



# CAIR and CSAPR

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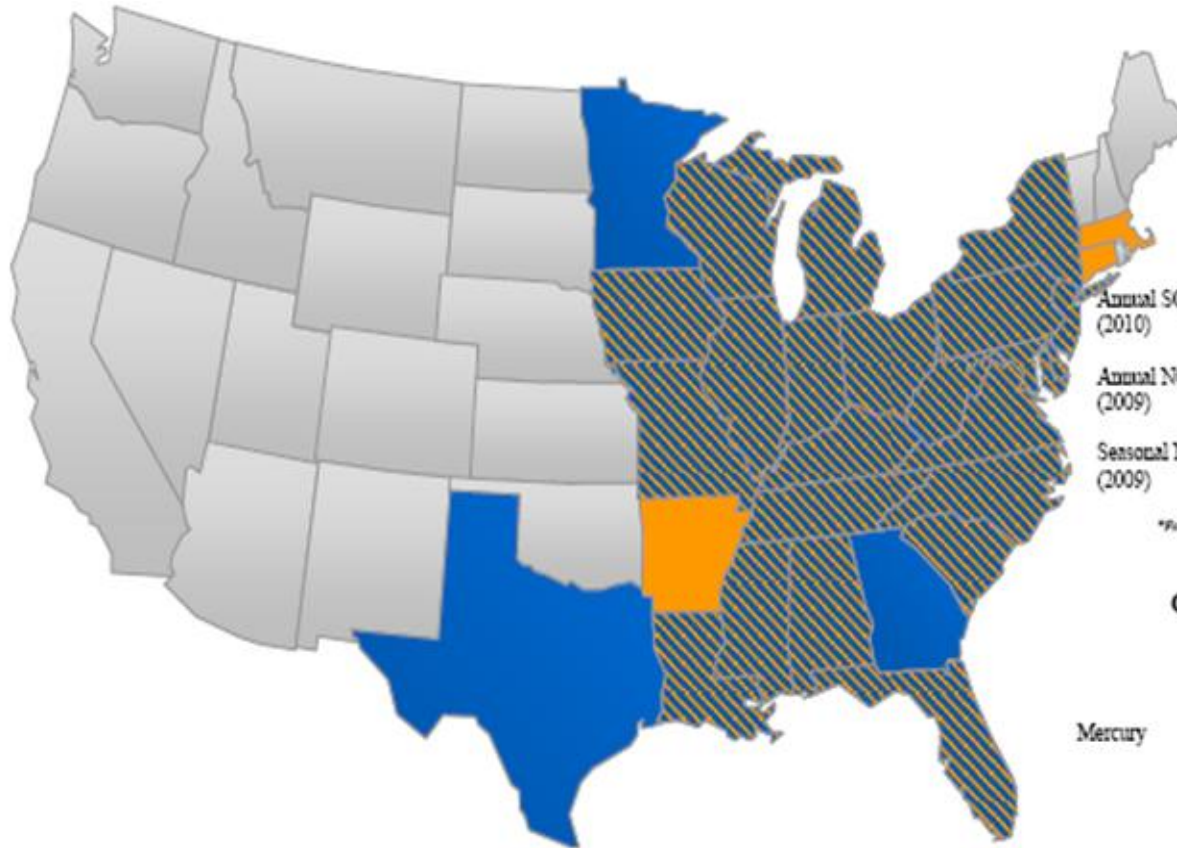
## **Clean Air Interstate Rule (CAIR)** issued March 10, 2005

- Applies to power plants > 25 MW
- Intended to coordinate or supersede other programs:
  - NO<sub>x</sub> SIP Call
  - Acid Rain (SO<sub>2</sub>)
  - Visibility/Regional Haze (NO<sub>x</sub> and SO<sub>2</sub>)
- Overturned and remanded by Court on July 11, 2008

## **Cross-State Air Pollution Rule (CSAPR)** issued August 8, 2011

- Replaced CAIR effective January 1, 2012
- Vacated and remanded by Court on August 21, 2012
  - *Homer City Generation v. EPA*
- CAIR remains in effect

# CAIR Affected States



- States not covered by CAIR
- States controlled for fine particles (annual SO<sub>2</sub> and NO<sub>x</sub>)
- States controlled for both fine particles (annual SO<sub>2</sub> and NO<sub>x</sub>) and ozone (ozone season NO<sub>x</sub>)
- States controlled for ozone (ozone season NO<sub>x</sub>)

### CAIR Emission Caps\* (million tons)

	<u>2009/2010</u>	<u>2015</u>
Annual SO <sub>2</sub> (2010)	3.7	2.6
Annual NO <sub>x</sub> (2009)	1.5	1.3
Seasonal NO <sub>x</sub> (2009)	.58	.48

*\*For the official region*

### CAMR Emissions Caps (tons)

	<u>2010</u>	<u>2018</u>
Mercury	38	15

### CAVR

Outside of CAIR Region –  
BART (best available retrofit  
technology)





# Reason #1 for Vacatur

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1. **Rule could require states to do more than necessary for downwind nonattainment areas to reach attainment**
  - Focus on “good neighbor” provision:
    - SIPs must prohibit emissions which will “contribute significantly” to nonattainment in another state
  - EPA used 2-step process to determine a state’s “good neighbor” obligation:
    - A state is a “significant contributor” if it contributes > 1% of NAAQS
    - Using air modeling, EPA set an emission budget for each state based on:
      - Annual NO<sub>x</sub>: \$500/ton
      - Seasonal NO<sub>x</sub>: \$500/ton
      - Annual SO<sub>2</sub>: \$2,300/ton (Group 1)  
\$500/ton (Group 2)
  - Court said EPA should have used the 1% threshold to set a floor for budgets
    - Cost-based emission budgets could require a state to go “beyond” the floor
    - EPA should treat each state individually; “grouping” will lead to “over-control”
  - Dissent said the “2-step” process was never challenged during the rulemaking



# Reason #2 for Vacatur

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## 2. FIP issued before states had an opportunity to submit SIPs

- FIP converts budget for each state into allowances which are allocated among power plants in the state
- Dissent: That's okay
  - CSAPR addresses NAAQS revisions made in 1997 and 2006
  - States should have already submitted SIPs with “good neighbor” provisions
  - Before issuing FIP, EPA issued a finding that the states had failed to meet their “good neighbor” obligations
- Majority Opinion: States could not submit “good neighbor” provisions until EPA defined their obligations
  - For other rules (NO<sub>x</sub> SIP Call, CAIR) EPA defined good neighbor obligation first, then gave the states at least 12 months to submit SIPs
  - States are not expected to take a “stab in the dark”
- Dissent also mentions how litigation has served to delay the rulemaking and argues for allowing some exercise of discretion by EPA