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Technical Focus, Energy & Environmental Committee Meetings

June 10-11, 2014
Radisson Hotel, Reagan National Airport
Arlington, VA
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M I N U T E S

TUES-WED June 10-11, 2014

TECHNICAL FOCUS GROUP SESSION

Jason Philpott, Eastman Chemical Company, Technical Committee Chairman

Moderator - **Eric Hallman**, Cargill Incorporated

Russell Bailey of Trinity Consultants Inc., reported on Rule Requirements for Performance Testing and Monitoring Certification. Boiler MACT for industrial units and MATS for utility units have specific requirements for testing and monitoring. The utility date is April 16, 2015 and the industrial date is Jan. 31, 2016. The initial compliance demonstration is within 180 days after the compliance date. An initial tune up must be completed by the compliance date. An energy assessment is required for the industrial units. A notification to test is required 60 days before the test. Test reports must be submitted to EPA's Compliance and Emissions Data Reporting Interface (CEDRI). Compliance reports must also be submitted. Performance test results must be submitted within 60 days after the test. CEMS RATA evaluations also must be submitted. The format is the Emissions Reporting Tool (ERT).

The industrial units have requirements for CO, PM, HCl, and Hg. The utility units do not have a CO requirement. For the industrial units, a CO CEMS can be used instead of a stack test. For utility units, an SO2 CEMS can be used instead of a stack test of HCl. For industrial units, a site specific test plan is required. A representative operating load must be selected. A worst case fuel with the highest levels of mercury, chlorides and PM is supposed to be selected. The test sets operating load conditions for future operations. For utility units, a maximum load must be selected (up to 110%).

There is a low emitting option. This allows the testing frequency to expand to 3 years if the testing results are below 50% of the threshold. For ongoing compliance, there are different assumptions on the existing fleet. For industrials there are many different types of units and few CEMS. Most compliance methods are parametric monitoring systems (CPMS). For utilities there are quarterly reporting requirements relying on CEMS as there are limited types of units and fuels and most have CEMS for emissions reporting. For industrials, there needs to be an oxygen monitor or CO CEMS. For PM, the larger units (> 250 MMBTU/hr) have to have a PM CEMS or PM CPMS, unless the unit can use the Total Selective Metals test. For a PM CPMS, the different measurement systems must show that the system can detect and respond to changes as low as 0.5 mg/Nm3. For fabric filters, a COM system or bag leak detection system is required. For chlorides, the injection rate for dry sorbent or the pH of a wet system must be measured. For mercury, the additive injection rate must be monitored. For utilities, either CEMS or quarterly stack tests are required, with the exception of mercury, which has a 30 day test for the Low Emitting Option each year, but otherwise needs a

mercury CEMS. As an additional note, for new natural gas units, a number of states still have NOx SIP call requirements, including registration with the Clean Air Markets division.

Dan Todd of Air Quality Services, LLC., reported on Performance Testing and particularly the 30 Day Absorbent Test for Mercury MATS Low Emitters. Performance testing requires advance planning and considerations. Stack testing is required for a number of reasons including compliance, guarantee provisions, or R&D issues. Communications is a key factor.

There will be a number of people involved from different parts of the company and different companies. Set up an overall coordinator so that all that will be involved are kept up to date and are aware of the schedule and the requirements. It is a good idea to get in touch with the appropriate state agency in advance, especially if this is a non-routine test or a first time test. An experienced test person should be identified early and be available during the test. It is important to keep everyone informed and up to date about goals, expectations, and progress. All safety requirements need to be identified and satisfied. Test location and operating conditions need to identified and verified. The permit/regulation requirements should be double checked to assure that the proper test methods and protocols are being used. Visual Emissions requirements need to be investigated. The expectations for the submittals and notifications all need to be defined and assigned. Even signature authorizations need to be checked.

