ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES,	)	
Petitioner	)	**No. 11-1131 (consolidated with Nos. 11-1167 and 11-1185)**
v.	)	
ENVIRONMENTAL PROTECTION AGENCY and LISA PEREZ JACKSON, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY	)	
Respondents	)	

EMERGENCY JOINT MOTION FOR STAY OF THE SSI RULE

Pursuant to Fed. R. App. P. 18 and Circuit Rule 18, the National Association of Clean Water Agencies ("NACWA") and Hatfield Township Municipal Authority ("Movants") hereby move for an order staying the Environmental Protection Agency ("EPA" or "Agency") action 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) (the "SSI Rule"). EPA and Sierra Club state that they oppose this Motion.

In the SSI Rule, EPA illegally promulgated numerous stringent emission limitations, operating conditions and other requirements under § 129 of the Clean

Air Act ("CAA"), 42 U.S.C. § 7429, applicable to sewage sludge incinerators ("SSIs"). The SSI Rule is demonstrably unlawful and, if it remains in effect, will result in concrete and irreparable harm to the many communities who rely upon incineration, without concomitant benefits to other parties or the environment.

STANDARD FOR GRANTING A STAY

The Court weighs four factors in considering motions to stay an agency rule: (1) Has the petitioner made a strong showing that it is likely to prevail on the merits? (2) Has the petitioner shown that without such relief, it will be irreparably harmed? (3) Would the issuance of a stay substantially harm other parties? (4) Where lies the public interest? Circuit R. 18(a); see also Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). These factors are considered together and balanced against one another; a "stay may be granted with either a high probability of success and some injury, or *vice versa*." Cuomo v. NRC, 772 F.2d 972, 974 (D.C. Cir. 1985). In this case, each factor weighs heavily in favor of staying the SSI Rule.

ARGUMENT

EPA's promulgation of the SSI Rule is an extreme example of Agency obduracy and regulatory corner-cutting with imminently harmful results for the communities who rely upon incineration as the only practical solution for managing the sewage sludge from their wastewater treatment facilities. By setting

emission standards under CAA § 129, EPA has violated a clear statutory mandate to regulate SSIs under the more flexible regime in CAA § 112(d). Congress included SSIs under § 112(d) to enhance the flexible scheme reserved for publicly owned treatment works ("POTW") under the CAA and the Federal Water Pollution Control Act ("CWA"), and EPA's decision to impose standards under § 129 is contrary to that design. Even if CAA § 129 were applicable to SSIs, EPA has violated the CAA mandate to set standards based on the requisite minimum number of SSIs. Finally, EPA ignored critical data and other information submitted during the comment period, and failed to give weight to information showing that the standards are not achievable even for some of the best performing SSIs.

I. EXPEDITED REVIEW OF THIS MOTION IS WARRANTED.

Pursuant to Circuit Rule 27(f), Movants request expedited action on this Motion. There is no specific date by which Court action is necessary in this instance, but expedited consideration is warranted to minimize the imminent and irreparable harms being imposed now on over 100 communities who rely on incineration, as set forth more fully in Section IV below.

II. MOVANTS EXHAUSTED THEIR ADMINISTRATIVE REMEDIES.

Movants previously sought relief from EPA by submitting a Petition for Reconsideration and Stay ("Petition") (Ex. 1) on May 24, 2011. The Petition requested an immediate stay of the SSI Rule pending reconsideration of the rule

and promulgation of replacement regulations. Receiving no response, on June 27, 2011 NACWA submitted a supplement to the Petition (Ex. 2). After obtaining two extensions of time to act, EPA still has not formally announced its decision on the Petition. However, on August 31, 2011 EPA's counsel orally informed Movants that the Agency will not reconsider the decision to regulate SSIs under CAA § 129 and will not administratively stay the rule. Therefore, EPA has not afforded the relief requested.

III. MOVANTS ARE LIKELY TO PREVAIL ON THE MERITS.

The SSI Rule is substantively and procedurally unlawful in many respects.

A. EPA's Interpretation That SSIs Must be Regulated Under CAA § 129 Is Contrary to the Text of the CAA and Arbitrary and Capricious.

EPA's foundational claim that SSIs are subject to regulation under CAA § 129 fails both steps of analysis under Chevron U.S.A. Inc. v. Natural Res. Def. Council, 467 U.S. 837 (1984). The plain language of CAA § 112(e)(5) requires EPA to establish national emission standards for hazardous air pollutants ("NESHAP") for POTWs under CAA § 112(d). Because CAA § 129(h)(2) provides that regulation of sources under §§ 112(d) and 129 is mutually exclusive, EPA cannot regulate SSIs under § 129. EPA's decision to regulate SSIs under § 129 upsets Congress' mandate to provide the flexibility local governments need to choose the best method of sewage sludge management for their communities.

1. Congress Directed that SSIs Be Regulated Under CAA § 112(d).

In analyzing the interplay between §§ 112(e)(5) and 129, courts are "guided not by 'a single sentence or member of a sentence, but [must] look[ ] to the provisions of the whole law, and to its object and policy.'" John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 510 U.S. 86, 94-95 (1993) (quoting Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 51 (1987)).

CAA § 112(e)(5) requires EPA to "promulgate standards pursuant to" CAA § 112(d) "applicable to publicly owned treatments works as defined in title II of the [CWA]." The definition of "treatment works" in Title II of the CWA is extraordinarily broad and clearly includes SSIs. CWA § 212(2)(A) defines "treatment works" to include, *inter alia*, "any works … used for ultimate disposal of residues resulting from such treatment." 33 U.S.C. § 1292(2)(A). This definition covers SSIs, whose primary purpose is to dispose of residues resulting from sewage treatment. EPA's regulatory definition of "treatment works" likewise reinforces the expansive meaning of the term and just as clearly encompasses SSIs:

> ***Any devices and systems for the*** storage, ***treatment***, recycling, ***and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes*** … ***These include*** … ***any works*** … ***or any other method or system for*** preventing, abating, ***reducing***, storing, ***treating***, separating, ***or disposing of municipal waste or industrial waste*** … .

40 C.F.R. § 35.905 (emphasis added).

The CAA § 112(e)(5) scheme placing SSIs under § 112 is consistent with the congressional plan, expressed in CWA § 405(e), for flexibility in regulating POTWs and their SSIs. CWA § 405 plays the primary role in regulating the use and disposal of sewage sludge. When Congress decided in 1990 to supplement that CWA program by using a technology-based approach under the CAA, it invoked the CWA to define the POTW source category that EPA was to regulate. The legislative history of § 112 shows that Congress was fully aware that emissions from POTWs were covered by the CWA and that Congress intended to supplement that authority using § 112. See, e.g., S. Rep. No. 100-231, Comm. on Env't and Pub. Works, 1990 CAA Legislative History, at 9436, 9668. There is no hint that Congress intended EPA to regulate an SSI differently from the rest of the POTW, much less through different authority.

EPA's own regulatory pronouncements and actions make clear the Agency's understanding (prior to the SSI Rule) that SSIs are part of the POTW for purposes of the CWA and the CAA. *First*, EPA has consistently provided federal funding to POTWs in order to build and upgrade SSIs through its Title II grant fund, under which funding is specifically limited to "treatment works" as defined above. See, e.g., LeBlanc Decl. ¶ 4 (Ex. 3); Northeast Ohio Regional Sewer District ("NEORSD") Decl. ¶ 4 (Ex. 4); Ball Decl. ¶ 4 (Ex. 5). It may be the case that many or all of the approximately 230 SSIs nationwide were constructed or

upgraded with Title II construction grants. This would have been plainly contrary to the CWA if EPA did not consider SSIs to be part of the "treatment works."

