

1 XAVIER BECERRA  
 Attorney General of California  
 2 GARY E. TAVETIAN, SBN 117135  
 DAVID A. ZONANA, SBN 196029  
 3 Supervising Deputy Attorneys General  
 ELIZABETH B. RUMSEY, SBN 257908  
 4 JULIA K. FORGIE, SBN 304701  
 Deputy Attorneys General  
 5 1515 Clay Street, 20th Floor  
 P.O. Box 70550  
 6 Oakland, CA 94612-0550  
 Telephone: (510) 879-0860  
 7 E-mail: Liz.Rumsey@doj.ca.gov  
*For the State of California, by and through Attorney  
 8 General Xavier Becerra and the California Air  
 Resources Board*

9 *Additional Parties and Counsel Listed on Signature*  
 10 *Page*

11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 The STATE OF CALIFORNIA, by and through  
 15 Attorney General Xavier Becerra and the  
 CALIFORNIA AIR RESOURCES BOARD;  
 16 the STATE OF ILLINOIS; the STATE OF  
 MARYLAND; the STATE OF NEW MEXICO;  
 17 the STATE OF OREGON; the  
 COMMONWEALTH OF PENNSYLVANIA;  
 18 the STATE OF RHODE ISLAND; and the  
 STATE OF VERMONT,

19 Plaintiffs,

20 v.

22 UNITED STATES ENVIRONMENTAL  
 PROTECTION AGENCY; and SCOTT  
 23 PRUITT, Administrator, U.S. EPA,

24 Defendants.

CASE NO. \_\_\_\_\_

STATES' COMPLAINT FOR  
 DECLARATORY AND INJUNCTIVE  
 RELIEF

(Clean Air Act, 42 U.S.C. § 7604)

**INTRODUCTION**

1  
2 1. Plaintiffs the State of California, by and through the Attorney General and the  
3 California Air Resources Board; the State of Illinois; the State of Maryland; the State of New  
4 Mexico; the State of Oregon; the Commonwealth of Pennsylvania; the State of Rhode Island, and  
5 the State of Vermont (Plaintiffs) bring this action under the citizen suit provision of the Clean Air  
6 Act (42 U.S.C. § 7604(a)(2)) to compel the United States Environmental Protection Agency  
7 (Defendant or EPA) to fulfill its statutory duty to implement and enforce the *Emission Guidelines*  
8 *and Compliance Times for Municipal Solid Waste Landfills*<sup>1</sup> (Emission Guidelines).

9 2. EPA promulgated the Emission Guidelines concurrently with a rule for new sources,  
10 *2016 Standards of Performance for Municipal Solid Waste Landfills*<sup>2</sup> (New Source Performance  
11 Standards, and together, Landfill Emission Rules). The Landfill Emission Rules aim to control  
12 emissions of volatile organic compounds, hazardous air pollutants, carbon dioxide, and methane  
13 from municipal solid waste landfills (landfills). These pollutants present a range of significant  
14 public health and safety concerns. For one, landfills are the third largest source of anthropogenic  
15 methane emissions in the United States. EPA has acknowledged that methane is a potent  
16 greenhouse gas and thus a significant driver of climate change. When it promulgated the Landfill  
17 Emission Rules, EPA asserted that the pollution reductions achieved by the Rules “will improve  
18 air quality and reduce the potential for public health and welfare effects associated with exposure  
19 to landfill gas emissions.” 81 Fed. Reg. at 59,276.

20 3. After completing the comprehensive notice-and-comment rulemaking process, EPA  
21 issued the final Landfill Emission Rules on August 29, 2016. On October 28, 2016, the Emission  
22 Guidelines went into effect, including an implementation schedule that would have required  
23 landfill owners/operators to install control systems within 30 months of determining that the  
24 rule’s emission threshold has been exceeded. But instead of working to support and ensure  
25 compliance with the Emission Guidelines, EPA has worked to undermine them—for example, by

26  
27 <sup>1</sup> 81 Fed. Reg. 59276 (Aug. 29, 2016). Docket No. EPA-HQ-OAR-2014-0451. *See* 40 CFR Part  
60, Subpart Cf.

28 <sup>2</sup> 81 Fed. Reg. 59332 (Aug. 29, 2016). Docket No. EPA-HQ-OAR-2003-0215. *See* 40 CFR Part  
60, Subpart XXX.

1 communicating that it has no intent to respond to state plans or to impose a federal plan on states  
2 that did not impose a state plan—in clear derogation of its statutory and regulatory duties.

3 4. EPA’s violation of legal mandates in this case is plain: Under the Emission  
4 Guidelines, states were required to submit implementation plans by May 30, 2017. 40 C.F.R.  
5 § 60.30f(b). Pursuant to its own regulations, EPA had four months from that date to approve or  
6 disapprove any submitted state plans and six months to impose a federal plan on noncomplying  
7 states. Therefore, by September 30, 2017, EPA was legally required to respond to states that had  
8 timely submitted plans (40 C.F.R. § 60.27(b)), and by November 30, 2017, EPA was legally  
9 required to impose a federal plan on noncomplying states. 40 C.F.R. § 60.27(d). It failed to do  
10 either (and has conceded as much in pleadings filed in *Natural Resources Defense Council v.*  
11 *EPA*, 2018 WL 105266. This constitutes an actionable violation under the Clean Air Act. *See,*  
12 *e.g., Sierra Club v. Leavitt*, 355 F. Supp. 2d 544, 552-53 (D.D.C. 2005) (failure to perform  
13 mandatory duty arising out of regulation constitutes violation of Clean Air Act).

