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**Ken Kirk**

March 11, 2008

Benjamin Grumbles  
Assistant Administrator  
Office of Water, U.S. Environmental Protection Agency  
Ariel Rios Building, 1200 Pennsylvania Avenue, N. W.  
Washington, D.C. 20460  
*Via Facsimile*

Dear Mr. Grumbles,

*Ben*

The recent decision by the U.S. District Court for the Southern District of Georgia in the matter of *McElmurray v. U.S. Department of Agriculture (USDA)*, regarding claims that biosolids land application resulted in contaminated pastureland, has received a significant amount of national attention over the last few days. Press coverage on the decision has shown that the District Court's statements can be used to cast doubt on the beneficial reuse of biosolids through land application, without regard to the facts in the case or those relating to the safety of land application in general. We understand that the U.S. Attorney representing the USDA is now considering an appeal to the 11<sup>th</sup> Circuit Court of Appeals. NACWA believes that a successful appeal of this decision could help to ensure that the District Court's statements do not become the foundation for renewed attacks on this environmentally responsible and beneficial practice.

The risk-based pollutant levels in your office's Part 503 regulations, developed after extensive sampling and risk assessment, together with the other management restrictions in those regulations, provide a scientific framework to further ensure that biosolids land application is protective of human health and the environment. NACWA believes it is essential that the USDA appeal this decision and seek to correct any misimpressions the District Court's decision may have left regarding the effectiveness of the Part 503 regulations and the safety of biosolids. NACWA encourages you and your staff to work with the USDA as they consider their next steps in this matter to ensure they fully understand the implications of the District Court's decision for the national biosolids program.

As always, please consider me and my staff available to assist you in any way as you work on this issue. NACWA has always appreciated EPA's strong support of the national biosolids program and understands that EPA is preparing a 'Desk Statement' in response to the recent press coverage. NACWA would be happy to provide you with any relevant information or assistance on that as well.

Sincerely,



Ken Kirk  
Executive Director