

the submittal was announced on EPA's transportation conformity Web site, and no comments were submitted. The finding is available at EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). The Transportation Conformity Rule in 40 CFR 93.109(k) states that a regional emissions analysis is no longer necessary if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor. A finding of insignificance does not change the requirement for a regional analysis for other pollutants and precursors and does not change the requirement for hot spot analysis. We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

The finding and the response to comments are available at EPA's transportation conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: November 17, 2009.

**Walter W. Kovalick Jr.,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9-29075 Filed 12-4-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL\_9089-7]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by WildEarth Guardians in the United States District Court for the Northern District of California: *WildEarth Guardians v. Jackson*, No. 4:09-CV-02453-CW (N.D. CA). On June 3, 2009, Plaintiff filed a complaint alleging that EPA failed to perform a non-discretionary duty to either approve a State Implementation Plan ("SIP") or promulgate a Federal Implementation Plan ("FIP") for California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon to satisfy the requirements of Clean Air Act section 110(a)(2)(D)(i), 42 U.S.C. 7410(a)(2)(D)(i), with regard to the 1997 National Ambient Air Quality Standards ("NAAQS") for 8-hour ozone and fine particulate matter ("PM<sub>2.5</sub>"). Under the terms of the proposed consent decree, deadlines are established for EPA to take action.

**DATES:** Written comments on the proposed consent decree must be received by *December 7, 2009*.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2009-0849, online at [www.regulations.gov](http://www.regulations.gov) (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

### FOR FURTHER INFORMATION CONTACT:

Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460; telephone: (202) 564-5601; fax number (202) 564-5603; e-mail address: [wilcox.geoffrey@epa.gov](mailto:wilcox.geoffrey@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Additional Information About the Proposed Consent Decree

The proposed consent decree would settle the complaint filed by Plaintiff for EPA's alleged failure either to approve a State Implementation Plan ("SIP") or promulgate a Federal Implementation Plan ("FIP") for California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon to satisfy the requirements of Clean Air Act section 110(a)(2)(D)(i), 42 U.S.C. 7410(a)(2)(D)(i) with regard to the 1997 National Ambient Air Quality Standards ("NAAQS") for 8-hour ozone and fine particulate matter ("PM<sub>2.5</sub>"). Under the terms of the proposed consent decree, after the date of lodging of the proposed consent decree, the Administrator shall sign a notice or notices either approving a State Implementation Plan ("SIP"), promulgating a Federal Implementation Plan ("FIP") or approving a SIP in part with promulgation of a partial FIP, for California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon to satisfy the four separate requirements of Clean Air Act section 110(a)(2)(D)(i), 42 U.S.C.

7410(a)(2)(D)(i), with regard to the 1997 National Ambient Air Quality Standards ("NAAQS") for 8-hour ozone and fine particulate matter ("PM<sub>2.5</sub>") as identified by the deadlines specified for each requirement in the consent decree. These dates fall 6 months, 12 months, or 18 months from the date of lodging of the proposed consent decree, depending upon the specific requirements of section 110(a)(2)(D)(i) and the specific state in question. In addition, under the proposed consent decree, if any of the States has not submitted an administratively complete proposed SIP to address the visibility requirement of 42 U.S.C.

7410(a)(2)(D)(i)(II) by 6 months after lodging of the proposed consent decree, then by 12 months after lodging of the proposed consent decree, the Administrator shall sign a notice or notices proposing for each such State either promulgation of a FIP, approval of a SIP (if one has been submitted in the interim), or partial promulgation of a FIP and partial approval of a SIP, to address the visibility requirement.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to

the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

## II. Additional Information About Commenting on the Proposed Consent Decree

### A. How Can I Get a Copy of the Proposed Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2009-0849) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket

materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

### B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD-ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: November 26, 2009.

**Richard B. Ossias,**

*Associate General Counsel.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9089-6]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by WildEarth Guardians in the United States District Court for the District of Colorado: *WildEarth Guardians v. Jackson*, No. 09-cv-02109-MSK-KLM (D. CO.). On September 3, 2009, Plaintiff filed a complaint alleging: (a) That EPA failed to perform a mandatory duty under section 110(k)(5) of the CAA, 42 U.S.C. 7410(k)(5), to require the State of Utah to revise the State Implementation Plan regarding Utah Regulation 307-107-1 through 307-107-5 ("the Utah breakdown provision"), relating to excess emissions resulting from the breakdown of pollution control equipment, and (b) that EPA failed to timely respond to a petition from WildEarth Guardians requesting EPA to require Utah to revise the Utah breakdown provision consistent with CAA section 110(k)(5). The proposed consent decree establishes a deadline for EPA to take final action either issuing a rule under section 110(k)(5) requiring Utah to revise the Utah breakdown provision or determining that a revision is unnecessary.

**DATES:** Written comments on the proposed consent decree must be received by *January 6, 2010*.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2009-0896, online at <http://www.regulations.gov> (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption,