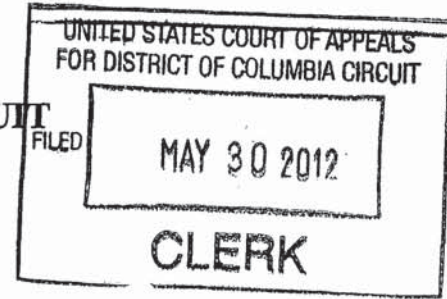


MAY 30 2012 **UNITED STATES COURT OF APPEALS**
FOR THE DISTRICT OF COLUMBIA CIRCUIT
RECEIVED



**NATIONAL ASSOCIATION OF CLEAN
WATER AGENCIES,**

Petitioner

v.

**U.S. ENVIRONMENTAL PROTECTION
AGENCY and LISA M. JACKSON,
ADMINISTRATOR, U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Respondents

Case No. 12-1236

PETITION FOR REVIEW

Pursuant to the Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1), the National Association of Clean Water Agencies (NACWA) hereby petitions this Court for review of the U.S. Environmental Protection Agency final agency action entitled "Denial of Reconsideration Petitions on Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units," 76 Fed. Reg. 25087-25088 (Apr. 27, 2012).

The challenged action denies a May 24, 2011 petition for reconsideration by NACWA regarding Clean Air Act regulations applicable to sewage sludge incinerators (SSIs) owned and operated by municipalities at publicly-owned

treatment works. Copies of EPA's letter denying NACWA's petition for reconsideration and of the Federal Register notice announcing the denial are attached to this Petition as Exhibit A and Exhibit B, respectively.

Dated: May 30, 2012

Respectfully submitted,



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR - 6 2012

THE ADMINISTRATOR

Mr. Ken Kirk
Executive Director
National Association of Clean Water Agencies
1816 Jefferson Place
Washington, D.C. 20036-2505

Dear Mr. Kirk:

The purpose of this letter is to respond to the National Association of Clean Water Agencies' (NACWA) May 24, 2011, Petition for Reconsideration and request for a stay of the effective date the U.S. Environmental Protection Agency's final rule entitled Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units (SSI rule), published in the Federal Register on March 21, 2011 (76 FR 15372).¹ In this Petition, NACWA asks the EPA to reconsider the SSI rule to address the following eight issues: (1) Regulation of sewage sludge incineration (SSI) under Clean Air Act (CAA) section 129 instead of CAA section 112; (2) collection of data to determine the maximum achievable control technology (MACT) floors; (3) use of the Clean Water Act (CWA) sludge content program data; (4) establishment of subcategories in addition to fluidized bed incinerators (FBI) and multiple hearth incinerators (MHI); (5) new source standards for MHI; (6) treatment of dioxin/furan emissions data measurements in the MACT floor database; (7) achievability of performance test specifications; and (8) request for stay of effective date of the SSI rule. The EPA has carefully reviewed the points raised in the Petition and is denying the Petition for Reconsideration and the request for a stay of the rule's effective date.

Section 307(d)(7)(B) of the CAA states that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b))."

As to the first procedural criterion for reconsideration, a petitioner must show why the issue could not have been presented during the comment period, either because it was impracticable to raise the issue during that time or because the grounds for the issue arose after the period for public comment (but within 60 days of publication of the final action). In the EPA's view, an objection is of central relevance

¹ Hereinafter referred to in this letter as "Petition for Reconsideration" or "Petition."

to the outcome of the rule only if it provides substantial support for the argument that the promulgated regulation should be revised. See, e.g., the EPA's Denial of the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202 of the Clean Air Act, 75 FR at 49556, 49561 (August 13, 2010). See also, 75 FR at 49556, 49560 - 49563 (August 13, 2010) and 76 FR at 4780, 4786 - 4788 (January 26, 2011) for additional discussion of the standard for reconsideration under CAA section 307(d)(7)(B).

1. Regulation of SSI Under CAA Section 129 Instead of CAA Section 112

The Petition requests that the EPA reconsider its decision to regulate SSI under section 129 of the CAA, rather than CAA section 112. The Petition alleges that the public lacked the opportunity to comment on the EPA's arguments supporting its interpretation of the CAA and that the issue is of central relevance. The EPA is denying reconsideration of this issue. The EPA disagrees that the proposed SSI rule provided inadequate notice of the EPA's interpretation of the CAA and the Petitioner does not demonstrate that it lacked the opportunity to comment on this issue.

In the proposed SSI rule, the EPA discussed its position that the CAA requires SSI units to be regulated under CAA section 129 rather than CAA section 112. 75 FR at 63263 - 63264. As part of that discussion, the proposal specifically requested comments on Petitioner's position, as articulated in a 2009 letter to the agency, that SSI units must be regulated under section 112 of the CAA. The EPA also included the Petitioner's letter in the docket for the SSI rulemaking. See K. Kirk, NACWA, to USEPA, Letter regarding Regulations on CISWI and RCRA Solid Waste Definitions, September 9, 2009, at EPA-HQ-OAR-2009-0559-0026.

