

CAIR Ruling: Impacts and Immediate Needs

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NY DEC

Overview

- Facts – what happened
 - Court decision
 - EPA petition for rehearing
- Results – what it means for states
 - Public health at risk
 - Revisit state implementation plans
 - Transport of pollution not resolved
- Needs – actions for feds and states
 - Legislative fix in 2009
 - State options

Fact: Court Decision

- CAIR was vacated in its entirety by the DC Circuit court in July 2008.
 - Did not adequately address transport (nonattainment and maintenance)
 - Called into question the use of broad interstate trading programs to address 110(a)(2)(D) contributions.
- NOx SIP Call case did not address the regional trading approach. Interstate trading was not challenged.

Fact: Petition for Rehearing

- On September 24th, EPA petitioned for rehearing and rehearing *en banc*.
- EPA recommends that CAIR should be remanded rather than vacated.
- EPA argues the program is not “fundamentally flawed.”

Fact: Petition for Rehearing

- Court asked parties to:
 - Address if anyone was seeking to vacate, and:
 - If it should stay mandate until EPA revises rule in response to remand.
- OTC states submitted the amicus brief
 - Asked Court to reinstate Phase I and remand rule to EPA

Result: Public Health at Risk

- According to EPA, CAIR would have prevented 13,000 deaths annually by 2010, and 17,000 annually by 2015
- Net CAIR Benefits (Benefits – Costs)
 - 2010: \$ 60.4 – 71.2 Billion
 - 2015: \$ 83.2 – 98.5 Billion
- More stringent reductions will be required to meet the new ozone and 24-hour PM_{2.5} standards.

Result: SIPs Status

- Ozone, annual PM_{2.5} and regional haze SIPs
 - Relied on CAIR emission reductions.
 - Were submitted or in process when the ruling was issued.

- Section 110(a)(2)(D) Transport SIPs based on CAIR
 - Submitted and approved

State Actions

- Reinstate NOx Budget Trading Program
- Obtain BART reductions for eligible EGUs
- Reevaluate RACT measures

Reinstate NOx Budget Trading Program

- CAIR replaced NOx Budget Program (NBP) for seasonal ozone reductions
 - States told to sunset NBP
 - Some states still have NBP rules on books; others will have to reinstate them for 2009
- EPA must reinstate the state budget allocations for 2009 as soon as possible
- EPA also must continue to administer program
 - Allocations must be done ASAP

Obtain BART Reductions for EGUs

- CAIR \neq BART (upon issuance of mandate)
- States need to perform BART analysis for eligible EGUs
 - Obtain reductions from sources that are now not subject to CAIR
 - Limits to be based on unit-by-unit engineering analysis
- BART required as expeditiously as practicable, but no later than 5 years from SIP approval.

Reevaluate RACT

- CAIR \neq RACT (upon issuance of mandate)
- RACT required under CAA for non-attainment areas and throughout OTR
- States can reevaluate source categories that can be subject to RACT.
- States can review control options to strengthen current RACT rules (NJ).

Need: Congressional Action

- Broad Support to Reinstate CAIR Phase 1
 - ECOS
 - 20-states agreement
 - Letters sent to House and Senate Committees
 - Carper/Alexander Roundtable
 - CAAAC Statement from States, Industry and Environmental Groups

Need: State Action

- States still obligated to address section 110(a)(2)(D) pollution transport provisions
- States need to revisit transport SIPs
 - Performance standards (MD, DE)
 - State budgets with intra-state trading (NY)
- Examine reductions needed for attainment and maintenance for 1997 standards as well as 2006/2008 PM_{2.5} and ozone standards

Outlook

- Public health at risk – need for immediate federal and state action
- States need to address deficiencies in SIPs caused by CAIR Decision
- Transport of pollution not resolved – still a major factor in Northeast non-attainment
- Need to focus on:
 - State Rules
 - Federal Rules
 - Legislative action ?