



ENVIRONMENTAL PROTECTION AGENCY

FRL-9792-1

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 ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Preserve Pepe'ekeo Health and Environment in the United States District Court for the District of Hawaii: Preserve Pepe'ekeo Health and Environment v. EPA, No. CV 12 00520 ACK-RLP (D. HI). On September 19, 2012, Preserve Pepe'ekeo Health and Environment filed a complaint that EPA failed to perform its nondiscretionary duty pursuant to section 505(b)(2) of the Act, 42 U.S.C. 7661d(b)(2), to grant or deny, within 60 days after it was filed, a petition requesting that EPA object to a proposed title V operating permit for the Hu Honua Bioenergy Facility issued by the Hawai'i Department of Health to Hu Honua. Under the terms of the proposed consent decree, EPA would be required to sign its response to Plaintiff's petition by August 7, 2013, or within 30 days of the entry of this Consent Decree, whichever is later.

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-2029-0477, online at www.regulations.gov (EPA's preferred method); by e-mail to oei.docket@epa.gov; mailed 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: Susan Stahle, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-1272; fax number (202) 564-5603; email address: stahle.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed consent decree.

The proposed consent decree would settle Plaintiff's claims in a title V deadline suit concerning an administrative petition dated August 29, 2011, to object to a permit issued by the Hawai'i Department of Health to Hu Honua to operate a Bioenergy Facility, a power generating facility that is proposed to be built in Pepe'ekeo, Hawai'i. The proposed consent decree would require EPA to sign its response to Plaintiff's petition by August 7, 2013, or within 30 days of the entry of this Consent Decree, whichever is later. Once EPA has signed its response, EPA would be required to expeditiously deliver notice of its response to the Office of the Federal Register for publication. In addition, the proposed consent decree would require EPA to promptly transmit its determination to Preserve Pepe'ekeo Health and Environment and, if such determination contains an objection in whole or in part, to the State of Hawai'i, Department of Health. Under the proposed consent decree, once EPA has met these obligations, and any claims by Plaintiffs for costs of litigation have been resolved pursuant to the process provided in the proposed consent decree, the court would dismiss the suit with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive 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 the consent decree should be withdrawn, the terms of the 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 ?

Direct your comments to the official public docket for this action under Docket ID No. EPA-HQ-OGC- 2029-0477 which contains a copy of the 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 the 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, select “search,” then key in the appropriate docket identification number.

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: March 12, 2013.

Lorie J. Schmidt,
Associate General Counsel.