

CIBO - CLEAN AIR ACT LITIGATION - Updated October 17th, 2008

CONFIDENTIAL

Case Info	Parties/ Issues	Status
<p><u>BMACT/CISWI</u></p> <p>NRDC v. EPA 04-1385</p> <p>OAR-2002-0058</p> <p>Panel judges: Henderson Randolph Rogers</p>	<p>Petitioners: NRDC Environmental Integrity Project Sierra Club</p> <p>Amici for Petitioners: National Assoc. of Clean Air Agencies ME, NJ, NY, DC -----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: UARG Alliance of Automobile Manufacturers ACC AF&PA American Home Furnishings Alliance American Public Power Assoc. AMP OH API CIBO Coalition for Responsible Waste Incineration Coke Oven Environmental Task Force CRWI Edison Electric National Oilseed National Rural Electric Coop Assoc NPRA USWAG</p> <p>Amici for Respondent: American Boiler Manufacturers Assoc</p>	<p>Final Rule 09-13-04</p> <p>Petition for Review 11-12-04</p> <p>CISWI Definitions Rule & Boilers Rule vacated and remanded 06-08-07</p> <p>EPA submitted ICR to OMB for approval to implement MACT rules through § 112(g) & § 112(j). CIBO filed comments 05-19-08.</p> <p>OMB has approved the BMACT §114 survey ICR. Certified §114 letters sent to Individual facilities in August. Documents for the EPA Combustion Survey published online include an overview document (containing all survey questions, definitions of terms, and instructions for submission) and seven spreadsheets for entering responses. Survey responses due 10-06-08.</p>

<p><u>NSPS</u> New York v. EPA 06-1148</p> <p>Briefing format panel: Rogers Garland Griffith</p> <p>OAR-2005-0031</p> <p>Challenging "Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units," Final Rule 71 Fed. Reg. 9866 (02-27-06)</p>	<p>Petitioners: NY, CA, CT, ME, NM, OR, RI, VT, WI, MA, DC, City of NY</p> <p>Intervenors for Petitioner: Environmental Defense NRDC Sierra Club</p> <p>Amici for Petitioner: Entergy Corp. NJ -----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: UARG WA, DE</p> <p>NSPS Litigation Group: AF&PA AISI API Business Roundtable CRA CIBO Nat'l Oilseed NPRA SOCMA</p>	<p>Final Rule 02-27-06</p> <p>CO2 issue remanded to EPA 09-24-08</p> <p>Final Brief 08-29-08</p> <p>No oral argument schedule ordered as of 10-06-08.</p>
<p><u>NSPS – CO2 Issues</u> 06-1322</p> <p>Motion to sever panel: Henderson Griffith Kavanaugh</p>	<p>(See above)</p>	<p>Motion to sever & hold in abeyance pending US Supreme Court decision in Mass v. EPA granted 09-13-06</p> <p>Case remanded to EPA for further proceedings in light of Mass v. EPA (127 S.Ct. 1438), denying request for vacatur and summary reversal 09-24-08</p>

<p><u>PM</u></p> <p>American Farmer Bureau Federation & National Pork Producers Council v. EPA 06-1410</p> <p>OAR-2001-0017</p> <p>Panel judges: Ginsburg Garland Griffith</p>	<p>Petitioners NY, CT, RI, VT, ME, NH, DE, NJ, PA, DC, CA, SCAQMD, OR, NM, IL</p> <p>Agricultural Retailers Assoc. American Farm Bureau Federation National Cattlemen's Beef Assoc. National Mining Assoc. National Parks Conservation Assoc. National Pork Producers Council Newmont Mining American Lung Association Environmental Defense</p> <p>Amici for Petitioners: MA, MD, AZ <i>Health Groups:</i> AMA American Academy of Pediatrics American College of Chest Physicians American Thoracic Society Cardiovascular & Pulmonary Respiratory Care</p> <p>-----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors:</p> <table border="0"> <tr> <td><i>Fine PM Group:</i></td> <td><i>Coarse PM Group:</i></td> </tr> <tr> <td>UARG</td> <td>AFPA</td> </tr> <tr> <td>CIBO</td> <td>Corn Refiners Assoc.</td> </tr> <tr> <td>ACC</td> <td>Nat'l Cotton</td> </tr> <tr> <td>AFPA</td> <td>Nat'l Oilseed</td> </tr> <tr> <td>AISI</td> <td>Nat'l Stone, Sand & Gravel</td> </tr> <tr> <td>API</td> <td>PCA</td> </tr> <tr> <td>NAM</td> <td></td> </tr> </table>	<i>Fine PM Group:</i>	<i>Coarse PM Group:</i>	UARG	AFPA	CIBO	Corn Refiners Assoc.	ACC	Nat'l Cotton	AFPA	Nat'l Oilseed	AISI	Nat'l Stone, Sand & Gravel	API	PCA	NAM		<p>Final briefs 03-07-08</p> <p>Oral Argument 09-15-08</p> <p>Judges active on Fine standards issues. Judges did not ask questions on Coarse issues.