

Landmark Battles



Council of Industrial Boiler Owners 2009 Annual Conference

**October 14th – 16th
San Antonio Texas**

Lisa Jaeger, Bracewell & Giuliani LLP

ACTUAL



CEM Rule

UARG/Air Liquide v. EPA

- Protocol Gas Verification Program not in effect
- Cases held in abeyance
- Discussion among parties ongoing

Startup/Shutdown/Malfunction

Sierra Club v. EPA

- SSM General Provisions vacated
- Mandate stayed to October 6 2009
- Industry seeking Supreme Court review

ACTUAL TO POTENTIAL



BMACT/CISWI II
NRDC v. EPA (CIBO)

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

Status

- Vacated and remanded
- EPA must propose by 4.15.10
finalize by 12.16.10

ACTUAL TO POTENTIAL



Boiler NSPS II

New York v. EPA (CIBO)

- “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 = system of emission reduction

Status

- EPA voluntary remand
- Environmental Petitioners' bill of costs \$1,500.00 4

ACTUAL TO POTENTIAL



CAIR II

NC v. EPA (CIBO)

- Vacated and remanded
- Court requires reasonable time for CAIR II

OZONE II

MS v. EPA (CIBO)

- Ozone standard set at .075 ppm
- EPA seeking voluntary remand
- EPA plans to stay rule for area designations only

ACTUAL TO POTENTIAL



PSD Johnson Memo

Sierra Club v. EPA (CIBO)

- Case in abeyance
- PSD interpretive rule out for comment by 12.17.09

FUTURE POTENTIAL



- **MACT Rule Cases**
- **Boiler MACT Permit Cases**
- **CO2 Permit Cases**
 - **Deseret, Desert Rock**
- **CO2 Nuisance Cases**
 - **CT v AEP**
- **Coal Combustion Byproducts (CCB) Rule**



Landmark Battle Launch

	Fall/Winter '09	Spring '10	Summer '10	Fall/Winter '10
BMACT/ CISWI II		Propose 4.15.10 (Court)		Final 12.16.10 (Court)
NSPS II		Propose?	Final?	
Ozone II	Propose (EPA)		Final (EPA)	
CAIR II	Propose (EPA)			Final (EPA)
SSM	Supreme Court Cert?			
NO2 NAAQS	Proposed 7.15.09		Final?	
RCRA CCB		Propose?		Final?
<u>OTHER MACTS</u>				
RICE	Proposed 3.5.09			
HMIWI	Final 10.10.09			
PC	Proposed 5.6.09			
<u>CLIMATE</u>				
Endangerment	Proposed 4.24.09	Final?		
PSD Tailoring	Proposed 9.30.09 Final?			
PSD Interpretive Rule	Proposed 10.7.09 Final?			
GHG Mobile Source	Propose?	Final?		Final?
CAMR		Propose?		Final?



New Alamo



Battle of San Jacinto