



April 8, 2002

The Honorable Jeffrey R. Holmstead  
Assistant Administrator  
Office of Air and Radiation (6101A)  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Connecticut

Delaware

District of Columbia

Maine

Maryland

Massachusetts

New Hampshire

New Jersey

New York

Pennsylvania

Rhode Island

Vermont

Virginia

Dear Administrator Holmstead:

I am writing to express concerns in response to the U.S. Environmental Protection Agency's (EPA's) recent announcement that it will delay to May 31, 2004, the implementation date of sources subject to the "Section 126" rule, which is designed to address interstate ozone transport from upwind sources. Taking such action will make the Section 126 rule implementation date identical to the current implementation date of the regional "NOx SIP call" rule.

Children, individuals with acute and chronic respiratory problems, and healthy individuals working or exercising outdoors are particularly at risk from ozone exposure. We cannot accept any further delays in implementing Section 126 emission reductions, as they will only postpone our citizens' access to clean air. While court challenges have complicated your Agency's progress towards implementation, quick and decisive action by EPA to expedite the required NOx emission reductions must be a priority.

Historically, the Ozone Transport Commission (OTC) has supported Federal initiatives that address transport of ozone and ozone precursors into our region, including the NOx SIP call. However, due to the concerns about the cumbersome SIP call process, the desire to protect public health in a timely fashion, and the three-year timeframe for regulating contributing sources that Section 126 of the Clean Air Act provides, all jurisdictions of the OTC, except Virginia, filed petitions with EPA under Section 126. These petitions were developed and submitted, beginning in August 1997, because of the priority the petitioning States placed on quick and successful action to address the ozone transport issue.

Bruce S. Carhart  
Executive Director

However, EPA's response to the Section 126 petitions have not been expeditious. Shortly after the petitions were submitted, EPA chose to regard the Section 126 rule as a functional backstop to the NOx SIP call. The current implementation date for the Section 126 rule represents more than a doubling of the implementation period provided for in the statute. EPA's actions underscore the low priority that it has given to implementing a Section 126 remedy, and its inability over the years to provide timely relief under Section 126 flies in the face of the three-year deadline prescribed in the Clean Air Act.

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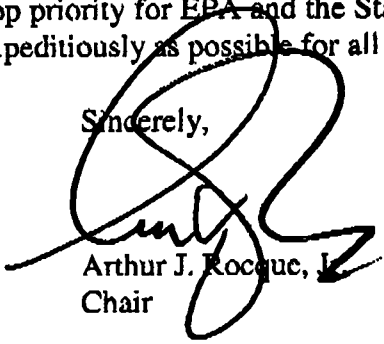
For many years, the petitioning OTC States have been actively seeking remedies to address the transport problem. While EPA may consider the Section 126 rule as a backstop rule to its NOx SIP call program, we agree with the recent U.S. Court of Appeals decision that recognized Section 126 as an independent requirement of the Clean Air Act, which establishes mandatory requirements and timeframes for sources significantly contributing to nonattainment in downwind areas. In August 2001, eight Governors in our region sent a letter emphasizing the importance of prompt action by EPA on the Section 126 petitions.

The petitioning OTC States have fulfilled their commitments to reduce ozone and ozone precursor emissions within their areas pursuant to the NOx SIP call and the Section 126 programs, and new NOx regulations will become effective by May 1, 2003. We are relying on the reductions in ozone and ozone precursor emissions from outside of the Ozone Transport Region (OTR) in order to achieve clean air and attain the one-hour ozone standard. Many sources have been working in good faith to meet the May 2003 deadline by installing the required NOx controls. EPA should support those commitments, especially those of sources outside of the OTR that have acted on their legal obligations.

OTC would like EPA to respond, in writing, as to its commitment to and the specific actions it will take over the next 14 months to ensure that the Section 126 and the NOx SIP call programs will be successfully implemented by May 31, 2004. We want assurances that both programs have the support that they need to be successful. As promised at the February 2002 OTC meeting, EPA indicated it would complete its growth factor analysis by the end of March 2002, so that the statutory schedule and process for sources affected by Section 126 could recommence immediately. That has not occurred and it is our understanding that EPA now intends to complete this analysis and action by mid-April. This recent development further intensifies our concern over the level of EPA's priority on this issue. EPA must complete both its analysis and commencement of its Section 126 process by mid-April. In addition, any proposed legislation in Congress -- even legislation that includes reductions similar to or beyond those of the NOx SIP call or the Section 126 rule -- must not be portrayed as a legitimate rationale to further delay or loosen the stringency of the Section 126 remedy or the NOx SIP call.

We would rather see meaningful and timely reductions through these programs than to engage in future legal challenges. The public health mandate of the Clean Air Act demands that reductions in transported ozone and its precursors be a top priority for EPA and the States. We stand ready to work with you to achieve healthful air as expeditiously as possible for all of our citizens.

Sincerely,

  
Arthur J. Rocque, Jr.  
Chair

AJR:CJ:emw

CC: All OTC State Members  
Robert Brenner, EPA  
John Seitz, EPA  
Lydia Wegman, EPA