Regulations and requirements can change with the "stroke of a pen". There are 94 subparts for NSPS, 22 subparts for HAP, and 133 subparts for NESHAPS. Even Method 5 (for particulate testing) has a change of one word about the temperature of the sampling train. It used to say, "may be tested at 320 F". It now says, "**must** be tested at 320 F". It is no longer optional. Nominal conditions of temperature, pressure, flow, moisture, and concentration should be properly identified in advance, and shared with testing contractor. In preparation for the test day, unit conditions should be checked and brought up to good operating status. Plant maintenance should not be done during the test. Stable operating conditions are required for a test. That includes fans, dampers, valves, fuel feed, and process conditions. Collecting additional data is a good idea so that the potential for data correlation exists. Post test activities should be identified and defined. The timetable and responsibility for report submittals should be clearly defined. A test contractor needs to be identified and secured for the test; in most cases it is not required that the contractor be certified, but it is a good place to start in the selection process. Availability and experience are also key factors for successful testing. Although certification is not required for part 63, it is required for parts 72 and 75. Preliminary tests and contingency days should be considered.

For units that are routinely in compliance with no changes in the last year, preliminary testing or contingency days may not be needed. For first time testing, it is a good idea to consider them. Allow enough time, energy, and budget for the testing. There are a number of resources that are available for advice and experience on stack testing. For particulate testing, traversing is required. For gaseous emissions, the test locations need to be checked to see if the flow is stratified. If not, a single point test closest to the average is allowed. If stratification is present, there are rules for the degree of traversing that is required.

The Low Emitting EGU, LEE, has special requirements in the MATS rule. If the EGU is new, LEE cannot be used for mercury. If the unit has an SO2 scrubber, it cannot use LEE. Otherwise, LEE can be applied for each individual HAP. If the unit is consistently below 50% of the stand for 3 years, the stack testing requirement becomes every 3 years instead of every year. Thus, a 30 Mw biomass unit

that sells 1/3 of its electrical output to the grid is a solid fueled electrical generating unit that is subject to MATS. If the biomass is low in chlorides and particulates, and has low CO levels, it can qualify for LEE and only test for those elements every 3 years after the first 3 years of testing. State permit requirements will still have to be followed.

For mercury, the unit must conduct a 30 day performance test using Method 30(b). This method uses sorbent traps to capture mercury from the sample and measure the nanograms collected. The traps are not allowed to run more than 10 days at a time, thus, at least 3 test runs of 10 days each are required with paired traps – it is allowable to use shorter run times with more runs. The relative deviation on the two traps is evaluated for Q/A. There are also special sections of the trap that evaluate break through and calibration. Activated carbon is the trap material. A low gas flow rate is used to assure capture. These are not really good for fine-tuning control systems due to the length of time between actual measurements. Mercury CEMS are still in the development phase. Stack gas moisture measurements will be required as well as hourly electrical load data. The detailed calculations are located in 40 CFR 10005(h). To maintain LEE status the source must conduct a performance test every year and be less than 10% of the applicable emissions standard.

Eric Hallman, Cargill Incorporated, reported on Certification Testing for CEMS. The cabling of the sample line needs to be carefully considered. The certification requirements for 40 CFR 60 Subpart Db. This applies to units built after 1984. For units over 250 MMBTU/hr for coal and oil required PM, NOx, and SO2 CEMS. For gas, only NOx CEMS are required. For many states, the are NOx limits under 0.1 lb/MMBTU. Reference gases are needed for CEMS units in order to calibrate the various monitors. For Certification, an Initial Certification Performance Test is required within 180 days of initial start up. There are Quarterly Accuracy Determinations with calibrated gases. There is an Annual RATA test. There are daily calibrations with the reference gases. For a new gas unit over 100 MMBTI/hr, that fired only natural gas, there would be no SO2 or PM requirements, but there would be a NOx requirement. These would include standards for NOx that apply at all times with a 30 day rolling average. Fuel amounts have to be reported on daily and annual basis. Additional reporting requirements include excess emission reports, testing reports, and notification reports. For certification and other testing, planning is important as there are load requirements for the testing. The unit needs to be available at the required load for the testing. It is good practice to work with calibration gas supplier for the gas bottles for both supply and replacement, as well as Part 75 calibration gas certification.

