



June 17, 2011

## **NACWA Files Petition for Reconsideration and Stay of Sewage Sludge Incinerator Rule**

NACWA filed its [petition](#) May 24 with EPA requesting reconsideration and a stay of the Clean Air Act (CAA) maximum achievable control technology (MACT) standards for municipal sewage sludge incinerators (SSIs) ("Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units"; 76 Fed. Reg. 15372; March 21, 2011). The petition for reconsideration and a stay of the SSI Rule comes after NACWA filed a [legal petition](#) for review of the final rule on May 6 with the U.S Court of Appeals for the District of Columbia Circuit (D.C. Circuit). Taken together, NACWA's petition for reconsideration to EPA and legal challenge to the SSI Rule in the D.C. Circuit mark the start of the Association's legal advocacy efforts to ensure EPA addresses fundamental flaws in the emissions limits and the significant negative environmental and economic impacts the standards will have on communities that rely on SSIs as a safe and efficient form of biosolids management.

As outlined in NACWA's petition for reconsideration, EPA's SSI Rule contains a number of significant errors, including regulating SSI units under CAA Section 129 instead of under Section 112, where Congress directed emissions from publicly owned treatment works (POTWs) to be regulated; failing to establish subcategories recognizing fundamental class and use differences among SSIs; and, ignoring data showing variability in the concentrations of metals that end up in biosolids and that affect the overall performance of each individual SSI – thus affecting the overall achievability of the emissions standards. The petition for reconsideration also underscores that because the flaws in the SSI Rule are fundamental and pervasive – implicating the legal authority for the rulemaking, the selection of pollutants for which standards may be established, the selection of SSI subcategories, and numerous other aspects of the Rule – it is impossible to carve out and maintain segments of the SSI Rule. Accordingly, NACWA believes the entire Rule should be reconsidered.

In addition to requesting reconsideration of the SSI Rule, NACWA's petition also requests that EPA stay or postpone the effective date of the final Rule pending the reconsideration process and promulgation of regulations replacing the SSI Rule. NACWA's request for a stay is based on the environmental, economic, and future regulatory harm that clean water utilities with SSIs could suffer if a stay is not granted. Some of these concerns were also echoed in a [press release](#) on the legal filing sent to NACWA's media contacts.

From this point forward, the administrative petition for reconsideration and stay – coupled with the legal petition for review with the D.C. Circuit – will proceed on parallel tracks. Unless EPA indicates during the reconsideration process that it intends to reconsider the SSI Rule in its entirety, NACWA will continue its efforts to seek judicial review of the EPA

standards. The Association plans to file a separate legal petition challenging EPA's "definition of solid waste" rule, which provides the underlying foundation for the CAA rules, in mid-June.

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## **NACWA Moves to Enter Chesapeake Bay Daily Loads Case, Defend Holistic Watershed Approach**

NACWA filed a [Motion to Intervene](#) on May 25 in the case of *American Farm Bureau, et al. v. U.S. Environmental Protection Agency* (EPA) as an intervenor defendant on the side of EPA. By doing so, NACWA is moving to protect the interests of its municipal clean water agency members in the litigation and defend EPA's ability to address all sources of water quality impairment.

NACWA's motion, filed jointly with the Maryland Association of Metropolitan Wastewater Agencies (MAMWA) and the Virginia Association of Metropolitan Wastewater Agencies (VAMWA), seeks to defend the holistic watershed approach and preserve EPA's ability through the total maximum daily load (TMDL) process to address all sources of water quality impairment in the Bay watershed, including nonpoint sources such as agriculture. NACWA will not support EPA with regard to the technical underpinnings of the TMDL, as many Association members in the Bay watershed continue to have concerns with some of the underlying allocations. However, it is critical that NACWA provide an independent municipal voice in the litigation and prevent the agricultural plaintiffs from walking away from the TMDL process.

The agricultural plaintiffs in the case are challenging EPA's legal authority to regulate nonpoint sources as part of the TMDL process. Their allegations threaten the watershed approach under which all pollutant source sectors contribute equitably to improve the quality of water bodies that do not meet water quality standards. Since TMDLs are essentially a "zero sum game," allowing agricultural sources to relax their load allocation will put even greater burden on other sources such as municipal wastewater and stormwater dischargers. Thus, if the agricultural plaintiffs succeed in limiting EPA's legal authority through this litigation, the result could be increased regulatory pressure on municipal wastewater and stormwater utilities – leaving the underlying water quality problems unaddressed.

Additional information on the case is available on the [Litigation Tracking](#) section of NACWA website. Additionally, NACWA sent out a [press release](#) to announce the Association's action to enter the case. In related news, NACWA is also testifying at a June 1 U.S. House of Representatives hearing on nutrient-related issues.

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## **Senate SRF Dear Colleague Letter Closes with Strong Support**

The "Dear Colleague" letter being circulated to defend the Clean and Safe Drinking Water State Revolving Funds (SRFs) from additional cuts in Fiscal Year (FY) 2012 closed with strong bipartisan support thanks, in part, to NACWA and its members' advocacy efforts. The letter, which was led by Senators Barbara Boxer (D-Calif.), James Inhofe (R-Okla.) and Ben Cardin (D-Md.) gained 35 total signatories including 5 Republicans, a significant accomplishment in the current political climate. Republicans joining Senator Inhofe on the letter include: Senators Mike Crapo (Idaho), Olympia Snowe (Me.), John Boozman (Ark.) and John Thune (S.D.). The letter is posted on NACWA's [website](#) for your review.

