

**CAIR Replacement Rule
Discussions between CenSARA and EPA
April 1, 2009**

I. Introduction

On Wednesday, April 1, 2009, EPA held a call with Central States Air Resource Agencies (CenSARA) to discuss the CAIR replacement rule. The brief summary that follows covers the key issues discussed during the call. More detailed notes, including a list of all participants in the call, are being prepared.

II. EPA Opening Comments

Sam Napolitano, CAMD, began with a short introduction, explaining that EPA was beginning the process of creating a replacement rule for CAIR. The Agency is reviewing all options, setting up analyses, and preparing technical models. The goal is to finalize a replacement rule within two years.

The primary objectives are to help states comply with the NAAQS and to reduce interstate transport. Therefore, EPA has decided that it would be best to start working with states immediately. EPA would like to hear from the states about what type of replacement rule would most help them meet air quality requirements. Sam stressed that this is the beginning of a dialogue process, and that EPA intends to continue these types of discussions throughout the rule development process.

This is a chance for the states to talk to the key EPA staff that will actually develop and write the rules, as well as the OGC attorneys assigned to the rule development. Sam stressed that EPA is interested in hearing the states' thoughts and concerns. Everything is on the table as EPA puts together ideas for the new Assistant Administrator for Air and Radiation, who should arrive within the next couple of weeks.

III. CenSARA Opening Comments

Arturo Blanco, City of Houston, Air Quality Control, thanked EPA for the opportunity to share thoughts and ideas about how to approach a CAIR replacement rule. He noted that the session would be an informal opportunity for states and other members to ask questions, express concerns, or generally share ideas. Although notes will be taken on the call, it is understood that the ideas or suggestions brought up on the call are not necessarily the official positions of the different government agencies represented on the call.

IV. Core Issues Outlined by EPA

Sam Napolitano said that EPA would lay out the issues, but that he would be unable to indicate how EPA would eventually proceed, as the Agency is uncertain at present as to how to respond to the issues raised by the CAIR court decision. The options for a replacement rule are very broad and EPA is looking at new ways to address the section 110(a)(2)(D) finding of failure. The purpose of this meeting is to gather different ideas and thoughts to present to the

new Assistant Administrator for Air, whose responsibility it will be to decide how to address the ramifications of the court decision.

Sam Napolitano, Tim Smith, OAQPS, and Sonja Rodman, OGC, then outlined the key issues EPA is considering in the CAIR replacement rule. Sam asked that speakers identify themselves as notes of the meeting were being prepared and would be shared with all participants on the call.

EPA outlined the following major issues:

1. Baseline

What is the starting point? What is the baseline? When the original CAIR rule was developed there were many questions about how to set up a baseline and what to take into account when creating the baseline. The situation has continued to change, and EPA would like to know how states believe the baseline should be created, and what factors should be considered in the baseline.

2. Quantifying significant contribution

This is one of the key issues from the court decision. The court held that CAIR failed to adequately quantify and then eliminate each state's significant contribution. There are many smaller issues that come up under this general rubric, but the key questions pivot on how significant contribution is quantified and then what part of the quantified emissions must be eliminated.

3. Remedy

What remedy should be applied to the quantified significant contribution? What types of approaches should be considered? Is the trading option practical?

4. Affected Area/National Ambient Air Quality Standards (NAAQS)

Which states or regions should be covered by the rule? What should the timing of the rule look like? Should EPA start with existing NAAQS? Or, should it try to integrate the newer NAAQS into a replacement rule? Timing becomes a key element when considering which NAAQS to target.

V. CenSARA Response to Core Issues

1. Baseline

In response to a question about why BART would be an issue in a future CAIR baseline, Tim Smith explained that many states were relying on CAIR to meet the BART requirements. Because CAIR now can be in effect for only a limited period of time, and because it is unclear what will replace CAIR, many states are turning back to the BART requirements. EPA is trying

to decide how much consideration, if any, to give the probable reductions from plants installing BART controls when considering a baseline for the replacement CAIR program.

Calvin Ku, Missouri DNR, noted that the states use the current year data during the SIP process and that using future year projections might not give a realistic view of the emissions. Using the current year data lines up with the states' process and ensures that the baseline is generated from fully quality-assured data. He also suggested that if a future baseline year were to be used, it would be best to align it with the 2012 and 2018 non-attainment deadlines.

Sonja Rodman mentioned that use of a future year baseline was one of the parts of CAIR that the court upheld. Other participants supported using a future year baseline, but wanted to know which year of data the future year baseline would be based on. Tim said he believed that future year modeling would be based on 2005 emissions data.

Kim Herndon, TCEQ, mentioned that it would be most helpful for states if the replacement CAIR implementation dates corresponded to the attainment dates for the 2008 NAAQS.

