

**Washington State  
Compliance Assurance Agreement  
for Air Programs**

*among*

**The Washington State Department of Ecology**

**The Energy Facility Site Evaluation Council**

**The Washington Local Air Pollution Control Agencies**

*And*

**The U.S. Environmental Protection Agency**

*May 30, 2003*

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# Compliance Assurance Agreement

## I. Applicability

This Agreement applies to the U.S. Environmental Protection Agency Region 10 (EPA), the Washington Department of Ecology (Ecology), Washington State's seven local air agencies (locals), and the Energy Facility Site Evaluation Council (EFSEC). The primary focus of this Agreement is to outline the procedures used to ensure compliance with federal and State air quality laws for sources that are subject to the EPA policy on "*Clean Air Act Stationary Source Compliance Monitoring Strategy, April 25, 2001.*" (*Appendix A*)

The stationary sources covered by this agreement include: all Title V and synthetic minor sources, including those at or greater than 80 percent synthetic minor sources subject to the Compliance Monitoring Strategy.

## II. Purpose

The purposes of this Agreement are:

- To define the roles and responsibilities of EPA and the State and local air agencies in ensuring stationary source compliance with the Washington SIP and federal air quality requirements, to describe federal expectations with respect to implementation of delegated programs, and to describe how and under what circumstances EPA's oversight authority will be exercised independent of the State or local air agencies.
- To describe enforcement and compliance procedures that the parties will follow in implementing federal and State air pollution control laws, including ensuring that High Priority Violations (HPV's) are addressed in accordance with federal and State laws and EPA's Timely and Appropriate Policy, unless explicit departures from the policy are mutually agreed upon.
- To describe the planning process and communication procedures that the parties will use regarding: identification of HPV's, actions taken or pending to resolve HPV, feedback from EPA on oversight inspections, and EPA's implementation of their enforcement authority.
- To describe a process for resolving conflicts that may arise between the parties.

## III. Statement of Authority

As provided by various State laws, Ecology, the State's seven local air agencies, DOH, and EFSEC are authorized to regulate air quality in the State of Washington. The Washington Clean Air Act, Chapter 70.94 RCW, established Ecology's Air Quality Program, and the State's local air agencies. The seven local air agencies have jurisdiction over 20 of the State's 39 counties. The local air agencies are not part of Ecology, but are

separate municipal corporations, operating under their own boards of directors. Each local air agency may enact its own regulations or adopt Ecology's regulations.

Ecology's regional offices have jurisdiction over 19 of the State's 39 counties. In addition, Ecology's Industrial Section of the Solid Waste Program has statewide jurisdiction over chemical pulp mills and primary aluminum smelters under Ecology's authority in RCW 70.94.395. Similarly, all sources located on the Hanford Nuclear Reservation are regulated by Ecology's Nuclear Waste Program. The Washington Clean Air Act, under RCW 70.94.422, also recognizes DOH's jurisdiction over the radionuclide air emissions and EFSEC's separate authority to regulate large energy-related facilities.

Ecology and EFSEC are the only agencies delegated by EPA to issue PSD permits. For facilities not regulated by EFSEC, the delegated Title V permitting agencies, whether state or local, agree to enforce the requirement for a facility to obtain a PSD permit prior to commencing construction and to enforce the terms of any PSD permit. For facilities regulated by EFSEC, it is EFSEC's responsibility to enforce the requirement to obtain a PSD permit through EFSEC's site certification process prior to commencing construction, and to enforce the terms of any PSD permit that has been issued by EFSEC.

When Ecology is the agency that issues the PSD permit, it will make every reasonable effort to ensure the PSD permit and Title V permitting agency's NOC approvals are coordinated, and that the Title V permitting agency is satisfied with the terms of the PSD permit, prior to releasing the draft PSD permit for public comment and prior to issuing the final PSD permit. If the Title V permitting agency provides comments on the draft PSD permit on conditions it believes are inadequate, incomplete or unenforceable and Ecology is unresponsive to those comments, the Title V permitting agency may invoke the Conflict Resolution provisions of this agreement.

When EFSEC is the PSD permitting agency, it is also the delegated Title V permitting authority. EFSEC plans to establish contracts with local air authorities and Ecology for assistance with issuing PSD and Title V permits for sources under EFSEC jurisdiction. EFSEC, directly or through its PSD permitting contractor may request assistance from the jurisdictional Title V agency for a review of the draft PSD permit to determine if there are any Title V permit program issues related to inadequate, incomplete, or unenforceable requirements in the draft PSD permit.

