

Litigation Update

Council of Industrial Boiler Owners
2011 Annual Meeting



October 12-14, 2011

Ft. Lauderdale, FL

Lisa Jaeger, Bracewell & Giuliani LLP

Nightmare on EPA Street

I. On-Going

- MACT Cases
- NSPS
- Oz NAAQS
- Others
- CSAPR

II. Up-Coming

III. Litigation Outlook

I. On-going: Boiler MACT Cases

In DC Circuit Court

- BMACT (in abeyance)
- Area Source (in abeyance)
- CISWI (in abeyance)
 - NHSM (briefing proposals due October 31, 2011)
- Delay Notice (in abeyance 60 days pending, DC District Court decision)
- Completion case (briefing on summary vacature complete)

In the DC District Court:

- Delay Notice (EPA motion to dismiss denied; EPA sought oral argument on summary judgment)
- Original Area Source Deadline Case (motion to enforce)



I. On-going: MACT

PC MACT

PCA v. EPA 10-1359

Oral Argument on October 11, 2011

RICE MACT

EnerNOC v. EPA 10-1090

In Abeyance

Next status report on November 28, 2011



I. On going: NSPS

New York v. EPA 06-1148

A. Utility NSPS

- Proposed with UMACT May 3, 2010
- Final: November 16, 2011

B. Db BOILERS UNKNOWN TIMEFRAME

C. GHG NSPS Settlements

Utilities

- Proposal due ? EPA missed the Sept. 28th deadline
- Final due May 26, 2012

Refineries

- Proposal due December 10, 2011
- Final due November 10, 2012



I. On going: NAAQS

SO₂ NAAQS

NEDA/CAP v. EPA 10-1252

- Opening Briefs August 29, 2011
- EPA Brief due December 28, 2011
- Final Briefs by January 25, 2011

Ozone NAAQS

Mississippi v. EPA 08-1200

- White House Announcement
 - Ozone Rule Withdrawn
 - Back to 2008 Standards
- Order on Further Proceedings?



I. On going: Climate Change

Endangerment Finding

- Briefing will be complete November 14, 2011
- Motion for Judicial Notice

Tailoring Rule and PSD Interpretive Rule

- Reply Briefs due November 16, 2011
- Final Briefs due December 14, 2011
- Motion for Judicial Notice

LDV Rule

- Reply Briefs due November 16, 2011
- Final Briefs due December 14, 2011
- Motion for Judicial Notice



CSAPR (The new CAIR)

EME Homer City Generation v. EPA 11-1302

Final Rule August 8, 2011

Petition for Review August 23, 2011

Motions to Stay Rule (EME, Luminant, TX)

- Sierra Club et al. opposed

Petitions for Administrative Reconsideration:

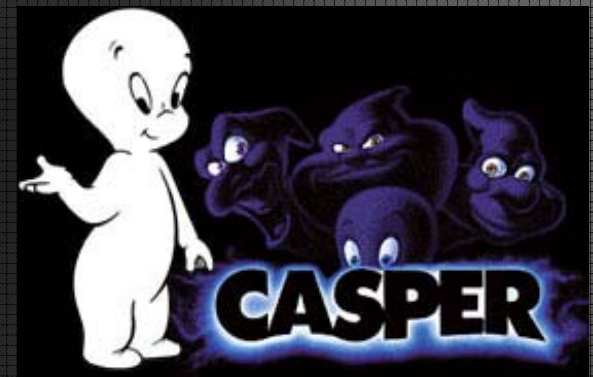
National Cotton Ginners' Association, Texas Cotton Ginners' Association

Air Products and Chemicals, Inc.

Wisconsin Public Service Corp.

State of Nebraska

State of Texas (not in docket)



CSAPR cont'd

<u>Industry Petitioners</u>	<u>State Petitioners</u>	<u>Intervenors</u>
Luminant Generation Co.	Kansas	Exelon Corp.
Sandow Power Co.	Texas	Sierra club
Big Brown Paper Co.	TX CEO	EDF
Oak Grove Management Co.	TX CEQ	ALA
Big Brown Lignite Co.	Public Utility Comm. of TX	Calpine Corp.
Luminant Big Brown Mining Co.	RR Commision	NRDC
Luminant Energy Co.	TX General Land Office	PSEG Fossil
Luminant Holding Co.	Nebraska	
GenOn Energy, Inc.	Alabama	
Wisconsin Public Service Corp.	Florida	
National Mining Assoc.	Oklahoma	
UARG	South Carolina	
Murray Energy Corp. et al.	Virginia	
Entergy Corp.		
Wisconsin Electric Power Co.		
Lafayette Utilities system		

II. Up coming Litigation

Utility NSPS/UMACT

Other Boiler NSPS?

Utility NSPS GHG

Refinery NSPS GHG

Other Boiler NSPS GHG?

Definition of Solid Waste

Coal Combustion Byproducts (CCB)

Litigation Outlook

	Sept-Dec '11	Jan-Apr '12	May-Aug'12	Sept-Dec '12
NAAQS	Other Boiler NSPS			
	Ozone II			
	NO ₂ NAAQS			
	SO ₂ 1- hour		Oral Argument ?	
	SO _x /NO _x Secondary			
	CSAPR		Briefing?	
MACTS	Solid Waste Def.			
	PC MACT		Decision ?	
	BMACT/Area/CISWI	Proposed Rules (Oct 31, 2011)	Final Rules (Apr 30, 2011)	File lawsuit ? Briefing ?
	RICE	Abeyance		
	RCRA CCB			Final Rule ?
OTHERS	Utility MACT	Final Rule Nov. 16		
	Endangerment/LDV/ PSD/Tailoring		Oral Argument?	Decision ?