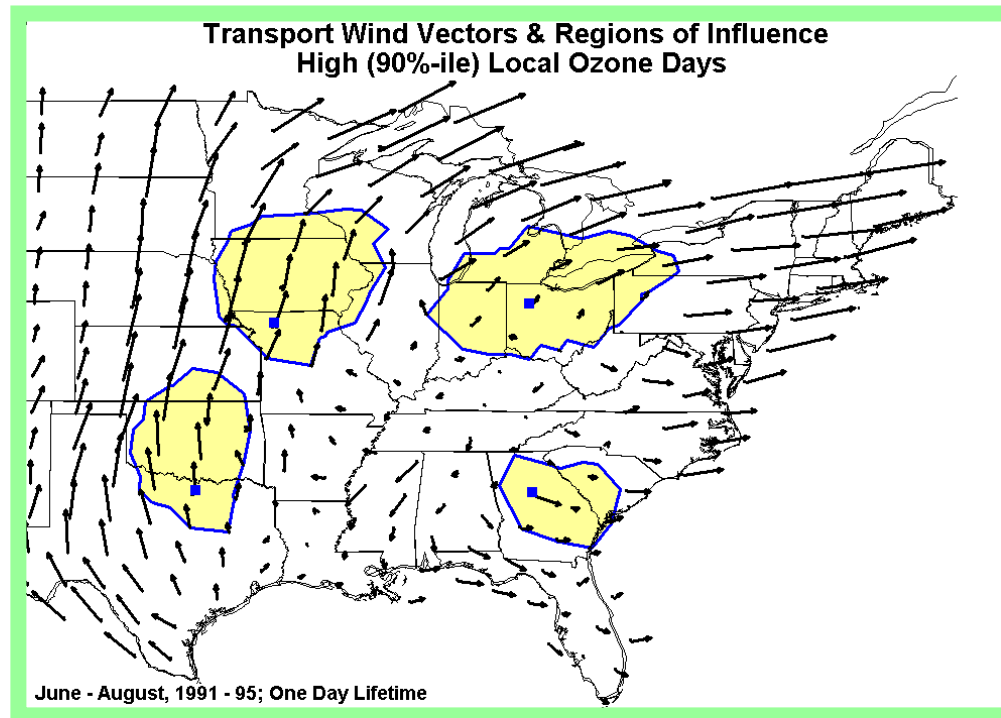


# Addressing Transport



OTC Caucus Meeting – November 9, 2011  
Tad Aburn - Air Director, MDE

# Topics

- Background
  - What have we already done?
    - Our Push for federal measures
  - Is it working?
- What else can we do?
  - Options to address transport
- Discussion of options and actions
  - Not all states need to move forward at once



# Purpose of Today's Discussion

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- Brief the Commissioners on available legal tools in the Clean Air Act designed to address transport
- Have a discussion on how to proceed
- Discuss potential action items for tomorrow's meeting



# The Current “Big” Picture

- The White House delayed the Ozone NAAQS Reconsideration in early September, and decided to implement the 2008 ozone NAAQS of 75ppb
  - Scientific community still recommends 60 to 70 ppb
- EPA’s recent rulemaking, the Cross-State Air Pollution Rule (CSAPR) does not address the 2008 ozone NAAQS of 75 ppb
- When EPA does attainment designations for the 2008 ozone NAAQS of 75ppb, large portions of the OTR will be designated as non-attainment
- Transport still dominant - Measured, “incoming” ozone routinely exceeds 75 ppb

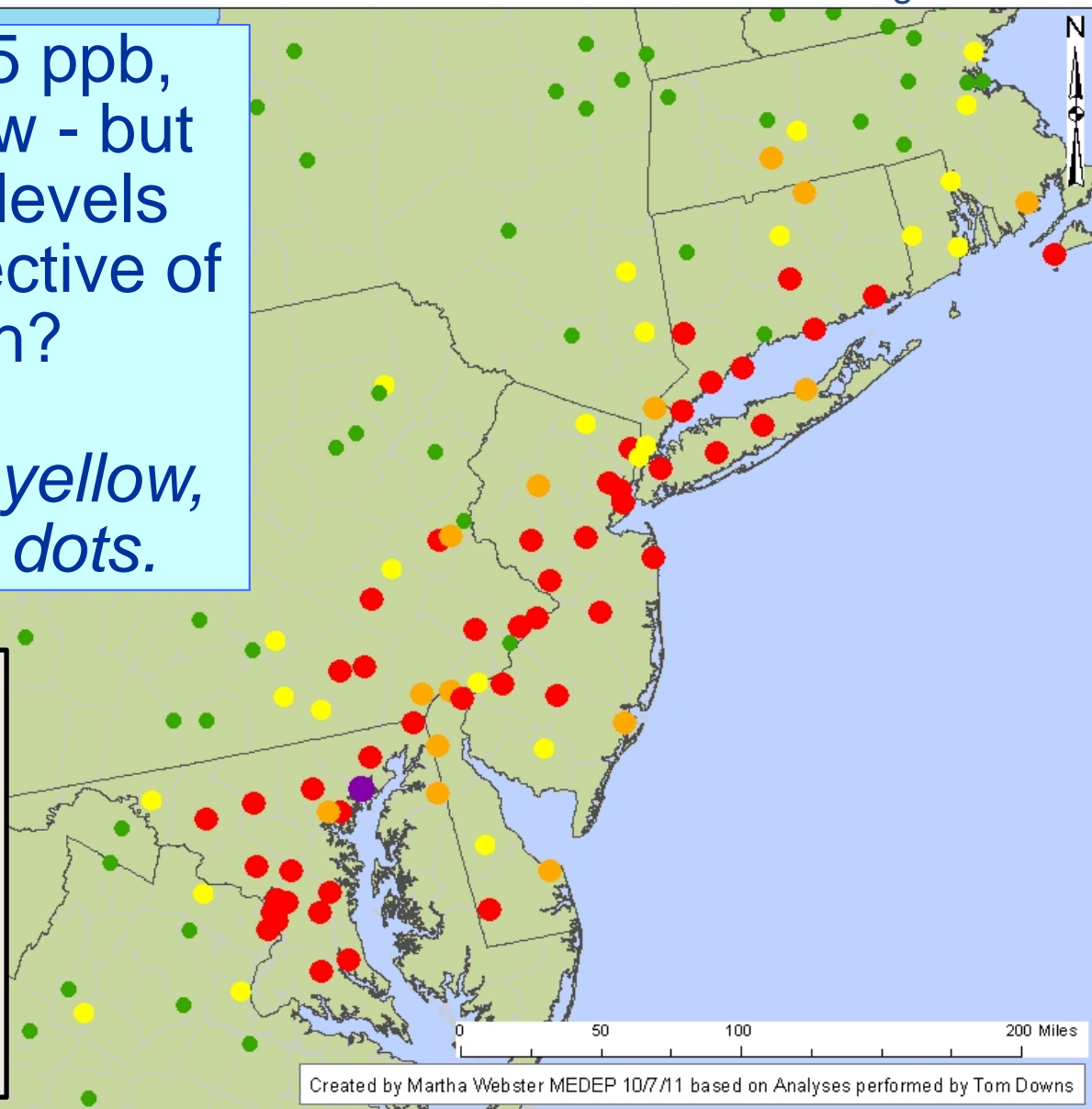


# Who's Above/Below 75 ppb?

Data through 9/28/2011

Who's above 75 ppb,  
and who is below - but  
still measuring levels  
that are not protective of  
public health?

*All of the green, yellow,  
red and purple dots.*



# The Path Forward

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- We understand the science of ozone better than ever
- We've implemented programs that have worked in the real world
- We need a two-part strategy
  - Local (inside the OTR) controls are still critical
    - Can help reduce about 1/3 of the ozone problem in most OTC cities
  - National/super-regional controls are now essential
    - Incoming ozone is already measured at levels above a 75 ppb standard
    - Regional contribution represents approximately 2/3 of the ozone problem in most OTC cities



# Pushing Federal Measures

... as the best tool to address transport

- Multiple OTC actions on federal measures over the past 2 years
  - Support for federal measures to reduce transport from almost all 50 states
- The OTC has built a very strong scientific basis for the need to reduce regional emissions with federal measures
  - Analyses of past efforts show that these regional emission reduction programs will work

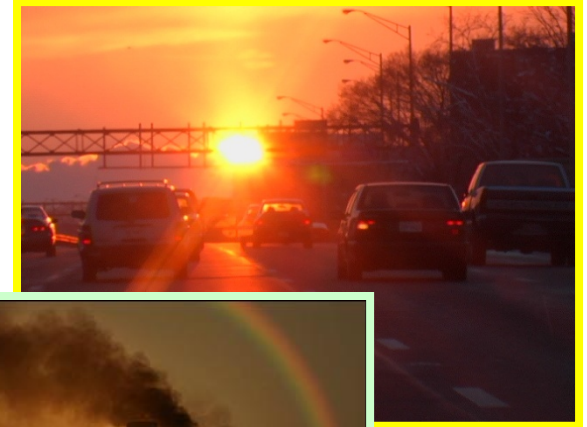




# The Priority Source Categories

The OTC National Asks:

- Power Plants (EGUs)
- On-Road Vehicles – Cars and trucks
- ICI Boilers
- Cement Kilns
- Marine Engines
- Locomotives



