



CIBO ESG Meeting

December 6-7, 2016

Lisa Jaeger

Bracewell LLP

December 7, 1972
Apollo 17 last shuttle launched to the moon
landing on December 11

Crew

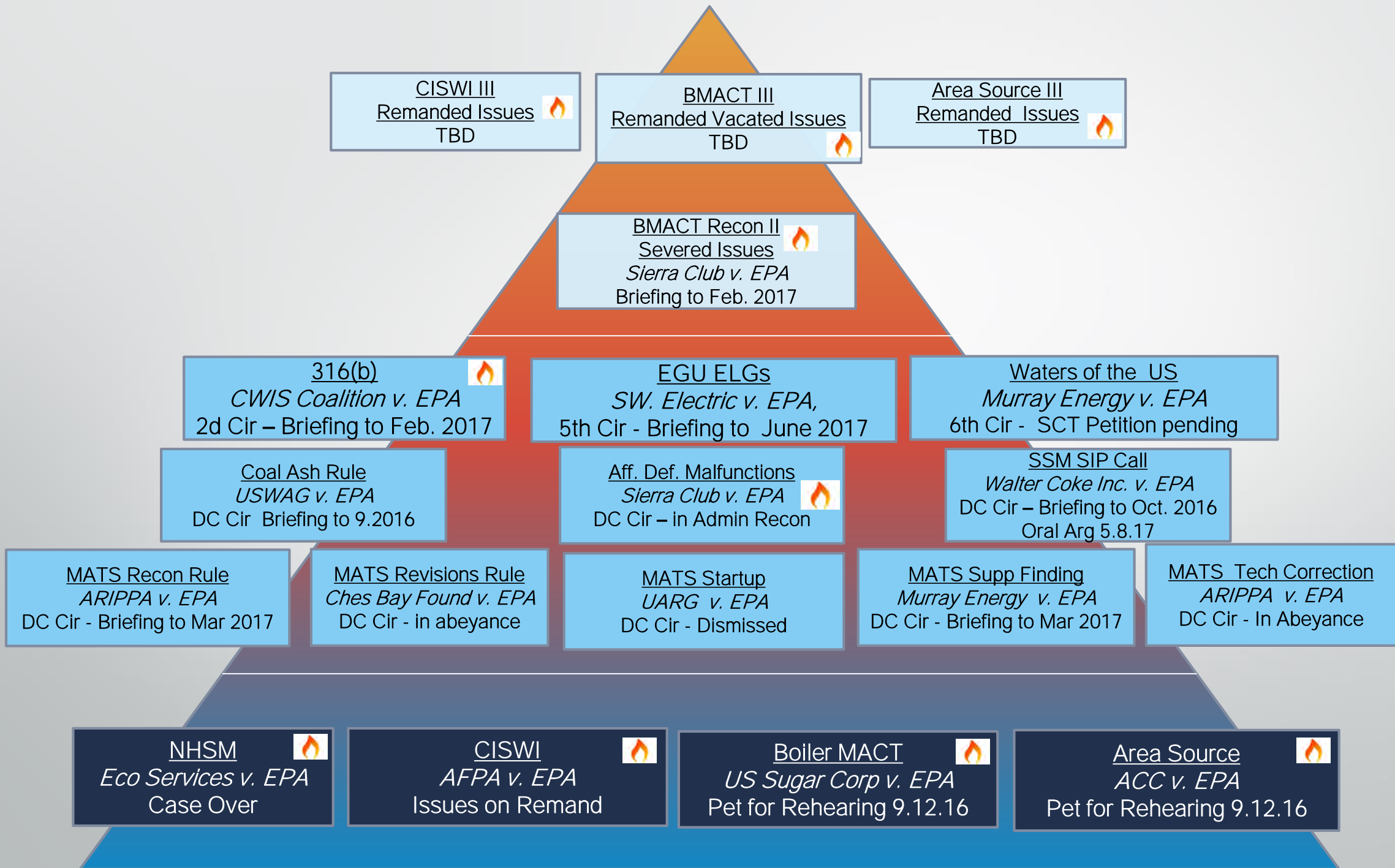
Harrison H. Schmitt,
Lunar Module Pilot(left)

Eugene A. Cernan,
Commander (seated)

Ronald E. Evans
Command Module Pilot
(right)









“Bob, this is Gene, and I’m on the surface and as I take man’s last steps from the surface, back home, for some time to come, but we believe not too long into the future. I’d like to Just list what I believe history will record that America’s challenge of today has forged man’s destiny of tomorrow. And, as we leave the Moon at Taurus Littrow, we leave as we come and, God willing, as we shall return, with peace and hope for all mankind. Godspeed the crew of Apollo 17.”

