ORAL ARGUMENT NOT YET SCHEDULED

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

No. 17-1157

NATURAL RESOURCES DEFENSE COUNCIL, CLEAN AIR COUNCIL, CLEAN WISCONSIN, and CONSERVATION LAW FOUNDATION,

Petitioners,

v.

E. SCOTT PRUITT, Administrator, U.S. Environmental Protection Agency, and UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

PETITIONERS' INITIAL OPENING BRIEF

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November 20, 2017

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Petitioners Natural Resources Defense Council, Clean Air Council, Clean Wisconsin, and Conservation Law Foundation certify as follows:

(A) Parties and Amici

Petitioners: Natural Resources Defense Council, Clean Air Council, Clean Wisconsin, and Conservation Law Foundation.

Respondents: E. Scott Pruitt, in his official capacity as Administrator of the United States Environmental Protection Agency, and the United States Environmental Protection Agency.

Respondent-Intervenors: National Waste & Recycling Association, Solid Waste Association of North America, Waste Management, Inc., Waste Management Disposal Services of Pennsylvania, Inc., and Republic Services, Inc.

(B) Rulings Under Review

Petitioners seek review of the final action of Respondents published in the Federal Register at 82 Fed. Reg. 24,878 (May 31, 2017) and titled "Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills."

(C) Related Cases

Petitioners are aware of the following cases related to this matter that are currently pending in this Court:

(1) *Nat'l Waste & Recycling Ass'n, et al. v. EPA*, D.C. Cir. No. 16-1371, consolidated with D.C. Cir. No. 16-1374. These cases, which are currently held in abeyance, challenge the EPA regulation published at 81 Fed. Reg. 59,276 and titled "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills." That regulation has been stayed by EPA in the challenged action.

(2) *Nat'l Waste & Recycling Ass'n, et al. v. EPA*, D.C. Cir. No. 16-1372. This case, which is currently held in abeyance, challenges the EPA regulation published at 81 Fed. Reg. 59,332 and titled "Standards of Performance for Municipal Solid Waste Landfills." That regulation has been stayed by EPA in the challenged action.

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, Petitioners Natural Resources Defense Council, Clean Air Council, Clean Wisconsin, and Conservation Law Foundation make the following disclosures:

Natural Resources Defense Council

Non-Governmental Corporate Party to this Action: Natural Resources Defense Council ("NRDC").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: NRDC, a corporation organized and existing under the laws of the State of New York, is a national nonprofit organization dedicated to improving the quality of the human environment and protecting the nation's endangered natural resources.

Clean Air Council

Non-Governmental Corporate Party to this Action: Clean Air Council.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Clean Air Council is a non-profit corporation organized and existing under the laws of the Commonwealth of Pennsylvania. For 50 years, Clean Air Council has fought to improve air quality across Pennsylvania and the Mid-Atlantic Region and to protect everyone's right to a healthy environment.

Clean Wisconsin

Non-Governmental Corporate Party to this Action: Clean Wisconsin.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Clean Wisconsin, created in 1970 as Wisconsin's Environmental Decade, is a nonprofit membership corporation organized and existing under the laws of Wisconsin, whose mission is to protect Wisconsin's air, water, and special places by being an effective voice in the legislature, state and federal agencies, and the courts.

Conservation Law Foundation

Non-Governmental Corporate Party to this Action: Conservation Law Foundation.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Conservation Law Foundation, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, is a non-profit organization dedicated to improving the quality of the human environment in New England and the region's endangered natural resources.

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GLOSSARY OF ABBREVIATIONS

EPA	Environmental Protection Agency
NESHAP	National Emission Standards for Hazardous Air Pollutants
NMOC	Non-methane organic compounds
VOCs	Volatile organic compounds

INTRODUCTION

Administrator Scott Pruitt's administrative stay of the Environmental Protection Agency's ("EPA" or "Agency") standards and compliance deadlines for landfill emissions, 82 Fed. Reg. 24,878 (May 31, 2017), suffers from the same flaws as the stay vacated by this Court in *Clean Air Council v. Pruitt*, 862 F.3d 1 (D.C. Cir. 2017). The stay at issue here was premised on the supposed need for a reconsideration proceeding to cure notice failures in a prior rulemaking. But, as in *Clean Air Council*, no such notice failure occurred in that rulemaking. In the absence of a notice failure, reconsideration was not required, and EPA lacked authority to stay these rules. *See Clean Air Council*, 862 F.3d at 14. The landfill stay, just like the one at issue in *Clean Air Council*, must therefore be declared unlawful and vacated.

While the 90-day stay technically ended at the end of August 2017, it has serious continuing legal and real-world consequences. Under the rules as written, states were required to submit state plans for existing landfills by May 30, 2017, and all subsequent deadlines for action by states, EPA, and landfill operators ran from this date. The administrative stay purported to suspend that state-plan-submission deadline for 90 days, while EPA prepared additional actions to extend the stay for a longer, as-yet-undisclosed period.

Likewise, the stay purported to suspend the compliance dates for new or modified landfills, whose control system design plans were due under the updated rules as early as November 28, 2017.

After the end of the 90-day stay, EPA's website tersely announced that "the 2016 rules are currently in effect."[1] But the Agency has never officially stated what it believes to be the status of the implementation and compliance dates specified in the original rules. Rather, an EPA spokesperson recently told states and regulated sources not to concern themselves with compliance because EPA does not "plan to prioritize the review of these state plans . . . nor are we working to issue a Federal Plan for states that failed to submit a state plan."[2] Effectively, EPA has extended the stay indefinitely.

Because the stay was legally invalid, the original compliance dates must remain in effect. Vacatur is essential to discontinue EPA's illegal reliance on the stay and to clarify the Agency's, states', and regulated entities' legal obligations. A decision by this Court is especially critical where EPA has effectively turned a short-term unlawful stay into an unlimited delay in implementing regulations, without notice or comment. The Agency cannot be allowed to evade judicial review by these tactics.

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[1] EPA, Municipal Solid Waste Landfills: New Source Performance Standards (NSPS), Emission Guidelines (EG) and Compliance Times, https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards (last visited Nov. 19, 2017) (JA__).

[2] Cody Boteler, *EPA offers public clarification on timeline for NSPS, EG landfill rules months after stay expires*, WASTEDIVE (Oct. 31, 2017), https://www.wastedive.com/news/epa-offers-public-clarification-on-timeline-for-nsps-eg-landfill-rules-mon/508484/ (JA __).

Background

The administrative stay suspended implementation of two EPA rules issued under section 111 of the Clean Air Act, 42 U.S.C. § 7411, updating for the first time since 1996: (1) emission guidelines for *existing* municipal solid waste landfills, and (2) standards of performance for *new and modified* municipal solid waste landfills. Emission Guidelines, 81 Fed. Reg. 59,276 (Aug. 29, 2016) (JA __); New Source Performance Standards, 81 Fed. Reg. 59,332 (Aug. 29, 2016) (JA __) [hereinafter collectively "Landfill Rules"]. EPA concluded that the Landfill Rules will significantly reduce emissions of landfill gas, a mixture produced by the decomposition of waste that includes methane, carbon dioxide, hazardous air pollutants, and volatile organic compounds that contribute to smog. 81 Fed. Reg. at 59,276 and 59,332. More landfills are covered, as EPA lowered the emissions threshold above which a landfill must install and operate landfill gas collection and control systems. *Id.* The additional pollution reductions will "improve air quality and reduce the potential for public health and welfare effects associated with exposure to landfill gas emissions." 81 Fed. Reg. at 59,276. The Landfill Rules directly benefit Petitioners' members by reducing these harmful landfill emissions. Likewise, delay in implementing these rules is presently harming our members' health and well-being.

On May 31, 2017, one day after the deadline for states to submit implementation plans, EPA Administrator Scott Pruitt summarily announced a stay of the Landfill Rules in their entirety for 90 days, without prior notice and comment or

any showing that the statutory requirements for a stay under Clean Air Act section 307(d)(7)(B) were met. 82 Fed. Reg. at 24,878-79.

The Administrator predicated the 90-day summary stay on his decision to reconsider the rules to cure supposed notice defects in the underlying rulemakings. But just as in *Clean Air Council*, there were no such notice defects, and thus no basis for mandatory reconsideration proceedings and no authority to issue an administrative stay under Clean Air Act section 307(d)(7)(B). *See Clean Air Council*, 862 F.3d at 8; 42 U.S.C. § 7607(d)(7)(B).

Because the issues identified by the Administrator simply did not meet the statutory requirements for reconsideration, the Administrator lacked authority to stay or otherwise take out of effect the Landfill Rules until and unless EPA completes a notice and comment rulemaking and provides a reasoned and lawful basis to modify or replace them. *Clean Air Council*, 862 F.3d at 8-9; *see* 42 U.S.C. § 7607(d)(1)-(6).[3] No such rulemaking has as yet even been proposed.

Petitioners seek vacatur of the administrative stay because the Administrator acted arbitrarily, capriciously, and contrary to law by staying the Landfill Rules in violation of the Clean Air Act. 42 U.S.C. § 7607(d)(9).

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[3] *Cf. Becerra v. U.S. Dep't of Interior*, 2017 WL 3891678 (N.D. Cal. 2017) (declaring unlawful the Department of Interior's postponement of the Valuation Rule, at 82 Fed. Reg. 11,823 (Feb. 27, 2017)); *California v. U.S. Bureau of Land Mgmt.*, 2017 WL 4416409 (N.D. Cal. 2017) (vacating the Bureau of Land Management's postponement of the Waste Prevention Rule, at 82 Fed. Reg. 27,430 (June 15, 2017)).

JURISDICTIONAL STATEMENT

Pursuant to Clean Air Act section 307(b)(1), 42 U.S.C. § 7607(b)(1), this Court has jurisdiction to review and vacate the final action taken by Respondents Administrator E. Scott Pruitt and EPA, 82 Fed. Reg. 24,878 (May 31, 2017), titled "Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills." The stay, ostensibly issued under Clean Air Act section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), unlawfully suspended and continues to delay implementation of the Landfill Rules.

Petitioners Natural Resources Defense Council, Clean Air Council, Clean Wisconsin, and Conservation Law Foundation filed a timely petition for review of the administrative stay, Pet. for Review, ECF No. 1680483 (June 15, 2017), followed by a motion for summary vacatur of the stay, Mot. for Summary Vacatur, ECF No. 1687388 (Aug. 4, 2017). The Court denied the motion for summary vacatur and ordered the parties to address both the legality of the stay and mootness in their merits briefs, Order, ECF No. 1695344 (Sept. 28, 2017).

The stay technically expired on August 29, 2017, but the unlawful delay has continuing deleterious effects. This matter thus remains a live controversy that continues to demand judicial intervention.

STATUTES AND REGULATIONS

Relevant statutes and regulations are set forth in the Addendum.

STATEMENT OF ISSUES

1. Whether the legality of EPA's administrative stay remains a live controversy because of the stay's continuing consequences for implementation and enforcement of the Landfill Rules.
2. Whether EPA's administrative stay exceeded the Agency's authority under Clean Air Act section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), or was otherwise arbitrary, capricious, or unlawful, because:
    a. EPA lacks the authority to stay a rule where the required preconditions for mandatory reconsideration under section 307(d)(7)(B) are not met.
    b. The stay of both regulations in their entirety is overbroad relative to the narrow issues on which reconsideration was granted.

STATEMENT OF THE CASE

In 1996, EPA issued standards of performance and emission guidelines to curb emissions of landfill gas (including methane, smog-forming pollutants, and hazardous air pollutants) from new and existing landfills. The original rules applied to landfills that emitted at least 50 metric tons of non-methane organic compounds per year. *See* 61 Fed. Reg. 9,905, 9,912 (Mar. 12, 1996). In 2014 and 2015, EPA proposed to update the performance standards and emission guidelines to cover additional, lower-emitting landfills by lowering the threshold at which controls are required to 34 metric tons of non-methane organic compounds per year, and to make other changes to improve emissions control. 79 Fed. Reg. 41,796, 41,811 (July 17, 2014); 80 Fed. Reg. 52,100,

52,102 (Aug. 27, 2015); 80 Fed. Reg. 52,162 (Aug. 27, 2015). After receiving comments on the proposals, EPA issued the final Landfill Rules, both of which were effective October 28, 2016. 81 Fed. Reg. at 59,276, 59,332.

Several waste industry groups submitted a petition seeking reconsideration, new rulemaking, and an administrative stay of the Landfill Rules. Nat'l Waste & Recycling Ass'n *et al.*, Pet. for Rulemaking, Reconsideration, & Admin. Stay (Oct. 27, 2016) (JA __) [hereinafter "Industry Pet."]. The same parties re-submitted the same petition on January 30, 2017 "in recognition of the recent change in leadership at EPA." Nat'l Waste & Recycling Ass'n *et al.*, Pet. for Rulemaking, Reconsideration, & Admin. Stay; Resubmission (Jan. 30, 2017) (JA __). The petition requested reconsideration of certain aspects of the Landfill Rules that the petitioners claimed to require reconsideration under Clean Air Act section 307(d)(7)(B). Industry Pet. at 26-27 (JA __). The petition also sought relief on other issues that the petitioners acknowledged were ineligible for reconsideration; for these the petition requested that EPA "initiate rulemaking to address certain aspects of EPA's Final Rules that were raised in comments at proposal." *Id.* at 4-5. The petition thus conceded that the latter set of issues did not qualify for mandatory reconsideration. *Id.*

On May 5, 2017, Administrator Pruitt sent the industry groups a letter granting reconsideration of six of the issues in the petition, without offering any explanation for the Administrator's conclusion that those issues required reconsideration under section 307(d)(7)(B). Letter from E. Scott Pruitt, EPA Administrator, to Carroll W.

McGuffey, Republic Services, *et al.* (May 5, 2017) (JA__). Nonetheless, the letter assured petitioners that "EPA intends to exercise its authority under Clean Air Act section 307(d)(7)(B) to issue a 90-day stay of the effectiveness" of both Landfill Rules *in their entirety*. *Id.* at 2.

The Administrator's letter to the industry groups became public only on May 22, 2017, when the notice of administrative stay was signed and posted on the Agency's website, and subsequently published. *See* 82 Fed. Reg. at 24,878-79. The Federal Register notice granted reconsideration on the same six issues listed in the letter. *Id.* The notice offered only the barest assertion of a notice defect, and that for only one issue—the use of so-called "Tier 4" surface emissions monitoring to demonstrate that a landfill's emissions are below the 34-ton applicability threshold. *Id.* at 24,879. For the other five issues, the notice offered no explanation *at all* as to how they met the requirements of section 307(d)(7)(B). *Id.* Even a cursory examination of the record, however, shows that the issues could have been – and in fact were – commented on during the underlying rulemaking.[4]

Environmental and public health organizations, including Petitioners, twice demanded in writing that EPA withdraw this unlawful stay. Letter from Envtl. & Pub.

[4] *See*, *e.g.*, Waste Management Comments on Supplemental Proposal, at 45 (Oct. 26, 2015), EPA-HQ-OAR-2003-0215-0198 (JA __) [hereinafter "Waste Management 2015 Comments"]; Wis. Dep't of Natural Res. Comments, at 5-6 (Sept. 15, 2014), EPA-HQ-OAR-2003-0215-0088 (JA __).

Health Grps. to E. Scott Pruitt, EPA Admin. (June 14, 2017) (JA __); Letter from Envtl. & Pub. Health Grps. to E. Scott Pruitt, EPA Admin. (July 10, 2017) (JA __). Administrator Pruitt declined to do so in a July 11, 2017-letter, which stated that he intended to "look broadly at the entire 2016 [Landfill Rules] during this reconsideration proceeding." Letter from E. Scott Pruitt, EPA Admin., to David Doniger, Natural Res. Def. Council (July 11, 2017) (JA __). The Administrator has submitted two proposals to extend the stay of the Landfill Rules to the Office of Management and Budget for review.[5] While their precise content is not yet public, these still-pending proposals—like EPA's analogous proposals to extend the stay vacated in *Clean Air Council v. Pruitt,* 862 F.3d 1 (D.C. Cir. 2017)—suggest that the 90-day stay is only the first step toward a long-term suspension of the Landfill Rules.

The administrative stay notice did not expressly address the impact of the stay on subsequent state implementation and source compliance obligations. It has, however had the practical effect of delaying those obligations – an effect that continues even after the stay's expiration. For existing landfills the May 30, 2017

[5] Office of Mgmt. & Budget, Notice Pending EO 12866 Regulatory Review: Extension of Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (last visited Nov. 18, 2017) (JA __); Office of Mgmt. & Budget, Notice Pending EO 12866 Regulatory Review: Stay of Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (last visited Nov. 18, 2017) (JA __).

deadline for states to submit state plans, 40 C.F.R. § 60.30f, was stayed, effectively delaying each regulatory step required by law to take place thereafter.[6] Each subsequent deadline is keyed to the May 30th submission date: (1) EPA must approve or disapprove the plan "within four months after the date required for submission," and (2) affected facilities must submit design capacity and emission rate reporting within 90 days of the effective date of EPA's state plan approval. 40 C.F.R. §§ 60.27(b), 60.38f. If those reports show that a facility meets the design capacity and emissions thresholds, it must install and operate gas collection and control system within 30 months. 40 C.F.R. § 60.32f.

For any new, modified, or reconstructed landfills—those that commence construction after July 17, 2014—the stay lifted compliance obligations that fell due during the 90-day stay period, and likely also delays subsequent compliance deadlines. For example, the earliest new sources subject to the updated rule were required to report on whether the source's emissions exceeded the threshold requiring controls by November 28, 2016. 40 C.F.R. § 60.767. Control system designs are due one year later – eight days from the date this brief is being filed. *Id.* Those controls must be installed

[6] Even if the stay were valid, the May 30, 2017 state plan submission deadline would at most be delayed until the end of the stay, August 29, 2017. However, to this date Petitioners are aware of only two states that have submitted the required state plan to EPA: California, *see* Cal. Air Res. Bd., Landfill Activities, https://www.arb.ca.gov/cc/landfills/landfills.htm#stateplan (JA__); and New Mexico, *see* N.M. Env't Dep't, Proposed Air Quality Regulations and Plans, https://www.env.nm.gov/air-quality/proposed-regs/ (JA__).

within 30 months of the initial report. 40 C.F.R. § 60.762(b)(2)(ii). For any sources that fall within this category the stay tolls those deadlines by at least 90 days.

