

# CAIR and SIPs

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# CAIR Court Decision

- The Court upheld several aspects of the CAIR rule relating to EPA's methodology in determining which states should be affected and the 2009 phase one NO<sub>x</sub> deadline.
- The Court also ruled against EPA on several issues finding that:
  - The CAIR trading programs are inconsistent with the statutory mandate of 110(a)(2)(D) because EPA's region wide focus on emission reductions failed to appropriately factor in each state's contribution to air pollution issues
  - EPA did not afford enough protection to downwind areas from upwind states' emissions, because EPA's analysis would consider interference with downwind state maintenance from an upwind state only if that state had also contributed significantly to the downwind state's nonattainment
  - The 2015 date for upwind states to comply with CAIR is impermissible because it is inconsistent with downwind states' 2010 attainment deadlines for PM<sub>2.5</sub> and ozone NAAQS, such that downwind states are not provided sufficient protection from upwind states.

# CAIR Court Decision

- EPA's SO<sub>2</sub> budgets (i.e., the allowances states were given in their trading programs) were based as a starting point on Acid Rain Program allowances and not, in the Court's view, on the objectives of the Clean Air Act related to significant contribution downwind nonattainment, and thus are arbitrary and capricious
- EPA's use of "fuel factors" to allocate the regional NO<sub>x</sub> cap among the CAIR states inappropriately shifted the burden of emission reductions among states and ignored each state's obligation to eliminate its significant contribution to downwind pollution
- EPA lacked authority to remove Title IV (the acid rain trading program) allowances from circulation through CAIR, or change the amount of SO<sub>2</sub> emissions that an allowance would permit, because such adjustments are unrelated to the downwind attainment objectives of the Clean Air Act, and EPA has no statutory authority to terminate or limit Title IV allowances
- A Minnesota-specific issue: EPA did not properly address certain claims of measurement errors raised by Minnesota regarding its contributions to NO<sub>x</sub> and SO<sub>2</sub> emissions.

# D.C. Circuit Request for Briefs

- The D.C. Circuit issued an order today.
- Upon consideration of the petition for rehearing and rehearing en banc filed by Respondent, it is ORDERED, on the court's own motion, that within 15 days of the date of this order, aligned Petitioners file a response to the petition for rehearing and rehearing en banc. Additionally, petitioners are directed to address (1) whether any party is seeking vacatur of the Clean Air Interstate Rule, and (2) whether the court should stay its mandate until Respondent promulgates a revised rule. The responses may not exceed 15 pages each. Absent further order of the court, the court will not accept a reply to the responses, but Respondent may reply to the question whether a stay of the court's mandate in lieu of immediate vacatur would suffice; the reply may not exceed five pages.

# CAIR and SIPs

- 1997 Ozone Attainment SIPs
  - CAIR tightened controls and expanded geographically the NO<sub>x</sub> Budget Program
- 1997 PM<sub>2.5</sub> Attainment SIPs and Regional Haze SIPs
  - CAIR Phase I reductions deliver significant reductions in PM<sub>2.5</sub> concentrations and visibility
- Section 110(a)(2)(D)(i) FIPs
  - Requirement for States to address interstate impacts
- National consistency issue for how we treat CAIR vs. non-CAIR States (e.g., only 1 of 22 Regional Haze SIPs submitted for non-CAIR States)

# Status of Ozone, PM2.5 and Regional Haze SIPs (CAIR Region)

## ■ Ozone

- 26 SIPs with attainment demonstrations due in June 2007 – 22 SIPs submitted

## ■ PM2.5

- 53 SIPs with attainment demonstrations due in April 2008 – 20 SIPs have been submitted

## ■ Regional Haze

- 28 SIPs in due December 2007 – 12 SIPs have been submitted.

# Pending Questions

- How will we deal with SIPs approvability issues?
- How do we address FIPs for Ozone attainment SIPs findings (due 03/10)?
- Do we proceed with findings of failure to submit for Regional Haze SIPs (due 2/07) and for PM attainment SIPs (due 4/08)?
- How do we deal with FIPs for Section 110(a)2(d)(i) findings (due 2007)?
- Many legal issues

# PM2.5/Ozone SIP Options

- Act as normal on SIPs outside the CAIR region?
- If SIP submitted, approve SIP strengthening measures?
  - RFP
  - RACT/RACM
  - Conformity budgets
  - Other control measures
  - Approve NOx Budget programs
- Attainment demonstrations?



# What is next to get emission reductions in place?

- Legislation?
- State actions to put require reductions?
- Section 126 Petitions
  - North Carolina Section 126 petition
- Federal rule to regulate sources of interstate transport?
  - Linking States to nonattainment areas
    - New ozone (March 2011) and PM2.5 standards (September 2009)?
  - Rule to address interstate transport or to reduce interstate transport?
  - Opportunity of State certifications?
- Meeting with EPA/States early next year?
- Multi-state Transport Assessment Process?