

US EPA ARCHIVE DOCUMENT

PUBLIC HEARING ON
NOTICE OF PROPOSED RULEMAKING
ON SECTION 126 PETITIONS

Proposal to Amend Two Respects
of May 25, 1999 Final Rule
(64 FR 28250)

July 8, 1999

9:00 a.m.

EPA Auditorium
401 M Street, S.W.
Washington, D.C.

C O N T E N T S

PRESENTATION OF:	PAGE
Norman Fichthorn UARG	8
Bryan Roosa State of Michigan	11
Michael Bradley M.J. Bradley and Associates	16
Kathy Beckett Midwest Ozone Group	22

P R O C E E D I N G S

1
2 MR. HELMS: I'd like to welcome you here
3 today and thank you for attending EPA's public hearing
4 on the proposal to amend two aspects of the final rule
5 on section 126 petitions. This final rule was signed
6 by the administrator on April 30, 1999.

7 I'm Tom Helms with EPA's Office of Air
8 Quality Planning and Standards. Alexander Tietz of our
9 Office of General Counsel is here with me. Peter
10 Tsirigotis, from our Acid Rain Division, will be here
11 very shortly. We're glad to have you here. Let me
12 give you a little bit of background and purpose of the
13 session today.

14 In 1997-'98 time frame, eight northeast
15 states submitted petitions under section 126 of the
16 Clean Air Act seeking to mitigate the interstate
17 transport of NOX emissions, a main precursor of the
18 formation of ozone. All of the states petitioned. All
19 of these eight states petitioned under the 1-hour ozone
20 air quality standard and five of the states also
21 petitioned under the 8-hour ozone standard.

22 On April 30th, when EPA issued a final rule,

1 in that rule, EPA determined that portions of the
2 1-hour and the 8-hour petitions that were submitted
3 were technically approvable. However, EPA deferred
4 making the section 126 petition findings that would
5 trigger control requirements for certain upwind
6 stationary sources as long as the states and EPA stayed
7 on a schedule to meet the requirements of EPA's NOX SIP
8 call. The NOX SIP call is a related action that
9 addresses NOX transport in the eastern half of the
10 United States.

11 We're now proposing today to amend certain
12 aspects of the section 126 final rule in light of two
13 recent court decisions by the U.S. Court of Appeals in
14 the District of Columbia. In one ruling, the Court
15 remanded the 8-hour air quality standard for ozone
16 which formed the underlying technical basis for certain
17 EPA determinations under section 126. In that ruling,
18 the Court left the 8-hour standard in place based on
19 its determination that it could not be enforced.

20 In a separate action, the D.C. Circuit
21 granted a motion to stay the SIP submission deadlines
22 established pursuant to the NOX SIP calls.

1 Because there is no longer a set schedule for
2 complying with the NOX SIP call, this section 126
3 proposal, the one we're talking about today, removes
4 the link between the NOX SIP deadline and the final
5 action granting or denying the 126 petitions. Instead,
6 EPA is proposing to take a final action later this year
7 which will simply make the section 126 findings.

8 We're also proposing to indefinitely stay the
9 8-hour portion of the rule pending further developments
10 in the ongoing NAAQS litigation. In the April 30th
11 rule, EPA made separate technical determinations under
12 the 1-hour and the 8-hour standards. The 1-hour
13 standard determinations are not affected by this Court
14 rulemaking.

15 In a separate action, EPA recently stayed the
16 effectiveness of the April 30th rule on an interim
17 basis until November 30th of this year, while EPA
18 conducts the rulemaking that we're discussing today.

19 EPA expects to promulgate a final rule on
20 this proposal on or before November 30th of this year,
21 when the interim stay expires. To address the
22 possibility of any delay in this final rule, EPA is

1 also taking comment on an extension of the interim
2 final stay of the April 30th rule in the event that EPA
3 needs more time to complete the final rule.

4 While EPA does not think that an extension
5 will be necessary, we anticipate that if one is, it
6 will be over a two- or three-month time frame.

7 Providing for this possible extension, if in fact we
8 need it, would ensure that the automatic trigger
9 deadlines for the section 126 findings, which are now
10 in place, would not become effective through a lapse in
11 the stay before EPA can take final action on this
12 proposal.

