

REGULATORY UPDATE

**CIBO E&E MEETING
MARCH 3-4, 2015**

LISA M. JAEGER

BRACEWELL & GIULIANI, LLP



MAJOR RULES IN COURT



Area Source II Recon
TBD 


CISWI II Recon
TBD 


CISWI Severed Issues
AFPA v. EPA 


BMACT II Recon
TBD 

BMACT Severed Issues
US Sugar v. EPA 

Area Source Severed Issues
ACC v. EPA 

Aff. Def. Malfunctions
Sierra Club v. EPA
In abeyance 


Chromium MACT RTR
Nat'l Assoc. of Surface Finishing v. EPA
Oral Arg 12-3-14 


316(b) 
CWIS Coalition v. EPA
4th Circuit

MATS Recon/PM CEMS
Chesapeake Bay Foundation v. EPA
In abeyance


MATS SU/SD Recon
UARG v. EPA

MATS
White Stallion v EPA
S Ct Oral Arg 3-25-15

NHSM 
Solvay USA v. EPA
Briefing complete

CISWI 
AFPA v. EPA
Final briefs 3-6-15

Boiler MACT 
US Sugar Corp v. EPA
Briefing Complete

Area Source 
ACC v. EPA
Briefing Complete

CWA 316(B)

CWIS V. EPA (NO. 14-4645)

Transferred to 2nd Circuit

**Joint Motion to include FWS
& NMFS Biological Opinion issues**



**Petitioners now allowed to amend Petitions to add Services
as respondents**

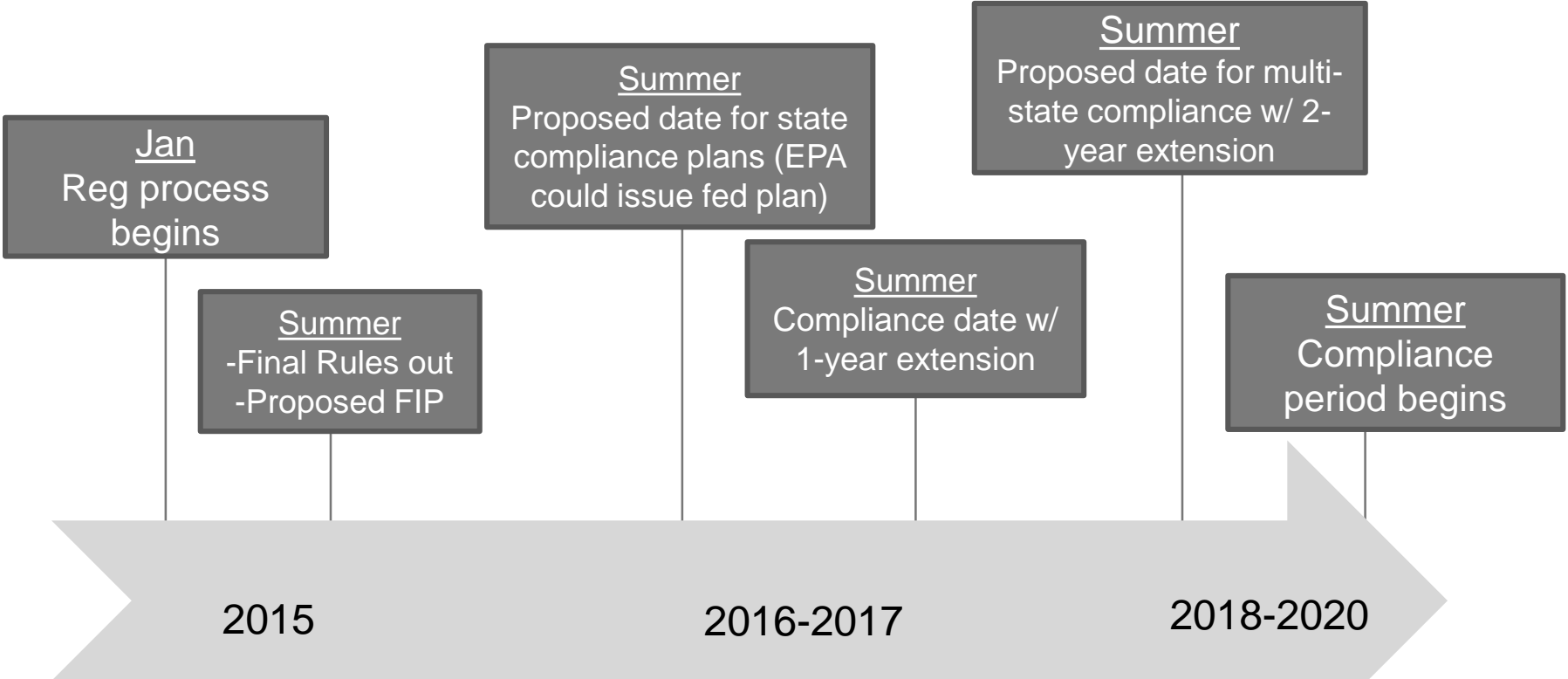
EPA will not engage in settlement discussions