BMACT-AREA SOURCE-CISWI

Main Case – *U.S. Sugar Corp v. EPA*

- DC Cir upheld most of 30 issues challenged 7.29.16
 - 4 issues remanded (BMACT, Area, CISWI)
 - 20 standards vacated (BMACT, 11 existing, 9 new)
- 4 Petitions for rehearing /en banc 9.12.16
 - Court sought views on EPA Petition to remand rather than vacate standards. No opposition.
- Supreme Court petition?

BMACT-AREA SOURCE-CISWI

Related rules and cases

- BMACT Reconsideration II/Severed Issues Rule
 - *Sierra Club v. EPA* (16-1021) Briefing to Feb. 2017
- CISWI Reconsideration II Rule – case over
- Area Reconsideration II Rule – case over
- Remanded UPL as applied to subcategories with small data sets
 - EPA took remand after *NACWA v. EPA* (11-1131) remand 8.2013

EUGENE A. CERNAN - COMMANDER OF



Utility MATS

- MATS CAA §132(a) Jobs Case *Murray Energy v. EPA* (WVA Dist Ct)
 - HELD: EPA must submit plan to evaluate coal jobs impact
 - EPA filed 2-year plan to seek advice from Science Advisory Board
 - Industry response: plan not responsive to court order; court should issue injunction
- MATS Reconsideration Rule *ARIPPA v. EPA* (DC Cir 15-1180)
 - Oral arg. to be same day/panel as MATS Supplemental Finding
 - Briefing to 4.2017
- MATS Supplemental Finding *Murray Energy v. EPA* (DC Cir 16-1127)
 - Remanded from SCT to consider cost of MATS rule
 - Briefing to 3.2017
- MATS Startup Case *UARG v. EPA* (DC Cir 15-1013)
 - Startup definition 4-hour exemption; work practice standards for SU/SD
 - Dismissed 10.31.16
- MATS Technical Corrections Rule *ARIPPA v. EPA* (DC Cir 16-1168). In abeyance
 - EPA asks motions to gov. be filed 30 days after resolution of rehearing petition in main MATS 11-1108

BMACT-AREA-CISWI

Pending Issues

ISSUE	DESCRIPTION / VENUE
Standards do not reflect best performers	BMACT main case: Standards vacated. Rulemaking necessary BMACT Recon II: briefing to 2.2017
Legitimacy of CO as surrogate for organic HAP	BMACT main case: remanded ENV Petition for Rehearing/en banc
130 ppm CO standard	BMACT Recon II: briefing to 2.2017 BMACT main case statements by court

