



CIBO E&E Meeting

March 7-8, 2017

Lisa Jaeger

Bracewell LLP

CPP/NSPS Cases DC
WV v. EPA (DC Cir 15-1363)
ND v. EPA (DC Cir 15-1381)
In Abeyance

EGU ELG
Southwestern Power v. EPA
(5th Cir 15-60821)
Case Stayed Until Aug. 12, 2017

CWA 316(b)
CWIS v. EPA
(2nd Cir 14-4645)
Briefing Complete

Coal Ash Rule
USWAG v. EPA
DC Cir Briefing Complete

Def. Solid Waste
API v. EPA (DC Cir. 09-1038)
Oral Arg Nov. 3, 2016

Waters of the US
Murray Energy v. EPA
SCT Decision Pending

BMACT Recon II
Severed Issues
Sierra Club v. EPA
Briefing Complete

BMACT III
Remanded Issues
TBD

CISWI III
Remanded Issues
TBD

SSM SIP Call
Walter Coke Inc. v. EPA
DC Cir – In Abeyance

Aff. Def. Malfunctions
Sierra Club v. EPA
DC Cir – in Admin Recon

MATS Recon Rule
ARIPPA v. EPA
DC Cir – In Abeyance

MATS Startup
Ches Bay Found v. EPA
DC Cir – In Abeyance

MATS CAA §321(a) Jobs
Murray Energy v. EPA
(4th Cir 16-2432)
Oral Arg - May 9, 2017

MATS Supp Finding
Murray Energy v. EPA
DC Cir – In Abeyance

MATS Tech
Correction
ARIPPA v. EPA
DC Cir - In Abeyance

BMACT-Area Source-CISWI

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

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

BMACT

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

AMP-Ohio Cert Petition (USSCT 16-1168) 3.27.17

QUESTION PRESENTED

Can EPA lawfully issue emission standards under CAA § 112 that require impossible perfect performance and outlaw accidental releases?

ARGUMENTS

- § 112(r) covers malfunctions
- Malfunction emissions de minimis
- *Sierra Club* decision compelled outcome in BMACT

BMACT-Area Source-CISWI

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

EPA opposed cert

- 112(r) and de minimis arguments not raised below
- Citizen suit threat overstated
- Notes that CIBO did not join Petition

Next steps: AMP reply 6.6.17

- Case to Justices earliest 6.6.17



Fred after hearing MACT
HG limits

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

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

EPA FUTURE ACTION MUST COVER ISSUE	RULE / VENUE
<ul style="list-style-type: none">- EPA use of GACT rather than MACT, remanded for justification- Synthetic minors exempt from Title V, remanded for justification	Area Area
<ul style="list-style-type: none">- Standards for cyclonic burn barrels, remanded- Whether “incinerator” includes burn-off ovens, soil treaters, space heaters and standards for these, remanded	CISWI CISWI
<ul style="list-style-type: none">- UPL as applied to subcategories with 9 or fewer data points, vol remand	BMACT Area, MATS
<ul style="list-style-type: none">- Standards for subcategories do not reflect best performers, remanded	BMACT
<ul style="list-style-type: none">- CO as surrogate for organic HAP, remanded for justification	BMACT Area CISWI

BMACT-Area-CISWI

SUMMARY OF POTENTIAL STANDARDS POST-REMAND

Existing Emission Standards

Mercury standards – 2 of 3 become more stringent

6% Solid Fuel

63% Liquid Fuel

HCl standards – 2 of 3 become more stringent

30% Solid Fuel

68% Liquid Fuel

PM standards – 6 of 12 become more stringent

85% Biomass FB

34% Biomass Dutch Oven

20% Biomass Suspension Burner

7% Wet Biomass Stoker

CO standards – 3 of 15 become more stringent

55% Biomass FB

50% Wet Biomass Stoker

19% Coal Stoker

BMACT-Area-CISWI

SUMMARY OF POTENTIAL STANDARDS POST-REMAND

New Emission Standards

Mercury standards - 1 of 3 become more stringent

96% Solid Fuel

HCl standards - 2 of 3 become more stringent

3% Solid Fuel

100% Liquid Fuel

PM standards - 4 of 12 become more stringent

11% Biomass FB

20% Biomass Dutch Oven

20% Biomass Suspension Burner

CO standards - 3 of 15 become more stringent

69% Biomass FB

1% Wet Biomass Stoker

83% Biomass Hybrid Suspension Grate

BMACT-Area-CISWI

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 <i>Walter Coke Inc v. EPA</i> (DC Cir. 15-1166) removed from oral argument, in abeyance - Nine-rule Affirmative defense case. Admin Recon, in abeyance - Title V Proposed Rule removing affirmative defense comments 8.15.2016; no final rule 5.22.17
Work practice standards for startup/shutdown	BMACT Recon II
130 ppm CO standard	BMACT Recon II
Work practice for malfunctions	BMACT Petition for Certiorari

