

CIBO E&E MEETING

March 7-8, 2017

Lisa Jaeger

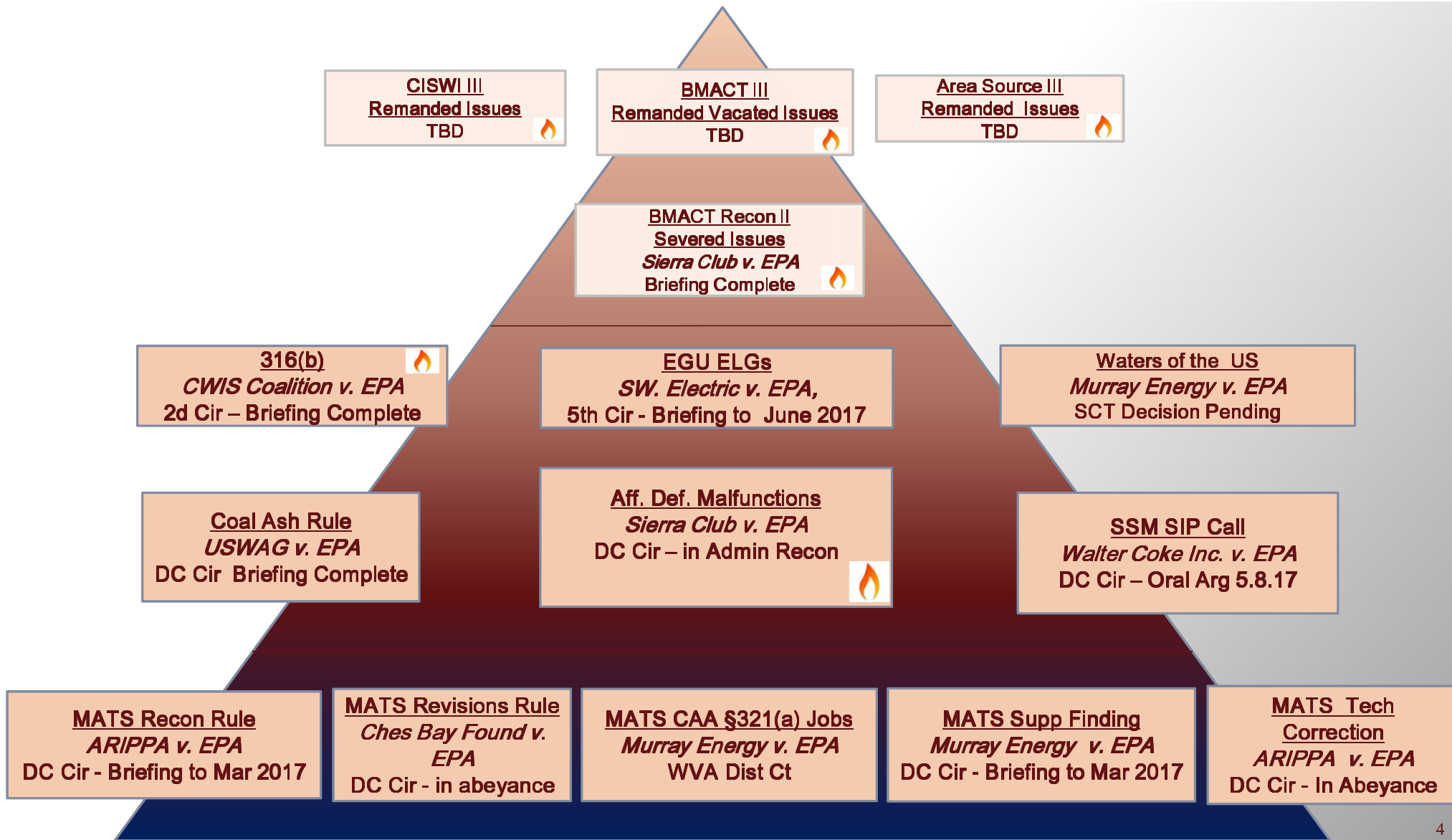
Bracewell LLP

ST. BERNARDS AND MOUNTAIN RESCUE



FIDE CANEM – TRUST THE DOG





BMACT-AREA SOURCE-CISWI

US Sugar Corp v. EPA (11-1108) Main case

- Remanded UPL for small data set subcategories
- 4 issues remanded (BMACT, Area, CISWI)
- 20 BMACT standards remanded (vacated)
(BMACT, 11 existing, 9 new)
- Petitions for rehearing denied
- Supreme Court petition
- BMACT Recon II/Severed Issues Case. Briefed.
Sierra Club v. EPA (16-1021)

BMACT-AREA-CISWI

Sierra Club v. EPA (16-1021) BMACT Recon II

ENV Petitioners

EPA --- Industry Intervenors

130 ppm CO standard (CO as surrogate for organic HAP in BMACT main case)

- Standards must reflect average emissions achieved by best performers
If use CO, that applies to CO, not HAP
- 130 ppm is not maximum reduction achievable in CO or HAP
Can reduce POM post-combustion – unrelated to lowering CO (main case)

Work practice standards for startup/shutdown

- EPA cannot show numeric standards impracticable for “class of sources”
2 definitions of startup, some boilers CAN measure emissions w/in 4 hours
- EPA used data from utility boilers
- Requiring controls when “possible” inconsistent with 112d

BMACT-AREA-CISWI

Status March 2016

EPA FUTURE ACTION MUST COVER ISSUE	RULE / VENUE
- EPA use of GACT rather than MACT, remanded for justification - Synthetic minors exempt from Title V, remanded for justification	Area Area
- Standards for cyclonic burn barrels, remanded - Whether “incinerator” includes burn-off ovens, soil treaters, space heaters and standards for these, remanded	CISWI CISWI
- UPL as applied to subcategories with 9 or fewer data points, vol remand	BMACT Area, MATS