</p> <p>State Petitioners – Fine arguments:</p> <ul style="list-style-type: none"> • EPA failure to revise PM 2.5 standard did not protect public health within CAA "margin of safety." • Uncertainty in science was insufficient to overcome the requirement that EPA err on the side of caution when setting NAAQS. • Support for lower standard is in the record and specifically cited RA/Gauderman study. Ignoring this led to adoption of inadequate standard. <p>Environmentalists - Fine arguments:</p> <ul style="list-style-type: none"> • EPA had reasoned that mitigation of peak events led to proportional reductions in avg. annual concentrations and that similar reductions should be expected in the future in response to the stringent daily PM2.5 NAAQS -- this assumption unsupported by scientific evidence. • Relying on the short-term standard to lower the entire distribution of air quality not a viable strategy for health protection and unsupported by evidence • EPA wrongly rejected CASAC and EPA Staff guidance re: secondary standard -- new standard did not show visibility improvements. • EPA wrongly reasoned that the same number of areas would receive enhanced visibility protection under the standard as under proposed alternative. • EPA's characterization of the adequacy of visibility standards is "subjective." <p>EPA - Fine arguments:</p> <ul style="list-style-type: none"> • In 1997, EPA recognized short-term standard mitigating peak events could help to reduce long-term exposures; EPA Staff noted proportional reductions in such concentrations. • It was appropriate to discount various studies of short-term exposure effects. • EPA sufficiently explained discounting Gauderman and the 24-Cities Study. • Efforts to attain new NAAQS will result in visibility improvements. • Petitioners' challenge to the secondary standard waived by their failure to file Petition for Recon.
<i>Fine PM Group:</i>	<i>Coarse PM Group:</i>																	
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<p><u>CAIR</u></p> <p>North Carolina v. EPA 05-1244</p> <p>OAD-2003-0053</p> <p>Panel judges: Sentelle Rogers Brown</p> <p>"Rulemaking on Section 126 Petition From North Carolina To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program" 71 Fed Reg 25,328 (04-28-06)</p>	<p>Petitioners:</p> <p>SO₂: Duke SC Elec. & Gas MN Power FPL JEA</p> <p>SO₂ Exempt Units: Inter-Power/AhlCon AES/Constellation ARIPPA</p> <p>Fuel Adjustment: Entergy FPL</p> <p>NO_x dates: FL Assoc. Elec. Util. No IN Pub. Serv. Co.</p> <p>Border States: FL Assoc. Elec. Util. Xcel MN Power Occidental Amarillo, TX</p> <p>Amici States for NC NY, CT, NJ, MA, RI, NM, DE, MD, DC, NH, IL</p> <p>Amicus for SO₂ Exempt Units: PA -----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent:</p> <p>Environmental: Enviro. Defense NRDC OH Env. Council U.S. PIRG</p> <p>Utilities: Midwest Generation UARG AL Power NMA</p>	<p>Final Rule 04-28-06</p> <p>Oral Argument 03-25-08</p> <p>Opinion; Per Curiam Judgment 07-11-08</p> <p>– CAIR and FIP vacated and remanded to EPA</p> <p>Petitions for rehearing, rehearing en banc 09-24-08</p> <p>– EPA – Environmental Defense, NRDC, U.S. PIRG – Nat'l Mining Association – UARG</p> <p>DC Circuit rehearing decision pending.</p>
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<p><u>CAMR</u></p> <p>New Jersey v. EPA 05-1097</p> <p>OAD-2002-0056</p> <p>Panel judges: Rogers Tatel Brown</p> <p>Delisting Rule: 70 Fed Reg 15994 (03-29-05)</p> <p>CAMR: 70 Fed Reg 28606 (05-18-05)</p> <p>EPA Final Action on Reconsideration: 71 Fed Reg 33388 (06-09-06)</p>	<p>Petitioners: CA, CT, MA, ME, NH, NJ, NM, NY, VT Environmental groups</p> <p>Intervenors for Petitioner: City of Baltimore MD MI Dept. Environemtnal Quality</p> <p>American Academy of Pediatrics Adirondack Mtn. Club American Nurses Assoc. American Public Health Assoc. Physicians for Social Responsibility</p> <p>Indian