All parties acknowledge EPA's authority under the federal Clean Air Act for ensuring compliance with, and enforcement of, federal requirements. In turn, EPA recognizes the State's responsibility, and that of the local air agencies, as primary implementers of delegated federal programs and State and local air quality laws and regulations.

#### **IV. Guiding Principle**

This agreement is based on the principle that collaborative planning and coordinated implementation should result in clear understanding among the parties. The parties are all committed to timely and clear communication with each other with a goal of "no surprises" concerning the implementation of this agreement. The parties agree to follow the "*EPA / State Agency Agreement on Compliance Assurance Principles*" May 1997 (*Appendix B*)

## **V. Roles and Responsibilities**

### **A. State and Local Agency Roles**

In delegated programs, the role of the State and local agencies is that of primary enforcer or “front line” agency in program implementation. In any case where the local agency must defend an enforcement action, involving the terms of a PSD permit issued by Ecology, upon request of the local agency, Ecology will assist in the defense of the enforcement action.

In the situation where EFSEC is the PSD permitting agency and has contracted with Ecology or a local Title V agency to provide compliance monitoring and air operating permit review services, EFSEC is responsible to take the enforcement action and Ecology or the local agency contractor will assist EFSEC in defense of the action in accordance with the terms of their contract.

### **B. EPA Role**

In delegated programs, EPA’s principal role is “back-up” for the State/local program. However, EPA may initiate an enforcement action, as appropriate, under any of the following circumstances:

- At the State or local air agency’s request, including requests for assistance in the defense of an enforcement action involving the terms of a PSD permit;
- If a State or local air agency action is determined to be inadequate, or the State/local agency fails to carry out action in a timely or appropriate manner;
- As part of EPA’s role established in the collaborative planning process, which includes those situations where national, regional, or sector initiatives warrant an EPA lead.

In non-delegated programs, EPA is the lead on compliance and enforcement issues. EPA will strive to keep the State and local air agencies informed of its activities in those programs, and to follow the “no surprises” principle.

### **C. Indian Country**

Environmental issues in Indian Country are addressed in accordance with Indian treaties, the U.S. Constitution, case law, statutes, executive orders, and historical relations between the United States and Indian tribes. EPA and tribal governments are usually the only regulators on reservations. EPA has not delegated any of the Clean Air Act programs to Indian tribes within the State of Washington.

However, EPA has approved Ecology’s Part 70 (Title V) program as applying to lands within the Puyallup Reservation, except for Trust-restricted lands for which EPA retains permitting and enforcement responsibilities.

## **VI. Collaborative Planning Process**

Twice a year (in the spring and fall) EPA will sponsor planning meetings with representatives from the State and local air agencies. The purposes of the meetings will be to:

- Discuss and identify agency roles in implementing upcoming national, regional, and sector initiatives for that year. (Fall)
- Develop and finalize the Compliance Monitoring Strategy schedule for the upcoming federal fiscal year. (Fall)
- Discuss State/local enforcement and compliance priorities. (Fall)
- Review the performance of EPA and the State and local air agency compliance and enforcement programs. (Spring)
- Discuss State and local air agency training plans for the upcoming year based on the previous year's program performance and other training needs. (Spring)

## **VII. Training**

EPA and the State and local air agencies agree to assure all inspectors are qualified to conduct inspections in accordance with EPA Order 3500.1. The State and local air agencies agree to provide training regarding State and local regulatory requirements. EPA commits to assist in providing adequate training to the State and local air agencies regarding enforcing federal regulations.

To achieve these training goals, EPA and the State and local air agencies will jointly identify training priorities on an annual basis as part of the Collaborative Planning Process, including considering training needs identified during oversight inspection activities.

## **VIII. Compliance Monitoring Plans**

The State and local agencies agree to submit a biennial Compliance Monitoring Plan in accordance with the "*Clean Air Act Stationary Source Compliance Monitoring Strategy, April 25, 2001*" (*Appendix A*) for discussion with, and approval by, EPA. The plan will include the following elements:

1. A facility-specific list (including the AFS identification numbers) of all Title V major sources. The list should identify by federal fiscal year those facilities for which a Full Compliance Evaluation will be conducted. It should also identify those for which an on-site visit will be conducted.
2. A facility-specific list (including the AFS identification numbers) of all at or greater than 80 percent synthetic minor sources. The list should identify by federal fiscal year those facilities for which a Full Compliance Evaluation will be conducted.
3. A plan to assure the data submitted and maintained in AFS is complete and accurate

If at the end of the first federal fiscal year, the State/locals anticipate or know that they will be unable to meet their two year commitments by the end of the second year, they should notify the Region and revise their CMS plan accordingly.

