

# LITIGATION UPDATE

CIBO E/E MEETING

SEPTEMBER 11-12, 2012

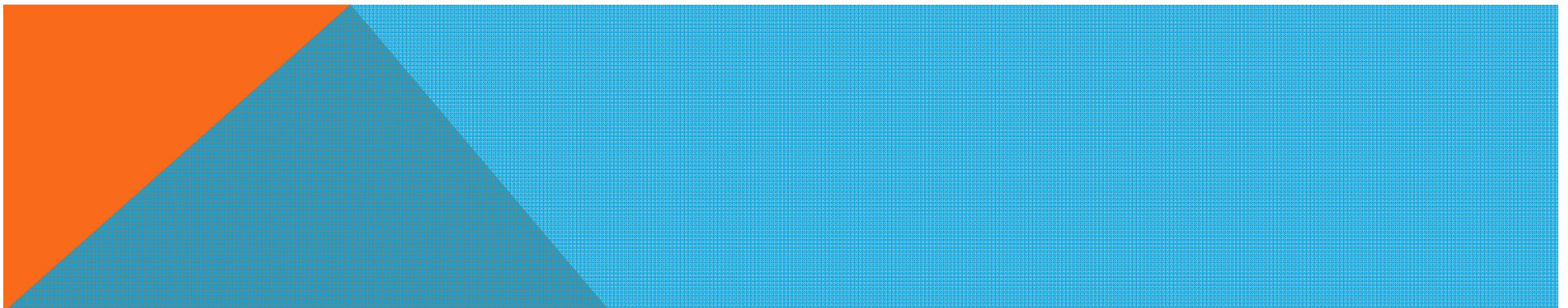
LISA M. JAEGER



# OZONE NAAQS

*Mississippi v. EPA (08-1200)*

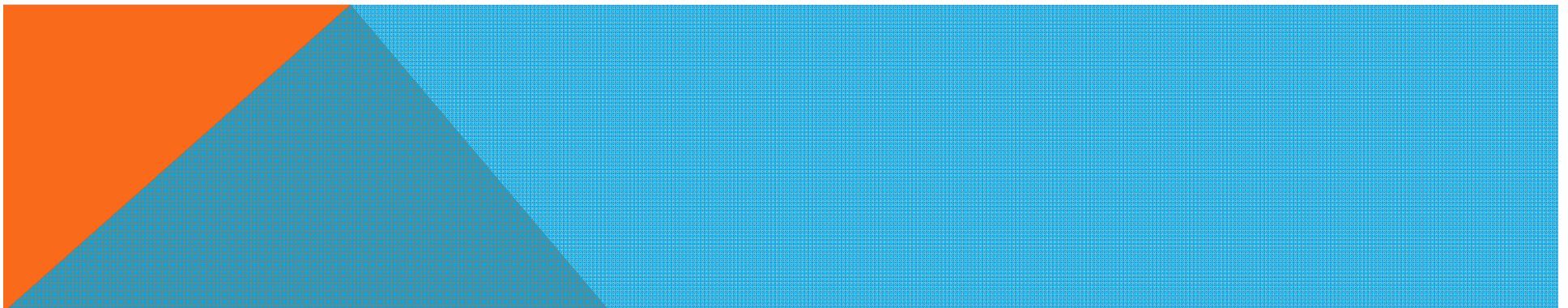
- **Parties**
- **Issue** Is 2008 decision to revise 1997 NAAQS “requisite” to protect public health with adequate margin of safety?
- **Schedule**
  - Oral argument 11/16/2012  
Tatel, Brown, Griffith
  - Decision Jan 2013?
- **Future Case**
  - New proposed ozone standard 2013



