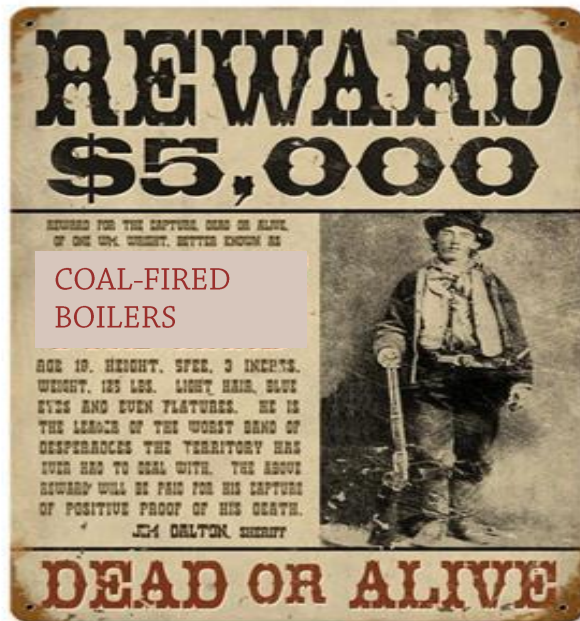




CIBO Annual Meeting Litigation & Regulatory Update

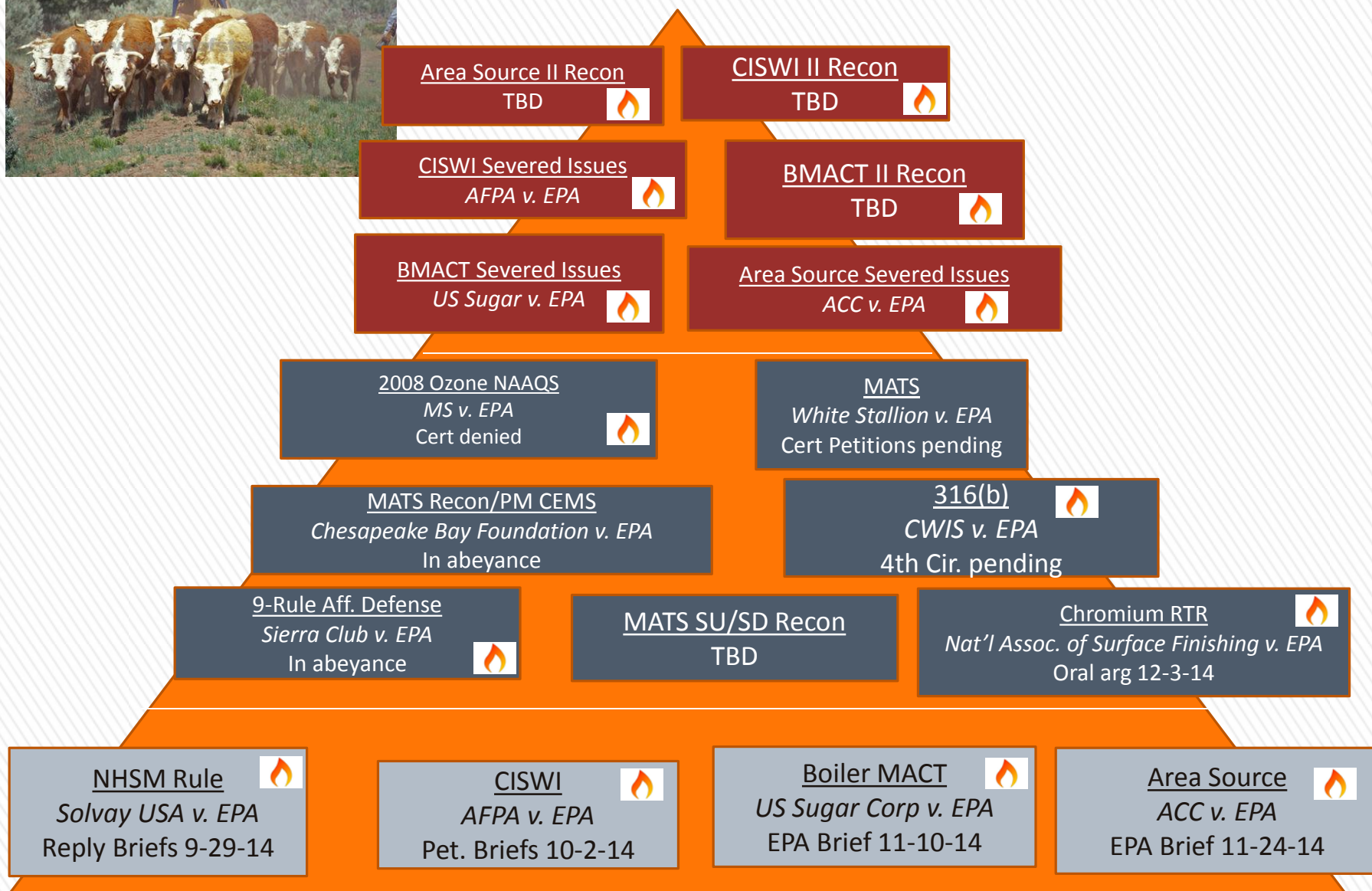
October 15-17, 2014

Lisa M. Jaeger
Bracewell & Giuliani LLP





MAJOR RULES IN COURT






Hibernating Issues: BMACT

Location	Issues
<i>US Sugar Corp v. EPA</i> (13-1256) In abeyance	<ul style="list-style-type: none">• Startup/Shutdown• CO limits based on 130 ppm• CPMS• Clarifying changes• Affirmative Defense
	<ul style="list-style-type: none">• UPL <p>-New and existing standards based on < 9 data points</p> <p>-5 existing, 14 new</p>



Hibernating Issues: Area Source

Location	Issues
<p><i>ACC v. EPA</i> (13-1258)</p> <p>In abeyance</p>	<ul style="list-style-type: none">• Startup• Alternative monitoring for Hg, PM• Limited-use subcat and standards• Clarifying changes• Affirmative defense 
	<ul style="list-style-type: none">• UPL-New and existing standards based on < 9 data points-New and existing Hg and CO MACT standards-GACT standards not impacted

Hibernating Issues: CISWI

Location	Issues
<i>AFPA v. EPA</i> (13-1257) In abeyance	<ul style="list-style-type: none">• CEMS data during SU/SD• PM limit for waste-burning kilns• Affirmative defense• Fuel variability/energy recovery units
	<ul style="list-style-type: none">• UPL <p>-New and existing standards based on < 9 data points</p> <p>-4 existing, 4 new</p>

