July 10, 2017

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

Second Request for Withdrawal of Administrative Stay of Landfill Methane Rules

Dear Administrator Pruitt,

The undersigned respectfully submit this additional request that the Environmental Protection Agency (EPA) withdraw the 90-day Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 82 Fed. Reg. 24,878 (May 31, 2017), in light of the recent decision in *Clean Air Council v. Pruitt*, No. 17-1145 (D.C. Cir. July 3, 2017) vacating EPA's 90-day stay of certain provisions of the new source performance standards for methane emissions from oil and gas production.

In *Clean Air Council*, the court determined that "industry groups had ample opportunity to comment on all four issues on which EPA granted reconsideration." Slip op. at 23. "Because it was thus not 'impracticable' for the industry groups to have raised such objections during the notice and comment period, CAA section 307(d)(7)(B) did not require reconsideration and did not authorize the stay." *Id.*

EPA similarly lacks authority to stay the landfills standards. As we discussed in our June 14 letter requesting withdrawal of the administrative stay of the landfill rules (enclosed), none of the issues EPA identified for reconsideration meet the requirements for reconsideration under Clean Air Act section 307(d)(7)(B): issues that are of central relevance to the outcome of the rule, which either were impracticable to raise during the public comment period or arose after that period. In the proposed landfill rules, EPA solicited comment on the issues for which the agency has now granted reconsideration. Stakeholders, including those seeking reconsideration, had the opportunity to raise—and in fact did raise—their objections during the public comment period.

As the prerequisites for reconsideration under section 307(d)(7)(B) are not met, the stay of the landfill rules is not authorized and the existing regulations must remain effective until the completion of a notice and comment rulemaking to modify or replace them. *Clean Air Council*, slip op. at 10-12.

We respectfully request that the stay of the landfill rules be withdrawn in accordance with *Clean Air Council*.

Respectfully submitted,

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Enclosure: Letter from Ann Weeks, Clean Air Task Force, et al., to E. Scott Pruitt, Administrator, U.S. EPA (June 14, 2017)

CC: Justin D. Heminger, U.S. Department of Justice

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June 14, 2017

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

Request for Withdrawal of Administrative Stay of Landfill Methane Rules

Dear Administrator Pruitt,

The undersigned respectfully request that the Environmental Protection Agency (EPA) withdraw the 90-day Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. 82 Fed. Reg. 24,878 (May 31, 2017). EPA's last-minute stay of these long-overdue protections is contrary to the Clean Air Act (CAA) and arbitrarily overlooks the significant risks to public health and climate that result from a delay in implementing these protections.

As we explain below, EPA lacks legal authority under section 307(d)(7)(B) of the CAA to reconsider and stay the landfills standards. An administrative stay under section 307 must be based on a legitimate reconsideration sought on valid grounds. Reconsideration is only available for objections that were impracticable to raise during the rulemaking comment period, or where the grounds for objection arose after the period for public comment (but within the time specified for judicial review). Those objections must also be of central relevance to the outcome of the rule. 42 U.S.C. § 7607(d)(7)(B). None of the issues EPA has identified for reconsideration meet these standards.[1]

Moreover, EPA's decision to issue the stay fails to even acknowledge the harmful impacts of a delay in implementing these protections. Landfills are among the nation's largest sources of methane, a potent climate pollutant, and they also emit substantial quantities of smog-forming and hazardous air pollutants. Communities across the nation who bear the burden of landfill pollution on a daily basis will be harmed by EPA's unjustified decision to delay these protections—yet EPA gave those concerns no weight at all in its decision.

We also note that the public was at no time given an opportunity to provide input on this decision. Indeed, EPA did not make any public announcement of its decision until more than two weeks *after* the date of EPA's letter granting reconsideration.[2] EPA's lack of transparency and its decision to delay vital safeguards on specious grounds is part of an unfortunate pattern that has emerged under your tenure at EPA. *See, e.g.*, 82 Fed. Reg. 25,370 (June 5, 2017).

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[1] The Notice of Stay is based on six issues raised in a Petition for Rulemaking, Reconsideration, and Administrative Stay submitted on October 27, 2016, and on a letter from EPA to entities in the waste management industry sent May 5, 2017 in response to that petition. 82 Fed. Reg. 24,878. The six issues identified for reconsideration are: 1) Applicability of the Tier 4 Surface Emissions Monitoring option; 2) Annual Liquids Reporting; 3) Corrective Action Timeline Procedures; 4) Overlapping Applicability with Other Rules; 5) Definition of Cover Penetration; and 6) Design Plan Approval. *Id.* at 24,878-79.

[2] EPA's decision to stay the landfills standards was signed May 22, 2017. 82 Fed. Reg. at 24,879.

1. BECAUSE THERE ARE NOT VALID GROUNDS FOR RECONSIDERATION, THE STAY IS UNLAWFUL

Because none of the six issues listed for reconsideration meet the section 307(d)(7)(B) standard, there is no basis for reconsideration under that provision and EPA has no authority to stay the rules.

