

BOILER MACT LITIGATION UPDATE

CIBO E&E Meeting
December 3-4, 2013

Lisa M. Jaeger
Bracewell & Giuliani, LLP

BMACT

BMACT III severed issues

BMACT II ENV issues

IND issues

Area Source

Area Source III severed issues

Area Source II ENV issues

IND issues

CISWI

CISWI III severed issues

CISWI II ENV issues

IND issues

NHSM II

US Sugar Corp v. EPA (13-1256) (BMACT III)

- SU/SD and work practice standards
- CO limit based on 130 ppm
- PM CPMS

BMACT III CLARIFYING CHANGES

- Applicability of BMACT to natural gas EGUs
- Compliance date for coal/oil EGUs now subject to BMACT
- Conversion error in floor - existing hybrid suspension grate boilers
- Recordkeeping re SU/SD periods for Gas 1
- Removal of unnecessary references to statistical equations
- Averaging time for operating load limits Table 8
- Existing source compliance date = effective date of final rule
- Other Gas 1 fuels, analysis provisions

US Sugar Corp v. EPA (11-1108) (BMACT II)

- Subcategories that are not based on class, type, size
- No standards for PCBs, POM, hexachlorobenzene
- CO as surrogate
- Floor methodology
- Work practice standards instead of emission standards
- Standards do not require the “maximum” “achievable” emission reduction
- Affirmative defense

- Energy Assessments
- No HBEL for HCl (and Mn?)
- EPA unlawfully sets beyond-the-floor MACT limits by requiring that sources continuously meet operating limits established during stack tests below the MACT floor.

- BMACT numeric CO limit for small EGUs but MATS CO work practice for large EGUs
- Malfunction: numeric limits must reflect malfunction emissions data
- Operating limits that do not correlate with emission limits
- 10-day and 30-day rolling averages
- 10-day averaging period for certain biomass units with CEMS
- 10% discount factor emissions averaging
- Liquid fuel in gas 1 units only during curtailment
- 6 month wait to switch between BMACT and CISWI
- Gas 2 units cannot combust any liquid fuel
- No total hydrocarbon alternative limit for CO
- No authority to include low-emitting small and gas 1 boilers
- PM CEMS or CPMS unreliable

- Illegal floor
- Pollutant by pollutant
- Unachievable numeric limits
- Hot water heater exemption
- Annual stack testing
- Definitions of “waste heat boiler” “process heaters” “blast furnace gas-fired boiler” “metal process furnace”
- Affirmative defense for malfunctions
- No authority for tune-up requirements
- Subcategory definitions
- Use of surrogates

ACC v. EPA (13-1258) (Area Source III)

- Definition of startup
- New monitoring provisions that eliminate further stack testing for PM and fuel sampling for mercury (Sierra)
- Limited-use subcategory and standards (Sierra)
- No more PM performance testing if initial compliance 50% of PM limit (Sierra)
- No more fuel sampling at coal boilers if initial compliance with Hg limit based on fuel analysis (Sierra)
- Clarifying changes
 - Applicability of BMACT should not be based on CISWI recordkeeping requirement

ACC v. EPA (11-1141) (Area Source II)

- Subcategories that are not based on class, type, size
- Some subcategories lack standards
- Not all pollutants are regulated
- Floor methodology
- Requiring only tune-ups for most sources
- Coal-fired standards do not require the “maximum” “achievable” emissions reduction
- Affirmative defense

- Energy assessment
- Maybe issues
 - Malfunction: Industry sought work practice rather than affirmative defense
 - Annual emission testing: Industry sought 5 year interval; Final rule testing is triennial

AF&PA v. EPA (13-1257) (CISWI III)

- CEMS data during SU/SD
- PM limit for waste-burning kiln subcategory

•Clarifying changes

- recordkeeping and reporting requirements (including when retest data and new stack test data become effective for use in compliance calculations, the effective date of recordkeeping requirements, and whether 60-day notification requirement is waived for performance tests triggered by deviations)

