

7/27/01

FACT SHEET

AVAILABILITY OF DOCUMENTS IN RESPONSE TO THE COURT REMANDS IN THE OZONE (SMOG) TRANSPORT CASES CONCERNING THE METHOD FOR COMPUTING GROWTH FOR ELECTRIC GENERATING UNITS

TODAY'S ACTION

- ! Today the Environmental Protection Agency (EPA) is making available data relevant to growth rates for heat input by electric generating units in the dockets for the two rulemakings concerning ozone-smog transport in the eastern part of the United States. Those rules are an ozone transport rule known as the NOx SIP Call and a rule responding to state petitions under section 126 of the Clean Air Act.
- ! Today's action responds to two decisions handed down earlier this year by the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) which considered challenges to EPA's calculation of growth rates in the Section 126 rulemaking and a pair of rulemakings that made technical corrections to the NOx SIP Call final rule.
- ! In these decisions, the D.C. Circuit upheld the major provisions of EPA's ozone transport rules, but remanded the growth component to EPA for a better response to certain data presented by the affected states and industry concerning actual heat input, and for a better explanation of EPA's methodology.
- ! With today's notice, EPA is stating its preliminary view that the growth calculations and methodology the Agency used were reasonable and can be supported with a more robust explanation, based on the existing record, that takes into account the court's concerns.
- ! EPA is also considering new data that, the Agency has recently placed in the dockets for the NOx SIP Call and Section 126 rules.
- ! EPA believes these new data confirm the reasonableness of the growth factors used by the Agency.

WHAT HAPPENS NEXT

- ! Through this notice, EPA is making the new data available for the public and providing a 30-day period for the public to comment on this data.

- ! EPA intends to complete its response to the Court's remands on electric generating unit growth rates in the fall of 2001.

BACKGROUND

- ! Ground-level ozone can be a problem over broad regional areas, particularly in the eastern United States, where ozone and the compounds that form it {primarily oxides of nitrogen (NO_x) and volatile organic compounds} are transported by the wind. These compounds, as well as ozone itself, can travel hundreds of miles across State boundaries to affect public health in areas far from the source of the pollution. Thus, cities or areas with "clean" air, those that meet or attain the national air quality standards for ozone, may be contributing to a downwind city's ozone problem because of transport.
- ! In order for many cities in the eastern US to meet the 1-hour national air quality standards for ozone, NO_x emissions from upwind sources must be reduced. The NO_x SIP Call and the Section 126 Rule both address NO_x transport in the eastern U.S.
- ! EPA promulgated the NO_x SIP Call rule on October 27, 1998, and the Section 126 rule on May 25, 1999.
- ! The NO_x SIP Call, the Technical Amendments, and the Section 126 rule were challenged by various groups of States and industries in the U.S. Court of Appeals for the D.C. Circuit.
 - < On March 3, 2000, the D.C. Circuit largely upheld EPA's NO_x SIP Call rule, although partially vacating and remanding the SIP Call on certain specific issues. No party to that litigation specifically raised any issue concerning EPA's method for computing the growth component for the EGU Budget.
 - < On May 15, 2001, the D.C. Circuit largely upheld EPA's Section 126 rule. In response to a direct challenge by parties to EPA's method for determining EGU growth rates, the Court remanded that part of the rule to EPA.
 - < On June 8, 2001, the D.C. Circuit decided challenges to the Technical Amendments. Although largely upholding the Technical Amendments, the Court remanded the EGU growth rates.

FOR MORE INFORMATION

- ! To download copies of this action, the NOx SIP Call, the Technical Amendments, or the Section 126 Rule, go to EPA's Web site at the following addresses: <http://www.epa.gov/ttn/rto> or <http://www.epa.gov/ttn/oarpg> .

- ! The new documents, and other documents relevant to these rulemakings, are available for inspection at the Docket Office, Docket NO. A-96-56 for the NOx SIP Call, and Docket NO. A-97-43 for the Section 126 Rule, located at 401 M Street SW, Room M-1500, Washington, DC 20460, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. Some of the documents have also been made available in electronic form at the following EPA website: <http://www.epa.gov/airmarkets/fednox/126noda/>.

- ! To download a copy of the Court's rulings on the three rulemakings discussed above, go to the March 2000, May 2001, and June 2001 sections on <http://pacer.cadc.uscourts.gov/common/opinions/> .

- ! Questions concerning today's notice should be directed to Kevin Culligan, Office of Atmospheric Programs, Clean Air Markets Division, 6204M, 1200 Pennsylvania Ave. NW, Washington, DC 20460, telephone (202) 564-9172, e-mail at culligan.kevin@epa.gov ., or Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-3347, e-mail at oldham.carla@epa.gov.