The letter provides a significant foundation for the SRF's to avoid drastic cuts entering forthcoming Fiscal Year 2012 budget negotiations. NACWA took a leadership in role by

drafting the letter and organizing a municipal coalition, including members of the Water Infrastructure Network, to support the effort. NACWA Executive Director Ken Kirk also sent a personalized note to all Senate offices urging their support for the letter, emphasizing the importance of clean water funding to the municipal community and the economic, environmental and public health benefits such funding provides.

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## **NACWA Provides Input on EPA Environmental Justice Permitting Initiative**

NACWA provided [comments](#) on a permitting initiative related to EPA's *Plan Environmental Justice (EJ) 2014*, which was launched last summer in an effort to integrate EJ concerns into the Agency's programs, policies, and activities. NACWA's comments on the permitting initiative reiterated concerns raised in the Association's [letter](#) from last fall on the Agency-wide plan, asserting that affordability concerns were not sufficiently factored into the Agency's EJ programs. EPA's EJ efforts have been, in large part, focused on the disproportionate impact of environmental pollution on economically disadvantaged communities. NACWA's letters stress that the Agency's regulatory mandates, and the very real financial burdens they represent for those same disadvantaged populations, are also important. NACWA highlighted that EPA must also take into consideration the ability of these communities to continue to pay rising sewer bills that result from programs designed to meet EPA mandates.

Since releasing its Plan EJ 2014, EPA has been working on several Plan-related efforts across the Agency focused on advancing EJ. One of those elements is the EJ Permitting Initiative through which the Agency wants disproportionately burdened communities to have full and meaningful access to the permitting process in order to ensure that permits issued under EPA's authority address EJ issues to the greatest extent practicable. In addition to seeking comments on the draft implementation [plan](#) for the EJ Permitting Initiative, EPA also asked for comment on a draft [list](#) of tools and recommendations. Included in the draft list are potential permit conditions, including enhanced monitoring and the availability of facility-specific data, and other provisions designed to address community concerns.

In addition to the affordability concerns, in its most recent letter NACWA also raised concern over any overly-prescriptive permitting regime developed at the federal level to address EJ concerns given the local nature of the issue. Working to improve lines of communication and outreach can help to better address these issues at the local level, but suggesting prescriptive permit conditions, like increased or enhanced environmental monitoring, or outlining specific processes for permit writers to follow, seem to presuppose what any major local issues may be. NACWA will continue to track the Agency's ongoing EJ efforts to ensure they strike the appropriate balance..

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## **NACWA Submits Comments to EPA on Controversial Stormwater Memo, Meets with National Groups on Stormwater Rule**

NACWA forwarded [comments](#) May 12 to EPA on the Agency's November 2010 memorandum regarding numeric limits in stormwater permits, responding to EPA's request for public comment and encouraging the Agency to withdraw the highly controversial document. The NACWA letter, submitted jointly with the American Public Works Association (APWA) and the National Association of Flood & Stormwater Management Agencies (NAFSMA), draws upon a previous letter sent to EPA by the three associations in January expressing significant concerns with the November memo. The joint municipal comments ask EPA to withdraw the document in its entirety or to reissue

the memo with significant revisions after the completion of the current post-construction stormwater rulemaking process. The comments also request that EPA provide NACWA and its municipal partners with more information regarding some of the assertions made by the Agency in the November memo about existing state stormwater permits with numeric limits.

As a result of pressure from NACWA and others, including the joint municipal [letter](#) sent to EPA in January, the Agency [announced](#) in March that it was opening up a formal comment period on the memo. NACWA, APWA, and NAFSMA met with key EPA staff in April to further discuss the municipal stormwater community's concerns with the document. NACWA is optimistic that EPA will either withdraw the memo or reissue the document with significant revisions after reviewing input from the public comment process. EPA is accepting comments on the memo until May 16, and any public agency with concerns about the document is encouraged to submit their own comments directly to the Agency.

NACWA also met with a number of other national stakeholder groups to discuss EPA's national stormwater rulemaking process. The meeting included the Water Environment Federation (WEF), the Association of State & Interstate Water Pollution Control Administrators (ASIWPCA), the Natural Resources Defense Council (NRDC), and American Rivers – along with key EPA staff currently working to develop the stormwater rule. Participants are discussing a number of aspects of the planned rule, including ways to ensure that the rule proposal strikes the right balance between environmental protection and economic practicability. NACWA looks forward to continued discussions with key national stakeholders and EPA as the rulemaking process continues.

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## NACWA's Summer Conference in Chicago Explores Cutting Edge Management Issues

Join us July 19-22, 2011 at the [Westin Chicago River North](#) in Chicago, Illinois for NACWA's 2011 [Summer Conference](#), *Engineered for Success. . . Creating a First Class Public Utility*. The conference will explore cutting-edge efforts underway at utilities to evaluate and enhance the sustainability of management practices and overall operations.

[Registration](#) is now open and a [preliminary agenda](#) is now available. As an added feature, NACWA is offering a discounted registration to Gen X/Gen Y staff (defined for this purpose as individuals born 1970–1990) attending with their NACWA Member representative. As you make your plans to attend, please contact the [Westin Chicago River North](#) to secure your hotel accommodations. Reservations must be made by June 27 to receive the special group rate of \$189/night. Don't delay . . . [register now](#) for what is certain to be an exceptional conference.

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Please feel free to contact Thea Graybill, Government Affairs Assistant with any questions or concerns at [tgraybill@nacwa.org](mailto:tgraybill@nacwa.org).