

possible cost-effective NO<sub>x</sub> emission reductions.

The source sectors include nonroad mobile, highway mobile, electricity generating units (EGUs), and major non-EGU stationary point sources. EGUs include stationary boilers and turbines that generate at least some electricity, even if they also generate steam for industrial processes. Non-EGUs include other large stationary boilers and turbines, typically for the purpose of generating steam for industrial processes.

USEPA established recommended NO<sub>x</sub> emissions caps for large EGUs (potentially generating more than 25 megawatts) and for large non-EGUs (minimum design heat input of 250 mmBTU per hour). USEPA determined that significant NO<sub>x</sub> reductions using cost-effective measures could be obtained as follows: Application of a 0.15 pounds NO<sub>x</sub>/mmBtu heat input emission rate limit for large EGUs; a 60 percent reduction of NO<sub>x</sub> emissions from large non-EGUs; a 30 percent reduction of NO<sub>x</sub> emissions from large cement kilns; and a 90 percent reduction of NO<sub>x</sub> emissions from large stationary internal combustion engines. The 2007 state-wide NO<sub>x</sub> emission budgets established by jurisdiction were based, in part, by assuming these levels of NO<sub>x</sub> emission controls coupled with NO<sub>x</sub> emissions projected by source sector to 2007.

Although the state-wide NO<sub>x</sub> emission budgets were based on the levels of reduction achievable through cost-effective emission control measures, the NO<sub>x</sub> SIP Call allows each State to determine what measures it will choose to meet the state-wide NO<sub>x</sub> emission budgets. It does not require the States to adopt the specific NO<sub>x</sub> emission rates assumed by the USEPA in establishing the NO<sub>x</sub> emission budgets. The NO<sub>x</sub> SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the NO<sub>x</sub> state-wide emission budget. The NO<sub>x</sub> SIP Call encourages the States to adopt a NO<sub>x</sub> cap and trade program for large EGUs and large non-EGUs as a cost-effective strategy and provides an interstate NO<sub>x</sub> trading program that the USEPA will administer for the States. If States choose to participate in the national trading program, the States must submit SIPs that conform to the trading program requirements in the NO<sub>x</sub> SIP Call.

#### B. What Requirements Must Ohio Meet?

The State of Ohio has the primary responsibility under the Clean Air Act for ensuring that Ohio meets the ozone

air quality standards and is required to submit a SIP that specifies emission limitations, control measures, and other measures necessary for meeting the NO<sub>x</sub> emissions budget. The SIP for ozone must meet the ozone transport SIP Call requirements, must be adopted pursuant to notice and comment rulemaking, and must be submitted to the USEPA for approval.

These NO<sub>x</sub> emission reductions will address ozone transport in the area of the country primarily east of the Mississippi River. USEPA promulgated the NO<sub>x</sub> SIP Call pursuant to the requirements of CAA section 110(a)(2)(D) and our authority under CAA section 110(k). Section 110(a)(2)(D) applies to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. It requires a SIP to contain adequate provisions that prohibit any source or type of source or other types of emissions within a State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance of attainment of a standard by any other State with respect to any NAAQS.

Pursuant to its authority under section 110(k)(5), USEPA concluded that the SIPs for Ohio and other states were substantially inadequate to prohibit NO<sub>x</sub> emissions that significantly contribute to ozone nonattainment. As a result, Ohio was required to submit SIP revisions that addressed this inadequacy.

USEPA has published a model rule for control of NO<sub>x</sub> emissions from boilers and turbines. This model rule, codified at title 40 of the Code of Federal Regulations part 96 (40 CFR part 96), reflects USEPA's recommendations for the general design of the necessary NO<sub>x</sub> emission control programs as well as detailed recommendations for specific program features. Similarly, at 63 FR 56393 (October 21, 1998), USEPA has published a proposed Federal implementation plan including rules regulating cement kilns, which serve as sample rules for this source type. USEPA recommends the cost-effective levels of control noted above. The budget that USEPA established for states reflects these control levels. USEPA further recommends that states take the necessary steps to allow their sources to participate in a multi-state NO<sub>x</sub> emissions trading program that USEPA will run. While USEPA offers flexibility to states on various elements of program design, particularly in the distribution of projected emission reductions, USEPA can offer more streamlined approval of programs that more closely

follow USEPA's model rule. (See 63 FR 57365)

#### C. What Have Been the Court Rulings Regarding USEPA's NO<sub>x</sub> Emission Control Rule?

When the USEPA published the NO<sub>x</sub> SIP Call on October 27, 1998, a number of States and industry groups filed petitions challenging the rulemaking before the United States Court of Appeals for the District of Columbia. The court, on May 25, 1999, stayed the States' obligation to submit SIPs in response to the NO<sub>x</sub> SIP Call rule. Subsequently, on March 3, 2000, the court upheld most of USEPA's NO<sub>x</sub> SIP Call rule. The court, however, vacated the rule as it applied to Missouri and Georgia, and remanded for further consideration the inclusion of portions of Missouri and Georgia in the rule. The court also vacated the rule as it applied to Wisconsin because the court believed that USEPA had not made a showing that sources in Wisconsin significantly contributed to nonattainment or interfered with maintenance of the ozone NAAQS in any other State. Finally, the court remanded to USEPA two issues concerning a limited portion of the NO<sub>x</sub> emission budgets. See *Michigan et al. v. EPA*, 213 F.3d 663 (D.C. Cir. 2000). On April 11, 2000, based on the remanded issues, USEPA initiated a two phase approach to implement the NO<sub>x</sub> SIP Call. Phase I of this approach addressed the portion of the NO<sub>x</sub> SIP Call upheld by the court. Phase I will achieve the majority of the reductions in the NO<sub>x</sub> SIP Call. The Phase I plan was due from Ohio on October 30, 2000.

Phase II will address the few narrow issues that the DC Circuit court remanded to USEPA, including: Whether, and if so, how, a small subclass of facilities that generate electricity should be included in the rule; and what control levels should be assumed for large, stationary internal combustion engines. Phase II of the NO<sub>x</sub> SIP Call will not require a submittal from the States until USEPA has proposed and finalized rules in response to the court's remand.

On June 22, 2000, the court removed the stay of the state's obligation to submit SIPs in response to the NO<sub>x</sub> SIP Call and denied petitioner's motions for rehearing and rehearing *en banc*. In removing the stay, the court provided that USEPA should allow 128 days for States to submit SIPs to the USEPA, *i.e.*, by October 30, 2000. Shortly after removing the stay, petitioners requested that the court adjust the NO<sub>x</sub> SIP Call compliance date. In an action related to *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir