

# Hot Topics in Clean Water Law

January 22, 2014



# Conservation League Sues to Require Daily Permit Limits in POTW Permit to Implement Daily TMDL Wasteload Allocation for Phosphorous - Implications for POTWs (and MS4s) Nationwide.

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# Overview

## Regulatory Backdrop

- Effluent Limits for POTWs
- POTWs' Position
- Regulators Get It

## Backdoor Attack on Monthly/Weekly Limits

- *Friends of the Earth v. EPA*
- EPA's Response to *FOE*

## Direct Challenge to Monthly/Weekly Limits

- Homedale Case Background
- Idaho Conservation League Petition
- Municipal Coalition Amicus Brief

## Potential National Implications

- Precedential Effect of Decision
- Implications for POTWs & MS4s
- Disastrous for Nutrient Programs

## Looking Forward

- Next Steps

# Regulatory Backdrop:

## Effluent Limits for POTWs

- **40 C.F.R. § 122.44(d)(4)(B)**
  - Limits must be “consistent with the assumptions and requirements of any available wasteload allocation” in any applicable total maximum daily load (TMDL)
- **40 C.F.R. § 122.45(d)**
  - Permits for POTWs must use “weekly and monthly average discharge” limits “unless impracticable”

# Regulatory Backdrop:

## POTWs' Position

- **Average Monthly/Weekly Limits Are Typical**
  - Ex: Conventional Pollutants (BOD, TSS), Toxics (Metals)
- **Often Avg. Monthly/Weekly Limits Impracticable**
  - Ex: Nutrients (seasonally or annual limits common)
  - No ecological impact of daily variation in nutrient load
  - Biological treatment efficacy varies (e.g., impact of ambient temperature)
  - Influent flows are variable and unpredictable

# Regulatory Backdrop: The Regulators Get It



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

MAR 3 2004

OFFICE OF  
WATER

## MEMORANDUM

**SUBJECT:** Annual Permit Limits for Nitrogen and Phosphorus for Permits Designed to Protect Chesapeake Bay and its tidal tributaries from Excess Nutrient Loading under the National Pollutant Discharge Elimination System

**FROM:** James A. Hanlon, Director  
Office of Wastewater Management

**TO:** Jon Capacasa, Director  
Water Permits Division, EPA Region

Rebecca Hanmer, Director  
Chesapeake Bay Program Office

Thus, we conclude that due to the characteristics of nutrient loading and its effects on the water quality in Chesapeake Bay and its tidal tributaries and because the derivation of *appropriate* daily, weekly or monthly limits is not possible for the reasons described above, that it is therefore "impracticable" to express permit effluent limitations as daily maximum, weekly average, or monthly average effluent limitations.

# Backdoor Attack on Monthly/Weekly Limits:

## *Friends of the Earth v. EPA*

- *Friends of the Earth v. EPA*, 346 F.Supp.2d 182 (DDC 2004)
- Challenge to annual/seasonal loads in Anacostia River TMDL
- FOE: “*EPA's approval of annual and seasonal TMDLs violates the CWA's ‘express requirement to establish ... total maximum daily load[s].’*”
- District Court: “[*T*]he text of the CWA does not reveal a clear congressional intent to require EPA to calculate only daily TMDLs.”

# Backdoor Attack on Monthly/Weekly Limits:

## *Friends of the Earth v. EPA*

- *Friends of the Earth v. EPA*, 446 F.3d 140 (D.C. Cir. 2006)
- Reversed district court: TMDLs must include daily loads
- *“‘Daily’ connotes ‘every day.’ Doctors making daily rounds would be of little use to their patients if they appeared seasonally or annually. And no one thinks of ‘[g]ive us this day our daily bread’ as a prayer for sustenance on a seasonal or annual basis.”*



# Backdoor Attack on M/W Limits: EPA's Response to *FOE*



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

NOV 15 2006

OFFICE OF  
WATER

## MEMORANDUM

**SUBJECT:** Establishing TMDL "Daily" Loads in Light of the Decision by the U.S. Court of Appeals for the D.C. Circuit in *Friends of the Earth, Inc. v. EPA, et al.*, No.05-5015, (April 25, 2006) and Implications for NPDES Permits

**FROM:** Benjamin H. Grumbles  
Assistant Administrator

**TO:** Director, Office of Ecosystem Protection, Region 1  
Director, Division of Environmental Planning and Protection, Region 2  
Water Division Directors, Regions 3-7 and Region 9  
Director, Office of Ecosystems Protection and Remediation, Region 8  
Director, Office of Environmental Cleanup, Region 10

- All TMDLs should include daily loads
- Develop TMDLs on appropriate timeframe (e.g., yearly), then back-calculate "daily" load to include in TMDL
- *FOE* decision does not mean that NPDES permits must include daily permit limits

# Direct Challenge to M/W Limits: Homedale Case Background

- **Homedale, Idaho Wastewater Treatment Plant**
  - Serves a population of 2,750
  - Design flow rate of 0.45 MGD
  - Discharges to Snake River



# Direct Challenge to M/W Limits: Homedale Case Background

## Homedale WWTP's Permit

- Reissued by EPA Aug. 28, 2013
- Total Phosphorus discharge limits:
  - 11 lbs/day monthly avg.
  - 16.5 lbs/day weekly avg.

