

**MEMORANDUM OF AGREEMENT**

*BETWEEN*

**THE PUGET SOUND AIR POLLUTION CONTROL AGENCY  
AND THE TULALIP TRIBES OF WASHINGTON**

*REGARDING*

**DEVELOPMENT AND IMPLEMENTATION OF THE  
TULALIP TRIBES AIR QUALITY IMPLEMENTATION PLAN**

**August, 1994**

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This Memorandum of Agreement (MOA) is entered into by and between the Tulalip Tribes of Washington, a federally recognized Indian tribe organized under Section 16 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 476 ("Tribes") and the Puget Sound Air Pollution Control Agency ("PSAPCA"), and concerns development and implementation of the Tulalip Tribes Air Quality Implementation Plan ("TIP") within the exterior boundaries of the Tulalip Indian Reservation ("Reservation").

1. Recitals

1.1 TIP. The Tribes desire to develop and implement a TIP to protect and regulate Reservation air quality. The TIP is intended to be a comprehensive regulatory air pollution control program including, but not limited to, air quality standards and emission limitations. The program may also include, but is not limited to, the following elements:

- a.) A tribal air quality ordinance;
- b.) A detailed tribal regulatory program;
- c.) A tribal administrative procedures ordinance; and
- d.) One or more agreements between the Tribes and PSAPCA, the State of Washington Department of Ecology ("Ecology"), the United States Environmental Protection Agency ("EPA") and other interested agencies and persons.

1.2 Purposes. The purposes of this MOA are to:

- a.) Create a mechanism by which the Tribes work with PSAPCA to coordinate certain elements of the Tribal Implementation Plan ("TIP") with the WSIP.
- b.) Establish a framework for intergovernmental cooperation and coordination between the Tribes and PSAPCA regarding the development of the TIP;
- c.) Minimize duplicative efforts and expenditures of monetary and program resources by the Tribes and PSAPCA in the development of the TIP;

- d.) Establish a framework by which PSAPCA provides technical assistance and support services to the Tribes as they adopt and enforce industrial air emission standards. The standards will be no less stringent than, but not necessarily identical to, the existing PSAPCA regulations for air pollution applicable to similar emission sources operating under similar conditions, except for ceremonial, subsistence or other cultural activities, indoor and outdoor burning; and
- e.) Adopt and enforce outdoor burning standards that protect Tribal and public health on the Reservation.

1.3 Tribal Authority. As set forth below, the Tribes have the authority to enter into, and implement, this Agreement:

- 1.3.1 Pursuant to its Constitution, which has been approved by the Secretary of the Interior, the Tribes have the authority to establish the TIP, and to enter into this MOA to implement that program, and to seek Treatment as a State status for provisions of the Clean Air Act.
- 1.3.2 The Tribes will implement this MOA, consistent with Section 2 below, within the exterior boundaries of the Tulalip Reservation. The Reservation was established by the Point Elliott Treaty on January 22, 1855.
- 1.3.3 The Tribes have historically monitored and regulated the reservation environment and are fully capable of carrying out the governmental functions necessary to implement this MOA.
- 1.3.4 Tribal legislation will confer authority upon the Tulalip Natural Resources Department to implement this MOA and to act as an independent regulatory agency for purposes of implementing and enforcing the TIP and this MOA. The Natural Resources Department will specifically be authorized with permitting authority, and the authority to delegate such functions to the Environment and Forestry Divisions. Such legislation will also confer enforcement authority upon the Tribal Court.

1.5 PSAPCA Authority. To the extent of its authority under the Washington Clean Air Act, Chapter 70.94 RCW, and the WSIP, the PSAPCA has the responsibility for regulating air pollution in Snohomish (excluding the Tulalip Indian Reservation), King, Pierce, and Kitsap counties. The PSAPCA has the authority to enter into and implement this MOA with the Tribes pursuant to RCW 70.94.141.(10).

## 2. Terms of Agreement

NOW, THEREFORE, the parties agree as follows:

2.1 Jurisdiction. This MOA is intended to support the Tribes' efforts to implement Section 301(d) of the Federal Clean Air Act, and facilitate implementation of Chapter 70.94 RCW. This MOA is not intended to enlarge, diminish, or define the scope of either the PSAPCA's off or on-reservation or the Tribes' on-reservation jurisdiction over civil or criminal matters.

2.2 Communication. The Tribes and PSAPCA will develop procedures to ensure timely communication and cooperation in the event of complaints from citizens outside the Reservation regarding air-quality related activities on the Reservation, or from Reservation residents regarding air-quality related activities outside the Reservation.