EPA recently announced that it simply is not undertaking the state-plan-review steps that by law should have been *completed* by September 30, 2017. An EPA spokesperson said that the Agency does not "plan to prioritize the review of these state plans . . . nor are we working to issue a Federal Plan for states that failed to submit a state plan." Boteler, *supra* note 2 (JA__). In other words, following this Court's rebuke in *Clean Air Council*, EPA is still proceeding as though the illegal Landfill Rule stay was perfectly valid – and indeed effectively still in place.

SUMMARY OF ARGUMENT

The legality of EPA's administrative stay remains a live controversy due to its continuing effects. Although the stay nominally ended on August 29, 2017, the 90-day suspension of deadlines has caused a cascading series of delays, pushing back all subsequent compliance obligations, and the Agency has stated publicly its intention not to move forward to implement the rule, effectively extending the illegal stay indefinitely. This case is therefore a live controversy warranting judicial review.

A three-month administrative stay under Clean Air Act section 307(d)(7)(B) is permitted only when reconsideration is required by a notice failure in the prior rulemaking. *Clean Air Council*, 862 F.3d at 8. For five of the six issues on which he granted reconsideration of the Landfill Rules, the Administrator failed to articulate any rationale at all for why reconsideration was required. The Administrator offered a

minimal explanation for only one issue, but that explanation patently fails to meet the statutory criteria. Because reconsideration of the Landfill Rules was not mandatory, EPA's administrative stay must be vacated as arbitrary, capricious, and unlawful.

STANDING

Timely compliance with the Landfill Rules will reduce air pollution exposure for Petitioners' members, and many others across the country, who live in close proximity to affected landfills. Petitioners have associational standing based on the harm to their members caused by Respondents' action suspending implementation of the Landfill Rules. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). *See also* Declaration of Gina Trujillo ¶¶ 4-7; Declaration of Joseph O. Minott ¶¶ 3-5; Declaration of Kathryn A. Nekola ¶¶ 3-6; Declaration of Sara Molyneaux ¶¶ 2-4. This case is no different from the many other cases where environmental organizations, on behalf of their members, have challenged government actions that delay environmental protections. *See Natural Res. Def. Council v. EPA*, 643 F.3d 311, 317-19 (D.C. Cir. 2011) (organization has standing on behalf of its members to challenge EPA action that delayed air quality improvement); *Sierra Club v. EPA*, 129 F.3d 137, 139 (D.C. Cir. 1997) (same).

A. Petitioners' member declarants are currently injured by EPA's unlawful stay.

Harmful air pollution from landfills is causing injury to Petitioners' members now, and delaying compliance with the Landfill Rules prolongs and worsens those

injuries.[7] Landfills subject to the Rules emit nearly 30 different hazardous air pollutants, including known carcinogens, 81 Fed. Reg. at 59,281, and Petitioners' members who live near affected landfills currently suffer concrete and particularized injury from exposure to them. RIA at 4-31 to 4-40 (JA __). Petitioners' members who live, work, and recreate near landfills covered by the Landfill Rules are exposed to landfill emissions and face increased risk of the associated health effects; the stay deprives them of the public health protections promised by the Landfill Rules. *See, e.g.*, Declaration of Craig Gooding ¶¶ 4-8; Declaration of Susan Almy ¶¶ 10-13; Nekola Decl. ¶¶ 19-21.

Petitioner's member declarants have demonstrated specific harm from emissions regulated by the Rules. Craig Gooding, who lives less than one mile away from the Charleston County Landfill, can smell the landfill's noxious emissions from his home and curtails time spent outdoors to avoid breathing the landfill's emissions out of fear of the effects on his health from breathing the polluted air. Gooding Decl. ¶¶ 6-8.

[7] *See* EPA, Regulatory Impact Analysis at tbl. 4-1 (July 2016), EPA-HQ-OAR-2014-0451-0225 [hereinafter "RIA"] (describing the climate and human health effects of emission reductions resulting from the Landfill Rules) (JA __).

Landfills also emit methane and volatile organic compounds ("VOCs") that contribute to the formation of ground-level ozone smog and particulate matter,[8] pollutants associated with premature deaths, heart attacks, asthma attacks, bronchitis, and other public health harms. 81 Fed. Reg. at 59,281. Susan Almy suffers from chronic asthma that is exacerbated by ozone smog, a pollution problem to which the emissions of the Lebanon Landfill near her home contributes, as do others upwind of her. Almy Decl. ¶¶ 10-12; Molyneaux ¶¶ 21-22 (same for husband). Joseph Minott lives in Philadelphia, an ozone nonattainment area, and suffers from sarcoidosis, which is aggravated by ground level ozone, to which the region's landfills contribute. *Id.* at ¶¶ 16, 19-20.

EPA projects that by lowering the emissions threshold from 50 to 34 tons of non-methane organic compounds ("NMOC") per year, the Landfill Rules will require 105 additional landfills to install controls and significantly reduce their emissions.[9] 81 Fed. Reg. at 59,361 and 59,305. Petitioners' individual member declarants are harmed by delays in emissions reductions, due to continued exposure to particulate matter and

[8] *See* RIA, at 4-21 to 4-23 (JA__) (describing the role of methane and VOCs as ozone precursors, and the role of VOCs a precursor to particulate matter).

[9] Landfill gas contains methane and NMOC; NMOC is comprised of air pollutants including VOCs and hazardous air pollutants. RIA at 4-1 (JA__). Combined, the Landfill Rules will reduce methane emissions by 9.1 million metric tons, RIA at tbls. 4-6 & 7-1 (JA__), and NMOC by 2,300 megagrams, *id.* at tbls. 3-7 & 7-13 (JA__), in 2020.

ozone smog. *See Natural Res. Def. Council v. EPA*, 643 F.3d at 317-19 (NRDC members injured by delayed reduction of ambient ozone).

Landfills emit more than 20 percent of methane emissions from *all* U.S. sources. RIA at 4-5 (JA__). Landfill methane is a potent greenhouse gas that contributes to global climate change that specifically injures Petitioners' members. The Landfill Rules will significantly reduce these emissions *See supra* note 9. The health and well-being of Petitioners' members, and property and natural resources that they use, own, and enjoy, are presently being harmed by, or are at risk of harm from climate change to which landfill greenhouse gas emissions contribute. *See, e.g.*, Declaration of Douglas I. Foy ¶¶ 17-20; Gooding Decl. ¶¶ 9-10; Minott Decl. ¶¶ 18-22; Nekola Decl. ¶¶ 17-18.

Petitioners' members are already experiencing concrete harm from climate change and have particularized interests in minimizing its future impacts. For example, Kathryn Nekola works and recreates near the Dane County Landfill. Nekola Decl. ¶¶ 20-21. In addition to the landfill's localized public health effects, Ms. Nekola is experiencing the adverse impacts of climate change on the southern Wisconsin forests and streams where she hikes, bikes, and swims, including the spread of tick-borne Lyme Disease, which she herself has suffered. Nekola Decl. ¶¶ 11-17. And Mr. Gooding, avid kayaker, has experienced climate change-driven sea level rise and flooding in the Charleston area. Gooding Decl. ¶¶ 9-10; Minott ¶ 17 (concerned about personal waterfront property flooding); Molyneaux ¶ 18 (same).

The stay delays compliance with the Landfill Rules, delays emission reductions from those Rules, and delays reductions in current harms suffered by Petitioners' members. Even the initial three-month delay in compliance, which has now been nearly doubled, prolonged and exacerbated the present injuries those emissions are causing. For example, the Charleston County Landfill—located less than one mile from Mr. Gooding's home—is an existing landfill with emissions below the 1994 rule's 50-ton emissions threshold, but likely to exceed the 2016 Landfill Rules' 34-ton threshold for installing controls. Without the stay, South Carolina would have been required to submit a state plan covering this facility by May 30, 2017, and EPA would have had to approve or disapprove the plan by the end of September 2017. An approved plan would have required the landfill's operator to submit by December 2017, a report indicating whether controls are required, and then to install such controls within 30 months of the report. Each of these deadlines is now delayed—seemingly indefinitely—extending the time that Petitioners' members must continue to suffer injury from the unmitigated emissions.

B. Petitioners have been denied procedural rights.

By issuing the stay without notice-and-comment rulemaking, the Administrator deprived Petitioners and their members of fundamental procedural rights to which they are entitled under Clean Air Act section 307(d), 42 U.S.C. § 7607(d). The Administrator failed to propose any legal and factual basis for delaying the landfill compliance deadlines, failed to give the public any opportunity to comment on the

substantive change, and failed to shoulder his duty to respond to public comments. Such procedural injuries lessen Petitioners' burden to demonstrate Article III standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n. 7 (1992) (petitioners "accorded a procedural right to protect … concrete interests can assert that right without meeting all the normal standards for redressability and immediacy").

C. Petitioners' injuries can be redressed by a favorable decision.

As discussed below, *see infra* Part I, a decision that the stay was unlawful, and vacatur of the stay, will redress Petitioners' injuries by restoring the Rules' original compliance schedule. Because the stay pushed back a series of deadlines—and because EPA has recently indicated it is continuing to not implement the Rules—Petitioners' injuries were not redressed by the expiration of the stay on August 29, 2017. A ruling that the stay was unlawful is necessary to prevent the delay of emission reductions and mitigate harm to Petitioners' members precisely by putting back on track the "lengthy chain of events," EPA Opp. at 17, ECF No. 1689616 (Aug. 21, 2017), that lead to installation of landfill emission controls.

STANDARD OF REVIEW

This Court must reject and vacate an EPA action found to be "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," or "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *See* 42 U.S.C. § 7607(d)(9).

Agency action is "arbitrary and capricious" if the agency does not "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted). A court "must judge the propriety of such action solely by the grounds invoked by the agency." *Sec. & Exch. Comm'n v. Chenery Corp.*, 332 U.S. 194, 196 (1947).

ARGUMENT

I. THE VALIDITY OF THE STAY REMAINS A LIVE CONTROVERSY.

Although the administrative stay, by its terms, expired on August 29, 2017, the initial 90-day stay delayed a series of implementation and compliance deadlines, which continues to have repercussions. The continuing consequences of this stay keep this controversy alive and demand judicial intervention.

The stay suspended all deadlines under both Landfill Rules for 90 days. Because all the Landfill Rule's compliance dates for existing landfills are tied to the initial dates of state or federal plan completion, *see supra* p. 10, the illegal stay will continue to cause delays in compliance. Absent the stay, state plans were due May 30, 2017, 40 C.F.R. § 60.30f, and EPA was required to approve or disapprove submitted plans by the end of September 2017, 40 C.F.R. § 60.27(b). Assuming timely state plan approval, affected landfills would have been required to submit reports by the end of December 2017, 40 C.F.R. § 60.38f, and landfills exceeding the emission threshold would have been required to install controls within 30 months, or roughly by the end

of June 2020, 40 C.F.R. § 60.32f. Likewise, for states that failed to submit an approvable plan by May 30, 2017, EPA would have been required to promulgate a federal plan by the end of November 2017. 40 C.F.R. § 60.27(d). EPA's suspension of the state plan submission deadline pushes back each of these subsequent deadlines and ultimately delays the installation of pollution controls, keeping this controversy alive. *See Am. Fed'n of Gov't Employees, AFL-CIO v. Reagan*, 870 F.2d 723, 726 (D.C. Cir. 1989) (recognizing that "collateral consequences flowing from" challenged action keep a "controversy … very much alive").

For the first new sources subject to the updated rules—those built after July 17, 2014 but before August 29, 2016—a report measuring the source's emissions of NMOC, to determine whether they triggered requirements for control systems, was due November 28, 2016. 40 C.F.R. § 60.767. If the new source exceeded the threshold for controls, a control system design is due a year later, November 28, 2017 – eight days from the date this brief is being filed. *Id.* For any new source built after August 29, 2016, the report its due 90 days after the date of commenced construction, modification, or reconstruction. *Id.* The controls must be installed within 30 months of the original report. 40 C.F.R. § 60.762(b)(2)(ii). EPA's 90-day stay here, likewise, pushes back all of these deadlines and delays installation of pollution controls.

While EPA's website notes that "[b]ecause this 90-stay expired on August 29, 2017, the 2016 rules are currently in effect," EPA, *supra* note 1 (JA__), such a statement does not end the controversy due to the ongoing and cascading series of

delays. Moreover, EPA continues to use its claimed intent to reconsider the rule as a basis for an indefinite delay in implementing the Landfill Rules. An EPA spokesperson recently made the following statement to a trade publication:

> Since the Agency is reconsidering various issues regarding the landfill regulations, at this time we do not plan to prioritize the review of these state plans nor are we working to issue a Federal Plan for states that failed to submit a state plan.

Boteler, *supra* note 2 (JA__). By illegally suspending deadlines, failing to reestablish them, and then publicly stating its intention to ignore non-compliance, EPA is prolonging the unlawful 90-day stay. A decision of this Court holding the stay illegal will definitively establish that implementation and compliance are behind schedule and that EPA must act according to the original schedule codified in the Landfill Rules, or as near to it as feasible at this point. Such a ruling will prevent EPA from relying on the stay to justify ongoing delays. Because of the continuing effects of the stay, a live controversy exists for this Court to resolve.

Short term actions such as EPA's 90-day stay present the additional problem of evading judicial review in the normal course, making them prone to repetition and abuse. *See, e.g.*, *Humane Society v. EPA*, 790 F.2d 106, 113 (D.C. Cir. 1986) ("one-year life span of the permits simply did not allow completion of the [judicial review] process prior to their demise"); *Envtl. Def. Fund v. Gorsuch*, 713 F.2d 802, 811 (D.C. Cir. 1983) (national environmental advocacy group "likely to be a party to any future dispute which involves a similar principle" because of "breadth of its interest" in

implementation of regulations under environmental statute). Judicial intervention here is therefore doubly warranted to ensure that such a short-term illegal action does not morph into a long-term, unchecked Agency action.

II. EPA'S ADMINISTRATIVE STAY WAS UNLAWFUL.

A. Clean Air Act administrative stays are unlawful absent mandatory reconsideration.

That EPA may undertake a new rulemaking to revise an existing regulation, in accordance with the procedures required by the Clean Air Act, is unchallenged. *See* 42 U.S.C. § 7607(d)(1) -(6). What the Administrator may not do is summarily stay an existing regulation while contemplating revisions to it. *Clean Air Council*, 862 F.3d at 9; *see also Nat'l Family Planning & Reproductive Health Assoc. v. Sullivan*, 979 F.2d 227, 234 (D.C. Cir. 1992) ("an agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked").

A temporary stay is permissible only in the context of a mandatory reconsideration proceeding under Clean Air Act section 307(d)(7)(B). *Clean Air Council*, 862 F.3d at 9. Section 307(d)(7)(B) specifies the limited circumstances under which reconsideration is required:

> If the person raising an objection can demonstrate to the Administrator that it was *impracticable to raise such objection within such time* or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) *and if such objection is of central relevance to the outcome of the rule*, the Administrator shall convene a proceeding for reconsideration of the rule... Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed

> during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

42 U.S.C. § 7607(d)(7)(B) (emphasis added). Accordingly, reconsideration is mandatory, and a three-month stay permissible, only when both criteria are met: an objection that was "impracticable to raise" and that is of "central relevance" to the rule. *Clean Air Council*, 862 F.3d at 9-10.

The impracticability of raising an objection turns on whether the final rule is a "logical outgrowth" of the proposal—that is, where the proposed rule provided sufficient notice that stakeholders should have raised the objection during the public comment period. *North Carolina v. EPA*, 531 F.3d 896, 928–29, *modified in part on reh'g*, 550 F.3d 1176 (D.C. Cir. 2008) (reconsideration petitioner "fail[ed] to demonstrate a statutory ground that would require reconsideration" where final agency action was a "logical outgrowth" and petitioner had "not demonstrated that it was impracticable to raise such objection within the comment period"); *see also CSX Transportation, Inc. v. Surface Transportation Board*, 584 F.3d 1076, 1081 (D.C. Cir. 2009) ("a final rule represents a logical outgrowth where the [proposal] expressly asked for comments on a particular issue or otherwise made clear that the agency was contemplating a particular change.").

All the issues on which Administrator Pruitt granted reconsideration were adequately noticed in the proposed rules, and therefore objections were not impracticable to raise—and in fact *were* raised—during the period for public comment.

B. The stay notice fails to justify reconsideration for five of the six issues where it was granted.

In his grant of reconsideration and stay, the Administrator failed to provide any rationale whatsoever for how five of the six issues on which he granted reconsideration meet the requirements of section 307(d)(7)(B). 82 Fed. Reg. at 24,878-79. For five of the issues, the notice provides nothing but the unsupported statement that the statutory criteria were met. 82 Fed. Reg. at 24,878-79. This total lack of explanation fails the minimum requirements for reasoned decision-making, where the agency must "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted). A court "must judge the propriety of such action solely by the grounds invoked by the agency." *Sec. & Exch. Comm'n v. Chenery Corp.*, 332 U.S. 194, 196 (1947). Because Administrator Pruitt provided no explanation for why reconsideration of these five issues is mandatory, a stay based on reconsideration of those issues is arbitrary, capricious, and unlawful. 42 U.S.C. § 7607(d)(9)(A).

C. Reconsideration of the surface emissions monitoring issue is not mandatory.

The Administrator claims to have found two notice defects with respect to the Tier 4 monitoring option: the stay notice claims (1) that certain conditions on the use of Tier 4 monitoring—"limits on wind speed, the use of barriers" and (2) that

"restricting the use of Tier 4 [monitoring] to landfills with …emission rates between 34 and 50" tons per year—"were not included in the proposal." 82 Fed. Reg. at 24,879. The Administrator's claims are plainly erroneous.

