Spokane Regional Clean Air Agency

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A RESOLUTION AUTHORIZING THE DIRECTOR OF SRCAA TO ENTER INTO OUTDOOR BURNING AND LIMITED AGRICULTURAL SPOT BURNING AGREEMENTS WITH GOVERNMENT ENTITIES

Resolution 09-02

WHEREAS, provisions in RCW 70.94.141(3), RCW 70.94.170 and Spokane Regional Clean Air Agency (SRCAA) Regulation I, Article II, Section 2.02 provide a broad grant of authority to the Control Officer (Director) to enforce the Washington State Clean Air Act, Board Orders and Resolutions, and SRCAA regulations; and

WHEREAS, WAC 173-425-060 authorizes SRCAA to enter into agreements with fire protection authorities or counties to serve as the permitting and/or enforcement agency for outdoor burning and agricultural burning; and

WHEREAS, pursuant to RCW 70.94.690, the Washington Department of Natural Resources (DNR) and local air pollution control authorities are directed to develop agreements to coordinate regulations; and

WHEREAS, SRCAA has contacted Fire Protection Districts, the Spokane County Noxious Weed Control Board, and Washington Department of Natural Resources (DNR) regarding the regulations and some entities are interested in entering into such agreements; and

WHEREAS, staff presented sample Memoranda of Understanding and a Mutual Agreement to the Board of Directors for review and comment on March 5, 2009; and

WHEREAS, authorizing the Director to sign these agreements as they are completed will facilitate timely execution;

NOW THEREFORE, BE IT RESOLVED that the Director of SRCAA is hereby authorized to sign Memoranda of Understanding or Mutual Agreements, as applicable, in 2009 that are in substantially the same form as the samples previously reviewed by the Board with Spokane County Fire Districts 2, 5, 11 and 12, the Spokane County Noxious Weed Control Board, and DNR on behalf of the Board of Directors.

DATED this 2nd day of April 2009

SPOKANE REGIONAL CLEAN AIR AGENCY

Jeffrey Corkill, Chair

Bonnie Mager

Edward Crockett

ATTEST:

William Dameworth, Director

Rose Dempsey

MUTUAL AGREEMENT

Between
Washington State Department of Natural Resources (DNR), Northeast Region Office
And
Spokane Regional Clean Air Agency (SRCAA)

THIS AGREEMENT, by and between DNR, Northeast Region Office, and the Spokane Regional Clean Air Agency (SRCAA), recognizes that both agencies have responsibilities for outdoor burning, as outlined in the Washington Clean Air Act, Ch. 70.94 RCW. Consistent with the Washington Clean Air Act, outdoor burning may be categorized in various ways, with specific rules for each type of burning:

Outdoor burning
Combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. Outdoor burning means all types of outdoor burning except agricultural burning and silvicultural burning. [WAC 173-425-030(16)]

Land clearing burning
Outdoor burning of trees, stumps, shrubbery, or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused. [WAC 173-425-030(9)]

Agricultural burning
Outdoor burning regulated under Chapter 173-430 WAC, including, but not limited to, any incidental agricultural burning or agricultural burning for pest or disease control. [WAC 173-425-030(1)]

Silvicultural burning
Outdoor burning regulated under Chapter 332-24 WAC and Chapter 76.04 RCW, and relating to abating or prevention of a forest fire hazard, instructing in methods of forest fire fighting, improving the forestlands of the state, or improving or maintaining fire dependent ecosystems. [WAC 173-425-030(23)]

In order to comply with RCW 70.94.690, directing state and local agencies to coordinate a cooperative system where dual responsibilities exist, DNR and SRCAA agree to the following, within the boundaries of Spokane County:

DNR and SRCAA will work cooperatively to carry out their responsibilities, as outlined in the Clean Air Act, and in state and local regulations relating to outdoor burning.

DNR has the authority to regulate silvicultural burning (Chapter 332-24 WAC and Chapter 76.04 RCW) and SRCAA has the authority to regulate outdoor burning (Chapter 173-425 WAC) and agricultural burning (Chapter 173-430 WAC).