Sam the *Snow Beagle*



MACT/Risk & Technology Review

Stationary Combustion Turbine NESHAP RTR Subpart YYYY

- EPA draft survey, comments 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
- Court ordered dates for rule: March 2020*

Multiple deadline suits to set aggressive RTR schedules

MACT - Risk & Technology Review

CASE	RTRs
<p><i>Air Alliance Houston v. EPA</i> (D.D.C. 2012) consent decree, final RTR 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) Order on SJ 3.15.17: all 20 RTRs final in 3 years</p>	<p>20 RTRs including Stationary Combustion Turbines, Subpart YYYY, Municipal Solid Waste Landfills Subpart AAAA, Integrated Iron and Steel Manufacturing Subpart FFFF</p>
<p><i>Sierra Club / CA Communities Against Toxics v. EPA</i> No. 13-01639 (D.D.C. Oct. 24, 2013) Consent decree: final rule 10.16.17 Comments on proposed rule 3.29.17</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 SJ: final rule 10.7.17. Comments on proposed rule 2.24.17</p>	<p>Nutritional Yeast, Subpart CCCC</p>

MACT - Risk & Technology Review

CASE	RTRs
<p><i>Sierra Club / CA Communities Against Toxics v. EPA</i> No. 15-1165 (D.D.C. Mar. 21, 2015) Order on SJ: 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) Order on SJ: 7 Final RTRs 12.31.18; All final 6.30.20 EPA appeal to DC Cir 5.19.17</p>	<p>13 RTRs eg Rubber Tire Manufacturing (XXXX), Lime Manufacturing Plants (AAAAA), Iron and Steel Foundries (EEEE)</p>
<p><i>Community In-Power and Development Assoc. v. EPA</i> No. 16-1074 (D.D.C. filed Jun 8, 2016) SJ Briefed 5.19.17. ENV request: begin proposals in 8 months; all final in 2 years EPA will file cross-motion for SJ 6.14.17</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)

- WV Dist Ct HELD: EPA must submit plan to evaluate coal jobs impact
- EPA appealed to 4th Circuit
 - Oral argument 5.9.17
 - DOJ 28j: no standing for informational injury

MATS Technical Corrections Rule

ARIPPA v. EPA (DC Cir 16-1168)

- ARIPPA & UARG: definition of “coal refuse” and removal of affirmative defense for malfunctions
- ENVs intervened for EPA
- 3.27.17 in abeyance pending SCT BMACT cert petition

MATS Startup/Shutdown Revisions Rule

Chesapeake Bay v. EPA (15-1015)

- ENV: su/sd definition
- UARG intervened for EPA
- In abeyance pending decision in BMACT Recon II (16-1021)

CAA - Utility MATS Cases

MATS Reconsideration Rule

ARIPPA v. EPA (DC Cir 15-1180)

- UARG contaminated emissions data. ARIPPA variability in coal refuse. ENV pm2.5 standard.
- IND and ENVs intervened for EPA
- 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
- State, IND petitioners. State, IND, ENVs intervened for EPA
- Briefing to 3.24.2017

BUT.....

These MATS Cases to be heard by same panel, same day:

- 4.27.17 removed from 5.18.17 oral argument
- in abeyance pending EPA action, EPA 90-day reports

CAA - Utility MATS – Title V

PA MATS TITLE V

3-YEAR EXTENSION FOR WASTE COAL PLANT

- CAA 112(i)(3)(b) allows approved States to grant 3 years for mining waste if time needed to dry & cover waste to avoid HAP emissions
- PA granted extensions to waste coal plants
- ENVs challenged in Title V proceeding, sought EPA order
- EPA Order to PA: better justify extension or revise permit

CAA – CPP & UTILITY GHG RULES

CLEAN POWER PLAN (existing units) (111(d))

- WV v. EPA (15-1363, DC Cir)
- 157 Petitioners, 28 States challenging, 18 States defending
- USSCT STAY OF RULE pending DC Circuit and SCT proceedings 2.9.16
- DC CIRCUIT en banc oral argument 9.27.16

NEW/MODIFIED UNITS RULE (111(b))

- ND v. EPA (15-1381, DC Cir)
- Briefed, oral argument 4.17.17

Cavi and Pi

SATURDAY TRIPS TO WAWA ARE THE BEST!