A brief explanation of the function of Tier 4 monitoring will set the context. The Landfill Rules require landfills to install a gas collection and control system if their NMOC emissions are above 34 metric tons per year. 81 Fed. Reg. at 59,278 and 59,333-34. Under the 1996 rules, whether a landfill met the previously applicable 50-ton threshold was determined using three "tiers" of emissions modelling. 61 Fed. Reg. at 9,907. The 2016 Landfill Rules added a "Tier 4" option for landfills whose modelled emissions are determined to fall between 34 and 50 metric tons per year using the three tiers of emissions modeling methods. For these landfills, the Rules add the option to use surface emissions monitoring to demonstrate that their actual emissions rate is below the threshold, and therefore that the landfill need not install controls. 81 Fed. Reg. at 59,334.

1. Wind restrictions

The Landfill Rules established wind restrictions to assure that Tier 4 emissions monitoring would yield representative results. Because surface emissions measurements can be distorted in windy conditions, the Landfill Rules require that a wind barrier must be used during Tier 4 monitoring when the average wind speed exceeds four miles per hour, or gusts are above 10 miles per hour. 81 Fed. Reg. at

59,287 and 59,344. Tier 4 measurements cannot be conducted if the average wind speed exceeds 25 miles per hour. *Id.*

EPA first gave notice of these issues in the 2014 advance notice of proposed rulemaking that preceded the proposed rulemaking. The advance notice indicated concern with how "air movement can affect whether the monitor is accurately reading the methane concentration" and solicited comment on whether surface emissions monitoring should be allowed during periods of elevated wind speed. 79 Fed. Reg. 41,771, 41,789 (July 17, 2014) (JA __). Due to the concern that "conducting surface emissions monitoring during windy periods may not yield readings that are representative of the emissions," in the 2014 proposed rule for new sources EPA again "requested public comment on surface monitoring procedures…such as…allowing sampling only when wind is below a certain speed." 79 Fed. Reg. at 41,822. EPA again solicited public comment on this issue in the 2015 proposed rule and considered "not allowing surface emissions monitoring when the average wind speed exceeds 5 [miles per hour]." 80 Fed. Reg. at 52,135-36. Industry stakeholders submitted comments in response to each of these requests. *See, e.g.*, Waste Management 2015 Comments at 15-16 (JA __).

These facts show that the Administrator's current contention that the issue of wind restrictions on the use of surface emissions monitoring is plainly wrong. Reconsideration is not required where the Agency clearly requested comment on the

specific issue, and stakeholders commented on the issue, as they did here. *Clean Air Council*, 862 F.3d at 14.

2. Limitation to Under-50-Ton Landfills

The Administrator's stay notice claims that stakeholders were deprived of the opportunity to comment on the final Landfill Rules' decision to limit the Tier 4 monitoring option to landfills with modelled emissions in the 34 to 50 metric ton range. 82 Fed. Reg. at 24,879. This is both plainly erroneous and of no real-world impact.

The proposed rules included the Tier 4 monitoring option for all landfills with modelled emissions above 34 metric tons per year. The proposals requested "input on all aspects of implementing a new Tier 4 option." 79 Fed. Reg. at 41,791 and 41,824; *see also* 80 Fed. Reg. at 52,127-29. The 2015 proposal (80 Fed. Reg. at 52,137) also specifically asked for comment on how to harmonize these standards with another existing standard, the 2003 National Emission Standards for Hazardous Air Pollutants (NESHAP) for landfills established under section 112 of the Act. 40 C.F.R. § 63.1955. The 2003 NESHAP requirements were identical to those of the original 1996 New Source Performance Standards and Emission Guidelines. They all applied to landfills with emissions exceeding 50 metric tons per year, and they required the same emission controls. *See* 81 Fed. Reg. at 59,334.

There is no question that industry commenters were aware of the NESHAP and its relationship to the section 111 Landfill Rules at issue in this rulemaking. In

fact, Waste Management and others commented on the issue, urging consistency between the Landfill Rules and the NESHAP.[10] In response, the final Landfill Rules limited the Tier 4 option to landfills in the 34 to 50 ton range specifically to avoid any conflict with the NESHAP. 81 Fed. Reg. at 59,279 and 59,334. Because commenters recognized and actually commented upon the very issue that Administrator Pruitt identified, and because the Agency response is a clearly logical outgrowth of the proposal and comments, there is no factual support for his claim that affected parties were not on notice of that issue during the original rulemakings. *See Clean Air Council*, 862 F.3d at 14; *Nat'l Mining Ass'n v. Mine Safety & Health Admin.*, 512 F.3d 696, 699-700 (D.C. Cir. 2008) (no notice violation when comments demonstrate actual notice).

Finally, Tier 4 is of limited relevance to the suite of landfill regulations. Restricting the use of Tier 4 monitoring to under-50-ton landfills has no practical effect on above-50-ton landfills—even if EPA's NSPS and emission guideline rules under section 111 allowed a landfill with modelled emissions above 50 tons to use

[10] *See* Waste Management 2015 Comments at 45 (citing EPA's description of the interrelationship between the proposed rules and the NESHAP and expressing concerns regarding inconsistency) (JA__); Waste Management, Comments on Advanced Notice of Proposed Rulemaking, at 11-12 (Sept. 15, 2014), EPA-HQ-OAR-2014-0451-0037 [hereinafter "Waste Management 2014 Comments"] (describing potential overlap in requirements between the performance standards and the Subpart AAAA NESHAP) (JA__); *see also* Republic Services, Comments on Proposed Rulemaking, at 31 (Oct. 26, 2015), EPA-HQ-OAR-2014-0451-0176 (recommending "a coordinated rule with the NESHAP Subpart AAAA and NSPS/emission guidelines to ensure a consistent approach") (JA__).

Tier 4 and measure actual emissions, that landfill would still have to install the same controls under the section 112 NESHAP regardless of the result of the Tier 4 monitoring. Because the original section 111 standards applied to above-50-ton landfills for more than 20 years without a Tier 4 option, it is not credible to claim that Tier 4 "go[es] to the heart of the decisionmaking process," as required for a valid reconsideration. *Air Pollution Control Dist. of Jefferson Cnty. v. EPA*, 739 F.2d 1071, 1079 (6th Cir. 1984).

For these reasons, the Administrator's claim that there was a notice failure requiring reconsideration is patently meritless. Further, limiting the Tier 4 option to lower-emitting landfills is not of central relevance because it had no real-world impact on higher-emitting landfills already subject to the same requirements under the NESHAP regulations.

D. None of the remaining issues meet the requirements for mandatory reconsideration.

As noted, the Administrator gave no explanation why the five other identified issues merited reconsideration, and thus a stay based on reconsideration of those issues is arbitrary, capricious, and unlawful. Nonetheless, a brief summary explains how any such claim would fail.

1. Annual Liquids Reporting.

The proposed rules requested comment on whether to impose different requirements on wet landfills or landfills that add liquid to facilitate waste

decomposition. 79 Fed. Reg. at 41,784 and 41,808. Industry stakeholders commented that EPA did not have enough data to justify different compliance regimes for wet landfills. Waste Management 2014 Comments at 11-12 (JA __); Waste Management 2015 Comments at 43-44 (JA__); Republic Services 2015 Comments at 31 (JA__). In response, EPA agreed that it lacked the necessary data to impose different requirements for wet landfills at this time. The final Rules' requirement that landfills annually report the quantities of added or recirculated liquids is an obvious logical outgrowth of the proposal and the comments concerning the need for more data. 81 Fed. Reg. at 59,295-96 and 59,350-51.

2. Corrective Action Timeline Procedures.

EPA specifically requested comment on the appropriateness of a schedule for landfill owners to submit an alternative corrective action timeline after a landfill exceeds emission limits. 79 Fed. Reg. at 41,793 and 41,820; 80 Fed. Reg. at 52,126-27. In response, an industry commenter recommended a "root cause analysis and corrective action procedure" as "particularly appropriate for landfills." Republic Services 2015 Comments at 13 (JA__). The final Landfill Rules adopted requirements nearly identical to that recommendation—they imposed minimal analytical requirements to determine the cause of the exceedance and how to remedy the problem, and required submission of that analysis and timeline to the Administrator for approval only if the remedy will take longer than 120 days. 81 Fed. Reg. at 59,293-94 and 59,348-50. These requirements are a logical outgrowth of the proposals, as

informed by numerous comments. *See Appalachian Power Co. v. EPA*, 135 F.3d 791, 816 (D.C. Cir. 1998).

3. Overlapping Applicability; Definition of Cover Penetration; Design Plan Approval.

As industry stakeholders themselves acknowledged, the remaining three issues do not meet the criteria for reconsideration because they "were raised in comments at proposal." Industry Pet. at 4 (JA __). As industry concedes, these issues do not require reconsideration, and therefore are ineligible bases for a stay, because they were noticed in the proposal and the Agency received comment on them. Like the others, these three issues plainly fail to meet the criteria for mandatory reconsideration.

CONCLUSION

Because the Administrator identified no issue where reconsideration was required under section 307(d)(7)(B), and because the stay has continuing effects, the administrative stay granted by Administrator Pruitt is arbitrary, capricious and contrary to law and must be declared unlawful and vacated.

Dated: November 20, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Federal Rules of Appellate Procedure 32(a)(7)(B) and 32(g)(1) that the foregoing Petitioners' Initial Opening Brief contains 7,339 words, and thus complies with the 13,000-word limit.

I further certify that this document complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in Garamond 14-point font.

Dated: November 20, 2017

/s/ Melissa J. Lynch
Melissa J. Lynch

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November 2017, I have served the foregoing Petitioners' Initial Opening Brief on all registered counsel through the court's electronic filing (ECF) system.

Dated: November 20, 2017

/s/ Melissa J. Lynch
Melissa J. Lynch

ORAL ARGUMENT NOT YET SCHEDULED

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

No. 17-1157

NATURAL RESOURCES DEFENSE COUNCIL, CLEAN AIR COUNCIL, CLEAN WISCONSIN, and CONSERVATION LAW FOUNDATION,

Petitioners,

v.

E. SCOTT PRUITT, Administrator, U.S. Environmental Protection Agency, and UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

ADDENDUM TO PETITIONERS' INITIAL OPENING BRIEF

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42 U.S.C.A. § 7411

§ 7411. Standards of performance for new stationary sources

Currentness

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term "existing source" means any stationary source other than a new source.

(7) The term "technological system of continuous emission reduction" means--

(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C.A. § 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C.A. § 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii) of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within one year after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one year after such publication, such standards with such modifications as he deems appropriate. The Administrator shall, at least every 8 years, review and, if appropriate, revise such 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. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h) of this section, nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i) and (ii) of this section shall be promulgated not later than one year after August 7, 1977. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Standards of performance for existing sources; remaining useful life of source

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority--

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 7410(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 7413 and 7414 of this title with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.

(e) Prohibited acts

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) New source standards of performance

(1) For those categories of major stationary sources that the Administrator listed under subsection (b)(1)(A) of this section before November 15, 1990, and for which regulations had not been proposed by the Administrator by November 15, 1990, the Administrator shall--

(A) propose regulations establishing standards of performance for at least 25 percent of such categories of sources within 2 years after November 15, 1990;

(B) propose regulations establishing standards of performance for at least 50 percent of such categories of sources within 4 years after November 15, 1990; and

(C) propose regulations for the remaining categories of sources within 6 years after November 15, 1990.

(2) In determining priorities for promulgating standards for categories of major stationary sources for the purpose of paragraph (1), the Administrator shall consider--

(A) the quantity of air pollutant emissions which each such category will emit, or will be designed to emit;

(B) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare; and

(C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(g) Revision of regulations

(1) Upon application by the Governor of a State showing that the Administrator has failed to specify in regulations under subsection (f)(1) of this section any category of major stationary sources required to be specified under such regulations, the Administrator shall revise such regulations to specify any such category.

(2) Upon application of the Governor of a State, showing that any category of stationary sources which is not included in the list under subsection (b)(1)(A) of this section contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources), the Administrator shall revise such regulations to specify such category of stationary sources.

(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under subsection (f)(2) of this section, the Administrator shall revise the list under subsection (b)(1)(A) of this section to apply properly such criteria.

(4) Upon application of the Governor of a State showing that--

(A) a new, innovative, or improved technology or process which achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources, and

(B) as a result of such technology or process, the new source standard of performance in effect under this section for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated,

the Administrator shall revise such standard of performance for such category accordingly.

(5) Unless later deadlines for action of the Administrator are otherwise prescribed under this section, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either--

(A) find that such application does not contain the requisite showing and deny such application, or

(B) grant such application and take the action required under this subsection.

(6) Before taking any action required by subsection (f) of this section or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(h) Design, equipment, work practice, or operational standard; alternative emission limitation

(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such

standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase "not feasible to prescribe or enforce a standard of performance" means any situation in which the Administrator determines that (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of standard of performance whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this chapter (other than the provisions of subsection (a) of this section and this subsection).

(i) Country elevators

Any regulations promulgated by the Administrator under this section applicable to grain elevators shall not apply to country elevators (as defined by the Administrator) which have a storage capacity of less than two million five hundred thousand bushels.

(j) Innovative technological systems of continuous emission reduction

(1)(A) Any person proposing to own or operate a new source may request the Administrator for one or more waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under this paragraph, if the Administrator determines after notice and opportunity for public hearing, that--

(i) the proposed system or systems have not been adequately demonstrated,

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

(iii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

(iv) the granting of such waiver is consistent with the requirements of subparagraph (C).

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (iii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

(B) A waiver under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure--

(i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

(ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 7413 of this title.

(C) The number of waivers granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the conditions specified in clauses (ii) and (iii) of subparagraph (A).

(D) A waiver under this paragraph shall extend to the sooner of--

(i) the date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used, or

(ii) the date on which the Administrator determines that such system has failed to--

(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

(II) comply with the condition specified in paragraph (1)(A)(iii),

and that such failure cannot be corrected.

(E) In carrying out subparagraph (D)(i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the date--

(i) seven years after the date on which any waiver is granted to such source or portion thereof, or

(ii) four years after the date on which such source or portion thereof commences operation,

whichever is earlier.

(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 7413 of this title.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 111, as added Pub.L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1683; amended Pub.L. 92-157, Title III, § 302(f), Nov. 18, 1971, 85 Stat. 464; Pub.L. 95-95, Title I, § 109(a)-(d)(1), (e), (f), Title IV, § 401(b), Aug. 7, 1977, 91 Stat. 697 to 703, 791; Pub.L. 95-190, § 14(a)(7) to (9), Nov. 16, 1977, 91 Stat. 1399; Pub.L. 95-623, § 13(a), Nov. 9, 1978, 92 Stat. 3457; Pub.L. 101-549, Title I, § 108(e) to (g), Title III, § 302(a), (b), Title IV, § 403(a), Nov. 15, 1990, 104 Stat. 2467, 2574, 2631.)

MEMORANDA OF PRESIDENT

PRESIDENTIAL MEMORANDUM

Memorandum of the President of the United States, June 25, 2013, 78 F.R. 39535, relating to power sector carbon pollution standards, was revoked by Ex. Ord. No. 13783, § 3(a)(ii), March 28, 2017, 82 F.R. 16093.

Notes of Decisions (120)

42 U.S.C.A. § 7411, 42 USCA § 7411
Current through P.L. 115-82

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter III. General Provisions

42 U.S.C.A. § 7607

§ 7607. Administrative proceedings and judicial review

Currentness

(a) Administrative subpenas; confidentiality; witnesses

In connection with any determination under section 7410(f) of this title, or for purposes of obtaining information under section 7521(b)(4) or 7545(c)(3) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the [1] chapter (including but not limited to section 7413, section 7414, section 7420, section 7429, section 7477, section 7524, section 7525, section 7542, section 7603, or section 7606 of this title),, [2] the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 7521(c) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph [3], the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Judicial review

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title,, [2] any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5) of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title, under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c-10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or revising

regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I of this chapter) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

(c) Additional evidence

In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to [4] the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(d) Rulemaking

(1) This subsection applies to--

(A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this title, or any regulation under section 7412(g)(1)(D) and (F) of this title, or any regulation under section 7412(m) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under section 7429 of this title,

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(F) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(G) the promulgation or revision of any regulation under subchapter IV-A of this chapter (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility),

(K) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

(L) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(M) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 7511b(e) of this title,

(P) the promulgation or revision of any regulation pertaining to field citations under section 7413(d)(3) of this title,

(Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of subchapter II of this chapter,

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 7547 of this title,

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 7552 of this title,

(T) the promulgation or revision of any regulation under subchapter IV-A of this chapter (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 7511b(f) of this title pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of Title 5.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of Title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the "comment period"). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of--

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)

of this section). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

(e) Other methods of judicial review not authorized

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, except as provided in this section.

(f) Costs

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties

In any action respecting the promulgation of regulations under section 7420 of this title or the administration or enforcement of section 7420 of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(h) Public participation

It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of Title 5, the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in section [5] 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

CREDIT(S)

(July 14, 1955, c. 360, Title III, § 307, as added Pub.L. 91-604, § 12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub.L. 92-157, Title III, § 302(a), Nov. 18, 1971, 85 Stat. 464; Pub.L. 93-319, § 6(c), June 22, 1974, 88 Stat. 259; Pub.L. 95-95, Title III, §§ 303(d), 305(a), (c), (f)-(h), Aug. 7, 1977, 91 Stat. 772, 776, 777; Pub.L. 95-190, § 14(a)(79), (80), Nov. 16, 1977, 91 Stat. 1404; Pub.L. 101-549, Title I, §§ 108(p), 110(5), Title III, § 302(g), (h), Title VII, §§ 702(c), 703, 706, 707(h), 710(b), Nov. 15, 1990, 104 Stat. 2469, 2470, 2574, 2681-2684.)

Notes of Decisions (347)

Footnotes

1 So in original. Probably should be “this”.

2 So in original.

3 So in original. Probably should be “subsection,”.

4 So in original. The word “to” probably should not appear.

5 So in original. Probably should be “sections”.

42 U.S.C.A. § 7607, 42 USCA § 7607

Current through P.L. 115-82

End of Document

 KeyCite Yellow Flag - Negative Treatment
Proposed Regulation

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 60. Standards of Performance for New Stationary Sources (Refs & Annos)
Subpart B. Adoption and Submittal of State Plans for Designated Facilities (Refs & Annos)

40 C.F.R. § 60.27

§ 60.27 Actions by the Administrator.

Currentness

(a) The Administrator may, whenever he determines necessary, extend the period for submission of any plan or plan revision or portion thereof.