Second, EPA has stated repeatedly and unequivocally that SSIs are part of the POTW. For example, EPA has consistently held that sewage sludge incineration is an inherent part of POTW operations for which CWA Title II funding was made available. EPA has also made clear in the Part 503 program that "treatment works" include incinerators. See 58 Fed. Reg. 9248, 9359 (Feb. 19, 1993) (App. A); 40 C.F.R. § 122.2 (treatment is expressly defined to include sewage sludge treatment systems).

Third, EPA has also previously classified SSIs as Congress intended under CAA § 112, by identifying SSIs as source category under § 112. In 1992, EPA examined the categorization of SSIs under the CAA and included SSIs as a § 112 source category. See 57 Fed. Reg. 31576 (July 16, 1992) (App. B); see also 58 Fed. Reg. 9248, 9262, 9276-77 (Feb. 19, 1993) (same) (App. C). In 1999, EPA promulgated a NESHAP under § 112 for POTW treatment plants. See 64 Fed. Reg. 57572 (Oct. 26, 1999). Although EPA's preamble inexplicably stated that EPA then believed that SSIs were subject to regulation under CAA § 129, EPA nowhere elaborated on the rationale for this change from its prior approach or justified this new interpretation of the statute. See 62 Fed. Reg. 1868 (Jan. 14, 1997). Shortly thereafter, EPA reversed its position and expressly stated that SSIs

would be regulated under § 112 instead of § 129. See 65 Fed. Reg. 23460 (Apr. 24, 2000) (App. D). EPA then acted on this by revising the list of major source categories under § 112 to delete SSIs, not because they were not covered by § 112, but because there were no major sources in that category. See 67 Fed. Reg. 6521 (Feb. 12, 2002) (App. E). These actions are contrary to EPA's view, newly expressed in the SSI Rule, that SSIs are not subject to regulation under § 112.

Confronted in the SSI rulemaking with the language of § 112(e)(5) and clear indications that Congress intended SSIs to be regulated with POTWs, EPA merely responded that it "has taken the position in its regulation of POTW under the Clean Air Act that § 112(e)(5) does not apply to SSI units and for this reason did not regulate them in its POTW § 112(d) emission standards." 75 Fed. Reg. 63264 (Oct. 14, 2000). EPA nowhere in the record explains why it believes § 112(e)(5) does not apply to SSIs in the same manner as the rest of a POTW, how EPA's position is reasonable in light of its own contrary interpretations, or how SSIs could have been built and improved using CWA Title II funds if they are not "treatment works." The plain meaning of Congress' invocation in § 112(e)(5) of the CWA definition of POTW, coupled with EPA's many regulatory pronouncements and actions, makes EPA's current position on §§ 112(e)(5) and 129 clearly contrary to the text of the CAA; and EPA's failure to articulate an explanation for its position is arbitrary and capricious.

2. SSIs Are Not "Solid Waste Incineration Units" and So Cannot Be Regulated Under CAA § 129.

SSIs cannot be regulated under CAA § 129 because they do not fit within the definition of "solid waste incineration unit" under § 129(g)(1). Per § 129(a)(1)(A) and (b)(1), EPA must set emission standards "for each category of solid waste incineration units." Thus, the definition of solid waste incineration unit serves a gate-keeping function – only if a unit is a solid waste incineration unit can it be subject to standards under § 129. Section 129(g)(1) defines the term solid waste incineration unit as "a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels)." By contrast, sewage sludge is generated in the POTW itself from the treatment of wastewater after several stages of filtering, chemical and physical treatment, and dewatering. Thus, the sewage sludge combusted in SSIs is generated within the POTW, a government-owned facility, and so is not a solid waste material collected "from commercial and industrial establishments or the general public" under § 129(g)(1). EPA has itself long acknowledged that sewage sludge is generated in the POTW and also concluded that these sludges are not solid waste. See, e.g., 55 Fed. Reg. 46354, 46364 (Nov. 2, 1990) (sludges generated in the POTW are covered under the domestic sewage exclusion) (App. F).

EPA incorrectly claims that this Court's decision in Natural Res. Def. Council v. EPA, 489 F.3d 1250 (D.C. Cir. 2007) ("NRDC"), "precludes" EPA from regulating SSIs under § 112 and mandates regulation under § 129. See 76 Fed. Reg. 15383. The issue of how to regulate SSIs simply was not before the Court in that case. NRDC invalidated EPA's attempt to carve out new exceptions from the definition of "solid waste incineration units," which exceptions have no bearing on or application to SSIs. The panel in that case did not address or rule on the proper application of § 112(e)(5), nor did it address or rule on the regulation of POTWs or SSIs or the issue of whether SSIs must be regulated as part of POTWs under § 112(d).

Even if EPA had independently decided that SSIs can be covered by the general definition of a solid waste incineration unit, instead of justifying the SSI Rule on an incorrect reading of NRDC, such an interpretation is not supportable for the reasons discussed above. Further, it is axiomatic that the specific direction of Congress contained in § 112(e)(5) is controlling over the general provisions of § 129 dealing with solid waste incineration. See Fourco Glass Co. v. Transmirra Prods. Corp., 353 U.S. 222, 228 (1957).

B. The Standards Are Based Upon an Impermissibly Small Number of Sources, and EPA Failed to Use Critical Data.

Assuming *arguendo* that SSIs may be regulated under CAA § 129, the standards EPA has created are unlawful because (1) the database used to set the

maximum achievable control technology ("MACT") floors does not contain data from the statutorily mandated number of SSIs, and (2) EPA failed to consider and use all relevant available data.

1. EPA's SSI Database Is Inadequate.

In performing MACT floor calculations, § 129(a)(2) provides that the floor for existing sources cannot be less stringent than "the average emission limitation achieved by the best performing 12 percent of units in the category." Unlike similar language in § 112(d), § 129(a)(2) does not permit EPA to use a smaller number of sources in the calculation where data from the best performing 12% are not available.

The SSI Rule contains two subcategories of sources – fluidized bed incinerators ("FBIs") and multiple hearth incinerators ("MHIs"). Because EPA identified 60 existing FBIs and 144 existing MHIs, § 129(a)(2) requires MACT floors to be based on data from no less than eight FBIs and 18 MHIs. See "Revised MACT Floor Analysis for the Sewage Sludge Incinerator Source Category," (Jan. 2011) ("Memo") at 6 (App. G). Instead, EPA set the floors for FBIs using as few as four units (6.7%) for some pollutants and no more than six units (10%) for any pollutant. EPA set the floors for MHIs using fewer than 4% of the 144 units in that subcategory. By EPA's own admission, § 129 does not permit it to stop short of collecting sufficient emissions information from the required number of SSIs:

> [W]hile EPA believes Congress intended for the MACT floor calculation under [§§ 112 and 129] to be the same, this difference in the text of the two provisions requires us to establish the MACT floor for section 129 source categories based on the best performing 12 percent of sources in the category. Because EPA does not have that data at this time, the statistical technique described below is the only manner in which we can establish the existing source floor on that basis.

