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Court Orders EPA to Implement Landfill Emission Rule.

In *State of California vs. U.S. EPA*, Case No. 18-cv-03237-HSG, California U.S. District Judge Haywood S. Gilliam Jr. held that the U.S. EPA failed to comply with a "nondiscretionary obligation" under the federal Clean Air Act to implement regulations aimed at reducing air pollutants, including greenhouse-gas emissions, from municipal solid waste landfills. EPA promulgated Landfill Emission Guidelines during the Obama Administration that became effective October 28, 2016. States were to submit implementation plans by May 30, 2017. EPA was to approve or disapprove plans by September 30, 2017, and EPA was to issue federal plans for states that either did not submit plans or for non-conforming state plans by November 30, 2017. California, New Mexico, Arizona, Delaware, and West Virginia submitted state plans. EPA has not approved or disapproved any state plans, nor has it promulgated a federal plan. Plaintiffs sued to force EPA to take action.

EPA admitted that it failed to take action on the plans. However, EPA claimed that Plaintiffs lacked standing and that Plaintiffs' deadlines were not feasible. The Court found Plaintiffs had standing under the "special solicitude" standard of *Massachusetts v. EPA*, 549 U.S. 497 (2007). The Court found that states are not normal litigants for purposes of federal jurisdiction and that Congress by statute had granted State Plaintiffs the right to challenge EPA's alleged failure to perform a nondiscretionary duty (finding a procedural right under 42 U.S.C. 7607(b)(1)/7604(a)(2)). EPA alleged that State Plaintiffs lacked standing because they had failed to plead causation, and relatedly, redressability. Thus, EPA alleged that there was an insufficient causal connection between EPA's inaction and the alleged injuries to the States or the requested relief. The Court rejected this argument pointing to indications that solid waste landfills contribute emissions that "contain numerous harmful pollutants." Also, the Court notes that the parties did not dispute that landfills "'are the third-largest source of [domestic] human-related methane emissions' and that methane is the leading greenhouse gas behind carbon dioxide." The Court also pointed to the fact that the EPA Landfill Emission Guidelines themselves detail what it deemed to be a "meaningful contribution of landfill emissions to harmful pollution." The Court similarly rejected the redressability challenge, finding that EPA's challenge on this point was "entirely derivative of its [EPA's] causation challenge."

EPA and the States offered different proposed schedules for further action on the implementation plans. The Court found insufficient justification for the delays requested by EPA. The Court ordered EPA to: (1) approve or disapprove existing state plans no later than September 6, 2019; (2) promulgate regulations setting forth a federal plan non later than November 6, 2019; and (3) file status reports with the Court every 90 days.

by Bernard F. Hawkins, Jr.

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