

**Informational
Briefing on
Proposed Changes to
Ozone Standard**

February 1997



**National Ambient Air Quality
Standards Revision Process**

EPA required to review and reaffirm or revise each ambient air quality standard every 5 years.

- Particulate Standard last reviewed - 1987
- Ozone Standard last reviewed - 1993
 Technical review - 1989

Review accomplished by preparation of Air Quality Criteria document.

This document reviewed by Clean Air Scientific Advisory Committee (CASAC).



STANDARD REVISION PROCESS

Primary Standard-

Clean Air Act directs EPA to define a primary (health based) standard. The Act defines a primary standard as one "the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria and allowing an adequate margin of safety (are) requisite to protect public health."

- ▶ margin of safety
 - ▶ address uncertainty in studies
 - ▶ protect against unknown hazard
- ▶ does not require zero risk levels
- ▶ cost of meeting standard not explicitly/legally a consideration



SCIENTIFIC ASSESSMENT PROCESS

- ▶ EPA prepares "Criteria document" that compiles and assesses recent peer-reviewed health/environmental effects studies. EPA chapters are peer-reviewed.
- ▶ EPA prepares "Staff Paper" that interprets information in the criteria document and includes staff recommendations.
- ▶ EPA holds public hearings on both documents.
- ▶ Clean Air Scientific Advisory Committee (CASAC) reviews both documents.
- ▶ EPA revises documents.
- ▶ CASAC gives EPA a "closure letter" expressing satisfaction with final documents.
- ▶ EPA proposed standard in the Federal Register.
- ▶ EPA published final standard in the Federal Register.

Clean Air Scientific Advisory Committee

- **Stephen Ayres, Medical College of Virginia**
- **Philip Hopke, Clarkson University**
- **Jay Jacobson, Boyce Thompson Institute**
- **Petro Koutrakis, Harvard University**
- **Kinley Larntz, University of Minnesota**
- **Allan Legge, Biosphere Solutions**
- **Morton Lippmann, New York University**
- **Joe Maurerly, Inhalation Toxicology Research Institute**
- **Roger McClellan, Chemical Industry Institute of Toxicology**
- **Daniel Menzel, University of California, Irvine**
- **Paulette Middleton, Science and Policy Associates**
- **William Pierson, Desert Research Institute**
- **James Price, Texas Natural Resource Conservation Commission**
- **Carl Shy, University of North Carolina**
- **Jonathan Samet, Johns Hopkins University**
- **Christian Seigneur, Atmospheric and Environmental Research, Inc.**
- **Frank Speizer, Harvard University**
- **Jan Stolwijk, Yale University**
- **Mark Utell, University of Rochester**
- **Warren White, Washington University**
- **George Wolff (Chairman), General Motors Corporation**



WHAT IS GROUND-LEVEL OZONE?

- ▶ A prime ingredient of smog in our cities
- ▶ A highly reactive, unstable molecule formed when two groups of air pollutants chemically react in the atmosphere

VOLATILE ORGANIC COMPOUNDS (fumes from petroleum-based products, such as gasoline, paints, thinners.)

PLUS

NITROGEN OXIDES (from combustion, such as power plant and industrial boilers, vehicles.)

PLUS

HOT SUMMER DAYS AND SUNLIGHT

equals

OZONE



OZONE STANDARD

Current Standard

- ▶ 1 hour standard of .12 parts per million (125 parts per billion)
- ▶ Expressed as a "1-expected exceedance" form (i.e. To be exceeded no more than once per year, averaged over 3 years.)

Proposed Standard

- ▶ 8 hour standard of .08 parts per million (.85 parts per billion)
- ▶ Expressed as a "concentration based" form (i.e., the 3-year average of the annual third highest daily maximum 8 hour ozone concentration may not exceed .08 ppm.)



Proposed Ozone Standard

NEW Form of Standard - How to Calculate

Example for Sheboygan Monitor:

Five Highest 8 Hour Readings

Year	1st	2nd	3rd	4th	5th
1993	83	80	75	75	75 ppb
1994	135	127	88	82	82 ppb
1995	112	105	105	104	99 ppb
3 year average	110	104	89	87	85 ppb



OZONE STANDARD

Level of the Standard

Alternatives currently under consideration

.07 ppm
.08 ppm
.09 ppm } 8 hour average

and/or retention of current 1 hour
standard at .12 ppm

.09 ppm 8 hour standard and .12 -1 hour standard are
considered approximately equal in terms of health



Ozone Standard

Differential health impacts of alternative levels of O₃ exposures

Per cent and number of children outdoors estimated to experience pulmonary function decrements

Level of Alternate Standard	≥ 15% Decrement	≥ 20% Decrement
.07 ppm, 8 hr	5,300 (3.0%)	700 (0.4%)
.08 ppm, 8 hr	8,900 (5.1%)	2,500 (1.4%)
.09 ppm, 8 hr	13,500 (7.7%)	4,700 (2.7%)
.12 ppm, 1 hr	14,600 (8.3%)	5,300 (3.0%)

Percentage estimates represent aggregate results for 9 urban areas. Total number of estimated "at risk" children in Milwaukee, Waukesha, Racine and Kenosha Counties.



Ozone Standard

There is no "bright line" below which there are no adverse impacts.

Of the CASAC members who expressed their personal values:

3 preferred .08 ppm

1 preferred a range from .08 - .09 ppm

3 preferred .09 ppm

1 preferred a range from .09 - .10 ppm

Broad consensus on support for a standard in the range .07 - .09 ppm.

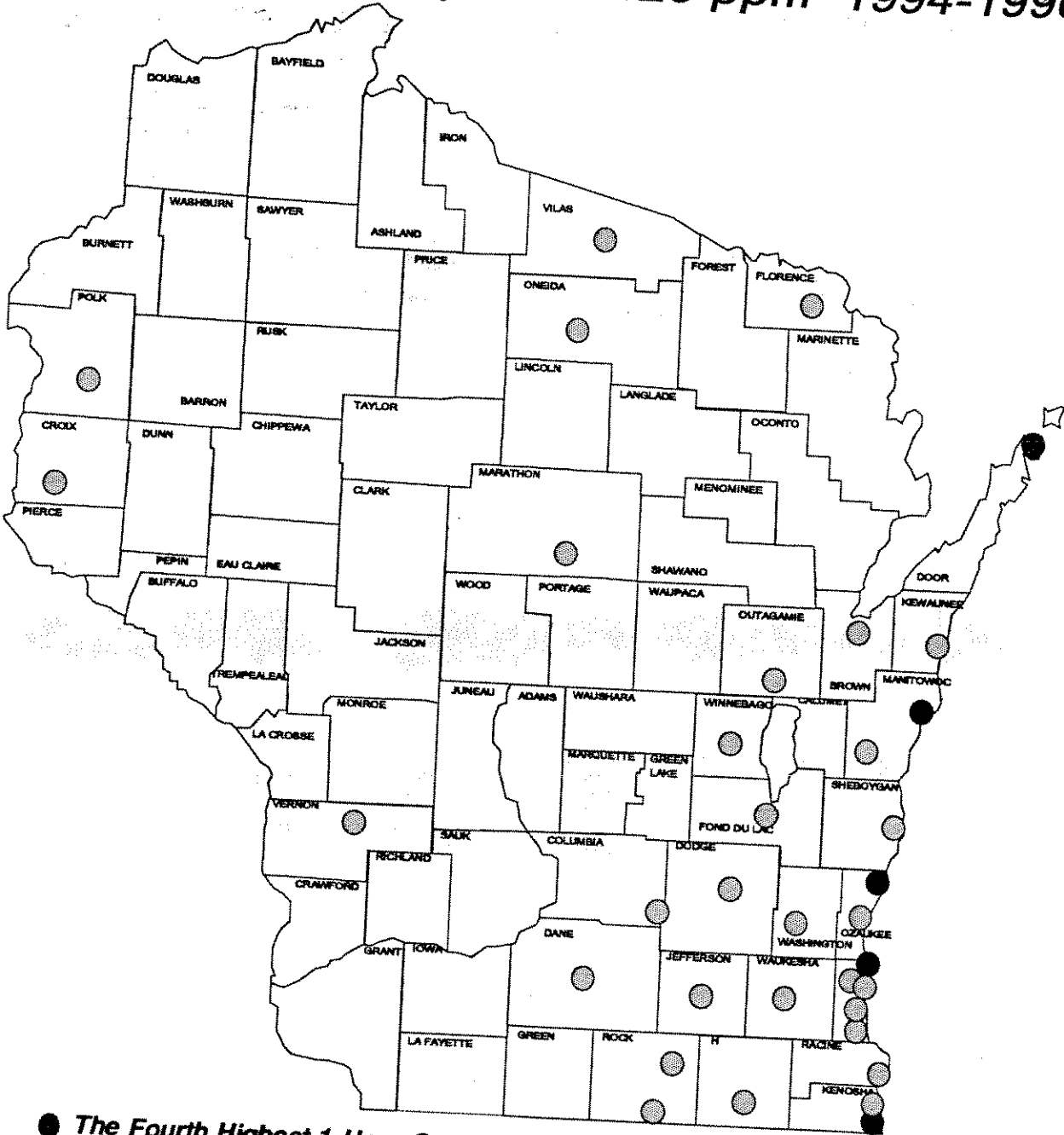


Ozone Standard

Basis of EPA's decision to select .08 ppm from among alternatives considered.

