STATE OF CALIFORNIA
CALIFORNIA AIR RESOURCES BOARD
STATE OF ILLINOIS
STATE OF MARYLAND
STATE OF NEW MEXICO
STATE OF OREGON
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE OF RHODE ISLAND
STATE OF VERMONT

March 23, 2018

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
And via email

E. Scott Pruitt, Administrator
Office of the Administrator (1101A)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
pruitt.scott@epa.gov

Re: Notice of Intent to Sue for Failure to Enforce the 2016 Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (40 C.F.R. Part 60 Subpart Cf)

Dear Administrator Pruitt:

Pursuant to Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), we hereby provide 60 days' notice of our intent to commence litigation regarding the U.S. Environmental Protection Agency's (EPA) failure to enforce the 2016 Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills ("Landfill Emission Rule"). 81 Fed. Reg. 59,276 (Aug. 29, 2016); 40 C.F.R. Part 60 Subpart Cf. EPA has missed its deadlines to timely review and approve state compliance plans and has failed to prepare and publish a federal plan for states that did not submit compliance plans, and has therefore failed to perform its nondiscretionary duties in violation of 40 C.F.R. section 60.27(b), (c), and (d).

As you are aware, the Landfill Emission Rule was promulgated on August 29, 2016, in part to reduce emissions of methane, a potent greenhouse gas, as well as non-methane organic compounds (NMOC), including volatile organic compounds (VOCs) and other hazardous air pollutants. Under the Landfill Emission Rule, states were to submit implementation plans by May 30, 2017. 40 C.F.R. § 60.30f(b). From that date, EPA had four months to approve or disapprove any submitted state plans (40 C.F.R. § 60.27(b)) and six months to impose a federal plan on states that either did not submit a plan or whose proposed plan EPA disapproved (40

C.F.R. § 60.27(c)).[1] Therefore, by September 30, 2017, EPA was required to respond to states that had timely submitted plans; by November 30, 2017, EPA was required to impose a federal plan on states that did not submit a compliance plan. EPA's deadlines are critical, as they trigger subsequent deadlines for entities to implement emissions control systems and, ultimately, reduce emissions. *See* 40 C.F.R. § 60.38f.

Here, EPA has failed to take either mandatory action. California submitted its state plan by May 30, 2017. Yet, despite multiple requests from the California Air Resources Board, EPA has not provided a substantive response. Nor has EPA prepared and published a federal plan in accordance with the statute. EPA has acknowledged as much. In a brief filed in the D.C. Circuit Court of Appeals on January 22, 2018, EPA noted "EPA has neither approved nor disapproved the state plans that were timely submitted, nor has EPA promulgated any federal plans."[2] Instead, EPA's website indicates that "EPA still intends to complete the reconsideration process" and "will continue to work with states and stakeholders as we develop a path forward."[3]

EPA's failure to take these actions constitutes a violation of a nondiscretionary duty under the Clean Air Act, subjecting the agency to suit under Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2). Accordingly, we intend to file a lawsuit in federal district court to compel EPA to comply with its obligations under the statute if EPA continues not to do so.

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[1] In a May 5, 2017 letter to industry counsel, EPA expressed its intent to impose a 90-day stay of the Landfill Emission Rule, and it formally imposed the stay on May 31, 2017. 82 Fed. Reg. 24,878 (May 31, 2017). The stay was immediately challenged as illegal in litigation filed by environmental groups. Regardless, by EPA's own admission in that proceeding, this 90-day stay had no impact on the states' plan submission deadline of May 30, 2017 or on EPA's affirmative duties to approve or disapprove of the plans and impose a federal plan. *Natural Resources Def. Council v. EPA*, No. 17-1157 (D.C. Cir.) Respondents' Br. at 35, 36, filed Jan. 22, 2018 ("[T]he Stay Decision by its express terms began on *May 31*, not May 30, and therefore did not alter the May 30 due date for state plans. . . . Notwithstanding the subsequent stay, state plans were still due on May 30 and EPA did not purport to retroactively extend that date." "[EPA's state plan approval and federal plan implementation] deadlines were not pushed back. They have come and gone, and the Stay Decision had no effect on them.").

[2] *Natural Resources Def. Council v. EPA*, No. 17-1157 (D.C. Cir.) Respondents' Br. at 37.

[3] *See* EPA, Municipal Solid Waste Landfills: New Sources 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 Feb. 1, 2018).

If you would like to discuss this matter prior to expiration of the 60-day notice period, you may have your counsel contact us through California Supervising Deputy Attorney General Gary E. Tavetian at the address below.

Sincerely,

XAVIER BECERRA
Attorney General of California

By _____

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