

Battle in the Courts

Council of Industrial Boiler Owners

2010 Annual Meeting



October 20th – 22nd
Williamsburg, VA
Lisa Jaeger, Bracewell & Giuliani LLP



Battle in the Courts

I. On-going Litigation

- NAAQS/NSPS
- MACTS
- Other

II. Up-coming Litigation

III. Litigation Outlook



I. On-going: NAAQS/NSPS

NSPS

New York v. EPA

- CIBO in Coalition *supporting* 2006 rule
- Court granted EPA voluntary remand 09-04-09
- Oral Argument (Da at issue) 09-14-09
- ETA for revised NSPS 01-15-11

NSPS- CO2 Issues

New York v. EPA



I. On-going: NAAQS/NSPS

Ozone NAAQS *Mississippi v. EPA*

- CIBO in Coalition *supporting* 2008 rule (0.075)
- Court order: abeyance until 11-01-2010 03-19-2009
- Conference Call with EPA AA Gina McCarthy 08-19-2010
- EPA Status Report: EPA will act "on or about the end of October" 08-20-2010
- ETA for revised ozone standard 11-03-2010



I. On-going : NAAQS/NSPS

SO₂ NAAQS

NEDA/CAP v. EPA

- CIBO in Coalition v. 2010 1-hr primary SO₂ NAAQs
- Dispositive Motions: 10-25-2010
- Reconsideration/Clarification Petitions pending
modeling v. monitoring
June 2011 State attainment designation deadline
stay of rule? of June 2011 deadline?



I. On-going: MACT

HMIWI

Medical Waste Institute v. EPA

- CIBO in Manufacturers' Coalition as Amicus
- Final Briefs: 09-17-2010
- Oral Argument: 11-16-2010
Sentelle, Ginsburg, Kavanaugh
- Issues



I. Ongoing: Other

PSD Johnson Memo *Sierra Club v. EPA*

- CIBO/ERCC/UARG Petitioners
- Case in abeyance
- PSD Interpretive Rule Litigation



I. Ongoing: Other

- **Mandatory Reporting of Greenhouse Gases**
American Chemistry Council v. EPA
- **Endangerment Finding**
Coalition for Responsible Regulation v. EPA
- **PSD Interpretive Memo Rule**
American Iron and Steel Institute v. EPA
- **LDV Rule**
Southeastern Legal Foundation v. EPA
- **Tailoring Rule**
Southeastern Legal Foundation, v. EPA

II. Up-coming Litigation

• Portland Cement MACT	Jan 2011
• Definition of Solid Waste	Mar 2011
• Boiler MACT/Area Source MACT	Mar 2011
• Commercial & Industrial Solid Waste Incinerator	Mar 2011
• Transport Rule	Mar 2011
• Coal Combustion Byproducts (CCB)	June 2011 ?

III. Litigation Outlook

	Sept-Dec '10	Jan-Apr '11	May-Aug'11	Sept-Dec '11	Jan-Apr '12
NAAQS	NSPS II	Final?			
	Ozone II	Final?			
	NO2 NAAQS	Abeyance			
	SO2 1- hour				
	SOx/NOx Secondary			Propose Rule?	
	Transport SOx/NOx		Final Rule (EPA)		
MACTS	Solid Waste Def.		Final Rule (Ct)		
	HMIWI	Oral Argument (Nov)	Decision?		
	PC MACT	Final Rule	Briefing?	Oral Argument?	
	BMACT/Area/CISWI		Final Rules (Ct) (Jan)	Briefing?	Oral Argument?
OTHERS	RICE	Abeyance			
	RCRA CCB			Final Rule?	
	GHG Reporting	Final Rule?	Briefing?		
	Endangerment/LDV/ PSD/Tailoring				

