



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0368; FRL-10012-76-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 section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), notice is given of a proposed consent decree in *Our Children’s Earth Foundation v. Wheeler*, No. 3:19-cv-07125 (N.D. Cal.). On October 29, 2019, Our Children’s Earth Foundation filed a complaint in the United States District Court for the Northern District of California, alleging that the Administrator of the United States Environmental Protection Agency (“EPA”) failed to perform non-discretionary duties to review the existing New Source Performance Standards (“NSPS”) governing Secondary Lead Smelters (“Secondary Lead Smelters NSPS”); Lead-Acid Battery Manufacturing Plants (“Lead-Acid Battery Manufacturing NSPS”); Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines (“Industrial Surface Coating of Plastic Parts for Business Machines NSPS”); and Automobile and Light Duty Truck Surface Coating Operations (“Automobile and Light Duty Truck Surface Coating Operations NSPS”), and to review the existing National Emission Standards for Hazardous Air Pollutants (“NESHAP”) governing Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards (“Dry Cleaning Facilities NESHAP”); Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (“Paint Stripping and Miscellaneous Surface Coating Operations NESHAP”), and Lead Acid Battery Manufacturing Area Sources (“Lead Acid Battery Manufacturing NESHAP”). The proposed consent decree would establish deadlines for EPA to take action on these source categories.

**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-2020-0368, 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. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Stacey Simone Garfinkle, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200

Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-3103; email address: garfinkle.stacey@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-2020-0368) contains a copy of the proposed consent decree.

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 resolve a lawsuit filed by Our Children’s Earth Foundation seeking to compel the Administrator to take action under the Clean Air Act to review, and if appropriate revise, the Secondary Lead Smelters NSPS, Lead-Acid Battery Manufacturing Plants NSPS, Industrial Surface Coating of Plastic Parts for Business Machines NSPS, and Automobile and Light Duty Truck Surface Coating Operations NSPS at least every 8 years under section 111(b)(1)(B) of the Act, and to review, and revise if necessary (taking into account developments in practices, processes, and control technologies), the Dry Cleaning Facilities NESHAP, Paint Stripping and Miscellaneous Surface Coating Operations NESHAP, and Lead Acid Battery Manufacturing NESHAP no less often than every 8 years under section 112(d)(6) of the Act.

Under the terms of the proposed consent decree, EPA shall review, and revise if necessary, the above source categories by the deadlines established in the proposed consent decree. Beginning on January 1, 2021, EPA will provide Our Children's Earth Foundation with status reports every 180 days to inform Plaintiff as to whether the Agency is making reasonable progress toward meeting the deadlines proposed in the consent decree, and whether the Agency anticipates any difficulties in meeting the deadlines with an explanation of the difficulty or difficulties.

For a period of thirty (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-2020-0368, 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.

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Associate General Counsel.

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