The Petition claims that the EPA failed to provide notice of its position as to why SSI units must be regulated under CAA section 129. Specifically, the Petition alleges that in the final SSI rule, the EPA's rationale for its position that SSI units must be regulated under section 129 was "fundamentally different" from its statements in the proposed rule, because the EPA in the final rule states that section 112(e)(5) of the CAA does not apply to SSI units. Specifically, the Petition claims that the EPA did not explain in the proposal the following: "(1) how its new interpretation squares with the clear directive in section 112(e)(5) for the Administrator to set emission standards under section 112(d), (2) how it implicitly reached the conclusion that SSIs are not covered by the expansive CWA definition of "treatment works" incorporated into CAA section 112(e)(5), (3) how its new interpretation is legally possible in light of the numerous SSIs built and improved using CWA Title II funds, [and] (4) how EPA's new interpretation squares with the examples NACWA provided of previous Agency rulemakings and policy statements." Petition at 7.

The EPA disagrees with petitioner's assertions. The proposed rule provided sufficient explanation regarding the EPA's rationale for regulating SSI units under section 129, and that explanation was more than sufficient for members of the public to comment on the agency's interpretation of the CAA, including each of the issues the Petition raises. Indeed, NACWA commented extensively on the issue of EPA's authority to regulate SSI units under section 129. NACWA comments at 5-15. Therefore, the Petitioner has failed to demonstrate that it was impracticable to raise its objections to the EPA's interpretation during the public comment period for the proposed rule. See Air Transport Ass'n v. FAA, 169 F.3d 1, 6 ("agency's notice must fairly apprise interested persons of the subjects and issues involved in the rulemaking").

The EPA explained in the preamble to the proposed rule that it had not regulated SSI units under the CAA section 112(d) emissions standards issued for public owned treatment works (POTW) in 1999 and that such units should be regulated under section 129. See 75 FR at 63264. While the EPA elaborated on

its position in the final rule, responding to comments from the Petitioner, such additional explanation to support the same interpretation taken in the proposed rule does not warrant re-opening this issue for reconsideration, and does not support Petitioner's argument that it lacked the opportunity to comment on the EPA's interpretation. See *International Fabricare Institute v. EPA*, 972 F.2d 384, 399 (D.C. Cir. 1992) (notice and comment is not intended to result in "interminable back-and-forth") and *Community Nutrition Institute v. Block*, 749 F.2d 50, 58 (D.C. Cir. 1984) (agency is not required to provide additional opportunity to comment on its response to comments).

In addition, the petitioner misconstrues EPA's position when it asserts that the EPA concluded SSI are not covered by the CWA definition of publicly owned treatment works. The EPA's interpretation, as explained in the proposal and the final rule, is not based on any such conclusion. Rather, it is based on a reasonable interpretation of two provisions in the CAA, so as to give both meaning. CAA section 129(g) defines "solid waste incineration unit" to include "any facility" combusting "any" solid waste. 42 U.S.C. § 7429(g)(1). Since sewage sludge is a solid waste, SSI units are clearly solid waste incineration units under this definition and the EPA must, therefore, issue emissions standards for them under CAA section 129. See *NRDC v. EPA*, 489 F.3d 1250, 1257-58 (D.C. Cir. 2007) and 76 FR 15455 (Mar. 21, 2011)(Non-Hazardous Secondary Materials Final Rule). Given the broad definition of solid waste incineration in section 129, as well as the context of CAA section 112(e)(5), which is a provision found in a subsection of CAA section 112 that governs the timing of emissions regulations, it is reasonable for the EPA to consider both provisions and to conclude that CAA section 129(g)'s all-encompassing definition of solid waste incineration unit requires regulation of SSI under CAA section 129. See 76 FR at 15383. Therefore, Petitioner's contention that the EPA's interpretation is inconsistent with and impermissible in light of the CWA definition of publicly owned treatment works is not relevant, since the interpretation does not depend on whether or not the SSI is within the scope of that definition.

Finally, the Petitioner claims that the EPA failed to provide notice of its position regarding how the agency's interpretation squares with past statements. The EPA disagrees. The Petitioner's comments on the proposed rule referred to several Federal Register notices, which it alleged contained statements inconsistent with the EPA's interpretation, as described in the proposed rule. The EPA responded to those comments in the final rule, explaining that those statements did not support the Petitioner's argument that the EPA must regulate SSI units under CAA section 112. See 76 FR at 15383. The fact that the EPA addressed these past statements in response to comments received on the proposal does not provide a basis for reconsideration. It was clearly not impracticable for the Petitioner to comment on the EPA's past statements, and it did, in fact, do so.

The Petitioner filed a Supplemental Petition for Reconsideration on June 27, 2011, stating that several of its members had received information requests from the New York Department of Environmental Conservation seeking a certification regarding each member's plans regarding compliance with the SSI rule. The Petition claims that these requests demonstrate the imminent impact of the SSI rule on its members. The Supplemental Petition also requests that the EPA stay the SSI rule itself.

