



Consideration of Final-Omitted
Clean Air Interstate Rule
Environmental Quality Board Meeting
Harrisburg, PA
September 16, 2008

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Federal Clean Air Interstate Rule

- The U. S. Environmental Protection Agency (EPA) found that 28 states and the District of Columbia contribute significantly to downwind PM_{2.5} and 8-hour ozone nonattainment areas.
- On May 12, 2005, EPA promulgated the final Clean Air Interstate Rule (CAIR) to mitigate the transport of sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions from electric generating units (EGUs) of 25 megawatts or greater.



Court Vacates Federal CAIR Rule

- On July 11, 2008, the Court of Appeals for the District of Columbia Circuit ruled that CAIR was “fundamentally flawed,” and vacated the regulation.
- The court stated that the NOx SIP Call continues in CAIR’s absence.
 - The NOx SIP Call is in the Commonwealth’s approved SIP.



PA CAIR Final-Omitted Rule

- This rulemaking is necessary to repeal the CAIR provisions and to ensure continuity in implementing the NOx SIP Call regulations.
- The “final-omitted” rulemaking process being used for this CAIR repeal is authorized under section 204 of the Commonwealth Documents Law. Omitting notice of proposed rulemaking is appropriate here because the notice of proposed rulemaking procedure would be impracticable, unnecessary and contrary to the public interest.
- Other Pennsylvania regulations affected by the CAIR repeal are those that allow small sources of NOx in the five-county Philadelphia area to surrender CAIR allowances as a compliance option.
- The NOx SIP Call regulations in Pennsylvania consist mainly of the NOx Budget Trading Program and emission limitations on Portland cement kilns and large stationary internal combustion engines.



NOx Budget Related Programs

- The *vacatur* of the EPA's CAIR necessitates prompt repeal of Pennsylvania's CAIR by the end of this year in order to avoid significant loss of emission reductions and to avoid undue confusion. If the Department were required to publish a notice of proposed rulemaking, repeal would not be possible this year.
- Repeal this year is necessary in order to continue the NOx Budget Trading Program emission allowances that the CAIR rulemaking terminated beginning January 1, 2009.
- Repealing Pennsylvania's CAIR will ensure that air pollution reductions continue in accordance with the court ruling and the Commonwealth's approved SIP. The Department will continue to implement the Commonwealth's federally-approved NOx SIP Call regulations instead of CAIR.



PA CAIR Repeal Final-Omitted Rulemaking

- This rulemaking repeals the transition provisions in the CAIR which included transition provisions for non-electric generating units, such as large industrial boilers, to move from the NOx Budget Trading Program.
- This rulemaking reinstates the option to surrender NOx Budget Trading Program allowances instead of CAIR allowances.
 - Applies to small sources of NOx, namely certain boilers, stationary combustion turbines and stationary internal combustion engines, in the five-county Philadelphia area, and for Portland cement kilns and large stationary internal combustion engines statewide.



Provision Retained Unrelated to CAIR

- A revision of Section 129.204 (b) was adopted at the same time as CAIR.
- The provision clarifies a compliance option for small sources of NO_x in the Southeast PA region.
- This provision should be retained.

§ 129.204. Emission accountability.

(iv) An alternate calculation and recordkeeping procedure based upon emissions testing and correlations with operating parameters. The operator of the unit shall demonstrate that the alternate procedure does not underestimate actual emissions throughout the allowable range of operating conditions. **In regard to obtaining the Department's approval for an alternate calculation method and recordkeeping procedure for actual emissions, the owner or operator may request an adjustment to the allowable emissions calculations set forth in §§ 129.201--129.203. An allowable emission adjustment may not overestimate a unit's allowable emissions and must be based upon the parameters and procedures proposed in the alternate calculation method for actual emissions.** The alternate calculation and recordkeeping procedures must be approved by the Department, in writing, prior to implementation.



CAIR Final Rulemaking: Recommendation

- The Department requests that the Board approve this final-omitted rulemaking to repeal the Pennsylvania Clean Air Interstate Rule.
- Your consideration of this final-omitted rulemaking is greatly appreciated.



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Thank you on behalf of:

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Deputy Secretary, Office of Waste, Air and
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