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Technical Focus, Energy & Environmental Committee Meetings

March 2016
Crystal City Marriott
Arlington, VA

MINUTES

TUES-WED March 22-23

TECHNICAL FOCUS GROUP SESSION

Jason Philpott, Eastman Chemical Company, Technical Committee Chairman

Clean Water Act Workshop 101 - **Amber LeClair, The Babcock & Wilcox Company**, Moderator

Jamal Shamas, AECOM, opened the workshop with an overview of the Clean Water Act. In 1899, Congress passed the Rivers and Harbors Act. This act concentrated on navigable waters. This was followed by the Federal Water Pollution Act of 1948. This act was the first that had a water quality focus. In 1965, water standards were added. In 1972, the NPDES (National Pollution Discharge Elimination System) emissions standards were established. The Clean Water Act of 1977 focused on priority pollutants. The Water Quality Act of 1987 focused on water quality based effluent limits and storm water. The 1972 regulations established the NPDES limits with construction grants and permits. The permit limit is 5 years. In a consent decree with the NRDC, the EPA agreed to a list of "toxic priority pollutants" with 65 categories and 129 compounds. The 1987 regulations specified storm water permit requirements and created the federal sludge control program.

The goals of the Clean Water Act are to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The stated goal was zero discharge of pollutants into navigable waters by 1985. Discharge of toxic pollutants in toxic amounts are prohibited. Both point source and non-point sources are covered. The details of achieving these goals was left to the EPA. The EPA issues both regulations and polices/guidance in its approach to achieving these goals. The NPDES covers point sources. All point sources discharging pollutants into the Waters of the US (WOTUS) must obtain an NPDES permit from EPA (or an authorized entity). A permit is essentially a license to discharge substances into regulated waterways. The permit is good for 5 years. These rules do not cover ground waters or drinking waters. These are under the Safe Drinking Water Act. The NPDES does not consider the flow rates of the receiving body of water. Waters of the US (WOTUS) include navigable waters, interstate waters, territorial seas, and other waters. There have been a number of issues in the interpretation of this definition. The Supreme Court decision in 2006 limited the definition to permanent bodies of water. EPA and environmental groups still pushed for expanded interpretation using the "significant nexus" basis for greater scope. The EPA issued a new rule with a "new and improved" definition of WOTUS. The 6th Circuit Court of Appeals issued a stay of this rule pending several court decisions.

A point source is any discernable, confined and discrete conveyance. This includes pipes, ditches, channels tunnels, conduits, wells collections systems, etc. Any other source is a non-point source. A pollutant under Section 502 is dredged soil, solid waste, incinerator residue, filter backwash, sewage, garbage sludge, munitions, chemical wastes, biological wastes, radioactive materials, heat, rock,



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sand, dirt, wrecked equipment, and industrial/municipal/agricultural waste. There are 3 classes of pollutants: conventional pollutants, toxic pollutants, and non-conventional pollutants. The list of toxic pollutants has been reduced from 129 to 126 compounds.

The Administrator of the EPA administers the Clean Water Act (CWA Section 101). States, tribes, and territories can be authorized for permitting authority under Section 402(b). All states are authorized for all programs with certain exceptions. New Mexico, Idaho, and New Hampshire do not have NPDES programs. In these states, permits must be obtained from EPA.

The Act has 6 major sections or titles. Title 1 is the Research and Development section. Title 2 provides grants for construction of treatment works. Title 3 covers Standards and Enforcement. There are 20 sections in this section that have various rules, standards, guidelines, policies, and practices. Title 4 covers permits and licenses. Title 5 has general provisions. The regulations are codified in the Code of Federal Regulations (CFR), primarily in 40 CFR parts 121 to 125 and parts 130 to 136. The general provisions are in part 401.

Section 301 has the effluent limitations. There are two technological approaches. These are technology based and water quality based effluent limitations. (TBELs and WQBLs) The Section provides for a permit agency to use Best Professional Judgement (BPJ) in establishing a permit requirement for a substance that does not have a numerical standard. In a similar manner to the Ambient Air Quality standards, there are water quality standards in receiving streams. Effluents can be limited in order to maintain a water quality standard in the receiving body of water. Technology Based Effluent Limits (TBELs) apply to direct discharges or indirect discharges. An indirect discharge is one that goes to another facility that then discharges to the receiving body. TBELs are not the same for all categories of facilities. There are 4 different classes that apply. These are Best Practical Technology, Best Conventional Technology, Best Available Technology, and New Source Performance Standards. These are listed in the Effluent Limitation Guidelines (ELGs).

