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# Flares/Clean Air Act: Environmental Organizations and U.S. Environmental Protection Agency Enter into Consent Decrees Regarding Alleged Failure to Undertake Certain Non-Discretionary Duties

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The Environmental Integrity Project and nine other environmental organizations entered into proposed consent decrees with the United States Environmental Protection Agency (“EPA”) to resolve a Clean Air Act citizen suit that alleged a failure to undertake certain non-discretionary duties under the Clean Air Act.

The other environmental organizations included:

- Clean Air Council
- Air Alliance Houston
- Chesapeake Climate Action Network
- Earthworks
- Environment America
- Environment Texas
- Hoosier Environmental Council
- PennEnvironment
- Texas Campaign for the Environment

(collectively, “EIP”)

The Complaint had included an allegation that EPA failed to undertake certain Clean Air Act non-discretionary duties related to flares.

EIP alleged that EPA failed to review the general control device requirements for flares under the New Source Performance Standards at least every eight years as required by Section 111(b) of the Clean Air Act.

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 also be used to convert gases releases in an emergency to less hazardous or objectionable emissions by burning of the gases.

Some flaring has been criticized as occurring in routine, non-emergency situations such as being used to bypass pollution control equipment. The argument is that some facilities have violated the requirement that they operate their facilities in a manner consistent with good air pollution practices for minimizing emissions. In other words, repeated or regularly occurring incidents of flaring are argued to be anticipated and therefore, not classified as malfunctions.

The consent decrees impose upon EPA a requirement that it establish a date certain by which it will fulfill alleged obligations under Clean Air Act Sections 111(b)(1)(B) and 112(d)(6).

A copy of the consent decrees can be downloaded below.

<https://environmentalintegrity.org/wp-content/uploads/2022/08/Consent-decree-1.pdf>

<https://environmentalintegrity.org/wp-content/uploads/2022/08/consent-decree-2.pdf>