14 5. Accordingly, Plaintiffs seek a declaration that EPA’s actions and inactions have  
15 violated the Clean Air Act, and a mandatory injunction requiring EPA to immediately implement  
16 and enforce the Emission Guidelines.

### 17 JURISDICTION AND VENUE

18 6. This Court has jurisdiction over this action pursuant to section 304(a) of the Clean Air  
19 Act, 42 U.S.C. § 7604(a), which authorizes any person (including states, *see* 42 U.S.C.  
20 § 7602(e)), after duly giving notice, to commence an action in district court to compel the  
21 Administrator to perform an act or duty which is not discretionary. This Court also has  
22 jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States), 28  
23 U.S.C. § 1361 (action to compel officer or agency to perform duty owed to Plaintiffs), and 5  
24 U.S.C. §§ 701–06 (Administrative Procedure Act). An actual controversy exists between the  
25 parties within the meaning of 28 U.S.C. § 2201(a), and this Court may grant declaratory relief,  
26 injunctive relief, and other relief pursuant to 28 U.S.C. §§ 2201-02.

27 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because this is the  
28 judicial district in which two of the Plaintiffs, the State of California and the California Air

1 Resources Board, reside, and this action seeks relief against federal agencies and officials acting  
2 in their official capacities.

3 **NOTICE**

4 8. On March 23, 2018, Plaintiffs sent EPA a notice of intent to sue for EPA's failure to  
5 enforce the Emission Guidelines. The letter provided the requisite 60-day notice for an action to  
6 compel the Administrator to perform a non-discretionary act or duty under Section 304(a). 42  
7 U.S.C. § 7604(a)(2).

8 9. More than 60 days have passed since the Plaintiffs sent the notice letter, and EPA still  
9 has not taken mandatory steps to implement and enforce the Emission Guidelines.

10 **PARTIES**

11 10. Plaintiff STATE OF CALIFORNIA brings this action by and through Attorney  
12 General Xavier Becerra and the California Air Resources Board. The Attorney General is the  
13 chief law officer of the State (Cal. Const., art. V, § 13), and is authorized to file civil suits that  
14 either directly involve the State's rights and interests or that are deemed necessary by the  
15 Attorney General to protect public rights and interests. Cal. Gov. Code §§ 12600–12; *Pierce v.*  
16 *Superior Court*, 1 Cal. 2d 759, 761–62 (1934). This challenge is brought pursuant to the Attorney  
17 General's independent constitutional, statutory, and common law authority to bring suit and  
18 obtain relief on behalf of the State of California.

19 11. The CALIFORNIA AIR RESOURCES BOARD (CARB) is a public agency of the  
20 State of California within the California Environmental Protection Agency. The mission of  
21 CARB is to promote and protect public health, welfare, and ecological resources of California's  
22 citizens through the monitoring and protection of air quality. CARB's major goals include  
23 providing safe, clean air to all Californians, reducing California's emission of greenhouse gases,  
24 and providing leadership and innovative approaches for implementing air pollution controls.  
25 CARB is the agency responsible for ensuring California's compliance with the regulations at  
26 issue here. In addition to developing statewide rules, CARB works with local California air  
27 districts, many of which regulate landfills at the local level. This action is brought, in part, by the  
28 Attorney General at the request of CARB and in the name of the State of California.

1           12. Plaintiff STATE OF ILLINOIS brings this action by and through Attorney General  
2 Lisa Madigan. The Attorney General is the chief legal officer of the State of Illinois (Ill. Const.,  
3 art. V, § 15), and “has the prerogative of conducting legal affairs for the State.” *Envtl. Prot.*  
4 *Agency v. Pollution Control Bd.*, 372 N.E.2d 50, 51 (1977). She has common law authority to  
5 represent the People of the State of Illinois and “an obligation to represent the interests of the  
6 People so as to ensure a healthful environment for all the citizens of the State.” *People v. NL*  
7 *Indus.*, 604 N.E.2d 349, 358 (1992).

8           13. Plaintiff STATE OF MARYLAND brings this action by and through Attorney  
9 General Brian E. Frosh. The Attorney General of Maryland is the State’s chief legal officer with  
10 general charge, supervision, and direction of the State's legal business. Under the Constitution of  
11 Maryland, and as directed by the Maryland General Assembly, the Attorney General has the  
12 authority to file suit to challenge action by the federal government that threatens the public  
13 interest and welfare of Maryland residents with respect to, among other things, protecting the  
14 natural resources and environment of the State. Md. Const. art. V, § 3(a)(2); 2017 Md. Laws,  
15 Joint Resolution 1, § 7.

16           14. Plaintiff STATE OF NEW MEXICO brings this action by and through Attorney  
17 General Hector Balderas. The Attorney General of New Mexico is authorized to prosecute in any  
18 court or tribunal all actions and proceedings, civil or criminal, when, in his judgment, the interest  
19 of the state requires such action. N.M. Stat. Ann. § 8-5-2.