Best Professional Judgement applies when ELGs have not been promulgated for a substance. ELGs are available for a substantial number of industries. Revisions are planned for Steam Electric Generating Plants, Petroleum Refining, and Metal Finishing industries. Guidelines have been proposed for Steam Electric Generating Plants. Facilities that have more than one type of process might fall under more than one ELG. ELGs are defined in terms of actual effluent limits and not a particular technology. The limit may have been based on a particular technology, but the limit itself is a numerical standard. The difficulty is that the EPA searches the literature for instances where a particular effluent level can be achieved (e.g. 2 ppb of selenium). This level may have been achieved in a lab experiment and not an operating facility on a 24/7 basis. That affords an opportunity to challenge a particular limit. Variances can be allowed for circumstances such as fundamentally different factors, economic availability, thermal discharge, non-conventional, and net intake situations.

Water Quality related effluent limitations are set to maintain a certain water quality standard to a receiving body of water. It is independent of technology. Section 304(a) requires EPA to develop and publish recommended water quality criteria. Section 301 requires compliance with effluent limitations necessary to meet water quality standards. The standards are reviewed every 3 years. The standards have to be quantifiable measurements. Water quality standards apply throughout the body of water, as defined by the state, territory, or tribe. The components of a water quality standard include designated uses, anti-degradation, general policies, and other water quality criteria. Designated uses refer to the category of use of the body of water (i.e. fishing, boating,



swimming, navigation, public water supply, etc.). Once a designated use has been established, it cannot be removed.

EPA has been establishing guidance for water quality criteria since 1968. The standards can be numeric or narrative. A narrative standard would be one that supports a policy (i.e. no discharge of toxic substances in toxic amounts). Standards can be based on human health criteria, aquatic life criteria, water fowl criteria, etc. The Whole Toxic Effectivity test requires a water sample with certain aquatic species that are then exposed to the discharge substances. If the aquatic life is killed by the sample, then it cannot be discharged. Anti-degradation policy requires that once a body of water achieves its ambient standard, discharges must not make it worse (similar to PSD). Implementation of the standard can include consideration of mixing zones, low flow rates, and critical flows. If a mixing zone is considered, the standard as to be met outside of the mixing zone, but can exceed the standard inside the mixing zone. The size of the mixing zone is dependent upon the body of water in question.

Critical low flow rates apply to streams and rivers that experience low flow rates during certain times of the year. This would be the case for cooling water discharge. If the body of water exceeds the water quality standard, the issue belongs to the state. The state must report to Congress on its water quality standards achievement. If a water body has a problem, it becomes a threatened and impaired body of water and goes on a list. Those waters must develop further lists for discharge of each pollutant exceeding the standard. This results in the Total Maximum Daily Load (TMDL) for each pollutant. The state then allocates allowances for these substances to the various facilities that discharge into that body of water.

Section 308 covers inspections, monitoring, and entry. This gives the EPA the authority to enter the facility, inspect the plant, and monitor the discharge. The quality of the discharge can be made public. Spill prevention, containment, and control is covered under Section 311. This covers on site containers or equipment that could produce a spill. Thermal discharges fall under Section 316. Intake structures are included in this section, including the 316(b) rule on water intakes to power plants. Section 319 deals with non-point sources of pollution. This includes water runoff from things like storm water, agricultural runoff, snow melt, and drainage. EPA has developed an NPDES storm water program. If a facility is large enough, it could be included in this program. A storm water permit would be required under this program, along with a pollution prevention program. Typically, such a program would include "best management practices" (similar to work practice standards). Section 401 covers certification. Section 404 covers wetlands and includes dredged or fill material. Permit types include individual permit, nationwide permit, or regional permit.