13 What success for today. We are here today to
14 listen to your comments on the proposal. EPA is only
15 soliciting comments on the specific changes proposed in
16 response to the court rulings. EPA is not reopening
17 the remainder of the April 30th final ruling for public
18 comment and reconsideration.

19 A transcript of this hearing will be
20 prepared. It will be available for inspection and
21 copying at EPA's Air and Radiation Docket Office and on
22 our Internet web site in approximately 30 days.

1 Let's focus on the ground rules for
2 conducting this hearing. This hearing is not intended
3 to be adversarial in nature. You will simply come
4 forward, make your statement. EPA may ask clarifying
5 questions of any speaker as appropriate.

6 I'll call out each speaker one at a time and
7 ask you to come forward down to this podium. We'll
8 allow you 10 minutes to make your presentation. The
9 notice said five. We'll in fact allow 10 minutes.
10 We'll hold up a sign saying one minute remaining after
11 nine minutes.

12 Hopefully you brought copies of your
13 statement and you've left them out there for the
14 record. As you come forward and start your
15 presentation, please identify yourself and the company
16 or the organization that you represent.

17 We have a contractor, E.H. Pechan and
18 Associates, here today to help us and support us. In
19 addition, JoAnn Allman of my staff and Linda Lassiter
20 are out in the back foyer. They're here to assist you
21 in any way possible. We have an overhead projector and
22 slides if you should choose to use them.

1
2 Again, I want to introduce Peter Tsirigotis,
3 Alexandra Tietz. They'll be here with me manning this
4 public hearing.

5 Are there any questions before I begin?

6 (No questions.)

7 MR. HELMS: Okay. Let's get the show moving.
8 We have signed up right now four presenters and then
9 we're having a -- someone is turning in testimony. It
10 will not be read. So we have got four people, Norm
11 Fichthorn. Norm, sorry about that. You're first on.
12 Come forward.

13 PRESENTATION BY NORMAN FICHTHORN

14 MR. FICHTHORN: Good morning. My name is
15 Norman Fichthorn, and I'm with the law firm of Hunton
16 and Williams. I'm here on behalf of the utility Air
17 Regulatory Group to provide initial comments on EPA's
18 proposed revisions to its rule under section 126 of the
19 Clean Air Act.

20 EPA is limiting this new rulemaking to two
21 changes. Both changes are attempts to react to
22 decisions of the U.S. Court of Appeals for the D.C.

1 Circuit that have disrupted EPA's plan to impose
2 massive additional NOX reductions on electric
3 utilities.

4 First, EPA recognizes that, under the Court's
5 May 14 decision in the American Trucking Associations
6 case, the 8-hour ozone standard is unenforceable. So
7 EPA is proposing to stay indefinitely its section 126
8 findings of significant contribution to projected
9 8-hour nonattainment, pending any further developments
10 in that litigation.

11 Second, reacting to the Court's May 25
12 decision that states challenging the SIP call had met
13 the criteria for a stay of the SIP submissions, EPA is
14 severing the link in the existing section 126 rule
15 between the dates for section 126 findings and the
16 dates for submission of and EPA action on
17 implementation plan revisions. The proposed rule would
18 instead make 1-hour section 126 findings effective upon
19 conclusion of the new rulemaking this fall, without
20 regard to any date for SIP submissions.

21 On June 14th, Administrator Browner wrote the
22 governors of the section 126-petitioning states about

1 EPA's plan to proceed with 1-hour findings, quote,
2 unimpeded, close quote, by the Court's stay. And on
3 that day, the Administrator said at a briefing that EPA
4 was decoupling section 126 from the SIP call to avoid
5 having EPA's NOX control scheme become ensnared,
6 entangled and threatened, to use her words, by judicial
7 proceedings.