20           15. Plaintiff STATE OF OREGON is a sovereign entity that brings this action, by and  
21 through Attorney General Ellen F. Rosenblum, on behalf of its citizens and residents to protect  
22 their health and well-being and to protect natural resources held in trust by the State. The  
23 Attorney General is the chief law officer of the State (Or. Rev. Stat. § 180.210), and is authorized  
24 to file civil suits when deemed necessary by the Attorney General to protect the state’s interests  
25 and when requested by any state officer. Or. Rev. Stat. § 180.060(1)(d). The Director of the  
26 Oregon Department of Environmental Quality is a state officer charged with leading that agency  
27 and administering and enforcing environmental laws in Oregon (Or. Rev. Stat. § 468.045(1)), and  
28 has requested the Attorney General to bring this action.

1           16. Plaintiff COMMONWEALTH OF PENNSYLVANIA brings this action by and  
2 through Attorney General Josh Shapiro and the Pennsylvania Department of Environmental  
3 Protection to protect its own sovereign and proprietary rights and the rights of its citizens. Under  
4 the Pennsylvania Constitution, the citizens of the Commonwealth “have a right to clean air, pure  
5 water, and to the preservation of the natural, scenic, historic and esthetic values of the  
6 environment.” Pa. Const., art. I, § 27. The Attorney General is “the chief law officer of the  
7 Commonwealth,” Pa. Const., art. IV, § 4.1, and is authorized to bring this action on behalf of the  
8 Commonwealth pursuant to his statutory authority under 71 P.S. § 732-204.

9           17. Plaintiff STATE OF RHODE ISLAND brings this action by and through Attorney  
10 General Peter F. Kilmartin. The Attorney General has all the sovereign powers and duties as  
11 founded in the common law and established in Article IX, Section 12 of the Rhode Island  
12 Constitution, and by statute. The Attorney General, therefore, has the common law power to  
13 institute, conduct, and maintain all such actions and proceedings as he deems necessary for the  
14 enforcement of the laws of the state, the preservation of order, and the protection of public  
15 right. *See Suitor v. Nugent*, 98 R.I. 56, 58, 199 A.2d 722 (1964).

16           18. Plaintiff STATE OF VERMONT brings this action by and through Attorney General  
17 Thomas J. Donovan, Jr. The Attorney General is authorized to represent the State in civil suits  
18 involving the State’s interests, when, in his judgment, the interests of the State so  
19 require. 3 V.S.A. Ch. 7.

20           19. Each of the plaintiffs is a “person” as defined in Section 302(e) of the Clean Air Act  
21 (42 U.S.C. § 7602(e)), for purposes of bringing suit under Section 304.

22           20. Defendant EPA is an executive agency of the federal government charged with  
23 protecting human health and the environment, which includes implementing and enforcing the  
24 Clean Air Act in coordination with the states.

25           21. Defendant E. Scott Pruitt is the Administrator of the EPA. The Administrator is  
26 charged with implementing and enforcing the Clean Air Act, including the nondiscretionary  
27 requirement in Section 111(d), 42 U.S.C. § 7411(d), and implementing regulations to establish  
28 and enforce guidelines to limit emissions of any non-criteria and non-hazardous air pollutants

1 from existing sources in a source category when EPA establishes standards of performance for  
2 emissions of air pollutants from new sources in the source category under Section 111(b).

### 3 **STATUTORY AND REGULATORY FRAMEWORK**

#### 4 **I. THE CLEAN AIR ACT**

5 22. The Clean Air Act requires EPA to regulate all categories of stationary sources that  
6 cause or contribute significantly to air pollution that may reasonably be anticipated to endanger  
7 public health or welfare. 42 U.S.C. § 7411(b)(1)(A). For each category, EPA must prescribe  
8 federal “standards of performance” under Section 111(b) for emissions of pollutants from new or  
9 modified sources (new source performance standards, or NSPS). 42 U.S.C. § 7411(b)(1)(B).  
10 Section 111(b) further requires EPA to review and if appropriate revise those standards at least  
11 every eight years. *Id.* EPA sets NSPS by reference to emissions levels that can be achieved using  
12 the most up-to-date control technology that is both feasible and cost-effective for each type of  
13 pollutant, but the agency does not mandate the use of any specific equipment or technology. 42  
14 U.S.C. §§ 7411(a)(1), (b)(5).

15 23. When EPA establishes performance standards for emissions of air pollutants from  
16 new sources in a particular source category under Section 111(b), Section 111(d) and applicable  
17 regulations direct the agency to publish guidelines for controlling emissions from *existing* sources  
18 in that source category, except where those emissions are covered under certain other Clean Air  
19 Act programs. 42 U.S.C. § 7411(d)(1). EPA’s regulations provide that such emission guidelines  
20 will be issued “[c]oncurrently upon or after proposal of [Section 111(b)] standards of  
21 performance for the control of a designated pollutant from affected facilities.” 40 C.F.R.  
22 § 60.22(a).

23 24. Under EPA’s regulations implementing Sections 111(b) and (d) (40 C.F.R., Subpart  
24 B), states must submit to EPA an implementation plan within nine months of the promulgation of  
25 an emission guideline, unless the emission guideline specifies a different submission deadline. 40  
26 C.F.R. § 60.23(a)(1). EPA must approve or disapprove a state’s plan within four months after the  
27 submission deadline. *Id.* § 60.27(b). If a state fails to submit a plan, EPA must promulgate a  
28 federal plan within six months after the submission deadline. *Id.* § 60.27(d).







