

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CITY OF LOS ANGELES, ET AL.,
Plaintiffs/Appellees

v.

COUNTY OF KERN, ET AL.,
Defendants/Appellants

Appeal From A Judgment Of The United States District Court
For The Central District Of California
Judge Gary A. Feess

**BRIEF OF AMICUS CURIAE THE NATIONAL ASSOCIATION OF
CLEAN WATER AGENCIES IN SUPPORT OF APPELLEES**

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INTERESTS OF THE AMICUS CURIAE

Pursuant to Federal Rule of Appellate Procedure Rule 29 and the accompanying Motion for Leave to File Amicus Curiae Brief, the National Association of Clean Water Agencies (NACWA) respectfully submits this *amicus curiae* brief in support of Plaintiffs/Appellees, the City of Los Angeles, Orange County Sanitation District, County Sanitation District No. 2 of Los Angeles County, Responsible Biosolids Management, Inc., R & G Fanucchi Farms, Inc., Shaen Magan, Honey Bucket Farms, Tule Ranch/Magan Farms, Western Express, Inc., Sierra Transport, Inc., and California Association of Sanitation Agencies (collectively, “Plaintiffs”).

NACWA is a trade association representing the interest of more than 300 of the nation’s publicly owned treatment works (POTWs). NACWA membership includes over 30 California public wastewater utilities and more than 60 public wastewater utilities within the jurisdiction of the Ninth Circuit Court of Appeals, including Plaintiffs City of Los Angeles, Orange County Sanitation District, and County Sanitation District No. 2 of Los Angeles County. Collectively, NACWA member agencies serve the majority of the sewered population in the United States and, together, treat and reclaim more than 18 billion gallons of wastewater each day. A central function of NACWA is to represent the interests of its members in the legislative, regulatory, and litigation arenas.

Ensuring safe and environmentally appropriate management of biosolids is a key component of the environmental mandate of NACWA's members. NACWA is also committed to preserving the ability of municipalities to choose the method of biosolids management that works best for their communities, including the option of land application. Many NACWA members currently use land application as the primary method of biosolids management. NACWA has an interest in this case to provide the Court with a national perspective on the importance of land application of biosolids to clean water utilities. NACWA is also interested in emphasizing the primacy of science-based federal and state regulation of biosolids, as opposed to misguided local efforts to ban the recycling of biosolids, as occurred in this case.

NACWA further believes that this Court should affirm the District Court's recognition that land application is an environmentally sound and efficient method of biosolids management for those communities that choose to use it. NACWA is concerned that land application of biosolids could be adversely affected if the District Court's ruling is overturned. Such a ruling would encourage local interest groups opposed to biosolids recycling to pursue similar ordinances and initiatives that discriminate against urban wastewater treatment plants and thwart federal and state laws that encourage responsible biosolids recycling. These repercussions would severely limit biosolids management options and substantially harm the

public agencies that constitute NACWA and the clean water community in the nation as a whole.

SUMMARY OF THE ARGUMENT

Land application of biosolids plays a critical role in the biosolids management practices of many publicly owned clean water agencies across the nation. The majority of biosolids produced in the United States are managed through land application. Eliminating this management method through bans such as that enacted by Kern County would have significant environmental, economic, and public health impacts on communities and wastewater utilities nationwide. The federal and state regulations currently in place ensure that biosolids which are land applied are done so in a method that is protective of the environment and of human health.

These regulations have evolved over the past three decades in a scientifically sound process that strives to harness the beneficial properties of biosolids while at the same time guaranteeing that all land applied biosolids receive proper treatment and are applied in a manner that will protect public health. Because the federal government and state governments have promulgated the laws and regulations for biosolids, invested in research, and maintained permitting and oversight programs, to now allow individual communities such as Kern County to countermand federal

and state biosolids programs through local land application bans would cause significant problems in biosolids management nationwide. Moreover, as in this case, such bans or efforts to pass bans typically target and discriminate against out-of-county or out-of-state biosolids, disrupting long-term planning for utilities and farmers, endangering capital investments, and imposing great expense to find alternative ways to manage biosolids. For these reasons NACWA believes the Court should affirm the ruling of the District Court.

