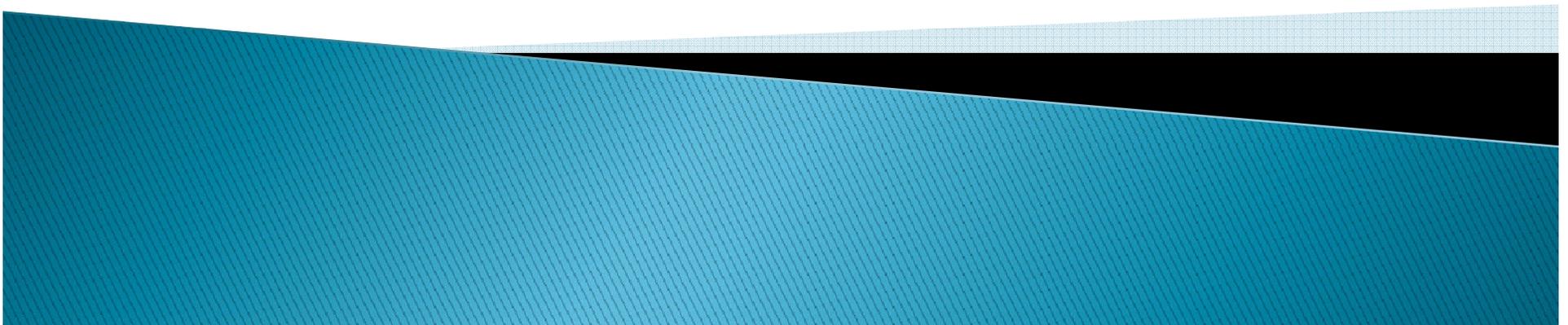


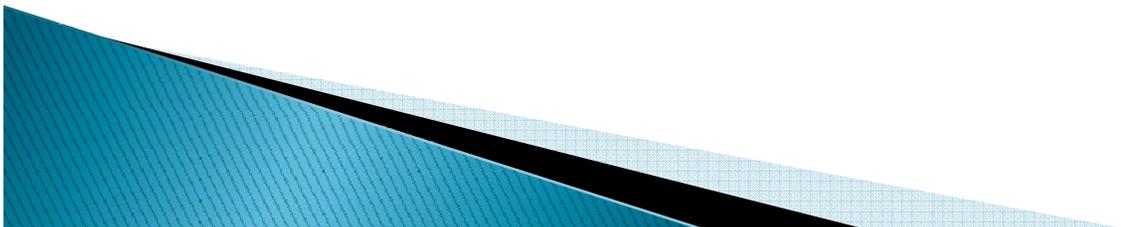
Clean Air Interstate Rule (CAIR) Remand

January 8, 2009 SIPRAC



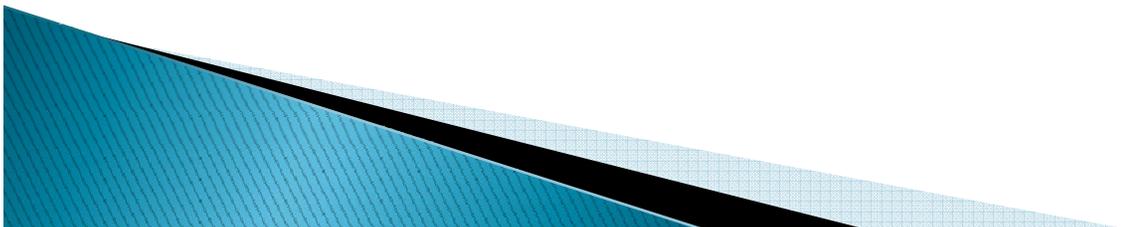
Overview of CAIR “almost” vacatur

- ▶ Several challenges to CAIR were filed in 2006.
- ▶ On July 11, 2008, the D.C. Circuit Court of Appeals issued an opinion that found “more than several fatal flaws” in CAIR. The court intended to vacate CAIR in its entirety and remand to EPA to promulgate a rule consistent with the court’s opinion.
- ▶ On September 24, 2008, EPA filed a petition for rehearing or for a remand without vacatur.



