

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NATIONAL WASTE & RECYCLING)	
ASSOCIATION, <i>et al.</i> ,)	
)	
)	
Petitioners,)	
)	
)	
v.)	Case No. 16-1371
)	(Consolidated with 16-1374)
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, and)	
SCOTT PRUITT, Administrator,)	
United States Environmental Protection Agency,)	
)	
Respondents.)	

**RESPONDENTS' MOTION TO HOLD
CONSOLIDATED CASES IN ABEYANCE FOR 90 DAYS**

Respondents United States Environmental Protection Agency and EPA Administrator Scott Pruitt¹ respectfully request the Court hold these consolidated cases in abeyance for 90 days because the EPA has convened a proceeding for reconsideration and granted a 90-day stay of the final rule challenged in these cases, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016) (the Landfill Emission Guidelines).

¹ EPA Administrator Scott Pruitt is automatically substituted for his predecessor in office pursuant to Fed. R. App. P. 43(c)(2).

EPA makes this request to promote judicial efficiency, conserve resources, and avoid potentially unnecessary litigation.

Counsel for EPA has conferred with counsel for Petitioners and with counsel for Intervenors. Petitioners do not oppose the motion. Intervenors take no position on the motion.

In support of its motion, EPA states as follows:

1. On October 27, 2016, National Waste & Recycling Association, Solid Waste Association of North America, Inc., Waste Management, Inc. Republic Services, Inc., and Waste Management Disposal Services of Pennsylvania, Inc. (the Landfill Petitioners) filed a petition for judicial review of the Landfill Emission Guidelines (Case No. 16-1371). The Utility Air Regulatory Group (UARG) filed a petition for judicial review on October 28, 2016 (Case No. 16-1374). The Court consolidated the two cases on November 1, 2016. ECF No. 1644017.
2. On October 27, 2016, the Landfill Petitioners submitted a Petition to EPA for Reconsideration, Rulemaking, and Administrative Stay of the Landfill Emission Guidelines (the Administrative Petition).
3. On March 30, 2017, this Court granted a joint unopposed motion to extend the deadline to file proposed briefing formats until May 26, 2017. ECF No. 1668558.

4. In a letter to the Landfill Petitioners dated May 5, 2017, Administrator Pruitt convened a proceeding for reconsideration to address six topics related to the Landfill Emission Guidelines. In the letter, Administrator Pruitt also announced that the EPA will prepare a notice of proposed rulemaking to provide an opportunity for comment on those topics, as well as “any other matter” that EPA concludes may benefit from additional comment. *See* Exhibit A.

5. Because EPA concluded that the six topics that it has decided to review are integral to the Landfill Emission Guidelines, Administrator Pruitt’s letter also announced EPA’s intent to issue a 90-day stay of the rule in its entirety under Clean Air Act Section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B). *See* Exhibit A.

6. On May 22, 2017, Administrator Pruitt signed a final action to administratively stay the Landfill Emission Guidelines for 90 days from the date the action is published in the Federal Register. *See* Exhibit B.

7. Temporarily holding these cases in abeyance would promote judicial efficiency, conserve resources, and avoid potentially unnecessary litigation by allowing Respondents to consider potential opportunities to resolve some or all of the issues presented without the need for judicial action. *See Basardh v. Gates*, 545 F.3d 1068, 1069 (D.C. Cir. 2008) (finding cause for abeyance when other pending proceedings may affect the outcome of the case).

Accordingly, Respondents move to hold these consolidated cases in abeyance for 90 days from the issuance of the Court's order, and Respondents request that the Court order the parties to file motions to govern further proceedings at that time.

Respectfully submitted,

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources
Division

/s/ Justin D. Heminger
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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure and Circuit Rule 25, I hereby certify that on this 26th day of May, 2017, I caused the foregoing document to be electronically filed with the Clerk of the Court by using the Court's CM/ECF system. All registered CM/ECF users will be served by the Court's CM/ECF system.

Respectfully submitted,

/s/ Justin D. Heminger
Justin D. Heminger

Counsel for Respondents

**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 27(D)**

I certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 517 words, excluding the parts of the motion exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/ Justin D. Heminger
JUSTIN D. HEMINGER

EXHIBIT A

Letter from Scott Pruitt, EPA Administrator (May 5, 2017)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 5, 2017

THE ADMINISTRATOR

Mr. Carroll W. McGuffey III
Mr. M. Buck Dixon
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Troutman Sanders LLP
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Atlanta, Georgia 30308

Mr. Barry Shanoff
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Ms. Carol F. McCabe
Mr. Michael Dillon
Counsel for Waste Management Inc. and
Waste Management Disposal Services of Pennsylvania
Manko, Gold, Katcher & Fox
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Bala Cynwyd, Pennsylvania 19004

RE: Convening a Proceeding for Reconsideration of final rules entitled "Standards of Performance for Municipal Solid Waste Landfills," 81 Fed. Reg. 59332 and "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills," 81 Fed. Reg. 59276, both published August 29, 2016.

