ENCLOSURE A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB, Plaintiff, v. LISA P. JACKSON, Administrator, U.S. Environmental Protection Agency, Defendant.	Case No. 1:01CV01537 and Consolidated Cases Judge Paul L. Friedman

EPA'S MEMORANDUM IN SUPPORT OF
MOTION TO AMEND ORDER OF MARCH 31, 2006

Defendant, Lisa P. Jackson, Administrator, United States Environmental Protection Agency ("EPA"), moves the Court to further amend Paragraphs 1(i) and 3 of the Order of March 31, 2006 ("2006 Order"), as amended on September 20, 2010, to allow EPA additional time to complete its obligations.[1] Plaintiff Sierra Club opposes this motion.

In these Paragraphs, the Court established a schedule for EPA to complete the duties mandated by section 112(c)(3) and (k)(3) and 112(c)(6) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(c)(3) and (k)(3), and (c)(6). Paragraph 1(i), which addresses the obligations under section 112(c)(3) and (k)(3), requires EPA to "promulgate emission standards under [CAA] section 112(d) or section 129 assuring that area sources representing ninety percent of the area source emissions of the 30 urban hazardous air pollutants are subject to emissions standards by January 16, 2011." Order (Sept. 20, 2010). Paragraph 3, in relevant part, requires that "[n]o

[1] For the Court's convenience, EPA has attached the 2006 Order and the amendments dated September 10, 2009, April 13, 2010, and September 20, 2010, as Exhibits 1 to 4 hereto. The Court's opinion dated August 2, 2006, *Sierra Club v. Johnson*, 444 F. Supp. 2d 46 (D.D.C. 2006), is attached as Exhibit 5.

later than January 16, 2011, the Agency shall promulgate emission standards assuring that sources accounting for not less than ninety percent of the aggregate emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under Section 112(d)(2) or (d)(4)." *Id*.

For each of these obligations, the key is reaching the ninety percent threshold. Since 2006, EPA has promulgated final rules establishing emission standards for 48 source categories pursuant to Paragraph 1. Declaration of Panagiotis E. Tsirigotis, Director of the Sector Policies and Programs Division, Office of Air Quality Planning and Standards, Office of Air and Radiation, EPA, ¶ 9 (Dec. 6, 2010) ("Decl."). Exhibit 6. Pursuant to Paragraph 3, EPA has promulgated one rule. *Id*. ¶ 10. As required by Paragraph 3 of the September 20, 2010 Order, EPA expects to issue emission standards for one additional category by December 16, 2010. *Id*.

With regard to Paragraph 3 of the Order, in order to reach the ninety percent threshold, EPA needs to complete additional emission standards for certain hazardous air pollutants emitted by major source boilers and certain area source boilers and commercial and institutional solid waste incineration ("CISWI") units. Decl. ¶¶ 11, 41-42 and n.2. On April 29, 2010, EPA published proposed emission standards for these sources. It received over 4,800 individual comments in response to the proposed standards. Decl. ¶ 34. The comments raise issues that EPA had not fully considered and also provided substantial additional data that raise questions about some of the Agency's initial conclusions. *See id.* Based on its initial review of the significant comments, EPA's preliminary assessment is that the comments may materially affect important decisions relating to source categorizations and coverage for the final emission standards. Decl. ¶ 34-35.

As explained more fully below, EPA believes that the purpose of section 112(c)(6) and the public interest will be best served if the Agency's deadline in Paragraph 3 is extended from January 16, 2011, to April 13, 2012, so that EPA can re-propose the rules for further public comment to ensure that the final rules are logical outgrowths of the proposals. *See Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983) (EPA cannot promulgate a final rule that materially differs from the proposal unless the changes are a "logical outgrowth" of the proposal.); s*ee* Decl. ¶ 36. EPA anticipates that, if the Court grants the requested modification, it will publish the revised proposals for these three rules no later than June 1, 2011, and promulgate the final emission standards no later than April 13, 2012. Decl. ¶ 37. This is an achievable, but very aggressive schedule for a re-proposal. The requested extension will also provide EPA the opportunity to respond fully to all of the significant comments received from the public on the proposed emission standards. Decl. ¶ 36-37. These steps would significantly bolster the strength of the final rules and would enable the Agency to obtain additional input from the public on three complex, inter-related rules that impact almost 200,000 boilers and 176 CISWI units across the United States. *Id.* ¶¶ 26-27.

Because the standards for certain area source boilers are necessary for EPA to complete its obligations under section 112(c)(3) and (k)(3) and 112(c)(6), the deadline for EPA to complete all the emission standards required under Paragraph 1(i) and 3 should be extended to the same date. To meet its obligations under Paragraph 1 and section 112(c)(3) and (k)(3), EPA must also issue emission standards for sewage sludge incineration units ("SSI"). Decl. ¶¶ 9-11. EPA should be able to complete the SSI rule before April 13, 2012 because the Agency currently does not plan to re-propose the SSI standards. Decl. ¶ 48. The Agency, however, must address the more than 80 individual comments received in response to the SSI proposal before the

comment period closed on November 29, 2010. *Id*. ¶¶ 47-48. In order to fully meet its obligation to respond to these comments, EPA requests that it be allowed until July 15, 2011, to take final action on the SSI standards. *Id*. ¶ 49. This will enable EPA to reduce the risk that a party later seeking judicial review could successfully contend that EPA did not adequately respond to a particular comment. *See North Carolina v. EPA*, 531 F.3d 896, 928 (D.C. 2008). EPA therefore requests that Paragraph 1(i) be amended to require EPA to promulgate standards for one additional area source category by July 15, 2011. EPA requests that Paragraph 1(i) be further amended to require the Agency to promulgate emission standards under CAA section 112(d) or section 129 assuring that area sources representing ninety percent of the area source emissions of the 30 urban hazardous air pollutants are subject to emissions standards by April 13, 2012.

In the alternative, should the Court deny EPA time to re-propose the standards for major source boilers and certain area source boilers and CISWI units, EPA requests that the deadline for completing its obligations under Paragraph 3 be extended until June 15, 2011, to allow the Agency time to fully respond to the 4,800 individual comments received in response to the proposals, and that Paragraph 1(i) be similarly extended. The Agency also seeks to extend the deadline for completing obligations under Paragraph 1(i) to July 15, 2011, so that EPA can fully respond to the comments on the proposed SSI standards.

BACKGROUND

A. Statutory Background

The purpose of section 112 as a whole is to regulate emissions of hazardous air pollutants ("HAP"). To meet this goal, Congress established a complex process for standard-setting set forth in section 112(a)-(k). The statute addresses standards for both major and area sources of

HAP emissions. A "major source" is a stationary source or group of stationary sources that emits 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1). An area source is a stationary source that emits HAPs, but that does not qualify as a major source. *Id.* § 7412(a)(2).

Section 112 establishes a comprehensive program for regulating source categories that emit HAP. The first step requires the listing of major and area source categories for regulation under section 112, and the next step concerns the promulgation of section 112(d) emission standards for listed source categories. The listing of a source category is a condition precedent to the requirement to promulgate emission standards under section 112(d). Paragraphs 1(i) and 3 of the 2006 Order address the second step of regulation under section 112(d) – the establishment of emission standards for source categories listed pursuant to section 112(c)(3) and (k)(3)(B) and 112(c)(6).

1. Section 112(c)(6)

Section 112(c)(6) requires EPA to take action with respect to seven specific HAPs.[2] 42 U.S.C. § 7412(c)(6). The statute establishes two distinct obligations. First, by November 15, 1995, EPA shall list sufficient source categories to ensure that sources accounting for at least ninety percent of the aggregate emissions of each of these specific pollutants are subject to regulation. The list can include both major and areas sources. Second, by November 15, 2000, EPA shall publish emission standards applicable to these sources pursuant to section 112(d)(2) or (d)(4).

[2] Alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8- tetrachlorodibenzofurans, and 2,3,7,8-tetrachlorodibenzo-p-dioxin. 42 U.S.C. § 7412(c)(6).

Under section 112(d)(2), EPA imposes emission standards that require "the maximum degree of reduction in emissions of [HAPs]" that EPA concludes are achievable based on a consideration of factors identified in the statute. These are referred to as "maximum achievable control technology" or "MACT." Setting a MACT standard is a complex, multi-step process. The MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of existing sources (for which the Administrator has emissions information) or the best performing 5 sources for source categories with less than 30 sources (CAA section 112(d)(3)(A) and (B)). This level of minimum stringency is called the MACT floor. For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best controlled similar source (CAA section 112(d)(3)). EPA also must consider more stringent ‘‘beyond-the-floor" control options. When considering beyond-the-floor options, EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy, and nonair environmental impacts when doing so. *See Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 857-58 (D.C. Cir. 2001). Section 112(d)(4) authorizes EPA to set a health-based standard for a limited set of hazardous air pollutants for which a health threshold has been established, and that standard must provide for "an ample margin for safety." 42 U.S.C. § 7412(d)(4).

2. Section 112(c)(3) and (k)(3)(B)

Section 112(c)(3) and (k)(3)(B), 42 U.S.C § 7412(c)(3), (k)(3)(B), govern the listing and regulation of area sources. Section 112(k)(3)(B), which requires EPA to publish a strategy to control emissions of HAPs from area sources in urban areas, provides, in pertinent part, that:

> a. EPA shall identify not less than 30 HAPs which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas; and

> b. EPA shall list area source categories emitting these 30 HAPs and shall assure that the "sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified [HAPs]" are regulated.

Section 112(c)(3) similarly provides that EPA shall list sufficient categories to ensure that "area sources representing 90 percent of the area source emissions of the 30 [identified HAPs]" are regulated. In addition, section 112(c)(3) requires that EPA promulgate the emission standards by November 15, 2000. These standards may be set under section 112(d)(2) or (d)(4), as described above, or under section 112(d)(5), which authorizes EPA to establish emission standards for area sources that reflect "generally available control technologies" or management practices.

B. Litigation Background

These consolidated cases were filed in 2001. A number of claims were resolved in a partial consent decree entered in 2003. The decree required EPA to take a number of actions, including, but not limited to, the promulgation of emission standards for specified source categories listed under section 112(c)(3) and (k)(3)(B) and 112(c)(6). Despite continued negotiations, the parties were unable to settle the remaining claims and filed cross-motions for summary judgment. The only issue presented was remedy, that is, how much time should EPA be allowed to complete the required regulations. 2006 Order at 1.

The Court established a schedule in the 2006 Order. In relevant part,[3] the Court required EPA to promulgate emission standards for source categories listed under section 112(c)(3) and (k)(3)(B) by issuing a set number of standards every six months between December 15, 2006, and December 15, 2008, and issuing standards for any remaining categories by June 15, 2009.

[3] The Court also required EPA to issue regulations required by CAA section 183(e), 42 U.S.C. § 7511b(e). 2006 Order ¶ 4. Because EPA has met this obligation, the requirement is not relevant to the instant motion.

Id. ¶ 1(a)-(f). In Paragraph 3, the Court required EPA to complete its obligation under section 112(c)(6) by December 15, 2007.

As explained further below, EPA has completed a substantial amount of work to date pursuant to the Order. Specifically, EPA has completed its obligations with respect to section 183(e), issued emission standards for over 48 different source categories pursuant to Paragraph 1(i) and section 112(c)(3) and (k)(3), and issued standards for one source category under section 112(c)(6). Decl. ¶¶ 9-10. Since 2006, the Court has granted a number of unopposed motions to extend the deadlines in the Order.[4] The most recent extensions were granted on September 10, 2009, April 13, 2010, and September 20, 2010. Exh. 2-4. On September 10, 2009, the Court amended Paragraph 3 to require EPA to complete its section 112(c)(6) obligations by April 30, 2010, unless, no later than April 15, 2010, EPA signed notices of proposed rulemaking for emission standards for (1) gold mining production processes; (2) industrial, commercial and institutional boilers and process heaters; and (3) CISWI units. If the proposed rules were signed on schedule, the deadline for EPA to complete all its obligations under Paragraph 3 would be advanced to December 16, 2010. This same Order also amended Paragraph 1 to require EPA to promulgate standards for fourteen area source categories pursuant to section 112(c)(3) and (k)(3) by December 16, 2009. Order, ¶ 1(f)-(h). Finally, the Court also amended Paragraph 1 to add subparagraph (i), which allowed EPA to promulgate any additional standards necessary to fully discharge its obligations under section 112(c)(3) and (k)(3) by December 16, 2010, if EPA timely promulgated the proposals identified in Paragraph 3.

[4] Because the motions to extend the deadlines were unopposed, EPA did not provide an explanation of the reasons that the additional time was necessary. The difficulties encountered in the administrative process that required the Agency to seek additional time are set forth in the following section of this brief.

On April 13, 2010, the Court amended Paragraph 3 to provide that EPA could still secure the benefit of the December 16, 2010, deadline if the proposed standards for industrial, commercial and institutional boilers and process heaters, and CISWI units were signed by April 29, 2010. Finally, on September 20, 2010, the Court extended the final deadlines under Paragraphs 1(i) and 3 from December 16, 2010 to January 16, 2011.

C. Administrative Background

To date, EPA has issued final emission standards for 48 area source categories pursuant to Paragraph 1(i) of the Order and CAA section 112(c)(3) and (k)(3). Decl. ¶¶ 9. EPA will complete its remaining obligations under Paragraph 1(i) by establishing emission standards for certain emissions from area source boilers and for SSI units. *Id*. Under Paragraph 3 and section 112(c)(6), EPA has issued emission standards for one source category and will take final action on emission standards for a second category by December 16, 2010. Decl. ¶ 10. To meet its obligations under Paragraph 3 and section 112(c)(6), EPA must establish emission standards for certain emissions from major source boilers, area source boilers, and CISWI units. Decl. ¶ 11.

1. The Major Source Boilers, Area Source Boilers, and CISWI Rules

The development of the proposed emission standards took much longer than EPA had anticipated during the 2006 proceedings before this Court in large part because the D.C. Circuit issued three decisions in 2007 that required EPA to substantially modify its methodology for developing MACT emission standards. *Sierra Club v. EPA*, 479 F.3d 875 (D.C. Cir. 2007); *Natural Resources Def. Council v. EPA*, 489 F.3d 1250 (D.C. Cir. 2007) ("*NRDC I*"); *Natural Resources Def. Council v. EPA*, 489 F.3d 1364 (D.C. Cir. 2007) ("*NRDC II*").[5] EPA explains

[5] The extensions granted by the Court in ruling on the unopposed motions for extensions of time provided most of the time necessary for EPA to complete the unexpected additional work necessary to comply with the D.C. Circuit's instructions during the rulemakings required by the Order. This background information is important, however, so that the Court can understand

the consequences of these decisions for future MACT rulemakings at greater length in the preamble to the proposed rule for emission standards for major source industrial, institutional, and commercial boilers and process heaters. 75 Fed. Reg. 32,006, 32,008-10 (June 4, 2010). *See also* Decl. ¶¶ 13-15.

In *NRDC I*, the D.C. Circuit vacated the MACT standards that EPA had promulgated for major source industrial, institutional, and commercial boilers and process heaters, which is one of the source categories needed to fulfill the Agency's section 112(c)(6) obligation. Decl. ¶ 14. Because the 2006 Order was issued before *NRDC I*, this Court, in formulating its remedy, had not considered the time and effort that would be required for EPA to redo the emission standards vacated by the D.C. Circuit. Furthermore, *NRDC I* also vacated a rule that EPA had promulgated to define the types of CISWI units that would be subject to emission standards under CAA section 129(a)(1)(D) ("CISWI Definitions Rule"). All solid waste incineration units, including CISWI units, are regulated under section CAA section 129.[6]

Under the CISWI Definitions Rule, only those units that combusted commercial or industrial solid waste and were either not designed to, or did not operate to, recover thermal energy from combustion would be subject to standards under section 129(a)(1)(D). The D.C. Circuit, however, rejected EPA's effort to exclude units that combust solid waste from the scope of section 129. The Court held that section 129(g)(1) unambiguously applies to "solid waste incineration units" and specifically to "solid waste incineration units combusting commercial or industrial waste." In vacating the CISWI Definitions Rule, the Court held that section 129(g)(1)

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why the proposals were not published until 2010, several years after the final rules under section 112(c)(6) should have been completed under the 2006 Order.

[6] The standards for setting MACT for sources regulated under sections 112 and 129 are the same and thus the Court's decisions in *Sierra Club* and *NRDC II* are also relevant to the Agency's section 129 standards.

"defines '[t]he term 'solid waste incineration unit' plainly and broadly to include 'a distinct operating unit of *any* facility which combusts *any* solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels).'" *NRDC I*, 489 F.3d at 1257. CAA section 129(g)(6), in turn, defines "solid waste" to have the meaning provided by the EPA Administrator under the Resource Conservation and Recovery Act ("RCRA").

The D.C. Circuit concluded that, because EPA had used an invalid definition of "solid waste incineration unit," EPA's determination as to which boilers and process heaters would be regulated as boilers, rather than CISWI units, was also invalid. The D.C. Circuit further concluded that, once EPA properly defined "solid waste incineration unit,"the Boilers MACT standards will need to be revised as well because the universe of sources subject to its standards will change. *Id.* at 1261.

In order to redo the major source boilers rule and to proceed with the standards for certain emissions from area source boilers and the CISWI units, EPA is working on a rule called the Non-Hazardous Solid Waste Rule, *see* Decl. 24, to define "solid waste" under RCRA. With this rule, the Agency can establish the universe of industrial, institutional, and commercial boilers and process heaters that will be regulated as boilers under section 112 and the universe that will be regulated as CISWI units under section 129.

NRDC II and *Sierra Club* did not vacate standards that would have counted towards EPA's obligations under the 2006 Order. However, the principles laid down in these decisions, as well as *NRDC I*, required EPA to substantially modify its methodology for setting emission standards pursuant to section 112(c)(3) and (k)(3) and 112(c)(6). *See* 75 Fed. Reg. at 32,009-10 (discussing effect of decisions on all MACT rulemakings).

As a result of these decisions, EPA determined that it needed to gather substantial additional information from many facilities regarding the major industrial, commercial and institutional boilers and process heaters and CISWI units in order to proceed to set MACT standards.[7] To do so, the Agency had to comply with the requirements of the Paperwork Reduction Act ("PRA"), 44 U.S.C. §§ 3501-21. The main requirements of the PRA are that the agency seeking to collect information must publish notice of the proposed collection in the Federal Register and allow 60 days for the public to submit comments on the proposal. *Id*. § 3506(c)(2)(A). After the comments are received and reviewed, the agency must submit its proposed information collection request ("ICR") to the Director of the Office of Management and Budget ("OMB") for review. *Id*. § 3507(c)(3). After submission, the agency must publish a second Federal Register notice to inform the public that the submission has been made and that comments may be submitted to OMB. *Id*. § 3507(a)(1)(D). OMB must allow at least 30 days for public comment, *id*. § 3507(b), but must approve or disapprove the ICR within 60 days of the later of publication in the Federal Register or receipt of the ICR from the Agency. *Id*. § 3507(c)(2).

Thus, under the PRA, collecting information is a time-consuming process by design. After drafting the ICR, EPA published the first Federal Register notice on December 7, 2007, and after considering the comments received and revising the draft, EPA published the second Federal Register notice on May 14, 2008. OMB approved the first phase of the ICR, which required submission of existing information for major industrial, commercial and institutional boilers and process heaters and CISWI units, on August 8, 2008. By the end of that month, EPA

[7] EPA did not seek additional information regarding area source boilers. The Agency did not proceed separately with that rulemaking because, given its close connection to the major source boiler and CISWI rulemakings, EPA concluded that the three rules should be kept on the same track so that the public would be able to consider both in formulating their comments.

had sent the ICR out to over 3,000 facilities. The facilities were given 60 days to respond, but this deadline was later extended for facilities located in areas hit by hurricanes. The responses were all completed by mid-December 2008. After EPA and OMB reviewed these responses, OMB issued its approval of Phase 2 of the ICR, which required 200 facilities to conduct specific emissions testing, on May 21, 2009. On June 1, 2009, EPA sent out the testing surveys. Although the responses were originally due on October 31, 2009, EPA did not receive all the data until February 2010, because a number of facilities encountered difficulties in getting contractors to complete the tests and produce the analytical results.

After reviewing the information, the Agency completed the proposed rules for the major source boilers, area source boilers, and CISWI (as well as the Non-Hazardous Solid Waste Rule). The four proposals were signed on April 29, 2010. Although the notices were promptly sent to the Office of the Federal Register, the notices were not published until June 4, 2010. The citations are:

> "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters," 75 Fed. Reg. 32,006-73 (June 4, 2010) ("major source boilers rule");
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> "National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers," 75 Fed. Reg. 31,896-935 (June 4, 2010) ("area source boilers rule");
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> "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units," 75 Fed. Reg. 31,938-32,004 (June 4, 2010) ("CISWI rule"); and
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> "Identification of Non-Hazardous Secondary Materials That Are Solid Waste," 75 Fed. Reg. 31,844 (June 4, 2010) ("Non-Hazardous Solid Waste Rule").

Because of intense public interest in the proposed rules, EPA held three public hearings on the proposed emission standards and allowed the public until August 23, 2010, to comment on these complicated and interconnected rules. EPA received over 4,800 individual comments

on the proposed emission (discounting mass mailings). Some of these comments exceed 300 pages. As evidenced by the number of comments, which include a substantial amount of additional new data, the major source boilers, area source boilers, and CISWI rules will have far-reaching effects. Estimates of the monetized value of the public health benefits for all three rules combined range from $18 billion and $44 billion. The economic impacts of implementation of these standards will also be significant and vary by rule. For example, the nation-wide capital cost for the proposed major source boilers rule was estimated to be $9.5 billion in the year 2013, with a total national annual cost of $2.9 billion in the year 2013. The major source and area source boilers rules are expected to apply at almost 200,000 boilers at over 90,000 facilities. On balance, given the broad impact these rules will have, EPA believes that the overall public interest is best served by allowing EPA to re-propose the rules so that the Agency will be able to issue emission standards that are based upon a thorough consideration of all available data and reduce potential litigation risks.

2. The SSI Rule

The proposed SSI standards were published in the Federal Register on October 14, 2010. "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units," 75 Fed. Reg. 63,260-344 (Oct. 14, 2010) ("SSI rule"). EPA's signature of the proposal had been delayed by several factors. In October 2009, EPA sent an information collection survey to a small number of facilities. That survey asked for existing information and required facilities to test for certain pollutants.[8] The survey required sources to submit existing information by December 19, 2009, and the test data by February 17, 2010. The Agency provided extensions for many facilities for the submission of test data. See

[8] The number of facilities was too small to trigger the PRA requirements.

Decl. In large part, the extensions were needed so that the sewage sludge incinerator units, which are owned almost exclusively by municipalities, could secure the necessary funding and resources to complete the testing. The Agency received all of the information and test data by March 31, 2010, but there were some shortcomings that took several weeks to resolve. Finally, while developing the proposed standards, EPA recognized that it was missing some necessary cost information. A few additional weeks were required to gather this information and complete the cost assessment for the proposed standards.

The Administrator signed the proposed SSI emission standards on September 30, 2010. EPA received a request for a public hearing, and that hearing was held on October 29, 2010. The comment period closed on November 29, 2010, thirty days after the public hearing as required by CAA section 307(d)(5). EPA received over 80 comments on the proposed rule. Based on its review to date of the comments, EPA does not currently intend to re-propose the rule. The Agency cannot, however, currently respond in full to all of the significant comments submitted on the proposed rule by January 14, 2011. An extension until July 15, 2011, would allow EPA to fully consider the information presented in the significant comments and prepare an appropriate response.

STANDARD OF REVIEW

In its 2006 decision, this Court held that, when EPA fails to meet a statutory deadline for an action mandated by Congress, the appropriate remedy is for the Court to exercise its "equity powers" to establish a schedule for EPA to complete its obligations. *Sierra Club*, 444 F. Supp. 2d at 49-50. The Court's authority to modify the 2006 Order is not open to question. *Natural Resources Def. Council, Inc. v. Train*, 510 F.2d 692, 713 n.106 (D.C. Cir. 1974) (quoting *System Fed'n No. 91, Ry. Employees v. Wright*, 364 U.S. 642, 647 (1961) ("There is also no dispute but

that a sound judicial discretion may call for the modification of the terms of an injunctive decree if the circumstances . . . have changed, or new ones have since arisen.") and *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932) ("A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.")).

In determining whether EPA has established that a modification is appropriate, the Court should rely on the same principles as it did in issuing the Order. In 2006, the Court recognized that "the sound discretion of an equity court does not embrace enforcement through contempt of a party's duty to comply with an order that calls him to do an impossibility." 444 F. Supp. 2d at 52 (internal quotations omitted). The Court explained that it would not "order a remedy that would . . . completely neutralize the mandatory nature of the statutory directive." *Id*. (internal quotations omitted). The Court also declined to impose a schedule that did not "afford any reasonable possibility of compliance." *Id*. at 58. The Court ultimately applied these principles to "order a regulatory schedule that is slightly more relaxed than that proposed by plaintiff, but significantly more expedited than that sought by the defendant." *Id*. at 59.

ARGUMENT

In the four and a half years since the 2006 Order, EPA has made substantial progress towards completing its obligations under that Order, as amended, and has completed its obligations under the Partial Consent Decree. The Agency is now working on the last actions necessary to discharge its obligations and bring this matter to a close, but has encountered unanticipated complexities that could create a risk that these rules will not survive judicial review unless the current deadline of January 16, 2011, is extended. On August 31, 2010, when EPA submitted its unopposed motion seeking a one-month extension to the existing deadline of December 16, 2010, in Paragraphs 1(i) and 3, the Agency had not yet reviewed the 4,800 individual comments received on the proposed boilers and CISWI rules and thus had not recognized the complexity of the issues raised in the many submissions. Importantly, certain submissions identified data that called into question the accuracy of data previously relied upon by the Agency in its proposal. The Agency has now completed its initial review of the comments and is in the process of reevaluating the substance of some aspects of its proposals, as well as the procedural steps necessary for completing the rulemakings under CAA section 307(d), which sets the requirements for promulgating the rules at issue here. EPA respectfully requests that the Court, consistent with *Natural Resources Defense Council, Inc. v. Train*, 510 F.2d at 713, consider the current posture of these rulemakings and grant EPA the relief it seeks.

I. ALLOWING TIME FOR RE-PROPOSAL COULD AVOID DELAY IN THE ACTUAL IMPLEMENTATION OF THE SECTION 112(c)(6) EMISSION STANDARDS

Congress' purpose in setting deadlines for the promulgation of emission standards was to timely achieve the improvements in air quality that would result from the implementation of the standards. The three rules establishing standards for certain emissions from major source boilers

and area source boilers, and CISWI units, along with the Non-Hazardous Solid Waste Rule, are complicated and interconnecting rulemakings. The three air rules are expected to cover almost 200,000 boilers and 176 CISWI units. As demonstrated by the 4,800 comments received, there is a strong public interest in the outcome of these rulemakings. The interests of public policy require that EPA proceed with due care in these circumstances.

In this case, EPA's preliminary assessment is that the comments may materially affect important decisions relating to source categorizations and coverage for the final emission standards. If EPA re-proposes the rules, the interested parties will have the opportunity to identify and propose corrections to any weaknesses in the revisions that EPA is contemplating. This process is particularly valuable in complex and far-reaching rulemakings such as these standards. In light of the anticipated public health benefits and the significant costs associated with the implementation of the standards at the many facilities that will be regulated, it is important that EPA be able to formulate the final standards based on careful consideration of all relevant data and upon full consideration of comments on the anticipated changes to the proposed standards.

Furthermore, under the CAA, where the Agency makes changes between the proposed and final rules, the public must be given the opportunity to comment on the changes unless the changes are a logical outgrowth of the proposal. The D.C. Circuit has explained that "a rule is deemed a logical outgrowth if interested parties 'should have anticipated' that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period." *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 952 (D.C. Cir. 2004). Those dissatisfied with the final rules will likely allege that the changes from the proposed standards are too significant to be deemed logical outgrowths.

If EPA is allowed time to re-propose the standards, the Agency will be able to avoid any potential claims that the Agency made changes to the proposed rules that exceed the scope allowed under the logical outgrowth rule without providing an opportunity for public comment. A successful petition could undo the standards and so delay realization of the intended air quality improvements pending further administrative action. Thus, while the requested extension would add fifteen and a half months to the rulemaking process, maintaining the current deadline could result in a far longer delay.

As explained by Mr. Tsirigotis, this extension is necessary for EPA to re-propose the rules and complete the rulemakings.[9] In reaching this conclusion, Mr. Tsirigotis considered the reality that these are complex and interconnected rules. The Non-Hazardous Solid Waste Rule, defining "solid waste," will be significant in distinguishing which industrial, commercial, or institutional units are regulated as boilers and which are subject to the standards adopted for CISWI units. If such units combust secondary materials that are "solid waste," as that term is ultimately defined when EPA promulgates the Non-Hazardous Solid Waste Rule, the unit will be subject to the CISWI standards. If not, the unit may be subject to the emission standards established for major source boilers or area source boilers, as appropriate. *See* 75 Fed. Reg. at 32,008-09. Until the boundaries of the different standards are defined, many of the regulated entities, as well as members of the public, will have an equal interest in the three air emission rulemaking, as well as the Non-Hazardous Solid Waste Rule. Therefore, it is necessary that these rules be kept on the same schedule.

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[9] In 2006, the Court criticized EPA for relying on a declaration that presented a "template" schedule, based on the Agency's experience in the past and not what was in fact needed to complete the actual rules at issue. 644 F. Supp. 2d at 55-56. In contrast, Mr. Tsirigotis Declaration is based on an analysis of the development of particular rules and the issues that have been raised by the public. Accordingly, this Declaration has the specificity that the Court found lacking in EPA's prior submission.

Mr. Tsirigotis estimates that EPA would need about five months to develop the re-proposals, including the necessary supporting documentation, such as revised calculations regarding the standards, the health benefits, and the costs associated with the standards. EPA also expects that a public hearing on the proposed changes will be requested, and, of course, would have to allow time for the submission of public comments. Before taking final action, EPA would have to respond to all significant comments on the re-proposal, as well as completing its responses to the significant comments already received that are not mooted by the re-proposal. Mr. Tsirigotis estimates that this process can be completed in ten and a half months.

EPA recognizes that section 307(d)(5)(B), which establishes a process for judicial reconsideration of regulations after promulgation, could provide a path for remedying some of the issues that are causing EPA to conclude that re-proposal is advisable. This process, however, is time-consuming and prolongs uncertainty as to what the final standards will be even as regulated entities are planning the actions necessary to come into compliance. While reconsideration can be an effective means of resolving issues, EPA does not believe it is the appropriate path to pursue here. In this case, EPA has identified the need for additional public input prior to issuing the final rules, the rules affect almost 200,000 boilers and 176 CISWI units across the United States, and are complex and inter-related. Under these circumstances, EPA believes it is appropriate to seek to avoid any risk of procedural error and provide the public another opportunity to comment on the new information and data received in response to the proposals. A re-proposal would result

in standards that are more defensible and will yield environmental benefits earlier, because the final standards will more likely withstand substantive review. For this reason, the Court should grant EPA the requested extension until April 13, 2012.

II. IF THE COURT DECLINES TO ALLOW EPA TIME TO RE-PROPOSE THE SECTION 112(c)(6) EMISSION STANDARDS, THE COURT SHOULD ALLOW EPA SIX MONTHS TO COMPLETE THE PROCESS OF RESPONDING TO THE PUBLIC COMMENTS

CAA section 307(d)(6)(B) requires that EPA must respond to the significant public comments before promulgating the final rules. 42 U.S.C. § 7607(d)(6)(B) ("The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period."). Because of the unanticipated number and complexity of the comments received, EPA is concerned that it may not be able to adequately complete this duty by January 16, 2011. Mr. Tsirigotis has concluded that the Agency will require until June 15, 2011, to fully complete this important task. Decl. ¶ 49. This conclusion is not an approximation based on the Agency's experience in other rules, but is grounded in Mr. Tsirigotis's knowledge regarding the actual number and complexity of the comments that must be addressed here.

Allowing the Agency the additional time will reduce the risk that a petition for review would be granted on the ground that EPA failed to adequately respond to comments, as happened in *North Carolina v. EPA*, 531 F.3d at 928. *See also Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1051 (D.C. 2001) ("While we generally uphold the EPA's authority to make emission projections and set emission limitations accordingly, we do so only where the EPA adequately responded to comments and explained the basis for its decisions."). Thus, although this shorter extension would not address the likelihood that opponents of the rule will allege that EPA failed to allow for sufficient public comment, it would enhance the defensibility of the final emission standards. Accordingly, EPA requests that, if the Court declines to allow the Agency time to re-propose the rules at issue, the Court instead extend the deadline to June 15, 2011, so that EPA can prepare the responses required under the Clean Air Act.

III. WITH RESPECT TO THE SECTION 112(c)(3) AND (k)(3) STANDARDS, THE COURT SHOULD SET TWO NEW DEADLINES

EPA must establish standards for certain emissions from area source boilers to meet its obligations under Paragraph 1 of the Order of September 20, 2010. Because standards for certain area source boilers are needed under both Paragraph 1(i) and Paragraph 3, EPA requests that the Court establish the same final deadline for both Paragraphs. Because EPA currently does not expect to re-propose the SSI standards, this rulemaking can be completed more expeditiously. EPA has serious concerns, however, as to whether it can fully respond to the over 80 significant comments received unless the January 16, 2011, deadline is extended. The comment period closed on November 29, 2010, only forty-five days before the deadline. The Agency requests that it be allowed until July 15, 2011, to promulgate the final SSI rule so that the Agency can ensure that it has fully responded to all significant comments, as required by section 307(d), thereby improving the defensibility of the rule.

CONCLUSION

For these reasons, the Court should amend Paragraph 1(i) to require EPA to promulgate standards for one additional area source category by July 15, 2011. The final deadlines in Paragraphs 1 and 3 of the Order of September 20, 2010, should be amended to allow EPA to complete its obligations by April 13, 2012.

Respectfully submitted,

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EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB, Plaintiff, v. STEPHEN L. JOHNSON, Administrator, United States Environmental Protection Agency,[1] Defendant.	Civil Action No. 01-1537 (PLF) (consolidated with Civil Action No. 01-1548 Civil Action No. 01-1558 Civil Action No. 01-1569 Civil Action No. 01-1578 Civil Action No. 01-1582 Civil Action No. 01-1597)

ORDER

This matter is before the Court on the parties' cross-motions for summary judgment on the issue of remedy. The Court heard argument on the motions on November 22, 2005. Upon consideration of the arguments raised by the parties in their briefs and in open court, it is clear that there are no genuine issues of material fact, and that plaintiffs are entitled to judgment as a matter of law. Accordingly, it is hereby

DECLARED that the failure of defendant Steven L. Johnson to take the following actions constitutes "a failure of the Administrator to perform any act or duty under this chapter that is not discretionary with the Administrator" within the meaning of Section 304(a)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7604(a)(2):

[1] Under Rule 25(d)(1) of the Federal Rules of Civil Procedure, EPA Administrator Stephen L. Johnson has been automatically substituted as a defendant for former Administrator Michael O. Leavitt.

1. Promulgate area source air toxics standards, as required by CAA Section 112(c)(3) and 112(k)(3)(B), 42 U.S.C. § 7412(c)(3), (k)(3)(B);

2. Assure that sources accounting for ninety percent of the aggregate emissions of certain persistent and bioaccumulative hazardous air pollutants are subject to emission standards with respect to such pollutants, as required by CAA Section 112(c)(6), 42 U.S.C. § 7412(c)(6); and

3. Promulgate emission standards for smog-causing consumer and commercial products, as required by CAA Section 183(e), 42 U.S.C. § 7511b(e). It is therefore

ORDERED that [63] plaintiff's motion for summary judgment is GRANTED in part; it is

FURTHER ORDERED that [67] defendant's cross-motion for summary judgment is DENIED; it is

FURTHER ORDERED that:

1. EPA shall promulgate standards under CAA Section 112(d) for those area source categories listed by EPA pursuant to CAA Section 112(c)(3) and (k)(3)(B) as source categories that are necessary to meet the 90 percent statutory threshold identified in Section 112(c)(3) and (k)(3)(B), and for which it has not yet issued standards, as follows:

a. EPA shall promulgate standards for 4 of the listed area source categories by December 15, 2006.

b. EPA shall promulgate standards for 6 additional area source categories by June 15, 2007.

c. EPA shall promulgate standards for 10 additional area source categories by December 15, 2007.

d. EPA shall promulgate standards for 10 additional area source categories by June 15, 2008.

e. EPA shall promulgate standards for 10 additional area source categories by December 15, 2008.

f. EPA shall promulgate standards for all remaining listed area source categories by June 15, 2009.

2. This Order shall not restrict EPA's authority to revise the list of area source categories under CAA Section 112(c)(3) and (k)(3)(B).

3. No later than December 15, 2007, EPA shall promulgate emission standards assuring that source categories accounting for not less than ninety percent of the aggregate emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under Section 112(d)(2) or (d)(4).

4. For the three remaining Groups of categories of consumer or commercial products ("product categories") listed by EPA pursuant to Section 183(e), EPA shall promulgate regulations or control techniques guidelines under CAA Section 183(e), 42 U.S.C. § 7511b(e), to meet the 80 percent statutory threshold identified in that section, as follows:

a. EPA shall promulgate regulations for Group II by September 30, 2006.

b. EPA shall promulgate regulations for Group III by September 30, 2007.

c. EPA shall promulgate regulations for Group IV by September 30, 2008.

5. This Order shall not restrict EPA's authority under Section 183(e) to revise the product category list or product category groups.

6. For purposes of this Order, a regulation is "promulgated" on the date on which the Administrator (or other relevant EPA official) signs the relevant final agency action. It is

FURTHER ORDERED that [70] plaintiff's motion to strike the declaration of Steve Page is DENIED; it is

FURTHER ORDERED that judgment in this case is entered for plaintiff; and it is

FURTHER ORDERED that this Order and Judgment shall constitute a FINAL JUDGMENT in this case. This is a final appealable order. See FED. R. APP. P. 4(a). The Court will retain jurisdiction of this action to supervise compliance with its Order and to receive any applications for costs and attorneys' fees that may be filed.

An Opinion explaining the reasoning underlying this Order will issue shortly.

SO ORDERED.

/s/_____
PAUL L. FRIEDMAN
United States District Judge

DATE: March 31, 2006

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB, Plaintiff, v. LISA P. JACKSON, Administrator, U.S. Environmental Protection Agency, Defendant.	Case No. 1:01CV01537 and Consolidated Cases Judge Paul L. Friedman

ORDER

Upon consideration of the Unopposed Motion to Amend Order of March 31, 2006, as amended on June 30, 2009, it is hereby ordered that the motion is granted.

Paragraph 1 of the Order requires EPA to promulgate standards pursuant to section 112(c)(3) and (k)(3)(B) of the Clean Air Act ("CAA"), 42 U.S.C § 7412(c)(3), (k)(3)(B). Paragraph 1 is amended as follows:

1. EPA shall promulgate emission standards under section 112(d) assuring that area sources representing ninety percent of the area source emissions of the 30 urban hazardous air pollutants identified pursuant to section 112(k)(3) are subject to emission standards as follows:

* * *

(f) EPA shall promulgate standards for nine additional area source categories by October 16, 2009.

(g) EPA shall promulgate standards for two additional area source categories by November 16, 2009.

(h) EPA shall promulgate standards for two additional area source categories by December 16, 2009.

(i) EPA shall promulgate emission standards under section 112(d) or section 129 assuring that area sources representing ninety percent of the area

source emissions of the 30 urban hazardous air pollutants are subject to emission standards by the date specified in Paragraph 3 of this Order.

Paragraph 3 of the Order is amended as follows:

No later than April 30, 2010, EPA shall promulgate emission standards assuring that sources accounting for not less than ninety percent of the aggregate emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under section 112(d)(2) or (d)(4). This deadline shall be extended until December 16, 2010 if, no later than April 15, 2010, the Agency signs a notice(s) of proposed rulemaking proposing (1) emission standards for gold mining production processes and industrial, commercial and institutional boilers and process heaters under section 112(d); and (2) emission standards for commercial and industrial solid waste incineration units under section 129.

Executed this 9th day of September, 2009.

HON. PAUL L. FRIEDMAN
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB,	Case No. 1:01CV01537 and Consolidated Cases
Plaintiff,	Judge Paul L. Friedman
v.	
LISA P. JACKSON, Administrator, U.S. Environmental Protection Agency,	
Defendant.	

