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Emission Guidelines for Municipal Solid Waste Landfills: Multistate Coalition Comments to U.S. Environmental Protection Agency Opposing Rule Delay

A multistate coalition submitted January 3rd comments to the United States Environmental Protection Agency ("EPA") opposing a proposed rule denominated as:

> *Adopting Subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills*
>
> 83 Fed. Reg. 54527 (Oct. 30, 2018) ("*Delay Rule*")

The states collectively submitting the comments include:

- California
- Illinois
- Maryland
- New Jersey
- New Mexico
- Oregon
- Pennsylvania
- Rhode Island
- Vermont
- California Air Resources Board

The *Delay Rule* addresses a final rule styled Emission Guidelines Compliance Times for Municipal Solid Waste Landfills. 81 Fed. Reg. 59,276 ("Guidelines"). The states note that this rule was finalized on August 29, 2016, and effective October 28, 2016.

The states argue that had EPA implemented the Guidelines, every state would have had an approved state or federal plan to reduce emissions from existing municipal solid waste landfills by November 30, 2017. Citing 40 C.F.R. §§ 60.30F(b), 60.27(b) & (d). They argue that the *Delay Rule* would push back implementing the Guidelines by an additional four years.

The *Delay Rule* is argued to have a substantive impact as opposed to a procedural change. As a result, the states object to the federal agency's describing the *Delay Rule* as procedural in nature. They argue that adverse impacts of the proposed *Delay Rule* on human health and the environment were in fact objectives Congress tasked EPA with safeguarding.

Additional arguments raised in opposition to the *Delay Rule* include:

- EPA is violating its statutory responsibility of the Clean Air Act to reduce the emission of air pollutants that endanger human health and the environment

- EPA fails to provide a reasoned explanation for the change of course (four years of delay)
- EPA failed to conduct a regulatory impact analysis or otherwise analyze the foregone benefits resulting from the *Delay Rule*
- EPA predicates the proposed *Delay Rule* on another proposed rule that does not on its face apply and is likely unlawful
- EPA failed to comply with various executive orders such as one that would determine whether there was a disproportionate impact on low-income or minority populations

A copy of the comments can be found here.

by Walter Wright

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