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8	Application pending for admission pro hac vice				
9	Attorneys for Plaintiffs Environmental Defense Fund and Sierra Club				
10	UNITED STATES DISTRICT COURT				
11	NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION				
12 13	ENVIRONMENTAL DEFENSE FUND and SIERRA CLUB,) Case No.: 3:22-cv-7731				
13	Plaintiffs,				
14	v.) COMPLAINT				
16	UNITED STATES ENVIRONMENTAL				
17	Defendant.				
18)				
19	I. STATEMENT OF THE CASE				
20	1. Plaintiffs bring this civil action under the Clean Air Act's citizen suit provision, 4	2			
21	U.S.C. § 7604(a)(2), to require the Administrator of the Environmental Protection Agency to				
22	perform his nondiscretionary duty to review and revise the air pollution emission limits applicable	le			
23	to stationary combustion turbines every eight years. 42 U.S.C. § 7411(b)(1)(B). The last emission				
24	limits for these facilities were proposed in 2005 and finalized in 2006, over 16 years ago.				
25	II. JURISDICTION AND VENUE				
26	2. JURISDICTION: This court has subject matter jurisdiction over the claims in this	S			
27	complaint pursuant to 42 U.S.C. § 7604(a)(2), 28 U.S.C. §§ 2201 and 2202, and 28 U.S.C. § 1361.				
28					
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3. VENUE: Venue lies in the Northern District of California, pursuant to 28 U.S.C.
 § 1391(b) and (e), because the action arises in the Northern District of California and because the
 United States Environmental Protection Agency ("EPA") has an office located in San Francisco,
 California.

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4. DIVISIONAL ASSIGNMENT: This case should be assigned to the San Francisco Division or the Oakland Division because Defendant EPA's regional office is located in San Francisco County, and this is a District-wide matter.

5. Plaintiffs bring this action to compel the EPA to perform nondiscretionary duties
under the Clean Air Act ("CAA" or "the Act"). Specifically, the EPA Administrator
("Administrator") has failed to perform his nondiscretionary duty to review and revise the air
pollution emission limits, called new source performance standards ("NSPS"), for new, modified
and reconstructed stationary combustion turbines ("new combustion turbines") as mandated by the
Act at 42 U.S.C. § 7411(b)(1)(B).

6. On September 29, 2022, plaintiffs served written notice on the Administrator of the
matters complained of herein pursuant to 42 U.S.C. § 7604(b) and 40 C.F.R. §§ 54.1-3. More than
sixty days have passed since plaintiffs served such notice.

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III. PARTIES

7. Plaintiff Environmental Defense Fund ("EDF") is a national nonprofit organization
with over 400,000 members that links science, economics, and law to create innovative, equitable,
and cost-effective solutions to urgent environmental problems. EDF has long pursued initiatives
at the state and national levels designed to reduce emissions of health-harming and climatealtering air pollutants from stationary, mobile and area sources. EDF brings this action on behalf
of its adversely affected members.

8. Plaintiff Sierra Club is a national conservation organization with approximately
735,000 members. Sierra Club's mission is to explore, enjoy, and protect the wild places of the
earth; to practice and promote the responsible use of the earth's ecosystems and resources; to
educate and enlist humanity to protect and restore the quality of the natural and human
environment; and to use all lawful means to carry out these objectives. In advancing these

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objectives, Sierra Club works to safeguard and enhance the quality of air throughout the country,
in large part by seeking protective pollution standards for industrial facilities such as new
combustion turbines and other sources of emissions. Sierra Club brings this action on behalf of its
adversely affected members.

9. Plaintiffs' members reside in, work in, or regularly visit and use the atmospheric
and terrestrial resources immediately impacted by the Administrator's violations of the Act. The
health, environmental, economic, aesthetic and recreational interests of plaintiffs' members have
been and will continue to be injured by the Administrator's failure to perform the nondiscretionary
duties complained of herein. These injuries are exacerbated by climate impacts driven by
greenhouse gas emissions from the same combustion turbines.

