



Rescission of Final-Omitted Rulemaking
Repealing the PA Clean Air Interstate Rule
25 Pa. Code Chapters 121, 129 and 145

Environmental Quality Board Meeting
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Clean Air Interstate Rule (CAIR): Background

- The U. S. Environmental Protection Agency (EPA) found that 28 states and the District of Columbia contribute significantly to downwind fine particulate and 8-hour ozone nonattainment areas from nitrogen oxides (NO_x) and sulfur dioxide (SO₂) emissions from large stationary sources.
- On May 12, 2005, EPA promulgated the Clean Air Interstate Rule (CAIR), regulating annual NO_x, SO₂, emissions and seasonal NO_x emissions from electric generating units (EGUs) greater than 25 megawatts.
- EPA required CAIR-affected states to establish CAIR programs and submit revisions to State Implementation Plans (SIPs).



Clean Air Interstate Rule: Timeline

- On April 28, 2006, the EPA promulgated CAIR Federal Implementation Plans (FIPs) to ensure timely NO_x and SO₂ emission reductions.
- On April 12, 2008, PA's final-form CAIR was published in the Pennsylvania Bulletin; this rulemaking largely incorporates EPA's CAIR requirements by reference.
- On May 23, 2008, the Department submitted the CAIR SIP revision to EPA for approval.
- On July 11, 2008, the U.S. Court of Appeals for the DC Circuit issued an opinion vacating EPA's "fundamentally flawed" CAIR; the Court continued the ozone season NO_x SIP Call Program in effect to minimize disruption.



Clean Air Interstate Rule: Timeline

- On September 16, 2008, the EQB Board approved a final-omitted rulemaking to repeal the PA CAIR provisions to ensure continuity in implementing the NOx SIP Call regulations.
- On November 20, 2008, on behalf of the EQB, the final-omitted rulemaking was withdrawn from review by the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees.
- On December 16, 2008, the Department briefed EQB on the status of CAIR.



CAIR: New Developments

- On December 23, 2008, the Court issued a new ruling remanding the CAIR regulations to EPA, without vacating CAIR, for revisions consistent with the Court's opinion, and providing no firm deadline for new regulations.
- The "remand" continues EPA's CAIR in effect and restores the anticipated NO_x and SO₂ reductions.
- The "remand" also negates the Department's need to repeal PA CAIR.



EQB Action Requested

- The Department requests that the Board rescind it's approval of a final-omitted rulemaking to repeal CAIR.
- Rescission is requested pursuant to Section 1920-A of the Administrative Code and Section 5 of the Air Pollution Control Act.



Compliance Deadlines

- EGU owners/operators covered by EPA's CAIR Federal Implementation Plan (FIP) must meet EPA's CAIR FIP requirements as of January 1, 2009 for NO_x and January 1, 2010 for SO₂.
- Owners/operators in PA must comply with EPA's FIP until EPA approves PA CAIR as a revision to the State Implementation Plan.
- DEP will continue to monitor developments at the federal level as CAIR is implemented and post-CAIR federal regulations developed.



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