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September 29, 2022

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Hon. Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Notice of Intent to File Suit Under the Clean Air Act

Dear Mr. Regan:

Pursuant to the Clean Air Act (“CAA”) at 42 U.S.C. § 7604(b)(2), the Environmental Defense Fund and Sierra Club (“Claimants”) hereby provide notice that they intend to sue the Administrator for his failure to review within the last eight years, and revise if necessary, the New Source Performance Standards (“NSPS”) for NO_x emissions from stationary combustion turbines at 40 C.F.R. Part 60, Subpart KKKK, as required by CAA § 7411(b)(1)(B). In light of the community health and climate benefits of coordinating emission standards pertaining to power plant pollution, Claimants request that EPA also review, and if appropriate revise, the greenhouse gas emission limits for stationary combustion turbines at 40 C.F.R. Part 60, Subpart TTTT as part of the same proceeding.

- A. EPA’s Nondiscretionary Duty to Review and Revise if Necessary the Subpart KKKK rule.

CAA § 7411(b)(1)(B) directs the Administrator to promulgate “standards of performance” regulating emissions from new or modified stationary sources. Pursuant to this provision, EPA has promulgated over 70 NSPSs, including standards for stationary combustion turbines at 40 C.F.R. Part 60, Subpart KKKK¹ (NO_x and SO₂ emissions).

¹ Subpart KKKK applies to stationary combustion turbines with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour. 40 C.F.R. § 60.4305(a).

The last revision of Subpart KKKK (40 C.F.R. § 60.4300 et seq.) was proposed on February 18, 2005 (70 Fed. Reg. 8314), and finalized on July 6, 2006 (71 Fed. Reg. 38,482). More than eight years have thus passed since Subpart KKKK was last revised.

CAA § 7411(b)(1)(B) provides in relevant part:

The Administrator shall, **at least every 8 years**, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(Emphasis added.)

B. EPA's Failure to Perform Nondiscretionary Duty to Review and Revise if Necessary Subpart KKKK.

More than eight years have elapsed since Subpart KKKK was proposed on February 18, 2005 and issued as final on July 6, 2006, yet the Administrator has failed to perform his nondiscretionary duty to either: (a) review and, if appropriate, revise the applicable stationary combustion turbine NSPS for all applicable pollutant emissions, including but not limited to, NO_x, or (b) determine that such review is not appropriate in light of readily available information on the efficacy of such standard.

The current NO_x emission standards in Subpart KKKK, ranging from 15 parts per million (ppm) for new natural gas-fired electricity generating turbines with a heat input greater than 850 MMBtu/hour, to 42 ppm for those with a heat input of 50 MMBtu/hour or less, do not reflect "the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." 42 U.S.C. § 7411(a)(1).

There are numerous examples of combustion turbines permitted and operating at levels as low as 2 ppm of NO_x using selective catalytic reduction (SCR),

an emission rate 87 percent lower than the current most stringent NSPS limit of 15 ppm. SCR is a mature control system that has long been demonstrated for both combined cycle and simple cycle combustion turbines. Aero-derivative stationary turbines can be even more compatible with SCR control systems than frame-type simple cycle turbines due to their lower exhaust gas temperatures, and these combustion turbines also have lower operating costs than frame-type units due to higher efficiencies (i.e., lower heat rates). There are also several examples of frame-type simple cycle combustion turbines in California successfully employing SCR to meet strict NO_x standards. For example, the Marsh Landing Generating Station in Contra Costa County, California has a rated capacity of 760 MW with four natural gas-fired simple cycle turbines that began operation on May 1, 2013, and that employ SCR with an air tempering system to achieve NO_x emission limits of ≤ 2.5 ppm.

In light of the above, the Administrator should revise the Subpart KKKK NO_x standards to reflect the use of SCR. We further propose that, to ensure compliance with the best system of emission reduction, EPA express the revised standard in terms of both pounds of NO_x per MMBtu and pounds of NO_x per megawatt hour, each of which being independently enforceable.

C. Request for Review and Revision of the GHG Emission Limit
Applicable to NSPS Subpart TTTT

Claimants also request that the Agency currently review and revise the greenhouse gas emission limit for combustion turbines at 40 C.F.R. § 60, Subpart TTTT. It has been more than eight years since that standard was proposed on January 8, 2014, and by October of next year it will have been eight years since it was finalized on October 23, 2015.

The current Subpart TTTT standard acknowledges that fossil fuel-fired electric generating units emit multiple greenhouse gases, including CO₂, methane (CH₄), and nitrous oxide (N₂O).² However, the standards in the rule are limited to CO₂ limits, expressed in pounds per megawatt hour. Accordingly, we request that EPA establish a comprehensive CO_{2eq} emission limit for stationary combustion turbines at Subpart TTTT, expressed in pounds of CO_{2eq} per megawatt-hour. The standard should be based on the best systems of emission reduction for all greenhouse gases emitted by the facility.

² See Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510, 64,536-37 (Oct. 23, 2015).

E. Notice of Intent to Sue

Please take notice that after expiration of sixty (60) days from the postmark date of this notice of intent to sue, Claimants intend to file suit against you in federal court for your failure to act in accordance with, or fulfill a duty created in, CAA § 7411(b)(1)(B).

D. Our Contact Information

As required by 40 C.F.R. § 54.3, we provide our names and addresses, which are as follows:

Environmental Defense Fund
1875 Connecticut Ave, NW, Suite 600
Washington, DC 20009

Environmental Defense Fund
2060 Broadway St, Ste 300
Boulder, Colorado 80302

Sierra Club
2101 Webster St., Ste. 1300
Oakland, CA 94612

Sierra Club
50 F St. NW, 8th Floor
Washington, DC 20001

E. Our Counsel

Counsel's contact information is as follows:

Reed Zars
Attorney at Law
910 Kearney St.
Laramie, WY 82070
307-760-6268
reed@zarlaw.com

During the sixty (60) day notice period, we would be willing to discuss effective measures to correct your failure to comply with CAA § 7411(b)(1)(B) and to discuss any information which bears upon this notice. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate them substantially before the end of the 60-day period so that they may be completed before the end of that period. We do not intend to delay the filing of a complaint in federal court if the discussions fail to resolve these matters within the notice period,

and we intend to seek all appropriate relief, including injunctive relief and all costs of litigation, including, but not limited to, attorneys' fees, expert witness fees, and other costs.

We believe this notice provides information sufficient for you to determine that you have failed to perform your mandatory duty. If, however, you have any questions, please feel free to contact us for clarification.

We look forward to hearing from you.

Yours Sincerely,



Reed Zars

cc: Merick Garland, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Martha Guzman, Regional Administrator
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105