

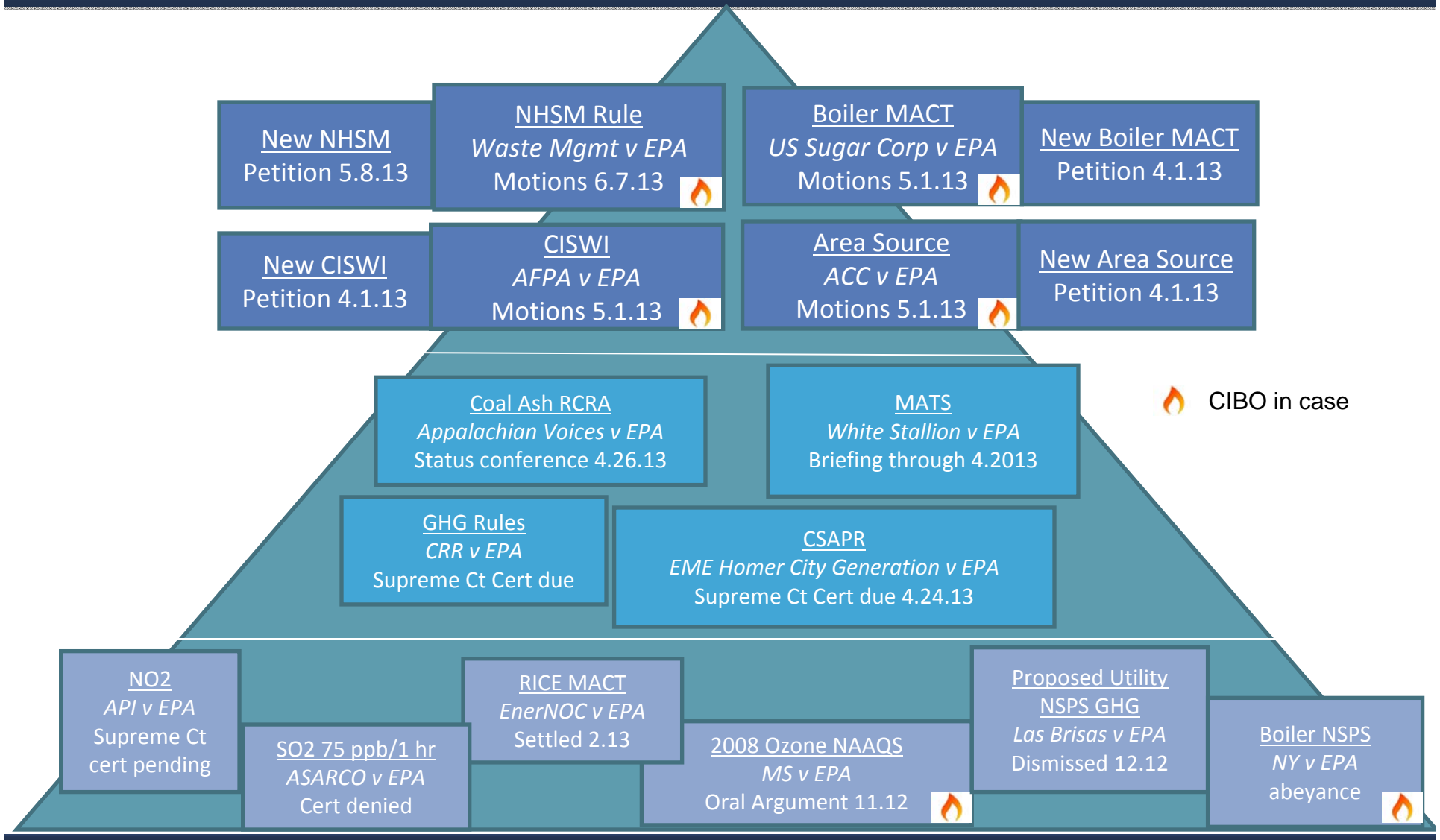
Litigation Update



CIBO March E&E Meeting
MARCH 6-7, 2013
LISA M. JAEGER
Bracewell & Giuliani

Pending Major Rule Challenges

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MICRO ISSUES - OFFENSE

Rule/Issue

EPA

Further Action?

