

4APT-APB

Bill Holman, Secretary  
North Carolina Department of Environment  
and Natural Resources  
Post Office Box 27687  
512 N. Salisbury St.  
Raleigh, NC 27611-7687

Dear Mr. Holman:

I am writing concerning North Carolina's efforts to comply with the regional strategy to reduce ozone levels across the eastern United States by reducing emissions of nitrogen oxides (NOx). This strategy -- known as the NOx State Implementation Plan (SIP) Call -- will protect the health of over one hundred million Americans living in North Carolina and the eastern United States from harmful levels of air pollution. Under this strategy, states were to submit to EPA a complete set of adopted rules for reducing NOx emissions by October 30, 2000. Reducing these emissions will prevent thousands of ozone-related illnesses each year, including aggravated cases of childhood asthma.

North Carolina has made significant progress in meeting the air pollution requirements of the NOx SIP call. Your staff submitted fully adopted temporary rules to us on October 30, 2000, which make substantial progress toward meeting the tests established under the Clean Air Act for these regulations to be approved. We have worked closely with your staff and commend you and them for your efforts to achieve these emissions reductions.

However, there is some work left to do. The enclosed document notes our remaining concerns with the October 30, 2000, submittal, including the concern that the regulations we have received from you are temporary rules and that they did not go through public hearing and comment. We have previously communicated our concerns to your staff in a November 21, 2000, letter to Alan Klimek, Director of the North Carolina Division of Air Quality, and are confident that North Carolina can correct the draft regulations and complete the adoption process so that so that the State can submit these regulations as a SIP revision for EPA review and approval.

Despite this confidence, there is a step which we have to take today to ensure that progress continues and to meet our commitment to states that made complete submittals. If a state does not submit a complete plan to EPA that meets the requirements of the NOx SIP call and the Clean Air Act, the Act authorizes EPA to make what is known as a finding of failure to submit such a plan. Consequently, EPA is issuing a "finding" that North Carolina did not submit a complete, fully adopted State Implementation Plan in response to the NOx SIP Call. Such a finding does not in any way negate the good work that North Carolina has conducted. It simply states as fact that a complete plan has not been submitted to date.

This finding is important to provide a guarantee that all 19 states and the District of Columbia subject to the NO<sub>x</sub> SIP call will be treated equally in meeting their air pollution obligations. Consequences can result from it - if a state does not submit rules that have been subject to a public hearing, sanctions under the Clean Air Act and a Federal Implementation Plan can occur. I emphasize that we will continue to work closely with you and the North Carolina Department of Environment and Natural Resources to enable the State to make a complete submission, including permanent adopted rules, as soon as possible.

I believe it is essential for us to take action as quickly as possible to achieve the public health benefits from this ground-breaking strategy. By acting expeditiously, you can secure cleaner air for the citizens of your State and other states in the eastern United States.

If I may be of further assistance, please feel free to contact me or Mr. Winston Smith at (404) 562-9077.

Sincerely,

John H. Hankinson, Jr.  
Regional Administrator

cc: Alan Klimek, NCDENR

Enclosure

## ENCLOSURE TO GOVERNOR'S LETTERS Re: Findings

### EPA's Preliminary Assessment of North Carolina's NOx SIP Call Submittal

After EPA issued the regional transport rule, known as the Nitrogen Oxides (NOx) State Implementation Plan (SIP) Call, in September 1998, to reduce ozone levels across the eastern United States, several parties challenged the rule in court. In May 1999, as an interim measure, the Court stayed the requirement that states submit their plans to address transported ozone. On March 3, 2000, the United States Court of Appeals for the District of Columbia Circuit issued a decision largely upholding the NOx SIP Call. Subsequently, the Court lifted the stay and ordered EPA to allow states until October 30, 2000, to submit adopted rules in response to the NOx SIP Call. The Court also extended the deadline for full implementation of the NOx SIP Call from May 1, 2003, to May 31, 2004. It is important that we move forward with plans to reduce ozone levels by May 31, 2004. Our technical analysis supports that realizing these NOx reductions by 2004 is feasible without endangering the reliability of the electric power supply.

In light of the public health benefits that will result, and the March 3, 2000, Court decision upholding the NOx SIP Call, we intend to move forward expeditiously in implementing the regional strategy to reduce ozone levels. North Carolina has made progress in meeting the requirements of the NOx SIP Call. However, North Carolina has not submitted a fully approvable package. On October 30, 2000, North Carolina submitted a proposed revision to the SIP but did not include all of the necessary corresponding documentation. The Region provided a detailed comment letter to the North Carolina Department of Environment and Natural Resources on November 21, 2000, and held a conference call to discuss the major issues on November 29, 2000. The major problems with the rule are: the rule applies a trading program as a remedy but does not require all large electric generating units and large non-electricity generating units to participate in the trading program and allows trading with sources not in the program; the rule does not require all large electric generating units and industrial boilers to monitor their emissions according to part 75 and allows sources not meeting Part 75 monitoring requirements to trade; the submittal did not include in the regulation the method for distributing the compliance supplement pool; the submittal did not include a regulation (however the legislation may be sufficiently specific) or documentation for the credit for the expanded inspection and maintenance (I/M) program; the rule did not include a budget demonstration; and the submittal requests a fuel waiver so that the State can take credit for reductions from their low sulfur fuel legislation. The Region does not believe the fuel waiver can be granted, however, it may be possible for the State to meet the Phase I budget without that credit. The rule also contains an "out" clause that could interfere with implementation by May 31, 2004, and replaces the SIP call rule with a back up rule from the Governor's plan (0.21 lb/mmBTU) should the Supreme Court rule against EPA. The rule also is a temporary rule that has not been subject to public comment and hearing. It is the Region's understanding that the State will revise the rule and take it back to their commission, most likely in January, adopt a new temporary rule and take both the temporary and permanent rules to public hearing. EPA is notifying North Carolina that pursuant to section 179(a) of the Clean Air Act, EPA will shortly publish a notice of final rulemaking in the Federal Register making a finding that North Carolina failed to submit a complete SIP meeting the requirements of the NOx SIP Call.

EPA intends to continue making all necessary efforts to ensure that the State can submit the necessary document(s) as soon as possible so that the State can avoid or replace a Federal Implementation Plan (FIP). The EPA is making this finding to continue the process to protect public health, to assist downwind nonattainment areas in reaching attainment for the 1-hour ozone standard and to ensure equity with states that have submitted adopted rules. Section 110(c) of the CAA provides that EPA promulgate a FIP no later than two years after a finding under section 179(a).