



Association of
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Sewerage Agencies

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August 23, 2001

James S. Pew
Earthjustice Legal Defense Fund
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036

Re: Citizen Suits Including Sewage Sludge Incinerators

Dear Mr. Pew:

On behalf of the Association of Metropolitan Sewerage Agencies (AMSA), I write concerning two complaints recently filed by the Sierra Club in the United States District Court for the District of Columbia to require the U.S. Environmental Protection Agency (EPA) to promulgate certain Clean Air Act (CAA) standards due under that statute by November 15, 2000. The suit filed July 20, 2001 seeks to compel EPA to promulgate performance standards and other requirements under CAA §129 for "other solid waste incinerators" (OSWI), including sewage sludge incinerators. The suit filed July 16, 2001 seeks to compel EPA to publish technology-based maximum achievable control technology (MACT) standards under CAA §112 for a number of industrial source categories, including sewage sludge incinerators.

This letter brings your attention to certain facts regarding the status of EPA's regulation of sewage sludge incinerators under CAA §129 and §112. These facts reveal that EPA has studied sewage sludge incinerator emissions extensively, evaluated the applicability of CAA §129 and §112 to these sources, and made decisions not to regulate them under these specific CAA provisions. This letter also outlines the numerous existing federal regulatory requirements to control air pollution from sewage sludge incinerators. This synopsis demonstrates that sewage sludge incinerators are subject to significant air pollution emission limits, monitoring, and recordkeeping requirements under both the CAA and the Clean Water Act (CWA). Based on this information, AMSA respectfully requests that Sierra Club amend its complaints to remove sewage sludge incineration from the categories of sources at issue in each of these lawsuits. Such amendments will conserve AMSA and other organizations' limited litigation resources and energies for regulatory matters of greater environmental benefit.

AMSA represents the interests of over 260 of the country's publicly-owned wastewater treatment agencies, which collectively serve the majority of the sewered population in the United States. A significant number of our member agencies rely upon incineration to manage their biosolids (sewage sludge). AMSA has a long history of cooperatively providing EPA with data and other information about our members' sewage sludge incineration activities and the level and type of pollutants released during this process, including for the purposes of evaluating the applicability of CAA §129 and §112. AMSA members have offered their experiences and technical expertise as EPA has developed the numerous federal CAA and CWA requirements presently applicable to sewage sludge incineration.

This letter first addresses the status of EPA's regulatory activities for sewage sludge incinerators under CAA §129 and §112. This letter then summarizes the existing air pollution control requirements under the CAA and CWA applicable to sewage sludge incinerators.

I. Clean Air Act §129 Does Not Apply to Sewage Sludge Incinerators

Sierra Club's complaint correctly states that in January 1997 EPA gave notice of its intent to develop CAA §129 regulations for sewage sludge incinerators as part of the "other solid waste incinerators (OSWI)" category. 62 Fed. Reg. 1868 (Jan. 14, 1997). AMSA and many of its individual member agencies provided comments on this notice by the March 17, 1997 deadline. EPA then evaluated these comments, further studied sewage sludge incinerators – including through a Federal Advisory Committee on §129 on which AMSA member agencies participated – and conducted legal analysis. Subsequently, EPA published a notice in April 2000 stating "[t]he Agency has decided not to regulate sewage sludge incinerators as a category under Section 129 of the Clean Air Act." 65 Fed. Reg. 23,460 (Apr. 24, 2000). EPA determined that sewage sludge incinerators are not covered by §129 because while such incinerators combust "solid waste" – a process covered by §129 – the CAA requires that such solid waste be generated by "commercial or industrial establishments or the general public." Sewage sludge is generated by a municipal sources, and thus sewage sludge incinerators are not the type of "solid waste incinerators" to which §129 applies. *Id.*

EPA reiterated its decision not to include sewage sludge incinerators in the OSWI §129 category in a 2000 notice stating that EPA would complete the OSWI §129 regulations by November 15, 2005, and confirming which sources are covered by the OSWI rulemaking. 65 Fed. Reg. 67,357 (Nov. 9, 2000). In the notice, sewage sludge incinerators are not included among the seven types of incinerators EPA will regulate under the OSWI §129 standards. Further demonstrating its intent not to address sewage sludge incineration under §129, EPA also provided an exemption for sewage sludge incinerators complying with 40 CFR Part 60, Subpart O (discussed under Section III, below) from final December 2000 §129 regulations for commercial and industrial solid waste incinerators (CISWI). 65 Fed. Reg. 75,338, 75,351 (Dec. 1, 2000).

Accordingly, EPA has made a final determination not to regulate sewage sludge incinerators under CAA §129. We request that Sierra Club amend its complaint to remove sewage sludge incinerators from the

categories of sources at issue in the OSWI complaint.

II. Sewage Sludge Incinerators Are Not "Major Sources" of HAPs

EPA is poised to delist sewage sludge incinerators from the CAA §112(c)(6) list of source categories to be regulated by technology-based MACT standards for "major sources" of hazardous air pollutants (HAPs) under CAA §112(d). EPA has determined that regulation under §112 is inappropriate because there are no major sources of HAPs in the sewage sludge incineration category. EPA has the authority under CAA §112(c) to delete categories of sources on the Administrator's own motion. The next §112(c)(6) list of source categories published in the *Federal Register* will notice this delisting.