- .09 ppm - 8 hour average and/or .12 ppm - 1 hour average provide "little if any margin of safety"
- Clear evidence from human clinical and field studies that adverse O₃ effects occur at .08 ppm (these effects appear to be reversible).
- Numerous epidemiological studies show excess hospital admissions and emergency room visits at levels above .08 ppm.
- Long term animal studies suggest that changes in lung biochemistry and structure may become irreversible under certain circumstances.

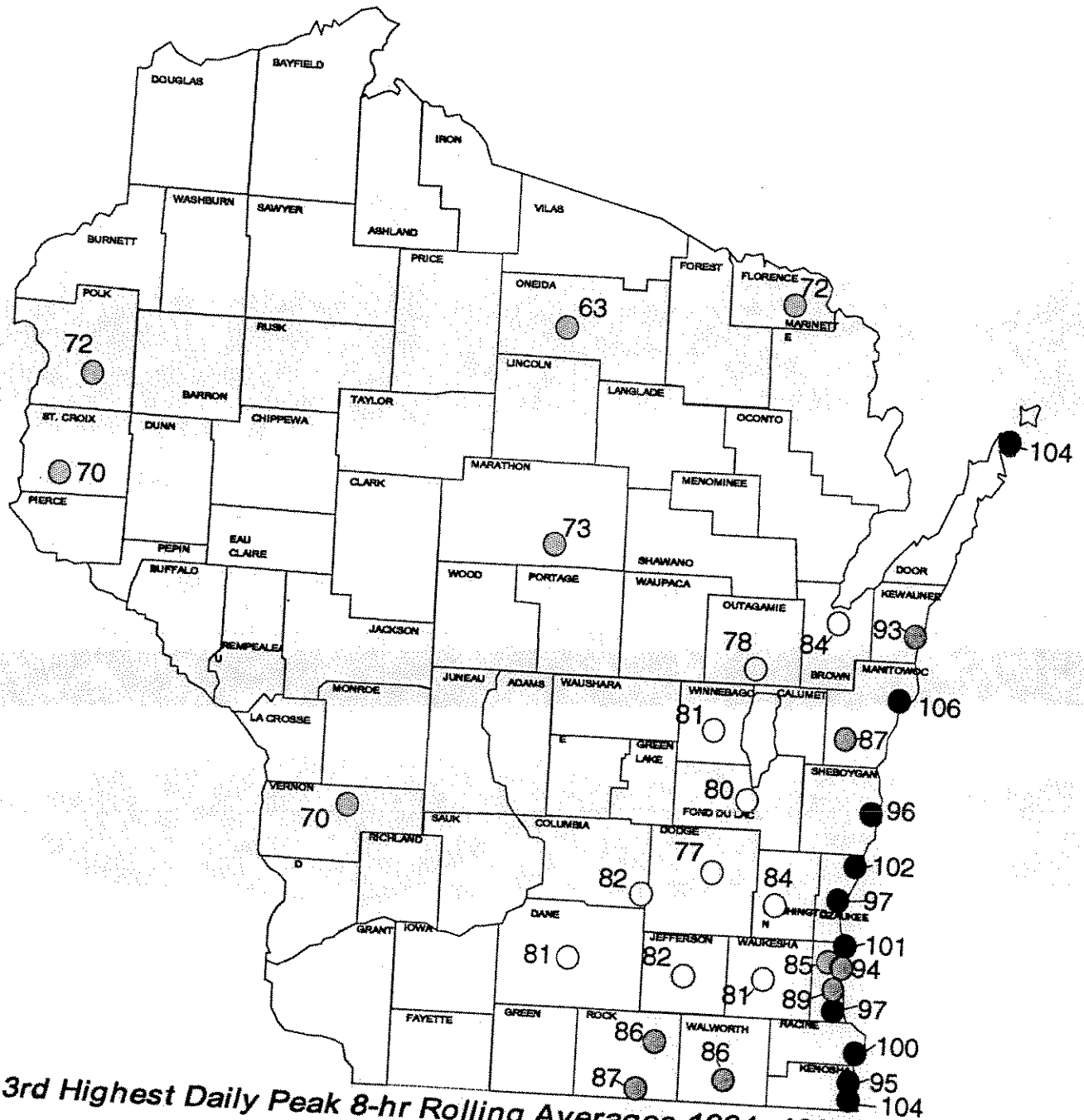
Sites With 4th Highest 1-Hour Ozone Value Greater Than or Equal to .125 ppm 1994-1996



● The Fourth Highest 1-Hour Ozone Value $\geq .125$ ppm - 1994-1996

● The Fourth Highest 1-Hour Ozone Value $< .125$ ppm - 1994-1996

Alternative Ozone Standards, 1994-1996



3rd Highest Daily Peak 8-hr Rolling Averages 1994 -1996 Average

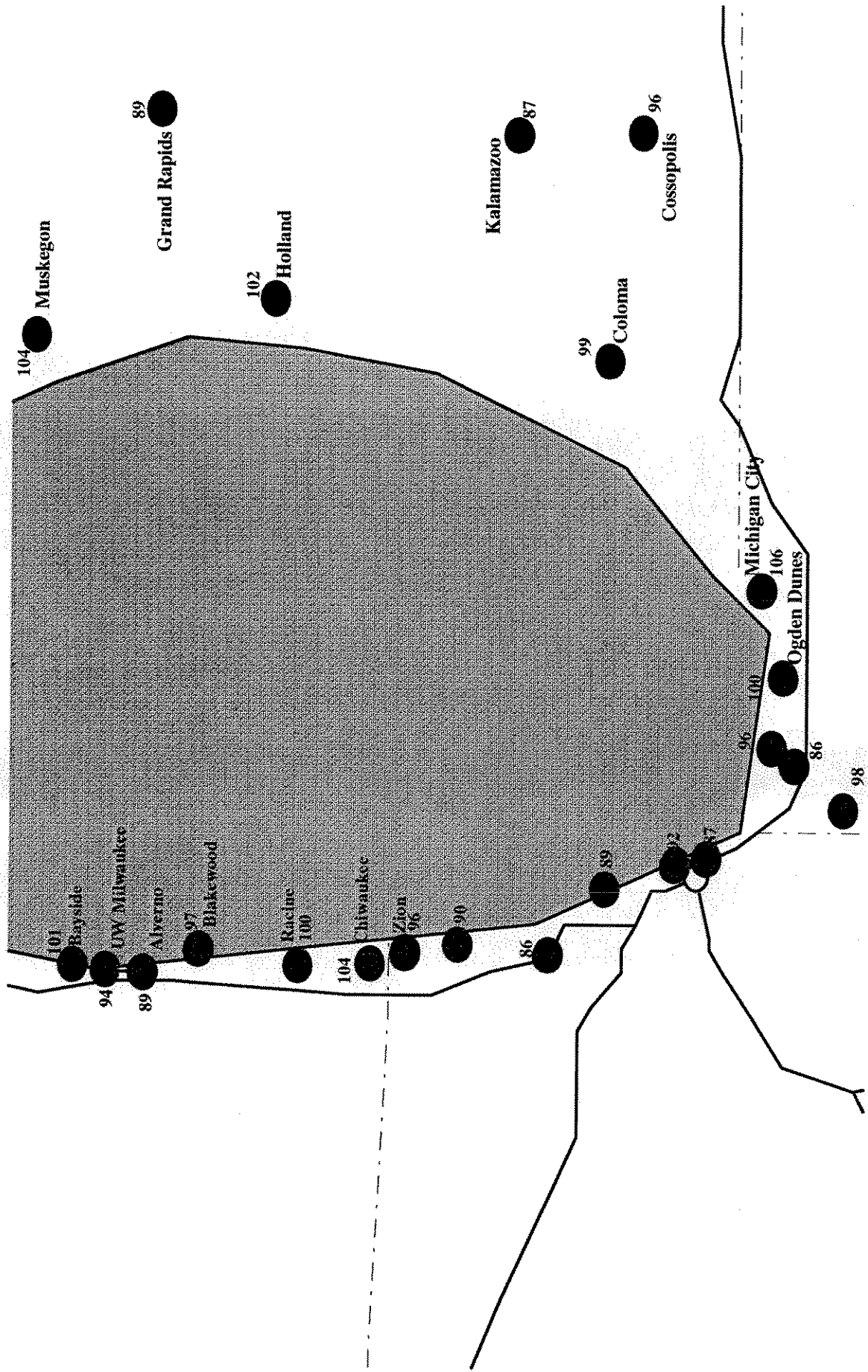
● Ave. of Annual 3rd Highest Ozone 8-hr Rolling Ave., \leq 74 ppb

○ Ave. of Annual 3rd Highest Ozone 8-hr Rolling Ave., 75 to 84 ppb

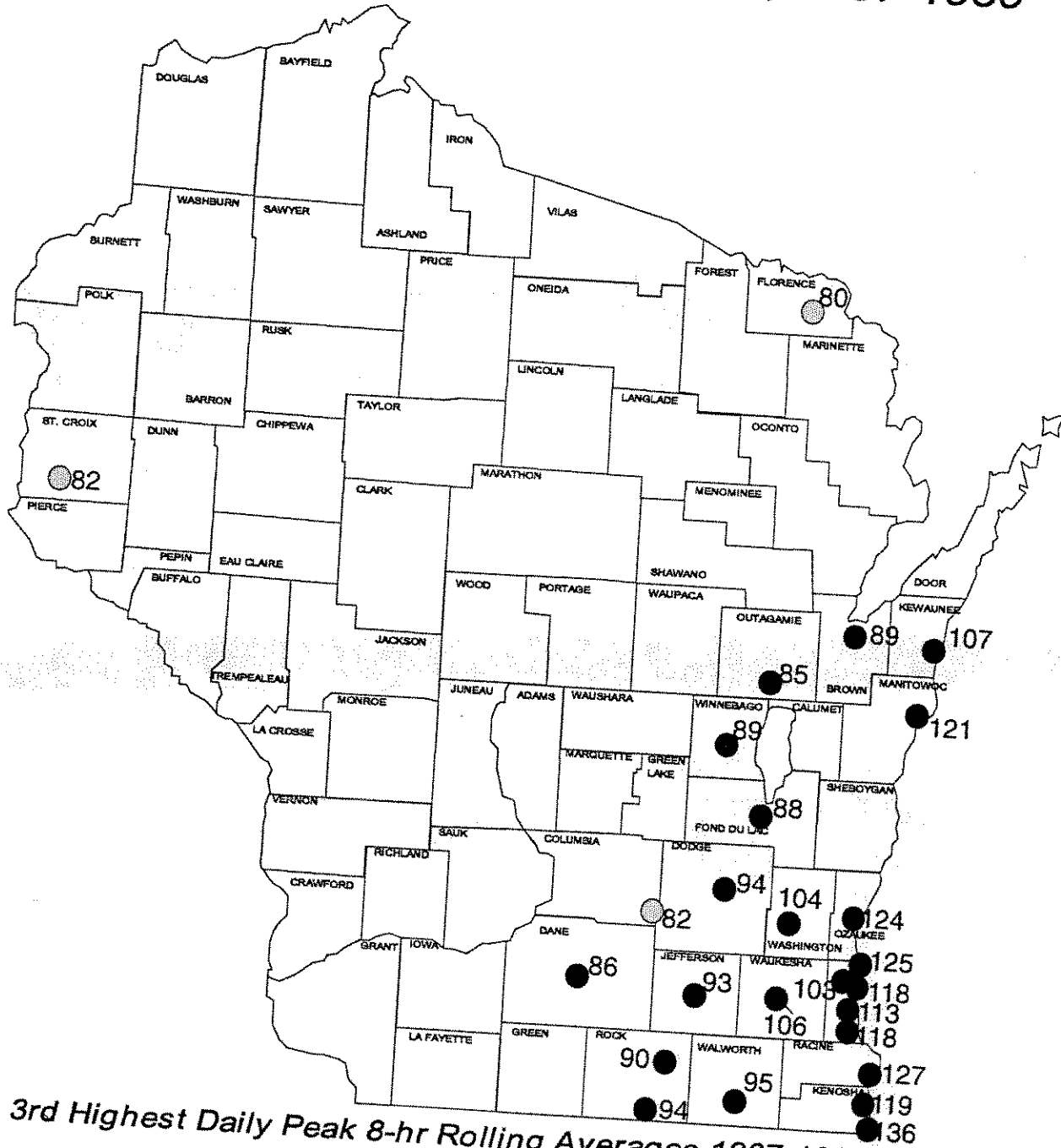
● Ave. of Annual 3rd Highest Ozone 8-hr Rolling Ave., 85 to 94 ppb

● Ave. of Annual 3rd Highest Ozone 8-hr Rolling Ave., \geq 95 ppb

**Ozone Standard @ .08 ppm - Violation @ .085 ppm
With No Reduction In Transport (3rd Highest 8-hr Average - 94-96)**

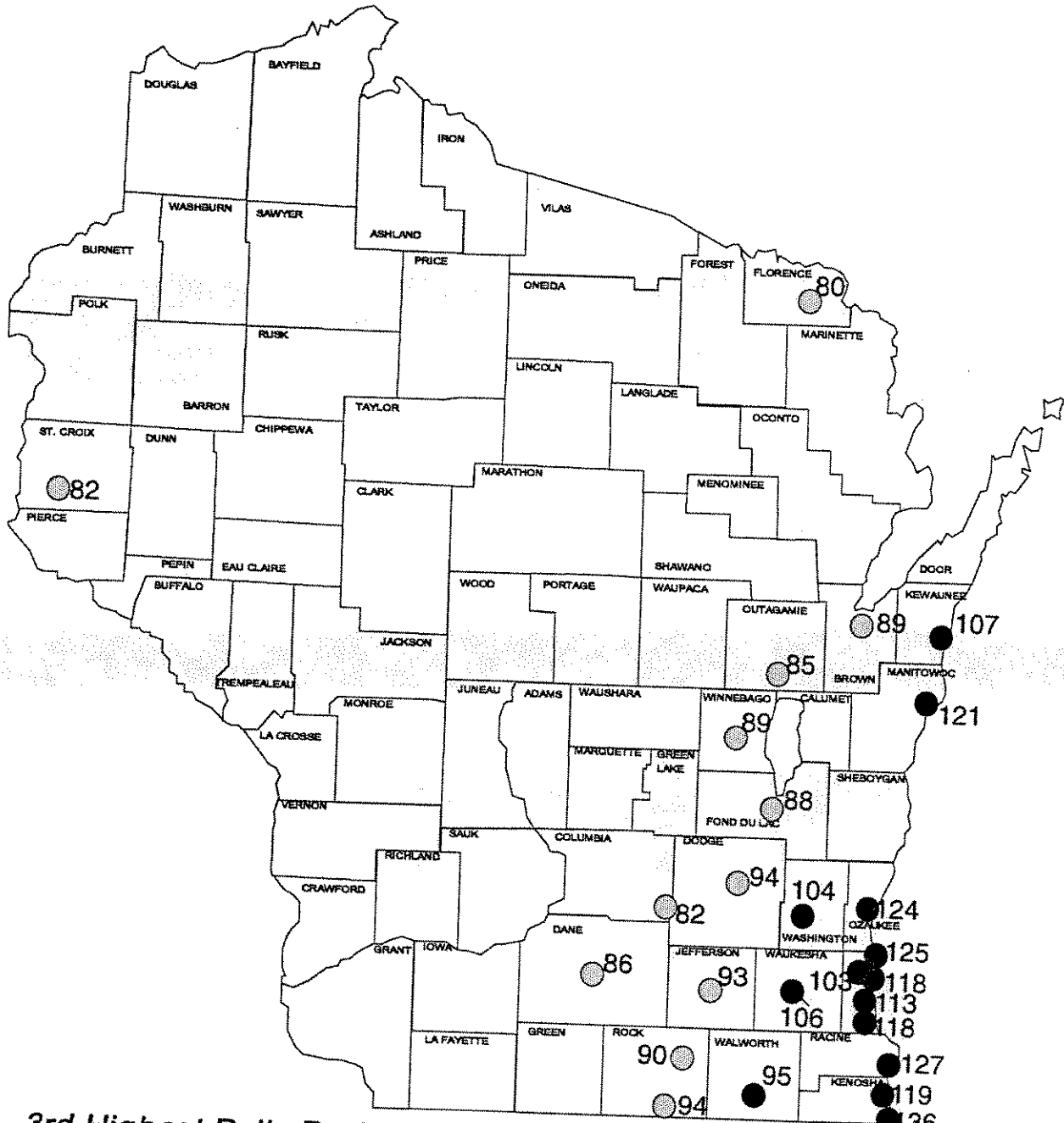


Ozone Standard @ .08 ppm - Violation @ .085 ppm with No Reduction in Transport, 1987-1989



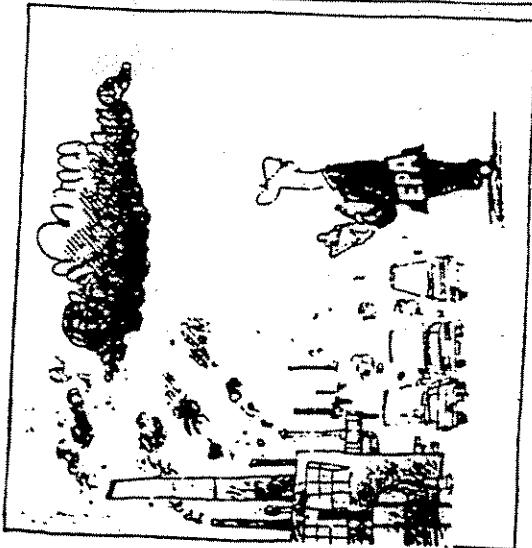
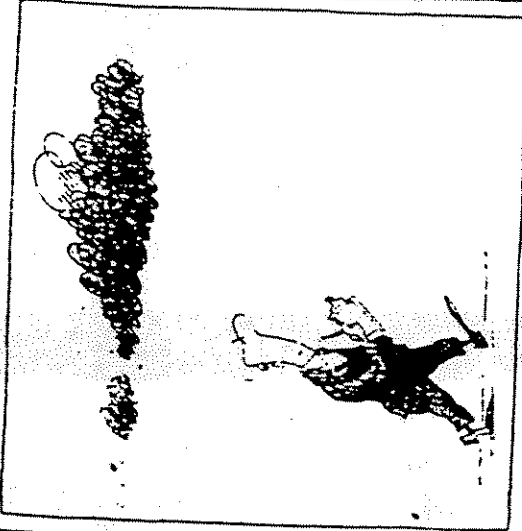
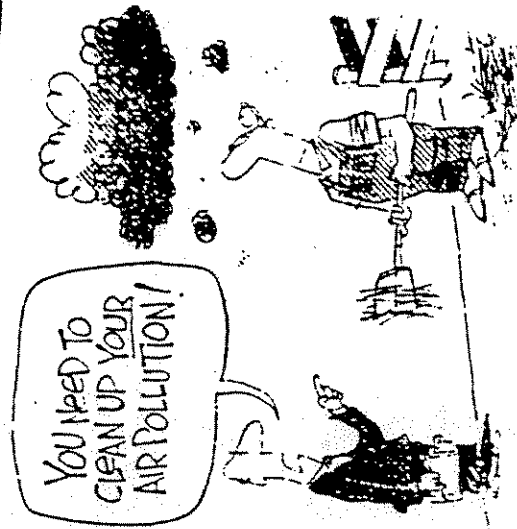
- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., 1987 - 1989 \geq .085 ppm (Violation Criteria Using Existing Rounding Convention)
- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., 1987 - 1989 $<$.085 ppm (Attainment Criteria Using Existing Rounding Convention)