ORDER

Upon consideration of the Unopposed Motion to Amend Order of March 31, 2006, as amended on September 9, 2009, it is hereby ordered that the motion is granted. Paragraph 3 of the Order is amended as follows:

> No later than May 14, 2010, EPA shall promulgate emission standards assuring that sources accounting for not less than ninety percent of the aggregate emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under section 112(d)(2) or (d)(4). This deadline shall be extended until December 16, 2010 if:
>
> a. no later than April 15, 2010, the Agency signs a notice of proposed rulemaking proposing emission standards for gold mining production processes and;
>
> b. no later than April 29, 2010, the Agency signs a notice(s) of proposed rulemaking proposing (1) emission standards for industrial, commercial and institutional boilers and process heaters under section 112(d); and (2) emission standards for commercial and industrial solid waste incineration units under section 129.

Executed this 13th day of April, 2010.

Paul L. Friedman

HON. PAUL L. FRIEDMAN
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB, Plaintiff, v. LISA P. JACKSON, Administrator, U.S. Environmental Protection Agency, Defendant.	Case No. 1:01CV01537 and Consolidated Cases Judge Paul L. Friedman

ORDER

Upon consideration of the Unopposed Motion to Amend Order of March 31, 2006, as amended on September 9, 2009, and April 13, 2010, it is hereby ordered that the motion is granted.

Paragraph 1(i) of the Order is amended as follows:

> 1. EPA shall promulgate emission standards under section 112(d) assuring that area sources representing ninety percent of the area source emissions of the 30 urban hazardous air pollutants identified pursuant to section 112(k)(3) are subject to emissions standards as follows:
>
> * * *
>
> (i) EPA shall promulgate emission standards under section 112(d) or section 129 assuring that area sources representing ninety percent of the area source emissions of the 30 urban hazardous air pollutants are subject to emissions standards by January 16, 2011.

Paragraph 3 of the Order is amended as follows:

> No later than December 16, 2010, the Agency shall promulgate emission standards for one additional category pursuant to section 112(c)(6). No later than January 16, 2011, the Agency shall promulgate emission standards assuring that sources accounting for not less than ninety percent of the aggregate

emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under Section 112(d)(2) or (d)(4).

Executed this 17th day of September, 2010.

HON. PAUL L. FRIEDMAN
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT 5

and 15, Plaintiff's present formulation of the "claims lost" following any deception (1) has already been rejected by the Supreme Court, and (2) would also have to be rejected for the reasons expressed above in this Opinion. As such, the Court rejects Plaintiff's attempted reformulation of her "denial of access" claims at this time, and notes that dismissal of all remaining counts is both complete and final.

IV: CONCLUSION

For the reasons set forth above, the Court shall grant Defendant's Motion to Dismiss and shall dismiss all counts remaining in Plaintiff's action for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). An appropriate Order accompanies this Memorandum Opinion.

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, it is, this 1 st day of August, 2006, hereby

ORDERED that [199] Defendant's Motion to Dismiss All Remaining Counts of the Complaint Pursuant to Federal Rule of Civil Procedure 12(h)(3) is GRANTED; it is further

ORDERED that this case is closed. This is a final, appealable Order.

SO ORDERED.

SIERRA CLUB, Plaintiff,

v.

Stephen L. JOHNSON, Administrator, United States Environmental Protection Agency,[1] Defendant.

Civil Action Nos. 01–1537(PLF), 01–1548, 01–1558, 01–1569, 01–1578, 01–1582, 01–1597.

United States District Court, District of Columbia.

Aug. 2, 2006.

Background: Environmental organization filed action under citizen suit provision of the Clean Air Act, seeking to compel Environmental Protection Agency (EPA) to perform a nondiscretionary duty under the Act. After parties entered into a partial consent decree regarding liability and setting a schedule for the promulgation of some of the regulations at issue, parties filed cross-motions for summary judgment as to remedy for EPA's noncompliance.

Holding: The District Court, Paul L. Friedman, J., held that EPA did not demonstrate that it would be impossible to comply with plaintiff's proposed schedule for the enactment of remaining standards, however, it was appropriate for court to order a regulatory schedule that was slightly more relaxed than that proposed by plaintiff, but significantly more expedited than that sought by the agency.

Order in accordance with opinion.

1. Environmental Law ⇐695

When Environmental Protection Agency (EPA) has failed to discharge a nondiscretionary duty under the Clean Air Act, a district court has jurisdiction to compel the EPA Administrator to fulfill it.

1. Under Rule 25(d)(1) of the Federal Rules of Civil Procedure, EPA Administrator Stephen L. Johnson has been substituted as defendant for former Administrator Michael O. Leavitt.

Clean Air Act, § 304(a), 42 U.S.C.A. § 7604(a).

2. Administrative Law and Procedure ⚖811

When an agency has failed to meet the statutory deadline for a nondiscretionary act, the court may exercise its equity powers to set enforceable deadlines both of an ultimate and an intermediate nature; court appropriately may decline to impose an immediate deadline, however, and may afford an agency additional time for compliance where it is convinced by the official involved that he has in good faith employed the utmost diligence in discharging his statutory responsibilities.

3. Administrative Law and Procedure ⚖811

When Congress expresses its intent that regulations be promulgated by a date certain, that intent is of utmost importance, and a court considering an agency's claim of impossibility must not order a remedy that would completely neutralize the mandatory nature of the statutory directive.

4. Administrative Law and Procedure ⚖741

When an agency has failed to meet a mandatory statutory deadline, it is insufficient for the agency to demonstrate only that it has proceeded in good faith; it also must demonstrate that it has exercised utmost diligence in its efforts to comply with the statute.

5. Environmental Law ⚖695

Environmental Protection Agency (EPA), which failed to discharge fully its nondiscretionary duty under the Clean Air Act amendments to promulgate regulations governing the discharge of certain hazardous air pollutants, did not demonstrate that it would be impossible to comply with plaintiff environmental organization's proposed schedule for the enactment of the remaining standards where EPA's only justifications for seeking huge amounts of additional time, 12 years in the case of certain standards and more than eight years for other standards, were the asserted complexity of the regulatory tasks before it and the fact that other regulatory priorities demanded resources that could be devoted to meeting EPA's obligations under the Clean Air Act; however, in view of the difficulties of compliance, it was appropriate for court to order a regulatory schedule that was slightly more relaxed than that proposed by plaintiff, but significantly more expedited than that sought by the agency. Clean Air Act, § 182(b)(2), 42 U.S.C.A. § 7511a(b)(2).

6. Environmental Law ⚖695

Clean Air Act (CAA) does not allow district courts to address the content of Environmental Protection Agency's (EPA's) conduct, issue substantive determinations of its own, or grant other forms of declaratory relief. Clean Air Act, § 307(b), 42 U.S.C.A. § 7607(b).

James S. Pew, Earth Justice, Harold Patrick Quinn, Jr., National Mining Association, Washington, DC, for Plaintiff.

Eileen T. McDonough, U.S.DOJ–Environmental Defense Section, Washington, DC, for Defendant.

OPINION

PAUL L. FRIEDMAN, District Judge.

This case concerns defendant EPA's failure to discharge fully its duty under the 1990 Clean Air Act amendments to promulgate regulations governing the discharge of certain hazardous air pollutants. EPA does not deny that it has failed in its duty to promulgate these regulations by the deadlines set in the statute; the only

dispute concerns the schedule under which the Court should order EPA to discharge its statutory duty. On March 31, 2006, the court issued an Order denying defendant's motion for summary judgment; granting plaintiff's motion for summary judgment; declaring that defendant Steven L. Johnson's failure to take certain regulatory actions constituted "a failure of the Administrator to perform any act or duty under this chapter that is not discretionary with the Administrator" within the meaning of Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2); and ordering the EPA to fulfill its statutory duties under Sections 112(c)(3), 112(k)(3)(B), 112(c)(6), and 183(e) on a prescribed schedule. The Court also denied plaintiff's motion to strike the declaration of Steve Page filed by defendant in support of its motion for summary judgment. This Opinion explains the reasoning underlying that Order.

I. BACKGROUND

A. 1990 Clean Air Act Amendments

On November 15, 1990, Congress enacted sweeping revisions to the Clean Air Act. *See* Pub.L. No. 101–549, 104 Stat. 2399 ("the Act"). Title III of the revised statute created a complex scheme for the regulation of 189 specified hazardous air pollutants ("HAPs"), and directed EPA to identify the sources of those pollutants and to promulgate regulations governing the emission of HAPs from those sources. Congress by statute added to the Clean Air Act the list of pollutants to be regulated, minimum stringency requirements, and (most important for this case) regulation deadlines. It did so because it believed that EPA had failed to regulate enough HAPs under previous air toxics provisions. *See Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 634 (D.C.Cir.2000). The Senate Committee Report states: "The [air toxics] law has worked poorly. In 18 years, EPA has regulated only some sources of only seven chemicals.... The legislation reported by the Committee would entirely restructure the existing law, so that toxics might be adequately regulated by the Federal Government." S. REP. NO. 101–228, at 128 (1989); *see also* H.R. REP. NO. 101–490, pt. 1, at 322 (1990) ("Since 1970, EPA has listed only eight substances as hazardous air pollutants ... and has promulgated emissions standards for seven of them.").

Title III of the Clean Air Act recognizes two basic kinds of air pollution "sources." A "major source" is "any stationary source or group of stationary sources located within a contiguous area and under common control that emits ... 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." 42 U.S.C. § 7412(a)(1). Major sources are subject to regulation under Section 112(d) of the Act, 42 U.S.C. § 7412(d). An "area source" is "any stationary source of hazardous air pollutants that is not a major source." 42 U.S.C. § 7412(a)(2).[2] The Act calls upon EPA to list the "source categories" most responsible for emissions of each HAP listed in the statute. Source categories include, for example, steel foundries, industrial boilers, clay ceramics manufacturing, and asphalt processing and asphalt roofing manufacturing.[3] After listing these source categories, EPA is required to promulgate regulations governing their emission of HAPs.

The Act also enacted new provisions regarding the emission of Volatile Organic

2. Mobile sources of air pollutants (*i.e.* vehicles) are regulated by Title II of the Clean Air Act.

3. Because one source may emit numerous pollutants, a single source category may be among the major source or area source categories listed for several HAPs.

Compounds ("VOCs" or "ozone precursors"), a major contributor to ground-level ozone pollution (smog). VOCs are a component of automobile exhaust, and also are emitted in the fumes from products like oil-based paints and solvents. Among other things, the Act calls upon EPA to promulgate regulations or "control techniques guidelines" for VOC-emitting consumer and commercial products that determined to contribute to ozone pollution in areas where ground-level ozone exceeds regulatory limits.

At issue in this case are three mandatory duties imposed on EPA by the 1990 Clean Air Act amendments, which the agency admits it has failed to discharge fully. These duties are to:

1. *Regulate area sources of 30 most dangerous HAPs:* Sections 112(c)(3) and (k)(3)(B) of the Clean Air Act, 42 U.S.C. § 7412(c)(3) & (k)(3)(B), require the EPA to: (1) "identify not less than 30 hazardous air pollutants which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas"; (2) identify the categories or subcategories of sources "accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants" within 5 years from the date of the statute's enactment (*i.e.* by November 15, 1995); and (3) issue emissions standards for those source categories within 10 years from the date of the enactment of the amendment (by November 15, 2000).

EPA has fulfilled the first two of these duties. It issued the list of area source categories in 1999. *See* 64 Fed.Reg. 38,706 (July 9, 1999); Defendant's Statement of Facts ¶ 2. The list has since been revised several times, but currently contains 70 area source categories. EPA has promulgated emission standards for only 15 of these 70 categories. *See* Declaration of Steve Page ("Page Decl.") ¶ 15; Defendant's Statement of Facts ¶ 2.

After lodging a draft consent decree with the Court for solicitation of public comment, the parties executed and filed a Revised Partial Consent Decree May 22, 2003. *See* Revised Partial Consent Decree (May 22, 2003) ("Consent Decree"). The Consent Decree requires EPA to promulgate standards for six further categories under Section 112(c)(3) and (k)(3)(B). *See* Page Decl. ¶ 19.[4] EPA has taken final action on one of these categories (mercury cell chlor-alkali plants); the deadlines under the Consent Decree for the remaining five sources range from November 30, 2005 to December 20, 2007. *See id.*

Accordingly, EPA must issue regulations for 55 remaining source categories under Section 112(c)(3) and (k)(3)(B), five of which are accounted for in the Consent Decree. *See* Page Decl. ¶ 24; Statement of Sierra Club of Material Facts as to Which There is no Genuine Dispute ¶ 1.

2. *Regulate areas sources of statutorily-specified HAPs:* Section 112(c)(6) of the Act also calls for the regulation of area sources of seven specific HAPs, without regard to their inclusion on EPA's list of the 30 most dangerous HAPs.[5] EPA's duties with respect to HAPs listed under this provision are identical to its duties with respect to the 30 most dangerous HAPs under Sections 112(c)(3) and 112(k)(3)(B): to (1) identify the categories

4. Two of these six categories are also source categories that must be regulated under Section 112(c)(6).

5. The seven HAPs listed are alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8–tetrachlorodibenzofurans and 2,3,7,8–tetrachlorodibenzo–p–dioxin. 42 U.S.C § 7412(c)(6).

or subcategories of sources "accounting for 90 per centum or more of the aggregate emissions of each such [listed] pollutant" by November 15, 1995; and (2) issue emissions standards for those source categories by November 15, 2000. 42 U.S.C. § 7412(c)(6).

EPA issued the list of source categories under Section 112(c)(6) in 1998, *see* 63 Fed.Reg. 17,838 (April 10, 1998), but later modified the list to remove five source categories. *See* 67 Fed.Reg. 68,124 (Nov. 8, 2002); Page Decl. ¶ 16–17. The current list contains 50 source categories. Between 1990 and 2003, EPA promulgated emissions standards for about 30 of these source categories, because those source categories were "major sources" of HAPs also subject to regulation under Section 112(d). *See* id. ¶ 18.

Under the Consent Decree, EPA agreed to promulgate standards for two further source categories under Section 112(c)(6). EPA has taken final action on emissions standards for mercury cell chlor-alkali plants (also a source category regulated under Section 112(c)(3) and (k)(3)(B)); it must promulgate a final rule with regard to the last category, gasoline distribution facilities, by December 20, 2007. *See* Consent Decree at 5–6.

EPA therefore must regulate four Section 112(c)(6) source categories beyond the one it already is bound by the Consent Decree to regulate before a date certain. *See* Page Decl. ¶ 25. These five source categories, however, are also among the 50 source categories that must be regulated under Section 112(c)(3) and (k)(3)(B). *See* Page Decl. ¶ 28.

3. *Regulate products that emit VOCs:* Section 183(e) of the Act, 42 U.S.C. § 7511b(e), calls on EPA to "conduct a study of the emissions of volatile organic compounds into the ambient air from consumer and commercial products" in order to "determine their potential to contribute to ozone levels" that violate EPA limits on ambient ozone levels, and to "establish criteria for regulating consumer and commercial products . . . which shall be subject to control under this subsection." 42 U.S.C. § 7511b(e)(2)(A). After completing the study, EPA is to: (1) list the categories of products that account for 80 percent or more of VOC emissions in areas that violate EPA ambient standards for ozone; (2) divide the list into four priority categories, based on specified criteria; and (3) every two years after the list is promulgated, regulate one group of categories, until all four categories are regulated. 42 U.S.C. § 7511b(e)(3)(A).

Under Section 183(e), EPA may enact "any system or systems of regulation as the Administrator may deem appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption, or disposal of the product." 42 U.S.C. § 7511b(e)(4). For any given product category EPA may either issue a national rule requiring the "best available controls," or instead issue "control techniques guidelines" ("CTGs") "if the Administrator determines that such guidance will be substantially as effective as regulations in reducing emissions." 42 U.S.C. § 7511b(e)(3)(A), (C).

"Best available controls" is a technology-based emissions standard defined as the level of emissions reduction "that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and

directions for use, consumption, storage, or disposal." 42 U.S.C. § 7511b(e)(1)(A). CTGs, by contrast, are not binding regulations but merely "information on air pollution control techniques" provided by EPA to the states to aid in their own regulation of air pollution under the Clean Air Act. States bear substantial responsibility for the implementation of the Act, especially in "non-attainment areas" where regulations under Section 183(e) would take effect. The information provided under CTGs includes:

> data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

42 U.S.C. § 7408(b)(1). EPA's issuance of a CTG triggers a responsibility for states to submit emission standards for stationary sources of VOCs. *See* Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Cross-motion for Summary Judgment on Remedy ("Def.Opp.") at 8; Page Decl. ¶ 49; 42 U.S.C. § 7511a(b)(2).

In March 1995, EPA completed its study of VOC emissions and published an initial listing of product categories, as well as a schedule for the regulation of each category. *See* Page Decl. ¶¶ 20–21; 60 Fed.Reg. 15,267 (March 23, 1995).[6] EPA had promulgated regulations or CTGs for each category in the first group (Group I) by July 1999. *See* Page Decl. ¶ 22.[7] Accordingly, EPA was to have promulgated regulations for the four priority groups by March 23, 1997, March 23, 1999, March 23, 2001, and March 23, 2003, respectively. EPA last revised its list of product categories and groupings under Section 183(e) on November 17, 2005. *See* 70 Fed.Reg. 69,-759. Fifteen categories, divided into three groups (Groups II–IV), remain unregulated. *See* Page Decl. ¶ 23.

B. History of this litigation

Starting on July 16, 2001, plaintiff the Sierra Club filed seven different complaints against EPA, each seeking relief for EPA's alleged failure to discharge a different aspect of its regulatory duties under the 1990 Clean Air Act. The cases were consolidated on June 20, 2002 and then stayed while the parties sought mediation. On May 22, 2003, the parties entered into a partial consent decree setting a schedule for the promulgation of some of the regulations at issue. *See* Revised Partial Consent Decree.

The parties engaged in further settlement discussions until early 2005, during which time they provided periodic status updates to the Court. Unfortunately, they were unable to resolve the remaining claims, but instead filed cross-motions for summary judgment. Plaintiff also filed a motion to strike the declaration of Steve Page that had been filed by defendant in support of its dispositive motion. Defendant conceded in its briefs that it had failed to discharge its mandatory duties

6. EPA completed the study only after being sued by the Sierra Club and entering into a consent decree (approved by this Court) on February 27, 1995. *See Sierra Club v. Browner,* Civil Action No. 94–0553 (D.D.C. filed Mar. 17, 1994).

7. This also was accomplished only after litigation in this Court and the signing of a consent decree. *See Sierra Club v. Browner,* Civil Action No. 97–1984 (D.D.C. filed Aug. 29, 1997).

under the Clean Air Act, but argued that plaintiff's proposed remedy—a schedule for the promulgation of the rest of the regulations required by the statute—was impracticable, and proposed a more generous alternative schedule.

Argument was heard on the motions on November 22, 2005. On March 31, 2006, the Court issued an Order denying defendant's motion for summary judgment, granting summary judgment in favor of plaintiff and denying plaintiff's motion to strike.

II. DISCUSSION

Plaintiff filed these consolidated actions to compel EPA to perform a nondiscretionary duty under the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a)(2). There is no question as to liability; EPA does not contest its failure to discharge its duty under the statute. The only controversy concerns what schedule the Court, in the exercise of its equitable discretion, should order defendants to comply with in promulgating the required regulations.

A. Standard of Review

1. Summary Judgment Standard

Summary judgment is to be granted if there is no genuine issue of material fact. FED.R.CIV.P. 56(c). Once the moving party carries its burden of demonstrating the absence of any genuine issue of material fact, the nonmoving party must present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. R. 56(e). The nonmovant must show that he can satisfy the burden of proof that will be put on him in the trial to support his claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Brees v. Hampton*, 877 F.2d 111, 117 (D.C.Cir.1989), *cert. denied*, 493 U.S. 1057, 110 S.Ct. 867, 107 L.Ed.2d 951 (1990). Because defendant does not contest the issue of liability, the entry of summary judgment is appropriate, and it remains only for the Court to fashion an appropriate equitable remedy. *See NRDC v. Train*, 510 F.2d 692, 705 (D.C.Cir.1974) ("The authority to set enforceable deadlines both of an ultimate and an intermediate nature is an appropriate procedure for exercise of the court's equity powers to vindicate the public interest."); *see also Amer. Lung Ass'n v. Browner*, 884 F.Supp. 345, 349 (D.Ariz.1994) (where liability is uncontested and "it remains only for the Court, acting in its discretion, to fashion an equitable remedy," summary judgment is appropriate); *Sierra Club v. Ruckelshaus*, 602 F.Supp. 892, 898 & n. 9 (N.D.Cal.1984) (summary judgment appropriate regarding purely equitable issue of how the court, exercising its discretionary power, should fashion a remedy).

2. Failure to Perform Nondiscretionary Duty

[1, 2] When EPA has failed to discharge a nondiscretionary duty under the Clean Air Act, a district court has jurisdiction to compel the Administrator to fulfill it. *See* 42 U.S.C. § 7604(a); *Sierra Club v. Browner*, 130 F.Supp.2d 78, 82, 89 (D.D.C.2001); *Sierra Club v. Ruckelshaus*, 602 F.Supp. at 898. When an agency has failed to meet the statutory deadline for a nondiscretionary act, the court may exercise its equity powers "to set enforceable deadlines both of an ultimate and an intermediate nature[.]" *NRDC v. Train*, 510 F.2d at 705 (citing *Porter v. Warner Holding Co.*, 328 U.S. 395, 398, 66 S.Ct. 1086, 90 L.Ed. 1332 (1946)). A court appropriately may decline to impose an immediate deadline, however, and may afford an agency additional time for compliance, "where it is convinced by the official involved that he has in good faith employed the utmost

diligence in discharging his statutory responsibilities." *Id.* at 713. In other words, "[t]he sound discretion of an equity court does not embrace enforcement through contempt of a party's duty to comply with an order that calls him 'to do an impossibility.'" *Id.* (quoting *Maggio v. Zeitz*, 333 U.S. 56, 68 S.Ct. 401, 92 L.Ed. 476 (1948)).

[3] Nonetheless, the district court must scrutinize carefully claims of impossibility, and "separate justifications grounded in the purposes of the Act from the footdragging efforts of a delinquent agency." *NRDC v. Train*, 510 F.2d at 713. When Congress expresses its intent that regulations be promulgated by a date certain, that intent is of utmost importance; a court considering a claim of impossibility must not "order a remedy that would ... completely neutralize the mandatory nature of the statutory directive." *Sierra Club v. Browner*, 130 F.Supp.2d at 95. "An equity court can never exclude claims of inability to render absolute performance, but it must scrutinize such claims carefully since officials may seize on a remedy made available for extreme illness and promote it into the daily bread of convenience." *NRDC v. Train*, 510 F.2d at 713.

[4] An agency thus bears "a heavy burden to demonstrate the existence of an impossibility." *Alabama Power Co. v. Costle*, 636 F.2d 323, 359 (D.C.Cir.1979) (citing *NRDC v. Train*, 510 F.2d at 713); *see also NRDC v. Reilly*, 797 F.Supp. 194, 197 (E.D.N.Y.1992); *Sierra Club v. Ruckelshaus*, 602 F.Supp. at 898. That burden is especially heavy where "the agency has failed to demonstrate any diligence whatever in discharging its statutory duty to promulgate regulations and has in fact ignored that duty for several years." *Sierra Club v. Thomas*, 658 F.Supp. 165, 172 (N.D.Cal.1987). When an agency has failed to meet a mandatory statutory deadline, it is insufficient for the agency to demonstrate only that it has proceeded in good faith; it also must demonstrate that it has exercised "utmost diligence" in its efforts to comply with the statute. *See id.* at 171 n. 5 (reviewing cases); *State v. Gorsuch*, 554 F.Supp. 1060, 1065 n. 4 (S.D.N.Y.1983) ("If the administrator could possibly have complied with the statutory mandate, but did not because of competing concerns or other decisions on his part, then he is not acting in 'good faith' ").

In *NRDC v. Train*, the D.C. Circuit recognized two possible legitimate constraints on the agency's ability to meet a statutory deadline:

> First, it is possible that budgetary commitments and manpower demands required to complete the guidelines by [the existing deadline] are beyond the agency's capacity or would unduly jeopardize the implementation of other essential programs. Second, EPA may be unable to conduct sufficient evaluation of available control technology to determine which is the best practicable or may confront problems in determining the components of particular industrial discharges.

NRDC v. Train, 510 F.2d at 712; *see also Alabama Power Co. v. Costle*, 636 F.2d at 359; *Sierra Club v. Thomas*, 658 F.Supp. at 170–71; *Sierra Club v. Ruckelshaus*, 602 F.Supp. at 898; *State v. Gorsuch*, 554 F.Supp. at 1064.

The courts, however, have rejected agency claims that additional time is needed simply to improve the quality or soundness of the regulations to be enacted. *See Sierra Club v. Ruckelshaus*, 602 F.Supp. at 899 (rejecting defendant's justification that regulations would be improved by further study). Courts also tend to reject as contrary to the relevant statute agency approaches to rulemaking that sacrifice the timely implementation of the statute in

favor of extensive agency information-gathering and analysis. For example, the United States District Court for the Southern District of New York, in rejecting EPA's defense of its failure to promulgate regulations required by the 1977 Clean Air Act on grounds of impossibility, stated:

> The deadlines imposed [under the 1977 Clean Air Act amendments], when viewed against the various statements of purpose, show simply that Congress concluded that prompt, though imprecise, regulations were preferable to no regulations during the period while further studies were being conducted to provide the Administrator with more complete information. Against this clear articulation of legislative intent, it is unseemly for the Administrator to assert that she is vested with the discretion to balance the need for prompt regulation against the need for informed standards.

State v. Gorsuch, 554 F.Supp. at 1064; *see id.* at 1065 ("I suggest that this evidence does not demonstrate 'impossibility,' but rather a difference in rulemaking philosophy from that evinced by Congress."); *see also Sierra Club v. Gorsuch*, 551 F.Supp. 785, 788–89 (N.D.Cal.1982) ("the EPA envisions a level of thoroughness and scientific certainty not within the contemplation of Congress at the time it mandated the regulation of hazardous air pollutants.").

Courts also turn a skeptical eye towards agency claims that competing regulatory priorities preclude compliance with statutorily-mandated deadlines. "If Congress formulates policies and programs to meet specific problems, it may also establish their relative priority for the Nation. In such a situation, the court's role is to enforce the legislative will when called upon to do so." *State v. Gorsuch*, 554 F.Supp. at 1062–63 (citing *TVA v. Hill*, 437 U.S. 153, 194, 98 S.Ct. 2279, 57 L.Ed.2d 117 (1978)). "EPA's generalized complaints ... that there are competing demands on their resources, do not amount to a claim of impossibility sufficient to justify a departure from a Congressional mandate .... 'shifting resources in response to statutory requirements and court orders is commonplace for EPA.'" *NRDC v. Reilly*, 797 F.Supp. at 197 (citations omitted) (quoting *Sierra Club v. Thomas*, 658 F.Supp. at 174). To accept such an argument in the face of a congressional direction "would effectively amount to condoning a fully discretionary approach to a nondiscretionary duty." *Sierra Club v. Browner*, 130 F.Supp.2d at 95.

B. The Parties' Proposed Schedules

1. Section 112 Source Categories

[5] Under the 1990 Amendments to the Clean Air Act, EPA was to have issued emissions standards for all of the Section 112(c)(3) and 112(c)(6) source categories by November 15, 2000. Plaintiff proposes a schedule calling for EPA to promulgate regulations for ten source categories every six months, from June 15, 2006 to June 15, 2008. Under plaintiff's proposal, EPA must promulgate regulations for the source categories subject to regulation under Section 112(c)(6) by December 15, 2007. EPA proposes a far more leisurely schedule, calling for it to regulate four source categories by December 15, 2007, six more by December 15, 2008, and ten more source categories every December 15 until 2012, when all remaining source categories will be regulated.

2. Section 183(e) Products

EPA promulgated its list of consumer and commercial products subject to Section 183(e) regulation, dividing them into four priority groups, on March 23, 1997. *See* 60 Fed.Reg. 15,267 (March 23, 1997). Accordingly, EPA was to promulgate regulations for Group I by March 23, 1997; Group II by March 23, 1999; Group III by March 23, 2001; and Group IV by March

23, 2003. EPA had promulgated regulations or CTGs for Group I by July 1999. *See* Page Decl. ¶ 22. Groups II through IV remain unregulated.

Plaintiff's proposed schedule would require defendants to: (1) regulate one specified category of products (flexible package printing materials) by June 15, 2006; (2) regulate four specified categories of products by December 15, 2006; and (3) regulate the ten remaining specified categories of products by June 15, 2007. Defendant's proposed schedule calls for defendant to regulate the remaining product categories in three groups of five each, in two-year intervals. Under this schedule EPA would be required to promulgate regulations or CTGs for Group II by September 30, 2007; Group III by September 30, 2009; and Group IV by September 30, 2011.

C. The Parties' Arguments

Defendant's first argument that plaintiff's proposed schedule is "impracticable" is that compelling EPA to promulgate regulations on that timeline would result in "rules that fall short of meeting the substantive requirements of section 112(c)(6), 112(c)(3) and (k)(3)(B), and 183(e) or the applicable procedural requirements." Def. Opp. at 12, 19 (faster schedule would require "procedural or analytical shortcuts" which "could seriously jeopardize both the soundness of the regulatory action and its legal defensibility."). Defendant claims that it "is of paramount importance" that it be afforded sufficient time to promulgate "sound regulations that will survive judicial review." *Id.* at 13 (quoting *Sierra Club v. Thomas*, 658 F.Supp. at 172). EPA claims that its proposed schedule "represents the reasonable minimum time in which EPA can complete the obligations at issue [.]" Def. Opp. at 12.

In support of its motion for summary judgment, EPA filed a declaration from Steve Page, Director of the Office of Air Quality Planning and Standards ("OAQPS"), Office of Air and Radiation ("OAR") at EPA. Mr. Page has served in this position since 2002. OAQPS sets national emissions standards, monitors and reports on air quality and emissions of air pollutants, and is responsible for implementing several programs under the Act. *See* Page Decl. ¶ 1. The Page Declaration discusses the components of the Act at issue here, and canvasses the history of regulatory actions taken by the EPA under the statute. It describes what EPA sees as its remaining obligations and explains EPA's proposed schedule. *See* Page Decl. ¶ 27. EPA claims that the Page declaration establishes two facts: first, that it takes, on average, approximately 50 months to promulgate a regulation governing a single category under Section 112 or 183(e); and second, that OAQPS's competing regulatory priorities preclude adherence to a faster schedule.

With respect to Section 112(c) standards, Page sets forth a "template schedule" for the promulgation of each standard. The schedule allows 50 months for the promulgation of a standard for a single source category—a figure Page claims is "based on ESD's practical experience in issuing emission standards regulations under CAA [Clean Air Act] section 112." Page Decl. ¶¶ 33–34. The schedule is divided into four phases: (1) general industry characterization/survey (9 months); (2) information collection and analysis (17 months); (3) rule proposal (12 months); and (4) rule promulgation (12 months). *See id.* ¶ 35. EPA states that, between 1990 and 2003, OAQPS worked on about five area source categories each year, but that it currently is working on 30 categories and that by 2008 it will have commenced work on all the remaining source categories. *See* Def. Opp. at 16; Page Decl. ¶ 57. Page asserts that a 50–month schedule also is appropriate for the promulgation of Section 183(e) standards, pro-

posing a "template schedule" similar to the one he proposes for Section 112 standards. *See* Page Decl. ¶¶ 45–47. If the EPA elects, however, to promulgate CTGs instead of standards based on "best available controls" under Section 183(e), Page asserts that a 24–month regulatory time frame would be adequate. *See id.* ¶¶ 49–52.

As it made plain in its March 31, 2006 Order, the Court rejects these proposed regulatory timelines, as well as defendant's argument that anything faster would yield substantively or procedurally deficient rules. First, Mr. Page's 50–month proposed timelines for regulations under Sections 112 and 183 represent only his *retrospective* estimate of the average amount of time needed by EPA to promulgate a single standard. *See* Page Decl. ¶ 33 ("This schedule ... is based on ESD's actual regulatory experience issuing both major and area source emissions standards regulations under Section 112 over the past 15 years."). The Court's primary concern here is not what EPA has (or has not) achieved in the past, but what it can reasonably be expected to accomplish going forward.

Moreover, courts evaluating claims of impossibility when an agency has failed to meet a mandatory deadline generally have rejected claims that additional time is needed to ensure substantively adequate regulations. *See Sierra Club v. Ruckelshaus,* 602 F.Supp. at 899 (not enough for agency to say "further study always makes everything better"); *State v. Gorsuch,* 554 F.Supp. at 1065 ("While the Administrator should be commended for striving to develop the fullest possible statistical basis for any regulations she promulgates, that quest must give ground in favor of expedition where Congress expressly directs the Administrator to establish standards promptly."); *see Sierra Club v. Gorsuch,* 551 F.Supp. at 788–89 ("by calling for further elaborate study of the radionuclide emission problem and the concomitant increased use of EPA resources, the EPA envisions a level of thoroughness and scientific certainty not within the contemplation of Congress at the time it mandated the regulation of hazardous air pollutants."). The four-phase regulatory process described in the Page declaration, *see* Page Decl. ¶¶ 33–41, is indicative of "a level of thoroughness and scientific certainty not within the contemplation of Congress at the time it mandated the regulation of hazardous air pollutants." *Sierra Club v. Gorsuch,* 551 F.Supp. at 788–89. Although in most circumstances the Court defers to agency expertise about appropriate rulemaking procedures, such deference is inappropriate where Congress has unambiguously expressed its intent that these regulations be promulgated by a date certain and the agency manifestly has failed to fulfill this statutory obligation. *See Linemaster Switch Corp. v. EPA,* 938 F.2d 1299, 1303 (D.C.Cir.1991) ("given the clarity of Congress' instruction that [the CERCLA Hazard Ranking System] be revised no later than October 17, 1988, it would indeed be odd to conclude that Congress implicitly entrusted a laggard agency with the authority to devise a remedy for its own untimeliness.").

Defendant also argues that the regulatory tasks at issue here present unique challenges that justify the allowance of additional time. With respect to the regulation of area source categories under Section 112(c) and 112(k)(3)(B), defendant argues that area source category standards are especially difficult to set rationally, for two primary reasons: First, the relevant data for each source category are unique, so that information gathered in one rulemaking will not usually expedite another. *See* Def. Opp. at 16. Second, area sources pose difficulties not encountered when regulating major sources. For example, area sources constitute a larger and more di-

verse group of smaller entities than major sources; existing research focuses on major sources, so that less information about area sources currently exists; and it is harder for smaller entities to respond to information requests, because they tend not to have personnel dedicated to environmental compliance. *See id.* at 21; Page Decl. ¶ 36.

This is an insufficient basis for the Court to release EPA from its statutorily required duty to promulgate these regulations by a date certain. If the schedule set by the Clean Air Act for the regulation of these sources is unreasonable, EPA's remedy lies with Congress, not with the courts. *Amer. Lung Ass'n v. Browner,* 884 F.Supp. at 348 n. 9 ("The EPA's relief is with Congress, not with the courts."); *NRDC v. Reilly,* 797 F.Supp. at 198 ("Short of this showing [of impossibility], EPA's proper recourse is to persuade Congress to amend the statute, not to defy the statute and seek relief with this Court."); *Sierra Club v. Thomas,* 658 F.Supp. at 175 ("In the absence of a showing of impossibility, EPA must look to Congress, not this Court, for an extension of time."). "[T]o grant an extension such as required by the EPA, would involve the Court, rather than Congress, in changing, qualifying or amending ... the unqualified, mandatory provisions of Section 7412. Such relief, as sought by EPA should come from the Congress—not from the Courts." *Sierra Club v. Gorsuch,* 551 F.Supp. at 789. The Court will not second-guess Congress's determination that it would be (or would have been) possible to regulate these sources within the time frame set by the statute.

Finally, EPA argues that "other mandatory obligations" preclude its compliance with plaintiff's proposed schedule. *See* Def. Opp. at 16; Page Decl ¶ 30. Page names several regulatory tasks for which his office is responsible under Section 112 and other provisions of the Clean Air Act. *See id.* As plaintiff notes, however, EPA (including OAR) currently devotes substantial resources to discretionary rulemakings, many of which make existing regulations more congenial to industry, and several of which since have been found unlawful. *See* Sierra Club's Memorandum of Points and Authorities in Opposition to Defendant's Cross-motion for Summary Judgment on Remedy ("Pl.Opp.") at 12–13. Defendant's only response is that at least some of those regulatory activities were not discretionary because they were undertaken in response to petitions to modify the list of HAPs under 42 U.S.C. § 7412, to which EPA must respond within 18 months under the terms of the Act. *See* Reply Memorandum of Points and Authorities in Support of Defendant's Cross-motion for Summary Judgment on Remedy ("Def.Rep.") at 13 & n. 10 (citing 42 U.S.C. § 7412(b)(3)).

This response is insufficient. That *some* of the regulatory activities that EPA currently is engaged in are nondiscretionary comes as no surprise, and does little to undermine plaintiff's basic point—that it is inappropriate for an agency to divert to purely discretionary rulemaking resources that conceivably could go towards fulfilling obligations clearly mandated by Congress. The will of Congress, as expressed in the Act, is that the promulgation of standards according to these mandatory deadlines should take precedence over all other rulemaking that EPA has not been expressly ordered to complete by Congress, as well as (arguably) over mandatory rulemaking for which the authorizing statute does not set a date certain.[8] *See State v. Gorsuch,*

8. The Court notes that many of the mandatory regulatory duties cited by defendants in the Page Declaration involve reviewing and revising *existing* regulations, either on a regular schedule or in response to petitions. *See* Page Decl. ¶ 30. Although both tasks might

554 F.Supp. at 1066 ("While in the normal instance I would defer to the wisdom of the Administrator, I cannot when Congress has so clearly spoken on the issue. If the Administrator disagrees with the burden Congress has imposed upon her Agency, her proper recourse is to persuade Congress to amend the statute, not to defy the statute and seek relief from the courts.").

Despite the complexity of the regulatory scheme involved, this case devolves to a single issue: whether defendant has met the "heavy burden" of demonstrating that it would be impossible to comply with plaintiff's proposed schedule for the enactment of the remaining standards. *Alabama Power Co. v. Costle,* 636 F.2d at 359. The Court finds that it has not. EPA's only justifications for seeking huge amounts of additional time—12 years in the case of Section 112(c)(3) standards; more than eight years for Section 183(e) standards—are the asserted complexity of the regulatory tasks before it and the fact that other regulatory priorities demand resources that might be devoted to meeting EPA's obligations under the Clean Air Act. As the Court has discussed, neither of these arguments is sufficient to excuse EPA from expeditious compliance.

Congress directed EPA in 1990 to begin executing these tasks on a specific schedule set by statute. EPA has been grossly delinquent in making serious efforts to comply. And far from making the required showing that it has exercised its "utmost diligence" in its efforts to comply with the statutory deadlines, *Sierra Club v. Thomas,* 658 F.Supp. at 171 n. 5, defendant has not even attempted to justify its delinquency up to this point. The history of regulation under Sections 112(c) and 183(e) of the Clean Air Act shows that EPA has fulfilled its statutory duties only when forced by litigation to do so. By all appearances, EPA's failure to promulgate the required standards owes less to the magnitude of the task at hand than to "the footdragging efforts of a delinquent agency," *NRDC v. Train,* 510 F.2d at 713, or an attempt by EPA to prioritize its own regulatory agenda over that set by Congress in the 1990 Clean Air Act amendments. It is emphatically not within an agency's authority to set regulatory priorities that clearly conflict with those established by Congress. *See State v. Gorsuch,* 554 F.Supp. at 1062–63. EPA's justifications for seeking additional delay cannot override the clear intent of Congress (as expressed in the statute) that these duties should be fulfilled by a date certain.

All of this notwithstanding, the Court does find that plaintiff's proposed schedule is simply too compressed at this stage to afford any reasonable possibility of compliance. *See NRDC v. New York,* 700 F.Supp. 173, 181 (S.D.N.Y.1988) (recognizing "the necessity of dealing with the issues on a pragmatic basis," court allowed EPA administrator "a reasonable period of time" to comply with mandatory statutory duty); *Sierra Club v. Thomas,* 658 F.Supp. at 175 ("Nevertheless, since the purpose of this order is to protect the public interest and not to punish EPA, the Court would extend EPA's time to compensate for its footdragging if it were convinced that doing so was necessary for the promulgation of workable regulations."). In particular, plaintiff's proposal that defendant be required to promulgate regulations for the first sets of source categories and product categories by June 2006 does not afford sufficient time for EPA to shift resources to regulation under Sections 112 and 183.

be mandated by statute, the Court finds if unreasonable for EPA to devote its limited resources to the revision of existing regulations while so many mandatory regulations remain unpromulgated, years after the statutory deadlines have passed.

Rather than order the defendant to do what is likely an impossibility, *see NRDC v. Train*, 510 F.2d at 713, the Court finds it appropriate to order a regulatory schedule that is slightly more relaxed than that proposed by plaintiff, but significantly more expedited than that sought by the defendant.