BMACT-AREA-CISWI

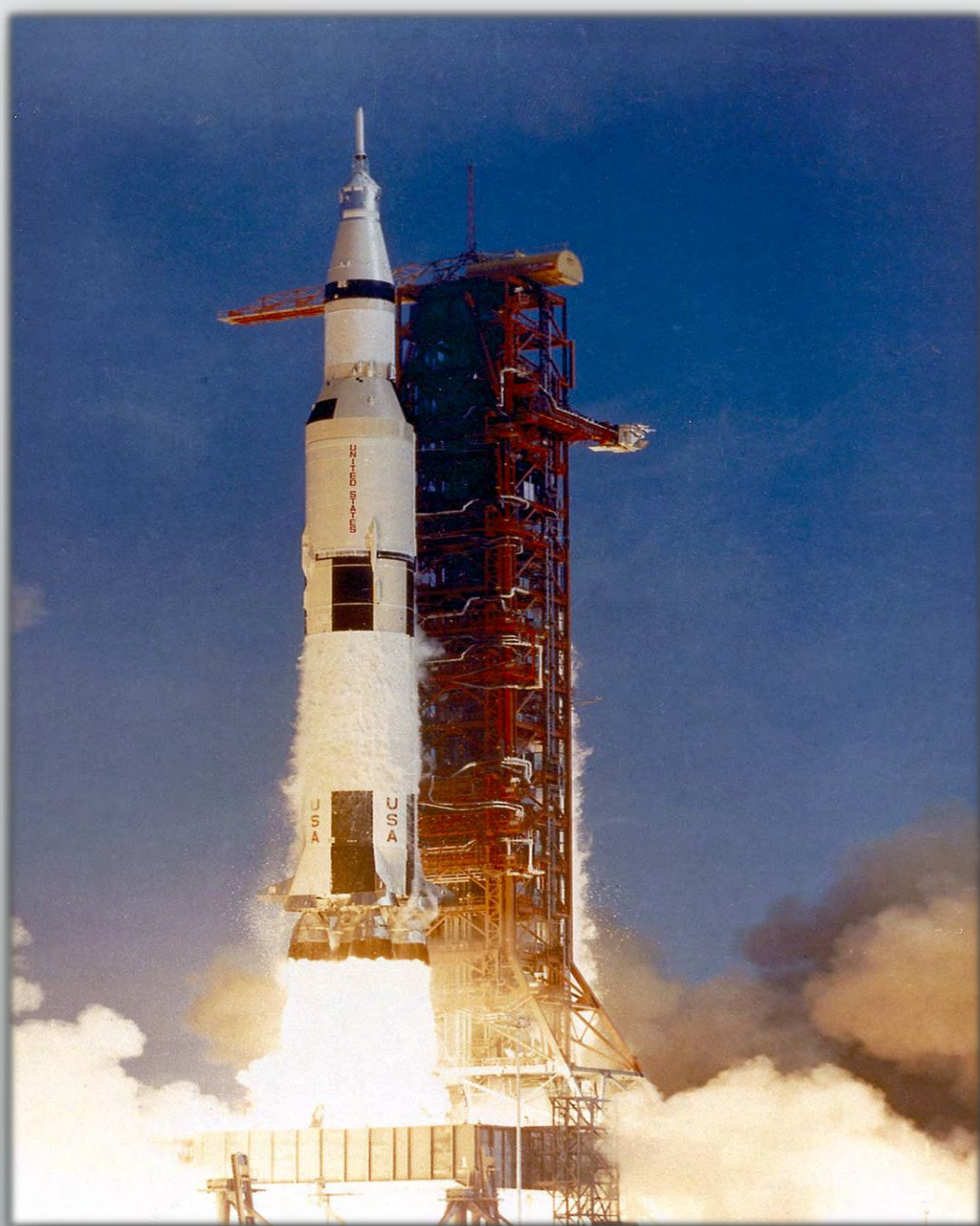
Pending Issues

ISSUE	DESCRIPTION / VENUE
Work practice standards generally and for SU/SD	Area Source ENV Petition for Rehearing
Work practice standards for Startup/Shutdown	BMACT Recon Rule II case Briefing complete 2.2017 MATS Recon 4-hr Startup case Dismissed MATS Technical Corrections case In abeyance SSM SIP Case Oral arg. 5.8.17 State SIPs due 11.22.16

