

**ORAL ARGUMENT NOT YET SCHEDULED**

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

**SIERRA CLUB,**

# Petitioner

**V.**

**ENVIRONMENTAL PROTECTION  
AGENCY and LISA PEREZ JACKSON,  
ADMINISTRATOR, ENVIRONMENTAL  
PROTECTION AGENCY**

## Respondents

**No. 11-1185**

**(consolidated with case Nos.  
11-1131 and 11-1167)**

## UNOPPOSED MOTION FOR LEAVE TO INTERVENE

As provided by Rule 15(d) of the Federal Rules of Appellate Procedure and Rule 15(b) of the Circuit Rules for the U.S. Court of Appeals for the D.C. Circuit, the National Association of Clean Water Agencies (“NACWA”), petitioner in No. 11-1131, respectfully requests the Court grant NACWA leave to intervene on behalf of the respondents, U.S. Environmental Protection Agency (“EPA”) and

Lisa Perez Jackson, in the above-captioned proceeding.<sup>1</sup> Counsel for Sierra Club, EPA and for Hatfield Township Municipal Authority (petitioner in consolidated case No. 11-1167) have indicated that these parties do not oppose NACWA's intervention in this proceeding.

In support of this motion, NACWA states as follows:

1. On March 21, 2011, EPA promulgated the final rule entitled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units," 76 Fed. Reg. 15372 (Mar. 21, 2011), establishing emission limitations and other requirements under section 129 of the Clean Air Act, 42 U.S.C. § 7429, applicable to sewage sludge incinerators (the "SSI Rule"). NACWA participated fully in the underlying SSI Rule rulemaking proceedings through various submissions to EPA and through written comments on the proposed SSI Rule.

2. On May 6, 2011 NACWA filed a petition for review of the SSI Rule. NACWA has also previously filed a disclosure statement pursuant to Circuit Rule 26.1 (ECF Document 1307124 in No. 11-1131) and a certificate as to parties, rulings and related cases (ECF Document 1310344 in No. 11-1131).

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<sup>1</sup> Pursuant to Circuit Rule 15(b), NACWA seeks to intervene with respect to all petitions consolidated with No. 11-1185.

3. Sierra Club filed a petition for review (No. 11-1185) challenging the SSI Rule on May 20, 2011. Also currently before the Court is a petition for review filed by Hatfield Township Municipal Authority (No. 11-1167) involving the same agency action. By order entered on May 25, 2011 (ECF Document No. 1309976 in lead case No. 11-1131), the Court consolidated the three petitions under No. 11-1131. NACWA is not aware of any other petitions currently before the Court involving the same agency action.

4. Rule 15(d) of the Federal Rules of Appellate Procedure states that a motion to intervene “must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. P. 15(d). This motion to intervene has been filed within 30 days after the date Sierra Club’s petition for review was filed.

5. NACWA is a voluntary, non-profit association whose membership includes 270 municipalities and public clean water authorities. NACWA’s members operate nearly 1,000 of the nation’s publicly-owned treatment works, which provide essential services to the majority of the sewered population of the United States. NACWA’s members also own and operate approximately roughly one-half of the sewage sludge (aka, biosolids) incinerators affected by the SSI Rule. NACWA has long advocated for maintaining the flexibility local communities need to choose the biosolids management approaches (namely incineration, land application or landfilling) that work best within the economic and environmental

constraints unique to each locality. By contrast, based on the arguments raised in Sierra Club's comments submitted on the proposed SSI Rule, Sierra Club's interests are aimed at increasing the stringency of the SSI Rule, which would increase the impacts of the SSI Rule on NACWA's members. Therefore, the interests and operations of NACWA's members would be adversely affected – in fact, the continued viability of biosolids incineration itself would be threatened – if Sierra Club's petition is granted and standards of the SSI Rule are made more stringent or beneficial aspects of the SSI Rule are vacated or remanded.

6. Without intervention in this case, the interests of NACWA's members will not be adequately represented. No other party to the Sierra Club petition represents the interests of the many municipalities and public clean water agencies that are subject to the SSI Rule. While we anticipate NACWA will agree with some of EPA's positions in opposing Sierra Club's petition, EPA's regulatory and institutional interests are very different from those of NACWA's members and of the regulated community generally; and so we expect to offer additional or different positions on the issues raised in this proceeding.

7. This matter is still in the early stages of litigation and so NACWA's participation as an intervenor-respondent should not delay any proceedings in this Court nor cause prejudice to any party.

WHEREFORE, NACWA respectfully requests that the Court enter an order granting NACWA's motion to intervene on behalf of the respondents in this proceeding.

Dated: June 15, 2011

Respectfully submitted,

/s/ Jeffrey A. Knight .

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 15th day of June 2011, a copy of the foregoing Unopposed Motion for Leave to Intervene was served electronically through the CM/ECF system on all registered counsel. In addition, a copy of the foregoing was sent by electronic mail and First Class Mail to:

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