(b) After receipt of a plan or plan revision, the Administrator will propose the plan or revision for approval or disapproval. The Administrator will, within four months after the date required for submission of a plan or plan revision, approve or disapprove such plan or revision or each portion thereof.

(c) The Administrator will, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth a plan, or portion thereof, for a State if:

(1) The State fails to submit a plan within the time prescribed;

(2) The State fails to submit a plan revision required by § 60.23(a)(2) within the time prescribed; or

(3) The Administrator disapproves the State plan or plan revision or any portion thereof, as unsatisfactory because the requirements of this subpart have not been met.

(d) The Administrator will, within six months after the date required for submission of a plan or plan revision, promulgate the regulations proposed under paragraph (c) of this section with such modifications as may be appropriate unless, prior to such promulgation, the State has adopted and submitted a plan or plan revision which the Administrator determines to be approvable.

(e)(1) Except as provided in paragraph (e)(2) of this section, regulations proposed and promulgated by the Administrator under this section will prescribe emission standards of the same stringency as the corresponding emission guideline(s) specified in the final guideline document published under § 60.22(a) and will require final compliance with such standards as expeditiously as practicable but no later than the times specified in the guideline document.

(2) Upon application by the owner or operator of a designated facility to which regulations proposed and promulgated under this section will apply, the Administrator may provide for the application of less stringent emission standards or longer compliance schedules than those otherwise required by this section in accordance with the criteria specified in § 60.24(f).

(f) Prior to promulgation of a plan under paragraph (d) of this section, the Administrator will provide the opportunity for at least one public hearing in either:

(1) Each State that failed to hold a public hearing as required by § 60.23(c); or

(2) Washington, DC or an alternate location specified in the Federal Register.

Credits
[65 FR 76384, Dec. 6, 2000]

SOURCE: 36 FR 24877, Dec. 23, 1971; 40 FR 53346, Nov. 17, 1975; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988; 57 FR 32338, July 21, 1992; 58 FR 40591, July 29, 1993; 60 FR 65384, Dec. 19, 1995; 62 FR 8328, Feb. 24, 1997; 62 FR 48379, Sept. 15, 1997; 64 FR 7463, Feb. 12, 1999; 65 FR 78275, Dec. 14, 2000; 72 FR 59204, Oct. 19, 2007, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Current through November 9, 2017; 82 FR 52014.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 60. Standards of Performance for New Stationary Sources (Refs & Annos)
Subpart CF. Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Refs & Annos)

40 C.F.R. § 60.30f

§ 60.30f Scope and delegated authorities.

Effective: October 28, 2016
Currentness

This subpart establishes Emission Guidelines and compliance times for the control of designated pollutants from certain designated municipal solid waste (MSW) landfills in accordance with section 111(d) of the Clean Air Act and subpart B of this part.

(a) If you are the Administrator of an air quality program in a state or United States protectorate with one or more existing MSW landfills that commenced construction, modification, or reconstruction on or before July 17, 2014, you must submit a state plan to the U.S. Environmental Protection Agency (EPA) that implements the Emission Guidelines contained in this subpart. The requirements for state plans are specified in subpart B of this part.

(b) You must submit a state plan to EPA by May 30, 2017.

(c) The following authorities will not be delegated to state, local, or tribal agencies:

(1) Approval of alternative methods to determine the NMOC concentration or a site-specific methane generation rate constant (k).

(2) [Reserved]

SOURCE: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988; 57 FR 32338, July 21, 1992; 58 FR 40591, July 29, 1993; 60 FR 65384, Dec. 19, 1995; 62 FR 8328, Feb. 24, 1997; 62 FR 48379, Sept. 15, 1997; 64 FR 7463, Feb. 12, 1999; 65 FR 78275, Dec. 14, 2000; 72 FR 59204, Oct. 19, 2007; 81 FR 59313, Aug. 29, 2016; 82 FR 24879, May 31, 2017, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Current through November 9, 2017; 82 FR 52014.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 60. Standards of Performance for New Stationary Sources (Refs & Annos)
Subpart CF. Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Refs & Annos)

40 C.F.R. § 60.32f

§ 60.32f Compliance times.

Effective: October 28, 2016
Currentness

Planning, awarding of contracts, installing, and starting up MSW landfill air emission collection and control equipment that is capable of meeting the Emission Guidelines under § 60.33f must be completed within 30 months after the date an NMOC emission rate report shows NMOC emissions equal or exceed 34 megagrams per year (50 megagrams per year for the closed landfill subcategory); or within 30 months after the date of the most recent NMOC emission rate report that shows NMOC emissions equal or exceed 34 megagrams per year (50 megagrams per year for the closed landfill subcategory), if Tier 4 surface emissions monitoring shows a surface emission concentration of 500 parts per million methane or greater.

SOURCE: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988; 57 FR 32338, July 21, 1992; 58 FR 40591, July 29, 1993; 60 FR 65384, Dec. 19, 1995; 62 FR 8328, Feb. 24, 1997; 62 FR 48379, Sept. 15, 1997; 64 FR 7463, Feb. 12, 1999; 65 FR 78275, Dec. 14, 2000; 72 FR 59204, Oct. 19, 2007; 81 FR 59313, Aug. 29, 2016; 82 FR 24879, May 31, 2017, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Current through November 9, 2017; 82 FR 52014.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 60. Standards of Performance for New Stationary Sources (Refs & Annos)
Subpart CF. Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Refs & Annos)

40 C.F.R. § 60.38f

§ 60.38f Reporting guidelines.

Effective: October 28, 2016
Currentness

For approval, a state plan must include the reporting provisions listed in this section, as applicable, except as provided under §§ 60.24 and 60.38f(d)(2).

(a) Design capacity report. For existing MSW landfills subject to this subpart, the initial design capacity report must be submitted no later than 90 days after the effective date of EPA approval of the state's plan under section 111(d) of the Clean Air Act. The initial design capacity report must contain the following information:

(1) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the state, local, or tribal agency responsible for regulating the landfill.

(2) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the permit issued by the state, local, or tribal agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering practices. The calculations must be provided, along with the relevant parameters as part of the report. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually. Any density conversions must be documented and submitted with the design capacity report. The state, local, or tribal agency or the Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(b) Amended design capacity report. An amended design capacity report must be submitted providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to meet or exceed 2.5 million megagrams and 2.5 million cubic meters. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in § 60.39f(f).

(c) NMOC emission rate report. For existing MSW landfills covered by this subpart with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the NMOC emission rate report must be submitted following the procedure specified in paragraph (j)(2) of this section no later than 90 days after the effective date of EPA approval of the state's plan under section 111(d) of the Clean Air Act. The NMOC emission rate report must be submitted to the Administrator annually following the procedure specified in paragraph (j)(2) of this section, except as provided for in paragraph (c)(3) of this section. The Administrator may request such additional information as may be necessary to verify the reported NMOC emission rate.

(1) The NMOC emission rate report must contain an annual or 5–year estimate of the NMOC emission rate calculated using the formula and procedures provided in § 60.35f(a) or (b), as applicable.

(2) The NMOC emission rate report must include all the data, calculations, sample reports and measurements used to estimate the annual or 5–year emissions.

(3) If the estimated NMOC emission rate as reported in the annual report to the Administrator is less than 34 megagrams per year in each of the next 5 consecutive years, the owner or operator may elect to submit, following the procedure specified in paragraph (j)(2) of this section, an estimate of the NMOC emission rate for the next 5–year period in lieu of the annual report. This estimate must include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided to the Administrator. This estimate must be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5–year estimate, a revised 5–year estimate must be submitted to the Administrator. The revised estimate must cover the 5–year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(4) Each owner or operator subject to the requirements of this subpart is exempted from the requirements to submit an NMOC emission rate report, after installing a collection and control system that complies with § 60.33f(b) and (c), during such time as the collection and control system is in operation and in compliance with §§ 60.34f and 60.36f.

(d) Collection and control system design plan. The state plan must include a process for state review and approval of the site-specific design plan for each gas collection and control system. The collection and control system design plan must be prepared and approved by a professional engineer and must meet the following requirements:

(1) The collection and control system as described in the design plan must meet the design requirements in § 60.33f(b) and (c).

(2) The collection and control system design plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions of §§ 60.34f through 60.39f proposed by the owner or operator.

(3) The collection and control system design plan must either conform to specifications for active collection systems in § 60.40f or include a demonstration to the Administrator's satisfaction of the sufficiency of the alternative provisions to § 60.40f.

(4) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must submit a copy of the collection and control system design plan cover page that contains the engineer's seal to the Administrator within 1 year of the first NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year, except as follows:

(i) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in § 60.35f(a)(3) and the resulting rate is less than 34 megagrams per year, annual periodic reporting must be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated NMOC emission rate is equal to or greater than 34 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated NMOC emission rate based on NMOC sampling and analysis, must be submitted, following the procedures in paragraph (j)(2) of this section, within 180 days of the first calculated exceedance of 34 megagrams per year.

(ii) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant k, as provided in Tier 3 in § 60.35f(a)(4), and the resulting NMOC emission rate is less than 34 megagrams per year, annual periodic reporting must be resumed. The resulting site-specific methane generation rate constant k must be used in the NMOC emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of § 60.35f(a)(4) and the resulting site-specific methane generation rate constant k must be submitted, following the procedure specified in paragraph (j)(2) of this section, to the Administrator within 1 year of the first calculated NMOC emission rate equaling or exceeding 34 megagrams per year.

(iii) If the owner or operator elects to demonstrate that site-specific surface methane emissions are below 500 parts per million methane, based on the provisions of § 60.35f(a)(6), then the owner or operator must submit annually a Tier 4 surface emissions report as specified in this paragraph (d)(4)(iii) following the procedure specified in paragraph (j)(2) of this section until a surface emissions readings of 500 parts per million methane or greater is found. If the Tier 4 surface emissions report shows no surface emissions readings of 500 parts per million methane or greater for four consecutive quarters at a closed landfill, then the landfill owner or operator may reduce Tier 4 monitoring from a quarterly to an annual frequency. The Administrator may request such additional information as may be necessary to verify the reported instantaneous surface emission readings. The Tier 4 surface emissions report must clearly identify the location, date and time (to the nearest second), average wind speeds including wind gusts, and reading (in parts per million) of any value 500 parts per million methane or greater, other than non-repeatable, momentary readings. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places. The Tier 4 surface emission report should also include the results of the most recent Tier 1 and Tier 2 results in order to verify that the landfill does not exceed 50 Mg/yr of NMOC.

(A) The initial Tier 4 surface emissions report must be submitted annually, starting within 30 days of completing the fourth quarter of Tier 4 surface emissions monitoring that demonstrates that site-specific surface methane emissions are below 500 parts per million methane, and following the procedure specified in paragraph (j)(2) of this section.

(B) The Tier 4 surface emissions rate report must be submitted within 1 year of the first measured surface exceedance of 500 parts per million methane, following the procedure specified in paragraph (j)(2) of this section.

(iv) If the landfill is in the closed landfill subcategory, the owner or operator must submit a collection and control system design plan to the Administrator within 1 year of the first NMOC emission rate report in which the NMOC emission rate equals or exceeds 50 megagrams per year, except as follows:

(A) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in § 60.35f(a)(3) and the resulting rate is less than 50 megagrams per year, annual periodic reporting must be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated NMOC emission rate is equal to or greater than 50 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated NMOC emission rate based on NMOC sampling and analysis, must be submitted, following the procedure specified in paragraph (j)(2) of this section, within 180 days of the first calculated exceedance of 50 megagrams per year.

(B) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant k, as provided in Tier 3 in § 60.35f(a)(4), and the resulting NMOC emission rate is less than 50 megagrams per year, annual periodic reporting must be resumed. The resulting site-specific methane generation rate constant k must be used in the NMOC emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of § 60.35f(a)(4) and the resulting site-specific methane generation rate constant k must be submitted, following the procedure specified in paragraph (j)(2) of this section, to the Administrator within 1 year of the first calculated NMOC emission rate equaling or exceeding 50 megagrams per year.

(C) The landfill owner or operator elects to demonstrate surface emissions are low, consistent with the provisions in paragraph (d)(4)(iii) of this section.

(D) The landfill has already submitted a gas collection and control system design plan consistent with the provisions of subpart WWW of this part; 40 CFR part 62, subpart GGG; or a state plan implementing subpart Cc of this part.

(5) The landfill owner or operator must notify the Administrator that the design plan is completed and submit a copy of the plan's signature page. The Administrator has 90 days to decide whether the design plan should be submitted for review. If the Administrator chooses to review the plan, the approval process continues as described in paragraph (c)(6) of this section. However, if the Administrator indicates that submission is not required or does not respond within 90 days, the landfill owner or operator can continue to implement the plan with the recognition that the owner or operator is proceeding at their own risk. In the event that the design plan is required to be modified to obtain approval, the owner or operator must take any steps necessary to conform any prior actions to the approved design plan and any failure to do so could result in an enforcement action.

(6) Upon receipt of an initial or revised design plan, the Administrator must review the information submitted under paragraphs (d)(1) through (3) of this section and either approve it, disapprove it, or request that additional

information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems. If the Administrator does not approve or disapprove the design plan, or does not request that additional information be submitted within 90 days of receipt, then the owner or operator may continue with implementation of the design plan, recognizing they would be proceeding at their own risk.

(7) If the owner or operator chooses to demonstrate compliance with the emission control requirements of this subpart using a treatment system as defined in this subpart, then the owner or operator must prepare a site-specific treatment system monitoring plan as specified in § 60.39f(b)(5).

(e) Revised design plan. The owner or operator who has already been required to submit a design plan under paragraph (d) of this section, or under subpart WWW of this part; 40 CFR part 62, subpart GGG; or a state plan implementing subpart Cc of this part, must submit a revised design plan to the Administrator for approval as follows:

(1) At least 90 days before expanding operations to an area not covered by the previously approved design plan.

(2) Prior to installing or expanding the gas collection system in a way that is not consistent with the design plan that was submitted to the Administrator according to paragraph (d) of this section.

(f) Closure report. Each owner or operator of a controlled landfill must submit a closure report to the Administrator within 30 days of ceasing waste acceptance. The Administrator may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of 40 CFR 258.60. If a closure report has been submitted to the Administrator, no additional wastes may be placed into the landfill without filing a notification of modification as described under § 60.7(a)(4).

(g) Equipment removal report. Each owner or operator of a controlled landfill must submit an equipment removal report to the Administrator 30 days prior to removal or cessation of operation of the control equipment.

(1) The equipment removal report must contain the following items:

(i) A copy of the closure report submitted in accordance with paragraph (f) of this section; and

(ii) A copy of the initial performance test report demonstrating that the 15–year minimum control period has expired, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX, or information that demonstrates that the GCCS will be unable to operate for 15 years due to declining gas flows. In the equipment removal report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX; and

(iii) Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 34 megagrams or greater of NMOC per year, unless the NMOC emission rate reports have been submitted

to the EPA via the EPA's CDX. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports; or

(iv) For the closed landfill subcategory, dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 50 megagrams or greater of NMOC per year, unless the NMOC emission rate reports have been submitted to the EPA via the EPA's CDX. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports.

(2) The Administrator may request such additional information as may be necessary to verify that all of the conditions for removal in § 60.33f(f) have been met.

(h) Annual report. The owner or operator of a landfill seeking to comply with § 60.33f(e)(2) using an active collection system designed in accordance with § 60.33f(b) must submit to the Administrator, following the procedures specified in paragraph (j)(2) of this section, an annual report of the recorded information in paragraphs (h)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system. The initial annual report must include the initial performance test report required under § 60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. The initial performance test report must be submitted, following the procedure specified in paragraph (j)(1) of this section, no later than the date that the initial annual report is submitted. For enclosed combustion devices and flares, reportable exceedances are defined under § 60.39f(c)(1).

(1) Value and length of time for exceedance of applicable parameters monitored under § 60.37f(a)(1), (b), (c), (d), and (g).

(2) Description and duration of all periods when the gas stream was diverted from the control device or treatment system through a bypass line or the indication of bypass flow as specified under § 60.37f.

(3) Description and duration of all periods when the control device or treatment system was not operating and length of time the control device or treatment system was not operating.

(4) All periods when the collection system was not operating.

(5) The location of each exceedance of the 500 parts per million methane concentration as provided in § 60.34f(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(6) The date of installation and the location of each well or collection system expansion added pursuant to § 60.36f(a)(3), (a)(5), (b), and (c)(4).

(7) For any corrective action analysis for which corrective actions are required in § 60.36f(a)(3) or (5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(i) Initial performance test report. Each owner or operator seeking to comply with § 60.33f(c) must include the following information with the initial performance test report required under § 60.8:

(1) A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

(2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

(3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

(4) The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area;

(5) The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

(6) The provisions for the control of off-site migration.

(j) Electronic reporting. The owner or operator must submit reports electronically according to paragraphs (j)(1) and (2) of this section.

(1) Within 60 days after the date of completing each performance test (as defined in § 60.8), the owner or operator must submit the results of each performance test according to the following procedures:

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (https://www3.epa.gov/ttn/chief/ert/ert_info.html) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (https://cdx.epa.gov/). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternative file format

consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site, once the XML schema is available. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (j)(1)(i).

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 60.4.

(2) Each owner or operator required to submit reports following the procedure specified in this paragraph must submit reports to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) The owner or operator must use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI Web site (https://www3.epa.gov/ttn/chief/cedri/index.html). If the reporting form specific to this subpart is not available in CEDRI at the time that the report is due, the owner or operator must submit the report to the Administrator at the appropriate address listed in § 60.4. Once the form has been available in CEDRI for 90 calendar days, the owner or operator must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted.

(k) Corrective action and the corresponding timeline. The owner or operator must submit according to paragraphs (k)(1) and (2) of this section.

(1) For corrective action that is required according to § 60.36f(a)(3)(iii) or (a)(5)(iii) and is expected to take longer than 120 days after the initial exceedance to complete, you must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 55 degrees Celsius (131 degrees Fahrenheit) or above. The Administrator must approve the plan for corrective action and the corresponding timeline.

(2) For corrective action that is required according to § 60.36f(a)(3)(iii) or (a)(5)(iii) and is not completed within 60 days after the initial exceedance, you must submit a notification to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature exceedance.

