



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply To
Attn Of: ORC-158

May 29, 2007

Chief Paul Nichol
North Kitsap Fire & Rescue District
26642 Miller Bay Road
Kingston, Washington 98346

Dear Chief Nichol:

I am enclosing a fully executed original copy of the Memorandum of Agreement (MOA) between the Suquamish Tribe, the North Kitsap Fire & Rescue District, the Kitsap County Fire District 18, and the U.S. Environmental Protection Agency Region 10. The purpose of the MOA is to describe an intergovernmental partnership for implementation of certain sections of the Federal Implementation Plan (FIP) for the Port Madison Indian Reservation (40 CFR Part 49 Subpart M, Sections 49.10921 through 49.10950). Fully executed original copies of the MOA are also being transmitted to the Suquamish Tribe and to Chief Shields at the Kitsap County Fire District 18.

We are very pleased to have established this agreement for cooperatively working together to protect air quality and fire safety. Please contact me at (206) 553-8203 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard G. McAllister".

Richard G. McAllister
Assistant Regional Counsel

Enclosure

cc: Chief Shields, Kitsap County Fire District 18
Mark Bubenik, Suquamish Tribe

ORIGINAL

Memorandum of Agreement

This agreement between the Suquamish Indian Tribe (Tribe), the North Kitsap Fire and Rescue District (NKF&R), the Kitsap County Fire District 18 (Poulsbo Fire Dept.), and the U.S. Environmental Protection Agency Region 10 (EPA), describes an intergovernmental partnership for implementation of certain sections of the Federal Implementation Plan (FIP) for the Port Madison Indian Reservation (40 CFR Part 49 Subpart M, Sections 49.10921 through 49.10950), hereafter referred to as the Port Madison FIP, that EPA issued under the federal Clean Air Act.

I. Purpose

The purpose of this agreement is to facilitate intergovernmental cooperation between the Tribe, NKF&R, the Poulsbo Fire Dept., and EPA in order to implement the **General rule for open burning, including procedures for calling Burn Bans to prohibit open burning** within the exterior boundaries of the Port Madison Indian Reservation (Reservation).

II. Legal Authority

- A. The Clean Air Act Amendments of 1990 (CAA, or Act) provide EPA authority to promulgate regulations to protect air quality within Indian country. See Section 301(a) and 301(d)(4) of the Act. EPA Region 10 has promulgated such regulations for the Port Madison Reservation. See 40 CFR Part 49 Subpart C and 40 CFR Part 49 Subpart M, sections 10401 through 10411.
- B. 40 CFR Part 49 Subpart M, "Implementation Plans for Tribes - Region X", identifies for each Indian Reservation specific regulations applicable to each Reservation. 40 CFR Part 49 Subpart M, Sections 49.10921 through 49.10950 contain the Port Madison FIP for the Port Madison Reservation.
- C. The Tribe, NKF&R, Poulsbo Fire Dept. and EPA have authority to enter into a voluntary agreement to implement portions of the Port Madison FIP.
- D. NKF&R and the Poulsbo Fire Dept., municipal governments under the laws of the State of Washington as defined in RCW 52, are acting pursuant to their governmental powers under RCW 52.12.021, RCW 52.12.031, and other statutes, and enter into this cooperative agreement pursuant to authority granted by RCW 39.34, the Interlocal Cooperation Act. NKF&R and the Poulsbo Fire Dept. administer fire safety programs to regulate open burning within their boundaries in Kitsap County, Washington, which include the Reservation, and assist the Puget Sound Clean Air Agency to implement air quality burn bans that are called for Kitsap County. Nothing in the Port Madison FIP exempts or excuses any person from complying with NKF&R's and the Poulsbo Fire Dept's requirements.

E. This agreement neither creates nor diminishes any authority otherwise established by tribal, state or federal law. This agreement in no way diminishes the sovereign immunity of the Suquamish Indian Tribe or its exercise of inherent Tribal authority.

