Downwind Ozone: Clearing the Air

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Ground-level ozone, commonly known as "smog," is produced when nitrogen oxides (NO_x) and other compounds interact in the atmosphere in the presence of heat and sunlight. NO_x is emitted from automobiles, electric utilities, and other fuel-burning sources. These pollutants may be transported long distances by prevailing westerly winds. States in the northeast have become increasingly concerned that the transport of ozone contributes to air quality problems in those states. At the same time, northeast states also faced more stringent requirements under the Clean Air Act to improve unhealthy air quality. These pressures led to a series of rulemakings and lawsuits that have created a stormy and cloudy future for ozone control.

The Clean Air Act establishes a federal–state partnership to address air pollution. EPA is authorized to establish national ambient air quality standards (NAAQS) for air pollutants to protect human health and welfare. 42 U.S.C. § 7409. EPA has established NAAQS for several pollutants, including a one-hour and an eight-hour standard for ozone. 40 C.F.R. §§ 50.9, 50.10. States implement the NAAQS by developing implementation plans (SIPs), subject to EPA approval, consisting of regulations for implementation and enforcement of the NAAQS. 42 U.S.C. § 7410(a). Areas designated by EPA as "nonattainment" must meet specific requirements to achieve compliance by prescribed deadlines, depending on the severity of the problem. 42 U.S.C. §§ 7502, 7511. By November 1994, states in nonattainment areas were to submit demonstrations showing that their SIPs would result in attainment by the prescribed dates. November 2007 was the deadline for the one-hour ozone standard. *Id.* Approved SIPs are enforceable by both EPA and the states, as well as citizen groups. 42 U.S.C. §§ 7413, 7604. If EPA finds that an approved SIP is "substantially inadequate" to attain or maintain the NAAQS, EPA may require the state to revise the plan as necessary to correct the inadequacy. 42 U.S.C. § 7410(k).

In 1990, the Clean Air Act was amended *inter alia* to address the problem of interstate ozone transport. Congress established the Ozone Transport Region and a Northeast Ozone Transport Commission charged with assessing ozone transport and recommending control measures to EPA. 42 U.S.C. § 7511c. Congress also amended two existing provisions of the Clean Air Act directed at interstate pollution. Section 110(a)(2)(D) of the Act as amended, also known as the "good neighbor" provision, requires SIPs to contain provisions prohibiting any source or type of emission activity within a state "from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, another State. . . . " 42 U.S.C. § 7410(a)(2)(D). Section 126 of the Act provides that "downwind" states may petition EPA to impose limits directly on "upwind" sources that violate Section 110(a)(2)(D).

Despite efforts, many states facing difficulty with transport from upwind NO_x sources were not able to submit plans for meeting the November 1994 deadline for submitting SIPs to address ozone. As of that date, the ozone standard in effect was the 0.12 ppm, one-hour ozone standard promulgated in 1979. 44 Fed. Reg. 8202 (1079).

In 1994, the Ozone Transport Commission (OTC) made a recommendation that EPA require eleven northeast states to adopt California's low emission vehicle (LEV) program. 59 Fed. Reg. 12,914 (1994). Based on that recommendation, EPA subsequently promulgated a rule requiring all states to amend their SIPs to include the LEV program. 60 Fed. Reg. 4712 (1995). However, this regulation was successfully challenged by the State of Virginia. The court of appeals held that Section 110 of the Clean Air Act does not authorize EPA to require states to adopt a particular approach to achieve necessary emission reductions. *Virginia v. EPA*, 108 F.3d 1397, 1403, *modified on other grounds*, 116 F.3d 499 (D.C. Cir. 1997). These federalism issues would arise again in the context of subsequent EPA efforts to control ozone.

In March 1995, EPA asked the states to evaluate problems relating to downwind ozone transport. In response, thirty-seven states east of the Rockies and the District of Columbia formed the Ozone Transport Assessment Group (OTAG). *See* 62 Fed. Reg. 60,318, 60,319 (1997). For two years, OTAG developed the most complete inventory for the OTAG region, employing advanced air modeling and other techniques to assess the complex problem of air transport. OTAG concluded that regional NO_x emission reduc-

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tions are effective in producing ozone benefits, and discussed a range of possible control options for upwind states. However, OTAG members did not recommend specific controls. *Id.* at 60,320.

