



# Options in Light of the CAIR Vacatur

SIPRAC

August 14, 2008

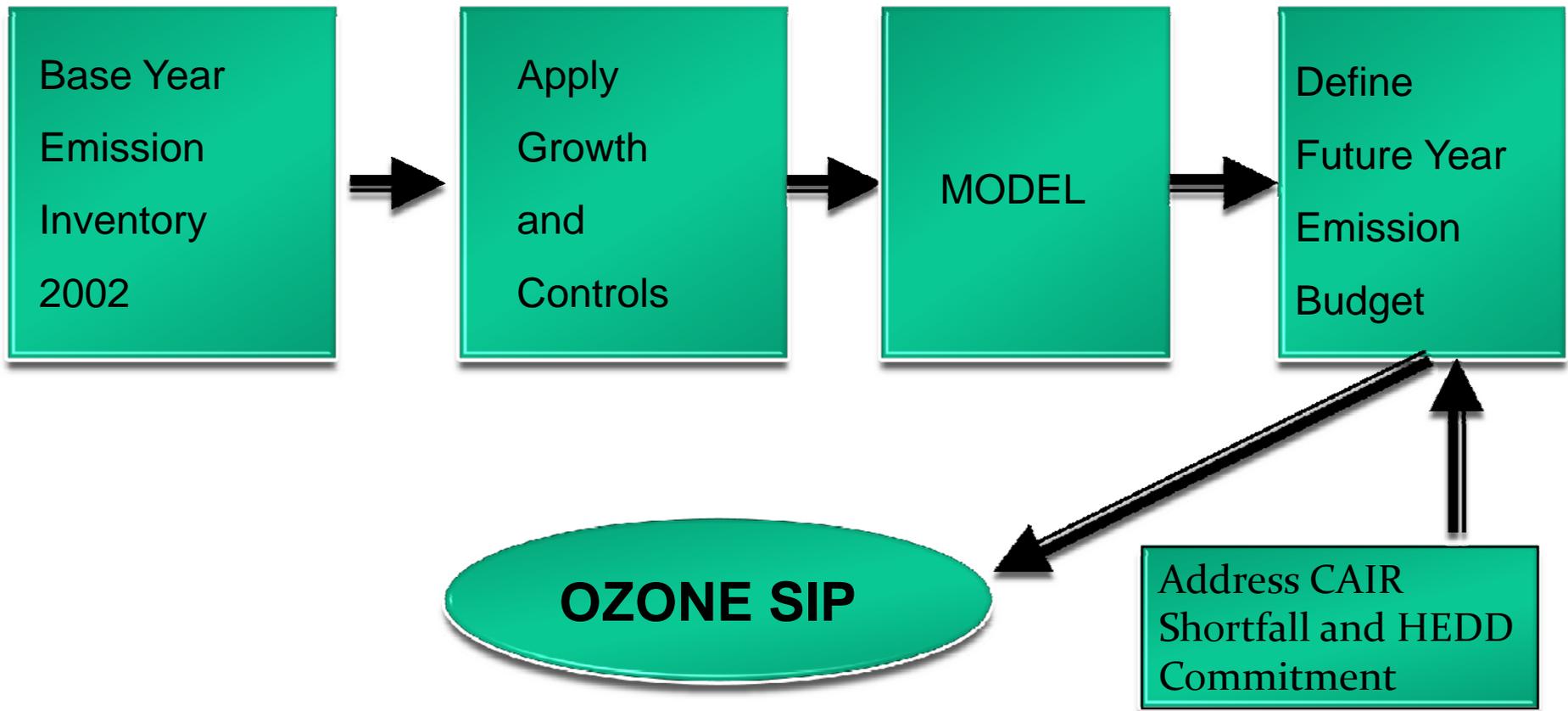
# Many Unknowns

- CAIR still in existence until decision becomes final. Assuming EPA appeals, will the vacatur be upheld?
- Will EPA or Congress act in a timely fashion to restore at least the Phase 1 CAIR emission reductions?
- Will the NO<sub>x</sub> SIP call be re-instated?
- Will all interstate trading programs be challenged?

# Clean Air Act Obligations Impacted

- Section 110(a)(2)(D) SIP (interstate transport)
- RACT/BART
- 8-hr Ozone SIP
- PM<sub>2.5</sub> SIP
- Regional Haze SIP
- NO<sub>x</sub> SIP Call
- Section 185 fees

# Effect of CAIR Vacatur on O<sub>3</sub> SIP



# Policy Considerations

- No backsliding on public health/ozone SIP commitment (tons). CAIR emissions reductions assumed in all future year emissions modeling (ozone, PM, regional haze).
- Timing– accelerate effort instead of delay.
- Limited resources put toward results.
- Avoid EPA disapproval and sanctions.
- Continue work toward future goals (i.e., more stringent ozone standard).

