

STATE OF ILLINOIS
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
Proposed Procedural Rules for)
the Clean Air Interstate Rule)
Clean Air Set-Asides)
)

ORDER

A public hearing regarding the above captioned matter was held on June 11, 2008, in Springfield, Illinois. This matter was set to receive written comments until closure of the record on July 11, 2008. The Agency's summary was to be filed by August 25, 2008. On January 27, 2009, the Agency filed a motion for leave to file its summary and agency statement *instanter*. The Agency asserts that production of the Illinois EPA's 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 Clean Air Interstate Rule on July 11, 2008. *North Carolina v. EPA*, (D.C. Cir. App. No. 05-1244). The Agency contends that after the Federal Clean Air Interstate Rule was vacated, the Illinois EPA did not proceed with the promulgation of the proposed Clean Air Interstate Rule Clean Air Set-Asides, because USEPA did not distribute Clean Air Interstate Rule nitrogen oxide allowances. On December 23, 2008, the appellate court reinstated the rule and required sources to comply with the Federal Clean Air Interstate Rule on schedule beginning January 1, 2009. *Id.* (December 23, 2008). The Agency further contends that as the Clean Air Set-Asides program is part of Illinois' Clean Air Interstate Rule as set forth at 35 Ill. Adm. Code Part 225, it believes that it is now advantageous to proceed with the adoption of the procedures to implement the Clean Air Set-Asides portion of the Clean Air Interstate Rule as adopted by the Illinois Pollution Control Board and has prepared the requisite summary and agency statement. The Agency moves the Hearing Officer to allow the filing of its summary and statement.

The Hearing Officer finds that no material prejudice will result to the interested parties should the Agency's summary be filed now. Additionally, the Hearing Officer finds that material prejudice would result if the motion for leave to file were not granted. Accordingly, the Hearing Officer, pursuant to the authority set forth under 35 Ill. Adm. Code Section 164.401, hereby grants the motion for leave to file and accepts the Agency's summary of comments and statement of conclusions.

Date: January 28, 2009

Annet Godiksen, Hearing Officer