April 9, 2019

SUBMITTED ELECTRONICALLY

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: Freedom of Information Act Request for All Records Concerning NSPS and Emission Guidelines for Landfills

Dear National Freedom of Information Officer:

Environmental Defense Fund ("EDF") respectfully requests records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, from the U.S. Environmental Protection Agency ("EPA" or the "Agency"). EDF seeks copies of all records, as that term is described at 5 U.S.C. § 552(f)(2), related to EPA's Standards of Performance for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,332 (Aug. 29, 2016) ("NSPS") and EPA's Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016) ("Emission Guidelines"). These include, but are not limited to, communications, documents, letters, information, notes, memoranda, electronic mail transmissions or other electronic forms of information, telephone logs and records, meeting records, reports, analyses, assessments, data, and modeling, including all drafts and preliminary forms of any such records. Specifically, EDF requests:

1. All correspondence relating to the implementation of the Emission Guidelines, including but not limited to:
    a. any draft or final state Emission Guidelines implementation plans submitted to EPA for review;
    b. any guidance issued to states regarding states' obligations under the Emission Guidelines;
    c. any stay of the Emission Guidelines;
    d. the proposed Emission Guidelines timeline extension at *Adopting subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills*, 83 Fed. Reg. 54,527 (Oct. 30, 2018);
    e. the process (including any deadlines) for states' submission, and EPA's review, of state plans, including any feedback provided on draft state plans;

f. the process (including any deadlines) for promulgating any federal implementation plans;
g. the timeframe for implementing the Emission Guidelines; and
h. any reconsideration of the Emission Guidelines.

2. All correspondence relating to implementation of the NSPS.

This request includes correspondence in the possession of EPA Headquarters, as well as regional offices. It includes correspondence internal to EPA, as well as between EPA and external entities such as other federal government entities, states, regulated entities, and members of the media.

EDF submitted a previous FOIA request covering the NSPS and Emission Guidelines on March 27, 2018. EPA logged the request, together with an update submitted on April 17, 2018, as No. EPA-HQ-2018-005836. EPA provided its final response to that request on October 11, 2018. The current request seeks records produced, modified, or transmitted from March 27, 2018 through the date that EPA begins searching for records responsive to this request, excluding any records already covered by request No. EPA-HQ-2017-001268.[1] However, if any record covered by the prior request was subsequently modified or transmitted, such modification or transmission qualifies as a separate record for the purposes of this request, and should therefore be included among the responsive records.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is "[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public." With respect to five other FOIA requests, EPA has recognized EDF's eligibility for expedited processing on this basis.[2] In support of this request for expedited processing, I certify that the following information is true

[1] For example, at least one state has submitted a state plan that was not covered by EDF's prior request. *See* West Virginia Dep't of Envt'l Protection, Division of Air Quality Comments, *Adopting subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills*, at 2, EPA-HQ-OAR-2018-0696-0006 (stating West Virginia submitted its state plan on September 18, 2018).

[2] See Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-003545 (Feb. 23, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-005587 (Apr. 12, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-008622 (July 7, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009283 (July 13, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPAHQ-2017-009579 (July 26, 2017).

and correct to the best of my knowledge and belief:

(1) EDF engages in extensive, daily efforts to inform the public about matters involving environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than 2 million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.[3]

(2) EDF has the expertise to disseminate these records in a rigorous and accessible manner. We have long been actively involved in regulation of air pollution from landfills. The NSPS arose from a lawsuit that EDF filed against EPA in 2011.[4] The Emission Guidelines resulted, in part, from EPA's "data collection efforts" for the NSPS.[5] EDF also submitted comments on proposals for the NSPS, Emission Guidelines, and the proposed deadline extensions for compliance with the Emission Guidelines,[6] as well as a white paper containing expert analysis relevant to the NSPS and Emission Guidelines.[7]

(3) The public has very little information about EPA's plans or actions to implement the NSPS and Emission Guidelines, despite the considerable public interest in the NSPS and Emission Guidelines—and EPA's plans for implementing them.[8] Once fully implemented,

