

**DRAFT**  
**Memorandum of Understanding**  
**Annex to the Grand Canyon Visibility Transport Commission Report**  
**October 2000**

Whereas, section 169(A) of the Clean Air Act (Act) sets forth a national goal for visibility as the “prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas [in] which impairment results from man-made air pollution;”

Whereas, section 169(A) of the Act calls for states to develop implementation plans ensuring reasonable progress toward the national visibility goal, including emission limits, schedules of compliance and other measures as necessary, including a long term strategy and provisions for Best Available Retrofit Technology (BART) for certain major stationary sources;

Whereas, reducing visibility impairment complements reduction strategies necessary to achieve ozone and PM national ambient air quality standards (NAAQS);

Whereas, the states are empowered to adopt rules protecting public health and welfare, including visibility impairment in the nation’s Class I areas;

Whereas coordination of multi-state and tribal efforts to address regional haze will maximize regional efforts to achieve ozone and PM NAAQS;

Whereas, the Act requires the protection of health and welfare, including visibility impairment, from the adverse impacts of air pollution;

Whereas, it is desirable to meet these goals through an intensive, coordinated, federal, state, regional, and local effort to improve air quality, including protection of our national vistas for public enjoyment;

Whereas, it is desirable to develop a strategy that reduces emissions that impair visibility in the nation’s Class I areas, consistent with the states’ preeminent responsibility to protect public health;

Whereas, towards this end, it is in the best interest of the citizens of the West for Western states impacting the 16 Class I areas in the Colorado Plateau to work together to reduce visibility impairment in these areas from affected pollution sources.

Whereas regional haze is visibility impairment caused by the cumulative air pollutant emissions from numerous sources over a wide geographic area;

Whereas there are 16 Class I areas within the Colorado Plateau, specifically, Flat Tops, Maroon

Bells-Snowmass, West Elk, Black Canyon of the Gunnison, Weminuche, Mesa Verde, San Pedro Parks, Mt. Baldy, Petrified Forest, Sycamore Canyon, Zion, Bryce Canyon, Canyonlands, Capitol Reef, Arches, and Grand Canyon;

Whereas the Grand Canyon Visibility Transport Region comprised nine states and 211 tribes that influence or are influenced by emissions that contribute to regional haze in the Colorado Plateau;

Whereas, the U.S. Environmental Protection Agency (U.S. EPA) established the Grand Canyon Visibility Transport Commission (GCVTC) in 1991 to assess information about the adverse impacts on visibility in and around these 16 Class I areas and to provide policy recommendations to U.S. EPA to address such impacts;

Whereas, the GCVTC was comprised of eight states and four tribes from the Region;

Whereas, the GCVTC issued a report to U.S. EPA in 1996 recommending measures that should be taken to protect visibility in these 16 Class I areas;

Whereas, the GCVTC report, in part, recommended the close monitoring of stationary source emissions, the establishment of regional targets for sulfur dioxide emissions for the year 2000 and the year 2040 with interim targets, and the development of market-based programs if emission targets are not met;

Whereas, the U.S. EPA promulgated a Regional Haze Regulation in July 1999 that established goals and emission reduction strategies for improving visibility in all 156 mandatory Class I national parks and wilderness areas;

Whereas, the Regional Haze Regulation incorporates the GCVTC recommendations in specific provisions that allows the states and tribes in the Grand Canyon Visibility Transport Region to implement the recommendation of the Grand Canyon Visibility Transport Commission (GCVTC) within the framework of the national regional haze program;

Whereas, the follow-up body to the GCVTC is the Western Regional Air Partnership (WRAP) that was formed by Western states to establish a regional process to address, at a minimum, the 16 Class I areas that were the focus of the GCVTC;

Whereas section 51.309 of the Regional Haze Regulation provides for the continued work of the GCVTC, which may be accomplished through the WRAP, to establish a complete framework which can be adopted in the SIPs for addressing all sources of visibility impairment in the 16 Class I areas;

Whereas, the WRAP has set as its goal to "promote and monitor the implementation of the recommendations from the Grand Canyon Visibility Transport Commission and, with the concurrence of its members, engage in other common regional air quality issues."

Whereas, the WRAP plans to accomplish this by developing a consensus not only among its members but also others who are participants in the process, including representatives of local governments, corporations and small businesses, academia, environmental groups and other members of the interested public.