III. Open Burning Provisions of the Port Madison FIP

The Port Madison FIP at 40 C.F.R. § 49.10926(g) applies to all sources of air pollution within the Reservation.

Section 49.131, General rule for open burning

This section limits the types of materials that can be openly burned within the Reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground level concentrations of particulate matter. This rule also provides the authority to issue a burn ban should conditions warrant.

IV. Complaint Response, Inspections & Investigations for Section 49131, General rule for open burning

A. The Tribe and EPA agree that the Tribe will initially respond to air quality complaints on the Reservation on behalf of EPA. This initial response will generally include a site visit to the source, request for additional information, and compliance assistance or outreach to the source owner. Information gathered during a site visit response will be transmitted as soon as possible to EPA in writing. EPA will staff the FARR Hotline (located in EPA's Seattle office) to log complaints and immediately report complaints on the Reservation to the Suquamish Tribe. Written information can be sent to EPA via email to FARR Hotline.

B. The Tribe, NKF&R, and the Poulsbo Fire Dept. have agreed that NKF&R and the Poulsbo Fire Dept. will respond on behalf of the Tribe to outdoor burning complaints on the Reservation, which includes all fee owned land and all trust land. Provided however, if there is a complaint that involves a Tribal government or Tribal agency burn, NKF&R's and the Poulsbo Fire Dept's response and action will be in consultation with the Tribe's Department of Natural Resources, with the goal being to educate the personnel on any issues of concern. The Tribe, NKF&R, and the Poulsbo Fire Dept. may assist EPA in compliance monitoring activities by investigating complaints and conducting compliance inspections. These activities may include an inspection or investigation of open burning activities regulated under the General rule for open burning, 40 CFR 49.131. EPA recognizes that as set forth in this Memorandum of Agreement, NKF&R and the Poulsbo Fire Dept. may perform the initial response, investigation and reporting on outdoor burning complaints within the Reservation.

C. When the NKF&R or the Poulsbo Fire Dept. respond to complaints about open burning on the Reservation, they may respond in one or more of the following ways: (1) provide information and outreach about the FARR, burn bans and/or the list of prohibited materials in Section 49.131, General rule for open burning to illegal burners; (2) provide the Tribe with information about the complaint call (such as name, address, photos or other evidence of burning prohibited materials, etc.), which the Tribe will forward to EPA as described above; (3) inform the burner of NKF&R's or the Poulsbo Fire Dept's own fire safety rules and regulations; or (4) if there is a fire safety concern or a health/safety pollution concern, extinguish the fire according to NKF&R's or the Poulsbo Fire Dept's protocols for fire and/or health safety the

same as NKF&R or the Poulsbo Fire Dept's do on non-tribally owned fee land within Kitsap County. Provided however, NKF&R and the Poulsbo Fire Dept. shall request Suquamish Police assistance and support when enforcement action is being taken on trust land.

D. EPA, in consultation with the Tribe, will decide whether additional response is warranted and the extent of that response. Complaints that result in a violation of the Port Madison FIP, and that EPA determines warrant an enforcement response, will be addressed by EPA in accordance with established federal policies and procedures, following consultation with the Suquamish Tribe. (See Section V. Outreach, Compliance Assistance and Enforcement below)

V. Outreach, Compliance Assistance & Enforcement

A. EPA will inform the public about outdoor burning regulations and alternatives to burning through news releases to local newspapers, purchasing advertisements, posting materials in local libraries and speaking to local government officials, if requested.

B. Enforcement of the Port Madison FIP will remain the sole responsibility of EPA. Enforcement of Tribal law will remain the sole responsibility of the Tribe. Enforcement of NKF&R fire safety codes will remain the sole responsibility of the NKF&R. Enforcement of the Poulsbo Fire Dept. fire safety codes will remain the sole responsibility of the Poulsbo Fire Dept.

