

## Addendum To The

Memorandum of Understanding Between the Wisconsin Department of Natural Resources and Forest County Potawatomi Community to Implement Forest County Potawatomi Class I Air Redesignation, Effective October 7<sup>th</sup>, 2010.

### I. Purpose

The purpose of this Addendum is to provide clarification regarding the Department's opportunity to review FCPC's newly designated AQRVs of Vegetation and Visibility (the "New AQRVs") and Threshold Effects Levels (TELs) for both the New AQRVs and the recognized Existing AQRVs of Water Quality and Aquatic Systems that were submitted by FCPC on June 13, 2012.

### II. Benefits of the Addendum

Although the 2010 MOU sets forth a deadline for adding AQRVs and establishing TELs, it did not specify a timeline for their review. This Addendum will clarify the Department's review time and will also clarify the implementation of the Existing and New AQRVs and TELs during the review period.

### III. Review of New AQRVs and Threshold Effects Levels

Because of the complexity behind the science and methodology of the TELs, and because the Department seeks additional information to conduct the review, the Department will be allowed one year from the date this Addendum is first signed to review the New AQRVs and TELs (the "Review Period"). The parties anticipate that any reasonable additional information needed will be provided in a timely manner. If the additional information is delayed, and without limiting the rights set forth in Section VIII of this Addendum, the parties will negotiate in good faith to extend the Review Period.

### IV. New AQRVs and TEL Effectiveness

While the FCPC has designated New AQRVs and submitted TELs to the Department, the parties hereby agree that they become effective (a) individually when the Department reaches concurrence with the FCPC on a particular New AQRV or TEL, or (b) collectively at the conclusion of the Review Period for those New AQRVs and TELs for which the Department has not invoked Scientific Review Panel dispute resolution in accordance with Section VI of the 1999 Agreement (the "SRP Process").

### V. New AQRV Implementation during the Review Period

Notwithstanding anything to the contrary in this Addendum or Section IV.B.4 of the 1999 Agreement, until the New AQRVs and TELs become effective, FCPC has the right to apply the New AQRVs and TELs 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 New AQRVs within the Class I

Area. Should the Department have a scientific or technical dispute relating to the New AQRVs or TELs 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 New AQRVs.

VI. Existing AQRVs

Until the TELs for the Existing AQRVs become effective, FCPC continues to have the right to apply the Existing AQRVs to new and modified PSD permit applications. When FCPC applies the Existing AQRVs, both parties will work together to determine interim TELs for the Existing AQRVs. 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 may potentially occur to the Existing AQRVs.

VII. Remaining Terms

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

VIII. Termination

Should either party believe the other party is not acting in good faith, it may terminate this Addendum upon forty five (45) days' written notice to the other party (sent by certified priority mail to the signatory of this 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 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 New AQRVs and TELs prior to the Termination Date.

**IN WITNESS THEREOF**, the Parties hereto have caused this Addendum, which shall become effective when signed by both Parties, to be executed as follows:

FOREST COUNTY POTAWATOMI COMMUNITY

By: David Frank

Title: Chairman

Date: 11-8-12

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By: Greg Stapp

Title: Secretary

Date: 11/28/12