

EPA's Regional Haze Program: A New Agenda for Visibility

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January 30, 2013

Overview

- Legal Background
- EPA Rulemakings and Litigation Affecting Western Facilities
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- Questions

Regional Haze Background

- CAA §169A: Directs EPA and states to achieve “reasonable progress” toward goal of remedying visibility impairment in “Class I areas” (national parks and wilderness areas) caused by air pollution
- Best Available Retrofit Technology (BART) is a major component of the program
 - States assess BART for facilities that are subject to the CAA’s BART requirement and impose emission limits for NO_x, SO₂, and PM through State Implementation Plans (SIPs), which are submitted for EPA approval

Regional Haze Background (cont'd)

- BART is determined on a site-specific basis through the state's consideration of five factors:
 - Cost of compliance
 - Degree of visibility improvement
 - Energy and non-air-quality environmental impacts
 - Emission controls currently in use
 - Remaining useful life of the source
- States have primary decision-making authority regarding BART and regional haze, but EPA has disapproved several SIPs and required more stringent emission controls than the states would require

Rulemakings and Litigation in the West

- Final Federal Implementation Plan (FIP) for Four Corners Power Plant (FCPP) and Proposed FIP for Navajo Generating Station (NGS)
- Final FIP for San Juan Generating Station, NM
- Partial Final Rule for Oklahoma
- Final Rule for North Dakota
- Final FIP for Montana
- Final Rule for Reid Gardner Generating Station, NV
- Final Rule for Wyoming
- Final Rule for Utah
- Partial Final Rule for Arizona

Rulemakings and Litigation in the West (cont'd)

- Many of these rules have key elements in common:
 - EPA rejects state BART determinations and adopts its own policies, often very stringent NO_x and/or SO₂ limits based on the most costly technologies, such as selective catalytic reduction (SCR)
 - EPA often ignores its own “presumptive BART limits”
 - EPA deemphasizes site-specific costs and relies on its generic Control Cost Manual to assess BART

Rulemakings and Litigation in the West (cont'd)

- EPA's visibility improvement calculation methodology significantly affects its BART analysis
- EPA's BART Guidelines suggest that states may choose to assess visibility improvements in the "maximum impact area"
- EPA instead uses a "cumulative" approach, which looks at visibility impacts at all potentially affected areas and adds them together

Pristine Air (0 deciviews)



EPA's Standard for Perceptible Impairment (1 deciview)



Hypothetical Maximum Impact in a Single Area (5 deciviews)



EPA's Hypothetical Cumulative "Impact" (21.69 deciviews)



Rulemakings and Litigation in the West (cont'd)

- The result of EPA's Western rulemakings has been several challenges in the federal courts to EPA's authority:
 - 8th Circuit
 - Challenge to EPA regional haze rule for North Dakota
 - 9th Circuit:
 - Challenges to EPA regional haze rules for Reid Gardner in Nevada, Four Corners Power Plant, and Montana
 - 10th Circuit:
 - Challenges to EPA regional haze rules for San Juan Generating Station, Oklahoma, New Mexico, Wyoming, Utah

Rulemakings and Litigation in the East

- Regional haze issues in the East are dominated by the status of the Clean Air Interstate Rule (CAIR), the Cross-State Air Pollution Rule (CSAPR), and EPA's BART alternative rulemaking actions
- In lieu of source-by-source BART, states (and EPA) can provide for BART alternatives, so long as the alternative provides for "greater reasonable progress" than BART, i.e., it is "better than BART"

Rulemakings and Litigation in the East (cont'd)

- When EPA promulgated CAIR in 2005, it also adopted a rule designating compliance with CAIR as a BART alternative for SO₂ and NO_x for states covered by CAIR – the “CAIR=BART” rule
- On June 7, 2012, EPA promulgated a rule that rescinded the CAIR=BART rule and replaced it with a “CSAPR=BART” rule. EPA also disapproved SIPs that relied on CAIR=BART and, for many states, promulgated CSAPR=BART FIPs

Rulemakings and Litigation in the East (cont'd)

- On August 21, 2012, the D.C. Circuit vacated CSAPR and ordered that CAIR continue to be implemented, putting in doubt the validity of EPA's CSAPR=BART rulemakings
- Environmental groups filed petitions for review and will argue that neither CAIR nor CSAPR can serve as a valid BART alternative, which would force source-by-source BART in each state
- Industry filed petitions for review and will argue that CAIR may properly serve as a BART alternative

Rulemakings and Litigation in the East (cont'd)

- Suits related to the CSAPR=BART rule have been filed in the D.C., Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Eleventh Circuits
 - The appropriate venue has been subject to debate given the nature of the rulemakings
 - Environmental petitioners and EPA have both indicated that they view the D.C. Circuit as the proper venue

Rulemakings and Litigation in the East (cont'd)

- Almost all of these cases have been held in abeyance pending the issuance of the legal mandate in the CSAPR litigation
- On January 24, 2013, the D.C. Circuit denied EPA's and environmental groups' petitions for rehearing in the CSAPR litigation
- It remains unclear whether and when the litigation on the June 7 rule will move forward

Rulemakings and Litigation in the East (cont'd)

- EPA has made recent statements indicating it may attempt to resolve these issues through rulemaking
 - EPA's Nov. 19, 2012 Memo: "Next Steps for Pending Redesignation Requests and Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule"
 - EPA's Jan. 17, 2013 Proposed Rule on Kentucky's 2008 Ozone Standards Infrastructure SIP
 - EPA's Jan. 24, 2013 Proposed Rule on Connecticut's Regional Haze SIP
- Each of these documents supports reliance on CAIR

Questions?

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