Section 402 covers the NPDES program. All point discharges must obtain an NPDES permit. The permit process will identify which standards and guidelines apply to the discharge. The permit must be signed by an appropriate signatory. Civil and criminal penalties may apply for willful violations. An individual permit would cover a specific discharge with specific limits. One permit is issued. A general permit might apply for some general use discharge. An individual permit must be requested at least 180 days before the existing permit expires or the new discharge goes into service. Standardized forms are required for the permit application. There is a public notice and comment period. The permit will contain the effluent limitations required for the license to discharge. Monitoring and reporting plans will be required. During the process, TBELs and WQBLs will be considered. The final limit will be the more stringent of the two. The application will be subject to the "reasonable" possibility to impact the water quality of the receiving stream.



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It is a good idea to go through this process internally before applying for the permit. In that way, there can be some possibility to head off an arbitrary determination that the discharge will impact the water quality. The permitting authority is subject to "anti-backsliding" policy. That means that the permitting agency cannot give less stringent standards to some facility or industry compared to others, without proper scientific justification. The recently issued Effluent Guidelines for Power Plants is a technology based standard. There could still be additional requirements for a plant depending upon the receiving body of water. Water quality standards are local. Therefore, the actual permit will be site specific.

Ann McIver, Citizens Thermal, noted that the impact on existing plants will be very site specific. That means that there will be assumptions that are being made going into the applicability of any particular limit or the stringency of such a limit. The ELGs are technology based guidelines and function similar to the MACT/BACT/RACT Clearinghouse for air. That means that a plant in one location that achieves a particularly low concentration for a substance can set the bar for other plants. However, there does not appear to be publicly available database with these permit figures being made available. There was a general feeling that permit renewals were requesting more and more requirements in order to obtain a permit. In going for a permit, a strategy has to be developed in advance and supporting data and analysis should be prepared to support that strategy. CIBO can be a support group for members on the water side as well as the air side.

GOVERNMENT AFFAIRS SESSION

Anthony Reed, Archer Daniels Midland Co., *Government Affairs Committee Chairman*

There will be no Hill Visits this week as it is Spring Break in Virginia. **Chris Keuleman, International Paper**, filled in for **Anthony Reed, Archer Daniels Midland Co.** as Chair. It is an election year and this will influence what can be done on the Hill. The Energy Bill (S. 2012) has been delayed until after the Senate recess due to the discord surrounding the Flint, Michigan water crisis. The underlying bill is not particularly controversial (promoting efficiency). However, there is some controversy surrounding loan guarantees to the auto industry to be diverted to pay for water treatment in Flint and fees to coastal states for oil and gas production inland. The bill also has to be reconciled with the House version. The Clean Power Plan was stayed. Some states are still moving along with programs. But many states have put a complete stop on any activity related to the CPP. Some states are just trying to figure out what to do. Litigation will proceed up to and following the election. The nomination of Justice Garland to replace Justice Scalia is currently being held up by the Senate to wait for the election results. Justice Garland is considered to be moderate with respect to the incumbent justices, but is considered to be sympathetic to environmental concerns. Presuming the Senate confirmation hearings are held off until after the election, the election results will matter. The prospect of a much more liberal justice under a Democratic president and possibly Senate might cause the current Republican Senate to consider Justice Garland in a lame duck session. For this election, there are more Republican held Senate seats up for election. This will make it more difficult for them to hold on to their majority in the Senate. With regard to the House Energy and Commerce Committee, Upton and Whitaker have announced their retirements, which will cause new chairmanship for the next commerce. On the Senate Environment and Public Works, Senator Barbara Boxer has announced her retirement. Bernie Sanders is on the committee and is running for President. There are a dozen Senate seats that will be highly contested. Of these, 8 are Republican, including some large states such as Florida, Pennsylvania, Illinois, and Wisconsin. Senator Harry Reid (former Senate Majority Leader) has also announced his



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retirement. The Senate situation will flip again in 2018, when the majority of seats up for election is 3 to 1 Democratic.

ENERGY SESSION

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

Bob Corbin, CIBO Member Services Consultant, introduced the new members and guests. English Boiler has joined CIBO. Kinetrix is considering membership. The “around the room” introductions were done.

