

**EXECUTIVE COMMITTEE**

**PRESIDENT**

**David R. Williams**

*Director of Wastewater*

East Bay Municipal

Utility District

Oakland, CA

**VICE PRESIDENT**

**Suzanne E. Goss**

*Government Relations Specialist*

JEA (Electric, Water & Sewer)

Jacksonville, FL

**TREASURER**

**Julius Ciacia, Jr.**

*Executive Director*

Northeast Ohio Regional

Sewer District

Cleveland, OH

**SECRETARY**

**Karen L. Pallansch**

*General Manager*

Alexandria Sanitation

Authority

Alexandria, VA

**PAST PRESIDENT**

**Jeff Theerman**

*Executive Director*

Metropolitan St. Louis

Sewer District

Saint Louis, MO

**EXECUTIVE DIRECTOR**

**Ken Kirk**

February 21, 2012

Attention Docket ID No. EPA-HQ-RCRA-2008-0329 and EPA-HQ-OAR-2003-0119

EPA Docket Center

Environmental Protection Agency, Mail Codes 28221T and 6102T

1200 Pennsylvania Ave. NW

Washington, DC 20460

Via Email: [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov) and [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov)

**Re: Comments on Proposed Rule – Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Proposed Amendments; Non-Hazardous Secondary Materials That Are Solid Waste (76 Fed. Reg. 80452; December 23, 2011)**

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on EPA's reconsideration of and proposed revisions to its March 21, 2011 final Non-Hazardous Secondary Materials (NHSM) rule (76 Fed. Reg. 80452; December 23, 2011), published together with proposed revisions to the commercial and industrial solid waste incinerator (CISWI) rule. NACWA represents the interests of the public clean water community. NACWA's members treat and reclaim the majority of the wastewater generated in the United States each day and safely and responsibly manage more than one million tons of sewage sludge annually. While NACWA disagrees with EPA's finding in the March 2011 NHSM rule that all sewage sludge is a solid waste when combusted, the Association is focusing its comments here solely on the issues EPA has raised through its reconsideration of the NHSM and CISWI rules.

NACWA's members rely on having multiple options for the management of their sewage sludge, but the list of available options has slowly shrunk over the years for many municipalities. EPA's determination regarding the regulatory status of sewage sludge incineration – which is used to manage approximately a fifth of the sludge generated annually in the United States – will have a devastating impact on the clean water community's ability to manage biosolids. Sewage sludge that is burned in sewage sludge incinerators (SSIs) will not be impacted by any of EPA's proposed NHSM or CISWI revisions. EPA has made a blanket determination that the general designs of SSIs currently in operation are not intended to recover energy, despite the fact that many SSIs do in fact recover energy from the heat generated during combustion. Therefore, even when the sewage sludge otherwise



meets EPA's legitimacy criteria, the act of burning in a SSI triggers the more stringent Clean Air Act requirements that EPA has applied to solid wastes.

However, though the regulation of SSIs is not impacted by these proposed changes, there is a large and growing use of sewage sludge or biosolids as a fuel source in other combustion devices that would meet EPA's criteria for legitimate use of a nonhazardous secondary material. Biosolids are a potent source of green energy and many industries have begun to look to biosolids as a substitute for traditional fuels. Unprocessed biosolids typically contain a heating value which is similar to the energy content of low-grade coal. These biosolids are plentiful and the future supply is guaranteed. EPA should be encouraging the recovery of the energy value from biosolids, which can be an important component of the country's renewable energy portfolio.

Though EPA's March 21 final rule made a blanket determination that all sewage sludge would not meet the contaminant legitimacy criterion, it did provide a pathway for utilities to demonstrate that their sludges should be recognized as a legitimate, non-waste fuel. This is an unfortunate hurdle to the potential use of this potent energy source, but NACWA believes that many utilities will be able to make this demonstration that biosolids can meet the legitimacy criteria.

NACWA is challenging EPA's determination that all biosolids are solid wastes when combusted. Nevertheless, the Association remains committed to ensuring these regulations, which are currently in effect and being implemented, are easily understood and accessible to all clean water agencies, large and small, and that EPA's erroneous determination has a minimal impact on this renewable source of green energy. The comments below generally support EPA's proposed revisions and seek additional clarity on certain elements of the existing rules.

