



Administrator Stephen L. Johnson
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

July 25, 2008

Connecticut

Dear Administrator Johnson:

Delaware

District of Columbia

Maine

Maryland

Massachusetts

New Hampshire

New Jersey

New York

Pennsylvania

Rhode Island

Vermont

Virginia

The members of the Ozone Transport Commission (OTC), in response to the July 11, 2008 court decision vacating the Clean Air Interstate Rule (CAIR), urge the U.S. Environmental Protection Agency (EPA) to take prompt action to develop a new regulation that achieves or exceeds the clean air benefits of CAIR and to ensure, in the interim, that there is no backsliding from the emission caps imposed under the NOx SIP Call (NOx Budget Trading Program).

The vacatur of CAIR presents a significant blow to the protection of human health and the environment. It has far-reaching impacts on the ability of states to attain and maintain the eight-hour ozone and fine particulate matter National Ambient Air Quality Standards (NAAQS), and improve visibility in our national parks and wilderness areas as required under the Clean Air Visibility Rule. Prompt action by EPA to develop a national program that restores or even strengthens the air quality protection CAIR would have provided, and is consistent with the court's ruling, is more important than ever in light of the recently strengthened ozone and PM 2.5 NAAQS.

A key priority is to fully reinstate the NOx SIP Call Trading Program, as indicated in the court's decision, including the allocation of allowances and administration of the program by EPA. Simultaneously, the EPA should promulgate a new rule that, consistent with the court's decision, corrects the disconnect between the timing of the reductions that were required by CAIR and the timeframe for states in the Northeast and elsewhere to achieve and maintain the ozone and PM 2.5 NAAQS.

We recognize that EPA is considering whether to seek rehearing of, or appeal, the court's decision. Regardless of whether EPA further pursues the litigation, EPA should not postpone developing a regulatory response to the decision pending the exhaustion of appeals. The appeal process is likely to take months and EPA should move as quickly as possible to ensure that public health is protected.

Anna Garcia
Executive Director

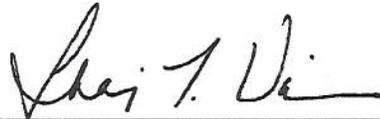
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The court also held that "downwind states retain their statutory right to petition for immediate relief from unlawful interstate pollution under Section 126, 42 U.S.C. § 7426." Consequently, many of our states are now considering the filing of Section 126 petitions. We urge EPA, however, not to wait for the filing of Section 126 petitions before taking appropriate and prompt action to comply with the court's decision. In light of the CAIR vacatur, EPA should also expeditiously revisit its April 28, 2006 denial of the North Carolina Section 126 petition, the court challenge of which is currently being held in abeyance.

Our states stand ready to work with EPA as it promptly develops a regulation that achieves maximum clean air benefits and complies with the court's decision, and to take appropriate steps in the interim to ensure continued implementation of the NOx SIP Call. We look forward to working collaboratively with EPA to protect the health of all of our citizens as expeditiously as practicable.



Jared Snyder, Chair
Assistant Commissioner
New York Department of
Environmental Conservation



Shari Wilson, Vice Chair
Secretary
Maryland Department of the
Environment



Laurie Burt, Secretary/Treasurer
Commissioner
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