

*Via Certified Mail and Email*

June 19, 2018

E. Scott Pruitt, Administrator  
Environmental Protection Agency  
Office of the Administrator, Mail Code 1101A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

RE: Notice of Intent to Sue for Failure to Enforce Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

Dear Administrator Pruitt:

Pursuant to Clean Air Act section 304(a)(2), 42 U.S.C. § 7604(a)(2), the undersigned organizations hereby provide 60 days' notice of intent to commence litigation concerning your failure as Administrator of the Environmental Protection Agency (EPA) to implement or enforce the Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016) ("Landfills Rule").<sup>1</sup>

The Landfills Rule represents a long-overdue update to clean air protections for existing municipal solid waste landfills, and EPA's failure to carry out the rule's clear requirements deprives Americans of important climate and public health benefits. Landfills are the nation's third-largest source of climate-destabilizing methane pollution, and also discharge approximately thirty different kinds of hazardous air pollutants – including known human carcinogens such as benzene. Moreover, landfills emit significant quantities of volatile organic compounds that contribute to soot and smog pollution.<sup>2</sup>

In promulgating the Landfills Rule, EPA recognized that it was appropriate to update existing clean air protections for these facilities – which had not been substantially revised since they were first issued in 1996 – to reflect recent trends in the industry and to realize "opportunities for significant reductions in methane and other pollutants at reasonable cost."<sup>3</sup> The Landfills Rule includes common-sense, cost-effective provisions to ensure that a larger number of the nation's landfills install and maintain gas

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<sup>1</sup> On March 23, 2018, the states of California, Illinois, Maryland, New Mexico, Oregon, Rhode Island, and Vermont, and the California Air Resources Board and Pennsylvania Department of Environmental Protection similarly provided notice of their intent to commence litigation for the same. Letter from Xavier Becerra, Attorney General of California, et al., to E. Scott Pruitt, Administrator (Mar. 23, 2018), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-if-epa-administrator-pruitt-fails-enforce-critical>. These states filed a complaint seeking declaratory and injunctive relief in the Northern District of California on May 31, 2018. *California v. EPA*, No. 18-cv-03237 (N.D. Cal. filed May 31, 2018).

<sup>2</sup> Landfills Rule, 81 Fed. Reg. at 59,281.

<sup>3</sup> *Id.* at 59,286.

capture and control systems, and to ensure that those landfills reduce landfill gas emissions over a longer portion of their lifecycle. EPA estimated in the Landfills Rule that these updated protections would reduce approximately 285,000 metric tons of methane pollution and 1,810 metric tons of non-methane organic compounds each year by 2025, yielding annual net benefits (over and above compliance costs) of \$390 million.<sup>4</sup>

Yet under your leadership, EPA has failed to perform the nondiscretionary duties that are required in order to implement these important protections. *See* 40 C.F.R. § 60.27. The Landfills Rule required states to submit implementation plans by May 30, 2017. 40 C.F.R. § 60.30f(b). After this date, EPA had four months, or until September 30, 2017, to approve or disapprove submitted state plans. 40 C.F.R. § 60.27(b). EPA had six months, or until November 30, 2017, to impose a federal plan on states that failed timely submit an approvable plan. 40 C.F.R. § 60.27(c). EPA has taken none of these mandatory actions.

EPA has conceded this failure in recent legal filings. On May 31, 2017, EPA published a three-month stay of the Landfills Rule, 82 Fed. Reg. 24,878 (May 31, 2017), which was challenged as unlawful by environmental organizations including one of the undersigned. EPA admitted in that proceeding that the deadlines for EPA to approve or disapprove state plans and issue a federal plan “have come and gone” and “EPA has neither approved nor disapproved the state plans that were timely submitted, nor promulgated any federal plans.”<sup>5</sup>

EPA has also confirmed in recent months that the agency does not intend to enforce the Landfills Rule. On October 31, 2017, an article in the industry trade press quoted an EPA spokesperson as saying, “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.”<sup>6</sup>

Each day that EPA fails to perform the Agency’s mandatory duties delays the Landfill Rule’s promised emission reductions. Facilities subject to the Landfills Rule are only obligated to install pollution controls after EPA has approved a state’s implementation plan. 40 C.F.R. § 60.32f. As noted above, EPA concluded that implementation of the Landfills Rule 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. EPA’s failure to approve or disapprove any state plans or impose a federal plan on states that have failed to submit state plans forestalls those pollution reductions indefinitely, depriving the public of the climate and human health protections afforded by the Landfills Rule.

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<sup>4</sup> *Id.* at 59,306, 59,309.

<sup>5</sup> Brief for Respondents, ECF No. 1714147, at 36- 37, *Natural Resources Defense Council v. Pruitt*, No. 17-1157 (D.C. Cir.); *see also* Stipulation of Voluntary Dismissal, ECF No. 1715796, at 2.

<sup>6</sup> Waste Dive, *EPA offers public clarification on timeline for NSPS, EG landfill rules months after stay expires* (Oct. 31, 2017), available at <https://www.wastedive.com/news/epa-offers-public-clarification-on-timeline-for-nsps-eg-landfill-rules-mon/508484/>.

Because EPA has failed to perform these nondiscretionary duties, EDF and NRDC hereby notify you that we intend to file a lawsuit under Clean Air Act section 304(a)(2) to secure the implementation of the Landfills Rule. 42 U.S.C. § 7604(a)(2). If EPA continues to neglect these obligations, the undersigned organizations intend to seek the appropriate relief in federal district court.

Sincerely,

David Doniger  
Lissa Lynch  
Natural Resources Defense Council  
1152 15th Street NW, Suite 300  
Washington, DC 20005  
202-289-6868  
ddoniger@nrdc.org  
llynch@nrdc.org

Tomás Carbonell  
Environmental Defense Fund  
1875 Connecticut Ave., 6th Floor  
Washington, DC 20009  
202-572-3610  
tcarbonell@edf.org

Peter Zalzal  
Alice Henderson  
Environmental Defense Fund  
2060 Broadway, Suite 300  
Boulder, CO 80302  
303-447-7214  
pzalzal@edf.org  
ahenderson@edf.org