

Boiler MACT II Litigation

CIBO E&E Meeting
September 10-11, 2013



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BMACT II DC Circuit Cases

- ▶ *US Sugar Corp v. EPA* (11-1108) BMACT
 - CIBO and AMP, petitioners and intervenors
- ▶ *ACC v. EPA* (11-1141) Area
 - CIBO, ACC, AF&PA-AWC coalition, petitioners
 - CIBO and ACC, intervenors
- ▶ *AF&PA v. EPA* (11-1125) CISWI
 - CIBO, intervenor for EPA
- ▶ *Waste Management v. EPA* (11-1148) NHSM
 - CIBO, intervenor for EPA

BMACT – Reconsideration

Reconsideration Issues

“Startup” “Shutdown” definitions & work practice standards

Revised 130 ppm CO limit

CPMS requirement to certify, including consequences of exceeding operating parameters (and requirement to certify)

Non-Reconsideration Issues

“Gas 1” definition to allow <10% liquid on annual heat

* EPA could reconsider/hold in abeyance other issues.

BMACT – Reconsideration

Clarifying Changes & Inadvertent Inconsistencies

Applicability of BMACT to natural gas EGUs

Compliance date for coal/oil EGUs now subject to BMACT

Conversion error in floor calculation for existing hybrid suspension grate boilers

Recordkeeping re SU/SD periods for Gas 1

Removal of unnecessary references to statistical equations

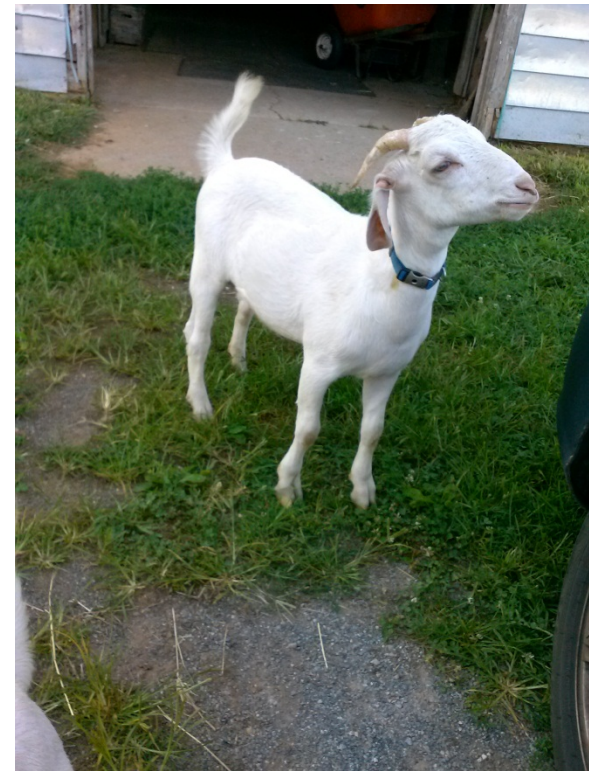
Averaging time for operating load limits Table 8

Existing source compliance date = effective date of the final rule

Other Gas 1 fuels, analysis provisions

BMACT Case– Industry Issues

- ▶ Energy Assessment
- ▶ CO issues other than 130 ppm limit
- ▶ Operating limits based on performance tests
- ▶ 10% penalty for emissions averaging
- ▶ No health based emission limit
- ▶ Shifting between MACT and CISWI
- ▶ “Gas 1” does not allow
<10% liquid



BMACT Case – Sierra Issues

- ▶ Subcategories must be class, size, type
- ▶ No standards for PCBs, POM, hexachlorobenzene
- ▶ Floors
 - source performance not best performers
 - new not performance of best controlled source
 - actual emissions different to ID best performers & set limits
 - adjusting source emission levels twice
 - rounding up to ID best performers & performance
 - assume emissions 3X highest method detection level
- ▶ Standards
 - MACT not MACT
- ▶ Malpractice affirmative defense
- ▶ Compliance
 - 30-day averaging excludes su/sd

