

MOA 2010-4



MEMORANDUM OF UNDERSTANDING

BETWEEN THE

**U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF AIR QUALITY
PLANNING AND STANDARDS,**

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10,

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,

PUGET SOUND CLEAN AIR AGENCY,

AND

THE PUYALLUP TRIBE OF INDIANS

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to establish a cooperative effort among the U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (EPA OAQPS), U.S. Environmental Protection Agency, Region 10 (EPA Region 10), State of Washington, Department of Ecology (Department of Ecology), Puget Sound Clean Air Agency (PSCAA), and the Puyallup Tribe of Indians (collectively referred to as the Parties) to produce a Performance Agreement for the Tacoma PM_{2.5} Nonattainment Area. Through work under this MOU and the Performance Agreement, the Parties will work together to apply the Clean Air Performance Commitment (CAPC) concept, which attempts to describe a new, more effective and efficient approach to air quality planning. The goal of this effort is to bring the Tacoma area into attainment for fine particulate matter (PM_{2.5}), thereby improving the health and welfare of the citizens of the Puget Sound area. This effort will consider the area's PM_{2.5} issues in the context of local toxics priorities and environmental justice concerns.

II. BACKGROUND

The Parties believe that improvements to the state planning process for air quality management are needed in order to more efficiently and effectively address current and future air quality challenges. This belief is supported by recommendations from the National Academy of Sciences in its 2004 report *Air Quality Management in the United States* and from the Clean Air Act Advisory Committee in its 2005 and 2007 reports, as well as our own experience with SIP processing and approvals. Although the SIP process has resulted in tremendous improvements in air quality, it can be resource-intensive.

The Puget Sound area is a prime candidate for testing a new air quality management process given the nature of the air quality issues it is confronting (PM_{2.5} issues are strongly driven by a single source type, i.e., wood smoke emitters), the strong relationships PSCAA and the Department of Ecology have built with stakeholders, and the area's interest in testing air quality innovations.

The Performance Agreement between the Parties would provide the starting point for the State Implementation Plan (SIP) for the Tacoma PM_{2.5} nonattainment area, either by:

1. resulting in three years of "clean data" such that a redesignation request may be appropriate when all required SIP provisions are approved except certain attainment SIP requirements which can be suspended so long as the area continues to have clean data (i.e. reasonably available control measures, reasonable further progress plans, attainment demonstrations, and contingency measures, see 40 CFR 51.1004(c) see also PM_{2.5} Clean Data Policy, Dec. 14, 2004, and Clarification, May 22, 2008), or
2. providing information that is directly relevant to developing an attainment SIP for the Tacoma PM_{2.5} Nonattainment Area.

The Performance Agreement will be focused on attainment and maintenance of the NAAQS in an administratively efficient and effective way. The objectives of the Performance Agreement are:

1. To target the Tacoma area's PM_{2.5} air pollution (particularly wood smoke) with focused local control measures that complement national control measures.
2. To establish agreed-upon accountability measures and mechanisms to quickly make adjustments if milestones are not met.
3. To ensure meaningful stakeholder input and collaboration.

The Performance Agreement for the Tacoma area would additionally reflect area toxics priorities and environmental justice issues. Incorporation of these elements will position the Department of Ecology or PSCAA in the future, should they choose, to extend the Tacoma-area plan to become a comprehensive multi-pollutant air quality management plan (AQMP). An AQMP provides for air quality and emission management activities for more than one air pollutant (such as criteria pollutants, toxics, and greenhouse gases), and integrates factors related to air quality such as transportation, land use, energy, climate, and ecosystem impacts.

III. AUTHORITY

Each party to this MOU is authorized to enter into this MOU pursuant to the following authorities:

EPA OAQPS and EPA Region 10—CAA 103(a) (research and development program for prevention and control of air pollution); Delegation 1-11 (authority to sign agreements with, inter alia, state, local, and tribal governments)

Department of Ecology—Chapter 70.94 RCW Washington Clean Air Act, Chapter 43.21A RCW Department of Ecology

PSCAA—RCW 39.34, and RCW 70.94:141 (10)

Puyallup Tribe of Indians— Puyallup Tribe of Indians Land Claim Settlement of 1989

IV. ROLES AND RESPONSIBILITIES

This MOU is focused on defining general action items and roles and responsibilities for efforts leading to the development of a Performance Agreement. These major roles and responsibilities will generally fall into six categories: technical analysis, stakeholder engagement, project management, outreach, strategy development, and strategy implementation.

The Parties agree to work together to accomplish the following actions to enable the development of the Performance Agreement:

- Continue to implement fine particle emission reductions in the nonattainment area (Lead Agency PSCAA),
- Develop and reach consensus on a technical support document that guides the 2011 comprehensive stakeholder process (Co-Lead Agencies EPA Region 10 and Department of Ecology),
- Conduct a comprehensive stakeholder process to explore potential emission reduction strategies and make recommendations for actions, funding sources, milestones, and timelines (Lead Agency PSCAA), and
- Complete and sign a Performance Agreement that applies the CAPC concept by laying out performance goal(s), milestones to achieve the goal(s), initial control measures and backup measures, and reporting (Co-lead Agencies Department of Ecology and EPA).
- The Parties intend to hold quarterly meetings or conference calls to discuss progress in accomplishing the intent of the MOU.

The Parties intend to develop and execute a Performance Agreement by winter 2011 based on the results of these actions.

The Parties respectively expect to undertake the following actions under this MOU:

EPA OAQPS

1. Facilitate discussions with the other Parties to encourage continuing communication, review progress made, and discuss status and issues arising under this MOU.
2. Engage EPA headquarters technical staff as necessary to inform the Parties' deliberations regarding the appropriate analytical effort for the airshed.
3. Assist in identifying and seeking available federal resources for implementing this MOU, as well as pursue funding opportunities for fine particle emission reduction activities, subject to the limitations identified in Section VI. of this MOU.
4. Support education efforts to inform the public in the Tacoma area about current air quality planning efforts.
5. Reach out to national environmental and health organizations to raise awareness regarding the CAPC approach and the Parties' exploration of this approach through this MOU and the subsequent Performance Agreement, and to ensure their concerns are fully taken into account during the Performance Agreement development process.
6. Facilitate discussions with relevant EPA headquarters offices (including but not limited to Office of Air and Radiation, Office of General Counsel, and Office of Enforcement and Compliance Assurance) on all matters relating to actions under this MOU and development of the Performance Agreement, and seek their review and concurrence on the draft final Performance Agreement.
7. Complete and sign the Performance Agreement with the Parties.

EPA Region 10

1. Lead the development of the technical evaluation approach prior to the 2011 stakeholder process. This may include: fine particle receptor modeling support of the violating site, modeling, and emission inventory support as guided by the technical team.
2. Assist in identifying and seeking available federal resources for implementing this MOU, as well as pursue funding opportunities for fine particle emission reduction activities, subject to the limitations identified in Section VI. of this MOU.
3. Support education and outreach efforts to engage communities in the Tacoma area in air quality planning and emission reduction efforts.
4. Participate in calls and meetings as needed to discuss progress, status, and issues that arise with the Parties.
5. Complete and sign the Performance Agreement with the Parties.

Department of Ecology

1. Continue to support forecasting tools to support burn curtailments during impaired air quality periods, the uncertified wood stove replacement programs in the nonattainment area (as resources allow), and education and outreach activities.
2. Play a lead role with EPA Region 10 in developing the technical evaluation that will address outstanding technical issues prior to the 2011 stakeholder process. This may include: fine particle receptor modeling support of the violating site, modeling, and emission inventory support as guided by the technical team, and estimates of fine particle health effects and economic impacts.
3. Serve as main point of contact with EPA during the development of the Performance Agreement.
4. Assist in identifying and seeking available funding, including State resources for

implementing this MOU, as well as pursue funding opportunities for fine particle emission reduction activities, subject to the limitations identified in Section VI of this MOU.

5. Support education and outreach efforts to engage communities in the Tacoma area in air quality planning and emission reduction efforts.
6. Participate in the comprehensive stakeholder process, to be initiated in January 2011. The stakeholder process will result in recommendations of fine particle emission reduction strategies to bring the area back to attainment status, to be incorporated into a winter 2011 Performance Agreement.
7. Participate in calls and meetings as needed to discuss progress, status, and issues that arise with the Parties.
8. Complete and sign the Performance Agreement with the Parties.

PSCAA

1. Implement fine particle emission reduction activities, as outlined in its FY10-11 "Fine Particle and Wood Smoke Work Plan." Main activities include uncertified wood stove replacement programs, burn curtailments during impaired air quality periods, education and outreach campaigns, and a socio-economic investigation of the area around the violating monitor to identify community barriers to clean home heating. FY11 emission reduction activities (to be identified in spring 2010) will also be implemented as part of this MOU, and will be included in the Performance Agreement.
2. Work with EPA, Department of Ecology, and potentially other partners to address outstanding technical issues before a 2011 stakeholder process. The main role of PSCAA in this regard will be to provide any existing air quality and meteorological data, as well as existing emission inventory/survey information.
3. Assist in identifying and seeking available funding, including State and local resources for implementing this MOU, as well as pursue funding opportunities for fine particle emission reduction activities, subject to the limitations identified in Section VI of this MOU.
4. Conduct education and outreach efforts to engage communities in the Tacoma area in air quality planning and emission reduction efforts.
5. Reach out to local city and county partners to raise awareness of the CAPC approach and the Parties' application of this approach through this MOU and the subsequent Performance Agreement, and address their questions and their feedback on the process.
6. Manage the comprehensive stakeholder process, to be initiated in 2011 if adequate funding is identified by the Parties. The stakeholder process will result in recommendations of fine particle emission reduction strategies to bring the area back to attainment status, to be incorporated into a 2011 Performance Agreement.
7. Participate in calls and meetings as needed to discuss progress, status, and issues that arise with the Parties.
8. Complete and sign the Performance Agreement with the Parties.

Puyallup Tribe of Indians

1. Contribute to the development of the Performance Agreement.
2. Participate in the stakeholder process.

3. Assist in identifying and seeking available funding for implementing this MOU, as well as pursue funding opportunities for fine particle emission reduction activities, subject to the limitations identified in Section VI of this MOU.
4. Participate in calls and meetings as needed to discuss progress, status, and issues that arise with the Parties.
5. Complete and sign the Performance Agreement with the Parties.

V. TIMELINE

March 2010	MOU signed by the Parties
December 31, 2010	Complete and reach consensus on technical evaluation (led by EPA Region 10)
January 2011	Begin comprehensive stakeholder process assuming adequate funding is identified (led by PSCAA)
Spring/Summer 2011	Conclude comprehensive stakeholder process (led by PSCAA)
Winter 2011	Performance Agreement finalized, signed; begin implementation, including check-ins at interim milestones and supplementation of efforts with backup measures as necessary (Department of Ecology, PSCAA and EPA Region 10)

VI. STAKEHOLDER ENGAGEMENT

The Parties agree it is desirable for the stakeholders listed in this section to participate in the comprehensive stakeholder process described in this MOU.

National stakeholders:

State air agencies and organizations representing state air agencies
 National environmental and health organizations
 Industry groups, as needed
 Others

Local stakeholders:

Local county and city officials
 Local environmental and health organizations
 Local communities within the nonattainment area (groups representing these communities)
 Local industry, business, and economic development groups
 Local home heating industries (e.g. hearth products, utilities)
 Others

VII. LIMITATIONS

A. No statements made in the course of negotiations among the Parties or in this MOU may be construed to represent an admission, determination, settlement, or adjudication of any legal or factual dispute relating to any Party's rights, privileges or interests. By entering into this MOU the parties reserve and do not waive their claims to jurisdiction over all or parts of the airshed and sources of pollution affecting those airsheds.

B. This MOU shall not be construed as waiving any rights, powers, or remedies the parties have under any applicable Act of Congress, Executive Order, treaty, regulation, State Constitution, State law, court decision, equity, or other authority. Each Party expressly reserves the right to assert any and all defenses it may have to any claim that may be asserted by the other Parties or by any other person under federal, state, or tribal law.