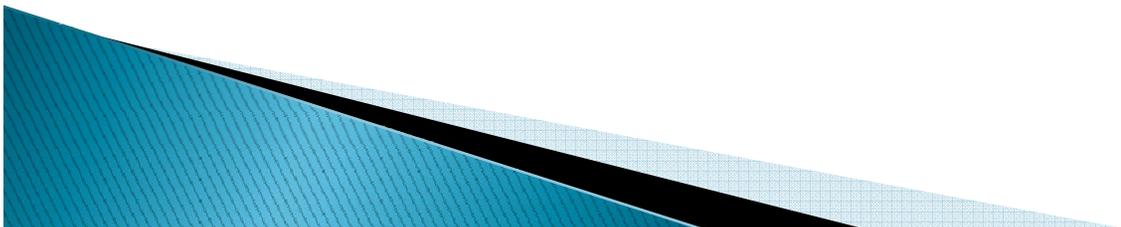
Overview of CAIR “almost” vacatur (cont.)

- ▶ On October 21, 2008, the court directed the parties to file a response to EPA’s petition. The court also asked the parties to address:
 - 1) If any party supported vacatur of CAIR, and
 - 2) If the court should stay its mandate until EPA promulgates a revised rule.
- ▶ The majority of parties filing responses to EPA’s petition, including environmental groups, 20+ states, and some industry petitioners, did not support vacatur of CAIR.



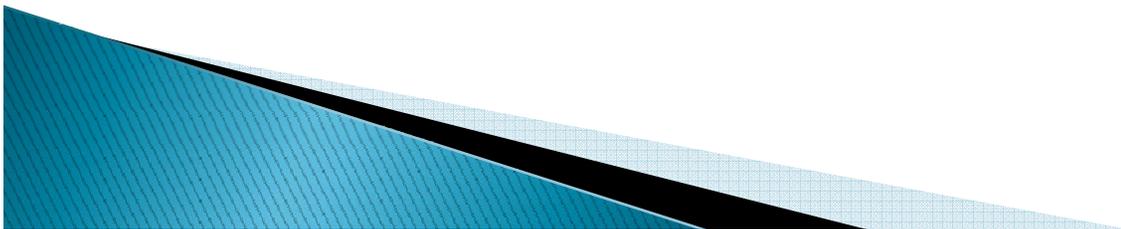
CAIR Remand

- ▶ On December 23, 2008, the D.C. Circuit Court of Appeals remanded CAIR without vacatur to EPA until it is replaced by a rule consistent with the court's July 11, 2008 opinion.
- ▶ The court determined that a remand of CAIR without vacatur is appropriate because a CAIR vacatur “would have serious adverse implications for public health and the environment.”



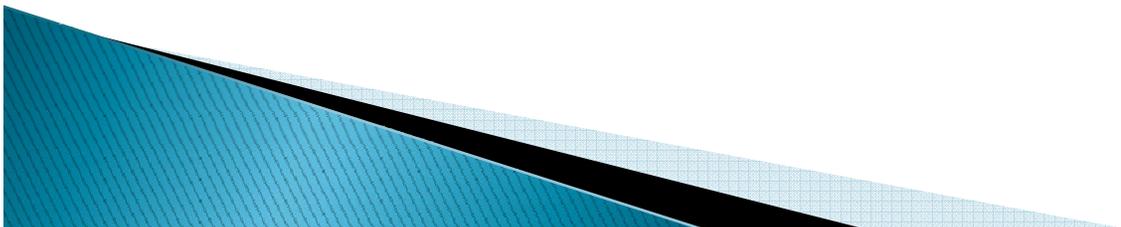
Timing

- ▶ The court did not impose a schedule by which EPA must revise CAIR, but the court noted that it does not intend to grant an indefinite stay.



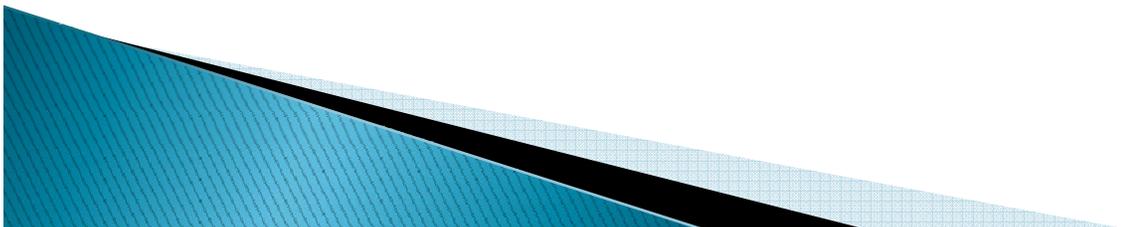
Review of what EPA has to revise in CAIR