AF&PA v. EPA (11-1125) (CISWI II)

- Subcategories that are not based on class, type, size
- Some subcategories exempted from standards
- Some pollutants not regulated
- Floor methodology
- Standards do not require the “maximum” “achievable” emissions reduction for several subcategories and pollutants
- Affirmative defense

- Recordkeeping: no records = CISWI status
- SO₂ limits for biomass energy recovery units
- Inconsistency with MWC standard
- No provision for inadvertent burning waste in boiler
- Need emissions averaging
- Need subcategories

- Exclusion from definition of solid “waste,” materials that are burned instead of being used for their intended purpose.
- Exclusions for: (1) wastes that are processed before burning; (2) wastes burned at a facility owned or operated by the same company that generated them; (3) whole tires; (4) used oil; (5) coal refuse; (6) resinated wood waste; (7) pulp and paper sludge; (8) construction and demolition waste; (9) coal combustion residuals (fly ash, bottom ash and boiler slag)
- Exclusion of “traditional fuels” including asphalt and wastes from petroleum refining
- Petition process for “non-waste” determination

- Additional materials are non-wastes
- Transfer to 3rd party = disposal
- Sewage sludge = solid waste
- Discarded tires

MACT CASE OVERLAP

BMACT

-CO limit

-Energy
Assessment

-Subcategories
(Sierra)

-SU/SD (severed)
-CFB Subcat
-Fuel switching (Julander
MATS/CIBO BMACT (??))
-Averaging (Sierra)
-Monitoring alternatives
(Sierra)
-HBEL

MATS

Oral arg
12.10.13

Compliance date

Achievability
Aff Defense
UPL (SSI decision)

PC MACT

Oral arg 10.24.13

MATS *White Stallion v. EPA* (No.12-1100)

- No CAA 112(n) appropriate and necessary finding
- Area sources: no finding and no GACT
- Hg limit based on 4% coal EGUs
- Law requires HBEL for acid gas HAPs
- Need CFB subcategory (HCl, waste coal)
- Lignite Hg limit
- Pet coke PM limit & no finding
- Emissions averaging illegal (Sierra)
- PM monitoring alternatives illegal (Sierra)

NSPS *UARG v. EPA* (No. 12-1166)

- PM CEMS units meet higher limit or monitor opacity
- TX affirmative defense should be approved

MATS CASE ORAL ARGUMENT

White Stallion v. EPA 12-1100

Issues	Time Allotment
1. Appropriate and Necessary finding 40 min	Industry: 15
	State: 5
	EPA: 15
	Environmental (for EPA): 3
	States (for EPA): 2
2. Industry, State and Labor Emission Standards Issues 40 min	State: 10
	Joint Industry: 5
	Individual Industry: 5
	EPA: 18
	Industry (for EPA): 2
3. Environmental and Julander Issues 40 min	Sierra Club (averaging): 10
	Chesapeake Climate (monitoring): 5
	Julander: 5
	EPA: 20

UARG v. EPA 12-1166

Issue	Time Allotment
Requirement that Subpart D, Db, and Dc units using PM CEMS either meet a more stringent PM standard or perform periodic visible emissions testing 20 min	Industry Petitioners: 10
	EPA: 8
	Environmental (for EPA): 2