ARGUMENT

I. The Land Application Of Biosolids Plays A Critical Role For Many Clean Water Utilities To Meet Their Environmental Mandates

Biosolids are a natural by-product of the modern wastewater treatment process. As the District Court observed in its ruling, the “collection and treatment of wastewater, and the resulting generation of biosolids that must be recycled or disposed of, is a constant, non-discretionary governmental function.... In other words, government agencies cannot decide to stop producing biosolids and instead must find ways to manage those that are produced.” *City of Los Angeles v. County of Kern*, 509 F. Supp. 2d 865, 871 (C.D. Cal. 2007). Although there are a variety of different methods utilized by municipalities to manage biosolids, land

application has become the most common in large part because it provides an agriculturally beneficial way to recycle the nutrient-rich content of biosolids.

The latest data compiled in 2004 from state regulatory agencies, the U.S. Environmental Protection Agency (EPA), individual wastewater treatment facilities, and other sources indicate that 7,180,000 dry tons of biosolids were produced and beneficially used or disposed of in the United States during 2004. North East Biosolids and Residuals Association (NEBRA), *A National Biosolids Regulation, Quality, End Use & Disposal Survey Final Report* (2007). Based on an estimated national population of 293.6 million people in 2004, each person in the United States produced an average of 40 pounds of biosolids per year.¹ Simply put, there is a great deal of human organic waste produced on a daily basis that must be managed safely and effectively. Production of biosolids on a massive scale is a practical reality of modern life, and the amount of biosolids produced in the United States will increase with the population. Municipal wastewater treatment utilities must continue processing and managing biosolids in methods that are beneficial and environmentally sensitive.

¹ Census figures from U.S. Census Bureau website, <http://www.census.gov/popest/states/tables/NST-EST2004-01.pdf>

There are three primary methods of biosolids management in the United States: land application, landfilling, and incineration.² The most recent national surveys on biosolids use indicate that approximate 55% of all biosolids in the U.S. are recycled through land application for agronomic, silvicultural, and/or land restoration purposes, while 45% are managed primarily through landfills or incineration. NEBRA Report at 1. This means that the majority of biosolids in the U.S. – approximately 3,929,000 tons per year – are beneficially recycled through land application. Many major U.S. cities use land application as a significant component of their biosolids management program, including Phoenix, Portland, Seattle/King County, Milwaukee, Chicago, Philadelphia, Washington, DC, and New York City.

The vast majority of biosolids that are land applied are used for agricultural purposes. Approximately 74% (2,907,460 tons) of the land applied biosolids are used for agriculture, while a small percentage 4% (157,160 tons) of land applied biosolids are used for land restoration/reclamation and in silviculture. NEBRA Report at 14. The remaining 22% (864,380 tons) are treated to meet EPA's highest quality biosolid standards (Class A EQ) and are publically distributed for a variety

² Prior to 1990, significant amounts of biosolids were disposed of in the ocean. However, this practice was outlawed by Congress in 1988 with the passage of the Ocean Disposal Ban Act. 33 U.S.C. §§1401-1445.

of uses including landscaping, horticulture and agriculture.³ *Id* at 1. The biosolids applied in Kern County are all Class A EQ biosolids, pursuant to the County's ordinance prior to the passage of the outright ban that is the subject of this case.