- Standards for subcategories do not reflect best performers, remanded	BMACT
- CO as surrogate for organic HAP, remanded for justification	BMACT Area CISWI

BMACT-AREA-CISWI

Status March 2016

EPA FUTURE ACTION MAY NEED TO COVER ISSUE	VENUE
Affirmative defense	<ul style="list-style-type: none">- Removed from BMACT, Area, MATS rules- SSM SIP Case. Oral arg 5.8.17- Nine-Rule Affirm Defense Case. Admin Recon.- Title V Proposed Rule removing affirm defense Comments 8.15.2016. No final rule 3.3.17
Work practice standards for startup/shutdown	BMACT Recon II
130 ppm CO standard	BMACT Recon II
Work practice for malfunctions	BMACT Petition for Certiorari

BMACT

BMACT DRAFT SCT Petition for Cert

QUESTION PRESENTED

- The regulation upheld by the Court of Appeals in this case requires impossible perfect performance that even EPA admits has never been achieved and is in fact unachievable because accidents are an inevitable fact of industrial life. This ruling leaves hundreds of thousands sources across the country at the mercy of EPA enforcement and citizen suits, and threatens to generate unnecessary and unproductive litigation in federal district courts across the country.

The questions presented is:

- Can EPA lawfully issue emission standards under Clean Air Act Section 112 that require impossible perfect performance and outlaw accidental releases?

K9 VETERANS' DAY



MARCH 13th

They served to save; they deserve to be remembered.

MACT/RTR

Stationary Combustion Turbine NESHAP Risk and Technology Review

- EPA draft survey, comments due 12.1.15
- No OMB approval -- EPA will send to 9 or fewer entities
- Phase 1 inventory info, existing turbine emissions data
- Phase 2 required turbine emissions testing
- Dates for rule TBD – in litigation