Ozone Standard @ .09 ppm - Violation @ .095 ppm with No Reduction in Transport, 1987-1989



3rd Highest Daily Peak 8-hr Rolling Averages 1987-1989 Average

- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., 1987 - 1989 \geq .095 ppm
(Violation Criteria Using Existing Rounding Convention)
- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., 1987 - 1989 $<$.095 ppm
(Attainment Criteria Using Existing Rounding Convention)





Transport of Ozone

During Ozone Episodes (4 - 6 days) substantial amounts of ozone (~50%) are transported into the Lake Michigan Region from other parts of the United States.

- Primarily from South/Southwest/Southeast
- Amount and direction varies by episode
- This ozone formed primarily from emissions of NO_x

Reduction of this transported ozone is critical to attainment of ozone standard.



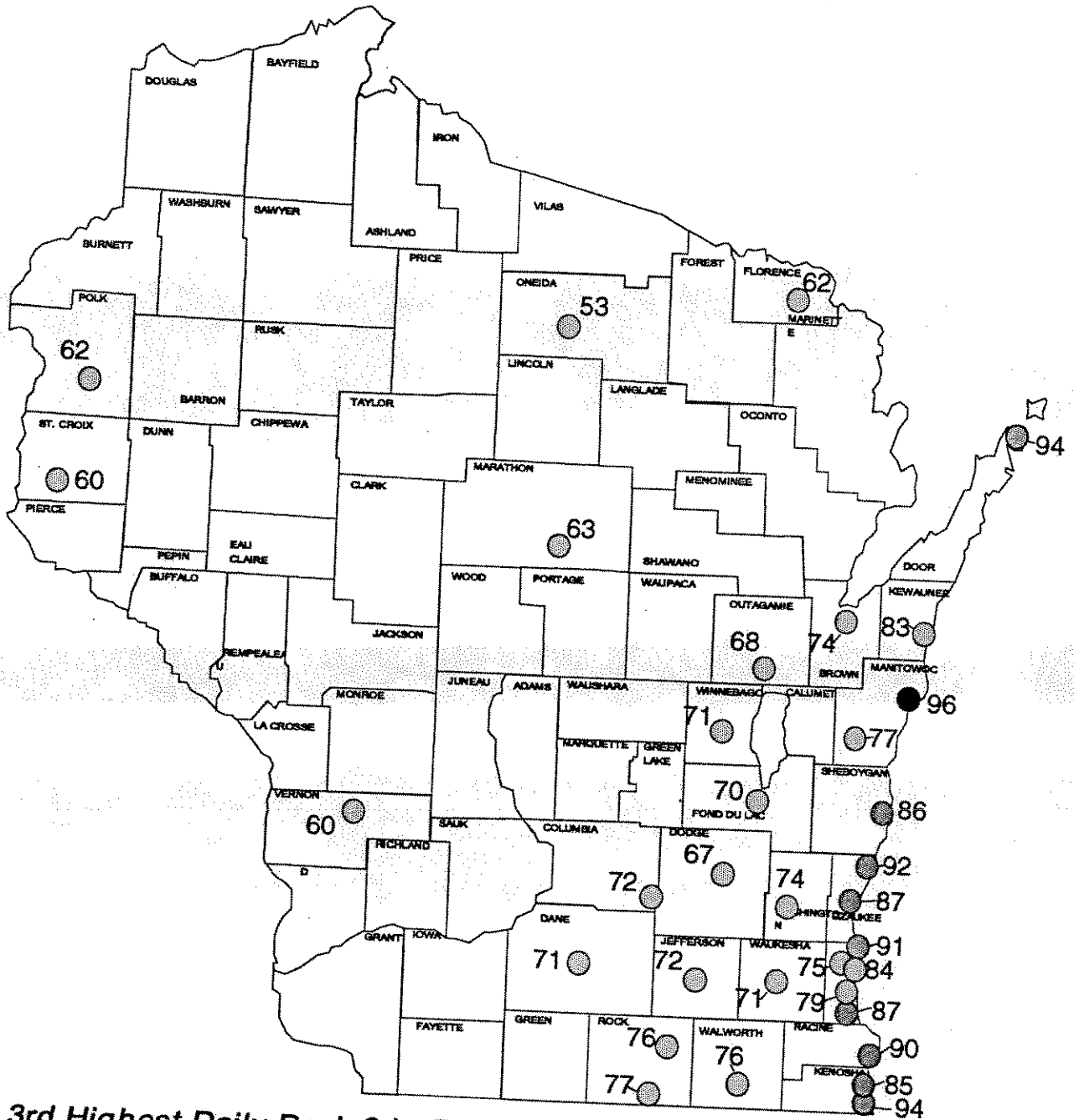
OTAG

Ozone Transport Assessment Group

- ▶ OTAG - Consortium of 37 states
- ▶ Currently analyzing ozone transport
- ▶ Attempting to formulate consensus recommendations for use by EPA by May 1997

D.N.R. staff estimate is that recommendations could result in a reduction of 10 - 20 ppb in transported ozone in Lake Michigan Region.

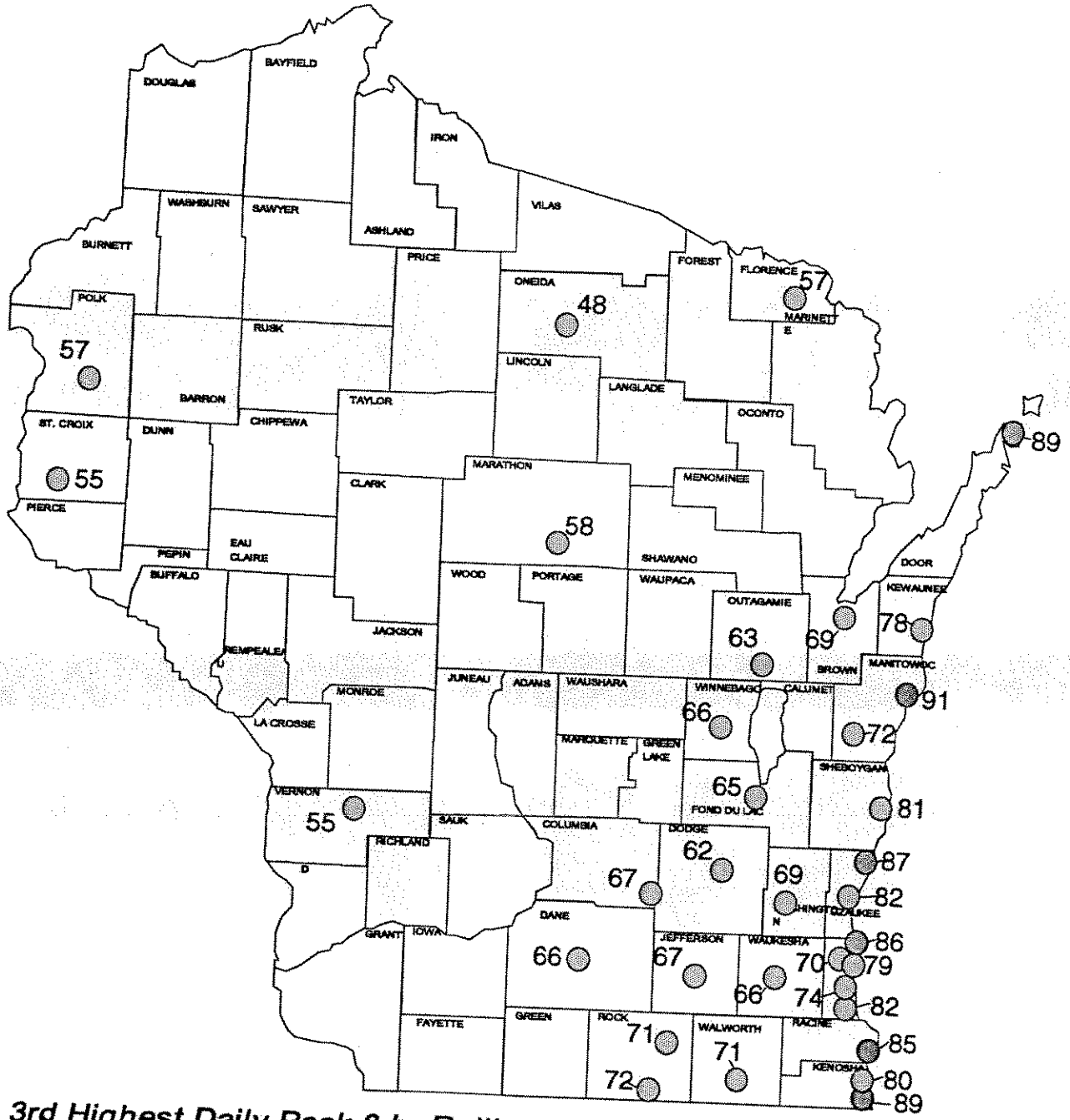
Effects of Transport On Proposed Ozone Standard At 85 ppb & 95 ppb with 10 ppb Reduction in Transport