EPA demonstrated its intent to delist sewage sludge incinerators from §112 more than four years ago in the 1997 §129 *Federal Register* notice discussed above. This notice also announced "EPA's intent to delist SSI [sewage sludge incinerators] from the Section 112(c) source category list and the 112(e) schedule." 62 Fed. Reg. 1869 (Jan. 14, 1997). EPA planned to accomplish this action when it proposed §129 standards, but this path was not pursued when EPA later determined it would not promulgate §129 sewage sludge incinerator regulations. EPA's intent to delist for §112 is also evident in its June 2001 compilation of "upcoming 10 year MACT standards" posted on the EPA Air Toxics Website, which labels the sewage sludge incinerator category as "to be delisted."

The imminent *Federal Register* §112(c)(6) notice will complete EPA's action on this source category under CAA §112. In light of this, we request that Sierra Club amend the MACT deadline complaint to remove sewage sludge incineration from the categories of sources at issue in the lawsuit.

III. Air Pollution Requirements for Sewage Sludge Incineration

It is helpful to evaluate EPA's decisions under CAA §129 and §112 in the context of the many existing federal regulations already in place to control air pollution from sewage sludge incinerators. A review of these requirements shows that EPA has studied sewage sludge incinerator emissions and that these sources are extensively and meaningfully controlled.

A) Clean Air Act Requirements

In 1974, EPA promulgated New Source Performance Standards (NSPS) under CAA §111 for sewage sludge incinerators. 40 CFR Part 60, Subpart O. These requirements remain in effect today and impose emission limits on particulate matter/opacity, and establish operational, monitoring, testing, and reporting requirements.

In 1975, EPA revised the National Emission Standard for Hazardous Air Pollutants (NESHAP) for mercury to apply specifically to sources that "incinerate or dry wastewater treatment plant sludges." 40 CFR Part 61, Subpart E. These regulations prohibit wastewater treatment plant sludge incinerator emissions from exceeding 3,200 grams of mercury per 24-hour period, and require stack and sludge sampling, and monitoring. In 1975, EPA also promulgated a beryllium NESHAP that prohibits emissions which exceed 10 grams of beryllium over a 24-hour period

(unless an alternative is approved) and requires sampling. 40 CFR Part 61, Subpart C.

Furthermore, under CAA §110 states impose emission limits and other restrictions on criteria pollutant emissions from sewage sludge incinerators through their state implementation plans.

B) Clean Water Act Requirements

In 1977, Congress added §405(d) to the Clean Water Act (CWA), directing EPA to promulgate regulations for the utilization and disposal of sewage sludge. In 1987, Congress amended §405(d) to require EPA to identify toxic pollutants in sewage sludge that may adversely affect public health or the environment, specify management practices, and establish numeric limits for each pollutant identified. These standards are to be “adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant.” CWA §405(d)(2)(D). Section 405(d) contemplates two initial rounds of rulemaking – Round I standards for pollutants based on available information and Round II standards for additional pollutants identified through study.

Accordingly, in 1993 EPA promulgated Round I rules for the incineration of sewage sludge, now codified at 40 CFR Part 503.40. 53 Fed. Reg. 9248 (Feb. 19, 1993). In 1999 EPA published final amendments to these Round I regulations. 64 Fed. Reg. 42,551 (Aug. 4, 1999). These regulations establish pollutant limits for arsenic, cadmium, chromium, lead, and nickel, and require compliance with the beryllium and mercury NESHAPs. These regulations also establish operational standards for total hydrocarbons (THC) at 100 parts per million (ppm) on a monthly average (or alternatively carbon monoxide (CO) at 100 ppm on a monthly average). Management practices are required relating to monitoring THC, oxygen, moisture, and temperatures. Finally, the regulations require performance testing, recordkeeping, and reporting.

EPA has addressed additional pollutants of concern in its proposed Round II regulations. Following an EPA risk assessment, in 1999 EPA proposed to establish a limit of 300 parts per trillion (ppt) toxic equivalents (TEQ) for 29 specific congeners of polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans, and coplanar PCBs, and to require minimum monitoring, record keeping, and reporting requirements in land applied biosolids. 64 Fed. Reg. 72,045 (Dec. 23, 1999). Based on the risk assessment, EPA did not propose limits for these pollutants in incinerated sewage sludge. Under a consent decree to which AMSA, Natural Resources Defense Council, and citizen plaintiffs are parties, EPA must finalize these proposed regulations by December 15, 2001.

IV. Conclusion

We hope the additional information regarding EPA’s specific actions under CAA §129 and §112, and the brief synopsis of sewage sludge incinerator regulations under the CAA, CWA, and state regulations, are of assistance to you. Again, we respectfully request that Sierra Club amend its complaints to remove sewage sludge incineration from the categories of sources at issue in these lawsuits.

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Please contact me at (202) 533-1803 to discuss our request. We look forward to achieving satisfactory resolution of these matters.

Sincerely,



Alexandra Dapolito Dunn
General Counsel

cc: Al Vervaert
Gene Crumpler
U.S. EPA Office of Air Quality Planning and Standards