

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

JUN 16 2017

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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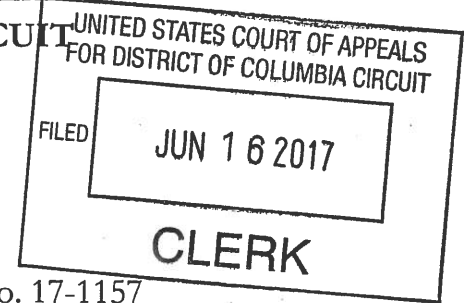
NATURAL RESOURCES DEFENSE COUNCIL,
CLEAN AIR COUNCIL, CLEAN WISCONSIN, and
CONSERVATION LAW FOUNDATION,

Petitioners,

v.

E. SCOTT PRUITT, Administrator, U.S.
Environmental Protection Agency, and
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondents.



Case No. 17-1157

AMENDED PETITION FOR REVIEW

Pursuant to Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1), Rule 15 of the Federal Rules of Appellate Procedure, and D.C. Circuit Rule 15, Natural Resources Defense Council, Clean Air Council, Clean Wisconsin, and Conservation Law Foundation hereby petition the Court for review of the final action of Respondents E. Scott Pruitt, Administrator, U.S. Environmental Protection Agency, and U.S. Environmental Protection Agency to administratively stay standards of performance and emission guidelines for municipal solid waste landfills published in the Federal Register at 82 Fed. Reg. 24,878 (May 31, 2017) and titled "Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills." Conservation Law

Foundation was inadvertently omitted from the Petition for Review filed June 15, 2017.

Dated: June 16, 2017

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Respectfully submitted,

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NATURAL RESOURCES DEFENSE COUNCIL,
CLEAN AIR COUNCIL, CLEAN WISCONSIN,
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E. SCOTT PRUITT, Administrator, U.S.
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Case No. 17-1157.

RULE 26.1 DISCLOSURE STATEMENT OF PETITIONERS

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, Petitioners Natural Resources Defense Council, Clean Air Council, Clean Wisconsin, and Conservation Law Foundation make the following disclosures:

Natural Resources Defense Council

Non-Governmental Corporate Party to this Action: Natural Resources Defense Council ("NRDC").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: NRDC, a corporation organized and existing.

under the laws of the State of New York, is a national nonprofit organization dedicated to improving the quality of the human environment and protecting the nation's endangered natural resources.

Clean Air Council

Non-Governmental Corporate Party to this Action: Clean Air Council

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Clean Air Council is a non-profit corporation organized and existing under the laws of the Commonwealth of Pennsylvania. For 50 years, Clean Air Council has fought to improve air quality across Pennsylvania and the Mid-Atlantic Region and to protect everyone's right to a healthy environment.

Clean Wisconsin

Non-Governmental Corporate Party to this Action: Clean Wisconsin

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Clean Wisconsin, created in 1970 as Wisconsin's Environmental Decade, is a non-profit membership organized and existing under the laws of Wisconsin, whose mission is to protect Wisconsin's air, water, and special places by being an effective voice in the legislature, state and federal agencies, and the courts.

Conservation Law Foundation

Non-Governmental Corporate Party to this Action: Conservation Law Foundation

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Conservation Law Foundation, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, is a non-profit organization dedicated to improving the quality of the human environment in New England and the region's endangered natural resources.

Dated: June 16, 2017

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Respectfully submitted,

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*Counsel for Counsel for Clean Air Council,
Clean Wisconsin, and Conservation Law
Foundation*

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2017, the foregoing Petition for Review and Rule 26.1 Corporate Disclosure Statement of Petitioners Natural Resources Defense Council, Clean Air Council, Clean Wisconsin, and Conservation Law Foundation have been served by first-class mail on each of the following:

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable Jefferson Beauregard Sessions, III
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Kevin S. Minoli
Acting General Counsel
U.S. Environmental Protection Agency
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Washington, D.C. 20460

/s/ James P. Duffy

Attachment:

**U.S. Environmental Protection Agency,
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)**

Ohio nonattainment area has been approved as submitted on June 29, 2016.