Gary Merritt, Inter-Power/AhlCon Partners, L.P., gave the Fuels Subcommittee report. The committee held a webinar on natural gas carried out by **Doug Freidel, Black & Veatch Corporation**. Doug gave a summary on the presentation. Black & Veatch Corporation conducted an industry survey of providers, users, pipelines, and equipment suppliers. The survey generated 404 responses. Top concerns were safety, aging infrastructure, and the economy. These issues are similar across industries. As the price of oil has declined, the oil rig count has declined as well. However, the production of natural gas has actually increased. The main reason is that the technology has improved substantially, so that wells can continue to produce for quite a while. The pipeline industry issues include regulatory uncertainty (82% of respondents), sustained growth of demand, and safety (aging infrastructure). Barriers to pipeline construction include NIMBY, regulations, firm subscriptions, shipper creditworthiness, and access to capital. Over 8 regions of the country have identified the need for infrastructure improvement as well as new pipelines. Forecasts for gas pricing are relatively stable to modest increases. Pipeline flows have changed significantly. Productive fields are available from Canada, Montana/Dakotas, Colorado, Pennsylvania, and Texas. Gary noted that at the end of the webinar there was a discussion of the alternative fuels per the NHSM regulations. An overview of the Section 45 tax credits was considered. Also a focus group session on distributed power, combined heat and power, and the smart grid. Potential topics for discussion, webinars, or focus group sessions were requested of the members.

Fred Fendt, The Dow Chemical Company, reported on the potential of a new subcommittee on sustainability. Sustainability covers not just the manufacturing sector, but the organization and its committees as well. We have a good message that needs to be communicated to the next generation. Cradle to grave energy use of our products and their impacts on consumers' needs to be communicated in all of the venues that we are engaged with. As an example, Dow has a goal of savings 6 times the energy use for customers as it takes to make the product. One of the ideas behind starting this subcommittee would be to get younger members involved in CIBO. Telling a positive story would be a significant change from chasing regulations. Young engineers at the plant are enthusiastic about sustainability and could be more interested in our organization. Energy bills and efficiency incentives are being considered both in Congress and at the agencies (DOE and EPA).

Bob Bessette, CIBO, pointed out that having a prepared position on energy and sustainability can help us in getting our story and position across to Congress and the Agencies. Fred has put together a detailed list of topics/issues that will be circulated sometime in April. The goal would be to have members identify issues which are important, not important, or negative. In getting this information,



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we could synthesize a CIBO position on energy and energy issues. Subsequently, we can prepare the wording that would summarize the CIBO position. That document would give guidance to the membership on the CIBO position and the justification for it. From this document, individual one page “take away” papers can be prepared on specific issues. Another thought was having a “public face”. Perhaps some kind of outreach program might be effective. Many customers have an interest in “sustainability” on the part of manufacturers. Energy conservation was another term that was used. Perhaps a new buzzword would be more appropriate.

University business school programs now have sustainability programs. The link between energy, the environment, and the economy is inextricable and critical. The outside world tends to call that “sustainability”. There is a Dow Jones Sustainability Index, as well as others. There is a lot of misconception of the terms, but CIBO needs to get involved. **Bob Bessette, CIBO**, will send out the spreadsheet with the issues and **Fred Fendt, The Dow Chemical Company**, will collect the results.

Paul Kempf, The University of Notre Dame, reported on their program for operator certification and training. The University of Notre Dame has 6 boilers firing coal, oil, and gas. They generate about half of their power demand through cogeneration. There are 18 total operators, along with 11 maintenance employees and 2 instrumentation and control employees. The military has been a major source of these employees (particularly US Navy). However, the Navy has moved away from boilers to either gas turbines or nuclear vessels. This has reduced the experience pool for operators. The NAPE (National Association of Power Engineers) has had a basic boiler operator certification program. They now have an on-line curriculum for a variety of the pieces of equipment in a plant, including water treatment, refrigeration, air conditioning, etc. From these courses, the operators can take the various state tests to obtain their licenses and state certifications. The University has grouped these into classes so that operators can “move up” the training ladder. Starting personnel are brought in as Class C operators and can work their way up to Class A operators.