Rule/Case	Description	Status
<i>Sierra Club v. EPA</i> (DDC 13-1639)	POTWs. EPA failed to complete 8-year review for 46 MACTs	Stayed until 3-23-15
<i>Sierra v. EPA</i> (DC Cir. 14-1110)	9-rule Affirm Defense 9 §112 and §129 rules	In abeyance Interventions pending Admin Petition granted
Petroleum refinery RTR and NSPS	Malfunction/affirmative defense	SSM Coalition comments 10-28-14
EPA proposed finding of SIP inadequacy	State SIPs inadequate due to SSM provisions	SSM coalition comments 11-6-14
BMACT, Area, CISWI	Affirmative defense severed and put into reconsideration cases Proposal: delete aff defense	Case in abeyance Recon rule proposed
Primary & Secondary Aluminum Supplemental Notice	Malfunction/affirmative defense	Comments filed 2-6-15

GHG/UTILITY LITIGATION

Case	Issue	Action
<i>Nebraska v. EPA</i> (DNE 14-3006)	NSPS Federal Power Act Administrative Procedure Act	Case dismissed
<i>West Virginia v. EPA</i> (DC Cir. 14-1146)	Settlement Agreement 111/112 duplicative	Briefing to 3-9-15 Oral Arg 4-16-15
<i>Murray v. EPA</i> (DC Cir. 14-1112) and <i>Murray v. EPA</i> (DC Cir. 14-1151)	ESPS Writ of Prohibition Standing EPA lacks authority 111/112 duplicative	Briefing to 3-9-15 Oral Arg 4-16-15
<i>Murray et al. v. EPA</i> (NDWV 14-39)	NSPS CAA § 321(a): jobs & economic impact must be evaluated	EPA M/ to Dismiss 12-23-14

GHG/UTILITY CLEAN POWER PLAN





CIBO COLLABORATION

Case	Description	Status
<i>Natl Assoc. for Surface Finishing v. EPA</i> (DC Cir. 12-1459) Amicus curiae for Petitioner	Chromium RTR -Must / may EPA reset MACT floor when doing 8-year RTR?	Briefing complete Oral arg 12-3-14
Pb NAAQS Proposed Rule 80 Fed. Reg. 278 (Jan. 5, 2015)	Reaffirmed standard	Comments 4-6-15
CEQ NEPA Guidance	GHGs and climate change in NEPA reviews	Comments 3-25-15
Social Cost of Carbon	Fossil-Fuel Reduction for Fed. Buildings	12-15-14
	Residential Dishwashers	12-27-15
	Air Conditioners	3-2-15

SUPREME COURT

CSAPR (on remand) - *EME Homer City v. EPA*

- Kavanaugh, Rogers, Griffith
- DC Cir. Oral Arg 2-25-15
- Unclear on how court might resolve issues

MATS - *Michigan v. EPA*

- Oral arg 3.25.15
- Cost



Reg Process – *Nickols v. Mortgage Bankers Assoc.*

- Oral arg 12-1-14
- Whether agencies can revise rules without notice and comment

RCRA

Coal Ash Final Rule

- Subtitle D
- Signed: 12-19-14. Fed Reg pub: Mid-Mar?
- DC Cir. Petition: Mid-May?