Multiple deadline suits to set aggressive RTR schedules

MACT/RTR

CASE

RTRs

<p><i>Air Alliance Houston v. EPA</i> (D.D.Ct 2012) consent decree, final RTR published 12.1.15</p>	<p>Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, Subpart UUU; Petroleum Refineries, Subpart CC</p>
<p><i>CA Communities Against Toxics v. EPA</i> 15-0512 (D.D.C 2015) Oral argument on Summary Judgment 1.6.17</p>	<p>20 RTRs including Stationary Combustion Turbines, Subpart YYYY, Municipal Solid Waste Landfills Subpart AAAA, Integrated Iron and Steel Manufacturing Subpart FFFFF</p>
<p><i>CA Communities Against Toxics v. EPA</i> No. 13-01639 (D.D.C. Oct. 24, 2013) Consent decree, final rule 10.16.17</p>	<p>Publicly Owned Treatment Works, Subpart VVV</p>
<p><i>Sierra Club / CA Communities Against Toxics v. EPA</i> No. 15-1165 (D.D.C. Mar. 21, 2015) Order on summary judgment, final rule 10.7.17</p>	<p>Nutritional Yeast, Subpart CCCC</p>

MACT/RTR

CASE

RTRs

<p><i>Sierra Club / CA Communities Against Toxics v. EPA</i> No. 15-1165 (D.D.C. Mar. 21, 2015) Order on Summary Judgment, final rule 10.1.17</p>	<p>Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills, Subpart MM</p>
<p>EPA Action underway Proposed rule: June 15, 2017 Final rule: June 15, 2018</p>	<p>Portland Cement Manufacturing</p>
<p><i>Blue Ridge Environmental Defense League v. EPA</i> No. 16-0364 (D.D.C. filed Feb. 24, 2016) Briefing Summary Judgment</p>	<p>13 RTRs including Rubber Tire Manufacturing (XXXX), Lime Manufacturing Plants (AAAAA), Iron and Steel Foundries (EEEEEE)</p>
<p><i>Community In-Power and Development Assoc. v. EPA</i> No. 16-1074 (D.D.C. filed Jun 8, 2016) Briefing Summary Judgment through May 19, 2017</p>	<p>9 RTRs including Primary Copper Smelting (QQQ), Semiconductor Manufacturing (BBBBB)</p>

CAA - UTILITY MATS CASES

- MATS CAA §321(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
 - Ct Order 1.11.17. EPA “hostile” to congressional mission
 - EPA appealed to 4th Circuit.
- MATS Reconsideration Rule *ARIPPA v. EPA* (DC Cir 15-1180)
 - Oral arg same day/panel as MATS Supplemental Finding
 - Briefing to 4.3.2017
- MATS Supplemental Finding *Murray Energy v. EPA* (DC Cir 16-1127)
 - Remanded from SCT to consider cost of MATS rule
 - Briefing to 3.24.2017
- MATS Technical Corrections Rule *ARIPPA v. EPA* (DC Cir 16-1168). In abeyance
 - EPA: motions to govern 30 days after rehearing petition resolved in main MATS 11-1108

CAA – CPP & 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
- **PRESIDENTIAL EO TBD**

WHAT HAPPENS NEXT?

CAA CASES

- 2008 Ozone NAAQS Implementation Rule
 - South Coast *AQMD v. EPA* (15-1115)
 - Partial remand w/ vacatur 8.29.16 – anti-backsliding 1-hr NAAQS
 - Briefed
- 2015 Ozone NAAQS (70 ppb)
 - Murray Energy v. EPA* (DC Cir. 15-1385)
 - Oral arg 4.19.17
- CSAPR Update Rule for 2008 Ozone NAAQS
 - WI v EPA* (DC Cir. 16-1406)
 - Initial submissions completed

CAA CASES

- CAA 608 Refrigerant Management Rule
 - *NEDACAP v EPA* (DC Cir. 17-1016)
 - Initial Submissions 3.6.17
 - IND: no authority in CAA ODS program to regulate non-ODS substitutes for ghg reductions
- Regional Haze (Amendments to State Plans)
 - *TX v EPA* (DC Cir. 17-1021)
 - Initial submissions through 3.31.17
 - Addresses requirements for 2d planning period (2019 to 2028)

