

### **Third Addendum to the 2010 Memorandum of Understanding**

This Third Addendum to the October 7<sup>th</sup>, 2010 Memorandum of Understanding between the Wisconsin Department of Natural Resources and Forest County Potawatomi Community to Implement Forest County Potawatomi Class I Air Redesignation (the "2010 MOU"), is effective as of August 7, 2014 (the "Effective Date").

#### **I. Extension of Review Period**

The Parties agree that the Review Period established in section III of the First Addendum to the 2010 MOU (the "First Addendum") and modified by section I of the Second Addendum to the 2010 MOU (the "Second Addendum") is extended with respect to FCPC's new mercury and sulfur Threshold Effects Levels (TELs) related to the methylation component of the Existing Water Quality and Aquatic Systems AQRVs (the "Mercury Methylation TELs"), and with respect to FCPC's New Vegetation AQRV and TEL, so as to conclude by close of business on Monday, February 9, 2015 or individually for the Mercury Methylation TELs, the Vegetation AQRV, and/or the Vegetation TEL if the Department takes action to invoke Scientific Review Panel dispute resolution in accordance with Section VI of the 1999 Agreement (the "SRP Process"), whichever occurs earlier.

#### **II. Visibility AQRV and Water Quality and Aquatic Systems TELs to Protect Against Acidification or Eutrophication**

The Visibility AQRV, the Visibility TEL, and the nitrogen and sulfur TELs related to the water acidification or eutrophication component of the Water Quality and Aquatic Systems AQRVs are recognized and acknowledged by the Department. For the avoidance of doubt, the recognized and acknowledged values are set forth in the Appendix to this Third Addendum.

The Appendix to the Third Addendum does not amend or otherwise modify the substantive terms of the underlying agreements, including the 1999 Agreement, the 2010 Memorandum of Understanding, and the Third Addendum. As such, FCPC shall have the right to, among other things: change AQRVs and TELs once every ten years, starting with year 2019; to utilize the substantial harm framework discussed in Section IV.A.4 of the 1999 Agreement, Section 4.d of the 2010 Memorandum of Understanding, and Section III of the Third Addendum; and to also apply the Water Quality and Aquatic Systems AQRVs consistent with Section IV of the Third Addendum.

#### **III. Vegetation AQRV Implementation During Review Period**

Notwithstanding anything to the contrary in this Third Addendum or Section IV.B.4 of the 1999 Agreement, until the Vegetation AQRV and TEL become effective, FCPC has the right to apply the Vegetation AQRV to new and modified PSD permit applications on a case-by-case basis if FCPC believes that substantial harm, as defined in Section IV.A.4 of the 1999 Agreement and Section 4(d) of the MOU, will occur to the Vegetation AQRV

within the Class I Area. Should the Department have a scientific or technical dispute relating to the Vegetation AQRV or TEL applied by FCPC pursuant to this paragraph, the Department may invoke the SRP Process to resolve the dispute and determine if adverse impacts may potentially occur to the Vegetation AQRV.

#### IV. Water Quality and Aquatic Systems Mercury Methylation TELs Implementation During the Review Period

Until TELs (or DATs) to protect against mercury methylation become effective, FCPC continues to have the right to apply the Water Quality and Aquatic Systems AQRVs to new and modified PSD permit applications, including in ways to protect against mercury methylation. When FCPC applies the Water Quality and Aquatic Systems AQRVs to protect against mercury methylation, both parties will work together to determine interim TELs. If the parties are unable to agree on interim TELs, the Scientific Review Panel, as defined in the 1999 Agreement, has the authority to determine if adverse impacts from mercury methylation may potentially occur to the Water Quality and Aquatic Systems AQRVs.

#### V. Remaining Terms

Except as expressly modified by this Third Addendum, the remaining terms in the 2010 MOU and the First Addendum and Second Addendum shall remain unchanged.

#### VI. Termination

Should either party believe the other party is not acting in good faith, it may terminate this Third Addendum upon forty five (45) days' written notice to the other party (sent by certified priority mail to the signatory of this Third Addendum and by electronic mail to the signatory party's air program director and legal counsel). The party issuing notice shall provide in its notice its concerns and why it believes the other party is not acting in good faith and the party receiving notice shall be given an opportunity to respond to the concerns. If the response is acceptable to the issuing party, the notice can be rescinded. If the response is not acceptable then this Third Addendum shall be terminated effective on the forty-fifth day following the date the written notice was sent by certified priority mail (the "Termination Date"). For the avoidance of doubt, nothing in this paragraph shall limit a party's right to invoke the SRP Process for the Vegetation AQRV and/or TEL or the Mercury Methylation TELs prior to the Termination Date.

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**IN WITNESS THEREOF** the Parties hereto have caused this Third Addendum, which shall be effective as of the date set forth above when signed by both Parties, to be executed as follows:

**FOREST COUNTY POTAWATOMI COMMUNITY**

By:                     *alw. Milham*                    

Title:                     *Vice - Chairman*                    

**WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

By:                     *Walt Wrona*                    

Title:                     *Deputy - Secretary*

## APPENDIX TO THIRD ADDENDUM – Recognized Air Quality Related Values and Threshold Effect Levels

Air Quality Related Values	Date of Recognition
Visibility	Recognized as of the Effective Date (August 7, 2014)
Water Quality and Aquatic Systems	Recognized pursuant to 1999 Agreement (October 12, 1999)

Visibility Threshold Effect Levels		Date of Recognition
Uniform Haze (Deciview)	Acceptable change is a 0.5 deciview (dV) increase on the 98 <sup>th</sup> percentile day compared to natural conditions for the best 20% days. <sup>1</sup>	Recognized as of the Effective Date (August 7, 2014)
Layered Haze (Plume Color Difference Index, Delta-E)	Acceptable change is 2.0 or less for the worst-case hourly value using VISCREEN (1.0 if the visibility monitoring analysis is conducted using PLUVUE II).	Recognized as of the Effective Date (August 7, 2014)
Layered Haze (Plume Contrast)	Acceptable change is an absolute value of 0.05 or less for the worst-case hourly value using VISCREEN (0.02 if the visibility modeling analysis is conducted using PLUVUE II).	Recognized as of the Effective Date (August 7, 2014)

### Water Quality and Aquatic Systems Threshold Effect Levels

Atmospherically Deposited Pollutant	Purpose of Threshold Effect Level (TEL) / Deposition Analysis Thresholds (DAT)	TEL (DAT) Value	Date of Recognition
Nitrogen or Sulfur	Protect against water acidification or eutrophication	0.01 kg/ha/yr	Recognized as of the Effective Date (August 7, 2014)

<sup>1</sup> As specified in the modeling protocol, applicants can request, and FCPC in its discretion may consider, the use of “annual average” in lieu of the best 20% days for natural conditions; provided, however, that nothing shall obligate FCPC to accept or agree to such use.