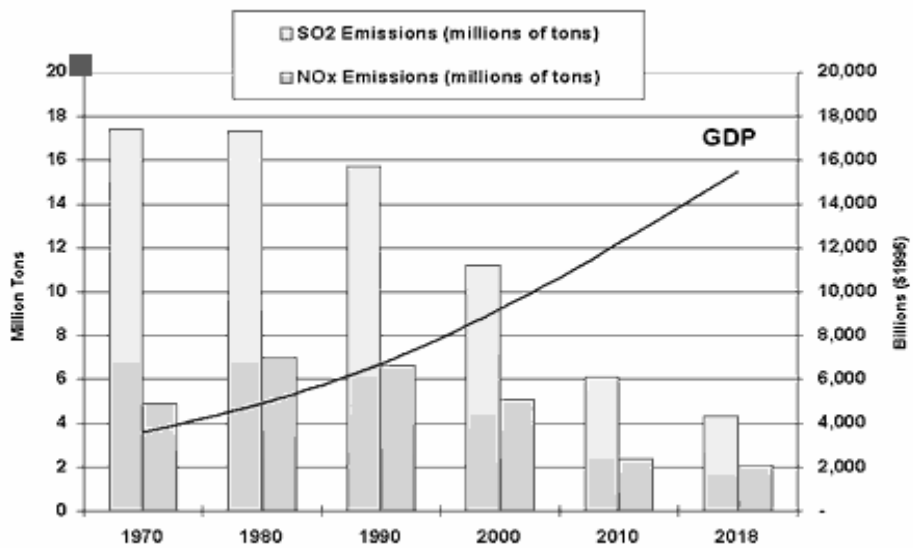


Air quality challenges facing WV coal

WV Energy Roadmap Workshop on Coal's
Role in Economic & Homeland Security
July 22, 2004

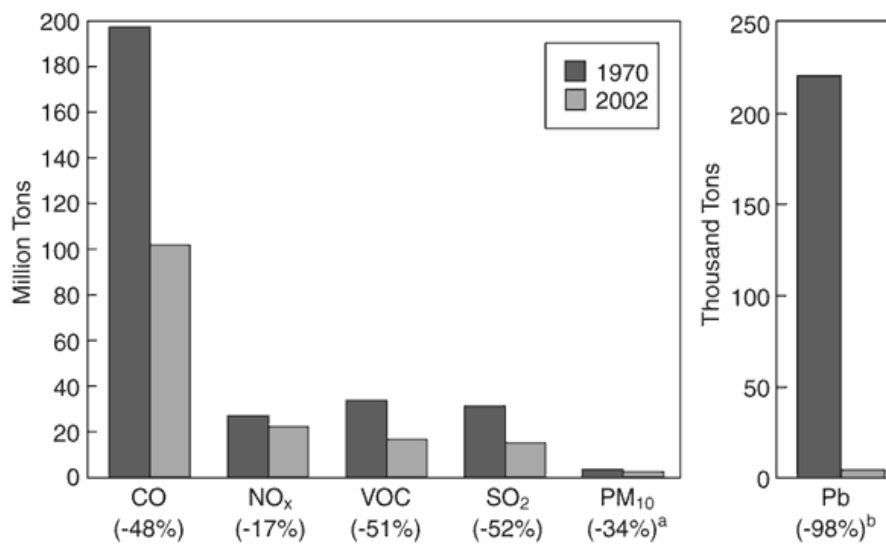
Eugene M. Trisko
Attorney at Law
Emtrisko@earthlink.net
(304) 258-1977

First, the big picture ...



