



# WORKING WITH REGULATORS

**CIBO INDUSTRIAL EMISSIONS  
CONTROL TECHNOLOGY IX**  
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**PRESENTED BY**

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# OVERVIEW

## The Regulatory Dilemma

### Federal – State Relationships

### Dealing with Regulators

# REGULATORY

## EPA Initiatives –

- **New Air Quality Standards**
- **Climate Actions**
- **Boiler MACT**
- **Cross-State Air Pollution Rule**
- **New Auto Standards**
  - **54 mpg by 2025**
  - **Current – 35.5 mpg**

# **NEW STANDARDS (NAAQS)**

**EPA launched a program for a new set of NAAQS over the past 2 years**

- **To lower the existing Ozone std. –**
  - **But most areas in US attain**
- **New short-term (1-hour) –**
  - **Nitrogen Dioxide (NO<sub>2</sub>) – 1/2010**
  - **Sulfur Dioxide (SO<sub>2</sub>) – 6/2010**
- **Neither NO<sub>2</sub> nor SO<sub>2</sub> has been a significant air quality issue for the 40+ years of the Clean Air Act**

# OZONE PAST & FUTURE

**March 2008 – EPA lowered to 75 ppb**

**Sept. 2009 – New EPA Administrator announced it would be lowered**

**December 2009 – EPA Proposed range from 70 ppb down to 60 ppb**

**Fall 2011 – New standard to be set?**

**Basis – Chamber testing – 6 hours exercising, lung function changes approx. 1-2%**

**Yet, asthma incidence rising even though ozone levels dropping**

# STATE OPPOSITION – N.C.

**North Carolina: “Our State . . . & nation face the most serious recession since the Great Depression . . . Many North Carolinians have lost their jobs and their health insurance, and face the real possibility of losing their homes.”**

**“Lack of employment, loss of health care, loss of a home also affect the health of our citizens.”**

**“NCDAQ strongly believes that it is important to balance . . . the potential for health impacts of ozone with the current economic situation.”**

## STATE OPPOSITION – 2

**“If EPA elects to [reduce] the standard, . . . [it should ] set the level . . . at the upper end of the range . . . to minimize uncertainty in the health benefits.”**

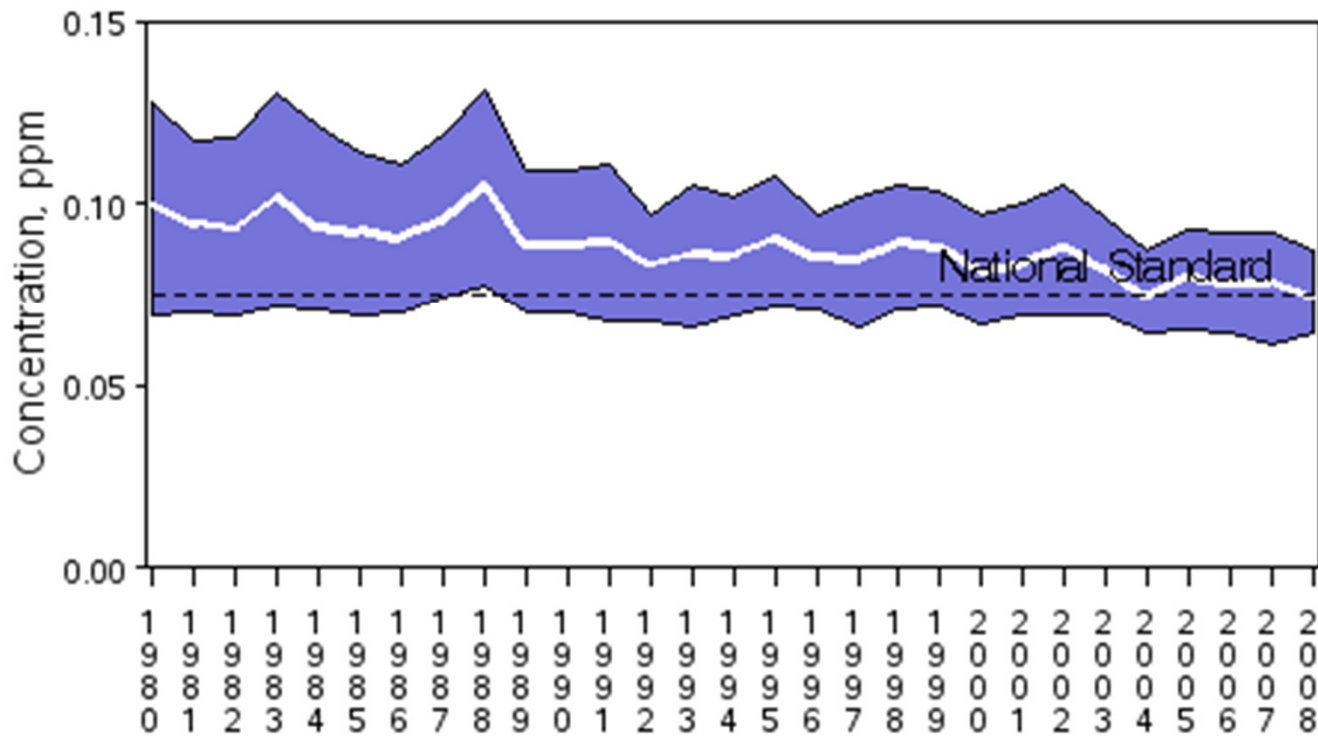
**NC DAQ Director asked by a legislator, “What is the natural background level of ozone in the Southeast –**

