

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: )  
 )  
Proposed procedural rules for the ) DLC #81-08  
Clean Air Interstate Rule (CAIR) )  
Clean Air Set-Asides (CASA) )  
 )

**Motion to File Summary and Agency  
Statement Instante**

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys and, moves that the Hearing Officer grant its request to file the Summary and Agency Statement in DLC#81-08 instante. The procedural rules provide that the Illinois EPA shall file a Summary and Agency Statement within 45 days after the record closed. 35 Ill. Adm. Code 164.401(d). As explained below, there were circumstances beyond the control of the Illinois EPA that lead to the delay in the preparation and filing of the Agency Statement. The Illinois EPA has decided to proceed with this rulemaking for the reasons described below.

On June 11, 2008, the Illinois Environmental Protection Agency (“Illinois EPA”) held a public hearing in Springfield, Illinois, on the Procedural Rules for the Clean Air Interstate Rule (“CAIR”) Clean Air Set-Asides (“CASA”). On June 11, 2008, a public hearing on the above matter was held to gather comments and answer questions. The comment period ended July 11, 2008. Following the public hearing, the Illinois EPA received no comments from the public.

Publication of the Illinois EPA’s production of this Summary and Agency Statement was delayed due to a decision by the United States Court of Appeals for the District of Columbia Circuit, vacating the Federal CAIR rule on July 11, 2008. *North Carolina v. EPA*, (D.C. Cir.

App. No. 05-1244). After the Federal CAIR rule was vacated, the Illinois EPA did not proceed with the promulgation of the proposed CAIR CASA rules, because USEPA did not distribute CAIR NO<sub>x</sub> allowances. However, on December 23, 2008, the appellate court reinstated the rule and required sources to comply with the Federal CAIR on schedule beginning January 1, 2009. *Id.* (December 23, 2008). As the CASA program is part of Illinois' CAIR rule as set forth at 35 Ill. Adm. Code Part 225, the Illinois EPA believes that it is advantageous to proceed at this time with the adoption of the procedures to implement CASA portion of the CAIR rule as adopted by the Illinois Pollution Control Board and has prepared the requisite Summary and Agency Statement.

The Illinois EPA respectfully submits this Motion For Leave to File Instanter and attached Summary and Agency Statement.

Illinois Environmental Protection Agency

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Dated: January 27, 2009  
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