

US EPA ARCHIVE DOCUMENT

04/22/02

## **EPA'S RESPONSE TO THE COURT REMANDS ON ELECTRIC GENERATING UNIT GROWTH FACTORS**

### **FACT SHEET**

#### **TODAY'S ACTION**

- Today the Environmental Protection Agency (EPA) is announcing its decision to retain the original growth projections which the agency used in setting limits on nitrogen oxides (NOx) emissions in two rules designed to reduce interstate transport of ozone (smog). These rules are the NOx State Implementation Plan Call (NOx SIP Call) and the Section 126 Rule.
- In the Federal Register notice EPA explains why the methodology and resulting growth projections were reasonable based on the information that EPA had available at the time of the original rulemakings, and remains reasonable in light of new information.
- In making this decision today, EPA is responding to two remands from the United States Court of Appeals for the District of Columbia Circuit (the Court). The Court raised issues concerning the heat input growth rates (seasonal amount of fossil fuel used to produce electricity) EPA used in developing the two rules.
- The Court remanded the heat input growth rates to EPA to either justify the growth rates currently used by EPA, or to develop and justify new growth rates.
- The growth projections were used in setting budgets for nitrogen oxides (NOx) emissions for large electricity generating units in EPA's Section 126 Rule, and in setting NOx emission budgets for the states in the NOx SIP Call rule. Nitrogen oxides (NOx) are a key precursor to ground-level ozone.
- In a thorough review, EPA reexamined the growth rates for EGUs and the methodology used to develop those growth rates. Also, EPA analyzed more recent information on actual heat input to confirm the reasonableness of the methodology and resulting projections.
- In today's Federal Register notice, EPA provides a detailed explanation of the heat input growth rates and methodology that EPA used to develop the growth rates in the NOx SIP Call and the Section 126 Rule. EPA provided notice and opportunities for public comment on the new information used to confirm the reasonableness of EPA's existing methodology and heat input growth rates.

#### **BACKGROUND**

- EPA's efforts to reduce smog across the eastern U.S. include three actions recently addressed by the D.C. Circuit:
  - (1) A regulation, known as the NOx SIP Call, originally requiring 22 states and the District of Columbia to submit to EPA SIPs outlining strategies to reduce regional transport of ozone through reductions in NOx emissions. EPA issued this rule in two phases, the initial rule was issued in September 1998, the Phase 2 rule was proposed in February 2002;
  - (2) Technical Amendments to the NOx SIP Call, issued May 14, 1999 and March 2, 2000, revised the NOx emissions budgets; and
  - (3) In January 2000 EPA issued the Section 126 Rule in which EPA partially approved petitions filed by several Northeastern States under Section 126 of the Clean Air Act. The petitions asked EPA to set emissions limits for power plants and other sources of NOx in certain upwind States.
- NOx is a primary ingredient in the formation of ground-level ozone pollution (smog). Facilities that emit NOx in upwind States contribute to smog formation in downwind States. When inhaled – even at very low levels – ground-level ozone can cause acute respiratory problems, aggravate asthma, reduce lung capacity, inflame lung tissue, and impair the body's immune system.
- The NOx SIP Call and Section 126 Rule will help States meet the 1-hour ozone standard. These reductions will improve air for more than 100 million people -- including people in both downwind States and the States where sources are making the reductions.
- Eight states challenging the NOx SIP Call asked the D.C. Circuit Court to stay the due date for the State plans outlining strategies to reduce air emissions of NOx. As an interim measure, the court issued an indefinite stay in May 1999. The Court lifted that stay in June 2000. As a result, the District of Columbia and the affected States were required to submit implementation plans due in two phases - the first was due October 30, 2000.
- In a series of decisions, the Court supported most portions of EPA's NOx SIP Call, and the Section 126 Rule, but remanded two issues to EPA. One issue concerns the growth rates that EPA used to calculate NOx emissions budgets for sources subject to the rules. The Court directed EPA to either properly justify the growth rates EPA used or develop and justify new growth rates.
- On August 24, 2001, the Court temporarily suspended the compliance date for EGUs subject to the Section 126 Rule, pending EPA's resolution of the EGU growth factor issue. As of

today, with the issuing of EPA's response to the growth factor remand, the EGU compliance date under the Section 126 rule is no longer suspended.

- EPA is also issuing a rulemaking to establish May 31, 2004 as the Section 126 Rule compliance date for all sources subject to the rule. This will align the deadline with the compliance date established by the D.C. Circuit for the NOx SIP Call.

#### **FOR MORE INFORMATION**

- To download a copy of the notice, go to <http://www.epa.gov/ttn/rto> .
- To download a copy of the original NOx SIP Call Rule, the NOx SIP Call Technical Amendments, and the Section 126 Rule go to <http://www.epa.gov/ttn/rto> .
- To download a copy of the Court's March 3, 2000 and June 22, 2000 rulings, go to the March 2000 and June 2000 Sections on <http://pacer.cadc.uscourts.gov/common/opinions/>. To download a copy of the Court's May 15, 2001 and June 8, 2001 rulings, go to May 2001 and June 2001 at the same website.
- For additional information, call Doug Grano of EPA's Office of Air Quality Planning & Standards at 919-541-3292.