Specifically, with respect to defendant's Section 112(c)(3) and (k)(3)(b) duties, the Court on March 31, 2006 ordered EPA to increase more gradually the number of rulemakings due at one time: as opposed to issuing standards for ten source categories by June 15, 2006, and then ten more every six months until June 2008 (as plaintiff requests), the Court directed defendant to issue standards for four categories by December 15, 2006; six more by June 15, 2007; and then ten more categories every six months until June 15, 2009. With respect to regulations under Section 183(b), EPA must promulgate regulations or CTGs for Groups II, III, and IV by September 30, 2006; September 30, 2007; and September 30, 2008, respectively.[9]

D. Promulgation of Standards Under Section 112(c)(6)

As the Court has discussed, EPA's mandatory duties under Section 112(c)(6) are to identify the categories or subcategories of sources "accounting for 90 per centum or more of the aggregate emissions of each such pollutant [listed in Section 112(c)(6)]" and to issue emissions standards for those source categories. 42 U.S.C. § 7412(c)(6). EPA has failed to issue those standards, and the Court (by its Order of March 31, 2006) directed EPA to promulgate, no later than December 15, 2007, emission standards assuring that source categories accounting for not less than 90 percent of the aggregate emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under Section 112(d)(2) or (d)(4).

With regard to discharging its duty to regulate the remaining source categories under Section 112(c)(6), defendant proposes to do the following:

> [O]nce EPA completes emission standards for the remaining source categories under section 112(c)(6), it intends to issue a notice that explains how it has satisfied the requirements of section 112(c)(6) in terms of issuing emission standards for the source categories that account for the statutory thresholds identified in section 112(c)(6).

Def. Opp. at 19 n. 16. In other words, defendant suggests that it may elect not to promulgate standards directly under Section 112(c)(6), because regulations it promulgates under *other* sections of the Act may suffice to "account[ ] for 90 per centum or more of the aggregate emissions" of the pollutants listed in that section. Instead, EPA simply may issue a notice stating how the standards it has promulgated under other sections account for 90 percent of the emissions of the pollutants specified in Section 112(c)(6).

9. Defendant argues that, by requiring it to set standards for *specific* source categories and product categories by dates certain, plaintiff's proposal "would improperly compel EPA to take action on specific categories of area sources and consumer and commercial products based on the current lists published by EPA." Def. Rep. at 4. Defendant argues that granting the proposed order would "impermissibly strip" EPA of it statutory authority to modify the list of source categories and product categories to be regulated under Sections 112(c)(3) and (k)(3)(B), Section 112(c)(6), and Section 183(e). *See id.;* Def. Opp. at 17. Defendant is correct—the Act does afford it discretion to modify the lists in question; however, this warrants not denial of plaintiff's motion, but merely a modification of its proposal so that EPA may decide in what order it wishes to regulate the source and product categories in question.

Plaintiff argues that this proposed remedy is unlawful "[b]ecause Clean Air Act § 112(c)(6) required 'standards' by November 15, 2000, not an EPA pronouncement[.]" Pl. Opp. at 14. According to plaintiff, allowing EPA to make such a pronouncement, subject only to review after the fact by the D.C. Circuit, "is no substitute for an order from this Court ordering EPA to complete its nondiscretionary duty by a date certain deadline." Pl. Opp. at 14. Plaintiff argues that the delay involved in an appeal to (and, potentially, a remand from) the D.C. Circuit creates the potential for "serious harm." *Id.* at 15.

[6] It is, however, within EPA's authority to use surrogates to regulate hazardous pollutants "if it is reasonable to do so[.]" *Mossville Envt'l Action Now v. Whitman*, 370 F.3d 1232, 1242 (D.C.Cir. 2004) (quoting *Nat'l Lime Ass'n v. EPA*, 233 F.3d at 637). Plaintiff appears to challenge implicitly the reasonableness of EPA's potential surrogates, *see* Plaintiff Sierra Club's Reply in Support of Motion for Summary Judgment ("Pl.Rep.") at 10; however, the United States Court of Appeals for the District of Columbia Circuit is the exclusive forum for substantive review of EPA regulations promulgated under Section 112 of the Clean Air Act. *See* 42 U.S.C. § 7607(b), (d)(1)(C), (e). Although the Court recognizes plaintiff's legitimate concerns about further delay—and the potentially grave health consequences of deficient or delayed regulation of Section 112(c)(6) pollutants—it is beyond this Court's authority to tell EPA *how* (as opposed to when) it must fulfill its duties under Section 112(c)(6). As Judge Kotelly stated in *Sierra Club v. Browner*:

> Under the CAA, the Court can only order EPA to take nondiscretionary actions required by the statute itself.... Notably, the CAA does not allow district courts to address the content of EPA's conduct, issue substantive determinations of its own, or grant other forms of declaratory relief.... Accordingly, the Court shall not grant the declaratory relief that Sierra Club seeks, especially *since doing so would necessarily embroil the Court in an assessment of the substance of EPA's actions or omissions.* Under 42 U.S.C. § 7607(b), such substantive judicial review is expressly reserved for the appropriate court of appeals.

130 F.Supp.2d at 90. Accordingly, the Court will not order EPA to issue standards for the specific source categories EPA has identified as accounting for ninety percent of PCB emissions.

III. PLAINTIFF'S MOTION TO STRIKE

As noted, plaintiff moved to strike portions of the Page declaration pertaining to Mr. Page's estimates of the amount of time required to promulgate regulations under Section 112(c). Plaintiff argues that: (1) the declaration does not state facts within Mr. Page's personal knowledge, but only opinions about how long rulemaking might take; (2) Mr. Page's estimates are admissible neither as expert testimony under Rule 702 of the Federal Rules of Evidence nor as lay opinion testimony under Rule 701; and (3) parts of the declaration are "purely conclusory," in that they state only what Mr. Page personally believes, unsupported by any facts. Although (as has already been discussed) the Court finds the Page declaration to be of limited value in determining what an appropriate timetable for regulation might be, this does not justify striking the affidavit. The Court therefore denied the motion to strike on March 31, 2006.

IV. CONCLUSION

For the foregoing reasons, the Court finds that there are no genuine issues of

material fact and that plaintiff is entitled to judgment as a matter of law. Accordingly, the Court denied defendant's motion for summary judgment, granted plaintiff's motion, and entered summary judgment for plaintiff on March 31, 2006. The Court further concluded that ordering the defendant to promulgate regulations under the following timetable, as set forth in the March 31, 2006 Order, will best preserve the intent of Congress in enacting the 1990 Clean Air Act amendments, without calling upon defendants to do the impossible.

EPA shall promulgate standards under Section 112(d) of the Clean Air Act for those area source categories listed by EPA pursuant to Section 112(c)(3) and 112(k)(3)(B) as source categories that are necessary to meet the 90 percent statutory threshold identified in Section 112(c)(3) and 112(k)(3)(B), and for which it has not yet issued standards, as follows:

12/15/06	4 listed categories
6/15/07	6 listed categories
12/15/07	10 listed categories
6/15/08	10 listed categories
12/15/08	10 listed categories
6/15/09	10 listed categories

No later than December 15, 2007, EPA shall promulgate emission standards assuring that source categories accounting for not less than 90 percent of the aggregate emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under Section 112(d)(2) or (d)(4). EPA shall retain its statutory authority to revise the list of area source categories under Section 112(c)(3) and 112(k)(3)(B).

For the three remaining Groups of categories of consumer or commercial products ("product categories") listed by EPA pursuant to Section 183(e) of the Clean Air Act, EPA shall promulgate regulations or control techniques guidelines under Section 183(e), to meet the 80 percent statutory threshold identified in that section, as follows:

9/30/06	Group II
9/30/07	Group III
9/30/08	Group IV

EPA shall retain its statutory authority under Section 183(e) to revise the product category list or product category groups.

An Order consistent with this Opinion issued on March 31, 2006.

Sharon HOLLINGSWORTH, Plaintiff,

v.

James C. DUFF,[1] Director, Administrative Office of the U.S. Courts, Defendant.

Civil Action No. 04–2209 (RMC).

United States District Court,
District of Columbia.

Aug. 2, 2006.

Background: Federal employee, a computer programmer for Administrative Office of the U.S. Courts (AOUSC) who developed sick-building syndrome while working in federal judicial building and was initially permitted to work from home but was ultimately terminated, sued Director of AOUSC under Rehabilitation Act. Director moved to dismiss for lack of subject matter jurisdiction.

Holdings: The District Court, Collyer, J., held that:

(1) AOUSC, as judicial branch agency, was not within purview of the Rehabilitation Act, and

1. James C. Duff is substituted for his predecessor, Leonidas Ralph Mecham, as Director of the Administrative Office of the U.S. Courts, pursuant to Fed.R.Civ.P. 25(d)(1).

EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB, Plaintiff, v. LISA JACKSON, in her official capacity as Administrator, United States Environmental Protection Agency, Defendant.	)	Case No. 1:01CV01537 (PLF) and Consolidated Cases

DECLARATION OF PANAGIOTIS E. TSIRIGOTIS

I, Panagiotis E. Tsirigotis, under penalty of perjury, affirm and declare that the following statements are true and correct to the best of my knowledge and belief and are based on my own personal knowledge or on information contained in the records of the United States Environmental Protection Agency (EPA) or supplied to me by EPA employees under my supervision.

1. I am the Director of the Sector Policies and Programs Division (SPPD) within the Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation (OAR) at EPA; a position I have held since February 6, 2006. SPPD is the division within OAQPS that has responsibility for, among other things, developing regulations under section 112 of the Clean Air Act (CAA), the national emission standards for hazardous air pollutants (NESHAP) program.

2. In my current capacity as Director of SPPD, I am responsible for overseeing EPA's promulgation of significant regulations related to the NESHAP program. In this capacity,

I am familiar with the process and time periods required for developing and promulgating major EPA regulations under the CAA.

3. This declaration is filed in support of EPA's "Motion to Amend Order of March 31, 2006." EPA needs additional time to promulgate certain emission standards that are needed to fulfill its CAA section 112(c)(3) and (k)(3) obligations under Paragraph 1(i) of the Court's Order of September 20, 2010, and its section 112(c)(6) obligations under Paragraph 3 of the Order.

4. As explained more fully below, EPA believes that the deadlines in Paragraphs 1(i) and 3 of the Court's Order should be extended from January 16, 2011, to April 13, 2012, to allow the Agency time to re-propose for further public comment and take final action on certain standards that are needed to meet the Agency's obligations under the Court's order. The standards that EPA needs to re-propose are the ones that apply to major source industrial, commercial and institutional boilers and process heaters ("major source boilers"), [1] area source industrial, commercial and institutional boilers ("area source boilers"), and commercial and industrial solid waste incinerators ("CISWI units"). EPA wishes to re-propose the rules for further public comment in order to ensure that the final rules are logical outgrowths of the original proposals. In addition to re-proposing, EPA would use the additional time to respond to the over 4,800 comments received on the original proposals. See infra ¶¶ 32, 36-40.

5. If the Court does not allow EPA to re-propose the standards at issue, EPA believes that it needs until June 15, 2011 to complete the final rules. EPA currently cannot respond in full to all of the comments received on the proposed rules by the January 16, 2011 deadline. I estimate that it would take approximately five more months to review and prepare

[1] A "major source" is a stationary source that emits or has the potential to emit 10 tons per year or more of any one hazardous air pollutant or 25 tons per year or more of a combination of hazardous air pollutants. An area source is any stationary source that is not a major source.

complete responses to the over 4,800 public comments received on the proposed major source boilers, area source boilers and CISWI rules and to prepare a final rule for the Administrator's signature consistent with the comments. While this short extension will not allow EPA to solicit further public comment, it will enable the Agency to reduce the legal vulnerabilities of the standards at issue and greatly increase the likelihood that the rules will withstand judicial review.

6. EPA also needs an additional six months to complete its section 112(c)(3) obligations for sewage sludge incinerators. Specifically, EPA requests that Paragraph 1(i) of the Court's September 20, 2010 Order be modified to allow EPA to complete one additional category pursuant to section 112(c)(3) by July 15, 2011. If the Court were to accept the proposed extension described in Paragraph 4 above, the deadline for completing the remaining section 112(c)(3) standards under Paragraph 1(i) would be April 13, 2012.

7. Below, I first provide some background on the actions that the Agency has taken to date to meet the requirements of Paragraphs 1(i) and 3 of the Court's Order. I then provide background concerning actions and events that have impacted the Agency's development of the remaining standards needed to meet our section 112(c)(6) obligations. After providing this background information, I first explain the Agency's need for additional time to meet its obligations under paragraph 3 of the Court's Order, and then discuss the additional time needed to meet its obligations under Paragraph 1(i).

Actions Taken to Date Pursuant to Paragraphs 1(i) and 3 of the Court Order

8. Paragraph 1(i) of the Court's September 20, 2010 Order requires the Agency to issue emission standards under CAA section 112(d) or section 129, assuring that area sources representing ninety percent of the area source emissions of the 30 of the thirty urban hazardous air pollutants identified pursuant to section 112(k)(3) are subject to emission standards by

January 16, 2011. Paragraph 3 of that Order requires the Agency to promulgate emissions standards by January 16, 2011, assuring that sources accounting for not less than ninety percent of the aggregate emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under Section 112(d)(2) or (d)(4).

9. To date, EPA has issued final emission standards for 48 area source categories pursuant to Paragraph 1(i) of the Order and CAA section 112(c)(3) and (k)(3). EPA proposed emission standards for three other area source categories in 2010, pursuant to section 112(c)(3) and (k)(3). Specifically, on April 29, 2010, EPA proposed emission standards for area source Industrial Boilers and area source Commercial and Institutional Boilers. In this declaration, I refer collectively to these two source categories as "area source boilers." On September 30, 2010, EPA proposed emission standards for sewage sludge incinerators.

10. To date, EPA has issued final emission standards for one source category under Paragraph 3 of the Order and section 112(c)(6). On April 15, 2010, consistent with Paragraph 3(a) of the April 13, 2010 Order, EPA proposed emission standards for gold mining production processes. EPA intends to issue final standards for this category by December 16, 2010, consistent with the Court's September 20, 2010 Order. Finally, on April 29, 2010, consistent with paragraph 3(b) of the Court's April 13, 2010 Order, the EPA Administrator signed proposed rules setting "emission standards for industrial, commercial and institutional boilers under section 112(d)" and "standards for commercial and industrial solid waste incineration units under section 129." Order dated April 13, 2010, ¶ 3(b). Those rules include: (1) National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (the "major source boilers rule"), 75 Fed. Reg. 32,006-73 (June 4, 2010); (2) National Emission Standards for Hazardous Air Pollutants for Area

Sources: Industrial, Commercial, and Institutional Boilers (the "area source boilers rule"), id. at 31,896-935; and (3) Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units (the "CISWI rule"), id. at 31,938-32,004.

11. In the proposed rules identified in Paragraph 10, EPA indicated that it believed that it needed to establish emission standards for certain emissions from major source boilers, CISWI units, and area source boilers to meet its section 112(c)(6) obligations.[2] EPA also indicated that it needed to establish emission standards for certain emissions from area source boilers to meet its section 112(c)(3) obligations.

General Background Relating to the Agency's Section 112(c)(6) and Section 112(c)(3) and (k)(3) Obligations

12. Paragraph 3 of the September 20, 2010 Order provides that the Agency must promulgate emissions standards by January 16, 2011, assuring that sources accounting for not less than ninety percent of the aggregate emissions of each of the hazardous air pollutants enumerated in Section 112(c)(6) are subject to emission standards under Section 112(d)(2) or (d)(4). Under section 112(d)(2), EPA imposes emission standards that require "the maximum degree of reduction in emissions of hazardous air pollutants" that EPA concludes are achievable based on consideration of factors identified in the statute. These are referred to as "maximum achievable control technology" or "MACT" standards. Section 112(d)(4) allows the Administrator, with respect to pollutants for which a health threshold has been established, to set a standard that considers such threshold and provides an "ample margin of safety."

[2] In the proposed area source boilers rule, EPA indicated that it needed to set emission standards under section 112(c)(6) for certain hazardous air pollutants emitted by certain area source boilers. Based on the comments received on the proposed rules, the Agency is re-evaluating which area source boilers and CISWI units are needed to meet its section 112(c)(6) obligations.

13. In March 2007, the United States Court of Appeals for the District of Columbia Circuit vacated EPA's section 112(d)(2) MACT emission standards for the Brick and Structural Clay Ceramics source categories. Sierra Club v. EPA, 479 F. 3d 875, 882-83 (D.C. Cir. 2007) (the Brick MACT decision). In its opinion, the court identified several significant deficiencies with EPA's MACT standard-setting methodology.

14. Shortly thereafter, in June 2007, the Court vacated the MACT standards for major source industrial, commercial, and institutional boilers and process heaters ("major source boilers"). Natural Resources Defense Council v. EPA, 489 F. 3d 1250, 1257-61 (D.C. Cir. 2007) ("NRDC I"). As noted above, the Agency believes that it needs to establish standards for certain emissions from major source boilers to meet its section 112(c)(6) obligations. At the same time the D.C. Circuit vacated the major source boilers MACT, it vacated a related rule called the Commercial and Industrial Solid Waste Incineration Units (CISWI) Definitions Rule, 70 Fed. Reg. 55,568 (Sept. 22, 2005), which EPA issued pursuant to CAA section 129(a)(1)(D). NRDC I, 489 F. 3d at 1250. The D.C. Circuit vacated both the boiler MACT rule and the CISWI Definitions rule because EPA had improperly identified the universe of sources subject to each rule. Specifically, the Court rejected EPA's interpretation of the term "solid waste incineration unit" in section 129(g)(1) and held that such term " plainly and broadly includes 'a distinct operating unit of *any* facility which combusts *any* solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels).'" 489 F.3d at 1257. CAA section 129(g)(6), in turn, defines "solid waste" to have the meaning provided by the EPA Administrator under the Resource Conservation and Recovery Act ("RCRA"). In sum, the Court vacated the Boilers MACT rule in 2007, because EPA had

improperly included in that rule sources that combusted solid waste and therefore should have been subject to standards under the CAA section 129 CISWI rule.

15. Finally, also in the summer of 2007, the D.C. Circuit vacated, in part, another section 112(d) MACT standard for the plywood industry. Natural Resources Defense Council v. EPA, 489 F. 3d 1364 (D.C. Cir. 2007) (the "Plywood MACT decision"). This trilogy of decisions substantially impacted how the Agency sets MACT emission standards under CAA section 112 and section 129.

16. In light of these decisions, the Agency determined that it needed additional information and data from major industrial, commercial and institutional boilers and process heaters and CISWI units in order to set defensible MACT emission standards pursuant to CAA section 112(d) and section 129(a)(1)(D).[3] As a result, the Agency prepared an information collection request. Because the request would be sent to "ten or more persons," as that phrase is defined in the Paperwork Reduction Act of 1995, 44 U.S.C. § 3502(3), the Agency had to obtain approval from the Office of Management and Budget ("OMB"), as provided in 5 C.F.R. § 1320.5, prior to sending the request to the affected facilities. As required by regulation, EPA published two Federal Register notices, soliciting comment on the draft information collection request. See 5 C.F.R. § 1320 (8), (10). EPA issued the first Federal Register notice on December 7, 2007, on which the public had 60 days to comment. EPA reviewed the comments received, revised the draft information collection request based on those comments, and issued the second Federal Register notice on May 14, 2008, providing the public 30 days to comment on the revised draft information collection request. In total, the public had 90 days in which to

[3] Like CAA section 112, section 129 requires that EPA set MACT standards. As such, the D.C. Circuit's Brick and Plywood MACT decisions cited above are also relevant to the Agency's section 129 standards.

comment on the draft information collection request. The regulations governing this process require this amount of public comment opportunity.

17. The draft information collection request consisted of two phases. The first phase required the submission of existing information, and the second phase required certain facilities to conduct a suite of stack tests to evaluate their emissions of hazardous air pollutants and certain other pollutants, such as particulate matter and carbon monoxide.

18. On August 1, 2008, OMB approved phase one of the information collection request, 5 C.F.R. § 1320.5, and the request was sent to about 3,000 facilities in late August 2008.

19. The facilities had until October 16, 2008 to complete phase one of the information collection request. We provided several facilities a 60-day extension because operations at the facilities were adversely impacted by the flooding that occurred in Texas, Louisiana and the Midwest due to Hurricanes Gustav and Ike in September 2008. EPA, therefore, did not receive the data and information required by the first phase of the information collection request until mid-December 2008, which is two months later than anticipated.

20. Once EPA obtained and reviewed the information submitted under phase one of the information collection request, it identified about 300 facilities (including both boilers and incinerators) for additional testing. EPA then submitted its list of proposed facilities for testing to OMB for review and requested approval of the second phase of the information collection request.

21. On May 21, 2009, OMB approved the second phase of the information collection request. Shortly thereafter, EPA, on June 1, 2009, sent the phase two testing survey to the affected facilities, and requested that all data be submitted to the Agency by October 15, 2009.

22. The Agency received numerous requests for extension of the phase two testing deadline, and EPA granted several of those requests. The requestors stated that the additional time was needed largely because of the lack of available testing contractors to perform the testing and the limited number of analytical laboratories available to analyze the required dioxin/furan samples. Other requestors, with units located in Alaska, cited weather issues that impeded completion of the testing on the schedule required by the information collection request. Finally, we had to identify some additional sources for testing because certain sources had shut-down or were in the process of shutting down. This resulted in additional delays in obtaining testing data. The Agency received most of the test data by December 31, 2009, and the remaining data in February 2010.

23. Consistent with the Court's Order, on April 29, 2010, the EPA Administrator signed proposed rules setting "emission standards for industrial, commercial and institutional boilers under section 112(d)" and "standards for commercial and industrial solid waste incineration units under section 129." Order ¶ 3(b). Those rules include the major source boilers rule, the area source boilers rule, and the CISWI rule. See supra ¶ 9.

24. In addition, on April 29, 2010, the EPA Administrator signed the "Identification of Non-Hazardous Secondary Materials That Are Solid Waste" proposed rule pursuant to RCRA ("Non-Hazardous Solid Waste Rule").[4] This rule is intricately tied to the three air rules identified in the prior paragraph because some industrial, commercial, or institutional boilers or process heaters combust secondary materials as alternative fuels. The proposed Non-Hazardous Solid Waste Rule describes which secondary materials constitute "solid waste" within the meaning of RCRA. Consistent with NRDC I, units that combust solid waste are subject to CAA

[4] In January 2009, EPA issued an Advanced Notice of Proposed Rulemaking ("ANPRM") on the Identification of Non-Hazardous Secondary Materials that are Solid Waste. The April 2010 proposal considered the comments received on the ANPRM.

section 129. Thus, if the industrial, commercial, or institutional boilers or process heaters combust secondary materials that are "solid waste" within the meaning of RCRA, those units would be subject to CAA section 129, and EPA would need to account for those units in setting MACT standards under section 129. By contrast, if the secondary materials combusted by a particular boiler are not solid waste, that source would be subject to the applicable section 112 boiler rule.

25. Following signature, the Agency promptly submitted the proposed major source boilers, area source boilers, and CISWI rules (the "three air rules") and the Non-Hazardous Solid Waste rule to the Office of the Federal Register. The rules were published in the Federal Register on June 4, 2010.

26. Taken together, the rules impact a substantial number of sources. Specifically, in the proposed major source boilers rule, EPA estimated that the rule would cover about 13,555 boilers and process heaters located at about 1,600 facilities. As a result of the proposed emission standards for major source boilers and process heaters, EPA estimated significant annual health benefits, which EPA quantified to range from $17 billion to $41 billion in 2013. The total nation-wide capital cost for the proposed rule was estimated to be $9.5 billion in the year 2013, with a total national annual cost of $2.9 billion in the year 2013.

27. In the proposed area source boilers rule, EPA estimated that the rule would cover 183,000 existing area source boilers at about 92,000 facilities in the United States. Industrial boilers are used in manufacturing, processing, mining, refining, or any other industry. Commercial area source boilers include those used, for example, in malls, restaurants, hotels, and apartments. Institutional area source boilers include boilers used in medical centers (e.g., hospitals and nursing homes), educational and religious facilities (e.g., schools, universities and

churches), and municipal buildings (e.g., courthouses and prisons). EPA estimated that the proposed area source boiler standards would result in health benefits ranging from $1 billion to $2.4 billion, and $900 million to $2.2 billion, at 3% and 7% discount rates, respectively. EPA estimated the total nationwide capital cost for the rulemaking for existing and new area source boilers, as proposed, to be approximately $2.5 billion, with an annualized cost of $1 billion.

28. In the proposed CISWI rule, EPA estimated that the rule would cover 176 solid waste incineration units. EPA estimated that if all affected units used add-on controls, the total nationwide cost for complying with the rule would be approximately $244 million per year. EPA further estimated the monetized benefits of the proposed regulatory action to be $240 million to $580 million (assuming 2008 dollars and a 3 percent discount rate) in the implementation year (2015).

29. In the June 4, 2010 Federal Register notices for the three air rules and the Non-Hazardous Solid Waste rule, EPA stated that one public hearing would be held, and that the comment period on the rules would close on July 19, 2010 (45 days following publication in the Federal Register).

30. Given the significant public interest in the 3 air rules and related Non-Hazardous Solid Waste rule and the substantial number of sources potentially affected by these rules, on June 9, 2010, EPA issued a notice of public hearing and extension of the comment period. The notice explained that EPA would hold three public hearings on the four related rules, as opposed to one hearing. 75 Fed. Reg. 32,682 (June 9, 2010). The notice further explained that the hearings would be held on June 15, 2010 in Arlington, Virginia, June 22, 2010 in Los Angeles, California, and June 22, 2010 in Houston, Texas. Finally, the notice extended the comment period to August 3, 2010.

31. EPA received several requests for additional extensions of the comment period. Generally, the requestors argued that additional time was needed for the public to provide meaningful feedback on the four complex and inter-related rules. Among other things, the requestors cited the need for additional time to review the calculations supporting EPA's proposed CAA emission standards and EPA's cost estimates. On July 22, 2010, EPA extended the comment period for the three air rules from August 3, to August 23, 2010. 75 Fed. Reg. 42676 (July 22, 2010). With the second extension of the comment period, the public had 80 days to comment on the three related air rules, and 60 days to comment on the Non-Hazardous Solid Waste rule.

Section 112(c)(6): Need for Additional Time To Complete Standards

32. EPA received about 2,360 individual comments on the major source boilers rule, 2,200 individual comments on the area source boilers rule, and over 250 individual comments on the CISWI rule. If each mass mailing received were also counted, the total number of comments received on the rules would exceed 30,000 comments. The volume of comments received on these three air rules is significant, as compared to the number received on other similar rules. Indeed, several of the comment letters submitted spanned hundreds of pages.

33. EPA received about 1,150 individual comments on the Non-Hazardous Solid Waste Rule. If each mass mailing received were also counted, the total number of comments received on the rule would exceed 20,000 comments. In addition, prior to issuance of the proposed rule, EPA received approximately 21,000 emails from concerned citizens, in addition to a host of comments it received in response to the January 2009 Non-Hazardous Solid Waste ANPRM. See supra n.4.

34. The Agency has spent considerable time reviewing the over 4,800 individual comments received on the three air rules. These comments raise several significant issues and provide new information and data. After reviewing the comments, we have a different and better understanding of the facts and complexities associated with the emissions of certain hazardous air pollutants from industrial, commercial and institutional boilers and process heaters and CISWI units. Based on the comments and new information and data, I believe a re-proposal of the major source boilers, area source boilers and CISWI rules would significantly bolster the strength of the final rules. As explained further below, there were a number of significant issues raised in the comments that may result in certain changes to the proposed rules that, we believe, could change the direction from the proposals sufficiently to make additional notice and comment advisable.

35. Although I cannot speak with specificity at this time as to the precise details of what we would include in a re-proposal because we have not yet presented the Administrator with options for her approval, I can discuss generally the kinds of issues that have emerged.

a. For example, commenters have raised legitimate issues concerning the proposed subcategorization scheme in the three air rules. Some commenters argued that we failed to establish a sufficient number of subcategories, while others argued that the proposed subcategorization scheme was not supported by the record. In addition to the new information and data we received on the sources at issue, these comments have made us recognize that, at proposal, we failed to understand fully certain issues associated with the affected sources that are relevant to subcategorization decisions. A different subcategorization decision could significantly change the proposed emission limits.

b. Another issue that emerged during the comment period is the scope of coverage of the proposed rules. Some commenters argue that the proposed boilers rules improperly fail to cover boilers that combust solely non-hazardous secondary materials that are not solid waste. We agree that the proposed boilers rules did not set standards for such boilers. If a decision is made to set standards for such boilers, we believe that providing the public an appropriate opportunity to comment on those standards would significantly reduce the risk that a reviewing court might later find that EPA had failed to provide sufficient notice to the regulated community.

c. Some commenters argued that we significantly under-estimated the number and types of certain units in the CISWI rule. For example, we estimated that there were 36 burn-off ovens in the United States. Commenters assert that there are between 10,000 and 15,000 of these ovens in the United States and that we lack data on these units and thus cannot set defensible MACT standards. Another commenter argued that we rushed to set standards for CISWI units that are not in the inventory supporting EPA's section 112(c)(6) listing and that such units are therefore not needed to meet the Agency's 112(c)(6) obligations. EPA is carefully evaluating these comments and assessing whether it needs burn off ovens and other CISWI units on which it currently lacks data or information to meet its section 112(c)(6) obligation.

36. Based on our current understanding of the facts about the sources at issue here and the issues that have emerged during the comment period, I believe that if we issue final rules for the three categories described above by January 16, 2011, various interested parties will allege in proceedings for judicial review that we did not provide meaningful notice and opportunity for public comment. In addition, I do not believe that we can adequately respond by

January 16, 2011, to the over 4,800 individual comments received on the major and area source boilers and CISWI rules. Although we have been working diligently to review and evaluate the comments since late August, we simply cannot fully respond by January 16, 2011, given the sheer volume and complexity of the issues presented.

37. EPA believes the deadline in Paragraph 3 of the September 20, 2010 Order should be extended from January 16, 2011, to April 13, 2012, to allow the Agency time to develop workable rules that can be implemented effectively and that can withstand judicial review. With such an extension, we would intend to re-propose the major source, area source, and CISWI rules by June 1, 2011. Following an opportunity for notice and comment on the re-proposals, EPA would take final action on the emission standards needed to meet the requirements of Paragraph 3 by April 13, 2012. See infra. In addition to issuing the re-proposals, EPA would use the extension of time to develop complete responses to all of the comments received on both the proposals and re-proposals. As explained above, the rules at issue cover almost two hundred thousand boilers and about 175 CISWI units and have significant environmental benefits, but they also have significant costs. See supra ¶¶ 26-28 (noting that the proposed major source boilers rule covers about 13,555 boilers and the proposed area source boilers rule covers about 183,000 boilers). As a matter of public policy, on rules of this significance that affect such a substantial number of sources, we believe it is appropriate to seek to avoid any risk of procedural error especially where, as here, we have identified the need for additional public input prior to issuing the final rules. I also believe that the re-proposal approach will result in standards that are more defensible and will yield environmental benefits earlier, because the final standards will more likely withstand substantive review.

38. EPA continues to work to complete final emission standards for those major source boilers, area source boilers and CISWI units that are needed to meet the requirements of Paragraph 3 of the Court's Order and section 112(c)(6). Were the Court to grant our request to extend the current January 16, 2011 deadline to April 13, 2012, I estimate that we would need at least 4 and one half months to develop re-proposals for the three rules. In addition to developing the re-proposals, we would need to prepare appropriate supporting documentation, including any revised calculations supporting the re-proposed emission standards and the costs associated with such standards.

39. Under the schedule proposed in Paragraph 37, there would be ten and one half months between signature of the re-proposed rule and signature of the final rule. I believe that this period of time is sufficient to promulgate the final standards. EPA currently intends to provide a 60-day comment period on the re-proposals, given the significant public interest in the original proposals. EPA also intends to hold a public hearing after the re-proposals are published in the Federal Register. We recognize that we will likely receive many additional comments, but we believe that the proposed period between the signature of the re-proposed and final rules provides sufficient time to review, consider, and respond to comments. We are prepared to commit the necessary resources to meet the schedule proposed in Paragraph 37.

40. If the Court does not allow EPA time to re-propose the standards at issue, EPA believes that the January 16, 2011 deadline in Paragraph 3 of the September 20, 2010 Order should, at a minimum, be extended to June 15, 2011. The Agency cannot currently respond in full to all of the significant comments submitted on the major source, area source, and CISWI proposed rules and prepare a final rule for the Administrator's signature that is consistent with those comments by January 16, 2011. While such an extension would not eliminate the

likelihood that opponents of the rules will allege the Agency provided insufficient notice and opportunity for comment, it would enable the Agency to develop responses to all significant comments received and to prepare fuller and more defensible response to those comments, which would enhance the defensibility of the final standards.

Section 112(c)(3): Need for Additional Time To Complete Standards

41. Consistent with the proposal set forth in Paragraph 37, Paragraph 1(i) of the September 20, 2010 Order would need to be extended to April 13, 2012, because the Agency believes that it needs to set standards for certain emissions from certain area source boilers to meet its section 112(c)(3) obligations. The deadline in Paragraph 1(i) must be consistent with the deadline in Paragraph 3, because certain area source boilers are needed to meet the requirements of both section 112(c)(3) and (c)(6). Thus, to the extent the deadline in Paragraph 3 is extended, the deadline in Paragraph 1(i) should be extended by the same amount of time.

42. As noted above, on September 30, 2010, EPA proposed emission standards for sewage sludge incinerators to meet its section 112(c)(3) obligations. EPA had hoped to be in a position to propose this rule earlier in 2010, but it encountered some unexpected delays, as explained below.

43. The Agency determined in 2009 that it needed additional information concerning the emissions of certain pollutants from sewage sludge incinerators. On October 23, 2009, EPA sent a CAA section 114 information collection request to a small number of facilities. Because of the small universe of sources targeted for information, the requirements of the Paperwork Reduction Act did not apply to this collection. In the information request, the Agency asked facilities to submit certain existing information and required the facilities to test for certain

pollutants. The information request required sources to submit the existing information by December 19, 2009, and the test data by February 17, 2010.

44. The Agency provided extensions for certain sources to submit their test data. Most of the sources requested these extensions because the units needed additional time to secure the necessary funding to complete the testing and to adhere to any relevant local government procedures for securing contractors to complete the testing. Sewage sludge incinerator units are owned almost exclusively by municipalities and the process for securing the funding and resources necessary to complete the testing was time consuming. Another source requested an extension of time to complete the testing due to weather-related issues. The Agency received all of the information and test data by March 31, 2010.

45. Once EPA reviewed and evaluated the information and data submitted in response to the survey, it identified some missing or incomplete information and data. It took a few additional weeks to resolve the data discrepancies that we had identified.

46. Finally, during the rule development process, we recognized that we were missing certain information relevant to our cost analysis of the proposed emission standards. In our cost analysis, we examined alternative disposal methods, one of which was landfilling sewage sludge. To complete our cost analysis, we needed the cost for small entities to transition from incinerating sewage sludge to landfilling it. It took a few weeks to obtain this information and complete the cost assessment for the proposed emission standards.

47. As noted above, the Administrator signed the proposed emission standards for sewage sludge incinerators on September 30, 2010. We received a request for a public hearing, and that hearing was held on October 29, 2010. The comment period closed on November 29, 2010, thirty days after the public hearing, as required by the CAA.

48. To date, we have received over 80 individual comments on the proposed rule. Based on the comments we have reviewed to date, we do not currently intend to re-propose the rule. The Agency cannot, however, currently respond in full to all of the significant comments submitted on the proposed sewage sludge incinerators rule by January 16, 2011.

49. Based on the comments reviewed to date and the information and data submitted, we estimate that we would need until July 15, 2011 to finalize the emission standards for sewage sludge incinerators. The additional time would enable the Agency to fully assess the new information submitted, including emissions and cost information, and to determine what, if any, changes to the proposed standards are needed. The additional time would also enable the Agency to develop responses to all significant comments received and to prepare fuller and more defensible responses to those comments, which would enhance the defensibility of the final standards. We therefore request that Paragraph 1(i) be modified to allow EPA to complete standards for one additional source category under section 112(c)(3) by July 15, 2011.

SO DECLARED:

/s/ PANAGIOTIS E. TSIRIGOTIS

Dated: December 6, 2010

ENCLOSURE B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB, Plaintiff, v. LISA P. JACKSON, Administrator, U.S. Environmental Protection Agency, Defendant.	Case No. 1:01CV01537 and Consolidated Cases Judge Paul L. Friedman

EPA'S REPLY MEMORANDUM IN SUPPORT OF
MOTION TO AMEND ORDER OF MARCH 31, 2006

Defendant, Lisa P. Jackson, Administrator, United States Environmental Protection Agency ("EPA"), has moved the Court to further amend Paragraphs 1(i) and 3 of the Order of March 31, 2006 ("2006 Order"), as amended on September 20, 2010 ("September Amendment"), to allow EPA additional time to complete its obligations. *See* EPA's Corrected Memorandum in Support of Motion to Amend Order of March 31, 2006 (Dec. 7, 2010) ("EPA Memo"). Plaintiff Sierra Club has opposed this motion. Sierra Club's Memorandum of Points and Authorities in Opposition to Defendant's Motion to Amend Order of March 31, 2006 (Dec. 24, 2010) ("SC Opp.").

The Agency has worked diligently to complete its obligations under Paragraphs 1 and 3 of the 2006 Order. To date, EPA has established emission standards for 50 source categories – 48 pursuant to Paragraph 1 of the Court's Order and two pursuant to Paragraph 3. Supplemental Declaration of Panagiotis E. Tsirigotis ¶ 4 (Jan. 3, 2011) ("Supp. Decl.") (Attached hereto). As EPA has explained, the Agency needs additional time to complete the four rulemakings necessary to fully discharge its obligations under the Order. Paragraphs 1(i) and 3 of the

September Amendment require EPA to complete its obligations under section 112(c)(3) and (k)(3), and (c)(6) of the Clean Air Act, 42 U.S.C. § 7412(c)(3) and (k)(3), and (c)(6), by January 16, 2011. EPA expects to satisfy its obligations under Paragraph 1(i) by promulgating emission standards for sewage sludge incineration units ("SSI") and certain area source boilers. EPA Memo 3. The obligations under Paragraph 3 are expected to be satisfied by promulgating standards for certain hazardous air pollutants emitted by major source boilers and certain area source boilers and commercial and institutional solid waste incineration ("CISWI") units. *Id*. 2.

Based on its review to date of the over 4,800 individual comments received in response to the proposed emission standards under section 112(c)(6), EPA's preliminary assessment is that the comments may materially affect important decisions relating to the level of the emission standards at issue. Specifically, as EPA explained, the comments raise a number of complex and significant issues, several of which could not have been previously anticipated. These issues relate, for example, to source categorizations and the appropriate scope of coverage of the final emission standards. As a result of these significant issues, the Office of Air and Radiation has recommended to the Administrator certain changes to the major source boilers, area source boilers and CISWI rules and has further recommended that the rules be re-proposed because the recommended changes would change the direction from the proposals sufficiently to make additional notice and comment advisable. Supp. Decl. ¶ 26.

Under these circumstances, the purpose of section 112(c)(6) and the public interest will be best served if the Agency's deadline in Paragraph 3 is extended from January 16, 2011, to April 13, 2012, so that EPA can re-propose the rules for further public comment. Because the standards for area source boilers are necessary to satisfy the requirements of Paragraph 1(i) as well, that final deadline should also be extended to April 13, 2012. The Agency does not believe

that it is necessary to re-propose the SSI standards, but it does need additional time (until July 15, 2011) to complete the final standards.

Accordingly, EPA requests that the Court amend Paragraph 1(i) of the amended Order to require EPA to promulgate standards for one additional area source category by July 15, 2011 and amend the final deadlines in Paragraphs 1 and 3 to allow EPA to complete its obligations by April 13, 2012. EPA also requests that, if the Court should deny EPA time to re-propose the standards for major source boilers and certain area source boilers and CISWI units, the deadline for completing its obligations under Paragraph 3 should be extended until June 15, 2011. Even without a re-proposal, EPA cannot complete the rules at issue by January 16, 2011. Finally, EPA requests that the deadline in Paragraph 1(i) should be extended to July 15, 2011, so that EPA can complete the SSI standards.

ARGUMENT

I. THE PUBLIC INTEREST WILL BE BEST SERVED IF EPA IS GIVEN SUFFICIENT ADDITIONAL TIME TO DEVELOP WORKABLE RULES THAT WILL SURVIVE JUDICIAL REVIEW

The Agency's goal is to issue final rules that meet the substantive requirements of CAA sections 112 and 129, as well as the procedural requirements for rulemaking in CAA section 307(d), 42 U.S.C. § 7607(d). Rules that fall short of these requirements will not withstand judicial review. Sierra Club maintains that the soundness of the rules is of no concern here; the only goal is to get rules signed by January 16, 2011. SC Opp. 14-15.