Definition of Solid Waste Final Rule

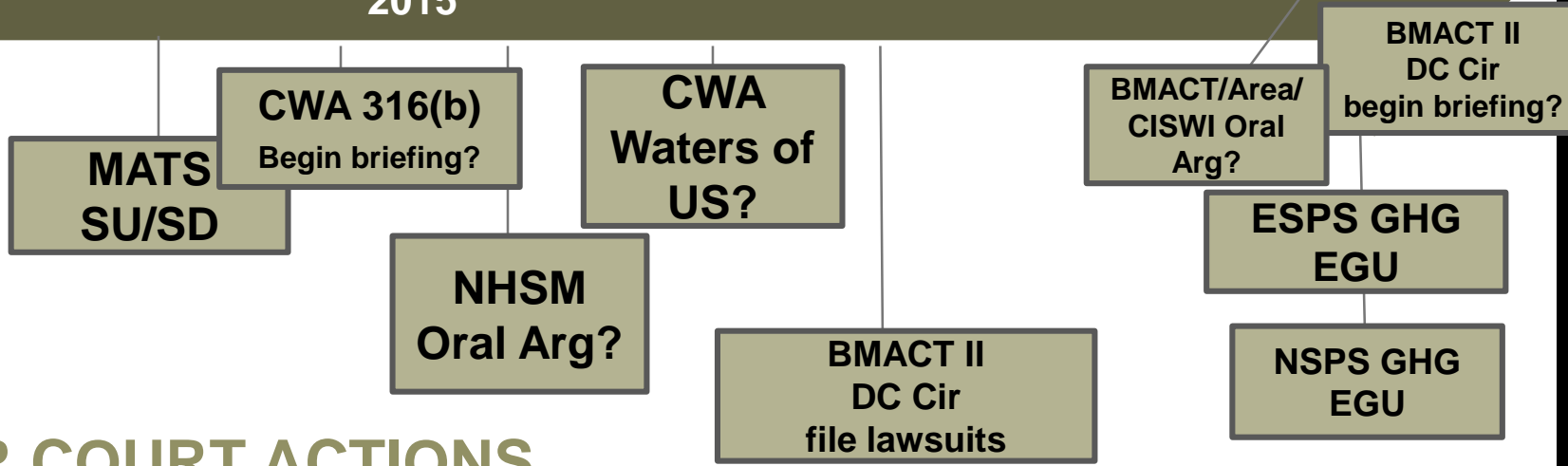
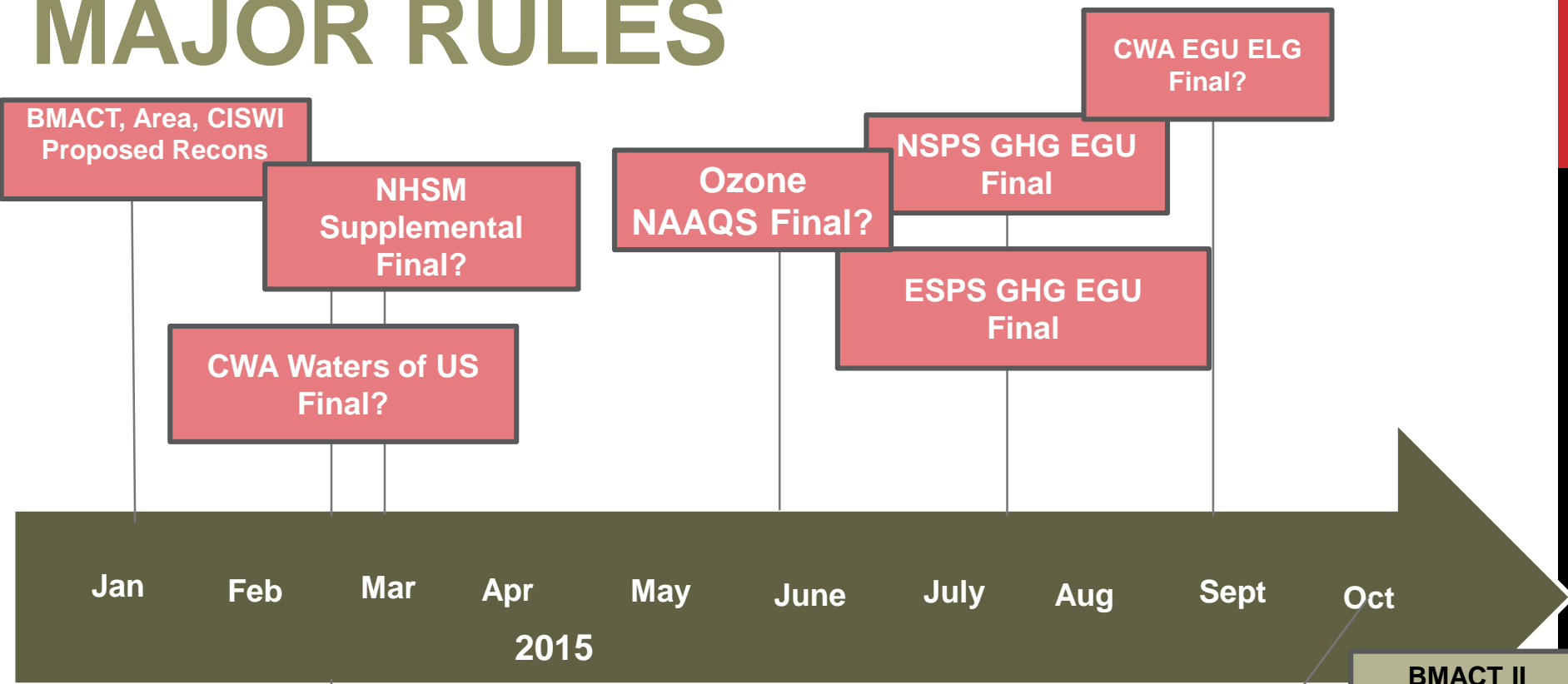
- 80 Fed. Reg. 1,694 (Jan. 13, 2015)
- DC Cir. Petition: 4-13-15
- Withdrew exclusion of material transfer to 3rd parties for recycling or reclamation
- New “verified recycler” program gives EPA/States more oversight
- Recyclers must meet 4 mandatory legitimacy criteria to be excluded
- Not enough record information to determine 2008 exclusions were legitimate

Effluent Limitations Guidelines

- Final by 9-2015



MAJOR RULES



MAJOR COURT ACTIONS