- **His response – “65 ppb” – in the middle of EPA’s proposed range**

**If EPA goes to 60 ppb – more that 50 counties NA vs. 25-30 at 75 ppb**

# OZONE CONCENTRATIONS

Ozone Air Quality, 1980 - 2008  
 (Based on Annual 4th Maximum 8-Hour Average)  
 National Trend based on 258 Sites



1980 to 2008 : 25% decrease in National Average



# NEW NO2 STANDARD

**Prior standard set 1985 – annual avg.**

**Annual rescinded & replaced with stringent 1-hour standard**

- **EPA requiring monitors along urban highways – likely nonattainment**

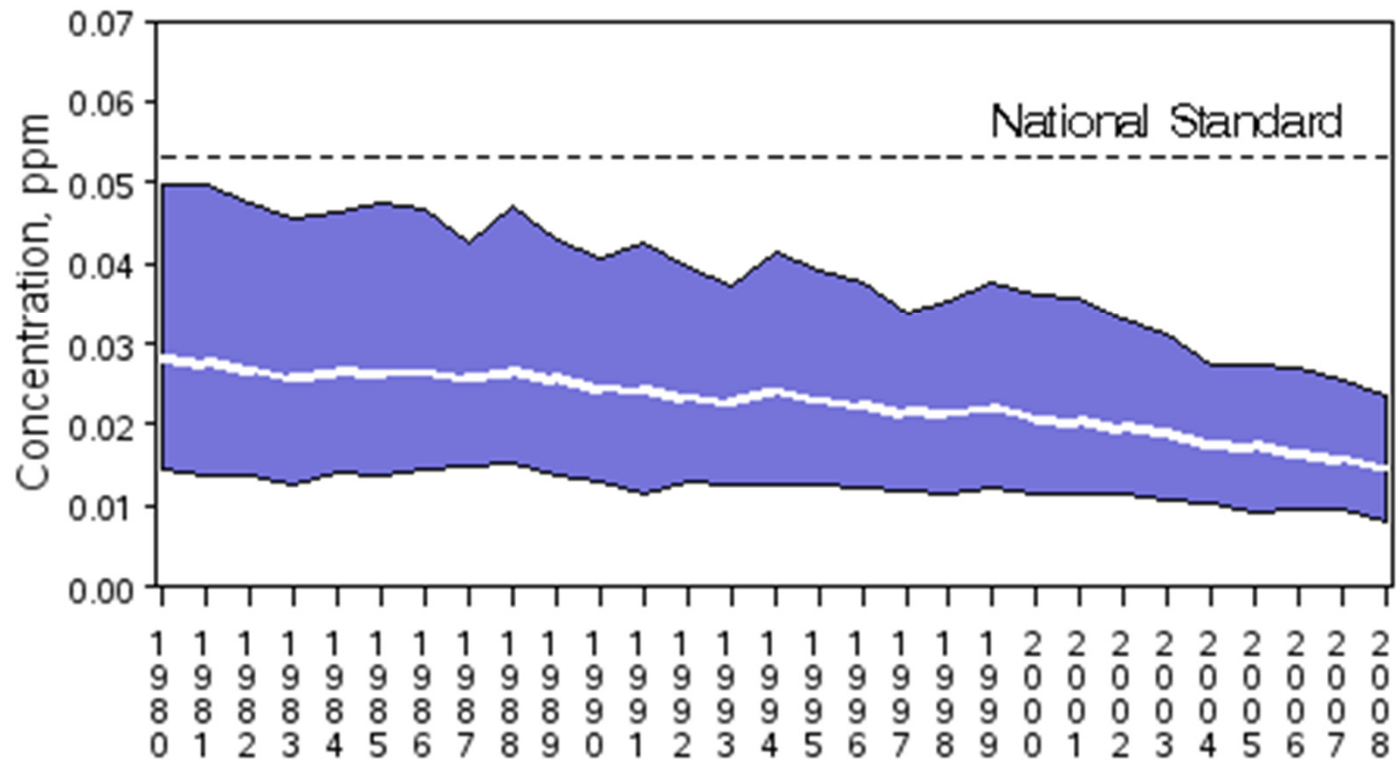
**Immediate implementation required –**

- **PSD sources – immediate compliance**