The Supplemental Petition does not provide a basis for reconsidering the SSI rule. First, to the extent that the New York information requests have an imminent impact on the Petitioner's members, those requests were not required by the SSI rule. Since nothing in the SSI rule required the information requests to be sent, reconsideration of the rule would have no effect on them. In addition, the information requests do not demonstrate that Petitioners lacked an opportunity to comment on any issue in the rule itself, nor are they of central relevance to the SSI rule, since they do not in any way affect the EPA's establishment of emissions standards for SSI. The requests are simply an effort on the part of a state, without any request from the EPA, to identify existing sources within its jurisdiction that may be subject to the SSI rule once its requirements are applicable.

Therefore, because the Petition does not demonstrate that it was impracticable for the Petitioner to comment, the EPA is denying reconsideration of this issue.

2. Collection of Data for the MACT Floor Calculations

The Petition also requests reconsideration of the amount of emissions data the EPA used to calculate the MACT floors. The Petitioner claims that the MACT standards are based on insufficient data because the EPA did not have actual emissions test data from 12 percent of SSI within the source category. The Petitioner claims that the quality and quantity of the data used to set MACT standards are of central relevance to the development of the final rule and, further, argues that CAA Section 129 does not allow the EPA to establish MACT standards without emissions data from 12 percent of units in a category or subcategory. The EPA is denying the Petition for Reconsideration on this issue because the Petitioner has not demonstrated that it was impracticable to comment on this issue. Further, the Petition does not demonstrate that this objection is of central relevance to the outcome of the final rule because it does not provide substantial support that the emissions standards should be revised.

The EPA explained in the preamble to the proposed rule that it issued an information collection request to several SSI which required emissions testing and submission of the test results to the EPA for purposes of the SSI rulemaking.² These units were identified as those expected to have the lowest emissions of units in each subcategory, based on the type of unit and the pollution controls installed. See 75 FR at 63270. The EPA received comments on the scope of its information collection request, including comments from the Petitioner which raised the same arguments furthered in the Petition. While Petitioner's comments urged EPA to collect additional emissions test data, the comments did not identify units other than those from which the EPA required emissions testing which the Petitioner believed were the lowest-emitting units. NACWA comments at 24-27. In the final rule, the EPA explained that it had conducted a statistical analysis to verify the minimum number of observations needed to accurately characterize the distribution of the best-performing 12 percent of units in each subcategory. The results showed that the data used by the EPA meets or exceeds the number of observations necessary to provide an accurate representation of that data distributed from the best-performing 12 percent of the source population. See 76 FR at 15387.

Further, the EPA did solicit additional emission information in the preamble to the proposed rule. Some commenters summarized results of their most recent emissions tests, comparing them to the EPA's site-specific estimates of baseline emissions. However, none of the commenters actually provided emission test reports. In the proposed rule, the EPA specifically requested supporting documentation for any data submitted by commenters, and reiterated this request at the public hearing on the proposed rule. See 75 FR at 63262 and EPA-HQ-OAR-2009-0559-0138 (Transcript of October 29, 2010 Public Hearing for Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Units: Sewage Sludge Incineration Units: Proposed Rule at 60 and Public Hearing Desk Copy at 6). The EPA needs such background documentation to determine the conditions under which the testing was conducted, the specific methodology that was used and whether appropriate quality control was applied. Specifically, the EPA needs to ensure that data used to calculate the MACT floor has been collected using appropriate test methods and has been subject to quality assurance procedures. Without such information, the EPA cannot conclude that the emissions data are appropriate to use in calculating MACT floor limits. As explained in the preamble to the final rule, the EPA concluded that, lacking

² The Petition alleges that the EPA "circumvent[ed] the Paperwork Reduction Act" with its "fast track" approach to rulemaking. However, the Petition does not acknowledge that the EPA was required to issue the final rule by February 21, 2011, pursuant to an order issued by the Federal District Court for the District of Columbia. Moreover, the EPA's information collection request did not violate the Paperwork Reduction Act.

background documentation, the emission test summaries provided by commenters were not sufficiently reliable to use in the MACT floor calculations. See 76 FR at 15387. Thus, the Petitioner had the opportunity to comment on the EPA's proposed approach to establishing the MACT floor limits and on the data it intended to use in those calculations. The final MACT limits were established using the same approach, with appropriate modifications to address new data and information that EPA could verify as sufficiently reliable to use in the calculations. See *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983) ("notice requirement should not force an agency endlessly to re-propose a rule because of minor changes") and *Solite Corp. v. EPA*, 952 F.2d 473, 485 (D.C. Cir. 1991) (public had sufficient notice of final rule threshold calculations where methodology did not change significantly from proposed rule). As explained above, the EPA described the scope of its information collection efforts in the preamble to the proposed rule and received comments on the data on which the proposed MACT standards were based, including comments from the Petitioner raising the same issues as in the Petition. The EPA responded to those comments in the final rule. Moreover, the Petition does not provide any information to support its argument that the final rule MACT floor standards should be changed. Rather, the Petition simply reiterates comments submitted on the proposed rule, and provides no supporting information or analysis regarding what the MACT limits should be. Further, the Petition does not explain how the Petitioner believes the EPA should have calculated the MACT limits given the limited emissions test data. For these reasons, the EPA is denying reconsideration of this issue.

