

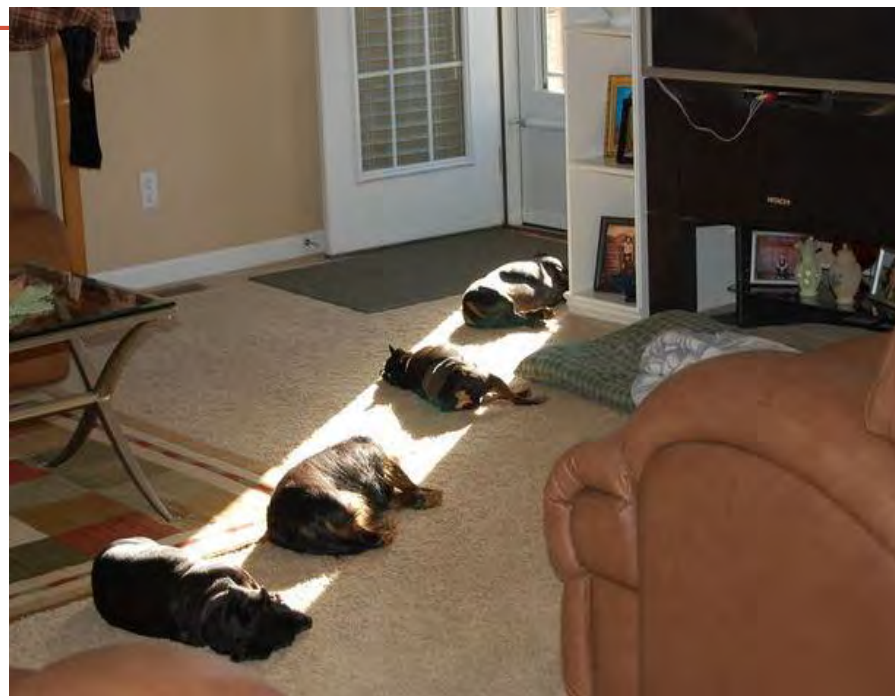
# BOILER MACT UPDATE

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June 2-3, 2015

Lisa M. Jaeger

Bracewell & Giuliani, LLP



# NHSM

## *Eco Services v. EPA (11-1189)*

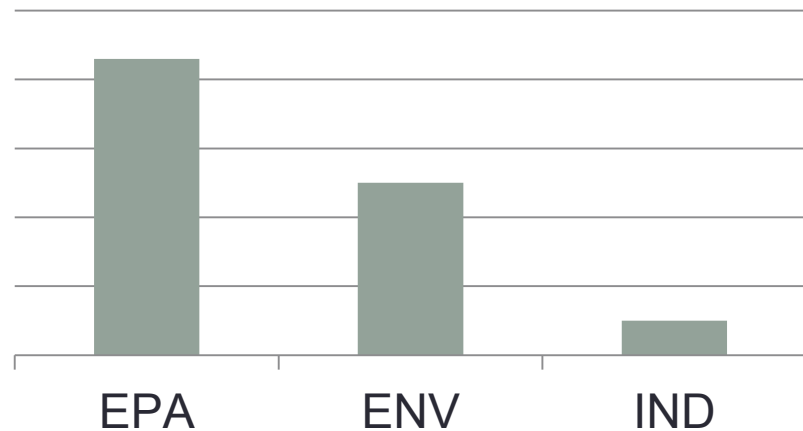
Oral Argument 5-11-15

Judges Tatel, Wilkins, Sentelle (same for BMACT)

Degree of deference:

Key issues of debate

- “discard”
- CAA standards
- “sewage sludge”