Proper, safe, and effective management of biosolids is a key part of clean water agencies' environmental mandate, and land application provides an important option for recycling a product with beneficial properties. The numbers outlined above represent the vast amounts of biosolids that municipal clean water utilities must process on a daily and annual basis. They also suggest the magnitude of the problem that utilities would face if land application of biosolids was no longer an option due to bans such as that enacted by Kern County. If the Kern County ban is allowed to stand, it is very likely that other communities across the

³ EPA has established a two-tiered system to evaluate the quality of biosolids produced in the United States based on the amount of potential pathogen content, Class B and Class A. Class B biosolids have been treated to substantially reduce pathogens but can still contain detectable levels prior to being subject to hostile environmental conditions in the field, and thus have site restrictions on land application to further reduce the low potential for animal and human exposure. Class A biosolids are subject to an even higher level of treatment which destroys pathogens below detectable levels and can be land applied without any pathogen-related restrictions. National Research Council, *Biosolids Applied to Land: Advancing Standards and Practices* (2002), p. 14. Also, Class A biosolids that have low levels of trace metals are called "Class A Exceptional Quality" (EQ) biosolids which are treated to the highest standard for pathogen removal and are often sold or distributed as commercial fertilizer.

nation will also move towards land application bans, creating a significant environmental and financial challenge for municipal wastewater treatment agencies, and the communities they serve, which rely on land application. To be sure, since Kern County passed its ban in Spring 2006, at least one county in California, Imperial County, has already followed suit, passing by county voter initiative a ban on importation of biosolids into the county for land application.

Banning land application of biosolids would force those municipalities that rely on it to manage biosolids in other ways, most likely through incineration or placement in municipal solid waste (MSW) landfills.⁴ However, both incineration and landfilling present complicated problems for communities which have relied on land application that make it unlikely either method alone or in combination would be able to adequately handle the entire nation's biosolids in the absence of land application. Incineration, although used with success by some communities in various parts of the country, presents a unique challenge for utilities switching from land application in that it can have a high start up cost in order to install the necessary equipment and incinerators.⁵ Additionally, the incineration process

⁴ Currently, incineration and disposal in landfills are the only other viable alternatives that could handle biosolids in the large amounts required if land application was unavailable.

⁵ There are a number of wastewater utilities across the nation that effectively use incineration as the primary method of biosolids management because it is the most

produces a residual ash which also requires disposal. Furthermore, in some urban areas of the nation such as Southern California, management of biosolids through incineration would present regulatory and political challenges due to strict local air quality restrictions and likely political opposition from clean air advocates. This would be particularly true for the municipal Plaintiffs in this case. Biosolids incinerators have also recently come under increased scrutiny from federal air regulators.⁶ For these reasons it is unlikely that all wastewater utilities which have relied on land application would be able to switch to incineration in the event of large-scale ban on land application.

The other available option for clean water utilities in response to land application bans is landfilling through placement of biosolids in MSW landfills. While about a quarter of biosolids produced in the U.S. are currently managed in this manner, drastically increasing that amount to make up for the lack of land

appropriate method based on the needs of their local communities. Many of these utilities have been incinerating for some time and have thus been able to absorb the capital costs of building and operating the incinerators. However, for communities which have relied on land application, the switch to incineration in the event of a ban on land application may prove infeasible due to the start-up costs involved.

⁶ NACWA and other municipal groups concerned with biosolids issues have recently learned that EPA is considering switching regulation of biosolids incinerators under the Clean Air Act from Section 112 to more restrictive requirements under Section 129. 42 U.S.C §7412; 42 U.S.C §7429.

application would create significant environmental and financial problems for many communities around the nation. Based on the most recent numbers available from EPA, in 2006 approximately 138.2 million tons of municipal solid waste was sent to landfills around the United States. EPA Report, *Municipal Solid Waste Generation, Recycling, and Disposal in the United States: Facts and Figures 2006*.⁷ Widespread transition by municipal wastewater utilities to landfill management of biosolids instead of land application could result in an increase of an additional three to four million tons per year of waste being sent to landfills. This would present significant problems for the many communities already facing a shortage of landfill capacity.⁸ Additionally, utilities will have to pay tipping fees to dispose of biosolids at landfills, increasing the cost of managing the biosolids which must ultimately be passed on to the ratepayers. Many communities may

⁷ Available at <http://www.epa.gov/epaoswer/non-hw/muncpl/pubs/msw06.pdf>.