CAA CASES

- Regional Consistency Rule
 - *NEDACAP v. EPA* (DC Cir. 16-1344)
 - CIBO commented with NAM Coalition
 - IND Challengers include API, NEDACAP
 - Briefing to 5.8.17
- 2011 Petition to list ammonia as criteria pollutant *OVER*
 - *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
 - Case Dismissed 1.17.17
- Lead NAAQS *OVER*
 - No pets for review filed by 12.19.16
 - EPA retaining current standards (set in 2008)
 - Primary and secondary = $0.15 \mu\text{g}/\text{m}^3$

AKC PAW OF COURAGE

K9 Nicky



CAA REGULATORY

- Regional Haze Program Amendments
- Methane ICR for existing oil/gas sources
 - EPA withdrew ICR 3.2.17
- RMP Rule adds disclosure and other requirements to CAA RMPs. Industry comments opposed rule.
 - Final rule 1.12.17. Petitions due 3.14.17.
 - CRA (Sen Inhofe) petition 3.3.17
- PSD GHG Significant Emission Rate Proposal

CAA REGULATORY

- EPA Control Cost Manual Chapters
- NSR Reform
- Social Cost of Carbon

AKC PAW OF COURAGE

K9 Tryko



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
- Briefed

CWA EGU EFFLUENT LIMITATIONS GUIDELINES

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

- Utility & ENV Petitioners & Respondent-Intervenors
- Briefing 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 US

1. Court jurisdiction 2. Merits

6th Circuit *Murray Energy v. EPA* (15-3751)

- Nationwide injunction. Held: Circuit Courts have jsd.
- Merits briefing began, case in abeyance 1.25.17

10th Cir *US Chamber v. EPA* (10th Cir. 16-5038)

- Jurisdiction issue pending, case abated

SCT will hear jurisdiction issue

NAM v. DOJ (SCT No. 16-299)

WOTUS

Executive Order 2.28.17

- Must review June 2015 CWA rule defining “waters of the US”
- EPA and Army Corps: rescind or revise the rule, reflecting this policy: keep navigable waters clean AND promote economic growth, minimize regulatory uncertainty, respect Congress and States
- All departments: revise or rescind implementing documents
- “Navigable waters” shall be defined in future consistent with *J. Scalia’s Rapanos v. US* (2006) opinion, as relatively permanent bodies of water

?? What happens next?

AVALANCHE RESCUE DOGS IN TRAINING



RCRA - COAL ASH RULE

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

USWAG v. EPA (DC Cir. 16-1183) Remanded Issues Case >>> Rule

Ind Petitioner	Env Petitioner	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

Main Case: Briefing completed. Oral arg Spring 2017?

Remanded Issues Case Dismissed – EPA rule on remanded issues by April 2017

ENV Petition for rulemaking to regulate CCR disposal at municipal solid waste landfills 6.8.16

RCRA - COAL ASH RULE

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

USWAG v. EPA (DC Cir. 16-1183) Remanded Issues Case >>> Rule

Issues – Main Case (DC Cir. 15-1219)

- IND
 - open dump prohibition illegally applies to inactive surface impoundments
 - CCR storage regulations arbitrary
 - 12,400 ton limit in definition of “beneficial use”
 - 2-year deadline for impoundments not meeting safety factors
 - deleted risk-based compliance exemption
- ENV
 - unlined impoundment illegally classified as sanitary land fill
 - impoundments pose 2x cancer risk = reas prob of adverse health effects
 - inactive impoundments illegally exempt if site no longer generating electricity

Remanded Issues Rule

No notice for multiple issues.
Alternative closure exemption.

RCRA - COAL ASH

Petition for Rulemaking

Petitioners

Earthjustice and 9 ENV and clean-energy groups

Timing

Petition filed 6.8.16

Issues

RCRA requires regulation of disposal of CCR in municipal solid waste landfills, now exempt from CCR rule.