2.3 Development of TIP. The Tribes and the PSAPCA acknowledge that it is desirable for the Tribes to develop the TIP, and that the TIP and the WSIP be compatible with one another. To attempt to achieve compatibility between the TIP and the WSIP, the Tribes and the PSAPCA agree to:

- 2.3.1 Make good faith efforts to work cooperatively and consult with one another regularly in accordance with this MOA;
- 2.3.2 Ensure that the regulatory provisions of the TIP meet or exceed the minimum requirements of the Federal Clean Air Act, and are comparable to the WSIP regulatory provisions acceptable to the Tribes, after opportunity to review final WSIP provisions;
- 2.3.3 Notify each other in advance of proposed regulation changes and hearings, and take steps to ensure coordination of revisions of the TIP with revisions of the PSAPCA regulations (in a manner consistent with the Federal Clean Air Act); and
- 2.3.4 Coordinate their efforts through the Review Advisory Committee in accordance with Section 2.5 of this MOA.
- 2.3.5 Pending federal approval of the TIP, the Tribes will retain full authority for permitting, enforcement, fee collection, issuance and enforcement of burning and industrial permits, within the exterior boundaries of the reservation.

2.4 Technical Support. As described in Exhibit A to this MOA, PSAPCA shall provide to the Tribes technical assistance and support services as needed to implement this MOA, free of charge. (See Exhibit A). Exhibit A is incorporated by reference into this MOA. Such technical assistance and support services are intended to ensure that the TIP shall meet all

applicable requirements of the Federal Clean Air Act<sup>1</sup>, including: Sections 110 (a)(2)(c); 110 (a)(2)(F)(i); 110 (a)(2)(F)(iii) - (iv); 169A. Technical assistance and support services provided by PSAPCA to the Tribes pursuant to this MOA shall be in addition to technical assistance and support services provided to the Tribes pursuant to any other agreement or arrangement, or state or federal law. Though PSAPCA will provide technical assistance and support services, the Tribes will collect all permit and registration fees related to the Tulalip air quality program. Upon federal approval, the Tribes TIP will be employed as the reservation-wide air quality program.

2.5 Review Advisory Committee. The Tribes and the PSAPCA shall establish a Review Advisory Committee. The Committee's purpose shall be to promote communication between the PSAPCA and the Tribes, to facilitate the coordination of their respective air quality programs, and to further the relationship between the parties.

2.5.1 Composition. The Review Advisory Committee shall be composed of four (4) members, two (2) of whom shall be designated by the Tribes and two (2) of whom shall be designated by the PSAPCA. The Review Committee shall take action by affirmative vote of three (3) members.

2.5.2 Ex-officio Members. Any of the following individuals or their respective designees, may serve as ex-officio (non-voting) members of the Review Committee: all members of the Tulalip Tribes Board of Directors who are not members of the Review Committee; the PSAPCA Board of Directors; the Superintendent of the Puget Sound Bureau of Indian Affairs Agency; the Director of the EPA Washington Operations Office; and the Director of Ecology.

2.5.3 Actions. The Review Advisory Committee is advisory in nature only, and its actions are not binding on either party to this MOA.

2.6 Effective Date, Amendment and Termination. This MOA shall be effective when executed by both parties. This MOA may not be amended except by written agreement executed by both parties. This MOA shall continue in effect until terminated by joint agreement of the parties, provided, however, that either party may terminate the MOA by giving thirty (30) days written notice to the other party.

2.7 Written Communications. Written communications pursuant to the provisions of this MOA shall be delivered or mailed as follows:

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<sup>1</sup> See the Clean Air Act Amendments of 1990, Sec. 107, Pub. L. No. 101-549, 104 Stat. 2464064 (to be codified at 42 U.S.C. Sec. 7601 (d)).

- 2.7.1 To the Tribes: Terry Williams, Executive Director, Fisheries and Natural Resources, 7615 Totem Beach Road, Marysville, WA 98271.
- 2.7.2 To PSAPCA: Dennis McLerran, Director, PSAPCA, 110 Union Street, Suite 500, Seattle, WA 98101-2038.
- 2.7.3 To the EPA: Julie Hagensen, Director, EPA - Washington Operations Office, Lacey, WA 98504.
- 2.7.4 To Ecology: Mary Riveland, Director, Department of Ecology, P.O. Box 47600, Olympia, WA 98504.
- 2.7.5 To the BIA: Superintendent, Bureau of Indian Affairs, Puget Sound Agency, Federal Building, 3006 Colby Avenue, Everett, WA 98201.

IN WITNESS WHEREOF, the parties have executed this MOA, which shall be effective as set forth in Section 2.6 above.

**THE TULALIP TRIBES OF WASHINGTON**

By: Stanley G. Jones Sr 11-8-94  
Stanley G. Jones, Sr., Chairman  
Tulalip Board of Directors  
Date

**THE PUGET SOUND AIR POLLUTION CONTROL AGENCY**

By: Win Granlund 9-8-94  
Win Granlund, Chairman,  
Board of Directors  
Date

Attest: Dennis McLerran 9-19-94  
Dennis McLerran  
Air Pollution Control Officer  
Date

**Approved as to Form:**

By: Laurie Halvorson 9/15/94  
Laurie S. Halvorson, Attorney for  
Puget Sound Air Pollution Control Agency  
Date