10. The interests of plaintiffs' members who are being, and will be directly injured by 11 the Administrator's failure to review and revise the NSPS for new combustion turbines include, 12 but are not limited to: (1) breathing air free from excessive, health-impairing pollutant emissions 13 from new, under-regulated combustion turbines, (2) viewing natural scenery and wildlife 14 unimpaired by ugly pollution that is caused, in whole or in part, by under-regulated emissions 15 from new combustion turbines, and (3) enjoying the benefits of lakes, rivers, streams, terrestrial 16 ecosystems, and other natural environments unsullied by the atmospheric fallout of under-17 regulated pollutants from new combustion turbines. 18

19 11. Under the Clean Air Act, air pollution effects on "welfare" include, but are not
20 limited to, harmful impacts to "soils, water, crops, vegetation, manmade materials, animals,
21 wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to
22 transportation, as well as effects on economic values and on personal comfort and well-being,
23 whether caused by transformation, conversion, or combination with other air pollutants." 42
24 U.S.C. § 7602(h).

12. Avoidable emissions of air pollutants from new combustion turbines adversely
affect the health and welfare of plaintiffs' members. If EPA issues a revised NSPS for new
combustion turbines it is more likely than not that emissions from such plants will be less than
they would be if only regulated under the current NSPS.

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1	13. For example, among other locations, plaintiff EDF has 1519 members in Brazoria,			
2	Guadalupe, Harris, Austin, Brazos, Anderson, and El Paso counties in Texas, where the			
3	construction of several new combustion turbines has been proposed. Plaintiff Sierra Club has 611			
4	members in Chippewa County, Wisconsin, where a new combustion turbine has been proposed,			
5	and the immediately neighboring Eau Claire County. As a result of EPA's failure to satisfy its			
6	nondiscretionary duty, these (and many other) new combustion turbines threaten to emit greater			
7	amounts of air pollutants because they will only be subject to the current, outdated, NSPS			
8	pollution standards that should have been reviewed and revised over eight years ago.			
9	14. The interests of plaintiffs' members thus have been adversely affected by the			
10	Administrator's violations of the Act, and those interests will continue to be so affected unless and			
11	until the relief requested herein is granted.			
12	15. Defendant EPA is an agency of the United States.			
13	IV. LEGAL BACKGROUND			
14	16. 42 U.S.C. § 7411, directs the Administrator to promulgate NSPS regulations that			
15	limit emissions from new, modified or reconstructed stationary sources.			
16	17. The term "modification" means "any physical change in, or change in the method			
17	of operation of, a stationary source which increases the amount of any air pollutant emitted by			
18	such source or which results in the emission of any air pollutant not previously emitted." 42			
19	U.S.C. § 7411(a)(4).			
20	18. Under EPA's regulations implementing the Clean Air Act, the term			
21	""reconstruction' means the replacement of components of an existing facility to such an extent			
22	that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost			
23	that would be required to construct a comparable entirely new facility, and (2) It is technologically			
24	and economically feasible to meet the applicable standards set forth in this part." 40 C.F.R.			
25	§ 60.15(b).			
26	19. The NSPS are required to reflect "the degree of emission limitation achievable			
27	through the application of the best system of emission reduction which (taking into account the			
28	cost of achieving such reduction and any nonair quality health and environmental impact and			
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1	energy requirements) the Administrator determines has been adequately demonstrated." 42 U.S.C.				
2	§ 7411(a)(1); Essex Chemical Corp. v. Ruckelshaus, 486 F.2d 427, 433 (D.C. Cir. 1973).				
3	20. According to 42 U.S.C. § 7411(b)(1)(B):				
4	The Administrator shall, at least every 8 years, review and, if appropriate, revise such				
5	standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.				
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7					
8	V. FACTUAL BACKGROUND				
9	21. On September 10, 1979, EPA promulgated the first NSPS for stationary				
10	combustion turbines at 40 C.F.R. Subpart GG, 40 C.F.R. § 60.330, 44 Fed. Reg. 52,798.				
11	22. On February 18, 2005, 26 years later, EPA proposed to revise those standards at				
12	Subpart KKKK. 40 C.F.R. § 60.4300 et seq., 70 Fed. Reg. 8314. EPA finalized this revision on				
13	July 6, 2006. 71 Fed. Reg. 38,481.				
14	23. More than eight years have passed since EPA last revised Subpart KKKK.				
15	24. Since EPA's last revision of those standards, the agency has neither determined that				