MACT

SOLID

- HCl new/existing – subcategories
- Hg new/existing – subcategories
- PM 0.0011 not demonstrated achievable
- CO
 - 100pm
 - work practice
 - THC alternative

No subcategories
 No subcategories
 0.0011 retained

 100pm
 No work practice
 No THC alternative

Admin Pet?

MICRO ISSUES - OFFENSE

Rule/Issue	EPA	Further Action?
<p>LIQUID HCl new/existing –subcategories Hg - subcategories PM - unachievable CO -unachievable -subcategories -work practice</p>	<p>No subcategories Heavy/light subcategories</p> <hr/> <p>100pm Heavy/light subcats No work practice</p>	
<p>STARTUP/SHUTDOWN -site specific SU/SD definition</p>	<p>-“clean fuel” startup -“startup” = when any steam/heat supplied for any purpose</p>	<p>Admin Recon?</p>

MICRO ISSUES - OFFENSE

Rule/Issue	EPA	Further Action?
MALFUNCTION Work practice	Affirmative defense	
ENERGY ASSESSMENT - Not "beyond the floor" - Scope too broad for CAA - Scope too broad for category - CBI	Amendments but legal questions remain	
AVERAGING INITIAL COMPLIANCE -30-day average	Intent monthly averaging, but unclear	
GAS 2 -Ability to burn 10% liquid	Cannot burn 10% liquid	

MICRO ISSUES - OFFENSE

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Rule/Issue	EPA	Further Action
AREA SOURCE		
-SU/SD Energy Assessment - Not "beyond the floor" - Scope too broad for CAA - Scope too broad for category -CBI	"startup" = when any steam/heat supplied for any purpose Amendments but legal questions remain	Admin Recon?
CISWI		
Boiler v CISWI fuel switching	6 month wait	
Make biomass ERU = biomass boiler	Biomass ERU = < 10% coal	
SU/SD – work practice	Numeric limits apply	
Malfunction – work practice	Affirmative defense	
NHSM		
"Fuel"/ "waste" makes transfer = discard	Procedure added for non-waste determination	

- SUBCATEGORIES
 - Variability, achievability, technology forcing
- FLOOR SETTING / EMISSION LIMITS
 - Variability, achievability, technology forcing
 - GACT v MACT for biomass/oil area sources
- WORK PRACTICE STANDARDS
 - Dioxin/Furan, Gas 1/Gas 2, small units, SU/SD
- COMPLIANCE FLEXIBILITY
 - eg, testing frequency