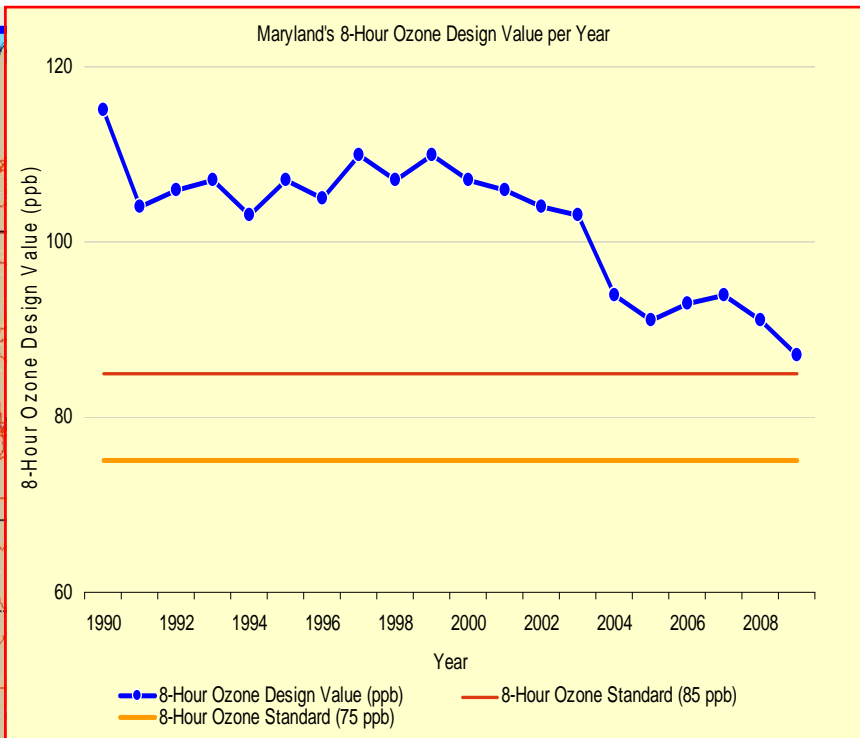
These represent ...

- 75 % of the NO<sub>x</sub> left to regulate
- 85 % of the SO<sub>2</sub> left to regulate
- 75 % of the 2005 Hg emissions



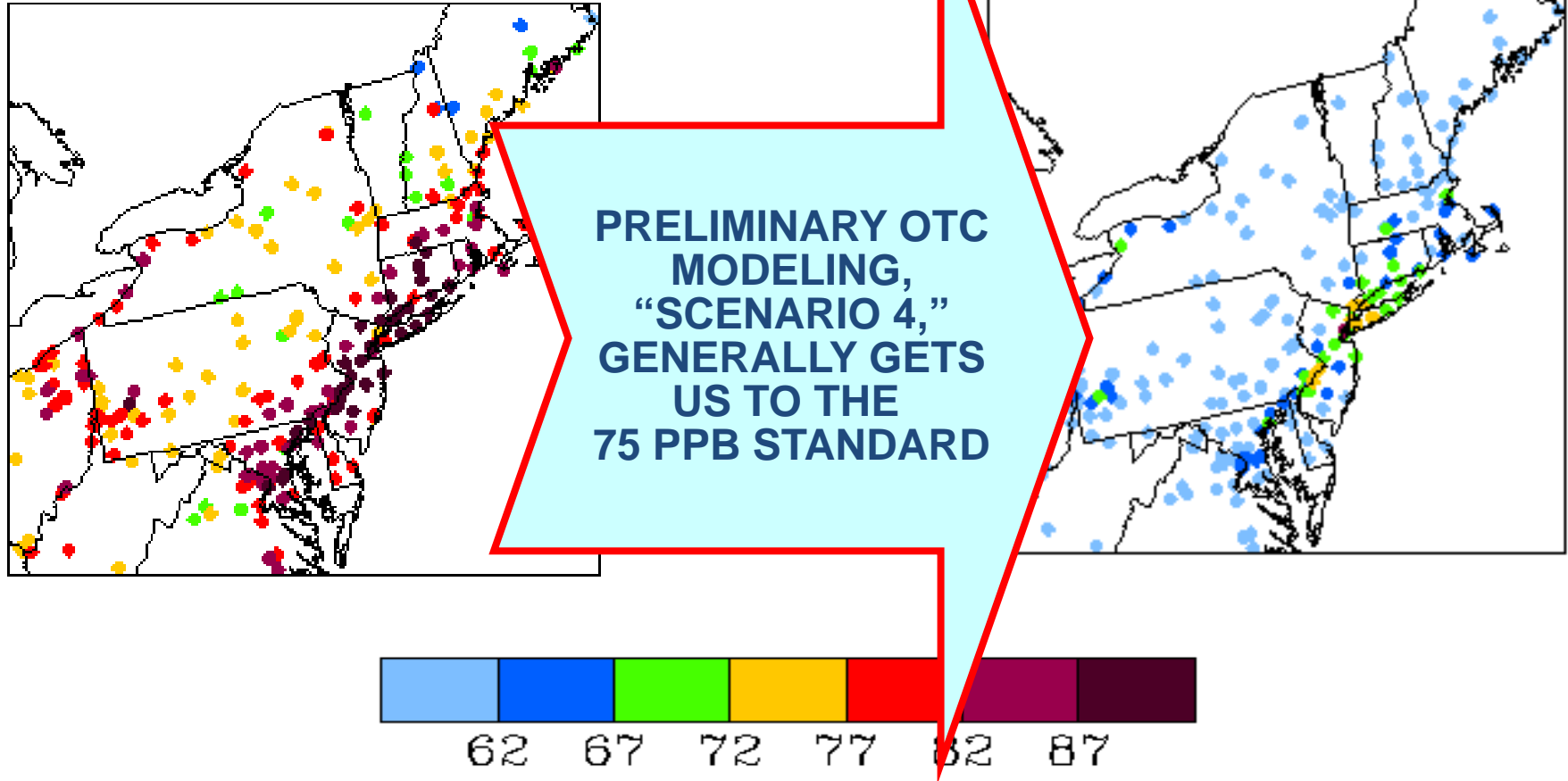
# Why Are Federal Measures Important?