C. EPA will consult with the Tribe, consistent with EPA policies and procedures, prior to initiating any enforcement action against Tribe's members related to sources located within the Reservation's exterior boundaries.

D. EPA will follow all established Federal policies and procedures, including policies and procedures issued by the Office of Enforcement and Compliance Assurance (OECA), in the pursuit of enforcement remedies for violations of the Port Madison FIP.

E. EPA will, on a quarterly basis, provide the Tribe a report on the status of all air enforcement actions for sources located within the Reservation.

VI. Data and Reporting Requirements

A. The Tribe will transmit information gathered during site visit responses (conducted by the Tribe or NKF&R or the Poulsbo Fire Dept.) as soon as possible to EPA in writing. EPA will staff the FARR Hotline (located in EPA's Seattle office) to log complaints and immediately report complaints on the Reservation to the Tribe. Written information can be sent to EPA via e-mail to FARR Hotline.

B. EPA shall furnish the Tribe, NKF&R, and Poulsbo Fire Dept. requested information in its files related to implementation of the Port Madison FIP, consistent with the Freedom of Information Act and EPA regulations at 40 C.F.R. Part 2.

C. Employees of the Tribe, NKF&R, and the Poulsbo Fire Dept. will not accept any information that the submitting party claims to be confidential business information. The person making the claim should be instructed to submit the protected information directly to EPA.

Information without a claim of confidential business information may be made available to the public without further notice.

VII. Specific Provisions between the Tribe and EPA

A. The Tribe has, or will have, the technical capability and adequate resources to carry out responsibilities outlined in this agreement. As requested by the parties, EPA will strive to provide technical assistance and resources to meet needs identified by the Tribe or EPA, as constrained by available resources.

B. EPA and the Tribe will maintain open communication. Should an issue arise between EPA and the Tribe, best efforts will be made for resolution at the staff level. If staff is unable to resolve the issue, staff will present the issue in writing to progressively higher levels of management until consensus is reached. If consensus cannot be reached, EPA retains final implementation and enforcement authority for the Port Madison FIP.

C. The Tribe will follow all EPA-issued policies, guidance and determinations involving implementation of the Port Madison FIP. EPA will provide the Tribe with copies of these policies, guidance, and determinations. Where no current EPA policy or guidance clearly covers a specific situation, the Tribe and EPA shall consult with each other.

D. The Tribe will be invited to consult with EPA during periods of air stagnation before EPA makes a burn ban call to prohibit open burning that will include the Port Madison Indian Reservation, and EPA will seek to obtain local weather and wind conditions and any other information that may be pertinent to the burn ban call. EPA will also notify the Tribe by e-mail each day there is a burn ban decision made by notifying staff of the Tribe (including fire and police personnel) that are included on EPA's Burn Ban Notification e-mail list.

VIII. Specific Provisions between the Tribe Poulsbo Fire Dept. and NKF&R

A. NKF&R and the Poulsbo Fire Dept. will notify the Tribe when responding to an outdoor burning complaint on the Reservation.

B. The Tribe's Department of Natural Resources Department (DNR), consistent with the Tribe's authority, will continue to issue outdoor burn permits to agencies and departments of the Tribe for burns on both trust and fee land within the Reservation, and to Tribal members who request a permit for burning wood debris on trust land. Tribe's DNR will fax a copy of said permits to NKF&R immediately after the permit is issued. NKF&R and the Poulsbo Fire Dept., consistent with state law, will continue to issue outdoor burn permits to persons or businesses who desire to burn on (non-trust) fee land. For outdoor burn permits that NKF&R or the Poulsbo Fire Dept. issue for a burn within the Reservation, NKF&R and the Poulsbo Fire Dept. will fax a copy of said permit to Tribe's DNR immediately after the permit is issued.

