

April 11, 2000

SUMMARY OF EPA'S APPROACH
TO THE NOx SIP CALL
IN LIGHT OF THE MARCH 3RD COURT DECISION

BACKGROUND

In September 1998, EPA issued a rule to reduce smog in the eastern United States. The rule, known as the NOx SIP Call, required 22 states and the District of Columbia to reduce emissions of nitrogen oxides (NOx), which react with other chemicals in the atmosphere to form ozone (smog). EPA required these reductions after determining that pollution from each of these states is transported by the wind and significantly contributes to unhealthy air quality in downwind states. EPA believes that these reductions are critical to help enable cities in the eastern half of our country to attain the national ambient air quality standard for ozone.

CURRENT STATUS

In response to litigation from several parties on the NOx SIP Call, the United States Court of Appeals for the District of Columbia Circuit upheld EPA's authority to issue the NOx SIP Call and to establish state "NOx budgets" – the maximum amount of nitrogen oxides allowed to be emitted in each state (Michigan v. EPA, No. 98-1497 (March 3, 2000)). In addition, the Court upheld the Agency's definition of how to determine if states "significantly contribute" to smog problems downwind. It also upheld EPA's method of calculating budgets by assuming the same level of control in all the affected states. Although in May 1999, as an interim measure, the Court stayed the portion of the rule that required states to submit their responses to the NOx SIP Call by September 30, 1999, EPA believes the stay is no longer justified given the March 3rd decision.

Based on the Court's decision and the significant public health benefits of the NOx SIP Call, EPA believes it is essential to implement this regional strategy as quickly as possible and is initiating a two-phased approach to do so. As part of this approach, the Department of Justice and EPA have requested that the Court lift its stay as of April 27, 2000.

If the Court grants EPA's motion, State Implementation Plan's (SIPs) addressing the portion of the NOx SIP Call upheld by the Court technically would be due to EPA immediately. However, EPA recognizes that the litigation may have caused some states to get off track in developing their SIPs. Therefore, EPA would allow states until September 1, 2000 to submit SIPs before taking further actions to ensure implementation of the NOx SIP Call. September 1, 2000 provides states with the additional four months and five days that they had remaining on the SIP submission schedule at the time the Court put the stay in place. This date will give states the additional time, yet it will not jeopardize the public health benefits achieved through the reduction of NOx emissions by May 1, 2003.

The first phase of the approach, which addresses the portion of the NOx SIP Call upheld by the Court, will achieve the majority of the reductions in the NOx SIP Call. If the Court grants EPA's request, the following 19 states and the District of Columbia

would need to submit State Implementation Plans (SIPs) for this phase by September 1, 2000: 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. Of these states, Massachusetts, New Jersey, Connecticut and Rhode Island have already submitted plans to meet the NOx SIP Call. The other affected states should move forward to prepare plans on all aspects of the NOx SIP Call that the Court upheld.

In the decision, the Court also remanded limited parts of the rule to EPA for further rulemaking. The second phase will address the few narrow issues that the Court remanded to EPA, including: whether, and if so, how, a small subclass of facilities that generate electricity should be included in the rule; what control levels should be assumed for large, stationary internal combustion engines; and what budget is appropriate for Missouri and for Georgia. For the second phase, EPA intends to issue a proposed rule addressing the remanded issues later this spring. Generally, any changes resulting from this second phase would have a small impact on the overall NOx budget for any particular state. States will have to submit Phase 2 plans no earlier than December 2000.

While no petitioners raised the issue of including the entire states of Alabama and Michigan in the NOx SIP Call, the Court's reasoning regarding Georgia and Missouri applies equally to Alabama and Michigan. Like Georgia and Missouri, Alabama and Michigan have both a "fine grid" and a "coarse grid" portion of the state -- a classification established as part of a two-year, multi-state process to reduce smog levels across the eastern United States. Therefore, based on the information in the record, EPA has calculated a NOx budget for Alabama and Michigan that reflects reductions only in the fine grid portions of these states. EPA intends to propose that Alabama and Michigan would meet their Phase 1 requirement if they submitted plans meeting these modified budgets.

