

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

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#### **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 NOx, SO<sub>2</sub>, 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



- Many of these rules have kéy elements in common:
  - EPA rejects state BART determinations and adopts its own policies, often very stringent NOx and/or SO<sub>2</sub> 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



- 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

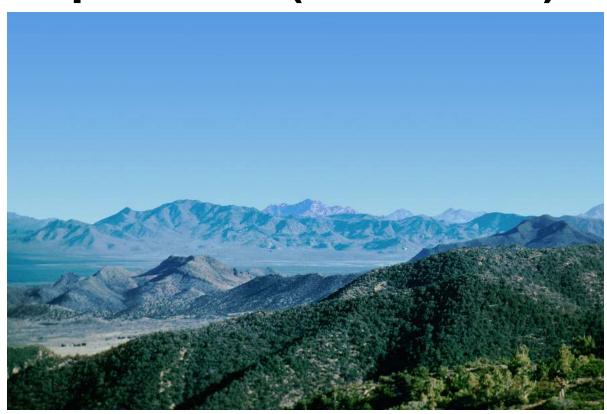


### Pristine Air (0 deciviews)





# EPA's Standard for Perceptible Impairment (1 deciview)



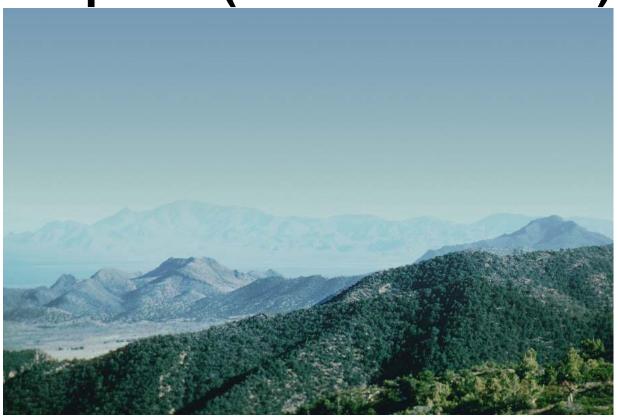


# Hypothetical Maximum Impact in a Single Area (5 deciviews)





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





- 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"



- When EPA promulgated CAIR in 2005, it also adopted a rule designating compliance with CAIR as a BART alternative for SO<sub>2</sub> and NOx 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



- 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



- 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



- 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



- 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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