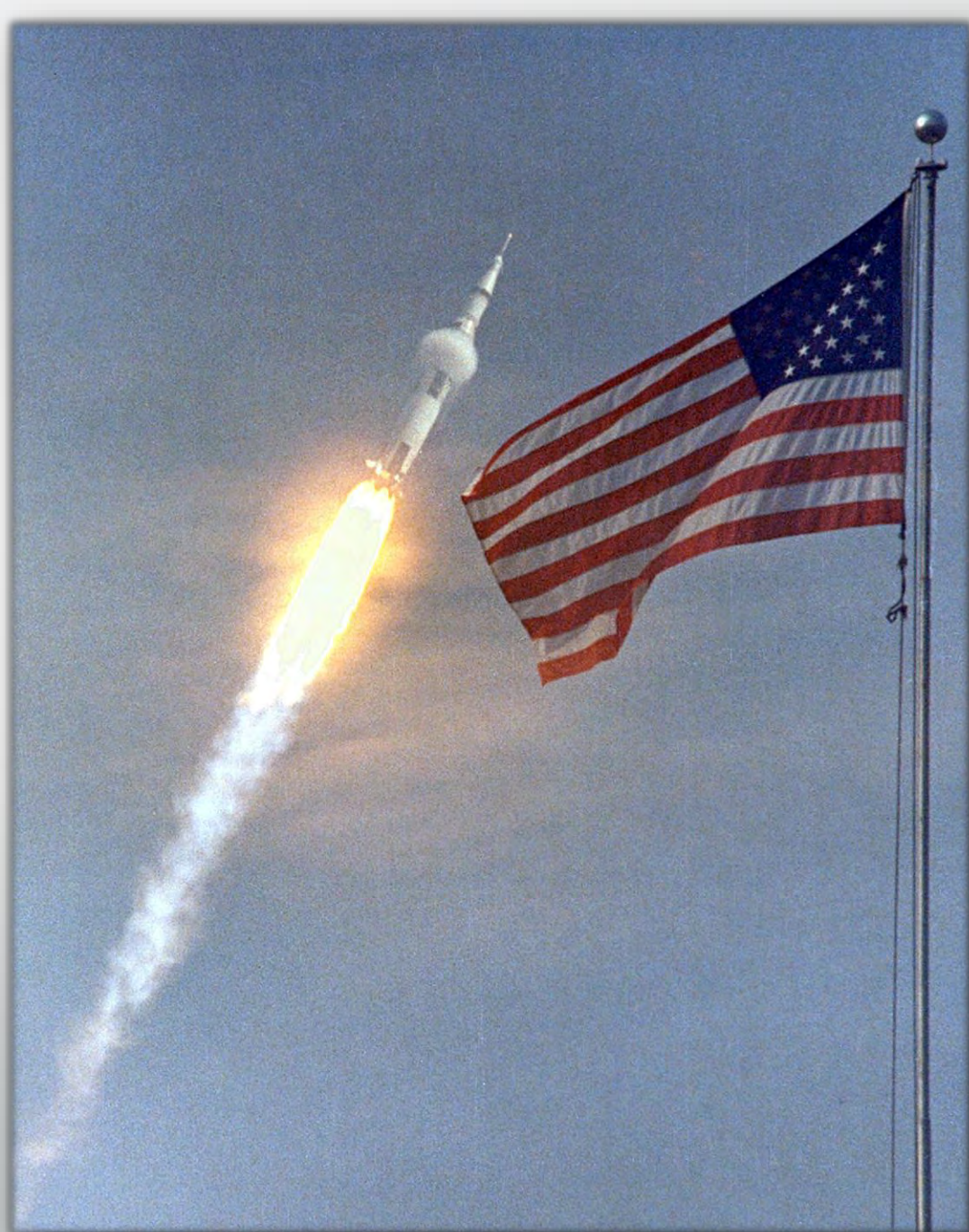
BMACT-AREA-CISWI

Pending Issues

ISSUE	DESCRIPTION / VENUE
Affirmative Defense	<p>Removed from BMACT, Area, MATS rules</p> <p>SSM SIP Case <i>Walter Coke Inc. v. EPA</i> Briefing complete 10.2016</p> <ul style="list-style-type: none">- Oral arg 5.8.17 <p>Nine-Rule Affirm Defense Case <i>Sierra Club v. EPA</i></p> <ul style="list-style-type: none">- In Admin Reconsideration- EPA status reports on removing affirm defense from rules <p>Title V Proposed Rule removing affirm defense</p> <ul style="list-style-type: none">- Comments 8.15.2016- Final rule 2016 likely



A P O L L O 11



BMACT-AREA-CISWI

Pending Issues

ISSUE	DESCRIPTION / VENUE
<p>UPL as applied to subcategories with 9 or fewer data points</p> <p>CISWI: Categories should not be exempted EPA must</p> <ol style="list-style-type: none">Set standards for cyclonic burn barrelsDecide whether burn off ovens, soil treaters and space heaters are incinerators & set standards if so	<ul style="list-style-type: none">ENV voluntary remand of numeric limits Rulemaking needed IF EPA changes any standards in BMACT, Area, MATS main caseENV Petition for Rehearing/en banc. <p>Remanded Rulemaking necessary</p>

BMACT-AREA-CISWI

Pending Issues

ISSUE	DESCRIPTION / VENUE
EPA use of GACT rather than MACT, needs justification	<ul style="list-style-type: none">• Area Source remanded• Rule possible• Area Source ENV Petition for Rehearing
New coal boiler standard based on uncontrolled source	<ul style="list-style-type: none">• Area Source ENV Petition for Rehearing
Synthetic Minors exempt from Title V, needs justification	<ul style="list-style-type: none">• Area Source remanded• Rule possible

Countdown Demonstration Test Apollo 11

Astronaut
Buzz Aldrin
Foreground

Astronaut
Michael Collins
Left of Armstrong



Pad leader
Guenter Wendt
Right

Astronaut
Neil Armstrong
Middle Back

ozone challenges

- 2008 Ozone NAAQS Implementation Rule
 - *South Coast AQMD v. EPA* (15-1115)
 - Partial remand w/ vacatur 8.29.16 – anti-backsliding 1-hr NAAQS
 - Briefing to 12.1.16
 - Oral arg Spring 2017?
 - Decision Aug 2017?
- 2015 Ozone NAAQS (70 ppb)
 - *Murray Energy v. EPA* (DC Cir. 15-1385)
 - Briefing to 9.26.16
 - Oral arg 2.16.17
 - Decision June 2017?