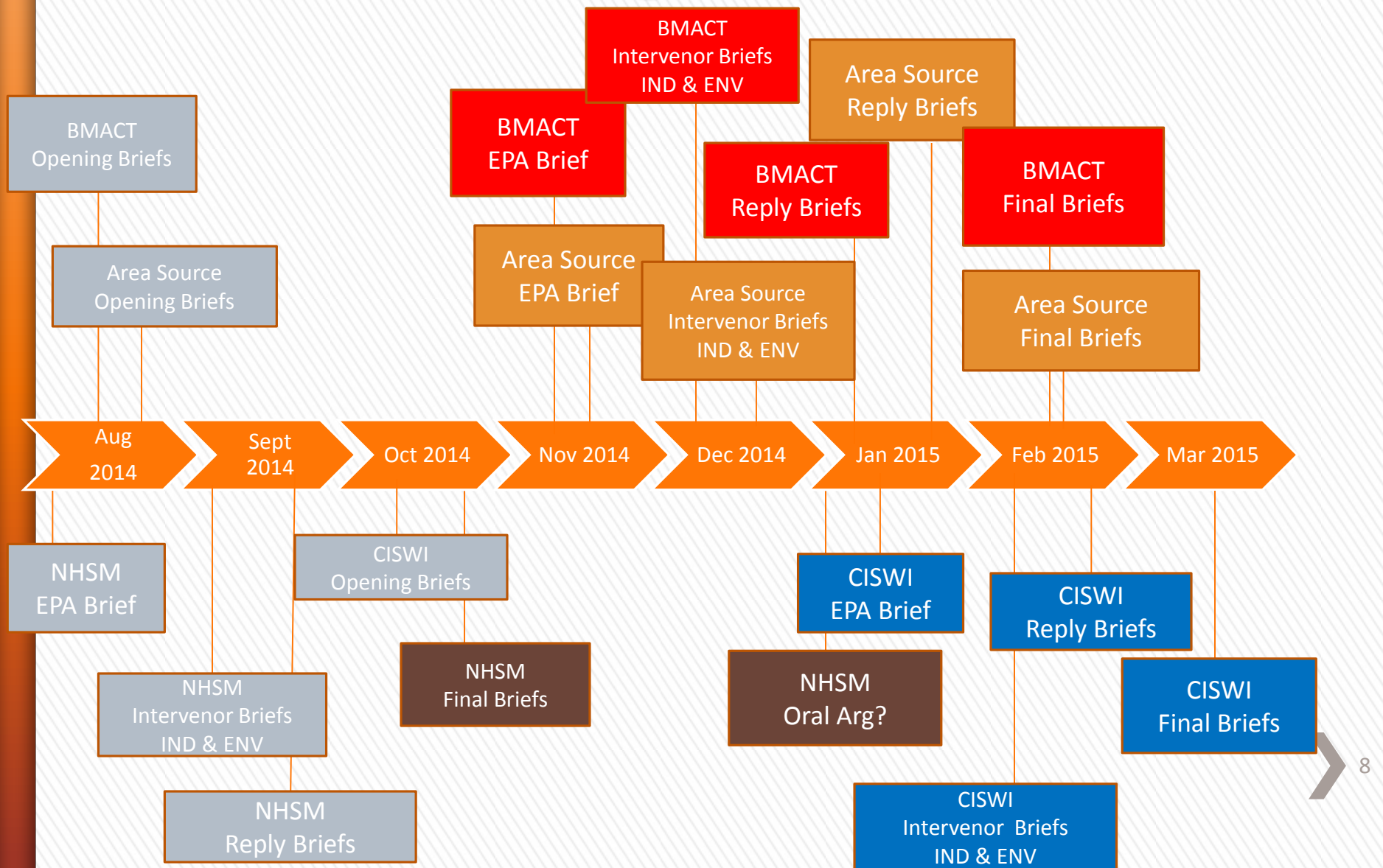


Hibernating Issues: NHSM

Location	Issue
Unopposed/ Pending Motion	<ul style="list-style-type: none">• Determinations for specific issue: categorical materials<ul style="list-style-type: none">• C&D wood• Creosote RR ties• Paper recycling residuals• Other treated wood



BMACT II Briefing Timeline



CWA Cooling Water Intake 316(b)

***CWIS v. EPA* (4th Cir. 14-1931)**

» Issues

1. Applicability threshold too low
2. Intake structure requirements lack authority
3. “New units” at existing facilities unlawful
4. USFWS and NMFS roles in NPDES permits unlawful
5. Facilities below 125 mgd threshold data collection

» 4th Circuit Petitions until Dec 2014



SSM/Affirmative Defense

» TX SSM SIP

- > *Texas v. EPA* (DC Cir. 10-1425)
- > Partial SIP Disapproval
- > Dismissed no jurisdiction
- > Rehearing en banc sought 9-22-14

» SMM SIP Call – 39 States

- > EPA revised SIP Call 9-17-14
- > SIP inadequate if has affirmative defense for malfunctions
- > Reverses Feb 2013 SSM SIP Call
- > Comments due 11-6-14