Memo at 8. Statistical manipulations of an undersized database do not increase the number of "units" to meet the minimum specified in § 129(a)(2).[1]

From the outset, EPA decided not to obtain data from the required minimum number of SSIs. By limiting its information collection to only *nine* of the roughly 118 POTWs with SSIs, EPA avoided Paperwork Reduction Act and Office of Management and Budget review and thereby gained several weeks under its rulemaking schedule. See Tsirigotis Decl. ¶ 43, Ex. 6 to Enclosure A of NACWA Petition (Ex. 1). By cutting corners, EPA guaranteed that it would not collect adequate emissions data from the requisite number of SSIs.

2. EPA Provided No Rational Explanation for Ignoring Data Demonstrating Variability in Emission Characteristics.

EPA disregarded critical data in its files and timely comments. These data, in particular many years of data generated by POTWs through compliance with the Part 503 rules, show the high variability of emissions of pollutants from SSIs.

[1] EPA's SSI count also is arbitrary. Commenters pointed out that a 2009 survey counted 234 active SSIs, and EPA did not confirm its inventory. By undercounting 30 SSIs, EPA's database is an additional four units short of the statutory minimum.

Commenters urged EPA to use Part 503 data to determine the emission rates achieved by the best performing sources under the full range of operating conditions. However, EPA ignored these data and relied on the original 17 stack tests from just nine POTWs. These stack test data do not represent the emission profiles of the large population of SSIs – or even the profiles of the tested units themselves over time – because they do not account for geographic variability in sludge characteristics among POTWs, nor do they account for seasonal and daily variability of sludge characteristics within a POTW.

EPA explained its refusal to use the data in its files and comments by claiming that it "did not receive adequate sampling data from the best performing sources" and, thus, concluded that "there is not enough information to determine whether it would be appropriate to incorporate variability in sludge feed into the rule." 76 Fed. Reg. 15391. This claim is patently untrue; EPA had access to years of sludge metals concentration data from all of the POTWs it contends are the best performing sources. Under the Part 503 rules, all POTWs are required to collect and submit these data directly to EPA or (in some instances) to the state permitting authorities that have primacy for the Part 503 program. There is no indication in the preamble or the rulemaking docket that EPA tried to retrieve these data from its files or contacted a single commenter to obtain new copies of the data.

EPA also refused to use stack test data submitted by commenters showing

that the proposed emission limits are not achievable. EPA did so only because these commenters did not include a complete stack test report with their comments. Id. at 15387. Again, there is nothing in the record to suggest that EPA tried to obtain the backup information to verify the data that were submitted. Moreover, complete test reports were not submitted for many of the 17 stack tests EPA did use. It is clearly arbitrary for the Agency to use only the data it wants and to disregard contrasting information by selectively applying more stringent data validation requirements. EPA's failure to use the Part 503 data and test data submitted by commenters violates the § 129 database requirements for making MACT floor determinations and the fundamental requirement underlying § 129 for rational decisionmaking. See CAA § 307(d)(9); Cement Kiln Recycling Coal. v. EPA, 255 F.3d 855, 861-62 (D.C. Cir. 2001). See generally NRDC v. EPA, 194 F.3d 130, 136 (D.C. Cir. 1999).

IV. ABSENT A STAY, THE SSI RULE WILL CONTINUE TO CAUSE SUBSTANTIAL AND IRREPARABLE HARM.

A stay is necessary to ensure complete correction of the legal defects in the SSI Rule and to avoid irreversible impacts to the environment and to the over 100 municipalities who rely upon sewage sludge incineration. *First*, as demonstrated by the attached declarations submitted by four POTWs, immediate implementation of the SSI Rule is causing significant environmental harm. Because several of the emission limitations in the SSI Rule are so stringent, some POTWs – even those

that operate SSIs EPA deemed to be among the "best performers" – predict that no viable control technologies exist that will allow them to operate in compliance with the rule.[2] Municipalities are already being forced to make immediate commitments either to take the uncertain path of retrofitting their SSIs or to abandon incineration and start the conversion to landfilling.[3] Making such significant changes to a POTW takes many months, so these local governments are being forced now to make these irretrievable commitments.

The environmental impacts cascading from municipalities being forced to switch to landfilling are irreversible as a practical matter and are magnified because landfilling is not an environmentally attractive option for many communities. Communities that are forced to switch are extremely unlikely to switch back if EPA later promulgates a defensible SSI rule because they will have

[2] See LeBlanc Decl. ¶¶ 5-6 (NOx control technologies never demonstrated) (Ex. 3); Ball Decl. ¶ 7 (no reliable method to control mercury) (Ex. 5); Lyons Decl. ¶ 6 (activated carbon absorption not shown to work) (Ex. 6). Municipalities also predict that they do not have the physical space and other necessary facilities to retrofit their SSIs to comply with the new standards. See LeBlanc Decl. ¶ 7 (Ex. 3); Ball Decl. ¶ 7 (Ex. 5).

[3] For example, New York regulators set a deadline of *June 30, 2011* by which POTWs were to certify whether they will retrofit to comply with the SSI Rule or commit to permanently shut down their SSIs by *March 21, 2012*. See Supplement to Petition (Ex. 2); Lyons Decl. ¶ 9 (Ex. 6). Virginia is likewise moving quickly to implement the SSI Rule, forcing HRSD to make its decision on shutting down four SSIs with tremendous resulting impacts. See LeBlanc Decl. ¶ 8 (loss of SSIs "will potentially result in greater landfilling burdens and increased costs" and increase pollution from trucking and landfills) (Ex. 3).

eliminated their SSIs and invested millions elsewhere.[4] Thus, the environmental impacts would be permanent. Increased diesel exhaust emissions from literally thousands of new truck trips travelling, in some cases, more than 260 miles round trip to the nearest landfill will greatly exceed emissions from incineration. See NEORSD Decl. ¶ 12 (Ex. 4); Ball Decl. ¶ 8 (170 miles round trip to nearest landfill) (Ex. 5). Due to increased emissions from trucking and from landfill emissions, one POTW estimates that the "carbon footprint" resulting from the SSI Rule forcing them to switch to landfilling would be *more than 35,000 metric tons CO2 equivalent greater than their current energy recovery project*. See NEORSD Decl. ¶¶ 12-13 (Ex. 4). Absent a stay, communities that are forced into landfilling would be irretrievably committed to less environmentally beneficial options, resulting in irreversible adverse environmental consequences.

The SSI Rule is also having an immediate chilling effect on environmentally beneficial projects. For example, Albany predicts that the SSI Rule will cause it and other POTWs to stop undertaking energy recovery and other beneficial projects because the projects may trigger expensive and possibly unachievable regulation. See Lyons Decl. ¶¶ 5-7 (Ex. 6). The City of Cedar Rapids is evaluating replacing its flood damaged older MHI with a new lower emitting FBI, but the SSI

[4] See LeBlanc Decl. ¶ 9 (capital costs of $200 million and net present value of total costs equals $546 million) (Ex. 3).

Rule may postpone or eliminate this beneficial upgrade. See Ball Decl. ¶ 5.