### **RESPONSE TO COMMENTS**

**City of Homedale  
Wastewater Treatment Plant  
NPDES Permit # ID-002042-7  
August 16, 2013**

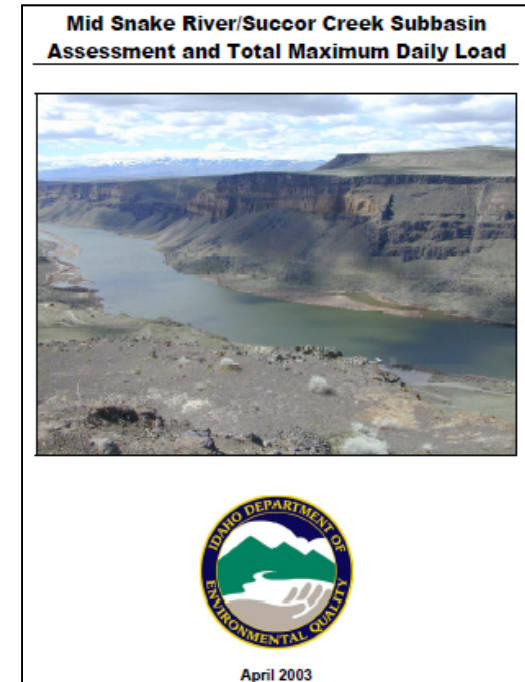
**Response:** The EPA disagrees with ICL's assertion that the TP wasteload allocation (WLA) in the Mid Snake River/Succor Creek Subbasin Assessment and TMDL (IDEQ, April 2003) (TMDL) of 5 kg/day, is expressed as a maximum daily load.

The WLA as expressed in the TMDL is an average monthly load based on a TP discharge concentration of 3.5 mg/L of TP, at the facility's design capacity of 0.4 mgd (maximum monthly design flow). Establishing the WLA as a maximum daily limit would be inconsistent with the TMDL.

# Direct Challenge to M/W Limits: Mid Snake River TMDL

- **TMDL**

- Goal to reduce total phosphorus loadings over 5-month growing season
- Point sources less than 1% of the phosphorus load



The load allocations can be summarized by the following load allocation equation:

$$LC(1667) = NB(453) + LA(1205) + WLA(9)$$

(the MOS is accounted for in the target concentration used to calculate the LC)

# Direct Challenge to M/W Limits: Idaho Conservation League Petition

- Petition filed with EPA Environmental Appeals Board in D.C. on September 30, 2013 includes the following allegations
- Homedale WWTP's wasteload allocation (WLA) for P is 11 lbs/day in Mid Snake River TMDL
- Permit limit must be "consistent with the assumptions and requirements" of the TMDL (§ 122.44(d)(4)(B))
- Average monthly/weekly limits allow Homedale WWTP discharge more than 11 lbs P on some days, contrary to the "requirement" of the TMDL WLA
- Therefore, discharge limit must be 11 lbs each day
- In other words, the TMDL (and § 122.44(d)) trump § 122.45(d)

# Direct Challenge to M/W Limits: Municipal Coalition Amicus Brief



# **Direct Challenge to M/W Limits:**

## **Municipal Coalition Amicus Brief**

- **Monthly/weekly avg. limits are required unless impracticable**
  - Permit is direct application of § 122.45(d)
  - Petition is a collateral attack on the regulation
  - Daily limits impracticable
- **Monthly/weekly avg. limits are consistent with Mid Snake River TMDL (§ 122.44(d)(4)(B))**
  - TMDL developed based on seasonal loadings
  - Daily WLA is a target to achieve annual loading
- **Adverse decision would be disastrous for nationwide nutrient reduction efforts**



# Potential Nationwide Implications: Precedential Effect of Decision

- **Precedential Value of EAB's Decisions**
  - Binding on future EAB decisions
  - Decision will be applicable to future appeals of EPA-issued NPDES permits (e.g., D.C., ID, MA, NH)
  - Questionable precedential value for federal Courts of Appeals and state courts
- **Big Question**
  - How would EPA respond to an adverse decision? Basis for new Agency policy? Rulemaking?