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[3] *See, e.g.*, Press Release, EDF, EDF, NRDC Plan to Sue EPA Over Pollution from Landfills (June 19, 2018) https://www.edf.org/media/edf-nrdc-plan-sue-epa-over-pollution-landfills; John Schwartz & Brad Plumer, *The Natural Gas Industry Has a Leak Problem*, The New York Times (June 21, 2018) https://www.nytimes.com/2018/06/21/climate/methane-leaks.html.
[4] *See* Consent Decree, *EDF v. Jackson*, No. 1:11-cv-04492 (S.D.N.Y. Oct. 1, 2012).
[5] *Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills*, Advanced Notice of Proposed Rulemaking, 79 Fed. Reg. 41,772, 41,775 (July 17, 2014).
[6] *See* Comments of Peter Zalzal & Tomás Carbonell, Dkt. Nos. EPA-HQ-OAR-2003-0215 & EPA-HQ-OAR-2014-0451 (Sept. 15, 2014); Comments of Peter Zalzal et al., Dkt. Nos. EPA-HQ-OAR-2003-0215 & EPA-HQ-OAR-2014-0451 (Oct. 26, 2015); Comments of Rachel Fullmer et al., Dkt. No. EPA-HQ-OAR-2018-0696 (Jan. 3, 2019).
[7] EDF, *Recommendations and Considerations for EPA's Forthcoming Revisions to Section 111 Standards for MSW Landfills* (Jan. 2, 2013), Dkt. No. EPA-HQ-OAR-2014-0451.
[8] *See, e.g.*, Rina Li, *Multi-State Coalition Demands EPA Withdraw Proposed Delay of Landfill Emissions Regulations*, Waste Dive (Jan. 9, 2019) https://www.wastedive.com/news/multi-state-coalition-epa-withdraw-proposed-delay-landfill-emissions/545579/; Aaron Sidder, *Greenhouse Gas Inventories Underestimate Methane Emissions*, Eos (Nov. 13, 2018), https://eos.org/research-spotlights/greenhouse-gas-inventories-underestimate-methane-emissions ("The results indicate that landfills play a more significant role in methane emissions than previously believed: The total methane emitted from the monitored dumps exceeded prior estimates by a factor of roughly 2. One site alone, the Brown Station landfill, spewed greater than 9 times more methane than the values reported by the Environmental Protection Agency's Greenhouse Gas Reporting Program, even though the landfill gas collection and control system was in operation on the site."); Miranda Green, *Attorneys General Sue EPA, Claiming Illegal Delay of Landfill Regulation*, The Hill (June 1, 2018) https://thehill.com/policy/energy-environment/390249-attorneys-general-sue-epa-over-methane-regulations; Abby Smith, *EPA Trashes Plan to Pause Landfill Methane Limits*, Bloomberg BNA (Jan. 12, 2018), https://www.bna.com/epa-trashes-plan-n73014474118/; Georgina Gustin, *Trump EPA Gives*

the NSPS and Emission Guidelines will result in reductions of multiple harmful pollutants, including methane, volatile organic compounds (and resulting particulate matter and ozone), and hazardous air pollutants including benzene, ethylbenzene, toluene, vinyl chloride, and other air toxics. These reductions will yield benefits for the climate and human health, including fewer asthma attacks and decreased incidence of cancer.[9]

(4) However, despite EPA's acknowledgement that deadlines for both state and federal plans "have come and gone,"[10] EPA's actions and statements have created significant uncertainty about the Agency's plans for implementing these rules. Expeditious production of the requested records would provide the public with a concrete indication of what actions the Agency has taken—and whether the rules' crucial public benefits are on track to be achieved. Since its deadlines have passed with no action, EPA has, on multiple occasions,[11] attempted to undermine this timeline, including its most recent proposal to delay the deadlines for state plans implementing the Emission Guidelines.[12]