C. NKF&R or the Poulsbo Fire Dept. shall contact the Suquamish Indian Tribe's police department for support when NKF&R or the Poulsbo Fire Dept. responds to a complaint involving a Suquamish Tribal member on the Reservation. In addition, NKF&R and the Poulsbo Fire Dept. will:

1. prepare an incident report for the more serious violations that sets forth the facts and send said report to the contact person identified by EPA and to the Tribe's Director of Natural Resources;
2. EPA and Tribe will make the decision on whether to refer an incident involving a Suquamish Tribal member to the Tribe's prosecuting attorney for possible prosecution, and
3. Tribe's prosecuting attorney will make the decision on whether to charge and prosecute all alleged violations by Suquamish Tribal members in Tribal Court.

IX. Specific Provisions between the EPA, NKF&R, and the Poulsbo Fire Dept.

- A. To the extent permitted by law and in accordance with 40 C.F.R. §§ 49.10926(g) and 49.131, EPA agrees to call burn bans for the Reservation consistent with the Puget Sound Clean Air Agency (PSCAA) call for burn bans for the Kitsap County Airshed. EPA will participate in daily telephone conferences with PSCAA to review meteorological information and the need to prohibit open burning.
- B. EPA will notify the NKF&R, the Poulsbo Fire Dept. and the Tribe by e-mail each day there is a burn ban decision made by notifying NKF&R staff, the Poulsbo Fire Dept. staff, and the Tribe's staff who are included on EPA's Burn Ban Notification e-mail list.
- C. EPA may request NKF&R and Poulsbo Fire Dept. incident reports (and any evidence) relating to activities on the Reservation for EPA to take additional action if necessary.
- D. NKF&R and Poulsbo Fire Dept. responders will participate in any administrative or court proceeding (ex: providing testimony) resulting from enforcement action by EPA.

VIII. Agreement Evaluation, Modification, or Termination

- A. This Agreement may be modified to account for any changes to the Port Madison FIP promulgated after the effective date of this agreement. Implementation of new or revised requirements after the effective date of this agreement will remain the sole responsibility of EPA until this Agreement is modified.
- B. This voluntary agreement may be modified, amended, or revoked, in part or in whole, or terminated by any of the parties by giving ten days written notice to all parties.

IX. Appendix

"Federal Air Rules for Reservations, Implementation Framework"

X. Reservation of Rights


The Tribe, EPA, the NKF&R, and the Poulsbo Fire Dept. recognize that each reserve all rights, powers, and remedies now or hereafter existing in law or in equity, by statute, treaty or otherwise. Nothing in this Agreement is, or shall be construed, to be a waiver of the sovereign immunity of the Suquamish Indian Tribe or the United States. By entering into this agreement, EPA, the Suquamish Indian Tribe, the NKF&R, and the Poulsbo Fire Dept. reserve, and do not

waive, any jurisdictional claims relating to proper application of the CAA or any other matter. This agreement is intended solely for the purpose of facilitating intergovernmental cooperation, and creates no rights in third parties or the right to judicial review.

XI. Signatures

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year below. By their signatures, the undersigned represent that they have the authority to enter into this Agreement for the Parties.

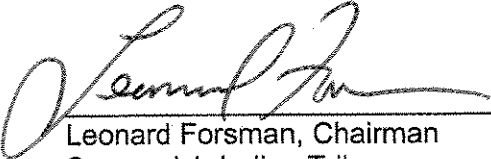
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Elin D. Miller, Regional Administrator
U.S. EPA Region 10