ALL CASES II BRIEFING SCHEDULE

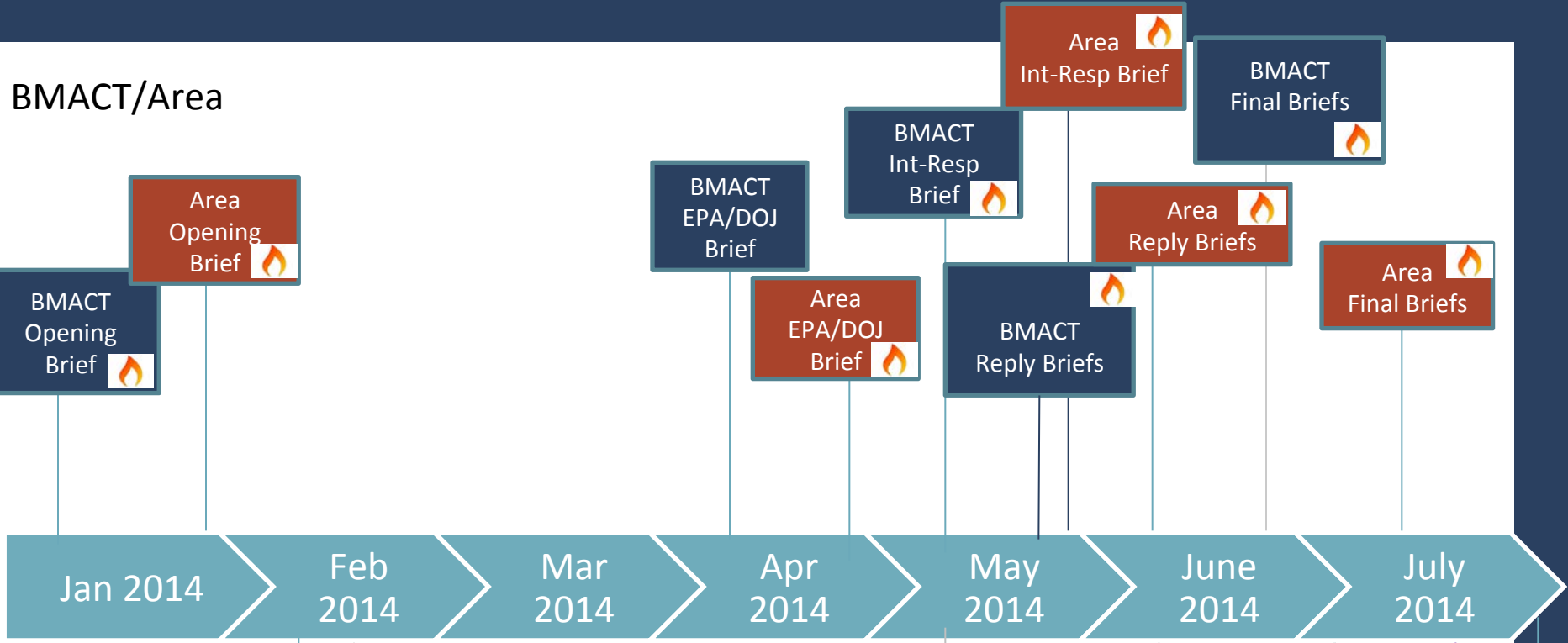
Case No.	Pet Opening Briefs	Resp Brief	Resp-Int Briefs	Pet Reply Briefs	Deferred Joint Appendix	Final Form Briefs
11-1108 BMACT	1/13/14	4/14/14	5/16/14	5/30/14	6/13/14	6/27/14
11-1141 Area Source	1/27/14	4/30/14	5/30/14	6/13/14	6/27/14	7/11/14
11-1148 NHSM	2/12/14	5/20/14	6/19/14	7/03/14	7/17/14	7/31/14
11-1125 CISWI	2/19/14	6/03/14	7/03/14	7/17/14	7/24/14	7/31/14

BMACT PROPOSED BRIEFING FORMAT

Briefs	Industry Pet Word Limit Proposal	Environmental Pet Word Limit Proposal
Industry Pet and Environmental Pet Opening	14,000 words each	14,000 words each
Julander Opening	3,500 words	3,500 words
EPA Response	31,500 words	31,500 words
Resp-Int	12,000 words for Industry Resp-Int	8,750 words for Environmental Resp-Int brief (opposing Industry Resp-Int)
Industry Pet and Environmental Pet Reply	7,000 words for Industry Pet reply	7,000 words for Environmental Pet reply if Industry Resp-Int brief is 8,750 words; 10,250 words for Environmental Pet reply brief if Industry Resp-Int brief is 12,000 words
Julander Reply	1,750 words	1,750 words

BMACT II Briefing Timeline

BMACT/Area



CISWI/NHSM

