



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2012-0554; FRL-9699-6]

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 hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: Sierra Club v. Jackson, No. 12-cv-00013-RWR (D. D.C.). Plaintiff filed a complaint and a first amended complaint alleging that EPA failed to take timely action to approve, disapprove, or approve in part and disapprove in part the state implementation plan (“SIP”) submittals or portions of submittals for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area from North Carolina and South Carolina. The proposed consent decree establishes a deadline of November 30, 2012, for EPA to take action on the North Carolina SIP with respect to the reasonable further progress (“RFP”) for volatile organic compounds (“VOC”) and nitrogen oxides (“NO_x”) requirement and the South Carolina SIP with respect to the RFP for VOC and NO_x and emissions statements requirements. The proposed consent decree also establishes a deadline of May 1, 2013, for EPA to take action on the North Carolina SIP with respect to the reasonable area control technology (“RACT”) for NO_x.

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-2012-

0554, online at www.regulations.gov (EPA's preferred method); by e-mail to oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hogan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-3244; fax number (202) 564-5603; email address: hogan.stephanie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed consent decree.

The proposed consent decree would resolve a lawsuit filed by Sierra Club seeking to compel the Agency to take final action under sections 110(k)(2) and (3) of the CAA, 42 U.S.C. 7410(k)(2) and (3), on the SIP submittals or portions of submittals for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area from North Carolina and South Carolina. Specifically, the lawsuit seeks to compel the Agency to take final action, pursuant to section 110(k) of the CAA, 42 U.S.C. 7410(k), on the 1997 8-hour ozone nonattainment area requirements in the North Carolina SIP, including the emissions inventory, the RFP for VOC and NO_x, the RACT for NO_x for major sources, and the emissions statements. The lawsuit also seeks to compel the Agency to take final action pursuant to section 110(k) of the CAA, 42

U.S.C. 7410(k), on the 1997 8-hour ozone nonattainment area requirements in the South Carolina SIP, including the emissions inventory, the RFP for VOC and NO_x, and the emissions statements.

On April 24, 2012, EPA took final action to approve the SIP submittal submitted by North Carolina addressing the 1997 ozone NAAQS emissions statements requirement for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area. 77 FR 24382. On May 4, 2012, EPA took final action to approve the SIP submittals submitted by North Carolina addressing the 1997 ozone NAAQS emissions inventory for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area. 77 FR 26441. On May 18, 2012, EPA took final action to approve the SIP submittals submitted by South Carolina addressing the 1997 ozone NAAQS emissions inventory for the Charlotte-Gastonia-Rock Hill 1997 8-hour ozone nonattainment area. 77 FR 29540.

The proposed consent decree requires that, no later than November 30, 2012, the appropriate EPA official shall sign a notice of final rulemaking approving, disapproving, or approving in part and disapproving in part the SIP submittals submitted by North Carolina addressing the 1997 ozone NAAQS RFP for VOC and NO_x requirements for the Charlotte-Gastonia-Rock Hill area. The proposed consent decree also requires that, no later than November 30, 2012, the appropriate EPA official shall sign a notice of final rulemaking approving, disapproving, or approving in part and disapproving in part the SIP submittals submitted by South Carolina addressing the 1997 ozone NAAQS RFP for VOC and NO_x, and emissions statements requirements for the Charlotte-Gastonia-Rock Hill area. Finally, the proposed consent decree requires that, no later than May 1, 2013, the appropriate EPA official shall sign a notice of final rulemaking approving, disapproving, or approving in part and

disapproving in part the SIP submittals submitted by North Carolina addressing the 1997 ozone NAAQS RACT for NO_x for major sources requirement for the Charlotte-Gastonia-Rock Hill area.

On June 25, 2012, the EPA issued a direct final rule approving the South Carolina emissions statement. 77 FR 37812. The EPA indicated that the rule will take effect on August 24, 2012, unless EPA receives adverse comment by July 25, 2012, 77 FR 37813. In the event that adverse comment is received on the direct final rule, EPA will withdraw the direct final rule in order to address the comments and there will be no change to the deadlines and obligations contained in the proposed consent decree. However, in the event that adverse comment is not received on the direct final rule, the rule will take effect as scheduled. In the latter case, the EPA intends to remove from the proposed consent decree the obligation to act on the South Carolina emissions statement by November 30, 2012, as the EPA will have already satisfied that obligation.

The proposed consent decree requires that, following signature, EPA shall promptly deliver the notice to the Office of the Federal Register for publication in the Federal Register and shall thereafter provide a copy of the notice to Plaintiff within ten (10) days. After EPA fulfills its obligations under the proposed consent decree, the consent decree may be terminated.

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 were 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 consent decree should be withdrawn, the terms of the proposed consent decree will be affirmed.

II. Additional information about commenting on the proposed consent decree.

A. How Can I Get A Copy Of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2012-0554) 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 to 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: July 5, 2012.

Patricia A. Embrey,
Acting Associate General Counsel.

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