UTILITY GHG RULES

- STAY OF RULE by USSCT pending DC Circuit and SCT proceedings
- CLEAN POWER PLAN (existing units) (111(d))
 - *WV v. EPA* (15-1363, DC Cir)
 - En banc oral argument 9.27.16
 - 157 Petitioners, 28 States challenging, 18 States defending
- NEW/MODIFIED UNITS RULE (111(b))
 - *ND v. EPA* (15-1381, DC Cir)
 - Oral Arg. 4.17.17
- Implementation ongoing
 - Clean Energy Incentive Program. Coalition (CIBO) comments 9.2.16

CWA § 316(b) RULE

Cooling Water Intake Structure Coalition v. EPA (2d Cir. 14-4645)

- IND Petitioners CWIS Coalition (CIBO), UWAG, API, Entergy
 - USFWS and NMFS roles in NPDES permits illegal
 - Biological Opinion has wrong baseline for measuring species effects
- ENV Petitioners
 - “best available technology” = closed loop for existing sources
 - “new” units should include replacement units
- Briefing to 2.2017

GENERAL DECLARATION

(Outward/Inward)

AGRICULTURE, CUSTOMS, IMMIGRATION, AND PUBLIC HEALTH

Owner or Operator NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Marks of Nationality and Registration U.S.A. Flight No. APOLLO 11 Date JULY 24, 1969

Departure from MOON Arrival at HONOLULU, HAWAII, U.S.A.
(Place and Country) (Place and Country)

FLIGHT ROUTING

("Place" Column always to list origin, every en-route stop and destination)

PLACE	TOTAL NUMBER OF CREW	NUMBER OF PASSENGERS ON THIS STAGE	CARGO
CAPE KENNEDY	COMMANDER NEIL A. ARMSTRONG		
MOON	<i>Neil A. Armstrong</i>	<u>Departure Place:</u> Embarking <u>NIL</u>	MOON ROCK AND MOON DUST SAMPLES <u> </u> Cargo Manifests Attached
JULY 24, 1969 HONOLULU	COLONEL EDWIN E. ALDRIN, JR.	Through on same flight <u>NIL</u>	
	<i>Edwin E. Aldrin, Jr.</i>	<u>Arrival Place:</u> Disembarking <u>NIL</u>	
	<i>Michael Collins</i>	Through on same flight <u>NIL</u>	
	LT. COLONEL MICHAEL COLLINS		