The State/locals may develop with EPA approval alternatives to the recommended evaluation frequencies. Alternatives may be developed on a facility-by-facility basis, or for an entire source category. However, in determining whether an alternative frequency is appropriate, the following factors should be considered:

- Compliance history,
- Location of facility,
- Potential environmental impact,
- Operational practices (e.g., whether operation is steady state or seasonal),
- Use of control equipment,
- Participation in Agency-sponsored voluntary programs (e.g., Project XL),
- Identified deficiencies in the overall State/local compliance monitoring program.

## **IX. Full Compliance Evaluations**

A Full Compliance Evaluation (FCE) may include onsite and/or offsite compliance assessments of a facility's emission units, records, and self-monitoring reports to determine compliance status.

### **A. On-Site Visits**

In most cases, an on-site visit is necessary to complete an FCE. The on-site visit should include a review of records and log books on source operations, observations of the facility in operation including control equipment and performance parameters (e.g., water flow rates, water pressure, static pressure drop, and control equipment power levels), visible emission observations, and an evaluation of compliance with permit conditions. Daily logbooks and continuous emission/parameter monitoring recording data sheets should be spot-checked for any apparent aberrations.

Not all the emission units require observation to qualify as an on-site visit. It depends on the size and type of facility. For smaller facilities with a few/some emission units, all the units should be observed during the on-site visit. For large facilities with many similar or identical emission units, a number of the units may be observed and coupled with other information (e.g., Environmental Management System reports), an FCE may still be determined for the facility.

### **B. Scope of Full Compliance Evaluations**

Generally, records at the regulatory agency and records maintained at the facility should be reviewed from the time of the last inspection or last full compliance evaluation. Records include CEM and continuous parameter monitoring reports, malfunction reports, excess emission reports, deviation reports, operation logbooks, inspection reports, compliance and enforcement documents, and correspondence.

## **X. Enforcement Response**

## **A. High Priority Violations**

The State and local air agencies agree to meet the requirements of the EPA Policy entitled "*The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations*," December 22, 1998 (*Appendix C*) using their statutory processes, regulatory directives, and enforcement guidance and policies.

## **B. Penalties**

The State and local air agencies agree to recover economic benefit of noncompliance when penalizing violators. To the extent allowed by law, penalty amounts will include a gravity component as well as an economic benefit component. The State and local agencies will use their respective penalty policies in determining penalty amounts. In calculating economic benefit, the State and local air agencies may use, but are not limited to using, EPA's BEN model.

EPA accepts approvable supplemental environmental projects (SEPs) for reducing the gravity component of an assessed civil penalty. The State and local agencies will follow the EPA "*Final Supplemental Environmental Projects Policy*," May 1, 1998 (*Appendix D*), in evaluating appropriate SEPs. This policy describes the conditions under which a SEP can be used to mitigate the gravity component of a civil penalty.

# **XI. Record Keeping and Reporting**

## **A. Compliance Evaluation Reports**

The State/locals may format compliance evaluation reports as they deem appropriate; however, the following basic elements should be addressed in the reports:

- (1) Facility information--facility name, location, mailing address, facility contact and phone number, Title V designation and mega-site designation.
- (2) General information--date, compliance evaluation category (i.e., Full Compliance Evaluation, Partial Compliance Evaluation, or Investigation), and official submitting the report.
- (3) Inventory and description of regulated emission units and processes
- (4) Information on previous compliance evaluations.
- (5) Compliance monitoring activities--processes and emission units evaluated; applicable requirements evaluated; on-site observations; whether compliance assistance was provided and if so, nature of assistance; any action taken by facility to come back into compliance during on-site visit.
- (6) Findings and recommendations relayed to the facility as a result of the compliance evaluation.

In providing the above information, the State/locals should reference or attach other relevant documents as appropriate to avoid duplication. For example, the relevant section of a Title V permit could be attached to the compliance evaluation report rather than rewriting all of the applicable requirements.

Compliance evaluation reports will be made available to EPA upon request.



## **B. AFS Reports**

All agencies share responsibility for entering their required data into the EPA data system and verifying data quality.