1           28. Solid waste landfills emit a number of harmful pollutants, including volatile organic  
2 compounds, hazardous air pollutants, and greenhouse gases, including methane and carbon  
3 dioxide. These emissions present a range of public health and safety concerns.

4           29. Methane, for one, is a potent greenhouse gas. According to EPA, methane is the  
5 second leading climate-forcing agent after carbon dioxide globally. Pound for pound, it warms the  
6 climate 28 to 36 times more over a 100-year time frame and roughly 86 times more over a 20-  
7 year time frame than carbon dioxide. 81 Fed. Reg. 59281. EPA further reports that landfills are  
8 the third-largest source of human-related methane emissions in the United States, accounting for  
9 approximately 18.2 percent of national methane emissions in 2014. *Id.*

10           30. In December 2009, EPA determined that greenhouse gases endanger public health  
11 and welfare because of their contribution to climate change. 74 Fed. Reg. 66,496 (Dec. 15, 2009).  
12 EPA has also found that methane specifically “contributes to warming of the atmosphere, which,  
13 over time, leads to increased air and ocean temperatures, changes in precipitation patterns,  
14 melting and thawing of global glaciers and ice, increasingly severe weather events, such as  
15 hurricanes of greater intensity and sea level rise.” 77 Fed. Reg. 49,490, 49,535 (Aug. 16, 2012).

16           31. Methane emissions from landfills harm Plaintiffs and their citizens by significantly  
17 contributing to air pollution that causes climate change. *See Massachusetts v. EPA*, 549 U.S. 497,  
18 521 (2007). Plaintiffs and their citizens have experienced and will continue to experience injuries  
19 from climate change, including, but not limited to:

- 20           a. increased incidence of heat deaths and illnesses due to intensified and prolonged heat  
21 waves;
  - 22           b. increased incidence of ground-level ozone pollution, with concomitant increases in  
23 asthma, bronchitis, heart disease, and emphysema, as well as coughing, throat  
24 irritation, and lung tissue damage;
  - 25           c. beach erosion, temporary and permanent inundation of portions of coastal state  
26 property, damage to publicly owned coastal facilities and infrastructure, and  
27 salinization of water supplies from accelerated sea level rise;
- 28

- 1 d. more frequent flooding from more severe rains and higher storm surges resulting in
- 2 property damage and hazard to human safety;
- 3 e. diminished water supplies and adverse impacts to agriculture due to reduced
- 4 snowpack and more frequent and severe droughts;
- 5 f. deaths, property damage, and impairment of air and water quality from increasingly
- 6 more severe and damaging wildfires;
- 7 g. additional state emergency response costs caused by more frequent and intense storm
- 8 surges, floods, and wildfires; and
- 9 h. widespread loss of species and biodiversity, including the disappearance of hardwood
- 10 forests from the northern United States.

11 32. These impacts are inflicting substantial social and economic costs on all Plaintiffs.

12 For one, the adverse health impacts attributable to rising temperatures and diminished air quality  
13 impose a significant burden on state health care systems. Additionally, Plaintiffs have spent and  
14 will continue to spend significant resources addressing threats to critical infrastructure and  
15 preparing for and responding to ever-more-frequent natural disasters.

16 33. In California, for example, drought conditions beginning in 2012 left reservoirs  
17 across the state at record low levels, often no more than a quarter of their capacity. The Sierra  
18 snowpack—critical to California’s water supply, tourism industry, and hydroelectric power—was  
19 the smallest in at least 500 years. The resulting water cutbacks threatened the livelihoods of  
20 farmers and fishermen alike. In the Central Valley, the drought cost California agriculture about  
21 \$2.7 billion and more than 20,000 jobs in 2015 alone. In addition, the drought led to land  
22 subsidence, due to reduced precipitation and increased groundwater pumping, and has contributed  
23 to the death of 129 million trees throughout the state. California has also documented a notable  
24 increase in average daily temperatures, rising sea level, coastal erosion, and an increase in the  
25 intensity and frequency of wildfires, including the worst fire season on record in 2017.

26 34. As a state in the arid southwest, New Mexico is also experiencing the adverse effects  
27 of climate change and will suffer additional impacts in the future. Average temperatures in New  
28 Mexico have been increasing 50 percent faster than the global average over the past century,

1 streamflow totals in the Rio Grande and other rivers in the Southwest are declining, and  
2 projections of further reduction of late-winter and spring snowpack pose increased risks to water  
3 supplies needed to maintain cities, agriculture, and ecosystems. Further, drought and increased  
4 temperatures due to climate change have contributed to extensive tree death across the Southwest.