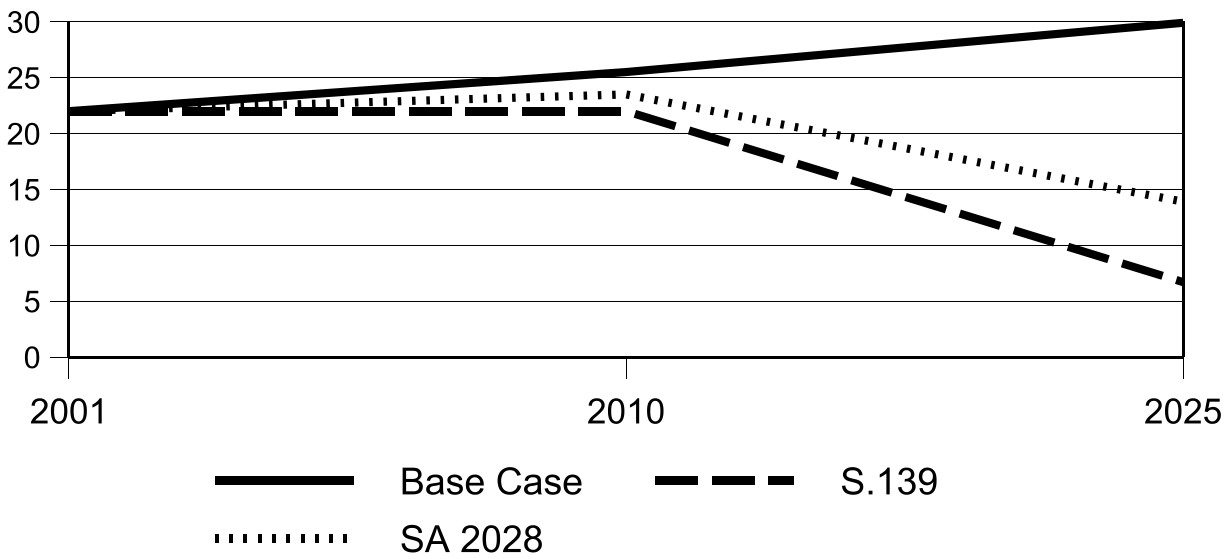
And some key trends ...

Comparison of 1970 and 2002 Emissions



Above all, beware of carbon!

DOE/EIA Analysis of S.139 and SA 2028
(Coal consumption in Quads)



EPA fills the Clear Skies Gap

- January 2004 proposed Clean Air Interstate Rule (CAIR) would apply new utility NO_x and SO₂ controls to 29 eastern states
- Levels of reductions comparable to Clear Skies Act, to be achieved in 2010 and 2015
- Adds 10 states to eastern NO_x SIP Call
- EPA legal authority based on Section 110 of the Clean Air Act and the decision in Michigan v. EPA upholding the NO_x SIP Call

The new Clean Air landscape EPA 8-Hr ozone nonattainment designations 432+ counties

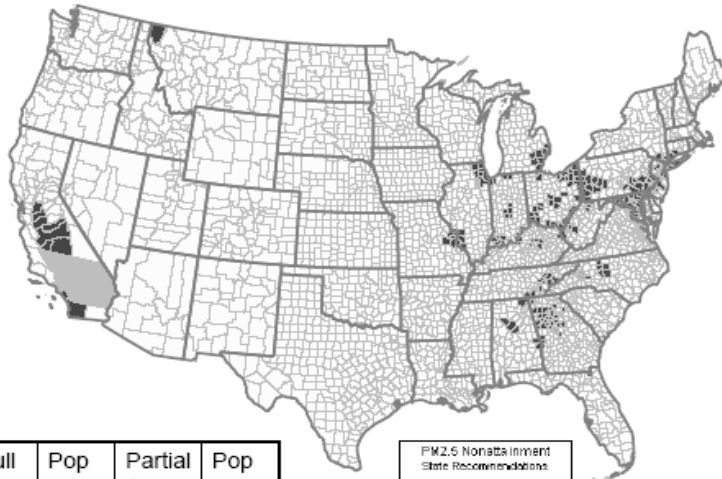
Attainment and Nonattainment Areas in the U.S.
8-hour Ozone Standard



- Attainment (or Unclassifiable) Areas (2668 counties)
- Nonattainment Areas (432 entire counties)
- Nonattainment Areas (42 partial counties)

EPA PM2.5 Designations - 244 Counties

EPA Response to State Recommendations
on PM_{2.5} Designations – June 29, 2004



	All Cou	Pop (mill)	Full Cou	Pop (mill)	Partial Cou	Pop (mill)
ST	142	79	134	65	8	14
EPA	244	99	234	85	10	14

PM2.5 Nonattainment State Recommendations	
■	Nonattainment
■	Partial nonattainment
EPA Additions	
■	Nonattainment
■	Partial nonattainment
■	Unclassifiable
□	Attainment/Unclassifiable

CAIR overview

- Two-phase program with declining compliance caps -
SO₂: 3.9 million tons in 2010, 2.7 million in 2015
NO_x: 1.6 million tons in 2010, 1.3 million in 2015
- Geographic scope based on “significant contribution” from individual states using zero-out modeling
- Emissions reduction budget for each state based on “highly cost-effective” controls on electric generating units
- Phase II equivalent to ~70% SO₂ reduction and 65% NO_x reduction

