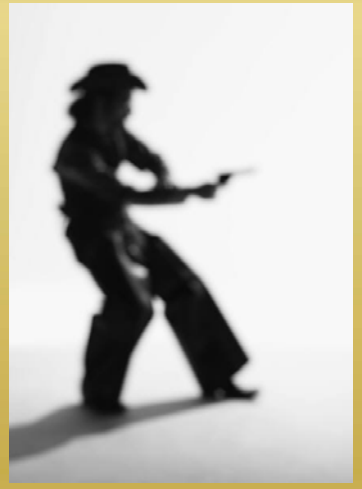
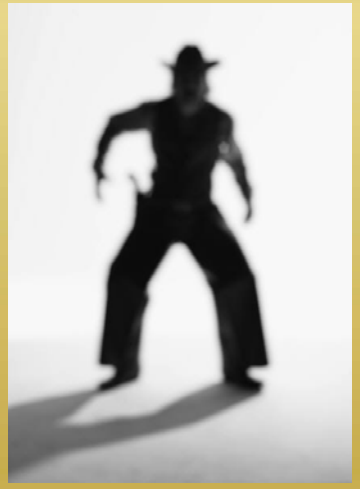
North Carolina v. EPA:



Showdown at the O-CAIR Corral



Disclaimer

CAIR Background

- CAIR published May 12, 2005
- Reconsideration & FIP published April 28, 2006
- Petitions for Review with D.C. Circuit Court of Appeals
  - North Carolina (amici: CT, NY, and several others)
  - Several utilities (Entergy, FPL Group, others in TX & MN) and Florida Association of Electric Utilities
  - City of Amarillo, TX

The Lowdown

- "CAIR is a single, regional program, . . . and all its components must stand or fall together."
- "EPA's approach . . . is fundamentally flawed."
- "No amount of tinkering . . . will transform CAIR . . . into an acceptable rule."
- "We must vacate CAIR because very little will survive remand in anything approaching recognizable form."

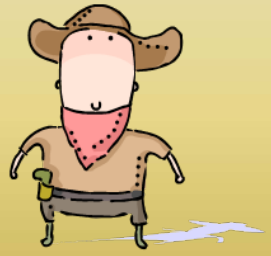
What Went Wrong

- Pollution Trading
  - CAIR program based on “highly cost effective” *regional* reductions
  - Contradicts CAA 110 which prohibits sources *within a state* from contributing to nonattainment or interfering with maintenance
  - EPA “must measure each state’s significant contribution” and CAIR “must actually require elimination” of such emissions

- 2015 Compliance Deadline
  - Forces downwind states to make greater reductions than CAA 110 requires
  - EPA ignored requirement that CAIR be consistent with *all* Title I provisions , including attainment deadlines

- SO_2 Budgets
  - Unrelated to “air quality factor” by which CAIR applicability determined
  - EPA wrongly considered “highly cost effective controls” to set budgets
  - Do not satisfy CAA 110
  - Title IV irrelevant
  - Arbitrary & capricious: EPA never explained how SO_2 budgets prohibit significant contribution

- NO_x Budgets
  - NO_x SIP Call rate (0.15) inexplicable starting point
  - EPA wrongly considered “highly cost effective controls”
  - EGU heat input multiplied by different fuel factors for coal, oil, & gas
  - EPA concept of “fairness”
  - Arbitrary & capricious: EPA never explained how NO_x budgets prohibit significant contribution



- Title IV Allowances
  - Budgets are 50% of 2010 and 35% of 2015 Title IV allowance allocations
  - EGUs use 2 allowances/ton in 2010; 2.8 allowances/ton in 2015
  - Non-trading state SIPs must require retirement
  - No statutory authority for EPA to require allowance use or retirement outside Title IV

- State-specific Issues
  - TX – Disputed inclusion of western TX
    - EPA need not subdivide state or separately model portion of state
  - FL – Rounding to determine “first cut” improper
    - EPA applied it uniformly; first cut did not determine ultimate CAIR applicability
  - MN – EPA overstated state impact by using wrong factors to determine emissions
    - EPA improperly ignored errors raised by MN Power

What Now?

- EPA may appeal
- If EPA decides to comply, it "must redo its analysis from the ground up"
  - Revisit CAIR applicability
  - Compliance date "as expeditious as practicable"
  - Revise trading program
  - Redo SO_2 and NO_x budgets
- NO_x SIP Call continues
- Downwind states can resort to CAA 126