ENERGY SESSION
Frederick (Fred) P. Fendt, The Dow Chemical Company, Energy Committee Chairman
Robin Mills Ridgway, Purdue University, Energy Committee Vice-Chairman

Robin Mills Ridgway, Purdue University, is co chair of the committee and filling in for **Fred Fendt**. Fred's wife is anticipating the birth of their first child any day now and was not able to attend. Robin and Bob Corbin wore yellow shirts in Fred's honor. **Bob Corbin** introduced the new members from ABB, Horn Industrial Services, and Indeck Keystone Energy, LLC. We also had some guests from Cabot, Environ, and Southern Environmental. We did the usual "around the table" introductions. Grant McIntyre of Bracewell & Giuliani LLC. gave the anti-trust admonition.

Bruce Johnson of Johnson Controls reported on the Advanced Energy Management Alliance. The Alliance is a new organization that aims to empower consumers through demand response management. The organization advocates for and educates on policies that empower and

compensate consumers through demand response. Alcoa Inc. is one of the 12 members as well as Walmart. The organization is actively seeking new members. The primary focus will be on FERC filings in key dockets involving demand response. The Regional Transmission Organizations (RTOs) can also benefit from demand response.

The demand response process involves a company that acts as a broker that buys the resource from the generator and sells it to the RTO. Most of the activity thus far has focused on PJM, partly due to location and partly due to some current proposals in PJM that were not favorable to demand response. Plant owners can get compensated for their willingness to curtail demand when the RTO is running out of resources. This stems from FERC Order 745. The US Circuit Court recently over turned Order 745. This ruling is of concern. Perhaps NERC (which is under FERC) could take the issue as a reliability issue. One of the issues with demand response would be grid control (smart grid). In some instances, these actions reduce the overall price of electricity, which now make the cost of instrumentation and control less attractive. Figuring out how to share the overall cost with all of the consumers that benefit is a problem. (This is also true of other ancillary services on the grid.)

Bob Fraser of Environmental Resources Management (ERM) reported on a case study for Energy Assessments. Area Source Energy Assessments were due to be completed by March, 2014. ERM has now done 53 assessments. The first case study involved a 20 Mw biomass to energy plant. The affected boiler is a base loaded "small power producer". It has decent steam conditions of 700 psig and 900 F. The plant has ash reinjection as well as an economizer and air preheater. For Nox, they have SNCR and advanced OFA. The exit gas temperature is 310 F. There is an oxygen trim system. They are very concerned about parasitic power and measure and report those routinely. They also have an SCR for certain state requirements. The total parasitic load is about 7%. All of the steam goes to the steam turbine, which is the main "energy use system".

For 35 years, this plant has been trying to reduce parasitic load in order to improve their performance to save cost. They have implemented every energy project with a 3 year pay back. They have automated blowdown with a blowdown heat exchanger. Variable speed drives have been installed on ID fan motors cooling tower fan motors. The ESP is on power management. Sonic horns, water lances, ash modifications, and soot blowers have been modified to reduce steam use. Wood contracts have been renegotiated to pay on a BTU basis. The air system has been modified using CFD to minimize pressure drop and maximize performance (low CO and low UBC). The next project will be a steam turbine upgrade. The blades will be replaced during the next overhaul. The fuel quality is being managed. Wet wood causes issues with excess air and high moisture loss. Covered storage was evaluated, but the payback was more than 10 years. Maintaining the wood pile higher tends to help dry out the wood. Otherwise, the owner had already done most of the energy efficiency concepts that could be implemented.

The next case has 2 fire tube boilers of 400 horsepower with steam at 150 psig. The plant handles #6 oil storage to maintain proper viscosity. The unit has access to firm natural gas. As it turned out, the firm access to gas meant that they did not need to do an energy assessment. They did retrofit an economizer on the unit to bring the exit gas temperature down. They also completed a steam trap inspection program and a tank insulation upgrade. The major use system is the tank farm that stores the oil. Energy projects that were identified included an automated O2 trim system (boiler operating at 8% O2 vs 2 - 3% O2), one uninsulated tank, and fixing leaking steam traps.

