

Administrator, in the above-captioned proceeding.¹ Counsel for Sierra Club has indicated that Sierra Club does not oppose NACWA's intervention in this proceeding. Counsel for EPA has indicated that EPA does not take a position with respect to NACWA's intervention in this proceeding.

In support of this motion, NACWA states as follows:

1. On March 21, 2011 EPA published a notice in the *Federal Register* titled "Completion of the Requirement to Promulgate Emission Standards," 76 Fed. Reg. 15308 (Mar. 21, 2011) (the "90% Notice"). In the 90% Notice, EPA announced that it has completed promulgating the emission standards required under sections 112(c)(3), 112(c)(6), and 112(k)(3) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7412(c)(3), 7412(c)(6), and 7412(k)(3). Sections 112(c)(3) and (k)(3)(B) of the CAA require that EPA promulgate emission standards assuring that area sources representing 90 percent of the area source emissions of the 30 urban hazardous air pollutants are subject to emission standards. EPA has previously identified the 30 urban hazardous air pollutants in its "Urban Air Toxics Strategy," published at 64 Fed. Reg. 38706 (Jul. 19, 1999).

2. Also published on March 21, 2011, EPA promulgated a final rule entitled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units," 76 Fed. Reg. 15372

¹ Pursuant to Circuit Rule 15(b), NACWA seeks to intervene with respect to all petitions consolidated with No. 11-1184.

(Mar. 21, 2011), establishing emission limitations and other requirements under section 129 of the CAA, 42 U.S.C. § 7429, applicable to sewage sludge incinerators (the “SSI Rule”). NACWA filed a petition for review (No. 11-1131) of the SSI Rule on May 6, 2011, which has been consolidated with two other petitions challenging the SSI Rule filed by Sierra Club (No. 11-1185) and Hatfield Township Municipal Authority (No. 11-1167).

3. In the 90% Notice, EPA identifies two technical memoranda that document the emission standards EPA has promulgated to meet the requirements of CAA sections 112(c)(3), 112(c)(6), and 112(k)(3). *See* 76 Fed. Reg. at 15308 col. 3. Both memoranda identify the SSI Rule as being among the categories of area sources that EPA used to meet the 90 percent requirements under CAA sections 112(c)(3), 112(c)(6), and 112(k)(3). *See* “N. Topham to Docket ID EPA-HQ-OAR-2002-0036, Emission Standards for Meeting the 90 Percent Requirement Under Section 112(c)(3) and Section 112(k)(3) of the Clean Air Act,” p.15 (Feb. 18, 2011); and “N. Topham to Docket ID EPA-HQ-OAR-2004-0505, Emission Standards for Meeting the Ninety Percent Requirement Under Section 112(c)(6) of the Clean Air Act,” p.27 (Feb. 18, 2011).

4. On May 20, 2011, Sierra Club filed a petition for review (No. 11-1184) of the 90% Notice.

5. 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 is timely as it has been filed within 30 days after the date Sierra Club’s petition for review was filed.

6. NACWA is a voluntary, non-profit association whose membership includes approximately 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 directly 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. Thus, NACWA and its members have a strong interest in this Court’s review of EPA’s notice that it has met the 90 percent obligations under CAA sections 112(c)(3), 112(c)(6), and 112(k)(3).

7. By contrast, based on the issues likely to be raised by Sierra Club in its challenge to the 90% Notice, Sierra Club’s interests are aimed at expanding and increasing the stringency of the emission standards for area source categories, including the SSI Rule, which EPA used to meet its 90 percent obligations under CAA sections 112(c)(3), 112(c)(6), and 112(k)(3). For example, Sierra Club has argued in previous submissions to EPA that the CAA requires EPA to impose more stringent emission standards on hazardous air pollutants from area source

categories covered by sections 112(c)(3), 112(c)(6), and 112(k)(3). Thus, an adverse ruling by this Court on whether EPA's obligations have been met may lead to subsequent EPA rulemaking that could 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 emission standards applicable to sewage sludge incinerators are made more stringent.

8. Without intervention in this case, the interests of NACWA's members will not be adequately represented by any other party. Neither Sierra Club nor EPA represents the interests of the many municipalities and public clean water agencies that are subject to regulation under 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.

9. 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 20, 2011

Respectfully submitted,

/s/ Jeffrey A. Knight .

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

Respondents

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No. 11-1184
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- Sierra Club, Petitioner in No. 11-1184

- EPA and the Honorable Lisa Perez Jackson, Administrator, as Respondents in No. 11-1184.

B) The action under review is EPA's notice published in the *Federal Register* titled "Completion of the Requirement to Promulgate Emission Standards,"

76 Fed. Reg. 15308 (Mar. 21, 2011).

C) There were no previous cases before this Court on the action under review.

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1. NACWA is a voluntary not-for-profit trade association of the nation's publicly-owned sewage treatment authorities and municipal clean water agencies. NACWA's members operate nearly 300 of the nation's publicly-owned treatment

works which collectively serve the majority of the sewerred population of the United States.

2. NACWA's purpose and general nature is to provide a forum for collaboratively addressing issues affecting publicly-owned sewage treatment authorities and to advocate on behalf of its members regarding legislative, regulatory and legal matters.

3. NACWA has no parent company, and no publicly held company has a 10 percent or greater ownership interest in NACWA.

4. NACWA has no outstanding shares or debt securities in the hands of the public and has no parent, subsidiary or affiliate that has issued shares or debt securities to the public.

Dated: June 20, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June 2011, copies of the foregoing Unopposed Motion for Leave to Intervene, Certificate as to Parties, Rulings and Related Cases and Rule 26.1 Disclosure Statement were served electronically through the CM/ECF system on all registered counsel.

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