

Ben Clark  
Sullivan & Ward, P.C.  
6601 Westown Parkway, Suite 200  
West Des Moines, Iowa 50266

Environmental Law: Who's externality is this?

Cross-State Air Pollution Rule ("CSAPR"): Clean Air Act and Downwind Determinations

- Replaces the Clean Air Interstate Rule ("CAIR"), seeking to implement the "good neighbor" considerations under the Clean Air Act
- Iowa added in 2011
- Regulates sulfur dioxide and nitrogen oxide emissions on the basis of affecting other "downwind" states
- DC Circuit struck down regulation as not specific enough
- Supreme Court granted Cert. in *EPA v. Homer City Generation, L.P.*
  - Procedural:
    - Oral arguments take place December 10, 2013
    - Decision expected June 2014
  - Issues:
    - Whether DC Circuit lacked jurisdiction to consider the challenges to CSAPR
    - Whether states are excused from adopting SIPs prohibiting emissions that "contribute significantly" to air pollution problems in other states until after the EPA has adopted a rule quantifying each state's inter-state pollution obligations; and
    - Whether the EPA permissibly interpreted the statutory term "contribute significantly" so as to define each upwind state's "significant" interstate air pollution contributions in light of the cost-effective emission reductions it can make to improve air quality in polluted downwind areas, or whether the Act instead unambiguously requires the EPA to consider only each upwind state's physically proportionate responsibility for each downwind air quality problem.
  - Potential Outcomes

*Gulf Restoration Network v. Jackson*: Clean Water Act and Other People's Nutrients.

- A district court ordered EPA to conduct a necessity determination under CWA §303(c)(4)(B) in response to an environmental group's petition asking the Agency to establish water quality standards to control nitrogen and phosphorous pollution in the mainstem of the Mississippi River and the Northern Gulf of Mexico.
- *Mass. v. EPA* applicability
- The EPA has 180 days to make determination
- Iowa's proposed response: Reduce nutrients through discharge permits for point sources and voluntary efforts by nonpoint sources
- Iowa Nutrient Reduction Strategy Released in June 2013