This Court previously held that, to secure an extension of a statutory deadline, the Agency must demonstrate that it is impossible to meet the deadline.[1] *Sierra Club v. Johnson*,

[1] The Court also held that the Agency must demonstrate that it "has exercised 'utmost diligence'" to fulfill its obligations. 444 F. Supp. at 53 (internal citation omitted). Contrary to Sierra Club's assertions, the Agency has indeed acted with such diligence in meeting the

(continued...)

444 F. Supp. 2d 46, 53 (D.D.C. 2006). However, even where Congress has established a deadline for EPA to act, the courts, in developing remedies in deadline cases, have given consideration to the amount of time needed to establish rules that will be workable and survive judicial review. *See id*. at 58 *quoting Sierra Club v. Thomas*, 658 F. Supp. 165, 175 (N.D. Cal. 1987) ("Nevertheless, since the purpose of this order is to protect the public interest and not to punish EPA, the Court would extend EPA's time to compensate for its footdragging if it were convinced that doing so was necessary for the promulgation of workable regulations."). Absent such consideration, the test of impossibility would be *pro forma*; it is difficult to imagine a circumstance where an agency could not sign some sort of a flawed rule by any particular date.

Promulgating a flawed rule does nothing, however, to advance the goals of Congress. Such an action can ultimately delay implementation of effective standards. As indicated in the Supplemental Declaration of Mr. Tsirigotis, the Office of Air and Radiation has recommended to the Administrator certain changes to the rules "that could significantly change the direction from the proposals," Supp. Decl. ¶ 26, and this recommendation makes clear that EPA is seeking to avoid issuing flawed rules. In this case, the three air rules at issue, taken together, will set emission standards for over 200,000 units in multiple different industries, and those standards will affect State and municipality-owned institutions. Declaration of Panagiotis E. Tsirigotis ¶¶ 26-28 (Dec. 6, 2010) ("Decl.") (EPA Memo Exhibit 6). No one disputes the significance of the rules from both a health and cost perspective. *See* EPA Memo 14; SC Opp. 5-6 (discussing emissions and health impacts of emissions from industrial and commercial boilers). The issue for resolution is whether the Agency should be required to issue final rules on January 16, 2011, when the Agency has acknowledged that the significant and complex issues raised in the

[1](...continued)
requirements of the 2006 Order. *See infra* 15-16.

comments may result in certain changes to the proposed rules that could result in interested parties alleging in judicial review that the Agency did not provide meaningful notice and opportunity to comment on these important rules and the Agency cannot currently respond to all significant comments. *See* Supp. Decl. ¶ 27.

Sierra Club's approach of insisting on immediate action on the standards, despite EPA's explanation of the remaining work to be done and the outstanding issues to be resolved is likely to do nothing more than delay realization of the benefits, while increasing the costs.[2] Even Sierra Club appears to recognize that promulgation of a flawed rule can, as a practical matter, delay the actual implementation of emission standards. As Sierra Club notes, SC Opp. 3, EPA promulgated standards for boilers in 2004. "National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters," 69 Fed. Reg. 55,218 (Sept. 13, 2004). In 2007, the D.C. Circuit vacated these standards. *Natural Resources Def. Council v. EPA*, 489 F.3d 1250, 1261-62 (D.C. Cir. 2007). This delay did not benefit the public interest.

In evaluating EPA's claim for relief, the Court should carefully consider the time needed for EPA to ensure that standards are not seriously flawed before final rules are issued. The public interest will be best served by the promulgation of workable standards that meet the statutory requirements and are based on a full and accurate assessment of all the data and

[2] Sierra Club argues that Congress has established that rulemakings to promulgate MACT standards should be completed in two years. SC Opp. 8-9. Sierra Club raised this same argument in the summary judgment proceedings that culminated in the 2006 Order. EPA responded to the argument in its Reply Memorandum of Points and Authorities in Support of Defendant's Cross-motion for Summary Judgment on Remedy (Oct. 8, 2005). The Court did not find it necessary to reach Sierra Club's claim in deciding the summary judgment motions. For this reason, EPA will not respond again, but will incorporate its prior response by reference.

information involved, even if that requires additional time to complete the standards for the over 200,000 units that will be subject to the rules once finalized.

II. RE-PROPOSAL IS THE MOST EFFECTIVE MEANS OF DEALING WITH THE UNANTICIPATED ISSUES RAISED IN THE COMMENTS IN RESPONSE TO THE PROPOSED SECTION 112(c)(6) RULES

A. Re-proposal Will Enable EPA to Resolve Many of the Issues Raised in Response to the Proposed Standards.

EPA has requested an extension of 15 months (until April 13, 2012) to complete the emission standards for certain hazardous air pollutants emitted by major source boilers and certain area source boilers and CISWI units.[3] This would allow the Agency sufficient time to propose revised standards and to secure additional comment from the public before taking final action. *See infra* 9-10. The Agency has received over 4,800 individual comments on the proposed section 112(c)(6) rules, and the comments with associated attachment total thousands of pages. Supp. Decl. ¶ 16. Many comments contained new emissions data; critiques of EPA's existing data and analytical approaches; and objections to EPA's method of categorizing sources. *Id*. ¶¶ 19, 21-22. Such input goes to the basic underpinnings of EPA's calculations of emission standards, which are premised on mathematical calculations based on data gathered from existing sources.

The standards at issue are referred to as "maximum achievable control technology" or "MACT standards." Under CAA section 112(d)(3)(A) and (B), MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best

[3] To complete these rules, EPA will also have to take final action on the proposed rule defining solid waste, which is necessary to define the universe of industrial, institutional, and commercial boilers and process heaters that will be regulated as boilers under section 112 and the universe that will be regulated as CISWI units under section 129. EPA Memo 11, 13 (citing "Identification of Non-Hazardous Secondary Materials That Are Solid Waste," 75 Fed. Reg. 31,844 (June 4, 2010)) ("Non-Hazardous Solid Waste Rule").

performing 12 percent of existing sources in the category (for which the Administrator has emissions information) or the best performing 5 sources for source categories with less than 30 sources. This level of minimum stringency is called the MACT floor. For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best controlled similar source (CAA section 112(d)(3)). EPA also must consider more stringent "beyond the floor" control options. When considering beyond the floor options, EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy, and nonair environmental impacts when doing so. *See Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 857-59 (D.C. Cir. 2001).

If, during the comment period on a proposed rule, commenters submit data from additional sources or show, to EPA's satisfaction, that the emissions information underlying the floors is incorrect, EPA would revise its calculations of the MACT floor for the relevant source category, which would make it necessary to reevaluate the beyond the floor control options. Such a reevaluation could also be necessary if commenters identify additional control options or provide new information regarding the other factors that EPA must consider in evaluating the beyond the floor control options. Finally, reevaluation of the floor and beyond the floor would be necessary if EPA determined that it erred in any of its proposed subcategorization decisions.

Thus, a change in data or analytical approach can require extensive recalculations and change the final emission standards for the different subcategories ultimately defined. For the 112(c)(6) rules, the collection and analysis of data and the development of subcategories has been more complicated than in most MACT rulemakings because of the diversity of sources involved. Supp. Decl. ¶ 9. Most MACT standards affect primarily a single industry. *Id*. Many diverse industries use the boilers, process heaters and CISWI units that must be addressed in

these rulemakings, including, for example, pulp and paper mills, refineries, chemical plants, steel manufacturing processes, sugar production, wood furniture manufacturing, and food processing. In addition, they are used by non-industrial entities such as universities, churches, and municipalities. Decl. ¶ 27; Supp. Decl. ¶¶ 9, 17.

Mr. Tsirigotis's Supplemental Declaration provides additional explanation concerning the new information received during the comment period and how it will affect the Agency's conclusions in setting emission standards. The submissions included information challenging the accuracy of the emissions inventories used by EPA in calculating the proposed standards, including the Agency's treatment of emissions that are at or close to the minimum level that can be detected using EPA-approved test methods. Supp. Decl. ¶¶ 21-22. Another example of significant new information provided in the comments concerns boilers and CISWI units burning a combination of fuels, such as coal and biomass. *Id.* ¶ 21. These comments have given EPA a better understanding of the facts pertaining to the use of combination fuels and raise questions as to whether the Agency properly considered the emissions of boilers and CISWI units burning a combination of fuels in setting the proposed MACT floors. As Mr. Tsirigotis notes in his Supplemental Declaration, this new information has caused the Agency to re-evaluate its proposed subcategorization scheme decision.[4] *Id.*

As EPA previously explained, re-proposal is advisable in order to deal with the new data and information received that may materially affect some important decisions relating to source categorizations and coverage for the final emission standards. EPA Memo 18. Re-proposal will ensure that the public, including Sierra Club and the regulated entities, will have an opportunity

[4] The Intervenors have also provided examples of comments that they believe raise substantial issues requiring significant changes to the proposed emission standards. Response by Intervenors to EPA's Motion to Amend Order of March 31, 2006 (Dec. 27, 2010).

to comment on the data and new information and on changes made to the proposed standards. The additional public comment could improve the accuracy of the standards, which would facilitate effective implementation. Furthermore, ensuring full public participation will strengthen the rule for the purpose of judicial review by eliminating issues as to whether the final rules can be considered "logical outgrowths" of the proposed standards. *See* EPA Memo 18-19.

B. The Supplemental Tsirigotis Declaration Establishes That the Requested Extension to April 13, 2012, Will Provide for an Expeditious Process for Completing Re-proposal and Final Action on the Emission Standards.

Mr. Tsirigotis has explained the steps necessary to prepare the re-proposal and take final action on the rules. Supp. Decl. ¶¶ 28-29. By June 1, 2011, EPA would sign the notices of re-proposal. *Id*. ¶ 28. To reach this point, EPA would have to (1) complete its review of the comments to ensure that all issues have been considered; (2) identify alternative options for proposal, and conduct additional analyses supporting each proposed option, including, floor, beyond the floor, and cost analyses; (3) prepare the proposed rule documents, including the preamble, regulatory text, and all technical support documents, including economic analyses; and (4) concurrently complete EPA senior management and inter-agency review. *Id*.

EPA would then allow an opportunity for a public hearing and a 60-day period for public comment, which would commence when the notice was published in the Federal Register. *Id*. ¶ 29. After the comment period closes, EPA will have to (1) review the comments; (2) assess the data, correct any data issues, and re-run the MACT analyses; (3) prepare all final rule documents, including the preamble, regulatory text, comment-response document, and all technical support documents, including economic analyses; and (4) concurrently complete EPA senior management and inter-agency review. EPA would then take final action on the emission

standards needed to meet the requirements of Paragraphs 1(i) and 3 by April 13, 2012. *Id*. This is an achievable, but very aggressive schedule for a re-proposal. *See* Decl. ¶ 38.

C. Sierra Club's Argument that Re-proposal Is Not Appropriate Lacks Merit.

In opposing the Agency's request for sufficient time to re-propose the rules, Sierra Club complains that EPA has neither made a definitive statement that it will re-propose the rules nor identified the specific issues that will be reproposed. SC Opp. 14-15. Mr. Tsirigotis' Supplemental Declaration provides additional information on the type of issues that the Agency is confronting, but the final decisions must be made by the Administrator. As explained by Mr. Tsirigotis:

> As explained in my prior declaration, there were a number of significant issues raised in the comments, including, for example, the combination fuel issue discussed above, and many of those issues directly impact the level of the emission standards at issue. Decl. ¶ 34. In light of these significant issues, the Office of Air and Radiation has recommended to the EPA Administrator that we make certain changes to the major source boilers, area source boilers and CISWI rules based on our analysis to date of the comments received. *Id*. ¶¶ 34-37. In view of these recommended changes that could significantly change the direction from the proposals, the Office of Air and Radiation has also recommended re-proposal of the three rules. *Id*. In the weeks since EPA filed its "Motion to Amend Order of March 31, 2006," our ongoing review of the issues raised by comments only reinforces that recommendation.

Supp. Decl. ¶ 26. The fact that the process necessary for the Administrator to make a final decision on the Air Office's recommendation has not been completed does not undermine the seriousness of the difficulties caused by the submission of the information received in response to the proposed rules. EPA could not delay the current motion to permit a final decision by the Administrator. Once EPA determined that it needed additional time to complete the standards, it came to the Court seeking relief. Supp. Decl. ¶ 24. Given the current deadline of January 16, 2011, it was not in a position to delay.

Sierra Club also contends that the CAA's process for reconsideration of rules offers an effective alternative to re-proposal. SC Opp. 15-16. Section 307(d)(7)(B) provides that a party may petition EPA to reconsider a rule based on objections that arise after the close of the comment period. 42 U.S.C. § 7607(d)(7)(B). EPA has recognized that this provision would provide an avenue for addressing some of the complications that have developed as these rulemakings have proceeded. EPA Memo 20-21. In these particular circumstances, however, reconsideration is not as effective as a re-proposal in addressing the problems presented. There are four interrelated rules at issue (including the Non-Hazardous Solid Waste Rule); EPA has identified significant issues concerning the standards proposed in April 2010; and the final standards will apply to a large and diverse group of entities. Re-proposal is the best method of ensuring that the final standards will be suitable for immediate implementation. EPA Memo 20-21.

III. IN THE ALTERNATIVE, EPA SHOULD BE ALLOWED UNTIL JUNE 15, 2011, TO COMPLETE THE SECTION 112(c)(6) RULES SO THAT THE AGENCY CAN RESPOND TO THE COMMENTS AND COMPLETE THE RULES

A. EPA Requires The Additional Time to Comply with the Requirements of CAA Section 307(d) for Rulemaking.

Section 307(d)(6)(B) of the CAA requires that EPA must respond to the significant public comments before promulgating a final rule. 42 U.S.C. § 7607(d)(6)(B) ("The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period."). Failure to meet this requirement is grounds for a remand. *See Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1051 (D.C. 2001) ("While we generally uphold the EPA's authority to make emission projections and set emission limitations accordingly, we do so only where the EPA

adequately responded to comments and explained the basis for its decisions."). Depending on the nature of the comment, the Agency's response may require changes to the rule, as well as a written response. The failure to make such changes, where warranted, could lead to a judicial determination that the emission standards are arbitrary and capricious.[5]

As EPA has explained, the Agency has received over 4,800 individual comments, which, in total, amount to thousands of pages of information to review. That information includes legal and technical comments, new data, data corrections, and cost information, much of which is directly relevant to the emission standards-setting process and could directly affect the outcome of the final rules. *See* Supp. Decl. ¶ 16-25. In his initial Declaration, Mr. Tsirigotis stated: "the Agency cannot currently respond in full to all of the significant comments submitted on the major source, area source, and CISWI proposed rules by January 16, 2011." Decl. ¶ 40. This is a statement of fact by the Director of the office responsible for the rules at issue here.[6] *See id.* ¶ 4. In his Supplemental Declaration, Mr. Tsirigotis provides a more detailed appraisal that includes the Agency's efforts in the several weeks since his initial declaration.

> Based on recent discussions with my staff, I have concluded that we now cannot respond to all of the significant comments submitted on the major source boilers, area source boilers, and CISWI rules by January 16, 2011. In addition, as to those comments that we have not yet had an opportunity to consider fully, we will not be able to determine by January 16, 2011, whether some of these comments warrant additional changes to the floor, variability, beyond the floor, or cost analyses. As to the significant comments we have considered, we are not in a position to provide complete responses to those comments by January 16, 2011.

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[5] When new data are received, those data are subjected to a quality review to determine whether they are acceptable for use. Supp. Decl. ¶ 24 (describing data quality review).

[6] Sierra Club improperly seeks to minimize the importance of Mr. Tsirigotis's statement by drawing distinctions between language in EPA's memorandum of law and the Declaration. SC Opp. 10. To the extent that such differences exist, with respect to factual issues, the Declaration is dispositive. Statements by counsel in a brief are not evidence. *Wood ex rel. United States v. Am. Inst. in Taiwan*, 286 F.3d 526, 534 (D.C. Cir. 2002).

Id. ¶ 25. Thus, if EPA signs final emission standards on January 16, 2011, EPA will not have met its obligation under section 307(d)(6)(B) of the CAA to respond to all significant comments. EPA will also not have considered all of the comments for the purpose of determining whether they warrant further modifications to the emission standards or whether they require revisions to any of the documentation and analyses supporting the final standards, including the cost analyses. Finally, EPA will not have completed the response to comments document. *See* Supp. Decl. ¶ 25.

This Court has expressly recognized that it is not appropriate to require an agency to meet a schedule that does not "afford any *reasonable possibility* of compliance." *See Sierra Club v. Johnson*, 444 F. Supp. 2d at 58 (emphasis added) (citing *Natural Resources Def. Council v. New York*, 700 F. Supp. 173, 181 (S.D.N.Y. 1988) (recognizing "the necessity of dealing with the issues on a pragmatic basis," court allowed EPA administrator "a reasonable period of time" to comply with mandatory statutory duty). As demonstrated above, the Agency needs additional time to complete its section 112(c)(6) obligations.

Sierra Club suggests that the Agency's current inability to meet the deadline is immaterial and that the focus should instead be on the Agency's past conduct. SC Opp. 7-8. Contrary to Sierra Club's assertions, and as demonstrated below, the Agency has acted with utmost diligence since the issuance of the Court's March 2006 Order. *See infra* at 15-16. Moreover, judicial discretion should consider the concrete circumstances as they exist at the time the Agency requests additional time. *See Natural Resources Def. Council, Inc. v. Train*, 510 F.2d 692, 713 n.106 (D.C. Cir. 1974) (quoting *System Fed'n No. 91, Ry. Employees v. Wright*, 364 U.S. 642, 647 (1961) ("There is also no dispute but that a sound judicial discretion may call for the modification of the terms of an injunctive decree if the circumstances . . . have changed,

or new ones have since arisen.") and *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932) ("A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.")). Otherwise, the Court's inquiry would be restricted to considering the Agency's past decisions, with the benefit of hind-sight, as opposed to addressing the remaining work actually required to complete the rules at issue. The Court has rejected this approach. *See Sierra Club v. Johnson*, 444 F. Supp.2d at 58.

As shown below, EPA has demonstrated that it has employed utmost diligence in meeting the requirements of the Court's March 2006 Order, and the issue for resolution now is whether EPA has met its burden of demonstrating that it needs additional time to complete the final rules at issue. Mr. Tsirigotis' Supplemental Declaration confirms that the Agency cannot promulgate the standards needed to fulfill its obligations under Paragraph (3) by January 16, 2011. EPA therefore respectfully requests that, even if the Court declines to provide the time necessary for re-proposal of the rules, the deadline in Paragraph (3) of the Court's Order be extended from January 16, 2011 to June 15, 2011.

B. EPA Has Proceeded Diligently To Meet its Obligations Under the 2006 Order.

Since the Court's issuance of the March 31, 2006 Order, EPA has worked diligently and accomplished a significant amount of work pursuant to the Court's March 31, 2006 Order. Sierra Club argues to the contrary, however, making a blanket assertion that the Agency "adopted a rulemaking approach involving extensive discretionary delay." SC Opp. at 9. This assertion lacks foundation. First, Sierra Club wholly ignores that EPA has established emission standards for over 50 different source categories – 48 pursuant to Paragraph 1 and two pursuant to Paragraph 3 of the Order. Supp. Decl. ¶ 4. In addition, EPA has issued control techniques

guidelines and/or established regulations pursuant to section 183(e) of the Act, as required by Paragraph 4 of the Order and has completed its obligations in this regard. Finally, EPA has completed its obligations under the Consent Decree entered by the Court in 2003.

Moreover, even with respect to the pending rulemakings that form the basis of this motion, the Agency has proceeded with great diligence. As explained previously, EPA had to account for unfavorable decisions by the D.C. Circuit, particularly the vacatur of the Brick MACT rule, the Boilers MACT rule, and the CISWI Definitions rule, which greatly increased the scope of work required for the Agency to establish MACT standards for the sources at issue pursuant to CAA section 112 and 129.[7] Supp. Decl. ¶ 10. Among other things, the Agency needed information on the specific materials burned by the sources at issue. The Agency also needed emissions data and information on the sources at issue so that it could evaluate which sources were the best performing sources and would thus form the basis for the MACT floor calculation. In this regard, EPA conducted a comprehensive information collection request ("ICR"). The first phase of the ICR required the submission of existing information regarding more than 3,000 major industrial, commercial and institutional boilers and process heaters and CISWI facilities. Decl. ¶ 18; Supp. Decl. ¶ 9. The second phase required about 300 facilities to conduct tests to evaluate their emissions of hazardous air pollutants and certain other pollutants, such as particulate matter and carbon monoxide. Decl. ¶ 20-21; Supp. Decl. ¶ 10.

Finally, after obtaining the necessary information, on April 29, 2010, the EPA Administrator signed four interrelated proposed rules, and those rules were published in the

[7] Sierra Club mistakenly suggests that EPA is relying on the consequences of these decisions as grounds for its current motion. SC Opp. 4 n.5. EPA expressly stated that the previous extensions had provided most of the time needed to respond to these decisions, but that it was discussing the cases because they were relevant background information so that the Court could understand the delay in proposing the emission standards at issue. EPA Memo 10 n.5.

Federal Register on June 4, 2010. EPA Memo 13-14. EPA held three public hearings and allowed the public until August 23, 2010, to comment on these rules. *Id.* In response, EPA received over 4,800 individual comments. *Id*. Since that time, EPA has been engaged in the process of analyzing the comments, reviewing and assessing the quality of new data, evaluating alleged data errors in EPA's existing emissions inventories, reevaluating calculations, and working on developing written responses to the comments. Supp. Decl. ¶¶ 21-23.

Thus, contrary to Sierra Club's claim, EPA has been proceeding diligently to meet all of its obligations under the Order. The fact that EPA is unable to issue the remaining standards at issue does not connote a lack of diligence; rather it reflects that unexpected difficulties and issues were encountered.

C. Sierra Club's Claim that EPA Engaged in Discretionary Delay Lacks Merit.

The sole support Sierra Club provides for its assertion that the Agency engaged in "extensive discretionary delay" is that the Agency "chose to collect" information from the sources at issue in two phases and that EPA could have asked for a waiver of the relevant requirements of the Paperwork Reduction Act, 44 U.S.C. § 3501-21.[8] SC Opp. at 9. These assertions are meritless.

As an initial point, Sierra Club's attack on the two-phased ICR comes too late. As of December 2007, Sierra Club was fully aware of the two-phased ICR approach, as EPA, pursuant to the PRA, issued the first Federal Register notice, explaining, in detail, the Agency's proposed information collection. Sierra Club had a full and fair opportunity to comment on that notice and the second notice the Agency issued in May 2008. Decl. ¶ 16. Sierra Club was also among the

[8] As explained previously, because EPA needed information from ten or more persons, ICR was subject to the requirements of the PRA, which imposes specific requirements for public participation. The PRA also requires that OMB review and approve information collection requests to ten or more persons. *See* EPA Memo 12.

entities that EPA consulted regarding the drafts of the second phase of the ICR. Supp. Decl. ¶ 12. Thus, Sierra Club was fully aware of the Agency's approach to information gathering when it agreed to extensions of the deadline in Paragraph 3 in 2008 and 2009. Having consented to the prior extensions, it is now too late for Sierra Club to complain that the Agency's action was improper.

More importantly, the Agency did not engage in "discretionary delay" in collecting the information needed for these rules. EPA's decision to proceed in two phases was the appropriate approach in the circumstances. The information from the first phase, which included the identification of the types of material burned in the different units, enabled EPA to determine which units should be tested and which pollutants should be addressed for each unit. Supp. Decl. ¶ 10. Thus, by proceeding in two steps, EPA was able to focus the testing on obtaining the information that it needed to address specific gaps in the data. *Id*.

Sierra Club's complaint that EPA should have asked OMB to waive the requirements of the PRA is equally unfounded. *See* SC Opp. 9 & n.7 (citing 44 U.S.C. § 3507(j)(2)). The PRA provides that the head of an agency may request OMB to authorize an ICR where "the use of normal clearance procedures is reasonably likely to cause a court-ordered deadline to be missed." 44 U.S.C. § 3507(j)(1)(B)(iii). If authorized, the collection may be conducted for no more than 180 days after OMB received the request. *Id*. § 3507(j)(2). Thus, the process referred by Sierra Club is not actually a waiver of the PRA, but a temporary authority to proceed without the normal process. *See* 40 C.F.R. § 1320.13 ("Emergency Processing").

EPA would have had to request emergency processing in the fall of 2007, when it was preparing the ICR. Supp. Decl. ¶ 14. At that point, EPA could not have reasonably anticipated

how prolonged the ICR process would become.[9] *Id*. Given the public interest in the rules and the number and variety of facilities that would be regulated, it was important to secure public input on the ICR to ensure that the necessary information would be obtained. Finally, the reasonableness of one's past actions cannot be judged against today's knowledge. At the time EPA embarked on the information collection process, it thought it was acting appropriately by following the requirements of the Paperwork Reduction Act and providing affected sources the opportunity to provide input to the Agency on the draft ICR. It also thought it had sufficient time to do so.[10] *Id*. ¶ 15.

D. EPA Has Demonstrated that It Requires Until June 15, 2011, to Complete the Emission Standards.

In response to Sierra Club's claim that EPA did not provide a sufficient explanation as to why the Agency required an additional five months to complete these standards, Mr. Tsirigotis has provided additional information as to the necessary tasks to be finished and the time required. Supp. Decl. ¶ 30. EPA must complete its review of the comments to ensure that the final rules are supported by the administrative record and adequately account for all the new information and data received. The Agency must also verify the accuracy of its emissions data base by confirming that it has resolved the allegations of inaccuracies in the comments. For

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[9] Up to six months of delay was caused by events outside the control of either EPA or the sources. Specifically, there was a two month delay in obtaining Phase I information due to several facilities' operations being impacted by hurricanes, and there was up to a four month delay in obtaining the Phase II information due to a shortage of testing contractors and analytical laboratories qualified to perform the required testing. Weather-related conditions also caused some delays in the submission of the Phase II data. Supp. Decl. ¶ 13.

[10] Moreover, the public process significantly improved the draft information collection request. EPA received input from interested parties, including Sierra Club, regarding the types of information that should be collected and the testing that should be required, which resulted in a better data set for setting the emission standards. Supp. Decl. ¶ 8. Moreover, the Agency was able to reduce the total estimated cost of the ICR's testing phase from almost $38 million to about $19 million. *Id*.

example, Mr. Tsirigotis explained that, as a result of the comments, EPA has identified a key piece of information that is relevant to assessing carbon monoxide data. If the Agency had additional time, it could confirm certain information as to the instrument calibration range used during those emissions tests. *Id*. Finally, EPA must prepare all final rule documents, including the preamble, regulatory text, comment-response document, and all technical support documents, including economic analyses; and concurrently obtain senior EPA management and inter-agency review. *Id*. When this is all complete, the Administrator will be able to sign the final rules.

Sierra Club argues that the Agency does not need additional time to finalize the emission standards at issue because EPA has, in the past, in other rulemakings responded to a substantial number of comments - more than 4,800 - in a four to five month period. SC Opp. 12. Sierra Club wholly ignores that there can be significant variations in the complexities and analyses required for different rules. Contrary to Sierra Club's assertion, there is no single, defined time-period for responding to comments received on a rule. This period varies significantly depending on the nature of the comments received, the number and complexity of issues raised in the proposed rule, and the amount of new information and data received in response to comments.

The rules on which Sierra Club relies for the proposition that the Agency can complete responses to comments in four to five months involved completely separate issues than what are presented by the rules at issue here. For example, Sierra Club points to the fact that the Agency responded to comments on the Greenhouse Gas Endangerment final rule in a matter of five and a half months between the close of the comment period and promulgation. SC Opp. at 12. The Greenhouse Gas Endangerment final rule found that greenhouse gas emissions from motor vehicles contribute to greenhouse gas pollution that endangers public health and welfare.

Significantly, Sierra Club fails to mention that EPA had issued an Advanced Notice of Proposed Rulemaking ("ANPR") one year prior to issuing the Greenhouse Gas Endangerment proposal. As a result the Agency had been reviewing the central comments on endangerment since November 2008 when the comment period on the ANPR closed. Sierra Club also cites the Agency's Tailoring final rule and the 2008 NAAQS. These rules involved very different decisions. The establishment of a MACT standard is calculated based on an extensive body of factual information. Every bit of data can be relevant to the outcome, and failure to properly consider data can render the final rule legally vulnerable, as has happened in prior regulations. The data and information that the Agency received on the major source boilers, area source boilers and CISWI rules was of such a magnitude and raised such complex and significant issues, that the Agency could not respond to the over 4,800 comments (and thousands of pages of information submitted), in four and a half months, which is the time period from the close of the comment period to the current court-ordered deadline.

IV. AN EXTENSION UNTIL JULY 15, 2011, IS NECESSARY FOR EPA TO COMPLETE ITS OBLIGATIONS UNDER SECTION 112(c)(3) AND (k)(3)

To satisfy its obligations under section 112(c)(3) and (k)(3), EPA must establish emission standards for area source boilers and SSI units. The area source boilers standards are also needed to complete the Agency's obligations under section 112(c)(6) and will be completed in accord with the schedule discussed above.

EPA requires an additional six months to complete emission standards for SSI units. Supp. Decl. ¶¶ 31-34. At the time EPA filed the instant motion, the comment period for the SSI standards had been closed for only a week. *Id.* ¶ 31. Mr. Tsirigotis and his staff have now been able to assess some of the comments (which, including attachments, total over 1600 pages) and

have identified a number of central issues that must be addressed. *Id*. ¶¶ 32-33. These include claims that EPA failed to properly consider the impact of sludge content on emissions in designating the best performers and calculating the MACT floors; additional information on sludge content; information allegedly contradicting EPA's estimates for facility emissions; and new information regarding the costs of emission controls and the effectiveness of control devices. *Id*. ¶ 33.

Mr. Tsirigotis has stated that "EPA cannot respond to all of the significant comments submitted on the proposed [SSI] rule by January 16, 2011." Supp. Decl. ¶ 32. In order that this rulemaking can be completed, EPA must fully review the comments and, on some issues, contact commenters regarding the data and information they submitted related to emissions because it appears that the submitted information does not include certain information the Agency needs to evaluate the utility of that new information in the standard-setting process. *Id*. ¶ 34. EPA must also make any appropriate revisions to the proposed standards, and the necessary analyses of costs and other impacts. *Id*. In particular, EPA must analyze information regarding the variability of sludge content, determine whether that analysis warrants any revisions to the variability incorporated into the proposed standards, and calculate revised MACT floors, as appropriate. *Id*. ¶¶ 32-33. If revisions to the floor are made, EPA would then re-evaluate the beyond the floor analysis and the regulatory impact analysis to reflect any revisions to the standards, including the analysis of costs and benefits of the regulation. *Id*. Finally, EPA must prepare all final rule documents, including the preamble, regulatory text, comment-response document, and all technical support documents, including economic analyses; and concurrently obtain EPA senior management and inter-agency review. *Id*. ¶ 34. When this is all complete, the Administrator will be able to sign the final rule on July 15, 2011. *Id*.

CONCLUSION

For the reasons above and in EPA's opening brief, the Court should amend Paragraph 1(i) to require EPA to promulgate standards for one additional area source category by July 15, 2011. The final deadlines in Paragraphs 1 and 3 of the Order of September 20, 2010, should be amended to allow EPA to complete its obligations by April 13, 2012.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB, Plaintiff, v. LISA JACKSON, in her official capacity as Administrator, United States Environmental Protection Agency, Defendant.	Case No. 1:01CV01537 (PLF) and Consolidated Cases

SUPPLEMENTAL DECLARATION OF PANAGIOTIS E. TSIRIGOTIS

I, Panagiotis E. Tsirigotis, under penalty of perjury, affirm and declare that the following statements are true and correct to the best of my knowledge and belief and are based on my own personal knowledge or on information contained in the records of the United States Environmental Protection Agency (EPA) or supplied to me by EPA employees under my supervision.

1. I am the Director of the Sector Policies and Programs Division (SPPD) within the Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation (OAR) at EPA, a position I have held since February 6, 2006. SPPD is the division within OAQPS that has responsibility for, among other things, developing regulations under sections 112 and 129 of the Clean Air Act (CAA), the national emission standards for hazardous air pollutants (NESHAP) program and the solid waste combustion program, respectively.

2. In my current capacity as Director of SPPD, I am responsible for overseeing EPA's promulgation of significant regulations related to the NESHAP and solid waste

combustion programs. In this capacity, I am familiar with the process and time periods required for developing and promulgating major EPA regulations under the CAA.

3. On December 6, 2010, I signed a declaration in support of EPA's "Motion to Amend Order of March 31, 2006." This supplemental declaration provides further support for that motion.

4. On December 16, 2010, consistent with Paragraph 3 of the Court's Order, the EPA Administrator signed a final rule, entitled: "National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category; and Addition to Source Category List for Standards." Thus, to date, under the Court's Order, EPA has issued final emission standards for a total of 50 source categories, 48 of which have been issued under Paragraph 1(i) and two of which have been issued under Paragraph 3. *See* Declaration of Panagiotis E. Tsirigotis, dated December 6, 2010 ("Decl.") ¶¶ 9-10. In issuing these rules, EPA has followed the requirements of CAA section 307(d), which, among other things, requires the Agency to provide an opportunity for public comment and a hearing on the proposed standards, and to leave the rulemaking record open for 30 days after any such hearing.

5. Below, I first provide some additional background concerning the information collection request that the Agency conducted with respect to major industrial, commercial and institutional boilers and process heaters ("major source boilers") and commercial and industrial solid waste incinerators ("CISWI units"). The remainder of the declaration is divided into two parts. The first part provides additional information concerning the Agency's need for more time to complete emission standards for major source boilers, area source industrial, commercial and institutional boilers ("area source boilers"), and CISWI units under Paragraph 3 of the Court's Order, and to complete standards for area source boilers under Paragraph 1(i). *See* Decl. ¶ 11.

The second part addresses the Agency's need for additional time to complete emission standards for sewage sludge incinerators under Paragraph 1(i) of the Court's Order.

Additional Information Related to the Boilers/CISWI Information Collection Request

6. In my prior declaration, I explained that following the issuance of *Sierra Club v. EPA*, 479 F. 3d 875, 882-83 (D.C. Cir. 2007) (the "Brick MACT decision"), *Natural Resources Defense Council v. EPA*, 489 F. 3d 1250, 1257-61 (D.C. Cir. 2007) (the "Boiler MACT decision"), and *Natural Resources Defense Council v. EPA*, 489 F. 3d 1364 (D.C. Cir. 2007) (the "Plywood MACT decision"), the Agency determined that it needed additional information and data from major source boilers and CISWI units in order for the Agency to set defensible MACT emission standards pursuant to CAA section 112(d) and section 129(a)(1)(D). *See* Decl. ¶16. I also described in my prior declaration the information collection request process that the Agency followed in obtaining the data and information from major source boilers and CISWI units. *Id.* ¶¶ 16-21.

7. Following the issuance of the Brick MACT, Boiler MACT, and Plywood MACT decisions, EPA determined that it needed additional time to meet the requirements of Paragraphs 1(i) and 3 of the Court's March 31, 2006 Order. *Id.* ¶ 16. As such, the Agency filed unopposed motions to extend the deadlines in Paragraphs 1(i) and 3. *Id.* ¶¶ 4-6. At the time EPA filed the motion resulting in the Court's November 2008 Order, it thought the revised deadline of July 15, 2010 (which would apply if EPA proposed certain rules by specific dates), afforded the Agency sufficient time to obtain information from the affected sources consistent with the requirements of the Paperwork Reduction Act, *see* Decl. ¶¶ 16-22, to process that information, and to finalize the emission standards at issue.

8. As explained in my prior declaration, the Agency, as required by regulation, provided 90 days for the public to comment on all aspects of the Agency's proposed information collection request, including, but not limited to, the format of that request and the type of information requested. *See id.* ¶ 16. This public comment process provided critical information, and as a result the Agency made a number of changes to the information collection request, including changes that significantly improved the questionnaire and testing requirements. For example, as a result of comments received on the draft information collection request, we revised questions related to the design of the units, the materials combusted, test methods, and other issues. Among other things, the Agency was able to reduce the total estimated cost of the testing phase of the information collection request from almost $38 million to about $19 million.

9. Preparing the information collection request was challenging given that the request sought information from over 3,000 major source boilers and CISWI facilities. *Id.* ¶ 18. Significantly, these boilers, process heaters and CISWI units represent a broad spectrum of different industries, including, for example, pulp and paper mills, refineries, chemical plants, steel manufacturing processes, sugar production, wood furniture manufacturing, and food processing. By contrast, other section 112 and 129 source categories are not so diverse. Rather, they generally affect a single industry. The sources at issue here affect multiple industries because multiple industries use combustion devices for different purposes and the combustion devices combust different materials. Universities and municipalities are also impacted. *See also* Decl. ¶ 27.

10. As explained in my prior declaration, the information collection request consisted of two phases. *See id.* ¶ 17. The first phase ("Phase I") of the request required the submission of existing information, and the second phase ("Phase II") required certain facilities to conduct a

series of stack tests to measure their emissions of hazardous air pollutants ("HAP") and certain other pollutants, such as particulate matter and carbon monoxide. *Id.* The primary purpose of Phase II was to fill data gaps identified from the Phase I assessment. In addition, as the result of Phase I, we received important information on the type of materials burned by each unit. This information, in turn, was critical, as it helped the Agency determine which units to test and whether to require such units to test solely for HAP, regulated under section 112 of the CAA, or to test for the nine pollutants identified in section 129(a)(4) of the CAA, which include both HAP and non-HAP.

11. When OMB approved Phase I of the information collection request, it asked EPA to provide, following submission of the Phase I information, a proposed list of facilities for testing and the specific testing that would be required. OMB did not approve Phase II of the information collection request until it had reviewed the Agency's summary of the data submitted in response to Phase I and EPA's proposed list of facilities for testing. *See Id*. ¶¶ 18, 20-21

12. Prior to obtaining OMB approval of Phase II of the information collection request, EPA worked with affected stakeholders, including industry representatives and Sierra Club, concerning the content of the draft Phase II testing request.

13. As explained in my prior declaration, there were several unanticipated delays once the information collection request was sent to the affected facilities, and these delays were beyond the Agency's and the affected sources' control. *See* Decl. ¶¶ 19, 22 (noting two month delay in obtaining Phase I information due to several facilities' operations impacted by Hurricanes Gustav and Ike, and up to four month delay in obtaining the Phase II information due to lack of available testing contractors and analytical laboratories, as well as weather related issues that affected certain facilities' ability to complete the required testing). Thus, we had up

to a six month delay in obtaining the required information, and that delay affected our ability to meet the July 15, 2010 deadline identified in the November 2008 order. *Id.*

14. Although the Agency could have asked OMB to waive the 3 months of public participation requirements of the Paperwork Reduction Act for this particular information collection request, it did not. In my experience, requests to waive the requirements of the Paperwork Reduction Act pursuant to 42 U.S.C. section 3507(j)(1) are rarely granted. EPA would have had to make this request in the fall of 2007 when it was preparing the information collection request. At that point, EPA could not have reasonably expected how prolonged the process would become. Even assuming that we could have made the demonstration required by 42 U.S.C. section 3507(j)(1) and obtained a waiver from OMB, that would not have prevented the delays described above that occurred once the information collection request was sent to industry, which were beyond EPA's and the sources' control. *See* Decl. ¶¶ 19, 22

15. At the time EPA embarked on its information collection process, it thought it was acting appropriately by following the requirements of the Paperwork Reduction Act and affording affected sources, which represent a broad variety of industries, and other stakeholders the opportunity to provide significant input to the Agency on how best to obtain the information needed to set the required emission standards under sections 112 and 129 of the CAA.

Need for Additional Time to Establish Standards: Major Source Boilers, Area Source Boilers, and CISWI Units

16. The comments that EPA received on the proposed major source boilers, area source boilers, and CISWI rules were substantial. *See id.* ¶¶ 32, 34. These comments include not only legal and technical comments, but also new data, data corrections, and cost information which could materially affect the outcome of the rulemaking. The over 4,800 individual comments and associated attachments received on these three rules total thousands of pages. One commenter submitted comments that totaled almost 1,000 pages. In addition, EPA received significant data on certain pollutants for certain types of units.

17. The volume of comments received on these three air rules far exceeds that which we typically receive in a rulemaking setting section 112 or 129 emission standards for a source category. *Id.* ¶ 32. As noted above, major and area source boilers and CISWI units exist in multiple different industries and thus multiple industries are affected by these rules. *See Id.* ¶¶ 26-27, 37 (proposed major and area source boilers rules together cover almost 200,000 boilers).

