

ORAL ARGUMENT NOT YET SCHEDULED

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

**NATIONAL ASSOCIATION OF
CLEAN WATER AGENCIES, et al.,**

Petitioners,

V.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,**

Respondents.

No. 11-1131
(and consolidated cases)

MAXWEST’S MOTION FOR LEAVE TO INTERVENE OUT OF TIME

MaxWest Environmental Systems, Inc. (“MaxWest”), by counsel, pursuant to Rules 15(d) and 27 of the Federal Rules of Appellate Procedure, and Circuit Rules 15(b) and 27, respectfully moves this Court for leave to intervene out of time in support of Petitioners the National Association of Clean Water Agencies (“NACWA”) and Hatfield Township Municipal Authority (“Hatfield Township”) in case numbers 11-1131 and 11-1167. In support of its Motion, MaxWest states as follows:

1. MaxWest, a sustainable energy company, uses a proprietary closed-loop gasification process to convert the fixed carbon contained in biosolids

(sewage sludge) into thermal energy that is then re-cycled into the drying process, all without releasing methane into the atmosphere. It operates the only commercially-operating biosolids gasification facility in North America near its headquarters in Sanford, Florida.

2. On March 21, 2011, the United States Environmental Protection Agency (“EPA”) published a final rule pursuant to Clean Air Act § 129, codified at 42 U.S.C. § 7249, governing “Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units; Final Rule.” 76 Fed. Reg. 15,372-452 (Mar. 21, 2011) (“Sewage Sludge Incineration Rule” or “Rule”).

3. MaxWest is affected by the Sewage Sludge Incineration Rule because, even though MaxWest’s biogasification process does not involve incineration in any manner, EPA has determined that MaxWest is subject to the Sewage Sludge Incineration Rule. MaxWest’s unique biogasification technology is and should be considered inherently different from facilities employing conventional combustion or other types of processes. In MaxWest’s process, all processible biosolids are thermally converted in an oxygen-starved environment—not combusted—which generates a materially uniform syngas that is then oxidized and used as recyclable thermal energy within the process. Moreover, in comparison to many NACWA-member technologies or biosolids-combustion processes, the MaxWest technology

is capable of unique recycling and renewable energy production with a lower emissions profile.

4. In sum, MaxWest's interest is in the EPA's arbitrary failure to distinctly classify gasifiers under the Sewage Sludge Incineration Rule. MaxWest therefore has a direct and substantial interest in these proceedings that may not be adequately represented by any other party. *See Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (intervention appropriate when other parties' representation "may be" inadequate). This Court has also stated that "in the intervention area the interest test is primarily a practical guide to disposing of lawsuits by involving *as many apparently concerned persons as is compatible with efficiency and due process.*" *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967) (internal quotation omitted) (emphasis added).

5. MaxWest's interests would not be adequately represented in the absence of intervention. MaxWest is a start-up clean energy company focused on commercializing its technology. The company has demonstrated its commercial viability through its Sanford project and as a result was just recently successfully venture-backed and capitalized. The company's ability to competently participate in these proceedings has been delayed as a result.

6. MaxWest's intervention on behalf of Petitioners will not delay the proceedings or prejudice any party. This Motion is submitted before the Court has

scheduled oral argument and procedural motions are not due until September 9. Counsel for Petitioners and Respondents have been contacted regarding this Motion: NACWA indicated that it would not oppose the motion, EPA reserved its position pending its review of the motion, the Sierra Club indicated its intent to oppose it, and Hatfield Township was unable to report on its position as of the time of this filing.

WHEREFORE, for all of the foregoing reasons, MaxWest respectfully requests that the Court grant it leave to intervene on behalf of Petitioners NACWA and Hatfield Township in Case Nos. 11-1131 and 11-1167.

Date: September 8, 2011

Respectfully submitted,

MAXWEST ENVIRONMENTAL
SYSTEMS, INC.

/s/ Lisa Sharp

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2011, a true copy of the foregoing was sent to all attorneys of record in this proceeding via the Court's electronic filing system:

/s/ Lisa Sharp

Lisa Sharp