8 At this time, we offer the following initial
9 comments.

10 First, UARG welcomes EPA's recognition that
11 it cannot move forward with 8-hour findings. Rather
12 than merely stay these findings, however, EPA should
13 proceed to deny the 8-hour parts of the section 126
14 petitions on the grounds not only that the 8-hour
15 standard is unenforceable but also that, even without
16 the ATA holding, it turns the Act on its head to impose
17 emission controls on out-of-state sources to address
18 projected future 8-hour nonattainment before any state
19 is required to revise its own SIP to address that
20 nonattainment within its own borders.

21 Second, EPA should not cut the link between
22 dates for section 126 findings and dates for

1 implementation plan actions. Just six weeks ago, in
2 publishing the section 126 rule, EPA described
3 compelling reasons for that link; giving effect to the
4 central role of the implementation plan process,
5 avoiding unnecessary and burdensome competing control
6 schemes, and avoiding impermissible pressure on states
7 to conform their SIPs to the section 126 controls.
8 These reasons for maintaining linkage have not
9 disappeared merely because EPA has encountered a
10 judicial impediment to its NOX control strategy.

11 Finally, UARG urges EPA to consider on the
12 merits the comments that it receives on this proposal.
13 We are not encouraged by the Administrator's
14 characterization of the proposal on June 14th as a,
15 quote, technical step, or by her letter to the
16 governors assuring EPA's state allies that it will
17 decouple section 126 from the SIP call.

18 Thank you for the opportunity to present
19 these comments. UARG will submit written comments by
20 the end of the comment period.

21 Do you have any questions?

22 MR. HELMS: Thank you.

1 MR. FICHTHORN: Thank you.

2 MR. HELMS: No questions. Thank you very
3 much.

4 Our next presenter from the State of
5 Michigan, Bryan Roosa.

6 PRESENTATION BY BRYAN ROOSA

7 MR. ROOSA: Good morning. My name is Bryan
8 Roosa, and I am the Deputy Director of the State of
9 Michigan, Washington Office. This testimony is
10 provided on behalf of the Michigan Department of
11 Environmental Quality. I will gladly convey any
12 questions you may have for a written response from the
13 Department. My comments today address the U.S. EPA's
14 latest in a long and incredible series of proposed
15 rulemakings aimed at reducing ozone transport.

16 EPA's attempt to apply a draconian level of
17 control on sources in the eastern U.S. has been a
18 tangled web of misapplied legal authority and
19 inadequate technical analysis. This most recent
20 proposal is yet another inappropriate action.

21 At the heart of our disagreement with this
22 rulemaking, and related rulemakings, is that the NOX

1 reductions EPA is seeking are not necessary to address
2 Michigan's contribution to ozone problems in downwind
3 states. We have repeatedly submitted detailed comments
4 and technical analysis which confirms this extreme
5 level of control is unnecessary.

6 We have also consistently argued that the
7 level of control in Michigan, or any other state for
8 that matter, should be based on the state's
9 contribution to nonattainment in another state. In
10 fact, my governor and the governors of several other
11 states in the Midwest and the Southeast submitted
12 alternative proposals to EPA that included substantial
13 NOX reductions. Our technical analysis confirmed that
14 our alternative proposal is adequate to address
15 Michigan's contribution to ozone nonattainment in
16 downwind states.

17 The Clean Air Act allows EPA to address
18 transport of air pollution from one state to another
19 when it is significant. It also requires controls on
20 contribution that a state has to ozone nonattainment in
21 another state. The EPA's attempts to impose an extreme
22 and uniform level of NOX control throughout the eastern

1 U.S. is obviously driven by policy considerations, not
2 air quality impacts.

3 EPA has rejected a different level of control
4 in the Midwest and Southeast in order to level the
5 economic playing field with the Northeast. While these
6 may be valid policy in the mind of those at EPA, it is
7 not what the Clean Air Act provides.

8 Nowhere are the EPA's policy considerations
9 more evident than with this rulemaking. EPA claims to
10 be revising the basis for controls from the new 8-hour
11 ozone standard to the old 1-hour standard. And yet the
12 level of control that the EPA is seeking in Michigan
13 has not changed. We argue that it is technically and
14 scientifically impossible for Michigan to have the same
15 impact with regard to two dramatically different
16 standards.