Request for Fee Waiver

As a non-partisan, non-profit organization that provides information that is in the public interest, EDF respectfully requests a waiver of fees associated with this request. The records we seek concern the operations and activities of the government concerning its commitment to protect Americans living near landfills from increased methane pollution and air pollution. We are not seeking information for any commercial purpose and the records received will contribute to a greater public understanding of issues of considerable public interest: emissions of dangerous and hazardous pollutants from our nation's solid municipal waste landfills. 5 U.S.C. § 552(a)(4)(A)(iii). EDF is well positioned to disseminate the records to the public, as we routinely issue press releases, action alerts, reports, analyses, and other public outreach materials. These outreach channels are proven effective: articles about records EDF has obtained through FOIA productions have appeared in several major media outlets.[13]

Landfills a Pass on Climate-Warming Methane, Inside Climate News (May 24, 2017), https://insideclimatenews.org/news/23052017/methane-rules-trump-epa-obama-clean-power-plan-wastemanagement-delay.

[9] *See* EPA, Regulatory Impact Analysis for the Final Revisions to the Emission Guidelines for Existing Sources and the New Source Performance Standards in the Municipal Solid Waste Landfills Sector 4-1 to -49, 7-10 to -13, Docket ID EPA-HQ-OAR-2014-0451-0225 (July 2016).

[10] Resps. Initial Br. 35-36, Nat. Res. Def. Council v. EPA, No. 17-1157 at 36 (D.C. Cir. Jan. 22, 2018), ECF No. 1714147. EPA's latest possible deadline for approving state plans was September 30, 2017, 81 Fed. Reg. 59,332 (Aug. 29, 2016), and its latest deadline for creating a federal plan was November 30, 2017, 81 Fed. Reg. 59,276 (Aug. 29, 2016).

[11] *See e.g.*, Office of Info. & Regulatory Affairs, Regulation Identifier Nos. 2060-AT64, 2060-AT60 (submitting to OMB and then later withdrawing both a "Stay" and an "Extension of Stay" of the Emission Guidelines).

[12] *Adopting Subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills*, 83 Fed. Reg. 54,527 (Oct. 30, 2018).

[13] *See, e.g.*, Russ Choma and Rebecca Leber, *The EPA Hired GOP Oppo Firm Because it Was Sick of "Fake News,"* Grist (Jan. 7, 2019) https://grist.org/article/the-epa-hired-gop-oppo-firm-because-it-was-sick-of-fake-news/ (reporting information disclosed through an EDF FOIA request); Ellen Knickmeyer, *Emails Show Cooperation Among EPA, Climate-Change Deniers*,

Indeed, EDF's March 2018 request revealed that, in addition to the few states that had submitted finalized plans, a significant number of states were actively working with EPA to get feedback on their own draft plans, some of which were nearly final.[14] EDF disseminating this information significantly increased the information available to the public about state compliance with these regulations.[15] We fully intend to disseminate newsworthy information received in response to this request. Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. EDF respectfully requests that EPA produce any responsive records as they become available, without waiting until all responsive records have been prepared for release. In the event EDF's request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at (303) 447-7214 or by email at pzalzal@edf.org.

Respectfully submitted,

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Assoc. Press (May 26, 2018), https://apnews.com/64cd37b0503440c0b92e6ca075f87dd4 (same); Michael Biesecker, *Emails: Pruitt Monitored Changes to EPA Webpages on Climate*, Assoc. Press (Feb. 2, 2018), https://www.apnews.com/85e69300761040a2995f5b457f2ac9f4 (same); Coral Davenport & Eric Lipton, *Scott Pruitt Is Carrying Out His E.P.A. Agenda in Secret, Critics Say*, N.Y. Times (Aug. 11, 2017), https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html (same).

[14] *See* Plaintiffs' Joint Motion for Summary Judgment *California v. EPA*, Case No. 4:18-cv-03237-HSG at 19-22 (N.D. Cal. Jan. 22, 2019) ("MSJ").

[15] *Compare* 83 Fed. Reg. at 54,530 n.5 ("At the present, only California, Arizona, and New Mexico have submitted a state plan to the EPA."), *with* MSJ at 21 n.18 (noting that Alabama, Florida, and North Dakota had submitted a draft plan and received feedback from EPA on their plans).