- ▶ EPA must demonstrate reasonable measures to assure that upwind states will abate their unlawful emissions as required by section 110(a)(2)(D)(i)(I) of the Clean Air Act.
- ▶ EPA must not ignore the “interfere with maintenance” prong of section 110(a)(2)(D)(i)(I) of the Clean Air Act.
 - “Section 110(a)(2)(D)(i)(I) requires EPA to ensure that SIPs “contain adequate provisions” prohibiting sources within a state from emitting air pollutants in amounts which will “contribute significantly to nonattainment in, *or* interfere with maintenance by, any other state with respect to any [NAAQS].”



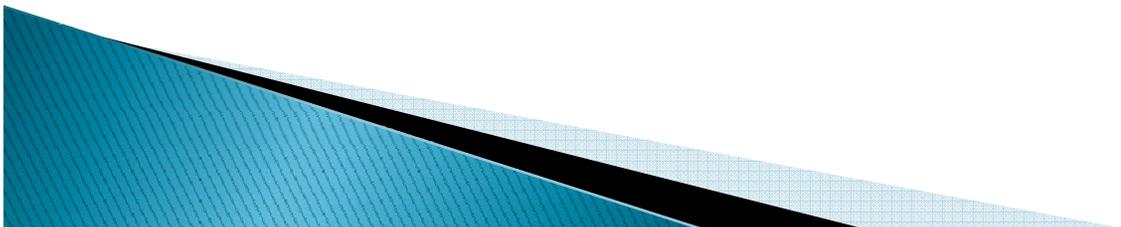
Review of what EPA has to revise in CAIR (cont.)

- ▶ 2015 compliance deadline – EPA did not make any effort to harmonize CAIR’s Phase Two deadline for upwind contributors to eliminate their significant contribution with the attainment deadlines for downwind areas of 2010.
- ▶ EPA’s SO₂ emission caps based on Title IV allowances were “arbitrary, capricious...or not otherwise in accordance with law.”



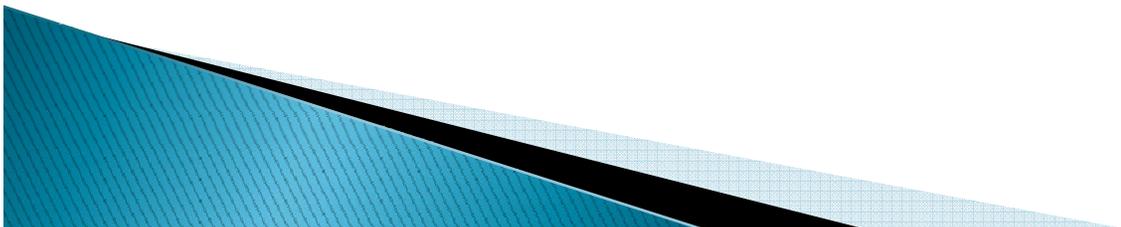
Review of what EPA has to revise in CAIR (cont.)

- ▶ NOx Budgets (fuel adjustment factor) – “EPA’s approach contravenes section 110(a)(2)(D)(i)(I); the statute requires each state to prohibit emissions “within the State” that contribute significantly to downwind pollution, not to pay for other states to prohibit their own contributions.”
- ▶ Title IV allowances – “EPA lacks authority to terminate or limit Title IV allowances, either through a trading program under section 110(a)(2)(D), or by requiring that SIPs have allowance retirement provisions.”



What this means for Connecticut

- ▶ Regulations of Connecticut State Agencies (RCSA) section 22a-174-22c (CAIR NO_x Ozone Season Trading Program) is in place.
- ▶ EPA has issued 2009-2011 CAIR NO_x Ozone Season allocations.
- ▶ EPA has asked CAIR states not to submit 2012 allocations to EPA until states speak with regional offices.
- ▶ CTDEP requests that all Title V sources subject to RCSA section 22a-174-22c submit CAIR Permit applications by January 31, 2009.



Stay tuned for the next chapter of the continuing saga...

- ▶ Any questions?
 - Pertaining to CAIR regulation, contact Wendy Jacobs at wendy.jacobs@ct.gov or (860) 424-3457
 - Pertaining to Title V as it relates to CAIR, contact your permit engineer