# Potential Nationwide Implications:

## Implications for POTWs

- **Regulatory Uncertainty**
  - Impairs POTW planning and investment
  - Set off new round of state regulatory revisions
- **Daily Limits for Many Pollutants Unachievable**
  - POTWs not designed for daily limits for many pollutants
  - Huge investments already made to meet average annual/monthly/weekly discharges limits
- **Disrupts sewer overflow control programs**
  - Wet weather programs (combined sewer overflows) based upon “typical year”

# Potential Nationwide Implications: Disastrous for Nutrient Programs

*Efforts by Virginia to Reduce Nutrient Loadings to Chesapeake Bay All Predicated on Annual Load Reductions*

- **Water Quality Improvement Fund:** Grants and facility design based on annual average concentrations (VDEQ Memo No. 06-2012)
- **VPDES Permits:** Limits for total nitrogen and total phosphorus for each permitted facility expressed as annual mass loads. (Va. Code. § 62.1-44.19:14)
- **Technology-based standards:** “[L]imitations . . . shall be expressed as annual average limitations.” (§ 62.1-44.19:14)
- **Nutrient Credit Exchange:** Credits defined as difference between annual mass load allocation and nutrients delivered to tidal waters annually (§ 62.1-44.19:13)

# Potential Nationwide Implications: Disastrous for Nutrient Programs

## Other Examples

- Maryland Bay Restoration Act specifies annual average concentration designs and funding for those designs
- Long Island Sound Program (CT/NY)
- NC Tar-Pamlico, Neuse River (upper and lower) based on annual loadings and POTW designs to achieve same
- Catawba River (SC) monthly average point source bubbled loadings (NC & SC dischargers)
- Florida (2/3 year geomean for nutrient criteria)

# Looking Forward: Next Steps

- **Schedule Before EAB**
  - EPA response brief filed December 6, 2013
  - Amicus brief filed December 23, 2013
  - Petitioner's reply brief due January 24
  - Environmental Appeals Board likely to rule in late spring of 2014
- **Any Appeal to Ninth Circuit Court of Appeals**
  - Interesting precedential implications

# Questions?



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# Biosolids: Legal Challenges to Land Application and Policy Considerations for Utilities of the Future

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McGuireWoods LLP

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# **Biosolids are safe and environmentally beneficial when land applied according to existing regulations**

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- **Cost-effective**
  - In many states, biosolids land application is currently a lower cost option than land filling or Class A processing
- **Environmentally beneficial**
  - Recycling nutrients and carbon via land application tends to enhance sequestration of atmospheric carbon and offset carbon emission associated with fertilizer production
- **Safe – Excerpt from Biosolids Expert Panel Report:**

“...there does not seem to be strong evidence of serious health risks when biosolids are managed and monitored appropriately. Human health allegations associated with biosolids usually lack evidence of biological absorption, medically determined human health effects, and/or do not meet the biological plausibility test.” (Virginia).

# Potential Uses

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- **Agricultural land application**
    - Fertilizer/soil conditioner for human crop production
    - Fertilizer for animal crop production – pastures
  - **Non-agricultural land application**
    - Forest crops (land restoration and forestry)
    - Land reclamation (roads, urban wetlands)
    - Reclaiming mining sites
    - Landscaping, recreational fields, and domestic use
  - **Energy recovery – Energy production**
    - Heat generation, incineration, and gasification
    - Oil and cement production
    - Commercial uses
- 



# **Recent changes in biosolids regulations in MD**

## **Impact on Biosolids Management Programs**


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- **Increased costs for biosolids land application**
    - Hauling costs projected to be  $\approx$  30% higher beginning in late 2013
    - More Maryland biosolids hauled to Virginia
    - Construction of seasonal cake storage facilities
    - Impacts could accelerate if Maryland farmers cease seeing value in land application programs
  - **Viable alternatives to land application include:**
    - Land-filling
    - Hauling to other states
    - Class A, EQ Product Production
    - Waste-to-Energy
- 

# Land application is still opposed and several states and localities have strictly limited its practice

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## State Revisions of 503 Rule

- For land application, regulatory changes appear to be focused on state and local levels. Several states have moved forward with significant changes to their requirements.
  - **Texas and Florida** made modifications to state land application regulations that effectively restrict Class B land application, albeit (in Texas) in a subtle manner. Texas revisions enacted several years ago require both a permit and a public hearing for Class B land application, as well as the implementation of a Nutrient Management Plan (NMP). Since promulgation of this rule, the number of land appliers in the state has diminished by 75%, and the total volume of applied biosolids has fallen 25%.
  - In **Florida**, land application in the Okeechobee region has been forbidden since 2008 (Class A or Class B), and additional land has been added near Orlando where Class B land application will be prohibited.
  - **Ohio and Washington** have limited options for pathogen reduction options, and Vermont has been considering changes.
  - Several counties in **mid-Atlantic states, California, and Georgia** have attempted to enact bans or other restrictions on land application.
  - Even in agriculture-friendly **Virginia**, local bans have been proposed and citizen-based monitoring program have been developed and adopted by some counties. Appomattox, Surry, and several other Virginia counties have local biosolids ordinances, which establish such programs (Virginia Biosolids Council, 2006).
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## **Land application is still opposed by some and several states have strictly limited its practice**

