

4/11/00

EPA ASKS COURT TO LIFT STAY ON NO_x SIP CALL

FACT SHEET

TODAY'S ACTION

To move forward as quickly as possible to ensure that Americans in the eastern United States breathe cleaner air, the U.S. Environmental Protection Agency (EPA) today asked a federal court to lift a stay on the Agency's rule for reducing the interstate transport of smog-causing emissions of nitrogen oxides (NO_x).

Also today, EPA notified the District of Columbia and 19 states that it had requested that the stay be lifted. EPA told the states to be ready to submit plans showing how they will reduce nitrogen oxide emissions.

EPA asked the U.S. Court of Appeals for the D.C. Circuit to end the stay of the date by which states are required to submit the plans, known as state implementation plans, or SIPs. As an interim measure, the Court stayed the due date for the plans in May 1999 until it could consider arguments on challenges to the NO_x SIP Call. If the court grants EPA's request and lifts the stay, the plans would be due Sept. 1, 2000.

EPA's request is designed to implement a March 3, 2000 ruling by the Court that largely upheld the SIP Call for the District of Columbia and the following states: Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia.

NO_x emissions from each of these states contribute to ground-level ozone pollution (smog) in downwind states. When inhaled – even at very low levels – ground-level ozone can cause acute respiratory problems, aggravate asthma, reduce lung capacity, inflame lung tissue, and impair the body's immune system.

All affected states and the District of Columbia will have to implement pollution control measures to reduce their NO_x emissions by May 1, 2003; emissions must be reduced to specific levels by 2007. (See table at the end of this fact sheet for reduction levels.) These reductions will improve air for more than 100 million people -- including people in both downwind states, and the states where sources are making the reductions.

The NO_x SIP Call will help states meet the 1-hour ozone standard.

WHAT HAPPENS NEXT

In letters to governors today, EPA notified each state of the maximum amount of NOx emissions allowed for that state during the “ozone season” (May 1 through Sept. 30 each year) beginning in 2007. This number is known as a “NOx emissions budget.”

If the Court grants EPA’s request, the District of Columbia and the 19 affected states will have to submit revised SIPs in two phases: The first phase plans, due Sept. 1, 2000, must contain the measures the states will use to address the portion of the NOx budgets not affected by the Court’s decision. For most of these states, the budget covers about 90 percent of the reductions required in the NOx SIP Call rule.

Later this spring, EPA will propose rules to address the few minor issues that the Court remanded: the inclusion of parts of Georgia and Missouri in the NOx SIP Call; and procedural issues related to a small subclass of electricity generating facilities and the reductions assumed for large, stationary internal combustion engines. EPA also will remove Wisconsin from the NOx SIP Call for the time being, because the court determined that the record did not support including that state.

Because the Court held that evidence did not show that portions of Georgia and Missouri significantly contributed to downwind states’ ozone nonattainment problems, Georgia and Missouri will not be required to submit a SIP until EPA completes its rule addressing the remanded issues.

Once final, these rules will complete the remaining portion of the budgets for the District of Columbia and the 19 states, and will establish the budgets for Missouri and Georgia. EPA plans to propose that states submit second phase SIPs no earlier than December 2000, if their budgets change as a result of these final rules. Those second phase plans must include any additional controls needed to meet the remainder of the NOx budgets.

Consistent with the Court’s decision, EPA also intends to allow adjustments to Michigan’s and Alabama’s NOx emission budgets. Although the Court did not order EPA to modify budgets for these states, EPA believes these adjustments are consistent with the Court’s March 3, 2000 decision concerning the inclusion of Georgia and Missouri in their entirety.

Four states – Connecticut, Massachusetts, New Jersey and Rhode Island – voluntarily submitted their plans to address the requirements of the NOx SIP Call despite the stay on the due date. Those states will not have to submit a SIP in September, however, they may wish to revise their plans once EPA has addressed the remanded issues.

States may adopt whichever control measures they choose to meet the required NOx reductions: they may choose any combination of reductions from their NOx sources, provided they meet their budget.

EPA expects that states will move quickly to develop and submit SIPs by September 1, 2000. The Clean Air Act requires EPA to issue a federal plan in cases where EPA determines states fail to make required submissions. EPA proposed a federal plan at the time it issued the NOx SIP Call in September 1998. EPA hopes to avoid issuing any federal plans for the NOx SIP Call and will work with states as they prepare state plans.

BACKGROUND

EPA issued the NOx SIP Call rule in September 1998 as part of its efforts to reduce unhealthy air in the eastern half of the country. The original rule required 22 states and the District of Columbia to reduce NOx emissions that cross state boundaries, forming ground-level ozone in downwind states.

Eight states challenging the rule asked the U.S. Court of Appeals for the D.C. Circuit to stay the due date for the state plans; as an interim measure, the court issued an indefinite stay on May 25, 1999.

On March 1, 2000, EPA proposed to stay the NOx SIP Call as it applied for the 8-hour ozone standard while litigation on that standard proceeds. EPA plans to take action soon to make this voluntary stay final.

