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EPA REVISES NO_x CUT PLANS

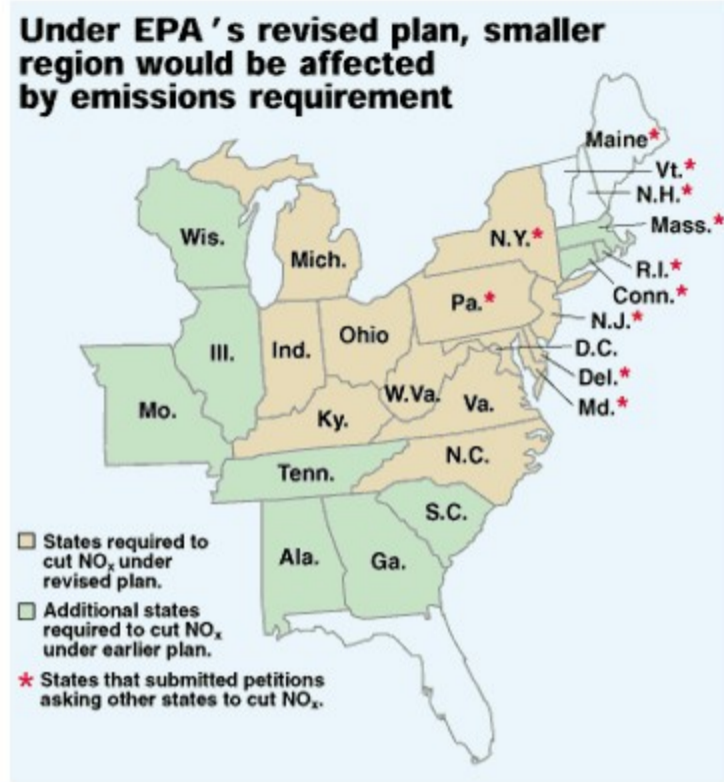
Agency proposes amended plan for reducing emissions after two court decisions that questioned how air standards are set

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In an attempt to work around two recent court decisions that challenged implementation of sections of the Clean Air Act, the Environmental Protection Agency last month announced [an amended plan](#) to get states to reduce their emissions of nitrogen oxides (NO_x), pollutants that are primary precursors for ground-level ozone.

The three-part plan would not be as effective as EPA's original program to reduce the transport of harmful emissions across state lines. But the agency says it is crucial that states be required to continue to go forward with emission cuts while it appeals the court's decisions.



In a letter to governors from several northeastern states, EPA Administrator Carol M. Browner said: "While these court decisions are undergoing review there are important steps we can take to ensure cleaner air." The 11 governors who received the letter represent states that have petitioned EPA, saying they cannot meet air standards because of pollution drifting across their borders from other states.

The petitions, based on Section 126 of the Clean Air Act, originally were considered by EPA to be a "back stop," according to an agency spokesman. They were to be used only if states weren't satisfied under the more inclusive regional ozone rules, he says. Those are rules that have now been put on hold by the court.

The upheaval began on May 14, when the U.S. Court of Appeals for the District of Columbia remanded the eight-hour portion of the [National Ambient Air Quality Standard](#) (NAAQS) for ozone, saying that it was based on "an unconstitutional delegation of legislative power" and that EPA had used no "intelligible principle" when setting the standard ([C&EN, May 24, page 5](#)). That ruling also remanded the revised standard for particulate matter. Eleven days later, the same court granted a motion to stay the deadlines for submission of state implementation plans (SIPs) for NO_x emission cuts, the so-called NO_x SIP call.

The NO_x SIP call would have required reductions from 22 states and Washington, D.C., as part of a regional program to cut the transport of ozone across state borders.

EPA's first response to the court decisions was to issue an interim final rule that temporarily stayed--until Nov. 30--the effectiveness of its final rule related to the states' Section 126 petitions. This would allow the agency time to conduct a notice-and-comment rulemaking to address issues that arose from the court's rulings.

Second, the agency issued a final rule extending the time frame for consideration of Section 126 petitions from three of the states--Delaware, Maryland, and New Jersey.

Its third step was to propose an amendment to two aspects of its final rule on the petitions. The final determinations on the petitions were issued at the end of April. Under the amended proposal, EPA would grant state petitions that it found technically valid. It also would indefinitely stay any technical determinations based on the now-pending eight-hour standard.