(l) Liquids addition. The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters that has employed leachate recirculation or added liquids based on a Research, Development, and Demonstration permit (issued through Resource Conservation and Recovery Act, subtitle D, part 258) within the last 10 years must submit to the Administrator, annually, following the procedure specified in paragraph (j)(2) of this section, the following information:

(1) Volume of leachate recirculated (gallons per year) and the reported basis of those estimates (records or engineering estimates).

(2) Total volume of all other liquids added (gallons per year) and the reported basis of those estimates (records or engineering estimates).

(3) Surface area (acres) over which the leachate is recirculated (or otherwise applied).

(4) Surface area (acres) over which any other liquids are applied.

(5) The total waste disposed (megagrams) in the areas with recirculated leachate and/or added liquids based on on-site records to the extent data are available, or engineering estimates and the reported basis of those estimates.

(6) The annual waste acceptance rates (megagrams per year) in the areas with recirculated leachate and/or added liquids, based on on-site records to the extent data are available, or engineering estimates.

(7) The initial report must contain items in paragraph (l)(1) through (6) of this section per year for the most recent 365 days as well as for each of the previous 10 years, to the extent historical data are available in on-site records, and the report must be submitted no later than:

(i) September 27, 2017, for landfills that commenced construction, modification, or reconstruction after July 17, 2014 but before August 29, 2016; or

(ii) 365 days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction after August 29, 2016.

(8) Subsequent annual reports must contain items in paragraph (l)(1) through (6) of this section for the 365–day period following the 365–day period included in the previous annual report, and the report must be submitted no later than 365 days after the date the previous report was submitted.

(9) Landfills in the closed landfill subcategory are exempt from reporting requirements contained in paragraphs (l)(1) through (7) of this section.

(10) Landfills may cease annual reporting of items in paragraphs (l)(1) through (6) of this section once they have submitted the closure report in § 60.38f(f).

(m) Tier 4 notification.

(1) The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must provide a notification of the date(s) upon which it intends to demonstrate site-specific surface methane emissions are below 500 parts per million methane, based on the Tier 4 provisions of § 60.35f(a)(6). The landfill must also include a description of the wind barrier to be used during the SEM in the notification. Notification must be postmarked not less than 30 days prior to such date.

(2) If there is a delay to the scheduled Tier 4 SEM date due to weather conditions, including not meeting the wind requirements in § 60.35f (a)(6)(iii)(A), the owner or operator of a landfill shall notify the Administrator by email or telephone no later than 48 hours before any known delay in the original test date, and arrange an updated date with the Administrator by mutual agreement.

SOURCE: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988; 57 FR 32338, July 21, 1992; 58 FR 40591, July 29, 1993; 60 FR 65384, Dec. 19, 1995; 62 FR 8328, Feb. 24, 1997; 62 FR 48379, Sept. 15, 1997; 64 FR 7463, Feb. 12, 1999; 65 FR 78275, Dec. 14, 2000; 72 FR 59204, Oct. 19, 2007; 81 FR 59313, Aug. 29, 2016; 82 FR 24879, May 31, 2017, unless otherwise noted.

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End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 60. Standards of Performance for New Stationary Sources (Refs & Annos)
Subpart XXX. Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014 (Refs & Annos)

40 C.F.R. § 60.762

§ 60.762 Standards for air emissions from municipal solid waste landfills.

Effective: October 28, 2016
Currentness

(a) Each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume must submit an initial design capacity report to the Administrator as provided in § 60.767(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions must be documented and submitted with the report. Submittal of the initial design capacity report fulfills the requirements of this subpart except as provided for in paragraphs (a)(1) and (2) of this section.

(1) The owner or operator must submit to the Administrator an amended design capacity report, as provided for in § 60.767(a)(3).

(2) When an increase in the maximum design capacity of a landfill exempted from the provisions of § 60.762(b) through § 60.769 on the basis of the design capacity exemption in paragraph (a) of this section results in a revised maximum design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, the owner or operator must comply with the provisions of paragraph (b) of this section.

(b) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, must either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in § 60.764. The NMOC emission rate must be recalculated annually, except as provided in § 60.767(b)(1)(ii). The owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters is subject to part 70 or 71 permitting requirements.

(1) If the calculated NMOC emission rate is less than 34 megagrams per year, the owner or operator must:

(i) Submit an annual NMOC emission rate emission report to the Administrator, except as provided for in § 60.767(b)(1)(ii); and

(ii) Recalculate the NMOC emission rate annually using the procedures specified in § 60.764(a)(1) until such time as the calculated NMOC emission rate is equal to or greater than 34 megagrams per year, or the landfill is closed.

(A) If the calculated NMOC emission rate, upon initial calculation or annual recalculation required in paragraph (b) of this section, is equal to or greater than 34 megagrams per year, the owner or operator must either: Comply with paragraph (b)(2) of this section; calculate NMOC emissions using the next higher tier in § 60.764; or conduct a surface emission monitoring demonstration using the procedures specified in § 60.764(a)(6).

(B) If the landfill is permanently closed, a closure report must be submitted to the Administrator as provided for in § 60.767(e).

(2) If the calculated NMOC emission rate is equal to or greater than 34 megagrams per year using Tier 1, 2, or 3 procedures, the owner or operator must either:

(i) Calculated NMOC Emission Rate. Submit a collection and control system design plan prepared by a professional engineer to the Administrator within 1 year as specified in § 60.767(c); calculate NMOC emissions using the next higher tier in § 60.764; or conduct a surface emission monitoring demonstration using the procedures specified in § 60.764(a)(6). The collection and control system must meet the requirements in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) Collection system. Install and start up a collection and control system that captures the gas generated within the landfill as required by paragraphs (b)(2)(ii)(C) or (D) and (b)(2)(iii) of this section within 30 months after:

(A) The first annual report in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in § 60.767(c)(4); or

(B) The most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year based on Tier 2, if the Tier 4 surface emissions monitoring shows a surface methane emission concentration of 500 parts per million methane or greater as specified in § 60.767(c)(4)(iii).

(C) An active collection system must:

(1) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control system equipment;

(2) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active; or 2 years or more if closed or at final grade.

(3) Collect gas at a sufficient extraction rate;

(4) Be designed to minimize off-site migration of subsurface gas.

(D) A passive collection system must:

(1) Comply with the provisions specified in paragraphs (b)(2)(ii)(C)(1), (2), and (3) of this section.

(2) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners must be installed as required under 40 CFR 258.40.

(iii) Control system. Route all the collected gas to a control system that complies with the requirements in either paragraph (b)(2)(iii)(A), (B), or (C) of this section.

(A) A non-enclosed flare designed and operated in accordance with the parameters established in § 60.18 except as noted in § 60.764(e); or

(B) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen. The reduction efficiency or parts per million by volume must be established by an initial performance test to be completed no later than 180 days after the initial startup of the approved control system using the test methods specified in § 60.764(d). The performance test is not required for boilers and process heaters with design heat input capacities equal to or greater than 44 megawatts that burn landfill gas for compliance with this subpart.

(1) If a boiler or process heater is used as the control device, the landfill gas stream must be introduced into the flame zone.

(2) The control device must be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in § 60.766;

(C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or beneficial use such as fuel for combustion, production of vehicle fuel, production of high–Btu gas for pipeline injection, or use as a raw material in a chemical manufacturing process. Venting of treated landfill gas to the ambient air is not allowed. If the treated landfill gas cannot be routed for subsequent sale or beneficial use, then the treated landfill gas must be controlled according to either paragraph (b)(2)(iii)(A) or (B) of this section.

(D) All emissions from any atmospheric vent from the gas treatment system are subject to the requirements of paragraph (b)(2)(iii)(A) or (B) of this section. For purposes of this subpart, atmospheric vents located on the condensate storage tank are not part of the treatment system and are exempt from the requirements of paragraph (b)(2)(iii)(A) or (B) of this section.

(iv) Operation. Operate the collection and control device installed to comply with this subpart in accordance with the provisions of §§ 60.763, 60.765 and 60.766.

(v) Removal criteria. The collection and control system may be capped, removed, or decommissioned if the following criteria are met:

(A) The landfill is a closed landfill (as defined in § 60.761). A closure report must be submitted to the Administrator as provided in § 60.767(e).

(B) The collection and control system has been in operation a minimum of 15 years or the landfill owner or operator demonstrates that the GCCS will be unable to operate for 15 years due to declining gas flow.

(C) Following the procedures specified in § 60.764(b), the calculated NMOC emission rate at the landfill is less than 34 megagrams per year on three successive test dates. The test dates must be no less than 90 days apart, and no more than 180 days apart.

(c) For purposes of obtaining an operating permit under title V of the Clean Air Act, the owner or operator of an MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters, and not otherwise subject to either part 70 or 71, becomes subject to the requirements of § 70.5(a)(1)(i) or § 71.5(a)(1)(i) of this chapter, regardless of when the design capacity report is actually submitted, no later than:

(1) November 28, 2016 for MSW landfills that commenced construction, modification, or reconstruction after July 17, 2014 but before August 29, 2016;

(2) Ninety days after the date of commenced construction, modification, or reconstruction for MSW landfills that commence construction, modification, or reconstruction after August 29, 2016.

(d) When an MSW landfill subject to this subpart is closed as defined in this subpart, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement for a control system under paragraph (b)(2) of this section; or

(2) The owner or operator meets the conditions for control system removal specified in paragraph (b)(2)(v) of this section.

SOURCE: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988; 57 FR 32338, July 21, 1992; 58 FR 40591, July 29, 1993; 60 FR 65384, Dec. 19, 1995; 62 FR 8328, Feb. 24, 1997; 62 FR 48379, Sept. 15, 1997; 64 FR 7463, Feb. 12, 1999; 65 FR 78275, Dec. 14, 2000; 72 FR 59204, Oct. 19, 2007; 81 FR 59368, Aug. 29, 2016; 82 FR 24879, May 31, 2017, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Current through November 9, 2017; 82 FR 52014.

End of Document

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 60. Standards of Performance for New Stationary Sources (Refs & Annos)
Subpart XXX. Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014 (Refs & Annos)

40 C.F.R. § 60.767

§ 60.767 Reporting requirements.

Effective: October 28, 2016
Currentness

(a) Design capacity report. Each owner or operator subject to the requirements of this subpart must submit an initial design capacity report to the Administrator.

(1) Submission. The initial design capacity report fulfills the requirements of the notification of the date construction is commenced as required by § 60.7(a)(1) and must be submitted no later than:

(i) November 28, 2016, for landfills that commenced construction, modification, or reconstruction after July 17, 2014 but before August 29, 2016; or

(ii) Ninety days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction after August 29, 2016.

(2) Initial design capacity report. The initial design capacity report must contain the following information:

(i) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the permit issued by the state, local, or tribal agency responsible for regulating the landfill.

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the permit issued by the state, local, or tribal agency responsible for regulating the landfill, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering practices. The calculations must be provided, along with the relevant parameters as part of the report. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually. Any density conversions must be documented and submitted with the design capacity report. The state, tribal, local agency or Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(3) Amended design capacity report. An amended design capacity report must be submitted to the Administrator providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to meet or exceed 2.5 million megagrams and 2.5 million cubic meters. This increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in § 60.768(f).

(b) NMOC emission rate report. Each owner or operator subject to the requirements of this subpart must submit an NMOC emission rate report following the procedure specified in paragraph (i)(2) of this section to the Administrator initially and annually thereafter, except as provided for in paragraph (b)(1)(ii) of this section. The Administrator may request such additional information as may be necessary to verify the reported NMOC emission rate.

(1) The NMOC emission rate report must contain an annual or 5–year estimate of the NMOC emission rate calculated using the formula and procedures provided in § 60.764(a) or (b), as applicable.

(i) The initial NMOC emission rate report may be combined with the initial design capacity report required in paragraph (a) of this section and must be submitted no later than indicated in paragraphs (b)(1)(i)(A) and (B) of this section. Subsequent NMOC emission rate reports must be submitted annually thereafter, except as provided for in paragraph (b)(1)(ii) of this section.

(A) November 28, 2016, for landfills that commenced construction, modification, or reconstruction after July 17, 2014, but before August 29, 2016, or

(B) Ninety days after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction after August 29, 2016.

(ii) If the estimated NMOC emission rate as reported in the annual report to the Administrator is less than 34 megagrams per year in each of the next 5 consecutive years, the owner or operator may elect to submit, following the procedure specified in paragraph (i)(2) of this section, an estimate of the NMOC emission rate for the next 5–year period in lieu of the annual report. This estimate must include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided to the Administrator. This estimate must be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5–year estimate, a revised 5–year estimate must be submitted to the Administrator. The revised estimate must cover the 5–year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(2) The NMOC emission rate report must include all the data, calculations, sample reports and measurements used to estimate the annual or 5–year emissions.

(3) Each owner or operator subject to the requirements of this subpart is exempted from the requirements to submit an NMOC emission rate report, after installing a collection and control system that complies with § 60.762(b)(2), during such time as the collection and control system is in operation and in compliance with §§ 60.763 and 60.765.

(c) Collection and control system design plan. Each owner or operator subject to the provisions of § 60.762(b)(2) must submit a collection and control system design plan to the Administrator for approval according to the schedule in paragraph (c)(4) of this section. The collection and control system design plan must be prepared and approved by a professional engineer and must meet the following requirements:

(1) The collection and control system as described in the design plan must meet the design requirements in § 60.762(b)(2).

(2) The collection and control system design plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of §§ 60.763 through 60.768 proposed by the owner or operator.

(3) The collection and control system design plan must either conform with specifications for active collection systems in § 60.769 or include a demonstration to the Administrator's satisfaction of the sufficiency of the alternative provisions to § 60.769.

(4) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must submit a collection and control system design plan to the Administrator for approval within 1 year of the first NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 megagrams per year, except as follows:

(i) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in § 60.764(a)(3) and the resulting rate is less than 34 megagrams per year, annual periodic reporting must be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated emission rate is equal to or greater than 34 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated emission rate based on NMOC sampling and analysis, must be submitted, following the procedures in paragraph (i)(2) of this section, within 180 days of the first calculated exceedance of 34 megagrams per year.

(ii) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant k, as provided in Tier 3 in § 60.764(a)(4), and the resulting NMOC emission rate is less than 34 Mg/yr, annual periodic reporting must be resumed. The resulting site-specific methane generation rate constant k must be used in the emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of § 60.764(a)(4) and the resulting site-specific methane generation rate constant k must be submitted, following the procedure specified in paragraph (i)(2) of this section, to the Administrator within 1 year of the first calculated emission rate equaling or exceeding 34 megagrams per year.

(iii) If the owner or operator elects to demonstrate that site-specific surface methane emissions are below 500 parts per million methane, based on the provisions of § 60.764(a)(6), then the owner or operator must submit annually a Tier 4 surface emissions report as specified in this paragraph following the procedure specified in paragraph (i)(2) of this section until a surface emissions readings of 500 parts per million methane or greater is found. If the Tier 4 surface emissions report shows no surface emissions readings of 500 parts per million methane or greater for four

consecutive quarters at a closed landfill, then the landfill owner or operator may reduce Tier 4 monitoring from a quarterly to an annual frequency. The Administrator may request such additional information as may be necessary to verify the reported instantaneous surface emission readings. The Tier 4 surface emissions report must clearly identify the location, date and time (to nearest second), average wind speeds including wind gusts, and reading (in parts per million) of any value 500 parts per million methane or greater, other than non-repeatable, momentary readings. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places. The Tier 4 surface emission report must also include the results of the most recent Tier 1 and Tier 2 results in order to verify that the landfill does not exceed 50 Mg/yr of NMOC.

(A) The initial Tier 4 surface emissions report must be submitted annually, starting within 30 days of completing the fourth quarter of Tier 4 surface emissions monitoring that demonstrates that site-specific surface methane emissions are below 500 parts per million methane, and following the procedure specified in paragraph (i)(2) of this section.

(B) The Tier 4 surface emissions report must be submitted within 1 year of the first measured surface exceedance of 500 parts per million methane, following the procedure specified in paragraph (i)(2) of this section.

(5) The landfill owner or operator must notify the Administrator that the design plan is completed and submit a copy of the plan's signature page. The Administrator has 90 days to decide whether the design plan should be submitted for review. If the Administrator chooses to review the plan, the approval process continues as described in paragraph (c)(6) of this section. However, if the Administrator indicates that submission is not required or does not respond within 90 days, the landfill owner or operator can continue to implement the plan with the recognition that the owner or operator is proceeding at their own risk. In the event that the design plan is required to be modified to obtain approval, the owner or operator must take any steps necessary to conform any prior actions to the approved design plan and any failure to do so could result in an enforcement action.

(6) Upon receipt of an initial or revised design plan, the Administrator must review the information submitted under paragraphs (c)(1) through (3) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems. If the Administrator does not approve or disapprove the design plan, or does not request that additional information be submitted within 90 days of receipt, then the owner or operator may continue with implementation of the design plan, recognizing they would be proceeding at their own risk.

(7) If the owner or operator chooses to demonstrate compliance with the emission control requirements of this subpart using a treatment system as defined in this subpart, then the owner or operator must prepare a site-specific treatment system monitoring plan as specified in § 60.768(b)(5).

(d) Revised design plan. The owner or operator who has already been required to submit a design plan under paragraph (c) of this section must submit a revised design plan to the Administrator for approval as follows:

(1) At least 90 days before expanding operations to an area not covered by the previously approved design plan.

(2) Prior to installing or expanding the gas collection system in a way that is not consistent with the design plan that was submitted to the Administrator according to paragraph (c) of this section.

(e) Closure report. Each owner or operator of a controlled landfill must submit a closure report to the Administrator within 30 days of waste acceptance cessation. The Administrator may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of 40 CFR 258.60. If a closure report has been submitted to the Administrator, no additional wastes may be placed into the landfill without filing a notification of modification as described under § 60.7(a)(4).

(f) Equipment removal report. Each owner or operator of a controlled landfill must submit an equipment removal report to the Administrator 30 days prior to removal or cessation of operation of the control equipment.