3. Use of Clean Water Act Sludge Content Program Data

The Petition requests that the EPA reconsider its calculation of variability in the final MACT standards. Specifically, the Petition argues that sewage sludge concentration data (*i.e.*, pollutant concentrations in sludge prior to incineration) that was collected pursuant to regulations issued under the CWA should be used to incorporate additional variability into the standards, resulting in less stringent standards than in the EPA's final rule. The Petition then further contends that, because this data was not utilized in determining MACT floors, the standards are set at levels that are unachievable by the best-performing SSI units, even with the use of add-on control technologies. The Petition also requests that the EPA reconsider its approach of setting MACT floor standards on a pollutant-by-pollutant basis and alleges that the EPA failed to address the inverse relationship between nitrogen oxide (NO_x) and carbon monoxide (CO) when using this approach.

The EPA is denying the Petition for Reconsideration on this issue because the Petition does not demonstrate that it was impracticable to comment on this issue. Moreover, the Petition does not provide substantial support for its argument that the final rule should be revised. In the proposed rule, the EPA requested additional sewage sludge content data from the best performing sources collected during emissions stack tests in order to better evaluate the effect on emissions of differences in metal content of the sewage sludge for the final standards. See 75 FR at 63268. The EPA received comments, including comments from the Petitioner, claiming that emissions from SSI units are affected, not just by control technology, but also by other factors, including the contents of the sludge, and referencing sludge content data collected pursuant to the CWA. In the preamble to the final rule, the EPA explained the basis for its variability analysis, including the fact that the standards were based on emissions information from different regions of the country and different seasons of the year. In addition, the EPA explained that the final standards sufficiently accounted for variability through use of the upper predictive limit (UPL). See 76 FR at 15388 - 15392. Therefore, the Petition does not demonstrate that it was impracticable to comment on this issue, and the Petitioner did, in fact, provide comments raising the same issues raised in the Petition. As noted above, the EPA is not required to provide additional opportunity to comment on the agency's response to comments received. *Community Nutrition Institute v. Block*, 749 F.2d at 58.

Moreover, the Petitioner has not provided substantial support to demonstrate that the MACT standards should be revised based on the CWA. Therefore, this issue is not of central relevance to the outcome of the rule. See *Union Oil v. EPA*, 821 F.2d 768, 683 (D.C. Cir. 1987) (court declined to remand rule because petitioners failed to show substantial likelihood that final rule would have been changed based on internal agency memorandum regarding rule's costs and benefits). While the Petition claims that the concentration of certain pollutants varies considerably in sewage sludge, it fails to demonstrate whether and how the pollutant content in the sludge itself affects emissions. The MACT floor standards must be based on the emissions performance of the best-performing sources, not the pollutant content of the materials combusted. CAA section 129(a)(2). In fact, because SSI units are already well controlled for those pollutants for which sludge content information is collected under the CWA (*i.e.*, cadmium, lead and mercury), the content of these pollutants in the sludge itself has little relationship to the emissions of those pollutants, because the pollutants are removed by the control devices.

As an example, during the EPA's information collection request prior to the rule's proposal, the EPA collected sludge content data that was gathered at the same time as the emissions stack tests. The stack test data were used to calculate the final MACT floors. The EPA reviewed the sludge content data that was collected for lead. The lead concentrations in the sludge itself are within a wide range – from 1.62E-5 to 3.82E-1 (pound lead sludge/dry ton sludge). However, comparing the lead emissions from the incinerator to the lead content of the sludge entering the incinerator shows that the units achieve an average of 97-percent reduction in lead, primarily due to the add-on controls that are used to remove particulate matter from the stack emissions (including sources using only venturi scrubbers, those using venturi scrubbers-impact scrubbers, and those using venturi scrubbers-wet scrubbers-wet electrostatic precipitators). These combinations of controls are generally used by the best-performing SSI. Because of the high reduction in pollutant levels between incoming sludge and emissions due to the add-on controls, the variation in the lead content in the sludge, based on the data collected during the emissions stack testing on the best performing sources, did not affect the emissions performance of those sources. The Petition provides no information to support a contrary conclusion, including any information relating sludge content to emissions from the SSI unit.

The Petition further claims that final MACT floor standards are unachievable by the best-performing units because the EPA did not account for the variability of sludge content and because the EPA established the standards on a pollutant-by-pollutant basis. The EPA disagrees with this assertion, particularly since the agency's analysis shows that most SSI units are currently able to meet the final standards. See 76 FR at 15386. As explained above and in the preambles to both the proposed and final rules, the EPA's variability analysis accounted for the variability in emissions seen among the best-performing sources tested through use of the 99-percent UPL approach, and this variability is reflected in the final limits. Adding additional variability on top of limits that already incorporate appropriate variability would result in standards that are less stringent than the average emissions performance of the best-performing 12 percent of units, and is further not justified, based on the lack of any information showing that sludge content affects emissions.