For the 3rd case, a college campus has 2 gas fired boilers build in 1972. The capacity is 55 kpph with 125 psig. These 2 older boiler are essentially back up boiler. The original brick stack is still being used. The major energy use systems are the absorption chillers and campus heat. There are 17 buildings with no particular big users. There was no one operation that used more than 20% of the steam that is produced. Therefore, the end use of steam did not fall under the study. Projects that had already been completed included a new CHP system, a new gas fired boilers, drum heaters, steam trap inspection & repair, insulation maintenance, and fuel savings programs. The identified energy projects were boiler oxygen control, oil tank heating, and lighting upgrades. The oil tank is being heated to provide back up for the gas fired units. Going to light oil might be a possibility.

For these assessments, usually 2 energy assessors are sent on site. The assessment time is from a half day to 1.5 days. Travel expense is an important variable. Past studies can be of some assistance. The final report becomes a regulatory document. It could be subject to the Freedom of Information Act and be subject to request. Power plants have a single energy use system (the steam turbine). Fuel is money. Therefore, many plants have already looked at the practical ways to save money. Checklists and templates are a good idea. It is a good idea to document the projects that have already been done. The report must be kept on site. It is a good idea to have a paper copy so that the report can be handed to an inspector. Common themes include boiler O2, fuel management, VFDs, power management systems, and tube cleaning. Insulation, leaks, motor replacements, marginal systems, steam traps, blowdown heat recovery, and steam turbine upgrades.

Chuck Hallier of Cargill Incorporated reported on their energy assessment. They have reviewed the rule to determine which units are impacted. They have struggled with efficiency credits. The operations are somewhat complicated making the main energy use definition somewhat more problematical. They are considering whether to do the assessments internally vs externally. They do have energy experts at their plants. There is even an energy behavioral program. This is partly manifested in a "leak tag" program. Anyone that notices a leak can apply a tag and hand the second part to the supervisor. The leak then gets on the "fix it" list. This program resulted in cutting the compressor use in half in the first few weeks of implementation. Additional metering for unit operations helps to identify where the energy is being use. They are looking at ISO 50001.

Other Energy Issues. EIA Manufacturing Energy Consumption Survey (MECS)

Steve Woock of Weyerhaeuser Company noted that there has been an information request that gives the Energy Information Agency the authority to conduct an energy use survey. The survey has 237 questions. These surveys have been done every 4 years. Part of the request is to conduct the assessment every 2 years. The next one will come due in 2015, which means 2014 data being in good shape. The request came out towards the end of May.

Government Affairs Session

Anthony Reed, Archer Daniels Midland Company**,** Government Affairs Committee Chairman

Salo Zelermyer of Bracewell & Giuliani LLC, pointed out that Congressional staff is looking for real world information about the impacts of many of these regulations, particularly with respect to jobs and manufacturing activity. The major issues in Washington are all being framed in terms of the November mid term elections. From a policy point of view, the administration has pretty much given up getting legislation through the US Congress and has moved to executive order and regulatory action. As indicated in the State of the Union message, the White House Climate Action Plan has

been issued with the EPA GHG regulations for both new and existing utility coal based generating plants and the review of methane emissions from shale gas development. DOE is also looking at energy efficiency issues.

Congressional response has been to keep the Shaheen-Portman bill from a vote in the Senate and to promote LNG exports and fight EPA rules in the House of Representatives. There is a lot of anxiety amongst Democrats at this time. The Republicans are angry, but looking at these issues as an opportunity to attack the Democrats in the mid-term elections. An LNG export bill will come to the floor of the House soon, driven by the recent actions in the Ukraine.

Jason Herbert from Bracewell & Giuliani LLC, pointed out that we are still in the midst of primary season. The Republicans need 6 seats to take over the Senate. The Democrats have 21 seats up for re-election and the Republicans have on 14. Thus, far incumbents have been faring well in primaries (139 out of 139 primaries as of the end of May). There are a handful of key states that the Republicans need to win in order to gain the 6 seats. These include Louisiana, North Carolina, Virginia, New Hampshire, Arkansas, and Kentucky. The House is expected to remain in Republican control.

