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8 *Application pending for admission pro hac vice*

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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

12 **ENVIRONMENTAL DEFENSE FUND and**
13 **SIERRA CLUB,**

14 Plaintiffs,

15 v.

16 **UNITED STATES ENVIRONMENTAL**
17 **PROTECTION AGENCY,**

18 Defendant.

) Case No.: 3:22-cv-7731

) COMPLAINT

19 **I. STATEMENT OF THE CASE**

20 1. Plaintiffs bring this civil action under the Clean Air Act’s citizen suit provision, 42
21 U.S.C. § 7604(a)(2), to require the Administrator of the Environmental Protection Agency to
22 perform his nondiscretionary duty to review and revise the air pollution emission limits applicable
23 to stationary combustion turbines every eight years. 42 U.S.C. § 7411(b)(1)(B). The last emission
24 limits for these facilities were proposed in 2005 and finalized in 2006, over 16 years ago.

25 **II. JURISDICTION AND VENUE**

26 2. JURISDICTION: This court has subject matter jurisdiction over the claims in this
27 complaint pursuant to 42 U.S.C. § 7604(a)(2), 28 U.S.C. §§ 2201 and 2202, and 28 U.S.C. § 1361.
28

1 3. VENUE: Venue lies in the Northern District of California, pursuant to 28 U.S.C.
2 § 1391(b) and (e), because the action arises in the Northern District of California and because the
3 United States Environmental Protection Agency (“EPA”) has an office located in San Francisco,
4 California.

5 4. DIVISIONAL ASSIGNMENT: This case should be assigned to the San Francisco
6 Division or the Oakland Division because Defendant EPA’s regional office is located in San
7 Francisco County, and this is a District-wide matter.

8 5. Plaintiffs bring this action to compel the EPA to perform nondiscretionary duties
9 under the Clean Air Act (“CAA” or “the Act”). Specifically, the EPA Administrator
10 (“Administrator”) has failed to perform his nondiscretionary duty to review and revise the air
11 pollution emission limits, called new source performance standards (“NSPS”), for new, modified
12 and reconstructed stationary combustion turbines (“new combustion turbines”) as mandated by the
13 Act at 42 U.S.C. § 7411(b)(1)(B).

14 6. On September 29, 2022, plaintiffs served written notice on the Administrator of the
15 matters complained of herein pursuant to 42 U.S.C. § 7604(b) and 40 C.F.R. §§ 54.1-3. More than
16 sixty days have passed since plaintiffs served such notice.

17 III. PARTIES

18 7. Plaintiff Environmental Defense Fund (“EDF”) is a national nonprofit organization
19 with over 400,000 members that links science, economics, and law to create innovative, equitable,
20 and cost-effective solutions to urgent environmental problems. EDF has long pursued initiatives
21 at the state and national levels designed to reduce emissions of health-harming and climate-
22 altering air pollutants from stationary, mobile and area sources. EDF brings this action on behalf
23 of its adversely affected members.

24 8. Plaintiff Sierra Club is a national conservation organization with approximately
25 735,000 members. Sierra Club’s mission is to explore, enjoy, and protect the wild places of the
26 earth; to practice and promote the responsible use of the earth's ecosystems and resources; to
27 educate and enlist humanity to protect and restore the quality of the natural and human
28 environment; and to use all lawful means to carry out these objectives. In advancing these

1 objectives, Sierra Club works to safeguard and enhance the quality of air throughout the country,
2 in large part by seeking protective pollution standards for industrial facilities such as new
3 combustion turbines and other sources of emissions. Sierra Club brings this action on behalf of its
4 adversely affected members.

5 9. Plaintiffs' members reside in, work in, or regularly visit and use the atmospheric
6 and terrestrial resources immediately impacted by the Administrator's violations of the Act. The
7 health, environmental, economic, aesthetic and recreational interests of plaintiffs' members have
8 been and will continue to be injured by the Administrator's failure to perform the nondiscretionary
9 duties complained of herein. These injuries are exacerbated by climate impacts driven by
10 greenhouse gas emissions from the same combustion turbines.

11 10. The interests of plaintiffs' members who are being, and will be directly injured by
12 the Administrator's failure to review and revise the NSPS for new combustion turbines include,
13 but are not limited to: (1) breathing air free from excessive, health-impairing pollutant emissions
14 from new, under-regulated combustion turbines, (2) viewing natural scenery and wildlife
15 unimpaired by ugly pollution that is caused, in whole or in part, by under-regulated emissions
16 from new combustion turbines, and (3) enjoying the benefits of lakes, rivers, streams, terrestrial
17 ecosystems, and other natural environments unsullied by the atmospheric fallout of under-
18 regulated pollutants from new combustion turbines.