The Petition claims that certain facilities will not be able to achieve the final emissions limits without making combustion adjustments or adding air pollution control devices to control certain pollutants. However, the Petition does not present emissions data or other information to support this claim, including any specific information on "at least two utilities that believe their units cannot achieve" the final rule mercury standard. Petition at 15. Moreover, the Petitioner had the opportunity to comment on the achievability of the proposed MACT limits and, in fact, did so. The EPA solicited public comments on the emissions baseline calculations and emission reduction analysis supporting it. The Petitioner and other commenters, in fact, commented on the EPA's baseline estimation and estimated emission

reduction, providing the EPA with substantial new information during the public comment period, which the EPA used to adjust the baseline and emissions reductions estimation in the final rule. See NACWA comments at 19 and Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units Summary of Public Comments and Responses at 8-1 (EPA-HQ-OAR-2009-0559-0171). Specifically, the EPA, in the final rule, revised the emissions inventory (204 units), the default parameters assigned to units and unit capacity and feed assumptions in order to provide a more accurate representation of the baseline calculation and the amount of emission reductions each unit would need to achieve to comply with the limits, in order to determine how many units would need to install controls to comply. See 76 FR at 15392 and EPA-HQ-OAR-2009-0559-0155-0155.10 (Revised Cost and Emission Reduction of the MACT Floor Level of Control and Supporting Tables). In the final rule, the EPA estimated that most SSI units (155 of 204 units) are currently meeting the emissions limits. See 76 FR at 15386. Therefore, the Petition does not demonstrate that the Petitioner lacked the opportunity to comment on the achievability of the emissions limits, or that the final emissions limits do not represent the emissions level achieved by the best-performing sources. See *Sierra Club v. EPA*, 479 F.3d 875, 882 (D.C. Cir. 2007).

The Petition also includes statements criticizing the EPA's pollutant-by-pollutant approach to establishing the MACT floor standards. However, the Petition does not demonstrate that it was impracticable to comment on this issue. The EPA explained in the preamble to the proposed rule that the proposed standards were based on the pollutant-by-pollutant approach and our interpretation of the CAA that is the basis for this approach. See 75 FR at 63273. See *Air Transport Ass'n v. FAA*, 169 F.3d at 6. The EPA received several comments on the pollutant-by-pollutant approach, as noted in the final rule preamble (see 76 FR at 15384), including comments from Petitioner opposing the EPA's approach. NACWA comments at 29. The EPA responded to these comments in the preamble to the final SSI rule, explaining how the basis for using this approach is consistent with both the intent of section 129 of the CAA and previous court rulings on this matter. Petitioner's comments included its claims regarding the impact of the inverse relationship between CO and NO_x, and the EPA's response addressed that specific issue as well. See 76 FR at 15386. As noted above, the EPA is not required to provide additional opportunity to comment on the agency's response to comments received. *Community Nutrition Institute v. Block*, 749 F.2d at 58. Therefore, to the extent the Petition requests that the EPA reconsider its establishment of MACT floor standards on a pollutant-specific basis, the Petition does not demonstrate that it was impracticable to comment on that issue, as the Petitioner did, in fact, submit comments on the proposed rule, raising the same issues in the Petition. The EPA, therefore, denies the request for reconsideration of this issue.

4. Subcategories Other than FBI and MHI Units

The Petition requests the EPA reconsider its establishment of subcategories in the final rule and add a third subcategory for a stoker/grate type design that the Petitioner claims are being used at a limited number of POTW. The Petitioner states that they were unaware of this type of unit until after the public comment period closed. The Petition also claims that the regulatory status of the few existing sources of this type and potential new stoker-design sources is uncertain, because they do not appear to fit within either subcategory in the SSI rule. The EPA is denying the Petition for Reconsideration.

First, the Petition does not provide support for its argument that the final rule should be revised to add a third subcategory of units. Based on the information currently available to the EPA, there is no stoker-design system currently employed in practice in the United States, although such units are currently being marketed. See EPA-HQ-OAR-2009-0559-0180 (Other Unit Designs as Related to New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units). The Petition

does not identify any sources at which such units are being used. Therefore, based on the lack of information regarding any currently-operating units of the type the Petition raises and the cursory information in the Petition regarding the design of such units, the Petition does not demonstrate that a separate subcategory would be appropriate or that there is any information that the EPA could use to establish emissions standards for these units as a separate subcategory.

Additionally, the EPA solicited public comment in the preamble to the proposed rule on the subcategorization it proposed for new and existing sources, specifically including a request for whether other types of SSI units existed. See 75 FR at 63268. Therefore, the Petitioner clearly had the opportunity to comment on any other units that did not fit within the proposed subcategories. For these reasons, the EPA is denying the Petition for Reconsideration on this issue.

