

## **EPA Grants Northeast States' Ozone Petitions**

The United States Environmental Protection Agency (EPA) has granted petitions by four Northeastern states to require emission reductions from sources in Michigan and twenty-one other states. The purpose of requiring these emission reductions is to alleviate ozone smog problems in the Northeast that are allegedly caused, in part, by air pollution drifting from Michigan and other Midwestern and Southern states. The EPA regulations issued in response to these petitions are similar to EPA's controversial "NOx SIP Call" rules. *[Editor's Note: The Michigan Environmental Compliance Update has just learned that on March 3, 2000, the United States Circuit Court of Appeals for the District of Columbia Circuit has denied most of the challenges to the NOx SIP Call rules filed by Michigan and other parties in Michigan et al. v. United States Environmental Protection Agency. This decision will be addressed in an article in the next issue of the Michigan Environmental Compliance Update.]*

The petitions were filed by Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania, and Vermont. EPA denied the petitions from Rhode Island, Maine, New Hampshire and Vermont because those states had air quality already meeting the federal standards. EPA granted or partially granted the petitions from Connecticut, Massachusetts, New York and Pennsylvania, however, finding that those states had made an adequate demonstration that emissions of nitrous oxides (NOx) from Michigan and twenty-one other states and the District of Columbia, contributed to ozone air quality problems in those states.

NOx is believed to transform into ozone in the atmosphere, contributing to smog pollution. According to the Northeastern states, NOx emissions from Midwestern and Southern states are carried by the wind and transform into ozone smog by the time they reach the Northeast. The Northeastern states petitioned EPA under Section 126 of the Clean Air Act in an effort to compel EPA to require NOx emission reductions from the Midwestern and Southern states.

EPA granted four of the eight petitions and issued regulations requiring sources in the twenty-two affected states and the District of Columbia to reduce their NOx emissions. The regulations apply to certain "electric generating units," which generate electricity for sale, and industrial boilers with a maximum rated heat input capacity of 250 million Btu per hour (Btu/hr). The regulations apply to such sources in Michigan that are South of \_\_ degrees latitude and East of \_\_ degree longitude. Michigan sources further North and West were not included in the data submitted by the Northeastern states in support of their petitions and, therefore, are not regulated by these rules.

The regulations are implemented through a NOx emission trading system established by EPA as part of the rules. This trading system is similar to the "acid rain" emissions trading system that is already in use by EPA. Every facility regulated under will be granted a "NOx allocation" to allow emissions of a certain amount of NOx during the ozone smog season between April and October each year):

- For electric generating units, the amount of NO<sub>x</sub> allocations will be based on historical heat input multiplied by 0.15 pounds of NO<sub>x</sub> per million Btu.
- For industrial boilers covered by the rules, the NO<sub>x</sub> allocations will be based on historical heat input multiplied by 0.17 pounds of NO<sub>x</sub> per million Btu.

In an appendix to the rules, EPA listed all the emission sources of which it is aware that are subject to these rules, along with their respective NO<sub>x</sub> allocations. Facilities that meet the applicability requirements of the rules (*e.g.* industrial boilers with a maximum rated heat input capacity greater than 250 million Btu/hr located within the geographic area covered by the rules) will be required to comply with the emission limitations even if they were not included in the appendix to the rules.

Facilities subject to the regulations will be required to hold a sufficient number of NO<sub>x</sub> allocations to cover their total NO<sub>x</sub> emissions during the ozone smog season each year starting in 2003. Facilities will be required to submit reports by November 30 documenting that they held a sufficient quantity of NO<sub>x</sub> allocations to cover their total NO<sub>x</sub> emissions between April 1 and September 30 of that year.

Facilities that have surplus NO<sub>x</sub> allocations (*e.g.* because they elected to install additional NO<sub>x</sub> emission controls or curtailed their operations compared to historical production levels) will be allowed to trade those allocations to other facilities for cash or other consideration. Facilities that fail to obtain enough NO<sub>x</sub> allocations to cover their emissions by November 30 will be subject to sanctions from EPA, including monetary penalties and a loss of future NO<sub>x</sub> allocations. ***65 Fed. Reg. 2674 (January 18, 2000).***

This article was prepared by S. Lee Johnson, a partner in our Environmental Department, and previously appeared in the February, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.