In July 1997, EPA concluded that its existing one-hour, 0.12 parts per million, ozone NAAQS no longer adequately protected the public. EPA promulgated a new, more stringent 0.08 ppm standard averaged over an eight-hour period. 62 Fed. Reg. 38,856 (1997). At the same time, EPA promulgated a rule providing for phasing out the one-hour standard. The one-hour standard would no longer apply to an area once EPA determined that the area had attained the one-hour standard, at which point it would be replaced by the eight-hour standard. 40 C.F.R. § 50.9(b). To comply with the more stringent eight-hour standard, states would have to impose more stringent controls on sources. However due to the continued litigation over the eight-hour standard, as discussed below, EPA in July 2000 revised Section 50.9(b) to limit its authority to revoke the one-hour standard until such time as the eight-hour standard becomes fully enforceable and no longer subject to judicial review. 65 Fed. Reg. 45,182 (2000).

In August 1997, eight northeast states submitted petitions under Section 126 of the Act alleging that NO_x emissions from electric utilities in the Midwest and Southeast were contributing to ozone nonattainment. Most of the states based their Section 126 petitions in part on the new eight-hour standard. If EPA made the finding requested by the states, EPA was authorized to establish federal emission limits for the affected sources.

In November 1997, EPA issued a notice of proposed rulemaking known as the "NO_x SIP Call rule," finding that twenty-two states and the District of Columbia significantly contribute to downwind ozone nonattainment. 62 Fed. Reg. 60,320 (1997). EPA proposed to require each state to mitigate these problems by submitting a SIP revision consistent with an assigned NO_x emissions budget. EPA determined these budgets by projecting NO_x emissions to 2007 for all source categories and then reducing those amounts by the emissions reductions achievable using controls that EPA determined to be highly cost-effective (i.e., $2,000 or less per ton). The final NO_x SIP Call rule was promulgated by EPA on October 27, 1998. 63 Fed. Reg. 57,356 (1998). EPA required each state to submit, by September 30, 1999, proposed SIP revisions sufficient to meet the state's NO_x control budget.

In May 1999, EPA granted the northeast states' Section 126 petitions. 64 Fed. Reg. 28,250 (1999). In acting on the petitions, EPA relied on the analysis used to develop the NO_x SIP call rule. EPA determined that large electric-generating units (EGUs), boilers, and turbines in twelve states and the District of Columbia were contributing significantly to nonattainment problems in four of the petitioning states under the one-hour and eight-hour ozone standard. This finding triggered direct federal regulation of stationary sources of NO_x in the upwind states. The rule also established a cap-and-trade program for NO_x emissions. Although EPA's rule made affirmative findings, it allowed states to comply by submitting plans in compliance with the NO_x SIP call.

The foregoing regulatory developments set the stage for a series of lawsuits.

American Trucking Ass'n v. EPA

In May 1999, the D.C. Circuit invalidated EPA's new eight-hour ozone standard and remanded it to EPA for further consideration. *American Trucking Ass'n v. EPA*, 175 F.3d 1027 (D.C. Cir. 1999), *aff'd in part and rev'd in part sub nom Whitman v. American Trucking Ass'n*, 121 S. Ct. 903 (Feb. 27, 2001). The D.C. Circuit held that the ozone standard was an unconstitutional violation of the nondelegation doctrine because EPA had not provided an intelligible principle for selecting the 0.08 ppm standard. The D.C. Circuit's decision created uncertainty concerning state plans to control ozone. EPA urged states to continue to make their nonattainment designations under the new eight-hour standard, indicating that it would seek to appeal and reinstate the standard. *See* 64 Fed. Reg. 60,447 (1999). Not surprisingly, this stance was controversial with industry groups that had successfully challenged the standard. In 2001, the Supreme Court subsequently upheld the ozone standard, finding that the provisions of the Clean Air Act did not violate the nondelegation doctrine. In the meantime, however, the D.C. Circuit's decision complicated the regulatory picture.

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In June 1999, EPA responded to the D.C. Circuit's *American Trucking* decision by delaying the effectiveness of the final rule on the Section 126 petitions and proposing an alternative regulation. 64 Fed. Reg. 33,956, 33,962 (1999). EPA proposed to grant the portions of the state petitions based on the

old one-hour standard and to defer deciding those portions based on the new eight-hour standard pending further developments in the *American Trucking* lawsuit. EPA promulgated its final rule in January 2000. 65 Fed. Reg. 2674 (2000). The rule lists sources in twelve states and establishes a program to control emissions from those sources based only on the one-hour standard. EPA's Section 126 rule contained a provision to withdraw the relevant findings if a state submitted a SIP revision providing for NO_x controls in accord with the October 1998 SIP Call. EPA's rule also established an emission allowance "cap and trade" program.