(1) The equipment removal report must contain all of the following items:

(i) A copy of the closure report submitted in accordance with paragraph (e) of this section;

(ii) A copy of the initial performance test report demonstrating that the 15–year minimum control period has expired, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX, or information that demonstrates that the GCCS will be unable to operate for 15 years due to declining gas flows. In the equipment removal report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX; and

(iii) Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 34 megagrams or greater of NMOC per year, unless the NMOC emission rate reports have been submitted to the EPA via the EPA's CDX. If the NMOC emission rate reports have been previously submitted to the EPA's CDX, a statement that the NMOC emission rate reports have been submitted electronically and the dates that the reports were submitted to the EPA's CDX may be submitted in the equipment removal report in lieu of the NMOC emission rate reports.

(2) The Administrator may request such additional information as may be necessary to verify that all of the conditions for removal in § 60.762(b)(2)(v) have been met.

(g) Annual report. The owner or operator of a landfill seeking to comply with § 60.762(b)(2) using an active collection system designed in accordance with § 60.762(b)(2)(ii) must submit to the Administrator, following the procedure specified in paragraph (i)(2) of this section, annual reports of the recorded information in paragraphs (g)(1) through (7) of this section. The initial annual report must be submitted within 180 days of installation and startup of the collection and control system, and must include the initial performance test report required under § 60.8, as applicable, unless the report of the results of the performance test has been submitted to the EPA via the EPA's CDX. In the initial annual report, the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in lieu of the performance test report if the report has been previously submitted to the EPA's CDX. For enclosed combustion devices and flares, reportable exceedances are defined under § 60.768(c).

(1) Value and length of time for exceedance of applicable parameters monitored under § 60.766(a), (b), (c), (d), and (g).

(2) Description and duration of all periods when the gas stream was diverted from the control device or treatment system through a bypass line or the indication of bypass flow as specified under § 60.766.

(3) Description and duration of all periods when the control device or treatment system was not operating and length of time the control device or treatment system was not operating.

(4) All periods when the collection system was not operating.

(5) The location of each exceedance of the 500 parts per million methane concentration as provided in § 60.763(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month. For location, you must determine the latitude and longitude coordinates using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places.

(6) The date of installation and the location of each well or collection system expansion added pursuant to § 60.765(a)(3), (a)(5), (b), and (c)(4).

(7) For any corrective action analysis for which corrective actions are required in § 60.765(a)(3) or (5) and that take more than 60 days to correct the exceedance, the root cause analysis conducted, including a description of the recommended corrective action(s), the date for corrective action(s) already completed following the positive pressure reading, and, for action(s) not already completed, a schedule for implementation, including proposed commencement and completion dates.

(h) Initial performance test report. Each owner or operator seeking to comply with § 60.762(b)(2)(iii) must include the following information with the initial performance test report required under § 60.8:

(1) A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

(2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

(3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

(4) The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area; and

(5) The provisions for increasing gas mover equipment capacity with increased gas generation flow rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

(6) The provisions for the control of off-site migration.

(i) Electronic reporting. The owner or operator must submit reports electronically according to paragraphs (i)(1) and (2) of this section.

(1) Within 60 days after the date of completing each performance test (as defined in § 60.8), the owner or operator must submit the results of each performance test according to the following procedures:

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (https://www3.epa.gov/ttn/chief/ert/ert_info.html) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (https://cdx.epa.gov/). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternative file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site, once the XML schema is available. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 60.4.

(2) Each owner or operator required to submit reports following the procedure specified in this paragraph must submit reports to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) The owner or operator must use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI Web site (https://www3.epa.gov/ttn/chief/cedri/index.html). If the reporting form specific to this subpart is not available in CEDRI at the time that the report is due, the owner or operator must submit the report to the Administrator at the appropriate address listed in § 60.4. Once the form has been available in CEDRI for 90 calendar days, the owner or operator must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted.

(j) Corrective action and the corresponding timeline. The owner or operator must submit according to paragraphs (j)(1) and (j)(2) of this section.

(1) For corrective action that is required according to § 60.765(a)(3)(iii) or (a)(5)(iii) and is expected to take longer than 120 days after the initial exceedance to complete, you must submit the root cause analysis, corrective action analysis, and corresponding implementation timeline to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature monitoring value of 55 degrees Celsius (131 degrees Fahrenheit). The Administrator must approve the plan for corrective action and the corresponding timeline.

(2) For corrective action that is required according to § 60.765(a)(3)(iii) or (a)(5)(iii) and is not completed within 60 days after the initial exceedance, you must submit a notification to the Administrator as soon as practicable but no later than 75 days after the first measurement of positive pressure or temperature exceedance.

(k) Liquids addition. The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters that has employed leachate recirculation or added liquids based on a Research, Development, and Demonstration permit (issued through Resource Conservation and Recovery Act, subtitle D, part 258) within the last 10 years must submit to the Administrator, annually, following the procedure specified in paragraph (i)(2) of this section, the following information:

(1) Volume of leachate recirculated (gallons per year) and the reported basis of those estimates (records or engineering estimates).

(2) Total volume of all other liquids added (gallons per year) and the reported basis of those estimates (records or engineering estimates).

(3) Surface area (acres) over which the leachate is recirculated (or otherwise applied).

(4) Surface area (acres) over which any other liquids are applied.

(5) The total waste disposed (megagrams) in the areas with recirculated leachate and/or added liquids based on on-site records to the extent data are available, or engineering estimates and the reported basis of those estimates.

(6) The annual waste acceptance rates (megagrams per year) in the areas with recirculated leachate and/or added liquids, based on on-site records to the extent data are available, or engineering estimates.

(7) The initial report must contain items in paragraph (k)(1) through (6) of this section per year for the initial annual reporting period as well as for each of the previous 10 years, to the extent historical data are available in on-site records, and the report must be submitted no later than:

(i) September 27, 2017, for landfills that commenced construction, modification, or reconstruction after July 17, 2014 but before August 29, 2016 containing data for the first 12 months after August 29, 2016; or

(ii) Thirteen (13) months after the date of commenced construction, modification, or reconstruction for landfills that commence construction, modification, or reconstruction after August 29, 2016 containing data for the first 12 months after August 29, 2016.

(8) Subsequent annual reports must contain items in paragraph (k)(1) through (6) of this section for the 365–day period following the 365–day period included in the previous annual report, and the report must be submitted no later than 365 days after the date the previous report was submitted.

(9) Landfills may cease annual reporting of items in paragraphs (k)(1) through (7) of this section once they have submitted the closure report in paragraph (e) of this section.

(l) Tier 4 notification.

(1) The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must provide a notification of the date(s) upon which it intends to demonstrate site-specific surface methane emissions are below 500 parts per million methane, based on the Tier 4 provisions of § 60.764(a)(6). The landfill must also include a description of the wind barrier to be used during the SEM in the notification. Notification must be postmarked not less than 30 days prior to such date.

(2) If there is a delay to the scheduled Tier 4 SEM date due to weather conditions, including not meeting the wind requirements in § 60.764(a)(6)(iii)(A), the owner or operator of a landfill shall notify the Administrator by email or telephone no later than 48 hours before any delay or cancellation in the original test date, and arrange an updated date with the Administrator by mutual agreement.

SOURCE: 36 FR 24877, Dec. 23, 1971; 50 FR 36834, Sept. 9, 1985; 52 FR 37874, Oct. 9, 1987; 53 FR 2675, Jan. 29, 1988; 57 FR 32338, July 21, 1992; 58 FR 40591, July 29, 1993; 60 FR 65384, Dec. 19, 1995; 62 FR 8328, Feb. 24, 1997; 62 FR 48379, Sept. 15, 1997; 64 FR 7463, Feb. 12, 1999; 65 FR 78275, Dec. 14, 2000; 72 FR 59204, Oct. 19, 2007; 81 FR 59368, Aug. 29, 2016; 82 FR 24879, May 31, 2017, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Current through November 9, 2017; 82 FR 52014.

Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 63. National Emission Standards for Hazardous Air Pollutants for Source Categories (Refs & Annos)
Subpart Aaaa. National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (Refs & Annos)
Standards

40 C.F.R. § 63.1955

§ 63.1955 What requirements must I meet?

Currentness

(a) You must fulfill one of the requirements in paragraph (a)(1) or (2) of this section, whichever is applicable:

(1) Comply with the requirements of 40 CFR part 60, subpart WWW.

(2) Comply with the requirements of the Federal plan or EPA approved and effective State plan or tribal plan that implements 40 CFR part 60, subpart Cc.

(b) If you are required by 40 CFR 60.752(b)(2) of subpart WWW, the Federal plan, or an EPA approved and effective State or tribal plan to install a collection and control system, you must comply with the requirements in §§ 63.1960 through 63.1985 and with the general provisions of this part specified in table 1 of this subpart.

(c) For approval of collection and control systems that include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions, you must follow the procedures in 40 CFR 60.752(b)(2). If alternatives have already been approved under 40 CFR part 60 subpart WWW or the Federal plan, or EPA approved and effective State or tribal plan, these alternatives can be used to comply with this subpart, except that all affected sources must comply with the SSM requirements in Subpart A of this part as specified in Table 1 of this subpart and all affected sources must submit compliance reports every 6 months as specified in § 63.1980(a) and (b), including information on all deviations that occurred during the 6–month reporting period. Deviations for continuous emission monitors or numerical continuous parameter monitors must be determined using a 3 hour monitoring block average.

(d) If you own or operate a bioreactor that is located at a MSW landfill that is not permanently closed and has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, then you must meet the requirements of paragraph (a) and the additional requirements in paragraphs (d)(1) and (2) of this section.

(1) You must comply with the general provisions specified in Table 1 of this subpart and §§ 63.1960 through 63.1985 starting on the date you are required to install the gas collection and control system.

(2) You must extend the collection and control system into each new cell or area of the bioreactor prior to initiating liquids addition in that area, instead of the schedule in 40 CFR 60.752(b)(2)(ii)(A)(2).

SOURCE: 57 FR 61992, Dec. 29, 1992; 68 FR 2238, Jan. 16, 2003, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

Notes of Decisions (1)

Current through November 9, 2017; 82 FR 52014.

End of Document

DECLARATION OF GINA TRUJILLO

I, Gina Trujillo, do hereby affirm and state:

1. I am the Director of Membership for the Natural Resources Defense Council (NRDC). I have held this position since January 2015. I previously served as NRDC's Director of Member Development and Member Services for over nine years.

2. My current duties at NRDC include supervising the preparation of materials that NRDC distributes to members and prospective members. Those materials describe NRDC and identify its mission. In my previous position, I supervised the maintenance and updating of NRDC's membership database, which is a listing of those persons who are members of NRDC.

3. NRDC is a membership organization incorporated under the laws of the State of New York. It is recognized as a not-for-profit corporation under Section 501(c)(3) of the United States Internal Revenue Code.

4. NRDC currently has more than 346,000 members nationwide. NRDC has members in all fifty states and the District of Columbia.

5. When an individual becomes a member of NRDC, the member authorizes NRDC to take legal action on his or her behalf to protect the environment and public health.

6. NRDC's mission statement declares that "The Natural Resources Defense Council's purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends." NRDC's mission includes the

prevention and mitigation of global climate change in order to protect and maintain NRDC's members' use and enjoyment of natural resources threatened by climate change.

7. Through its Climate and Clean Air Program, NRDC pursues federal and state policies to curb air pollution and limit emissions of the pollutants that are causing climate change. NRDC seeks to reduce emissions of methane from municipal solid waste landfills, which are the nation's second largest industrial source of methane.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on: 7/27/17

Gina Trujillo

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Philadelphia County)
)
Commonwealth of Pennsylvania)

DECLARATION OF JOSEPH O. MINOTT

I, Joseph O. Minott, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity. I submit this declaration in support of Clean Air Council's ("CAC") Petition for Review in the above-referenced matter.

2. I am currently the Executive Director of CAC and have served in this position for thirty (30) years. Before serving as Executive Director I was a staff attorney at CAC for four years. My position at CAC requires me to be responsible for achieving CAC's goals and mission, and to be familiar with CAC's structure, activities and membership.

3. The, Clean Air Council, originally named The Delaware Valley Citizen's Council for Clean Air, was established in 1967. CAC is a 501(c)(3) non-profit, membership organization incorporated in Pennsylvania and

headquartered at 135 South 19th Street, Suite 300, Philadelphia, Pennsylvania 19103.

4. CAC currently has nearly 8,000 members, in the Mid-Atlantic regions, most of whom live in the Philadelphia, Pennsylvania area.

5. CAC works to achieve its mission, to protect everyone's right to breathe clean air, through advocacy and legal action. Among CAC's programmatic activities is its "Global Warming Program." CAC's work on this issue began in 2001 when it convened the Mid-Atlantic States Conference on Climate Change. Specifically, CAC works for strong state and federal policies to address climate change pollution, including defending the U.S. Environmental Protection Agency's ("EPA's") authority to regulate greenhouse gas emissions under the Clean Air Act. CAC's climate change work includes a focus on steps to ameliorate the public health damages due to a warmer climate and rising sea levels.

6. My position at CAC requires me to be up to date and knowledgeable about current and future threats to the environment in Pennsylvania, and more broadly, to the Mid-Atlantic region in which Pennsylvania is centrally located.

7. Among the most important current and future threats to Pennsylvania's natural and built environment is the ongoing damage due to a changing climate in the region. I am aware of the science documenting the existence of climate change, its causes, and its potential adverse impacts on public health and welfare and the environment – specifically to the natural and built environment in the Mid-Atlantic region. I understand that human activities, including the burning of fossil fuels to generate electric power, and production of waste, have resulted in elevated levels of carbon dioxide and methane pollution. Carbon dioxide, methane and other greenhouse gases trap heat in the Earth's atmosphere that would otherwise escape, and that "greenhouse effect" is now causing a variety of climactic and environmental changes, including, but not limited to, increased temperatures, sea level rise, and increases in the frequency and intensity of extreme weather events, including increased precipitation and heavy downpours in northern United States.

8. I understand that 2016 had the highest average temperatures of any year in recorded U.S. history, and that this is part of a pattern of increased warming globally and in my region. Between 1895 and 2011, average annual temperatures in Pennsylvania, indeed the entire Northeast U.S., increased by almost two degrees Fahrenheit and precipitation increased by more than ten percent.

9. Additionally, I know that global sea levels are projected to rise one to four feet by 2100; a rise of two feet, without any changes in storms, would more than triple the frequency of coastal flooding in the Mid-Atlantic, including along the Schuylkill River, the largest tributary of the Delaware River, which enters the Atlantic Ocean in southern New Jersey. The Schuylkill River in Philadelphia is tidal, with a six-foot tidal range, meaning that water levels are six feet higher at high tide than at low tide.

10. I know also that Philadelphia, as a modern large city, has significantly more impermeable surfaces, such as concrete and asphalt, and less vegetation than surrounding areas, and therefore suffers from a "heat island" effect, whereby average temperatures are several degrees warmer than in the surrounding regions. The "heat island" effect poses a direct health risk because extreme heat events can cause health problems including heat exhaustion, heat stroke, and even death, particularly among at-risk populations such as

children, the elderly, or those with low socio-economic factors. The "heat island" effect also contributes to greater concentrations of ground-level ozone, or smog, which forms when warm polluted air mixes with sunlight. Hotter areas experience higher localized concentrations of ground-level ozone than cooler areas. Smog is a particular problem in urban areas because of the increased presence of vehicles and industry, as well as the "heat island" effect.

11. Smog irritates the respiratory system, reduces lung function, inflames and damages cells that line your lungs, makes your lungs more susceptible to infections, aggravates asthma, aggravates chronic lung disease, and can cause permanent lung damage. Increasing temperatures associated with climate change will exacerbate smog and associated health problems. CAC's members residing in the Philadelphia region are experiencing the effects of summer smog now and this will continue and intensify if greenhouse gas accumulations in the atmosphere remain unchecked and average temperatures continue to rise.

12. I also know that climate change results in more frost-free days and can contribute to shifts in flowering time and pollen initiation from allergenic plants. Increases in carbon dioxide itself can elevate plant-based allergens, resulting in longer and more intense allergy seasons.

13. I am familiar with the final rule at issue in this litigation: Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. In my opinion, and based on my experience at CAC and with this rulemaking, the final Guidelines, which were stayed, were a significant step forward in reducing greenhouse gas emissions in the United States and confirm the country's international leadership in the global effort to address climate change, and the stay will undermine these benefits.

14. Guidelines for existing landfills were originally promulgated in 1996. This updated rulemaking reflects a number of advances in technology and operating practices for reducing emissions of landfill gas, which includes methane, since that time. Methane is a potent greenhouse gas that causes 86 times more warming than CO_2 in the short-term. I understand that these Guidelines will reduce 1,810 Mg/year of non-methane organic compound emissions from existing landfills and reduce methane by 7.1 mtCO_2e by 2025.

15. Greenhouse gases are neither hazardous air pollutants nor criteria pollutants and therefore must be regulated under section 111(d). Emission control technology, efficiency, and operational control innovations and development are occurring at a rapid rate. It is imperative to climate change

mitigation that EPA's authority to update section 111(d) emission guidelines be upheld.

16. In addition to my professional role at CAC, I also have been a CAC member for over twenty (20) years. I am sixty-three (63) years old. I own the property at which I live, located at 2301 Cherry Street, 4J, Philadelphia, Pennsylvania 19103, in Philadelphia County. I have been a resident of Philadelphia or its suburbs for forty-four (44) years.

17. My property is located less than one block from the Schuylkill River and is in a high-risk flood area according to the U.S. Federal Emergency Management Agency. I am aware that increased global temperatures cause increased flooding on tidal rivers like the Schuylkill, due to a combination of sea level rise, storm surge, and extreme precipitation events. Because my property is low-lying and within close proximity to a major river, it is vulnerable to damage from such flooding.

18. Indeed, it is my personal impression that strong storms and flooding events on the Schuylkill have increased in recent years. When my wife and I purchased our condominium four years ago, we thought it would be a beautiful home overlooking the river. Now, we are concerned about our investment because twice in the last few years the river came up over its banks and flooded the basement, garage and elevator shafts of the condominium

complex, rendering them inaccessible. I am concerned that climate change will increase these flooding incidents and undermine our comfort and investment in our home.