Second, absent a stay, EPA's current interpretation of its standard-setting authority under the CAA will operate to cause additional irreparable and unjustifiable harm to municipalities who have no practical alternative to incineration. This harm will occur *even if* this Court ultimately agrees that the SSI Rule is legally flawed. When EPA published the SSI Rule, it also published another set of CAA § 129 standards for commercial and industrial solid waste incineration units ("CISWI"). See 76 Fed. Reg. 15704. In the preamble to the CISWI rule, EPA responded to comments on the so-called "MACT-on-MACT" issue – that is, whether EPA may lawfully include in newly promulgated MACT floors the emission levels that incinerators were forced to achieve by virtue of unlawful predecessor MACT standards. EPA contended that it *must* use the MACT-on-MACT approach by virtue of the literal language of CAA § 129. Id. at 15721-22. Although Movants contest EPA's legal position, it nonetheless sets the stage for a profound and irreversible impact on SSIs. If the SSI Rule is not stayed, inevitably some POTWs will install new control equipment in an effort to comply. The effect will be to lower emissions to some degree and, thereby, to lower emission rates of SSIs selected as the best performing units and used to set the future MACT floor. If ultimately the Court vacates the SSI Rule, then, according to EPA's interpretation of § 129, SSIs that installed new controls during the

litigation will be used to set the new MACT floors.

Finally, as illustrated by the submitted declarations, many municipalities are suffering significant economic harm, and there is no prospect of compensatory relief for the costs these communities are incurring. Retrofitting SSIs with add-on control equipment is costly and time-consuming; and, unlike private sector companies, local governments must begin incurring costs and making commitments much sooner in order to meet compliance deadlines. Even by EPA's own estimation, dozens of municipalities will be forced to start spending public funds and committing other scarce public resources to planning, engineering and procurement of additional building space, add-on control devices and other equipment in order to try to meet the present emission standards. Many municipalities have already been forced to incur irretrievable costs for planning and procurement activities in order to identify compliance gaps, to locate capital project funding sources, to acquire the necessary engineering services and equipment, and to complete the major infrastructure and control equipment installations required for many SSIs. See NEORSD Decl. ¶ 15 (Ex. 4); Lyons Decl. ¶ 9 (Ex. 6). These economic impacts on taxpayers have already started and will increase in magnitude without a stay.

V. A STAY WILL NOT HARM ANY OTHER PARTY.

There is no foreseeable prospect that others will be harmed by staying the

SSI Rule. Emissions regulations are already in place under the Part 503 program that control emissions from SSIs in order to protect public health, and they will continue to remain in place during a stay. Since 1993, SSIs have been subject to a comprehensive regulatory program for reducing the potential environmental risks of sewage sludge pursuant to CWA § 405 and EPA's implementing rules in 40 C.F.R. Part 503. CWA § 405(d) required EPA to establish numeric limits and management practices that protect public health and the environment from the adverse effects of pollutants in sewage sludge. Section 405(e) prohibits any person from disposing of sewage sludge except in compliance with the Part 503 rules.

In the Part 503 rules, EPA identified the pollutants in sewage sludge that may adversely affect public health or the environment and developed the Part 503 rules to protect human health and the environment from any reasonably anticipated adverse effects from those pollutants. See 40 C.F.R. Part 503, Subpart E. Thus, from EPA's own standpoint, SSIs can clearly show, by demonstrating compliance with the Part 503 rules, that emissions from their operations are not adversely impacting human health or the environment.

VI. A STAY WILL ADVANCE THE PUBLIC INTEREST.

A stay will serve the public interest for at least two reasons. *First*, a stay will allow this appeal to proceed while maintaining the regulatory and economic conditions existing prior to EPA's adoption of unlawful requirements in the SSI

Rule. See, e.g., Cobell v. Kempthorne, 455 F.3d 301, 314 (D.C. Cir. 2006). The public interest is best served by preserving the viability of the essential public services that these POTWs provide and preventing wasteful use of taxpayer resources for less environmentally beneficial alternatives.

Second, granting relief from immediate implementation will help preserve meaningful judicial review and ensure the Court's power to fashion an appropriate remedy to unlawful agency action. A stay is "not simply '[a]n historic procedure for preserving rights during the pendency of an appeal,' but also a means of ensuring that appellate courts can responsibly fulfill their role in the judicial process." Nken v. Holder, 129 S. Ct. 1749, 1757 (2009).

CONCLUSION

Movants respectfully request expedited consideration and a stay of the effectiveness and implementation of the SSI Rule until final resolution of their petitions for review before this Court.

Dated: September 19, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September 2011 copies of the foregoing Emergency Joint Motion for Stay of the Sewage Sludge Incineration Rule were served electronically through the Court's CM/ECF system on all registered counsel.

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Exhibit 3

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Petitioner	)	**No. 11-1131 (consolidated with Nos. 11-1167 and 11-1185)**
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Respondents	)	

DECLARATION OF MR. NORMAN E. LEBLANC

I, Norman E. LeBlanc, hereby declare as follows:

1. I am the Director of the Department of Water Quality for the Hampton Roads Sanitation District ("HRSD"), a position I have held since April 2006. HRSD is the southeast Virginia regional public wastewater utility operating 13 publicly owned treatment works ("POTWs") including five plants that utilize multiple hearth incinerators ("MHI") for the safe and effective handling of biosolids received in and from the treatment of an average of

157 million gallons of wastewater per day. Through our operations, HRSD protects the public health of the greater Hampton Roads community and environment including the waters of the Chesapeake Bay.

2. This declaration is submitted in support of the Joint Motion for Stay of the SSI Rule by the National Association of Clean Water Agencies ("NACWA") and Hatfield Township Municipal Authority ("Hatfield Township") requesting stay of the "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units," 75 Fed. Reg. 15372 (Mar. 21, 2011) (the "SSI Rule"). NACWA's petition asks the U.S. Environmental Protection Agency ("EPA") to reconsider central elements of the final rule establishing emission limitations and other requirements under § 129 of the Clean Air Act ("CAA") applicable to sewage sludge incinerators ("SSI").

3. In my capacity as Director of Water Quality for HRSD and member of HRSD's Senior Management Team, I am responsible for planning and budgeting for the utility's facilities and capital improvement projects, including the acquisition of equipment and services that are necessary to comply with the requirements of EPA's SSI Rule. Based on the significant impacts of the SSI Rule, HRSD has commenced a planning project with an

outside engineering consultant to determine, in part, how to best address SSI Rule. Moreover, the SSI Rule has drawn into question HRSD's long term biosolids strategy including the future of biosolids resource recovery options.

4. HRSD has five POTWs that incinerate biosolids:

- HRSD Army Base, Norfolk, VA
- HRSD Boat Harbor, Newport News, VA
- HRSD Chesapeake-Elizabeth, Virginia Beach, VA
- HRSD Virginia Initiative Plant ("VIP"), Norfolk, VA, and
- HRSD Williamsburg, Williamsburg, VA.

Each of these POTWs has two MHIs (for a total of 10 SSIs) that comply with all current state and federal regulations including air quality requirements codified in each facility's Title V federal operating permit. HRSD's SSIs were originally constructed using Clean Water Act Title II grant funding in the 1970s and are now subject to the existing source standards under the SSI Rule. Several of HRSD's MHIs were used by EPA to set the emission limits for existing MHIs in the SSI Rule, including the

emission limits for nitrogen oxides ("NOx"), carbon monoxide ("CO"), cadmium, lead, and mercury.

