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Municipal Solid Waste Landfills/Clean Air Act: Federal Court Addresses States of California/New Mexico Action Alleging EPA Failure to Implement Emission Guidelines.

The United States District Court (Northern District California) ("Court") addressed in a December 21st Order an issue involving the Clean Air Act Municipal Solid Waste ("MSW") Landfill Emission Guidelines. See *State of California, et al., v. United States Environmental Protection Agency*, 2018 WL 6728009.

The states of California and New Mexico filed an action against the United States Environmental Protection Agency ("EPA") seeking to have the Court:

. . . issue a declaratory judgment that, by failing to implement and enforce the Emission Guidelines, EPA has violated the Clean Air Act; and issue a mandatory injunction compelling EPA to implement and enforce the Emission Guidelines.

As the Court notes, in 2016 EPA promulgated a final rule related to MSW landfills. See Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016) ("Landfill Emission Guidelines"). The rule was promulgated pursuant to Section 7411 of the Clean Air Act in which EPA sets standards of performance for emissions of pollutants from new or modified sources within certain categories. Further, Section 7411 also requires the regulation of existing sources that fall within the same category if such emissions are not already covered by certain other Clean Air programs. The Court notes that the federal statute provides that:

. . . the Administrator shall prescribe regulations which shall establish a procedure similar to that provided by Section 7410 of this title under which each State shall submit to the Administrator a plan that establishes standards of performance, and provides for the implementation and enforcement of such standards of performance.

The promulgation of this rule is then stated to have required that:

1. States were required to submit implementation plans by a certain date
2. EPA approve or disapprove submitted plans by a certain date
3. If either (i) states to which the guideline pertained did not submit implementation plans, or (ii) EPA disapproved a submitted plan, then EPA was required to promulgate a federal plan by a certain date

California and New Mexico submitted implementation plans. EPA is stated to have neither approved or disapproved the plans nor promulgated a federal plan.

EPA filed a Motion to Dismiss arguing:

1. There has been no unequivocal waiver of sovereign immunity
2. Plaintiffs failed to identify any specific state that should have submitted plans, which would have triggered EPA's duty to promulgate a federal plan under the relevant regulations.

The Court first rejects EPA's argument that dismissal is warranted because the citizen suit provision of the Clean Air Act does not unequivocally waive the sovereign immunity of the United States for duties imposed by the agency's regulations. It reviews the relevant case law and holds that the phrase "under this chapter" as used in 42 U.S.C. § 7604(a)(2) waives sovereign immunity for EPA's failure to perform nondiscretionary duties mandated by regulations promulgated in furtherance of the Clean Air Act.

As to EPA's argument that the plaintiffs failed to adequately state a claim, it concludes that the federal agency was provided "more than fair notice of the claim and grounds for relief." It rejects the argument that the plaintiffs fall short of the pleading requirements of Rule 8(a)(2) because they did not identify any particular state that failed to submit an implementation plan. The Court states that Rule 8(a)(2) does not require that level of particularity (instead simply requiring a short and plain statement of the claim showing that the pleader is entitled to relief).

Finally, the Court rejected a request by EPA to stay the case pending conclusion of a rulemaking that EPA has initiated. EPA proposed rules that are stated to amend the regulations involved in the litigation. The Court states that:

Even if EPA exercises complete diligence in passing the proposed regulation, that diligence does not eliminate the ordinary uncertainty in the rulemaking process, which creates at least a fair possibility of harm.

A copy of the Order can be found [here](#).

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