BMACT Case – Abeyance Issues

- ▶ **Startup/shutdown**
 - Definitions
 - Work practice standards
- ▶ **CO Limits**
 - 130 ppm
- ▶ **CPMS**
 - Including consequences of exceeding operating parameter



Area – Reconsideration

Reconsideration Issues

Definition of startup



New monitoring provisions that eliminate further stack testing for PM and fuel sampling for mercury

Limited-use subcategory and standards

No more PM performance testing if initial compliance 50% of PM limit

No more fuel sampling at coal boilers if initial compliance with Hg limit based on fuel analysis

* EPA could reconsider/hold in abeyance other issues.

Area Case – Industry Issues

- ▶ Energy Assessment
- ▶ Startup/shutdown



Area Case – Sierra Issues

- ▶ Subcategories must be class, size, type
- ▶ No standards for PCBs, POM, hexachlorobenzene
- ▶ Floors
 - source performance not best performers
 - new not performance of best controlled source
 - actual emissions different to ID best performers & set limits
 - 99th percentile worst performance of 12%
- ▶ CO as surrogate for POM

Area Case – Sierra Issues

- ▶ Standards
 - should be MACT
 - GACT not GACT
 - GACT = tune up
- ▶ Work practice standards for
 - < 10 MMBtu heat input
 - Startup/shutdown
- ▶ Malpractice affirmative defense
- ▶ Exemption from Title V
- ▶ Compliance alternatives
 - Low sulfur fuel for PM compliance
 - Stack testing exemption
 - Fuel sampling exemption



Area Case – Abeyance Issues

- ▶ Startup/shutdown definitions & standards
- ▶ PM standard for new low sulfur oil units
- ▶ Limited-use subcategory/standards
- ▶ PM stack testing exemption
- ▶ Fuel sampling exemption



CISWI – Reconsideration

Reconsideration Issues

Definition of “CEMS data during startup and shutdown periods”

PM limit for waste-burning kiln subcategory

NHSM – No Reconsideration

* EPA could reconsider/hold in abeyance other issues.

CISWI/NHSM Cases – Issues

▶ CISWI

- Recordkeeping: no records = CISWI status
- SO₂ limits for biomass energy recovery units
- Inconsistency with MWC standard
- No provision for inadvertent burning waste in boiler
- Need emissions averaging
- Need subcategories

▶ NHSM

- Additional materials are non-wastes
- Transfer to 3rd party = disposal
- Sewage sludge = solid waste
- Discarded tires

SSI MACT Decision

NACWA v EPA (11-1131)

- ▶ Court upheld
 - floors
 - use of non-detect data
 - not going beyond the floor for existing units
 - no further subcategorization
 - no CEMS for all pollutants
 - use of control technologies to estimate emissions and identify best performers even where controls not only factor affecting emission levels

SSI MACT Decision

NACWA v EPA (11-1131)

- ▶ On remand, EPA must “clarify” the UPL and variability, including why the UPL
 - represents the ‘average emissions limitation achieved by best performing 12%
 - reasonably estimates the worst foreseeable operating conditions
 - can account for more than intra-unit variability
- ▶ And EPA must “elaborate” on
 - use of statistical method to determine whether limited dataset is representative of units with no data
 - why it chose the variables it did for that statistical analysis