Must apply CCR Rule requirements for: monitoring groundwater and fugitive dust, disposal site liners, siting, public notices, compliance plans, weekly and annual inspections, permitting must follow EJ principles



RCRA – DEFINITION OF SOLID WASTE

API v. EPA (DC Cir. 09-1038)

Ind Petitioners

API, AGA, NRECA, EEI,
UWAG, NAM, ACC
Freeport-McMoRan

Amicus for IND
Eastman Chemical
Solvay USA

Env Petitioners

Sierra Club, CCAT, LEAN
Clean Air Council
Coalition for a Safe Environment

Respondent

EPA

Ind Intv
SOCMA, AFPA

Timing

Oral argument Nov 3, 2016 Judges Tatel, Kavanaugh, Williams

RCRA – DEFINITION OF SOLID WASTE

API v. EPA (DC Cir. 09-1038)

Issues

No RCRA authority to require legitimacy factors for materials that are not discarded IND

Verified recycler exclusion

IND - regulates materials that are transferred for recycling and not discarded

ENV - OMB inserted the exclusion, no notice comment

- presumption of discard should not be rebuttable

- Payment to transfer materials to 3d party = discard

EPA - NHSM case: EPA can burden party to disprove discard

- Payment should be considered but not determinative

Pre-2008 Exclusions should be revised ENV

RCRA

- Hazardous Waste Generator Improvements Rule
 - *ACC v EPA* (DC Cir. 17-1064)
 - Initial Submissions 3.31.17
 - Key IND issue: noncompliance with condition for exemption = facility operating as non-permitted TSDF
- WRDA >> WIIN Act
 - Water Infrastructure Improvements for the Nation 2016
 - EPA authority to approve/withdraw state permit programs or set fed program, enforce under open dump provision

RCRA

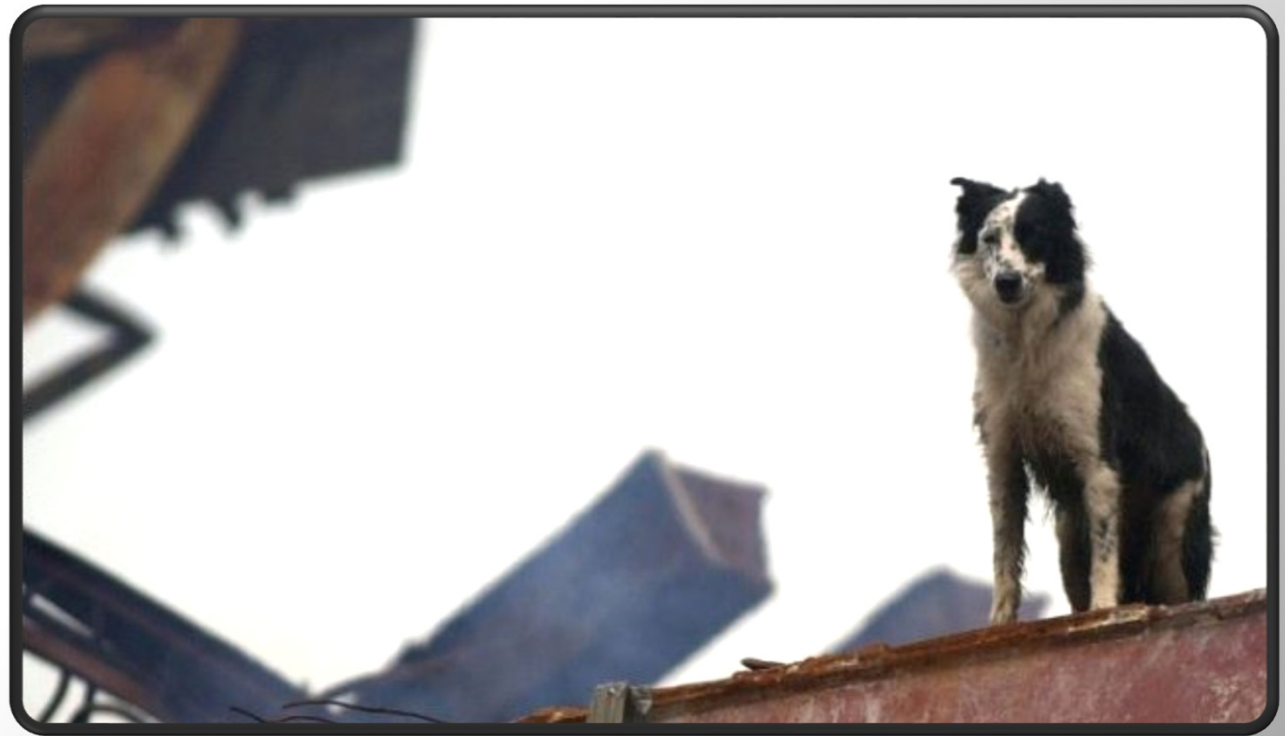
- NHSM Proposal for Other Treated Railroad Ties
 - Rule proposed categorical treatment of OTRT as NHSM for CAA 112/129 purposes.
 - CIBO filed comments.