5. New Source Standards for MHI

The Petition requests that the EPA reconsider the emission limits for new MHI units. The Petition alleges that the limits were not available for public comment, and that the new source performance standards (NSPS) will be difficult to achieve with control technologies demonstrated for use on MHI. The EPA is denying the Petition for Reconsideration on this issue because the Petition does not demonstrate that it was impracticable to comment on this issue.

While the EPA did not propose to establish separate NSPS for MHI units, the proposed SSI rule preamble did solicit public comment on emissions limits for new MHI units that were calculated based on the best-performing MHI unit. See 75 FR at 63272 (Table 3). The Petitioner submitted comments supporting NSPS limits for a MHI subcategory. NACWA comments at 30-31. In the final rule, the EPA established emission limits for new MHI units as a separate subcategory, based on the best-controlled MHI unit. Therefore, Petitioners clearly had an opportunity to comment on NSPS for a separate MHI subcategory and did so. Moreover, the limits for MHI units in the final rule were calculated using the same methodology as the limits in Table 3 of the proposed rule, with some minor modifications (e.g., modified variability assumptions). The fact that the EPA made adjustments to the limits on which it sought comment does not warrant an additional opportunity for comment. See *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d at 547 and *Solite Corp. v. EPA*, 952 F.2d at 485.

The Petition further claims that the standards for new MHI are not achievable for some units, because those units cannot meet the limits in the final rule without using add-on controls which have not been demonstrated for use on MHI units. However, the Petition does not demonstrate that it was impracticable to comment on this issue. See *NRDC v. Thomas*, 838 F.2d 1224, 1242 (D.C. Cir. 1988) and *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d at 547 (agency may make changes to proposed rule without triggering new round of comments, where change are logical outgrowth of proposal and comments). As noted above, the EPA did solicit comment on NSPS for MHI units based on the best-performing unit, and established such standards in the final rule. The final standards were calculated using the same methodology as the standards on which the EPA solicited comment, with appropriate adjustments. Therefore, Petitioners could have provided comments regarding the achievability of the limits on which the EPA solicited comment. In fact, the EPA did receive comments regarding the feasibility of add-on controls for SSI, including activated carbon injection, and responded to those comments in the preamble to the final rule, as well as the comment response document. See 76 FR at 15393 and Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units Summary of Public Comments and Responses at 11-23 to 11-31 (EPA-HQ-OAR-2009-0559-0171). Further, the Petition does not provide support for its argument that the rule should be revised. The Petition simply alleges that the final emissions limits “may

not be achievable” using proven technology, but provides no specific data or other information to support this claim. Therefore, the EPA is denying the Petition for Reconsideration on this issue.

6. Dioxin/Furan Emissions Data Measurements in the MACT Floor Database

The Petition asks the EPA to reconsider the dioxin/furan emission limits and to replace them with work practice standards. The Petition refers to the EPA’s then-proposed emission standards for electric utility steam generating units (Utility MACT) as new information warranting reconsideration of the SSI limits, arguing that similar concerns regarding limits of detection and sulfur-to-chlorine ratios exist within the data for SSI units.

The EPA is denying the Petition for Reconsideration on this issue because the Petition does not provide support for its argument that the final rule should be revised, and therefore does not demonstrate that the issue is of central relevance to the outcome of the final rule. The EPA proposed numeric emissions limits for dioxin/ furans, as required by section 129(a)(4). In the final rule, the EPA responded to comments requesting that the agency adopt work practice standards for periods of startup, shutdown and malfunction. The EPA responded to those comments and explained that, in contrast to section 112 of the CAA, section 129 of the CAA does not authorize the agency to establish work practice standards in lieu of numeric emissions limits for the nine pollutants specified in CAA section 129(a)(4). See Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units Summary of Public Comments and Responses at 15-8 (EPA-HQ-OAR-2009-0559-0171). The EPA previously explained the same interpretation in other section 129 rules. See 74 FR at 51368, 51396 (Oct. 6, 2009). The same interpretation would preclude the EPA from establishing work practice standards in lieu of numeric emissions limits for dioxin/furans in the SSI rule. However, the Petition does not explain how the outcome of the final rule could be different, given this limitation on the EPA’s authority under CAA section 129, nor does it address the fact that the Utility MACT was issued pursuant to CAA section 112, not CAA section 129.

Further, the Petition does not demonstrate that it was impracticable to comment on this issue. Specifically, the Petition raises issues regarding the dioxin/furan data used to establish the SSI floor standards which it could have raised during the public comment period on the proposed rule, but did not. The EPA proposed numeric emissions limits for dioxin/furan, and explained in the preamble to the proposed rule the agency’s approach for addressing non-detect data when calculating the proposed dioxin/furan emission limits. See 75 FR at 63273. Petitioners commented on the proposed standards, but did not recommend a work practice standard in lieu of emissions limits. As noted above, the Petitioner’s comments did request that the EPA establish work practice standards for periods of startup, shutdown and malfunction. As the Petitioner’s comments recommended work practice standards in certain circumstances, they could have similarly recommended such standards for dioxin/furan limits, given their concerns about the non-detect data, expressed for the first time in their Petition as a basis for recommending work practice standards. For these reasons, the EPA is denying the Petition for Reconsideration on this issue.