18. It is important to understand how the comments, data, data correction information, and cost information factor into the standard setting process under sections 112 and 129. The process is not a simple one. For existing major sources, under CAA section 112(d)(2), EPA must set emission standards that require the maximum degree of reduction in emissions of HAP that EPA concludes is achievable based on a consideration of certain statutory factors. These are referred to as "maximum achievable control technology" or "MACT" standards. Setting a MACT standard is a complex, multi-step process. The first step is to set the MACT floor. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT floor for existing sources can be

less stringent than standards for new sources, but cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (for which the Administrator has emissions information) in the category or subcategory or the best performing 5 sources for source categories or subcategories with less than 30 sources (CAA section 112(d)(3)(A) and (B)). In setting floors, EPA accounts for sources' operating variability. The second step is to consider more stringent "beyond-the-floor" control options. When considering beyond-the-floor options, EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy, and nonair environmental impacts when doing so. This process requires the review and assimilation of a substantial amount of data and information.

19. The significant new emissions data received during the comment period, the various submissions identifying allegedly incorrect data in EPA's emissions inventories, and the information on statistical methodologies for assessing variability are all directly relevant to the floor-setting process. EPA's proposed subcategorization scheme is also directly relevant to the floor analysis. Where, as here, the Agency has received substantial information directly relevant to the floors, it must re-evaluate whether there are beyond the floor control options, which would tighten the standard further, if appropriate, considering cost and other factors. The substantial amount of cost information that the Agency received in response to the proposed rules is also relevant to the beyond the floor analysis.

20. Finally, the broad diversity of industries (*e.g.*,wood products, petroleum refineries, chemical manufacturing, food manufacturing) and other entities (*e.g.*, universities, prisons, military bases) affected by the proposed rules at issue complicates standard setting. For example, a wood manufacturing facility may use a boiler to generate steam for various processes

and electricity for sale to the grid, whereas a petroleum refinery may use a boiler to heat carefully integrated petrochemical processes or to control organic HAP emissions from a petrochemical process, and a university may use a boiler to provide heat for buildings. The different end-uses of the boiler can affect boiler efficiencies and load swings, which can impact the emissions of the boilers. The same is true for solid waste combustion units.

21. Once the comment period closed, we immediately began reviewing the comments and other information, including the data.[1] These comments presented complex and significant issues, several of which could not have been previously anticipated, and those issues required additional review and discussion within the Agency. Decl. ¶¶ 34-35. For example, several commenters attacked the proposed MACT floors, asserting that even the best performing boilers and CISWI units burning a combination of fuels (such as coal and biomass), would not be able to meet the proposed numerical limits. The commenters asserted that the performance of units burning combinations of fuels was not adequately considered in the development of the floors. This is one example of an issue that I alluded to in my prior declaration where, as the result of comments, we have a different and better understanding of the facts and complexities associated with the emissions of boilers and CISWI units that burn combination fuels. These comments also relate to the Agency's proposed subcategorization scheme. The kind of information we obtained concerning combination boilers through the comment process has required us to re-evaluate the proposed subcategorization scheme, and a different subcategorization decision could significantly change the proposed emission limits. *Id.* ¶¶ 34-37.

22. During our review, we also found many comments that questioned certain data included in EPA's emission inventories, and much of that data served as the basis for the

[1] We did commence review of the comments submitted prior to the close of the comment period as those comments were submitted to the Agency. The majority of the comments were submitted, however, on the last day of the comment period.

proposed floor calculations. For example, we received several significant comments relating to our treatment of non-detect data and other measurements that were close to the detection level.[2] Based on those comments, we have been working to re-evaluate the non-detect data and other measurements that are close to the detection level to ensure that the levels that were reported, and used in the proposed floor calculations, are reliable measurements of the sources' actual performance.

23. Further, we have been reviewing and evaluating the new data received in response to the proposed rules. This is a time-intensive process. When we receive data, that data must be subjected to a quality review to determine whether the data are acceptable for use. Specifically, we determine whether the correct test methods were followed when the test was conducted, we examine the data for statistical outliers, and if the test report does not provide information on the processes, controls and operations occurring at the time the test was conducted, we follow up with the facility that conducted the test to obtain that information, as it is necessary to assess whether the data are reliable and acceptable for use in our analyses. In this regard, since the close of the comment period, we have reviewed multiple test reports and other relevant information to assess the data submitted.

24. The above provides a small snapshot of the significant amount of work that has occurred since receipt of the over 4,800 comments on the proposed rules. The Agency has been fully embroiled in working on the final standards at issue in this matter since the close of the comment period. We requested an extension of the deadlines from the Court after the Agency determined that it needed more time to complete the standards.

25. It has been almost one month since EPA filed its "Motion to Amend Order of March 31, 2006." Based on recent discussions with my staff, I have concluded that we now

[2] A detection level is the minimum level that can be detected by the EPA-approved test method.

cannot respond to all of the significant comments submitted on the major source boilers, area source boilers, and CISWI rules by January 16, 2011. In addition, as to those comments that we have not yet had an opportunity to consider fully, we will not be able to determine by January 16, 2011, whether some of these comments warrant additional changes to the floor, variability, beyond the floor, or cost analyses. As to the significant comments we have considered, we are not in a position to provide complete responses to those comments by January 16, 2011.

26. As explained in my prior declaration, there were a number of significant issues raised in the comments, including, for example, the combination fuel issue discussed above, and many of those issues directly impact the level of the emission standards at issue. Decl. ¶ 34. In light of these significant issues, the Office of Air and Radiation has recommended to the EPA Administrator that we make certain changes to the major source boilers, area source boilers and CISWI rules based on our analysis to date of the comments received. *Id.* ¶¶ 34-37. In view of these recommended changes that could significantly change the direction from the proposals, the Office of Air and Radiation has also recommended re-proposal of the three rules. *Id.* In the weeks since EPA filed its "Motion to Amend Order of March 31, 2006," our ongoing review of the issues raised by comments only reinforces that recommendation.

27. Furthermore, as noted in my prior declaration, and as further substantiated by our ongoing review in the weeks since my first declaration of the issues raised by comments, I believe that if we issue final rules for the major source boilers, area source boilers and CISWI units without a re-proposal, various interested parties will allege in proceedings for judicial review that we did not provide meaningful notice and opportunity for public comment. *Id.* ¶ 36. We therefore requested that the deadline in Paragraph 3 of the September 20, 2010 Order be extended from January 16, 2011, to April 13, 2012, to allow the Agency time to complete the

final major source boilers, area source boilers and CISWI standards and to develop workable rules that can be implemented effectively and withstand judicial review. *Id.* ¶ 37. With such an extension, we would intend to have the Administrator sign the major source, area source, and CISWI re-proposals by June 1, 2011. *Id.*

28. If we were to re-propose, the following activities would need to be conducted by June 1, 2011:

a. We would need to review the 4,800 comments, including all attachments to those comments, to ensure that we have fully considered all of the issues.

b. We would need to identify alternative options for proposal, and we would need time to conduct additional data and other analyses supporting each proposed option, including, floor, beyond the floor, and cost analyses. One example of additional analyses that would be completed relates to emissions data on carbon monoxide. As the result of the comments, we have identified a key piece of information that is relevant to assessing carbon monoxide data. While we have tried to review and consider as much information as possible to date, this additional period for re-proposal would allow us time to confirm certain information as to the instrument calibration range used during carbon monoxide emissions testing, including, as necessary, reaching out for additional information. Finally, we would use this period to confirm that all of the alleged data errors in the emission inventories have been resolved, to the extent such errors exist. The comments concerning data corrections are very time consuming to address, because they require a thorough analysis of the information submitted and often require additional follow-up with the source to the extent a test report or other piece of information relevant to the alleged data error is missing. We would also use this time to assess further any other data issues identified in the comments, including the non-detect issue noted above.

c. We would need to prepare the proposed rule documents, including the preamble, regulatory text, and all technical support documents, including economic analyses. We would also plan to include in the preamble to the proposed rule our preliminary responses to those issues that we believe are central to our analysis. Further, we would need to provide time for senior EPA management review. Inter-agency review would occur concurrently with senior EPA management review.

29. We would then provide a 60-day comment period on the re-proposals, which would include time for one public hearing. Decl. ¶ 39. If the rules are published in the Federal

Register by late June 2011,[3] the comment period would close in late August 2011. We would then have seven and a half months to finalize the rule. During this time, we would need to review the comments and assess the data, correct any data issues, and re-run any floor, variability and beyond the floor analyses. Finally, we would need to prepare all final rule documents, including the preamble, regulatory text, comment-response document, and all technical support documents, including economic analyses. We would also need to circulate the draft final rule packages for internal EPA management review. Inter-agency review with OMB would occur at the same time. EPA would then take final action on the emission standards needed to meet the requirements of Paragraphs 1(i) and 3 by April 13, 2012.

30. Separate from the need to re-propose these rules, I believe that we need until June 15, 2011, to finalize emissions standards for major source boilers and those area source boilers and CISWI units needed for the Agency to complete its obligations under Paragraph 1(i) and 3 of the Court's order. Specifically, I estimate that the following activities would occur during this time frame:

a. We would need to review all of the 4,800 comments, including all attachments to those comments, to ensure that we have fully considered all of the issues. Until we have the time to evaluate fully and carefully all of the comments, we will not know whether, in fact, the rules we are currently preparing for final are the correct rules, or whether additional changes are needed.

b. We would need to conduct additional data and other analyses, including, as necessary, floor, beyond the floor and cost analyses. This would include some of the same issues enumerated above in Paragraph 28b, above. In particular, while we have tried to review and consider as much information as possible to date, the additional time would allow us time to confirm certain information as to the instrument calibration range used during carbon monoxide emissions

[3] It took approximately five weeks for the proposed major source boilers, area source boilers, and CISWI rules to be published in the Federal Register following signature of the rules by the Administrator. This delay was due largely to the length of the rules, and the fact that the rules were published with the related Non-Hazardous Solid Waste Rule. I can only estimate when the re-proposals may be published in the Federal Register by the Office of the Federal Register. EPA does not control that process. We would, however, plan to ask for expedited publication of the re-proposals, as we did with the original proposals.

testing. Also, we would use this period to confirm that all of the alleged data errors in the emissions inventories have been resolved, to the extent such errors exist. We would also use this time to assess further any other data issues identified in the comments, including the non-detect issue noted above.

c. We would then need to prepare all final rule documents, including the preamble, regulatory text, comment-response document, and all technical support documents, including economic analyses. This time-frame includes time for senior EPA management review. Inter-agency review would occur concurrently with senior EPA management review.

Need for Additional Time: Sewage Sludge Incinerators

31. At the time EPA filed its Motion to Amend Order of March 31, 2006, the comment period on the Sewage Sludge Incinerators rule had been closed for only one week. *Id.* ¶ 47.

32. Based on recent discussions with my staff, who have now had a better opportunity to assess some of the comments, I have concluded that we cannot respond to all of the significant comments submitted on the proposed Sewage Sludge Incinerators rule by January 16, 2011. The comments received, including attachments, total over 1,600 pages.

33. While we have not fully evaluated the submitted comments, we have identified some central issues that we need additional time to consider. For example, we have received many comments challenging the proposed floors, asserting that we failed to assess variability appropriately because we failed to consider the impact of the sludge content on the level achieved by the best performers. Specifically, additional time is needed to evaluate information on sludge content that was submitted in the comments and previously submitted to EPA pursuant to certain Clean Water Act sewage sludge regulations. Finally, there is new information in the comments that compare EPA's estimates for facility emissions to the results of certain recent testing. Upon our initial review, it appears that we cannot fully evaluate these comments without

an opportunity to follow-up with the commenters concerning the emissions testing results. We do not, under the current schedule, have sufficient time to conduct this additional evaluation. We also received new information regarding the costs of emissions control and the effectiveness and application of emissions control devices at sewage sludge incineration units, given the uniquely high moisture content of their emissions stream. We have not had an opportunity to evaluate fully all of this new information and determine whether and what revisions to the cost and regulatory impact analysis are needed.

34. I believe we need until July 15, 2011, to finalize emission standards for sewage sludge incinerators. Decl. ¶¶ 48-49. The comment period for this rule closed on November 29, 2010. *Id.* ¶ 47. EPA has had only 30 days to review the over 1,600 pages of comments, which include many pages of technical information. This is an insufficient period of time to review and evaluate fully the submitted comments. Specifically, I estimate that the following activities would occur during this time-frame:

a. We would need to review fully the submitted comments and contact, where necessary, individual commenters regarding the technical information they submitted. Based on our review of the information to date, we expect that we will need to contact commenters regarding the data and information they submitted related to both emissions and sewage sludge content. For example, many of the comment letters provided data comparing EPA's estimated emissions to specific facility test data, which EPA did not have at the time it proposed the rule. EPA would need to obtain additional information regarding the newly-submitted facility test data from some commenters to determine whether the data can and should be used to establish the final SSI emissions standards.

b. We would need to make appropriate revisions to the proposed emissions standards, including re-evaluating the regulatory impact analysis, variability analyses, and the levels of the standards themselves. In particular, we would plan to analyze information regarding the variability of sludge content, determine whether that analysis warrants any revisions to the variability incorporated into the proposed standards, and calculate revised MACT floors, as appropriate. If revisions to the floor are made, we would then re-evaluate our beyond the floor analysis and the regulatory impact analysis to reflect any revisions to the standards, including our analysis of costs and benefits of the regulation.

c. We would then need to prepare the final rule documents, including the preamble, regulatory text, comment-response document, and all technical support documents, including economic analyses. We would also need to provide time for senior EPA management review. Inter-agency review would occur concurrently with senior EPA management review.

SO DECLARED:

/s/

PANAGIOTIS E. TSIRIGOTIS

Dated: January 3, 2011

ENCLOSURE C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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. _____

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 hereby petitions this Court for review of the U.S. Environmental Protection Agency 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 challenged action, a copy of which is attached to this Petition, amends certain provisions of 40 C.F.R. Part 60.17 and promulgates 40 C.F.R. Part 60 Subpart LLLL and Subpart MMMM containing new source performance standards and emission guidelines applicable to sewage sludge incinerators at publicly-owned treatment works.

Dated: May 6, 2011

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES,

Petitioner

v.

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

Respondents

11-1131

Case No. _____

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Petitioner the National Association of Clean Water Agencies (NACWA) makes the following disclosures:

1. NACWA is a voluntary not-for-profit trade association of the nation's publicly-owned sewage treatment authorities and municipal clean water agencies. NACWA's members operate nearly 300 of the nation's publicly-owned treatment works which collectively serve the majority of the sewered population of the United States.

2. NACWA's purpose and general nature is to provide a forum for collaboratively addressing issues affecting publicly-owned sewage treatment authorities and to advocate on behalf of its members regarding legislative, regulatory and legal matters.

3. NACWA has no parent company, and no publicly held company has a 10 percent or greater ownership interest in NACWA.

4. NACWA has no outstanding shares or debt securities in the hands of the public and has no parent, subsidiary or affiliate that has issued shares or debt securities to the public.

Dated: May 6, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Review and Rule 26.1 Disclosure Statement have been served by United States first-class mail this 6th day of May 2011 upon each of the following:

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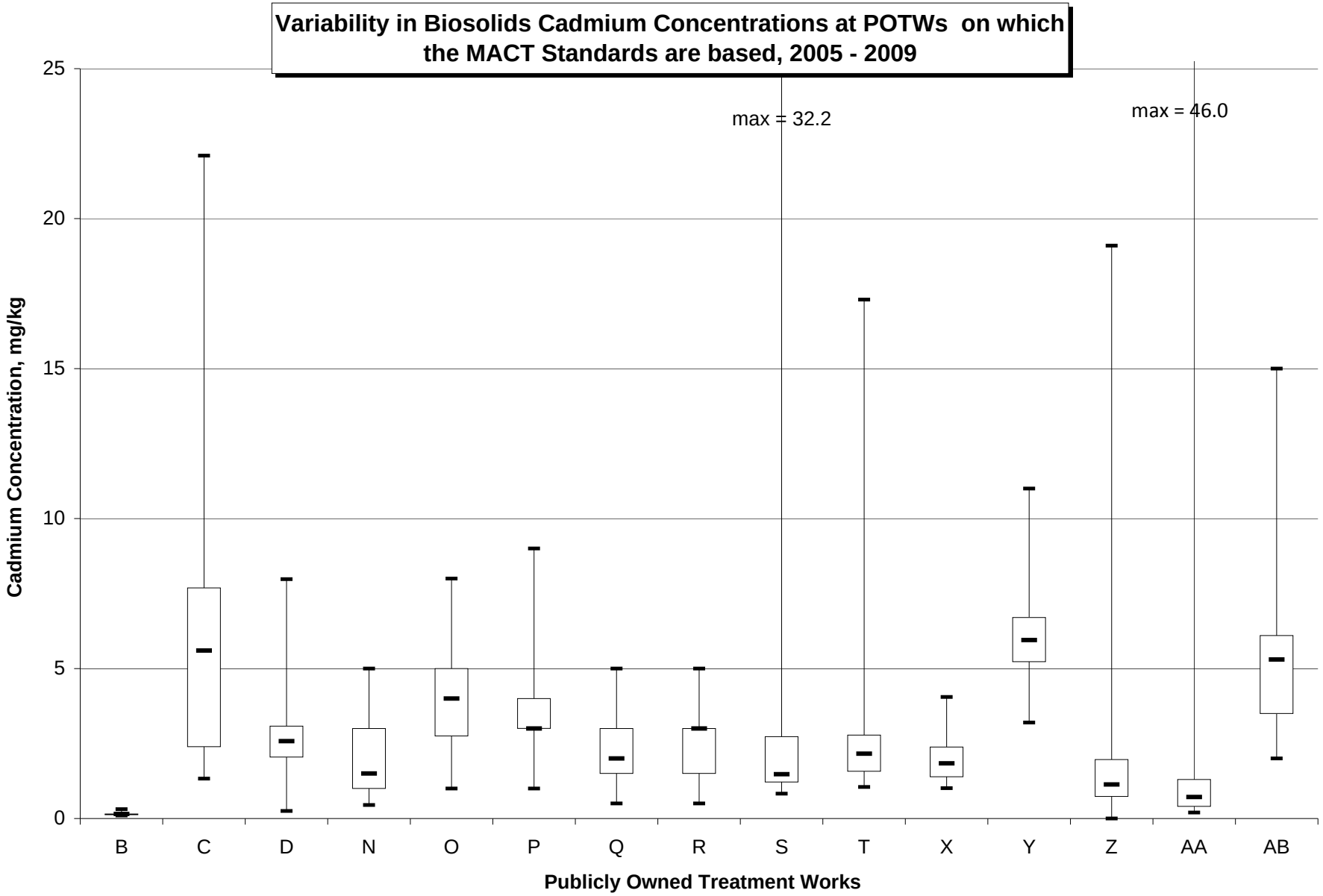
ENCLOSURE D

Cadmium in Biosolids at MACT Floor POTWs (Key)

B	CCCSD
C	Greensboro
D	Hartford
N	HRSD_Williamsburg
O	HRSD_ArmyBase
P	HRSD_BoatHarbor
Q	HRSD_Elizabeth
R	HRSD_Virginia Initiative
S	St. Paul Metro
T	Wayne Township
X	Indianapolis
Y	Upper Blackstone
Z	Alcosan
AA	St. Paul Seneca
AB	Ypsilanti


Variability in Biosolids Cadmium Concentrations at POTWs on which the MACT Standards are based, 2005 - 2009
max = 32.2
max = 46.0
Cadmium Concentration, mg/kg
25
20
15
10
5
0
B
C
D
N
O
P
Q
R
S
T
X
Y
Z
AA
AB
Publicly Owned Treatment Works

Monthly Average Cadmium in Biosolids at MACT Floor POTWs (mg/dry kg)
(2005-2009)

	B	C	D	N	O	P	Q	R	S	T	X	Y	Z	AA	AB
Jan-05	0.1	6.2	2.3	3.0	4.0	3.0	2.0	3.0	1.3	2.8	1.15	5.3	1.8	3.5	
Feb-05	0.1	8.0	5.4	3.0	5.0	4.0	4.0	4.0	1.4	2.6	1.3	5.4	0.13	3.6	
Mar-05	0.1	22.1	3.0	2.0	6.0	4.0	3.0	4.0	1.5	2.5	1.36	5.6	<1.4	1.3	
Apr-05	0.1	14.4	1.9	2.0	5.0	4.0	4.0	4.0	1.8	2.9	1.2	6.2	2	3.2	
May-05	0.1	7.4	2.0	3.0	6.0	5.0	3.0	4.0	1.1	3.2	1.5	6.1	3.4	5.9	3.9
Jun-05	0.1	6.2	2.5	5.0	8.0	5.0	3.0	4.0	1.0	3.5	1.5	8.6	<1.4	7.5	6.2
Jul-05	0.1	5.7	2.9	3.0	7.0	9.0	5.0	3.0	1.2	3.0		9.4	<1.4	19	
Aug-05	0.1	10.0	3.2	3.0	5.0	5.0	4.0	3.0	1.6	5.9		8.9	<1.4	21	
Sep-05	0.1	3.3	4.2	3.0	6.0	5.0	3.0	3.0	1.0	2.9	1.1	6.8	1.3	46	
Oct-05	0.1		4.2	3.0	6.0	4.0	3.0	3.0	1.5	2.9		6.3	2.7	2.2	
Nov-05	0.1	1.5	3.4	4.0	7.0	4.0	5.0	5.0	1.4	2.8		6.2	19.1	2.7	
Dec-05	0.1	2.8	2.3	3.0	6.0	5.0	4.0	3.0	1.5	5.0			14.3	0.73	
Jan-06	0.2	1.7	3.2	3.0	5.0	4.0	3.0	4.0	1.2	2.0	1.3	6.4	0	0.7	
Feb-06	0.2	3.6	0.3	2.0	5.0	3.0	2.0	3.0	1.1	3.0	1.1	7.2	<1.4	0.8	
Mar-06	0.2	4.4	1.9	1.0	3.0	2.0	2.0	2.0	0.8	2.2	1.4	6.7	0.5	0.7	
Apr-06	0.2	2.7	2.3	3.0	5.0	3.0	3.0	3.0	1.1	3.3	1.8	6.2	0.4	0.6	2
May-06	0.2	2.4	2.1	2.0	4.0	3.0	2.0	3.0	2.0	2.0	2.1	5.8	0.708	5.1	
Jun-06	0.2	6.4	3.0	1.0	3.0	3.0	2.0	2.0	1.5	2.6	2.2	6.2	0.39	0.7	3
Jul-06	0.2		4.2	0.5	1.0	2.0	0.5	0.5	1.2	2.6	1.9	6.0	0.78	0.7	2
Aug-06	0.2	16.2	2.3	0.5	4.0	5.0	2.0	0.5	1.4	3.0	2.3	6.6	3.9	0.8	
Sep-06	0.2	6.6	3.1	2.0	4.0	2.0	2.0	3.0	2.7	2.8	3.9	4.0	0.4	0.8	11
Oct-06	0.2	5.7	2.5	2.0	3.0	5.0	2.0	3.0	1.7	4.8	3.4	3.9	<0.80	0.4	15
Nov-06	0.2	3.0	8.0	1.0	4.0	3.0	2.0	4.0	1.5	2.2	3.1	4.1	2.06	0.3	6.7
Dec-06	0.2		3.0	0.5	3.0	3.0	2.0	3.0	1.8	2.8	2.5	4.2	2.74	0.5	3.4
Jan-07	0.2	4.4	2.2	0.5	3.0	3.0	1.0	2.0	1.2	2.4	1.5	6.0	1.87	0.6	
Feb-07	0.2	7.2	2.2	1.0	3.0	3.0	2.0	2.0	1.2	1.5	2.3	5.8	<0.29	0.2	
Mar-07	0.2	13.8	1.8	1.0	4.0	3.0	2.0	2.0		2.2	1.4	3.8	1.17	0.2	
Apr-07	0.2	5.6	1.2	3.0	3.0	3.0	3.0	4.0		2.0	1.3	5.3	1.59	0.2	
May-07	0.2	7.6	2.1	1.5	1.5	1.5	1.5	1.5		2.2	1.7	5.6	1.2	0.3	
Jun-07	0.2	6.1	2.7	3.0	4.0	3.0	1.8	1.6		2.6	2.9	6.2	1.22	0.2	
Jul-07	0.2	8.9	2.0	1.5	4.0	3.0	1.5	1.5		2.1	1.0	4.0	<1.4	0.2	
Aug-07	0.2	8.9	0.3	1.0	5.0	3.0	2.0	1.5		1.5	2.4	5.1	1.02	0.3	
Sep-07	0.2	9.2	2.4	4.0	4.0	1.5	4.0	1.5		1.4	2.6	5.0	<0.24	0.4	
Oct-07	0.2	6.4	2.9	1.0	4.0	4.0	1.5	4.0	2.8	1.8	3.0	5.2	0.46	1.2	
Nov-07	0.2	9.4	1.5	1.5	3.0	1.5	2.0	4.0		1.4	1.9	9.0	<1.4	0.8	
Dec-07	0.2	5.6	0.3	4.0	4.0	4.0	2.0	1.5	32.2	1.2	1.7	5.9	ND	0.5	

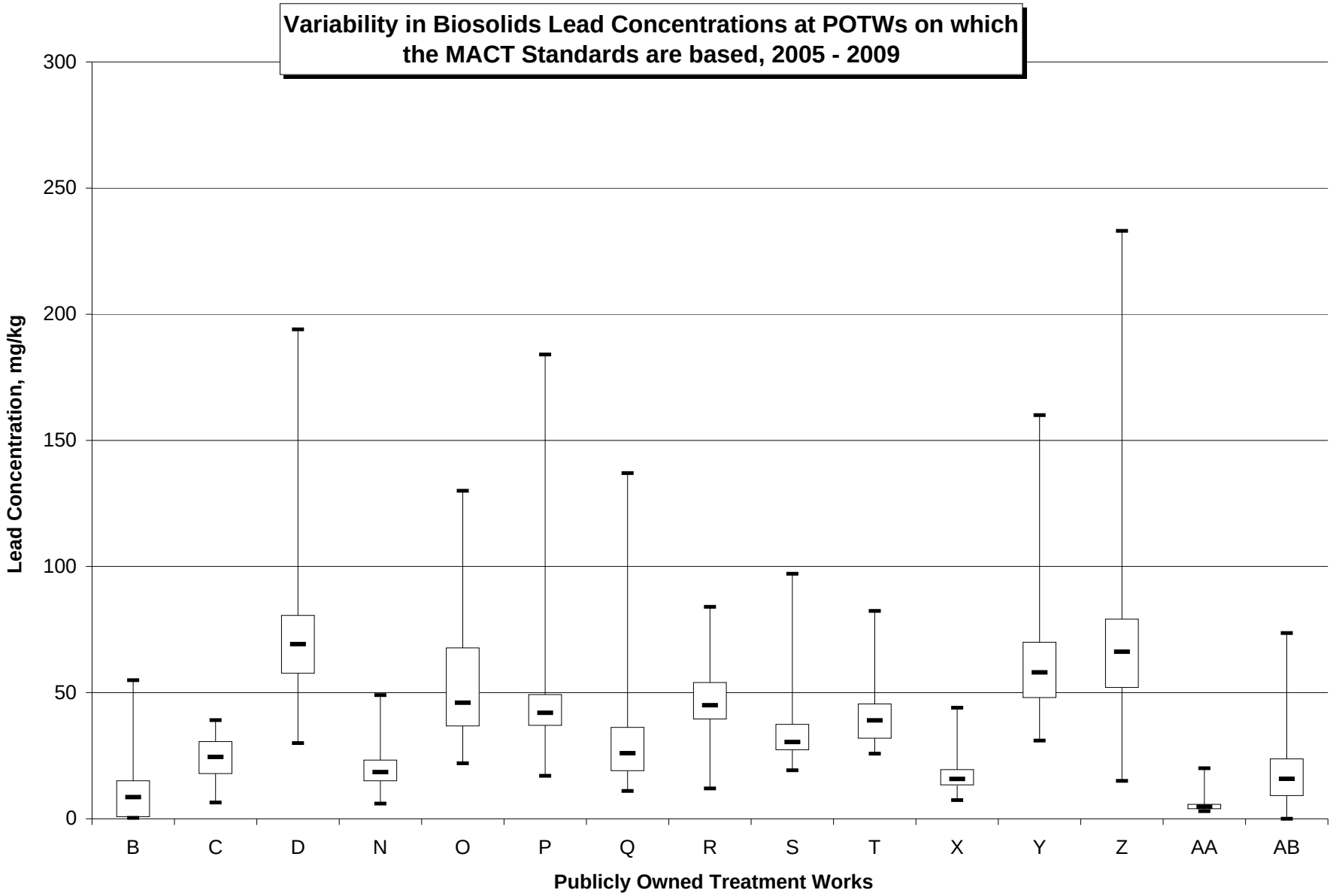
Monthly Average Cadmium in Biosolids at MACT Floor POTWs (mg/dry kg) (2005-2009)

Jan-08	0.1	7.7	1.7	1.5	3.0	5.0	1.5	3.0		1.4	1.5	5.2	0.937	0.3	4.8
Feb-08	0.1	9.8	4.7	1.5	1.5	1.5	1.5	1.5		1.5	1.9	6.6	<1.4	0.3	5.5
Mar-08	0.1	12.1	2.8	1.5	1.5	1.5	1.5	4.0	15.8	1.7	1.9	7.7	2.692	0.4	4
Apr-08	0.1	6.1	2.7	1.5	4.0	4.0	2.0	3.0	16.3	1.4	1.3	11.0	1.04	0.4	3.7
May-08	0.1	13.4	1.9	1.5	1.5	4.0	1.5	1.5	5.8	1.4	2.2	6.7	<0.753	0.7	
Jun-08	0.1	9.9	3.2	1.0	3.0	4.0	2.0	1.0	4.6	2.0	1.2	5.6	0.715	0.4	2.1
Jul-08	0.1	6.7	2.6	1.0	6.0	3.0	3.0	2.0	17.2	17.3	1.8	6.8	0.689	0.3	5.9
Aug-08	0.1	4.9	1.9	1.0	4.0	5.0	2.0	1.0	21.6	2.3	1.9	5.5	4.167	0.3	5.5
Sep-08	0.1	3.6	2.2	1.0	3.0	3.0	1.0	2.0	14.3	1.7	2.8	7.0	0.902	0.4	6.4
Oct-08	0.1	2.4	2.6	1.0	4.0	3.0	2.0	3.0		1.9	1.4	4.2	<0.972	3.6	5.9
Nov-08	0.1	1.6	2.5	1.0	3.0	4.0	2.0	3.0		1.5	1.6	4.9	<0.650	0.9	
Dec-08	0.1	1.5	1.9	1.0	1.0	3.0	2.0	2.0		1.6	1.4	7.3	<5.49	0.7	9.8
Jan-09	0.3	2.5	3.1	1.0	1.0	3.0	1.0	3.0		1.4	2.5	9.4	<0.832	0.9	6.4
Feb-09	0.3	2.9	3.6	1.5	1.5	2.0	2.0	3.0		1.7	1.5	9.1	<0.685	1.2	5.6
Mar-09	0.3	2.1	3.1	1.5	2.0	3.0	1.5	4.0		1.4	2.1	ND	<0.997	1	5.3
Apr-09	0.3	1.3	2.7	1.5	4.0	4.0	1.5	1.5		1.7	1.9	4.4	0.935	0.7	6.6
May-09	0.3	1.9	2.7	1.0	3.0	3.0	1.0	1.0		2.1	1.7	5.5	1.27	0.8	4.9
Jun-09	0.3	1.6	3.6	1.0	1.0	3.0	1.0	1.0		2.3	3.1	6.0	1.07	1.4	6
Jul-09	0.3	1.5	2.0	1.0	1.0	1.0	1.0	1.0		2.3	3.3	5.6	0.917	0.7	5.6
Aug-09	0.3	1.8	2.2	1.0	1.0	1.0	1.0	1.0		1.2	2.3	5.5	1.33	1.6	3.4
Sep-09	0.3	1.9	2.9	1.0	1.0	3.0	1.0	1.0		1.7	1.8	4.6	<0.887	0.9	2.2
Oct-09	0.3	1.8	2.7	1.0	1.5	1.0	1.0	1.0		1.1	4.1	5.9	<0.809	1.3	3.6
Nov-09	0.3	1.8	3.2	1.0	1.0	1.0	1.0	1.0		1.1	3.0	7.3	<0.935	0.8	3.5
Dec-09	0.3	2.4	3.0	2.0	7.0	5.0	3.0	3.0				3.2	1.10	0.773	3.5

	B	**C**	**D**	**N**	**O**	**P**	**Q**	**R**	**S**	**T**	**X**	**Y**	**Z**	**AA**	**AB**
25th Percentile	0.1	2.4	2.0	1.0	2.8	3.0	1.5	1.5	1.2	1.6	1.4	5.2	0.7	0.4	3.5
Minimum	0.1	1.3	0.3	0.5	1.0	1.0	0.5	0.5	0.8	1.1	1.0	3.2	0.0	0.2	2.0
Median	0.2	5.6	2.6	1.5	4.0	3.0	2.0	3.0	1.5	2.2	1.8	6.0	1.1	0.7	5.3
Maximum	0.3	22.1	8.0	5.0	8.0	9.0	5.0	5.0	32.2	17.3	4.1	11.0	19.1	46.0	15.0
75th Percentile	0.2	7.7	3.1	3.0	5.0	4.0	3.0	3.0	2.7	2.8	2.4	6.7	2.0	1.3	6.1

Lead in Biosolids at MACT Floor POTWs (Key)

B	CCCSD
C	Greensboro
D	Hartford
N	HRSD_Williamsburg
O	HRSD_ArmyBase
P	HRSD_BoatHarbor
Q	HRSD_Elizabeth
R	HRSD_Virginia Initiative
S	St. Paul
T	Wayne Township
X	Indianapolis
Y	Upper Blackstone
Z	Alcosan
AA	St. Paul Seneca
AB	Ypsilanti


Variability in Biosolids Lead Concentrations at POTWs on which the MACT Standards are based, 2005 - 2009
Lead Concentration, mg/kg
300
250
200
150
100
50
0
B
C
D
N
O
P
Q
R
S
T
X
Y
Z
AA
AB
Publicly Owned Treatment Works

Monthly Average Lead in Biosolids at MACT Floor POTWs (mg/dry kg)
(2005-2009)

	B	C	D	N	O	P	Q	R	S	T	X	Y	Z	AA	AB
Jan-05	8.6	16.2	55.4	27.0	130.0	106.0	52.0	50.0	26.3	37.8	23.2	65	66	4.2	30
Feb-05	11.9	21.8	163.0	16.0	80.0	51.0	90.0	57.0	97.1	31.0	17.1	51	54	6.2	
Mar-05	10.0	13.3	73.8	18.0	104.0	43.0	119.0	50.0	27.7	31.9	10.1	58	50	6.2	44
Apr-05	12.1	6.7	63.7	24.0	70.0	70.0	137.0	54.0	28.8	57.0	10.2	75	86	5.5	
May-05	12.0	14.5	73.3	22.0	79.0	65.0	96.0	64.0	22.9	37.4	13.4	69	90	6.7	13
Jun-05	20.2	19.0	63.4	13.0	80.0	102.0	133.0	51.0	24.2	46.6	12.4	70	63	6.1	16
Jul-05	25.9	17.0	92.1	12.0	95.0	166.0	61.0	41.0	30.1	46.3		94	83	6.5	
Aug-05	19.9	30.6	107.0	15.0	52.0	51.0	35.0	71.0	39.0	59.7		83	47	7.9	
Sep-05	12.9	34.2	106.0	18.0	73.0	44.0	26.0	30.0	28.9	45.6	13.5	66	95	9.1	73.6
Oct-05	9.0		77.5	13.0	73.0	34.0	24.0	31.0	36.9	82.4		75	77	6.5	
Nov-05	9.5	12.0	87.4	13.0	76.0	76.0	33.0	45.0	31.8	46.5		92	113	10	1
Dec-05	10.1	18.8	64.9	12.0	74.0	50.0	25.0	40.0	32.3	59.1		140	93	4.7	
Jan-06	8.7	18.0	72.8	10.0	77.0	46.0	30.0	76.0	29.6	29.0	11.0	59	73	20	4
Feb-06	8.6	37.0	59.6	22.0	84.0	57.0	96.0	56.0	45.5	39.0	11.4	63	46	5	38
Mar-06	0.5	25.5	43.0	49.0	91.0	38.0	27.0	38.0	27.3	29.9	14.0	50	76	5.5	23
Apr-06	4.5	23.4	73.3	25.0	76.0	33.0	89.0	36.0	28.6	41.0	18.7	50	77	5	4
May-06	10.0	23.6	55.9	20.0	67.0	41.0	22.0	40.0	43.8	39.0	15.8	73	75.97	5.1	
Jun-06	0.8	38.8	97.7	23.0	56.0	36.0	38.0	43.0	44.3	46.7	19.2	85	78.4	5.2	9
Jul-06	0.8		97.4	18.0	54.0	44.0	48.0	41.0	34.6	45.5	22.1	70	99.1	5.8	2
Aug-06	0.8	35.8	83.5	17.0	58.0	48.0	39.0	42.0	36.9	51.8	18.0	94	60	5.7	
Sep-06	0.8	39.1	80.9	21.0	53.0	40.0	38.0	84.0	37.9	45.5	25.3	59	62	4.6	49
Oct-06	0.8	33.5	59.5	24.0	42.0	52.0	35.0	84.0	27.4	44.8	27.7	41	50.9	4	45
Nov-06	0.8	31.6	194.0	20.0	35.0	42.0	19.0	32.0	23.5	31.9	33.1	55	53.9	3.5	16
Dec-06	0.8		79.7	14.0	32.0	41.0	32.0	37.0	27.0	34.0	18.0	54	77.2	4.5	28
Jan-07	0.8	38.2	51.9	15.0	25.0	38.0	11.0	25.0	30.4	41.8	13.0	48	63.9	3.5	
Feb-07	0.8	33.9	42.8	17.0	30.0	37.0	23.0	12.0	27.4	25.8	13.2	43	15	3.7	
Mar-07	0.8	28.2	57.9	12.0	34.0	25.0	18.0	30.0		32.1	15.8	42	75.7	3.8	
Apr-07	0.8	34.4	48.1	22.0	22.0	22.0	13.0	12.0		39.2	15.6	160	80.4	3.6	
May-07	10.8	28.6	60.3	23.0	22.0	24.0	20.0	15.0		37.2	17.3	60	53.1	3.5	
Jun-07	0.8	17.9	80.5	15.0	44.0	50.0	26.0	46.0		42.5	21.5	87	84.4	3.2	
Jul-07	0.8	28.1	74.1	16.0	29.0	37.0	30.0	40.0		43.1	7.4	83	85.1	3.7	
Aug-07	0.8	24.6	61.2	17.0	39.0	46.0	29.0	54.0		31.2	44.0	61	106	4.2	
Sep-07	0.8	24.5	65.7	15.0	37.0	49.0	22.0	38.0		31.0	26.4	46	18.8	4.4	
Oct-07	0.8	18.8	67.4	26.0	38.0	48.0	37.0	38.0	38.1	48.3	30.1	52	69.2	5.1	
Nov-07	0.8	22.5	53.1	27.0	44.0	44.0	15.0	41.0		34.4	14.1	63	18.3	5.7	
Dec-07	0.8	6.43	56.8	25.0	35.0	40.0	26.0	42.0	41.7	26.4	15.7	43	ND	3.8	