(e) EPA is approving the existing controls and maintenance provisions in the permit to install for the Ferro facility including the preventative maintenance plan, 0.3 tpy combined emissions limit for units P064 through P069 as well as the base control devices and upgrades, in addition the 0.009 tpy limit for P071

and all base control devices and upgrades for units P001, P071, P100, P101, and P951 as fulfilling the RACM/RACT 172(c)(1) requirement.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 5. Section 81.336 is amended by revising the entry for “Cleveland, OH:” in the table entitled “Ohio—2008 Lead NAAQS” to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—2008 LEAD NAAQS

Designated area	Designation for the 2008 NAAQS ^a	
	Date ¹	Type
Cleveland, OH: Cuyahoga County (part) The portions of Cuyahoga County that are bounded on the west by Washington Park Blvd./Crete Ave./East 49th St., on the east by East 71st St., on the north by Fleet Ave., and on the south by Grant Ave.	5/31/2017	Attainment.

^a Includes Indian Country located in each county or area, except as otherwise specified.
¹ December 31, 2011, unless otherwise noted.

[FR Doc. 2017-10968 Filed 5-30-17; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451; FRL-9963-19-OAR]

RIN 2060-AT62

Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Stay.

SUMMARY: By a letter dated May 5, 2017, the Administrator announced the convening of a proceeding for reconsideration of certain requirements in the final rules, “Standards of Performance for Municipal Solid Waste Landfills,” and “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,” both published on August 29, 2016. In this action, the EPA is staying subparts, which were added or revised by the two rules, for 90 days pending reconsideration.

DATES: Title 40 CFR part 60, subpart Cf, and 40 CFR part 60, subpart XXX, are stayed from May 31, 2017 until August 29, 2017.

ADDRESSES: Electronic copies of this document are available on the EPA’s Web site at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards>. Copies of this document are also available at <https://www.regulations.gov>, at Docket ID No. EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Tsirigotis, Sector Policies and Programs Division (D205-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (888) 627-7764; email address: airaction@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 14, 2016, the U.S. Environmental Protection Agency (EPA) Administrator signed a final rule establishing new source performance standards (NSPS) intended to reduce emissions of landfill gas from new, modified, and reconstructed municipal solid waste (MSW) landfills, thereby updating standards that were issued in 1996. In a separate action, the Administrator also signed a final rule revising guidelines for reducing emissions from existing MSW landfills, thereby updating the previous emissions guidelines (EG), which also were issued in 1996. The NSPS are codified at 40 CFR part 60, subpart XXX, and the EG are codified at 40 CFR part 60, subpart Cf. For further information on these

2016 rules, see 81 FR 59332 and 81 FR 59276 (August 29, 2016).

On October 27, 2016, a number of interested parties submitted administrative petitions to the EPA seeking reconsideration of various aspects of the 2016 rules pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA) (42 U.S.C. 7607(d)(7)(B)).¹ Under section 307(d)(7)(B) of the CAA, the Administrator shall convene a reconsideration proceeding if, in the Administrator’s judgment, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period, but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule. The Administrator may stay the effectiveness of the rule for up to 3 months during such reconsideration.

In a letter dated May 5, 2017, based on the criteria in CAA section 307(d)(7)(B), the Administrator convened a proceeding for reconsideration. The May 5, 2017, letter announced the convening of an administrative reconsideration proceeding to reconsider the following topics from one petition: (1) Tier 4 surface emission monitoring; (2) annual liquids reporting; (3) corrective action

¹ Copies of these petitions are included in the docket for the 2016 rules, Docket ID No. EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451.

timeline procedures; (4) overlapping applicability with other rules; (5) the definition of cover penetration; and (6) design plan approval. As part of the proceeding, the EPA will prepare a notice of proposed rulemaking that will provide the petitioners and the public an opportunity to comment on the issues identified in that letter. As explained in the letter, the EPA has not taken action on the remaining issues in the petitions for reconsideration. A copy of the letter is included in the dockets for this rule, Docket ID No. EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451.