By: Jim Jones 10-4-94  
Jim Jones, Attorney for  
Tulalip Tribes  
Date

EXHIBIT A

TO  
MEMORANDUM OF AGREEMENT REGARDING  
DEVELOPMENT AND IMPLEMENTATION OF THE  
TULALIP TRIBES AIR QUALITY IMPLEMENTATION PLAN

- I. To comply with Section 110(a)(2)(C) of the Federal Clean Air Act (FCAA), and as provided for in Section 2.3 of the MOA, PSAPCA agrees to provide the Tribes with technical assistance and support services, on an as-needed basis.
- II. PSAPCA shall provide support to the Tribes in the following areas:

A. Air Quality Monitoring.

In conformity with Section 110(a)(2)(C) of the FCAA, PSAPCA will provide training, technical assistance and support services to the Tribes regarding the Tribes' operation of air quality monitoring equipment and the generation and use of air quality monitoring data. Such assistance shall include training of field staff in the operation, calibration, and maintenance of the monitoring equipment, weighing of filters, site-selection for monitoring stations, and quality assurance auditing of the monitoring network.

B. Program Resources.

PSAPCA will provide training and technical assistance to the Tribes for the purpose of augmenting the present level of effort of Tribal staff and the administrative resources available for use by such Tribal staff to enable the TIP to meet the program resource requirements of Section 110(a)(2)(F)(i) of the FCAA.

C. Record Keeping.

PSAPCA will provide training to assist the Tribes in the generation and development of its air emission data and in the development of record keeping and data retrieval systems. Further, PSAPCA will continue to accept and incorporate the Tribes' air emission data within the overall PSAPCA record keeping system of storage and retrieval systems. At all times, during normal business hours, the Tribes shall have reasonable access to such data as needed. PSAPCA will also continue to provide such data to EPA as part of the overall PSAPCA air emission reporting system to enable the TIP to meet the record keeping and reporting requirements of Sections 110(a)(2)(F)(iii) - (iv) of the FCAA.

D. Permitting of New and Existing Sources.

The PSAPCA will provide training and technical assistance and services to the Tribes regarding the Tribes' development, implementation and enforcement of permit programs for new and existing air emission sources under the TIP. Such assistance and services shall include, consultation and advice regarding permit drafting; technical review, permit issuance, entry and inspection, and compliance monitoring. The PSAPCA's assistance, encompassing both new and existing emission sources, is intended to ensure that the TIP may satisfy the requirements of Section 110(a)(2)(D) and Section 110(a)(2)(E) of the FCAA.

In addition, the PSAPCA will assist the Tribes in ensuring that all permits, for new and existing sources include appropriate requirements that the owners or operators of such emission sources install equipment to monitor their emissions so that the TIP may satisfy the requirements of Section 110(a)(2)(F)(ii) of the FCAA.

E. Interagency Cooperation and Enforcement.

Cross-jurisdictional Complaints

The Tribes will forward complaints received from persons residing within the exterior boundaries of the Reservation about activities occurring off-Reservation outside the exterior boundaries of the Reservation to PSAPCA (1-800-552-3565). PSAPCA will respond to, investigate, and resolve these complaints. PSAPCA will inform both the complainant(s) and the Tribes as to the resolution of the complaint.

PSAPCA will forward complaints received from persons residing outside the exterior boundaries of the Reservation about activities occurring within the exterior boundaries of the Reservation to the Tribes. The Tribes will provide to PSAPCA a contact person and phone number to receive these complaints. The Tribes will respond to, investigate, and resolve these complaints. The Tribes will inform both the complainants(s) and PSAPCA as to the resolution of the complaint.

Burn Bans

In the event that PSAPCA adopts a Stage I or Stage II burn ban for Snohomish County (as required in Chapter 70.94 RCW), PSAPCA will consult with the Tribes' Fire Marshall and/or their Environmental Department Manager regarding a similar burn ban within the exterior boundaries of the reservation.

If the Tribes determine that similar burn ban provisions should be called for the Reservation, they will be responsible for informing Reservation residents regarding the time and duration of the burn ban, the geographical extent of the burn ban, and the Tribal requirements applicable during burn bans. The Tribes will also cooperate with

Snohomish County's fire marshall in the event that a county burn ban is called due to extreme dry weather conditions. The Tribes will be responsible for enforcement of burn bans on the Reservation. The Tribes, while reserving the right to exempt ceremonial burning, will coordinate with PSAPCA to achieve consistency with the following use restrictions for residential solid fuel burning devices:

Stage I: The use of residential solid fuel heating devices is curtailed unless the appliance is EPA approved or it is the only adequate source of heat.

Stage II: The use of residential solid fuel heating devices is curtailed unless it is the resident's only adequate source of heat.

#### Public Education

Cooperative public education efforts will be conducted by the Tribes and PSAPCA to inform Reservation residents about alternatives to outdoor burning, cleaner heating, and indoor burning methods. As part of such efforts, PSAPCA may provide current educational materials for distribution to Reservation residents, write articles for Tribal newsletters about current issues, make educational presentations for Tribal meetings, and develop specialized educational materials in cooperation with the Tribes. The Tribes may also provide public education on cultural activities that may be exempt from burn bans.