Issues in Utility Cases

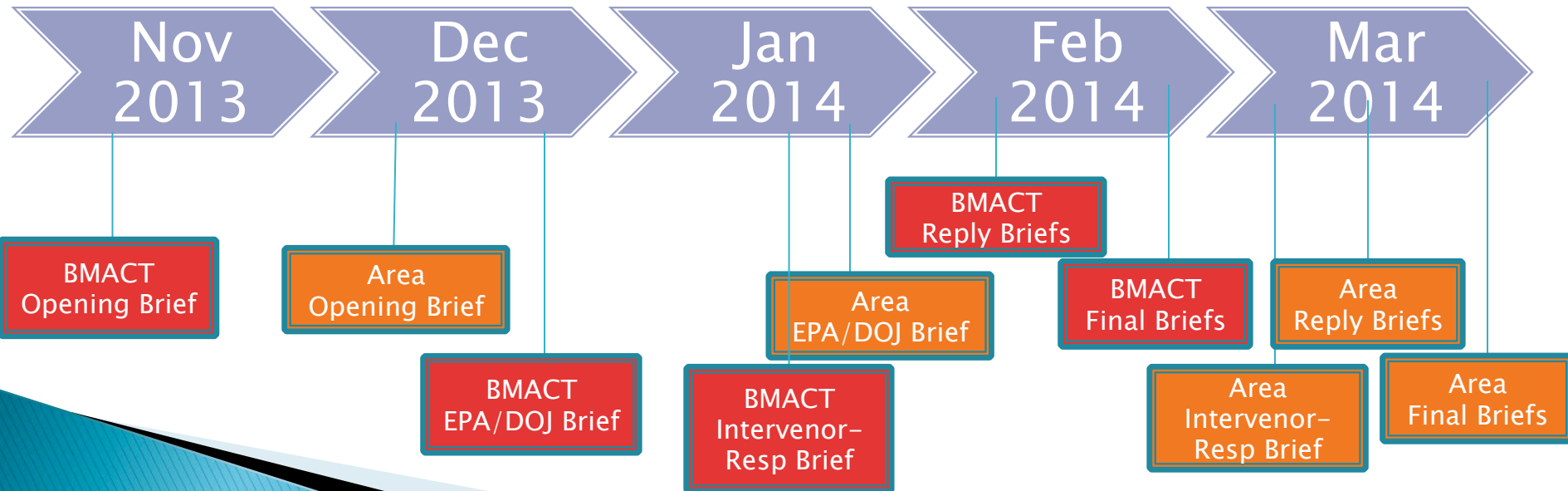
- ▶ *MATS White Stallion v EPA* (No.12-1100)
 - No S. 112(n) appropriate and necessary finding
 - Area sources: no finding and no GACT
 - Hg limit based on 4% coal EGUs
 - Law requires HBEL for acid gas HAPs
 - Need CFB subcategory (HCl, waste coal)
 - Lignite Hg limit
 - Pet coke PM limit & no finding
 - Emissions averaging illegal
 - PM monitoring alternatives illegal
- ▶ *NSPS UARG v EPA* (No. 12-1166)
 - PM CEMS units meet higher limit or monitor opacity
 - TX affirmative defense should be approved

