



## States Push Back on EPA's Position on Landfill Emissions

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Last year, we reported on EPA's decision to allow the expiration of a moratorium on the 2016 Obama Climate Action Plan rule and guidelines seeking to reduce landfill methane emissions ("Methane Rule and Guidelines"). Specifically, in early 2018, EPA informed industry that the agency would not go to court to try and maintain a stay on the Methane Rule and Guidelines despite a petition by industry to reconsider the more stringent requirements.

The regulatory actions at issue were: (1) a 2016 final rule updating the 1996 New Source Performance Standards (NSPS) for methane gas emissions from new, modified and reconstructed Municipal Solid Waste (MSW) Landfills; and (2) new guidelines aimed at reducing air emissions from existing MSW landfills. The Methane Rule and Guidelines meant lowering of the methane emissions threshold at which landfills must install control equipment and stricter requirements on capturing, monitoring and reporting of methane gas. EPA previously imposed a 90-day moratorium on the Methane Rule and Guidelines in response to an industry group petition to reconsider certain issues. During the moratorium, environmental groups sued EPA and asked the D.C. Circuit to invalidate the moratorium. However, the stay expired prior to the court taking action. In early 2018, EPA informed the regulatory community not to worry about the expiration of the stay because: (1) EPA would not demand state implementation plans (SIPs) or prioritize review of SIPs containing the new rule or guideline provisions; and (2) EPA would not actively impose new compliance deadlines required by the Methane Rule and Guidelines.

This left industry wondering about which standards apply for methane emissions (1996 or 2016) and EPA's intentions moving forward. Certain states, including California, Pennsylvania and Illinois, sued EPA in a California federal court in May of 2018 alleging that EPA violated the Clean Air Act (CAA) by failing to impose the Methane Rule and Guidelines. In the fall of 2018, EPA asked the court to defer issuing any dispositive motions in the case considering EPA's recent issuance of a proposed rule ("SIP Extension Rule"). That rule extended implementation of the Methane Rule by giving states until March 2023 to obtain EPA approval of revised SIPs and by continuing EPA's reconsideration of the Guidelines. Just before the holidays, the court denied the motion to stay the case.

To move the ball forward, a coalition of states led by California (the "Coalition") submitted comments to EPA in early January 2019 opposing the SIP Extension Rule. Among other things, the Coalition's comments contend:

1. the extension is improperly couched by EPA as a 'procedural change' with no environmental or health impacts;

2. the extension will allow emissions of up to 7.1 million metric tons of carbon dioxide per year that would have been avoided;
3. the expected benefits of implementing the Methane Rule and Guidelines far outweigh the costs;
4. the extension is arbitrary and capricious and violates the Clean Air Act;
5. the extension is unreasonable, unjustified and unjustifiable;
6. EPA failed to conduct a regulatory impact analysis;
7. EPA attached the extension provisions at the end of another proposed rule that does not on its face apply;
8. EPA failed to identify and address adverse effects on minority and low-income communities and consult American Tribal Governments; and
9. the extension is just another example of EPA illegally delaying final rules while it reconsiders them.

The Coalition members “strongly urge” EPA to withdraw the SIP Extension Rule and immediately implement the Methane Rule and Guidelines. While the regulatory community waits to see what EPA does, it is likely there will be further comments and legal filings relating to the SIP Extension Rule and the California lawsuit. In the meantime, MSW landfill owners and operators continue to watch to see when, if ever, they will have to increase monitoring and potentially install controls on landfill emissions.

**Coalition Comments on Proposed Rule, Adopting Subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills (Docket ID No. EPA-HQ-OAR-2018-0695, Jan. 3, 2019); State of California et al. v. U.S. Environmental Protection Agency, No. 4:18-cv-03237 (N.D. Cal. May 31, 2018); [81 Fed. Reg. 59,276 \(Aug. 29, 2016\)](#); [83 Fed. Reg. 54,527 \(Oct. 30, 2018\)](#)**

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