



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

[FRL-9950-99-OGC; EPA-HQ-OGC-2016-0364]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed consent decree; request for public comment.

SUMMARY: Supplemental notice is hereby given for the Wyoming portions of a proposed consent decree to address a lawsuit filed by the Sierra Club (“Plaintiff”) in the United States District Court for the Northern District of California: Sierra Club v. Gina McCarthy, No. 3:15-cv-04328-JD (N.D. Cal.). On September 22, 2015, Plaintiffs filed this matter against Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”). On February 9, 2016, Plaintiff filed a first amended complaint alleging that, with respect to the 2008 ozone national ambient air quality standards (“NAAQS”), EPA has failed to perform non-discretionary duties to take final action on portions of the state implementation plan (“SIP”) submission from Wyoming intended to address various interstate transport requirements. The proposed consent decree would establish a deadline for EPA to take certain specified actions.

DATES: Written comments on the Wyoming portions of the proposed consent decree must be received by [INSERT DATE 15 DAYS AFTER PUBLICATION DATE].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2016-0364, online at www.regulations.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public

docket. Do not submit electronically 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, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Zachary Pilchen, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564-2812; fax number (202) 564-5603; email address: pilchen.zach@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed consent decree and this supplemental notice with regard to Wyoming.

This proposed consent decree would resolve a lawsuit filed by Plaintiffs seeking to compel the Administrator to take action under Clean Air Act (“CAA”) section 110(k)(2)–(4). As relevant to this supplemental notice, Plaintiffs allege that the Administrator has failed to perform a non-discretionary duty to take final action on portions of Wyoming’s SIP submission intended to address the requirements of 42 U.S.C. 7410(a)(2)(D)(i) for the 2008 ozone NAAQS.

EPA previously published notice of this proposed consent decree on June 29, 2016.¹ The

¹ 81 FR 42351 (June 29, 2016).

“Summary” section of that notice listed a number of states with SIP submissions relevant to the proposed consent decree and notice, including Wyoming. The proposed consent decree itself—to which the notice directed readers for more details—included the specific claims and dates relevant to Wyoming. The Wyoming Department of Environmental Quality (“WDEQ”) submitted comments on the proposed consent decree, including with respect to those proposed consent decree dates, which WDEQ accurately characterized as “Proposed Consent Decree Deadlines Applicable to Wyoming’s Submittal.”²

A separate part of that June 29, 2016 notice, however, included a scrivener’s error. In the “Supplementary Information” section, the notice briefly summarized (in alphabetical order by state) the allegations regarding SIP submissions. As WDEQ noted in its comment letter, despite Wyoming’s inclusion in the “Summary” section of the notice, the “Supplementary Information” section did not list Wyoming, and instead listed Wisconsin as both of the two final states.³ The second reference to Wisconsin was a scrivener’s error that should have referred to Wyoming, as WDEQ correctly concluded in its comments on the proposed consent decree deadlines for Wyoming.

WDEQ commented, however, that as a result of this error the notice was “unclear” about “what allegation details” apply to Wyoming.⁴ CAA section 113(g) requires notice of a proposed consent decree; supplementary information about the allegations is not required. However, as a courtesy and out of an abundance of caution, for a period of fifteen (15) days following the date of publication of this supplemental notice, the Agency will accept written comments relating solely to the Wyoming portions of the proposed consent decree from persons who are not named

² See Comment of WDEQ at 1, Docket No. EPA-HQ-OGC-2016-0364-0004.

³ See 81 FR at 42351, col. 3.

as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the Wyoming portions of 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 consent decree will be affirmed.

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

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

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2016-0364) 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 the 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.”

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

⁴ Comment of WDEQ at 1.

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. 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: August 10, 2016.

Lorie J. Schmidt,
Associate General Counsel.

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