

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENVIRONMENTAL INTEGRITY PROJECT,
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005,

CLEAN AIR COUNCIL,
135 S. 19th Street, Suite 300
Philadelphia, PA 19103,

AIR ALLIANCE HOUSTON,
2520 Caroline Street, Suite 100
Houston, TX 77004,

CHESAPEAKE CLIMATE ACTION NETWORK
6930 Carroll Ave, Suite 720
Takoma Park, MD 20912,

EARTHWORKS,
1612 K Street, NW, Suite 808
Washington, DC 20006,

ENVIRONMENT AMERICA,
1543 Wazee Street, Suite 410
Denver, CO 80202,

ENVIRONMENT AMERICA d/b/a
ENVIRONMENT TEXAS,
200 East 30th Street
Austin, TX 78705,

HOOSIER ENVIRONMENTAL COUNCIL,
3951 N. Meridian, Suite 100
Indianapolis, IN 46208,

PENNENVIRONMENT,
1429 Walnut Street, Suite 1100
Philadelphia, PA 19102,

TEXAS CAMPAIGN FOR THE ENVIRONMENT,
105 W. Riverside Drive, Suite 120,
Austin, TX 78704,

Plaintiffs,

Civil Action No. 1:20-cv-3119

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

v.

ANDREW WHEELER, in his official capacity as
 Administrator, United States Environmental
 Protection Agency,
 Office of the Administrator, Mail Code 1101A
 1200 Pennsylvania Ave., N.W.
 Washington, DC 20460,

Defendant.

INTRODUCTION

1. With this action, Plaintiffs Environmental Integrity Project, Clean Air Council, Air Alliance Houston, Chesapeake Climate Action Network, Earthworks, Environment America, Environment Texas, Hoosier Environmental Council, PennEnvironment, and Texas Campaign for the Environment (“Plaintiffs”) seek to compel the U.S. Environmental Protection Agency (EPA), through the Defendant EPA Administrator Andrew Wheeler (“Administrator” or “Defendant”), to fulfill long-delayed nondiscretionary duties and review the general control device requirements for flares under the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) (“NSPS General Flare Requirements” and “NESHAP General Flare Requirements,” respectively).

2. The Administrator has failed to meet continuing nondiscretionary duties under the Clean Air Act to review the NSPS General Flare Requirements and NESHAP General Flare Requirements in accordance with sections 111(b)(1)(B) and 112(d)(6) and, where appropriate or necessary, to revise them within the time required by the Clean Air Act. 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6). Specifically, EPA has not conducted the statutorily mandated review of either the NSPS General Flare Requirements or the NESHAP General Flare Requirements within the last eight years, as required by Clean Air Act sections 111(b)(1)(B) and 112(d)(6). *Id.*

In fact, based on Plaintiffs' review of publicly available records, it is apparent that the Administrator has not conducted the statutorily mandated review of the NSPS General Flare Requirements since their initial promulgation in 1986 or of the NESHAP General Flare Requirements since their initial promulgation in 1994.

3. Flares are pollution control devices designed to destroy organic pollutants in waste gases, which include hazardous pollutants and smog-forming compounds, through the combustion process. The NSPS General Flare Requirements and NESHAP General Flare Requirements establish certain work practices to maximize combustion efficiency and the corresponding destruction of organics in flare gas. For example, these practices include requiring that "the net heating value of the gas being combusted" in steam- and air-assisted flares be at least 300 Btu per standard cubic foot of gas being combusted (300 Btu/scf), and limitations on "exit velocity" to avoid overwhelming the flare with more gas than it can burn efficiently. *See* 40 C.F.R. § 60.18(c)(3)(ii), (4), (5); 40 C.F.R. § 63.11(b)(6)(ii), (7), (8).

4. In the decades since the NSPS General Flare Requirements' and NESHAP General Flare Requirements' initial promulgation, these standards no longer reflect the "the best system of emission reduction" under Clean Air Act section 111(a)(1), 42 U.S.C. § 7411(a)(1), or "maximum degree of reduction in emissions" achievable under section 112(d)(2) of the Clean Air Act. *See* 42 U.S.C. § 7412(d)(2). For example, the minimum heating values required under the NSPS General Flare Requirements and NESHAP General Flare Requirements apply to the so-called "vent gas" that enters the bottom of the flare. Industry studies and EPA's own research have confirmed that because monitoring is poor or infrequent, vent gas is often incorrectly assumed to have the required minimum heating value when it does not. And for steam- and air-assisted flares, actual heating values can be much lower in the combustion zone at the flare tip

than they are in the vent gas routed to that flare because operators often add too much steam or air during the combustion process, lowering the flare's combustion efficiency and consequently increasing emissions of pollutants that the flare is meant to control.

5. Furthermore, operators rely on the NSPS General Flare Requirements and NESHAP General Flare Requirements to assure regulators that their flares will achieve certain destruction efficiencies, which in turn are used to estimate emissions, determine compliance with applicable limits, and determine the flares' potential to emit. Regulated industries, and regulators in turn, often assume that compliance with the NSPS General Flare Requirements and NESHAP General Flare Requirements will eliminate 98 percent of organic pollutants sent to the flare. Based on EPA's own data and findings, however, the actual destruction efficiency of flares operating under these outdated requirements can be 90 percent or even lower, meaning that emissions are five or more times higher than estimated or reported by plant operators.

6. The failure to review the NSPS General Flare Requirements and NESHAP General Flare Requirements is harmful because the available evidence, including EPA's own analysis, shows that flares subject to the NSPS General Flare Requirements and NESHAP General Flare Requirements operate far below the desired 98-percent destruction efficiency, releasing correspondingly larger quantities of pollutants that are toxic, smog-forming, or otherwise hazardous to the health of nearby communities. Industrial facilities with flares subject to the NSPS General Flare Requirements and NESHAP General Flare Requirements—such as petrochemical facilities, oil and natural gas production and processing facilities, bulk gasoline terminals, and municipal solid waste landfills—are disproportionately located in and near communities of color and lower-income communities. As a result, these communities have higher incidences of asthma and other respiratory ailments. Most recently, these same

communities have been disproportionately affected by COVID-19, making the cumulative effects on the communities' respiratory health greater and the excess emissions from flares subject to the outdated NSPS General Flare Requirements and NESHAP General Flare Requirements all the more significant.

7. Consequently, Plaintiffs bring this action to seek a determination by this Court that the Administrator's failures to fulfill each overdue duty and perform each action required by sections 111(b)(1)(B) and 112(d)(6) violate the Clean Air Act and to seek an order by this Court compelling the Administrator to fulfill each duty and take each required action in accordance with expeditious deadlines set by this Court.

JURISDICTION AND VENUE

8. This action arises under the Clean Air Act's citizen suit provision. 42 U.S.C. § 7604(a)(2).

9. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 7604(a)(2), 28 U.S.C. § 1331, and 28 U.S.C. § 1361.

10. This Court may award Plaintiffs all necessary relief pursuant to 42 U.S.C. § 7604(a)(2) and 28 U.S.C. §§ 2201-2202.

11. Plaintiffs have provided Defendant with at least sixty days' written notice of the violations of law alleged herein in the form and manner required by the Clean Air Act. 42 U.S.C. § 7604(b)(2); 40 C.F.R. Part 54. Copies of Plaintiffs' notice letters are attached as Exhibit A and Exhibit B to this Complaint.

12. Venue is vested in this Court under 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the claims occurred in this district and the Administrator's office is in the District of Columbia.

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