

August 8, 2001

The Honorable Christine Todd Whitman
U.S. Environmental Protection Agency
Ariel Rios Building, 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Whitman:

As you know, the Court of Appeals for the District of Columbia Circuit recently upheld EPA's granting of the Northeast States' petitions submitted under section 126 of the Clean Air Act. In its holding, the Court explicitly reaffirmed the May 2003 deadline for the control of NO_x emissions from sources that "significantly contribute" to ozone nonattainment in our states. We urge EPA to promptly respond to the Court's directive to properly justify two technical aspects of the section 126 rule and, in doing so, retain the Court-sustained 2003 deadline for implementation of NO_x controls on these sources.

The D.C. Circuit's May 15, 2001 decision in *Appalachian Power Company v. EPA* is an important victory for the public health and welfare of the states that petitioned EPA to regulate emission sources that hinder our efforts to attain and maintain the ozone NAAQS. With the rendering of the Court's decision, the way is paved for EPA to move forward and ensure that the benefits to be secured by implementation of the final rule will occur in a timely manner. As EPA noted in the final rule, NO_x emissions lead to the formation of ground-level ozone, a pollutant that causes human respiratory distress and damage, especially for individuals with impaired or immature lung functioning such as asthmatics, children and the elderly. NO_x also contributes to visibility reduction, nitrification of marine bays and estuaries, acidification of lakes and forests, and interferes with normal plant growth that impairs forest health and results in reduced agricultural yields.

Many areas in our States remain in nonattainment of the federal ozone standard and the deadlines for attainment are fast approaching. Further, for those areas attaining the standard, the ability to maintain the standard is hampered by continued interference from the identified upwind sources. In order to attain the standard by the deadlines mandated by Congress, and maintain the standards thereafter, we must make sure that the region-wide federal NO_x cap-and-trade program that forms the section 126 remedy is implemented by May 1, 2003 as provided in the final rule.

Despite the remand of the technical matters to EPA for further consideration, the court has not altered the May 1, 2003 deadline for implementation. In fact, the court recognized that the 2003 deadline is mandated by the language of section 126 which requires that sources subject to an EPA finding of significant contribution to downwind nonattainment of a federal air quality standard must be shut down if not adequately controlled within three years of the date of EPA's finding. Because the court upheld EPA's finding of significant contribution, made on January 18, 2000, the sources subject to that finding must be controlled by May 1, 2003 (the beginning of the 2003 ozone season).

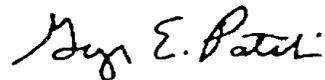
During your May 10, 2001 testimony before the Appropriations Committee of the U.S. House of Representatives, you indicated that EPA would look at harmonizing the May 1, 2003 section 126 deadline with the NOx SIP call implementation deadline of May 31, 2004. We would be very concerned if such effort contemplated a deferral of compliance with section 126 until the later SIP call deadline of May 2004. Such a deferral would not only defeat our states' efforts to achieve health-based ozone attainment standards, but we believe would be a violation of federal law that we would vigorously oppose.

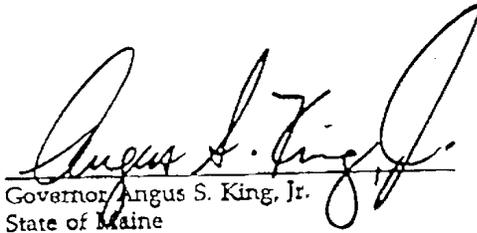
In light of the substantial resources that EPA has deployed to control interstate ozone transport, the Agency should experience no extraordinary strain in promptly responding to the technical matters remanded by the federal court. We hope that EPA's resolve in completing the work to address this significant interstate pollution problem remains unabated. We stand ready to assist EPA with the remanded matters and assuring timely implementation of the final rule.

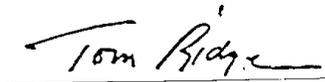
Sincerely,

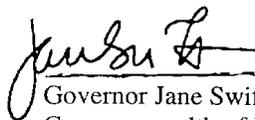
The Undersigned Northeast Governors

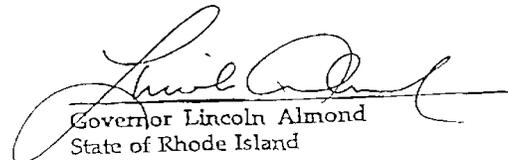

Governor John G. Rowland
State of Connecticut


Governor George E. Pataki
State of New York


Governor Angus S. King, Jr.
State of Maine


Governor Tom Ridge
Commonwealth of Pennsylvania


Governor Jane Swift
Commonwealth of Massachusetts


Governor Lincoln Almond
State of Rhode Island


Governor Jeanne Shaheen
State of New Hampshire


Governor Howard Dean, M.D.
State of Vermont