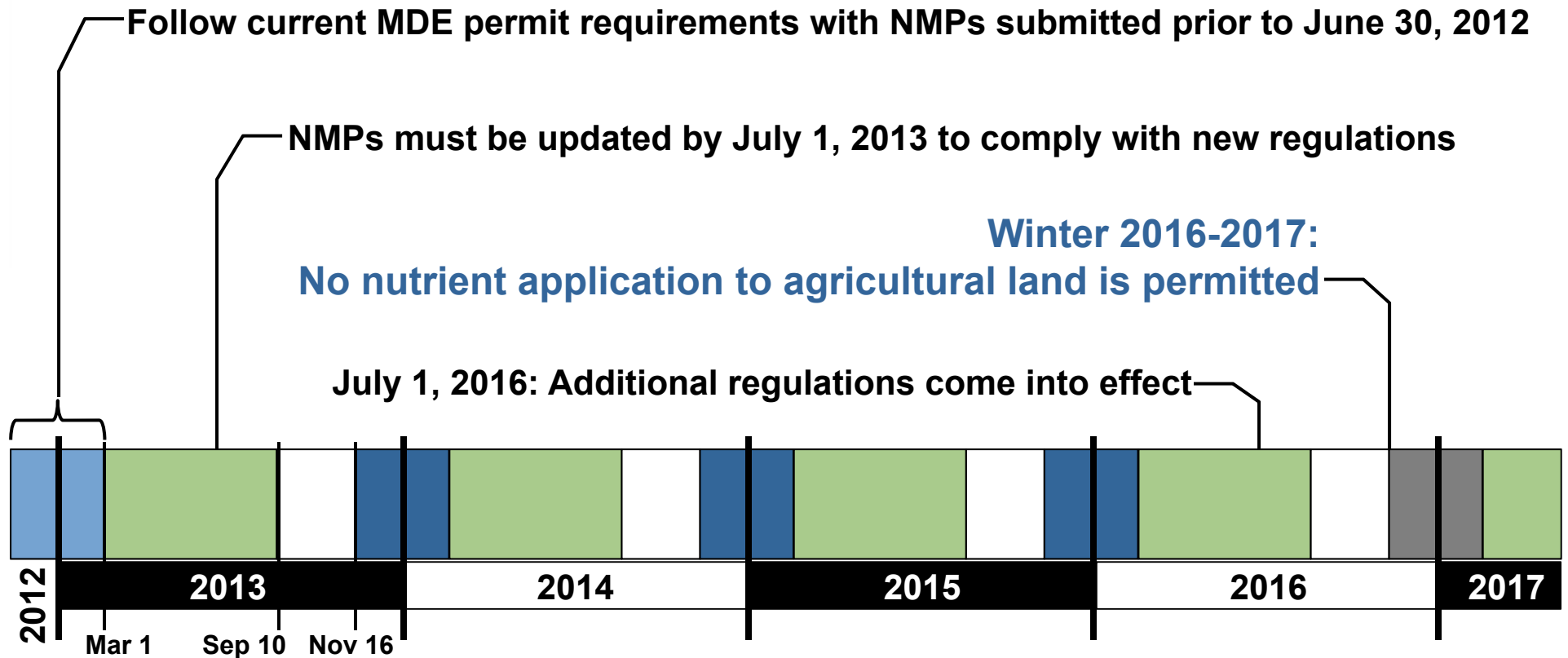
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- **Interest remains in restricting biosolids in some states**
  - Several Bills proposed annually in many states
- **Maryland has provided a case study for restricting biosolids land application based on nutrients, not “ick”**
  - A 25 DT/day WWTP will discharge about 350,000 lbs of P per year as biosolids, although only 7,000-10,000 is leachable by water

# Recent changes in biosolids regulations in MD

## Approximate Timeline

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# **Recent changes in biosolids regulations in MD**

## **Impact on Biosolids Management Programs**

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    - Land-filling
    - Class A, EQ Product Production
    - Waste-to-Energy
- 