19 11. Under the Clean Air Act, air pollution effects on "welfare" include, but are not
20 limited to, harmful impacts to "soils, water, crops, vegetation, manmade materials, animals,
21 wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to
22 transportation, as well as effects on economic values and on personal comfort and well-being,
23 whether caused by transformation, conversion, or combination with other air pollutants." 42
24 U.S.C. § 7602(h).

25 12. Avoidable emissions of air pollutants from new combustion turbines adversely
26 affect the health and welfare of plaintiffs' members. If EPA issues a revised NSPS for new
27 combustion turbines it is more likely than not that emissions from such plants will be less than
28 they would be if only regulated under the current NSPS.

1 energy requirements) the Administrator determines has been adequately demonstrated.” 42 U.S.C.
2 § 7411(a)(1); *Essex Chemical Corp. v. Ruckelshaus*, 486 F.2d 427, 433 (D.C. Cir. 1973).

3 20. According to 42 U.S.C. § 7411(b)(1)(B):

4 The Administrator shall, at least every 8 years, review and, if appropriate, revise such
5 standards following the procedure required by this subsection for promulgation of such
6 standards. Notwithstanding the requirements of the previous sentence, the Administrator
7 need not review any such standard if the Administrator determines that such review is not
8 appropriate in light of readily available information on the efficacy of such standard.

9 V. FACTUAL BACKGROUND

10 21. On September 10, 1979, EPA promulgated the first NSPS for stationary
11 combustion turbines at 40 C.F.R. Subpart GG, 40 C.F.R. § 60.330, 44 Fed. Reg. 52,798.

12 22. On February 18, 2005, 26 years later, EPA proposed to revise those standards at
13 Subpart KKKK. 40 C.F.R. § 60.4300 et seq., 70 Fed. Reg. 8314. EPA finalized this revision on
14 July 6, 2006. 71 Fed. Reg. 38,481.

15 23. More than eight years have passed since EPA last revised Subpart KKKK.

16 24. Since EPA’s last revision of those standards, the agency has neither determined that
17 revision of the standards would be inappropriate, nor has it revised such standards.

18 25. The most stringent NOx emission limit for new combustion turbines in the current
19 NSPS is 15 parts per million (ppm).

20 26. Today, combustion turbines such as the Marsh Landing Generating Station in
21 Contra Costa County, California, are operating at NOx emission rates as low as 2.5 ppm using
22 selective catalytic reduction (SCR) technology. This emission rate is 87 percent lower than the
23 current NSPS’s 15 ppm NOx emission limit for comparable combustion turbines subject to that
24 rule.

25 27. EPA’s current NOx emission limits under Subpart KKKK do not reflect “the
26 degree of emission limitation achievable through the application of the best system of emission
27 reduction which (taking into account the cost of achieving such reduction and any nonair quality
28 health and environmental impact and energy requirements) the Administrator determines has been
adequately demonstrated.” 42 U.S.C. § 7411(a)(1).

36. Plaintiffs are suffering and will continue to suffer irreparable harm because of the Administrator’s failure to timely perform these nondiscretionary duties.

VII. RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully request the Court:

A. DECLARE that the Administrator is in violation of his 42 U.S.C. § 7411(b)(1)(B) nondiscretionary duty to review and, unless inappropriate, revise the current NSPS within eight years.

B. ISSUE A MANDATORY INJUNCTION requiring the Administrator to carry out his 42 U.S.C. § 7411(b)(1)(B) nondiscretionary duty by,

1. Issuing a proposed revision of the NSPS for new combustion turbines, or a final decision not to revise such NSPS, within 120 days, and
2. Issuing a final revision of the NSPS for new combustion turbines by December 15, 2023, unless he decided not to revise such NSPS as provided for in B.1. above.

C. Retain jurisdiction over this matter for purposes of enforcing and effectuating the Court’s order;

D. Grant plaintiffs their reasonable costs of litigation, including their attorneys’ and expert witness fees; and,

E. Grant such further relief as the Court deems just and proper.

DATED this 7th day of December, 2022.

ENVIRONMENTAL DEFENSE FUND &
SIERRA CLUB, Plaintiffs

s/George E. Hays

s/Reed Zars

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