⁸ Some communities in certain parts of the country are required to divert significant amounts of solid waste away from landfills through recycling programs such as land application. This is certainly the case in California, where the California Integrated Waste Management Act (CIWMA), Cal. Public Resources Code §40050 *et seq.*, requires significant reductions in municipal waste destined for landfills. Banning land application in such places and increasing the amount of biosolids shipped to landfills would run contrary to local and state efforts to reduce municipal solid waste. NACWA agrees with the District Court decision in this case that recycling biosolids through land application is a significant part of fulfilling a locality's recycling obligations under the CIWMA.

also have to transport the biosolids increased distances to reach landfills with sufficient capacity to accept the biosolids, resulting in more transportation costs and environmental harm through increased truck emissions.

Filling valuable landfill space with biosolids that could be beneficially reused through land application does not make economic or environmental sense. All communities across the nation are trying to reduce the amount of waste they send to landfills, and land application of biosolids is a perfect example of how a waste product can be diverted from landfills and recycled in an environmentally and economically beneficial manner. Wastewater utilities have long understood the value of biosolids as a fertilizer and soil conditioner and thus have used land application as a preferred method of biosolids management.

II. The Land Application Of Biosolids Has Been A Common Practice In The Ninth Circuit For Decades

King County in Washington State serves as a valuable example of another major urban municipality located within the Ninth Circuit that, like the Plaintiffs, has established a safe and successful biosolids land application program in partnership with rural communities. King County has been recycling biosolids in various counties of Washington State since the early 1970s. After the passage in 1972 of the federal Clean Water Act, King County's predecessor agency, the

Municipality of Metropolitan Seattle, began to work with the University of Washington to investigate beneficial use options as an alternative to discharging treated wastewater solids into Puget Sound. Since that time, King County has routinely recycled all its biosolids in a variety of composting, land reclamation, forestry, and agriculture projects. Today, the county recycles its biosolids in five major projects in three counties, with partners that include farmers, forestland owners, state universities, state government and a major conservation organization. The program has outspoken support from its major customers in rural eastern Washington, where demand for biosolids exceeds the available supply.

The current King County land application program distributes about 110,000 wet tons of biosolids annually to contracted forestry and composting customers in King County and agricultural customers in Douglas and Yakima counties in eastern Washington. The County maintains a staff of project managers that ensure each project is conforming to its contract, to state and federal regulations, and to environmental standards established by the County. Land application sites are managed according to state and federal regulations and guidelines. All project sites (except small research plots) are subject to an environmental review under the State Environmental Policy Act (SEPA), Wash. Rev. Code §43.21C, that includes consideration of potential impacts to threatened or endangered species. Site-specific management practices have been developed to prevent biosolids from

entering waters or wetlands. Buffer areas from surface waters are designed after review of slopes, stream class, site vegetation and soils, with no buffer less than fifty feet. Application rates are designed to meet the nitrogen needs of the crop and vegetation and are prescribed by soil scientists from the University of Washington and Washington State University.

After years of experience with land application projects, King County has concluded that collaborative contractual relationships with the private sector provide the best approach to land application. The partnerships formed for each of the major projects are unique and specific to the conditions at each end use site, but they all are based on the assumption that the generator is responsible for a high quality product and that both the county and the end user manage the biosolids according to the procedures outlined in the county's environmental management system for biosolids.

Safe land application of biosolids is a key component of the environmental mandate of many public clean water utilities across the county, including the Plaintiffs and King County, and it is a duty these communities take very seriously. To this end, 100 wastewater agencies from around the nation are currently participating in a voluntary environmental management system (EMS) program offered by the National Biosolids Partnership to ensure the safe and effective

management of biosolids.⁹ In fact, two of the Plaintiff agencies in this case – City of Los Angeles, Orange County Sanitation District – have received certification, as has King County. Land application plays a critical role in the management of our nation’s wastewater, and bans such as that approved by Kern County threaten to disrupt the vital role that clean water utilities like the Plaintiffs and King County play in protecting public health and the environment, and to disrupt valuable and long-standing relationships between these urban utilities and their rural agricultural partners.