The EPA convened a proceeding for reconsideration based on the determination that some of the objections raised in the petition for reconsideration met the criteria set forth in CAA section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which requires the Administrator to convene a proceeding for reconsideration of a rule when the person raising an objection to a rule can demonstrate: (1) That it was either impractical to raise the objection during the period for public comment or that the grounds for the objection arose after the period for public comment; and (2) that the objection is of central relevance to the outcome of the rule. In particular, we determined that the tier 4 surface emissions monitoring (SEM) issues raised in the petition for reconsideration met those criteria. The proposed rule included tier 4 SEM as an optional monitoring method; however, the final rule imposed restrictions on the use of tier 4 SEM, *e.g.*, limits on wind speed, the use of wind barriers, and restricting the use of tier 4 SEM to landfills with non-methane organic compounds emission rates between 34 and 50 mega grams per year, that were not included in the proposal. While we believe that the restrictions are appropriate in light of the potential impact of the results of tier 4 SEM, we recognize that they were added without the benefit of public comment. Thus, we find that the petitioners have demonstrated that it was impractical to raise the objection during the period for public comment. We also find that the objection to the restrictions on the use of tier 4 SEM is of central relevance to the outcome of the rule. Tier 4 SEM can be used as a site-specific methodology for determining whether and when the requirement to install a gas collection and control system is triggered. The restrictions limit an owner's/operator's ability to use tier 4 SEM for those purposes, thereby reducing intended flexibility in the rule. If we had the benefit of public comment on the

restrictions, we might have structured the rule in such a way as to minimize any potential impacts on flexibility.

II. Stay of Subparts Cf and XXX

By this action, the EPA is staying the subparts added or revised by two final rules, "Standards of Performance for Municipal Solid Waste Landfills," 81 FR 59332 and "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills," 81 FR 59276 for 90 days pursuant to its authority under section 307(d)(7)(B) of the CAA. We believe that it is necessary to stay the subparts in their entirety because the tier 4 SEM provisions in the two rules are integral to how the rules function as a whole. The ability to use tier 4 SEM is a primary aspect of the flexibility we intended to include in the rule. Tier 4 SEM can be used to determine on a site-specific basis whether and when the requirement to install and operate a gas collection and control system is triggered. The tier 4 SEM provision provides flexibility in complying with other requirements in the rules that does not otherwise exist. As a result, we believe that it is appropriate to stay the subparts in their entirety while we address the tier 4 SEM issues and the other issues for which the Administrator has granted reconsideration. Therefore, pursuant to section 307(d)(7)(B) of the CAA, the EPA is staying 40 CFR part 60, subpart XXX, and 40 CFR part 60, subpart Cf, for 90 days.

This stay will remain in place until August 29, 2017.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 22, 2017.

E. Scott Pruitt,
Administrator.

40 CFR part 60 is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Cf—[Stayed]

■ 2. Subpart Cf is stayed from May 31, 2017 until August 29, 2017.

Subpart XXX—[Stayed]

■ 2. Subpart XXX is stayed from May 31, 2017 until August 29, 2017.

[FR Doc. 2017-10752 Filed 5-30-17; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 161118999-7280-02]

RIN 0648-XF410

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Nantucket Lightship Access Area to General Category Individual Fishing Quota Scallop Vessels

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Nantucket Lightship Scallop Access Area will close to Limited Access General Category Individual Fishing Quota scallop vessels for the remainder of the 2017 fishing year as of the effective date below. No vessel issued a Limited Access General Category Individual Fishing Quota permit may fish for, possess, or land scallops from the Nantucket Lightship Scallop Access Area. Regulations require this action once it is projected that 100 percent of trips allocated to the Limited Access General Category Individual Fishing Quota scallop vessels for the Nantucket Lightship Scallop Access Area will be taken.

DATES: Effective 0001 hr local time, May 30, 2017, through March 31, 2018.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, (978) 282-8456.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the Sea Scallop Access Areas can be found in 50 CFR 648.59 and 648.60. These regulations authorize vessels issued a valid Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) scallop permit to fish in the Nantucket Lightship Scallop Access Area under specific conditions, including a total of 837 trips that may be taken during the 2017 fishing year. Section 648.59(g)(3)(iii) requires the Nantucket Lightship Scallop Access