

EPA issued a [rule](#) last week that will significantly improve air quality, particularly on the East Coast. This is EPA's fourth and final iteration of a rule-making process to control interstate air pollution that began in 2005. Reflecting this history, this fourth rule is a second and presumably final revision of an update to an earlier rule called the Revised Cross-State Air Pollution Rule (Revised CASPR), which itself replaced a yet earlier rule. (CASPR is pronounced "Casper," like the friendly cartoon ghost.) EPA [says](#) the update to the rule will prevent an additional 290,000 asthma attacks, 560 hospital and ER visits, 110,000 days of missed work and school, and up to 230 premature deaths in 2025.

This regulatory effort has gone to the D.C. Circuit three times (so far), to the Supreme Court once (with a memorable [opinion](#) by Justice Ginsburg), and to a federal district court in New York. Luckily for you, dear reader, I'm not going to recount this history in full or try to explain all the legal issues. Very briefly, all the iterations of the regulatory process have aimed to protect downwind states that can't achieve their mandatory ozone levels because of ozone blown into the state from elsewhere. The solution is to cut ozone emissions in the upwind states. This task requires linking particular emissions sources with pollution problems in states that may be hundreds of miles away. It also involves allocating the needed reductions among upwind states. That's all made more complicated by the fact that a single upwind state may impact multiple downwind states, and a single downwind state may be impacted by multiple upwind states.

At the risk of leaving you dizzy from this litigation merry-go-round, here's a quick summary of the litigation. EPA's first effort, under the Bush Administration, was declared invalid by the D.C. Circuit, which nonetheless let it remain in effect at the request of all the parties to the case, none of whom had asked for the court to take such drastic action. The Obama Administration followed up with CASPR. The D.C. Circuit struck down CASPR entirely, but that ruling was overturned by the Supreme Court. The case then went back to the D.C. Circuit, which held that EPA had failed to do a careful enough job of linking emissions in upwind states with harm in downwind states. EPA tried again, and that effort was largely [upheld](#). However, the court faulted EPA for failing to ensure that the downwind states could reach their air quality requirements for ozone in 2021, which is the statutory deadline. By the time EPA got done with the revisions, some of the required actions by the upwind states couldn't be completed in 2021 and will stretch out until 2024. Of course, if the D.C. Circuit feels called upon to intervene again, the process could last even longer.

EPA is getting ready to reset the ozone target for air quality. History suggests that

we will go through another decade or more of litigation and rule-making in order to deal with the cross-state implications of that reset. Everyone, including the courts and EPA itself, seems to have worked diligently throughout this process. Large-scale regulation is just very complicated. Fortunately, the earlier stages of the effort all resulted in emission reductions along the way, so we didn't have to wait until the end to see health benefits.

I wish I had some magic formula for making all this simpler and faster. If the courts hadn't gotten involved, the process would have been faster, but it might also have achieved fewer benefits. Once the courts were involved in the process, the complexity of the regulations and the number of legal issues guaranteed slow processing by the judiciary.

This may seem like a non sequitur, but this kind of experience is one reason I find a carbon tax appealing. Implementing new taxes is complicated, but the IRS does it all the time, and pretty quickly. Courts can't enjoin the collection of taxes, which means that the carbon tax could take immediate effect. I do realize how politically difficult a carbon tax would be, and many people don't regard it as an ideal tool. But it could be a lot faster than the regulatory process seen in the the CASPR saga.