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CITIZEN PETITION BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

CITIZENS FOR A FUTURE NEW HAMPSHIRE,)
580 Brockway Road,)
Hopkinton, NH 03229)

**RESOURCE INSTITUTE FOR LOW ENTROPY)
SYSTEMS,**)
179 Boylston Street,)
Boston, MA 02130)

CENTER FOR FOOD SAFETY,)
660 Pennsylvania Ave., SE, Suite 302,)
Washington, DC 20003)

et al.,)
Petitioners,)

Filed With:)

Docket No.

MICHAEL LEAVITT,)
In his official capacity as)
EPA Administrator Designee)
Ariel Rios Building)
1200 Pennsylvania Avenue, NW)
Washington, DC 20460)

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PETITION SEEKING AN EMERGENCY MORATORIUM ON THE LAND
APPLICATION OF SEWAGE SLUDGE

I. INTRODUCTION AND REQUESTED ACTION

Pursuant to the Right to Petition Government Clause contained in the First Amendment of the United States Constitution,^a the Administrative Procedure Act,^b the Clean Water Act,^c other federal environmental laws, and the Environmental Protection Agency (EPA) regulations implementing provisions of those laws, the undersigned submit this citizen petition for rulemaking and collateral relief, requesting that the Administrator Designee immediately act to protect public human health and the environment from the adverse effects of the land application of sewage sludge. This petition also serves as a Notice of Intent to Sue under the provisions of the Clean Water Act [hereinafter “CWA”], the Solid Waste Disposal Act [hereinafter “SWDA”], the Clean Air Act [hereinafter “CAA”], the Safe Drinking Water Act [hereinafter “SDWA”], the Resource Conservation and Recovery Act [hereinafter “RCRA”], and the Comprehensive Environmental Response, Compensation, and Liability Act [hereinafter “CERCLA”].

Specifically, petitioners request the Administrator Designee take the following actions:

I. Place an immediate moratorium on the land application of sewage sludge.

¹ The right to petition for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights. *United Mine Workers of America, Dist. 12 v. Illinois State Bar Association*, 389 U.S. 217, 222, 88 S. Ct. 353, 356, 19 L. Ed. 2d 426 (1967). It shares the “preferred place” accorded in our system of government to First Amendment freedoms, and has sanctity and a sanction not permitting dubious intrusions. *Thomas v. Collins*, 323 U.S. 516, 530, 65 S. Ct. 315, 322, 89 L. Ed. 430 (1945). “Any attempt to restrict those First Amendment liberties must be justified by clear public interest, threatened not doubtful or remotely, but by clear and present danger.” *Id.* The Supreme Court has recognized that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. *United States v. Cruikshank*, 92 U.S. (2 Otto) 542, 552, 23 L. Ed. 588 (1875).

² 5 U.S.C. § 553(e) (declaring that agencies must provide to all interested persons the “right to petition” for the issuance, amendment, or repeal of a rule).

³ 33 U.S.C. § 1251(e) (requiring that the Administrator of the Environmental Protection Agency “provide for”, “encourage” and “assist” with public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program).

- (1) Freeze the issuance of new National Pollutant Discharge Elimination System (NPDES) permits authorizing the Land Application of Bulk Sewage Sludge.
- (2) Rewrite and reissue NPDES permits to require a method of sludge disposal other than land application to replace all NPDES permits currently in force that allow the Land Application of Bulk Sewage Sludge.
- (3) Initiate rulemaking to change the Part 503 Sludge Rule (promulgated under the authority of the Clean Water Act at 40 C.F.R. §503) to eliminate land application as an acceptable practice for sludge disposal.

II. PETITIONERS

Petitioner *Citizens for a Future New Hampshire* is a non-profit, grassroots organization whose mission is to protect the environment of New Hampshire and the public health of the citizens of New Hampshire. The petitioner is located at 580 Brockway Road, Hopkinton, NH 03229.

Petitioner *The ReSource Institute for Low Entropy Systems* (RILES) is an independent, nonprofit organization located at 179 Boylston Street, Boston, MA 02130. Founded in 1990, RILES works in partnership with local communities to protect public health and the environment both nationally and internationally.

Petitioner *The Center for Food Safety* (CFS) is a non-profit, membership organization located at 660 Pennsylvania Ave., SE, Suite 302, Washington, DC 20003. Petitioner was founded in 1997 to address increasing concerns about the impacts of our food production system on human health, animal welfare, and the environment.

Petitioner *International Center for Technology Assessment* (CTA) is a non-profit, bi-partisan organization located at 660 Pennsylvania Avenue SE, Suite 302, Washington, DC 20003. CTA was formed to help the general public and policy-makers understand how technological advancements affect society.

Petitioner *The United Mine Workers of America* is a growing union with a diverse membership that includes coal miners, clean coal technicians, health care workers, truck drivers, and school board employees. UMWA members live and work throughout the United States and Canada. The UMWA has fought for worker's rights since 1890. Today the International Union continues the fight for safe workplaces, good wages and benefits, and fair representation. The petitioner is located at UMWA Region 1 at 51 Eleventh Street, P.O. Box 200, Lucernemines, PA 15754.