In February 2001, the Supreme Court issued a decision holding that EPA's action in setting the eight-hour standard was not the exercise of an unconstitutional delegation of legislative authority. *Whitman v. American Trucking Ass'n*, 121 S. Ct. 903, 911–914 (2001). However, the Court had difficulty with EPA's use of the classification scheme under Subpart 2 of Part D of Title I of the Clean Air Act, and remanded the case to the D.C. Circuit for further proceedings. *Id*. at 919. On remand, the D.C. Circuit upheld the eight-hour standard, rejecting the remaining challenges. *American Trucking Ass'n v. EPA*, 283 F.3d 355 (D.C. Cir. 2002).

Michigan v. EPA: *The NO_x SIP Call Decision*

EPA's NO_x SIP Call rule was challenged in the D.C. Circuit by a group of states and corporations. In May 1999, while the case was pending, the court granted a petition to delay the deadline for the NO_x SIP Call until April 27, 2000. Submissions of revised SIPs were stayed pending further order of the court. Inasmuch as the compliance date is linked with the SIP submission date, the stay created uncertainty regarding the compliance date. Moreover, because there was no longer a schedule for the NO_x SIP Call, EPA no longer had a basis for deferring action under the Section 126 rule. Therefore, EPA moved forward to make the findings with respect to the one-hour standard, as discussed below.

On March 3, 2000, a divided panel of the D.C. Circuit upheld EPA's NO_x SIP Call rule in major respects. *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000). The court noted, at the outset, that EPA had stayed the eight-hour findings contained in the SIP Call, and thus the court resolved only the issues involving the one-hour standard *Id*. at 671. The court then turned to the interpretation of "significant contribution" in Section 110(a)(2)(D), which applies only to states that "contribute significantly" to nonattainment in a downwind state. In particular, petitioners complained that EPA improperly considered costs of reduction and irrationally imposed uniform NO_x controls on the states.

In defining the amount of emissions from each state that was "significant," EPA did not limit its consideration only to air quality factors, such as the extent of downwind nonattainment problems. EPA also considered cost-effectiveness. The amount of emissions that could be reduced in a highly cost-effective manner was determined to be the amount of "significant" emissions from the upwind state that should be controlled, and which should form the basis for each state's NO_x budget. 63 Fed. Reg. at 57,377–78. EPA defined "highly cost-effective" controls as any control measure that would cost up to $2,000/ton of NO_x for large boilers at electric utilities and industrial facilities, cement kilns, and stationary internal combustion engines. *Id*. As a result, the ultimate "significance" level would vary from state to state, depending on the amounts that could be reduced with highly cost-effective controls based on the sources in the state.

The court rejected the argument of state and industry petitioners who claimed that Section 110(a)(2)(D) precludes any consideration of costs in determining what emissions are "significant," stating that, absent express congressional direction to the contrary, statutes should be read as authorizing regulations with costs commensurate with benefits. 213 F.3d at 677–79. The court also rejected the argument that uniform controls are irrational because sources closer to the nonattainment have larger effects on air quality than those farther away. The court found no basis to upset EPA's judgment that a nonuniform, exposure-based approach would provide a significant improvement in either air quality or in cost when compared with EPA's cost-effectiveness standard and emissions trading. *Id*. at 679–80.

The petitioners also argued that EPA's NO_x budget program impermissibly intrudes on the statutory right of states to fashion their SIP submissions, essentially directing states how to achieve SIP compliance. They argued that because the budgets were calculated based on emission reductions from four types of sources identified by EPA, the budgets in effect cabined the state's choices, relying on the court's earlier decision in *Virginia v. EPA*. The D.C. Circuit held that the NO_x SIP Call did not require the states to implement any particular control strategy. The court found that the NO_x SIP Call allows a state full discretion to select from a broader menu of cost-effective, reasonable alternatives that may be advantageous in light of local concerns, and also allows a state to adopt an interstate trading program to purchase NO_x allowances from sources electing to overcontrol. 213 F.3d at 686. In short, because the regulation "merely provides the levels to be achieved by state-determined compliance mechanisms," the

court held that the NO_x SIP Call does not run afoul of the principle in *Train v. NRDC*, 421 U.S. 60 (1975), that states have the primary authority to determine which sources are burdened by regulation and to what extent. *Id.* In other words, the NO_x SIP Call was a permissible end goal rather than an impermissible source-specific, EPA-imposed emission limitation or control measure. The states had a "real choice" concerning control measures to meet budget requirements, the court found. *Id.*