CAVI AND HER WAWA EGGS



Clean Power Plan EO & EPA Action

3.30.17 EPA Admin Pruitt Letter to Governors

- EPA policy: states need not meet stayed CPP compliance dates

3.28.27 EO Promoting Energy Independence and Economic Growth

- Rescinds Obama CPP executive orders
- EPA and DOI: revise/rescind unnecessary regs that burden coal-fired electric utilities, coal miners, and oil and gas producers

4.4.17 Fed Reg notices

- Review of CPP
- Review of 2016 Oil and Gas NSPS
- Review of GHG standards for EGUs
- Withdrawal of proposed rules re: GHG emissions from EGUs

CAA – CPP & UTILITY GHG RULES

NEW/MODIFIED UNITS RULE (111(b))

- *ND v. EPA* (15-1381, DC Cir)

CLEAN POWER PLAN (existing units) (111(d))

- *WV v. EPA* (15-1363, DC Cir)

- 3.28.17 EPA moved for & court granted 60-day abeyance
- 3.30.17 DC Cir Orders
 - removed *ND v. EPA* from 4.17.17 oral argument pending abeyance motion
 - Parties must brief issue: should case be remanded rather than held in abeyance?
- 5.15.17 Supplemental briefs filed
- 5.30.17 EPA 30-day status report; EPA reviewing 111(b) and wants cases to remain in abeyance pending EPA's review

CAA Ozone NAAQS

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, oral argument pending scheduling

2015 Ozone NAAQS (70 ppb) Murray Energy v. EPA (DC Cir. 15-1385)

- 4.11.17 removed from 4.19.17 oral argument calendar
- 4.11.17 – beginning 90 days from order, EPA to file 90-day status reports on 2015 rule review; motions to govern within 30 days of EPA action on 2015 rule

Bipartisan Ozone compliance bill S. 1203

- State/EPA early action compacts to avoid nonattainment status

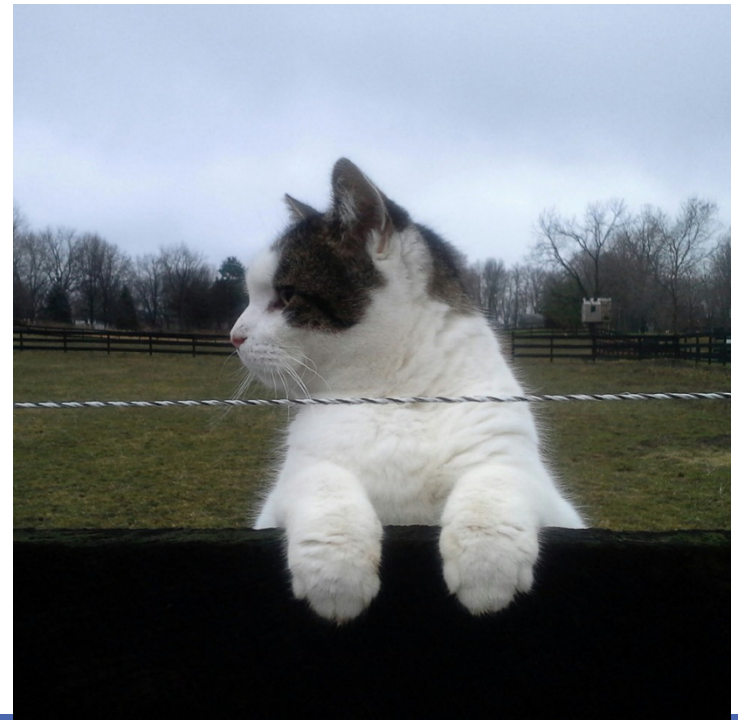
Peanut and Scooter



CSAPR Update Rule for 2008

CSAPR Update Rule for 2008 Ozone NAAQS

- *WI v EPA* (DC Cir. 16-1406)
- Briefing August 2017 to February 2018



CSAPR Update Rule for 2008 Ozone NAAQS

Petitioners	WI, AL, AR, OH, WY
Respondent	EPA
Intervenors	VT, RI, NY, NH, MD American Lung Assoc, Appalachian Mt Club, EDF, Sierra Club, etc UARG, Murray Energy, Cedar Falls Muni Utilities, Duke Energy Carolinas, Duke Energy Progress, FL Electric Power Coordinating Group, etc
Amicus	American Thoracic Society
Timeline	
BRIEFS	Petitioners 8.21.17 through Final Briefs 2.7.18