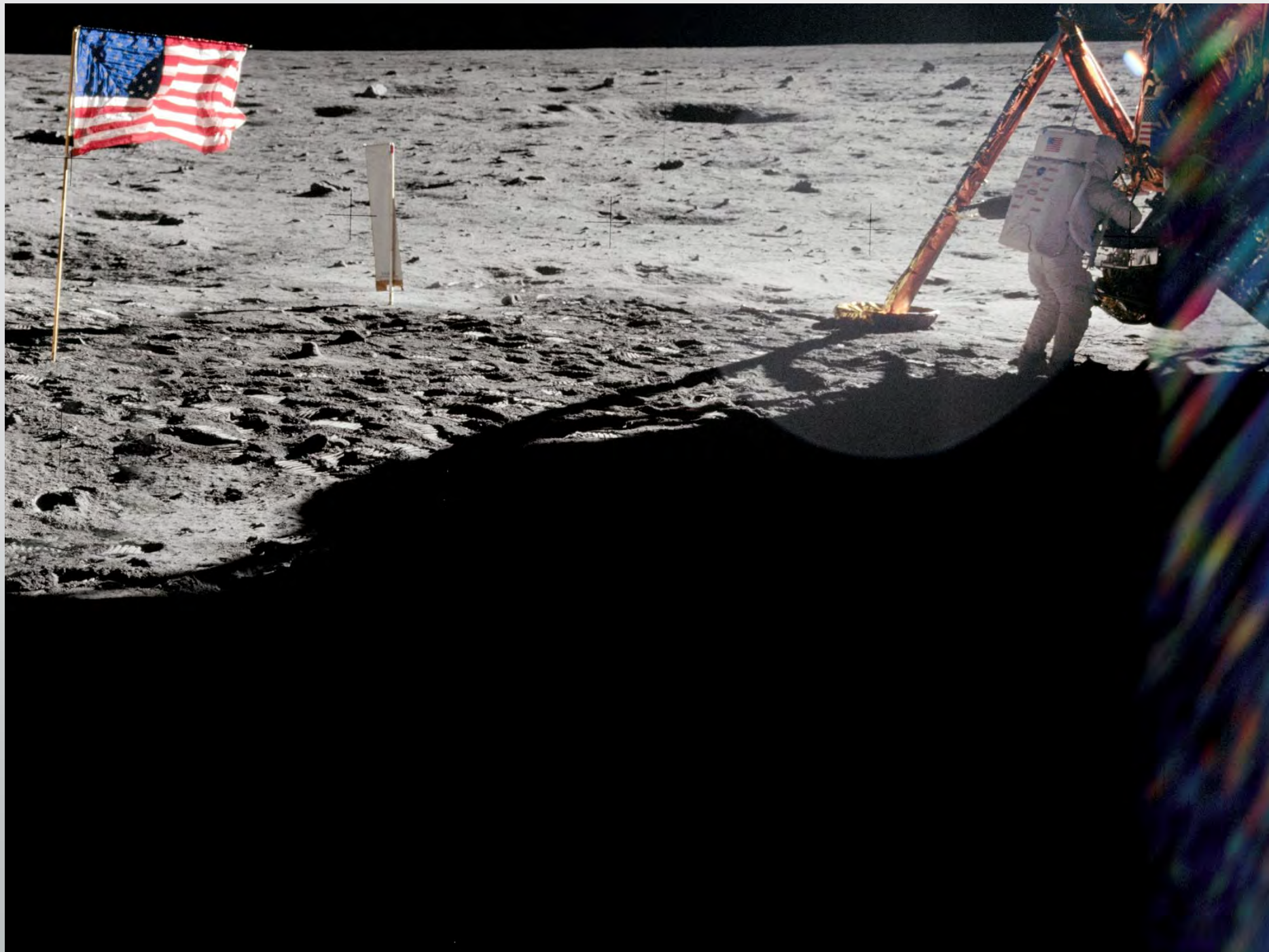
CWA EGU Effluent Limitations Guidelines

Southwestern Electric v. EPA (5th Cir 15-60821)

- Utility & ENV Pets
- Utility & ENV Resp-Int
- Briefing 12.5.2016 through 6.2017
- CIBO comments not resolved in final rule:
 - Applicability
 - Isolating wastewater streams
 - Reclassifying low-volume waste sources
 - Zero discharge in ash transport water
 - Daily loads as permit conditions

CWA Waters of the U.S.

- 1. Court jurisdiction? 2. Merits
- All Circuit Ct cases in 6th Circuit *Murray Energy v. EPA* (15-3751)
 - Nationwide injunction. Circuit Courts have jsd.
 - Merits briefing 11.1.16 through 3.8.17
- District Ct cases not combined but dismissed or stayed
 - Dismissal appealed to 10th Cir *US Chamber v. EPA* (10th Cir. 16-5038)
 - Oral arg on jsd 11.17.16
- Natl Assoc of Manufacturers to USSCT on jurisdiction 9.2.16 (No. 16-299)
 - 12.7.16 US response
 - 12.21.16 Petition distributed to Justices.
 - 1.6.17 Soonest consideration by SCT
 - US & 30 states oppose cert



coal Ash Rule

USWAG v. EPA (DC Cir. 15-1219)

Ind Pet	Env Pet	Respondent
USWAG, EEI, NRECA, APPA Beneficial Reuse Management City of Springfield MO AES Puerto Rico	EIP, Hoosier Env. Council, PennEnvironment, Sierra Club, etc.	EPA Intervenors – ENVs

Timeline

Briefing to 9.6.2016

Oral Arg. Spring 2017?