» SSM



Utility GHG Litigation

Case	Challenge	Status
<i>Nebraska v. EPA</i> (NEDC 14-3006)	Proposed NSPS Federal Power Act	Dismissed 10-7-14 Appeal to Eighth Cir.
<i>WV v. EPA</i> (DC Cir. 14-1146)	Settlement Agreement 111/112 duplicative	EPA response 11-3-14
<i>Murray Energy v. EPA</i> (DC Cir. 14-1112)	111/112 duplicative Not final/EPA lacks authority	EPA response to Petition 10-20-14
<i>Murray Energy v. EPA</i> (DC Cir. 14-1151)	ESPS is a final rule EPA lacks authority	Dispositive motions 10-23-14
<i>Murray Energy et al. v. EPA</i> (NDWV 14-39)	EPA violated CAA EPA has not evaluated job loss/economic impact	EPA m/ to dismiss denied EPA answer filed 10-6-14

The Roundup

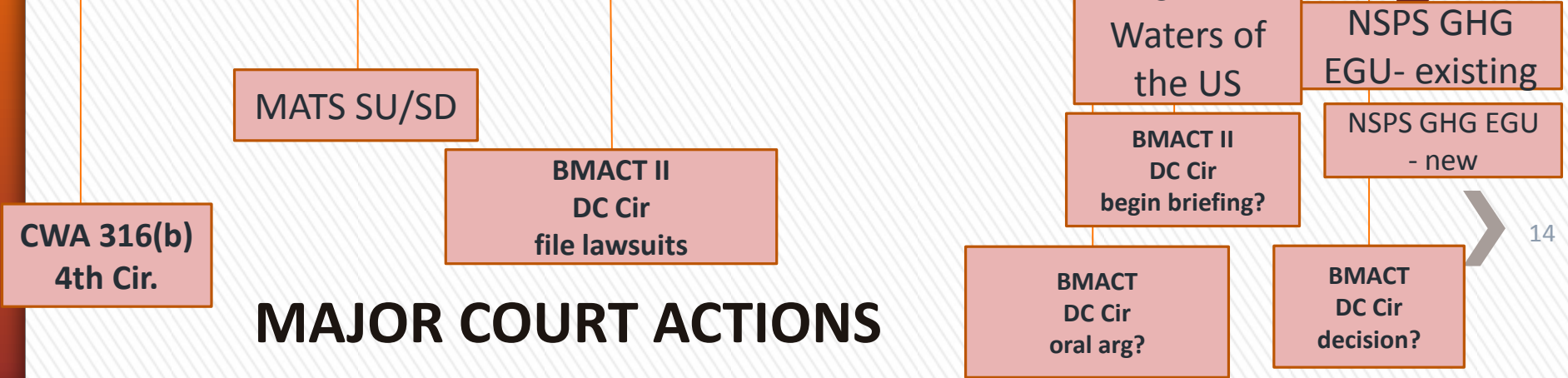
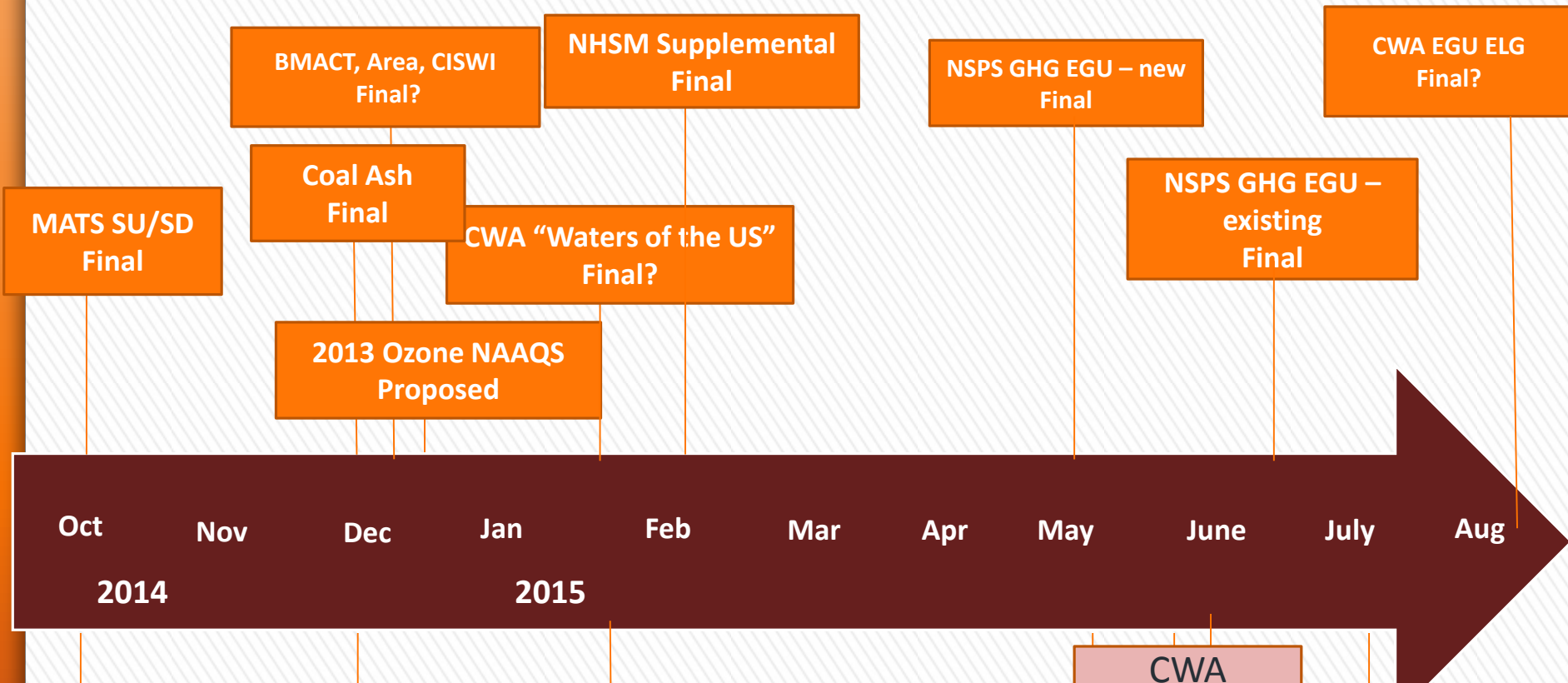


