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December 17, 2013

The Honorable Gina McCarthy  
Administrator

U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460

Dear Administrator McCarthy:

The National Association of Clean Water Agencies (NACWA) respectfully requests a meeting with you and the appropriate staff in both the Office of Air and Radiation and the Office of Water to discuss the U.S. Environmental Protection Agency's (EPA) next steps regarding the establishment of air emission standards for sewage sludge incinerators (SSIs) under the Clean Air Act (CAA). In August, the U.S. Court of Appeals for the District of Columbia Circuit remanded significant portions of the Agency's March 2011 emission standards for SSIs back to EPA (*NACWA v. EPA*, 734 F.3d 1115 (D.C. Cir., Aug. 20, 2013)) due to technical shortcomings with the rule, leading to the potential development of new emission limits as part of the remand process. NACWA believes the Agency must act quickly to address these remanded provisions to find a path forward that will help avoid millions of dollars of potentially unnecessary municipal spending, and would like to discuss with you and your staff the best path forward as soon as possible.

Although the D.C. Circuit found that EPA had failed to provide adequate technical justifications for several emission standards, and raised other technical issues with the rule, the court did not vacate the standards. As a result, approximately 100 public wastewater utilities across the country are working to meet these potentially flawed emission standards by the original March 2016 deadline, or even earlier based on state-imposed deadlines. NACWA is concerned that utilities may be wasting precious limited resources to meet standards that may ultimately change and could be put to use on other environmental priorities. NACWA urges EPA to move expeditiously with the remand to complete its work before the deadline or, if more time is needed, exercise its authority to administratively stay the deadline.

While EPA's original cost estimates for the March 2011 SSI rule suggest that most SSIs currently in operation can meet the limits as finalized with little or no significant expense, that has not been borne out by the data from stack testing conducted over the past two and a half years. In fact, while some SSIs appear to meet the emission standards as finalized with no additional expense, many of these utilities have no margin of safety for ensuring consistent compliance with the standards and will therefore need to install equipment to guarantee that they can reliably meet the limits. In addition to this group of SSIs needing equipment to provide a margin of safety, the majority of NACWA members we have heard from will need to install additional equipment to meet the standards, with capital costs ranging from \$500,000 to \$10 million, and at least five communities have determined that due to the cost of upgrading, they will have to shut down their SSIs. Several of the existing SSI units have discovered that they will have to comply with the new source performance standards due to unit modification, with estimated capital costs ranging from \$15-20 million for one utility, a situation that EPA did not contemplate or estimate costs for in the rule.

Municipal clean water agencies are working diligently to ensure their SSIs meet these new emission standards, but are also questioning whether it is prudent to expend tens of millions of dollars on upgrades to meet emissions standards that may significantly change under remand. Most of the SSIs still in operation are in the Midwest, an area of the country that has been hit particularly hard already with Clean Water Act (CWA) mandates on combined sewer overflows. These same utilities have also been burdened with more than their fair share of economic woes during the recent downturn in the economy. Communities that rely on incineration like Detroit, Cincinnati, Kansas City, and St. Louis, just to name a few, are facing billions of dollars of mandates to meet CWA requirements, and must carefully watch each dollar they spend.

EPA has recently shown welcome flexibility in working with municipal governments to ensure sustainable, resilient and affordable environmental investments. In that spirit, it is critical that EPA move quickly to address the remanded provisions of the SSI Rule to ensure municipalities are not unnecessarily spending their limited resources to meet emission limits that could change. EPA must recognize that it makes little financial or environmental sense to ask municipalities to spend significant financial resources on SSI upgrades until the outcome of the Agency's remand process is complete and the exact emission targets are clear.

NACWA believes that if EPA addresses the concerns with the rule as outlined by the D.C. Circuit and consistent with the court's remand instructions, the Agency will likely have no choice but to make changes in the final emission limits. If EPA is unable to address the remand provisions in sufficient time to allow communities to address these likely revisions to the standards before the existing federal and state deadlines, NACWA further believes EPA should exercise its existing authority to administratively stay the federal compliance deadline – and encourage the states to do the same with their deadlines – to ensure municipal clean water utilities are making the right investments to upgrade their SSI units. Such flexibility would be in line with EPA's ongoing commitment to work collaboratively with local governments to address environmental issues in the smartest, most cost-effective manner.

We welcome the opportunity to discuss these issues with you and your staff. While the CAA implications are obvious, this is also an important issue for the Office of Water. Given the important role SSIs play in managing nearly 20 percent of the Nation's sewage sludge under the CWA's Section 405 requirements and EPA's own Part 503 rules, we hope that the Office of Water will also be engaged in discussions on the remand going forward.

We look forward to hearing from you. Please contact me at [kkirk@nacwa.org](mailto:kkirk@nacwa.org) to schedule a meeting at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk".

Ken Kirk

Executive Director

cc: Bob Perciasepe, Deputy Administrator

Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation

Nancy Stoner, Acting Assistant Administrator, Office of Water

Peter Tsirigotis, Director, Sector Policies and Programs Division