19. I suffer from a chronic medical condition called sarcoidosis, which causes shortness of breath, wheezing, and chest pain. The symptoms of sarcoidosis are aggravated by ground-level ozone. I am therefore directly impacted by climate change because increased temperatures lead to more frequent bad ozone days which exacerbate my medical condition.

20. Further, I do not own a car, so I walk around Philadelphia on a daily basis. I also enjoy running, sitting outdoors, and spending time on the patio and roof of my apartment building. More frequent and intense bad ozone days will make it harder for me to breathe when I attempt to walk and exercise outdoors, and will force me to curtail these activities. More frequent and intense bad ozone days are already occurring in Philadelphia and likely to increase if climate change-related temperature increases remain unchecked.

21. I also suffer from seasonal allergies in the spring, due to increased pollen in the air at that time of year. My symptoms include runny eyes, stuffy nose, headache and a "spacey" feeling. Among the effects of climate change in the Mid-Atlantic region is a lengthening of the allergy season, which already is causing me to suffer from these symptoms more often.

22. I have children and two small grandchildren; one who is almost two years old and one who is five years old. They visit me in Philadelphia often and are an important reason why I am so concerned about the issue of climate change. I worry about how the changing climate will impact their futures and believe we must do everything we can to protect them from its effects.

23. The Guidelines at issue in the above-referenced matter will be a significant step toward addressing climate change and its effect on rising waters, increasing bad ozone, allergens, and our children's future planet. I believe the Guidelines will also make the air that I, my children and my grandchildren breathe cleaner and safer.

24. I understand that EPA recently issued a three-month delay of these landfill rules, and that Clean Air Council has initiated a lawsuit to challenge that delay. I support this lawsuit, because EPA's regulations will reduce air pollution from the landfill in my community and from the landfills in many other communities around the country.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of July 2017.

Joseph O. Minott
2301 Cherry Street, 4J
Philadelphia, PA 19103

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Dane County)
)
State of Wisconsin)

DECLARATION OF KATHRYN A. NEKOLA

I, Kathryn A. Nekola, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity. I submit this declaration in support of Clean Wisconsin's Motion to Intervene in Support of Respondents, in the above-referenced matter.

2. I am the General Counsel for Clean Wisconsin, where I have served for 12 years. In my current position, I lead the organization's legal program, including matters related to climate and energy policies. Due to my current position and my previous experience, I am knowledgeable about Clean Wisconsin's mission, and about how energy policy and climate change impacts the state of Wisconsin, including impacts to public health, natural resources and the built environment.

3. Clean Wisconsin, founded as Wisconsin's Environmental Decade, was established in 1970. Clean Wisconsin is a 501(c)(3) non-profit, membership

organization incorporated in Wisconsin and headquartered at 634 West Main Street, Suite 300, Madison, Wisconsin 53703.

4. Clean Wisconsin currently has 6,000 members in the Midwest region most of whom live in the state of Wisconsin.

5. Clean Wisconsin works to achieve its mission through education, advocacy, and legal action to protect Wisconsinites' right to breathe clean air and drink clean water. Among Clean Wisconsin's current programmatic activities is its Global Warming Program, and programmatic work to protect clean air and promote clean energy has been a continual focus of the organization since its beginning in 1970. Specifically, Clean Wisconsin is helping to ensure that Wisconsin's economy stays strong and is powered by clean, safe, reliable energy as Clean Wisconsin works for strong state and federal policies to address climate change pollution, including defending the U.S. Environmental Protection Agency's (EPA's) authority to regulate greenhouse gas emissions under the Clean Air Act.

6. Clean Wisconsin has engaged in solid waste disposal and management policies and landfill regulation for most of its 46-year history. Our former Policy Director served on the "Governor's Task Force on Waste Materials Recovery and Disposal" under Governor Doyle in 2005-06; our Government Relations Director currently serves on the Wisconsin Department of Natural Resources' Waste Materials and Management Working Group; and our Executive

Director serves on the Dane County Solid Waste and Recycling Commission (which deals directly with the management of the Dane County landfill). I am currently a member of the Wisconsin Department of Natural Resources' Technical Working Group to reevaluate and revise an administrative rule pertaining to the beneficial reuse of industrial waste.

7. I understand that this lawsuit challenges an EPA final rule entitled: Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills" ("Guidelines").

8. Guidelines for existing landfills were originally promulgated in 1996. This rulemaking reflects a number of advances in technology and operating practices for reducing emissions of landfill gas, which includes methane, since that time. Methane is a potent greenhouse gas that causes 86 times more warming than CO_2 in the short-term. I understand that these Guidelines will reduce 1,810 Mg/year of non-methane organic compound emissions from existing landfills and reduce methane by 7.1 mtCO_2e in 2025.

9. I understand that human activities, and the decomposition of waste in particular, have resulted in elevated levels of methane pollution in the atmosphere. I am well aware that methane and other greenhouse gases trap heat in the Earth's atmosphere that would otherwise escape, and that the "greenhouse effect" is now causing a variety of climatic and environmental changes, including, but not limited

to, increased temperatures, sea level rise, longer and more severe droughts, and increases in the frequency and intensity of extreme weather events including increased intensity in precipitation events. I am also aware that the increase in average temperatures tends to be higher in the interior of large continents such as North America, and that has been the case in the Midwestern portion of the United States. I understand that 2014 had the highest average temperatures of any year in recorded U.S. history, and that this is part of a pattern of increased warming globally and in the Midwest.

10. I am also aware that in 2014 landfills were the third-largest anthropogenic source of methane emissions in the United States, with municipal solid waste landfills accounting for approximately 18.2 percent of the total methane emissions from all sources. Significant methane generation can continue for 10 to 60 years after initial waste placement.

11. I am aware that rigorous analysis shows that under the expert International Panel on Climate Change's (IPCC's) scenario A1B (that is, the model showing more reductions in greenhouse gas emissions than is the case under the status quo in the United States), there is a 90 percent likelihood that the annual mean temperatures in Wisconsin will rise to somewhere between 3 and 9 degrees Fahrenheit above 1980 levels by the year 2055. I am aware that this analysis also shows that there is a 90 percent likelihood that the annual mean temperature in

Wisconsin will rise to somewhere between 5 and 13 degrees Fahrenheit above 1980 levels by the year 2090, and that the number of days that the daytime high will exceed 90 degrees Fahrenheit is likely to increase by 20 (over 1980 levels) by 2055. I am also aware that the number of rainfall events in excess of 2 inches is likely to increase by 6 days per decade by the year 2055.

12. I am further aware that the impacts of these and other changes in the climate are already being experienced in Wisconsin as a result of human-induced global warming due to methane and other greenhouse gas emissions. Climate change warming patterns will produce further serious harmful impacts to Wisconsin's natural environment, built environment, and public health over the coming centuries. I know that in Wisconsin droughts are already more frequent and will become more severe and longer in duration; that rain and storm events, while occurring less frequently, are now and will become more intense and severe. I know that warming is now having, and will continue to have the greatest impact during the winter months, resulting in less consistent snow cover and more icy conditions. I know that in Wisconsin cities, which have more paved and built-up surfaces and less vegetation than in rural areas, a heat island effect is now causing and will lead to even more severe hot-weather days.

13. I know that insect-borne diseases such as Lyme disease are already spreading into regions of the country (including areas in Wisconsin) where they

previously had not occurred due to warming winters that no longer kill off the insect hosts; and that Lyme disease will continue to spread, and the season when ticks are able to transmit the disease to humans will continue to lengthen, unless something is done to reduce climactic warming. I know that the incidence and intensity of ozone smog is already increasing and will continue to increase, and ozone smog seasons will lengthen in Wisconsin, with increased temperatures that drive the chemical reaction that forms ground-level ozone. I know that streams and rivers in Wisconsin already are warming, and this will greatly reduce the range and incidence of native cold-water fisheries in Wisconsin, especially brook trout.

14. I know that higher summer temperatures are already causing stress to dairy cows and increase the cost of producing quality milk, which is vital to the economic health of Wisconsin's dairy industry, one of the country's most important sources of milk and other dairy products. I know that because rainfall events are both less frequent but more intense when they do occur, both droughts and flooding are increasing, and this situation is already adding risk and expense to many types of Wisconsin crop farming including grains, fruits, vegetables, herbs, and livestock feed. I know that shorter snow-cover durations resulting from increases in winter thaws are now and will continue to have major impacts on the tourism industry in Wisconsin and increase costs for Wisconsin's timber industry.

15. I know that it is critical to adapt to these changes and that adaptation will come at a great cost to Wisconsin's economy; moreover, it is also critical to take steps now to reduce methane and other air pollution that causes climate change in order to mitigate those costs. I know that the combined costs of the impacts of climate change and the costs of adapting to minimize those impacts, will be far higher than the cost of mitigating the impacts, particularly from the largest sources such as municipal solid waste landfills.

16. In addition to my professional role with Clean Wisconsin I have also been a dues paying member of Clean Wisconsin for the past 12 years. I am 62 years old, and have been a resident of the state of Wisconsin most of my life. I have two daughters.

17. I am and have been an enthusiastic hiker, biker, and swimmer all of my life. I grew up in northwestern Wisconsin and spend many weekends every year in Douglas, Bayfield, and Sawyer Counties, camping, swimming, and hiking. I also hike and bike in southern Wisconsin and I am aware that plant, bird, and animal habitat, which I enjoy viewing on my walks and bike trips, are affected by global climate change. I am also aware that the increased incidence of tick-borne illnesses such as Lyme Disease have been attributed to global warming, and have myself suffered from Lyme Disease as a result of recreating in Wisconsin forests. Due to my professional work, I am aware that, unless we take significant steps to

reduce current levels of greenhouse gas emissions, Wisconsin's lakes, streams, and forests will be irreversibly altered in ways that will affect habitats, the prevalence of infectious disease, and recreational opportunities. This will be a great personal loss to me and will forfeit recreational opportunities for my daughters. Just as importantly, it will be a major economic and cultural blow to the state of Wisconsin.

18. My daughters both share my love for the outdoor recreational opportunities Wisconsin offers, and I am aware that their lives and their children's lives will be affected even more profoundly – in a negative way – than ours, by climate change impacts to Wisconsin. This fact, more than anything else, is my motivation for working to address climate change and mitigate its impacts on Wisconsin.

19. Municipal solid waste landfills also emit non-methane organic compounds, which include volatile organic compounds, a precursor to ozone and particulate matter, and hazardous air pollutants. Volatile organic compounds can cause eye, nose and throat irritation, headaches, nausea or damage to the liver, kidneys and nervous system. Ozone can cause lung and throat irritation and trouble breathing during exertion. Exposure to particulate matter can cause lung and heart damage. People exposed to hazardous air pollutant have an increased chance of getting cancer or experiencing other serious health effects such as immune system

damage, as well as, neurological, reproductive, developmental and respiratory health problems.

20. I work in downtown Madison, Wisconsin, less than 5 miles from the Dane County Landfill Site, located at 7102 East Broadway, Madison, Wisconsin. This site emitted 52,459 tons of CO_2 equivalent in 2015. Also in 2015, it emitted 63 tons of particulate matter and over 25 tons of hazardous air pollutants. I drive past the landfill site almost daily and am aware of the odor that emanates from it.

21. I recreate near the Dane County Landfill including biking and hiking on the Glacial Drumlin Bike Trail in Cottage Grove Wisconsin, approximately three miles from the Dane County Landfill, and hiking around Upper Mud Lake and Lake Waubesa, approximately four miles from the Dane County Landfill. Each autumn, my family picks apples at the Door Creek orchard, which is three miles from the Dane County Landfill.

22. Compliance with the Guidelines will, as a co-benefit, reduce emissions of hazardous air pollutants, ozone and particulate matter.

23. The Guidelines are a significant step toward addressing climate change and its effect on Wisconsin's air quality, lakes, rivers, ground water, farms, businesses, public health, culture and heritage. I believe the Guidelines will also make the air that I, my children, and my grandchildren breathe cleaner and safer. Clean Wisconsin seeks to intervene on EPA's behalf to defend the Guidelines. I

support EPA's promulgation of the Guidelines finalized by the Agency, and I support Clean Wisconsin's efforts to intervene on EPA's behalf.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of July 2017:

Kathryn A. Nekola
Kathryn A. Nekola
430 W. Main Street, Apt. 307
Madison, WI 53703

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Norfolk County)
)
Commonwealth of Massachusetts)

DECLARATION OF SARA MOLYNEAUX

I, Sara Molyneaux, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity. I submit this declaration in support Conservation Law Foundation's ("CLF") Petition for Review in the above-referenced matter.

2. I am currently the Chair of the CLF Board of Trustees. I have served on CLF's Board and have been a CLF member for eighteen years. My role at CLF requires me to be responsible for achieving the organization's goals and mission, and to be familiar with CLF's structure, activities, and membership.

3. Founded in 1966, CLF is a 501(c)(3) non-profit, member-supported corporation, organized and existing under the laws of Massachusetts, and headquartered at 62 Summer Street, Boston, Massachusetts 02110. CLF maintains offices in Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. CLF's membership consists of approximately 4,600 individuals, residing in thirty-

three states and the District of Columbia, with the largest concentrations in the New England region.

4. CLF's mission is to work to solve the most significant environmental challenges facing New England. CLF relies on sound science and uses the law to create and advocate for innovative strategies to conserve natural resources, protect public health, and promote vital communities in our region. Working to promote effective climate change policies, including defending the U.S. Environmental Protection Agency's ("EPA's") authority to regulate greenhouse gas emissions under the Clean Air Act, constitutes a core element of CLF's mission.

5. My role at CLF requires me to be up-to-date and knowledgeable about current and future threats to the environment in Massachusetts, and more broadly, to the New England region.

6. Among the most important current and future threats to Massachusetts' natural and built environment is the ongoing damage due to a changing climate in the region. I am aware of the science documenting the existence of climate change, its causes, and its potential adverse impacts on public health and welfare and the environment – specifically to the natural and built environment in the New England region. I understand that human activities, especially burning fossil fuels to generate electric power, have resulted in elevated levels of carbon dioxide pollution. Carbon dioxide and other greenhouse gases trap

heat in the Earth's atmosphere that would otherwise escape, and that "greenhouse effect" is now causing a variety of climatic and environmental changes, including, but not limited to, increased temperatures, sea level rise, and increases in the frequency and intensity of extreme weather events, including increased precipitation and heavy downpours in the northern United States.

7. I understand that 2016 had the highest average temperatures of any year in recorded U.S. history, and that this is part of a pattern of increased warming globally and in my region. Between 1895 and 2011, average annual temperatures in Massachusetts, indeed the entire Northeast United States, increased by approximately two degrees Fahrenheit, and precipitation increased by more than ten percent. I understand that sea level rise is already documented in Massachusetts and that global sea levels are projected to rise one to four feet by 2100, substantially increasing coastal flooding risks in my region.

8. I know that urban areas, such as the Greater Boston metropolitan area in Massachusetts, have significantly more impermeable surfaces, including concrete and asphalt and less vegetation than surrounding areas, and therefore suffer from a "heat island" effect, whereby average temperatures are several degrees warmer than in the surrounding regions. The "heat island" effect poses a direct health risk because extreme heat events can cause health problems, including heat exhaustion, heat stroke, and even death, particularly among at-risk

populations, such as children, the elderly, or those with low socio-economic factors. This "heat island" effect also contributes to greater concentrations of ground-level ozone, which forms when warm polluted air mixes with sunlight. Hotter areas experience higher localized concentrations of ground-level ozone than cooler areas. In turn, ground-level ozone combines with particulate matter to create smog. Smog is a particular problem in urban areas because of the increased presence of vehicles and industry, as well as the "heat island" effect.

9. Ozone smog irritates the respiratory system, reduces lung function, inflames and damages cells that line lungs, makes lungs more susceptible to infections, aggravates asthma, aggravates chronic lung disease and can cause permanent lung damage. Increasing temperatures associated with climate change will exacerbate ground-level ozone and ozone smog and associated health problems. CLF's members residing in urban areas experience the effects of smog, which will continue and intensify if greenhouse gas accumulations in the atmosphere remain unchecked and average temperatures continue to rise.

10. I know that climate change results in more frost-free days and can contribute to shifts in flowering time and pollen initiation from allergenic plants. Increases in carbon dioxide itself can elevate plant-based allergens, resulting in longer, more intense allergy seasons.

11. I am familiar with the final rule at issue in this litigation: Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. In my opinion, and based on my experience at CLF and with this rulemaking, the final Guidelines stayed by this rule, are a significant step forward in reducing greenhouse gas emissions in the United States and confirm the country's international leadership in the global effort to address climate change.

12. Guidelines for existing landfills were originally promulgated in 1996. The Guidelines which have been stayed in this rulemaking reflect a number of advances in technology and operating practices for reducing emissions of landfill gas, which includes methane, since that time. Methane is a potent greenhouse gas with a much shorter atmospheric lifespan than CO_2. I understand that these Guidelines will reduce 1,810 Mg/year of non-methane organic compound emissions from existing landfills and reduce methane by 7.1 mtCO_2e in 2025.

17. CLF's members live and recreate in areas throughout New England that are now, and will be in the future, impacted by climate change, rendering them at risk for the adverse public health effects of climate change. CLF's members also include persons owning property and recreating in coastal areas that have already experienced sea level rise, as well as the accompanying erosion, direct loss of coastal property, and compromised wetland areas. CLF's members further include

elderly persons and others living in urban areas with high concentrations of ground-level ozone, making them particularly vulnerable to the adverse health impacts associated with exposure to these elevated concentrations.

18. In addition to my role at CLF, I have been a resident of Massachusetts for 39 years. I live at 7 Wilsondale Street in Dover, which is located in Norfolk County. My husband and I own property at 581 and 595 Old Post Road in Cotuit, which is located in Barnstable County on Cape Cod. My property in Cotuit is located on the waterfront and is in a high-risk flood area according to the U.S. Federal Emergency Management Agency. I am aware that increased global temperatures cause increased flooding, due to a combination of sea level rise, storm surge, and precipitation events. Because my property is within close proximity to the Atlantic Ocean, it is vulnerable to damage from such flooding.

20. My husband of thirty-six years is a native New Englander and suffers from chronic asthma, which causes shortness of breath, wheezing, coughing, and chest pain. These symptoms are aggravated by ground-level ozone and ozone smog. My husband is, therefore, directly impacted by climate change because increased temperatures lead to more frequent bad ozone days, exacerbating his symptoms.