5. However, based on the most recent stack testing, HRSD predicts that none of its 10 MHIs can reliably achieve the sulfur dioxide ("SO_2") and NOx emission limitations for existing sources, without add-on pollution control devices, which in the case of NOx controls have never been demonstrated as effective for MHIs. Achieving compliance with the SO_2 limit will likely require an additional wet acid gas scrubber for each MHI. Achieving the NOx limit will require either modification to the combustion process (e.g., combustion adjustments and low NOx burners) and, if those changes are not sufficient, addition of selective catalytic reduction ("SCR") or selective non-catalytic reduction ("SNCR") controls. It is questionable that combustion adjustments alone will be sufficient to reliably meet the NOx and CO standards.

6. The inverse relationship between the creation of NOx and CO further complicates the path to compliance, since lowering NOx increases CO emissions. The increase in CO emissions may require addition of an afterburner; however, this will increase NOx emissions from the greater use of auxiliary fuel. NOx controls like SCR/SNCR have never been applied to

an MHI before so it is unknown if SCR/SNCR would even work in this application. Testing also indicated that HRSD VIP cannot reliably achieve the SSI Rule particulate matter, lead, cadmium, and dioxin/furan limits. This would require air pollution controls (wet electrostatic precipitator and an afterburner) in addition to SO_2 and NOx controls.

7. Should HRSD continue to operate our MHIs, we estimate that it will cost as much as $57 million to retrofit our five MHI plants to comply with the SSI Rule. *See* Enclosure A attached hereto. This cost estimate only represents the engineering and procurement costs for the capital improvements. The estimate does not include commensurate increases in annual operating and maintenance costs. The cost estimate also does not include the new regulatory costs such as stack testing, continuous emissions monitoring, monitoring, recordkeeping, and reporting. The total present worth cost of this option is estimated at $420 million. *See* Enclosure B attached hereto. Once any pollution control equipment is installed to comply with the SSI Rule, removing the equipment after the fact is not practicable.

8. HRSD has recently been informed by the Virginia Department of Environmental Quality they are planning to "move quickly" to implement the SSI Rule. HRSD requested DEQ provide as much time as possible for

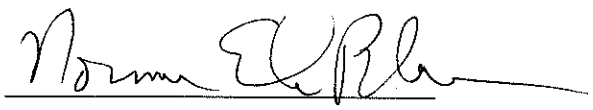
HRSD and the other Virginia MHIs to determine how best to comply with the SSI Rule. One current alternative is for HRSD to mothball four of its 10 MHIs because they potentially cannot comply with these new requirements and we do not have sufficient space to locate the controls necessary to comply with the rule, given competing space demands based on nutrient removal requirements established by EPA to meet the Chesapeake Bay Nutrient total maximum daily load ("TMDL"). This loss of incineration capacity will potentially result in greater landfilling burdens and increased costs. MHI emissions reductions will also be offset by air pollution from truck tailpipe emissions and from landfill emissions.

9. The current cost estimates that HRSD has prepared should it choose to abandon incineration entirely in response to the SSI Rule and implement alternatives to manage biosolids are identified in Enclosure B as system alternatives 9, 15, and DW. These estimates are based on professional engineering judgments and information provided by equipment manufacturers and product vendors. The current capital cost estimates of these options exceeds $200 million and the total present worth costs are over $546 million. Given HRSD's current capital improvement budget committed to meeting the Chesapeake Bay Nutrient TMDL and a sewer

system overflow consent order with EPA, HRSD is limited in its resources to afford this additional regulatory burden.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 7, 2011
Virginia Beach, Virginia



Norman E. LeBlanc

Enclosure A

Biosolids Resource Recovery Master Plan (BRRMP) Improvements

GN-141-2

SYSTEM	General	CATEGORY	Treatment Plant
TYPE	Solids Management	PROJ STATUS	Proposed

PROGRAM CASH FLOW PROJECTION ($,000)

Prog Cost	Exp to FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21
$57,465	$0	$269	$1,414	$2,538	$18,242	$19,242	$15,759	$0	$0	$0	$0

PROJECT DESCRIPTION

This project is a place holder for the improvements recommended in the Biosolids Resource Recovery Master Plan (BRRMP). The cost estimate for this project is based on adding Air Pollution Control (APC) devices at each incinerator plant.

PROJECT JUSTIFICATION

With the changing biosolids reuse/disposal and incineration regulations, public perception issues, and energy and sustainability challenges, HRSD is seeking to develop a Biosolids Resource Recovery Master Plan (BRRMP) to serve as a long-term, sustainable biosolids management strategy for the organization.

The most recent biosolids management strategy was completed in 2006, but has become outdated with pending regulations. One key pending EPA regulation will classify biosolids as solid waste which will require significant improvements or possibly the elimination of our incinerators, which represents over 70% of HRSD's biosolids handling.

FUNDING TYPE	REQUIRED SERVICES	CONTACTS
Revenue Bonds	Outside Study	Requesting Dept: General Manager
	Outside Design	Dept Contact: Jay Bernas
Acct No	Outside Construction	Managing Dept: Engineering
VRLF No		

PROPOSED SCHEDULE

Pre-Planning	Oct-11
PER	Dec-11
Design	Dec-12
Construction	Jun-14
Project Completion	Dec-16

COST ESTIMATE

PER		$461,770
Design		$2,616,695
Pre Construction		$30,785
Construction		$54,355,370
Est. Program Cost		**$57,464,620**
Contingency	20%	$10,871,075
Est. Project Cost		**$68,335,695**

RELATED INFRASTRUCTURE

RELATED PROJECTS

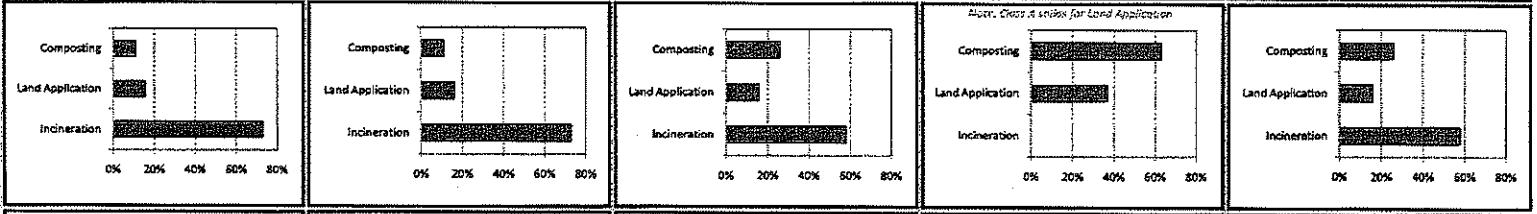
GN-141-1 Biosolids Resource Recovery Master Plan (BRRMP)

Enclosure B

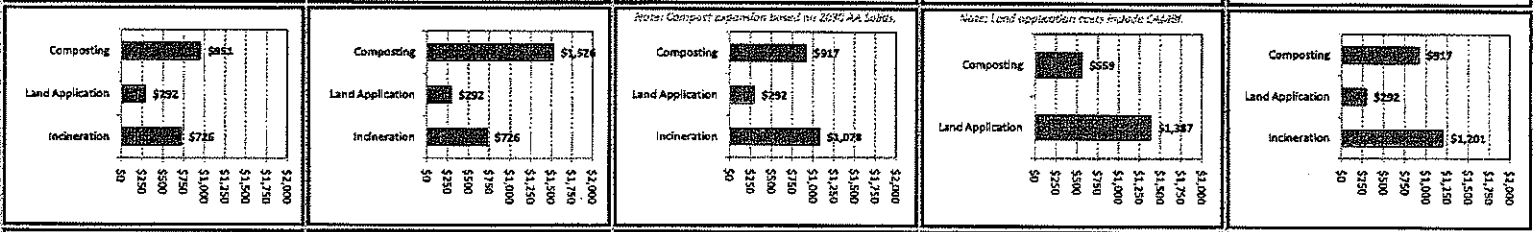
Cost Summary of Shortlisted Alternatives