Order Granting Voluntary Remand 6.14.16

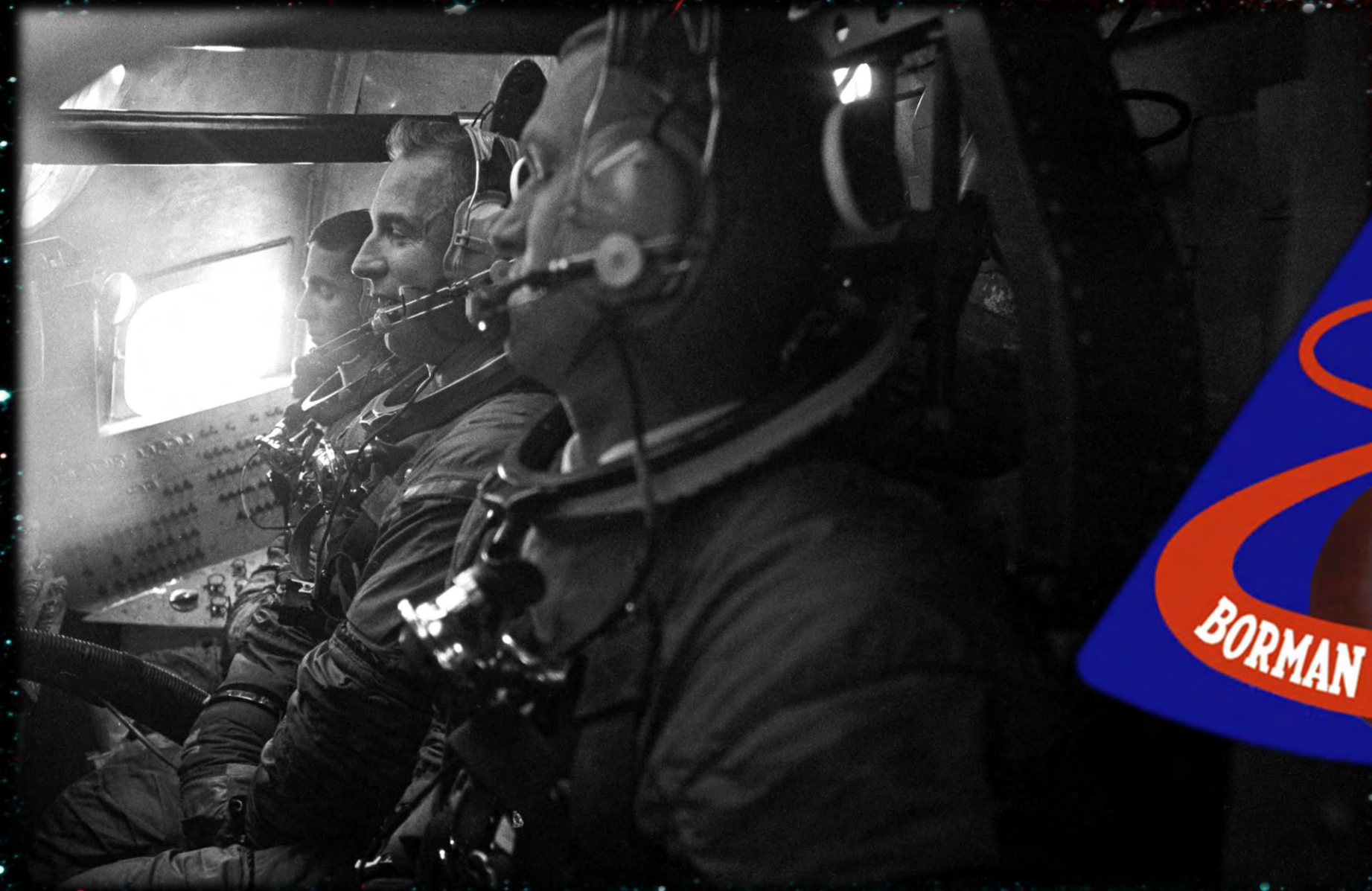
Remand Issues Severed into *USWAG v. EPA* (DC Cir. 16-1183)

2016 DOCKET

Comments

- CAA 608 Refrigerant Management Program Amendments
- CSAPR Update Rule for 2008 Ozone NAAQS
- MATS Supplemental Cost Analysis
- DOE Test Procedures for Commercial Packaged Boilers

Apollo 8 Crewmembers



2016 CIBO Pocket

Comments - Coalition Efforts

- CPP FIP
- CPP CEIP Design & Implementation
- Amendments to Regional Consistency Regs
- Regional Haze Program Amendments
- Methane ICR
- Hazardous Waste Generator Improvements Rule
- Deletion of Affirmative Defense Provisions from Title V Regulations
- DOT Cost-Benefit Analysis Guidance for Rail Projects (Social Cost of Carbon)