ENVIRONMENTAL COMMITTEE SESSION
Stephen (Steve) Gossett, Eastman Chemical Company, Environmental Committee Chairman
Robert (Rob) Kaufmann, Koch Companies Public Sector, LLC, Environmental Committee, Vice-Chairman

The minutes of the March meeting were approved as written.

Rick Wenning of Environ reported the EPA proposed rule that redefines Federal Jurisdiction under the Clean Water Act. This is another example of over reach by a federal agency. In this case, the Act talks about navigable waterways. Under this proposed rule, the "Waters of the US", or WOTUS, will mean essentially any and all surface waters. This includes ditches and other man made features, tributaries, isolated waters, irrigation ditches, and any other body of water that "might" impact a "navigable water".

The Supreme Court has made 3 major decisions that have helped shape these concepts. The first was the inclusion of wetlands in 1985. The second judgment went against EPA in that a non connected water way could not be considered a navigable water way solely on the basis that migrating birds used both water bodies. The most recent decision was divided over a man that built a shopping center on open land which was sometimes wet.

The key terms in the proposed rule is landscape jurisdiction, upland features, tributaries, adjacent or neighboring waterways, navigability and navigable waterways, ditches, ground water, connectivity, significant nexus, and similarly situated. The connectivity concept is one that what happens in water body has an impact on another body. Thus, insects that hatch in one water body and fly to another essentially connect the two bodies of waters. The comment period has been extended to October, 2014. The proposed rule is broader in scope, inconsistent with the Courts, has a poor economic assessment, inadequate science, and fails to provide clarity.

Ann McIver, Citizens Thermal, reported on the Cooling Water Intake Rule (316 b). There are over 1000 facilities subject to this rule, including 540 power plants. The estimated compliance cost from

EPA was $200 million, or $200,000 per facility. Since getting a permit will cost more than $200,000, this cost figure has clearly been low balled.

Impingement occurs when organisms get stuck on the inlet screens. Entrainment occurs when organisms pass through the inlet screens. Any organisms that get entrained are assumed to have died. Existing facilities with a design intake flow greater than 2 million gal/day and actual intake flow greater than 125,000 gal/day are subject to impingement and entrainment rules, provided that more than 25% of the water is used exclusively for cooling.

For NPDES permits that expire more than 45 months after the effective date of the rule must submit the permit application information with the next permit renewal. For those with less than 45 months, a compliance schedule must be developed. If the permit renewal is already in the queue, it will be allowed to proceed. Studies will be needed on impingement mortality under the rule. Design velocity, moving screens, closed cycle cooling, and fish returns are technologies that can be used to assure compliance.

The state drafts a permit, but prior to finalizing the rule the state will send a draft copy to the Fish and Wildlife Service. The Service can make recommendations on the permit. The state must include those recommendations in the permit. The facility must then implement the recommendations. If not, the facility is in violation.

Gary Merritt of Inter-Powe/AhlCon Partners, L.P., reported on the Coal Ash Update. EPA has entered a consent agreement to issue a final rule by Dec. 14, 2014. There has been no decision as to whether the rule will be a Title C or Title D rule. However, there seems to be at least some consideration for a Title D rule. The proposed effluent limitation guidelines for electric generation units could overlap coal combustion residuals. Duke Energy signed an enforceable agreement with EPA over an ash spill under the Super Fund (not Title C or Title D). Law suits are underway. Earth Justice filed a law suit in regard to a company operating under a consent agreement allowing it to use CCRs to reclaim a coal site.

Jay Hofmann of Trinity Consultants, Inc. reported the NAAQS update, including modeling development. On the SO2 NAAQS, there is a data requirements rule and dispersion modeling. For NOx, there is the finalized SIP requirements and the modeling issue. Finally, the ozone standards revision is coming up. The data requirements rule was issued in April and provides the states with assistance in coming up with a plan for either monitoring or modeling to demonstrate compliance with the 1 hour standard.