## Ground Level Ozone Drops Dramatically in the Same Time Frame



- Because they work !
- The classic ozone transport story
  - Incoming ozone levels (as high as 80 ppb) collect in an elevated reservoir over night
  - Real world programs like the NOx SIP call have shown that
    - Adding regional controls ...
    - Results in regional NOx emission reductions ...
    - Which lead to reduced ozone in the elevated reservoir ...
    - Which lead to lower ozone at ground level and public health protection !

# Will Federal Measures Get Us to 75 ppb?



**Note:** "Scenario 4" includes estimates for reductions from Tier 3 and CSAPR 2

# Is EPA Succeeding With Federal Measures?

- No, but they are trying very hard
- Federal rules for all key categories in some stage of proposal
  - Tier 3/low sulfur fuels and CSAPR are two good examples of EPA's push for federal rules
  - Many of EPA's current efforts fall far short in reducing nitrogen oxide (NO<sub>x</sub>) – the key to reducing ozone transport
    - For example, EPA has promised to do better with NO<sub>x</sub> – in CSAPR "2"
- EPA is under attack
  - Some final rules and rules that are being proposed are under attack
    - Federal legislation like the TRAIN Act
    - Litigation on everything



# Purpose of Transport Action?

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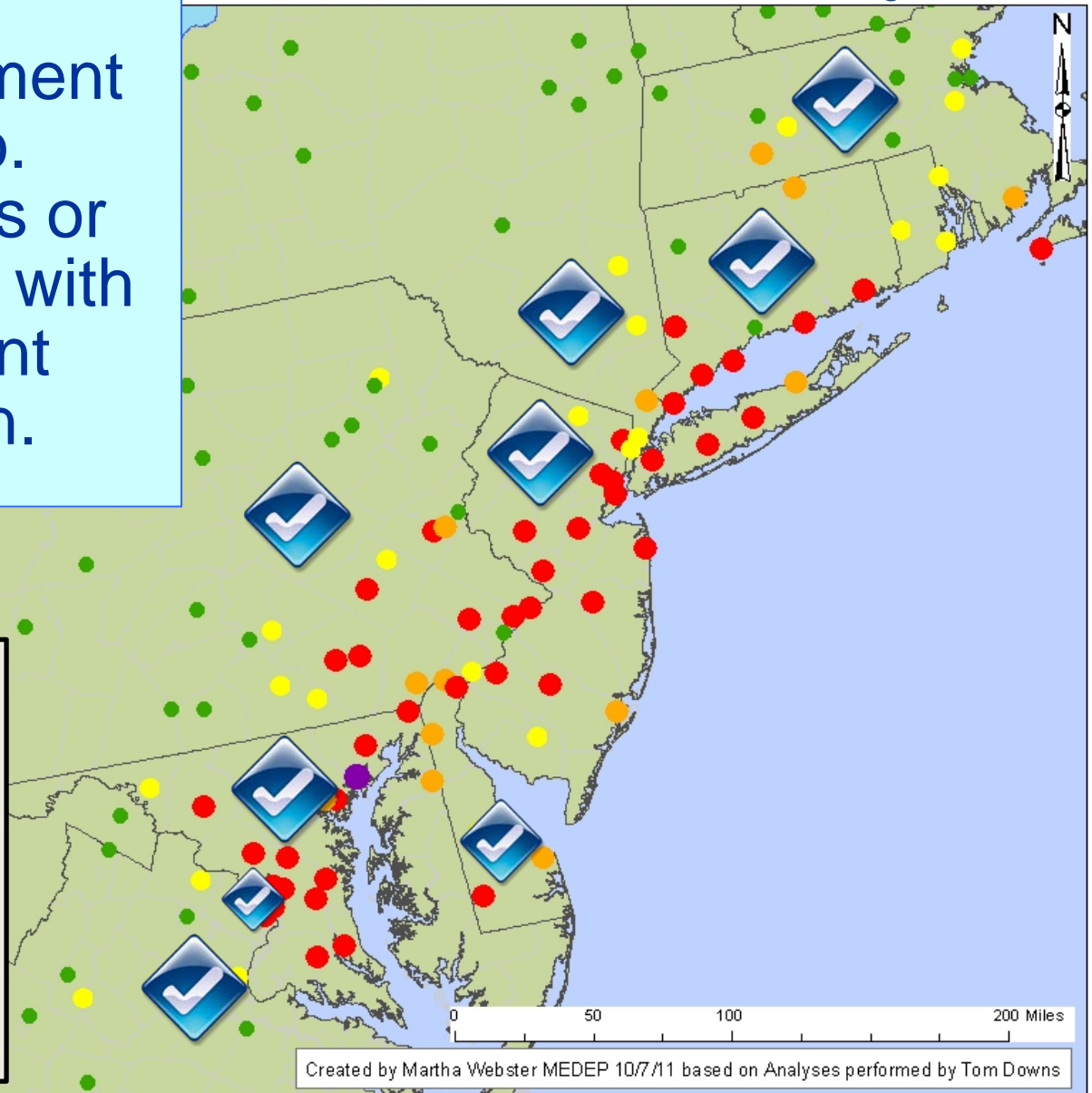
1. Help EPA succeed with Federal Measures
  - Make successful federal measures appear to be the lesser of several evils?
2. As a serious backstop to #1?
  - The actions discussed next are the tools provided to the states in the Clean Air Act to compel reductions in upwind states