BMACT v. MATS Timing

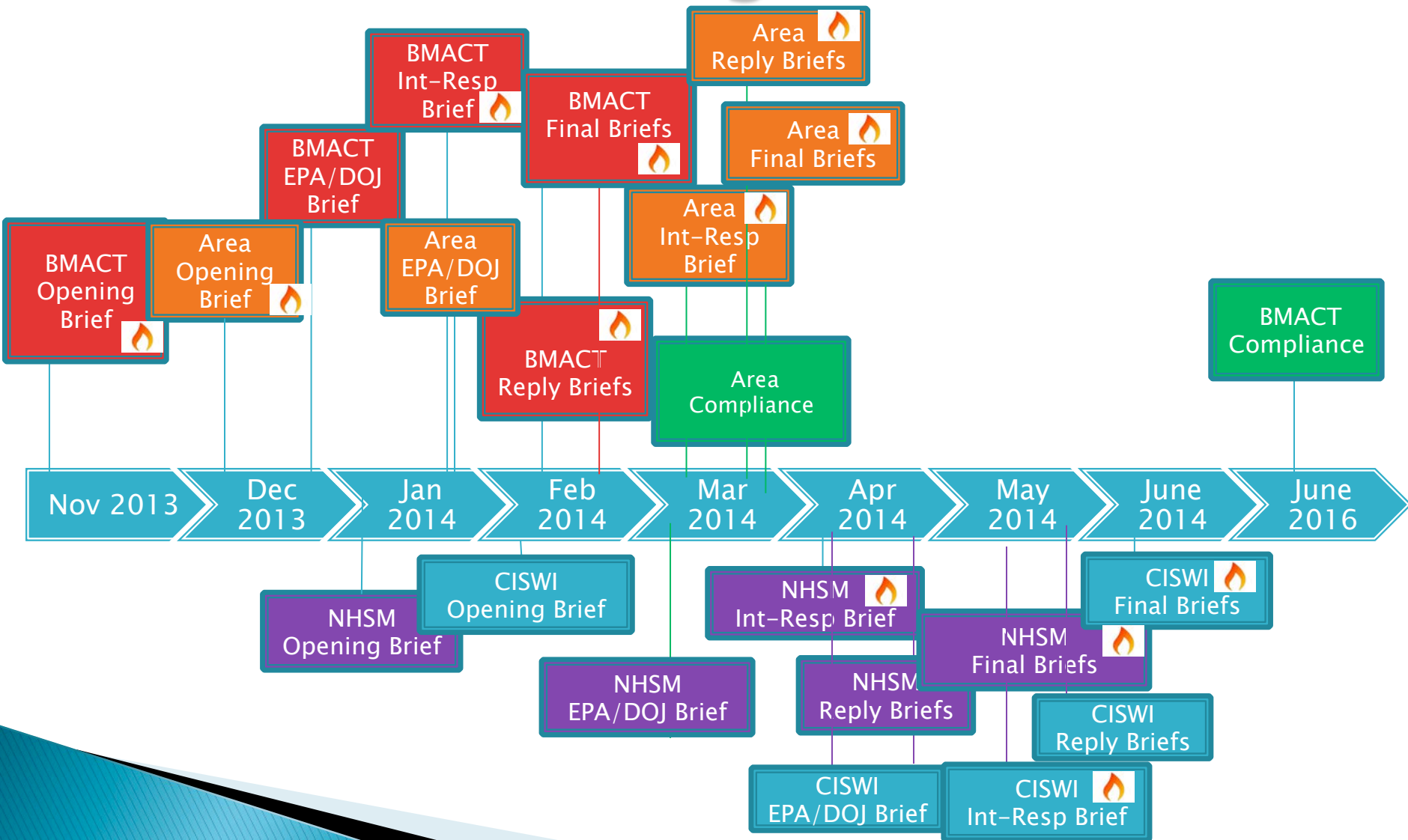
MATS/NSPS:



MACT:



BMACT II Briefing Timeline



Litigation Variables

- ▶ Briefing schedules (due Sept 12 2013)
- ▶ Pending Motion for single judicial panel
- ▶ Admin recon III. Proposed? Final?
- ▶ Utility MATS/NSPS cases
 - Overlapping issues – DC Cir decision when?



Other MACTS

▶ Portland Cement MACT

- *Sierra Club v EPA* (DC Cir No. 13-1112)
- Enviro petitioners only, Industry intervene
- EPA/DOJ final brief filed 8-23-13

▶ RICE MACT

- Final recon rule: 78 FR 6673 (Jan 30, 2013)
- Notice of Reconsideration 78 FR 54606 (Sept 5, 2013)
- Comments due 11-4-13

▶ Chromium Electroplating MACT

- *National Assoc. for Surface Finishing v EPA* (DC Cir. 12-1459)
- Motion to dismiss filed 5-28-13, not granted yet

Other MACTS

- ▶ Pulp/Paper Residual Risk/Tech Review
 - *AFPA v EPA* (DC Cir 12-1441)
 - Case put in abeyance 5-15-13

- ▶ Brick and Ceramic Kilns
 - *Sierra Club v EPA* (DC Dist. 08-424)
 - Consent decree signed 4-18-13
 - Proposed rule by 2-6-14
 - Final rule by 12-18-14