Unit Processes	BASE CASE									SYSTEM ALTERNATIVE 01									SYSTEM ALTERNATIVE 09									SYSTEM ALTERNATIVE 15									SYSTEM ALTERNATIVE DW								
	AB	AT	BH	CE	JR	NP	VIP	WB	YR	AB	AT	BH	CE	JR	NP	VIP	WB	YR	AB	AT	BH	CE	JR	NP	VIP	WB	YR	AB	AT	BH	CE	JR	NP	VIP	WB	YR	AB	AT	BH	CE	JR	NP	VIP	WB	YR
Pump Station/Pipelines etc.																																		X									
Pre-Dewatering (for Thermal Hydrolysis)																													X														
Thermal Hydrolysis Process (CAMBI)																													X														
Anaerobic Digestion																																			X								X	
Dewatering																													X														
Dewatered Cake Loadout Facilities																			X		X	X			X	X		X		X	X			X	X		X			X	X		
Foreign Biosolids Receiving Facilities	X		X							X		X												X					X									X					
Existing MHI Improvements	X		X	X			X	X		X		X	X			X	X																										
New Fluid Bed Incinerator																								X																		
Compost Facility																		X									X		X							X								X
Total Project Costs, *million $*	$45.4									$91.4									$201.5									$223.0									$244.2								
Average Annual O&M, *million $*	$31.4									$31.0									$29.7									$30.7									$29.3								
Revenue from Compost, *million $*	$0.37									$0.37									$0.69									$1.52									$0.69								
Total Present Worth, *million $*	$420.6									$460.2									$546.1									$569.3									$583.0								
Annualized Unit Cost, *$/dt processed*	$633									$692									$822									$857									$877								

Distribution of Solids to Various End Uses



Relative Processing Costs
($/dt Processed)



Triple Bottom Line Score	59									58									65									69									75								
Cost-Benefit Ratio *(Annualized Unit Cost/TBL Score)*	11									12									13									12									12								

Exhibit 4

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES,	
Petitioner	**No. 11-1131 (consolidated with Nos. 11-1167 and 11-1185)**
v.	
ENVIRONMENTAL PROTECTION AGENCY and LISA PEREZ JACKSON, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY	
Respondents	

DECLARATION OF NORTHEAST OHIO REGIONAL SEWER DISTRICT

I, Julius Ciaccia, hereby declare as follows:

1. I am the Executive Director for the Northeast Ohio Regional Sewer District ("NEORSD"), a position I have held since November of 2007. NEORSD is a publicly-owned regional wastewater utility that provides wastewater collection and treatment services for 1.1 million residents and businesses within the City of Cleveland and 61 suburban communities. NEORSD owns and operates three wastewater treatment plants ("WWTPs") (Easterly, Southerly and Westerly), processes an average of approximately 230 million

gallons of wastewater per day and currently manages approximately 40,000 dry U.S. tons (100,000 wet tons) of sewage sludge (biosolids) on an annual basis in an environmentally sound and cost-effective manner.

2. This declaration is submitted in support of the Joint Motion for Stay of the SSI Rule by the National Association of Clean Water Agencies ("NACWA") and Hatfield Township Municipal Authority ("Hatfield Township") requesting stay of the "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units," 75 Fed. Reg. 15372 (Mar. 21, 2011) (the "SSI Rule"). NACWA's petition asks the U.S. Environmental Protection Agency ("EPA") to reconsider central elements of the final rule establishing emission limitations and other requirements under § 129 of the Clean Air Act ("CAA") applicable to sewage sludge incinerators ("SSI").

3. In my capacity as Executive Director of NEORSD I have overall responsibility for planning and budgeting for NEORSD's facilities and capital improvement projects, including the acquisition of equipment and services that may be necessary to comply with certain regulatory requirements of the SSI Rule.

4. Approximately 93% of NEORSD's sewage sludge is incinerated and the balance is either disposed of in the PPG Lime Lakes Reclamation Project or a municipal solid waste landfill. NEORSD currently operates six (6) multiple hearth incinerators as well as a fluidized bed "skimmings only" incinerator. All of these were constructed using grants awarded by EPA under the Clean Water Act Title II grant authority.

5. In addition, NEORSD is actively constructing a new $165 million Incineration Facility at the Southerly WWTP. This new facility includes a new sludge dewatering system, three (3) new fluidized bed incinerators, and an energy recovery/production system. All of the sewage sludge generated at the Southerly and Easterly WWTPs along with the skimmings from all three (3) WWTPs will be incinerated in the new facility. The new facility will replace the existing four (4) multiple hearth incinerators at the Southerly WWTP and the skimmings-only incinerator at the Easterly WWTP, leaving two (2) existing multiple hearth incinerators functioning at the Westerly WWTP.

6. The Incineration Facility, scheduled to be placed into service in 2013, is anticipated to result in an estimated 100 ton/year reduction in air emissions, a 44,000 metric ton carbon dioxide equivalence ("CO2e")/year reduction in

greenhouse gas emissions and a substantial reduction in the use of fossil fuels. All of NEORSD's current SSIs would be subject to existing source standards under the SSI Rule.

7. NEORSD's preliminary construction costs that could be justified by the SSI Rule, including engineering fees, related construction management costs and contingencies, are estimated to be in the range of $38 million to $51 million. Due to the inherit variability of influent to the WWTPs, the new SSI Rule will present challenges to NEORSD in terms of compliance with cadmium, lead, mercury, oxides of nitrogen ("NOx") and sulfur dioxide ("SO_2") emission limits. Construction could include projects at two of NEORSD's WWTPs:

8. **Westerly WWTP:** At the NEORSD Westerly WWTP, wet electrostatic precipitators ("ESPs") could be installed to further reduce particulate matter and particulate-based metal emissions. In addition, better temperature controls and wet scrubbing process improvements could improve gaseous emissions. Finally, activated carbon absorbing systems are being evaluated as a means to reduce mercury emissions. Therefore, the range of improvements being investigated for the Westerly WWTP would be $4.4 million to $17.9 million. These evaluations are complicated by the fact that

space is very limited at the Westerly WWTP, especially around the incinerator building, and that the efficacy of such technology is an open question.

9. **Southerly WWTP:** As discussed above, the four (4) existing multiple hearth incinerators at the Southerly WWTP will be replaced by the three (3) new fluidized bed incinerators currently under construction. While emission testing data for these exact units do not exist, test data from operational fluidized bed incinerators at other utilities suggest that wet electrostatic precipitators (ESPs) to reduce particulate based metal emissions and activated carbon absorbing systems to reduce mercury emissions may be suitable for evaluation. Such improvements at the Southerly WWTP would be estimated at $33 million.