- **Other source compliance to follow**

**Response to States' inquiries on how to implement – EPA conceded that it has no answers on how sources comply with the new standard**

# NO2 CONCENTRATIONS

NO2 Air Quality, 1980 - 2008  
(Based on Annual Arithmetic Average)  
National Trend based on 75 Sites



1980 to 2008 : 46% decrease in National Average

# NEW SO<sub>2</sub> STANDARD

**SO<sub>2</sub> standards set 1971 after CAA enacted – annual & 24-hour**

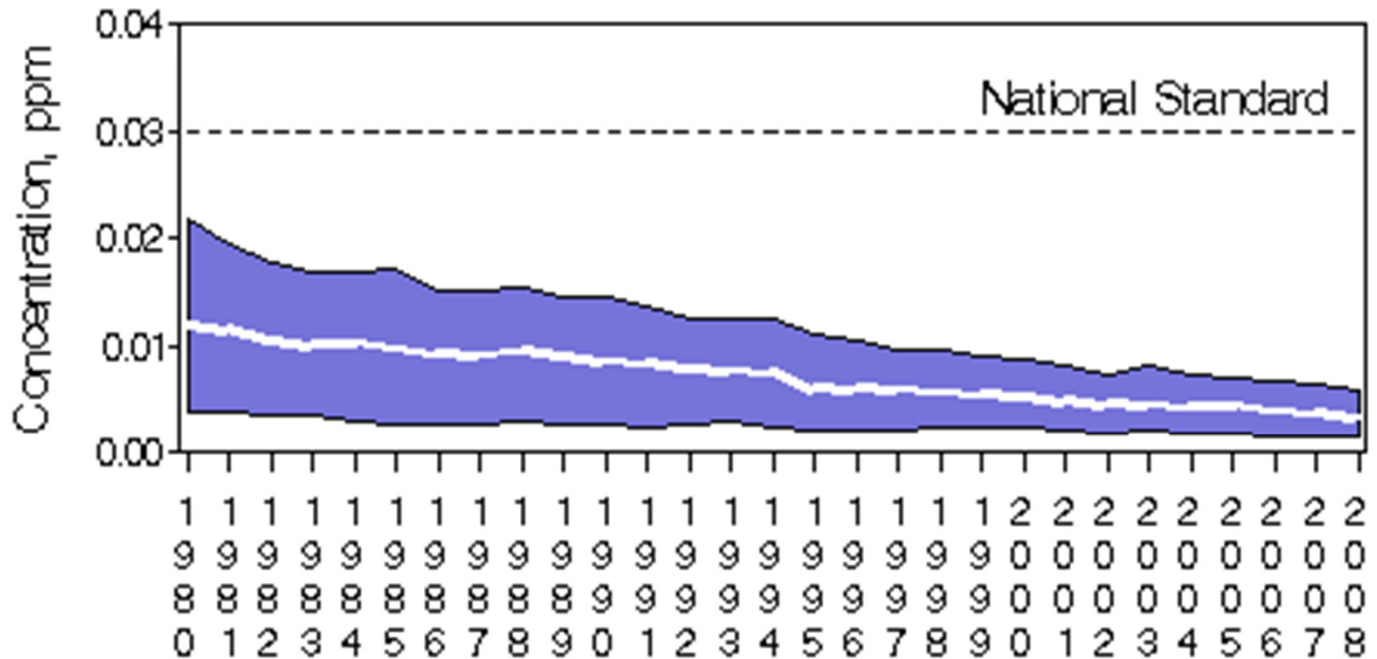
**Previous review of standards – 1996**

- **EPA considered 5-minute standard, but declined to set one**
- **Sued by environmental groups**
  - **Court remanded for explanation**