Whereas, section 51.309 of the Regional Haze Regulation allows for an annex to the GCVTC report which will be considered in establishing specific targets, or milestones, for SO<sub>2</sub> emissions reductions from stationary sources in the region between 2003 and 2018;

Whereas, section 51.309(d)(4) requires monitoring and reporting of stationary source emissions of SO<sub>2</sub> in order to assess compliance with these milestones from 2003 to 2018;

Whereas the annex process and U.S. EPA's approval of interim emissions targets will be key in completing a series of strategies that can be deemed by U.S. EPA to meet the rule's reasonable progress goal for the Class I areas on the Colorado Plateau;

Whereas, section 51.309(f)(1)(i) requires that applicable regional haze SIPs in 2003 contain criteria and procedures for implementing a market trading program or other program documented in the SIP if triggered by emissions exceeding the milestones in 2003, 2008, 2013, and 2018;

Now, therefore, the Parties agree to the following:

## **I. Authority**

- A. The federal Clean Air Act and enabling state legislation authorize state agencies to implement these requirements. The federal Clean Air Act and Tribal Authority Rule (40 CFR sec. 49) authorize delegation of authority to implement these requirements to federally recognized tribes.

## **II. General Responsibilities**

*General comment – there is some question as to the level of detail that the MOU should contain. For instance, it is clear that the general framework needs to be in the MOU – but how much of the details regarding allowances, monitoring, administration, is needed? Would general statements about monitoring, allowances, administration etc, in this section suffice?*

- A. Each signatory will include a measure as a contingency plan in its 2003 Regional Haze SIP/TIP that provides for a regional emission trading program for SO<sub>2</sub> emissions from affected stationary sources under the jurisdiction of the signatories (contingency plan measure).
- B. The contingency plan measure that is contained in the regional haze SIP for each

signatory will be consistent with section 309 requirements that U.S. EPA adopts subsequent to receipt of the Annex (e.g., milestones, activation conditions, monitoring, recordkeeping and recording, state and tribal allowances, and set-asides).

- C. The contingency plan measure will include provisions for activating a market trading program within 12 months after the emissions for the region are determined to exceed the applicable emission reduction milestone. Each subsequent emission reduction milestone will serve as the aggregate cap on regional emissions for that time period.
- D. The signatories will make a joint finding each year as to whether the milestone has been exceeded and the market trading program triggered.
- E. The market trading program that forms the framework of the contingency plan measure will provide a uniform exchange mechanism that will allow for the seamless interchangeability of stationary source SO<sub>2</sub> allowances across political boundaries.
- F. If activated, the market trading program will assure that all affected sources are in compliance with allocation and other requirements within 5 years after the emissions for the region are determined to exceed the applicable emission reduction milestone.
- G. Allowances that comprise the tribal set aside will be allocated by the administrator according to the allocation procedure described in Appendix Y.
- H. The market trading program framework is the compliance alternative for achieving stationary source SO<sub>2</sub> emissions milestones required by section 51.309(f)(ii) of the Regional Haze Regulation.
- I. Allowances will be allocated by the signatories in the aggregate in the amount no greater than the regional cap for each year. State and tribal budgets will be established according to the allocation procedures described in the model rule. States and tribes will distribute allocations to their sources as outlined in the applicable SIP.
- J. Allowances must be enforceable, and certified and registered by the state or tribe in which the allowance is held at the time of each five year allocation. The applicable state or tribe must agree in writing that use of these allowances complies with all applicable federal, state, and local requirements, including federal guidelines that apply to interstate trading programs. At a minimum, participating states and tribes will ensure regional consistency in the following key trading

program elements:

- an identification system for allowances traded between participating States and Tribes;
  - sharing of required notices of trades and a compatible emission reduction tracking system;
  - identification of geographic limitations or restrictions on trading;
  - allowance lifetime;
  - record retention requirements;
  - consistent methodologies for quantifying emissions for different source categories; and
  - identification of and assumptions used in calculating the emissions baseline.
- A. The market trading program must, in the aggregate, result in greater SO<sub>2</sub> emission reductions than would otherwise have occurred in lieu of trading, consistent with applicable provisions in sections 51.309(d)(4) and 51.309(f) of the Regional Haze Regulation.
- B. The market trading program framework will be written to ensure compliance with applicable federal, state and local requirements governing emissions trading through permit conditions or other enforceable instruments.

