

INTERLOCAL AGREEMENT FOR COOPERATIVE ODOR COMPLAINT INVESTIGATIONS

THIS INTERLOCAL AGREEMENT FOR COOPERATIVE ODOR COMPLAINT INVESTIGATIONS is made and entered into this 24 day of July, 2010, by and between the City of Marysville [hereinafter "Marysville"], a municipal corporation, and the Puget Sound Clean Air Agency [hereinafter "PSCAA"], a multicounty public agency.

RECITALS:

A. The PSCAA is a multicounty air pollution control agency organized and activated in accordance with Chapter 70.94, RCW. Marysville is located within the boundaries and the jurisdiction of the PSCAA.

B. The purpose and the public policy of the PSCAA is to secure and maintain such levels of air quality as will protect human health and safety, to prevent injury to plant and animal life and property, and to foster the comfort and convenience of the area's inhabitants.

C. Pursuant to the authority of RCW 70.94.141, the PSCAA has previously adopted Regulation 1 to control the emission of air contaminants from all sources within the agency's jurisdiction, to provide for the uniform administration and enforcement of said Regulation, and to carry out the requirements and purposes of the Washington Clean Air Act and the Federal Clean Air Act.

D. Section 9.11 of said Regulation 1 states, in part, as follows:

(b) With respect to odor, the Agency may take enforcement action under this section if the Control Officer or a duly authorized representative has documented all of the following:

(1) The detection by the Control Officer or a duly authorized representative of an odor at a level 2 or greater, according to the following odor scale:

level 0 - no odor detected;

level 1 - odor barely detected;

level 2 - odor is distinct and definite, any unpleasant characteristics recognizable;

level 3 - odor is objectionable enough or strong enough to cause attempts at avoidance; and

level 4 - odor is so strong that a person does not want to remain

present.

- (2) An affidavit from a person making a complaint that demonstrates that they have experienced air contaminant emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property; and
- (3) The source of the odor.

E. Marysville and the PSCAA have determined that their mutual goal of ensuring clean air for Marysville's citizens would be more efficiently attained if some of the odor complaint investigations described in Regulation 1, Section 9.11 (b) could be conducted by Marysville within its jurisdiction, on behalf of the PSCAA.

F. Marysville and the PSCAA are desirous of entering into an agreement to memorialize the terms and conditions under which Marysville may conduct said odor complaint investigations on behalf of the PSCAA. In compliance with Chapter 39.34, RCW, the purpose of this Agreement is to specify said terms and conditions.

Now, therefore, in consideration of the mutual promises made herein, it is hereby agreed as follows by the parties:

1. Odor Complaint Investigations. The PSCAA hereby authorizes Marysville, on a non-exclusive basis and on behalf of the PSCAA, to conduct the odor complaint investigation activities detailed in Regulation 1, Section 9.11(b) of the PSCAA, including but not limited to:

1.1 Quantifying the odor complained of according to the following scale, on a written form furnished by the PSCAA:

- level 0 - no odor detected;
- level 1 - odor barely detected;
- level 2 - odor is distinct and definite, any unpleasant characteristics recognizable;
- level 3 - odor is objectionable enough or strong enough to cause attempts at avoidance; and
- level 4 - odor is so strong that a person does not want to remain present.

1.2 Interviewing the complainant(s) and obtaining from him/her/them a signed affidavit or other formal statement which describes the odor, where the emission is coming from, who the complainant believes is responsible for causing or allowing the odor, and any distress or ill effects caused by the odor. Said affidavit or statement shall be completed on a form furnished by the PSCAA.

1.3 Determining and documenting the source of the odor, to the best of Marysville's knowledge.

2. Submittal to PSCAA. With respect to each individual complaint, at such time as Marysville has completed the investigation activities described in Section 1 above, Marysville shall submit to the PSCAA any written documentation pertaining to said complaint. In its sole discretion, the PSCAA shall then determine whether or not to initiate any enforcement action.

3. Other Remedies. Nothing in this Agreement shall be construed to impair any cause of action or legal remedy which Marysville may have for injury or damages arising from the emission of any odor in such place, manner or concentration as to constitute air pollution or a nuisance.

4. Agency Authority. Except as otherwise provided herein, neither party shall have agency authority to act for or bind the other party in any matter.

5. Responsible Official. The Marysville official responsible for conducting the odor complaint investigation shall be the Chief Administrative Officer or her duly authorized representative. For purposes of Regulation 1, Section 9.11(b), said official shall be the "duly authorized representative" of the PSCAA referenced therein.

6. Financing. The cost of conducting the odor complaint investigations performed by Marysville described in Section 1 above shall be borne exclusively by Marysville. The cost of any enforcement action taken as a result of the investigation shall be borne exclusively by the PSCAA. Each party shall document the costs associated with such investigations and enforcement activities.

7. Administrator. The administrator of this Agreement shall be Craig Kenworthy and he shall be responsible for administering the cooperative undertaking described herein.

8. Duration and Termination. This Agreement shall continue in full force and effect until such time as either party gives the other party sixty (60) days' written notice of the former's intent to terminate this Agreement. Upon the termination of this Agreement, Marysville shall submit to the PSCAA any written documentation secured with respect to an ongoing complaint investigation.

9. Notices. All notices and other communications hereunder shall be deemed to have been duly given if delivered or mailed, certified mail, with postage prepaid (a) if to Marysville, to:

City of Marysville
1049 State Avenue
Attn: Executive Office
Marysville, WA 98270

or to such other person or place as Marysville shall furnish to the PSCAA in writing, or (b) if to the PSCAA, to:

The Puget Sound Clean Air Agency

~~110 Union Street, Suite 500~~

Seattle, WA 98101-2038

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1904 3rd Ave Ste 105

emp

or to such other person or place as the PSCAA shall furnish to Marysville in writing.

10. Severability. If any part of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

11. Counterparts. This Agreement may be signed in two counterparts and, if so signed, shall be deemed one integrated Agreement.

12. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, negotiations, representations or agreements, either verbal or written, between the parties hereto concerning the subject matter of this Agreement.

13. Amendment. This Agreement may not be modified or amended except by writing signed by both parties hereto.

14. Successors. This Agreement shall inure to the benefit of and be binding upon the parties, their respective successors and assigns, but no right or obligation arising hereunder may be assigned or transferred by any party without the prior written consent of the other party.

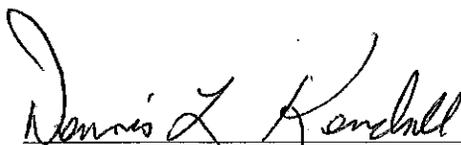
15. Governing Law. This Agreement shall be interpreted in accordance with the laws of the state of Washington.

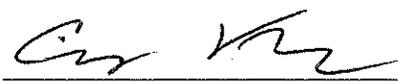
16. Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

CITY OF MARYSVILLE

PUGET SOUND CLEAN AIR AGENCY

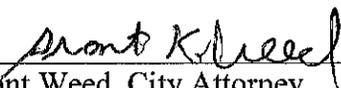




By: Dennis L. Kendall
Title: Mayor

By: _____
Title: _____

APPROVED AS TO FORM BY:



Grant Weed, City Attorney