Petitioner *Citizen's Environmental Coalition* is a statewide grassroots environmental organization of 110 groups and 14,000 individual members working to eliminate pollution in New York State. The organization is located at 543 Franklin Street, Suite 2, Buffalo, NY 14202 -1109.

Petitioner *Community Environmental Legal Defense Fund, Inc.* is a nonprofit corporation incorporated under the laws of the Pennsylvania that provides legal assistance to rural municipal governments and communities concerned about the land application of sludge. The Legal Defense Fund is located at

2859 Scotland Road, Chambersburg, PA 17201.

Petitioner *Environmental Research Foundation* is located at P.O. Box 160. New Brunswick, NJ 08903. For 23 years, Environmental Research Foundation has been providing scientific and technical information about toxic materials and dangerous technologies, and about safer alternatives, to community leaders, government officials, journalists, librarians and the interested public.

Petitioner *The Center for Media & Democracy* is located at 520 University Ave., Suite 310, Madison, WI. The Center for Media & Democracy is a nonprofit, public interest organization funded by individuals and nonprofit foundations and dedicated to investigative reporting on the public relations industry.

Petitioner *Institute for Agriculture and Trade Policy* (IATP) promotes resilient family farms, rural communities and ecosystems around the world through research and education, science and technology, and advocacy. IATP is located at 2105 1st Avenue, South Minneapolis, MN 55404.

Petitioner the *National Sludge Alliance* is a grassroots organization formed in 1996 to help protect public health and the environment from the adverse effects of sewage sludge. The policies of this mission include: preventing the land application of all sludge, promoting sewer avoidance, and advocating that industrial wastes be treated at their source. Petitioner is located at 180 Boston Corners Road, Millerton, NY 12546.

Petitioner *The Organic Consumers Association*, founded in 1998, is a nationwide network of 500,000 organic consumers, dedicated to safeguarding organic standards and promoting organic agriculture, public health, environmental sustainability, and social justice. One of OCA's major criticisms of conventional (non-organic) agriculture in the US is the use of toxic sludge on farmlands and toxic ingredients in fertilizers. The petitioner is located at 6101 Cliff Estate Road, Little Marais, MN 55614.

Petitioner *Toxics Action Center* located at 29 Temple Place, Boston MA 02111. Since 1987, Toxics Action Center has worked with more than 450 New England neighborhoods to fight toxic pollution in their communities. In the past five years we have worked with more than a dozen communities to address the issues of land application of sludge and the incineration of sludge.

Petitioner *Center for Health, Environment and Justice* is located at 150 South Washington Street Falls Church, VA 22046. Center for Health, Environment and Justice (CHEJ) was founded in 1981, as the Citizens Clearinghouse for Hazardous Waste (CCHW), by Lois Gibbs, the community leader at Love Canal. CHEJ seeks to help local citizens and organizations come together and take an organized, unified stand in order to hold industry and government accountable and work toward a healthy, sustainable future.

Petitioner *Science and Environmental Health Network* (SEHN) located at 3704 W. Lincoln Way #282, Ames, IA 50014. Founded in 1994 by a consortium of North American environmental organizations, SEHN is concerned with the wise application of science to the protection of the environment and public health. SEHN is also a think tank for the environmental movement,

framing concepts and ethical considerations that give direction to the movement in North America and internationally.

Petitioner *New York City Environmental Justice Alliance* is a citywide network that links grassroots organizations low-income neighborhoods and communities of color in their struggle against environmental racism. Founded in 1991, NYCEJA supports community-led initiatives through its network of professional environmental advocates, attorneys, scientists and health specialists. NYCEJA provides resources that enable its Member Organizations to engage in effective advocacy on behalf of EJ communities that are disproportionately and adversely affected by environmental and health impacts of public and private actions and policies. NYCEJA is a non-profit, 501(c)(3) corporation located at 115 West 30th St., Rm 709, New York, NY.

Petitioner *The Center for the Biology of Natural Systems (CBNS)*. The Center for the Biology of Natural Systems is dedicated to helping solve real-world environmental problems. Dr. Barry Commoner is Senior Scientist and Director Emeritus of the Center for the Biology of Natural Systems, a research institute at Queens College, City University of New York, Flushing, NY 11367.

Petitioner *Farm Aid* is a national, non-profit organization working to strengthen a family farm system of agriculture that produces safe, fresh food for everyone. Farm Aid is located at 11 Ward Street, Suite 200, Somerville, MA 02143.

Petitioner *Clean Water Action* is a national non-profit citizens, organization founded in 1971 and working for clean, safe and affordable water, prevention of health-threatening pollution, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work. Clean Water Action is located at 4455 Connecticut Ave. NW, Suite A300, Washington, DC 20008.

Petitioner *The Northeast Organic Farming Association/Massachusetts Chapter, Inc. (NOFA/Mass)* is a chapter of the Northeast Organic Farming Association, a nonprofit or nearly 4,000 farmers, gardeners, and consumers working to promote healthy food, organic farming practices, and a cleaner environment. NOFA/Mass is located at 411 Sheldon Road., Barre, MA 01005.

