

MEMORANDUM

SUBJECT: Deadlines for Electric Generating Units (EGUs) and Non-Electric Generating Units (non-EGUs) under the Section 126 Rule

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (C404-04)

TO: Regional Air Division Director, Regions I - V, VII

This memorandum discusses EPA's intent to harmonize the compliance dates for the NOx SIP Call and the Section 126 Rule. For the reasons described below, we intend to establish a May 31, 2004, compliance date for all affected sources, subject to the completion of our response to a related court decision. This would again align the compliance dates for the Section 126 Rule and the NOx SIP Call.

On August 24, 2001, the U.S. Court of Appeals for the District of Columbia Circuit temporarily suspended the compliance date for electrical generating units (EGUs) subject to the Section 126 Rule, pending EPA's resolution of the EGU growth factor issue that was remanded in an earlier court decision. While we intend to respond to the court's remand as soon as possible, the court's action will effectively delay the compliance date for EGUs beyond the 2003 ozone season. Although the court did not address the compliance deadline for non-electric generating units (non-EGUs), we believe the court's action has implications for these facilities as well.

In a notice of data availability published in the Federal Register on August 3, 2001, we set forth our preliminary view that the EGU growth factors and methodology we used in the Section 126 Rule were reasonable and can be supported with a more robust explanation based on the existing record. In the notice, we also presented new information that we believe confirms the reasonableness of our approach. We received over 30 public comments on the new information, which we are now carefully reviewing. We plan to complete our evaluation of the comments and, assuming we do not revise our growth factors, complete our response to the court's remand by March 2002. Assuming we complete our response to the court remand as currently planned,

we believe it makes sense to extend the compliance date for EGUs until the 2004 ozone season. Although May 1 is the beginning of the ozone season, we intend to establish May 31, 2004, as the compliance date for EGUs in order to align that date with the deadline established by the D.C. Circuit for the NO_x SIP Call.

There are two primary reasons we believe this is appropriate. First, from the beginning it has been our intention that the Section 126 Rule serve as a backstop to the NO_x SIP Call. Both rules originally had the same compliance date. We believe it makes sense to continue this approach because it helps provide States, affected industry, and the public with a better coordinated and simpler program for achieving these emissions reductions. Second, we believe it would be unnecessarily complicated and confusing for EGUs to be controlled under the Section 126 Rule for just 1 month (May 1 - May 30) and then be subject to controls under State plans in response to the NO_x SIP Call beginning on May 31. We intend to establish the new May 31, 2004, compliance deadline for EGUs as part of our response to the growth factor remand. Other dates, including the permit application date and monitoring date, will be adjusted as necessary to be consistent with the new compliance date.

The court's action on the EGU growth factors did not specifically address the compliance deadline for non-EGUs subject to the Section 126 Rule. However, we also plan to extend the compliance deadline for non-EGUs (which is currently May 1, 2003) to match the new compliance deadline for EGUs. Our goal is to establish the most cost-effective emission control program possible, which means that we want to allow trading among all sources. If the non-EGU controls were implemented a year earlier than the EGU controls, non-EGUs would have less compliance flexibility because they would be unable to trade with all EGUs throughout the NO_x SIP Call region. Further, non-EGUs are a small portion of the total group of sources affected by the Section 126 Rule (accounting for only about 5 percent of the emissions reductions). From a policy perspective, we do not believe it makes sense for this small portion of affected sources to have to comply at an earlier date. Finally, the original Section 126 Rule reflected the intention to regulate EGUs and non-EGUs on the same schedule. We intend to establish the new May 31, 2004, compliance date and adjust other related dates for non-EGUs when we respond to the growth factor remand.

While further action is needed to revise the Section 126 Rule compliance deadlines for EGUs and non-EGUs, I recommend that you advise your States of our current plans. If you have any questions regarding this issue, please contact Lydia Wegman at (919) 541-5507 or Tom Helms at (919) 541-5527.