# Do All OTC States Have to Act Together?

Data through 9/28/2011

States in attainment don't have to. Individual states or groups of states with non-attainment problems can.



# CAA Transport Tools

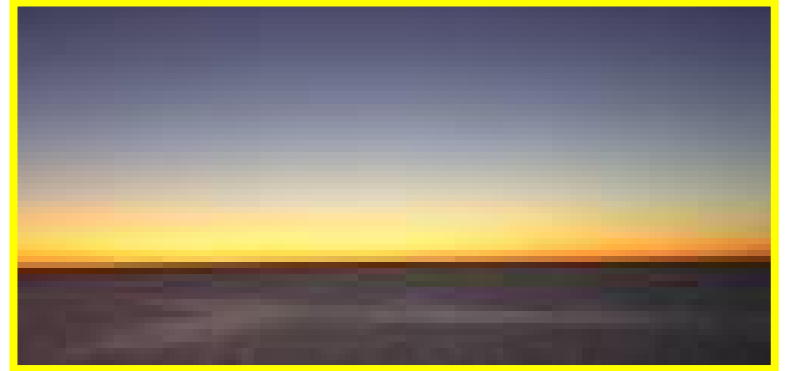
- Section 126 Petitions against stationary sources
- Giant non-attainment areas
- Section 176A Petition to create a new, much larger “Eastern Transport Region”
- Another “state partnership” effort
  - Daughter of OTAG
- The 5 U.S.C. § 553(e) “Mega” Petition
- One, none or some combination of above?





# Section 126 Petitions

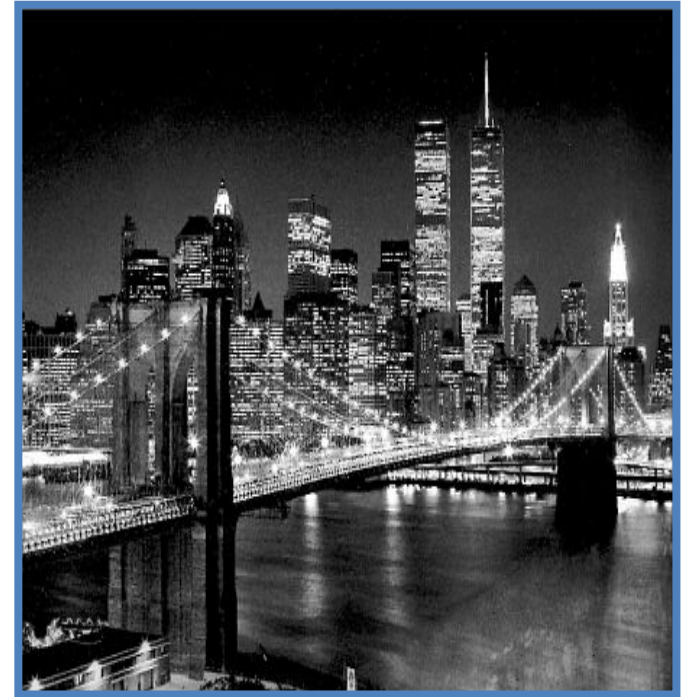
- The classic upwind transport tool
- States can petition EPA to require controls on specific (or groups of) stationary sources that contribute to non-attainment in downwind areas
- Many OTC states have used Section 126 petitions in the past
- Presumes quick action by EPA if the Petition is successful





