

Clean Air Interstate Rule – Rescission of Repeal Vote
Executive Summary
25 Pa. Code Chapters 121, 129 and 145

The Department of Environmental Protection (Department) is requesting that the Environmental Quality Board (Board) rescind its September 16, 2008 vote approving a final-omitted rulemaking to repeal the Clean Air Interstate Rule (CAIR). The CAIR was adopted by the Board on December 18, 2007 and published in the *Pennsylvania Bulletin* April 12, 2008. Rescission is requested pursuant to the Board's broad powers granted under section 1920-A of the Administrative Code and section 5 of the Air Pollution Control Act.

The reason the Department presented the Board with the CAIR Repeal final-omitted rulemaking on September 16, 2008, was that the U.S. Environmental Protection Agency's (EPA) CAIR that is incorporated by reference as the core of the Pennsylvania CAIR had been vacated by the U.S. Court of Appeals for the District of Columbia on July 11, 2008. At the time of the September Board meeting, the Department planned to implement the Commonwealth's nitrogen oxides (NO_x) state implementation plan (SIP) call regulations instead of CAIR if nothing happened to reverse the Court's ruling by the beginning of 2009. That plan was designed in concert with EPA and other affected states. The Department explained to the Board, however, that the Department would be monitoring developments at the federal level, especially in Congress, in case all or part of EPA's CAIR were reinstated by the end of 2008.

The Department is presenting this request to rescind to the Board because on December 23, 2008, the Court issued a new ruling reversing its earlier decision to strike down EPA's CAIR. In the new ruling, the Court stayed its earlier *vacatur* of the EPA's CAIR and remanded the regulation to EPA to revise in accordance with the Court's July 11 opinion. The new ruling keeps EPA's CAIR in effect and negates the Department's need to repeal the Pennsylvania CAIR.

In anticipation of this second court ruling, the Acting Secretary of the Department, the Honorable John Hanger, acting on behalf of the Board as Chairman, withdrew the CAIR Repeal final-omitted rulemaking from review by the Independent Regulatory Review Commission (IRRC) at IRRC's November 20 meeting on November 19 and also from review by the Standing Environmental Resources and Energy Committees (Committees). As a result, rescission by the Board of its September 16, 2008 approval of the CAIR Repeal final-omitted rulemaking is all that is necessary. The Department will continue to monitor events at the federal level as CAIR is implemented.

In the meantime, owners and operators of Pennsylvania units covered by EPA's CAIR Federal Implementation Plan (FIP) must be prepared to meet the requirements of the federal CAIR as of January 1, 2009.