Petitioner *Board of Supervisors, Spotsylvania County, Virginia*. The Board represents 100,000 residents & an area of 408 square miles, half way between Washington, D.C. and Richmond, Virginia, one of the fastest growing localities in Virginia, if not in the nation. The postal address for the Board of Supervisors is P.O. Box 308, Spotsylvania, VA 22553.

Petitioner *Maine Toxics Action Center* is located at One Pleasant Street, 4th Floor Portland, ME 04101. Since 1987, Toxics Action Center in Maine has helped neighborhoods across Maine fight toxic pollution in their communities.

Petitioner *Families Addressing Rural Messes in Yates (FARM-Yates)* is an association of concerned citizens dedicated to educating the region on the hazards associated with Concentrated Animal Feeding Operations and the land spreading of sludge. Farm-Yates is located in the Finger Lakes Region of Central N.Y.

Petitioner *The Concerned Citizens of West Providence Township* is a local, nonprofit, nonpartisan, grassroots, educational and public-action organization in Bedford County, Pennsylvania, dedicated to preventing the land application of sewage sludge and industrial waste under current standards established by the Commonwealth of Pennsylvania. The address of the organization is P.O. Box 188, Everett, PA 15537.

Petitioner *Coalition of Residents Organized for Political Self-expression* (CROPS) is a nonprofit corporation working to protect the freedom of local citizens to participate in the political process, specifically at the local level. CROPS is located at 4810 Rockdale Road, Greencastle, PA 17225.

Petitioner *Citizens Against Pollution* located in Grand Bay, AL. The organization's goal is stop the spreading of sewage sludge on pastures near our homes. The address is 8435 Jim McNeil Lp Rd W, Grand Bay, AL.

Petitioner *Finger Lakes Citizens for the Environment*, located in the Finger Lakes (Western NY), is a grassroots group dedicated to protecting the environment and educating the public regarding environmental concerns so we can protect our communities from environmental threats

Petitioner *Sludge Busters*, located at Fox Brush Farm, 1650 Furnace Rd., Brogue, PA 17309, is made up of people from York County, PA, fighting the land application of all industrial and municipal sewage sludge.

Petitioner *The Mahanoy Creek Watershed Association* is a non-profit organization founded in 1998 with the goal of mitigating the effects of abandoned mine drainage pollution in the Mahanoy Creek and protecting it from future environmental assaults. The petitioner is located at 420 Dutchtown Road, Ashland, PA 17921.

Petitioner *Rural Advancement Foundation International-USA* (RAFI-USA) is located at 21 Hillsboro Street, Pittsboro, NC. Petitioner is dedicated to community, equity and diversity in agriculture. While focusing on North Carolina and the southeastern United States, petitioners also works nationally and internationally. Petitioner plays a leadership role in responding to major agricultural trends and creating movement among farm, environmental and consumer groups to promote sustainable agriculture, strengthen family farms and rural communities, protect the diversity of plants, animals and people in agriculture and ensure responsible use of new technologies.

Petitioner *Citizens for Sludge-Free Land* is located at PO Box 38 North Sandwich, NH 03259. Its purpose is to collect, analyze, and disseminate accurate science-based information about the hazards of land application of sewage sludges and paper mill sludges, for citizens, legislators, town and county officials nationwide who need this information in order to put in place protective ordinances or bans.

Petitioner *TOXIC* (Take Off Unknowns in Communities) is a non-profit corporation located at 4944 Apple Avenue Duluth, MN 55804. The organization's mission is educational, providing information to the public on the land application of sludge and other substances that are land applied, such as septage and industrial wastes.

Petitioner *Army for a Clean Environment, Inc.* is a nonprofit, grassroots organization formed, in part, to expose the dangers of using sewer sludge, river sludge and harbor sludge in mine reclamation projects. Petitioner is located at 2066 Evergreen Drive, Tamaqua, PA 18252.

Petitioner *Safe Food and Fertilizer* (SFF) is a grassroots organization advocating for a ban on the use of hazardous and other solid wastes as fertilizer, soil amendments and animal feed. SFF is located at 617 H Street SW, Quincy, WA 98848 and is a project of Earth Island Institute.

Petitioner *The Franklin County Coalition* is an association of eighteen non-profit, community based organizations located in Franklin County, Pennsylvania. In 2002, the Coalition adopted a resolution supporting municipal governments that have passed ordinances controlling the land application of sewage sludge. The Coalition's mailing address is 2859 Scotland Road, Chambersburg, PA 17201.

Petitioner *Kern Food Growers Against Sewage Sludge's* members include the following companies: Wm. Bolthouse Farms, D.M. Camp & Sons, Anton Caratan & Son, M. Caratan, Inc., Howard Frick Farm, Giumarra Vineyards, Grimmway Farms, Jasmine Vineyards, Pandol & Sons, Sun World International, and Marko Zaninovich, Inc. The petitioner located in Kern County, California in the southern end of the San Joaquin Valley. The Kern Food Growers Against Sewage Sludge's postal address is M. Caratan, Inc, 33787 Cecil Ave., Delano, CA 93215.