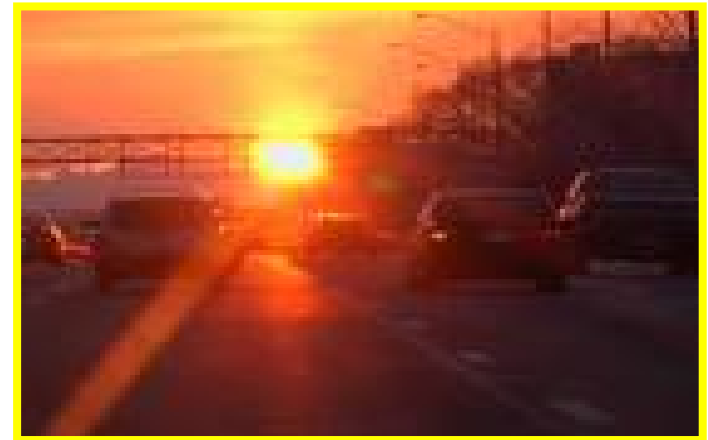
# Section 126 Petitions – Pros and Cons

- Pros
  - A clear cut legal tool
  - Lots of data
    - CAIR, CASPR, OTC modeling
  - May help drive a better CSAPR “2”
  - Just talking about Section 126 would have value
- Cons
  - For stationary sources only
  - Limited “direct” success in the past
    - “CSAPR” is the answer”
    - Easiest “targets” already controlling
  - Need for clean hands
    - May need to petition against each other
  - Potentially a resource intensive effort



# The Giant Nonattainment Area

- Include all of the “contributing” areas in a large non-attainment area for the 75 ppb standard
  - A 20 to 30 state non-attainment area
- Would be “science” or “airshed” based
- Would require OTC states to update Governor’s recommendations (for 75 ppb ozone std.) to include this concept
  - Quickly!



# The Giant NAA - Pros and Cons

- Pros

- Is scientifically correct
- Levels the playing field
- Has already been included in DE, NJ and MD recommendations
- Requires all contributing states to work together until the hardest downwind areas are cleaned up

- Cons

- Not taken seriously by EPA
- Historical EPA interpretation of the Act
  - Include only contributing counties “adjacent” to the CMSA boundary
  - Would have to argue that the science tells us the “scales of transport” are 100s of miles
- Not a favorite of some OTC states
- Short time frame to act



# The Section 176A Petition

- Petition EPA to establish a new very large “Eastern States” Ozone Transport Region
  - A 20 to 30 state Transport Region
  - Keep current Northeast Ozone Transport Region as is
- Levels the playing field for NSR, RACT and more
- Works from same kind of significant contribution concept as CSAPR, using EPA’s previous framework



# Section 176A – Pros and Cons

- Pros
  - Very legal
  - CSAPR could be used as a good technical justification for the petition
  - Very scary to non-OTR states
    - Makes federal measures look reasonable
- Cons
  - Could take years
  - Never attempted before
  - Would likely generate major push-back from non-OTR states



# Another OTAG?

- OTAG – The Ozone Transport Assessment Group
  - An early 1990's, 38 state partnership that lead to the NOx SIP Call
- Success in distant past with OTAG and more recently with the NE/MA/MW 17 State Collaborative
- General support from mid-west and southern states over the critical need for federal programs to reduce transport
- Technical partnership between the Northeast, Midwest and Southern Regional Planning Organizations (RPOs) has been a major success





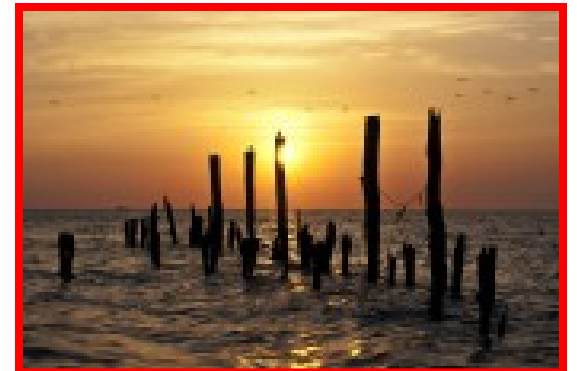
# OTAG – Pros and Cons?

- Pros

- A more cooperative approach
- Has worked in the past
- Some earlier consensus with Midwest in 2009 State Collaborative letter

- Cons

- Would need 2 or 3 Commissioners as champions
  - One within the OTC – at least one from outside of the OTC
- Political landscape will make it more difficult for some states to agree to strong actions
- Can be resource intensive
- Still requires EPA action
  - And ... can still be litigated
- Do we really need to provide this kind of support to EPA – or are they already trying?
  - Just having trouble succeeding?