3rd Highest Daily Peak 8-hr Rolling Averages 1994 -1996 Average

- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., \leq 84 ppb
- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., 85 ppb to 94 ppb
- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., \geq 95 ppb

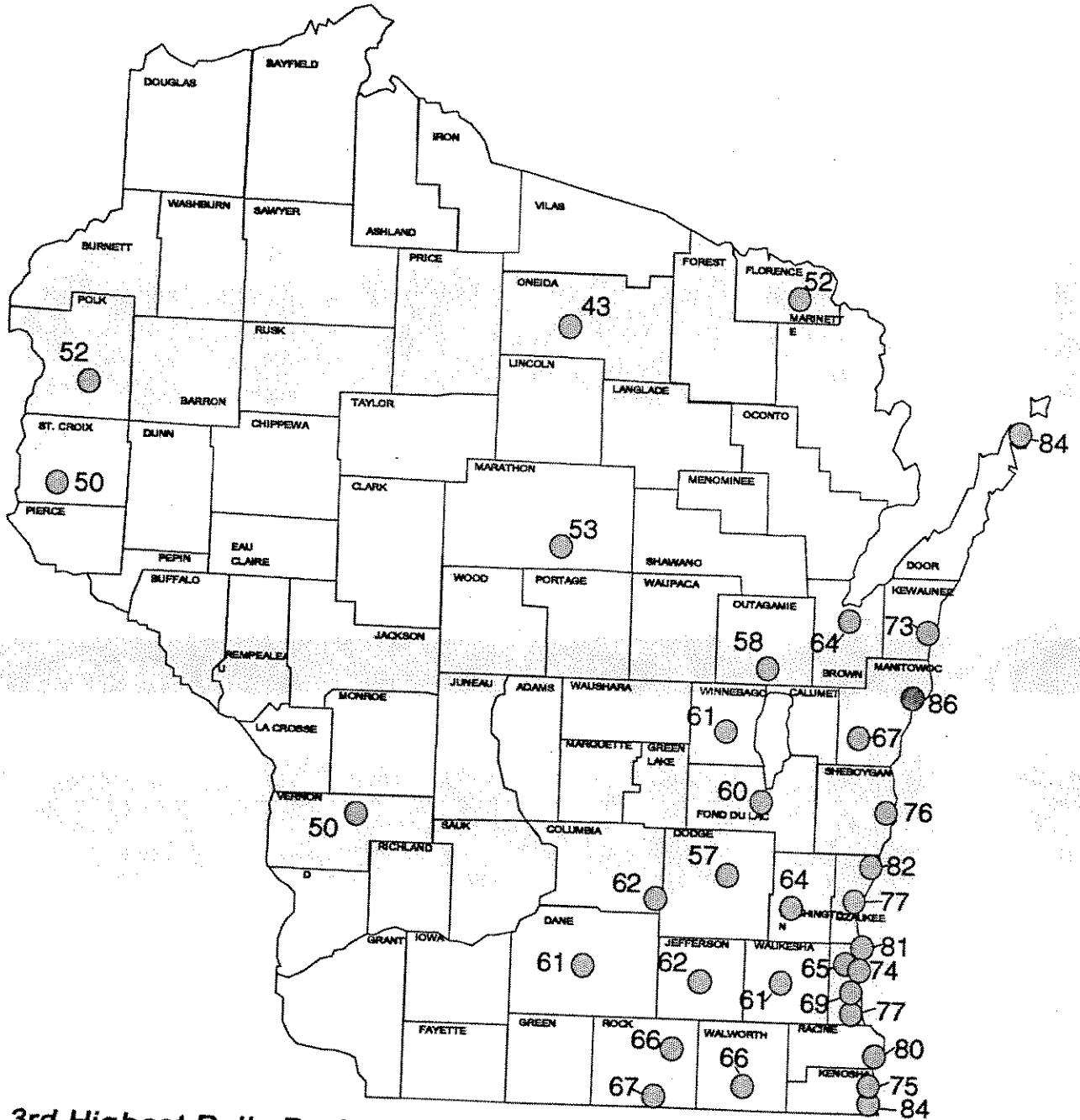
Effects of Transport On Proposed Ozone Standard At 85 ppb & 95 ppb with 15 ppb Reduction in Transport



3rd Highest Daily Peak 8-hr Rolling Averages 1994 -1996 Average

- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., \leq 84 ppb
- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., 85 ppb to 94 ppb
- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., \geq 95 ppb

Effects of Transport On Proposed Ozone Standard At 85 ppb & 95 ppb with 20 ppb Reduction in Transport



3rd Highest Daily Peak 8-hr Rolling Averages 1994 -1996 Average

- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., \leq 84 ppb
- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., 85 ppb to 94 ppb
- Ave. of Annual 3rd Highest Ozone 8-hr Rolling Aves., \geq 95 ppb

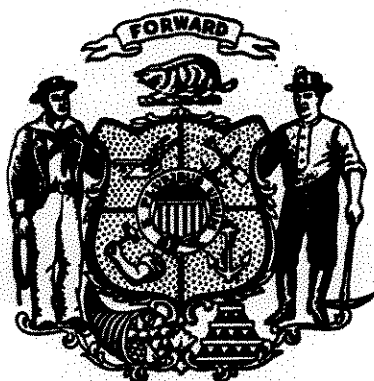


Particulate Matter & Ozone

Schedule for Changes to the NAAQS

- November 1996 - Proposed Revisions
- February 1997 - Comments Due to EPA
- June 1997 - Final Standards
- June 1999 - Designation of Areas
- June 2002 - Attainment Plans are Due
- 2004 - 2011 - Attainment Dates

END



END



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

May 16, 1997

R-19J

Tom Maulson, Chairman
Lac du Flambeau Band of Chippewa
P.O. Box 67
Lac du Flambeau, WI 54538

Re: Rescission of Approval to Administer Water Quality Standards Program

Dear Chairman Maulson:

On August 24, 1995, the Lac du Flambeau Band of Chippewa applied to the United States Environmental Protection Agency (U.S. EPA) for eligibility to administer the water quality standards program for surface waters within the exterior boundaries of the Lac du Flambeau Reservation, pursuant to section 303 of the Clean Water Act. On January 25, 1996, I approved your application. Because there is now uncertainty about the precise contents of the record that was before me at the time I made my decision, I have determined that the public interest would be best served by withdrawing the approval. By means of this letter, I hereby rescind the January 25, 1996, approval of the Lac du Flambeau Band's eligibility to administer the water quality standards program for surface waters within the exterior boundaries of the Lac du Flambeau Reservation.

The Band may re-apply for eligibility to administer the water quality standards program for surface waters within the exterior boundaries of the Lac du Flambeau Reservation. Such reapplication may be effected either by requesting U.S. EPA to reconsider the first application or by submitting a new application. In either case, U.S. EPA will process the application as a new application in accordance with the procedures in 40 C.F.R. § 131.8.

Sincerely yours,

Valdas V. Adamkus
Regional Administrator

cc: Kathy Gorospe, American Indian Environmental Office
David Carson, Department of Justice



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

May 16, 1997

R-19J

Deborah Doxtator, Chairperson
Oneida Business Committee
PO Box 365
Oneida, WI 54155

Re: Rescission of Approval to Administer Water Quality Standards Program

Dear Ms. Doxtator:

On August 25, 1995, the Oneida Tribe applied to the United States Environmental Protection Agency (U.S. EPA) for eligibility to administer the water quality standards program for surface waters within the exterior boundaries of the Oneida Reservation, pursuant to section 303 of the Clean Water Act. On January 25, 1996, I approved your application. Because there is now uncertainty about the precise contents of the record that was before me at the time I made my decision, I have determined that the public interest would be best served by withdrawing the approval. By means of this letter, I hereby rescind the January 25, 1996, approval of the Oneida Tribe's eligibility to administer the water quality standards program for surface waters within the exterior boundaries of the Oneida Reservation.

The Tribe may re-apply for eligibility to administer the water quality standards program for surface waters within the exterior boundaries of the Oneida Reservation. Such reapplication may be effected either by requesting U.S. EPA to reconsider the first application or by submitting a new application. In either case, U.S. EPA will process the application as a new application in accordance with the procedures in 40 C.F.R. § 131.8.