For example, the Notice of Stay states that the public had no opportunity to comment on the final rule's restriction of Tier 4 applicability, and that had Tier 4 applicability been finalized differently, it would have been of central relevance to the rule's outcome. 82 Fed. Reg. at 24,879. But in fact, in its rule proposal, EPA requested "input on all aspects of implementing a new Tier 4 option." 79 Fed. Reg. 41,772, 41,791 (July 17, 2014). The final Tier 4 option was formulated in response to the solicited comments and is a logical outgrowth of the proposal.[3]

Likewise, commenters noted—and EPA considered—the possibility of conflicts between the performance standards and a preexisting national emission standard for hazardous air pollutants for the same industry, which involved similar control requirements, 81 Fed. Reg. 59,276, 59,279 (Aug. 29, 2016), an issue which EPA now states was "impracticable" to raise during the comment period.

These examples are typical of the treatment of all issues for which the EPA has now granted reconsideration.[4]

EPA's proposal put stakeholders on notice by providing "reasonably specific[]" descriptions of "the range of alternatives being considered"[5] and explicitly requested comment on the objections on which EPA now purports to grant reconsideration. *See, e.g.,* 80 Fed. Reg. 52,000, 52,126 (Aug. 27, 2015). Unsurprisingly, stakeholders—including those industry representatives who now seek reconsideration—in fact raised those objections during the comment period.

Indeed, of the six issues EPA has announced it is reconsidering, only three were actually included in the request for reconsideration; the other three were listed in support of a petition for further rulemaking.[6] As the parties who sought further rulemaking correctly recognized, any

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[3] *See* 80 Fed. Reg. 52,100, 52,111 (Aug. 27, 2015) (exploring the possibility of "limit[ing] surface monitoring during windy conditions"); *see also* EPA, Responses to Public Comments on EPA's Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Landfills: Proposed Rules, Dkt. No. EPA-HQ-OAR-2014-0451 [hereinafter "Response to Comments"] at 520, 527-28 (responding to comments expressing support for Tier 4 and proposing an expansion of its use); *id.* at 530, (recommending Tier 4 availability be limited to existing landfills).

[4] *See, e.g.,* EPA, Responses to Comments at 234-42 (describing comments requesting that the Agency not "apply different standards to 'wet landfills'" without further information); *id.* at 995-96, 1013-16 (responding to industry comments on proposed corrective action timelines and providing recommendations); *id.* at 724-26, 734-36 (responding to industry comments expressing disagreement with EPA's interpretation of cover penetration and asking for clarification).

[5] *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983).

[6] National Waste and Recycling Association *et al.*, Petition for Rulemaking, Reconsideration, and Administrative Stay (Oct. 27, 2016) (petitioning for further rulemaking to address overlapping applicability of standards, design plan approval process, and clarification of "cover penetrations" definition).

contemplated changes to these final rules regarding those issues must take the form of new rulemaking, not reconsideration. If the prerequisites for reconsideration under section 307(d)(7)(B) are not met, no stay is authorized and existing regulations must remain effective until the completion of a notice and comment rulemaking to modify or replace them.

2. THIS STAY PREVENTS THE REALIZATION OF IMPORTANT ENVIRONMENTAL AND PUBLIC HEALTH BENEFITS

As the third largest source of human-related methane emissions in the U.S., landfills produce dangerous amounts of methane, a highly potent greenhouse gas. Landfills also emit Non-Methane Organic Compounds (NMOC), which include volatile organic compounds (VOC) that form ozone and particulate matter pollution, and hazardous air pollutants (HAPs). Exposure to these pollutants is associated with significant public health and environmental effects, including premature deaths, cardiovascular problems such as heart attacks, respiratory problems such as asthma attacks and bronchitis, and injury to vegetation. HAPs such as benzene and toluene are associated with further serious health concerns. Those who live near landfills thus face elevated risks of all these harms.

EPA's landfill standards were first issued in 1996, and until last year they had not been reviewed or updated in any meaningful way, despite the CAA's requirement that standards of performance for new sources be reviewed and revised at least once every eight years. 42 U.S.C. § 7607(b)(1)(B). These long-overdue revisions to the landfill standards represent important steps toward reducing the presence of these pollutants in our air. Merely by lowering the threshold at which a landfill must install Gas Collection and Control Systems (GCCS) to 34 Mg NMOC/year, it is expected that, by 2025, NMOC reductions of almost 2,100 Mg/year and methane reductions of over 320,000 metric tons will be achieved. 81 Fed. Reg. at 59,278-80; 81 Fed. Reg 59,332, 59,335 (Aug. 29, 2016). The final rule is also expected to result in a reduction of over 300,000 Mg of carbon dioxide (CO_2) emissions per year. *Id.* Simply put, these rules will result in significant reductions in emissions of climate-destabilizing pollutants and also will avoid negative public health and welfare effects associated with local exposure to these emissions.

The public benefits of implementing these regulations are substantial. When the rules were finalized in 2016, EPA estimated the pollution reduction benefits from them would yield global monetized climate benefits of up to $1.38 billion by the year 2025. *Id.* The Agency also projected that the monetized climate benefits associated with diminished CO_2 and methane emissions alone would be over $500 million in 2025. *Id.* Additionally, the annual net benefits of the final rules are projected to be over $450 million in 2025. *Id.*

Lastly, these rules clarify Surface Emissions Monitoring (SEM) requirements to ensure cover penetrations are inspected regularly. They also closed a loophole that previously allowed landfills to disregard emissions guidelines during periods of startup, shutdown, and malfunction.

The unauthorized and unjustified stay you have imposed delays and diminishes these benefits, and harms public health and the environment.

For these reasons, we respectfully request that the stay of the rules be withdrawn.

Respectfully submitted,

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