# MATS (UTILITY MACT/NSPS)

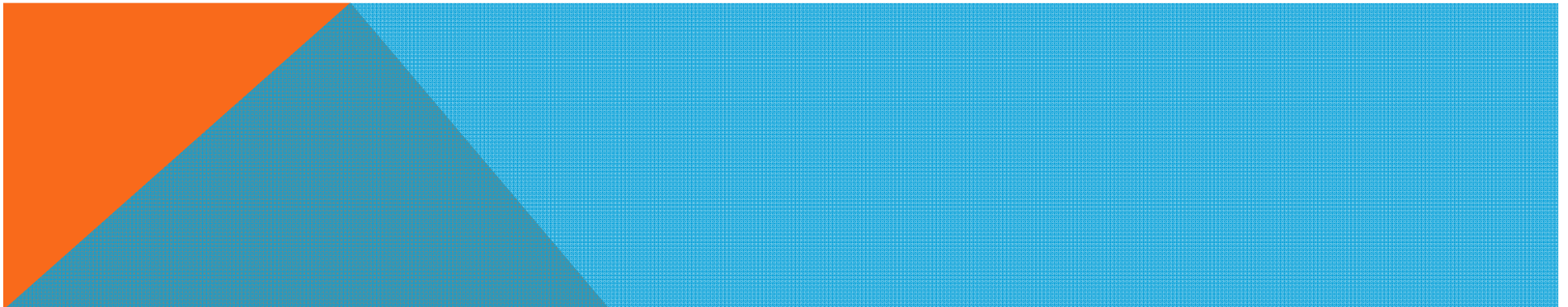
*White Stallion v EPA (12-1100)*

- Parties
- Issues
- Schedule
  - Briefing Oct 2012 – Apr 2013
  - Oral Argument June 2013?
  - Decision Sept 2013?



# BABY MATS

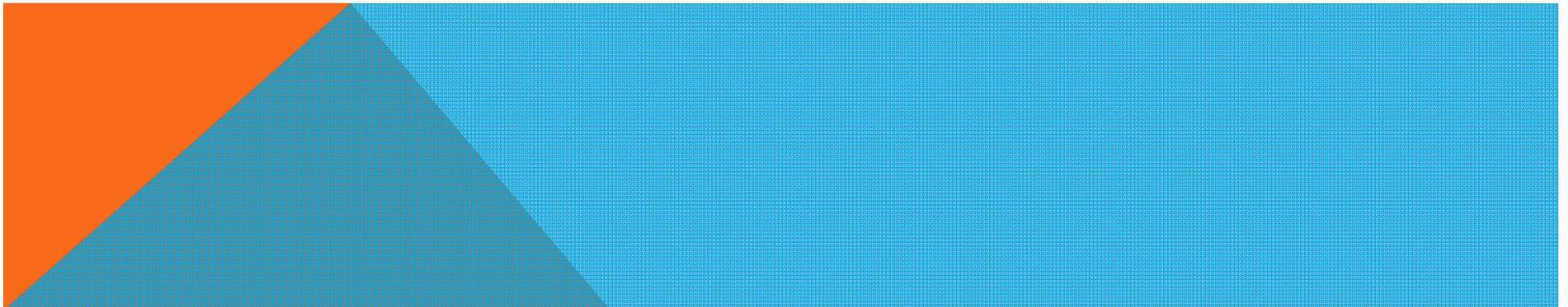
- New Unit Developers MATS
  - *White Stallion v EPA* (12-1272)
- NSPS Issues
  - *UARG v. EPA* (12-1166)
- EPA Denial of De-listing Petition
  - UARG Motion to sever pending
- UARG issue #8 (testing, facility averaging, notifications, reporting, etc)
  - Motion to sever pending
- Chesapeake Climate Action, et. al. issues
  - Motion to sever/hold in abeyance pending



# PROPOSED GHG UTILITY NSPS

*Las Brisas v. EPA (12-1248)*

- **Petitioners**
  - Las Brisas, White Stallion, Sunflower Electric, Tri-state, UARG, Power4Georgians
- **Issues**
  - 4/13/2012: proposal/new source applicability
  - NSPS 1000 lb CO<sub>2</sub>/MWh all fuels
  - “transitional sources” begun by 4/13/2013
  - BACT cannot exceed any applicable NSPS
- **Schedule**
  - Expedited briefing
  - Dispositive motions briefed 9/6/2012



# COAL ASH RCRA MANDATORY DUTY

*Appalachian Voices v. Jackson* (DC District Ct 12-0523)

Petitioners claim EPA violated mandatory duty to review/revise if necessary

○ **Appalachian Voices** remedy sought:

Declare violation/ Order EPA to review, make determination & revise if necessary:

- 40 CFR 261.4(b) CCR exemption from hazardous waste
- Subtitle D CCB disposal regs at 40 CFR 257.3-3, 3-4, 3-7
- TCLP reg 40 CFR 261.24