Dear Mr. McGuffey, Mr. Dixon, Mr. Shanoff, Mr. Kraushaar, Ms. McCabe and Mr. Dillon:

This letter concerns a petition from National Waste & Recycling Association, Solid Waste Association of North America, Republic Services, Inc., Waste Management, Inc., and Waste Management Disposal Services of Pennsylvania, Inc., dated October 27, 2016, to the U.S. Environmental Protection Agency requesting reconsideration, and in some circumstances an administrative stay, of provisions included in the EPA's final rules entitled "Standards of Performance for Municipal Solid Waste Landfills," 81 Fed. Reg. 59332 (August 29, 2016) (i.e. the NSPS), and "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,"

81 Fed. Reg. 59276 (August 29, 2016) (i.e. the emission guidelines), pursuant to section 307(d)(7)(B) of the Clean Air Act.

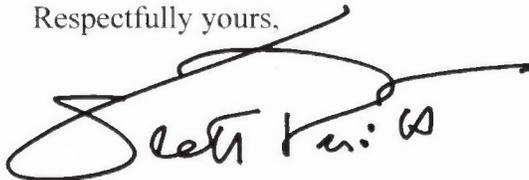
We find, under CAA section 307(d)(7)(B), that the petition has raised several objections to the provisions in both subpart XXX and subpart Cf that arose after the comment period or were impracticable to raise during the comment period and that are of central relevance to the outcome of the rule. Therefore, by this letter the EPA is convening a proceeding for reconsideration of the following topics: 1) tier 4 surface emission monitoring; 2) annual liquids reporting; 3) corrective action timeline procedures; 4) overlapping applicability with other rules; 5) the definition of cover penetration and 6) design plan approval. As part of the reconsideration process, the EPA expects to prepare a notice of proposed rulemaking that will provide an opportunity for notice and comment on the issues raised in the petition that meet the standard of CAA section 307(d)(7)(B), as well as any other matter we believe will benefit from additional comment.

As a result of this reconsideration, the EPA intends to exercise its authority under CAA section 307(d)(7)(B) to issue a 90-day stay of the effectiveness of both the NSPS (subpart XXX) and the emission guidelines (subpart Cf). The EPA believes it is appropriate to stay the effectiveness of both rules in their entirety because the topics listed above are integral to both rules. Sources need not comply with these requirements while the stay is in effect.

This letter does not address other requests for reconsideration raised in this and other petitions. Nor does it address the merits of, or suggest a concession of error on, any issue raised in the petition.

If you have any questions on this action, please contact Mr. Peter Tsirigotis in the Office of Air Quality Planning and Standards at (888) 627-7764 or airaction@epa.gov.

Respectfully yours,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", with a large, sweeping flourish extending to the right.

E. Scott Pruitt

EXHIBIT B

Stay of Standards of Performance for Municipal Solid Waste Landfills and
Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills
(May 22, 2017)

The EPA Administrator, E. Scott Pruitt, signed the following notice on 05/22/2017, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2003-0215 and EPA-HQ-2014-0451. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451; FRL-]

RIN 2060-AT62

Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Stay of final rules.

SUMMARY: By a letter dated May 5, 2017, the Administrator announced the convening of a proceeding for reconsideration of certain requirements in the final rules, “Standards of Performance for Municipal Solid Waste Landfills,” and “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,” both published on August 29, 2016. In this action, the EPA is administratively staying both rules in their entirety for 90 days pending reconsideration. The EPA is adding language to the Code of Federal Regulations (CFR) to reflect this stay.

DATES: “Standards of Performance for Municipal Solid Waste Landfills,” 40 CFR part 60, subpart XXX, and “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,” 40 CFR part 60, subpart Cf are administratively stayed from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The addition of 40 CFR 60.30f(b)(1) and 40 CFR 60.760(a)(1) is effective from **[INSERT DATE OF PUBLICATION**

IN THE FEDERAL REGISTER] until [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

The stay is effective from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Mr. Peter Tsirigotis, Sector Policies and Programs Division (D205-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (888) 627-7764; email address: airaction@epa.gov.

Electronic copies of this document are available on the EPA's Web site at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards>. Copies of this document are also available at <https://www.regulations.gov>, at Docket ID No. EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451.

SUPPLEMENTARY INFORMATION:

I. Background

On July 14, 2016, the U.S. Environmental Protection Agency (EPA) Administrator signed a final rule establishing new source performance standards (NSPS) intended to reduce emissions of landfill gas from new, modified, and reconstructed municipal solid waste (MSW) landfills, thereby updating standards that were issued in 1996. In a separate action, the Administrator also signed a final rule revising guidelines for reducing emissions from existing MSW landfills, thereby updating the previous emissions guidelines (EG), which also were issued in 1996. The NSPS are codified at 40 CFR part 60, subpart XXX and the EG are codified at 40 CFR part 60, subpart Cf. For further information on these 2016 rules, see 81 FR 59332 and 81 FR 59276 (August 29, 2016).