Sincerely yours,

Valdas V. Adamkus
Regional Administrator

cc: Kathy Gorospe, American Indian Environmental Office
David Carson, Department of Justice

Water

**EPA WITHDRAWS ONEIDA AND LAC DU FLAMBEAU TAS APPROVALS
IN LIGHT OF ALLEGATIONS OF MISCONDUCT**

By Paul G. Kent

On May 16, 1997, U.S. EPA Region 5 unilaterally withdrew the Clean Water Act TAS approvals it had granted to the Lac du Flambeau Band and Oneida Tribe that had been the subject of litigation brought by the State, local governments, landowners and trade associations in federal court. This development came after a series of startling revelations about improper conduct and mismanagement at EPA Region 5 in the TAS decisionmaking process.

This remarkable chain of events began when the State objected to an unsigned, undated document in these records entitled "Factual Analysis" which purported to set forth impacts of non-Indians on waters within reservation boundaries. In response to these inquiries, EPA filed sworn affidavits by the author of the document and legal counsel that the document had in fact existed at the time the decision was made. That is where the matter ended until April 18, 1997, when the EPA submitted a status report to the court indicating that it has "learned of allegations to suggest that affidavits submitted by the United States in this case may contain false statements."

Following this revelation, the federal court granted the State's request to take depositions and review EPA documents. Subsequently, seven key EPA employees including Regional Administrator Val Adamkus, Water Division Administrator Jodi Traub and Region 5 Indian Affairs Coordinator Casey Ambutas were deposed. Among some of the more significant revelations from that discovery process were the following:

- Diametrically opposed views between high ranking EPA officials (including Mr. Ambutas and Ms. Traub) over whether the Factual Analysis existed at all at

the time the decision was made.

- An admission by the actual author of the Factual Analysis that the author's statements and affidavits and certifications filed with the court were false because the author had materially altered the document after the decision was made. Among other things, it was pointed out that the factual analysis which supposedly was part of the January 1996 approval package contained maps with February 1996 revision dates.
- An inability of any person in the decision chain other than the author to vouch for the authenticity of the actual factual analysis in the record in large part because many people in the decision chain had not even reviewed the document.
- The wholesale failure of EPA to locate any file copy, routing copy or complete record of the decision package showing the Factual Analysis as it existed when the decision was made. Furthermore, there was no computer records of the Factual Analysis which could be found with a January 1996 date.
- There appears to be a failure of EPA to promptly investigate serious ethical allegations which were brought to Mr. Adamkus' attention in February 1997 and perhaps as early as June 1996. (As noted above, the matter was first brought to the court's attention on April 18, 1997).

In the wake of this discovery process, EPA withdrew the decisions, moved to dismiss the lawsuits challenging the Oneida and Lac du Flambeau TAS decisions and requested that all of the discovery materials be placed under permanent seal.

The court denied the motion to seal the records and released the records by order dated May 27, 1997. On May 30, 1997, Judge Crabb heard EPA's motion to dismiss the Lac du Flambeau case which was opposed by the State, local governments, trade associations and the Tribes. Having expended the resources to fully brief the legal issues before the court, none of the parties wanted to give EPA the opportunity to go back through the decisionmaking process again only to have a separate challenge follow. The parties were concerned that since EPA has not changed its legal or policy position nor done anything to correct the apparent internal procedural problems that led to the current situation a dismissal will not address their underlying

issues that prompted the lawsuits. Judge Crabb took the motion under advisement. A more extended briefing schedule on the motion to dismiss was ordered by Judge Clevert with respect to the Oneida case which should be completed later this summer.



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Tel. 608-831-2100

June 3, 1997

Please respond to: Capitol Square Office

HAND-DELIVERY

The Honorable Stephen L. Crocker
Magistrate Judge
U.S. District Court
Western District of Wisconsin
120 N. Henry St.
P.O. Box 432
Madison, WI 53703

Re: Continuing Discovery in *Oneida* Litigation
Case Nos. 96-C-329, 96-C-521, 96-C-605

Dear Judge Crocker:

This letter is in response to EPA's May 30, 1997 letter in which they provided certain additional documents but requested other additional documents be withheld. We believe that the documents produced illustrate why the remaining documents should also be produced.

Without attempting to be melodramatic, I think it is fair to say that the documents disclosed in EPA's most recent submission provide the "smoking gun" that we had long thought existed. Three e-mail messages with attachments have been recovered from the restoration of backup tapes. These messages include the following information:

- A 5/30/96, 8:16 a.m. e-mail from Claudia Johnson-Schultz to Marc Radell providing an early draft of the Oneida Factual Analysis with the notation "Here it is, at least the first nine complete pages." The first nine complete pages are significantly different than the first nine pages of the Factual Analysis which appears in the Record. Among other things, this 5/30/96 draft does not even contain the title "Factual Analysis."
- A 5/30/96, 10:37 a.m. e-mail from Claudia Johnson-Schultz to Marc Radell entitled, "Revision 2"

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LAW FIRM

The Honorable Stephen L. Crocker
June 3, 1997
Page 2

- A 5/31/96, 11:30 a.m. e-mail from Marc Radell to Claudia Johnson-Schultz entitled, "Oneida Document" which for the first time contains a heading using the term "Factual Analysis" and reflects the format that is found in the Factual Analysis contained in the Record.

These e-mail messages directly contradict the sworn testimony of at least three EPA officials who testified that the Oneida Factual Analysis existed in January 1996. Attorney Radell testified:

- Q. . . . My question is whether you saw the final drafts of the Factual Analyses after you reviewed the electronic drafts.
- A. Oh, after I reviewed the electronic drafts. I saw them when I reviewed the signoff package for the Regional Administrator. [Emphasis Added.]

Radell Dep. at 41. See also, *Id.* at 43, 93, 109-110, 160-61 and 177.

Similarly, the Water Division Administrator, Ms. Traub, stated:

- Q. What was in the [January 1996 approval] package that was assembled for purposes of the Oneida approval sitting in front of you?
- A. What I specifically recall, I read this document [Exhibit 12]. There was a document called the Factual Analysis. There were some other supporting documents. Again, these were all laying in a stack on my table. [Emphasis Added.]

Traub Dep. at 38-39. See also, *Id.* at 44 and 188-89.

And of course, there were the numerous statements of Ms. Johnson-Schultz who even after she admitted altering the document, stuck by her story that the Factual Analysis had existed in January 1996. See, Johnson-Schultz Dep. at 153.

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The Honorable Stephen L. Crocker
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Page 3

These latest revelations are directly relevant to the future of the discovery process and the issues before the Court in three respects. First, they confirm that the Factual Analysis document in each of the records could not have existed in January 1996, since it was not drafted until May 1996.

Second, these revelations also confirm that only the Factual Analysis was created after the fact. The remaining documents that form the basis for EPA's decision — the Tribe's application, the State's response, Mr. Radell's legal analysis and the other materials in the record — are not implicated.

Third, whether the multiple false statements noted above constitute perjury, conspiracy to obstruct justice or other federal crimes, they clearly are fraudulent acts which have resulted in a waiver of any possible attorney-client privilege. As the Court noted in *United States v. Weger*, 709 F.2d 1151, 1156 (7th Cir. 1983):

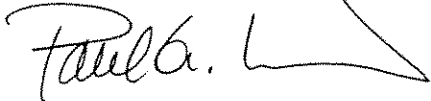
It should be noted that the attorney-client privilege was not created to shield clients from charges for fraudulent conduct, and a client who abuses the attorney-client relationship waives the attorney-client privilege.

Therefore, we do not believe that there is any basis for EPA's request that additional documents should be afforded protection.

For the foregoing reasons, we believe that the remaining documents which EPA seeks to withhold are relevant and are not subject to privilege. Therefore, we would request as part of the ongoing discovery process in the *Oneida* litigation that the documents be released.

Very truly yours,

DEWITT ROSS & STEVENS s.c.



Paul G. Kent

PGK:mys
Enclosure

TESTIMONY OF ASSISTANT ATTORNEY GENERAL THOMAS L. DOSCH
TO THE ASSEMBLY ENVIRONMENT COMMITTEE
REGARDING EPA DECISIONS TO WITHDRAW TAS AUTHORITY

June 4, 1997

TAS Program Background

In 1987 Congress amended the Clean Water Act to include a "Treatment-As-A-State" provision, authorizing EPA to treat qualifying Indian tribes as "states" for purposes of various CWA programs. 33 USC § 1377(e). For a tribe to qualify, EPA must conclude that the tribe possesses "the requisite authority" - inherent sovereignty - to manage the water resources within the reservation. 54 F.R. 39,101 (1989).

In late (9-29-95) 1995, and early 1996, EPA approved applications from four Wisconsin Indian Tribes for TAS authority to establish water quality standards on their reservations: Mole Lake (Sokaogon); Menominee, Oneida and Lac du Flambeau. The practical effect would be to authorize tribal regulation - instead of state regulation - of non-members on the reservation, and to give the tribes potential veto authority over upstream, off-reservation permits for activities which might violate the tribe's on-reservation water quality standards.

The Lawsuits

In early 1996, we filed lawsuits challenging all 4 of EPA's TAS approvals. Three cases were filed in the Eastern District federal court and were assigned to Judge C. N. Clevert. One case was filed in the Western district court and was assigned to Judge Barbara Crabb. Two related case challenging the Oneida TAS approval were also filed by local municipalities and business groups and Judge Clevert is handling them.