## **II. Emission Reduction Milestones**

- A. The following milestones will constitute the thresholds in which progress will be determined; failure to meet the milestones identified below will activate the market trading contingency measure:
1. 2003:
  2. 2008:
  3. 2013:
  4. 2018:

*Note: The milestones will be finalized in 2003 when the MOU is signed, based on the states and tribes that participate in the program, as outlined in the Annex. The suspended smelter provisions will also be included in this section at that time.*

### **III. Monitor Progress**

- A. The signatories will incorporate provisions in their regional haze SIP that provide for standardized minimum monitoring, recordkeeping, and reporting requirements to verify emissions of the affected sources and to determine compliance with the emissions milestones.
- B. The signatories will submit information to the WRAP that will be used by the WRAP to prepare an annual report of emissions for purposes of determining compliance with the milestones and decision to activate market trading program, if appropriate.
- C. Once the program is triggered, the signatories will activate their portion of the market trading program according to procedures laid out in the SIP/TIP contingency plan measure.

*Note: Additional language may be added to this section of the MOU to describe how compliance will be determined, including averaging provisions, penalty provisions in 2018, special provisions for Mojave Generation Station, and the 2013 SIP review. Further discussion is necessary to determine which elements should be addressed in the MOU, and which elements should be addressed in the model rule.*

### **IV. Assigning Allowances**

- A. SO<sub>2</sub> allowances will be proportionately distributed to states and tribes for allocation to existing sources consistent with procedures delineated in the model rule and the allocations procedures. The allowances will account for regional set-asides that are assigned to tribes in the aggregate (i.e., tribal set-aside).
- B. The trading program budget for each state and tribe will ensure collective achievement of the regional cap and delineate the allocation responsibility of each signatory.
- C. Each signatory will be responsible for allocating allowances to sources within their jurisdiction.

### **V. Program Administration**

- A. For purposes of compliance determination and program assessment, the signatories will appoint an administrator that will collect, monitor, record, and report to the signatories on the registration and use of allowances.
- B. The Tracking Systems Administrator will prepare a formal annual report to the

signatories on compliance levels, allowance transfer and use, and banked allowances, consistent with applicable information contained in the model rule and procedures delineated in Appendix "XX," Program Administration.

#### **VI. Program Coordination**

- A. The signatories will participate in the program administered under the auspices of the WRAP to improve program implementation and effectiveness, coordinate and report on emissions and progress within their states or tribes, and develop and institute procedures to coordinate and exchange interstate/tribal data collection and analysis necessary to achieve the goals of this MOU.
- B. The signatories will utilize ad hoc working groups on an "as needed" basis to implement key aspects of this agreement.
- C. The signatories will meet at least annually or as otherwise deemed necessary to discuss issues of concern related to this MOU or other matters affecting compliance with the requirements of the Regional Haze Regulation.

#### **VII. Terms of Agreement**

- A. This MOU will become effective upon execution and remain in effect until December 31, 2018, unless modified as indicated below.
- B. This MOU may be modified as necessary upon written consent of all parties.
- C. Participation may be terminated by any party by giving thirty (30) days notice in writing to each party to this MOU.
- D. Any transport region state or tribe upon signing the MOU will be part of the program.

#### **VIII. Principal Signatories**

#### **IX. Other Signatory Agencies**

This Agreement recognizes that other entities may be added to the agreement as amendments

#### **X. Required Clauses**

- A. Nothing in this MOU supersedes or changes any rule, regulation, or legislation pertaining to any signatory to this agreement.

- B. Nothing in this MOU supersedes or changes any existing or future agreement among the signatories that is operating to the satisfaction of the signatories and in compliance with applicable federal and state requirements.
- C. Nothing in this MOU precludes states or tribes from developing additional control strategies for achieving reasonable progress in other Class I areas.
- D. Nothing in this MOU precludes states or tribes from adopting Regional Haze SIPs/TIPs and SIP/TIP measures that may deviate from the provisions contained in this MOU. However, the signatories agree that any SIP/TIP-related actions that substantively change the agreements contained in this MOU by any one, several, or all parties, would, at a minimum, require a re-examination of the MOU, and may require the affected signatory(-ies) to comply with section 51.308 SIP/TIP requirements.
- E. This Agreement is neither a fiscal nor funds obligation document. Any endeavor involving reimbursement or contribution of funds among the parties will be handled in accordance with applicable laws, regulations and procedures.
- F. This Agreement in no way restricts any party from participating in similar activities with other public or private agencies, organizations and individuals.

Signatures: