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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 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).

1 28. For over eight years, EPA has had a nondiscretionary duty to review and revise the
2 best system of reducing NOx emissions from new combustion turbines. This entails a review and
3 revision not only of the technology that forms the basis of EPA's determination of the best system
4 of emission reduction, but also of the terms, units, and averaging times of EPA's standards in
5 order to ensure the greatest reduction of NOx.

6 29. The U.S. Department of Energy's Energy Information Administration projects that
7 nearly 120 Gigawatts of new combustion turbine electricity generation capacity will be
8 constructed in the country between 2022 and 2030, an increase of nearly 30 percent with respect to
9 current capacity.¹

10 30. If EPA complies with its nondiscretionary duty to review and revise the NSPS for
11 new combustion turbines, the agency will likely issue significantly more stringent NOx limits for
12 those facilities, resulting in a substantial reduction of harmful pollution nationwide.

13 31. Plaintiffs incorporate by reference and reallege the allegations contained in
14 paragraphs 1 through 30 for the cause of action set forth below.

15 VI. CAUSE OF ACTION

16 Failure to Review and Revise New Combustion Turbine NSPS Within Eight Years

17 32. The Administrator has a nondiscretionary duty to, at least every eight years, review
18 and, unless inappropriate, revise the NSPS for new combustion turbines. 42 U.S.C. §
19 7411(b)(1)(B).

20 33. More than eight years have passed since EPA last promulgated the NSPS for new
21 combustion turbines.

22 34. Since that time, the Administrator has neither reviewed and revised the NSPS for
23 new combustion turbines nor determined that revision of the NSPS would be inappropriate.

24 35. Therefore, the Administrator is in violation of 42 U.S.C. § 7411(b)(1)(B) and has
25 been since the eight-year deadline expired for EPA to either review and revise the current NSPS
26 for new combustion turbines or determine that revision was inappropriate.

27
28 ¹ EIA, Annual Energy Outlook 2022, Table 9: Electric Generating Capacity (AEO2022 reference case)
(March 3, 2022), <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=9-AEO2022&cases=ref2022&sourcekey=0>.

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