Petitioner *Citizens Campaign for the Environment* (CCE) works to build widespread citizen understanding and advocacy for policies and actions designed to manage and protect interdependent land and water resources, wildlife and public health. CCE carries out this mission through public education, research, lobbying, organizing and public outreach. CCE is located at 225A Main Street, Farmingdale, NY 11735.

Petitioner *Sustainable South Bronx*, located at 889 Hunts Point Avenue, Bronx, NY 10474, is a community organization dedicated to the implementation of sustainable development projects in the South Bronx that are informed by the needs of the community and the values of environmental justice.

Petitioner *The South Bronx Clean Air Coalition* (SBCAC) is a community based environmental justice organization in the South Bronx in New York City. SBCAC was founded in 1991. It is located at 541 E. 138th Street, Bronx NY 10454.

Petitioner *Harmony SOLE Alliance* is located at 2731 River Road Phillipsburg, NJ 08865. Harmony SOLE Alliance is a grassroots group who has been fighting for quality of life issues related to sludge facilities since 1994.

Petitioner *Citizens United for Responsible Environmentalism* (CURE) is located at 11 Clark Court Larchmont, NY 10538 and works on behalf of the many residents in the Bronx suffering from health-related problems caused by the New York Organic Fertilizer Company's sludge pelletization plant in the Hunts Point section of the Bronx.

Petitioner *Greening for Breathing* located at 889 Hunts Point Avenue, Bronx, NY 10474. Greening for Breathing (GFB) formed in 1998 as an outgrowth of two citizen groups, the NYC

DOH's Asthma Initiative's Environmental Committee and Hunts Point Awareness Committee, a local community association. GFB's mission is to address outdoor air quality in Hunts Point as a means of improving well-being and health, especially respiratory wellness, through greening.

Petitioner *Environmental Science Research Associates* (ESRA) helps prepare websites about Pennsylvania sludge issues and sludge victims and is located at 169 Slackwater Road, Millersville, PA 17551.

Petitioner *People for Environmental Action and Children's Health* (PEACH) is a nonprofit organization located at 35 West Main Ave., Suite 240, Spokane, WA 99201. The mission of PEACH is to provide information and act holistically to restore a healthy environment for the wellness of every child.

Petitioner *The Solano Citizens against B.S.* is a citizen's group working to ban land application sewage sludge in Solano County, California. Its postal address is 294 S. 4th St. Rio Vista, CA 94571

Petitioner *The Neighborhood Pesticide Action Committee* (NPAC) is a Boston-based grassroots organization that educates the community about pesticides and promotes safer alternatives in order to ensure that all concerned citizens are integral to policy decisions about pesticide use in their local. NPAC is located at P.O.Box 752 Jamaica Plain, MA 02130.

Petitioner *Citizens Protecting Ohio* is a citizen advocacy group addressing nuclear issues in Ohio. Its postal address is 735 Euclaire Ave, Bexley, OH 43209.

Petitioner *Campaign Recycle Maui, Inc.* a nonprofit community green waste composting operation located in Waikapu, Maui, Hawaii, PO Box 1469, Wailuku, HI 96793.

Petitioner *Help for Sewage Victims* is a Washington State based nonprofit corporation formed in the early 1990s to gather and provide information to victims of sewage sludge, located at 803 S. Main Everson, WA 98247

Petitioner *Vermont Public Interest Research Group* (VPIRG) is Vermont's leading watchdog and advocacy organization. Supported by members since 1972, VPIRG's mission is to promote and protect the health of Vermont's environment, people, and locally based economy. VPIRG is a non-profit, non-partisan organization supported by approximately 20,000 members statewide. Vermont Public Interest Research Group is located at 141 Main St. Montpelier, VT 05602.

Petitioner *The Maine Sludge Alliance* is a partnership of organizations working to protect Maine communities from the environmental and public health threats posed by sludge spreading. It provides local assistance to residents fighting to control sludge spreading in their communities and we advocate for change on the state level, particularly a return to home rule, which would allow towns to enact stricter regulations than state law. Maine Sludge Alliance, PO Box 95, Whitefield, ME 04353

Petitioner *Shenandoah County Alliance Against Toxic Sludge* (SCAATS) is a grassroots organization formed in 1998 to prevent land application of sludge. The petitioner is located at 209 Cannon Hill Road Mount Jackson, VA 22842

Petitioner *Genesis Farm* is a non-profit ecological learning center and community supported agriculture project located at 41A Silver Lake Rd., Blairstown, NJ, 07825. Genesis Farm was founded to explore the connections between the health of our global commons of air, water, soils, and nature, and the health of our local communities and bioregions.

Petitioner *Biosolids Information Group* was created to disseminate factual information about sewage sludge to the public. The petitioner is located at 5160 Crewsville Rd., Bumpass, VA 23024.

Petitioner *Citizens Opposing Sewer Sludge* (COPSS) is a nonprofit organization that opposes the land application of sewage sludge. The organization's mailing address is PO Box 5280, Mohave Valley, AZ 86446.

Petitioner *Valley Citizens for a Healthy Environment* is a nonprofit organization committed to preserving the rural nature of our local community, supporting family farms, discouraging the influx of large, corporate, factory farms, protecting the health of our families by safeguarding the health of our natural environment, and encouraging responsible stewardship of our water resources. The postal address of the organization is c/o Rev. Alice M. Meloy, 22448 Path Valley Road, Doylestown, PA 17219.