Post-argument ENV letter

# NHSM

## *Eco Services v. EPA (11-1189)*

### ENV ISSUE

“Discard”  
-Ordinary meaning  
-tires, on-spec used oil  
discarded by consumer

After discard, material cannot  
be processed into non-waste  
fuel

### EPA RESPONSE

“Discard” = has not become part  
of waste disposal problem

On-spec used oil

Tire collection programs not part  
of problem

Processing improves materials

# NHSM

## *Eco Services v. EPA (11-1189)*

### IND ISSUE

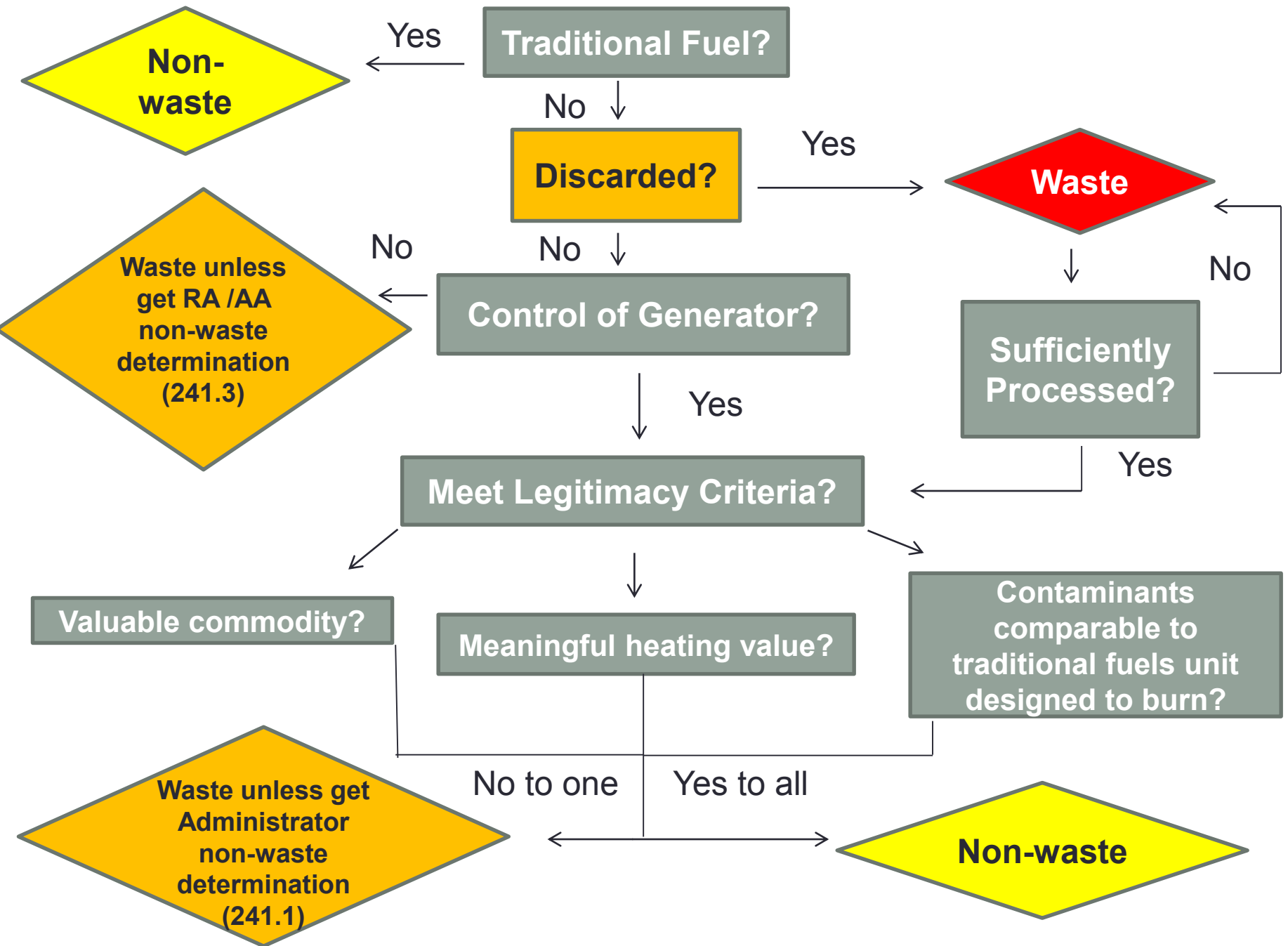
Transfer should not trigger RCRA regulation