**Once again, the new EPA Administrator chose to set a new, very stringent short-term limit**

# SO2 AMBIENT TRENDS

SO2 Air Quality, 1980 — 2008  
 (Based on Annual Arithmetic Average)  
 National Trend based on 141 Sites



**1980 to 2008 : 71% decrease in National Average**

# UNITED STATES SUPREME COURT

## *Massachusetts v. EPA (April 2007)*

**Supreme Court: EPA can regulate GHGs under Clean Air Act.**

**GHGs are CAA “air pollutants” which EPA must regulate if it finds endangerment of public health or welfare.**

**Provided opportunity for endangerment finding by New EPA – Dec. 2009**

**Precedent for all sources regulated under the CAA and across the economy.**



# WHO IS AFFECTED?

**Large industrial sources, power plants, refineries, chemical facilities, industrial boilers, etc.**

**Also – millions of previously not regulated sources such as office buildings, warehouses, health care facilities, hotels/motels, food service facilities, apartment buildings, etc.**

**Why? CO<sub>2</sub> is emitted in much larger quantities than traditionally regulated pollutants, even from small sources**

- **Ex., Auto or light truck: 6-10 tpy CO<sub>2</sub>**

# EPA'S SOLUTION – NSR “TAILORING” RULE

**EPA recognized permitting so many small sources would create regulatory gridlock**

**EPA Solution – Change the rules by eliminating the 100/250 tpy permit threshold established in the law**

**Originally proposal – 25,000 tpy CO<sub>2</sub>e**

- **Final – 100,000 tpy (June 2010)**

**Legal basis – “Absurd result”**

- **Over time ALL sources will be regulated in 4-step process**

# PROBLEMS FOR STATE REGULATORS – TEXAS

**Most States run their own permit programs – NSR & Title V**

**EPA recognized Tailoring rule may not allow States – under State law – to avoid regulating at 100/250 tpy**

**Final tailoring rule: States may “interpret” their laws to regulate only sources > tailoring thresholds**

**Some States object – Especially Texas**

- **“Texas has neither the authority nor the intention of interpreting, ignoring or amending its laws . . . to compel permitting of GHG emissions.”**



# FEDERAL vs. STATE

- States generally implement regulatory programs under their organic laws**
- State programs operate by meeting EPA minimum requirements**
- **But States may set more stringent requirements – Ex., California**
- EPA has NO authority to direct States' interpretations of their own laws**
- Bottom line: States are partners with EPA & not subordinates implementing environmental programs**

# REGULATORY FALSE PREMISE

**Environmental Quality is deteriorating, therefore –**

- **Greater efforts required, more stringent technologies**
- **With SUBSTANTIALLY higher costs**

**Non-biased environmental evaluations show contrary**

**Bases of Premise – Crises of Year / Decade / Century / Millenium**

# FALSE PREMISE – 2

**Climate Change (fka Global Warming) only the most recent justification for re-making the world & economy –**

- **Previous crises: acid rain, smog**
  - **Target : Energy Production**
- Energy sources under attack**
- **Coal – original whipping boy**

# FALSE PREMISE – 3

**Now even formerly “Clean” energy sources under attack**

- **Natural Gas**
  - **Production – Fracking**
  - **And Use**
- **Even Wind & Solar**
  - **Advocacy groups opposing Cape Cod & Death Valley Projects**

**What’s Left?**

# WORKING WITH REGULATORS

## How to get along?

- **Educate, Educate, Educate !!!**
- **Be patient**
- **Keep it simple (KISS)**
- **Repetition**
- **Expect delays & plan for them**
- **Keep your sense of humor**
- **Be Respectful – They have a tough job to do**



# RESPONDING TO REGULATORS

**If working with them does not succeed?**

**Challenge agency actions**

- **Lawsuits, if necessary**
- **Legislative action**
- **Pick targets carefully for greatest likelihood of success**

# CAVEATS FROM A REGULATOR

From a recent discussion with a  
State Regulator –

**“DON’T TRUST US”**

**“WE CAN’T HELP OURSELVES”**

# **SO WHERE ARE WE?**

## **Big Environmental Issues Looming**

**EPA appears to be entirely out  
of control**

**Remedies –**

- **Congress ?**
- **New Administration ?**
- **Educate the Public ?**



# IF ALL ELSE FAILS



*"Sorry, Harold, but I'm reducing our carbon footprint."*