CSAPR Update Rule for 2008 Ozone NAAQS Issues

- EPA failed to account for ozone originating outside the US
- Failed to prohibit significant downwind nonattainment and interference with the 2008 ozone standard
- Failed to consider apportionment of upwind and downwind responsibility
- Failed to require states to fully address transported pollution by promulgating a rule that is only a partial remedy
- EPA's projections of nonattainment are arbitrary, capricious, or unlawful
- Method for choosing states resulted in improper state emissions budget reductions
- Failed to appropriately account for inaccuracies in modeling air quality in areas near water bodies
- Singles out EGUs for emission reductions

CAA Cases

CAA 608 Refrigerant Management Rule

- *NEDACAP v EPA* (DC Cir. 17-1016)
- IND: no authority in CAA ODS program to regulate non-ODS substitutes for ghg reductions
- 5.23.17 in abeyance on unopposed motion pending order of court
- *Mexichem v. EPA* DC Cir oral argument

Regional Haze (Amendments to State Plans)

TX v. EPA (DC Cir. 17-1021)

- Addresses requirements for 2d planning period (2019 to 2028)
- Petitioners TX TXCEQ, AL, AR, ND, US Chamber, ENVs, UARG, Individual Power Producers
- Intervenors for Respondent: ENVs UARG
- Briefing formats due 7.24.17

Regional Haze (Amendments to State Plans) Issues

- Requires use of 2000-2004 data to calculate baseline visibility conditions for all planning periods
- Defines wildland wildfires as natural events, even if caused by human action
- Fails to address international emissions and natural haze
- Fails to consider disproportionate costs imposed on States to meet non-health based visibility goals
- Requires States to establish a long-term strategy and reasonable progress controls before establishing reasonable progress goals
- Requires states to conduct a source-specific reasonable progress analysis if a State's reasonable progress goal is above the uniform rate of progress
- Expands the scope of the reasonably attributable visibility impairment program

Regional Haze (Amendments to State Plans) Issues Continued

- Expands the role of the Federal Land Manager
- EPA cannot require SIP provisions that are more accelerated than the State's rate of progress
- Limits State's discretion in selecting days used to track reasonable progress
- Imposes improperly prescriptive standards governing regional haze SIP provisions interstate consultations
- Requires States to consider including limits that cannot be achieved within the applicable planning period
- Requires progress reports
- Improperly limits State discretion
- Doesn't allow States to use actual monitoring data to demonstrate that goals are being met

CAA Cases

Regional Consistency Rule

NEDACAP v. EPA (DC Cir. 16-1344)

- CIBO commented with NAM Coalition
- IND Challengers NEDACAP, API, Air Permitting Forum
- In abeyance 60 days / briefing sched extended
- Briefing July – Nov 2017

CAA Regulatory

PSD GHG Significant Emission Rate Proposal

- SER now 75,000
- Proposed rule 10.3.16 (81 FR 68110).
Comments 12.2.16
- Final rule TBD



CAA Regulatory

CAA RISK MANAGEMENT PLAN RULE

- adds disclosure and other requirements to CAA RMPs
- Industry comments opposed rule.
 - Final rule 1.12.17

CRA (Sen Inhofe) petition 3.3.17 blocked by Senate

ACC v. EPA (DC Cir., 17-1085)

- 4.4.17 Case in abeyance
- ENV and labor union motions to intervene, supported by EPA
- EPA proposed delay of effective date to 2.19.19; comments 5.19.2017



Maggie, a Portuguese
Water Dog at the ocean

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

Oral argument week of 9.5.17

CWA EGU Effluent Limitations Guidelines

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

- Utility & ENV Petitioners & Respondent-Intervenors
- Briefing initially 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 EGU Effluent Limitations Guidelines