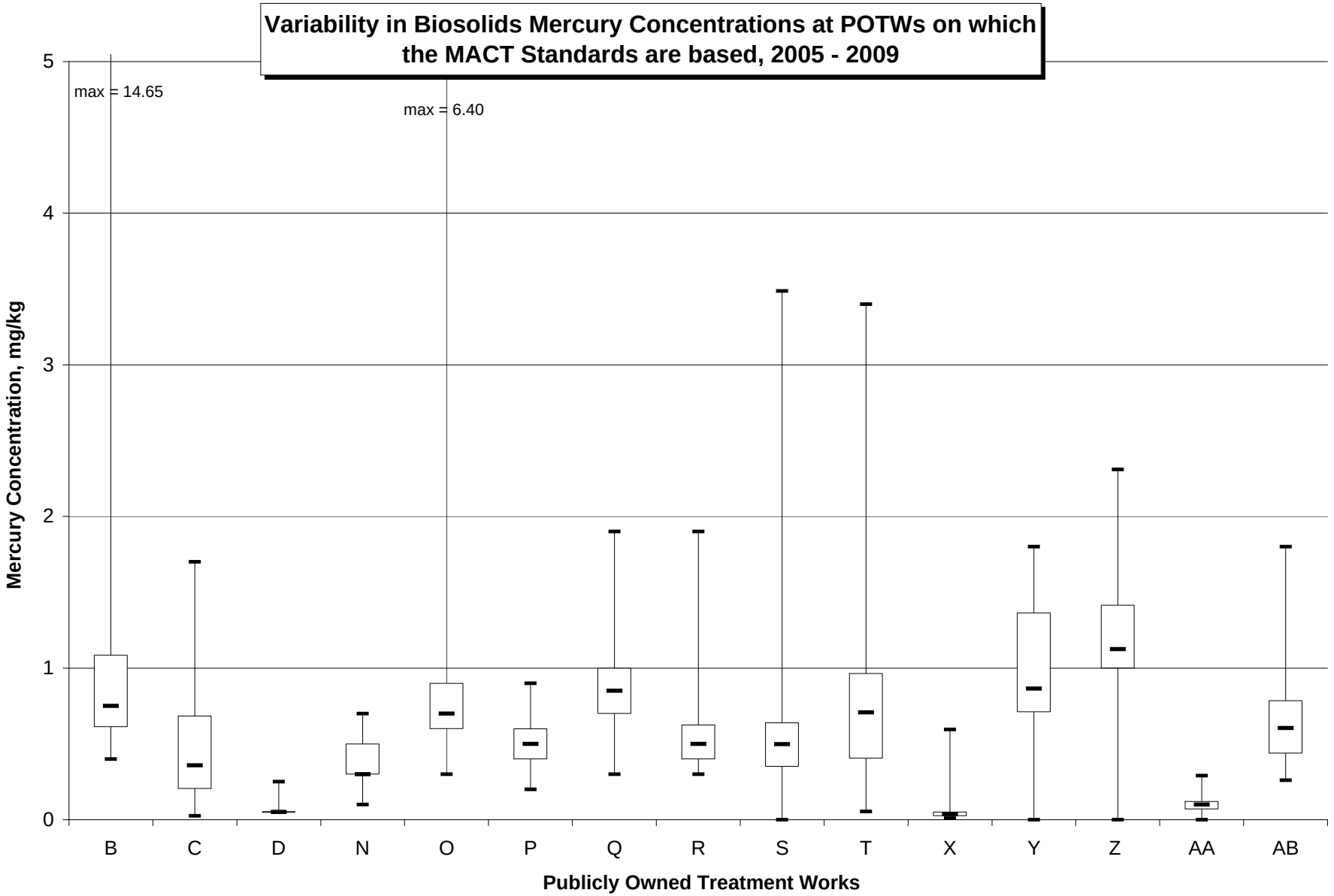
Monthly Average Lead in Biosolids at MACT Floor POTWs (mg/dry kg) (2005-2009)

Jan-08	22.7	10.0	56.5	20.0	34.0	35.0	23.0	46.0		41.0	25.1	52	70.36	4	14
Feb-08	22.1	22.1	86.8	16.0	43.0	24.0	25.0	54.0		32.0	17.8	54	71.55	4.4	24.5
Mar-08	25.6	27.2	68.6	21.0	46.0	38.0	19.0	64.0	30.5	28.4	27.8	54	79.85	3.2	16.5
Apr-08	24.6	36.9	78.4	18.0	30.0	21.0	13.0	43.0	23.5	26.8	14.5	56	66.2	3.6	15.7
May-08	0.3	25.5	55.9	19.0	43.0	38.0	22.0	56.0	19.2	27.5	19.6	36	60.2	4.5	
Jun-08	0.3	28.4	60.1	20.0	52.0	42.0	31.0	45.0	26.0	34.6	17.6	42	65.3	5.1	13
Jul-08	0.3	34.7	72.1	27.0	54.0	38.0	36.0	46.0	38.8	42.2	17.1	56	101.7	4.4	19
Aug-08	5.3	23.9	30.0	25.0	67.0	45.0	42.0	42.0	32.6	52.8	25.4	87	71.6	5	20
Sep-08	0.3	34.6	72.4	26.0	50.0	48.0	29.0	58.0	30.8	40.2	21.8	66	71.3	5.4	29
Oct-08	0.3	30.0	77.1	26.0	55.0	57.0	24.0	46.0		47.3	10.3	31	57.2	5.7	24
Nov-08	0.3	27.5	60.4	30.0	46.0	53.0	29.0	41.0		38.1	13.9	39	29.8	5.8	
Dec-08	14.5	28.9	56.8	23.0	40.0	46.0	15.0	59.0		37.7	10.2	48	30.9	5.2	19
Jan-09	14.4	17.3	49.5	26.0	41.0	39.0	21.0	45.0		30.6	15.7	60	38.2	4.8	5.8
Feb-09	29.5	20.6	67.3	17.0	42.0	39.0	17.0	49.0		29.8	10.7	42	39.9	3.2	5.7
Mar-09	12.2	27.6	69.8	13.0	29.0	37.0	19.0	41.0		30.0	9.9		233	3.3	6.9
Apr-09	29.9	16.0	99.7	16.0	46.0	46.0	21.0	54.0		29.3	13.9	36	47.9	3.4	18
May-09	19.3	17.2	79.9	12.0	36.0	21.0	15.0	56.0		33.7	10.5	43	65.2	3	16
Jun-09	16.8	25.5	105.0	6.0	26.0	22.0	17.0	35.0		48.8	16.4	61	57.6	4.4	10.8
Jul-09	26.1	19.1	82.7	13.0	29.0	23.0	17.0	46.0		47.6	15.2	58	70.6	4.5	12.4
Aug-09	22.5	22.9	83.7	31.0	62.0	44.0	36.0	67.0		42.7	17.3	86	82.7	4.5	0
Sep-09	0.7	32.2	66.5	23.0	61.0	38.0	36.0	52.0		38.4	15.5	38	49.5	8.2	1
Oct-09	0.7	15.8	56.8	12.0	43.0	17.0	12.0	38.0		44.9	18.6	48	43.0	5.6	9.7
Nov-09	54.9	15.0	55.7	13.0	45.0	184.0	12.0	52.0		37.4	13.4	52	39.5	5.2	12.5
Dec-09	35.1	17.4	76.0	22.0	55.0	28.0	18.0	52.0				39	58.6	4.75	13.4

	B	**C**	**D**	**N**	**O**	**P**	**Q**	**R**	**S**	**T**	**X**	**Y**	**Z**	**AA**	**AB**
25th Percentile	0.8	17.9	57.6	15.0	36.8	37.0	19.0	39.5	27.3	31.9	13.4	48.0	52.0	4.0	9.2
Minimum	0.3	6.4	30.0	6.0	22.0	17.0	11.0	12.0	19.2	25.8	7.4	31.0	15.0	3.0	0.0
Median	8.6	24.5	69.2	18.5	46.0	42.0	26.0	45.0	30.4	39.0	15.8	58.0	66.2	4.8	15.9
Maximum	54.9	39.1	194.0	49.0	130.0	184.0	137.0	84.0	97.1	82.4	44.0	160.0	233.0	20.0	73.6
75th Percentile	15.1	30.6	80.6	23.3	67.8	49.3	36.3	54.0	37.4	45.6	19.5	70.0	79.1	5.7	23.8

Mercury in Biosolids at MACT Floor POTWs (Key)

B	CCCSD
C	Greensboro
D	Hartford
N	HRSD_Williamsburg
O	HRSD_ArmyBase
P	HRSD_BoatHarbor
Q	HRSD_Elizabeth
R	HRSD_Virginia Initiative
S	St. Paul
T	Wayne Township
X	Indianapolis
Y	Upper Blackstone
Z	Alcosan
AA	St. Paul Seneca
AB	Ypsilanti


Variability in Biosolids Mercury Concentrations at POTWs on which the MACT Standards are based, 2005 - 2009
max = 14.65
max = 6.40
Mercury Concentration, mg/kg
0
1
2
3
4
5
B
C
D
N
O
P
Q
R
S
T
X
Y
Z
AA
AB
Publicly Owned Treatment Works

Monthly Average Mercury in Biosolids at MACT Floor POTWs (mg/dry kg)
(2005-2009)

	B	C	D	N	O	P	Q	R	S	T	X	Y	Z	AA	AC
Jan-05	0.8	0.4	0.05	0.5	2.1	0.5	0.5	1.1	1.7	0.6	0.062	1.5	ND	0.1	0.27
Feb-05	2.1	0.3	0.2	0.6	0.7	0.6	1.2	1.2	0.5	0.5	0.038	ND	ND	0.1	
Mar-05	0.9	0.5	0.2	0.4	3.7	0.7	1.1	0.7	0.2	1.1	0.071	ND	ND	0.06	0.32
Apr-05	1.8	0.8	0.05	0.3	0.3	0.6	0.6	0.5	0.2	0.4	0.048	ND	ND	0.07	
May-05	0.8	1.4	0.1	0.3	1.4	0.4	0.8	0.9	3.5	0.6	0.030	ND	ND	0.09	0.58
Jun-05	1.2	0.7	0.05	0.5	0.9	0.5	0.8	0.9	0.4	0.8	0.028	ND	ND	<0.06	1.80
Jul-05	14.6	0.4	0.05	0.3	1.2	0.7	1.2	0.5	0.6	0.4		1.8	ND	<0.06	0.69
Aug-05	12.2	0.5	0.05	0.6	1.1	0.6	1.1	1.1	1.2	0.9		ND	ND	<0.06	
Sep-05	14.7	0.9	0.05	0.2	0.8	0.7	0.9	0.4	0.6	0.7		ND	ND	0.11	0.43
Oct-05	1.3		0.05	0.5	0.9	0.5	0.7	0.4	0.5	0.7		ND	ND	0.07	
Nov-05	1.9	0.8	0.05	0.5	0.9	0.5	0.7	0.6	1.8	1.2		ND	ND	0.13	
Dec-05	1.2	0.9	0.05	0.5	0.8	0.5	0.6	0.7	0.6	0.3		ND	ND	<0.06	
Jan-06	0.7	0.6	0.3	0.4	0.5	0.4	0.4	0.3	0.4	0.4		0.86	ND	<0.06	0.26
Feb-06	0.4	0.8	0.05	0.6	0.5	0.4	0.7	0.7	0.6	0.4		ND	ND	<0.06	<0.05
Mar-06	1.0	1.7	0.05	0.3	1.1	0.9	1.0	0.4	0.7	0.7	0.041	ND	ND	0.12	0.36
Apr-06	0.7	1.6	0.05	0.4	0.6	0.4	1.0	0.5	0.7	0.8		ND	ND	0.12	
May-06	0.8	1.3	0.05	0.3	0.8	0.6	1.0	0.4	0.3	0.2		ND	ND	<0.06	
Jun-06	0.7	0.3	0.05	0.3	0.7	0.6	1.2	0.5	0.4	0.8		ND	ND	<0.06	
Jul-06	1.0		0.05	0.1	0.5	0.7	1.0	0.4	0.4	0.7		0.71	ND	0.06	
Aug-06	1.2	0.4	0.05	0.3	1.0	0.6	1.2	0.6	0.6	0.9		ND	ND	<0.06	
Sep-06	1.3	0.6	0.05	0.3	1.5	0.4	1.1	1.1	0.6	0.4		ND	ND	0.07	
Oct-06	1.6	0.8	0.05	0.3	0.9	0.8	1.1	0.4	0.8	0.1		ND	ND	<0.06	
Nov-06	1.1	0.069	0.05	0.3	0.6	0.3	0.8	0.4	0.2	2.0		ND	ND	0.26	
Dec-06	0.7		0.05	0.3	0.6	0.4	0.9	0.3	0.4	0.7		ND	ND	0.14	
Jan-07	0.4	0.0	0.05	0.2	0.5	0.2	0.6	0.3	0.3	0.1		0.64	ND	<0.06	
Feb-07	6.4	0.2	0.05	0.7	0.7	0.3	0.6	0.4	0.5	1.2		ND	ND	<0.06	
Mar-07	0.9	0.2	0.05	0.3	0.8	0.5	1.2	0.4		0.8		ND	ND	0.1	
Apr-07	0.5	0.6	0.05	0.3	0.6	0.7	0.8	0.6		0.9		ND	ND	0.18	
May-07	0.8	0.3	0.05	0.3	0.9	0.7	0.9	0.5		1.1	0.03	ND	ND	<0.06	
Jun-07	0.7	0.6	0.05	0.4	0.9	0.6	0.9	0.6		0.4	0.03	ND	ND	<0.06	
Jul-07	1.2	0.2	0.05	0.4	1.1	0.8	1.9	0.6		0.4	0.03	0.87	ND	0.08	
Aug-07	1.1	0.4	0.05	0.6	0.8	0.5	1.1	0.7		3.4	0.05	ND	ND	<0.06	
Sep-07	0.9	0.7	0.05	0.2	0.7	0.4	0.9	0.5		0.1	0.04	ND	ND	<0.06	
Oct-07	0.6	0.3	0.05	0.3	0.8	0.6	0.7	0.3	0.8	0.2	0.04	ND	ND	0.07	
Nov-07	0.7	0.6	0.05	0.2	0.6	0.3	0.6	0.5		1.0	0.04	ND	ND	0.18	
Dec-07	0.7	1.5	0.05	0.2	0.6	0.5	0.9	0.7	0.4	0.1	0.03	ND	ND	0.11	

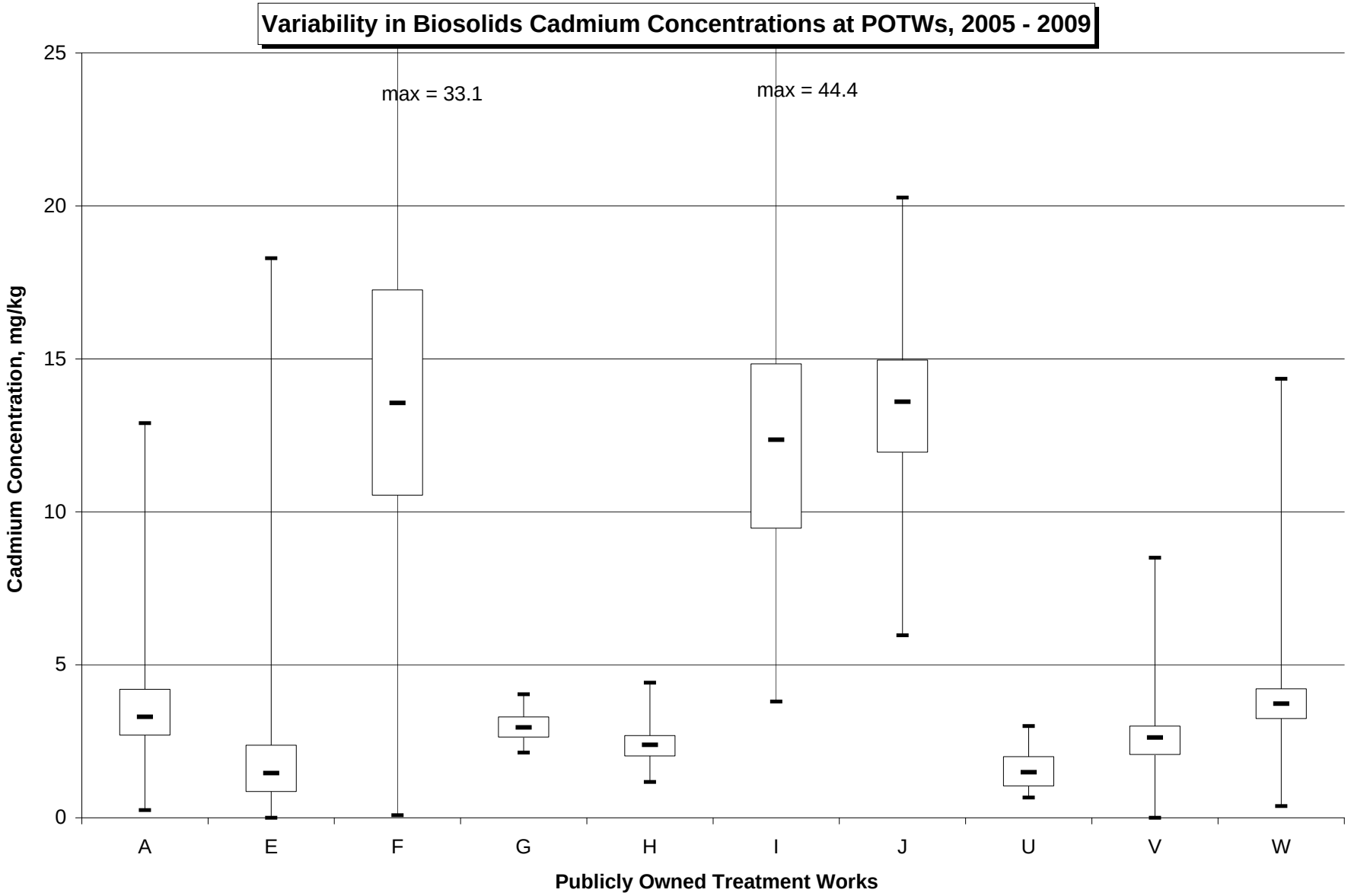
Monthly Average Mercury in Biosolids at MACT Floor POTWs (mg/dry kg) (2005-2009)

Jan-08	0.5	0.1	0.05	0.2	0.5	0.4	0.4	0.5		0.9	0.04	0.6	1.089	<0.06	0.44
Feb-08	0.5	0.7	0.05	0.4	0.8	0.4	0.5	0.5		0.3	0.03	ND	0.993	0.11	
Mar-08	0.6	0.4	0.05	0.3	0.6	0.4	0.7	0.5	0.6	0.3	0.04	ND	0.83	0.1	0.72
Apr-08	0.4	0.8	0.05	0.3	0.5	0.6	0.7	0.4	0.6	0.3	0.06	ND	0.85	0.04	0.59
May-08	0.7	0.2	0.05	0.3	0.8	0.4	0.8	0.5	0.2	0.6	0.60	ND	1.14	<0.06	
Jun-08	0.8	0.2	0.05	0.4	1.3	0.5	0.9	0.5	0.2	0.5	0.03	ND	1.08	0.06	0.80
Jul-08	1.0	0.2	0.05	0.5	6.4	0.7	1.2	0.7	0.4	1.0	0.04	0.96	1.159	<0.06	0.82
Aug-08	0.6	0.1	0.05	0.3	1.2	0.5	0.8	0.4	0.5	0.3	0.03	ND	1.50	0.29	0.88
Sep-08	0.6	0.2	0.05	0.2	1.4	0.3	1.0	0.3	0.4	0.3	0.03	ND	1.58	<0.06	0.62
Oct-08	0.6	0.1	0.05	0.3	1.1	0.4	0.6	0.4		0.8	0.03	ND	1.00	<0.06	
Nov-08	0.4	0.2	0.05	0.3	0.6	0.4	0.7	0.4	0.2	0.4	0.05	ND	0.90	<0.06	
Dec-08	0.4	0.2	0.05	0.4	0.5	0.4	0.3	0.8	0.3	2.2	0.07	ND	0.74	0.09	0.50
Jan-09	0.6	0.2	0.05	0.4	0.4	0.2	0.4	0.6		0.7	0.05	0.71	1.01	<0.06	0.62
Feb-09	0.7	0.3	0.05	0.6	0.4	0.3	0.7	0.3		1.5	0.05	ND	2.13	<0.06	
Mar-09	0.7	0.2	0.05	0.4	0.4	0.6	0.9	0.3		1.8	0.03	ND	1.65	0.09	
Apr-09	0.5	0.2	0.05	0.2	0.6	0.5	1.0	1.9		3.4	0.03	ND	1.35	<0.06	0.42
May-09	0.5	0.1	0.05	0.3	0.6	0.4	0.9	0.6		0.8	0.03	ND	1.23	0.06	0.55
Jun-09	0.7	0.4	0.05	0.2	0.7	0.4	0.7	0.3		1.7	0.05	ND	1.15	<0.06	0.78
Jul-09	0.8	0.4	0.05	0.3	0.6	0.6	0.6	0.4		1.4	0.05	1.7	2.31	0.06	0.98
Aug-09	0.9	0.2	0.05	0.3	0.7	0.6	1.5	0.5		1.1	0.03	ND	1.46	<0.06	
Sep-09	0.8	0.3	0.05	0.7	0.8	0.5	1.0	0.7		0.8	0.03	ND	1.06	0.17	
Oct-09	0.6	0.2	0.05	0.5	0.6	0.7	0.7	0.4		3.3	0.05	ND	1.00	0.11	0.52
Nov-09	0.7	0.4	0.05	0.5	0.6	0.4	1.5	0.3		0.4	0.01	ND	1.11	<0.06	0.67
Dec-09	0.5	0.3	0.05	0.5	0.5	0.4	0.4	0.5				ND	1.40	<0.06	0.89

	B	**C**	**D**	**N**	**O**	**P**	**Q**	**R**	**S**	**T**	**X**	**Y**	**Z**	**AA**	**AB**
25th Percentile	0.61	0.20	0.05	0.30	0.60	0.40	0.70	0.40	0.35	0.40	0.03	0.71	1.00	0.07	0.44
Minimum	0.40	0.03	0.05	0.10	0.30	0.20	0.30	0.30	0.00	0.05	0.01	0.00	0.00	0.00	0.26
Median	0.75	0.36	0.05	0.30	0.70	0.50	0.85	0.50	0.50	0.71	0.04	0.87	1.13	0.10	0.61
Maximum	14.65	1.70	0.25	0.70	6.40	0.90	1.90	1.90	3.49	3.40	0.60	1.80	2.31	0.29	1.80
75th Percentile	1.09	0.68	0.05	0.50	0.90	0.60	1.00	0.63	0.64	0.96	0.05	1.37	1.42	0.12	0.79

Cadmium in Biosolids at Non-MACT Floor POTWs
(Key)

A	Canton
E	MSD St. Louis_Lerney
F	MSD St. Louis_Bissell
G	Palo Alto
H	Columbus
I	NEORSD_Southerly
J	NEORSD_Westerly
U	Anchorage
V	Cincinnati_Little Miami
W	Cincinnati_Mill Creek


Variability in Biosolids Cadmium Concentrations at POTWs, 2005 - 2009
max = 33.1
max = 44.4
25
20
15
10
5
0
Cadmium Concentration, mg/kg
A
E
F
G
H
I
J
U
V
W
Publicly Owned Treatment Works

Monthly Average Cadmium in Biosolids at Non-MACT Floor POTWs (mg/dry kg)
(2005-2009)

	A	E	F	G	H	I	J	U	V	W
Jan-05	4.8	0.0	8.4	2.5	3.1	11.9	13.2		2.75	3.185
Feb-05		1.5	13.0	2.6	2.6	13.0	12.8	2.0	5.5	3.1
Mar-05	3.8	1.9	13.1	3.5	2.1	13.5	13.0		6.25	3.998
Apr-05		2.4	20.6	3.0	2.5	14.8	13.6	2.0	2.8	0.4
May-05	2.7	1.2	22.8	4.0	2.3	12.1	15.1	2.0	3.0	
Jun-05		2.3	13.5	3.1	1.5	18.8	13.8	2.0	2.5	3.8
Jul-05	5.1	1.3	13.5	3.3	1.9	11.7	13.7		2.0	3.8
Aug-05		1.7	33.1	3.0	2.5	19.2	11.2	1.6	8.5	4.0
Sep-05	0.9	1.3	16.8	2.9	2.5	44.4	11.7		6.0	2.0
Oct-05		1.3	23.5	3.0	2.6	19.8		3.0	4.0	4.6
Nov-05	3.2	0.8	7.9	2.9	3.0	12.9			3.0	4.0
Dec-05		1.0	16.5	2.8	1.2	14.5		2.0	1.8	3.8
Jan-06	12.9	0.8	7.0	2.6		15.3	12.3		1.0	2.8
Feb-06		1.4	32.2	3.0	2.1	16.0	10.6	3.0	2.0	2.0
Mar-06	6.0	0.5	13.0	2.5	1.9	31.8	19.5		3.5	2.0
Apr-06	4.8	0.8	11.2	3.0	2.8	16.6	10.7	3.0	2.5	3.0
May-06	4.7	0.0	7.2	2.8	2.0	11.0	12.4		2.5	3.5
Jun-06	6.7	0.0	16.9	3.2	3.0	11.4	13.9	2.4	2.0	3.8
Jul-06	7.3	1.7	25.4	3.2	3.2	12.4	15.3		2.9	5.0
Aug-06	0.3	3.5	7.8	3.4	2.3	14.1	15.2	1.6	2.8	5.6
Sep-06	3.2	2.4	14.2	3.3	2.3	17.8	13.6		2.6	4.8
Oct-06	3.7	1.4	18.0	3.4	1.7	15.5	13.7	1.5	1.1	3.8
Nov-06	0.9	1.0	16.6	2.8	2.2	12.3	12.4		2.5	4.0
Dec-06	3.6	1.6	6.2	2.8	1.4	13.9	13.0	1.2	0.0	7.6
Jan-07	4.2	0.0	5.8	2.7	2.4	11.4	12.8		2.0	4.0
Feb-07	2.9	0.6	13.6	2.2	2.5	17.8	12.8	1.0	1.8	3.7
Mar-07	2.6	2.1	10.4	2.8	1.7	12.9	14.0		2.0	3.6
Apr-07	3.2	2.7	12.5	2.9	2.1	11.2	14.7	1.5	3.0	3.4
May-07	3.5	1.3	6.7	2.9	1.8	14.5	15.2		2.6	3.6
Jun-07	2.6	1.6	10.8	3.2	2.0	14.1	15.2	0.8	2.7	4.4
Jul-07	2.6	1.5	8.0	3.9	2.0	14.3	13.9		2.7	5.1
Aug-07	3.5	1.8	20.8	3.4	1.7	15.1	14.3	0.7	5.4	4.8
Sep-07	2.2	1.2	8.3	2.6	1.2	18.9	20.3		2.0	4.2
Oct-07	2.6	3.4	14.7	2.6	1.9	17.1	17.1	2.4	1.8	3.6
Nov-07	3.9	1.5	13.6	2.5	2.6	9.8	13.7		2.5	3.7
Dec-07	2.6	1.2	13.6	2.4	3.2	11.0	15.4	1.4	2.7	3.3

Monthly Average Cadmium in Biosolids at Non-MACT Floor POTWs (mg/dry kg)
(2005-2009)

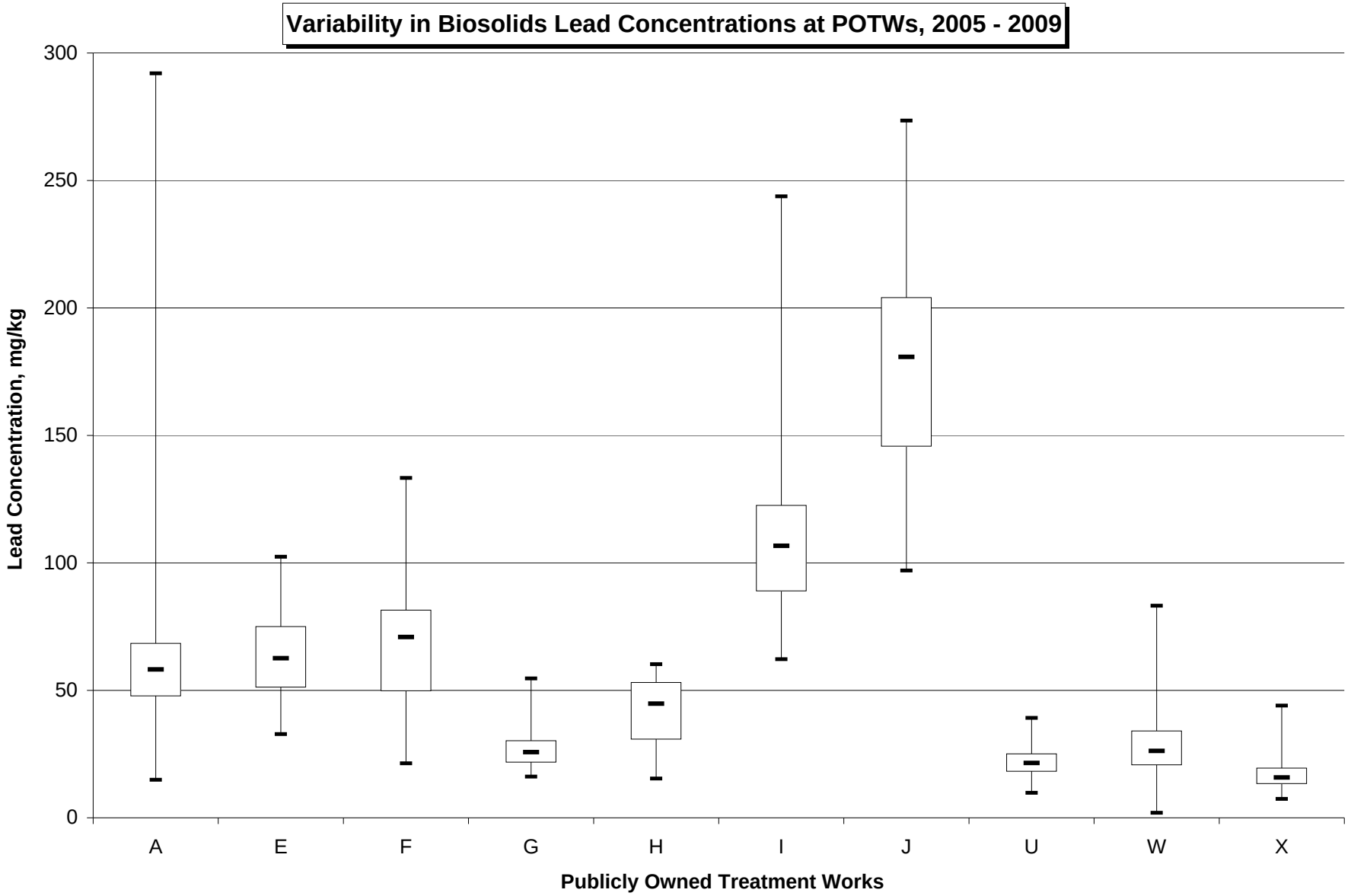
Jan-08	5.7	0.3	17.7	2.2	3.0	9.8	14.6		1.5	4.2
Feb-08	3.2	0.0	11.0	2.7	3.3	9.2	15.9	1.4	2.6	3.6
Mar-08	2.9	0.6	21.5	2.3	4.4	15.5	16.7		2.2	3.5
Apr-08	2.6	18.3	0.1	2.5	2.7	14.0	19.4	1.4	3.0	3.8
May-08	2.7	1.6	12.5	3.1	3.9	12.7	14.8		3.2	3.7
Jun-08	2.8	5.2	5.3	3.3	2.5	13.6	12.9	1.34	2.7	5.3
Jul-08	3.3	0.0	1.9	3.1	2.9	10.5	20.1		2.3	3.2
Aug-08	3.1	2.4	10.7	2.5	2.8	9.6	15.9	1.8	2.4	5.3
Sep-08	2.7	2.5	14.7	3.3	2.6	11.3	12.6		2.5	4.3
Oct-08	4.2	4.3	16.8	3.7	2.4	7.7	9.4		1.7	14.4
Nov-08	2.0	1.0	14.3	3.4	2.4	8.4	9.4	1.0	2.1	3.9
Dec-08	2.7	6.3	14.8	3.1	2.0	7.7	9.6	1.1	7.8	3.7
Jan-09	3.4	0.6	15.7	2.7	2.4	8.0	13.3		5.0	3.1
Feb-09	2.3	1.8	31.2	3.7	1.7	8.5	12.0	0.9	3.3	3.4
Mar-09	3.4	1.3	30.0	3.0	2.6	8.9	14.5		2.7	3.7
Apr-09	4.3	0.7	15.1	3.5	2.2	9.1	15.0	1.0	2.8	2.5
May-09	0.4	0.9	7.6	3.7	3.1	10.4	13.0	0.8	2.9	3.2
Jun-09	3.3	2.2	11.1	3.6	2.4	4.6	7.9	0.7	2.6	3.2
Jul-09	4.9	3.8	13.3	2.7	2.0	4.5	7.9	1.3	2.2	4.2
Aug-09	5.6	2.5	17.6	2.5	2.2	4.8	9.1	1.8	2.7	2.8
Sep-09	3.9	3.6	23.8	2.1	2.1	5.1	8.1		2.7	3.3
Oct-09	3.8	3.0	22.7		2.3	4.0	7.2	1.5	3.1	3.5
Nov-09	3.8	2.9	17.0		2.8	4.1	6.2	1.0	3.4	5.8
Dec-09	3.3				2.6	3.8	6.0		1.8	2.4

	A	**E**	**F**	**G**	**H**	**I**	**J**	**U**	**V**	**W**
25th Percentile	2.7	0.9	10.5	2.6	2.0	9.5	12.0	1.0	2.1	3.2
Minimum	0.3	0.0	0.1	2.1	1.2	3.8	6.0	0.7	0.0	0.4
Median	3.3	1.5	13.6	3.0	2.4	12.4	13.6	1.5	2.6	3.7
Maximum	12.9	18.3	33.1	4.0	4.4	44.4	20.3	3.0	8.5	14.4
75th Percentile	4.2	2.4	17.3	3.3	2.7	14.8	15.0	2.0	3.0	4.2

*Grab samples were removed from POTW "A"

Lead in Biosolids at Non-MACT Floor POTWs
(Key)

A	Canton
E	MSD St. Louis_Lemay
F	MSD St. Louis_Bissell
G	Palo Alto
H	Columbus
I	NEORSD_Southerly
J	NEORSD_Westerly
U	Anchorage
V	Cincinnati_Little Miami
W	Cincinnati_Mill Creek


Variability in Biosolids Lead Concentrations at POTWs, 2005 - 2009
Lead Concentration, mg/kg
300
250
200
150
100
50
0
A
E
F
G
H
I
J
U
W
X
Publicly Owned Treatment Works

Monthly Average Lead in Biosolids at Non-MACT Floor POTWs (mg/ dry kg)
(2005-2009)

	A	E	F	G	H	I	J	U	W	X
Jan-05	87.0	92.4	109.6	54.7	58.7	133.3	202.3		33.988	23.2
Feb-05		52.7	60.2	50.8	56.2	87.0	136.2	26.6	21.8	17.1
Mar-05	36.0	74.4	75.9	26.0	36.8	103.5	145.8		34.083	10.1
Apr-05		53.5	70.0	30.3	25.1	126.6	198.3	32.5	2.0	10.2
May-05	14.9	66.6	67.6	49.6	26.6	128.8	225.8	30.5		13.4
Jun-05		88.8	77.9	35.2	23.9	125.4	195.7	29.2	31.0	12.4
Jul-05	292.0	102.4	133.3	39.0	30.9	148.3	179.4		30.3	
Aug-05		57.2	41.0	26.2	46.1	169.9	176.6	23.9	24.7	
Sep-05	26.6	48.2	45.3	35.2	55.5	239.3	180.1		24.0	13.5
Oct-05		62.6	83.7	28.4	43.8	243.8	145.7	19.5	16.4	
Nov-05	61.4	93.1	115.8	27.6	53.1	122.1	130.9		54.8	
Dec-05		48.8	71.2	24.3	15.4	93.3	116.3	10.3	28.8	
Jan-06	69.6	77.6	94.9	32.2	23.8	79.4	129.5		26.3	11.0
Feb-06		54.9	67.9	25.6	29.9	107.5	188.7	39.2	19.0	11.4
Mar-06	45.3	62.1	79.3	33.7	22.8	123.5	203.8		10.8	14.0
Apr-06	56.8	72.1	91.5	27.9	30.6	125.6	213.5	32.3	21.5	18.7
May-06	63.5	101.4	85.2	29.5	29.0	122.0	168.0		25.0	15.8
Jun-06	66.8	85.4	77.9	25.1	44.0	122.3	231.6	21.7	30.0	19.2
Jul-06	62.4	88.2	77.2	31.1	42.7	140.2	273.5		26.5	22.1
Aug-06	65.7	82.1	71.1	30.1	24.3	125.9	213.3	25.0	27.0	18.0
Sep-06	55.4	73.7	83.6	26.1	27.2	107.3	171.5		33.5	25.3
Oct-06	61.4	79.7	57.8	30.3	40.0	120.1	265.3	25.9	13.0	27.7
Nov-06	15.5	85.3	70.9	22.5	29.0	89.3	158.3		9.8	33.1
Dec-06	43.2	58.7	57.0	21.7	17.8	83.6	172.0	18.2	22.6	18.0
Jan-07	87.3	65.2	86.0	22.6	47.8	105.9	204.0		19.7	13.0
Feb-07	60.1	41.9	41.7	16.1	50.1	68.0	101.2	18.3	11.4	13.2
Mar-07	70.0	53.4	49.8	20.9	37.5	110.1	218.3		14.7	15.8
Apr-07	74.6	71.9	121.2	26.9	28.9	93.6	204.4	22.9	24.4	15.6
May-07	82.4	35.0	34.9	21.1	39.6	97.4	167.3		15.9	17.3
Jun-07	48.3	84.0	90.8	30.4	44.5	88.1	172.5	9.8	29.1	21.5
Jul-07	59.6	75.7	112.7	39.6	50.0	97.1	181.5		37.6	7.4
Aug-07	140.0	46.8	66.6	37.1	54.6	149.3	233.3	18.9	20.5	44.0
Sep-07	48.9	45.2	62.5	24.8	46.2	107.8	179.3		20.9	26.4
Oct-07	51.2	42.0	64.0	24.9	48.5	95.2	157.0	25.1	21.1	30.1
Nov-07	62.2	53.2	61.0	20.0	37.0	80.8	187.0		17.0	14.1
Dec-07	50.9	68.0	76.3	18.6	59.3	89.9	203.3	18.7	24.0	15.7
Jan-08	42.6	70.2	74.2	20.6	44.0	80.4	184.7		35.3	25.1
Feb-08	115.0	70.9	89.8	19.4	55.1	111.0	245.3	23.5	83.2	17.8
Mar-08	64.2	69.5	110.0	17.4	56.8	116.5	232.0		19.8	27.8
Apr-08	58.2	45.9	47.4	22.1	40.4	113.5	247.3	23.8	11.2	14.5
May-08	95.3	34.8	46.2	22.5	50.3	106.1	167.8		25.5	19.6
Jun-08	53.2	68.0	44.0	22.7	45.0	117.5	192.3	25.0	44.5	17.6
Jul-08	79.4	39.9	21.4	25.1	44.5	131.8	210.5		42.8	17.1
Aug-08	85.3	50.2	51.1	27.2	57.9	108.6	141.0	20.0	70.7	25.4
Sep-08	59.4	55.4	27.8	29.9	60.2	109.0	185.8		22.2	21.8
Oct-08	76.5	65.5	73.6	30.8	49.9	96.6	184.0		69.0	10.3
Nov-08	58.2	39.2	49.8	30.1	43.0	92.6	169.5	18.0	18.8	13.9
Dec-08	49.7	32.8	35.6	25.7	35.0	85.7	125.5	15.4	31.3	10.2
Jan-09	48.5	54.0	52.0	19.8	47.6	62.2	97.0		22.6	15.7
Feb-09	36.8	71.1	43.1	23.0	29.0	75.6	126.1	11.0	34.0	10.7
Mar-09	68.4	63.8	73.5	20.3	48.9	84.9	141.2		45.3	9.9

Monthly Average Lead in Biosolids at Non-MACT Floor POTWs (mg/ dry kg)
(2005-2009)

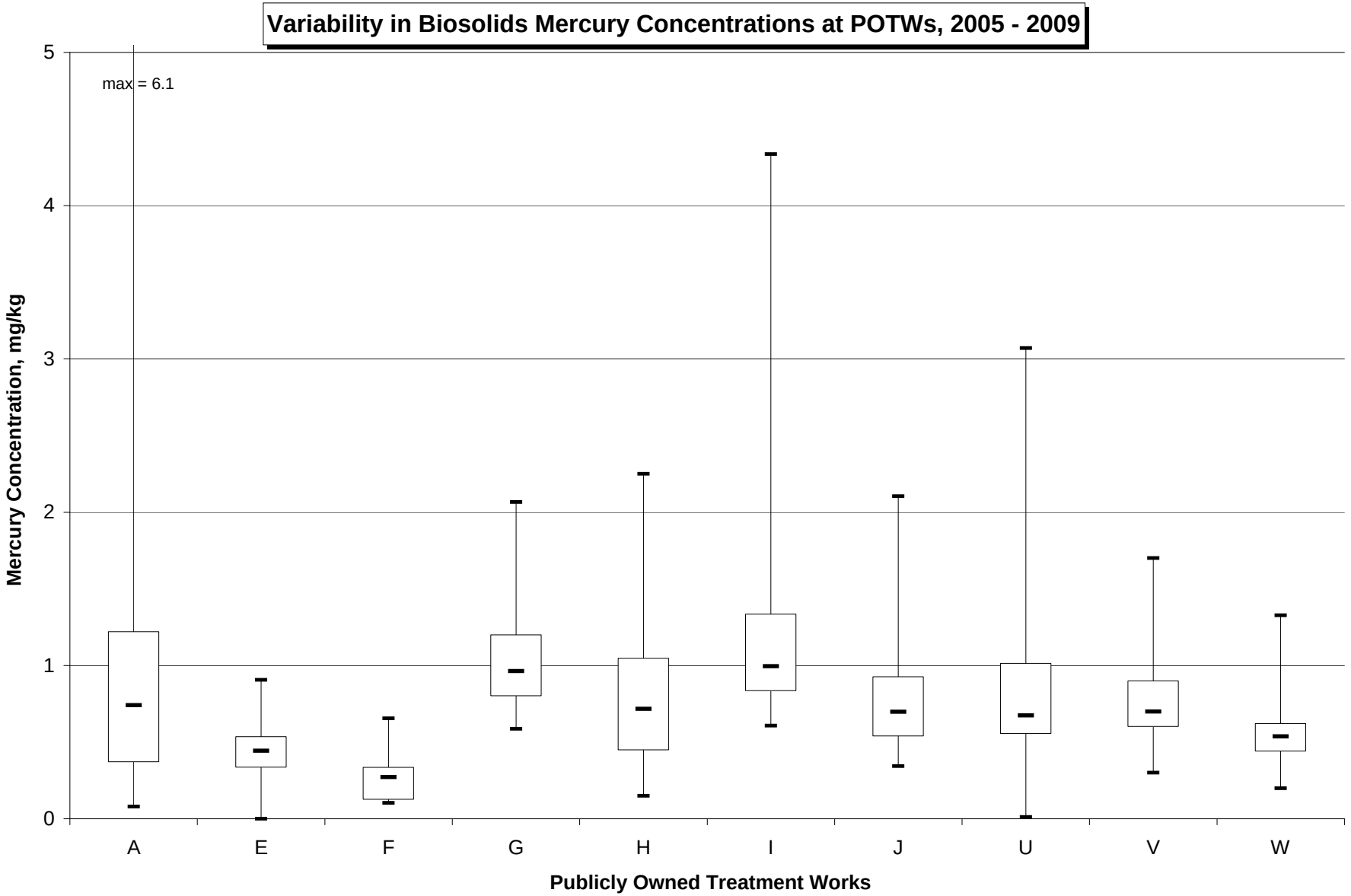
Apr-09	55.3	43.2	41.7	25.8	53.1	67.9	123.0	16.4	28.7	13.9
May-09	33.0	53.3	30.9	20.9	60.0	87.2	146.0	11.0	27.3	10.5
Jun-09	47.8	61.1	78.4	26.1	53.7	99.5	204.3	19.4	53.2	16.4
Jul-09	58.6	62.4	75.4	18.0	56.0	123.2	218.6	19.2	53.3	15.2
Aug-09	55.4	77.4	100.7	18.9	51.0	114.0	188.3	25.8	70.9	17.3
Sep-09	47.3	52.2	31.4	17.0	49.4	103.4	183.9		31.7	15.5
Oct-09	46.6	84.9	78.1	24.9	56.5	94.3	129.3	21.5	39.5	18.6
Nov-09	37.1	47.66	61.908		56.6	82.8	104.8	17.7	65.2	13.4
Dec-09	35.7				52.6	74.7	97.6		22.1	

	A	**E**	**F**	**G**	**H**	**I**	**J**	**U**	**W**	**X**
25th Percentile	47.8	51.2	49.8	21.8	30.8	89.0	145.7	18.2	20.7	13.4
Minimum	14.9	32.8	21.4	16.1	15.4	62.2	97.0	9.8	2.0	7.4
Median	58.2	62.6	70.9	25.7	44.7	106.7	180.8	21.5	26.3	15.8
Maximum	292.0	102.4	133.3	54.7	60.2	243.8	273.5	39.2	83.2	44.0
75th Percentile	68.4	75.0	81.5	30.2	53.1	122.5	204.1	25.1	34.1	19.5

*Grab samples were removed from POTW "A"
*One-half of the detection limit was used anytime a result was reported as <.