5 35. Pennsylvania faces two fundamental threats related to climate change: (1) sea level  
6 rise and its impact on communities and cities in the Delaware River Basin, including the city of  
7 Philadelphia; and (2) more frequent extreme weather events, including large storms, periods of  
8 drought, heat waves, heavier snowfalls, and an increase in overall precipitation variability. Based  
9 on studies commissioned by the Pennsylvania Department of Environmental Protection, as part of  
10 its mandate under the Pennsylvania Climate Change Act, 71 P.S. §§ 1361.1 – 1361.8,  
11 Pennsylvania has undergone a long-term warming of more than 1°C over the past 110 years. The  
12 models used in these studies suggest this warming is a result of anthropogenic influence, and that  
13 this trend is accelerating. These models show that by the middle of the 21st century, Pennsylvania  
14 will be about 3°C warmer than it was at the end of the 20th century.

15 36. In addition to greenhouse gases, landfills emit nearly thirty different organic  
16 hazardous air pollutants. Of primary concern are vinyl chloride, ethyl benzene, toluene, and  
17 benzene. Each of these are known to cause adverse health effects above a certain level of  
18 exposure, including heart attacks, asthma, and acute bronchitis leading to premature mortality.  
19 And Benzene is a known human carcinogen. This imposes a significant economic burden on  
20 states, including increased health care costs and diminished economic activity.

21 37. Volatile organic compound emissions are precursors to both fine particulate matter  
22 (PM<sub>2.5</sub>) and ground-level ozone formation. These pollutants, like methane, are associated with  
23 substantial health, welfare, and climate effects.

## 24 **II. THE LANDFILL EMISSION GUIDELINES**

### 25 **A. Promulgation of the Emission Guidelines**

26 38. EPA first proposed rules regulating landfill emissions in 1991. In 1996, EPA listed  
27 landfills as a source category that contributes significantly to air pollution that may reasonably be  
28 anticipated to endanger public health and welfare, and concurrently promulgated NSPS and

1 emission guidelines.<sup>3</sup> The eight-year review of the 1996 rules was ten years overdue by the time  
2 EPA first noticed the rulemaking at issue here, on July 17, 2014. The final New Source  
3 Performance Standards and Emission Guidelines were published two years later, on August 29,  
4 2016.

5 39. The Emission Guidelines retain the same basic regulatory structure as the prior  
6 regulations: They require all municipal solid waste landfills to submit a design capacity report.  
7 Landfills with a design capacity of at least 2.5 million megagrams<sup>4</sup> (Mg) of waste by mass (or 2.5  
8 million cubic meters of waste by volume) must monitor their emissions of non-methane organic  
9 compounds (NMOC), as a proxy for monitoring methane emissions directly.<sup>5</sup> 81 Fed. Reg.  
10 59276, 59278. Landfills whose NMOC emissions exceed a certain threshold must install a gas  
11 collection and control system (which reduces emissions of all pollutants of concern) within thirty  
12 months. *Id.* The Emission Guidelines changed the timeframes used to classify landfills as “new”  
13 versus “existing,”<sup>6</sup> lowered the threshold at which a landfill must install emission controls (from  
14 50 Mg/year to 34 Mg/year), and added a new method by which landfills can measure emissions  
15 for purposes of determining whether they must install controls. *Id.* EPA estimates that 1,851  
16 landfills are (and would remain) subject to the Emission Guidelines and that 93 landfills that are  
17 currently “reporting but not controlling” would be required to install controls under the revised  
18 threshold. *See* 81 Fed. Reg. 59304-05, Table 2.

19 40. Together, EPA estimated that the Landfill Emission Rules will reduce methane  
20 emissions by approximately 330,000 metric tons – with a global-warming potential equivalent to  
21 8.2 million metric tons of carbon dioxide (CO<sub>2</sub>e) – per year by 2025. That is roughly equivalent to  
22 the annual emissions of 1.8 million cars on the road. The Landfill Emission Rules’ expected

23 <sup>3</sup> *Standards of Performance for New Stationary Sources and Guidelines for Control of Existing*  
24 *Sources: Municipal Solid Waste Landfills*, 61 Fed. Reg. 9905 (March 12, 1996).

25 <sup>4</sup> A megagram is equal to a metric ton (1.1 U.S. short tons, or 2,205 pounds).

26 <sup>5</sup> When EPA initially issued regulations limiting landfill gas emissions, NMOCs were the  
27 pollutants of primary concern. Because NMOCs are a component of landfill emissions that occur  
28 in a constant concentration relative to other components, they continue to serve as an indicator of  
the level of emissions of landfill gas generally, and methane in particular.

<sup>6</sup> The Emission Guidelines apply to any landfill that accepted waste after 1987 and/or that  
commenced construction, reconstruction, or modification on or before July 17, 2014. (If a landfill  
commenced construction, reconstruction or modification after that date, it would be subject to the  
New Source Performance Standards.)

1 benefits far outweigh their costs: EPA estimated that, by 2025, the annual *net* benefits of the  
 2 regulations would be \$452 million (\$62 million for the New Source Performance Standards and  
 3 \$390 million for the Emission Guidelines.) This number accounts for avoided health-care costs  
 4 attributable to reduced emissions of volatile organic compounds, and for revenue derived from  
 5 sales of electricity that can be generated by the recovered landfill gas. It also reflects “global  
 6 monetized climate benefits,” which EPA calculated using the mean social costs<sup>7</sup> of methane and  
 7 carbon dioxide. 81 Fed. Reg. 59276, 59280.

8 41. The Landfill Emission Rules went into effect on October 28, 2016.