Petitioner *Cumberland Countians for Peace & Justice* (CCPJ) is a nearly 30-year-old organization representing congregations & individuals in Tennessee. Contact Rev. Walter Stark, PO Box 154, Pleasant Hill, TN 38578.

Petitioner *Obed Watershed Association* is a volunteer group concerned about the Obed watershed. Contact Rev. Charles Lord, PO Box 464, Pleasant Hill, TN 38578.

Petitioner *Network for Environmental & Economic Responsibility* (NEER/UCC) is a 20 year-old organization and recognized group of the United Church of Christ that has voice at General Synod. The petitioner can be contacted at United Church of Christ, PO Box 220, Pleasant Hill, TN 38578.

Petitioner *Desert Citizens Against Pollution* (DCAP) is a regional environmental justice group that works in the California desert to protect it from becoming a dumping ground for radioactive and toxic waste, municipal garbage, and sewage sludge. DCAP's postal address is P.O. Box 845, Rosamond, CA 93560.

Petitioner *California Communities Against Toxics* (CCAT) is a coalition of 85 environmental justice groups in California, formed in 1989, whose membership is very active on environmental health issues in their communities, such as blocking proposals to land apply sewage sludge throughout California. CCAT is located at 2137 Willowbrook St., Palmdale, CA 93551.

Petitioner *Northumberland Association For Progressive Stewardship*, Northumberland County, Virginia is primarily concerned with environmental issues that affect the county. Its Sewage Sludge Study Group has been actively trying to stop land application in our County, which is located where the Potomac River empties into the Chesapeake Bay. The petitioner is located at P.O. Box 567, Heathsville, VA 22473.

Petitioner *Citizens Against Toxic Sludge*, located at 398 Strickland Loop Road, Livermore Falls, ME 04254, works to keep air and water safe so that they can be used without fear of poison or illness.

Petitioner *Berk's Citizens Against Toxic Sludge* (BCATS) is a grassroots, nonprofit organization. It was formed to oppose the land application of sewage sludge. The organization can be reached at 440 Creek Lane, Lenhartsville, PA 19534.

Petitioner *The Cornucopia Network of New Jersey*, at 86 Elm Street, Montclair, NJ 07042, is a non-profit corporation dedicated to the production, distribution and quality of food in the state of New Jersey. Special focus is the quality of soil and water with an emphasis on composting and monitoring of sludge policies related to application to farmland.

Petitioner *Pennsylvania Environmental Network* is a nonprofit, grassroots alliance organized in 1989 of local citizens groups. Its aim is to network, organize and work for air fit to breathe, water fit to drink, soils safe for farms and environmental justice for all. PEN's sludge team seeks a ban on the land application of sludge and sludge products. PEN's sludge team address is 1880 Pickering Road, Phoenixville, PA 19460.

Petitioner *The Free Press* is an independent, progressive news journal located at 1240 Bryden Road Columbus, OH 43205.

Petitioner *Western Nebraska Resources Council* (WNRC) a non-profit organization, formed originally in 1983 to educate folks on the dangers of the nuclear power cycle, has enacted policy changes through litigation and education. We work on issues that threaten the purity of our land, water and air. WNRC's postal address is PO Box 612 Chadron, NE 69337.

Petitioner *Menifee Valley Community Economic Development Council* is a non-profit organization that provides community assistance around environmental and other issues. Its postal address is CEDCO, P.O. Box 2111, Sun City, CA 92586.

Petitioner *Neighbors Against Toxic Sludge* (NATS) is a nonprofit organization working to prevent the land application of sewage sludge. The organization's mailing address is PO Box 684, Hamilton, VA 20159.

The *Blackland Prairie Concerned Citizens Association* (BPCCA) address is P.O. Box 272, Manor, TX 78653. The BPCCA is a neighborhood association in northeast Travis County Texas. Its primary purpose is to preserve the rural way of life that has been prevalent in the area for over 100 years. The goal is to control development so that it is compatible with agriculture and the rural lifestyle that the residents of the area cherish and enjoy.

Petitioner *The Lancaster County Green Party* is a Pennsylvania political group that hopes to use elected office as a means to bring positive, sustainable, environmentally friendly practices into social functions. Its mailing address is Lancaster County Green party, PO Box 8922, Lancaster, PA 17602-8922.

Petitioner *Northwest Environmental Advocates* was formed in 1969 to work through advocacy and education to protect and restore water and air quality, wetlands, and wildlife habitat in the Pacific Northwest. The organization's postal address is P.O. Box 12187, Portland, OR 97212.

Petitioners are represented in this Petition for Rulemaking by The Center for Food Safety, located at 660 Pennsylvania Ave., SE, Suite 302, Washington, DC 20003, (202) 547-9359, office@centerforfoodsafety.org. Co-counsel is The Community Environmental Legal Defense Fund, Inc., located at 2859 Scotland Road, Chambersburg, Pennsylvania 17201, (717) 709-0457, info@celdf.org.

