**FACT SHEET – CONSENT DECREES IN FLARE DEADLINE LAWSUIT
(EIP v. EPA, U.S. District Court for the District of Columbia, Case No. 20-cv-03119-TNM)**

**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 (the “EIP Plaintiffs”).

**Defendant:** Michael Regan, in his official capacity as Administrator of the U.S. EPA.

**Background:** In October 2020, the EIP Plaintiffs brought this lawsuit to require EPA to update its decades-old general operating requirements for flares under the National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). EPA first issued the general NSPS flare requirements over three decades ago, in 1986, and the general NESHAP flare requirements 28 years ago, in 1994. The agency has not updated the general flare requirements in the several decades since they were first issued.

In the alternative, the lawsuit sought to require EPA to review and revise the NESHAP and NSPS for certain categories of air pollution sources that incorporate the outdated general flare requirements. The Clean Air Act requires EPA to update the NESHAP and NSPS every eight years, and the agency has blown past its statutory deadlines to review the NESHAP and NSPS for these particular source categories, which include petrochemical plants and other industrial facilities.

Flares are pollution control devices designed to combust and destroy organic pollutants—including hazardous air pollutants and smog-forming compounds—in waste gases. Petrochemical facilities and other plants that use flares are disproportionately located in and near communities of color and lower-income communities—communities that are often overburdened with toxic air pollution from multiple large sources. Since at least 2012, EPA has recognized that its outdated general requirements cannot ensure that many flares achieve proper destruction of air toxics and other pollutants. For example, in 2015, the agency instituted more stringent requirements for flares at petroleum refineries to reduce their toxic air pollution. At the time, EPA estimated that the improved refinery flare standards would reduce hazardous air pollution by 3,900 tons per year and emissions of volatile organic compounds by 33,000 tons per year.

In 2021, additional plaintiffs Concerned Citizens of St. John, Louisiana Environmental Action Network, and Sierra Club (the “CCSJ Plaintiffs”) brought a separate lawsuit (D.D.C. Case No. 1:21-cv-03063) concerning the NESHAP for the “Group I Polymers & Resins” source category. The CCSJ lawsuit was later consolidated with the EIP lawsuit.

**The Consent Decrees:** The parties agreed to two consent decrees to resolve the EIP and CCSJ lawsuits. The first consent decree covers just the EIP lawsuit and requires EPA to review the NSPS for the Volatile Organic Liquid Storage Vessels source category and the NESHAP for the Epoxy Resins Production and Non-Nylon Polyamides Production source category and the Marine Tank Vessel Loading Operations source category. The second consent decree covers both the EIP and CCSJ lawsuits and requires EPA to review the NESHAP for the Group I Polymers & Resins source category. The current standards for these various source categories incorporate EPA’s outdated, insufficient general requirements for flares. For each of these source categories, EPA will be required to decide if updated standards are necessary for all polluting units—not just flares. The consent decrees require the following deadlines for EPA to update the standards for the relevant categories:

| **Source Category** | **Proposed Rule Deadline** | **Final Rule Deadline** |
| --- | --- | --- |
| Group I Polymers & Resins NESHAP | March 31, 2023 | March 29, 2024 |
| Epoxy Resins Production and Non-Nylon Polyamides Production NESHAP | March 31, 2023 | March 29, 2024 |
| Volatile Organic Liquid Storage Vessels NSPS | September 29, 2023 | September 30, 2024 |
| Marine Tank Vessel Loading Operations NESHAP | December 19, 2025 | December 18, 2026 |

Note that the consent decrees do not commit EPA to any particular substantive outcome in its proposed or final rules for the review of each source category.

**Quote from EIP:** “We are pleased that EPA has agreed to conduct these long-overdue reviews of its standards for air pollution from petrochemical plants and other industrial facilities,” said Patton Dycus, an attorney at Environmental Integrity Project. “This is the first step for the agency to fix its old, flawed standards and better protect downwind communities from toxic air pollution from flares.  EPA needs to overhaul its flare requirements to safeguard public health.”