EPA has designated 29 areas in 16 states as non attainment for the SO2 1 hour standard. EPA has released 2 draft documents, one for modeling and one for monitoring. For those areas that are not monitored (and hence not known), a source oriented approach is being recommended for criteria pollutants that are relatively stable within the first few kilometers of the source. EPA further breaks down the analysis to heavily populated areas and lesser populated areas. Theoretically, the states will have to do this work, but any significant source will likely run into either monitoring or modeling requirements. The population threshold is 1 million. The lowest emission rate is 1000 ton/yr of SO2. In the modeling, getting the mixing height correct is one of the difficulties in getting the model to provide an "accurate" forecast of ground level concentration.

Annual Monitoring Network Plans are due to EPA by July 2016. SIP plans will be due in 2017. For modeling source information can be used including actual emissions, stack heights, stack temperature, permit limits and controls. The latest version of AERMOD allows for exclusion zones (places where no one lives, major lakes, etc.). A Court case forced EPA to use sub part 4 instead of part 1 for PM2.5 NAAQS. If an area is designated non attainment, it starts out as moderate non attainment, but could become serious. There are only two categories in sub part 4. If an area is now in attainment, EPA will not make the area go back and redo the sub part 1 to the sub part 4.

The modeling requirements for PM 2.5 have been finalized. The SILs had been thrown out by the Court. If the background level plus the SIL is still less than the standard, then the SIL can be used. If not, a cumulative impact analysis will need to be done and all sources in a 50 mile radius. Even a natural gas unit can trigger a PM2.5 SIL. EPA is allowing the use of an "offset ratio" for NOx and SO2 emissions that are converted to PM2.5. With this approach, a reference determines the ratio of the emitted substance that eventually becomes PM2.5. This amount can then be added immediately at the fence line and only model a static level of material rather than trying to do atmospheric chemistry in the model.

The current ozone standard is 75 ppb under the 2008 standard. A final implementation rule is anticipated this year as a result of the Court case that upheld the standard. A new ozone NAAQS is supposed to be issued this year. The anticipated level is 60 - 70 ppb. A final rule is due Oct. 1, 2015. Yesterday, EPA issued a proposed rule to withdraw the prior determination or presumption that compliance the CAIR or NOx SIP call constitutes compliance with RACT (for Nox) or RACM (for particulate). The CSAPR rule was originally vacated, but then reinstated on appeal. CSAPR is stayed at the moment due to some issues with timing and a few other legal issues. It is likely that it will take until 2017 to bring CSAPR into effect. CSAPR does not cover industrial units.

Bill Campbell of AECOM Environment reported on the proposed regulations for GHGs. The original GHG NSPS of April 2012 was pulled back due to 2.5 million comments filed with EPA. The new proposal was issued on Sept. 2013. This rule is only for EGUs and only for CO2. The rule sets standards for new coal fired units and new gas fired units. For coal units, the rule would require CCS to meet the 1,100 lb CO2/Mwhr. For CHP units, the amount that is generated internally is subtracted from the total. The gas fired units would have to meet 1000 lb/Mwhr. The level is on a 3 year average. The capture part only applies to the rule. If the CO2 is utilized and then escapes, that does not impact the requirement. EPA has stated that CCS is commercial. This is being debated.

On June 2, 2014, EPA proposed a target reduction of 30% from 2005 levels on electric generating units. States will have the flexibility to propose how they will meet the targets. EPA has based their targets on 4 approaches. The first is improved efficiency. EPA expects coal units to improve efficiency by 6%. The next is to increase the dispatch of natural gas combined cycle units to 70%. The next is to increase the dispatch of nuclear and renewables. Finally, demand response is expected to contribute 1.5 % by 2017 and 0.2% per year thereafter. EPA anticipates states will need cap and trade systems to influence the dispatch levels.

EPA has claimed co-benefits from the anticipated reductions in coal use from particulate emissions. However, we have the NAAQS standards, the CAIR rule, the CSAPR rule, and the MATS rule that have all claimed the same benefits.