III. STATEMENT OF LAW

Preamble, The Constitution of the United States of America 1787:

We the people of the United States, in Order to form a more perfect Union . . . and *promote the general Welfare* . . . do ordain and establish the Constitution for the United States of America.

The Environmental Protection Agency's Mission Statement:

The mission of the U.S. Environmental Protection Agency is to protect human health and to safeguard the natural environment – air, water, and land – upon which it depends. EPA's purpose is to ensure that [a]ll Americans are protected from significant risks to human health and the environment where they live, learn, and work . . . [and that] Federal laws protecting human health and the environment are enforced fairly and effectively.

Solid Waste Disposal Act, Section 1003, 42 U.S.C. §6902 (a):

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by . . . assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment . . . [and] requiring that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date.

Solid Waste Disposal Act, Section 1003, 42 U.S.C. §6902(b):

Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

Clean Water Act, Section 405, 33 U.S.C. § 1345 (d) (2) (A) (i):

Not later than November 30, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying

acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1) (A).

Clean Water Act, Section 405, 33 U.S.C. § 1345 (d) (2) (C):

From time to time, but not less often than every 2 years, the Administrator shall review the regulations promulgated under this paragraph for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants and promulgating regulations for such pollutants consistent with the requirements of this paragraph.

Clean Water Act, Section 405, 33 U.S.C. § 1345 (d) (2) (D):

The management practices and numerical criteria established under subparagraphs (A), (B), and (C) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant.

Safe Drinking Water Act, Section 1431, 42 U.S.C. §300i(a):

Notwithstanding any other provision of this subchapter the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons.

Clean Air Act, Section 101 and 303, 42 U.S.C. §7401 and 7603:

The purposes of this subchapter are to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.

....

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary.

The Comprehensive Environmental Response, Compensation, and Liability Act, Section 101 *et seq.*, 42 U.S.C. §9601 *et seq.*

U.S. Constitution, Amendment I.

Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*

IV. STATEMENT OF GROUNDS AND ARGUMENT

The land application of sewage sludge is used today for disposal of sewage sludge from wastewater treatment plants. Since the EPA began regulating this practice ten years ago, millions of tons of sewage sludge containing heavy metals and other hazardous materials have been disposed of on farmland in the United States. There is considerable anecdotal evidence that the land application of sewage sludge--both before and after the EPA began regulating the practice in 1993--has caused harm to people, livestock, and the environment.

In a recent legal case--the first to our knowledge where the damages and litigation occurred after the EPA's regulatory program was in place--the claim of harm done by the land application of sewage sludge was litigated through to judgment by a court in the United States. For several years through 1998, sludge was applied to farmland on the Boyce family farm. After the unexplained death of 300 cows, Boyceland Dairy of Burke County, Georgia, sued the city of Augusta, claiming that toxic metals in the city's sewage sludge poisoned their cattle and their land. On June 24, 2003, a court in Georgia ruled that the land application of sewage sludge was the legal cause of the damage to the farmland and the deaths of the farm's prize-winning cattle.^d

Neither the EPA nor the state took any enforcement action against the land application of sewage sludge on the Boyce farm and, according to EPA, this application of sewage sludge was in compliance with EPA's 1993 rules regulating this practice.⁵ Federal and state sludge regulations, and the EPA's enforcement of its regulations, did not prevent toxic levels of heavy metals in sewage sludge from poisoning the feed and causing the deaths of hundreds of cows on the fourth generation Boyce family farm. As Mr. William Craven, a retired Burke County Extension director with 33 years experience in the dairy industry succinctly observed, "The Boyce farm was the only farm in Burke County with sludge on it and the only one with dying cows." Clearly, EPA regulations and programs to protect public health and the environment from the land application of sewage sludge are not working.

A. BACKGROUND

Sewage is an unpredictable mixture of whatever enters the sewers. Sewage sludge may include human waste, industrial waste, hospital waste, runoff, landfill leachate, radioactive waste, and hazardous waste from known and unknown sources. The inevitable byproduct of sewage treatment is sludge (more or less cleaned water is the desired product). Sewage sludge is a toxic mix of heavy metals, synthetic organic compounds (*e.g.*, PCB's and related compounds), surfactants, pathogens,

⁴ *BOYCELAND DAIRY V. CITY OF AUGUSTA*, No. 2001-RCCV-126 (Richmond County Super. Ct. 2003); *See* Robert Pavey, *Jury: Augusta Responsible for Cattle Deaths*, *AUGUSTA CHRONICLE*, June 24, 2003.

⁵ *Memorandum from Richard Green and Robert F. McGhee, EPA Region 4, to Tim Fields, EPA Assistant Administrator, Office of Solid Waste Emergency Response, and Chuck Fox, EPA Assistant Administrator, Office of Water* (Nov. 2, 1999). [hereinafter "EPA Memo"].

and radioactive contaminants. There are as many as 100,000 chemicals used in American industry, and every year about a thousand new chemical compounds are put into commercial use.⁶ All of these can potentially enter the wastewater stream and any that do can end up in the sludge.

