

Summary of CAIR Decisions

SIPRAC Co-Chair Brief

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On July 11, 2008, the D.C. Circuit in *North Carolina v. EPA*, vacated the Clean Air Interstate Rule (CAIR) in its entirety

- The panel of 3 Judges found "more than several fatal flaws in the rule."
- Since the rule was adopted as "one, integral action," the panel saw no choice but to vacate the whole rule.
- CAIR only regulates electric utilities, however the court's ruling regarding emissions trading potentially has implications for establishing trading provisions applicable to other sources.

EPA promulgated CAIR to:

- Address the contribution of upwind state SO_x and NO_x pollution to the problems faced by downwind states in meeting the NAAQS for PM_{2.5} and Ozone.
- CAIR was enacted pursuant to section 110 under the Act requiring SIPs to contain adequate provisions prohibiting sources within that state from significantly contributing to nonattainment by any other state.
- The common theme of the court's decision was that EPA had failed to connect the CAIR regulations with the statutory authority created by the Act

Petitioners

- North Carolina argued that downwind states were not adequately protected.
- Electric utility companies argued that EPA had exceeded its statutory authority in promulgating CAIR.
- Three “border states” argued that all or part of the state should not have been included in CAIR.

On December 23, 2008, the D.C. Circuit in
North Carolina v. EPA, remanded CAIR
without vacatur

- "Having considered the parties' respective positions with respect to the remedy in this case, the court hereby grants EPA's petition only to the extent that we will remand the case without vacatur for EPA to conduct further proceedings consistent with our prior opinion."
- This court has further noted that it is appropriate to remand without vacatur in particular occasions where vacatur "would at least temporarily defeat . . . the enhanced protection of the environmental values covered by [the EPA rule at issue]."
- "Here, we are convinced that, notwithstanding the relative flaws of CAIR, allowing CAIR to remain in effect until it is replaced by a rule consistent with our opinion would at least temporarily preserve the environmental values covered by CAIR."

D.C. Circuit remand of CAIR

- “The parties’ persuasive demonstration, extending beyond short-term health benefits to impacts on planning by states and industry with respect to interference with the states’ ability to meet deadlines for attaining national ambient air quality standards for PM_{2.5} and 8-hour ozone, shows that the rule has become so intertwined with the regulatory scheme that its vacatur would sacrifice clear benefits to public health and the environment while EPA fixes the rule.”

D.C. Circuit remand of CAIR cont.

- “Though we do not impose a particular schedule by which EPA must alter CAIR, we remind EPA that we do not intend to grant an indefinite stay of the effectiveness of this court’s decision.”
- “Further, we remind the Petitioners that they may bring a mandamus petition to this court in the event that EPA fails to modify CAIR in a manner consistent with our July 11, 2008 opinion.”

What the Court Decided in July

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 I NO_x deadline.

The Court found six problems:

- CAIR trading programs are flawed because the region wide focus on emission reductions did not factor in each state's contribution to air pollution issues
- EPA did not give independent significance to the "interfere with maintenance language" in section 110(a)(2)(D) and thus did not provide enough protection to downwind areas
- The 2015 compliance date for Phase 2 of CAIR is inconsistent with downwind states' 2010 attainment deadlines for PM^{2.5} and ozone NAAQS

What the Court Decided in July, *cont.*

- Both SO² and NO_x budgets (i.e., the allowances states were given in their trading programs) were not based on the objectives of section 110(a)(2)(D) and were thus invalid
- EPA lacked authority to remove Title IV (Acid Rain Program) allowances through CAIR, or change the amount of SO² emissions that an allowance permits
- EPA did not properly address certain claims of measurement errors raised by Minnesota regarding its contributions to NO_x and SO² emissions