

Surviving the Inevitable: BMACT Litigation Update



**CIBO E/E MEETING
JUNE 12-13, 2012
LISA M. JAEGER**

Current Cases



- **March 21, 2011 Rules**
 - DC Circuit
 - BMACT, CISWI, Area, NHSM cases in abeyance
- **Completion Case EPA Notice that CAA §112(c)(6) obligations complete**
 - Oral Argument September 12, 2012
 - ✦ Henderson, Tatel, Williams
- **Final 2012 Reconsidered Rules**
 - Sent to OMB May 18, 2012
 - Fed. Reg. by July 2012?
 - DC Circuit Petition September 2012?

Outlook



Final BMACT
Rules

July in Fed. Reg.

Lawsuits filed
September

Completion
Case Decision

BMACT II
Decisions Spring

BMACT II
Compliance?

BMACT II
Compliance?

2012

2013

2014

2015

2016

Litigation Update

“ In this world, nothing can
be said to be certain
except **Death**
and
Taxes ”

*and
Regulations!*

Benjamin Franklin, Excerpt from a letter to Jean-Baptiste Leroy

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MATS



- ***White Stallion v. EPA***
 - Case docketed February 16, 2012
 - Petitioners: 40 industry/trade groups, 21 states, environs
 - EPA/Intervenors: 18 states, 4 cities, environs
- **New Source Developers**
 - Moved to sever new source issues and expedite case (briefing complete May 30, 2012)
 - EPA, Environs, States and some industry opposed
- **Industry generally**
 - Moved to sever NSPS issues, hold in abeyance
 - DOJ expected to oppose abeyance

PC MACT



- **Proposed Settlement Agreement**
 - June 15, 2012 – EPA to sign Proposed Rule addressing issues
 - ✦ Issues under reconsideration
 - ✦ Remand from DC Circuit
 - ✦ Holcim Inc. Admin Petition of PM Standard
 - Compliance deadline
 - ✦ Set as September 9, 2015 or solicit comments on whether existing source compliance deadlines should be extended
 - December 20, 2012 – EPA to sign Reconsidered Final Rule
- **Case now in abeyance**
 - Motions for future proceedings due January 15, 2013 or 15 days after Final Rule signed

NSPS GHG Cases



EPA/Environmental Petitioners Settled, set deadlines

- **Power Plants Da**
 - Proposed Rule published April 13, 2012
 - Comments due June 25, 2012
- **Refineries**
 - Original settlement deadlines delayed
 - Proposal date unknown
 - Original Settlement, final due November 10, 2012
- **Main NSPS : in abeyance**

NAAQS



- **Ozone**
 - Briefing scheduled through summer
 - ✦ Final Briefs August 27, 2012
 - Oral argument Fall 2012?
 - Decision Winter 2013?
- **PM (2009 PM 2.5 Rule Remand)**
 - Proposed rule under development
 - *American Lung Assoc. v. EPA*: Court Order to sign proposal by June 7, 2012

Pending Decision



- **GHG Cases**
 - Oral Argument February 28/29, 2012
 - Decision Summer 2012?
 - ✦ Endangerment Finding
 - ✦ Light Duty Vehicle Rule (LDV)
 - ✦ Tailoring Rule
 - ✦ Historic PSD Rules Grounds Arising After
- **CSAPR**
 - Oral Argument April 13, 2012
 - Decision Fall 2012?
- **SO₂**
 - Oral Argument May 3, 2012
 - Decision Fall 2012?

Possible Dates for Final Litigation Outcomes



GHG	Summer 2012
SO₂	Fall 2012
CSAPR	Fall 2012
Ozone	Winter 2013