

December 19, 1997

Highlights of the Memorandum of Agreement Concerning Schedule for EPA Action on Section 126 Petitions

- The Environmental Protection Agency (EPA) and eight States have agreed on a schedule for the Agency to take action on Section 126 petitions concerning transport of ozone-smog precursors across the eastern region of the United States. The schedule requires EPA to take action on the petitions by April, 1999, except that under certain circumstances, EPA action may occur as late as May, 2000. The Agreement does not require EPA to make any specific, substantive decisions on the Section 126 petitions
- In August 1997, Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania and Vermont, citing Section 126 of the Clean Air Act, filed petitions with EPA to reduce the transport of ground-level ozone pollution. The petitions ask EPA to make a finding that utilities and other sources of nitrogen oxides (NO_x)--a precursor to ozone-smog--exacerbate ozone problems in the eight petitioning states. All the petitions target sources in the Midwest; some of the petitions target additional sources in the south, southeast, and northeast. If EPA agrees and makes the requested finding, EPA would establish federal emissions controls on the targeted sources.
- In a related action dated November 7, 1997, EPA published, in the Federal Register, a proposed determination that NO_x emissions from twenty-two States and the District of Columbia were contributing significantly to region-wide ozone pollution in the eastern United States. This EPA action (hereafter referred to as the Ozone Transport Rule) proposed that each of the 22 States and the District of Columbia revise their State Implementation Plan (termed, "SIPs", which are the set of state rules controlling air pollution under the Clean Air Act) to impose tighter limits on NO_x emissions. The Ozone Transport rule is scheduled to be finalized by September, 1998.
- The Section 126 petitions and the Agency's proposed Ozone Transport Rule are both designed to reduce NO_x emissions that travel across the eastern United States and contribute to regional ozone problems. The Section 126 petitions request that EPA establish emission limitations and compliance schedules for groups of stationary sources that may also be subject to controls by States and the District of Columbia in their response to EPA's Ozone Transport Rule.
- On December 18, 1997, the eight states that submitted Section 126 petitions and EPA completed a Memorandum of Agreement in which they agreed to an overall schedule designed to ensure that the EPA will take timely action on States' petitions while recognizing that the Agency is simultaneously examining regional transport of ozone in the Ozone Transport Rule.

- The schedule contained in the Memorandum of Agreement harmonizes the timeframe for action on the Section 126 petitions with EPA's anticipated schedule for action on the Ozone Transport Rule. In the event EPA finalizes an Ozone Transport Rule providing for emission reductions from the states in which sources targeted by the Section 126 Petitions are located, this schedule would allow the time needed for EPA to take into account state compliance with that rule in taking action on the Section 126 petitions.

- Specifically, under the Memorandum of Agreement, EPA will issue an advance notice of rulemaking on the Section 126 petitions by April 30, 1998, and a proposed notice of rulemaking by September 30, 1998. The Agreement requires EPA to take a final action, granting or denying the petitions, by April 30, 1999, unless, by that date, EPA establishes the following schedule for action on the petitions:
 - By April, 1999, EPA may determine that the Section 126 petitions are technically meritorious in that they accurately identify utilities or other sources whose NOx emissions exacerbate ozone problems in the petitioning states, and determine an appropriate remedy, but postpone imposing control requirements.
 - This schedule would allow the 22 states and the District of Columbia an opportunity to respond to the final Ozone Transport Rule before EPA makes any final finding under Section 126.
 - If those States submit SIPs for EPA review, and if EPA proposes to approve those SIPs by November 30, 1999 and finalizes approval by May 1, 2000, EPA may delay taking any necessary final action on the Section 126 petitions until May 1, 2000.
 - However, if EPA does not propose to approve the SIPs by November 30, 1999, or take final action to approve them by May 1, 2000, then, to the extent that EPA determined in April 1999 that the petitions were technically meritorious the Section 126 petitions will be treated as automatically granted as of those dates.
 - Approval of the Section 126 petitions--automatic or otherwise--would mean that the affected sources would be required to reduce NOx emissions that significantly contribute to interstate transport of ozone.

- The attached timeline outlines the schedule for action agreed to by EPA and the eight States.

Timeline for EPA Review of Section 126 Petitions

August 14-15, 1997	Citing Section 126 of the Clean Air Act, Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania and Vermont filed petitions requesting that EPA examine the transport of ozone pollution from upwind sources.
November 7, 1997	EPA proposed Ozone Transport Rule under Section 110 of the Clean Air Act.
December 18, 1997	States and EPA agree on schedule to review the 126 petitions
April 30, 1998	EPA will publish an advance notice of proposed rulemaking.
September 30, 1998	EPA will publish a notice of proposed rulemaking on the 126 petitions.
October 30, 1998	Public hearing on the proposed rulemaking.
April 30, 1999	EPA will take a final action on Section 126 petitions. EPA could determine that the 126 petitions are technically meritorious in that they accurately identify sources whose NO _x emissions exacerbate ozone problems in the petitioning states, and determine an appropriate remedy, but postpone imposing control requirements.
November 30, 1999	If EPA so chooses, the April 30, 1999 rule, may provide that the Section 126 petitions will be automatically granted if EPA does not propose to approve SIPs submitted in response to the Ozone Transport Rule by the states whose sources are targeted by the Section 126 petitions. The petitions would only be automatically granted to the extent that EPA had determined in April 1999 that the petitions were technically meritorious.
May 1, 2000	If EPA so chooses, the April 30, 1999 rule may further provide that the Section 126 petitions will be automatically granted if EPA does not take final action approving SIPs submitted in response to the Ozone Transport Rule by the states whose sources are targeted by the Section 126 petitions. The petitions would only be automatically granted to the extent that EPA had determined in April 1999 that the petitions were technically meritorious. If EPA has taken the appropriate proposed and final actions by the appropriate dates for the Ozone Transport Rule SIPs, then EPA will take whatever final action on the Section 126 Petitions that EPA considers necessary by May 1, 2000.