On March 3, 2000, the U.S. Court of Appeals for the D.C. Circuit issued an opinion largely upholding the NOx SIP Call. In the opinion, the Court:

- ▶ Upheld EPA's approach to determining whether an upwind state significantly contributes to smog problems in a downwind state.
- ▶ Found that EPA had sufficiently analyzed individual states' emissions in determining which states significantly contribute to smog downwind.
- ▶ Upheld EPA's basic approach to determining how much a state needs to reduce its NOx emissions to reduce its significant contribution to downwind air quality problems. EPA's approach was to require states that contribute to downwind air quality problems to make reductions that are "highly cost-effective" (i.e., that cost \$2000/ton or less).
- ▶ Found that EPA's approach did not impermissibly intrude on the statutory right of states to develop clean air plans.

The Court upheld the rule for 19 states and D.C., but vacated it for Wisconsin, Georgia and Missouri, sending the portions of the rule focusing on those states back to EPA for further

rulemaking. The Court found that the record did not support the inclusion of Wisconsin in the SIP Call. The Court also found the record did not support including Georgia and Missouri in full.

The Court also found that EPA had not provided adequate notice before including a small class of units in its definition of electric generating unit. In addition, the Court found that EPA had not provided adequate notice on the reduction level assumed for large, stationary internal combustion engines.

The Court did not lift the stay at the time it issued its opinion.

ELECTRICITY SUPPLY

Before issuing the NO_x SIP Call, EPA examined the impact of the rule on the reliability of the country's electricity supply. As a result of that examination, EPA anticipates that installation of the emission controls required by the NO_x SIP Call would not cause or exacerbate electricity-availability problems, even during the summer when demands are high.

A study by an industry group, the North American Electric Reliability Council, predicted that there would not be a reliability problem if facilities had 30 months lead time to install controls. The schedule announced today provides more than that amount of lead time.

Some affected electric power companies may reduce NO_x emissions by installing systems known as *selective catalytic reduction*, or SCR, on individual boilers. EPA anticipates that SCR would be installed on about 10 percent of affected boilers.

Most SCR systems can be built next to a boiler while the boiler continues to operate. The boiler only needs to be shut down long enough to connect the SCR device. Companies normally install such controls when the units are shut down to perform other routine maintenance –which is not done during the summer.

Most of the SCR installations EPA has looked at both in the US and abroad have required units to be off-line for less than five weeks – and in some cases, as little as two. Under the timetable EPA requested today, companies would have more than two-and-a-half years to install controls.

As an added safeguard against reliability problems, the NO_x SIP call allows states to use a compliance supplement pool to assist facilities that experience unexpected problems installing the necessary equipment. This pool contains credits that equal more than one third of a single year's NO_x budget. To avoid electricity supply problems, facilities can either buy these credits from a facility that reduced its emissions early or be given these credits by the state.

NO_x REDUCTIONS REQUIRED

The table below sets out the NO_x emission reductions that each state would achieve through a SIP that meets the Phase 1 budgets.

State	NO _x Reductions Under SIP Call (Tons)	NO _x Reductions Under Phase 1* (Tons)	Percentage of original SIP Call Reductions
Alabama*	64,954	54,100	83%
Connecticut	3,166	<i>Already submitted</i>	N/A
Delaware	937	276	29%
District of Columbia**	0	0	N/A
Georgia	63,582	N/A	N/A
Illinois	98,310	90,724	92%
Indiana	110,689	106,029	96%
Kentucky	75,143	72,340	96%
Maryland	21,578	20,749	96%
Massachusetts	2,244	<i>Already submitted</i>	N/A
Michigan*	63,118	60,679	96%
Missouri	62,242	N/A	N/A
New Jersey	8,613	<i>Already submitted</i>	N/A
New York	15,365	13,672	89%
North Carolina	59,675	53,365	89%
Ohio	123,949	120,941	98%
Pennsylvania	87,609	77,043	88%
Rhode Island	85	<i>Already submitted</i>	N/A
South Carolina	29,700	25,049	84%
Tennessee	58,720	55,602	95%
Virginia	30,589	24,095	79%
West Virginia	92,866	91,654	99%
Wisconsin	38,463	N/A	N/A

NOTES: Consistent with the Court's opinion, the Phase 1 NO_x budgets reflect controls on electricity generating units subject to the acid rain program; large boilers and turbines; and cement kilns. The Phase 1 NO_x budgets do not reflect controls on internal combustion engines. States with N/A under budget requirements do not have to submit Phase 1 SIPs, either because they already have submitted plans, or because (for GA, MO and WI) the court vacated the rule for that state.

*EPA intends to propose that Michigan and Alabama would meet their Phase 1 NO_x SIP Call budget requirement if they submitted plans meeting NO_x emission budgets of 191,941 and 124,795 tons respectively. Although the Court did not order EPA to modify budgets for these states, EPA believes this approach is consistent with the Court's March 3, 2000 opinion concerning Georgia and Missouri. These budgets would result in reductions of 53,988 tons for Michigan and 44,361 tons for Alabama.

**Not projected to need additional reductions.

FOR MORE INFORMATION

To download a copy of the original NO_x SIP Call rule, go to
http://www.epa.gov/ttn/oarpg/t1/fr_notices/nxsip.pdf

To download a copy of the Court's March 3 ruling, go to the March 2000 section on
<http://pacer.cadc.uscourts.gov/common/opinions/> .

For additional information, call Kimber Scavo of EPA's Office of Air Quality Planning & Standards at 919-541-3354.