Emissions trading

- Allows states flexibility to decide which sources to control to meet state budgets and whether to join optional trading program
- EPA decided against separate 20-state western zone for SO₂ trading - WRAP remains in effect
- EPA requested comment on whether CAIR trading option should dispense with need for plant-specific “BART” controls for regional haze

**8-hour ozone nonattainment remains serious
in major urban areas - 2015 Clean Air Act
base case (34 eastern counties)**

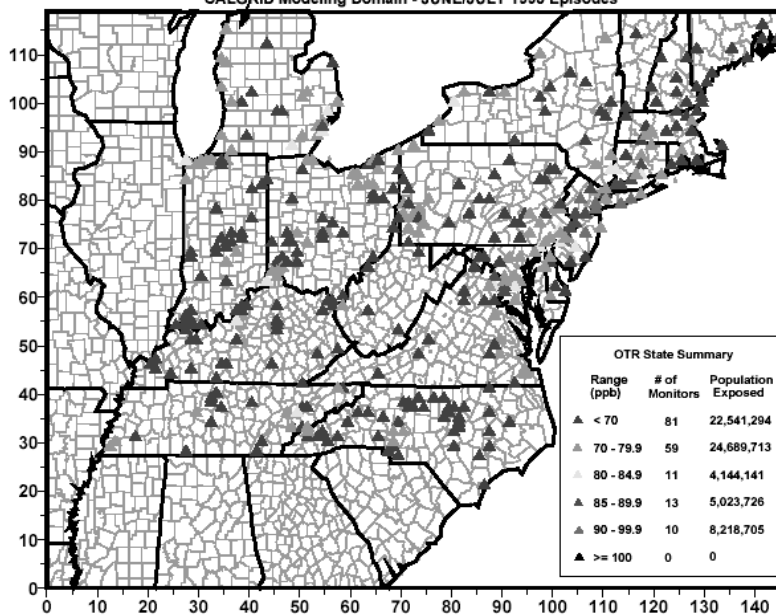


CAIR reduces eastern ozone nonattainment from 34 to 26 counties by 2015

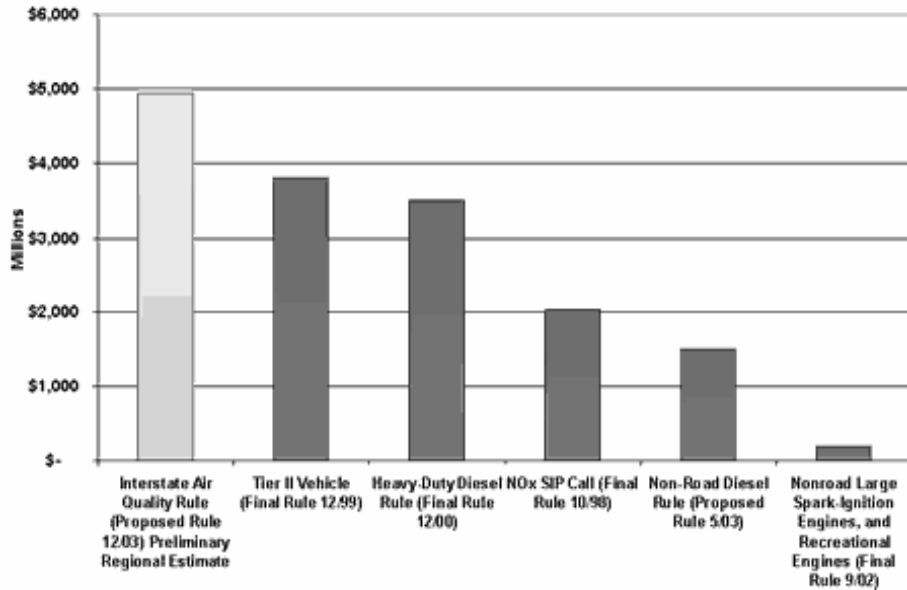


But the Northeast projects continuing nonattainment even with massive additional emission reductions

Maximum Adjusted Control Case 8-hour Ozone Concentrations at Ozone Monitors
R102 (2010 OTC Resolution minus 50% Area NO_x & VOC and 50% Mobile NO_x)
Based on Maximum Design Values 1999-2001, 2000-2002, & 2001-2003
CALGRID Modeling Domain - JUNE/JULY 1995 Episodes