### Proposed Revisions to Contaminant Level Criterion

NACWA supports the proposed changes to the contaminant level legitimacy criterion. The changes to the language of the criterion and the additional clarification provided in the preamble to the December 23 *Federal Register* provide key additional detail on making these comparisons and allow additional flexibility to look at groups of contaminants where appropriate. NACWA understands that EPA intends to develop additional guidance on making these comparisons, but urges the Agency to maintain sufficient flexibility to allow NHSM generators to use different approaches.

NACWA supports EPA's clarification that contaminant comparisons may use ranges from national surveys of traditional fuel data and that actual testing for contaminant levels in either the NHSM or the appropriate traditional fuel is not required. This flexibility will help ensure that clean water agencies with varying levels of sophistication can better document that their NHSMs are non-waste fuels.

### New Categorical Non-waste Determination

NACWA is encouraged by the proposed addition of a categorical non-waste determination process, but is unsure of the extent to which it might be available to the clean water community. Through the comprehensive regulatory structure put in place by the Clean Water Act – including the Industrial Pretreatment Program (§307(b)) and the §405 standards for biosolids management – the clean water community has worked for decades to ensure that the biosolids they manage are protective of human health and the environment. These programs dictate strict requirements for limiting discharges to the



sewer system and for allowable pollutant concentrations in biosolids. Through processing – for example, dewatering, drying and pelletizing – biosolids can consistently be turned into a fuel that serves as a viable alternative to coal. A number of current users of coal, including the cement industry, have actively pursued the use of biosolids as a fuel substitute in an effort to use more renewable energy sources.

This existing federal regulatory structure governing contaminant levels in biosolids and the potential for biosolids to be used as a renewable alternative to coal, should make it a candidate for EPA's new non-waste determination process. Though EPA made a blanket determination in the March 2011 final NHSM rule that biosolids would not meet the contaminant level legitimacy criterion, the Agency used very limited information on the contaminants in coal, which are not representative of the full range of contaminant levels found in national surveys of coal. Recent information posted by EPA on its NHSM website provides more accurate contaminant level ranges for coal. NACWA believes that through the new categorical non-waste determination it may be possible that processed biosolids could qualify as a non-waste fuel.

EPA's current proposed language for the categorical determination, however, provides insufficient information on the rulemaking petition process EPA envisions for this determination. Biosolids are generated by thousands of clean water agencies nationwide and it is unclear how broad and comprehensive a petition would need to be to encompass this diverse community.

### Contained Gas Clarification and Status of Biogas from Anaerobic Digestion

In addition to the fuel value of processed biosolids, the anaerobic digestion process used to treat biosolids also generates a potent biogas that many utilities use onsite to generate heat and electricity to run their plants. This biogas can be used for a number of other purposes as well, including injection into the gas grid for use off-site and as a transportation fuel. Where gas production exceeds a utility's ability to productively use it, clean water agencies employ a flare to meet state and local clean air requirements. The Agency's final CISWI rule and supporting materials generated significant confusion among the clean water community over the regulatory status of these activities.

NACWA supports EPA's clarification in the proposed revisions that it did not intend to change its previous statements and interpretations regarding contained gases (80473). Specifically, EPA states that "the burning of gaseous material, such as in fume incinerators (as well as other combustion units, including air pollution control devices that may combust gaseous material) does not involve treatment or other management of a solid waste (as defined in RCRA section 1004(27))." Based on this clarification and discussions with EPA staff, NACWA understands that digester gas or biogas generated during the treatment of sewage sludge that is burned for energy recovery and any gaseous material that is flared as an air pollution control measure is not subject to the requirements for combustion or treatment of a solid waste.

### Clarification of the Process for Submittal of Non-Waste Petitions

NACWA supports EPA's intention that the petition application process need not be burdensome or time and resource intensive for the applicant. NACWA understands that applications can be submitted by a single combustor or a class of combustors and by the generator, burner, or third party. NACWA understands this to mean that multiple generators that are combining their NHSMs prior to combustion need only submit a single application for the combined fuel, but requests that EPA clarify this in its final



February 21, 2012

Page 4 of 4

regulation. NACWA is encouraged that EPA has already granted a non-waste petition for sewage sludge and appreciates EPA's efforts to make that information available on its website.

\* \* \*

Again, NACWA appreciates the opportunity to comment on EPA's reconsideration of and proposed revisions to its March 21, 2011 final NHSM and CISWI rules. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Hornback".

Chris Hornback  
Senior Director, Regulatory Affairs