RCRA sewage sludge exemption eliminated by rule

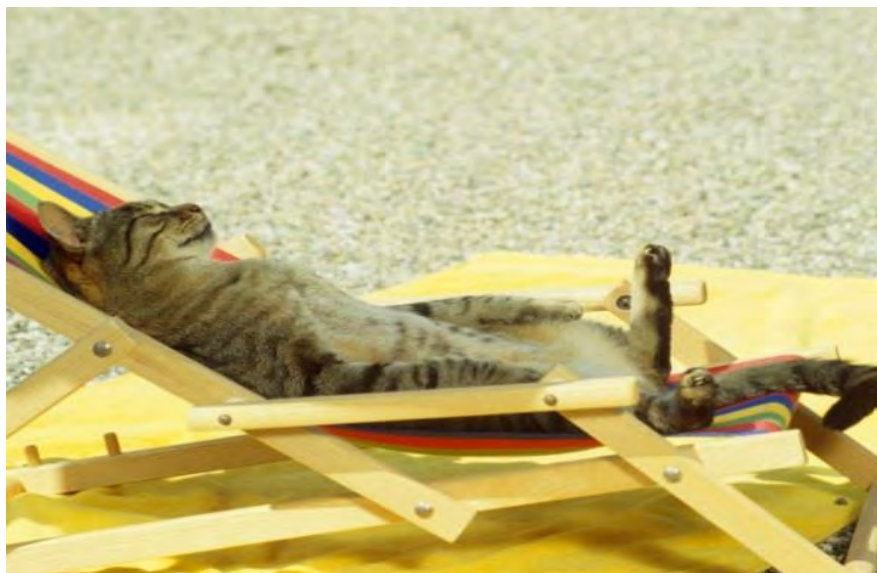
### EPA RESPONSE

Transfer raises concerns, is only one factor

Sewage sludge not excluded from reg as solid waste



# BMACT/Area Source/CISWI



# CAA 112(c)(6)

Final rule signed 5-22-15



EPA: EPA met 112(c)(6) duty to regulate 90% of 7 HAP  
EPA gave notice in 1998 listing notice  
Can't collaterally challenge old final rules  
Use of surrogates legal  
Can petition EPA to change rule  
Can use 112(d)(6) 8-year review

Legal challenges (ENVs) due ~8-1-15

Possible IND intervention

# RICE MACT

## *DE DNREC v. EPA* (DC Cir. 13-1093)

**Decision** 5-1-15. Garland Williams Randolph (opin)

- Rule mostly upheld
- Vacated: 100-hour exemption for backup generators for demand-response emergency & maintenance

Petitioners: DE DNREC, Conservation Law Foundation,  
Generators: FirstEnergy, Calpine, PSEG

Int-Pet: Electric Power Supply Assoc

Int-Resp: APPA, EnerNOC, EnergyConnect, GPA, Innoventive Power,  
KS Power Pool, NRECA

Vacating 100-hour exemption:

“EPA cannot get away so easily from its obligations under the APA to respond to ‘relevant and significant’ comments...an agency must respond sufficiently to ‘enable us to see what major issues of policy were ventilated...and why the agency reacted to them as it did.’”

“EPA seeks to excuse its inadequate responses by passing the entire issue off onto a different agency. Administrative law does not permit such a dodge.”



# PVC MACT

## *Mexichem Specialty Resins v. EPA* (DC Cir. 12-1260)

Decision 5-29-15. Rogers Kavanaugh (dis) Pillard (opin)

- Provisions upheld
- Issues pending Reconsideration no jds, no unreasonable delay
- No stay pending Reconsideration, no irreparable harm

### Timing of Rulemaking

2009 EPA begins data collection

Apr 2012 Final rule

Sep 2012 Recon GRANTED

Apr 2015 Compliance date

May 2015 DC Circuit decision

Apr 2016 Recon finished per EPA



## Chromium RTR MACT

*Natl Assoc. for Surface Finishing v. EPA* (DC Cir. 12-1459)

- ISSUE: Must / may EPA reset MACT floor when doing 8-year RTR?
- CIBO joined coalition amicus brief
- Oral Arg 12-3-14

## Off-site Waste and Recovery Operations RTR MACT

*Eastman Chemical Co v. EPA* (DC Cir. 15-1147)

- tighter emission standards
- SSM adjustments
- compliance 3-20-18

# MATS

## Supreme Court

- Michigan v. EPA* (14-46)

ISSUE: Cost consideration

Oral argument 3-25-15 (waiting for decision)

## Final SU/SD Reconsideration - 4-24-13

- UARG v. EPA* (DC Cir. 15-1013)

- ENV Issues: EGU emissions first 4 hours after generation, No CEMS, other work practice or 4 hour exemption, work practice standards, 30-day averaging

- IND Issues: definition of “startup”, EGUs subject to work practice and numeric emission limits for common stack

- Case in abeyance until Supreme Court decision

## Proposed rule to remove affirmative defense provisions

- SSM coalition likely to file comments

# BMACT Timeline