III. The Land Application Of Biosolids Has Developed And Evolved Over Time Through A Science-Driven Regulatory Process To Provide Key Agricultural And Environmental Benefits

Biosolids have a long and successful history of being applied to agricultural lands in order to help increase crop yields and dispose of human waste residuals in an environmentally conscious manner. While the term “biosolids” specifically refers to the specially treated solids that are produced by the modern wastewater treatment process, the practice of land application of human waste dates back many thousands of years. National Biosolids Partnership (NBP) Factsheet, *The History*

⁹ The National Biosolids Partnership is a joint endeavor between the Water Environment Federation, NACWA and EPA. More information on the National Biosolids Partnership and the EMS biosolids program is available at <http://www.biosolids.org/index.asp>.

of Biosolids.¹⁰ Cultures in various parts of the world have long recognized the agricultural benefits of applying sanitary waste to cropland, as evidenced by Chinese farmers using “night soil” to fertilize farmland and the growth of “sewage farms” in England and other parts of Europe in the 19th century to help dispose of wastewater and provide fertilizer for agricultural purposes. *Id.*

Modern wastewater treatment in the late twentieth century, spurred by the passage of the Clean Water Act in 1972, has made biosolids generation and recycling a highly routine and scientific endeavor. Since that time, Congress has amended the Clean Water Act and directed EPA to develop comprehensive rules governing land application and other uses of biosolids. This allowed biosolids to be applied to agricultural land and serve as a fertilizer because of their high nutrient content but without the previous risk of disease or contamination as a result of reduced levels of pathogens.

The origins of the current federal regulations governing the land application of biosolids date back to the 1970s and the enactment of the federal Clean Water Act (CWA) in 1972. Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* The first federal regulations covering biosolids came in 1979, when EPA published regulations in the Code of Federal Regulations, Chapter 40, Part 257 (40

¹⁰ Available at <http://biosolids.org/docs/history%20of%20biosolids.pdf>

CFR 257) to establish standards for the land application of biosolids, including acceptable pollutant levels. National Research Council (NRC), *Biosolids Applied to Land: Advancing Standards and Practices* (2002), p. 27. These regulations protected the environment and human health by determining the acceptable level of pollutants in biosolids which were being land applied. A number of states also began issuing biosolids regulations in the 1970s, such as Wisconsin which issued some of the first state guidelines on the responsible recycling of biosolids through use on agricultural land in 1973. *Id* at 28.

Congress revisited biosolids regulation in 1987 when it amended the Clean Water Act to add Section 405, which directed EPA to identify toxic pollutants that could be present in biosolids in amounts that could affect the environment and public health, and to develop regulations outlining acceptable management practices and numeric concentration limits for the pollutants in question. NBP Factsheet, *The History of Biosolids*; see also National Association of Clean Water Agencies Handbook, *Biosolids Management Options, Opportunities & Challenges* (2006). EPA complied with this directive in 1993 by publishing updated regulations on biosolids at 40 CFR 503. *Id*. These are the regulations in effect today and apply to the three major methods of biosolids management, including land application. They are often collectively referred to as the “part 503 rule” and

represent one of EPA's most significant rulemakings and risk assessment projects of the 1990s.

There are a number of other federal biosolids policies that have been promulgated over the past three decades in addition to the federal regulations. These guidance documents have been formulated by EPA in conjunction with other federal agencies and represent EPA's long-standing policy of promoting the beneficial use of biosolids. NRC Report at 28. EPA published the first interagency federal policy and guidance on biosolids in 1981 in conjunction with the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) outlining proper management techniques and the necessary controls for environmentally safe land application of biosolids to fruit and vegetable crops. *Id.* This was followed in 1984 with an EPA publication in the Federal Register further formalizing the Agency's policy of promoting the beneficial use of biosolids, and another interagency Federal Register notice in 1991 promoting biosolids from EPA, USDA, FDA, the U.S. Department of Defense, the U.S. Department of Energy, the U.S. Department of Interior, and the Tennessee Valley Authority. EPA, *Policy on Municipal Sludge Management*, 49 Fed. Reg. 24,358 (June 12, 1984); EPA ,et al., *Interagency Policy on Beneficial Use of Municipal Sewage Sludge on Federal Land*, 56 Fed. Reg. 33,186 (July 18, 1991). All of these policies and guidance documents reflect a broad federal commitment