Other MACTS - Issues

- Main MATS *White Stallion v EPA* (12-1100)
 - Briefing complete April 2013

Issues

Floor setting methodology

Startup/Shutdown

Separate standards for CFB units

Fuel-switching as MACT for new units

Averaging alternative

Parametric monitoring alternatives

Less frequent stack testing

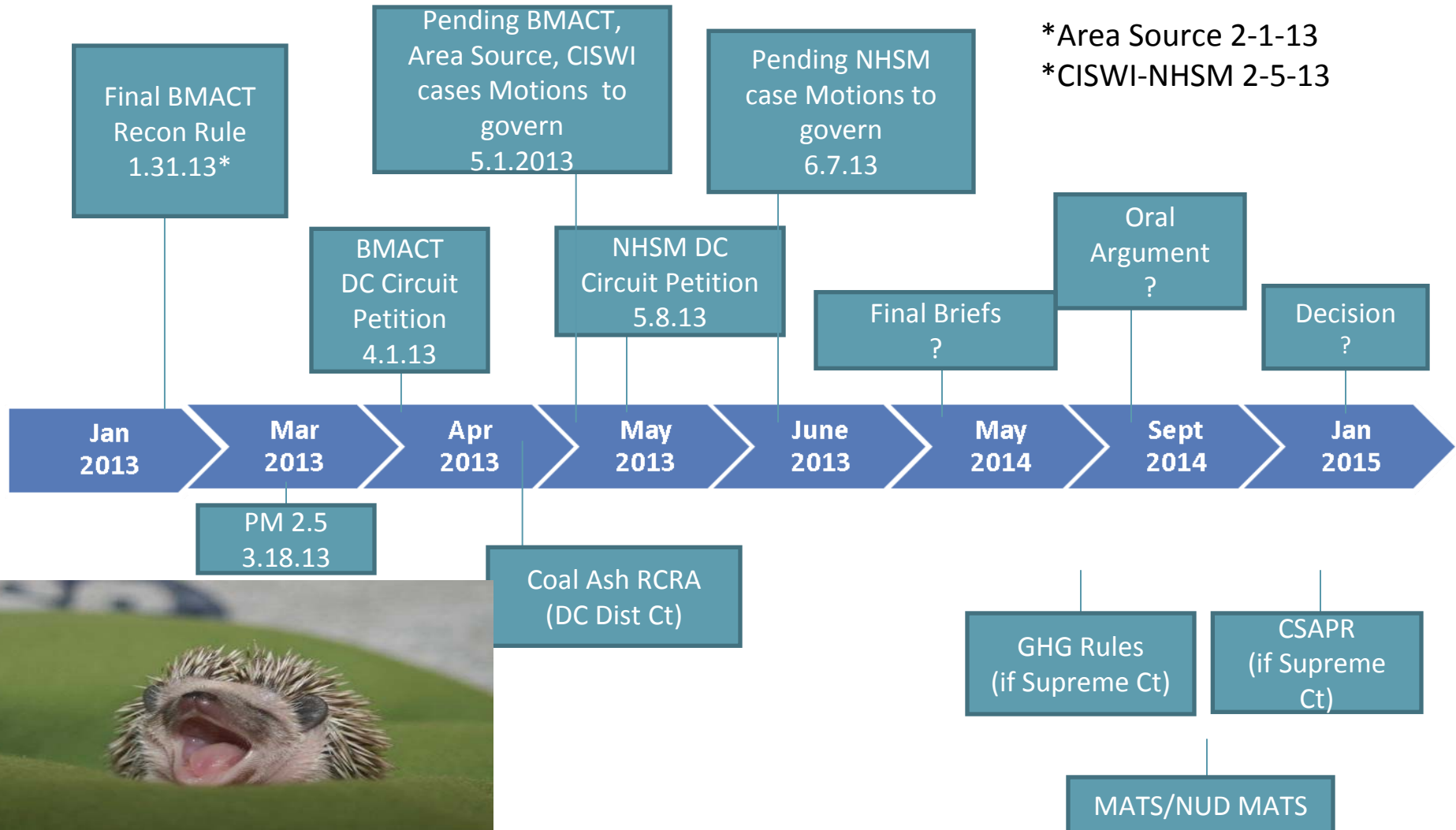


- Consolidated / coordinated cases
- Petitioner / Intervenor
- Solo or coalition petition? / joint briefing
- Administrative reconsideration?
 - Technical Amendment/Guidance?
- Rules in effect unless stayed
 - Cases on normal timeline unless expedited
- Further NHSM action

BMACT Litigation Timeline

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*Area Source 2-1-13
*CISWI-NHSM 2-5-13



Other MACTS - Status

- RICE MACT *EnerNOC v EPA (10-1090)*
 - Settled: Final Rule 78 FR 6674 (January 30, 2013)
 - EPA revised §63.6640(f): stationary emergency RICE can operate up to 100 hrs/yr for emergency DR within 100 hrs already provided for operation, maintenance, testing.
 - Rule may/may not be challenged
- PC MACT *PCA v EPA (10-1358)*
 - Settled: Final revised reconsidered rule 78 FR 10006 (Feb 12, 2013)
- Pulp/Paper Residual Risk/Tech Review *AFPA v EPA (12-1441)*
 - SSM provision under review, challenge “procedural”
- Brick and Ceramic Kilns *Sierra Club v EPA, DC Dist Ct (08-424)*
 - 2003 Rule, 2006 compliance (\$100 million), vacated 2007
 - Consent decree: 8.30.13 proposal; 7.31.14 final
 - Challenging final rule 77 FR 55,698 (Sept 13, 2012)

- NO₂ (*API v EPA*)
 - Cert pending
 - May EPA set NAAQS for hypothetical public health threat?
- PM 2.5 (_____ *v EPA*)
 - Primary/12 µg/m³
- E15/Standing (*GMA v EPA*)
 - Cert pending
 - *Clapper v Amnesty Internation*

EPA Rules Rough Timeline

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