The court did not uphold all aspects of the NO_x SIP Call. Importantly, the court found that the States of Missouri and Georgia were improperly included in the NO_x SIP Call. Missouri, Georgia, and Wisconsin were on the perimeter of the SIP Call; no state west of Missouri was included, nor were the two states to the north. OTAG's ozone transport model used grids across the eastern half of the United States, using "fine grid" cells of 12 km square. Missouri and Georgia were split between the fine grid and a "coarse grid" area to the west, north, and south of the fine grid. Based on its modeling, OTAG determined that regulation of the coarse grid areas would not be effective in reducing downwind ozone and recommended that emissions from the coarse grid be exempt from the state's emissions budget. 62 Fed. Reg. 60,333. Notwithstanding OTAG's recommendation, EPA decided to regulate all of Missouri, Georgia, and Wisconsin and to impose statewide budgets based on the entirety of NO_x emissions in each state.

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The petitioners argued that there is record support only for the calculation of budgets from the fine grid areas that OTAG concluded contribute to downwind nonattainment in other states. The court rejected EPA's argument that a statewide SIP Call area would produce larger benefits. Such a reason "can stand only if the emissions at issue contribute significantly no nonattainment in other state. OTAG concluded they did not." 213 F.3d at 683–84. The court also rejected EPA's administrative convenience argument, holding that EPA failed to explain why it was easier to calculate a NO_x budget for the whole state rather than sources in half a state. The court found that "[i]nterstate contributions cannot be assumed out of thin air," and that EPA had not explained how "calculation of a budget for sources in only half the state would be any more onerous than for all sources in a state." *Id.*

In a similar vein, the court rejected Wisconsin's inclusion in the SIP Call, which was based on a finding that the state contributes to ozone over Lake Michigan, because there was no record evidence showing that Wisconsin contributed to onshore nonattainment in any state. *Id.* at 681. The court also found that EPA failed to provide proper notice of its definition of an electricity-generating unit. *Id.* at 691–93.

On August 30, 2000, the D.C. Circuit ordered that the deadline for full implementation of the NO_x SIP Call be extended from May 1, 2003 to May 31, 2004. This extension was calculated in the same manner used by the court in extending the deadline for SIP submissions. As a result of the court's order, the NO_x SIP Call had a later compliance date than the SIP Call rule. As a result of the *Michigan* decision, EPA divided the NO_x SIP Call into two phases. The court-established submission dates apply to the portion of the rule upheld by the court. EPA proposed requirements for issues remanded by the court on February 22, 2002. 67 Fed. Reg. 8396 (2002). The SIP submission compliance dates will be established in that rulemaking.

Appalachian Power v. EPA: *The Section 126 Rule Decision*

On May 15, 2001, the D.C. Circuit upheld, in major respects, EPA's Section 126 regulations. *Appalachian Power Co. v. EPA*, 249 F.3d 1032 (D.C. Cir. 2001). A central argument made by the petitioners was that because EPA should in the first instance defer to the judgment of the states regarding how to achieve required air quality; direct regulation of sources under Section 126 should be a last resort. Petitioners argued that EPA cannot impose Section 126 findings and a SIP Call simultaneously, and should have deferred any Section 126 findings while the NO_x SIP Call was pending. EPA countered that the two provisions were independent statutory tools to address interstate pollution and that the agency may use either, singly or in tandem. The court found reasonable EPA's construction that Congress provided for both Sections 110 and 126 without indicating any preference for one over the other. *Id.* at 1048. The court stated that critical provisions of Section 126 would lose their force if the timetable of the NO_x SIP Call were to suspend the Section 126 process. *Id.* at 1047. The court also rejected the petitioner's argument that EPA's application of Section 126 impermissibly affects states' discretion under *Virginia v. EPA*, holding that states are not free of all extrinsic legal constraints and that

Section 126 does not affect a state's discretion under Section 110 to decide which sources to control and to what extent.

