

ORAL ARGUMENT NOT YET SCHEDULED

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

**NATIONAL ASSOCIATION OF CLEAN
WATER AGENCIES,**

Petitioner

V.

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

Respondents

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

**NATIONAL ASSOCIATION OF CLEAN
WATER AGENCIES,**

Petitioner

V.

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

Respondents.

No. 12-1236

UNOPPOSED MOTION TO CONSOLIDATE

Pursuant to Fed. R. App. P. 27(a)(1), the National Association of Clean Water Agencies (NACWA) respectfully moves this Court to consolidate the above-captioned case with three related cases currently pending before this Court and place the newly consolidated cases on a single briefing format and schedule. Counsel for the U.S. Environmental Protection Agency (“EPA”) and the other parties in the related cases have confirmed that they do not oppose this motion.

The three related cases pending before this Court are National Association of Clean Water Agencies v. EPA (No. 11-1131), Hatfield Township Municipal Authority v. EPA (No. 11-1167), and Sierra Club v. EPA (No. 11-1185) (collectively, “Related Cases”). The Related Cases are consolidated petitions for review each challenging EPA final agency action entitled “Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units; Final Rule,” 76 Fed. Reg. 15372-15454 (Mar. 21, 2011) (the “SSI Rule”). As explained below, NACWA’s instant petition challenges EPA’s recent denial of NACWA’s petition for administrative reconsideration of the SSI Rule.

Motions governing future proceedings in the Related Cases are due on June 1, 2012, two days after the above-captioned case petition was filed. Therefore, this Motion to Consolidate is being filed immediately after the filing of NACWA’s petition for review in order to allow the new petition to be consolidated with the

Related Cases so that all challenges to the SSI Rule can be raised in a single proceeding.

In support of this motion, NACWA hereby states as follows:

1. NACWA is the association of local governments and clean water agencies who own and operate many of the nation's publicly-owned treatment works, collectively serving the majority of the sewered population of the United States. Many of NACWA's members also own and operate sewage sludge incinerators ("SSIs") for the management of sewage sludge (a.k.a., biosolids) created at these publicly-owned treatment works. Therefore, these local governments and clean water agencies are subject to SSI Rule requirements.
2. On May 6, 2011 NACWA filed a petition for review (No. 11-1131) challenging the SSI Rule. NACWA also submitted a petition for administrative reconsideration on May 24, 2011, asking EPA to reconsider numerous problems with the SSI Rule and to stay the effectiveness of the SSI Rule pending completion of reconsideration proceedings. Sierra Club, petitioner in one of the Related Cases (No. 11-1185) also submitted a petition to EPA seeking reconsideration on different aspects of the SSI Rule from those raised in NACWA's petition.
3. Shortly after the Court entered an Order in the Related Cases setting February 24, 2012 as the date for filing opening briefs, counsel for EPA informed

NACWA and Sierra Club that EPA planned to issue letters by March 23, 2012 taking action on the petitions for reconsideration. Because EPA's decision on the petitions for reconsideration was expected to change issues raised in petitioners' briefs, the parties jointly moved to postpone briefing in the Related Cases to provide additional time for EPA to take final action on the petitions for reconsideration and for new petitions for review challenging EPA's action on the petitions for reconsideration to be consolidated with the Related Cases. The Court granted the motion by Order dated February 13, 2012, and set June 1, 2012 as the date for motions governing briefing format and schedule.

4. On April 6, 2012, EPA issued letters denying both NACWA's and Sierra Club's petitions for reconsideration. EPA's notice announcing these final actions was published in the Federal Register on April 27, 2012. See "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).

5. NACWA filed the above-captioned petition on May 30, 2012, challenging EPA's denial of NACWA's petition for reconsideration. Together, NACWA's petitions challenging the SSI Rule and EPA's denial of reconsideration raise several interrelated legal and factual issues regarding the same Clean Air Act rule

with a single rulemaking record. For example, both petitions raise arguments challenging (a) EPA's lack of statutory authority to set standards for SSIs under Clean Air Act section 129, rather than setting standards for SSIs under CAA section 112 as mandated by Congress, (b) EPA's failure to use data from the statutorily mandated number of SSIs in setting the level of the standards, and (c) promulgation of standards that are not demonstrated to be achievable by the best performing SSIs. In addition, NACWA's petition on denial of reconsideration raises additional issues, such as (a) EPA's failure to provide adequate notice and opportunity to comment on fundamental changes to the final rule, and (b) EPA's failure to subcategorize among types and classes of SSIs when setting standards. Therefore, consolidating the above-captioned petition with the Related Cases will allow more organized and efficient presentation in a single set of briefs to the Court on all issues affecting the SSI Rule.

6. This Motion to Consolidate is unopposed; therefore, NACWA expects that the parties' proposal(s) governing briefing format and schedule in the Related Cases will propose a single consolidated briefing format and schedule for all issues raised in NACWA's petitions.

7. Counsel for NACWA has coordinated by telephone regarding this motion with counsel for EPA, Hatfield Township Municipal Authority (petitioner in No.

11-1167 and intervenor in Nos. 11-1131 and 11-1185), Sierra Club (petitioner in No. 11-1185 and intervenor in No. 11-1131) and MaxWest Environmental Systems, Inc. (intervenor in No. 11-1131). All these parties have confirmed that they do not oppose this motion.

CONCLUSION

For the foregoing reasons, NACWA respectfully requests that the Court consolidate the above-captioned case with the Related Cases (Case Nos. 11-1131, 11-1167, and 11-1185) and place the newly consolidated cases on a single briefing schedule. Motions governing briefing format and schedule in the Related Cases are due to be filed on June 1, 2012.

Dated: May 31, 2012

Respectfully submitted,

/s/ Jeffrey A. Knight .

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May 2012 copies of the foregoing Unopposed Motion to Consolidate was served by United States first-class mail this 30th day of May 2012 upon each of the following and on all registered counsel in National Association of Clean Water Agencies v. EPA (No. 11-1131), Hatfield Township Municipal Authority v. EPA (No. 11-1167), and Sierra Club v. EPA (No. 11-1185).

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