



Sewage Sludge Incineration Clean Air Act Rule

National Association of Clean Water Agencies
2011 Developments in Clean Water Law Seminar
November 16, 2011

Overview of SSI Rule Activities

- Main Events (2011)
 - March – EPA promulgated SSI rule
 - May – NACWA filed a petition for administrative reconsideration with EPA
 - May/June – NACWA filed a petition for review in the DC Circuit and for leave to intervene in other petitions
 - Hatfield Township Municipal Authority is a co-petitioner
 - Sierra Club also filed a petition for review
 - All petitions consolidated for briefing
 - August – EPA informally indicated that it would deny portions of the petition for reconsideration and would deny the request for administrative stay; EPA still considering “technical” aspects
 - September-November – Litigation in DC Circuit progressing
 - NACWA filed emergency motion for judicial stay
 - Opposed by EPA and Sierra Club
 - Decision on stay likely by end of 2011
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Petition for Reconsideration/Stay

- CAA 307(d)(7)(B) – EPA must reconsider a final action if:
 - It was impracticable to raise an objection to the action during the comment period, and
 - The objection is of central relevance to the outcome of the action
- NACWA's petition raised seven such objections to the SSI rule
 - New legal rationale for using CAA 129 instead of 112
 - Used data from an inadequate number of SSIs to set standards
 - Failed to use available data, including Part 503 data and some stack test data
 - Failed to consider other SSI subcategories, including stoker/grate design units
 - Failed to propose the new source standards that were promulgated for MHIs
 - Set numerical emission standards for dioxin/furans using data below the method detection limit, instead of work practice standards as proposed in Utility MACT
 - Adopted performance test specifications that were not proposed and some SSIs cannot achieve
- NACWA also asked EPA to stay the SSI rule
 - Cited agency authority under CAA 307(d)(7)(B), 301(a), 129(a)(5) and APA 705

Motion for Judicial Stay of SSI Rule

- Judicial stay is an equitable power to maintain the status quo during litigation over agency action
 - Factors considered:
 - Likelihood of success on merits
 - Imminent and irreversible harm to the movant
 - Harm to other parties
 - Public interest
 - Supporting declarations filed with DC Circuit
 - Albany County (NY) Sewer District
 - Cedar Rapids (IA) Utilities Department
 - Hampton Roads (VA) Sanitation District
 - Northeast Ohio Regional Sewer District
 - Briefing on motion for stay completed October 28
 - Decision not expected before December 2011
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DC Circuit Challenges

- Use of CAA 129 instead of CAA 112
 - CAA 112 governs standards for POTWs, including SSIs
 - CAA 129 governs standards for solid waste incineration units, which do not include SSIs
- Inadequate data and methodology
 - CAA requires existing source standards to be based on the best performing 18 MHI and 8 FFI; while EPA used as few as 4 MHI and never more than 6 FFI
 - EPA did not adequately account for variability in sludge characteristics
 - EPA did not show that any control technology is demonstrated to achieve the standards
- Inadequate subcategorization
- EPA did not respond to some comments and gave arbitrary responses to others

DC Circuit Litigation Schedule (Est.)

- December 2011 – Motions governing briefing format and schedule likely to be filed
- Briefing (2012)
 - February – Petitioners' opening briefs
 - April – EPA's responses and NACWA's intervenor brief in response to Sierra Club
 - May – Petitioners' reply briefs
- July/September – Oral argument
- Fall/Winter 2012 – Decision

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- Other discussion items?

For follow-up, please contact:

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