On October 27, 2016, a number of interested parties submitted administrative petitions to the EPA seeking reconsideration of various aspects of the 2016 rules pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA) (42 U.S.C. 7607(d)(7)(B)).¹ Under section 307(d)(7)(B) of the CAA, the Administrator shall convene a reconsideration proceeding if, in the Administrator's judgment, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period, but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule. The Administrator may stay the effectiveness of the rule for up to 3 months during such reconsideration.

In a letter dated May 5, 2017, based on the criteria in CAA section 307(d)(7)(B), the Administrator convened a proceeding for reconsideration. The May 5, 2017, letter announced the convening of an administrative reconsideration proceeding to reconsider the following topics from one petition: (1) tier 4 surface emission monitoring; (2) annual liquids reporting; (3) corrective action timeline procedures; (4) overlapping applicability with other rules; (5) the definition of cover penetration; and (6) design plan approval. As part of the proceeding, the EPA will prepare a notice of proposed rulemaking that will provide the petitioners and the public an opportunity to comment on the issues identified in that letter. As explained in the letter, the EPA has not taken action on the remaining issues in the petitions for reconsideration. A copy of the letter is included in the dockets for this rule, Docket ID No. EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451.

The EPA convened a proceeding for reconsideration based on the determination that some of the objections raised in the petition for reconsideration met the criteria set forth in CAA

¹ Copies of these petitions are included in the docket for the 2016 rules, Docket ID No. EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451.

section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which requires the Administrator to convene a proceeding for reconsideration of a rule when the person raising an objection to a rule can demonstrate: (1) that it was either impractical to raise the objection during the period for public comment or that the grounds for the objection arose after the period for public comment; and (2) that the objection is of central relevance to the outcome of the rule. In particular, we determined that the tier 4 surface emissions monitoring (SEM) issues raised in the petition for reconsideration met those criteria. The proposed rule included tier 4 SEM as an optional monitoring method; however, the final rule imposed restrictions on the use of tier 4 SEM, *e.g.*, limits on wind speed, the use of wind barriers, and restricting the use of tier 4 SEM to landfills with non-methane organic compounds emission rates between 34 and 50 mega grams per year, that were not included in the proposal. While we believe that the restrictions are appropriate in light of the potential impact of the results of tier 4 SEM, we recognize that they were added without the benefit of public comment. Thus, we find that the petitioners have demonstrated that it was impractical to raise the objection during the period for public comment. We also find that the objection to the restrictions on the use of tier 4 SEM is of central relevance to the outcome of the rule. Tier 4 SEM can be used as a site-specific methodology for determining whether and when the requirement to install a gas collection and control system is triggered. The restrictions limit an owner's/operator's ability to use tier 4 SEM for those purposes, thereby reducing intended flexibility in the rule. If we had the benefit of public comment on the restrictions, we might have structured the rule in such a way as to minimize any potential impacts on flexibility.

II. Stay of the Final Rules

By this notice, the EPA is staying the effectiveness of the final rules, "Standards of Performance for Municipal Solid Waste Landfills," 81 FR 59332 and "Emission Guidelines and

Compliance Times for Municipal Solid Waste Landfills,” 81 FR 59276 in their entirety for 90 days pursuant to its authority under section 307(d)(7)(B) of the CAA. We believe that it is necessary to stay the effectiveness of the two final rules in their entirety because the tier 4 SEM provisions in the two rules are integral to how the rules function as a whole. The ability to use tier 4 SEM is a primary aspect of the flexibility we intended to include in the rule. Tier 4 SEM can be used to determine on a site-specific basis whether and when the requirement to install and operate a gas collection and control system is triggered. The tier 4 SEM provision provides flexibility in complying with other requirements in the rules that does not otherwise exist. As a result, we believe that it is appropriate to stay the rules in their entirety while we address the tier 4 SEM issues. Therefore, pursuant to section 307(d)(7)(B) of the CAA, the EPA is staying the effectiveness of “Standards of Performance for Municipal Solid Waste Landfills,” 40 CFR part 60, subpart XXX, and “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,” 40 CFR part 60, subpart Cf for 90 days.

This stay of effectiveness will remain in place until **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control,
Reporting and recordkeeping.

Dated: _____.

E. Scott Pruitt,
Administrator.

40 CFR part 60 is amended as follows:

PART 60--STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Cf—[Amended]

2. Section 60.30f is amended by adding paragraph (b)(1) to read as follows:

§60.30f Scope and delegated authorities.

* * * * *

(b) * * *

(1) Stay of effectiveness of requirements. The requirements of this subpart are stayed from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

* * * * *

Subpart XXX—[Amended]

2. Section 60.760 is amended by adding paragraph (a)(1) to read as follows:

§60.760 Applicability, designation of affected source, and delegation of authority.

(a) * * *

(1) Stay of effectiveness of requirements. The requirements of this subpart are stayed from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

* * * * *