

CIBO - CLEAN AIR ACT LITIGATION - Updated September 11, 2009

CONFIDENTIAL

<p><u>NSPS</u></p> <p>New York v. EPA 06-1148</p> <p>OAR-2005-0031</p> <p>"Standards of Performance for Electric Utility Steam Generating Units, ICI Steam Generating Units, and Small ICI Steam Generating Units," Final Rule 71 FR 9866 (02-27-06)</p> <p>Brief format panel Rodgers Garland Griffith</p> <p>Merits panel: Rodgers Tatel Brown</p>	<p>Petitioners: NY, CA, CT, ME, NM, OR, RI, VT, WI, MA, DC, City of NY</p> <p>Intervenors for Petitioner: Environmental Defense NRDC Sierra Club</p> <p>Amici for Petitioner: Entergy Corp. NJ -----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: UARG WA, DE</p> <p>NSPS Litigation Group: AF&PA AISI API Business Roundtable CRA CIBO Nat'l Oilseed NPRA SOCMA</p>	<p>Final Rule 02-27-06</p> <p>CO2 issue remanded to EPA 09-24-08</p> <p>Final Brief 08-29-08</p> <p>EPA motion for voluntary remand 08-19-09</p> <p>Court granted voluntary remand 09-04-09</p> <p>Oral Argument (Da at issue) 09-14-09</p>
<p><u>NSPS – CO2 Issues</u> 06-1322</p> <p>Motion to sever panel: Henderson Griffith Kavanaugh</p>	<p>(See above)</p>	<p>Motion to sever & hold in abeyance pending US Supreme Court decision in Mass v. EPA granted 09-13-06</p> <p>Case remanded to EPA for further proceedings in light of Mass v. EPA (127 S.Ct. 1438), denying request for vacatur and summary reversal 09-24-08</p>