# Biosolids management costs:

## Existing Class B vs. Marketed EQ Pellets

Existing Class B Biosolids (25 DTPD)		Class A/EQ Biosolids Marketing/Distribution	
Costs	\$US/Year	Costs	\$US/Year
<ul style="list-style-type: none"> <li>Dewatering Power</li> <li>Dewatering Polymer</li> <li>Biosolids Disposal</li> <li>VADEQ Monitoring Fee</li> <li>Revenue</li> </ul>	\$55,000/year \$265,000/year \$820,000/year \$70,000/year  NA <hr/> \$1,210,000/year ÷ 9450 DTPY <hr/> \$130/DT	<ul style="list-style-type: none"> <li>Dewatering Power</li> <li>Dewatering Polymer</li> <li>Heat Energy</li> <li>Electrical Energy</li> <li>Labor</li> <li>Maintenance Cost</li> <li>Annualized Debt Service</li> <li>Revenue</li> </ul>	\$55,000/year \$265,000/year \$390,000/year† \$110,000/year \$190,000/year \$160,000/year \$1,350,000/year  (\$190,000)/year <hr/> \$2,330,000/year ÷ 9450 DTPY <hr/> \$245/DT
Revenue		Revenue	
<ul style="list-style-type: none"> <li>NA</li> </ul>		<ul style="list-style-type: none"> <li>Stamford, CT Market Study: \$20-30/DT for pellets</li> <li>Andritz Estimate: \$20/DT for pellets</li> <li>Leesburg sells pellets to commercial users at \$70/DT</li> <li>Leesburg distributes free to utility customers</li> <li>Use \$20/DT for this cost estimate</li> </ul>	

† Digester gas can offset heat energy costs for drying

# Biosolids management costs:

## Local vs. Regional Biosolids Facility

25 DT/day @ 27% Solids		50 DT/day @ 25% Solids‡	
Costs	\$US/Year	Costs	\$US/Year
<ul style="list-style-type: none"> <li>Dewatering Power</li> <li>Dewatering Polymer</li> <li>Heat Energy</li> <li>Electrical Energy</li> <li>Labor</li> <li>Maintenance Cost</li> <li>Annualized Debt Service</li> </ul>	\$55,000/year \$265,000/year \$390,000/year† \$110,000/year \$190,000/year \$160,000/year \$1,350,000/year	<ul style="list-style-type: none"> <li>Dewatering Power</li> <li>Dewatering Polymer</li> <li>Heat Energy</li> <li>Electrical Energy</li> <li>Labor</li> <li>Maintenance Cost</li> <li>Annualized Debt Service</li> </ul>	\$110,000/year <sup>X</sup> \$530,000/year <sup>X</sup> \$825,000/year† \$180,000/year \$190,000/year \$240,000/year \$2,020,000/year
<ul style="list-style-type: none"> <li>Revenue</li> </ul>	(\$190,000)/year <hr/> \$2,330,000/year ÷ 9,450 DTPY <hr/> \$245/DT	<ul style="list-style-type: none"> <li>Revenue</li> </ul>	(\$380,000)/year <sup>X</sup> <hr/> \$2,030,000/year ÷ 18,900 DTPY <hr/> \$195/DT
Revenue			
<ul style="list-style-type: none"> <li>Stamford, CT Market Study: \$20-30/DT for pellets</li> <li>Andritz Estimate: \$20/DT for pellets</li> <li>Leesburg sells pellets to commercial users at \$70/DT</li> </ul>		<ul style="list-style-type: none"> <li>Leesburg distributes free to utility customers</li> <li>Use \$20/DT for this cost estimate</li> </ul>	

X Assume linear increase on dewatering polymer and power costs, and pellet sales revenue for regional facility

† Digester gas can offset about \$100,000 in heat energy costs for drying, and would reduce drying cost by approximately \$5-10/DT

‡ Does not include cost of transportation from treatment plant to regional facility