17 Now we are here once again to urge the EPA to
18 examine our technical analysis in making decisions on
19 the appropriate levels of NOX controls in an unbiased
20 and scientific manner. It is unfortunate that
21 throughout this regulatory process to reduce ozone
22 transport, the public affected by EPA's actions,

1 including states, have been hampered in their ability
2 to analyze each rulemaking due to the lack of
3 availability of necessary information.

4 EPA has released critical components of each
5 rulemaking in a piecemeal manner. Emission inventory
6 information has been in a constant state of flux, the
7 modeling revised frequently. Changes have often been
8 made after the agency closed the period for comment.
9 When information was made available, it was usually in
10 a form that was difficult to access and analyze.

11 Now EPA is announcing that the details of the
12 proposed remedy for the 126 petitions will not be
13 finalized on July 15, as previously announced.

14 Instead, the EPA plans to identify the targeted
15 sources, reveal the unit-by-unit allocations for the
16 sources, and specify the basis for the total tonnage
17 cap at the same time it makes the section 126 findings
18 on November 30th.

19 This leaves affected parties in a difficult
20 position to comment at this time on the level of
21 emissions control which the EPA will determine to be
22 necessary to reduce culpable emissions that cause

1 violations of the 1-hour standard in downwind states.

2 We emphasize that the level of control must be modified
3 from the level EPA proposed to mitigate transport
4 contributing to the 8-hour ozone standard.

5 In conclusion, we also express additional concern
6 about the timing of this rulemaking, in that EPA
7 intends to finalize this action well before the U.S.
8 Circuit Court of Appeals is likely to rule on the
9 merits of the NOX SIP call litigation.

10 This appears to be an unabashed effort on the
11 part of EPA to circumvent the legal proceedings and
12 impose its predetermined mandate on the states
13 regardless of what common sense and the most recent
14 science on ozone transport dictates.

15 While we appreciate this opportunity to
16 testify, please be assured we will be submitting
17 written comments on this rulemaking.

18 Thank you.

19 MR. HELMS: Thank you. Thank you very much.

20 MR. ROOSA: Thank you.

21 Our third presenter, Michael Bradley.

22 PRESENTATION BY MICHAEL BRADLEY

1 MR. BRADLEY: Good morning. My name is
2 Michael Bradley. I'm from the firm M.J. Bradley and
3 Associates. I'm here to represent the Clean Energy
4 Group. The members of the Clean Energy Group are major
5 electric generating companies that are committed to the
6 provision of clean energy and responsible environmental
7 stewardship.

8 The 10 Clean Energy Group member companies
9 operate power plants throughout the United States,
10 including the Northeast, Southeast, Mid-Atlantic and
11 West Coast, as well as in Canada. These companies
12 include Northeast Utilities, PECO Energy, ConEd, Key
13 Stem Energy, Mohawk, Ontario Power Generation, Inc.,
14 PG&E Generating, Semper Energy, PSE&G and Rochester Gas
15 and Electric.

16 In light of the Clean Energy Group member
17 companies' commitment to support policies that are
18 sustainable from both an economic and an environmental
19 perspective, these companies have long supported EPA's
20 efforts to develop a regional NOX reduction program for
21 the control of ground level ozone. More specifically,
22 the Clean Energy companies believe strongly that a

1 regional, seasonal emissions cap and NOX trading
2 program implemented by 2003 are necessary, cost
3 effective and technically feasible.

4 For example, the members of the Clean Energy
5 Group have determined that compliance with a NOX SIP
6 call would have no impact on electric system
7 reliability during the periods of peak electricity
8 demand.

9 While electricity providers may be struggling
10 now with reliability due to the widespread
11 recordbreaking summer temperatures, the installation of
12 NOX controls for the NOX SIP call, or in reaction to a
13 126 petition, will be widely achieved during non-peak
14 periods; in other words, not during the summer period.
15 This reliability report will be submitted to EPA for
16 the record for both the 126 proceeding and any other
17 proceeding that's related to it.