21. My husband enjoys spending time outdoors and participating in recreational activities. Based on the heightened frequency and intensity of bad

ozone days, my husband has been forced to curtail these activities. If climate-related temperature rises remain unchecked, these bad ozone days will only continue to increase, and the associated adverse health impacts will be compounded.

22. I have two children living in New England. They are an important reason why I am so concerned about the issue of climate change. I worry about how the changing climate will impact their health and their futures. I believe we must do everything we can to protect them from climate changes' adverse effects.

23. The Guidelines at issue in the above-referenced matter will be a significant step toward addressing climate change and its effect on rising waters, increasing bad ozone, allergens, and our children's future planet. I believe the Guidelines will also make the air that I, my children, and my grandchildren breathe cleaner and safer.

24. I understand that EPA recently issued a three-month delay of the Guidelines, and that CLF has initiated a lawsuit to challenge that delay. I support this lawsuit, because EPA's regulations will reduce air pollution from the landfill in my community and from the landfills in many other communities around the country.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of July, 2017.

Sara Molyneaux

Sara Molyneaux
7 Wilsondale Street
Dover, MA 02030

DECLARATION OF CRAIG GOODING

I, Craig Gooding, do hereby affirm and state:

1. I am currently a member of the Natural Resources Defense Council (NRDC). I have been a member since 2007.

2. I support NRDC's work to protect public health and the environment from the hazards associated with air pollution from municipal solid waste landfills, both in terms of direct threats to our health and impacts on our climate.

3. My wife and I live in Charleston, South Carolina. We have lived in our current home, which is in a relatively recently developed neighborhood, for six years. I was stationed in Beaufort, South Carolina in the 1990s, during which time I was frequently in Charleston and the surrounding area. I have lived in the area off and on since then.

4. My home is less than a mile east of the Charleston County Landfill. The landfill is in the middle of a rapidly developing residential area, including a new development with as many as 6,000 units immediately adjacent to the landfill. Due to the explosive population growth in the Charleston metro area, the landfill is accepting increasing amounts of waste.

5. It is my understanding that the Charleston County Landfill does not currently utilize any method of controlling its emissions of air pollutants.

6. I understand that landfill emissions include hazardous air pollutants and other pollutants that contribute to smog. I am concerned about the health effects that these air pollutants emitted by the landfill may have on the local community.

7. On clear nights when the wind comes from the west, a strong unpleasant odor from the landfill reaches my home. This occurs roughly once every two weeks. The odor is an oily, chemical smell. Although to my knowledge there is not an incinerator in use at the landfill, the smell resembles burning trash or tires. I believe that the landfill is the source of the odor because it occurs when the wind comes from the direction of the landfill, and it is the only industrial source in that direction—the rest of the area to the west of my home is residential and wetlands.

8. I am concerned about the pollutants that may be associated with the odor. When the smell is strong, my wife and I try to avoid breathing the air—we close up the windows in our house, and do not sit on our screened-in porch or otherwise go outdoors. I worry about the impacts of breathing the air on my own health, and I am concerned about the impacts on my neighbors, many of whom are families with young children.

9. I understand that landfill emissions also include methane and carbon dioxide, both of which are greenhouse gases that contribute to climate change. I am deeply concerned about the effects climate change will have, and is already having, on the Charleston area. Downtown Charleston is barely above sea level, and the surrounding area is a sunken river delta that is now full of tidal creeks and rivers. The

area is vulnerable to hurricanes and storm surge, and has become more vulnerable over time due to sea level rise, which is driven by climate change.

10. Having spent time in Charleston over the last twenty years, I have seen the effects of sea level rise first-hand: roads around Charleston that never flooded twenty years ago now frequently flood during twice-monthly spring tides (associated with a full moon or new moon). I am an avid kayaker, and spend time kayaking all over the Charleston area in the ocean, harbor, and tidal creeks and rivers. From this vantage point I can see just how much of the area is at risk of flooding, and how much more will be at risk in the future due to sea level rise.

11. I also have significant concerns about other environmental impacts of the landfill. I kayak in the wetlands to the west of the landfill, and I worry about the possible impacts of pollution from the landfill on the natural area. Additionally, there is constant and increasing local traffic from hundreds of trucks transporting waste to the landfill, and the additional air pollution associated with those trucks.

12. I am aware that in 2016 the U.S. Environmental Protection Agency updated its regulations to expand the number of landfills that must control their landfill gas emissions. I support these updated regulations, as they would likely require the Charleston County Landfill to install new controls to limit its air pollution in the near future. I believe these regulations should be fully implemented.

13. I understand that EPA recently issued a notice putting the landfill rules on hold, and that NRDC has initiated a lawsuit to challenge that delay. I support this

lawsuit, because EPA's regulations will reduce the air pollution from the landfill in my community and from the landfills in many other communities around the country. I believe that my wife's and my health, the health of our neighbors, and the future of Charleston and similarly vulnerable coastal cities, would all be better protected if these rules are implemented immediately.

14. I fully support NRDC in this action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on July 26, 2017.

Craig Gooding

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Grafton County)
)
State of New Hampshire)

DECLARATION OF SUSAN ALMY

I, Susan Almy, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity. I submit this declaration in support of Conservation Law Foundation's ("CLF") Petition for Review, in the above-referenced matter

2. I am currently serving my eleventh term as a Representative of Grafton County District 13, the City of Lebanon, in the New Hampshire House of Representatives. I am also a member of CLF.

3. Among the most important current and future threats to New England's natural and built environment is the ongoing damage due to a changing climate in the region. I am aware of climate change, its causes, and its potential adverse impacts on public health and welfare and the environment—specifically in New England. I understand that human activities have resulted in elevated levels of greenhouse gas pollution in the atmosphere. Methane and other greenhouse gases trap heat in the Earth's atmosphere that would otherwise escape, and that

"greenhouse effect" is now causing a variety of climatic and environmental changes, including, but not limited to, increased temperatures, sea level rise, and increases in the frequency and intensity of extreme weather events, including warmer winters, reduced snowfall, earlier spring runoff, increased total rainfall, and more frequent violent storms and short-term droughts in New England.

4. I understand that there is part of a pattern of increased warming globally and in my region. I also understand that sea level rise is already documented in New Hampshire and that projected sea level rise over the course of this century will substantially increase coastal and riverine flooding, erosion, and property damages risks in my state. The increased frequency and violence of extreme weather events have already severely impacted the housing stock, businesses, roads, and jobs of my state and our neighboring state, Vermont. Additionally, climate change threatens the viability of industries that contribute significantly to my state's economy, including New Hampshire's ski areas, snowmobiling industry, transportation, fisheries, and agricultural and forestry sectors. These industries are not only key to New Hampshire's economic success but also important the state's cultural heritage and history.

5. As a long-term member of the New Hampshire Ways and Means Committee, I am attuned to the impacts of climate change on New Hampshire's economy. I know that it is critical to adapt to the impacts of climate change and

that adaptation will come at a cost to New Hampshire's economy; moreover, it is also critical to take steps now to reduce methane and other air pollution that causes climate change in order to mitigate those costs. I know that the combined costs of the impacts of climate change and the costs of adapting to minimize those impacts, will be far higher than the cost of mitigating the impacts, particularly from large sources such as municipal solid waste landfills.

6. I am also a member of the City of Lebanon Conservation Commission and the Lebanon Steering Committee on the Implementation of the Master Plan, , and I was a member of the Grafton County Executive Committee and the Upper Valley Housing Coalition for many years. Climate change has impacted my work in these positions. The City of Lebanon Conservation Commission has had to deal with many instances of severe erosion and river pollution due to high-intensity storms that have become more frequent in recent years. The Upper Valley Housing Coalition became a leader in immediate response to flooding to save flooded houses. My city saw considerable jobs and property lost in Tropical Storm Irene. Lebanon is now the center for a regional discussion of sustainability measures that municipalities must take to protect against climatic changes and extreme weather events, which burden municipal budgets already strained by stormwater separation mandates and the downshifting of costs from the state and federal government.

My county powers all of its heating and cooling with renewable energy resources, and my city is pursuing multiple avenues to reduce its own carbon footprint.

7. I understand that this lawsuit challenges an EPA final rule entitled: Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.

8. I understand that the stay will delay Guidelines which would reduce landfill emissions of methane and other dangerous and hazardous air pollutants that can cause serious health effects.

9. I have been a dues paying member of CLF since 2014. I am 71 years old, and I own the property where I live at 266 Poverty Lane, Unit 4B, Lebanon, New Hampshire. I have been a resident of the state of New Hampshire for 23 years, and was domiciled here through my parents during my two decades of work overseas before that. I have no children, but I have two great-nieces.

10. I have chronic asthma, which causes shortness of breath, wheezing, coughing, and chest pain. These symptoms are aggravated by air pollution. I have trouble visiting parts of my state and nation when air pollution peaks in a region. I am directly impacted by methane emissions because such emissions contribute to the formation of ozone smog, which aggravates asthma.

11. I live approximately 2 miles from the Lebanon Landfill and Recycling Center (the "Landfill"), located at 370 Plainfield Road, Route 12-A, West

Lebanon, New Hampshire. This site emits methane and other dangerous and hazardous air pollutants. In recent years, the Landfill has made efforts to reduce its emissions, including through installation of a flare system to burn the Landfill's collected methane emissions.

12. The Landfill is located at the edge of a shopping site, which is among the most popular commercial destinations in my region. A long strip mall and a mini-golf and putting green cover most of a closed cell of the Landfill. I visit the mall or the surrounding area most weeks. Until the Landfill starting flaring its landfill gas, the smell of landfill gas was pervasive during large parts of the year. Despite flaring, the smell of landfill gas is still noticeable to me sometimes, especially when I am driving past the Landfill to access the nearby recycling center or when I am visiting towns located to the south and downwind of the Landfill.

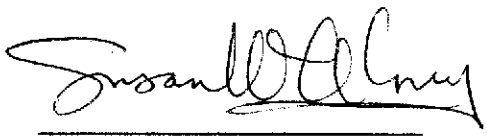
13. The Guidelines impose critical reporting requirements on the Landfill. These reporting requirements are particularly important because the Landfill's current design capacity is not far below the capacity that would trigger emission control requirements under the Guidelines. It is important to me, and I believe my community, to ensure that our regional landfill is properly regulated and guided in accord with up-to-date science and information. Furthermore, the Guidelines' enhanced reporting requirements will ensure transparency and allow for public involvement.

14. The Guidelines are a significant step toward addressing climate change and its effect on New Hampshire's natural resources, businesses, public health, culture, and heritage. I believe the Guidelines will also make the air that I breathe cleaner and safer.

15. I understand that EPA recently issued a three-month delay of the Guidelines, and that CLF has initiated a lawsuit to challenge that delay. I support this lawsuit, because EPA's regulations will reduce air pollution from the landfill in my community and from the landfills in many other communities around the country.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of July 2017:



Susan Almy
266 Poverty Lane 4B
Lebanon, New Hampshire
03766

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Suffolk County)
)
Commonwealth of Massachusetts)

DECLARATION OF DOUGLAS I. FOY

I, Douglas I. Foy, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer no legal incapacity. I submit this declaration in support of Conservation Law Foundation's ("CLF") Petition for Review, in the above-referenced matter

2. I currently serve on the CLF Board of Directors and have been a CLF member for thirty-nine years. I previously served as CLF's President and Chief Executive Officer for twenty-five years. My long-standing roles at CLF have required me to be responsible for achieving the organization's goals and mission, and to be familiar with CLF's structure, activities, and membership.

3. Founded in 1966, CLF is a 501(c)(3) non-profit, member-supported corporation, organized and existing under the laws of Massachusetts, and headquartered at 62 Summer Street, Boston, Massachusetts 02110. CLF maintains offices in Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

CLF's membership consists of approximately 4,600 individuals, residing in thirty-three states and the District of Columbia, with the largest concentrations in the New England region.

4. CLF's mission is to work to solve the most significant environmental challenges facing New England. CLF relies on sound science and uses the law to create and advocate for innovative strategies to conserve natural resources, protect public health, and promote vital communities in our region. Working to promote effective climate change policies, including defending the U.S. Environmental Protection Agency's ("EPA's") greenhouse gas emissions regulations under the Clean Air Act, constitutes a core element of CLF's mission.

5. My role at CLF requires me to be up-to-date and knowledgeable about current and future threats to the environment in Massachusetts, and more broadly, to the New England region.

6. Among the most important current and future threats to Massachusetts' natural and built environment is the ongoing damage due to a changing climate in the region. I am aware of the science documenting the existence of climate change, its causes, and its potential adverse impacts on public health and welfare and the environment – specifically to the natural and built environment in the New England region. I understand that human activities, including creation and decomposition of waste have resulted in elevated levels of

methane pollution. Methane and other greenhouse gases trap heat in the Earth's atmosphere that would otherwise escape, and that "greenhouse effect" is now causing a variety of climatic and environmental changes, including, but not limited to, increased temperatures, sea level rise, and increases in the frequency and intensity of extreme weather events, including increased precipitation and heavy downpours in the northern United States.

7. I understand that 2016 had the highest average temperatures of any year in recorded U.S. history, and that this is part of a pattern of increased warming globally and in my region. Between 1895 and 2011, average annual temperatures in Massachusetts, indeed the entire Northeast United States, increased by approximately two (2) degrees Fahrenheit, and precipitation increased by more than ten (10) percent. I understand that sea level rise is already documented in Massachusetts and that global sea levels are projected to rise one to four feet by 2100, substantially increasing coastal flooding risks in my region.

8. I know that urban areas, such as Boston, Massachusetts, have significantly more impermeable surfaces, including concrete and asphalt and less vegetation than surrounding areas, and therefore suffer from a "heat island" effect, whereby average temperatures are several degrees warmer than in the surrounding regions. The "heat island" effect poses a direct health risk because extreme heat events can cause health problems, including heat exhaustion, heat stroke, and even

death, particularly among at-risk populations, such as children, the elderly, or those with low socio-economic factors. This "heat island" effect also contributes to greater concentrations of ground-level ozone, which forms when warm polluted air mixes with sunlight. Hotter areas experience higher localized concentrations of ground-level ozone than cooler areas. In turn, ground-level ozone combines with particulate matter to create smog. Smog is a particular problem in urban areas because of the increased presence of vehicles and industry, as well as the "heat island" effect.

9. Ozone smog irritates the respiratory system, reduces lung function, inflames and damages cells that line lungs, makes lungs more susceptible to infections, aggravates asthma, aggravates chronic lung disease and can cause permanent lung damage. Increasing temperatures associated with climate change will exacerbate ground-level ozone and ozone smog and associated health problems. CLF's members residing in urban areas are experiencing the effects of summer smog now, which will continue and intensify if greenhouse gas accumulations in the atmosphere remain unchecked and average temperatures continue to rise.

10. I know that climate change results in more frost-free days and can contribute to shifts in flowering time and pollen initiation from allergenic plants.

Increases in carbon dioxide itself can elevate plant-based allergens, resulting in longer, more intense allergy seasons.

11. I am familiar with the final rule at issue in this litigation: Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. In my opinion, and based on my experience at CLF and with this rulemaking, the final Guidelines are a significant step forward in reducing greenhouse gas emissions in the United States and confirm the country's international leadership in the global effort to address climate change.

12. Guidelines for existing landfills were originally promulgated in 1996. The Guidelines which have been stayed in this rulemaking reflect a number of advances in technology and operating practices for reducing emissions of landfill gas, which includes methane, since that time. Methane is a potent greenhouse gas with a much shorter atmospheric lifespan than CO_2. I understand that these Guidelines will reduce 1,810 Mg/year of non-methane organic compound emissions from existing landfills and reduce methane by 7.1 mtCO_2e in 2025.

17. CLF's members live and recreate in areas throughout New England that are now, and will be in the future, impacted by climate change, rendering them at risk for the adverse public health effects of climate change. CLF's members also include persons owning property and recreating in coastal areas that have already

experienced sea level rise, as well as the accompanying erosion, direct loss of coastal property, and compromised wetland areas. CLF's members further include elderly persons and others living in urban areas with high concentrations of ground-level ozone, making them particularly vulnerable to the adverse health impacts associated with exposure to these elevated concentrations.

18. In addition to my role at CLF, I have been a resident of Massachusetts for 46 years. I am 70 years old. I live at 40 Battery Street, in Boston, which is located in Suffolk County. I have lived at this address for 13 years. I also own property at 65 East India Row, in Boston, which is located in Suffolk County.

19. Both my home and my property are located on the waterfront and are in high-risk flood areas according to the U.S. Federal Emergency Management Agency. I am aware that increased global temperatures cause increased flooding, due to a combination of sea level rise, storm surge, and extreme precipitation events. Because my home and my property are within close proximity to Boston Harbor, they are vulnerable to damage from such flooding.

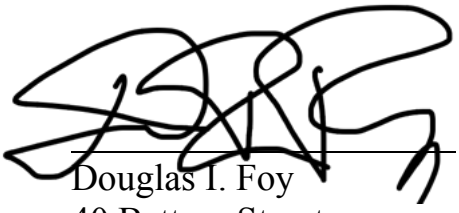
20. I have children, as well as two granddaughters ages one and four, living in the Boston area and visiting me regularly. They are an important reason why I am so concerned about the issue of climate change. I worry about how the changing climate will impact their health and their futures. I believe we must do everything we can to protect them from the adverse effects of climate change.

21. The Guidelines at issue in the above-referenced matter will be a significant step toward addressing climate change and its effect on rising waters, increasing bad ozone, allergens, and our children's future planet. I believe the Guidelines will also make the air that I, my children, and my grandchildren breathe cleaner and safer.

22. I understand that EPA recently issued a three-month delay of the Guidelines, and that CLF has initiated a lawsuit to challenge that delay. I support this lawsuit, because EPA's regulations will reduce air pollution from the landfill in my community and from the landfills in many other communities around the country.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of July, 2017.



Douglas I. Foy
40 Battery Street
Boston, MA 02109

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2017, I have served the foregoing Addendum to Petitioners' Initial Opening Brief on all registered counsel through the court's electronic filing (ECF) system.

Dated: November 20, 2017

/s/ Melissa J. Lynch

Melissa J. Lynch