2016 CIBO Pocket

Comments - Coalition Efforts Continued

SCC Comments on Multiple DOE Energy Efficiency Standards:

- Residential Furnaces
- Commercial Packaged Boilers
- Walk-in Cooler and Freezer Refrigeration Systems
- Residential Conventional Cooking Products
- Uninterruptible Power Supplies
- Manufactured Housing
- Compressors
- Portable Air Conditioners
- Commercial Water Heating Equipment
- General Service Lamps
- Ceiling Fans

Apollo 8 Lunar Module being hoisted onto the U.S.S. Yorktown on December 27, 1968



2016 CIBO DOCKET

Advocacy Letters

- CIBO letter in support of Honeycutt CASAC nomination
- Coalition letter to OMB – Proposed RMP Rule
- Coalition letter to Congress - Ozone Standards Implementation Act of 2016
- Coalition letter to Congress – Transparency and Honesty in Energy Regulations Act of 2016
- Coalition letter to Congress – REVIEW Act

2016 CIBO/Coalition Pocket

Pending Comments

- PSD GHG Significant Emission Rate Proposal (Coalition) due 12.16.16
- VOC and intro chapters of EPA Control Cost Manual (Coalition) due 12.21.16
- NHSM Proposal for Other Treated Railroad Ties (CIBO) due 1.3.17

Christmas at the International Space Station



other issues

- Regional Haze – final rule Spring 2017?
 - Addresses requirements for the second planning period (2019 to 2028)
- Petition to list ammonia as criteria pollutant in 2011
 - *Environmental Integrity Project v. EPA* DC Dist Ct (1:16-cv-02203)
 - EPA unreasonable delay in not acting on Petition
 - Targets CAFOs/AFOs but regs not limited to those sources
- NOx Control Cost Manual Chapters – comments due 12.21.16
 - Cost Estimation: Concepts and Methodology
 - Refrigerated Condensers
 - Incinerators and Oxidizers

other issues

- DC Cir Regional Consistency Rule
 - *NEDACAP v. EPA* (16-1344)
 - CIBO commented with NAM Coalition
 - Challengers include API, NEDACAP, Air Permitting Forum
 - Briefing to 5.2017
- Lead NAAQS
 - Pets for review due 12.19.16
 - EPA retaining current standards (set in 2008)
 - Primary and secondary = $0.15 \mu\text{g}/\text{m}^3$
- Stationary Combustion Turbine NESHAP Risk and Technology Review
 - EPA draft survey, comments due Dec 1 2015.
 - No OMB approval because EPA will send to 9 or fewer entities
 - Phase 1 information about facilities and turbines and existing emissions data from turbines
 - Phase 2 required turbine emissions testing



Hazardous Waste Generator Improvements Rule

81 FR 85732 (11.28.16)

RCRA rule to make haz waste rules “user-friendly”

- waste management, labeling key issues for industry
- final rule did not distinguish between “condition of exemption” and “independent requirement”
- finalized enforcement approach: noncompliance with condition for exemption can lead to charge of operating as a non-permitted TSDF
- possible admin action or legal challenge (due 2.28.17)

CAA section 608 Refrigerant Management Program

EPA authority to regulate ozone depleting substances ODS

40 CFR Part 82, Subpart F program covers:

- refrigerant reclamation
- technician certification
- appliance servicing, leak repair, disposal
- recordkeeping
- recovery & recycling equipment

CAA section 608 Refrigerant Management Program

New rule extends ODS requirements to non-ODS refrigerants including hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs) on basis of global warming potential

By promoting the proper handling of refrigerants, EPA claims benefits:

- Annual GHG Reduction (MMTCO₂eq): 7.3
= annual GHG emissions of 1.5 mill cars
- Annual ODS Reduction (ODP-weighted MT) 114

Industry opposed: no CAA authority to regulate ODS program for non-ODS substitutes to achieve ghg reductions

DC Cir Petitions due 1.17.16

CHANGE OF ADMINISTRATION

HOW BOUND IS NEW ADMINISTRATION?

Executive Orders

Rules Executive action
 Congressional Review Act

Litigation

- PROCESS
- LEGAL STANDARDS
- ISSUES WOTUS
 CPP
 Energy - Pipelines/Infrastructure
 Energy efficiency standard
 Affirmative defense for malfunctions