○ **Headwaters Resources & Boral Material Technologies** remedy sought:

Declare violation/ Order EPA to determine whether to revise regs for disposed CCR

under C, D or not at all and state authority for the decision

**Motions for Summary Judgment pending**

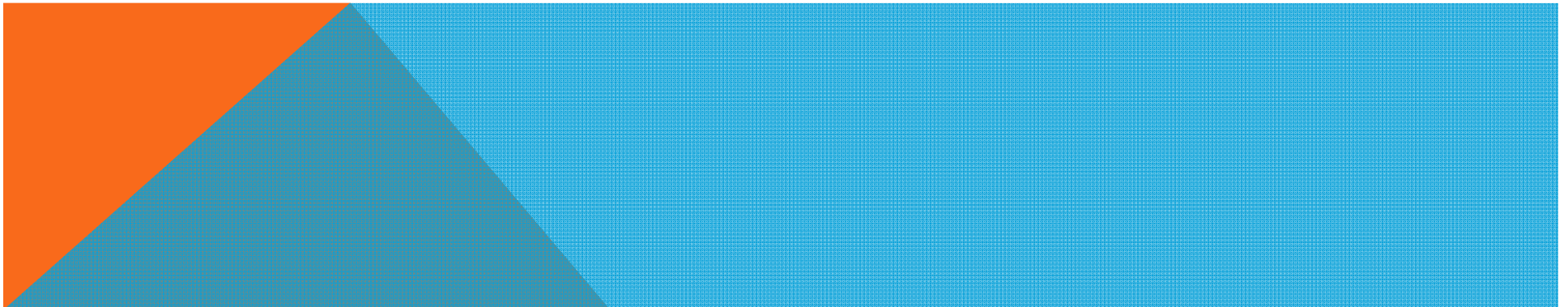
○ EPA response 9/28/2012



# PC MACT



- *PCA v. EPA* (10-1358)
- **Settlement Agreement**
  - 6/15/2012 – EPA Proposed Rule addressing
    - Recon issues, Remand issues,
    - Holcim Admin Petition of PM Standard
  - 12/20/2012 – EPA to sign Reconsidered Final Rule
  - Compliance deadline 9/9/2015, but taking comment on possible extension
- **Case in abeyance**
  - Motions for future proceedings 1/15/2013 or 15 days after Final Rule signed
- CIBO joined coalition comments on Proposed Rule 8/17/2012



# OTHER MACTS/NAAQS

## BMACT Rules

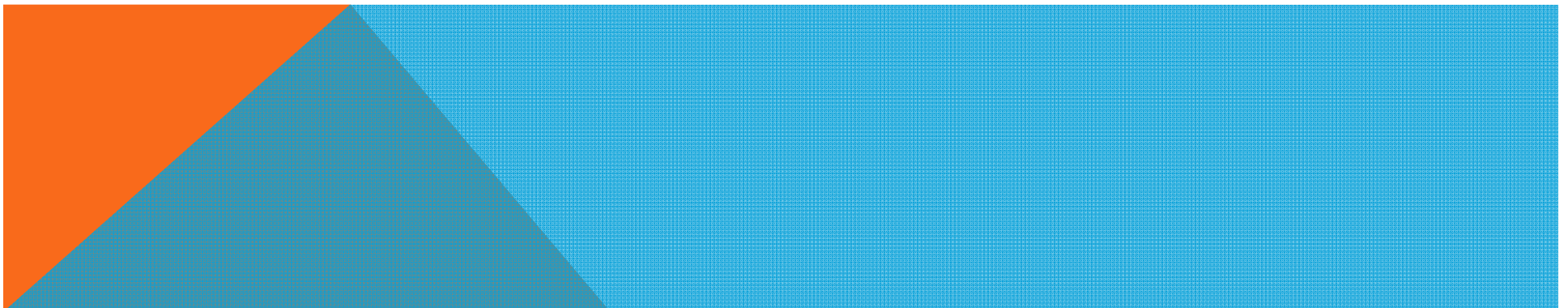
- Case in abeyance
- Final Reconsidered Rule Nov 2012?

## RICE MACT

- Case in abeyance
- Final Reconsidered Rule Nov 2012?

