2026, the appropriate EPA official would be required to sign a proposed rulemaking proposing a Federal plan under 42 U.S.C. 7429(b)(3) for existing OSWI facilities located in any state which has not submitted an approvable state plan; and (2) no later than June 30, 2027, the appropriate EPA official would be required to sign a final rule establishing a Federal plan under 42 U.S.C. 7429(b)(3) for existing OSWI facilities located in any state which has not submitted an approvable state plan.

In accordance with section 113(g) of the CAA, 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. 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-2024-0166, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. The 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. The 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.*

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