

Litigation Update



CIBO June E&E Meeting
June 11-12, 2013

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Boiler MACT and Area Source

- *US Sugar Corp v EPA* (DC Cir. No. 11-1108)
 - Consolidated with recon rule case *JELD-WEN v EPA*
 - Dispositive M/s, Certified Index, M/s to Govern: 8-6-13
 - CIBO and AMP, petitioners and intervenors
 - Admin recon pending
- *ACC v EPA* (DC Cir No. 11-1141)
 - Consolidated with recon rule *LEAN v EPA*
 - Dispositive M/s, Certified Index, M/s to Govern: 8-6-13
 - CIBO, ACC, AF&PA-AWC coalition, petitioners
 - CIBO and ACC, intervenors
 - Admin recon pending

CISWI and NHSM

- *AF&PA v EPA* (DC Cir No. 11-1125)
 - Consolidation with recon rule case *PCA v EPA*
 - Dispositive M/s, Certified Index, M/s to Govern: 8-6-13
 - CIBO, intervenor (also petitioner?)
 - Admin recon pending

- *Waste Management v EPA*, (DC Cir No. 11-1148)
 - Consolidated with recon rule case *NACWA v EPA*
 - M/s to Govern: 7-8-13
 - CIBO, intervenor (also petitioner?)
 - No admin recon pending (RCRA)

Recon Issues: More Admin Process?

Admin (possible/likely)	Litigate
MACT	
<ul style="list-style-type: none"> -Startup <ul style="list-style-type: none"> -clean fuel -definition <ul style="list-style-type: none"> - +process heater - +ESP -Shutdown definition -Operating load 30 day average -Clarification items -Liquid fuel <10% Gas 1/2 -Notice/Comment <ul style="list-style-type: none"> -lowered standards PM Hg CO -limited use units: work practice/capacity factor 	<ul style="list-style-type: none"> -SU/SD work practice -CO work practice (coal) -CO surrogate for non-D/F organics -PM CPMS -Limited use exemption -Standards/floors -CAA §112(c)(6): no standards for PCBs, POM, hexachlorobenzene -Energy Assessment

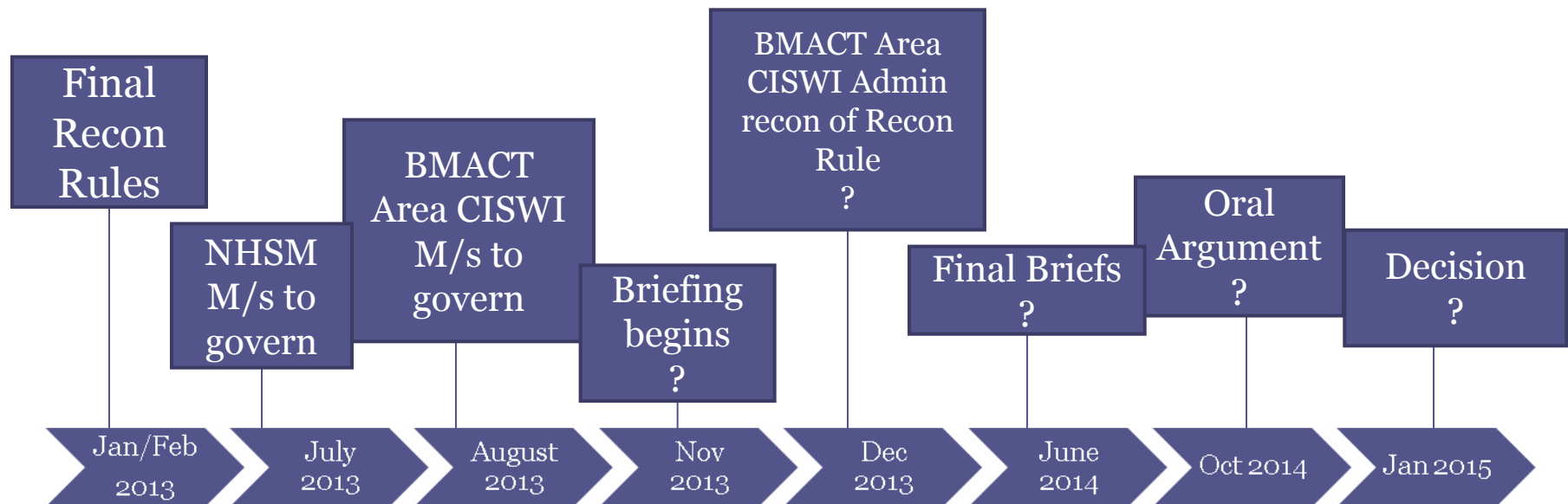
Recon Issues: More Admin Process?