18 As a result of the recent court rulings which
19 other presenters summarized effectively, affecting both
20 the 8-hour ozone standard as well as the schedule for
21 the NOX SIP call, the Clean Energy Group agrees that it
22 is appropriate and necessary for EPA to revise the

1 April 30, 1999 section 126 notice of final rulemaking.

2 Since 1970, section 126 of the Clean Air Act
3 has provided a mechanism for states to petition the EPA
4 Administrator when sources located upwind interfere
5 with the ability of a downwind state to achieve and
6 maintain national health-based air quality standards.

7 The ability to petition the Agency when
8 pollutants are transported across state borders is a
9 critical feature of the Clean Air Act, particularly
10 when dealing with the release and transport of nitrogen
11 oxides and the subsequent formation of ground level
12 ozone. These pollutants do not respect state
13 boundaries. And in the absence of a regional reduction
14 requirement, states in the Northeast will continue to
15 face elevated, concentrated ozone levels. The ozone
16 alerts announced throughout the region so far this
17 season are simply a reminder that the problem still
18 exists.

19 In 1998, following several years of extensive
20 modeling analysis under the auspices of the ozone
21 transport assessment process, eight states in the
22 Northeast filed petitions under section 126. Earlier

1 this year, three additional states in the ozone
2 transport region, those being Delaware, Maryland and
3 New Jersey, also filed 126 petitions.

4 In April of '99, EPA found six of the
5 original eight petitions to be basically approved
6 technically; that is, with regard to the 1-hour
7 standard, large electric generating units in Delaware,
8 Indiana, Kentucky, Maryland, Michigan, North Carolina,
9 New Jersey, New York, Ohio, Pennsylvania and Virginia,
10 also West Virginia and D.C., were found to contribute
11 significantly to nonattainment or to interfere with
12 maintenance in one or more of the states that submitted
13 the 126 petitions.

14 The Clean Energy Group believes that the
15 Agency, in responding to these petitions, established a
16 reasonable trigger mechanism for acting on 126
17 petitions when it based its schedule and tied it to the
18 NOX SIP call. In fact, this trigger was negotiated in
19 an effort to ensure that sources in the affected
20 Midwest and Southeast states would not be impacted by
21 the 126 process should they proceed to comply with the
22 NOX SIP call.

1 Also, keep in mind that under section 126,
2 existing sources that are found to contribute, must
3 comply with the necessary remedy within three years
4 from the date of the finding. The Agency, again acting
5 to the advantage of the upwind states, negotiated an
6 initial year of compliance via settlement agreement to
7 ensure that there would not be a section 126 impact on
8 the affected states that, again, submitted SIPs in
9 compliance with the NOX SIP call.

10 This was agreed to because the petitioning
11 states in the Northeast recognized that the NOX SIP
12 call established a reasonable, technically feasible
13 schedule to reduce NOX emissions and to deliver the air
14 quality benefits sought by the petitioning states.

15 However, in light of the recent partial stay
16 of the SIP revisions required under the NOX SIP call,
17 this reasonable and feasible schedule is now at risk.
18 As a result, the Clean Energy Group supports the
19 agency's decision to remove this 126 trigger mechanism.
20 Maintaining this NOX SIP call-related trigger mechanism
21 is no longer justified in light of the Court's action
22 to stay the SIP revisions, and would risk delaying

1 action under the section 126 process, effectively
2 denying the petitioning states an expeditious and
3 practical resolution to their ongoing air quality
4 challenges.

5 Also, we support EPA's decision to postpone
6 implementation efforts under section 126 with respect
7 to the 8-hour ozone standard. Pending the outcome of a
8 rehearing, the Clean Energy Group also supports
9 reinstatement of the 1-hour standard or, in other
10 words, a rescission of EPA's 1-hour revocation policy.

11 The Clean Energy Group believes that it is
12 sound policy to ensure that the 1-hour ozone standard
13 is in effect with enforceable provisions while the
14 status of the 8-hour standard is reconciled.

15 It is important to note that the absence of
16 the 8-hour component will mean that fewer NOX
17 reductions are achieved as compared to under the NOX
18 SIP call. As a result, additional states, such as
19 Wisconsin, may find it necessary to submit their own
20 126 petitions as a means to achieve compliance with the
21 nonattainment provisions in the Clean Air Act.