# Project costs for recent waste to energy facilities compare favorably with land application on a life-cycle basis

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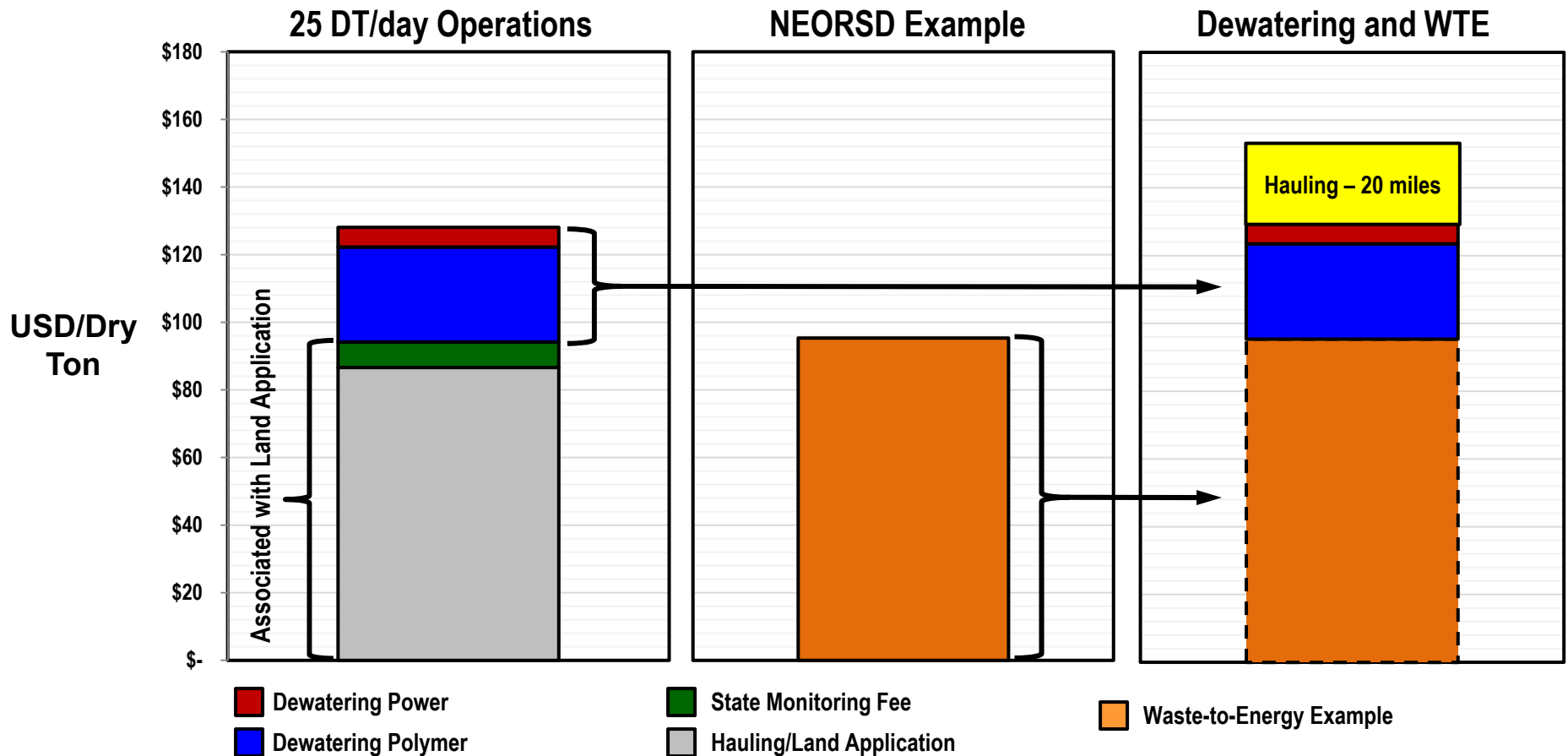
Data from NEORSD's (Cleveland, OH)  
biosolids management facility

Cost Item	Cost (USD/DT)