Our primary argument in all these cases is that these are Wisconsin waters, under the law's "Equal Footing Doctrine," and not tribal waters. Because in our view Wisconsin's citizens, and not the tribes, have authority over these waters, the tribes do not and cannot meet the requirements for TAS authority under the TAS provision.

As in all "judicial review" actions, the EPA thereafter had to file the administrative record upon which its decisions were based. We believed that the records in 3 of the cases - Oneida, Menominee, and Lac du Flambeau - contained documents - the agency's "Factual Analyses" - which looked as though they might have been created after the fact of the agency's decision. EPA, however, filed supplemental affidavits swearing to the authenticity of these findings, so we and the court dropped the matter.

On April 18, 1997, after all the cases were completely briefed on the merits, EPA's lawyer informed the court that several high

level EPA employees had alleged that these documents had in fact been created after EPA was sued by Wisconsin. The court then required EPA to search all its papers files and computer backup records, and authorized Wisconsin to take depositions of EPA officials. That "discovery" process has produced evidence which, in our view, shows that none of the challenged Factual Analyses were in existence at the time EPA made its TAS decisions.

EPA Decision To Withdraw Tribal Authority.

On May 16, 1997, two days after the last of these depositions, EPA unilaterally - without the Tribes' concurrence - withdrew its approval of the Oneida and Lac du Flambeau TAS decisions. (The Menominee Tribe had asked to withdraw its application on March 11, 1996, and EPA granted that request three days later). EPA did not withdraw the Mole Lake/Sokaogon approval (relating to a small reservation with no non-member lands). EPA then moved to dismiss our lawsuits - and those of private parties - relating to the Oneida and Lac du Flambeau TAS approvals - on the ground that the controversy had become moot. It did not move to dismiss the Mole Lake case.

We have opposed dismissal under a judicial doctrine providing that a case involving a controversy which is likely to recur is not moot and should not be dismissed. The legal issues which would arise the next time around have already been extensively briefed and should be decided by the courts now. Those issues include:

1. Whose waters are these? We believe that the law clearly establishes that, under the "Equal Footing Doctrine" all waters within this state, including those within the exterior boundaries of Wisconsin's Indian reservations, are public waters, and not resources subject to tribal jurisdiction.
2. Can the tribes can have regulatory jurisdiction over non-members within "open areas" of reservations, like those on the Oneida and Lac du Flambeau reservations?

The issues do not include who will do a better job of protecting the water - but simply who is the resource manager. Assume both sides want clean water (and both are subject to the same political and economic pressures).

What's Next?

EPA has clearly indicated a willingness to start over immediately (See Adamkus' letter in which EPA invites tribes to reapply for TAS status on the basis of their old applications). But it is unclear whether tribes will do so:

1. The Lac du Flambeau attorney said in court last Friday that there is less than 50% chance that Band will reapply.
2. The Oneida Nation has hinted that it may challenge EPA's authority to withdraw the TAS approval.
3. It's a high risk proposition for the tribes - they may get a court ruling saying they don't own the waters, a ruling which they need not force.
4. The future of the EPA's TAS program has also been seriously undermined by an April 28, 1997 decision handed down by the United States Supreme Court in Strate v. A-1 Contractors. The Court in Strate made clear that that exception to the general rule against tribal regulatory authority over non-members is an extremely narrow one, even where the nonmember activities "surely jeopardize the safety of tribal members." This undermines one of the primary assumptions of EPA's TAS program. It may be that EPA will decide that it cannot proceed to approve future TAS applications without Congressional amendment of the statute.

If Judge Clevert and Judge Crabb judges deny EPA's motions to dismiss, the courts may rule on all of our arguments. If the judges grant dismissal, only the Mole Lake (Sokaogon) case will be decided. A favorable decision on our "Equal Footing" doctrine in that case alone, however, argument might foreclose any future applications under the present TAS statute. If the three other cases are dismissed, we may have to wait months or years, before being able to raise the issue of tribal authority in "open areas" like those found on the Oneida, Lac du Flambeau and some parts of the Menominee reservations.

Michael Lutz
DNR

TREATMENT AS A STATE PROCESS

WISCONSIN ISSUES

In 1987, Amendments to the Clean Water Act authorized the Environmental Protection Agency to grant Native American Tribes "treatment as a state" status (TAS status) for various provisions of the CWA provided the tribes meeting certain criteria.

TAS status is evaluated on a tribe by tribe basis and may be granted to a tribe that:

1. is federally recognized;
2. has a governing body carrying out substantial governmental duties and powers;
3. has sufficient authority to regulate the water resources to be regulated;
4. is reasonably expected to be capable of performing the functions required by the water quality standards program.

Tribes meeting all the criteria and achieving TAS status may be granted authority to administer all or portions of the CWA that the EPA traditionally delegates to states. Three such portions include authority:

1. to set water quality standards under Section 303;
2. to issue water quality certifications under Section 401;
3. to grant permits under Section 402.

Delegation under Sections 303, 401 and 402 of the CWA means that tribes will be allowed to establish independent water quality standards, issue independent water quality certifications and grant independent permits. In the absence of a tribal permitting program delegated under the CWA, the tribe's water quality standards would be incorporated into water discharge permits issued by the EPA or the Department of Natural Resources (DNR).

If granted TAS status, the exercise of tribal authority would also have off-reservation/non-Indian impacts on:

1. Water quality standards for areas upstream which may require revision to accommodate downstream tribal standards.
2. Water permits upstream, should the tribe object to the permits on the grounds they believe the permits will interfere with attainment of tribal standards.
3. Wisconsin's integrated approach to environmental management by creating multiple, autonomous and diverse jurisdictions and standards.

In Wisconsin

Four tribes have been granted TAS status for purposes of establishing Section 303 Water Quality Standards under the Clean Water Act and are developing their own water quality standards.

These tribes include:

- the Mole Lake Band of the Lake Superior Chippewa, Sokaogon Chippewa Community,
- the Menominee Indian Tribe of Wisconsin,
- the Oneida Tribe of Indians of Wisconsin,
- the Lac du Flambeau Band of the Lake Superior Chippewa.

All four tribal applications were approved by the EPA Region V office.

Wisconsin Governor Tommy Thompson and the Wisconsin DNR reviewed the tribes' request for CWA authority and identified a series of objections. On behalf of the state, the DNR filed objections to each of the tribe's applications with the EPA.

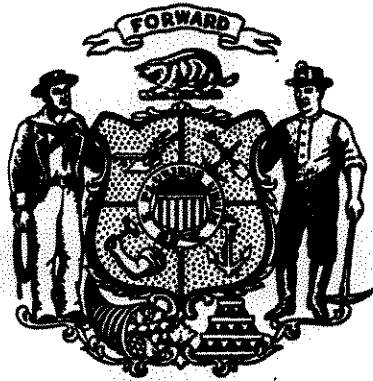
These objections are based on legal and impact concerns and include:

1. The state, not tribes, holds authority over submerged lands and navigable water bodies under the Equal Footing and Public Trust Doctrines.
2. A number of the reservations have substantial non-Indian populations. Federal case law indicates that tribes, under these circumstances, cannot legally assert jurisdiction on land owned by non-Indians.
3. Permitting tribes to establish independent water quality standards will fragment Wisconsin's integrated environmental management and infringe on its ability to manage consistently throughout the state.

The State of Wisconsin has filed suits against the Environmental Protection Agency in Federal District Court, on EPA's four TAS decisions. The State has also appealed the EPA approval of the Mole Lake and Oneida ordinances, which established the tribal water quality standards. In March of 1997, the Menominee Tribe withdrew its application for TAS status. Briefing is near completion in the remaining cases.

The state's immediate concern is not with resource protection, although this could change in the future. All of the involved tribes have enacted or are proposing ordinances which reflect their traditional concerns with resource protection. The state's concern is based on the loss of its jurisdiction, the impact on non-Indians who become subject to a government in which they have no representation and incompatibility of the tribal ordinances with the state's system.

END



END



James L. Leonhart
State Director
Government Relations

AT&T Center
Suite 700
44 East Mifflin Street
Madison, WI 53703-2877
608 259-2218
800 362-2355
FAX 608 259-2203

June 6, 1997

Dear Representative Duff:

AT&T wishes to invite you to a demonstration at its offices on the Capitol Square on the afternoon of Wednesday, June 11, 1997. This demonstration will be continuously available between the hours of 12 noon and 3 p.m., and you are invited to appear at any time during that period of time to observe the demonstration. The demonstration will be given on the 7th floor of the AT&T Center located at the northeast corner of the Capitol Square on East Mifflin Street.

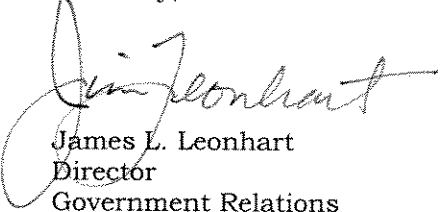
You will be given an opportunity to observe video applications over T-1 facilities and at the same time observe a DS-3 equivalent in the same room. This will give you an opportunity to view and compare these technologies. These are the two technologies which are currently most likely to be available to school districts under the TEACH Wisconsin initiative being proposed both by Governor Thompson in his budget bill and by the Joint Finance Committee version of the state budget bill.