to the beneficial reuse of biosolids, including land application, as well as a concerted effort to establish a scientifically sound, comprehensive national biosolids management program that ensures biosolids are disposed of in an environmentally safe manner that is protective of public health.

At the state level, over thirty states have enacted their own biosolids regulations in addition to the federal standards, including Alaska, Arizona, California, Oregon, and Washington.¹¹ In many of these states, including California, Oregon, Washington, and Arizona, the state regulation on biosolids are more restrictive than the federal regulations with regard to management practices and/or pathogen limits. NEBRA Report at 23. California's land application program is supported by a robust Environmental Impact Report (EIR) that studied all environmental and public health issues regarding land application and concluded that recycling biosolids on farmland is beneficial and presents little risk. California State Water Resources Control Board, *Statewide Program EIR Covering General Waste Discharge Requirements for Biosolids Land Application* (2004). This additional level of state regulation provides an even greater level of oversight on the land application process, ensuring the biosolids applied to agricultural land meet stringent controls to protect both the environment and public health.

¹¹ National Biosolids Partnership website, http://www.biosolids.org/technical_main.asp?sectionid=50&pageid=96.

One of the key elements of the federal regulatory program to maintain the safety of land application of biosolids is the industrial pretreatment regulations, which came into effect in 1978 at 40 CFR Part 403. These regulations were implemented because clean water utilities typically have industrial customers who contribute wastewater to the collection system. The modern two-stage wastewater treatment process is not designed to treat and remove all these industrial pollutants. If untreated, some industrial pollutants could be residual in biosolids. The pretreatment program addresses this concern by requiring industrial users to treat or remove the industrial waste before the wastewater enters the public sewer system. The purpose of the pretreatment program is to prevent the introduction of pollutants into the municipal system which will interfere with operation of the clean water utility, including interference with the use or disposal of biosolids, and to prevent the introduction of pollutants into the municipal system which could pass through the treatment works without proper treatment. NRC Report at 28. These pretreatment regulations are enforced by municipal clean water utilities that actively inspect their industrial customers to ensure compliance, and they are a critical component of the federal regulatory scheme to ensure the safety of biosolids for land application.

The progress from traditional land application on 19th century farms to the current stringent regulation of biosolids represents the evolution of a process that

humans have historically understood to be beneficial but which has become increasingly environmentally sound as technology has advanced. The current federal regulations in 40 CFR 503 are the product of decades of scientific research, including thousands of public comments and independent review. See EPA, *Standards for the Use or Disposal of Sewage Sludge*, 58 Fed. Reg. 9,248 (Feb. 19, 1993); EPA, *A Guide to Biosolids Risk Assessments for the EPA Part 503 Rule* (1995); EPA, *A Plain English Guide to the EPA Part 503 Rule* (1994). EPA has twice asked the National Research Council (NRC) of the National Academy of Sciences to review the practice of using biosolids for agricultural purposes and the EPA regulations governing land application, once in 1996 and again in 2002. The NRC produced detailed reports both times, noting in 1996 that the “use of [municipal wastewater and biosolids] in the production of crops for human consumption, when practiced in accordance with existing federal guidelines and regulations, presents negligible risk to the consumer, to crop production, and to the environment.” NRC, *Use of Reclaimed Water and Sewage Sludge in Food Crop Production* (1996). In 2002, the NRC stated in reference to the federal 40 CFR 503 rule on land application that “there is no documented scientific evidence that the Part 503 rule has failed to protect public health.” NRC, *Biosolids Applied to Land: Advancing Standards and Practices* (2002). These independent reviews by

respected scientists reiterate the safety of biosolids when land applied under the requirements of existing federal regulations.