16	revision of the standards would be inappropriate, nor has it revised such standards.				
17	25. The most stringent NOx emission limit for new combustion turbines in the current				
18	NSPS is 15 parts per million (ppm).				
19	26. Today, combustion turbines such as the Marsh Landing Generating Station in				
20	Contra Costa County, California, are operating at NOx emission rates as low as 2.5 ppm using				
21	selective catalytic reduction (SCR) technology. This emission rate is 87 percent lower than the				
22	current NSPS's 15 ppm NOx emission limit for comparable combustion turbines subject to that				
23	rule.				
24	27. EPA's current NOx emission limits under Subpart KKKK do not reflect "the				
25	degree of emission limitation achievable through the application of the best system of emission				
26	reduction which (taking into account the cost of achieving such reduction and any nonair quality				
27	health and environmental impact and energy requirements) the Administrator determines has been				
28	adequately demonstrated." 42 U.S.C. § 7411(a)(1).				
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1	28.	For over eight years, EPA has had a nondiscretionary duty to review	v and revise the	
2	best system of reducing NOx emissions from new combustion turbines. This entails a review and			
3	revision not only of the technology that forms the basis of EPA's determination of the best system			
4	of emission reduction, but also of the terms, units, and averaging times of EPA's standards in			
5	order to ensure the greatest reduction of NOx.			
6	29.	The U.S. Department of Energy's Energy Information Administration	on projects that	
7	nearly 120 Gigawatts of new combustion turbine electricity generation capacity will be			
8	constructed in the country between 2022 and 2030, an increase of nearly 30 percent with respect to			
9	current capacity. ¹			
10	30.	If EPA complies with its nondiscretionary duty to review and revise	the NSPS for	
11	new combustion turbines, the agency will likely issue significantly more stringent NOx limits for			
12	those facilities, resulting in a substantial reduction of harmful pollution nationwide.			
13	31.	Plaintiffs incorporate by reference and reallege the allegations conta	uned in	
14	paragraphs 1 through 30 for the cause of action set forth below.			
15	VI. CAUSE OF ACTION			
16	Failur	e to Review and Revise New Combustion Turbine NSPS Within Ei	ght Years	
17	32.	The Administrator has a nondiscretionary duty to, at least every eight	ht years, review	
18	and, unless in	happropriate, revise the NSPS for new combustion turbines. 42 U.S.C	. §	
19	7411(b)(1)(E	3).		
20	33.	More than eight years have passed since EPA last promulgated the l	NSPS for new	
21	combustion t	urbines.		
22	34.	Since that time, the Administrator has neither reviewed and revised	the NSPS for	
23	new combustion turbines nor determined that revision of the NSPS would be inappropriate.			
24	35.	Therefore, the Administrator is in violation of 42 U.S.C. § 7411(b)(1)(B) and has	
25	been since the eight-year deadline expired for EPA to either review and revise the current NSPS			
26	for new com	bustion turbines or determine that revision was inappropriate.		
27 28	¹ EIA, Annual Energy Outlook 2022, Table 9: Electric Generating Capacity (AEO2022 reference case) (March 3, 2022), https://www.eia.gov/outlooks/aeo/data/browser/#/?id=9- AEO2022&cases=ref2022&sourcekey=0. Complaint <i>EDF et al. v. U.S. E.P.A.</i> , Case No. 3:22-cv-7731 Page 6			
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1	36.	36. Plaintiffs are suffering and will continue to suffer irreparable harm because of the			
2	Administrator's failure to timely perform these nondiscretionary duties.				
3	VII. RELIEF REQUESTED				
4	WHEREFORE, plaintiffs respectfully request the Court:				
5	A. DECLARE that the Administrator is in violation of his 42 U.S.C. § 7411(b)(1)(B)				
6	nondiscretionary duty to review and, unless inappropriate, revise the current NSPS within eight				
7	years.				
8	B. ISSUE A MANDATORY INJUNCTION requiring the Administrator to carry out				
9	his 42 U.S.C. § 7411(b)(1)(B) nondiscretionary duty by,				
10	1. Issuing a proposed revision of the NSPS for new combustion turbines, or a final				
11	decision not to revise such NSPS, within 120 days, and				
12	2. Issuing a final revision of the NSPS for new combustion turbines by December 15				
13	2023, unless he decided not to revise such NSPS as provided for in B.1. above.				
14	C. Retain jurisdiction over this matter for purposes of enforcing and effectuating the				
15	Court's order;				
16	D. Grant plaintiffs their reasonable costs of litigation, including their attorneys' and				
17	expert witnes	s fees; and,			
18	E. Grant such further relief as the Court deems just and proper.				
19	DATED this	7 th day of December, 2022.			
20		ENVIRONMENTAL DEFENSE FUND & SIERRA CLUB, Plaintiffs			
21		SIEKKA CLOB, Flammins			
22		s/George E. Hays			
23		s/Reed Zars			
24		Attorneys for Plaintiffs			
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