

Court Ruling on Cross-State Air Pollution Rule (CSAPR)

Impacts & Associated Issues

Background

EPA finalized the Cross-State Air Pollution Rule (CSAPR) on July 6, 2011 to significantly improve air quality by reducing power plant emissions that cross state lines and contribute to ground-level ozone and fine particle pollution in other states. The rule was meant to replace EPA's 2005 Clean Air Interstate Rule (CAIR), which was remanded to EPA by the US Court of Appeals for the DC Circuit in its December 2008 decision. The court found flaws in CAIR, but kept CAIR requirements in place temporarily while directing EPA to issue a replacement rule.

CSAPR Emissions Reductions and Timelines

CSAPR required a total of 28 states in the eastern half of the United States to reduce SO₂ and NO_x emissions to assist in attaining the 1997 ozone standard (84 ppb), the 1997 annual fine particle standard (15 ug/m³) and the 2006 daily fine particle standard (35 ug/m³).

The first phase of SO₂ and NO_x emission reductions from CSAPR was supposed to begin on January 1, 2012 and the second phase of SO₂ reductions on January 1, 2014. By 2014, CSAPR along with other state and EPA actions was projected to reduce power plant SO₂ and NO_x emissions by 73 percent and 54 percent from 2005 levels respectively. These emission reductions were projected to be higher compared to those from CAIR in 2014.

Court Rulings on CSAPR

CSAPR was challenged by a number of states and the rule was vacated by the US court of appeals for the DC Circuit on Aug 21, 2012. However, the Court allowed CAIR to remain in place till EPA developed a replacement rule. EPA requested the Supreme Court in June 2013 for a review of this decision. On April 29, 2014, the Supreme Court reversed the lower court's opinion vacating CSAPR

Impacts of Supreme Court Decision on CSAPR & Other Related Issues

- A. Outstanding issues – There are still a few issues left to be decided in the US Court of Appeals for the DC Circuit, such as lifting the stay on CSAPR, the outcome of which are unknown. This could complicate CSAPR implementation.
- B. CSAPR implementation timeline – Deadlines for implementation of both phases of CSAPR emission reductions have passed. In order to establish new dates, EPA must go through a public comment process. Since the emissions and air quality data analysis used for CSAPR development is somewhat dated now, a few states might object to the rule on that basis and may even challenge the implementation process in the court.

- C. New ozone and fine particle standards – EPA developed CSAPR in 2011 to address the 1997 ozone standard (84 ppb), the 1997 annual fine particle standard (15 ug/m³) and the 2006 daily fine particle standard (35 ug/m³). EPA revised the ozone standard in 2008 (75 ppb) and the annual fine particle standard in 2012 (12 ug/m³) and is currently again in the process of revising the current ozone standard (75 ppb), which observers expect to be lower. In light of the tougher standards, CSAPR may not be sufficient to address the cross-state emissions transport issue. While the CSAPR case was still pending in the Supreme Court, EPA already started working on developing an alternate transport rule. Even though the Supreme Court upheld CSAPR, EPA is likely to make changes to it to make it suitable for the tougher standards.

- D. CSAPR Court decision and Section 176(a) petitions – Given that the Court upheld the structure of the CSAPR program, it can be considered a viable route for EPA to address the interstate transport issue. Therefore, it is not clear what decision EPA will take on the Section 176(a) petition filed by the eight downwind states (Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Rhode Island and Vermont) to EPA on December 9, 2013 to expand the Ozone Transport Commission region.

Next Steps for EPA

It is not clear at this time what action EPA might take in light of the above Supreme Court decision. There are a number of issues still to be resolved in the US Court of Appeals for the DC Circuit. Additional legal challenges to the rule in the future cannot be ruled out. A significant portion of CSAPR emission reduction has already taken place due to economic conditions (e.g., fuel switching from coal to natural gas) and other EPA rules such as the MATS rule. EPA has already spent a significant amount of time and resources to develop an alternative rule, which could be used to address the new tougher standards and therefore it is likely to continue this effort.