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

NOx Budget

A NOx budget is the maximum amount of nitrogen oxides allowed to be emitted in each state affected by the NOx SIP Call. States have flexibility in choosing how to achieve the NOx reductions needed to meet the budget. The existing record in the NOx SIP Call rulemaking provides a sufficient break down of the data on which the original budgets were developed to allow states to readily adjust their SIP submissions to account for the issues remanded by the Court. In light of the Court decision, EPA has reviewed the record and for the convenience of the states, identified in Table 1 an adjusted Phase 1 NOx budget for each state that needs to submit a Phase 1 plan. In addition, Table 2 provides a comparison of the NOx reductions under the original NOx SIP Call to those under the Phase 1 budgets. EPA staff will be available to provide additional details about the calculations of these budgets.

Compliance date

Sources that states choose to regulate in the first phase must comply with their control requirements by May 1, 2003. This will provide sources adequate time to install the appropriate pollution control devices by May 1, 2003. To the extent that states choose to regulate power plants, EPA has confirmed that achieving these reductions by 2003 is feasible without endangering the reliability of the electric power supply. Over 40% of the power plants that states could choose to regulate under the NOx SIP Call are already required to reduce NOx emissions as a result of EPA's recent action on petitions submitted by Connecticut, Massachusetts, New York and Pennsylvania to reduce air pollution from upwind sources. Power plants will have sufficient time so that they will not have to install controls during the peak usage seasons. Many of the pollution control devices can be built next to the boiler, and then connected to the boiler during routine maintenance outages. EPA's analysis, which is included in the record for the NOx SIP Call, confirms that even the most complicated installation of pollution control technology for a single plant not covered by the recent EPA action on the state petitions can occur in less than 28 months. In addition, the NOx SIP Call provides extra assurance that there will not be reliability problems by allowing states to adopt a Compliance Supplement Pool.

PETITIONS FROM NORTHEASTERN STATES

Under section 126 of the Clean Air Act, EPA is also addressing regional transport of smog in response to petitions submitted by four Northeastern States. In our January 18, 2000 response, EPA determined that NOx emissions from large electric generating units and large industrial boilers and turbines in 12 states and the District of Columbia are contributing to ozone nonattainment problems in the petitioning states. The EPA established Federal emission control requirements for these sources with a compliance deadline of May 1, 2003. As a result, some sources have already begun planning on how to meet the emissions limits by the 2003 ozone season.

The EPA rule responding to the petitions and the NOx SIP Call have the same goal -- to reduce NOx emissions that cause downwind ozone problems. If a state submits and EPA approves a SIP revision meeting all the requirements of both phases of the NOx SIP Call (including providing for control measures to be in place by 2003), then EPA will withdraw the Federal requirements for sources in that state subject to EPA's rule responding to the section 126 petitions. Thus, through timely action, states will have flexibility to address transport through a different control strategy than EPA is requiring under the section 126 rule.

TABLE 1: NOx BUDGETS (total amount of NOx a state can emit to comply with Phase 1)

State	NOx Budget Under SIP Call (Tons)	NOx Budget Under Phase 1* (Tons)
Alabama*	172,619	183,473
Connecticut	42,849	<i>Already submitted</i>
Delaware	22,861	23,522
District of Columbia	6,658	6,658
Georgia	188,572	N/A
Illinois	270,560	278,146
Indiana	229,965	234,625
Kentucky	162,272	165,075
Maryland	81,898	82,727
Massachusetts	84,848	<i>Already submitted</i>
Michigan*	229,702	232,141
Missouri	125,603	N/A
New Jersey	96,876	<i>Already submitted</i>
New York	240,288	241,981
North Carolina	165,022	171,332
Ohio	249,274	252,282
Pennsylvania	257,592	268,158
Rhode Island	9,378	<i>Already submitted</i>
South Carolina	123,105	127,756
Tennessee	198,045	201,163
Virginia	180,195	186,689
West Virginia	83,833	85,045
Wisconsin	135,771	N/A

NOTES: Consistent with the Court's opinion, the Phase 1 NOx budgets reflect controls on electricity generating units subject to the acid rain program; large boilers and turbines; and cement kilns. The Phase 1 NOx 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 NOx SIP Call budget requirement if they submitted plans meeting NOx 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.

TABLE 2: NOx REDUCTIONS REQUIRED

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

State	NOx Reductions Under SIP Call (Tons)	NOx 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

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**Not projected to need additional reductions.