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

- UWAG Petition for recon 3.24.17 and 4.5.17
- EPA granted reconsideration 4.12.17
- Case in abeyance on motion of EPA 4.24.17
- EPA motions to govern 8.12.17 “to inform the court if it wishes to seek a remand of any provisions of the rule”
- EPA proposed to suspend compliance deadlines until EPA completes recon of the 2015 rule; 30-day comments 5.25.17

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

NAM Petitions USSCT for Certiorari
Trump Executive Order 2.28.17

CWA Waters of the US

SCT will hear jurisdiction issue

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

Whether Cir Ct jurisdiction to review EPA action on CWA permits, extends to jurisdiction over the definition of “waters of US.”

- Briefing to 7.28.17
- Oral arg not yet scheduled

CWA Waters of the US

Executive Order 2.28.2017

- 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 consistent with *J. Scalia’s Rapanos v. US* (2006) opinion, as relatively permanent bodies of water

EPA Notice of intent to propose to rescind or revise the Rule 3.6.17



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 | <ul style="list-style-type: none">- 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 | <ul style="list-style-type: none">- 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

- WRDA >> WIIN Act
 - Water Infrastructure Improvements for the Nation 2016
 - Re CCR: EPA authority to approve/withdraw state permit programs or set fed program, enforce under open dump provision
- NHSM Proposal for Other Treated Railroad Ties
 - Rule proposed categorical treatment of OTRT as NHSM for CAA 112/129 purposes.

RCRA – Definition of Solid Waste

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

IND Petitioners	ENV Petitioners	Respondent
API, AGA, NRECA, EEI, UWAG, NAM, ACC Freeport-McMoRan IND Amicus Eastman Chemical Solvay USA	Sierra Club CCAT LEAN Clean Air Council Coalition for a Safe Environment	EPA IND Intervenors SOCMA, AFPA

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 – Definition of Solid Waste

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

- Oral argument Judges Tatel, Kavanaugh, Williams 11.3.16
- ENV 28j: no Chevron deference: Verified Recycler Exclusion procedurally defective (no notice and inadequate explanation of how the Exclusion can prevent “discard” of haz waste) 11.15.16
- Ct Order: parties brief issue of whether IND Pets have standing to challenge replacement of “reasonable efforts” with “variance” option 1.13.15
- 4.6.17 – Party Supp Briefs

RCRA – Haz Waste Generator Improvements Rule

ACC v EPA (DC Cir. 17-1064)

Final rule to make haz waste rules “user-friendly” 11.28.17

- Petitioners: ACC, AF&PA, AISI, API, American Wood Council, IPC-Assoc Connecting Electronics Industries, Motor & Equipment Mfters Assoc, NOPA, SOCMA
- Key IND issue: noncompliance with condition for exemption
= facility deemed to be operating as non-permitted TSDF
- In abeyance 5.22.17 maybe settle, 90-day reports from 8.29.17

Buddy Macak



Actions on Energy – Fossil fuel

Congressional Review Act & New Administration

- CRA repealed SEC oil and mining extraction revenue reporting
- CRA repealed DOI Stream Protection Rule limiting mountaintop mining 2.16.17
- EPA withdrew Methane & VOC NSPS ICR for existing onshore oil/gas sources 3.7.17
- EO directed EPA to review Methane NSPS for new oil/gas sources
 - In litigation. DOJ/EPA sought abeyance, granted
- DOI plan to suspend, revise or rescind BLM Methane rule for public, Indian lands. CRA failed.

Actions on Energy – Fossil fuel

Congressional Review Act & New Administration

- EO Promoting Energy Independence and Economic Growth *rescinded* Pres Obama Climate Action Plan (June 2013), directed EPA immediately to suspend, revise or rescind **Clean Power Plan** and related actions 3.28.17
- CEQ *rescinded* Pres Obama Final Guidance for Federal Agencies on Consideration of GHG Emissions and the Effects of Climate Change in NEPA Reviews, 81 Fed. Reg. 5,1866 (8.5.16), in response to EO “Promoting Economic Growth...”; all regs related to this guidance are under review 4.5.17

Actions on Energy – Fossil fuel

Congressional Review Act & New Administration

- EO Promoting Energy **revoked** Interagency Working Group, Technical Support Document – Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (Feb. 2010),; disbanded working group 3.28.17
- EO Promoting Energy **withdrew** Interagency Working Group, Technical Support Document – Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of NOx (Aug. 2016); disbanded working group 3.28.17