The demonstration is being given because during the Joint Finance Committee debate, a substantial amount of misinformation and misunderstanding of the qualities of the T-1 technology became apparent. It is our hope to dispel any misconceptions as to the quality of the T-1 technology by giving you this opportunity to observe it in operation.

At the time of the demonstration, we will also provide to you a brief summary of the relative qualities of the two technologies and the type of equipment that will have to be purchased by a school district in each case. Please remember that the TEACH Wisconsin proposal speaks only to the subsidized telecommunication link for video or Internet services and not to the equipment that is required to be procured by school districts to make these services operable.

We hope you are able to attend and we look forward to seeing you at the demonstration.

Sincerely,


James L. Leonhart
Director
Government Relations

VIDEO DISTANCE LEARNING DEMONSTRATION

USING COMPRESSION TECHNOLOGIES OVER T-1*

**The standard for K-12 education in Minnesota*

Wednesday, June 11, 1997
12:00 p.m. - 3:00 p.m.

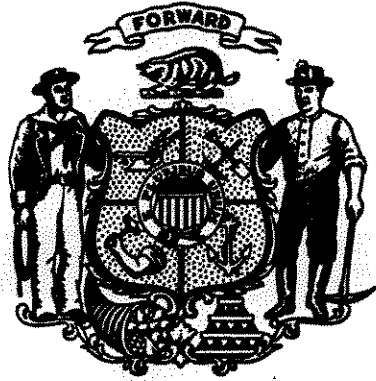
AT&T
44 East Mifflin Street ~ 7th Floor

VIDEO OVER T-1

- ◆ ***View a link up with Bell Labs***
- ◆ ***Classroom control techniques***
- ◆ ***Observe classroom features -
Use of various forms of media
Quad picture on one screen***

Call Lisa at 259-2254 with questions or
a special appointment request for an earlier time.

END



END



Wisconsin Department of Transportation

TRANSPORTATION DISTRICT 2
2000 Pewaukee Road, Suite A
P.O. Box 798
Waukesha, WI 53187-0798

June 5, 1997

Telephone (414) 548-5902
FAX (414) 548-5662

Rep. Marc C. Duff
Wisconsin Assembly District 98
P.O. Box 8952
Madison, WI 53708

Dear Rep. Duff:

You are invited to join a meeting of elected officials and business men and women to discuss the I-94 resurfacing. The meeting, for those affected by work that began May 27th between 76th Street and CTH J, is intended to address issues that may have developed during the early stages of the project. Wisconsin Department of Transportation officials will be present to listen to your comments and answer questions.

The meeting will be held at **the New Berlin City Hall, Council Chambers, 3805 S. Casper Drive, New Berlin (map enclosed), on Thursday, June 19th, from 4:30 p.m. to 5:30 p.m.**

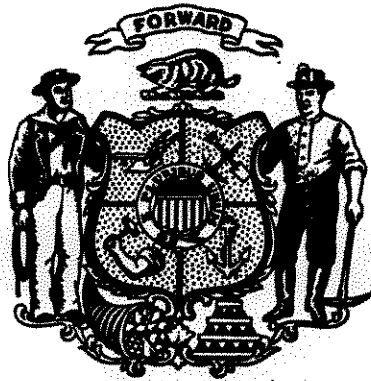
Sincerely,

A handwritten signature in black ink that reads "Michael L. O'Brien".

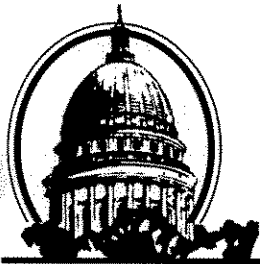
Michael L. O'Brien
District Communications Manager

MLO:ks

END



END



State Representative
James R. Baumgart

26th Assembly District
City of Sheboygan-
Wards 1-3,5,6,9,11-16
City of Sheboygan Falls
Village of Kohler
Town of Sheboygan
Town of Sheboygan Falls
Ward 4

3

*Received
3/17/97*

February 6, 1997

Representative Walter Kunicki
Assembly Minority Leader
21 North -- State Capitol

Dear Representative Kunicki:

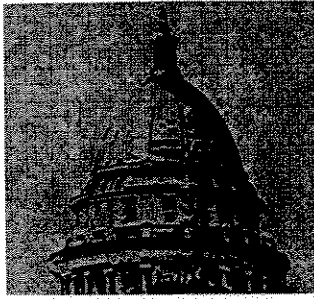
This letter is to officially notify you of my resignation, effective today, from the Assembly Environmental Committee. Although this is an interesting committee, there are a number of reasons that I have chosen to resign from the committee.

As you will recall, a few weeks ago we discussed my preference to be appointed to a committee other than the Environmental Committee. However, your decision on my appointment to another committee will not change this resignation.

Sincerely,

Jim Baumgart
Jim Baumgart
State Representative
26th Assembly District

JB:ae
cc: Rep. Duff
Rep. Brancel
Rep. Foti



STATE REPRESENTATIVE

**WALTER
KUNICKI**

April 2, 1997

Representative Ben Brancel
Assembly Speaker
211 West, State Capitol
Madison, WI INTER-D

Dear Speaker Brancel:

Due to the resignation of Representative Jim Baumgart, it is my pleasure to recommend Representative Spencer Black for appointment to the Environment Committee to fill this vacancy.

Thank you for your attention to this request.

Sincerely,

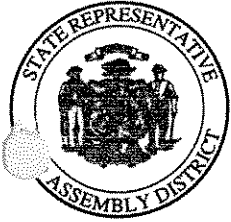
Walter Kunicki

Walter Kunicki
Assembly Democratic Leader

WK/sa

cc: Representative Spencer Black
✓ Representative Marc Duff, Chair, Environment Committee
Representative Peter Bock, Ranking Member, Environment Committee

ASSEMBLY DEMOCRATIC LEADER



ASSEMBLY SPEAKER

BEN BRANCEL

April 4, 1997

Representative Spencer Black
Room 219 North, State Capitol
Madison, Wisconsin 53702

Dear Spencer:

It is my pleasure as Speaker of the Wisconsin State Assembly to appoint you to the Assembly Standing Committee on Environment to fill the vacancy created by Representative Baumgart's resignation.

This appointment is effective immediately.

Sincerely,

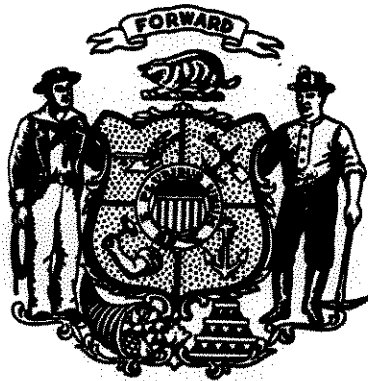
A handwritten signature in black ink, appearing to be "Be" or "Ben", written in a cursive style.

Ben Brancel
Speaker

BB:lj

cc: Assembly Records
Marc Duff

END



END

TESTIMONY BY THE DEPARTMENT OF NATURAL RESOURCES BEFORE THE
ASSEMBLY ENVIRONMENTAL RESOURCES COMMITTEE
MARCH 25, 1997

Thank you for the opportunity to appear before the Committee this evening. My name is Al Shea and I am the Senior Budget Analyst for the Department of Natural Resources. In order to allow time for questions, I will keep my comments brief.

The Department is very supportive of the Governor's biennial budget proposal for the Department. Many of the Governor's key initiatives support important strategic directions for the Department's environmental programs. Other proposals by the Governor support key information technology, permit streamlining, environmental monitoring, and staff support issues.

In general, the Department finds the Governor's budget proposal to be both creative and supportive of many of the environmental related requests DNR submitted as part of its agency budget request. The following four items highlight some of the Governor's important proposals:

1. **Brownfields Redevelopment:**
 - * Provides up to \$65.0 million in grants and loans;
 - * Provides critical core staffing in DNR to carry-out needed environmental assessment, cost-containment, and redevelopment assistance activities;
 - * Provides a blue-print for a comprehensive approach involving four state agencies in addressing this critical concern; and
 - * Includes several statutory modifications to encourage and expedite cleanup and redevelopment of potentially valuable land.
2. **"Breakthrough Legislation":**
 - * Authorizes DNR to establish environmental performance agreements with up to ten businesses that consolidate regulatory and permitting requirements.
 - * Require that participants establish an environmental management system consistent with ISO 14000 guidelines or their equivalent.
 - * Establishes a new **Environmental Performance Council** to evaluate the implementation of the agreements and to coordinate state participation in national efforts to develop an ISO 14000 implementation strategy.
 - * Early involvement by Wisconsin industries in this process will allow them a competitive advantage in the world marketplace, while assuring compliance with environmental regulations.
3. **Safe Drinking Water** - The Federal Safe Drinking Water Act, approved in the Summer of 1996, established a leveraged loan program similar to the Clean Water Fund for subsidized loans to municipalities for the replacement of public water supply systems. The Governor's package includes \$22.0 million in **State Bonding** to leverage \$110 million in **federal funding** over a 5 year period.
4. **Nonpoint Source Pollution Abatement** - Provides an additional \$4.9 million for the nonpoint program and re-emphasizes the water quality focus of the program.

To conclude, the Department finds the Governor's biennial budget proposal sets the stage for the Department to work cooperatively with citizens, local governments, businesses and other state agencies to meet the challenges Wisconsin will face in the upcoming century. I would be happy to answer any questions at this time.