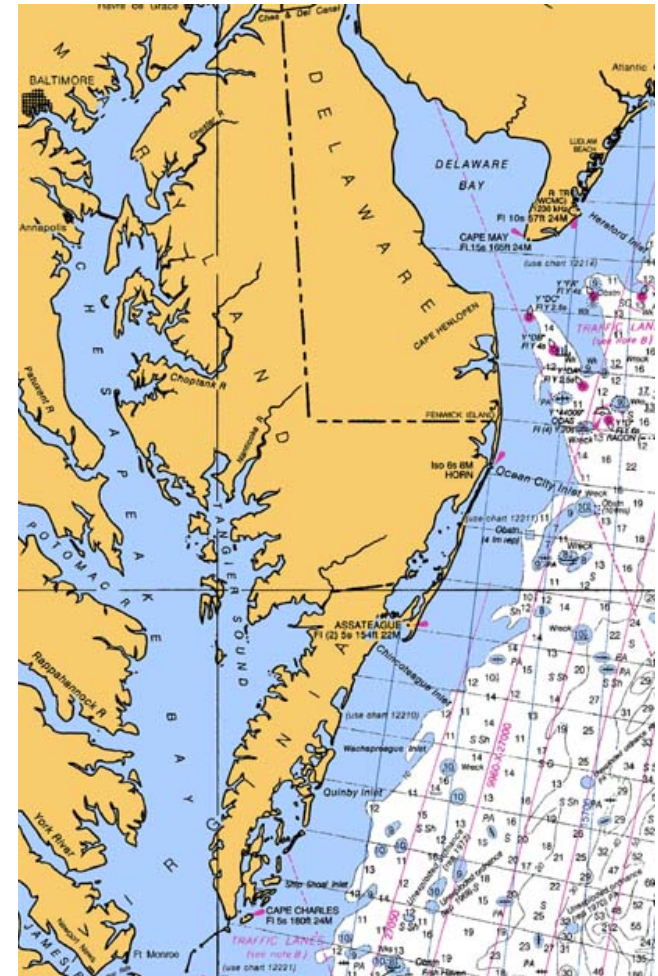
# The 5 U.S.C. § 553(e) “Mega” Petition

- Designed to add additional legal pressure for EPA to adopt appropriate federal measures to reduce transport
- Combines the specific transport authorities contained in Sections 110 and 126 of the Act
  - With the general authorities contained in Titles 1, 2, 3 and 4 (providing EPA with the authority to adopt federal rules) of the CAA
  - With the even more general authority of the federal Administrative Procedures Act (APA), specifically 5 U.S.C. § 553(e), which allows for states to directly petition EPA
- Argues OTR states are technically unable to comply with the CAA (and therefore “suffering a legal wrong”) unless EPA aggressively addresses transport
- Also sets the stage to challenge EPA decisions on upwind states “transport has been addressed” demonstrations required by Section 110(A)(2)(d)
  - If federal measures fail
- Could be linked to use of 85 ppb in CSAPR
- Would request EPA promulgation/implementation of new national rules designed to reduce ozone-forming pollutants from the six sources that represent about 75% of the NO<sub>x</sub> that is left to regulate (The OTC National Asks)



# Mega Petition – Pros and Cons

- Pros
  - Science based
  - Adds state-based legal arguments to the need for EPA to adopt Federal Measures
    - Will be plenty of legal arguments made by opponents of Federal Measures
  - Has PR value
- Cons
  - More complicated
  - Not a legal slam dunk
    - Stretches the authority of the CAA
  - Will require expert, creative legal expertise



# A Schedule for What?

- Several options

- Just the 75 ppb ozone standard?
- The appropriate health based level?
  - Somewhere in the 60 to 70 ppb range
    - At least shoot for 70 ppb
  - Understand what it would take to get even lower
- Something in the middle?