Tribes -----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: AL, IN, NB, ND, SD, RI, WY</p> <p>Duke Energy Edison Electric Fla. Power & Light NRG Energy PPL Corp. Producers for Electric Reliability PSEG Fossil Utility Air Regulatory Group</p> <p>Amici: WV Washington Legal Foundation</p>	<p>Delisting Rule & CAMR vacated 02-08-08</p> <ul style="list-style-type: none"> • Rule removing coal- and oil-fired EGUs from list of sources regulated under 112 of CAA was unlawful • EPA must make specific findings before it can remove EGU's from the 112 list and did not do so • EPA cannot regulate mercury emissions from coal-fired EGUs under section 111 (CAMR) unless EGU's are properly removed from 112 source list <p>EPA Petition for Rehearing denied 05-20-08</p> <p>UARG petition for writ of certiorari filed 09-17-08 (Docketed as Supreme Court Case No. 08-352)</p> <p>Response to certiorari petition due 11-17-08</p>
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<p><u>OZ</u> <u>Implementation</u></p> <p>South Coast Air Quality Management District v. EPA 04-1200</p> <p>OAR-2003-0079</p> <p>"Revision to the Guideline on Air Quality Models: Adoption of a Preferred Long Range Transport Model and Other Revisions," 68 Fed Reg 18440 (11-08-05)</p>	<p>Petitioners: South Coast Air Quality Mgmt. District</p> <p>Intervenors for Petitioners: Clean Air regulatory Project National Petrochemical & Refiners Assn. American Lung Assn. Environmental Defense NRDC Sierra Club</p> <p>-----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: American Chemistry Council American Forest & Paper Assn American Petroleum Inst. Nat'l Assn Manufacturers Renewable Fuels UARG</p> <p>Amici: Baton Rouge Chamber of Commerce</p> <p>Amici for Respondent: LA Oil Marketers & Convenience Store Assn. Lovie Robinson Hammett</p>	<p>Final Rule 11-08-05</p> <p>Vacated 2004 implementation plan and remanded to EPA 12-22-06</p> <p>Supreme Court denied petition for writ of certiorari 01-18-08</p>
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<p><u>Ozone NAAQS</u></p> <p>Mississippi v. EPA 08-1200</p> <p>Challenging "National Ambient Air Quality Standards for Ozone," Final Rule 73 Fed Reg 16436 (03-27-08)</p> <p>DC Circuit (Panel not yet named)</p> <p>Motions judges: Ginsburg Tatel Griffith</p>	<p>Petitioners: MS, NY, CA, CT, ME, NM, OR, PA, RI, MA, MD, NJ, NH, DE, DC, IL, City of NY, California Air Resources Board</p> <p>Intervenors for Petitioner: Missouri DNR AL County of Nassau</p> <p>Amici for Petitioner: Province of Ontario -----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: Natural Resources Defense Council American Lung Association Appalachian Mountain Club Environmental Defense Fund National Association of Home Builders Utility Air Regulatory Group Ozone NAAQS Litigation Group</p>	<p>Petition for Review 05-27-08</p> <p>Cases consolidated 05-29-08</p> <p>Order granting Motions to Intervene for Respondent 06-30-08</p> <p>Order granting Motions to Intervene for Petitioner 07-18-08</p> <p>EPA Motion for Reconsideration challenging AL Motion to Intervene 07-28-08</p> <p>Order granting Reconsideration of AL's Intervenor Status 10-08-80</p> <p>Proposed briefing format due 11-06-08</p>
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<p><u>Title V</u> <u>Monitoring</u></p> <p>Sierra Club v. EPA 04-1243</p> <p>OAR–2003–0179</p> <p>"Final Rule Interpreting the Scope of Certain Monitoring Requirements for State and Federal Operating Permits Programs" 71 Fed Reg 75422 (12-15-2006)</p> <p>Panel judges: Sentelle Griffith Kavanaugh</p>	<p>Petitioners: Sierra Club NRDC Environmental Defense</p> <p>Intervenors for Petitioner: American Petroleum Institute Clean Air Implementation Project Alliance for Automobile Manufacturers Alabama Power Air Permitting Forum American Forest & Paper Assoc. UARG</p> <p>Amici for Petitioner: NY -----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: Nat'l Enviro. Development Assoc.'s Clean Air Regulatory Project</p>	<p>Petition for Review 07-20-08</p> <p>Opinion 08-19-08</p> <ul style="list-style-type: none"> • 2006 rule vacated. • Court denied the petition for review with respect to the monitoring provisions of the Part 70 Rules. • Dissent (Kavanaugh) – "relevant statutory language supports EPA's 2006 rule." <p>EPA filed unopposed motion to extend time to file petition for rehearing or rehearing en banc to 11-03-2008 09-24-08</p>