Actions on Energy – Fossil fuel

Congressional Review Act & New Administration

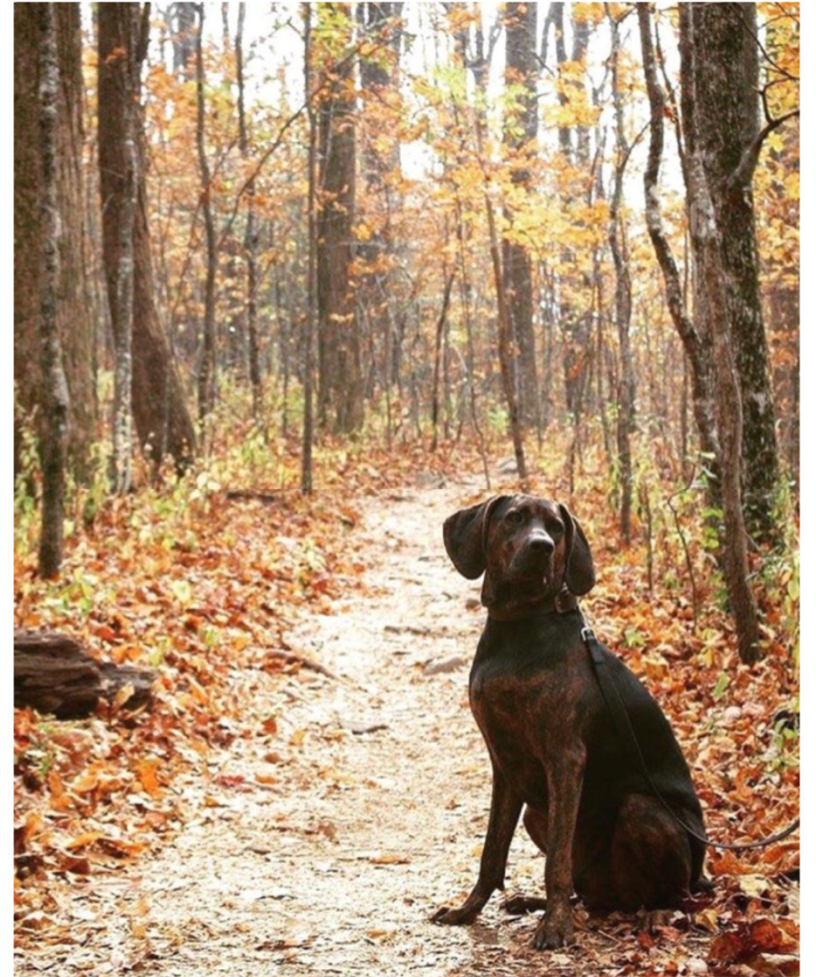
- EO Promoting Energy **revoked** Moratorium on New Coal Leases Secretary's Order 3338, "Discretionary Programmatic EIS to Modernize the Federal Coal Program" (Jan. 15, 2016), 3.28.17
- DOI Secretarial Order lifting moratorium 3.29.17
- ENVs, Northern Cheyenne Tribe challenging DOI Order, Dist Ct MT, seek injunctive/ declaratory relief claiming Order violates NEPA
- EO Promoting Energy **rescinded** The President's Climate Action Plan – A Strategy to Reduce Methane Emissions (Mar. 28, 2014), 3.28.17

Actions on Energy – Fossil fuel

Congressional Review Act & New Administration

- CRA repealed BLM Resource Management Planning: Revisions to procedures used to prepare, revise, or amend land use plans under the Federal Land Policy and Management Act, 81 Fed. Reg. 89,580 (Dec. 12, 2016) 3.27.17
- EO Implementing an America First Offshore Energy Strategy 4.28.17

Spud



New Administration – Early Actions

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
- Spending on new rules in 2017: \$0

EO being challenged *Public Citizen v. Trump*, DC Dist Ct, scientists & profs amici

New Administration – Early Actions

- EO Expediting environmental reviews & approvals for high priority infrastructure projects
- EO Permit Streamlining & Reducing Reg Burdens for Domestic Manufacturing
 - Department of Commerce Request for Info (CIBO)
 - EPA Request for Info (CIBO)
 - DOE Request for Info 5.30.17. Comments 7.14.17.