John C. deRuyter of E.I. DuPont de Nemours & Company, reported on the Industrial Boiler MACT Compliance Concerns. A number of industrials met with EPA staff in March to air some of these concerns. One of the concerns was about work practice standards for coal fired boilers. The MATS rule has work practice standards, but Boiler MACT does not. The only reason that the CO issue is being reconsidered is that the revised number was not in the original rule and the environmental groups did not have the opportunity to comment on the number. The next issue was the definition of start up. The original definition was when any steam was used. That definition doesn't work. The MATS definition was 4 hours after 25% load. That is also under consideration. EPA requested data on start up information for industrial boilers. The EPA would like to be final by the end of the year. EPA thinks that their UPL based limits are supportable. However, the standards that were developed for types with less than 9 data points needs work.

EPA feels that the actual numbers will not change much. They recommend proceeding with current numbers. They do not expect a remand of the fuel variability factor. A conference call follow up was held. The start up issue was discussed. For some units, the 25% plus 4 hours would work. However, bag house blinding is a major issue. Superheater metal temperatures are also an issue. EPA wants to use the MACT 12% for start up times. EPA reiterated their CO compliance position. At this point, the minimum oxygen limit will be the continuous compliance approach on a 30 day average.

On start up, it was pointed out that equipment integrity and safety must be taken into account. Unit design and system conditions will determine the actual start up time. Relative to the continuous oxygen approach, a Q/A relative to this should be submitted to EPA. The O2 trim system design and operation also should be part of a Q/A. CIBO conducted a start up survey to get a feel for start up times. The units were categorized into CFB, bubbling bed, PC, stoker, and liquid fueled. URS looked at some of the data to try to see if there were any reasonable approaches. The data scatter was too high. The Babcock & Wilcox Generation Group provided the required for thick walled parts to warm up at 100 F/hr and to cool down at 70 F/hr.

On the reconsideration, EPA will publish a notice in the federal register with more detail on the issues. The intent is to allow for comment on those issues that did not get comment. Then another round of any changes would be proposed. In the meantime, EPA asked for remand on certain issues including remand of the record, briefing schedule, and partial on numeric standards. The court approved the voluntary request and has now issued a schedule.

Lisa Jaeger, Bracewell & Giuliani, L.L.P., reported on the status of the various litigation activities on the various issues. On the Boiler MACT suite of rules, the CIBO concern was to maintain the order in which the cases will be heard. The final briefs will be due on Feb. 11, 2015 for BMACT, Feb. 18 for Area Source, and Mar. 16, for CISWI. For the NHSM, the schedule was held as none of the issues in that case were different. The final briefs are due on Oct. 28, 2014. Based on this briefing schedule, it is likely that a Court decision would be made by December 2015. Note that the BMACT compliance date is Jan. 31, 2016. There have been some decisions in other MACT cases that will impact the BMACT case.

In the Portland Cement MACT, the NRDC challenged EPA on the use of affirmative defense for malfunctions. The Court vacated the affirmative defense. CIBO was not a supporter of affirmative defense and in favor of work practice standards. In the proposed refinery rule, EPA has proposed "enforcement discretion". EPA has indicated that malfunctions are not standard operating modes.

There is only start up and shut down. If the unit does have a malfunction, the plant has to decide whether there is an exceedance and whether to shut down to fix it. Besides the affirmative defense decision, the Court indicated that it was OK to change the compliance dates for the rule even though only one number was changed. The Court also allowed the EPA to move the limits up or down depending upon the science. The Court also treated the cost issue favorably.

On the MATS rule, the White Stallion Project challenged EPA on the grounds that the HAP benefits were minuscule and that the side benefits should not be considered. The Court disagreed. There was a petition for additional subcategories. That was rejected. Further, for the lignite units, the Court said that the demonstrated inability to meet the standard was a "difference of opinion".