After initiating the sewage sludge regulatory program in 1993, the EPA introduced the public relations term “biosolids,” which it uses interchangeably with the technical term “sewage sludge”. Sludge is promoted by the EPA to farmers and the public all over the country as a safe fertilizer for fields or home gardens. Since wastewater treatment plants are not designed, and cannot be designed, to alter the toxicity or hazardous characteristics of heavy metals and organic chemicals that enter the wastewater treatment plant, such hazardous materials that the treatment plant is able to remove end up in the sludge either unaffected or incidentally affected – for better or for worse.

Since the EPA initiated its sludge regulatory program ten years ago, millions of tons of sludge have been land applied as fertilizer as well as being disposed of in landfills. Congress has not provided EPA the resources necessary to assure that the sludge regulatory program protects public health and the environment. The result is a growing body of evidence that the land application of sewage sludge has caused specific and measurable harm to people, animals, and the environment.

Though EPA has no system to track and respond to health complaints related to exposure to sewage sludge, over three hundred and fifty people have reported sludge-based health incidents to the Cornell Waste Management Institute alone.⁷ Symptoms have characteristically included: asthma, weight loss, fatigue, eye irritations, flu-like symptoms, gastrointestinal complications, headaches, immunodeficiency problems, lesions, nausea, nosebleeds, rashes, respiratory complications, abscesses, reproductive complications, cysts, and tumors.

There have been at least three cases of human death attributed to EPA regulated sewage sludge, and thousands of people who have suffered health effects from the land application of sewage sludge. In 1994, Tony Behun, an eleven-year-old boy from Pennsylvania, became suddenly ill with skin lesions, fever, and respiratory problems. He died from kidney failure four days later. Immediately before getting sick, he had ridden his bike through a mine reclamation field where sludge was being dumped. In November 1995, twenty-six year old Shayne Conner went to bed in his home next door to a field where sludge was land applied under the provisions of EPA’s sewage sludge program. He awoke with symptoms similar to Behun’s and died a short time later.⁸ Russell and Antoinette Pennock’s seventeen-year old son, Daniel, died in 1995 of a massive bacterial

6 Robert C. Hale and Mark J. LaGuardia, *Have Risks Associated with the Presence of Synthetic Organic Contaminants in Land-Applied Sewage Sludges Been Adequately Addressed?*, 12 NEW SOLUTIONS: J. ENV. & OCCUPATIONAL HEALTH POLICY 371, 372 (2002).

7 Cornell Waste Management Institute, *Clustering of Biosolid Land-Application Alleged Health Incidents by Locality*, <http://www.cfe.cornell.edu/wmi/Sludge/Incidents.htm> (last updated Feb. 10, 2003). See also Ellen Z. Harrison and Summer Rayne Oakes, *Investigation of Alleged Health Incidents Associated with Land Application of Sewage Sludges* 12N EW SOLUTIONS: J. ENV. & OCCUPATIONAL HEALTH POLICY 387 (2002).

8 John K. Carlisle and Michael J. Centrone, *Is the EPA Killing People?*, <http://www.enterstageright.com/archive/articles/1200epa.htm>.

infection after walking on a field where sewage sludge had been applied.⁹ To the best of our knowledge, the land application of sewage sludge in all three cases was performed in a manner consistent with EPA's regulatory program for sewage sludge and we have found no record that EPA took any enforcement action for any of the sludges applied being out of compliance with the EPA regulatory program.

The EPA categorically denies that land applied sewage sludge is harmful. But the claim of harm to animals and land was recently litigated to judgment by at least one court in the United States.¹⁰ On June 24, 2003, after reviewing detailed evidence, a Richmond County, Georgia jury found that sewage sludge from the city of Augusta was responsible for killing cows and damaging farmland at the Boyce family farm.

A 1999 EPA memorandum documents that the Augusta wastewater plant was "disposing of its sewage sludge in accordance" with EPA's regulatory program, intended to protect the public health and environment from the land application of sewage sludge. In response to the Boyce suit, EPA completed a Compliance Evaluation Inspection and a Diagnostic Evaluation of the plant's treatment processes and found that "[b]ased upon the findings of the inspections, the City was in substantial compliance with the 40 CFR Part 503 regulations."¹¹ Further, EPA documented the fact that they completed a review of "available historical analyses" of the land application of Augusta sludge and documented that "[d]ata reviewed to date indicates that the sludge is not a hazardous waste pursuant to the toxicity characteristic, either historically or at present."¹²

Toxic sewage sludge like Augusta's is being land applied under EPA's regulatory program all over the country. Examples of the kinds of unpredictable hazardous materials contained in sludge are high concentrations of polybrominated diphenyl ethers (PBDEs), a chemical used in flame retardants and related to PCBs, and nonylphenols, a product of the degradation during wastewater treatment of surfactants used in detergents. A recently published study found both of these chemicals at toxic levels in sewage sludge.¹³

The EPA Office of the Inspector General (OIG) completed two assessments in 2000 and 2002 of the EPA sewage sludge program. The 2000 report declared that the EPA did not have an "effective program for ensuring compliance with the land application requirements of the Sludge Rule."¹⁴ This report further documented that EPA performed "virtually no inspections" of land application sites and few inspections of treatment plants or land applicators." The report also documented the lack of resources committed to sludge and the low priority placed on the sludge

9 Kathleen Fackelmann, *Some Fear That Using Sewage Sludge as a Fertilizer is a Public Health Hazard*, USA Today, September 30, 2002, http://www.usatoday.com/news/health/2002-09-30-sludge-usat_x.htm.