## PM 2.5 (2009 Rule on Remand)

- Proposed remanded rule 6/29/2012
- Coalition comments 8/31/2012
- Final Remanded Rule due 12/14/2012





# GHG CASES

*Coalition For Responsible Regulation v. EPA (09-1322)*

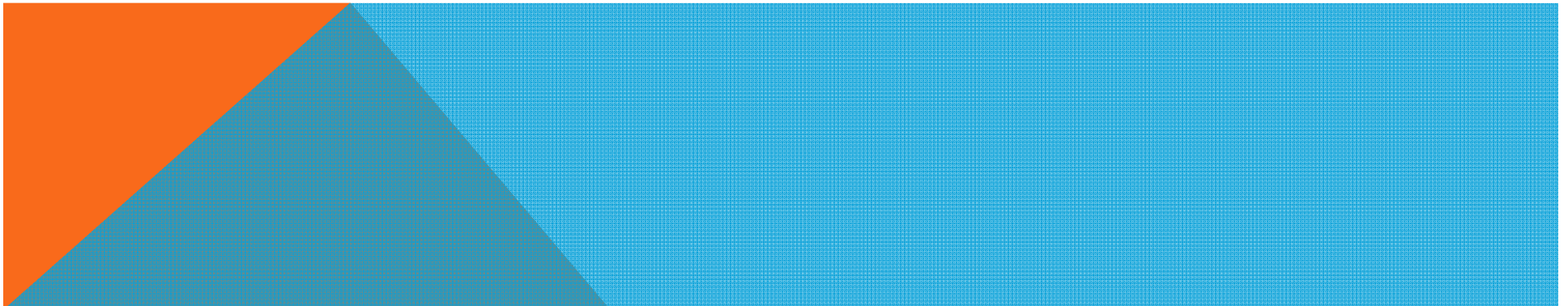
Endangerment Finding/ Light Duty Vehicle / Tailoring / Timing, Historic PSD Rules

DC Circuit Decision 6/26/2012

- Sentelle, Rogers, Tatel (per curiam)
- Timing and Tailoring dismissed for lack of standing
- All other petitions denied

Petitions for rehearing en banc 8/10/2012

- Court called for Responses by 9/21/2012



# NO2 AND SO2 NAAQS

NO2 *API v. EPA (10-1079)*

oDC Circuit Decision 07/17/2012

- Ginsberg (opinion), Rogers, Edwards
- No jurisdiction to review Preamble requiring compliance where no modeling method exists
- primary 100 ppb 1-hour NO2 standard upheld

SO2 *NEDA/CAP v. EPA*

oDC Circuit Decision 07/20/2012

- Sentelle (opinion), Kavanaugh, Ginsberg
- No jurisdiction to review Preamble requirement of modeling data for compliance
- 75 ppb 1-hour SO2 standard upheld



# CSAPR

## *EME Homer City Generation v. EPA (11-1302)*

- **DC Circuit Decision 8.21.12**
  - Kavanaugh (opinion), Griffith, Rogers (dissent)
  - CSAPR vacated and proceeding remanded to EPA
- **Other cases implicated by CSAPR vacatur**
  - Disapprovals of 2006 PM 2.5 SIPs for no interstate transport provisions
    - *Ohio v. EPA* (6<sup>th</sup> Cir) (in abeyance)
    - *Kansas v. EPA* (DC Cir) (in abeyance)
    - *Georgia v. EPA* (DC Cir) (in abeyance)
  - *Texas v. EPA* (DC Cir) (TX SIP/FIP case)
    - EPA revision of TX SIP to include PSD for GHGS
  - *Oklahoma v. EPA* (10<sup>th</sup> Cir)
    - EPA disapproval of OK regional haze SIP and simultaneous FIP



# PROJECTED DATES - FINAL LITIGATION OUTCOMES

Rule	Final Decision
Coal Ash RCRA (DC Dist Ct)	December 2012
GHG NSPS (DC Dist Ct)	January 2013
Ozone NAAQS	February 2013
MATS/NUD MATS	October 2013
GHG Cases (possible en banc/SCT)	Spring 2014
CSAPR (possible en banc/SCT)	Summer 2014



## STATE OF MACT & NAAQS STANDARDS