# Options

- Take no action now, wait to see what happens
- Restore NOx Budget Program
- Restore NOx Budget Program with enhancements
- Pursue performance standards that can be used to:
  - Demonstrate equivalency with NOX SIP call
  - Fulfill HEDD commitment
  - Address Ozone SIP shortfall

# Option 1 – Take no action

## Advantages

- Administratively efficient, wasting no effort until the situation is sorted out.

## Disadvantages

- Doesn't demonstrate support for regional solution.
- Sources might make operational changes to increase emissions.
- Findings/sanction risk.

# Option 2- Restore NOx Budget Program

## Advantages

- Administratively simple.
- Satisfies SIP Call obligations.
- If expedited and initiated now, could be accomplished by May 2009.

## Disadvantages

- Excess allowances; backsliding from CAIR.
- Not satisfactory upwind remedy.
- Opens door to challenge.

# Option 3 – Restore NOx Budget Program with enhancements

## Advantages

- If constrain allocations, would achieve public health and environmental results consistent with those that would have been achieved under RCSA section 22a-174-22c.
- If use RCSA section 22a-174-22c allocation methodology, public policy supports new, clean units over old, dirty units.

## Disadvantages

- Opens door to challenge.
- Upwind states not likely to accept tighter budgets.

# Option 4 – Pursue performance standards

## Advantages

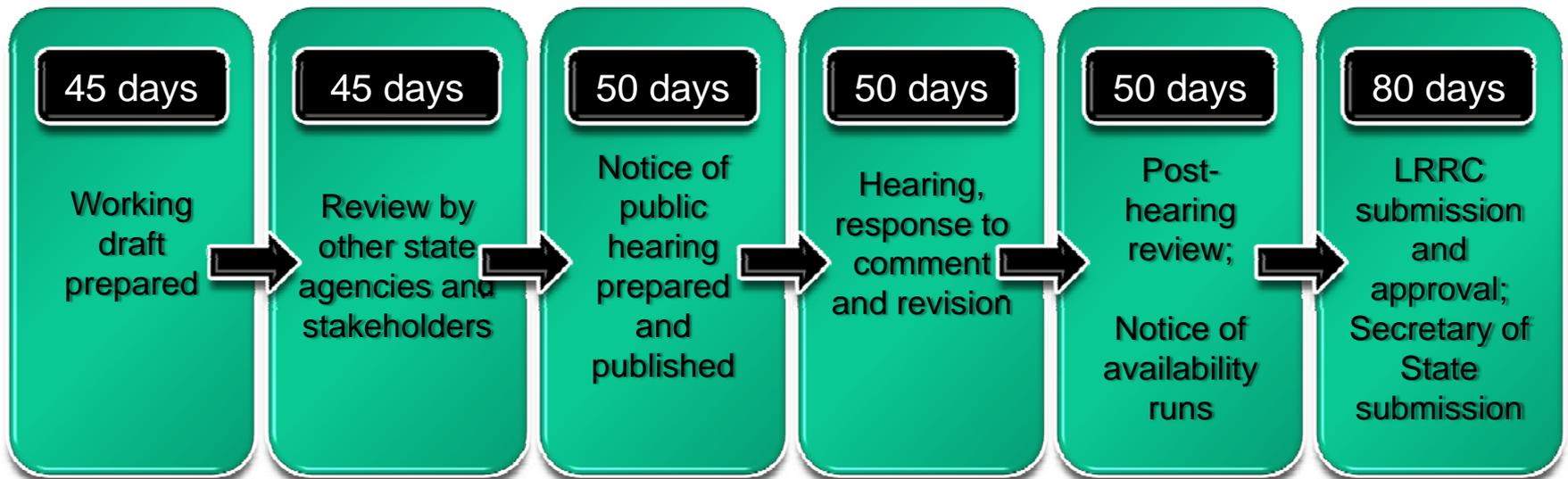
- Satisfies SIP Call obligations.
- Opportunity to prevent backsliding from ozone SIP commitment if sources meet CAIR reduction levels.
- Sets benchmark to demonstrate is viable as 126 remedy.
- Could satisfy HEDD and NO<sub>x</sub> shortfall obligations.

## Disadvantages

- Implementation not viable before 2010.

# Timeline issues

- Long regulatory processing timeframes in Connecticut.
- Consider 2009 and 2012 with reclassification to serious.
- 8 hr ozone SIP disapproval results in sanctions 18 months later. This could impact highway funds and trigger 2:1 offset requirement for new source review.



**BEST CASE SCENARIO FOR TYPICAL REGULATORY PROCESS  
ENTIRE PROCESS = MORE THAN 10 MONTHS**

## We are seeking input on the options...

- Anticipate multi-pronged approach: legislation, 126 petition, and CT state regulations.
- Contact Wendy Jacobs at 860-424-3457 or [wendy.jacobs@ct.gov](mailto:wendy.jacobs@ct.gov) with comments/suggestions.
- Time is of the essence for 2009.
- DEP decision on path(s) being formulated over the next week.