COWBOY - ROCKY MOUNTAIN RESCUE DOG

Level III and Utah Task Force
I - FEMA Certified

“I don’t think Cowboy ever realized he was a dog; he thought he was just a short person with four legs. I never tried to convince him otherwise.”

Dave Richards, Cowboy’s
Owner and Handler



Oso, WASHINGTON

Massive mudslides, March 2014



NEW ADMINISTRATION – NEW CONGRESS

- Executive Orders (EOs)
- Presidential Memos
- Congressional Review Act Resolutions adopted/signed
- Agency implementation

WH Chief of Staff Memorandum - Regulatory Freeze Pending Review

- Exec Depts: hold & review pending actions, extend effective dates, review for facts, law, policy
- Consider extending comment periods
- Rules raising questions, refer to OMB

Presidential Memo - Hiring Freeze for federal civilian employees

- Exec Depts: do not fill vacant positions or create new positions or contract to circumvent this intent
- OMB: in 90 days recommend long-term plan to reduce workforce through attrition
- this memo expires when long-term plan implemented

NEW ADMINISTRATION – NEW CONGRESS

EO Reducing regs and controlling costs (two-for-one)

- For every one rule proposed, identify two to rescind
- For any new incremental cost of new rule, identify cost offsets from at least two existing rules
- Annual Presidential budget will state total amount of incremental costs for each agency rules for fiscal year
- OMB will oversee
- Spending on new rules in 2017: \$0

NEW ADMINISTRATION – NEW CONGRESS

EO - Expediting environmental reviews & approvals for high priority infrastructure projects

- Infrastructure investment allows Americans to compete and win on the world economic stage. Federal infrastructure decisions should use maximum efficiency and effectiveness.
- Policy to expedite projects, esp high priority projects, such as electric grid and telecom systems, critical port facilities, airports, pipelines, bridges, highways.
- Governors, Dept heads or WH CEQ may request high priority designation for project.
- CEQ: decide within 30 days after a request whether project qualifies as "high priority" considering importance to general welfare, value to the Nation, environmental benefits, and other factors the Chairman deems relevant.
- CEQ: coordinate with head of agency to establish, consistent with law, expedited procedures and deadlines for environmental reviews and approvals.
- Agencies: give highest priority to completing reviews and approvals by the deadlines using all necessary and appropriate means. If deadlines not met, head of agency shall explain in writing to CEQ causes for delay and providing actions by agency to complete reviews and approvals as expeditiously as possible.

NEW ADMINISTRATION – NEW CONGRESS

EO - Permit Streamlining & Reducing Reg Burdens for Domestic Manufacturing

- Commerce: stakeholder outreach, maximum 60-day public comment re fed actions to streamline permitting and reduce regulatory burdens for domestic manufacturers
- Coordinate with USDA, DOE, EPA, OMB, SBA, others as appropriate
- Report to President in 60 days with plan to streamline and reduce reg burden. Report should identify priority actions, recommended deadlines. Report may recommend changes to existing regs or laws, & actions to change policies, practices, or procedures that can be taken immediately under existing authority.