22 Further, many Midwest states, such as

1 Michigan, Ohio and others, in their criticism of EPA's
2 technical justification for the NOX SIP call,
3 repeatedly failed to recognize the impact of their NOX
4 emissions on the air quality in southern Ontario.

5 In conclusion, although 126 is not as
6 desirable a solution as the NOX SIP call to address the
7 regional air quality concerns, the Clean Energy Group
8 companies support EPA's proposal because it delivers
9 meaningful benefits to downwind nonattainment areas in
10 the Northeast and Mid-Atlantic states. The Clean
11 Energy Group strongly supports EPA's actions to revise
12 the April 30, 1999, Section 126 Notice of Final
13 Rulemaking in light of the recent court decisions.

14 Again, the Clean Energy Group is planning to
15 submit written detailed comments prior to August 9th.
16 Thank you.

17 MR. HELMS: Thank you. Thank you very much.

18 Our next speaker, Kathy Beckett.

19 PRESENTATION BY KATHY BECKETT

20 MS. BECKETT: Good morning. My name is Kathy
21 Beckett. I'm from the law firm of Jackson and Kelly in
22 Charleston, West Virginia. I'm here to provide this

1 hearing statement on behalf of the Midwest Ozone Group
2 with regard to EPA's June 24, 1999 proposal.

3 The Midwest Ozone Group, otherwise known as
4 MOG, is an affiliation of over 30 companies, trade
5 organizations, and associations which have drawn upon
6 their collective resources to advance the objective of
7 seeking solutions to the development of legally and
8 technically sound ambient air quality regulatory
9 programs. It is the primary goal of MOG to work with
10 policy makers in evaluating air quality policies by
11 encouraging the appropriate application of science and
12 law.

13 The summary portion of the June 24, 1999
14 Federal Register explains that the agency is proposing
15 to stay, indefinitely, certain affirmative technical
16 determinations made pending further developments in
17 ongoing litigation.

18 The litigation referenced by EPA involves two
19 suits of which MOG is a party. EPA does not mention
20 that third litigation in which a number of petitions
21 were filed that directly challenge the April 30, 1999
22 final section 126 determinations. Those petitions were

1 filed in late May and early June.

2 The two D.C. Circuit cases addressed by EPA
3 call into question some of the principal assumptions
4 that were made by the agency in issuing its April 30,
5 1999 final determinations. In the May 14, 1999 D.C.
6 Circuit opinion in the American Trucking Association
7 case, questions the constitutionality of the 8-hour
8 ozone standard.

9 This decision is the first court ruling that
10 begins the unraveling of EPA's April 30th 126
11 determinations. EPA correctly concludes that since
12 certain portions of the 126 determinations were based
13 on attainment of the 8-hour ozone standard, action upon
14 those should be delayed indefinitely. MOG supports
15 this conclusion.

16 Next, the May 25, 1999 D.C. Circuit grant of
17 the petitioning parties' request for a stay of the
18 filing date for the NOX SIP call in the Michigan case,
19 created another set of problems for the 126 technical
20 determinations. Since EPA had coupled the two
21 rulemakings to provide for a single timeline for
22 implementation and a single test for significance, it

1 has been forced to try to repair the inevitable
2 unraveling of the combined rules.

3 The D.C. Circuit's stay created both a timing
4 and a substantive problem for the section 126
5 determinations. The Court has issued the stay pending
6 further ruling on the merits of the EPA NOX SIP call,
7 indicating that it has previewed the substantive issues
8 of the case and has determined that a stay is
9 justified.

10 The EPA relied on many of the same
11 substantive decisions in the section 126 determinations
12 as it did in the NOX SIP call. The continued stability
13 of the substantive bases of the section 126
14 determinations is unclear at this point in the
15 litigation.

16 In the Federal Register announcement, EPA has
17 not addressed the fact that its section 126
18 determinations are based upon many of the same legal
19 and technical elements that are the subject of the NOX
20 SIP call litigation, and which will be the subject of
21 further court rulings.

