

CES RESEARCH NOTE

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Clean Air Interstate Rule Struck Down by Federal Appeals Court Panel

By Mike D. McDaniel, Ph.D., CES Professional-in-Residence

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The Clean Air Interstate Rule (CAIR) program, finalized by the EPA in 2005, was designed to reduce power plant emissions of sulfur dioxide (SO₂), nitrogen oxides (NO_x), and mercury in 28 Eastern States (including Louisiana) and the District of Columbia through a cap-and-trade approach similar to that employed in the agency's acid rain program. Its primary purpose was to reduce or eliminate the impact of upwind sources on out-of-state downwind nonattainment of National Ambient Air Quality Standards for fine particulate matter (PM_{2.5}) and ozone. CAIR required affected upwind states to revise their State Implementation Plans (SIP) to include control measures to reduce emissions. It also essentially revised the Clean Air Act Title IV Acid Rain Program regulations governing the SO₂ cap-and-trade program and replaced the NO_x SIP Call with the CAIR ozone season NO_x trading program.

EPA's CAIR program rule governing mercury emissions from power plants (Clean Air Mercury Rule) was struck down by the DC Circuit of the U.S. Court of Appeals earlier this year (February 8). On July 11, the DC Circuit vacated the Clean Air Interstate Rule (CAIR) and its associated Federal Implementation Plan (FIP) and remanded both to the EPA, thus striking down the agency's remaining CAIR program rules governing power plant emissions of SO₂ and NO_x.

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After having worked through the CAIR rulemaking process with the Department of Environmental Quality (DEQ) and Public Service Commission and having planned and prepared for compliance with the rules, the state's electrical generating companies must now reassess their particular situations following the court's vacation and remand of the rules. It could be that new generation planning and millions of dollars in investment in new air pollution control strategies may or may not be necessary under existing Clean Air Act law.

The court's striking of the CAIR rule is particularly bad news for DEQ's ozone attainment planning efforts for the state, particularly in light of projected ozone nonattainment areas under the recently revised 8-hour ozone standard. According to EPA, CAIR was expected to help Louisiana reduce annual emissions of NO_x (an ozone precursor) by 39,000 tons or by about 57% by 2015. This reduction was expected to be especially beneficial for reducing ozone levels and helping the state achieve attainment with the new ozone standard.