10. Were the above-described capital improvements made, NEORSD's annual operation and maintenance ("O&M") costs are estimated to increase by approximately $2.0 million. Such O&M costs estimates include the additional chemical costs, additional water and energy usage to operate the systems, and the additional manpower to run and maintain the systems.

11. In 2005, NEORSD prepared a Long-Term Residuals Management Plan which analyzed a variety of potential residual management options for

NEORSD's three (3) WWTPs. The plan resulted in recommendations to continue the incineration of biosolids with landfilling only as a backup method. In 2008, NEORSD conducted a validation workshop with biosolids management experts to determine the most energy efficient, environmentally friendly and cost-effective technology for biosolids management. The panel's recommendation was to move forward with the Incineration Project at the Southerly WWTP as the most viable, environmentally protective and cost-effective management option for NEORSD's biosolids.

12. During the residuals study and validation workshop, the option of landfilling biosolids was assessed. It was determined that landfilling of all of the biosolids produced by NEORSD operations is not a practically or economically available option for NEORSD. If NEORSD were to shut down its incinerators and utilize another method for biosolids management such as landfilling, NEORSD would be required to construct new facilities at the Southerly WWTP and Westerly WWTP to accommodate as many as 26 trucks per day. In 2008, an engineering estimate of $37.4 million was prepared for converting biosolids operations at Southerly from incineration to landfill. Due to the space constraints at the Westerly WWTP, moreover, it is uncertain if it is even possible to convert the plant from incineration to trucking and landfilling. In addition to the significant costs associated with

landfilling, there are environmental and social impacts associated with landfilling biosolids. NEORSD currently produces approximately 100,000 wet tons of sludge annually. This number is expected to increase to 190,000 wet tons when sludge process changes and the new fluidized bed incinerators are on-line and as NEORSD receives increased flows at the plant due to area growth and combined sewer overflow CSO capture and treatment. Current rates in NEORSD contracts for sludge hauling and landfilling are $35.80 per ton. Today, therefore, landfilling all of NEORSD's sludge would cost approximately $5 million to $7.5 million annually. If NEORSD were forced into landfilling this would result in an increase of approximately 9,500 truckloads per year (i.e., approximately 183 trucks per week, 52 weeks per year). Furthermore, the closest landfill able to accept sewage sludge from NEORSD is 130 miles away. This translates into 1.2 million vehicles miles per year and approximately 247,000 gallons of diesel fuel, and all their associated emissions.

13. It is uncertain whether landfills would be able to accept the volume of biosolids produced by NEORSD on a consistent and daily basis. The 2008 NEORSD validation workshop identified that landfill disposal of the biosolids from the Southerly WWTP would have the largest carbon footprint

of the options considered and that fluidized bed incinerators with energy recovery has the smallest:

Biosolids Management Alternative	**Metric Tons CO_2 Equivalent**
Current Multiple Hearth Incinerators	19,280
Fluidized Bed Incinerators	5,700
Fluidized Bed Incinerators w/Energy Recovery	-10,500
Landfill Disposal	25,275

14. NEORSD is incorporating an energy recovery/production system in its fluidized incinerator project at the Southerly WWTP which will reduce greenhouse gas emissions and fossil fuel usage. The incinerators will be equipped with boilers to convert the energy in the incinerator exhaust gases to high pressure steam. The high pressure steam will be used to operate a steam turbine that will produce at least 2.6 megawatts of electricity, approximately 25% of the plant's electrical power demands. The electricity will be used to operate equipment within the Incineration Facility. The new turbine is expected to result in a 16,000 metric ton CO2e/year reduction in greenhouse gas emissions from the mainly coal-burning power plants that currently supply electricity to the Southerly WWTP.

15. Incineration is a viable, cost-effective and environmentally friendly biosolids management option at NEORSD. The SSI Rule could prompt increases in capital expenditures and could impact future operating and maintenance costs. If NEORSD is forced to abandon incineration, it will result in an enormous economic loss that cannot be recovered and will increase emissions of priority pollutants and greenhouse gases.

I declare under penalty of perjury that the foregoing is true and correct.

Julius Ciaccia

Executed September 8, 2011

Cleveland, Ohio

Exhibit 5

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES,	)	
Petitioner	)	**No. 11-1131 (consolidated with Nos. 11-1167 and 11-1185)**
v.	)	
ENVIRONMENTAL PROTECTION AGENCY and LISA PEREZ JACKSON, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY	)	
Respondents	)	

DECLARATION OF PATRICK BALL

I, Patrick Ball, hereby declare as follows:

1. I am Director of the City of Cedar Rapids, IA Utilities Department, a position I have held since 2007. My current position includes direct supervision and responsibility for all aspects of Water Pollution Control, Water Treatment, Solid Waste, and Transit Divisions. The City of Cedar Rapids Water Pollution Control Facilities ("CRWPCF") division provides advanced wastewater treatment to industries and residential customers in Cedar Rapids as well several adjoining communities.

2. This declaration is submitted in support of the Joint Motion for Stay of the SSI Rule by the National Association of Clean Water Agencies ("NACWA") and Hatfield Township Municipal Authority ("Hatfield Township") requesting stay of the "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units," 75 Fed. Reg. 15372 (Mar. 21, 2011) (the "SSI Rule"). NACWA's petition asks the U.S. Environmental Protection Agency ("EPA") to reconsider central elements of the final rule establishing emission limitations and other requirements under § 129 of the Clean Air Act ("CAA") applicable to sewage sludge incinerators ("SSI").

3. In my capacity at CRWPCF, I am responsible for management, planning, and budgeting for the operation and a construction of capital improvement projects, including the acquisition of services and equipment necessary to comply with the requirements of the SSI Rule and all other applicable environmental regulations.

4. CRWPCF owns and operates one (1) treatment facility and one (1) multiple hearth SSI in Cedar Rapids, IA. The SSI was constructed in the late 1970s using Clean Water Act Title II grant funding and became operational in late 1980. The total Title II grant provided by EPA was approximately $80 million and all

residential and industrial customers at that time were required to contribute 10% of the project cost.

5. The current SSI unit is subject to the existing source standards under the SSI Rule. However, the City of Cedar Rapids, together with the Federal Emergency Management Agency ("FEMA"), have been evaluating repair or replacement of its SSI to address damage suffered by the SSI during an historic flood in 2008. The timing of the SSI requirements is particularly problematic since major repairs or replacement of the SSI would trigger new source standards under the SSI Rule. As a result, the City of Cedar Rapids may be forced to postpone or eliminate otherwise beneficial upgrades simply because the unnecessarily stringent SSI Rule standards cannot be achieved.

6. We currently estimate that it will cost $15 million to $20 million for the *additional* air pollution control equipment (not covered by FEMA funding) necessary to comply with the SSI Rule depending on unit capacity and whether the existing SSI is modified or a new fluidized bed SSI is constructed. These cost estimates were prepared by the engineering firm of Brown & Caldwell as part of CRWPCF Solids Master Plan update project that was completed in May 2011. In preparing these estimates, B&C utilized the best available information from

vendors and existing wastewater treatment facilities that would currently meet the rule.

7. Compliance with the standards for mercury emissions is a particular concern due to the lack of existing compliance data from mercury control installations at an existing multiple hearth SSI and the fact that there are no reliable technologies for controlling mercury emissions from SSIs. The uncertainty that any SSI could comply with the SSI Rule and the huge capital, operational and maintenance costs associated with any type of mercury control equipment for either an existing or new SSI are concerns for CRWPCF. There are also significant issues for future building space options for additional air pollution control equipment or a new SSI due to the projected location of future flood mitigation structures.