Date: MAY -7 2007


SUQUAMISH INDIAN TRIBE



Leonard Forsman, Chairman
Suquamish Indian Tribe

Date: _____

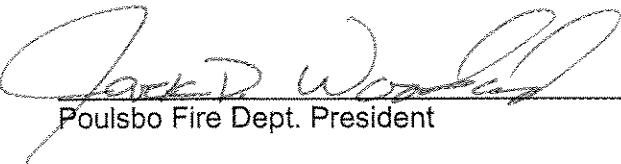
NORTH KITSAP FIRE & RESCUE



Gillian A. Gregory
NKF&R Board President

Date: 4-9-07

POULSBO FIRE DEPARTMENT



Jack D. Wood
Poulsbo Fire Dept. President

Date: 12 APR 07

EXECUTIVE SUMMARY
MEMORANDUM OF AGREEMENT—TRIBE, EPA, NORTH
KITSAP FIRE AND RESCUE DISTRICT & POULSBO FIRE DISTRICT

BACKGROUND: The EPA is required to administer and enforce the federal Clean Air Act on the Port Madison Indian Reservation. EPA has authorized the Tribe's Department of Natural Resources (DNR) to issue outdoor burn permits to Tribal members, Tribal departments and Tribal Agencies for burning woody debris. The Tribe has also had an excellent informal working relationship with North Kitsap Fire & Rescue (NKF&R), and Poulsbo Fire Department and has especially appreciated their outreach and education programs, response to outdoor burning complaints and putting out fires on the Reservation. Pursuant to the Clean Air Act, EPA may order a burn ban for the Reservation during periods of high air pollution. Notice of an EPA ordered burn ban is communicated to Tribal members by NKF&R and Poulsbo Fire Department placing burn ban signs on the Reservation and notifying the local media. The Tribe's DNR answers Tribal member questions about burn bans. Except during periods of a burn ban, burning of small amounts of paper waste that is not coated with plastic, is allowed without a permit.

REASON FOR THE PROPOSED MOA: The EPA is encouraging the Tribe, NKF&R and Poulsbo Fire Department to enter into a MOA to formalize the existing working relationship. A MOA will help existing and new staff understand the working relationship, which has been very beneficial to the Tribe. The Tribe's DNR is not staffed 24 hours/day, 7 days a week to respond to outdoor burning complaints. DNR usually finds out about an outdoor burning complaint from NKF&R or the Poulsbo Fire Department, as they typically are the first to respond to complaints about burning. NKF&R and Poulsbo Fire Department now provide outreach and health and safety education to all persons on the Reservation, and they also assist with information on obtaining a permit from the Tribe's DNR, and about complying with an EPA ordered burn ban.

PROPOSED MOA:

- Tribe's DNR will continue to issue burn permits to Tribal members, Tribal departments and Tribal agencies
- NKF&R and Poulsbo Fire Department will continue to provide outreach and education, and will be formally authorized to respond to all outdoor burning complaints on the Reservation
- Complaints to NKR&R or EPA involving Tribal Government or Tribal Agencies will require consultation with the Tribe's DNR with the goal of providing education on any issues of concern
- if there is a serious fire safety or health/safety concern, NKF&R and/or Poulsbo Fire Department will be formally authorized to extinguish the fire
- NKF&R and Poulsbo Fire Department are required to request Suquamish Police assistance and support when enforcement action is being taken on trust land, or fee land where a Tribal member resides
- Serious burn ban or burn permit violations by a Tribal member will result in the Tribe's DNR and EPA jointly deciding whether to refer the matter to the Tribal Prosecutor for

possible prosecution, and filing and prosecuting a complaint is at the discretion of the Tribal Prosecutor

--- EPA will exert good faith efforts to issue burn bans for the Reservation only when burn bans are issued for Kitsap County

BENEFITS TO TRIBE: By formalizing the Tribe's good working relationship with NKF&R and Poulsbo Fire Department, this will hopefully guarantee continuation of the outreach and education programs provided by NKF&R and Poulsbo Fire Department. Staff believes that NKF&R and Poulsbo Fire Department's outreach and education program benefits the Tribe because as Tribal members become better educated about the health hazards of burning plastic, plastic coated paper (paper cups, milk and ice cream cartons), there should be fewer Tribal members who are exposed to cancer causing air pollutants, and fewer incidents of related cancers. Also, as Tribal members become better educated about what is legally permissible for outdoor burning and as there is increased compliance with the Clean Air Act, there should be fewer complaints made by non-Indians about outdoor burning by Tribal members.