

Dear Governor:

Together we have worked to protect the public health and environment in your state from smog and air pollution carried from “upwind” sources and to improve the health of 138 million Americans in the Eastern United States. I am writing to inform you of actions now necessary to sustain our joint efforts.

The United States Court of Appeals for the District of Columbia Circuit recently issued two decisions that affect your petition to ensure reduction of the long range transport of air pollution from other states, submitted under section 126 of the Clean Air Act. On May 14, in a split opinion, a three judge panel of the Court held that the Clean Air Act public health standard provisions, as implemented by the Environmental Protection Agency (EPA), and supported by Congress and the courts for over 25 years, are unconstitutional as an improper delegation of legislative authority. The dissenting judge said that this ruling on the new health standards for ozone (smog) and particulate matter (soot) ignored over half a century of Supreme Court decisions that recognized the appropriate and necessary role of the executive branch in setting public health standards. Further, on May 24, the court temporarily stayed the implementation of EPA’s rule (NOx SIP Call) to reduce the state-to-state transport of smog. The consequences of these decisions significantly jeopardize the strong public health protections that EPA put in place for millions of Americans, including 35 million children. We disagree with the court’s decisions and are working with the Department of Justice to move forward with any and all necessary legal actions to ensure the important health protections associated with the ozone and particulate matter standards and our efforts to protect air quality in the Eastern United States.

However, while these court decisions are undergoing review, there are important steps we can take to ensure cleaner air for the Eastern United States. In order to strengthen EPA’s response to your petition to reduce air pollution drifting across your borders from other states, we will take actions immediately to temporarily suspend and then modify our response. These actions will focus our response to your petition exclusively on EPA’s old smog standard and “decouple” it from the NOx SIP Call. In so doing, we will separate the clean air petitions from these recent court decisions so that we can proceed toward our mutual goals unimpeded.

We have discussed these actions with your environmental commissioner, and I will keep you informed of any additional actions we take. I look forward to continuing our collaborative work to ensure clean air and protect the health of all our citizens.

Sincerely,

Carol M. Browner