# Stationary Combustion Engines/New Source Performance Standards: Environmental Defense Fund and U.S. Environmental Protection Agency Enter into Consent Decree Addressing Alleged Failure to Undertake Clean Air Act Nondiscretionary Duty

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The United States Environmental Protection Agency ("EPA") published in the June 13th Federal Register a notice that it had entered into a Consent Decree with the Sierra Club and Environmental Defense Fund (collectively "Sierra Club") resolving a citizen suit action alleging a failure to perform a nondiscretionary duty under the Clean Air Act. See 88 Fed. Reg. 38507.

Sierra Club had filed a citizen suit Complaint alleging that the Administrator of EPA failed to review and revise the air pollution limits applicable to stationary combustion turbines every eight years as required by Section 7411(b)(1)(B) of the Clean Air Act.

Section 7411 of the Clean Air Act addresses New Source Performance Standards ("NSPS"). These are applicable to new, modified, or reconstructed stationary sources for which EPA has promulgated NSPS regulations.

The Complaint outlined the history of the NSPS that had been previously promulgated for stationary combustion turbines at 40 C.F.R. Subpart GG, 40 C.F.R. § 60.330. The first NSPS for this category was promulgated on September 10, 1979. See 44 Fed. Reg. 52,798. EPA then proposed to revise those standards in 2005 which were finalized on July 6, 2006. See 71 Fed. Reg. 38,481.

The Complaint alleged that more than eight years had passed since EPA last revised the relevant NSPS. Sierra Club asked that a mandatory injunction be entered against the Administrator to carry out the cited nondiscretionary duties.

The proposed Consent Decree would require that EPA issue a proposed action by November 2024. Further, it would be required to take final action by November 2025. The proposed Consent Decree is undergoing a 30-day public comment period.

A copy of the Federal Register Notice can be downloaded here.