CIBO Sign-ons



Case	Description	Status
<p><i>Nat'l Assoc. for Surface Finishing v. EPA</i> (DC Cir. 12-1459)</p> <p>Amicus curiae for appellant</p>	<p>-Chromium RTR</p> <p>-Whether when setting 8-year RTR MACT standard, EPA must reset MACT floor</p> <p>Could set precedent for future MACT RTRs</p>	<p>Briefing complete</p> <p>Oral arg 12-9-14</p>
<p><i>Sierra v. EPA</i> (DC Cir. 14-1110)</p> <p>Intervenor in coalition</p>	<p>9-rule aff. Defense</p> <p>9 §112 and §1129 rules</p>	<p>In abeyance</p> <p>Pending interventions</p>
<p><i>Sierra v. EPA</i> 4th Cir. 14-1931</p> <p>Petitioners</p>	<p>316(b)</p>	<p>M/ to intervene</p> <p>Waiting consolidation from circuit courts</p>
<p><i>Freeman v. Grain Processing Corp</i> (SCt)</p> <p>Amicus brief</p>	<p>Nuisance preemption</p>	<p>Cert pending</p>

MAJOR RULES



MAJOR COURT ACTIONS

CIBO CASE DOCKET

*Coal Ash

2014	2015	2016	2017
BMACT BMACT Recons MATS SU/SD? NSPS GHG EGU New NSPS GHG EGU Existing 9-Rule Affirmative Defense			
Chromium RTR	Ozone NAAQS		
316(b)	WOTUS EGU ELGs		