C. Nothing in this MOU shall change the jurisdictional authorities of the United States or any of its agencies, the Tribes or any of its agencies, the State or any of its agencies, or any other entity. This MOU is solely for the purpose of facilitating intergovernmental cooperation between the parties. This MOU is not and shall not be used as a precedent for resolution of any dispute regarding the jurisdictional authority of the parties to the agreement. This MOU creates no rights in third parties or the right of judicial review.

D. All agreements made in this MOU are subject to the availability of appropriated funds and each Party's budget priorities. Nothing in this MOU, in and of itself, obligates any Party to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. The parties agree not to submit a claim for compensation for services rendered to any of the other parties for activities they undertake in carrying out this MOU.

E. This MOU is neither a fiscal nor a funds obligation document. This MOU does not exempt the Parties from policies requiring competition for financial assistance and contracts. Any endeavor involving reimbursement or contribution of funds between the Parties will be handled in accordance with applicable laws, regulations, policies, and procedures, and will be subject to separate agreements that will be effected in writing.

F. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity against the Parties to the MOU, their officers or employees, or any other person. This MOU does not direct the actions of, or apply to any person outside the Parties to this MOU.

G. The Parties agree that any copyrightable subject matter, including but not limited to journal articles, training, educational or informational material or software, created jointly by the Parties from the activities conducted under the MOU may be copyrighted by one or more of the Parties. Each Party hereby grants to the Federal government a royalty-free, nonexclusive, irrevocable right to reproduce, distribute, make derivative works, and publish or perform the work(s) publicly, or to authorize others to do the same on its behalf.

VIII. COMMENCEMENT, MODIFICATION, AND TERMINATION

This MOU is to take effect when signed by all Parties, and remain in effect until either the effective date of the Performance Agreement or the date on which Department of Ecology must submit an attainment plan, whichever is earlier. This MOU may be amended at any time by the mutual written consent of the Parties. A Party's participation in the MOU may be terminated at any time upon written notification to the other Parties at least 90 days in advance of the termination date. This MOU may otherwise be terminated by written agreement of the Parties.

IX. POINTS OF CONTACT

The following individuals are designated points of contact for this MOU:

U.S. Environmental Protection Agency, OAQPS

Tom Coda, (919) 541-3037, coda.tom@epa.gov
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U.S. Environmental Protection Agency
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U.S. Environmental Protection Agency, Region 10

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State of Washington, Department of Ecology:

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Program Development Section
Air Quality Program
Washington State Department of Ecology
300 Desmond Drive SE
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Puget Sound Clean Air Agency:

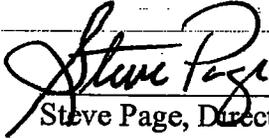
Dave Kircher, (206) 689-4050, davek@pscleanair.org
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Kathy Himes, (206) 689-4095, kathyh@pscleanair.org
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Puyallup Tribe of Indians of Indians
Environmental Department
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X. APPROVAL

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards


Steve Page, Director

4-20-10

Date

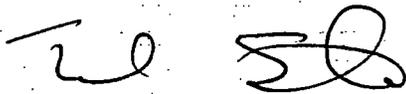
U.S. Environmental Protection Agency, Region 10


Dennis J. McLerran, Regional Administrator

4/15/10

Date

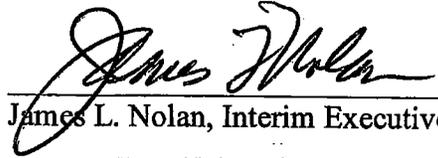
State of Washington, Department of Ecology


Ted Sturdevant, Director

3-29-2010

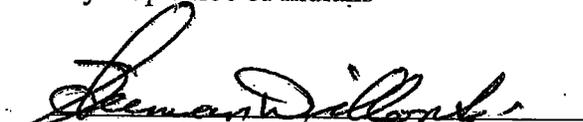
Date

Puget Sound Clean Air Agency


James L. Nolan, Interim Executive Director

4/8/10
Date

Puyallup Tribe of Indians


Herman Dillon Sr., Chairman

3/19/10
Date