Admin (possible/likely)	Litigate
Area Source	
<ul style="list-style-type: none"> -Startup -Shutdown -Notice/Comment <ul style="list-style-type: none"> -oil fired low-sulfur fuel PM compliance alternative -limited use subcategory/standards -PM initial performance test compliance alternative -Coal-fired Hg fuel sampling compliance alternative 	<ul style="list-style-type: none"> -Energy Assessment -Subcategories (limited use, others) -112(c)(6): not all urban HAP covered -Standards/floors -CO surrogacy -Work practice standards for <10 MM Btu/hr, su/sd, D/F, Gas 1/2 -Compliance alternatives performance test, fuel sampling, etc

Recon Issues: More Admin Process?

Admin (possible/likely)	Litigate
CISWI	
<ul style="list-style-type: none"> -“Modification” interpretation in Response to Comments only -Startup re CEMS for ERUs -Notice/Comment <ul style="list-style-type: none"> -lower PM limits (PCA) -lower HCl limits (ERC) 	<ul style="list-style-type: none"> -SU/SD work practice not numeric -“New” source status date June 4 2010 -Non-waste recordkeeping penalty -6-months CISWI → Boiler status -Standards (PM, HCl)
NHSM	
No Admin Petitions filed	All issues

BMACT Timeline



Other MACTS

- Sewage Sludge Incinerators (SSI)
 - Final rule: 76 Fed. Reg. 15,372 (Mar. 21, 2011)
 - *NACWA v EPA* DC Cir. No. 11-1131
 - Oral Argument May 3, 2013
 - Panel: Brown, Garland, Sentelle
 - NACWA: EPA used CAA §129 instead of §112
 - EarthJustice: floors based on best performers selected for control technology only; UPL wrongly used.

- MATS
 - *White Stallion v EPA* (DC Cir. No. 12-1100)
 - Fully briefed, oral arg not yet scheduled

- Portland Cement MACT
 - Final recon rule: 78 Fed. Reg. 10,006 (Feb. 12, 2013)
 - *Sierra Club v EPA* (DC Cir. No. 13-1112)
 - Environmental petitioners only, Industry intervened
 - M/s pending, provisional Sierra Club filed 6-5-13

Other MACTS

- **Chromium Electroplating MACT**

- Final rule: 77 FR 58,219 (Sept. 19, 2012)
 - Lowers limits on allowable hexavalent chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks
- EPA denied admin petition for recon
- *National Assoc. for Surface Finishing v EPA* (DC Cir. No. 12-1459)
 - Clean Air Council, Sierra Club also petitioners

- **RICE MACT**

- Final Recon rule: 78 FR 6673 (Jan. 30, 2013)
 - Backup stationary engines that generate electricity can run without controls for 100 hr/year during peak-use periods and emergencies
- *EnerNOC v EPA* (DC Cir. No. 10-1090)
 - Parties settled, case dismissed 2-6-13

Other MACTS

- Pulp/Paper Residual Risk/Tech Review
 - Final rule 77 FR 55,698 (Sept 11, 2012)
 - *AFPA v EPA* (DC Cir. No. 12-1441)
 - SSM provision under review, challenge “procedural”

- Brick and Ceramic Kilns
 - Final rule 2005 vacated 2007
 - *Sierra Club v EPA* (DC Dist. No. 08-424)
 - Deadline suit for new rule, consent decree 4-18-13
 - Proposed Rule by 2-6-14
 - Final Rule by 12-18-14

Extranet

- <https://extranet.bgllp.com/sites/MACT-Litigation/default.aspx>
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