9 42. One day prior, on October 27, 2016, a group of industry petitioners (“Industry”)  
 10 petitioned EPA for reconsideration of the Landfill Emission Rules. Industry concurrently filed for  
 11 judicial review of the Rules<sup>8</sup> and, on that basis, requested that EPA issue an administrative stay.  
 12 EPA took no action on the petition at that time.

### 13 **B. EPA’s 90-Day Stay of the Landfill Emission Rules**

14 43. On May 5, 2017, more than eight months after the Landfill Emission Rules took  
 15 effect, new EPA Administrator Pruitt sent a letter to industry groups, stating EPA’s intent to grant  
 16 their petition for reconsideration on the basis that “the petition has raised several objections . . .  
 17 that arose after the comment period or were impracticable to raise during the comment period and  
 18 that are of central relevance to the outcome of the rule[s].” Letter from Scott Pruitt, EPA  
 19 Administrator (May 5, 2017). EPA also stated its intent to issue a 90-day stay of both rules  
 20 “in their entirety . . . .” *Id.* EPA published notice of these actions in the Federal Register on May  
 21 31, 2017 (one day after the May 30 deadline for states to submit compliance plans) and the 90-  
 22 stay took effect that day. 82 Fed. Reg. 24878.

23  
 24  
 25 <sup>7</sup> “Social costs” are monetary values of annual impacts attributable to these emissions. The metric  
 26 includes “a wide range of anticipated climate impacts, such as net changes in agricultural  
 27 productivity, property damage from increased flood risk, and changes in energy system costs  
 28 [e.g., heating and air-conditioning] . . . .” 81 Fed. Reg. at 59335.

<sup>8</sup> *Nat’l Waste & Recycling Ass’n, et al. v. EPA*, No. 16-1374 (D.C. Cir., Oct. 28, 2016). This  
 lawsuit was consolidated with a separate petition for review of the Landfill Emission Rules, *Util.*  
*Air Regulatory Grp. v. EPA*, No. 16-1374 (D.C. Cir., Oct. 28, 2016). The cases are in abeyance  
 pending EPA’s reconsideration of the rules.

1           44. On June 15, 2017, various non-governmental organizations (NGOs), including the  
2 Natural Resources Defense Council (NRDC) and the Clean Air Council (Petitioners), filed a  
3 petition for review of the administrative stay on the basis that the criteria for mandatory  
4 reconsideration were not met and the stay was thus unlawful. *Nat. Res. Def. Council, et al. v.*  
5 *EPA*, 2018 WL1052622.

6           45. EPA’s January 22, 2018 response to Petitioners’ brief argued that the case was moot  
7 for the following reason: “the Stay Decision only affects deadlines in the [Landfill Emission  
8 Rules] that would have otherwise applied during the 90 days in which the stay was in effect,” that  
9 is, from May 31, 2017, until August 29, 2017. Respondent’s Initial Brief, p. 2.

10           46. Importantly, for purposes of this action, EPA also stated that the stay did not push  
11 back any of the Emission Guidelines’ compliance deadlines. Specifically, EPA stated, “the Stay  
12 Decision by its express terms began on *May 31*, not May 30, and therefore did not alter the May  
13 30” deadline for states to submit implementation plans for existing landfills “and EPA did not  
14 purport to retroactively extend that date.” *Id.* at 35 (emphasis in original). Additionally, “the Stay  
15 Decision did not affect any subsequent deadlines for existing landfills.” *Id.* at 36.

16           47. EPA further stated, with regard to its own obligations to implement the Emission  
17 Guidelines, that “EPA had four months, until September 31, 2017, to approve or disapprove any  
18 state plans that were timely submitted by May 30, and six months, until November 30, 2017, to  
19 promulgate a federal plan for states that did not timely submit state plans.” *Id.* These deadlines  
20 “have come and gone, and the Stay Decision had no effect on them.” *Id.* Finally, EPA stated that  
21 it “has neither approved nor disapproved the state plans that were timely submitted,” “nor  
22 promulgated any federal [implementation] plans” (and noted, citing 42 U.S.C. § 7604(a)(2), that  
23 “any remedy for EPA’s failure to act in this regard would lie in district court”). *Id.* at 37.

24           48. On January 31, 2018, on the basis of those representations, Petitioners and EPA  
25 stipulated to voluntary dismissal of the case, which explicitly reiterated the facts stated above.  
26  
27  
28

1           **C.   EPA’s Failure to Respond to State Submissions or to Impose a Federal**  
2           **Plan**

3           49.   On May 30, 2017 – the state plan submission deadline set forth in the Emission  
4           Guidelines and one day before the stay took effect – Plaintiff CARB submitted California’s state  
5           plan to EPA. Similarly, New Mexico submitted a state compliance plan for each of two regulatory  
6           jurisdictions, one on May 24, 2017 (for Albuquerque/Bernalillo County), and the other on May  
7           25, 2017 (for the remainder of the State). Neither California nor New Mexico received a response  
8           from EPA.

9           50.   A number of other states developed or were developing state plans. For example, on  
10          April 7, 2017, Florida requested initial comments from EPA on its proposed state plan (in  
11          connection with a solicitation for public comments). Delaware also appears to have finalized a  
12          proposal, and Maryland was in the process of developing one.