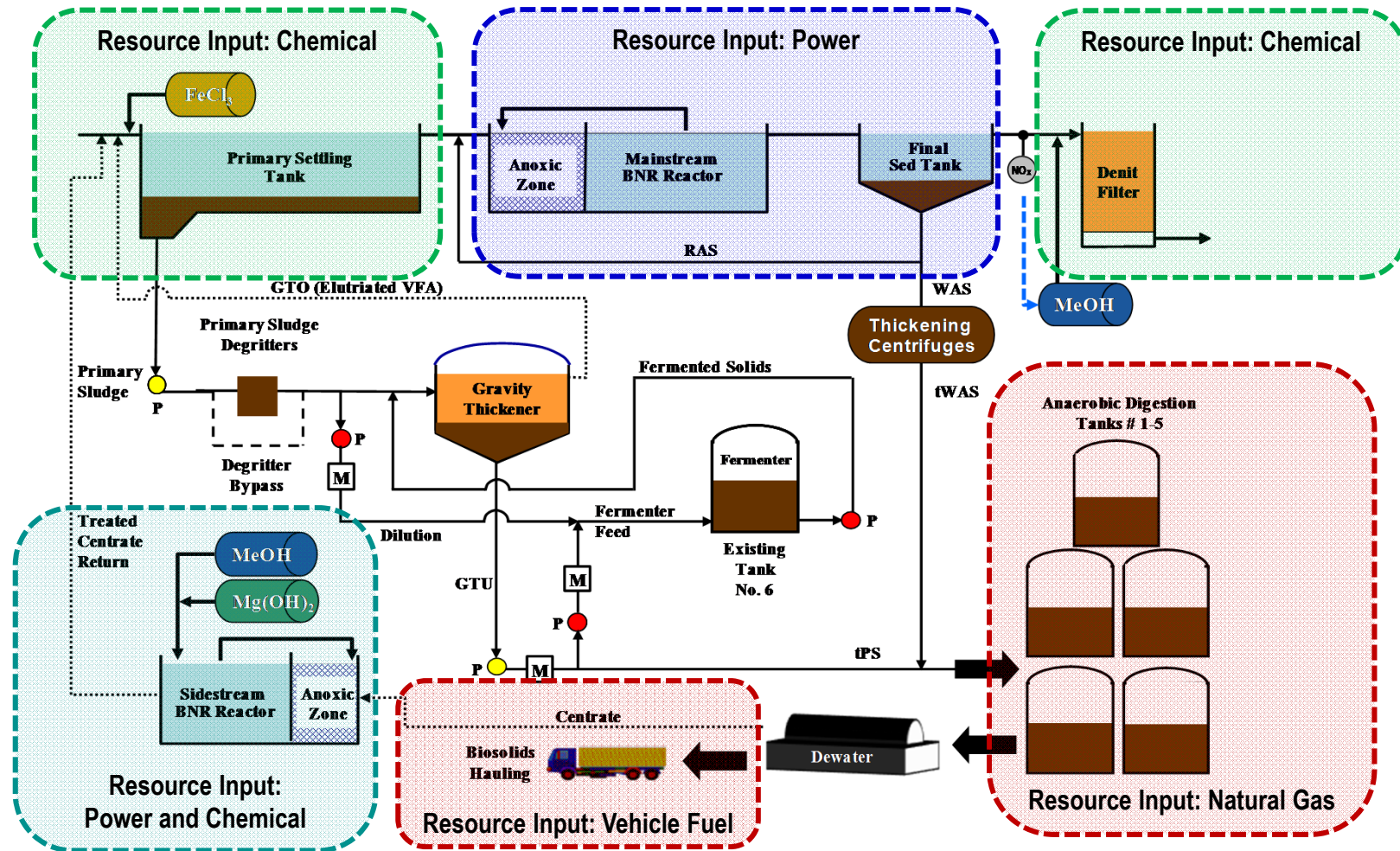
- 3 – 100 DT/day Fluidized Bed Incinerators
- 150 DT/day feed rate
- Combined solids from 2 WWTPs
- 3 – Waste heat boilers
- 1 – Condensing steam turbine (2.6-3.2 MW)



# Project costs for recent waste to energy facilities compare favorably with land application on a life-cycle basis



# The cost-impacts of exporting organics and nutrients to a Waste-to-Energy facility are specific to each WWTP



# EPA Ruling Opens Door to Environmentally Beneficial Waste Treatment Technology

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# EPA Ruling Opens Door to Environmentally Beneficial Waste Treatment Technology

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**EPA Letter dated Dec. 19, 2013, determined that federal emissions guidelines and compliance rules for sewage sludge incinerators do not apply to a MaxWest's sludge gasifier located near Sanford, Fla.**

- **Technology breaks down sewage sludge through heating in an oxygen-starved environment prevents combustion, and is not regulated as an incinerator; second energy-saving step “thermal oxidizer process heater” is also exempt from regulation as an incinerator;**
- **Self-sufficient closed-loop system.**

**The determination was in response to an “Applicability Determination” request submitted on behalf of MaxWest.**

# EPA Ruling Opens Door to Environmentally Beneficial Waste Treatment Technology

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- **EPA ruled that sewage sludge gasification technology patented by MaxWest Environmental Systems Inc., is not an incinerator for purposes of the SSI Rule.**
- **Gasification technology also eliminates air and groundwater pollution risks that landfill disposal of sludge poses.**

# EPA Ruling Opens Door to Environmentally Beneficial Waste Treatment Technology

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**It is unclear how EPA will choose to categorize and regulated gasification units going-forward**

- **MaxWest's EPA victory presents a clear distinction between its technology and traditional incineration.**
- **Lowers costs of compliance for certain gasification technologies.**
- **Enables greater market demand for alternative conversion technologies.**

# **Investigation of WTE as an alternative to land application is warranted based on potential costs, benefits, and regulatory environment**

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- **Many questions specific to utilities need to be answered to assess such a project's feasibility and cost-competitiveness**
    - **Public partners, specific technologies and costs, location, renewable energy potential, impact on plant operations, etc.**
  - **The economics of such a facility improve with increased scale**
  - **A Waste-to-Energy facility is more likely to leverage private funding than a Class A/EQ product production facility**
  - **The time to begin is now**
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# Biosolids: Legal Challenges to Land Application and Policy Considerations for Utilities of the Future

January 22, 2014

NACWA Webinar



Pollutant Disclosure Requirements to  
Invoke Clean Water Act Section 402(k)  
Permit Shield Defense: Potential  
Impacts of *Southern Appalachian Mt.  
Stewards v. A&G Coal Corp.*

**Karen Bennett**  
Hunton & Williams

# Clean Water Act Permit Shield

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- What is the Permit Shield?
- Why is the shield important?
- What is the scope of the shield?
- How is litigation being used to limit the shield's protection?
- What does this mean for NPDES dischargers?