7. Performance Test Specification Achievability

The Petition requests that the EPA reconsider the requirement that SSI must be operated at 85 percent of their maximum permitted capacity during compliance test runs. The Petition states that the EPA proposed operational requirements for SSI units but did not adopt them in the final rule. Instead, the final rule contains a requirement to conduct compliance tests at 85-percent of maximum capacity. The Petition claims that this requirement is not achievable for POTW that do not generate quantities of

biosolids on a continuous basis and do not have sufficient storage capacity to maintain a large enough quantity of biosolids to maintain the 85-percent operating rate for the duration of the emissions test.

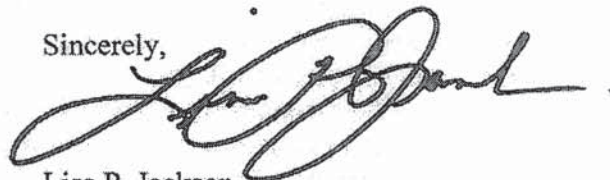
The EPA is denying the Petition for Reconsideration on this issue because the Petition does not demonstrate that it was impracticable to comment on this issue. The EPA proposed to require SSI units to maintain sludge feed rate and sludge moisture content within specified ranges during compliance testing. The Petitioner and other commenters opposed these requirements, and provided the EPA with sufficient information that demonstrated that the proposed operational ranges were unachievable and would have resulted in units having to conduct testing at maximum capacity, which could result in an erratic state of control of the unit. See Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units Summary of Public Comments and Responses at 12-4 to 12-5 (EPA-HQ-OAR-2009-0559-0171). The specific feed rate and moisture content requirements in the proposed rule were intended to ensure good combustion during testing. However, after consideration of comments received, the EPA did not adopt those operating parameter monitoring requirements. Instead, the EPA required units to monitor temperature in the combustion chamber and maintain requirements to report sludge feed rate and moisture during performance tests, to ensure good combustion during testing. See 76 FR at 15396 and Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units Summary of Public Comments and Responses at 12-4 to 12-5 (EPA-HQ-OAR-2009-0559-0171). Further, after consideration of information received during the comment period, the EPA included in the final rule a requirement that performance tests be conducted at 85 percent of the permitted maximum capacity in order to ensure good combustion and stable unit control.

8. Request for Stay of Effective Date of the SSI Rule

The Petition requests that the EPA stay the effectiveness of the SSI rule. Because the EPA is denying reconsideration of the final rule, the Agency does not believe that it is appropriate to stay the effective date. The EPA also notes that on November 28, 2011, the U.S. Court of Appeals for the District of Columbia denied Petitioner's motion for a stay of the rule.

I thank you for raising these issues and appreciate your comments and interest in this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", with a large, stylized flourish at the end.

Lisa P. Jackson
Administrator

EPA-APPROVED STATE OF HAWAII REGULATIONS—Continued

State citation	Title/subject	Effective date	EPA approval date	Explanation
11–60.1–40	Volatile organic compound water separation.	11/14/2003	4/27/2012 [Insert page number where the document begins].	New regulation.
11–60.1–41	Pump and compressor requirements.	11/14/2003	4/27/2012 [Insert page number where the document begins].	New regulation.
11–60.1–42	Waste gas disposal	11/14/2003	4/27/2012 [Insert page number where the document begins].	New regulation.
11–60.1–51	Definitions	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–1.
11–60.1–53	Agricultural burning: permit requirement.	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–19.
11–60.1–54	Agricultural burning: applications.	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–20.
11–60.1–56	Agricultural burning: record-keeping and monitoring.	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–22.

* * * * *

[FR Doc. 2012–10102 Filed 4–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2009–0559; FRL–9664–9]

RIN 2060–AP90

Denial of Reconsideration Petitions on Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petitions for reconsideration.

SUMMARY: The EPA is providing notice that it has denied two petitions for reconsideration of a final rule published in the *Federal Register* on March 21, 2011. The rule established new source performance standards and emission guidelines for sewage sludge incineration units located at wastewater treatment facilities designed to treat domestic sewage sludge, and was issued pursuant to the EPA's authority under Clean Air Act section 129 to regulate solid waste incineration units. After publication of the rule, the EPA received petitions for reconsideration of the final rule from the National Association of Clean Water Agencies (NACWA) (dated May 24, 2011) and the Sierra Club (dated May 20, 2011). After carefully considering the petitions and

supporting information, in reaching a decision on the petitions, EPA Administrator Lisa P. Jackson denied the petitions for reconsideration on April 6, 2012, in separate letters to the petitioners. EPA denied the petitions because they fail to meet the procedural test for reconsideration under CAA section 307(d)(7)(B), and/or are not of central relevance to the outcome of the rule, both of which are necessary conditions precedent to granting reconsideration. The letters explain in detail EPA's reasons for the denials.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Hambrick, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0964; fax number: (919) 541–3470; email address: hambrick.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. How can I get copies of this document and other related information?

This *Federal Register* notice, the petitions for reconsideration, and the letters denying the petitions for reconsideration are available in the docket that the EPA established for the “Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units” under Docket ID No. EPA–HQ–OAR–2009–0559. The document identification numbers for the petitions for reconsideration are: Sierra Club, EPA–HQ–OAR–2009–0559–0173; and NACWA, EPA–HQ–OAR–2009–0559–0174 (petition). The document

identification number for EPA's response letters are EPA–HQ–OAR–2009–0559–0181. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

This *Federal Register* notice, the petitions for reconsideration and the letters denying the petitions can also be found on the EPA's Web site at <http://www.epa.gov/ttn/atw/129/ssi/ssipg.html>. The “Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units” rules were published in the *Federal Register* on March 21, 2011, at 76 FR 15372.

II. Judicial Review

Any petitions for review of the letters denying the petitions for

reconsideration described in this Notice must be filed in the Court of Appeals for the District of Columbia Circuit by June 26, 2012.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 18, 2012.

Lisa P. Jackson,
Administrator.

[FR Doc. 2012-10098 Filed 4-26-12; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket No. 11-82; FCC 12-22]

Extension of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission extends the outage reporting requirements of the Commission's rules to interconnected Voice over Internet Protocol (VoIP) service providers and defers action with respect to reporting of outages of broadband Internet services. In addition, the NPRM for The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers proposal included reporting of both outages based on the complete loss of service and those where, while service is technically available, technical conditions effectively prevent communication. The rule adopted applies only to outages resulting from complete loss of service and only to interconnected VoIP services. Collecting this data will help the Commission help ensure the Nation's 9-1-1 systems are as reliable and resilient as possible and also allow the Commission to monitor compliance with the statutory 9-1-1 obligations of interconnected VoIP service providers.

DATES: The rules in this document contain information collection requirements that have not been approved by OMB. The Federal

Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Gregory Intoccia, Special Counsel, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-1470 or gregory.intoccia@fcc.gov (email). For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith Boley-Herman, (202) 418-0214 or PRA@fcc.gov (email).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PS Docket No. 11-82, FCC 12-22, released to the public on February 21, 2012, and NPRM released in **Federal Register** in Vol. 76, No. 111, June 9, 2011; and correction Vol. 76, No. 121, June 23, 2011. The full text of the document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW., Washington, DC 20554, or online at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0221/FCC-12-22A1.pdf.

Initial Paperwork Reduction Act of 1995

Document FCC 11-184 seeks comment on potential new information collection requirements. If the Commission adopts any new information collection requirement, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Synopsis

I. Introduction

1. Consumers are increasingly using interconnected VoIP services in lieu of traditional telephone service. Interconnected VoIP services allow a wireline or wireless user generally to receive calls from and make calls to the legacy public telephone network, including calls to 9-1-1. As of the end of 2010, 31 percent of U.S. residential telephone subscriptions were provided by interconnected VoIP providers, an increase of 21 percent from the previous year. The public's increased reliance on

interconnected VoIP services is also reflected in 9-1-1 usage trends; approximately 31 percent of residential wireline 9-1-1 calls are made using VoIP service. The availability and resilience of our communications infrastructure, specifically 9-1-1, directly impacts public safety and the ability of our first responders to fulfill their critical mission. The most effective way to maintain emergency preparedness is to work continuously to minimize the incidence of routine outages.

2. The Commission's public safety mission is one of its core functions. In 2008, Congress affirmed the Commission's efforts to accomplish this mission by codifying the requirement for interconnected VoIP providers to provide 9-1-1 services. Also, Presidential Directives and Executive Orders and related documents charge the Commission with ensuring the resilience and reliability of the Nation's commercial and public safety communications infrastructure. The Commission also has the responsibility to ensure continuous operations and reconstitution of critical communications and services, and plays an active role in Emergency Support Function 2 (ESF2), the communications branch of the National Response Framework, which guides the Nation's conduct during an all-hazards response. Executive Order 12472, which establishes the National Communications System, the functions of which include coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government, also requires Commission participation.

3. There is cause to be concerned about the ability of interconnected VoIP subscribers to reach emergency services when they need them. In the past several years, a series of significant VoIP outages has increased our concern about the availability of 9-1-1 over VoIP service. Unlike other outages of voice service, VoIP outages are not reported to the Commission because the current outage reporting requirements apply only to traditional voice and paging communications services over wireline, wireless, cable, and satellite, but not to outages affecting interconnected VoIP services. Without detailed information about these outages, the Commission is unable to know whether and how well providers are meeting their statutory obligation to provide 9-1-1 and Enhanced 9-1-1 (E9-1-1) service.

4. Seeking to ensure the availability of 9-1-1 service, this Report and Order: Extends the Commission's mandatory