

2. PROPOSED POLICY POSITION ON STATE IMPLEMENTATION PLANS FOR NITROGEN OXIDE EMISSIONS

BACKGROUND

On May 25, 1999, the United States Court of Appeals for the D. C. Circuit waived the September 30 deadline by which 22 states and the District of Columbia were to inform the Environmental Protection Agency (EPA) of their plans for new controls on major sources of nitrogen oxide (NOx) emissions, the so-called NOx State Implementation Plan (SIP). The three-judge panel agreed to stay implementation of the rule until the Court can hear later this year full arguments regarding the merits of the SIP call. Several Midwestern and Southeastern states and utilities challenged the SIP call in court. The states had objected to the 1997 EPA rule requiring the plans, arguing that the EPA did not have enough evidence to prove that emissions from these states were degrading air quality in the Northeast. The various cases were consolidated in one proceeding, leading the Court to waive the September 30 deadline to allow for litigation on the merits of the EPA rule. In its order, the Court said that the states had "satisfied the stringent standards required for a stay."

On May 14, 1999, the same court sent back to EPA the agency's revised standards for ozone and particulate matter, questioning EPA's authority to issue them. EPA will likely appeal that decision. The May 25 order to stay the revised state plans for controlling NOx emissions delays the implementation of the new ozone and particulate standards until the Court rules on their constitutionality.

RECOMMENDATION

The Southern Legislative Conference (SLC) of The Council of State Governments (CSG) urges the Environmental Protection Agency to pay greater heed to the concerns of the Southern states and to avoid the kind of draconian standards and measures that have resulted in lawsuits undertaken by the states. The EPA should rely on sound science in promulgating its rules, and clearly demonstrate a policy of working collaboratively with the Southern states in reaching achievable goals for clean air.