On emissions averaging, the Court upheld the averaging. The continuous parameter monitoring system was broken out of the case. Other monitoring alternatives were upheld. The health based emission limit was determined to be discretionary. For BMACT, the original rule had a health based standard. The proponents will argue that taking it out was not appropriately justified. The Court allowed EPA to combine major and area sources. The Court did not really address the UPL issue. All of the arguments about cherry picking the data and using the "best of the best" were rejected by the Court.

Relative to the BACT issues, the outcomes appear to be as follows: HBEL is not mandatory, less stringent standards or OK, subcategories as EPA decides, monitoring alternative are OK, the compliance time frame is OK, the floor setting data set is OK, beyond the floor cost effectiveness is OK, and the UPL may be OK. The petitioners opening brief so far includes pollutant by pollutant (simultaneous achievement), malfunction work practice standards, energy assessment, CO work practice standard, emissions standards without 10% reduction, and HBEL. On the CO work practice standard, there was a petition for reconsideration. However, EPA has indicated that they will not consider a work practice standard for BMACT. Therefore, the petition will be withdrawn and the issue will go to the Court.

On the Non Hazardous Secondary Materials (NHSM), there are still a number of issues. The presumption that the transfer of a material from one company to another for combustion purposes constitutes a "discard" is an arbitrary assumption. Further, treated wood and railroad ties should be treated as fuels. EPA has made some further considerations on those fuels. The process of getting a specific material declared as a fuel does not cure the definition of "waste". Sewage sludge cannot be declared as a "solid waste" due to prior rulings on this material. RCRA regulations should not duplicate CWA regulation. RCRA should apply only to discarded waste. The treated wood and railroad ties should be declared fuels. Sewage sludge should be exempt from the rule. The environmental brief claims the EPA deems discarded materials not to be discarded. They claim that EPA failed to get an exemption for energy recovery units under the Clean Air Act and are now trying to get this exemption under RCRA. The environmental groups are seeking vacatur of these exemptions.

Grant McIntyre of Bracewell & Giuliani, L.L.P., reported on EPA's NHSM Supplemental Proposed Rule. EPA expressed willingness to include C&D Wood as a fuel. Paper Recycling Residuals that are burned off site would be considered a fuel and include corrugated cardboard rejects. Comment was requested on the heating value level. Creosote Treated Railroad Ties (CTRT) could be considered, but some additional restrictions were proposed. These include limiting the amount of CTRT to 40% of fuel input and considering CTRT that was stored for more than a year as discarded.

Lisa Jaeger, Bracewell & Giuliani, L.L.P., reported on additional cases that we have been following. In the CSAPR case, the Supreme Court upheld the rule. This gives the approval to EPA to create a trading program that was not initiated by Congress. The Sierra Club sued EPA over the deadline for the 2013 ozone NAAQS. The Court ordered EPA to issue a proposed rule by Dec. 1, 2014 and a final rule by Oct. 1, 2015. The Coal Ash law suit has had a consent decree whereby a final subtitle D regulation would be signed on Dec. 19, 2014. On Effluent Emission Guidelines, comments have been filed. A final rule is due Sept. 20, 2015. The EPA appears to be trying to push towards "zero discharge" technology for water effluent. In this way, they can get at heavy metals from coal ash by minimizing any water discharge from such activities.

In a recent decision, a memo from EPA trying to ignore a 6th Circuit Court decision in the rest of the country. EPA cannot use different air permitting criteria in different parts of the country. In GenOn Power v. Bell, the Supreme Court decided not to hear the case. This had to do with nuisance suits. The challenge to California on fuel standards is still pending. There is a suit on chromium risk and technology review. This case has to do with a MACT floor setting procedure. Another case might be a challenge to a Louisiana law that requires actual proof of exposure to claim exposure to a hazardous chemical.

The recently proposed standards for existing sources on GHGs will most likely generate many law suits. There is also a modification rule which requires a 2% efficiency improvement if modifications are made. The DOE Social Cost of Carbon revision has been challenged.

Next Technical Focus Group/Environmental & Energy Committee Meetings
TUESDAY & WEDNESDAY, September 9-10 , 2014
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