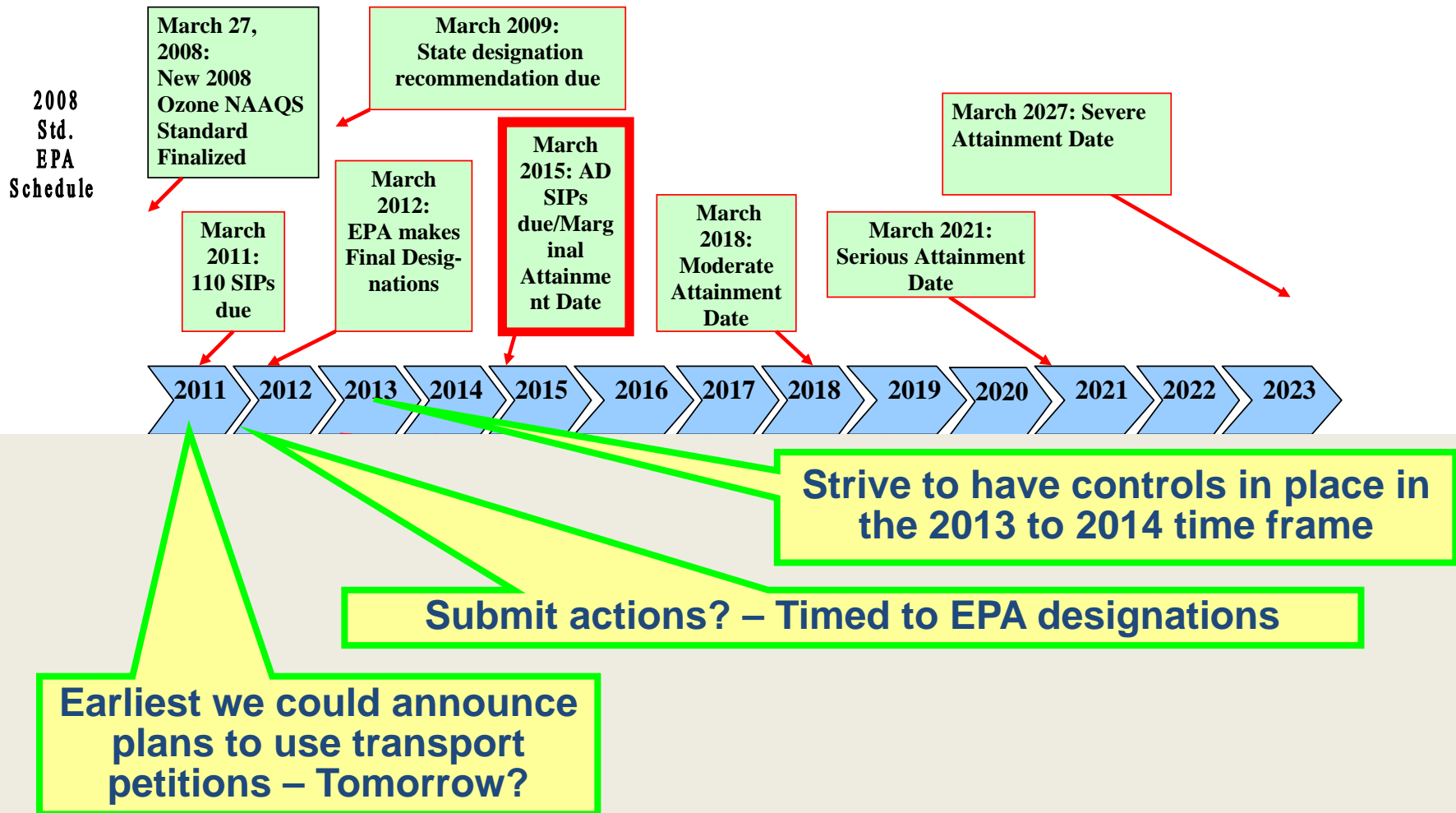
- Straw proposal

- Let 75 ppb ozone standard drive the schedule and planning process
- Ask the technical work to also inform policy makers on what it would take to get to a lower level



# The Basic Ozone Timeline

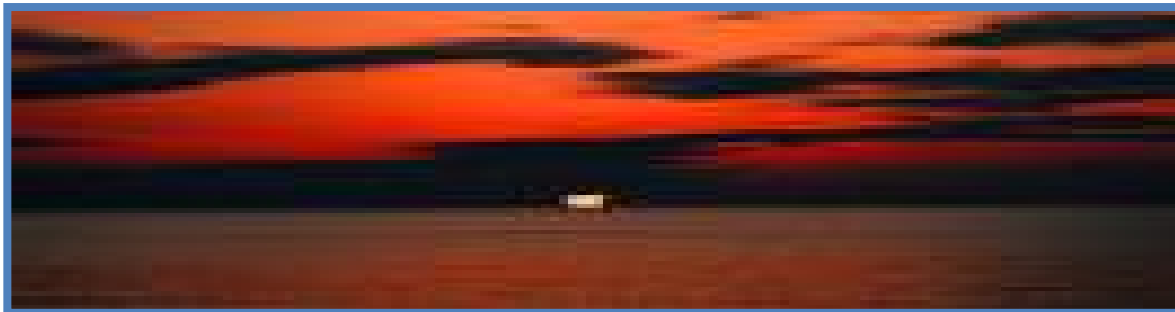
## Timeline for the 75 ppb ozone Standard



# Discussion

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- Discussion on transport tools
  - Who might want to move ahead?
  - Who can't move ahead?
    - Would those that can't move ahead be supportive of those that can?
- Potential actions for tomorrow
  1. Do nothing – Continue to discuss and consider for future action
  2. Charge the Committees to look at transport tools in the CAA (Sections 110(a)(2)(D), 126 and 176A)
  3. Do # 2 , but supplement with a press statement
- Other Discussion Items?



# Additional Briefing Material

- The Commissioners briefing package also includes:
  - One page summaries of each transport option
  - Draft action items for consideration
  - Copies of multiple earlier actions the OTC has taken on the need for federal measures to reduce transport
- If more detailed briefings are desired ... “For policy maker” briefings on key issues are available:
  - Overview of the need for federal measures to reduce transport and the overarching control strategy for the OTC:
    - “What We’ve Achieved Under the Clean Air Act Amendments of 1990, and Where We Need to Go. Getting to the New Ozone Standards a Pathway Forward.” OTC Fall meeting, November 10th, 2010
    - <http://www.otcair.org/upload/Documents/Meeting%20Materials/OTC%20Overall%20Progress%20Report%20-%20Fall%202010.pdf>
  - Overview of the science of transport:
    - “Where does the air pollution in the OTR come from and what do we need to do to fix it?” OTC Annual meeting, June 9 and 10, 2009
    - [http://www.otcair.org/upload/Documents/Meeting%20Materials/ConceptualModel\\_20090602%20TAD%20FOR%20OTC%20Final.pdf](http://www.otcair.org/upload/Documents/Meeting%20Materials/ConceptualModel_20090602%20TAD%20FOR%20OTC%20Final.pdf)
  - For assistance in proving more detailed briefings contact OTC Staff