# What is the Permit Shield?

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- CWA provides that once a permit is issued, compliance with a permit “shall be deemed compliance for purposes of sections [309 (government enforcement actions), 505 (citizen suits) ... 301 (effluent limits) and 302 (water quality based limits)]. CWA Sec. 402(k), 33 U.S.C. 1342 (k).

- Permit shield provides:
  - Complete defense against CWA enforcement actions and citizen suits
  - Notice of compliance obligations
  - Finality – planning, financing and operation

# How has EPA Interpreted the Permit Shield?

- EPA has promulgated regulations interpreting the statute. 40 C.F.R. 122.5, 123.25.
- EPA issued Permit Shield Policy Guidance in 1994; revised in 1995 to clarify application and scope:
  - (1) pollutants specifically limited in the permit,
  - (2) pollutants “specifically identified in writing ... during the permit application process,” and
  - (3) “[p]ollutants not identified as present but which are constituents of wastestreams, operations or processes that were clearly identified in writing during the permit application process and contained in the administrative record which is available to the public.” EPA Revised Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits (Apr. 11, 1995), *available at* <http://www.epa.gov/npdes/pubs/owm0131.pdf>.

# Acknowledges Limited Ability to Completely Control Discharges

- EPA recognizes a permittee should not be held responsible for what it cannot know or control
  - “in the case of POTWs, providing a permit shield only for pollutant discharges fully and completely characterized in the permit application could represent a significant burden on POTWs if they were required to identify every pollutant discharged.” Fed. Reg. 62,546, 62,553 (Dec. 6, 1995); 64 Fed. Reg. 42,434, 42,441 (Aug. 4, 1999).

# How Have Courts Interpreted the Permit Shield?

## ➤ Courts have deferred to EPA's Policy

- *Atlantic States Legal Found. v. Eastman Kodak Co.*, 12 F.3d 353 (2d Cir. 1993) – Adopted EPA's approach finding discharges of pollutants not listed in a permit was lawful, noting EPA recognized impossibility of regulating every pollutant in a discharge.
- *In re Ketchikan Pulp Co.*, 7 E.A.D. 605 (EPA 1998), 1998 WL 284964 - Permit shield does not apply where discharger failed to disclose known waste water discharges.
- *Piney Run Preservation Ass'n v. Cnty. Comm'rs of Carroll Cnty.*, 268 F.3d 255 (4<sup>th</sup> Cir. 2001) - Prong (2) of EPA policy shields discharger where discharges were reported as part of waste streams but agency did not include specific limits in permit.

- Permit Shield extends to general permits; appeals pending
  - *Sierra Club v. ICG Hazard, LLC*, No. 11-148-GFVT, 2012 WL 4601012 (E.D. Ky. Sept. 28, 2012) – Finding permit shield applies to general NPDES permits.
  - *Alaska Cmty. Action on Toxics v. Aurora Energy Servs., LLC*, 940 F. Supp. 2d 1005 (D. Alaska 2013) – Disclosure of waste streams in pollution prevention plan and agency's history and familiarity with the facility and industry as a whole as evidence of agency's awareness of the nature of the discharges.



- Permit shield may be limited
  - *S. Appalachian Mountain Stewards v. A&G Coal Corp.*, No. 2:12CV00009, 2013 WL 3814340 (W.D. Va. July 22, 2013) – Even if a permittee provides all the data required by the permit application and regulations, it is still liable for pollutants it did not “actually disclose.” (appeal pending 4<sup>th</sup> Cir.)
  - *Ohio Valley Envtl. Coal. v. Marfork Coal*, No. 5:12-1464, 2013 WL 4506175 (S.D. W. Va. Aug. 22, 2013) – Court found “no violation of water quality standards” language an enforceable permit limit outside the permit shield; *OVEC v. Fola Coal Co.*, No. 212-3750, (S.D. W. Va. Dec. 19, 2013).

# What Does This Mean?

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- Scope of permit shield protection is under attack
- Dischargers must be diligent when it comes to reporting waste streams associated with NPDES permits and reporting any changes in discharge during the permit cycle
- Dischargers should be wary of accepting permits that incorporate state water quality standards by reference
- Dischargers should document and keep detailed records of all communications with regulatory authority during permit negotiations and for the life of the permit

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