

Flares/New Source Performance Standards: Environmental Organizations Notice of Intent to Sue for Alleged Failure to Perform a Nondiscretionary Duty (Failure to Review)



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06/17/2020

The Environmental Integrity Project and nine other environmental organizations (collectively “EIP”) sent a June 11th letter to the United States Environmental Protection Agency (“EPA”) styled:

Notice of Intent to Sue the Environmental Protection Agency for Failure to Perform a Nondiscretionary Duty Under the Clean Air Act (“NOI”)

The NOI alleges that EPA has failed to review the general control device requirements for flares (“General Flare Requirements”) under the New Source Performance Standards (“NSPS”) at least every eight years as required by Section 111(b) of the Clean Air Act.

The NOI alleges that EPA has not conducted the referenced review of the General Flare Requirements since their initial promulgation in 1986.

The modern version of the Clean Air Act provided for NSPS when it was enacted in 1970. They establish standards of performance for new or modified emission sources for certain identified industries that are required to reflect:

The best system of emission reduction. . . the Administrator determines has been adequately demonstrated.

Flaring has been described as an engineering practice that provides for process equipment to immediately release gases to a device (i.e., a flare) where they can be incinerated. The purpose includes prevention of damages, fires and explosions. They may be also used to convert gases released in emergency to less hazardous or objectionable emissions by burning of the gases.

The NOI argues that 34 years after their original promulgation, the General Flare Requirements “no longer reflect the best system of emission reduction.” It cites as an example the minimum heating values required under the current rules which apply to vent gas that enters the bottom of the flare, stating:

Industry studies and EPA’s own research have confirmed that because monitoring is poor or infrequent, vent gas is often assumed to have the required heating value when it does not.

EIP states that it intends to file suit against EPA pursuant to Section 304(a)(2) of the Clean Air Act which authorizes citizen suits “against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.”

A copy of the NOI can be downloaded [here](#).