The State and local air agencies will maintain the Air Information and Retrieval System (AIRS) Facility Subsystem (AFS) as a complete and accurate inventory of compliance determinations and compliance activity at stationary sources of air pollution covered by this agreement. At least every quarter, the State and local air agencies will update AFS with current information. The updates will include the information requested in the EPA's guidance "*Minimum Data Requirements (MDRs) for Clean Air Act Stationary Source Compliance*," dated December 22, 1993, April 24, 1998 and October 5, 2001 (*Appendix E*). For Title V and synthetic minor MACT sources, the applicable subparts will be entered into AFS.

EPA will enter HPV flags (e.g. Day 0, Day Addressed, Day Resolved, Lead Changes) in AFS. In addition to HPV flags, EPA will change the EPA compliance status of flagged sources accordingly. In the event AFS is modernized through the various EPA HQ software/hardware projects, EPA may renegotiate the HPV flag identification in AFS.

## **XII. HPV Communications**

The main purpose of HPV communications is to encourage discussion on the status and handling of HPVs. In order to coordinate enforcement activities and tracking by EPA and the State and local air agencies, bi-monthly HPV calls will be conducted as follows:

### HPV Conference Calls:

EPA will conduct conference calls every other month with all State and local agencies and distribute an agenda and updated HPV List to the State and local air agencies at least ten days prior to and the day before the call. The list will contain potential, current, addressed, and resolved HPV's. The State and local air agencies will provide written updates to the HPV List on the ongoing status of HPV's and will include written updates on potential HPV's to be discussed during the conference call. These updates will be sent at least one week prior to the scheduled call.

### Purposes of HPV Calls:

EPA and the State and local air agencies will use the conference call as an opportunity to discuss:

- The compliance status of significant violators
- New HPV's to be confirmed or considered
- Potential or current federal enforcement actions
- The status of State and local agency's enforcement actions
- The status of national enforcement initiatives and their potential impacts on sources
- New developments in federal enforcement guidance or its interpretation

### **XIII. Overfile Procedures**

In delegated programs, if the State or local air agency has not taken action in accordance with the HPV Policy, does not have agreement with EPA on a strategy for resolution, or has not made a convincing argument as to why EPA action is inappropriate, EPA may proceed with an enforcement action against an HPV after first providing the State or local air agency with notification of the proposed action. EPA shall communicate its intent to take enforcement action to the State or local agency orally and in writing, and allow an opportunity for discussion prior to initiating an enforcement action against an HPV in a delegated program.

EPA may also decide to over file if a civil penalty collected by the State or local air agency fails to recover the economic benefits of noncompliance plus some appreciable portion reflecting the gravity of the violation. Criteria for direct federal enforcement in delegated or authorized States are found in the July 20, 1993, EPA Memo entitled "*Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements*," (Appendix F). EPA will give due consideration to the State and local air agency's own penalty policies and the effectiveness of its overall enforcement program in achieving deterrence in making an over file decision.

In addition, EPA recognizes that the State and local air agencies may request EPA to initiate a federal action or become involved in an enforcement action, and EPA will provide such support as appropriate, and consistent with its existing resources, authorities, policies, and enforcement objectives.

### **XIV. Performance Evaluation Process**

In the spring of each year, managers from EPA and the State and local air agencies will meet to review each agency's performance of the commitments contained in this Agreement. During that meeting, each agency will share its most significant areas of achievement for the year and identify at least one area where they plan to make improvement.

EPA may periodically conduct a more in-depth analysis of the compliance monitoring program as a whole. Before conducting such an analysis, EPA will inform the State/locals in advance of the criteria that will be used in the more in-depth analyses. EPA will follow the criteria, as agreed to, in the "*Compliance Assurance Program Evaluation Principles*," approved on March 24, 1998 (Appendix G).

EPA may evaluate, for example, whether adequate inspector training is available; quality monitoring evaluations are being conducted; violations are being found; HPV's are appropriately addressed; and data are reported in an accurate and timely manner. They may also assess whether the State/locals are using an appropriate mix of compliance monitoring techniques, and making full use of all available data. In addition, EPA may attempt to quantify the impact of the compliance monitoring program on parameters such as compliance rates; specific and general deterrence; and moving beyond compliance.

### **XV. Conflict Resolution**

EPA and the State and local air agencies recognize that disputes may occur. The agencies will attempt to resolve these disputes promptly and at the lowest level. If disputes cannot be resolved within 15 business days, they will be referred to the next level of management, unless the parties mutually agree to an extension of this time for further discussion. This management referral and resolution process will continue, if necessary, to the level of EPA Regional Administrator and to the Ecology Director, Local Air Pollution Control Officer or EFSEC Chair as appropriate.