Mercury in Biosolids at Non-MACT Floor POTWs
(Key)

A	Canton
B	CCCSD
C	Greensboro
D	Hartford
E	MSD St. Louis_Lerney
F	MSD St. Louis_Bissell
G	Palo Alto
H	Columbus
I	NEORSD_Southerly
J	NEORSD_Westerly
K	HRSD_York River
L	HRSD_James River
M	HRSD_Nansemond
N	HRSD_Williamsburg
O	HRSD_ArmyBase
P	HRSD_BoatHarbor
Q	HRSD_Elizabeth
R	HRSD_Virginia Initiative
S	St. Paul
T	Wayne Township
U	Anchorage
V	Cincinnati_Little Miami
W	Cincinnati_Mill Creek
X	Indianapolis


Variability in Biosolids Mercury Concentrations at POTWs, 2005 - 2009
max = 6.1
Mercury Concentration, mg/kg
0
1
2
3
4
5
A
E
F
G
H
I
J
U
V
W
Publicly Owned Treatment Works

Monthly Average Mercury in Biosolids at Non-MACT Floor POTWs (mg/dry kg)
(2005-2009)

	A	E	F	G	H	I	J	U	V	W
Jan-05	1.2	0.9	0.125	1.2	1.2	0.9	0.5		0.3	0.199
Feb-05		0.9	0.3	1.4	0.6	0.8	0.5	1.0	0.3	0.4
Mar-05	0.9	0.3	0.3	1.3	1.3	1.1	0.5		0.8	0.506
Apr-05		0.4	0.125	1.1	0.5	0.9	0.4	0.6	1.3	0.5
May-05	0.6	0.6	0.3	2.1	1.0	1.1	0.5	1.2	0.4	
Jun-05		0.6	0.4	1.5	1.1	2.2	0.8	0.0	0.9	0.3
Jul-05	6.1	0.7	0.3	1.7	1.2	1.5	0.9		0.6	0.6
Aug-05		0.5	0.125	1.3	1.2	2.1	0.9	1.4	0.7	0.3
Sep-05	3.0	0.3	0.125	1.6	0.8	4.3	0.8		1.1	0.4
Oct-05		0.4	0.3	2.0	1.1	3.3	1.1	3.1	0.5	0.7
Nov-05	0.7	0.8	0.7	1.2	1.1	1.3	0.6		1.0	0.9
Dec-05		0.4	0.6	1.2	1.0	1.0	0.5	3.0	1.7	1.3
Jan-06	0.8	0.4	0.5	1.4	1.2	0.7	0.6		0.5	0.3
Feb-06		0.5	0.3	1.8	0.7	1.3	0.8	0.8	0.3	0.3
Mar-06	1.6	0.6	0.125	1.1	0.6	1.9	0.5		0.8	0.5
Apr-06	2.5	0.5	0.3	1.3	0.8	1.0	0.7	0.6	0.7	0.6
May-06	3.2	0.5	0.3	1.4	1.9	0.8	0.6		1.1	0.7
Jun-06	1.9	0.6	0.3	0.9	0.8	1.2	2.1	1.4	0.7	0.6
Jul-06	1.9	0.7	0.5	1.1	1.3	1.1	1.0		0.8	0.9
Aug-06	1.0	0.6	0.3	1.1	0.8	1.1	1.3	0.9	0.7	0.6
Sep-06	0.4	0.5	0.4	1.1		1.2	1.3		0.9	1.0
Oct-06	0.4	0.4	0.125	1.2	2.3	1.0	1.7	0.5	0.9	0.6
Nov-06	3.1	0.4	0.3	0.7	0.6	1.0	0.9		1.0	0.5
Dec-06	1.0	0.3	0.125	1.1	0.7	0.9	1.0	0.4	1.2	0.5
Jan-07	1.0	0.4	0.3	0.9	0.2	1.0	1.5		0.7	0.6
Feb-07	1.2	0.0	0.3	0.7	0.9	1.2	0.8	0.6	0.6	0.4
Mar-07	1.0	0.3	0.3	0.9	1.8	0.7	0.9		0.6	0.5
Apr-07	0.9	0.4	0.125	0.8	0.3	1.2	0.7	0.6	0.6	0.6
May-07	0.6	0.4	0.125	0.9	1.6	0.8	1.3		0.9	0.6
Jun-07	0.7	0.5	0.3	0.8	0.8	1.4	1.5	1.0	0.8	0.5
Jul-07	0.4	0.4	0.125	1.2	0.3	1.7	2.0		0.7	0.6
Aug-07	0.9	0.6	0.3	1.0	0.4	2.2	1.4	1.0	0.9	0.8
Sep-07	2.7	0.4	0.4	1.3	0.5	1.3	0.7		0.7	0.6
Oct-07	1.8	0.5	0.4	1.0	0.9	1.0	1.0	1.0	1.3	0.5
Nov-07	1.8	0.5	0.125	0.9	0.4	0.8	0.9		0.7	1.3
Dec-07	0.9	0.5	0.3	0.7	0.5	0.8	0.6	0.7	0.9	0.4
Jan-08	0.8	0.5	0.4	0.9	0.5	0.9	0.6		0.6	0.4
Feb-08	1.4	0.3	0.125	1.0	0.7	0.8	0.7	1.9	0.6	0.5
Mar-08	0.9	0.4	0.125	1.0	1.6	1.0	0.9		0.6	0.4
Apr-08	0.4	0.3	0.4	1.0	0.2	0.9	0.5	0.8	0.6	0.3
May-08	0.4	0.3	0.125	1.2	0.2	0.8	0.5		0.7	0.5
Jun-08	0.1	0.0	0.3	0.9	0.5	0.8	0.8	0.9	0.6	0.4
Jul-08	0.3	0.3	0.125	0.9	0.4	0.8	0.6		1.1	0.5
Aug-08	0.2	0.6	0.4	0.8	0.4	1.5	0.6	0.5	0.6	0.5
Sep-08	0.2	0.5	0.4	0.8	0.3	1.1	0.7		0.8	0.4
Oct-08	0.2	0.5	0.3	0.7	1.4	0.8	0.6		0.8	0.6
Nov-08	0.1	0.3	0.125	0.7	0.8	0.8	0.7	0.6	0.7	0.5
Dec-08	0.1	0.3	0.125	0.6	0.3	0.8	0.4	0.4	0.8	0.6
Jan-09	0.2	0.5	0.3	0.9	0.2	0.6	0.4		0.7	0.5
Feb-09	0.2	0.3	0.1	0.8	0.4	0.9	0.4	0.4	0.5	0.6
Mar-09	0.3	0.4	0.1	0.7	0.5	0.7	0.3		0.7	0.6

Monthly Average Mercury in Biosolids at Non-MACT Floor POTWs (mg/dry kg)
(2005-2009)

Apr-09	0.4	0.3	0.2	0.9	0.4	0.7	0.4	0.7	0.8	0.4
May-09	0.3	0.3	0.1	0.6	0.4	0.8	0.4	0.2	0.7	0.5
Jun-09	0.5	0.3	0.3	0.7	0.5	0.9	0.8		0.7	0.6
Jul-09	0.6	0.3	0.3	0.7	0.7	1.5	0.9		0.7	0.4
Aug-09	0.6	0.4	0.2	0.6	0.7	2.8	0.6	0.5	0.8	0.5
Sep-09	0.2	0.3	0.1	0.6	0.6	2.1	0.9		0.8	0.5
Oct-09	1.2	0.6	0.2	1.0	0.5	1.0	0.6	0.9	0.9	0.8
Nov-09	0.6	0.3	0.5	0.8	0.8	0.9	0.6	0.6	0.7	0.8
Dec-09	0.7			0.8	0.6	1.4	0.4		0.7	0.9

	A	**E**	**F**	**G**	**H**	**I**	**J**	**U**	**V**	**W**
25th Percentile	0.37	0.34	0.13	0.80	0.45	0.83	0.54	0.55	0.60	0.44
Minimum	0.08	0.00	0.10	0.59	0.15	0.61	0.34	0.01	0.30	0.20
Median	0.74	0.44	0.27	0.96	0.72	1.00	0.70	0.67	0.70	0.54
Maximum	6.10	0.91	0.66	2.07	2.25	4.34	2.11	3.07	1.70	1.33
75th Percentile	1.22	0.54	0.34	1.20	1.05	1.34	0.93	1.01	0.90	0.62

*Grab samples were removed from POTW "A"

Northeast Ohio Regional
Sewer District
Protecting Your Health and Environment

Certified Mail No.
7000 1670 0002 9060 4628

February 15, 2011

U.S. EPA - Region 5
Water Enforcement and Compliance
Assurance Branch (WC-15J)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Re: Southerly Wastewater Treatment Center
NPDES Permit No. OH0024651
2010 Sludge Disposal Information

Dear Sir or Madam:

Transmitted herewith is the information required under 40 CFR Part 503 concerning the disposal of sewage sludge removed from the wastewater at the Northeast Ohio Regional Sewer District's (NEORSD's) Southerly Wastewater Treatment Center, during 2010.

A. SLUDGE PROCESSING AND DISPOSAL

All of the sludge (biosolids) removed from the wastewater at the Southerly WWTC is thickened, thermally conditioned and dewatered with centrifuges. (The thermal conditioning process destroys all of the pathogens in the sludge.)

Approximately 98% of the sludge removed from the wastewater is incinerated in the Plant's four multiple hearth sewage sludge incinerators, while the balance is hauled to the PPG Lime Lakes Reclamation project. During 2010, all of the sludge removed from the wastewater at the NEORSD's Easterly WWTP was transported, via a 13-mile long force main, to the Southerly WWTC for processing and disposal.

During the period of 1/1/10 - 12/31/10, a total of 32,403 dry metric tons of sludge were processed at the Southerly WWTC. Of this amount 31,895 dry metric tons were incinerated in the Plant's four multiple hearth incinerators, 0 dry metric tons were hauled to a MSW landfill and 508 dry metric tons were hauled to the PPG Lime Lakes.

3900 Euclid Avenue | Cleveland, OH 44115-2506 | P: (216) 881- 6600 | FAX: (216) 881-2738

Monthly information concerning the quantity of Southerly sludge that was incinerated or hauled to the PPG Limes Lakes during 2010 is contained in Attachment "A".

The sludge that was not incinerated was hauled by Kurtz Brothers to:

The PPG Lime Lakes
1743 Vanderhoff Road
Barberton, OH
(330) 825-1266

B. DISCHARGE MONITORING REPORT

The 2010 Discharge Monitoring Report (DMR) for the Southerly WWTC is contained in Attachment "B".

C. INCINERATOR REPORTS

Detailed information concerning the concentration of the regulated metals contained in the sludge fed to Southerly's four multiple hearth incinerators during 2010, is contained in Attachment "C-1". However, the following is a summary of the Southerly incinerators' calculated sludge metal limits, along with the maximum monthly average sludge metal concentrations, for 2010. (It should be noted that the Southerly sludge was analyzed for the regulated metals a total of 52 times during 2010.)

2010 Incinerator Sludge Feed Metal Concentrations

	"503" Limit*	Maximum Monthly Average *
Arsenic	1,292	17
Cadmium	272	5
Chromium	18,071	170
Lead	12,508	121
Nickel	379,429	69

* The units are milligrams (metal) per dry kilogram (sludge).

The metal limits for the four incinerators were calculated using the 1992 annual average sludge feed rate of 104 dry metric tons per day. However, during 2010 sludge was incinerated, at the Southerly WWTC, at an average feed rate of 87.4 dry metric tons per day. Therefore, Southerly's aforementioned Part 503 metal limits are lower than they would have been, had the current sludge feed rate been used to calculate these limits instead of the higher 1992 average value.

The following is contained in Attachments C-2 – C-5:

Attachment C-2: Information that demonstrates that the National Emission Standards for Beryllium and Mercury have been met.

Attachment C-3: Data concerning Total Hydrocarbon (THC) emissions from the Southerly incinerators.

It should be noted that data concerning the Oxygen and moisture content of the Southerly incinerators' exhaust gases, during 2010, are on file at the Southerly WWTC and the NEORSD's Administrative Office.

Attachment C-4: Information concerning the daily average maximum incinerator temperature.

Attachment C-5: Information that demonstrates that the operation of the air pollution control devices did not cause a significant exceedance of the average values recorded during the performance tests.

D. ADDITIONAL INCINERATOR INFORMATION

§503.47(a) requires that the person who fires sewage sludge in a sewage sludge incinerator shall develop the information in §503.47(b) through §503.47(n) and shall retain that information for five years. All of the required information is on file at the Southerly WWTC.

If you have any questions regarding the disposal of the sewage sludge removed from the wastewater at the Southerly WWTC during 2010 or require additional information concerning the operation of the Plant's four multiple hearth sewage sludge incinerators, please do not hesitate to contact me at (216) 881-6600 ext. 6405.

Sincerely,

Robert P. Dominak,
Residuals and Air
Emissions Manager

cc: D. McNeeley
F. Greenland
R. Weeden
J. Augustine
G. Schur
T. Robinson
D. Hancock
R. Lowery
R. Halperin
E. Toot-Levy
H. Carn
File

South10.doc

ATTACHMENT "A"

SOUTHERLY WWTC
SLUDGE DISPOSAL REPORT 2010

TOTAL DRY U.S. TONS INCINERATED	35164.45
TOTAL DRY U.S. TONS TO LANDFILLS	0
TOTAL DRY U.S. TONS TO PPG LIME LAKES	559.7
TOTAL DRY U.S. TONS GENERATED	35724.15

Month	Total Generated Dry Tons	Incinerated Dry Tons	Landfilled Dry Tons	PPG Lime Lakes Dry Tons	Landfilled Dry Metric Tons	PPG Lime Lakes Dry Metric Tons	Landfilled (Wet Tons) U.S. Tons	Landfilled (Wet Tons) Metric Tons	PPG Lime Lakes (Wet Tons) U.S. Tons	PPG Lime Lakes (Wet Tons) Metric Tons
January	2847.77	2836.58	0	11.19	0.00	10.15	0.00	0.00	24.30	22.04
February	2121.18	2095.79	0	25.39	0.00	23.03	0.00	0.00	59.01	53.52
March	3827.54	3752.58	0	74.96	0.00	67.99	0.00	0.00	192.07	174.21
April	4047.53	3946.39	0	101.14	0.00	91.74	0.00	0.00	218.10	197.82
May	3580.61	3492.01	0	88.60	0.00	80.36	0.00	0.00	187.61	170.17
June	3145.07	3104.79	0	40.28	0.00	36.54	0.00	0.00	90.29	81.90
July	2787.64	2737.98	0	49.66	0.00	45.04	0.00	0.00	102.19	92.69
August	2564.73	2551.72	0	13.01	0.00	11.80	0.00	0.00	24.05	21.81
September	2601.48	2558.23	0	43.25	0.00	39.23	0.00	0.00	96.06	87.13
October	2479.34	2438.22	0	41.12	0.00	37.30	0.00	0.00	85.91	77.92
November	2837.12	2788.00	0	49.12	0.00	44.55	0.00	0.00	110.05	99.82
December	2884.14	2862.16	0	21.98	0.00	19.94	0.00	0.00	45.40	41.18
TOTAL	35724.15	35164.45	0	559.7	0.00	507.66	0.00	0.00	1235.04	1120.22
AVG/DAY	97.87	96.34	0.00	1.53						

American Landfill 7916 Chapel St. NE Waynesburg, Ohio 44688 (330) 866-3265 U.S. Dry Tons	Central Waste Landfill 123003 Oyster Rd Alliance, Ohio (330)-823-6220 U.S. Dry Tons	Lime Lake Reclamation PPG Industries 1743 Vanderhoof Rd. Barberton, Ohio (330) 825 1266 U.S. Dry Tons
0.00	0.00	11.19
0.00	0.00	25.39
0.00	0.00	74.96
0.00	0.00	101.14
0.00	0.00	88.60
0.00	0.00	40.28
0.00	0.00	49.66
0.00	0.00	13.01
0.00	0.00	43.25
0.00	0.00	41.12
0.00	0.00	49.12
0.00	0.00	21.98
0.00	0.00	559.70

SOUTHERLY WWTC
SLUDGE DISPOSAL REPORT
2010 (U.S. Tons)

Month	Total Generated Dry Tons	Incinerated Dry Tons	Landfilled Dry Tons	PPG Lime Lakes Dry Tons	Incineration Total Hrs	Avg Dry Tons/Hr	Incineration Totals Calculated	Incinerated Wet Tons	Landfilled Wet Tons	PPG Lime Lakes Wet Tons	Total Generated Wet Tons	Avg Wet Tons/Hr
January	2847.77	2836.58	0.00	11.19	1805	1.57	2836.58	6450.50	0.00	24.30	6474.80	3.57
February	2121.18	2095.79	0.00	25.39	1503	1.39	2095.79	5046.89	0.00	59.01	5105.90	3.36
March	3827.54	3752.58	0.00	74.96	2457	1.53	3752.58	8761.13	0.00	192.07	8953.20	3.57
April	4047.53	3946.39	0.00	101.14	2421	1.63	3946.39	9162.80	0.00	218.10	9380.90	3.78
May	3580.61	3492.01	0.00	88.60	2054	1.70	3492.01	7573.39	0.00	187.61	7761.00	3.69
June	3145.07	3104.79	0.00	40.28	1942	1.60	3104.79	6508.61	0.00	90.29	6598.90	3.35
July	2787.64	2737.98	0.00	49.66	1618	1.69	2737.98	5744.01	0.00	102.19	5846.20	3.55
August	2564.73	2551.72	0.00	13.01	1509	1.69	2551.72	5505.15	0.00	24.05	5529.20	3.65
September	2601.48	2558.23	0.00	43.25	1639	1.56	2558.23	5568.84	0.00	96.06	5664.90	3.40
October	2479.34	2438.22	0.00	41.12	1459	1.67	2438.22	5487.89	0.00	85.91	5573.80	3.76
November	2837.12	2788.00	0.00	49.12	1891	1.47	2788.00	6388.15	0.00	110.05	6498.20	3.38
December	2884.14	2862.16	0.00	21.98	1884	1.52	2862.16	6429.70	0.00	45.40	6475.10	3.41
TOTAL	35724.15	35164.45	0	559.7	22182	1.59	35164.45	78627.06	0	1235.04	79862.1	3.54
AVG/DAY	97.87	96.34	0.00	1.53	60.77			215.42				

SOUTHERLY WWTC
INCINERATION SUMMARY REPORT
2010

	Incinerator #1						Incinerator #2					
Month	Total Hours	Nat. Gas mcf	U.S. Dry Tons	Metric Dry Tons	U.S. Wet Tons	Metric Wet Tons	Total Hours	Nat. Gas mcf	U.S. Dry Tons	Metric Dry Tons	U.S. Wet Tons	Metric Wet Tons
January	435	1951	683.61	620.05	1554.55	1410.03	198	1550	311.16	282.23	707.59	641.80
February	642	3856	895.21	811.98	2155.76	1955.34	290	2258	404.38	366.78	973.78	883.25
March	512	3215	781.98	709.28	1825.68	1655.95	615	4042	939.29	851.96	2192.96	1989.08
April	701	3244	1142.68	1036.44	2653.09	2406.43	445	2987	725.38	657.94	1684.20	1527.62
May	598	2553	1016.66	922.14	2204.91	1999.92	562	2232	955.46	866.63	2072.17	1879.52
June	637	2176	1018.41	923.73	2134.90	1936.42	629	2325	1005.62	912.13	2108.09	1912.10
July	646	1704	1093.16	991.53	2293.34	2080.13	112	191	189.53	171.91	397.61	360.64
August	616	1546	1041.66	944.81	2247.30	2038.37	31	525	52.42	47.55	113.09	102.58
September	473	2088	738.28	669.64	1607.11	1457.70	304	1748	474.50	430.38	1032.90	936.87
October	308	2458	514.72	466.86	1158.51	1050.81	531	1467	887.39	804.88	1997.31	1811.62
November	695	3073	1024.67	929.41	2347.84	2129.56	464	1941	684.10	620.50	1567.48	1421.75
December	717	3773	1089.26	987.99	2446.97	2219.48	592	3644	899.36	815.75	2020.37	1832.54
Totals	6980	31637	11040.29	10013.87	24629.97	22340.11	4773	24910	7528.576	6828.64	16867.56	15299.37

SOUTHERLY WWTC
INCINERATION SUMMARY REPORT
2010

	Incinerator #3						Incinerator #4					
Month	Total Hours	Nat. Gas mcf	U.S. Dry Tons	Metric Dry Tons	U.S. Wet Tons	Metric Wet Tons	Total Hours	Nat. Gas mcf	U.S. Dry Tons	Metric Dry Tons	U.S. Wet Tons	Metric Wet Tons
January	543	2191	853.33	774.00	1940.51	1760.10	629	3730	988.48	896.58	2247.85	2038.86
February	518	4696	722.30	655.15	1739.38	1577.67	53	1328	73.90	67.03	177.97	161.42
March	643	5151	982.05	890.75	2292.80	2079.64	687	5367	1049.26	951.71	2449.69	2221.94
April	553	4249	901.43	817.62	2092.95	1898.37	722	4050	1176.91	1067.49	2732.57	2478.52
May	650	3418	1105.07	1002.33	2396.64	2173.83	244	1851	414.82	376.26	899.66	816.02
June	629	2517	1005.62	912.13	2108.09	1912.10	47	619	75.14	68.16	157.52	142.88
July	586	2347	991.63	899.44	2080.34	1886.93	274	2235	463.66	420.56	972.72	882.28
August	661	3291	1117.75	1013.83	2411.47	2187.27	201	1737	339.89	308.29	733.29	665.12
September	673	3333	1050.45	952.79	2286.66	2074.06	189	838	295.00	267.57	642.17	582.46
October	620	3631	1036.12	939.79	2332.07	2115.26	0	0	0.00	0.00	0.00	0.00
November	708	4986	1043.84	946.79	2391.76	2169.39	24	90	35.38	32.09	81.08	73.54
December	533	4466	809.73	734.45	1819.02	1649.90	42	760	63.81	57.87	143.34	130.01
Totals	7317	44276	11619.32	10539.07	25891.68	23484.52	3112	22605	4976.26	4513.615	11237.85	10193.06

SOUTHERLY WWTC
SLUDGE DISPOSAL REPORT 2010

	Incinerator #1					Incinerator #2				
Month	Total Hours	Nat. Gas mcf	Dry Tons U.S.	Avg mcf/hr	Avg mcf/dry ton	Total Hours	Nat. Gas mcf	Dry Tons U.S.	Avg mcf/hr	Avg mcf/dry ton
January	435	1951	684	4.49	2.85	198	1550	311	7.83	4.98
February	642	3856	895	6.01	4.31	290	2258	404	7.79	5.58
March	512	3215	782	6.28	4.11	615	4042	939	6.57	4.30
April	701	3244	1143	4.63	2.84	445	2987	725	6.71	4.12
May	598	2553	1017	4.27	2.51	562	2232	955	3.97	2.34
June	637	2176	1018	3.42	2.14	629	2325	1006	3.70	2.31
July	646	1704	1093	2.64	1.56	112	191	190	1.71	1.01
August	616	1546	1042	2.51	1.48	31	525	52	16.94	10.02
September	473	2088	738	4.41	2.83	304	1748	474	5.75	3.68
October	308	2458	515	7.98	4.78	531	1467	887	2.76	1.65
November	695	3073	1025	4.42	3.00	464	1941	684	4.18	2.84
December	717	3773	1089	5.26	3.46	592	3644	899	6.16	4.05
Totals	6980	31637	11040.29	4.69	2.99	4773	24910	7528.576	6.17	3.91

SOUTHERLY WWTC
SLUDGE DISPOSAL REPORT 2010

	Incinerator #3					Incinerator #4				
Month	Total Hours	Nat. Gas mcf	Dry Tons U.S.	Avg mcf/hr	Avg mcf/dry ton	Total Hours	Nat. Gas mcf	Dry Tons U.S.	Avg mcf/hr	Avg mcf/dry ton
January	543	2191	853.33	4.03	2.57	629	3730	988.48	5.93	3.77
February	518	4696	722.30	9.07	6.50	53	1328	73.90	25.06	17.97
March	643	5151	982.05	8.01	5.25	687	5367	1049.26	7.81	5.12
April	553	4249	901.43	7.68	4.71	722	4050	1176.91	5.61	3.44
May	650	3418	1105.07	5.26	3.09	244	1851	414.82	7.59	4.46
June	629	2517	1005.62	4.00	2.50	47	619	75.14	13.17	8.24
July	586	2347	991.63	4.01	2.37	274	2235	463.66	8.16	4.82
August	661	3291	1117.75	4.98	2.94	201	1737	339.89	8.64	5.11
September	673	3333	1050.45	4.95	3.17	189	838	295.00	4.43	2.84
October	620	3631	1036.12	5.86	3.50	0	0	0.00		
November	708	4986	1043.84	7.04	4.78	24	90	35.38	3.75	2.54
December	533	4466	809.73	8.38	5.52	42	760	63.81	18.10	11.91
Totals	7317	44276	11619.32	6.11	3.91	3112	22605	4976.26	9.84	6.38

ATTACHMENT "B"

PERMITEE NAME/ADDRESS *(Include Facility Name/Location (if Different)*

NAME: Northeast Ohio Regional Sewer District

ADDRESS: 3900 Euclid Avenue
Cleveland, OH 44115

FACILITY LOCATION: Southerly Wastewater Treatment Center
6000 Canal Road Cuyahoga Hts., Ohio 44125

ATTN: John Augustine, Superintendent

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

DISCHARGE MONITORING REPORT (DMR)

Form Approved
OMB NO. 2040-0004

OHL024651	SLD P
PERMIT NUNMBER	DISCHARGE NUMBER

MINOR
(SUBR 3P)
F - FINAL
PRODUCTION AND USE

MONITORING PERIOD					
YEAR	MO	DAY	YEAR	MO	DAY
2010	01	01	2010	12	31

*** NO DISCHARGE ☐ ***

Note: Read Instructions before completing this form.

Parameter		Quantity or Loading			Quality or Concentration				No.Ex.	Frequency of Analysis	Sample Type
		Average	Maximum	Units	Minimum	Average	Maximum	Units			
Annual Amt. Sludge Disp. by other method 49017 + 0 0 Sludge	Sample Measurement	******	508	(4A)	******	******	******	*****			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			
Annual Amt. Sludge Incinerated 49018 + 0 0 Sludge	Sample Measurement	******	31,895	(4A)	******	******	******	******	0	52 times/yr	Grab
	Permit Requirement		Report	Metric Ton/Yr.	******	******	******	******			
Annual Sludge Production, Total 49019 + 0 0 Sludge	Sample Measurement	******	32,403	(4A)	******	******	******	******			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			
Annual Amt. Sludge Land Applied 49020 + 0 0 Sludge	Sample Measurement	******	N/A	(4A)	******	******	******	******			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			
Annual Amt. Sludge Disposed Surface Unit 49021 + 0 0 Sludge	Sample Measurement	******	N/A	(4A)	******	******	******	******			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			
Annual Amt. Sludge Disposed in Landfill 49022 + 0 0 Sludge	Sample Measurement	******	N/A	(4A)	******	******	******	******			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			
Annual Amt. Sludge Transported Interstate 49023 + 0 0 Sludge	Sample Measurement	******	N/A	(4A)	******	******	******	******			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			

NAME/TITLE PRINCIPAL EXECUTIVE OFFICER

Julius Ciaccia
Executive Director

TYPED OR PRINTED

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel property gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those person directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, inlcuding the possiility of fine and imprisonment for knowing violations.

SIGNATURE OF PRINCIPAL EXECUTIVE OFFICER OR AUTHORIZED AGENT

TELEPHONE

AREA CODE	NUMBER
216	881-6600

DATE

YEAR	MO	DAY
11	2	7

COMMENTS AND EXPLANATION OF ANY VIOLATIONS (Reference all attachments here)

*** IF ANNUAL SLUDGE DISPOSED BY OTHER METHODS IS APPLICABLE, EXPALAIN METHOD OF DISPOSAL **(PPG Limes Lakes Reclamation Project)**

ATTACHMENT "C-1"

Southerly 2010 Biosolids Metals Data

Month	Collection Date	Hg mg/Kg	As mg/Kg	Cd mg/Kg	Cr mg/Kg	Ni mg/Kg	Pb mg/Kg
JAN	04-Jan-10	0.876	10.220	1.360	92.840	60.490	77.320
	11-Jan-10	0.962	8.550	2.130	140.100	34.980	53.300
	18-Jan-10	1.368	9.390	1.870	108.500	43.820	65.070
	25-Jan-10	1.404	11.150	1.720	82.060	49.590	55.240
	JAN AVG	***1.153***	***9.828***	***1.770***	***105.875***	***47.220***	***62.733***
FEB	01-Feb-10	1.290	13.910	7.255	95.590	52.320	97.310
	08-Feb-10	1.210	15.740	5.410	101.800	52.380	84.900
	15-Feb-10	1.300	15.180	3.510	94.200	52.710	68.280
	22-Feb-10	1.210	12.510	4.370	103.300	49.520	67.840
	FEB AVG	***1.253***	***14.335***	***5.136***	***98.723***	***51.733***	***79.583***
MAR	01-Mar-10	1.240	14.710	4.135	93.640	47.260	72.620
	08-Mar-10	1.290	17.160	3.720	98.840	52.660	65.410
	15-Mar-10	1.090	15.900	3.940	91.690	49.560	72.220
	22-Mar-10	1.510	16.220	3.730	100.600	51.320	66.700
	29-Mar-10	1.800	18.960	4.210	110.400	61.130	121.400
	MAR AVG	***1.386***	***16.590***	***3.947***	***99.034***	***52.386***	***79.670***
APR	05-Apr-10	1.050	16.580	4.170	101.400	48.560	75.080
	12-Apr-10	1.250	15.400	3.510	104.400	55.610	77.570
	19-Apr-10	0.882	12.560	4.350	87.400	53.760	114.000
	26-Apr-10	0.836	9.650	AE	99.220	50.380	AE
	APR AVG	***1.005***	***13.548***	***4.010***	***98.105***	***52.078***	***88.883***
MAY	03-May-10	0.688	11.400	4.335	113.600	47.910	95.360
	10-May-10	0.726	9.510	3.890	116.300	61.900	151.400
	17-May-10	0.745	11.740	3.175	110.800	61.880	145.400
	24-May-10	0.682	11.150	2.980	108.000	52.200	101.200
	MAY AVG	***0.710***	***10.95***	***3.595***	***112.175***	***55.973***	***123.340***
JUN	07-Jun-10	0.785	10.020	6.320	110.40	60.770	132.800
	14-Jun-10	0.782	10.220	3.580	115.80	47.020	104.500
	21-Jun-10	0.702	8.850	3.910	335.50	73.240	71.460
	28-Jun-10	0.944	11.060	5.460	185.20	52.460	101.700
	JUN AVG	***0.803***	***10.038***	***4.818***	***186.725***	***58.373***	***102.615***
JUL	05-Jul-10	0.824	9.605	4.795	139.900	49.360	95.850
	12-Jul-10	0.905	10.080	4.770	200.800	69.210	94.120
	19-Jul-10	0.631	11.540	4.010	119.000	48.320	95.850
	26-Jul-10	1.120	13.470	4.730	159.500	70.670	141.900
	JUL AVG	***0.870***	***11.174***	***4.576***	***154.800***	***59.390***	***106.930***
AUG	02-Aug-10	0.639	9.920	4.325	141.600	45.390	89.430
	09-Aug-10	1.020	9.580	5.740	130.500	50.290	93.980
	16-Aug-10	1.140	12.670	5.600	139.800	59.060	161.500
	23-Aug-10	0.969	11.380	5.050	135.500	51.130	137.500
	AUG AVG	***0.942***	***10.888***	***5.179***	***136.850***	***51.468***	***120.603***
SEP	06-Sep-10	1.250	11.310	5.630	191.800	69.350	114.200
	13-Sep-10	1.750	10.140	2.980	161.100	49.810	86.920
	20-Sep-10	1.050	13.450	3.825	200.500	59.720	132.000

	27-Sep-10	0.836	12.240	3.510	203.700	57.820	103.000
	SEP AVG	***1.222***	***11.785***	***3.986***	***189.275***	***59.175***	***109.030***
OCT	04-Oct-10	1.030	12.410	4.592	177.400	69.820	105.800
	11-Oct-10	1.080	14.560	4.740	166.700	75.360	109.900
	18-Oct-10	0.899	15.860	4.140	171.200	65.260	100.200
	25-Oct-10	0.812	13.080	4.250	164.600	65.440	86.150
	OCT AVG	***0.955***	***13.978***	***4.431***	***169.975***	***68.970***	***100.513***
NOV	01-Nov-10	0.811	14.420	2.480	174.400	64.300	95.310
	08-Nov-10	0.844	17.140	2.530	156.400	64.960	93.450
	15-Nov-10	0.729	12.950	2.450	134.300	54.210	63.330
	22-Nov-10	0.786	14.860	AA	159.400	64.260	71.550
	NOV AVG	***0.793***	***14.843***	***1.865***	***156.125***	***61.933***	***80.910***
DEC	06-Dec-10	0.830	15.890	AA	122.600	61.140	80.530
	13-Dec-10	0.936	12.320	AA	130.200	52.860	65.880
	20-Dec-10	0.945	11.770	1.630	114.300	52.520	56.270
	27-Dec-10	0.589	10.730	AA	103.700	40.310	47.430
	DEC AVG	***0.825***	***12.678***	***0.408***	***117.700***	***51.708***	***62.528***
	Annual Monthly Average	0.99	12.55	3.64	135.45	55.87	93.11
	Highest Month	1.39	16.59	5.18	169.97	68.97	120.6

AA = Analyte not detected
AE = Data not valid

ATTACHMENT "C-2"

National Emission Standards

1. Beryllium = 10 grams/24-hours

2. Mercury = 3200 grams/24-hours

Beryllium and Mercury Performance Test Data - Exhaust Stack

A. Incinerator No. 1 Emissions
(Test Date: April 5, 1995)

Beryllium = 0.074 grams/24-hours
Mercury = 62.9 grams/24-hours

B. Incinerator No. 2 Emissions
(Test Date: June 9, 1993)

Beryllium = 0.0791 grams/24-hours
Mercury = 44.4 grams/24-hours

C. Incinerator No. 3 Emissions
(Test Date: June 11, 1993)

Beryllium = 0.0692 grams/24-hours
Mercury = 6.03 grams/24-hours

D. Incinerator No. 4 Emissions
(Test Date: June 10, 1993)

Beryllium = 0.0775 grams/24-hours
Mercury = 13.8 grams/24-hours

ATTACHMENT "C-3"

2010 Monthly Average THC Data
(PPM, as Propane, corrected to 7% Oxygen and 0% moisture)

Month	Incinerator 1	Incinerator 2	Incinerator 3	Incinerator 4
January	5.0	24.3	4.7	2
February	4.5	5.3	4.2	2.6
March	4.7	6.5	12.4	3.3
April	3.8	3.6	10.5	5.4
May	6.2	4.9	22.6	4.1
June	6.1	2.9	4.5	5.0
July	9.5	14.3	4.9	5.2
August	10.2	4.3	2.7	3.4
September	8.1	13.6	4.8	5.2
October	4.1	7.1	6	NIS
November	6.0	22.0	3.8	NIS
December	6.5	5.2	4.1	5.8

NIS – Incinerator not in service for the entire month

ATTACHMENT "C-4"

Maximum Average Daily Incinerator Temperature Limit
Southerly Incinerators

Incinerator No. 1			**Incinerator No. 2**			**Incinerator No. 3**			**Incinerator No. 4**		
Part 503 Test			**Part 503 Test**			**Part 503 Test**			**Part 503 Test**		
5-Apr-95			**9-Jun-93**			**11-Jun-93**			**10-Jun-93**		
Recorded Temperatures			Recorded Temperatures			Recorded Temperatures			Recorded Temperatures		
@ Point No. 4			@ Point No. 3			@ Point No. 5			@ Point No. 4		
Run No. 1	Run No. 2	Run No. 3	Run No. 1	Run No. 2	Run No. 3	Run No. 1	Run No. 2	Run No. 3	Run No. 1	Run No. 2	Run No. 3
1609	1504	1556	1650	1659	1653	1526	1507	1490	1497	1550	1556
1602	1586	1587	1688	1672	1547	1487	1540	1540	1534		1565
1585	1580	1586				1526	1507				
1577	1591	1575									
1565	1549	1583									
1588	1562	1577	1669	1666	1600	1513	1518	1515	1516	1550	1561
Arithmetic mean =		1576	Arithmetic mean =		1645	Arithmetic mean =		1515	Arithmetic mean =		1542

Maximum Temperature Limit		**Maximum Temperature Limit**		**Maximum Temperature Limit**		**Maximum Temperature Limit**	
1576 x 1.2=	**1891 deg-F**	1645 x 1.2=	**1974 deg-F**	1515 x 1.2=	**1818 deg-F**	1542 x 1.2=	**1850 deg-F**

Maximum Temperature Limit

Incinerator No. 1	1891 deg-F
Incinerator No. 2	1974 deg-F
Incinerator No. 3	1818 deg-F
Incinerator No. 4	1850 deg-F
Mean	1883 deg-F

The maximum average daily temperature limit of 1883 deg-F was not exceeded at Southerly from January 1 – December 31, 2010.