Fred Fendt, The Dow Chemical Company, noted that DOE has published in the federal register that they are attempting to “harmonize” their efficiency standards with the ANSI and ANRI and asked for comment. One of the issues with referencing another standard for a federal standard is the availability of such standards. If a 3rd party standard is referenced and that standard is not available, free of charge, that becomes a violation of a prior requirement. Further, if the 3rd party subsequently changes the standard, the change does not come out for review and comment. Further, there are some definitions in the proposal that are contradictory, which could cause future problems. It was pointed out that in many cases, the standard can be referenced to a date. If the standard changes at a new date, then the DOE will still be associated with the older standard.

ENVIRONMENTAL COMMITTEE SESSION

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

Scott Darling, Alcoa Inc., provided an update on the Midwest Ozone Group (MOG). MOG looks to assure that policy driving the ozone NAAQS implementation is based upon sound science. In the past, it has been utility focused, but industrials are getting involved. Industrial interest has been



piqued by potential follow ups to CSAPR and other rules. As an example, the Fairfield, CT monitor is very near to New York City and the I-95 corridor. Modeling has shown that less than 3% of the contribution comes from potential upstream industrial sources. Motor vehicles and New York City are the biggest contributors. EGUs were modeled at 5%. At the CIBO Board meeting, it was agreed to provide some modest funds to continue this modeling in order to head off any attempts to include industrials in any new ozone regulatory scheme. There should be no need for further NOx reductions from industrial sources.

Amy Marshall, AECOM, reported on the NAAQS update. There are a number of reviews underway. The NAAQS are scheduled for review every 5 years. The PM standard is under review. There have already been some challenges. The ozone standard was revised last year from 75 ppb down to 70 ppb. The implementation of that standard has to be clarified by SIPs from the various states. The new ozone rule forces a chain reaction of activity as states have to provide information on whether or not they are in compliance in their various regions. Then EPA has to make designations as to what is in attainment and what is in non-attainment.

States in non-attainment have to prepare plans on how to achieve compliance. The attainment deadlines are 2020 for marginal attainment, 2026 for moderate, and 2028 for serious. The ozone trends have been lower in recent years. The final rule will be based on 2014 – 2016 actual data. Fewer non-attainment areas are now anticipated based on 2012 – 2014 data. Background concentrations of ozone are a big issue in some areas. EPA put out a white paper in Dec. 2015 showing some of the areas that have higher background levels (mostly in the West). EPA took comment on what might be considered to be exceptional events (like a wild fire) that could provide the means for excluding that data from consideration. Legislation activity has been proposed to postpone the implementation of the 70 ppb standard and to change the review period from 5 years to 10 years. Legal challenges have been filed on both sides.

On SO₂, the 2010 standard was set at 75 ppb. EPA only set 29 areas in 16 states in 2013. The rest of the country was not designated. EPA was sued for not covering more areas. There will be 3 future rounds of designation. Areas with monitor exceedances and high emitting power plants will be designated in 2016. Model based designations will be done in 2017. Monitor based designations will be done by 2020. The SO₂ data requirements rule was published last year and covers sources over 2,000 ton/yr. Under the rule, the air agencies are supposed to provide additional air quality data. By July 2016, EPA has to decide whether monitoring data or modeling data will be used for a particular site.

Eleven states failed to craft SIPs outlining the measures needed to control SO₂ for compliance. There has already been one NOV issued to a site for not going fast enough to comply. Last July, EPA proposed to change their modeling guidelines to address comments and other problems with the prior guidelines. Appendix W changes will likely come out this July. Guidance may also come out with the rule changes.

SIL guidance is expected for ozone and PM_{2.5}. Precursors for PM_{2.5} will be finalized. The ADJU_U* was accepted for use at calm wind conditions. The LOWWIND3 option is still unclear. The Model Emission Rate for Precursors (MERPs) will be used to determine if a new project needs further modeling. The MERPs for ozone have not been established. The suggested approach is to start with published literature to establish MERPs. The second is to use other models. The third is to do a photochemical a system is utilities have already filed suit.



Gary Merritt, Inter-Power/AhIcon Partners, L.P., reported on proposed changes to the RCRA rules. The litigation updates will be done by Lisa Jaeger. In September, there was a proposed rule on hazardous waste generators. The changes seek to reorganize the rule, provide more flexibility, and improve compliance. As part of the rule, it was noted that classifying and labeling a hazardous often results in mis-classified materials. The determination rules could be expanded. The labeling rules could be problem for small quantities in chemistry labs.

There is also a nexus of coal combustion residues and water discharges. The ELGs now prohibit the mixing of waste water from ash handling, flue gas desulfurization, and cooling tower water. States have ground water programs. These requirements all apply together. West Virginia has adopted the RCRA rules for CCRs. Because of the overlapping rules, industrial units can get dragged into the EGU regulations, even though they are only intended for utilities. The permit writer has the ultimate control of this process. The biggest damage cases in the CCR rules have been for impoundments. Citizen suits are being used as a tool to bring in EPA over a state program. The final rule established criteria for landfills and other ash containment systems. If a system is determined to be an open dump, EPA can step in and require ground water monitoring and assessment monitoring. There are also closure and post closure requirements. For impoundments, concerns include open dump designation, water quality impacts, monitoring, structural stability, surface water runoff controls, time limits, top liners, and top cover for vegetation. Overlapping, or nexus, issues include open dump designation, citizen suits, state adopting a federal program, and using a water program to force closure.

Amy Marshall, AECOM, provided an update on the Boiler MACT reconsideration. The compliance date has passed (Jan. 31) unless a one year extension was obtained. For Gas1 units, the notification of compliance status (NOCS) is now due. For other units, it is due Jan. 2017. EPA is planning a technical correction package to remove references to P90 for ongoing compliance. That only applied to initial testing. There was also some testing protocol that referred to timing of average testing. EPA agreed that equal spacing was the intent. There was also a clarification on PM CEMS. EPA added additional requirements to the rule if CO₂ is used as a diluent for a CO monitor rather than O₂. The language is unclear as to whether the source "may" ask for an alternative method. For the NSHM rule, 3 more fuels were added to the rule. There were construction and demolition wood, paper recycling residuals, and creosote treated railroad ties. On the website, there are some letters where others have asked for a determination on a material that has been used for a fuel. These materials can now be utilized. The Area Source reconsideration rule has not been issued.

Bob Bessette, CIBO, provided information on the Boiler MACT database update. In the EPA database, there were 1,742 units that were major sources and had specific limits. Of the requests, some 671 responses were received. However, of the 671 units, 216 units were process heaters. Of the 671 units, 574 units were still active. Roughly 15% of the units have shut down. Of the 574 units, some 80 units were coal fired and 433 units were gas fired. By eliminating the process heaters, the number of gas units was reduced to 217 units. At this point, it would appear that the universe of industrial boilers is roughly 76% gas fired. The remaining units are coal (14%), oil, or biomass fired units. For all of the respondents that received the question about adding controls, some 92.5% responded that no controls were added. On the order of 10% requested a 1 year extension.

Amy Marshall, AECOM, gave an update on the CSAPR rule. This rule applies to states in the eastern half (28 states) of the country and is essentially a "transport" rule. There is a "good neighbor"



provision in the Clean Air Act (CAA). In 2012, CSAPR was vacated by the DC Circuit Court on the grounds that EPA did its analysis wrong. In 2013, the EPA asked for a review. In 2014, the Supreme Court reversed the DC Court decision. Litigation continues. EPA has issued updates and extended the 3 year compliance timeline. The update reduced the number of states to 23, as NO_x levels have dropped. Industrials are not included (even from the NO_x SIP call). The cost threshold is \$3,300/ton. The 2015 ozone compliance requirements were not considered in the update. The Regional Haze Rule update comes due in 2021.

Steve Gossett, Eastman Chemical Company, reported on EPA's proposed changes to the National Refrigeration Management Program (Section 608). The program is being changed to include HCF refrigerants which are deemed to be GHGs (as opposed to ozone depletion). The immediate goal is to decrease leaks of these substances. The use of HFC is increasing as ozone depleting refrigerants are being phased out. They have estimated that HFCs could contribute as much as 20% of the GHGs. Leaks are to be fixed within 30 days. Once a leak is detected, all leaks are to be fixed. Units that lose 75% of their charge for 2 years in a row would be required to be mothballed or replaced. A lot more record keeping will be required. Annual inspections will be needed for units above 50 lbs of refrigerant.