The Section 126 petitions that EPA found to be technically valid based only on the older, one-hour ozone standard are from Connecticut, Massachusetts, New York, and Pennsylvania. Maine, New Hampshire, Rhode Island, and Vermont also submitted petitions, but EPA found those not to have technical merit. Those states may submit new petitions in light of the recent rulings.

Because the one-hour standard was not brought into question by the appeals court, EPA is proposing to "decouple" it from the rest of the rule. In the new proposed rule, the agency wrote, "EPA . . . believes that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts with respect to the eight-hour standard that could be construed as inconsistent with the court's ruling."

The revised proposal offers "as much protection as is currently legally available," Browner said at a briefing when she announced the agency's plans.

David Friedland, an environmental attorney with Washington, D.C.-based law firm Beveridge & Diamond, says this is a way for EPA to live with the court's decisions and still keep the program moving forward.

EPA estimates that the emission cuts required for 22 states and Washington, D.C., under the NO_x SIP call would have reduced NO_x emissions by about 1.1 million tons per year by the implementation date of 2003. The current revised plan, which so far would require cuts from only 12 states and Washington, D.C., would cut emissions by about 60% of that by 2003, the agency says.

The states that would have to cut NO_x pollution under the revised rule are Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia, as well as Washington, D.C. Several of those states filed Section 126 petitions, blaming other states for part of their pollution problems. Under the NO_x SIP call, additional states that would be affected are Alabama, Connecticut, Georgia, Illinois, Massachusetts, Missouri, Rhode Island, South Carolina, Tennessee, and Wisconsin.

NO_x is a major contributor to ground-level ozone, the primary component of smog. Ozone in the lower atmosphere can cause a variety of health problems, especially those that affect children and people with asthma. In addition, nitrogen pollutants in the air contribute to the acidification of lakes and streams.

The facilities that will be affected by reduction cut requirements are primarily coal-burning power plants in the midwestern and southeastern U.S. Under the NO_x SIP call, it would be up to individual states to determine which plants must make cuts. But according to environmental attorney Friedland, the Section 126 petitions that EPA now plans to use are more specific and some are directed at individual utilities. He says the petitions could target any large plants that have a combustion source, including refineries.

A recent Senate hearing addressed many issues related to the NO_x SIP call. According to [Sen. James M. Inhofe](#) (R-Okla.), chairman of the Senate Environment & Public Works Committee's Subcommittee on Clean Air, Wetlands, Private Property & Nuclear Safety, which held the hearing, the recent court decisions have created confusion within states about how to go about NO_x reductions. He said some states are going forward with original SIPs, some are using altered plans that would not meet EPA requirements, and some are not doing anything at all until the court case has been decided.

Inhofe, who has been critical of many of EPA's air rules, said problems such as these could have been avoided if EPA had worked with states in setting standards. He said states had offered a compromise plan to cut NO_x that EPA had essentially ignored.

State and local officials from several midwestern and southeastern states who testified at the hearing criticized what they said were EPA's unreasonable and potentially unfeasible requirements.

Another subcommittee member, [Sen. George V. Voinovich](#) (R-Ohio), said that by compromising, EPA could have avoided the lawsuits that have now brought the rules into question.

Voinovich suggested that states could write letters to Browner to work out a deal or that perhaps a solution could be brought about through legislation.

But representatives from northeastern states were supportive of EPA's standards at the hearing. Officials from Maine and Connecticut testified that their states are doing as much as they are asking others to do to reduce their pollution, but they will not be able to meet air standards until upwind states make serious cuts.

Subcommittee member [Sen. Joseph I. Lieberman](#) (D-Conn.) said he is "dismayed" that his state is "choking on the exhaust of others" and that the state government is powerless to protect its people. He believes EPA's rules make sense and said he supports the NO_x SIP call. And he added that he is hopeful the courts will overturn the recent rulings.

EPA published the amended rule for Section 126 petitions in the *Federal Register* on June 24, and the rule will be open for comment until Aug. 9. The agency also will hold a public hearing at EPA headquarters in Washington, D.C., on July 8. The EPA spokesman tells C&EN that he expects the proposal to face legal challenges, because all of the agency's air rules do.

At the briefing to announce the planned rule, Browner said: "We continue to believe that the recent court decision [on NAAQS] was bizarre and extreme. We are vigorously pursuing all of our legal remedies and continue to believe that the court's decision will be reversed upon review."

"In the meantime, through these actions," she said, "we are taking steps today to ensure that people living in the eastern U.S. will still receive the public-health protections promised by the letter and spirit of the Clean Air Act." ▶

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