

Judicial Watch



CIBO Annual Meeting - October 23, 2008
Lisa M. Jaeger – Bracewell & Giuliani, LLP

BMACT/CISWI - NRDC v. EPA (CIBO)

Background

- No emission reduction MACT floor
- CAA §112(d)(4) health-based compliance option
- Sources burning any solid waste as §129 "incinerators"

From the Court

- Henderson (for Court), Randolph (concur), Rogers (concur dissent)
- 6/6/08 - CISWI Definitions Rule, Boilers Rule vacated and remanded

Next Steps

- EPA request for OMB approval to issue §112(g)(j) guidance pending
- EPA sent §114 letters to facilities; due 10/6/08

NSPS – New York v. EPA (CIBO)

Background

Environmental & State Petitioners argue:

- “Best system of emission reduction” = energy efficient design & IGCC
- Incremental cost to existing sources cannot be basis for rejecting SCR for NSPS
- PM 2.5 should have separate standard & condensables should be controlled
- NY: low sulfur fuel should be considered system of emission reduction

Next Steps

- Oral Argument schedule pending

PM – Am. Farm Bureau v. EPA (CIBO)

Background

- 2.5 annual retained at 15 $\mu\text{g}/\text{m}^3$ (prim/sec)
- 2.5 24-hour lowered to 35 $\mu\text{g}/\text{m}^3$ (from 65) (prim/sec)
- Science – Studies CASAC – staff recommendations – EPA discretion

From the Court

- 9/15/08 – Oral Arguments
- Ginsburg Garland Griffith

Next Steps

- DC Circuit decision perhaps Winter '08/'09

CAIR – NC v. EPA

SO2 Industry (some CIBO) v. EPA

Background

- Title I authority – significant contribution and trading
- Title IV authority – SO2 credit limits and inclusion of exempt units
- 2015 compliance
- Fuel adjustment factors

From the Court

- Per Curiam; Sentelle, Rogers, Brown
- 7/11/08 – CAIR, FIP vacated and remanded

Next Steps

- Rehearing Petitions pending
- Parties' responses to Rehearing due 11/10/08

Clean Air Mercury Rule – NJ v. EPA

Background

- EPA rule delisting egus as source category
- Trading program for mercury in lieu of §112 standards

From the Court

- 2/8/08 - Delisting Rule and CAMR vacated
- Rogers Tatel Brown

Next Steps

- DC Circuit denied rehearing
- EPA, UARG Petitions for writ of certiorari pending
- Opposition to certiorari due 11/17/08

OZ .075 – MS v. EPA

From the Court

- 10/8/08 - Reconsideration of Alabama's Intervenor Status

Next Steps

- 11/6/08 – Briefing formats due from parties

Title V Monitoring – Sierra Club v. EPA

Background

- EPA rule prohibited state/local supplementation of existing Title V permit periodic monitoring requirements to assure compliance, in favor of programmatic review of such requirements by EPA.

From the Court

- Sentelle, Griffith (for the Court), Kavanaugh (dissent)
- 8/19/08 - 2006 rule vacated: CAA requires state/local permit authorities to supplement Title V permits where monitoring not adequate to assure compliance.
- Court denied Petition for Review with respect to monitoring provisions of Part 70 Rules.

Next Steps

- EPA filed unopposed motion to extend Petition for Rehearing deadline to 11/3/08

CEM Rule – UARG/Air Liquide v. EPA

Background

- Requires compliance with Protocol Gas Verification Program by January '09.

From the Court

- 5/2/08 – Cases held in abeyance

Next Steps

- Discussion among parties ongoing
- Parties file status report 10/29/08.

Startup/Shutdown/Malfunction – Sierra Club v. EPA

Background

- Sierra argues that the reg “automatically exempts” sources from any emission standard and SSMs are not: mandatorily implemented, independently enforceable, vetted during development, publicly available

From the Court

- 9/12/08 – Oral Argument: Randolph, Rogers, Tatel
- J. Tatel "This case looks exactly like NJ v. EPA"

Next Steps

- DC Circuit Decision pending

Supreme Court Cases

- **Winter v. NRDC – NEPA**
 - Can the Navy use sonar off the CA coast in spite of alleged harm to marine mammals, based on finding that training is an emergency circumstance under NEPA?
- **Summers v. Earth Island – APA**
 - Can a party sue to overturn a programmatic Forest Service regulation, or must a party challenge specific programs enacted under the terms of the general regulation?

Supreme Court Cases

- **BNSF v. US**

- **Shell v. US – Superfund**

- Does CERCLA require joint and several liability where costs can be apportioned based on objectively reasonable grounds?

- **PSEG v. Riverkeeper**

- **Entergy v. EPA**

- **UWAG v. Riverkeeper – CWA 316(b)**

- Does CWA allow for cost-benefit analysis in determining the “best technology available for minimizing adverse environmental impact” at cooling water intake structures?

JUDICIAL WATCH OUTLOOK



	Fall '08	Winter '08-'09	Spring '09	Summer '09	Fall '09
CAIR		DC Circuit Rehearing			
PM		DC Circuit			
NSPS			DC Circuit		
OZ .075				DC Circuit	
TV Monitoring	DC Circuit Rehearing				
NEPA		Supreme Court Merits			
316(b)			Supreme Court Merits		
Superfund			Supreme Court Merits		
APA			Supreme Court Merits		
CAMR		Supreme Court Certiorari		(Supreme Court Merits)	