22 EPA is only proposing to decouple the timing

1 and the implementation of the two rulemakings in an
2 attempt to allow it to move forward on the section 126
3 petitions that assert nonattainment with the 1-hour
4 ozone standard. MOG strongly urges EPA to stay all
5 actions with regard to the section 126 petitions that
6 were the subject of the April 30th rulemaking, pending
7 resolution of the Court's review of the NOX SIP call.

8 The issue of the inability of the section 126
9 states to meet the 1-hour ozone standard deserves quick
10 mention, however. The section 126 petitions that are
11 the subject of this proposal and the April 30 rule
12 assert nonattainment with the 1-hour ozone standard, as
13 well as the 8-hour standard. In some areas of the
14 country, the 1-hour standard remains in effect.

15 In other areas, EPA has acknowledged, as
16 recently as June 9th, the fact that the nation is
17 experiencing ozone improvement at a rate that justifies
18 the revocation of the standard. EPA has finalized its
19 revocation of the 1-hour ozone standard for 10
20 additional areas, 2 of which are within the 126
21 petitioning states; the Boston area, the Providence
22 area, and then others to include Memphis, certain

1 Michigan counties, and Door County, Wisconsin.

2 EPA has proposed to identify seven additional
3 ozone areas where the 1-hour ozone standard no longer
4 applies. Through these and other revocations, EPA
5 itself has acknowledged that the 1-hour ozone
6 nonattainment dilemma is not as egregious as was
7 initially believed.

8 From a review of the actual ambient air
9 quality monitors for ozone in the section 126
10 petitioning states, as addressed in detail in the
11 report filed with EPA which was written by TRC
12 Consultants on behalf of the states of Michigan, West
13 Virginia and Virginia, it is apparent that ozone air
14 quality is improving. That report was filed with EPA
15 on March 26, 1999, certainly by West Virginia DEP and
16 I'm sure the other states have done the same.

17 Action on the section 126 petitions based
18 upon the 1-hour standard must be reassessed based upon
19 these obvious trends of improvement. MOG urges EPA to
20 withdraw its April 30 rule and reinitiate rulemaking on
21 the petitions asserting 1-hour ozone nonattainment
22 after the resolution of the NOX SIP call litigation.

1 With regard to 126 petitions subsequently
2 filed, asserting the same nonattainment problems as the
3 initial ones, MOG supports EPA's decision to provide
4 for an extension for responding to such petitions to
5 six months. As EPA acknowledges, it is important to
6 provide adequate time to develop proposals and to
7 provide the public sufficient time to comment.

8 In conclusion, MOG urges EPA to stay its
9 April 30, 1999 final rulemaking and withdraw its June
10 24, 1999 proposal until resolution of the NOX SIP call
11 litigation. The Midwestern and Southeastern states and
12 the sources impacted by the petitions filed by the
13 Northeast states, deserve full review of the technical
14 and legal issues currently the subject of litigation
15 prior to being required to invest important and limited
16 dollars in a rule that may be rendered invalid.

17 That's the close of my comments. MOG will be
18 providing written comments within the comment period.
19 I'd also like to take this moment to explain that Steve
20 Roberts was unable to attend on behalf of the West
21 Virginia Chamber of Commerce, and I have provided his
22 written statement, but I will not be reading it into

1 the record.

2 Thank you.

3 MR. HELMS: Thank you. Questions?

4 (No response.)

5 MR. HELMS: Thank you very much. Are there
6 others present that would like to make a statement?

7 (No response.)

8 MR. HELMS: Seeing none, then, we will
9 conclude the hearing.

10 A couple of reminders. We'd ask again that
11 you make sure you've left a copy of your testimony with
12 Linda Lassiter or JoAnn Allman in the back. If you
13 have not, please expeditiously get a copy to us as fast
14 as you can.

15 The record will remain open until -- I
16 believe the Federal Register indicates August 9th. We
17 ask you, though, if you're going to submit additional
18 comments, please do it expeditiously so we can have
19 time to process it, get all the information together so
20 that we can honor our commitment to get the results of
21 the hearing on our web site within 30 days.

22 I want to thank you very much for your time

1 and effort today. This hearing is adjourned.

2 (Whereupon, at 9:40 a.m., the hearing in the
3 above-entitled matter was concluded.)

4 * * * * *