10 Boyceland Dairy, *Supra* note 4.

11 Green, *Supra* note 5.

12 *Id.*

13 Hale, *Supra* note 6.

14 Christopher Conrad, *Comment: Sewage Sludge and Land Application Practices: Do the Section 503 Standards Guarantee Safe Fertilizer Usage?* 9 DICK. J. ENV. L. POL. 147, 159 (2000).

program by the EPA. The follow-up report in 2002 documented that "EPA cannot assure the public that current land application practices are protective of human health and the environment."¹⁵ The report also documented that there had been an almost 50% reduction in EPA enforcement resources since the earlier assessment.¹⁶ The report documented EPA's failure to create formal processes for tracking and responding to human health complaints related to land application of sludge.¹⁷

Because of the inherently unpredictable and inherently hazardous nature of sewage sludge, the EPA is, in fact, unable to implement any program or regulatory scheme to protect public health or the environment from the land application of sewage sludge. Allowing the continued land application of sewage sludge runs contrary to the EPA's statutory mandate to "protect public health and the environment from any reasonably anticipated adverse effects" of pollutants in sludge.¹⁸ We believe, therefore, EPA has no proper option but to ban the practice of the land application of sewage sludge in order to be in compliance with EPA's statutory mandate to "protect public health and the environment from any reasonable anticipated adverse effects" of the pollutants in sewage sludge.¹⁹

V. CERTIFICATION

The undersigned certify that, to the best of their knowledge and belief, this petition includes all information and views on which the petition relies, and that it includes representative data known to the petitioner that are unfavorable to the petition.

VI. CONCLUSION

For the reasons contained herein, the petitioners demand that the EPA Administrator Designee Michael Leavitt undertake the following actions as outlined above:

I. Place an immediate moratorium on the land application of sewage sludge.

- (1) Freeze the issuance of new National Pollutant Discharge Elimination System (NPDES) permits authorizing the Land Application of Bulk Sewage Sludge.
- (2) Rewrite and reissue NPDES permits to require a method of sludge disposal other than land application to replace all NPDES permits currently in force that allow the Land Application of Bulk Sewage Sludge.

15 EPA Office of the Inspector General, *STATUS REPORT ON LAND APPLICATION OF BIOSOLIDS* at 7 (March 28, 2002) [hereinafter "OIG 2002 REPORT"].

16 *Id.*

17 *Id.*

18 Clean Water Act, Section 405, 33 U.S.C. § 1345 (d) (2) (D)

19 *Id.*

(3) Initiate rulemaking to change the Part 503 Sludge Rule (promulgated under the authority of the Clean Water Act at 40 C.F.R. §503) to eliminate land application as an acceptable practice for sludge disposal.

As established by 5 U.S.C. § 555(e), petitioners request that the agency give this citizens' petition prompt attention, and provide an answer, including a statement of the reasons for denial if denied, within sixty (60) calendar days.²⁰ Failure to respond within a reasonable time will be construed as constructive denial of the requests contained herein and petitioners will then consider the pursuit of litigation to (1) compel agency rulemaking necessary for the protection of human health and the environment, and (2) hold the agency accountable for failing to protect human health and the environment through proper standards.

Respectfully submitted this _____ Day of _____, 2003.

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²⁰ The Clean Water Act requires that proposed Plaintiffs file a Notice of Intent to Sue within sixty days of filing a lawsuit against the Administrator. *See* CWA at §505 (b), 33 U.S.C. §1365(b). The Solid Waste Disposal Act (as amended by RCRA), the Clean Air Act, the Safe Drinking Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act, contain similar provisions, requiring sixty day Notices of Intent to Sue or less. *See* SWDA at §7002(b), 42 U.S.C. §6972(b); CAA at §304(b), 42 U.S.C. §7604(b); SDWA at §§1448, 1449, 42 U.S.C. §§300j-7(a), 300j-8(a); CERCLA at §310, 42 U.S.C. §9659(a).

This Petition serves as a Notice of Intent to Sue under each of those statutes and meets the regulatory requirements established for those Notices. *See, e.g.* 40 CFR §135.3 (requiring a Notice of Intent to Sue under the CWA to include provisions of the Act violated, a description of the failure to act by the Administrator, and a listing of the Petitioners with their addresses and telephone numbers, along with an identification of counsel). Petitioners note that unreasonable delay in agency rulemaking may also result in litigation under the Clean Air Act, and other laws. *See e.g.*, 42 U.S.C. § 7604(a) (requiring notice prior to commencement of an action for unreasonable delay). *See, e.g.*, 21 C.F.R. § 10.30 (e) (2) (1998) (example of agency implementation of the Administrative Procedure Act's petitioning provisions). This Petition also serves as a Notice of Intent to Sue to enforce the prohibition against unreasonable delay of agency rulemaking.

CC:
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