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Stationary Combustion Engines/New Source Performance Standards: Environmental Organizations File Citizen Suit Action Against U.S. Environmental Protection Agency Alleging Failure to Perform Clean Air Act Nondiscretionary Duty

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The Sierra Club and the Environmental Defense Fund (collectively, “Sierra Club”) filed a December 8th Clean Air Act citizen suit action against the United States Environmental Protection Agency (“EPA”) alleging a failure to perform a nondiscretionary duty under the Clean Air Act. See Case No. 3:22-cv-7731.

The Complaint alleges that the Administrator of EPA failed to review and revise the air pollution emission limits applicable to stationary combustion turbines every eight years as required by Section 7411(b)(1)(B) of the Clean Air Act.

Section 7411 of the Clean Air Act addresses New Source Performance Standards (“NSPS”). These are applicable to new, modified, or reconstructed stationary sources for which EPA has promulgated NSPS regulations.

The Complaint outlines the history of the NSPS that have been previously promulgated for stationary combustion turbines at 40 CFR Subpart GG, 40 C.F.R § 60.330. The first NSPS for this category was promulgated on September 10, 1979. See 44 Fed. Reg. 52,798. EPA then proposed to revise those standards in 2005 which were finalized on July 6, 2006. See 71 Fed. Reg. 38,481.

The Complaint alleges that more than eight years have passed since EPA last revised Subpart KKKK. It further argues that certain combustion turbines are operating pursuant to much lower NOx emission limits than are currently found in the NSPS for stationary combustion turbines. As a result, it is argued that the current Subpart KKKK emission limits 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.

Further cited is a United States Department of Energy's Energy Information Administration projection that nearly 120 Gigawatts of new combustion turbine electricity generation capacity will be constructed in the United States between 2022 and 2030.

The Complaint asks that a mandatory injunction be entered against the Administrator to carry out the cited nondiscretionary duties, which would include:

- Issue a proposed revision of the NSPS for new combustion turbines, or a final decision not to revise such NSPS within 120 days
- Issue a final revision of the NSPS for new combustion turbines by December 15, 2023, unless he decides not to revise such NSPS

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