NEW ADMINISTRATION – NEW CONGRESS

Dept of Commerce Implementation of Domestic
Manufacturing EO

Web release 3.3.17 Comments due 3.31.17

General Information:

- a. NAICS code(s)
- b. What do you manufacture?
- c. Where are your facilities located?
- d. How many employees?
- e. Approximate sales revenue?

NEW ADMINISTRATION – NEW CONGRESS

Manufacturing Permitting Process

1. How many permits from a Federal agency are required to build, expand or operate your manufacturing facilities? Which Federal agencies require permits and how long does it take to obtain them?
2. Do any of the Federal permits overlap with (or duplicate) other federal permits or those required by State or local agencies? If the answer is yes, how many permits? From which Federal agencies?
3. Briefly describe the most onerous part of your permitting process.
4. If you could make one change to the Federal permitting process applicable to your manufacturing business or facilities, what would it be? How could the permitting process be modified to better suit your needs?
5. Are there Federal, State, or local agencies that you have worked with on permitting whose practices should be widely implemented? What is it you like about those practices?

NEW ADMINISTRATION – NEW CONGRESS

Regulatory Burden/Compliance:

1. Please list the top four regulations that you believe are most burdensome for your manufacturing business. Please identify the agency that issues each one. Specific citation of codes from the Code of Federal Regulations would be appreciated.
2. How could regulatory compliance be simplified within your industry or sector?
3. Please provide any other specific recommendations, not addressed by the questions above, that you believe would help reduce unnecessary Federal agency regulation of your business.

NATURAL BORN HERO

Shana – a wolf and German Shepard mix saves her humans



NEW ADMINISTRATION – SUPREME COURT

Supreme Court Nominee Judge Neil Gorsuch

Columbia Univ BA 1988

Harvard Law 1991

Oxford D.Phil 2004

Clerked for J. Sentelle (DC Cir), Justices White & Kennedy (SCT)

Private practice DC. DOJ Prin Dep to Assoc AG, acting AG

10th Cir nominated by GWBush, Senate unanimously confirmed 2006

Confirmation hearings begin March 20, final floor early/mid April?

NEW ADMINISTRATION – WHITE HOUSE

Carl Icahn, Special Adviser on Regulatory Reform	
National Economic Council	<p>Director: Gary Cohn (former Pres. & CEO of Goldman Sachs)</p> <ul style="list-style-type: none"> • Special Assistant to the President for International Energy and Environment: George David Banks • Special Assistant to the President for Domestic Energy and Environmental Policy: Michael Catanzaro
Domestic Policy Council	Appointees
Office of Management and Budget Office of Information and Regulatory Affairs	Director Congressman Mick Mulvaney
Council on Environmental Quality	<p>_____</p> <p>Appointees Professional Staff</p>
National Trade Council (new WH office to facilitate industrial policy)	<p>Director, Peter Navarro</p> <ul style="list-style-type: none"> • Deputy Director for the Defense Industrial Base: Alexander Gray • Deputy Director for “Buy American, Hire American”: Rolf Lundberg

NEW ADMINISTRATION: WHO

All Departments must have Regulatory Reform Leader

Dept. of Commerce		Sec Dep Sec Reg Reform Lead	Wilbur Ross Todd Ricketts
Dept. of Energy		Sec Dep Sec Reg Reform Lead	Gov Rick Perry (TX)
Dept. of Interior		Sec Dep Sec Reg Reform Lead	Cong. Ryan Zinke (MT)
USDA		Sec Dep Sec Reg Reform Lead	Gov. Sonny Perdue

NEW ADMINISTRATION – EPA



EPA Administrator Scott Pruitt

- former OK Attorney General, private practice
- created OK federalism unit to combat fed overreach
- sued EPA as OK AG
- Univ KY (BA) – Univ Tulsa (JD)

Deputy Administrator, Office of Administrator Appointees

Assistant Administrators for Air, Water, Waste, Pesticides

Regional Administrators, Deputy RAs

NEW ADMINISTRATION – EPA

- Pruitt and EPA staff
- Early action on rules
- Budget 3.1.17
- Litigation positions