Lisa Jaeger, Bracewell, LLP, provided the litigation and regulatory update. The Boiler MACT cases had oral argument in December. The NHSM case has been completed. We expect that the decision will be available shortly. For each of these cases, several issues were severed. As a result, there are still cases for severed issues and reconsideration issues. The MATS reconsideration rule is in abeyance. The MATS PM CEMs reconsideration rule is in abeyance. The SSM SIP Call case is at the DC Circuit. The Affirmative Defense/Malfunctions rule is in abeyance. The NHSM rule has been upheld. There is some potential for treated wood that is in abeyance pending EPA revisions.

For the major source BMACT, the severed issues include the 130 ppm CO, the SU/SD definition and the CPMS for PM. Still pending is the statistical analysis used by EPA for the upper predicted limit (UPL). EPA took a voluntary remand on this issue. There were also problems with categories that had only a few units. EPA is waiting for a decision on the methodology first. On the other issues, industry has been satisfied with the results of the reconsideration, but the Sierra Club is not. All of the issues will end up in the Sierra Club v. EPA on reconsideration.

A similar situation will occur for Area Source and CISWI although some of the issues are different. Industry issues include malfunction treatment (need work practice standards), energy assessment illegal, pollutant by pollutant illegal, CO should have work practice, health based limits, waste variability, record keeping, emissions averaging for CISWI, and work practices for CISWI. Environmental issues include UPL methodology, best performers not in the floor, CO as a surrogate, exempt categories, beyond the floor standards, emissions averaging, work practice for SU/SD, and others. The EPA and environmentalists have proposed a schedule with briefing over the summer and a decision around next summer. Environmentalists are the petitioners. Respondents are the coalition of industrials plus UARG.

There is a separate SSM case regarding affirmative defense and other issues during SSM. In the Utility MATS case, the Supreme Court sent the MATS rule back to the DC Circuit stating EPA had to consider costs when regulating HAPs. The rule has been sent back to EPA. EPA has indicated that a final rule on the cost issue. Preliminary indications are that the cost treatment by EPA will be unsatisfactory and another round of litigation will result. The Supreme Court stayed the Clean Power



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Plan through any challenge in the Supreme Court. The merits of the plan will be argued before the DC Circuit in June. Since the Supreme Court stayed the rule, the time delay to any implementation should be added to the compliance date.

Part of the Supreme Court concerns on cost were in the case of MATS where the benefits of reducing mercury were only \$2 – 4 million, whereas the cost was \$9.6 billion. The co-benefits were claimed to be \$90 billion. The issue of relying on the co-benefits were also reviewed in the CSAPR rule. The Court indicated that states could challenge requirements beyond the regulated pollutant. This issue could carry into the Clean Power Plan. There are similar issues with Effluent Limitation Guidelines. The 316(b) Rule has also been challenged.

The case is being briefed through August of this year. Multiple challenges were filed in several courts over the Waters of the US (WOTUS). The circuit court cases were combined and will be heard in the 6th Circuit Court. However, there has been some challenge to this court having jurisdiction. There may be an “en banc” review by the full Circuit Court. If the court and grants en banc review will go to the Supreme Court. Thus, anything final on this rule may be at least 2 years away. In the meantime, the rule has been stayed. In another case, a wetlands determination has been challenged. The question is whether or not such a determination is a final agency action (which can be challenged). This issue is now up before the Supreme Court. A decision is expected by summer. The EGU ELG case is underway. While this is a utility case, industrials have filed comments. The Coal Ash rule has been challenged by utilities. A decision is expected next year. There have been rule revisions proposed for the Risk Management Plan rule. The new rule would require a 3rd party audit as well as root cause determination during an incident investigation. This is another case of EPA pushing into another area (in this case OSHA). Comments are due in May. With the passing of Justice Scalia, President Obama has nominated DC Circuit Chief Justice Merrick Garland. Justice Garland did work in the private sector and as a prosecutor. He was named to the Circuit Court during the Clinton Administration. Although the justice has a liberal bent, he does not seem to be an ideologue. His environmental record appears to be “middle of the road”.

Next Technical Focus Group/Environmental & Energy Committee Meetings
TUESDAY & WEDNESDAY, June 7-8, 2016
Hilton Garden Inn (formerly the Radisson)
2020 Jefferson Davis Highway
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