#### **XVI. Public Information**

EPA and the State and local air agencies are committed to account publicly for their compliance and enforcement programs, and to maximize opportunities for joint releases of information on compliance activities and enforcement actions. EPA and the State and local air agencies agree to adhere to the concept of "no surprises" concerning compliance activities and enforcement actions, particularly when such situations involve the media.

In some instances, as a result of agency policy or other requirements, EPA and the State and local air agencies may need to maintain the confidentiality of agency records. In doing so, each agency will handle confidential records in a mutually satisfactory manner, and consistent with federal and State law.

It is also agreed that neither the State and local air agencies nor EPA waive their respective rights to withhold documents under the attorney-client privilege.

#### **XVII. Updating the Compliance Assurance Agreement**

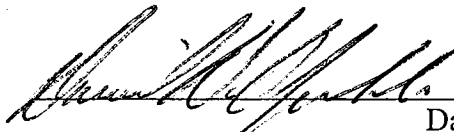
The terms of this Agreement remain in effect until a new agreement is reached. The Agreement may be revised upon notification by any party to the other parties of the desire to revise the Agreement and the basis for the request, and after the parties agree upon any such revisions to the Agreement.

This Agreement supersedes all previous Air Quality Program compliance assurance agreements.

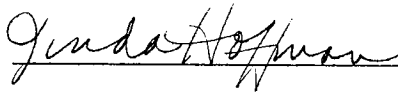
#### **XVIII. Limitations on Rights**

This Agreement creates no defenses or third party rights. This Agreement is not intended to, does not, and may not be relied upon to create a right or benefit, substantial or procedural, enforceable at law by any person or by the parties to this agreement. This Agreement creates no limitations under federal or State law on the State and local air agencies or EPA.

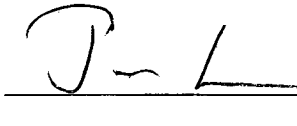
SIGNATORIES:

 5/20/03  
Date

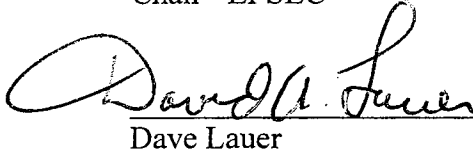
Daniel D. Opalski  
Acting Director, Office of Air Quality  
EPA Region 10

 6/18/03  
Date

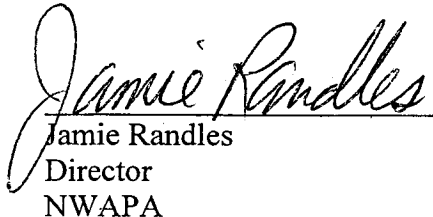
Deputy Director,  
Washington Department of Ecology

  
Date

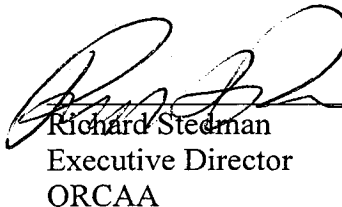
James O. Luce  
Chair EFSEC

 30 May 2003  
Date

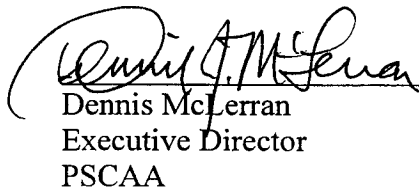
Dave Lauer  
Director  
BCAA

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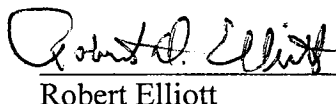
Jamie Randles  
Director  
NWAPA

 5/30/03  
Date

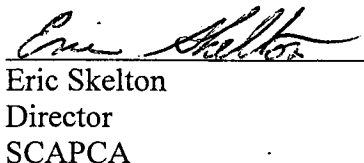
Richard Steedman  
Executive Director  
ORCAA

 5/30/03  
Date

Dennis McLerran  
Executive Director  
PSCAA

 May 30, 2003  
Date

Robert Elliott  
Executive Director  
SWCAA

 5/30/03  
Date

Eric Skelton  
Director  
SCAPCA

\_\_\_\_\_  
Date

Les Ornelas  
Director  
YRCAA

- Appendix A: Clean Air Act Stationary Source Compliance Monitoring Strategy
- Appendix B: EPA / State Agency Agreement on Compliance Assurance Principles
- Appendix C: The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations
- Appendix D: Final Supplemental Environmental Projects Policy
- Appendix E: Minimum Data Requirements (MDRs) for Clean Air Act Stationary Source Compliance
- Appendix F: Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements
- Appendix G: Compliance Assurance Program Evaluation Principles