IV. Biosolids Are Currently Regulated Under A Stringent And Effective Regulatory System That Would Be Undermined By Allowing Individual Communities To Alter the Regulations

As outlined in Section III, *supra*, the current federal regulatory regime covering the land application of biosolids has evolved over the past 30 years to achieve the present level of effective oversight. At the same time, many states have passed their own biosolids regulations, all of which are consistent with the federal requirements or more restrictive. The federal government and the states have thus taken the lead to establish a comprehensive framework which ensures that the land application of biosolids can provide communities across the nation with environmental and economic benefits while at the same time providing the necessary protections for human health. This framework also allows individual communities to make their own choices about which biosolids management method is best for them.

However, allowing individual communities like Kern County to pass bans on land application would undermine the current regime of biosolids management by frustrating the intent of federal and state regulations. Management of biosolids often involves transporting the material across the boundaries of local jurisdictions,

especially in the case of land application, and the existing state and federal regulations are designed to ensure a high level of protection for the environment and public health, as well as to encourage the reuse of a beneficial product. Allowing local communities to override these regulations through land application bans would upset the intent of federal and state biosolid management efforts, denying agriculture users the benefit of recycling biosolids and preventing utilities that choose to do so from managing biosolids through land application.

Additionally, allowing local communities to overrule the existing regulatory framework conflicts with the current environmental and public health guidelines in place for biosolid management, even if the local rules purport to protect the community as in the case of the Kern County ban. Federal and state governments are better positioned than counties and municipalities to fully appreciate the disruptive efforts that such insular local measures may have on national and state biosolids management efforts. The federal government and the states have demonstrated over the past three decades that they are the proper entities to regulate biosolids, and any changes to the existing regulations should be done by the federal or state entities which approved the regulations and not by individual communities.

NACWA must emphasize that localities like Kern County that have chosen to undermine federal and state environmental law are very few in number.

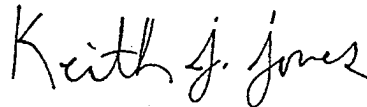
NACWA members have close relationships with hundreds of county governments and thousands of farmers who embrace the value of biosolids for farming, soil conservation, and preserving green space. NACWA members that have chosen land application confer daily with local governments regarding optimizing the value and minimizing the inconveniences of biosolids recycling in their communities.

CONCLUSION

For all of these reasons, NACWA respectfully requests that the Court affirm the ruling of the District Court and enter judgment in favor of the Plaintiffs/Appellees.

DATED: June 2, 2008

Respectfully Submitted,



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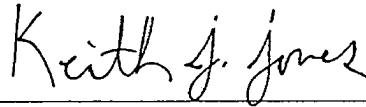
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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Pursuant to Federal Rule of Appellate Procedure 32(a), this brief is proportionally spaced, has a typeface of 14 points and contains 5,568 words, according to the word processor system used to prepare it.

A handwritten signature in cursive script, reading "Keith J. Jones", is positioned above a horizontal line.

KEITH J. JONES
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PROOF OF SERVICE

I am over eighteen years of age, not a party in this action, and employed in the County of San Francisco, California at Three Embarcadero Center, San Francisco, California 94111. I am readily familiar with the practice of this office for collection and processing of correspondence for mail/fax/hand delivery/next business day delivery, and they are deposited that same day in the ordinary course of business.

On June 2, 2008, I served two copies of the attached:


BRIEF OF AMICUS CURIAE THE NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES IN SUPPORT OF APPELLEES



(EXPRESS MAIL/OVERNIGHT DELIVERY) by causing a true and correct copy of the document(s) listed above to be delivered by Federal Express in sealed envelope(s) with all fees prepaid at the address(es) set forth below.

See Attached Service List

I declare under penalty of perjury under the laws of California and the United States of America that I am employed in the office of a member of the bar of this court at whose direction this service was made, that the foregoing is true and correct. Executed at San Francisco, California.



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