The petitioners in *Appalachian Power* also argued that EPA improperly imposed a NO_x cap on future sources by allocating 5 percent of a state's budget as a set-aside for sources that might be constructed in the future. The court held that by using the phrase "would emit," and referring to "new proposed sources," Section 126 is subject to the interpretation that Congress intended to authorize the regulation of emissions from future sources. It would be irrational to conclude that EPA could make findings that a group of sources in an upwind state contribute to downwind nonattainment, the court stated, but then preclude EPA from regulating new sources that contribute to the same pollution. *Id.* at 1057–58.

Although the court largely upheld the Section 126 rule, it remanded two issues to EPA and directed the agency (1) to properly justify the EGU heat input rates used to estimate state heat input in 2007, and (2) to properly justify or alter its categorization of cogenerators that sell electricity to the electric grid as EGUs. EPA is addressing the categorization of cogenerators in rules proposed on February 22, 2002. 67 Fed. Reg. 8396 (2002).

When EPA promulgated the NO_x SIP Call in 1998, the agency reopened public comment on the accuracy of data upon which the emission inventories and budgets were based. 63 Fed. Reg. 57,427 (1998). Subsequently, EPA published two technical amendments revising the NO_x SIP Call emissions budgets. 64 Fed. Reg. 26,298 (1999); 65 Fed. Reg. 11,222 (2000). On June 8, 2001, the D.C. Circuit ruled on a number of challenges to EPA's technical amendments. *Appalachian Power v. EPA*, 251 F.3d 1026 (D.C. Cir. 2001). In its decision, the court remanded the same issues concerning heat input growth rates for EGUs and cogenerators as were involved in the Section 126 decision.

On August 24, 2002, the D.C. Circuit suspended the compliance date for EGUs under the Section 126 rule pending EPA's response to the remand relating to EGU growth rates. EPA issued its response in a notice published on May 1, 2002. 67 Fed. Reg. 21,868 (2002). The tolling resulted in a delay in implementation of the Section 126 rule until the 2004 ozone season. As a result, on April 30, 2002, EPA issued a final rule to revise the Section 126 rule compliance date to May 31, 2004, which is the same date as the compliance date for Phase 1 of the NO_x SIP Call. 67 Fed. Reg. 21,552 (2002).

EPA's deadline extensions have been held invalid by the District of Columbia, Seventh, and Fifth Circuits.

A Hazy Future for Ozone Control

As the dust settled from this complexly interconnected series of judicial decisions, this is where matters stood: the one-hour standard remained in effect; the eight-hour standard remained to be implemented; and the Section 126 rule was stayed insofar as it effectuated the eight-hour standard. In the meantime, states and affected industries needed to grapple with attainment deadlines and, to further complicate matters, the Bush administration's proposed Clear Skies legislation that would affect these issues. That legislation, as well an alternative four-pollutant version is under active consideration by Congress. Due to the continued litigation over the eight-hour standard, discussed above, EPA in July 2000 revised 40 C.F.R. § 50.9(b) to limit its authority to revoke the one-hour standard until such time as the eight-hour standard becomes fully enforceable and no longer subject to judicial review. 65 Fed. Reg. 45,182 (2000).

With respect to the Section 126 rules, in May 2000, the court granted a motion by the petitioners in *Appalachian Power* to hold in abeyance all challenges to determinations by EPA based on the eight-hour ozone standard pending further order of the court. The court then severed those challenges from the main case and assigned them a new docket number. Because the Section 126 rules provide that the effectiveness of the eight-hour determinations is stayed and that stay remains in effect, the court has continued to hold that case in abeyance. *See* 65 Fed. Reg. 2674, 2727 (2000). As discussed below, EPA has begun to develop methods by which to implement the eight-hour ozone standard, but has not taken action to lift the stay on the Section 126 findings.

In March 2003, EPA proposed to revise the Section 126 rule to allow the rule to be withdrawn in states that control ozone under the NO_x SIP Call. The proposal notes that originally EPA harmonized the Section 126 rule and the NO_x SIP Call by establishing the same compliance date for both rules. As a result of the judicial decisions discussed above, the deadlines have been delayed and the SIP Call has been divided in two parts. By revising the Section 126 rule, EPA believes that the Section 126 rule will operate as intended under the current circumstances.

The current deadline for achieving the required reductions under both the NO_x SIP Call and the Section 126 rule is May 31, 2004.