<p><u>Ozone NAAQS</u></p> <p>Mississippi v. EPA 08-1200</p> <p>Challenging "National Ambient Air Quality Standards for Ozone," Final Rule 73 Fed Reg 16436 (03-27-08)</p> <p>DC Circuit (Panel not yet named)</p> <p>Motions judges: Ginsburg Tatel Griffith</p>	<p>Petitioners: MS, NY, CA, CT, ME, NM, OR, PA, RI, MA, MD, NJ, NH, DE, DC, IL, City of NY, California Air Resources Board</p> <p>Intervenors for Petitioner: Missouri DNR AL County of Nassau</p> <p>Amici for Petitioner: Province of Ontario -----v.----- ---</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: Natural Resources Defense Council American Lung Association Appalachian Mountain Club Environmental Defense Fund National Association of Home Builders Utility Air Regulatory Group Ozone NAAQS Litigation Group</p>	<p>Petition for Review 05-27-08</p> <p>Cases consolidated 05-29-08</p> <p>Order granting Motions to Intervene for Respondent 06-30-08</p> <p>Order granting Motions to Intervene for Petitioner 07-18-08</p> <p>EPA Motion for Reconsideration challenging AL Motion to Intervene 07-28-08</p> <p>Order granting Reconsideration of AL's Intervenor Status 10-08-08</p> <p>Order suspending briefing; case held in abeyance pending further order of the court. 03-19-09</p> <p>Order granting motion of Missouri DNR to withdraw as a party 06-16-09</p> <p>Order directing EPA to inform the court of the action it will take and its schedule for taking that action by 09-16-09 03-19-09</p>
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<p><u>CEM Rule Revision (Protocol Gas Verification Program)</u></p> <p>Air Liquide America Specialty Gases LLC v. EPA 08-1129</p> <p>UARG v. EPA 08-1127 (consolidated)</p> <p>"Revisions to the Continuous Emissions Monitoring Rule for the Acid Rain Program, NOx Budget Trading Program, Clean Air Interstate Rule, and the Clean Air Mercury Rule," 73 Fed. Reg. 4312 (01-24-08)</p>	<p>Petitioners: Air Liquide UARG -----v.----- -----</p> <p>Respondent: EPA</p>	<p>Petition for Review</p> <p>Cases consolidated; held in abeyance</p> <p>Status reports filed</p> <p>Discussions among parties ongoing.</p> <p>EPA posted a web statement notifying sources that no action is needed to comply with new part 75 text regarding the protocol gas verification program:</p> <p>"The processes and procedures described in the latest draft Protocol Gas Verification Program Implementation Plan dated February 2008 are not effective and therefore the January 1, 2009, compliance dates referenced in 40 CFR §72.2 and 40 CFR part 75, Appendix A §5.1.4 and discussed in the preamble of the above-mentioned rulemaking do not refer to nor are they effective with respect to the draft PGVP Implementation Plan. A revised procedure will not be effective until EPA goes through notice and comment rulemaking on any revised procedure. Please continue to check "Recent Additions" on the CAMD web site at: http://www.epa.gov/airmarkets/ for the latest developments." http://www.epa.gov/airmarkets/whatsnew.html</p>	<p>03-24-08</p> <p>05-02-08</p> <p>05-04-09 08-03-09</p> <p>10-29-08</p>
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<p><u>SSM</u> (Start-Up/Shutdown Malfunction)</p> <p>Sierra Club v. EPA 02-1135 (and consolidated) OAR-2004-0094</p> <p>"National Emission Standards for Hazardous Air Pollutants: General Provisions," 71 Fed Reg 20446 (04-20-2006)</p> <p>Panel judges: Randolph Rogers Tatel</p>	<p>Petitioners: <i>Environmental Petitioners:</i> Sierra Club Coalition for Safe Environment Environmental Integrity Project Friends of Hudson LA Envrio. Action Network</p> <p>American Chemistry Council Coalition for Clean Air Implementation Coalition for Responsible Waste Incineration Portland Cement Alliance Cement Kiln Recycling Coalition Nat'l Enviro. Development Assoc. Clean Air Regulatory Project</p> <p>Intervenors for Petitioner: American Chemistry Council Alliance of Automobile Manufacturers Nat'l Enviro. Development Assoc. Clean Air Regulatory Project</p> <p>-----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: National Paint & Coatings Association Clean Air Implementation Project Air Permitting Forum American Forest & Paper Association American Petroleum Institute Nat'l Petrochemical & Refiners Association</p>	<p>Oral Argument 09-12-08</p> <p>Petitions for Review granted, SSM exemption vacated 12-19-08</p> <p>NEDA/CAP and Industry Coalition Petition for Rehearing en banc or stay of mandate 04-03-09 - EPA opposed Rehearing en banc and stay of mandate 05-29-09</p> <p>Kushner EPA memorandum regarding vacatur 07-22-09</p> <p>Per Curiam Order denying petition for rehearing En Banc 07-30-09</p> <p>Respondent EPA motion to stay mandate 08-05-09</p> <p>Intervenors motion to stay mandate 08-06-09</p> <p>Respondents response in opposition to motion to stay 08-31-09</p>
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<p><u>Johnson Memo</u></p> <p>Sierra Club v. EPA 09-1018</p> <p>The Johnson Memo was issued 12-18-08 in response to EAB remand of a permit that had been issued for the new coal-fired Deseret Power plant. In the Johnson Memo, EPA concluded that because CO2 is subject only to monitoring and reporting under the CAA, it is not "regulated." Under that reasoning, the permit issued to Deseret need not establish BACT for CO2.</p>	<p>Petitioners: Sierra Club NRDC Environmental Defense</p> <p>Intervenors for Petitioner: Indiana Wildlife Federation Michigan Environmental Council Ohio Environmental Council</p> <p>-----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: CIBO ERCC UARG Deseret Power US Electric Cooperative CofC ACC American Coke and Coal Chemicals Institute AF&PA American Iron and Steel Institute American Petroleum Institute National Association of Manufacturers National Oilseed Processors Association Nat'l Petrochemical & Refiners Association Rubber Manufacturers Association Clean Air Implementation Project</p>	<p>Statement of Issues filed 02-17-09</p> <p>Order granting EPA motion to hold case in abeyance pending administrative reconsideration 02-19-09</p> <ul style="list-style-type: none"> - EPA must file status reports at 90-day intervals - Parties must file motions to govern future proceedings within 30 days of EPA's completion of reconsideration proceedings <p>EPA filed status report: agency reconsideration in progress; request for continued abeyance 09-08-09</p>
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<p><u>Wisconsin SIP NSR</u></p> <p>NRDC v. Lisa Jackson 09-1045 (U.S. Court of Appeals, 7th Circ.)</p> <p>Petition for Review of Final Rule "Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; New Source Review Reform "Linkage" Rule, Rule AM-32-04b," 73 Fed Reg 76,558 (December 17, 2008) (EPA-R05-OAR-2006- 0609)</p> <p>Petitioners challenging EPA's approval of NSR reforms for inclusion in the Wisconsin SIP. Specific arguments not detailed in Petition for Review, but likely limited to the substantive and procedural issues detailed in the Sierra Club's May 21, 2007 comments (Docket ID No. EPA-R05-OAR- 2006-0609-0006.1)</p>	<p>Petitioners: NRDC Sierra Club Environmental Defense</p> <p>Intervenors for Petitioner: Indiana Wildlife Federation Michigan Environmental Council Ohio Environmental Council</p> <p>-----v.-----</p> <p>Respondent: Lisa Jackson, Administrator, EPA</p> <p>Intervenors for Respondent: Air Permitting Forum UARG Wisconsin Manufacturers and Commerce Inc. Wisconsin Paper Council Inc.</p>	<p>Petition for Review filed 02-17-09</p> <p>Settlement Conference 03-04-09 Proceedings suspended</p> <p>Order granting motions to intervene 03-23-09</p>
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