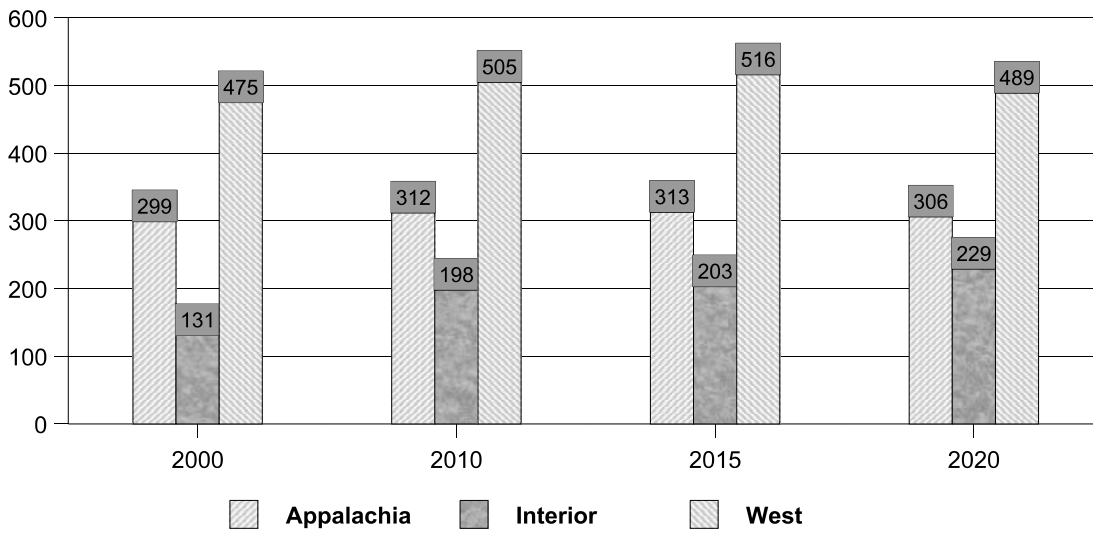


CAIR is not cheap compared to other EPA Clean Air rules



Projected Coal Market Impacts of IAQR

Appalachia and Interior regions increase production,
at expense of West
(In millions of tons/year)



The 126 outlook

- Northeast states likely candidates for 126 petitions against upwind MW and SE states
- EPA unlikely to grant relief against sources subject to CAIR reductions
- Disconnect between CAIR Phase II (2015) and attainment deadlines (e.g., 2009) will intensify pressure for local reductions
- Few local options are politically viable
- More work for the DC Circuit!

Mercury rules add major uncertainties

- EPA is under court order to publish final mercury regulations by December 2004
- January 2004 mercury proposals based on Maximum Achievable Control Technology and emission trading alternatives
- Proposed MACT limits have divided industry
- Controversial emission trading alternatives ensure litigation

Emission trading options

EPA and industry prefer flexibility of trading

- EPA offered alternative mercury trading proposals under sections 111(d) and 112(n) of the Clear Air Act
- Trading proposals seek to reverse Clinton policy determination to control mercury by MACT limits
- Trading options would impose 15 ton mercury cap by 2018, similar to Clear Skies Act, but EPA is under pressure to act sooner
- First phase reductions (2010) to be determined, may rely on “co-benefits” of CAIR

Mercury and public health

- EPA recognizes that benefits of mercury controls cannot be quantified due to global mercury transport
- US utilities contribute 1% to global mercury budget
- No evidence that proposed reductions would reduce risks to relevant population of women of child-bearing age

Trading uncertainties ...

States may control mercury emission allowances

- Section 111(d) emission trading option gives states power to determine mercury emission allocations through SIP process
- State participation in trading program is discretionary
- 12 Northeast OTC states have already rejected mercury trading option
- Section 112(n) national trading program or 111(d) option would be litigated by environmental groups

In sum ...

- CAIR has legal precedent, but litigation is certain over details such as “significant contribution” and “highly cost effective controls” - perhaps a safe bet on EPA to prevail on basic aspects of the rule.
- CAIR does not solve all urban nonattainment problems and local solutions may be politically unpopular.
- The mercury rule has become politicized, with litigation likely from all sides, a possible invitation for Congressional intervention.
- Historically, comprehensive CAA reforms have addressed all major emitting sectors - utilities, vehicles, etc.
- Carbon control is the largest wild card facing WV and all coal-producing and consuming states