



# Cross-State Air Pollution Rule (EPA's Final Transport Rule)

## *How Did We Get Here?*

Gabriel Rodriguez

August 23, 2011

# TRANSPORT RULE

## Purpose of Transport Rule:

- Address CAA Section 110(a)(2)(D)(i) obligations with respect to:
  - 1997 8-hour ozone standard,
  - 1997 annual PM<sub>2.5</sub> standard, and
  - 2006 24-hour PM<sub>2.5</sub> standard
- Respond to the court's remand of CAIR in *North Carolina v. EPA*

# CLEAN AIR INTERSTATE RULE

- CAA Section 110(a)(2)(D) --States must prohibit sources from emitting pollutants in amounts that *“contribute significantly to nonattainment in, or interfere with maintenance by, any other State”* with respect to any NAAQS.
- CAIR promulgated in 2005 -- downwind non-attainment for Ozone and PM2.5
- Established cap-and-trade programs for SO2 and NOx
- 28 States and DC subject to one or both of the programs

## CAIR (NOx Budget)

- Used NOx trading program as a starting point
- Region-wide budget based on upwind states' average annual heat input multiplied by a uniform emission rate
- State budgets based on each State's average annual heat input, subject to a fuel adjustment factor (effectively gave more allowances to states with a higher percentage of coal-fired units).
- Two phases – 2009 and 2015.

## CAIR (SO2 Budgets)

- Used Title IV trading program as a starting point
- EPA summed all the Title IV allowances allotted to EGUs in the covered states and then
  - Phase 1 (2010) Reduced available Title IV allowances by 50%
  - Phase 2 (2015) Reduce Title IV allowances by 65%
- States choosing not to opt into trading program had to provide for retiring or surrendering Title IV allowances.

# North Carolina v. EPA

- North Carolina, power companies and others challenge numerous aspects of the rule
- July 2008 -- DC Circuit grants several of the petitions, denies several, but . . .
- Strikes down CAIR in its entirety; Rule so deeply flawed none of it can stand
- Invalidates FIPs
- December 23, 2008 –Rehearing granted and remands to EPA *without vacating rule*

# North Carolina v. EPA

- Trading programs failed to assure actual reductions in a upwind States
- Methodology for setting NOx budgets/caps did not consider state-specific impacts to downwind nonattainment
- Reliance on Title IV for the SO2 budget/caps not related to state-specific impacts to downwind nonattainment
- No authority to alter the value of Title IV allowances
- Did not consider “interference with maintenance” prong
- Reliance on 2015 as the NAAQS attainment date



# CHRONOLOGY

- May 2005 - Clean Air Interstate Rule promulgated
- April 2006 - CAIR Federal Implementation Plans promulgated
- July 2008 - North Carolina v. EPA (D.C. Cir.) decided
- December 23, 2008 – Court grants rehearing and remands to EPA *without vacating rule*
- August 2010 – Transport Rule is proposed.
  - Pollutants in CAIR
  - Downwind interference with the 2006 24-hour PM 2.5 NAAQS
- August 8, 2011 – Final Transport Rule published in the Federal Register
- ***Appeal deadline: October 7, 2011***