The following is a summary of the maximum "average daily" hearth temperature recorded each month, in deg-F, from January 1st – December 31st:

Month	Incinerator 1	Incinerator 2	Incinerator 3	Incinerator 4
January	1680	1547	1555	1560
February	1533	1576	1480	1508
March	1547	1643	1568	1547
April	1620	1611	1532	1601
May	1645	1614	1599	1620
June	1659	1685	1555	1614
July	1772	1708	1771	1661
August	1650	1312	1558	1604
September	1649	1568	1512	1592
October	1569	1721	1505	NIS
November	1580	1635	1482	NIS
December	1622	1511	1491	1480

NIS = Incinerator not in service for the entire month.

ATTACHMENT "C-5"

Southerly Incinerators
Air Pollution Control Device
Pressure Drops

The following is a summary of the ranges in differential pressure across the venturi/ scrubbers during the Part 503 Tests, which were conducted on the following dates:

Incinerator No. 1 April 5, 1995
Incinerator No. 2 June 9, 1993
Incinerator No. 3 June 11, 1993
Incinerator No. 4 June 10, 1993

Run No.	Incinerator 1	Incinerator 2	Incinerator 3	Incinerator 4
1	28"	28"	23"	27"
2	28"	29"	23"	26"
3	28"	29"	23"	27"
Average	**28"**	**28.7"**	**23"**	**26.7"**

Overall Average = 26.6"

Since the Southerly incinerators are not subject to the requirements contained in 40 CFR Part 60 Subpart O, the Part 503 Regulations requires that the operation of the air pollution control device shall not cause a significant exceedance of the average value recorded during the performance test.

The air pollution control devices serving the Southerly incinerators were operated in a manner, from January 1, 2010 – December 31, 2010, that did not cause a significant exceedance of the average values recorded during the performance test.

The lowest pressure drops (in inches), on a daily average basis, are listed below:

Month	Incinerator 1	Incinerator 2	Incinerator 3	Incinerator 4
January	26.0	20.7	21.9	25.4
February	25.4	22.7	22.2	25.6
March	19.4	23.4	18.0	25.4
April	25.7	24.4	21.1	24.4
May	25.6	25.5	22.0	25.4
June	25.5	24.5	26.6	24.0
July	25.0	26.5	20.3	25.3
August	25.8	27.1	26.6	25.3
September	26.2	25.0	24.5	26.3
October	25.9	24.6	22.2	NIS
November	26.1	23.7	25.1	NIS
December	26.0	23.0	21.6	19.7

NIS = Incinerator not in service for the entire month.

The daily average pressure drops for each incinerator, from January 1st – December 31st are on file at Southerly and the NEORSD's Administrative Office.

Northeast Ohio Regional
Sewer District
Protecting Your Health and Environment

Certified Mail No.
7000 1670 0002 9060 4611

February 15, 2011

U.S. EPA - Region 5
Water Enforcement and Compliance
Assurance Branch (WC-15J)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Re: Westerly Wastewater Treatment Plant
NPDES Permit No. OH0024660
2010 Sludge Disposal Information

To Whom It May Concern:

Transmitted herewith is the information required under 40 CFR Part 503 concerning the disposal of sewage sludge removed from the wastewater at the Northeast Ohio Regional Sewer District's (NEORSD's) Westerly Wastewater Treatment Plant during 2010.

A. SLUDGE PROCESSING AND DISPOSAL

All of the sludge removed from the wastewater at the Westerly WWTP is thickened, chemically conditioned and dewatered by centrifuges. In excess of 99% of the sludge is incinerated in the Plant's two multiple hearth sewage sludge incinerators. The balance is hauled to a municipal solid waste (MSW) landfill.

During the period of 1/1/10 - 12/31/10, a total of 4,095 dry metric tons of sludge were removed from the wastewater at the Westerly WWTP. Of this amount 4,095 dry metric tons were incinerated in the two incinerators located at Westerly, while 0 dry metric tons were hauled to a MSW landfill.

Monthly information concerning the quantity of sludge burned in each incinerator and the quantity of sludge hauled to a MSW landfill, during 2010, is contained in Attachment "A".

The sludge that is not incinerated is hauled by Kurtz Brothers to the following MSW landfill:

American Landfill Inc.
7916 Chaple St. S.E.
Waynesburg, Ohio 44688
1-330-866-3265

B. DISCHARGE MONITORING REPORT

The 2010 Discharge Monitoring Report (DMR) for the Westerly WWTP is contained in Attachment "B"

C. INCINERATOR REPORTS

Detailed information concerning the concentration of the regulated metals in the sludge fed to Westerly's two multiple hearth incinerators during 2010 is contained in Attachment "C-1".

The following is a summary of the Westerly incinerators' calculated sludge metal limits, along with the highest 60-day average sludge metal concentrations for 2010. (It should be noted that the Westerly sludge was analyzed for the regulated metals approximately 49 times during 2010.)

2010 Incinerator Sludge Feed Metal Concentrations

	Limit*	Highest 60-Day Average*
Arsenic	511	18
Cadmium	450	10
Chromium	50,473	430
Lead	2,678	211
Nickel	168,995	91

* The units are in milligrams (metal) per dry kilogram (sludge).

The metal limits for the two incinerators were calculated using the average feed rate during the most recent Part 503 performance tests of 31.7 dry metric tons per day. However, during 2010, sludge was incinerated at the Westerly WWTP at an annual average rate of 11.2 dry metric tons per day.

Therefore, Westerly's aforementioned "Part 503" metal limits are lower than they would have been, had the current sludge feed rate been used to calculate these limits instead of the higher test values.

The following is contained in Attachments C-2 – C-5:

Attachment C-2: Information that indicates that the National Emission Standards for Beryllium and Mercury have been met.

Attachment C-3: Data concerning Total Hydrocarbon (THC) emissions from the Westerly incinerators.

It should be noted that data concerning the Oxygen and moisture content of the Westerly incinerators' exhaust gases, during 2010, are on file at Westerly and the NEORSD's Administrative Office.

Attachment C-4: Information that demonstrates that the daily average maximum incinerator temperature was <u>not</u> exceeded.

Attachment C-5: Information that demonstrates that the operation of the air pollution control device did not cause a significant exceedence of the average values recorded during the performance test.

D. <u>ADDITIONAL INCINERATOR INFORMATION</u>

§503.47(a) requires that the person who fires sewage sludge in a sewage sludge incinerator shall develop the information in §503.47(b) through §503.47(n) and shall retain that information for five years. All of the required information is on file at the Westerly WWTP.

If you have any questions regarding the disposal of sewage sludge removed from the wastewater at the Westerly WWTP, during 2010, or require additional information concerning the operation of the Plant's two multiple hearth sewage sludge incinerators, please do not hesitate to contact me at (216) 881-6600 ext. 6405.

Sincerely,

Robert P. Dominak,
Residuals and Air
Emissions Manager

cc: D. McNeeley
F. Greenland
R. Weeden
L. Cinadr
M. Sullivan
D. Smith
J. Augustine
R. Lowery
R. Halperin
E. Toot-Levy
H. Carn
File

West_10

ATTACHMENT "A"

NEORSD - Westerly WWTP

Annual - 2010

Sludge Report

Month	Tons Prod.	DTons Prod.	Tons Incn.	DTons Incn.	WTons Hauled	DTons Hauled	% T.S.	Sp gr	Lb CuFt	Max TPH	Max DTH	Gas Mcf	Gas Inc Mcf	Gas WTon	Inc l/S	High Hrth Tmp	Vent DP avg	Vent DP min
Jan	1159.9	337.2	1159.9	337.2	0.0	0.0	28.96	1.04	65	3.0	1.1	4571	3621	3.3	2.0	1470.0	30.1	27.9
Feb	876.8	266.7	876.8	266.7	0.0	0.0	30.56	1.09	68	2.5	0.9	6190	3236	3.8	1.3	1448.0	30.2	25.9
Mar	1246.6	382.5	1246.6	382.5	0.0	0.0	31.74	1.10	69	3.0	1.2	5545	4317	3.7	1.0	1470.0	30.3	26.0
Apr	1197.0	396.1	1197.0	396.1	0.0	0.0	32.93	1.11	69	3.5	1.2	5539	4790	4.4	1.0	1535.0	30.1	23.9
May	1474.8	499.3	1474.8	499.3	0.0	0.0	33.69	1.14	71	3.3	1.3	6058	5061	4.0	1.0	1505.0	28.8	26.2
Jun	1303.2	455.5	1303.2	455.5	0.0	0.0	34.41	1.12	70	2.8	1.2	5679	5276	4.3	1.0	1460.0	27.7	26.4
Jul	1194.3	399.9	1194.3	399.9	0.0	0.0	33.34	1.12	70	2.8	1.0	6611	5461	4.8	1.0	1501.0	27.1	23.2
Aug	969.5	307.6	969.5	307.6	0.0	0.0	31.70	1.18	74	2.5	0.9	6094	4392	4.7	1.0	1430.0	26.4	26.5
Sep	1053.7	341.6	1053.7	341.6	0.0	0.0	32.50	1.14	71	2.8	1.1	6356	5214	5.0	1.0	1493.0	29.9	26.0
Oct	1171.0	403.3	1171.0	403.3	0.0	0.0	34.43	1.13	70	3.3	1.2	7102	6323	5.4	1.0	1443.0	28.1	26.2
Nov	1126.1	365.8	1126.1	365.8	0.0	0.0	32.37	1.14	71	3.0	1.0	7406	6243	5.8	1.0	1468.0	29.2	26.5
Dec	1137.3	358.0	1137.3	358.0	0.0	0.0	31.43	1.15	72	3.0	1.0	7435	6854	6.1	1.0	1457.0	29.9	26.3
Total	**13910.2**	**4513.5**	**13910.2**	**4513.5**	**0.0**	**0.0**						**74585**	**60790**					
Avg	**1159.2**	**376.1**	**1159.2**	**376.1**	**0.0**	**0.0**	**32.34**	**1.12**	**70**	**2.9**	**1.1**	**6215**	**5066**	**4.6**	**1.11**	**1473.33**	**28.99**	**25.92**
Max	**1474.8**	**499.3**	**1474.8**	**499.3**	**0.0**	**0.0**	**34.43**	**1.18**	**74**	**3.5**	**1.3**	**7435**	**6854**	**6.1**	**2.00**	**1535.00**	**30.29**	**27.90**
Min	**876.8**	**266.7**	**876.8**	**266.7**	**0.0**	**0.0**	**28.96**	**1.04**	**65**	**2.5**	**0.9**	**4571**	**3236**	**3.3**	**1.00**	**1430.00**	**26.36**	**23.20**

Westerly WWTP Incinerator and Landfilling Biosolids Data (Totals) 2010

	Incinerated					Landfill			
	Run Time	Wet US Tons	Wet Metric Tons	Dry US Tons	Dry Metric Tons	Wet US Tons	Wet Metric Tons	Dry US Tons	Dry Metric Tons
Jan	608.10	1159.88	1052.23	337.21	305.91	0.00	0.00	0.00	0.00
Feb	453.00	876.84	795.46	266.66	241.91	0.00	0.00	0.00	0.00
Mar	585.70	1246.55	1130.85	382.53	347.02	0.00	0.00	0.00	0.00
Apr	610.20	1197.02	1085.92	396.08	359.31	0.00	0.00	0.00	0.00
May	627.90	1474.83	1337.94	499.30	452.96	0.00	0.00	0.00	0.00
Jun	634.00	1303.21	1182.25	455.49	413.21	0.00	0.00	0.00	0.00
Jul	589.20	1194.34	1083.49	399.92	362.80	0.00	0.00	0.00	0.00
Aug	517.80	969.48	879.50	307.62	279.07	0.00	0.00	0.00	0.00
Sep	603.00	1054.03	956.20	341.65	309.94	0.00	0.00	0.00	0.00
Oct	650.00	1170.96	1062.28	403.30	365.87	0.00	0.00	0.00	0.00
Nov	590.30	1126.07	1021.55	365.83	331.87	0.00	0.00	0.00	0.00
Dec	694.70	1137.33	1031.77	358.01	324.78	0.00	0.00	0.00	0.00
Totals	**7163.90**	**13910.54**	**12619.43**	**4513.60**	**4094.67**	**0.00**	**0.00**	**0.00**	**0.00**

Westerly WWTP Incinerator #1 and Landfilling Biosolids Data 2010

	Incinerated					Landfill			
	Run Time	Wet US Tons	Wet Metric Tons	Dry US Tons	Dry Metric Tons	Wet US Tons	Wet Metric Tons	Dry US Tons	Dry Metric Tons
Jan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Feb	303.00	596.79	541.40	186.69	169.36	0.00	0.00	0.00	0.00
Mar	585.70	1246.55	1130.85	382.53	347.02	0.00	0.00	0.00	0.00
Apr	610.20	1197.02	1085.92	396.08	359.31	0.00	0.00	0.00	0.00
May	627.90	1474.83	1337.94	499.30	452.96	0.00	0.00	0.00	0.00
Jun	634.00	1303.21	1182.25	455.49	413.21	0.00	0.00	0.00	0.00
Jul	589.20	1194.34	1083.49	399.92	362.80	0.00	0.00	0.00	0.00
Aug	517.80	969.48	879.50	307.62	279.07	0.00	0.00	0.00	0.00
Sep	603.00	1054.03	956.20	341.65	309.94	0.00	0.00	0.00	0.00
Oct	650.00	1170.96	1062.28	403.30	365.87	0.00	0.00	0.00	0.00
Nov	590.30	1126.07	1021.55	365.83	331.87	0.00	0.00	0.00	0.00
Dec	694.70	1137.33	1031.77	358.01	324.78	0.00	0.00	0.00	0.00
Totals	**6405.80**	**12470.61**	**11313.15**	**4096.42**	**3716.21**	**0.00**	**0.00**	**0.00**	**0.00**

Westerly WWTP Incinerator #2 and Landfilling Biosolids Data 2010

	Incinerated					Landfill			
	Run Time	Wet US Tons	Wet Metric Tons	Dry US Tons	Dry Metric Tons	Wet US Tons	Wet Metric Tons	Dry US Tons	Dry Metric Tons
Jan	608.10	1159.88	1052.23	337.21	305.91	0.00	0.00	0.00	0.00
Feb	150.00	280.05	254.06	79.98	72.55	0.00	0.00	0.00	0.00
Mar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Apr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
May	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Jun	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Jul	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Aug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Sep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Oct	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Nov	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dec	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Totals	**758.10**	**1439.93**	**1306.28**	**417.19**	**378.47**	**0.00**	**0.00**	**0.00**	**0.00**

ATTACHMENT "B"

PERMITEE NAME/ADDRESS *(Include Facility Name/Location (if Different)*		NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)		Form Approved
NAME:	Northeast Ohio Regional Sewer District	**DISCHARGE MONITORING REPORT (DMR)**	MINOR	OMB NO. 2040-0004
ADDRESS:	3900 Euclid Avenue	OH0024660 / PERMIT NUNMBER	SLD P / DISCHARGE NUMBER	(SUBR 3P)
	Cleveland, OH 44115			F - FINAL
				PRODUCTION AND USE
FACILITY LOCATION:	Westerly Wastewater Treatment Plant 5800 West Memorial Shoreway Cleveland, Ohio 44102	MONITORING PERIOD: YEAR 2010 MO 01 DAY 01 — YEAR 2010 MO 12 DAY 31	*** NO DISCHARGE ☐ ***	
ATTN:	Larry Cinadr, Superintendent		**Note: Read Instructions before completing this form.**	

Parameter		Quantity or Loading			Quality or Concentration				No.Ex.	Frequency of Analysis	Sample Type
		Average	Maximum	Units	Minimum	Average	Maximum	Units			
Annual Amt. Sludge Disp. by other method 49017 + 0 0 Sludge	Sample Measurement	******	N/A	(4A)	******	******	******	*****			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			
Annual Amt. Sludge Incinerated 49018 + 0 0 Sludge	Sample Measurement	******	4,095	(4A)	******	******	******	******	0	49 times/yr	Grab
	Permit Requirement		Report	Metric Ton/Yr.	******	******	******	******			
Annual Sludge Production, Total 49019 + 0 0 Sludge	Sample Measurement	******	4,095	(4A)	******	******	******	******			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			
Annual Amt. Sludge Land Applied 49020 + 0 0 Sludge	Sample Measurement	******	N/A	(4A)	******	******	******	******			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			
Annual Amt. Sludge Disposed Surface Unit 49021 + 0 0 Sludge	Sample Measurement	******	N/A	(4A)	******	******	******	******			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			
Annual Amt. Sludge Disposed in Landfill 49022 + 0 0 Sludge	Sample Measurement	******	N/A	(4A)	******	******	******	******			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			
Annual Amt. Sludge Transported Interstate 49023 + 0 0 Sludge	Sample Measurement	******	N/A	(4A)	******	******	******	******			
	Permit Requirement	******	Report	Metric Ton/Yr.	******	******	******	******			

NAME/TITLE PRINCIPAL EXECUTIVE OFFICER			TELEPHONE		DATE		
Julius Ciaccia Executive Director	I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel property gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those person directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, inlcuding the possiility of fine and imprisonment for knowing violations.	Glenn B. Domenick SIGNATURE OF PRINCIPAL EXECUTIVE OFFICER OR AUTHORIZED AGENT	216 AREA CODE	881-6600 NUMBER	2011 YEAR	2 MO	7 DAY
TYPED OR PRINTED							

COMMENTS AND EXPLANATION OF ANY VIOLATIONS (Reference all attachments here)

*** IF ANNUAL SLUDGE DISPOSED BY OTHER METHODS IS APPLICABLE, EXPALAIN METHOD OF DISPOSAL

ATTACHMENT "C-1"

Westerly 2010 Biosolids Metals Data

Month	Sample ID	Collection Date	Hg mg/Kg	As mg/Kg	Cd mg/Kg	Cr mg/Kg	Ni mg/Kg	Pb mg/Kg
JAN	WCC1001050001	04-Jan-10	AH	AH	AH	AH	AH	AH
	WCC1001120001	11-Jan-10	0.246	14.410	3.120	257.000	19.250	71.510
	WCC1001190001	18-Jan-10	0.338	13.960	2.710	242.700	25.340	84.800
	WCC1001260001	25-Jan-10	0.674	11.180	2.150	155.800	29.360	114.100
FEB	WCC1002020001	01-Feb-10	AH	AH	AH	AH	AH	AH
	WCC1002090001	08-Feb-10	0.376	14.880	9.230	296.300	54.690	113.000
	WCC1002160001	15-Feb-10	0.364	13.970	9.420	293.300	42.370	111.400
	WCC1002230001	22-Feb-10	0.422	12.280	9.305	263.800	42.960	116.800
		JAN - FEB AVG	***0.40***	***13***	***6***	***251***	***36***	***102***
MAR	WCC1003020001	01-Mar-10	0.861	11.980	9.430	253.400	68.110	156.300
	WCC1003090001	08-Mar-10	0.266	13.630	10.630	313.800	40.140	120.700
	WCC1003160001	15-Mar-10	0.814	10.330	6.040	234.000	48.160	133.900
	WCC1003230001	22-Mar-10	0.394	15.180	9.960	366.200	51.730	126.900
	WCC1003300001	29-Mar-10	AH	AH	AH	AH	AH	AH
APR	WCC1004060001	05-Apr-10	0.483	15.420	9.440	382.100	56.090	157.100
	WCC1004130001	12-Apr-10	0.424	14.370	8.260	407.300	70.610	139.000
	WCC1004200001	19-Apr-10	0.462	16.120	8.920	450.700	58.450	148.800
	WCC1004270001	26-Apr-10	0.636	12.590	6.810	328.700	60.660	191.000
		MAR - APR AVG	***0.54***	***14***	***9***	***342***	***57***	***147***
MAY	WCC1005040001	03-May-10	0.480	18.060	12.070	436.800	62.630	199.800
	WCC1005110001	10-May-10	0.664	14.890	7.090	342.200	68.180	249.600
	WCC1005180001	17-May-10	0.647	15.440	8.310	402.400	56.490	248.400
	WCC1005250001	24-May-10	AH	AH	AH	AH	AH	AH
JUN	WCC1006080001	07-Jun-10	0.687	14.730	7.710	260.000	52.950	203.700
	WCC1006150001	14-Jun-10	0.613	16.630	11.780	360.200	70.630	187.700
	WCC1006220001	21-Jun-10	0.685	15.870	11.650	420.300	48.880	154.300
	WCC1006290001	28-Jun-10	0.670	15.810	11.090	358.300	58.410	186.700
		MAY - JUN AVG	***0.64***	***16***	***10***	***369***	***60***	***204***
JUL	WCC1007060001	05-Jul-10	0.790	16.390	10.300	400.100	67.590	194.700
	WCC1007130001	12-Jul-10	0.937	15.050	9.910	368.700	85.120	202.700

	WCC1007200001	19-Jul-10	AH	AH	AH	AH	AH	AH
	WCC1007270001	26-Jul-10	1.045	16.420	8.385	292.600	63.660	287.400
AUG	WCC1008030001	02-Aug-10	0.800	16.990	10.590	436.900	70.760	218.800
	WCC1008100001	09-Aug-10	0.507	16.320	9.150	482.300	114.100	165.400
	WCC1008170001	16-Aug-10	0.889	14.870	6.920	407.000	147.000	231.900
	WCC1008240001	23-Aug-10	0.687	17.280	9.075	555.200	88.020	179.200
		JUL - AUG AVG	***0.81***	***16***	***9***	***420***	***91***	***211***
SEP	WCC1009070001	06-Sep-10	0.908	14.890	4.130	430.600	60.060	188.400
	WCC1009140001	13-Sep-10	0.789	13.890	4.620	457.500	59.340	147.100
	WCC1009210001	20-Sep-10	0.796	14.610	4.240	360.400	70.200	214.100
	WCC1009280001	27-Sep-10	0.500	16.210	6.390	531.000	49.460	145.800
OCT	WCC1010050001	04-Oct-10	0.765	16.980	8.350	372.400	83.040	173.100
	WCC1010120001	11-Oct-10	0.649	18.740	7.490	500.400	114.800	181.800
	WCC1010190001	18-Oct-10	0.891	18.720	8.230	514.400	147.700	197.400
	WCC1010260001	25-Oct-10	0.585	14.230	5.600	270.200	77.590	118.200
		SEPT - OCT AVG	***0.74***	***16***	***6***	***430***	***83***	***171***
NOV	WCC1011020001	01-Nov-10	0.680	19.090	4.120	385.800	73.600	122.300
	WCC1011090001	08-Nov-10	0.614	17.020	3.840	339.600	87.010	144.400
	WCC1011160001	15-Nov-10	0.515	15.500	4.250	424.000	48.740	105.900
	WCC1011230001	22-Nov-10	0.487	15.810	5.190	427.700	46.400	116.200
DEC	WCC1012070001	06-Dec-10	0.608	18.980	3.742	421.700	77.240	157.200
	WCC1012140001	13-Dec-10	0.501	15.960	2.460	415.700	44.000	107.300
	WCC1012210001	20-Dec-10	0.443	18.370	3.070	384.800	40.720	98.830
	WCC1012280001	27-Dec-10	0.322	24.360	2.280	534.500	30.040	84.990
		NOV - DEC AVG	***0.52***	***18***	***4***	***417***	***56***	***117***

	Hg mg/Kg	*As mg/Kg*	*Cd mg/Kg*	*Cr mg/Kg*	*Ni mg/Kg*	*Pb mg/Kg*
Maximum 60-days	**0.81**	**18**	**10**	**430**	**91**	**211**

AA = Analyte not detected
AE = Data not valid
AH = No sample collected

ATTACHMENT "C-2"

National Emission Standards

1. Beryllium = 10 grams/24-hours

2. Mercury = 3200 grams/24-hours

Beryllium and Mercury Performance Test Data - Exhaust Stack

A. Incinerator No. 1 Emissions
(Test Date: September 27, 1995)

Beryllium = <0.0432 grams/24-hours

Mercury = 55 grams/24-hours

B. Incinerator No. 2 Emissions
(Test Date: October 26, 1994)

Beryllium = <0.0366 grams/24-hours

Mercury = 27.2 grams/24-hours

ATTACHMENT "C-3"

2010 Monthly Average THC Data
(PPM, as Propane, corrected to 7% Oxygen and 0% moisture)

Month	Incinerator No. 1	Incinerator No. 2
January	NIS	6.9
February	6.6	9.1
March	7.3	NIS
April	10.0	NIS
May	1.9	NIS
June	3.1	NIS
July	8.5	NIS
August	11.3	NIS
September	4.4	NIS
October	2.5	NIS
November	2.2	NIS
December	1.9	NIS

NIS = Not in service for the entire month

ATTACHMENT "C-4"

Maximum Average Daily Temperature Limit
Westerly Incinerators

	Incinerator No. 1 Part 503 Test 27-Sep-95 Recorded Temperatures @ Hearth No. 5			Incinerator No. 2 Part 503 Test 26-Oct-94 Recorded Temperatures @ Hearth No. 6		
	Run 1	Run 2	Run 3	Run 1	Run 2	Run 3
	1648	1435	1583	1412	1449	1473
	1703	1439	1429	1469	1416	1455
	1610	1479	1556	1516	1425	1414
	1651	1649	1530	1521	1484	1412
	1532	1794	1510	1547	1459	1441
	1459	1800	1503	1545	1435	1438
	1434	1693	1492	1482	1426	1399
	1411	1685	1476	1428	1408	1378
	1399	1768	1478	1404	1403	1403
	1466	1762	1488	1394	1409	1441
	1530	1760	1484	1388	1429	1478
	1582	1788	1487	1381	1412	1508
	1592	1656	1492	1383	1383	1513
Ave.	1540	1670	1501	1452	1426	1443

Arithmetic mean = 1570 deg-F

Maximum Temperature Limit
Incinerator No. 1
1570 x 1.2 = 1884 deg-F

Arithmetic mean = 1440 deg-F

Maximum Temperature Limit
Incinerator No. 2
1440 x 1.2 =1728 deg-F

Incinerator No. 1	1884 deg-F
Incinerator No. 2	1728 deg-F
Arithmetic Mean =	1806 deg-F

Therefore, the Maximum Average Daily Temperature Limit for the Westerly Incinerators is 1806 deg-F.

The maximum average daily temperature limit of 1806 deg-F was not exceeded at Westerly from January 1, 2010 - December 31, 2010.

The following is a summary of the maximum "average daily" hearth temperature recorded each month, in deg-F, from January 1st – December 31st:

Month	Incinerator No. 1	Incinerator No. 2
January	NIS	1470
February	1418	1448
March	1470	NIS
April	1535	NIS
May	1505	NIS
June	1460	NIS
July	1502	NIS
August	1430	NIS
September	1493	NIS
October	1443	NIS
November	1468	NIS
December	1457	NIS

NIS = Incinerator not in service for the entire month.

ATTACHMENT "C-5"

Westerly Incinerators
Air Pollution Control Device
Pressure Drop

The following is a summary of the differential pressure across the venturi/scrubbers during the Part 503 Tests, conducted for the No. 1 Incinerator on September 27, 1995 and the No. 2 Incinerator on October 25, 1994:

Run No.	Incinerator No. 1	Incinerator No. 2
1	30.0"	30.4"
2	30.0"	29.8"
3	30.1"	29.6"
Average	**30.03"**	**29.93"**

Overall average = 29.98"

Since the Westerly incinerators are <u>not</u> subject to the requirements contained in 40 CFR Part 60 Subpart O, the Part 503 Regulation requires that the operation of the air pollution control device shall not cause a significant exceedance of the average value recorded during the performance test.

The air pollution control devices serving the Westerly incinerators were operated in a manner, from January 1, 2010 – December 31, 2010, that did <u>not</u> cause a significant exceedance of the average values recorded during the performance test.

The following is a summary of the lowest "average daily" pressure drop recorded each month from January 1st - December 31st:

Month	Incinerator No. 1	Incinerator No. 2
January	NIS	27.9
February	28.2	25.9
March	26.0	NIS
April	23.9	NIS
May	26.2	NIS
June	23.2	NIS
July	26.6	NIS
August	26.5	NIS
September	26.0	NIS
October	26.2	NIS
November	26.5	NIS
December	26.3	NIS

NIS = Incinerator not in service for the entire month.

ENCLOSURE E

U.S. ENVIRONMENTAL PROTECTION AGENCY

IN RE: PETITION FOR RECONSIDERATION AND STAY OF THE STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES AND EMISSION GUIDELINES FOR EXISTING SOURCES: SEWAGE SLUDGE INCINERATION UNITS; FINAL RULE
76 *FEDERAL REGISTER* 15372-15454 (MARCH 21, 2011)
DOCKET NO. EPA-HQ-OAR-2009-0559

DECLARATION OF MR. NORMAN E. LEBLANC

I, Norman E. LeBlanc, hereby declare as follows:

1. I am the Director of the Department of Water Quality for the Hampton Roads Sanitation District ("HRSD"), a position I have held since April 2006. HRSD is the southeast Virginia regional public wastewater utility operating 13 publicly owned treatment works ("POTWs") including five plants that utilize multiple hearth incinerators ("MHI") for the safe and effective handling of biosolids received in and from the treatment of an average of 157 million gallons of wastewater per day. Through our operations, HRSD protects the public health of the greater Hampton Roads community and environment including the waters of the Chesapeake Bay.

2. This declaration is submitted in support of the petition submitted by the National Association of Clean Water Agencies ("NACWA") requesting reconsideration and stay of the "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units," 76 *Fed. Reg.* 15372 (Mar. 21, 2011) (the "SSI Rule"). NACWA's petition asks the U.S. Environmental Protection Agency ("EPA") to reconsider central elements of the final rule establishing emission

limitations and other requirements under § 129 of the Clean Air Act ("CAA") applicable to sewage sludge incinerators ("SSI") including HRSD's MHIs.

3. In my capacity as Director of Water Quality for HRSD, I as a member of HRSD's Senior Management Team am responsible for planning and budgeting for the utility's facilities and capital improvement projects, including the acquisition of equipment and services that are necessary to comply with the requirements of EPA's SSI Rule. Based on the significant impacts of the SSI Rule, HRSD has commenced a planning project with an outside engineering consultant to determine, in part, how to best address SSI Rule. Moreover, the SSI Rule has drawn into question HRSD's long term biosolids strategy including the future of biosolids resource recovery options.

4. HRSD has five POTWs that incinerate biosolids:

* HRSD Army Base, Norfolk, VA

* HRSD Boat Harbor, Newport News, VA

* HRSD Chesapeake-Elizabeth, Virginia Beach, VA

* HRSD Virginia Initiative Plant ("VIP"), Norfolk, VA, and

* HRSD Williamsburg, Williamsburg, VA.

Each of these POTWs has two MHIs (for a total of 10 SSIs) that comply with all current state and federal regulations including air quality requirements codified in each facility's Title V federal operating permit. Several of HRSD's MHIs were used by EPA to set the

emission limits for existing MHIs in the SSI Rule, including the emission limits for nitrogen oxides ("NOx"), carbon monoxide ("CO"), cadmium, lead, and mercury.

5. However, based on the most recent stack testing, HRSD predicts that none of its 10 MHIs can achieve the sulfur dioxide ("SO_2") and NOx emission limitations for existing sources, without add-on pollution control devices, which in the case of NOx controls have never been demonstrated as effective for MHIs. Achieving compliance with the SO_2 limit will likely require an additional wet acid gas scrubber for each MHI. Achieving the NOx limit will require either modification to the combustion process (e.g., combustion adjustments and low NOx burners) and, if those changes are not sufficient, addition of selective catalytic reduction ("SCR") or selective non-catalytic reduction ("SNCR") controls. It is doubtful that combustion adjustments alone will be sufficient to reliably meet the NOx and CO standards. The inverse relationship between the creation of NOx and CO further complicates the path to compliance, since lowering NOx increases CO emissions. The increase in CO emissions may require addition of an afterburner; however, this will increase NOx emissions from the greater use of auxiliary fuel. NOx controls like SCR/SNCR have never been applied to an MHI before so it is unknown if SCR/SNCR would even work in this application. The requirement for NOx control is particularly anomalous for the Boat Harbor MHI since it is considered by EPA to be among the best performing sources for both NOx and CO. Testing also indicated that HRSD VIP cannot reliably achieve the SSI Rule particulate matter, lead, cadmium, and dioxin/furan limits. This would require air pollution controls (wet electrostatic precipitator and an afterburner) in addition to SO_2 and NOx controls.

6. HRSD may not physically have space to locate all of the controls required to comply with the SSI Rule. HRSD currently operates each facility with completely redundant furnace and off-gas systems, new controls installed at these facilities in redundancy could not fit given the space constraints and also given competing space demands based on nutrient removal requirements established by EPA to meet the Chesapeake Bay Nutrient total maximum daily load ("TMDL").

7. HRSD estimates that at least $57 million will be required to upgrade just the five primary MHI plants, thus sacrificing the POTWs' redundant incineration capabilities, in attempt to meet the SSI Rule standards. *See* Enclosure A attached hereto. This estimate only represents the engineering and procurement costs for the capital improvements. The estimate does not include commensurate increases in annual operating and maintenance costs. The cost estimate also does not include the new regulatory costs such as stack testing, continuous emissions monitoring, monitoring, recordkeeping, and reporting. The total present worth cost of this option is estimated at $ 420 million. *See* Enclosure B attached hereto. Once any pollution control equipment is installed to comply with the SSI Rule, removing the equipment after the fact is not practicable.

8. The current cost estimates that HRSD has prepared should it choose to abandon its MHIs in response to the SSI rule and implement alternatives to manage biosolids are identified in enclosure B as system alternatives 9, 15, and DW. These estimates are based on professional engineering judgments and information from equipment manufacturers and product vendors. The current capital cost estimates of these options exceeds $200 million and the total present worth costs are over $546 million. Given HRSD's current billion dollar capital improvement budget committed to meeting the Chesapeake Bay Nutrient

TMDL and a sewer system overflow ("SSO") consent order with EPA, HRSD is limited in its resources to afford this additional regulatory burden.

I declare under penalty of perjury that the foregoing is true and correct.

Mr. Norman E. LeBlanc

Executed May 23, 2011

Virginia Beach, Virginia

Biosolids Resource Recovery Master Plan (BRRMP) Improvements

SYSTEM	**General**	CATEGORY	**Treatment Plant**
TYPE	**Solids Management**	PROJ STATUS	**Proposed**

PROGRAM CASH FLOW PROJECTION ($,000)

Prog Cost	Exp to FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21
$57,465	$0	$269	$1,414	$2,538	$18,242	$19,242	$15,759	$0	$0	$0	$0

PROJECT DESCRIPTION

This project is a place holder for the improvements recommended in the Biosolids Resource Recovery Master Plan (BRRMP). The cost estimate for this project is based on adding Air Pollution Control (APC) devices at each incinerator plant.

PROJECT JUSTIFICATION

With the changing biosolids reuse/disposal and incineration regulations, public perception issues, and energy and sustainability challenges, HRSD is seeking to develop a Biosolids Resource Recovery Master Plan (BRRMP) to serve as a long-term, sustainable biosolids management strategy for the organization.

The most recent biosolids management strategy was completed in 2006, but has become outdated with pending regulations. One key pending EPA regulation will classify biosolids as solid waste which will require significant improvements or possibly the elimination of our incinerators, which represents over 70% of HRSD's biosolids handling.

FUNDING TYPE	REQUIRED SERVICES	CONTACTS
Revenue Bonds	Outside Study	Requesting Dept: **General Manager**
	Outside Design	Dept Contact: **Jay Bernas**
Acct No	Outside Construction	Managing Dept: **Engineering**
VRLF No		

PROPOSED SCHEDULE

Pre-Planning	Oct-11
PER	Dec-11
Design	Dec-12
Construction	Jun-14
Project Completion	Dec-16

COST ESTIMATE

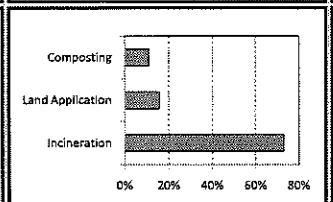
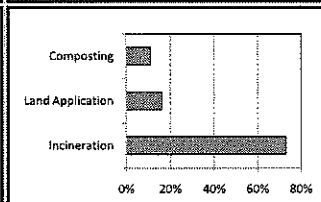
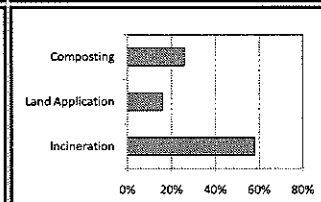
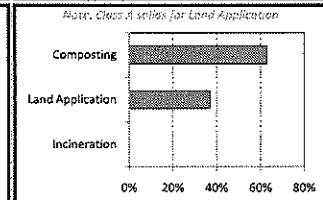
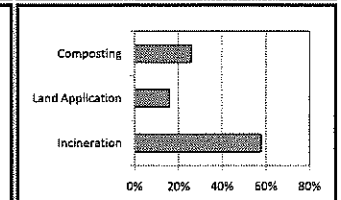
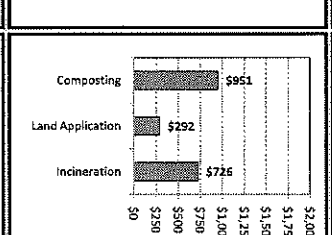
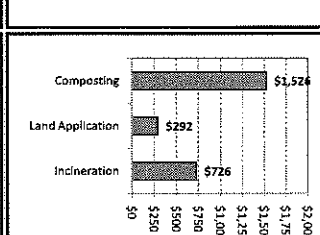
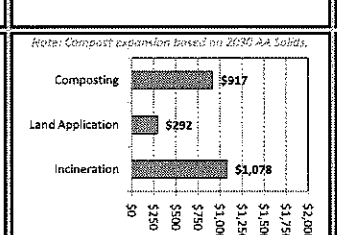
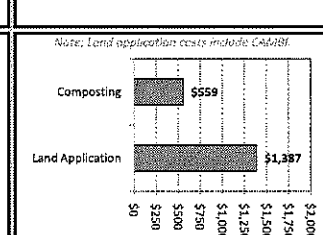
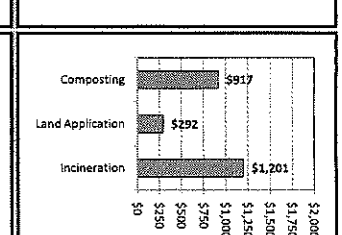
PER		$461,770
Design		$2,616,695
Pre Construction		$30,785
Construction		$54,355,370
Est. Program Cost		**$57,464,620**
Contingency	**20%**	$10,871,075
Est. Project Cost		**$68,335,695**

RELATED INFRASTRUCTURE

RELATED PROJECTS

GN-141-1 Biosolids Resource Recovery Master Plan (BRRMP)

Cost Summary of Shortlisted Alternatives

Unit Processes	BASE CASE									SYSTEM ALTERNATIVE 01									SYSTEM ALTERNATIVE 09									SYSTEM ALTERNATIVE 15									SYSTEM ALTERNATIVE DW								
	AB	AT	BH	CE	JR	NP	VIP	WB	YR	AB	AT	BH	CE	JR	NP	VIP	WB	YR	AB	AT	BH	CE	JR	NP	VIP	WB	YR	AB	AT	BH	CE	JR	NP	VIP	WB	YR	AB	AT	BH	CE	JR	NP	VIP	WB	YR
Pump Station/Pipelines etc.																																		X									
Pre-Dewatering (for Thermal Hydrolysis)																													X															
Thermal Hydrolysis Process (CAMBI)																													X															
Anaerobic Digestion																	X																	X									X	
Dewatering																													X															
Dewatered Cake Loadout Facilities																			X		X	X			X	X		X		X	X			X	X		X			X		X	X	
Foreign Biosolids Receiving Facilities	X		X							X		X												X					X														
Existing MHI Improvements	X		X	X			X	X		X		X	X			X	X																											
New Fluid Bed Incinerator																								X															X				
Compost Facility																		X									X		X							X								X
Total Project Costs, *million $*	$45.4									$91.4									$201.5									$223.0									$244.2								
Average Annual O&M, *million $*	$31.4									$31.0									$29.7									$30.7									$29.3								
Revenue from Compost, *million $*	$0.37									$0.37									$0.69									$1.52									$0.69								
Total Present Worth, *million $*	$420.6									$460.2									$546.1									$569.3									$583.0								
Annualized Unit Cost, *$/dt processed*	$633									$692									$822									$857									$877								
Distribution of Solids to Various End Uses																																													
Relative Processing Costs *($/dt Processed)*																																													
Triple Bottom Line Score	59									58									65									69									75								
Cost-Benefit Ratio *(Annualized Unit Cost/TBL Score)*	11									12									13									12									12								