

EDF et al. v. BLM et al. (D. Mont)
Potential impacts on CBM and other industries

- **SHIFT OF REGULATORY RESPONSIBILITY FOR AIR QUALITY:** Air emissions are currently permitted and regulated by the respective states with EPA overview. This lawsuit attempts to shift that responsibility to the BLM, at least indirectly, by forcing it to adopt emissions limitations and control measures in its Resource Management Plans.
- **CUMULATIVE AIR QUALITY ANALYSIS:** The Complaint alleges NEPA violations because the EISs did not analyze the cumulative air impacts of CBM development plus all other existing and reasonably foreseeable sources. This analysis would cost so much, and take so much time, that all CBM development on federal lands in the Powder River Basin could be halted for years. Further, the model could show that theoretical, modeled exceedances have already occurred. Relying on this analysis, third parties could start actions in any number of courts and regulatory agencies, seeking large reductions in emissions by sources of all kinds. This tactic has already been used by environmental organizations in North Dakota.
- **STATE-WIDE TRIGGER OF PSD BASELINE:** The suit alleges that the applicable PSD baselines for Wyoming and Montana were triggered decades ago. This indirect attack on the redesignation of smaller air quality control regions in the Powder River Basin could lead to the argument that the PSD increments have already been consumed or exceeded. If so, new air sources could not get permits without offsets, and existing sources could face increasing pressure to reduce emissions.
- **COMPLAINT ALLEGES STANDARDS ARE ALREADY BEING EXCEEDED.** The Complaint contends that ambient standards are already being violated by existing sources. If this is established, certain areas may have to be reclassified as “nonattainment” areas. Again, new sources could have to offset emissions, and existing sources could have to retrofit or otherwise reduce emissions.
- **OTHER INDUSTRIES ARE SPECIFICALLY IMPLICATED:** On pages 65-73, the Complaint specifically points at traditional oil and gas operations, refineries, coal mines, power plants, cement plants, compressor stations, and gravel pits as causing or contributing to unacceptable emissions levels and, allegedly, exceedances of applicable standards.
- **AREA AFFECTED IS BROADER THAN THE POWDER RIVER BASIN.** The Complaint defines the affected area as surrounding each of 15 Class I area within the 150-300 km range of the approved CALPUFF model. That takes in industries in six states.