

Regulatory and Li Update



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

LISA M. JAEGER
Bracewell & Giuliani

Pending Cases & Reg Actions

- 2008 Ozone NAAQS
 - *MS v EPA* (DC Cir No. 08-1200)
 - 1 hour 75 ppb standard
 - Oral argument 11-2012, waiting decision
 - Panel: Tatel Brown Griffith

- PM NAAQS
 - Final Remanded rule: 78 FR 3,086 (Jan 15, 2013)
 - *NAM v EPA* (DC Cir No. 13-1069)
 - Industry petitioners only
 - Admin recon pending
 - Industry/EPA/DOJ discussions of issues TBA
 - Industry will seek delay of July 2013 briefing

- Coal Ash
 - *Appalachian Voices v EPA* (DC Dist. No. 12-0523)
 - Summary judgment briefed
 - Status hearing 7-26-13
 - Court could set schedule for EPA coal ash rulemaking

Pending Cases & Reg Actions

- FERC Small Generator Interconnection NOPR
 - 78 FR 7,524 (Feb 1, 2013)
 - Proposal to modify interconnection procedures to increase efficiency
 - CIBO signed on to ELCON comments

- 316(b) Cooling Water Intake
 - Proposed rule 76 FR 22,174 (Apr. 20, 2011)
 - CIBO filed comments
 - Final rule expected 6-27-13

- SSM SIP
 - Sierra Petition for rule June 2011
 - Proposed rule 78 FR 12,460 (Feb. 22, 2013)
 - SIPs substantially inadequate to attain NAAQS
 - SSM SIPs due 18 months from 9-26-13
 - CIBO/coalition comments: EPA lacks authority
 - Lawsuit likely

Pending Cases & Reg Actions

- GHG SIPS
 - *Texas v EPA* (DC Cir No. 10-1425) (TX)
 - re 2010 partial withdrawal of TX PSD permit authority for GHGs
 - Oral argument 5-7-13
 - *UARG v EPA* (DC Cir No. 11-1037) (TX WY trades)
 - re 2010 SIP Call requiring State permits to cover GHGs
 - Oral argument 5-7-13

- CSAPR
 - Supreme Court Cert Petitions pending
 - *EPA v EME Homer City* (SCt No. 12-1182)
 - *American Lung Assoc. v EME Homer City* (SCt No. 12-1183)

Pending Cases & Reg Actions

- GHG Rules

- Supreme Court Cert Petitions pending:

- *Chamber of Commerce v EPA* (SCt No. 12-1272)
 - *UARG v EPA* (SCt No. 12-1152)
 - *Pacific Legal Foundation v EPA* (SCt No. 12-1153)
 - *Southeastern Legal Foundation v EPA* (SCt No. 12-1268)
 - *ACC et al. v EPA*
 - *CRR et al. v EPA*
 - *EIM et al. v EPA*
 - *Texas et al. v EPA*
 - *VA et al. v EPA*

- E15 Rules

- Supreme Court Cert Petitions pending: Standing

- *AF&PM v EPA* (SCt No. 12-1229)
 - *Grocery Manufacturers Assoc. v EPA* (SCt No. 12-1055)
 - *Alliance of Automobile Manufacturers et al. v EPA* (SCt No. 12-1167)

Also of Interest

- “Sue and Settle”
 - States/Industry
 - 13 state Attorneys General FOIA EPA communications Chamber study “Sue & Settle Regulating Behind Closed Doors”
 - Northeastern State NOI and other States’ response
 - US Congress
 - House Energy/Commerce Committee asks EPA to post Notices of Intent to Sue
 - House Judiciary Committee Hearing Feb 2012
 - HR 3862 Sunshine for Regulatory Decrees adopted July 2012
 - S 3382 introduced
 - Member letters to EPA

Also of Interest

- *Mingo Logan Coal v EPA* (DC Cir No. 12-5150)
 - Oral argument 3-14-13
 - Panel: Henderson Griffith Kavanaugh
 - Held: EPA has post-permit withdrawal authority under CWA §404 “whenever” discharges are determined to have adverse impact
 - Remanded 4-23-13
 - lower court to determine whether the withdrawal was arbitrary/capricious