8. Biosolids landfilling is an impractical and extremely costly disposal option for CRWPCF. We are well acquainted with the costs and logistical challenges of a biosolids landfill program due the unavailability of our SSI for 10 months after the historic June 2008 flood. Our local landfill did not have the capacity to handle our biosolids and it will take 15-20 side dump truck loads per day to three separate landfills all located in Illinois with round trips of no less than 170 miles to accommodate our daily biosolids production. Landfills are only open five or five and one-half days per week depending on weekends and holidays. Depending on

plant loading, we produce variable amounts of bio-solids every day and this means onsite storage capacity, weather conditions, road construction, and other potential bio-solids transportation issues would be a tremendous daily logistical challenge.

I declare under penalty of perjury that the foregoing is true and correct.

September 7, 2011

Cedar Rapids, Iowa

Patrick Ball

Exhibit 6

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES,	)	
Petitioner	)	**No. 11-1131 (consolidated with Nos. 11-1167 and 11-1185)**
v.	)	
ENVIRONMENTAL PROTECTION AGENCY and LISA PEREZ JACKSON, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY	)	
Respondents	)	

DECLARATION OF RICHARD J. LYONS

I, Richard J. Lyons, hereby declare as follows:

1. I am the Executive Director of the Albany County Sewer District ("District") with the mailing address of P.O. Box 4187, Albany, New York 12204. I have maintained a position at the Albany County Sewer District since 1975.

2. This declaration is submitted in support of the Joint Motion for Stay of the SSI Rule by the National Association of Clean Water Agencies ("NACWA") and Hatfield Township Municipal Authority ("Hatfield Township") requesting stay of

the "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units," 75 Fed. Reg. 15372 (Mar. 21, 2011) (the "SSI Rule"). NACWA's petition asked the U.S. Environmental Protection Agency ("EPA") to reconsider central elements of the final rule establishing emission limitations and other requirements under § 129 of the Clean Air Act ("CAA") applicable to sewage sludge incinerators ("SSI").

3. In my capacity as Executive Director of the District, I am responsible for planning and budgeting for the utility's facilities and capital improvement projects, including the acquisition of equipment and services necessary to comply with the requirements of the SSI Rule.

4. The District owns and operates two activated sludge facilities with the following operating capacities:

- North plant with 35 million gallons per day ("MGD") dry weather capacity, 88 MGD wet weather capacity which services eight municipalities with a population of roughly 110,000, and

- South plant with 19 MGD dry weather capacity, 45 MGD wet weather capacity which services approximately 90 percent of the City of Albany with a population of roughly 90,000.

3. Between the two treatment plants, the District processes 11,000 dry tons of bio-solids through incineration each year. Given there are only three management options available for the disposal of bio-solid waste (land application, landfilling and incineration) the District has found incineration to be the most cost-effective and environmentally friendly method for disposal.

4. The District maintains two multiple hearth incinerators at each of the District's two locations (designated as the North and South plants). The North plant has two BSP-design multiple hearth SSIs. The South plant has two Nichols-design multiple hearth SSIs. Presently, both facilities are subject to the existing sources standards in the SSI rule; however, the North plant could become subject to the new source standards as a result of ongoing upgrades which will include a heat recovery system.

5. The District has spent over $7 million on solid waste handling improvements over the past five years and maintains an outstanding record of compliance with environmental requirements. All improvements are made in the most cost effective manner to minimize the impact on rate payers. The District has made the following improvements to the two wastewater treatment facilities' biosolids handling operations.

North Plant:

Scrubber System Improvements - The District has completed over $5.5 million in engineering and improvements to the incinerator scrubber systems in 2005-2006. These improvements address particulate matter removal and opacity.

Belt Press Improvements – This project involved addition of a 2.0 meter belt filter press with cake conveying modifications, completed in 2008 at a cost of $600,000.

South Plant:

Scrubber System Improvements – Like at the North plant, the District has completed engineering and improvements to the incinerator scrubber systems at the South plant in 2005-2006. These improvements address particulate matter removal and opacity.

Belt Press Improvements - This project involved addition of a 1.5 meter belt filter press with cake conveying modifications, completed in 2008 at a cost of $550,000.

5. The District is in the middle of constructing a biosolids incineration heat recovery project. When complete, the project will generate over 35 percent of the District's electrical energy requirements at its North plant facility by recovering

heat and producing energy from renewable domestic sewage sludge thereby reducing reliance on imported and fossil fuel energy sources. The project has been recognized for its innovation, combined heat and power aspects by use of a renewable energy source.

6. However, as a result of performing beneficial projects like the North plant energy recovery project, the District's incinerators may now become subject to the new source performance standards in the SSI Rule, which are more stringent than any existing requirements and will cost far more in order to comply. Based upon available stack testing data, none of the District's SSIs meet the new source standards for multiple hearth incinerators. Vendor estimates for wet electrostatic precipitators ($5 million per plant) and activated carbon absorption systems ($10 million per plant) total $30 million in capital costs for the pollution control equipment alone. These estimates do not include capital costs for other changes necessary for the addition of pollution control equipment, do not include engineering costs, and do not include stack testing and other operation and maintenance costs. There is no practical way to eliminate these additional controls once they are purchased and installed. Furthermore, there is reason to believe that the District's SSIs still could not meet the SSI Rule requirements because activated carbon absorption has not been shown to work on SSIs.

7. As a direct result of the SSI Rule, facilities such as ours will not seek to make improvements or undertake other beneficial projects since doing so will trigger an immediate change in regulatory requirements that are very costly. Otherwise beneficial projects, such as energy recovery projects, would add many millions in capital and engineering costs and additional improvements in order to comply with the SSI Rule.

8. The overly stringent SSI Rule also threatens the continued use of incineration as the most viable and environmentally sound method of biosolids management. The District chose biosolids incineration because it is the most cost effective and environmentally beneficial means of biosolids management for the communities we serve. Incineration provides 90 percent volume reduction of biosolids thereby reducing burdens on landfill capacities, allows for the conversion of biosolids into energy (rather than wasting this energy through landfill decomposition), and produces a valuable ash product that the District blends with compost material to make a topsoil which can be used for landfill cover, closure material, road repair soil, and golf course repair and reconstruction soil. Recent regulatory changes have led to diverting organic material like biosolids away from landfills and, with the numerous restrictions on land application of biosolids, incineration remains the only viable alternative.

9. The impacts of the SSI Rule on the District and rate payers are already being felt. The New York State Department of Environmental Conservation is asking the District and other facilities with SSIs to immediately declare that they will be in compliance with the SSI regulations, or will cease biosolids incineration by March 21, 2012. The ramifications to rate payers and the industry as a whole of such conditions in these economic times can be devastating. The SSI Rule is having an immediate impact on all District rate payers by having to increase debt service to the District eight member communities, for capital improvements, engineering and other compliance burdens directly caused by the SSI Rule.

10. The District feels strongly that EPA should be made to reexamine the SSI Rule in full compliance with the CAA.

I declare under penalty of perjury that the foregoing is true and correct.

Albany, New York
September 6, 2011

Richard J. Lyons
Executive Director
Albany County Sewer District