13          51.   On October 19, 2017, CARB sent a letter to the Acting Regional Administrator for  
14          Region 9 requesting approval of its state plan by October 31, 2017. EPA failed to respond. On  
15          December 4, 2017, CARB sent a follow-up letter to the Acting Regional Administrator for  
16          Region 9, noting that it had never received a response to its state plan, and requesting either  
17          prompt approval of its plan or a timeline when it could expect to receive a decision from EPA and  
18          confirmation that a federal plan would not be imposed on California. Acting Regional  
19          Administrator for Region 9 sent an email indicating “Thank you, we’ll reply shortly[.]”

20          52.   On February 26, 2018, EPA sent a written response to CARB, stating, “Since the  
21          Agency is reconsidering various issues regarding the landfill regulations, at this time we do not  
22          plan to prioritize the review of submitted state plans nor are we working to issue a Federal  
23          [implementation] Plan for states that failed to submit a state plan. . . . Additionally, we are  
24          currently working to align our reconsideration of certain portions of the EG [Emission  
25          Guidelines] with the risk and technology review (RTR) for this source category. The EPA has a  
26          court order to complete the RTR by March 13, 2020 and the reconsideration will be finished on  
27          the same timeline.”

28



1           53. EPA has not approved any state plans or imposed a federal plan on any state that did  
2 not submit a state plan.

3           54. A number of states expended significant resources – including significant personnel  
4 time and money – in submitting and/or preparing state plans to comply with the Emission  
5 Guidelines. Other states made the well-considered decision not to develop a state plan, and to  
6 instead await EPA’s federal plan to achieve necessary reductions in landfill emissions.

7           55. Plaintiffs are directly harmed by EPA’s failure to perform its role in implementing the  
8 Emission Guidelines and to otherwise perform its role in the cooperative federalism approach  
9 embraced by Congress in the Clean Air Act.

10           **D. EPA’s Ongoing Failure to Implement the Emission Guidelines**

11           56. EPA has unequivocally stated that it does not intend to perform its obligations to  
12 implement the Emission Guidelines. Specifically, it has stated that it does not intend to respond to  
13 state plans that have already been submitted to comply with the Emission Guidelines, nor does it  
14 intend to impose a federal plan where the regulations require that it do so. However, EPA has  
15 taken no step to lawfully suspend, revise, or rescind the Emission Guidelines.

16           57. Sometime in June or July 2017 (the fact was not made public until July 20), EPA  
17 submitted to the Office of Management and Budget (OMB) a proposed rulemaking regarding the  
18 Emission Guidelines, and an identical proposal for the New Source Performance Standards,  
19 stating, “EPA intends to further extend the [90-day] stay in this action. Sources will not need to  
20 comply with these requirements while the stay is in effect.”<sup>9</sup> In the Fall 2017 Unified Agenda,  
21 EPA more specifically proposed to extend the deadline for submission of state plans under the  
22 Emission Guidelines to March 13, 2020,<sup>10</sup> but it never finalized that action. In the Spring 2018  
23 Unified Agenda, EPA noted for both Landfill Emission Rules that it was “no longer pursuing to  
24  
25

26 <sup>9</sup> <https://reginfo.gov/public/do/eAgendaViewRule?pubId=201704&RIN=2060-AT64> (last visited  
27 May 11, 2018).

28 <sup>10</sup> <https://reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=2060-AT64> (last visited  
May 11, 2018).

1 stay the rule[s]. No further action is planned.”<sup>11</sup> To date, that is EPA’s last word on the subject,  
2 for both rules.

3 58. On October 31, 2017, Waste Dive, an online news outlet for the waste industry,  
4 reported that, in a written statement, an EPA spokesperson had said that “any states that fail to  
5 submit plans for Emission Guidelines under Clean Air Act section 111(d) ‘are not subject to  
6 sanctions,’ and should not be concerned regarding any sanctions.”<sup>12</sup> According to Waste Dive,  
7 EPA further stated, “we do not plan to prioritize the review of these state plans . . . nor are we  
8 working to issue a Federal Plan for states that fail to submit a state plan.”

9 59. For a time, EPA listed the Landfill Emission Rules as one of many “EPA  
10 Deregulatory Actions under Development.” EPA’s website now includes the stay of the Landfill  
11 Emission Rules on a list of “Completed Deregulatory Actions.”<sup>13</sup>

12 60. EPA admits that the Landfill Emission Rules remain in effect: “Because th[e] 90-stay  
13 expired on August 29, 2017, the 2016 rules are currently in effect. The EPA still intends to  
14 complete the reconsideration process granted by the Administrator. EPA will continue to work  
15 with states and stakeholders as we develop a path forward on these separate but related  
16 actions.”<sup>14</sup>

## 17 CAUSE OF ACTION

### 18 *(Clean Air Act, 42 U.S.C. § 7604)*

19 61. The allegations set forth in the foregoing paragraphs are incorporated herein by  
20 reference.

21 62. The Emission Guidelines became final on August 29, 2016, and went into effect on  
22 October 28, 2016.

23  
24  
25 <sup>11</sup> <https://reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=2060-AT64> (last visited  
May 11, 2018).