2. Significant contribution

Tyler Harris, City of Saint Louis Air Pollution Control, said he thought EPA should raise the level of control considered cost effective. He noted that EPA's determination of what controls a unit needed to put on under CAIR was based on a determination of what controls were highly cost-effective. The tightening of the standards might require a level of control that had not been considered highly cost-effective in the earlier analysis.

Calvin Ku was concerned about how EPA might deal with maintenance areas. He suggested a higher cost-effectiveness trigger for maintenance areas than for non-attainment areas because using the same standard for both might unfairly punish some sources.

Tim Smith explained his understanding of the LADCO proposal that had been outlined in an earlier call. LADCO is looking at the CAMx modeling to apportion contribution by states. States that contribute 4% of the standard or more would be required to put on the most stringent controls, states between the 4% and 1% level would be required to put on less stringent controls, and states below 1% of the threshold would be required to put on the least stringent controls. Tim noted that his explanation was based on a preliminary outline, and that LADCO would be issuing the official proposal soon.

3. Remedy

There were not many comments related to remedy. Some participants asked EPA about the types of plans the Agency was considering. EPA responded that the Agency is considering the full range of possibilities. Some of the specific suggestions that have been offered include a strictly performance-based standard that all sources would be required to meet. Other ideas have included a performance-based standard with trading, perhaps limited to intrastate trading.

One of the big questions for the Agency is whether section 110(a)(2)(D), which requires EPA to specifically quantify each states' contribution to another state, also requires the Agency to fully eliminate that quantified contribution, or whether EPA is allowed to provide a partial remedy.

Calvin Ku suggested that EPA needs to look at large industrial boilers in addition to EGUs. He also said that he believed cement kilns should be considered as sources to control. Tyler Harris mentioned that according to modeling in the St. Louis area, mobile sources play a large role in attainment problems in St. Louis. Tyler also noted that some steel mills have a large impact.

The Iowa representative suggested that EPA look at source apportionment not simply on a state-by-state basis, but also on the basis of the contributing sectors in the states. A breakdown of apportionment by sector would provide a detailed analysis of what needs to be controlled and would allow EPA to target a program to those sources that have the largest impact on non-attainment.

4. Affected Area/Standards

Jim Kavanaugh, Missouri DNR, and Eddie Terrill, Oklahoma DEQ, suggested that CAIR should be a national program, with Oklahoma representatives specifically stating that Oklahoma should be included in any future CAIR region.

In suggesting that the CAIR replacement program should be national, CenSARA members also indicated that EPA should create a rule addressing the most recent NAAQS. They noted that if EPA addressed the most recent standards, the program would by definition include a large geographic area, which could help justify a national program.

CenSARA members advocated for a strong multi-pollutant program based on the most recent standards. States are currently being asked to comply with the new, lower standards. Because of the continued lowering of the standards, it is clear states will need strong regional and national multi-pollutant programs, such as the CAIR replacement rule, to meet the recent, more stringent NAAQS.

Sam Napolitano asked what other types of pollutants the states would like to see a replacement CAIR rule address. Jim suggested EPA might consider the new annual and 24-hour PM standards and how the Agency might control direct PM type pollutants and volatiles, with an emphasis on the direct PM pollutants.

Many areas mentioned interest in getting federal help to deal with non-attainment issues. EPA noted that the federal government could help with the transport part of non-attainment. However, under section 110(a)(2)(D) EPA is only allowed to look at the parts of non-attainment caused by interstate transport. Thus, local controls will always play a vital role in meeting the attainment and maintenance standards.

There was some confusion about why EPA created a summer and an annual program. Tyler Harris said he thought that sources should be required to use whatever controls were

installed year round. Sam noted that the summer program was created as extra insurance at the behest of the eastern states and would likely be included in a replacement program.

VI. Conclusion

David Thornton, MPCA, suggested that EPA consider the potential impact of other possible climate control programs, specifically on states that were not originally in CAIR, but which might be included under an expanded replacement program. These states, and sources in those states, will be making critical choices about what technologies to install and how to invest in emission controls; thus, having some idea of the future regulatory landscape would be very useful. EPA noted that on an earlier call the environmental NGOs had also asked EPA to take a holistic approach.

In response to questions about further comments, EPA suggested that participants use notes of this meeting, which will be distributed to all the participants, as one avenue for further comments. Once the formal process is started a docket will be opened and official comments can be submitted. Otherwise, participants should feel free to email EPA contacts with suggestions or ideas.

Sam Napolitano concluded the call by saying that this call was one of the first series of teleconferences with states and other stakeholders, including LADCO, OTC, NACAA, industry representatives, and environmental groups. When this series has concluded, EPA will meet with states again to report what EPA has heard from all of the groups. This will allow them to react and respond, and to continue the general dialogue.