This summer, EPA published a proposed rule to implement the eight-hour ozone standard. 68 Fed. Reg. 32,801 (June 2, 2003). In its June 2003 proposed rule, without regulatory text, EPA presented two options for implementing the eight-hour ozone standard. Under EPA's "preferred" approach, areas in attainment for the old one-hour standard would have flexibility in the steps required to comply with the eight-hour standard, while areas that do not meet the one-hour standard would be subject to more specific requirements. EPA proposes to revoke the one-hour standard, in whole or in part, within one year after designation of eight-hour areas. EPA's proposed draft regulatory language was published one month later. In addition to implementing the eight-hour standard, the proposed language contains three options for addressing new source review, which has been the subject of controversy.

With respect to attainment deadlines, pursuant to a 1998 guidance, EPA extended attainment deadlines in several areas without requiring additional control measures. However, EPA's deadline extensions have been held invalid by the District of Columbia, Seventh, and Fifth Circuits. In *Sierra Club v. EPA*, 294 F.3d 155 (D.C. Cir. 2002), EPA granted an extension until 2005 for Washington, D.C., a "serious" nonattainment area for ozone, to come into compliance. The court held that it was unlawful for EPA to grant the extension without a reclassification of the area to "severe" and without considering additional control measures. Similar decisions were reached by courts of appeals reviewing EPA's extension of deadlines for St. Louis and Beaumont-Port Arthur. *Sierra Club v. EPA*, 311 F.3d 853 (7th Cir. 2002); *Sierra Club v. EPA*, 2002 WL 3161817 (5th Cir. 2002). As a result of those decisions, at a July 22, 2003, House Energy and Commerce subcommittee hearing, EPA asked Congress for authority to extend the Clean Air Act deadlines for areas that do not meet the one-hour and eight-hour ozone standards due to pollution from downwind areas. *Clean Air Report* (Inside EPA), July 31, 2003. EPA advised Congress that it has been forced to redesignate or "bump up" cities such as St. Louis, Atlanta, and Baton Rouge in a more stringent ozone classification category and to require a new attainment plan with additional control measures, planning, and construction offsets.

While there is no statutory deadline for promulgating a strategy for implementing the eight-hour ozone standard, EPA entered into a consent decree requiring the agency to promulgate attainment designations by April 15, 2004. *American Lung Ass'n v. EPA*, Civ. Act. No. 02-2239 (D.C.C.). EPA plans to have an implementation strategy in place before designating areas nonattainment for the eight-hour ozone standard.

Finally, the future of ozone control will be debated in connection with the Bush administration's proposed Clear Skies legislation. The program was submitted to Congress as proposed legislation in July 2002. The proposed Clear Skies legislation would create a mandatory program intended to reduce power plant emissions of sulfur dioxide, nitrogen oxides, and mercury by setting a national cap on each pollutant. Metropolitan areas expect that they will be required to meet the new eight-hour ozone standards between 2007 and 2015, with many in 2010, depending on the severity of the problem. The proposed legislation includes a new designation of "transitional" for areas that are projected to come into attainment by 2015 based on existing controls or controls approved by the end of 2004. Officials in northeast states have expressed opposition to the proposal, relying on modeling data showing that metropolitan areas in the eastern United States would not achieve sufficient reductions enabling them to meet ozone standards in time to meet EPA deadlines. A new version of the legislative proposal would allow utilities and other companies to petition for flexibility under the NO_x SIP Call by asking for a delay in emission controls from 2004 to 2005.

EPA, the states, and industry have been locked in a series of regulatory proceedings and lawsuits for the past ten years over the future of smog control in the United States. Whatever its shortcomings, EPA's approach in the NO_x SIP Call had the virtue of a regulatory mechanism that took costs into account and provided a roadmap for the states. However, the states are still struggling to meet the deadlines and standards for ozone. Although EPA's approach has generally been upheld to date, the courts will carefully examine EPA's legal reasoning and technical support. EPA must show, for example, that a state's emissions in fact contribute significantly to downwind nonattainment in another state. It seems likely that congressional oversight and legislation may also affect the landscape in the years ahead. The outcome of these deliberations will have important consequences for the nation's air quality control efforts.

The control of ozone has proved to be a complex and difficult task. Resolution of these issues in a reasonable, workable, cost-effective manner will require the constructive involvement of all interested parties.