26 <sup>12</sup> Cody Boteler, *EPA offers public clarification on timeline for NSPS, EG landfill rules months  
after stay expires* (Oct. 31, 2017) [https://www.wastedive.com/news/epa-offers-public-  
clarification-on-timeline-for-nsp-eg-landfill-rules-mon/508484/](https://www.wastedive.com/news/epa-offers-public-clarification-on-timeline-for-nsp-eg-landfill-rules-mon/508484/) (last visited May 21, 2018).

27 <sup>13</sup> See <https://www.epa.gov/laws-regulations/epa-deregulatory-actions> (last visited May 30, 2018).

28 <sup>14</sup> See [https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-  
source-performance-standards](https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards) (last visited May 14, 2018).

1           63. EPA had a non-discretionary duty pursuant to 40 C.F.R. section 60.27(b) to respond  
2 to state plan submissions within four months of the submission deadline, that is, by September 30,  
3 2017. At least two states submitted state plans; EPA did not respond by the statutory deadline  
4 and, to date, has not responded to any state plan.

5           64. EPA had a non-discretionary duty pursuant to 40 C.F.R. section 60.27(d) to  
6 promulgate a federal plan for states that did not timely submit state plans within six months of the  
7 submission deadline, that is, by November 30, 2017. Some states did not submit state plans and  
8 EPA failed to promulgate a federal plan by the statutory deadline, and to date, has not  
9 promulgated a federal plan.

10           65. The Administrator has failed to perform an act or duty which is not discretionary, in  
11 violation of the Clean Air Act.

12 //

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a declaratory judgment that, by failing to implement and enforce the Emission Guidelines, EPA has violated the Clean Air Act;
2. Issue a mandatory injunction compelling EPA to implement and enforce the Emission Guidelines;
3. Award Plaintiffs their costs, expenses, and reasonable attorneys’ fees; and
4. Award such other relief as the Court deems just and proper.

Dated: May 31, 2018

Respectfully Submitted,

For the STATE OF CALIFORNIA

XAVIER BECERRA  
Attorney General of California  
GARY E. TAVETIAN  
DAVID A. ZONANA  
Supervising Deputy Attorneys General  
JULIA K. FORGIE  
Deputy Attorney General

/s/ Elizabeth B. Rumsey  
ELIZABETH B. RUMSEY  
Deputy Attorney General  
*For the State of California, by and through  
Attorney General Xavier Becerra and the  
California Air Resources Board*

1 For the STATE OF ILLINOIS

2 LISA MADIGAN  
3 Attorney General of Illinois  
4 DANIEL I. ROTTENBERG  
5 (*pro hac vice* admission pending)  
6 Assistant Attorney General  
7 Environmental Bureau  
8 Illinois Attorney General's Office  
9 69 W. Washington St., 18th Floor  
10 Chicago, Illinois 60602  
11 (312) 814-3816  
12 DRottenberg@atg.state.il.us

For the STATE OF MARYLAND

BRIAN E. FROSH  
Attorney General of Maryland  
LEAH J. TULIN  
(*pro hac vice* admission pending)  
Assistant Attorney General  
200 St. Paul Place  
Baltimore, Maryland 21202  
(410) 576-6962  
ltulin@oag.state.md.us

10 For the STATE OF NEW MEXICO

11 HECTOR BALDERAS  
12 Attorney General of New Mexico  
13 BILL GRANTHAM  
14 (*pro hac vice* admission pending)  
15 Assistant Attorney General  
16 201 Third Street NW, Suite 300  
17 Albuquerque, New Mexico 87102  
18 (505) 717-3520  
19 wgrantham@nmag.gov

For the STATE OF OREGON

ELLEN F. ROSENBLUM  
Attorney General of Oregon  
PAUL GARRAHAN  
(*pro hac vice* admission pending)  
Attorney-in-Charge  
Natural Resources Section  
Oregon Department of Justice  
1162 Court Street, N.E.  
Salem, Oregon 97301-4096  
(503) 947-4342  
paul.garrahan@doj.state.or.us

18 For the COMMONWEALTH OF  
19 PENNSYLVANIA

20 JOSH SHAPIRO  
21 Attorney General of Pennsylvania  
22 MICHAEL J. FISCHER  
23 (*pro hac vice* admission pending)  
24 Chief Deputy Attorney General  
25 ROBERT A. REILEY  
26 (*pro hac vice* admission pending)  
27 Assistant Director, Pennsylvania Department  
28 of Environmental Protection  
Pennsylvania Office of Attorney General  
Strawberry Square  
Harrisburg, PA 17120  
(215) 560-2171  
mfischer@attorneygeneral.gov

For the STATE OF RHODE ISLAND

PETER F. KILMARTIN  
Attorney General of Rhode Island  
GREGORY S. SCHULTZ  
(*pro hac vice* admission pending)  
Special Assistant Attorney General  
RI Department of Attorney General  
150 South Main Street  
Providence, RI 02903  
(401) 274-4400  
gschultz@riag.ri.gov

1 For the STATE OF VERMONT  
2 THOMAS J. DONOVAN, JR.  
3 Attorney General of Vermont  
4 NICHOLAS F. PERSAMPIERI  
5 (*pro hac vice* admission pending)  
6 Assistant Attorney General  
7 Office of the Vermont Attorney General  
8 109 State Street  
9 Montpelier, Vermont 05609  
10 (802) 828-3186  
11 nick.persampieri@vermont.gov  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

OK2018950007  
90960483.docx