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<p><u>CEM Rule Revision (Protocol Gas Verification Program)</u></p> <p>Air Liquide America Specialty Gases LLC v. EPA 08-1129</p> <p>UARG v. EPA 08-1127 (consolidated)</p> <p>"Revisions to the Continuous Emissions Monitoring Rule for the Acid Rain Program, NOx Budget Trading Program, Clean Air Interstate Rule, and the Clean Air Mercury Rule," 73 Fed. Reg. 4312 (01-24-08)</p>	<p>Petitioners: Air Liquide UARG</p> <p>-----v.-----</p> <p>Respondent: EPA</p>	<p>Petition for Review 03-24-08</p> <p>Cases consolidated; held in abeyance 05-02-08</p> <p>Parties filed status reports 07-31-08</p> <p>Next status reports due 10-29-08</p> <p>Discussions among parties ongoing.</p>
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<p><u>SSM</u> (Start-Up/Shutdown Malfunction)</p> <p>Sierra Club v. EPA 02-1135 (and consolidated) OAR-2004-0094 "National Emission Standards for Hazardous Air Pollutants: General Provisions," 71 Fed Reg 20446 (04-20-2006)</p> <p>Panel judges: Randolph Rogers Tatel</p>	<p>Petitioners: <i>Environmental Petitioners:</i> Sierra Club Coalition for Safe Environment Environmental Integrity Project Friends of Hudson LA Envrio. Action Network</p> <p>American Chemistry Council Coalition for Clean Air Implementation Coalition for Responsible Waste Incineration Portland Cement Alliance Cement Kiln Recycling Coalition Nat'l Enviro. Development Assoc. Clean Air Regulatory Project</p> <p>Intervenors for Petitioner: American Chemistry Council Alliance of Automobile Manufacturers Nat'l Enviro. Development Assoc. Clean Air Regulatory Project</p> <p>-----v.-----</p> <p>Respondent: EPA</p> <p>Intervenors for Respondent: National Paint & Coatings Association Clean Air Implementation Project Air Permitting Forum American Forest & Paper Association American Petroleum Institute Nat'l Petrochemical & Refiners Association</p>	<p style="text-align: right;">09-12-08</p> <p>Oral Argument</p> <p>Enviromentalists:</p> <ul style="list-style-type: none"> • EPA changes to SSM event plan requirements make the plans unenforceable and unavailable to the public. • Changes reopen entire rule to scrutiny -- original exemption of SSM events from emissions limits may be challenged. <p>EPA:</p> <ul style="list-style-type: none"> • Requirement to submit plans to prevent and minimize emissions during SSM events "a reasonable solution to a long-recognized problem." Industry says SSM events are the result of emergencies that cannot be prevented and therefore should not be subject to limits. • Sierra Club did not challenge the original rule, and has thus waived its challenges. <p>Judges Tatel, Rogers:</p> <ul style="list-style-type: none"> • Exemption may be unlawful under the statute, which requires compliance with continuous emissions standards. <p>Judge Randolph:</p> <ul style="list-style-type: none"> • Seemed persuaded by EPA argument that SSM exemption does not necessarily violate the overall emissions standard • Not persuaded about the significance of the changes EPA made to requirements -- said he did not understand "what has gotten stripped out." <p>Judge Rogers:</p> <ul style="list-style-type: none"> • Agreed with environmentalists that EPA has made important changes to the rule -- "You could get the plan in advance under the old regime," and citizens could demand changes to insufficient plans before events occurred. <p>Judge Tatel:</p> <ul style="list-style-type: none"> • This case looks exactly like New Jersey v. EPA."
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