

secondary materials, when used as fuels or ingredients in combusting units, are defined as “solid waste” under the Resource Conservation and Recovery Act (RCRA).

1. Whether the NHSM Rule, which identifies which non-hazardous secondary materials are solid wastes when used as fuels or ingredients in combustion units under sections 2002(a)(1) and 1004(27) of RCRA, 42 U.S.C. §§ 6912(a)(1) and 6903(27), as applied to sewage sludge, contravenes RCRA, is ultra vires, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

2. Whether the NHSM Rule contravenes the domestic sewage exclusion, RCRA § 1004(27), 42 U.S.C. §§ 6903(27), which excludes sewage from the definition of solid waste, and therefore contravenes RCRA, is ultra vires, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

3. Whether the NHSM Rule, which concludes that sewage sludge combusted for energy recovery is “discarded” and is therefore a solid waste, contravenes RCRA, is ultra vires, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

4. Given the comprehensive regulatory scheme provided by section 405 of the Clean Water Act, 33 U.S.C. § 1345, and 40 C.F.R. Part 503, whether the NHSM Rule contravenes RCRA's mandate in section 1006(b) that EPA integrate RCRA requirements with and avoid duplication of Clean Water Act requirements, and therefore is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

5. Given the comprehensive regulatory scheme provided by section 112(e)(5) of the Clean Air Act, 42 U.S.C. § 7412(e)(5), whether the NHSM Rule contravenes RCRA's mandate in section 1006(b) that EPA integrate RCRA requirements with and avoid duplication of Clean Air Act requirements, and therefore is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

6. Whether EPA's failure to consider and use sufficient and reliable data to determine that, when combusted in sewage sludge incinerators or other combustion units, sewage sludge is a legitimate fuel contravenes RCRA, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

7. Whether EPA's failure to consider and use sufficient and reliable data to determine that, when combusted in sewage sludge incinerators or other combustion units, sewage sludge is being recycled for beneficial uses contravenes RCRA, is

arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

8. Whether EPA's failure to consider and use sufficient and reliable data to determine that, when combusted in sewage sludge incinerators or other combustion units, sewage sludge is not a solid waste contravenes RCRA, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

9. Whether EPA's methodology for establishing what constitutes a legitimate fuel, which among other flaws ignores the clean energy value of sewage sludge and the critical infrastructure role of wastewater treatment, contravenes RCRA, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

10. Whether EPA's failure to consider the full regulatory, air quality and energy impacts of the NHSM Rule – including the forced diversion of sewage sludge to landfills and farms and the full impacts on small entities – contravenes RCRA, Executive Orders 12866 and 13563, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

11. Whether EPA's failure to define "contained gaseous material" for purposes of identifying which non-hazardous secondary materials are solid wastes when

used as fuels or ingredients in combustion units contravenes RCRA, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

12. Whether EPA's failure to provide adequate notice and an opportunity for comment on requirements in the final NHSM Rule contravenes RCRA, the Administrative Procedure Act, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

13. Whether EPA's failure to respond, or to respond adequately, to critical factual and legal issues raised during the rulemaking period contravenes RCRA, the Administrative Procedure Act, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

This 8th day of July, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Preliminary Non-Binding Statement of Issues of the National Association of Clean Water Agencies has been served on all registered counsel through the CM/ECF system this 8th day of July, 2011.

/s/ Jonathan E. Wells

Jonathan E. Wells