Fast -41

Fixing America's Surface Transportation Act (FAST ACT)

Title 41: streamlining federal permitting

- Created Fed Permitting Improvement Steering Council (FPISC)
 - WH OMB Permitting Team Lead Angela Colamaria
- Presidentially-appointed exec director position not filled
- Deputy Director: Janet Pfleeger
 - Senior Policy Advisor Karen Hanley

Fast -41

Adopted 12.4.15

Key components

- High-level fed oversight
- Improves environ review/authorization process
- Permitting dashboard

Covered projects if:

- Infrastructure
- Subject to NEPA
- \$200 million+ investment
- Don't qualify for other abbreviated review process
- FPSIC considers the project beneficial

Fast -41

Sectors

- Manufacturing
- Energy production
- Electricity transmission
- Surface trans
- Infrastructure
- Others may be considered



Fast -41



Benefits to project sponsors

- Project plan coordination
- Strict agency deadlines
- Concurrent review, not sequential

Legal benefits

- Statute of limitations from 6 years to 2 years
- NEPA challenges only filed by party who submitted related comment during environmental review
- Guidance for judicial review of actions seeking TROs or preliminary injunctions against covered projects
- Coordinated timetable among agencies; dispute resolution if agencies can't agree on project timetable; if no agreed timetable in 60 days, OMB makes final decision

Fast -41

Fees

- Agencies fee regs after notice and comment
- Reimburse US for “reasonable costs” of authorizations and env reviews
- Fees go to agencies to facilitate efficient reviews/authorizations for covered projects
- No fees until regs implemented

Implementation

- 1.13.17— OMB/CEQ guidance
- Agency fee regs not yet issued

Overlap with Trump admin permit efficiency



Sebastian in
his
Christmas
Sweater

New Administration – Supreme Court

Supreme Court Justice Neil Gorsuch

- Republicans take the “nuclear option”
- Gorsuch sworn in April 10, 2017
- “Hot bench” Justice on his first day

New Administration – White House

Special Adviser on Reg Reform	Carl Icahn
National Economic Council	Director Gary Cohn (former Pres. & CEO Goldman Sachs) Spec Assist, Intl Energy and Environment George David Banks Spec Assist, Domestic Energy and Environmental Policy Michael Catanzaro
Domestic Policy Council	Director: Andrew Bremberg Deputy Director: Paul Winfree Director of Policy and Interagency Coordination: Carlos Diaz-Rosillo
Office of Management & Budget Office of Information and Regulatory Affairs	Director Congressman Mick Mulvaney Professor Neomi Rao Appointees Professional Staff
Council on Environmental Quality	Possibly Kathleen Hartnett White Chief of Staff Mary Neumyar

New Administration – Exec Departments

All Departments must have Regulatory Reform Leader			
Dept of Commerce		Sec Dep Sec Reg Reform Lead	Wilbur Ross Todd Ricketts
Dept of Energy		Sec Chief of staff: Dep Sec Reg Reform Lead	Gov Rick Perry (TX) Brian McCormack Dan Brouillette Daniel Simmons
Dept of Interior		Sec Dep Sec Reg Reform Lead	Cong. Ryan Zinke (MT) David Bernhardt Daniel Jorjani
USDA		Sec Dep Sec Reg Reform Lead	Gov. Sonny Perdue Mike Young (Acting)

New Administration – EPA

Administrator Pruitt appointee staff

- Ryan Jackson, Chief of Staff
- Byron Brown, Dep Chief of Staff
- Brittany Bolen, Dep Assoc Admin, Office of Policy
- Matt Leopold likely nominee for EPA GC
- Justin Schwab, Deputy General Counsel
- Susan Bodine nominated to AA Office of Enforcement and Compliance Assurance 5.12.17. Hearing 6.7.17.



New Administration – EPA

Budget

- FY 2018 **proposal** 31% cut from FY 2017
- Largest reduction to the EPA of all federal agencies
- FY 2017 \$8.05 billion >>> FY 2018 \$5.65 billion
- EPA identified \$12 million “incentive payments for workforce reshaping”

Enforcement v. Compliance Assistance in EPA and DOJ Programs

- EPA structural change?
- OECA structural change?
- Resource re-focus

Blue and Violet at the beach



Kona



Lily and Tiger





Stewart

Buddy Macak and Danica Patrick

