

**MEMORANDUM OF AGREEMENT CONCERNING
SCHEDULE FOR EPA ACTION ON SECTION 126 PETITIONS**

WHEREAS:

- a. EPA has proposed the NOx SIP call.
- b. EPA has proposed to promulgate final action on the NOx SIP call by no later than September 30, 1998.
- c. EPA has proposed to allow the upwind states until September 30, 1999 to submit their SIPs.
- d. EPA has proposed to promulgate a FIP immediately after September 30, 1999 for each upwind state that fails to submit a SIP that meets the terms of the SIP call by that date.
- e. EPA has proposed to require the upwind States to implement controls by September 30, 2002, although EPA is taking comment on later dates of until September 30, 2004.
- f. On or about August 14-15, 1997, EPA received eight petitions under section 126 of the Clean Air Act ("CAA"), which were submitted by the States of Connecticut, Maine, New Hampshire, New York, Rhode Island, and Vermont; and the Commonwealths of Massachusetts and Pennsylvania (the "Section 126 Petitioners").
- g. The section 126 petitions request EPA to establish emission limitations and compliance schedules for groups of stationary sources that may also be the subject of emission limitations in SIP plans submitted in response to the NOx SIP call.
- h. EPA and the Section 126 Petitioners desire to establish a mutually agreeable schedule for action on the section 126 petitions:

NOW THEREFORE IT IS AGREED:

1. If any of the Section 126 Petitioners bring any lawsuit to compel EPA action on any section 126 petitions, EPA and the Section 126 Petitioners will jointly present to the court a proposed Consent Decree that incorporates the terms of this Memorandum of Agreement. This Memorandum shall cease to have any effect after said proposed Consent Decree is presented to a court of competent jurisdiction for entry into judgment.
2. As a result of this Agreement, EPA will not claim further extensions under CAA section 307(d)(10).

3. EPA will publish in the Federal Register an advance notice of proposed rulemaking regarding the section 126 petitions by no later than April 30, 1998. Said notice shall include, at a minimum --

a. Specification of the schedule set forth herein for finalizing action on the section 126 petitions, including the date and location of the public hearing.

b. EPA's preliminary identification (by type and geographic location) of sources, if any, that meet the "contribute significantly to nonattainment" or "interfere with maintenance" tests under CAA section 110(a)(2)(D)(i). For purposes of this Agreement, the term "sources" shall refer to sources or groups of sources.)

c. EPA's preliminary assessment of the types of recommended emission limitations and compliance schedules, set forth in the section 126 petitions, applicable to said sources (hereinafter, the "remedy").

d. A description, and request for comment on, any legal and policy issues raised under section 126.

4. EPA will publish in the Federal Register a notice of proposed rulemaking regarding the section 126 petitions by no later than September 30, 1998.

5. EPA will hold a public hearing on the section 126 petitions no later than 30 days after publication of the notice of proposed rulemaking.

6. a. EPA will take a final action on the section 126 petitions by no later than April 30, 1999.

b. Unless EPA takes the final action described in Paragraph 7, as to each individual petition, EPA's final action will be to --

(i) Grant the requested finding, in whole or part; and/or

(ii) Deny the petition, in whole or part.

c. Unless EPA denies a petition in whole, its final action will include promulgation of the remedy for sources to the extent that a requested finding is granted with respect to those sources.

7. EPA shall be deemed to have complied with the requirements of Paragraph 6(a) if it instead takes a final action by April 30, 1999, that --

a. Makes an affirmative determination concerning the technical components of the "contribute significantly to nonattainment" or "interfere with maintenance" tests under CAA section 110(a)(2)(D)(i);

b. Further provides that--

(i) If EPA does not issue a proposed approval of the relevant upwind State's SIP revision (submitted in response to the NOx SIP call) by November 30, 1999, then the finding will be deemed to be granted as of November 30, 1999, without any further action by EPA;

(ii) If EPA issues a proposed approval of said SIP revision by November 30, 1999, but does not issue a final approval of said SIP revision by May 1, 2000, then the finding will be deemed to be granted as of May 1, 2000, without any further action by EPA; and

(iii) If EPA issues a final approval of said SIP revision by May 1, 2000, EPA must take any and all further actions, if necessary to complete its action under section 126, no later than May 1, 2000; and

c. Promulgates the remedy for sources to the extent that an affirmative determination is made with respect to those sources.

8. The Parties note that CAA section 126(c) requires that sources comply with any remedy EPA may impose as expeditiously as practicable, but in no case later than three years from the date the finding is made.

9. Without implying limits on any of EPA's other authorities, the Parties acknowledge EPA's authority to revise or amend any remedy promulgated under section 126 in light of controls required under any SIP or FIP that EPA has finally approved or

promulgated under the NOx SIP call.

10. Nothing in this Agreement precludes any signatory from challenging any final action by EPA concerning any Section 126 Petition; the NOx SIP call; or a SIP revision submitted, or FIP promulgated, in response to the NOx SIP call.

11. In entering this Agreement, the parties do not intend to resolve or concede any issue regarding the substance and timing of any remedy that EPA may or should require in response to the section 126 petitions (except as specifically set forth in paragraphs 6, 7, and 9, with respect to the effective date and modification of a remedy), including without limitation Pennsylvania's request that the remedy be implemented on a phased basis according to the schedule required in the OTC NOx MOU.

12. Nothing in this Agreement shall be construed to condition EPA's obligation to propose action, hold a hearing, and take action with respect to the section 126 petitions by the dates specified herein upon timely action by EPA with respect to the NOx SIP call.

AGREED:

For the United States Environmental Protection Agency:

Richard D. Wilson, Acting Assistant Administrator for Air and
Radiation

For the State of Connecticut:

Arthur J. Rocque, Jr., Commissioner, Environmental Protection
Richard Blumenthal, Attorney General

For the State/Commonwealth of Maine:

E.O. Sullivan, Commissioner, DEP
Gerald Reid, Assistant Attorney General

For the Commonwealth of Massachusetts:

David B. Struhs, Commissioner, Massachusetts Department of
Environmental Protection

William L. Pardee, Assistant Attorney General

For the State of New Hampshire:

Robert W. Varney, Commissioner
Jeffrey A. Meyers, Esq., Assistant Attorney General

For the State of New York:

John P. Cahill, Commissioner, New York State Department of
Environmental Conservation

Dennis C. Vacco, Attorney General
By: J. Jared Snyder, Assistant Attorney General

For the Commonwealth of Pennsylvania:

James M. Self, Secretary, Department of Environmental Protection

Terry R. Bossert, Chief Counsel, Department of Environmental Protection

For the State of Rhode Island:

Andrew H. McLeod, Director, Department of Environmental Management

Jeffery B. Pine, Attorney General

For the State of Vermont:

Barbara G. Ripley, Secretary, Agency of Natural Resources

William H. Sorrell, Attorney General

by: Conrad W. Smith, Assistant Attorney General