Both agencies recognize differences in each other's regulations and agree to accept each other's regulations when burning is done according to the rules of the agency of jurisdiction.

SRCAA will keep DNR informed about situations that come to the attention of SRCAA, where outdoor burning has impacted or has the strong potential to impact air quality or visibility. DNR agrees to consider this information when making burn/no-burn day decisions for smoke management purposes.

I. PUBLIC RELATIONS

DNR and SRCAA recognize the complexity of implementing outdoor burning programs and an effective smoke management program and therefore both agencies agree to coordinate efforts to inform the public of the outdoor burning programs and alternatives to burning.

When possible, both agencies will cooperate on production and distribution of pamphlets, joint media releases and other written materials relating to outdoor burning programs. Each agency will keep the other informed on outdoor burning implementation procedures and changes to their programs.

II. REQUESTS FOR BURNING

Each agency will handle their own requests for burning, except in situations where the Joint Consultation Process, as outlined below in Section III, is applicable. If questions regarding jurisdiction arise, the agency receiving the request shall consult with the other agency. Once jurisdiction has been decided, the agency with jurisdiction will respond to the person making the request to burn.

Applicants for burning permits must show that burning is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is necessary to successfully carry out the enterprise in which the applicant is engaged, or both. Burning shall not be allowed in areas where reasonable alternatives are available.

All permits written by either agency shall be conditioned to protect air quality and public health and shall meet the purpose and goals of the Clean Air Act of Washington, as well as applicable state and local regulations. Permits written by DNR will meet the purpose and goals of the most current State of Washington Smoke Management Plan. DNR will write permits on forestlands where forest patrol assessments are being paid or are subject to being paid.

III. REQUESTS FOR BURNING – JOINT CONSULTATION PROCESS

By experience, SRCAA and DNR have identified situations, involving requests for burning, where a joint consultation process is determined to be mutually beneficial to the two agencies. Section III identifies those situations, establishes when a joint consultation

is required, or simply advisable, and identifies the general procedures for a joint consultation.

Silvicultural Burn Requests in Former Federal Nonattainment Areas:
The Washington Clean Air Act prohibits outdoor burning, including silvicultural burning, in any area of the state where federal and state ambient air quality standards are exceeded for pollutants emitted by outdoor burning (RCW 70.94.743(a)). State regulations for outdoor burning (Ch. 173-425 WAC) and silvicultural burning (Ch. 332-24 WAC) allow for exemptions to these prohibitions, subject to the approval of the air pollution control authority, provided the DNR determines that a fire hazard exists and there is no practical alternate means of abatement. In the situation involving a request to conduct silvicultural burning in a former nonattainment area, DNR agrees to conduct inspections and to use SRCAA's guideline, *Management of Silvicultural Debris in the Nonattainment Areas of Spokane County*, July 1, 2004, in its present form, or as subsequently amended, as a resource. These guidelines are incorporated into the *Burn Permits in Smoke Sensitive Areas* information sheet.

Silvicultural Burn Requests in Urban Growth Areas:
Silvicultural burning shall comply with Chapter 332-24 WAC and Chapter 76.04 RCW. The Washington Clean Air Act prohibits outdoor burning in urban growth area when alternative disposal practices, consistent with good solid waste management, are reasonably available or practices eliminating production of organic refuse are reasonably available. However, outdoor burning to abate fire hazards created by the accumulation of natural vegetation on lands where the DNR does not have fire protection responsibility (e.g., inside UGAs) may be permitted as Fire Hazard Abatement Burning pursuant to SRCAA Regulation I, Section 6.01.

Silvicultural Burn Requests in Smoke Sensitive Areas:
A smoke sensitive area is one where, by virtue of population density or its location in a confined airshed, particulate emitted by outdoor burning tends to accumulate at levels that impair visibility and/or generate complaints from the public about smoke intrusion. These areas may or may not fall within urban growth areas. This sub-section is intended to address those smoke sensitive areas that are outside of urban growth areas, but for which there is concern, identified by SRCAA and DNR, regarding smoke intrusion.

By way of example, the following areas are identified as smoke sensitive areas. The Geographic Description is not intended to establish absolute boundaries; rather it is included here as an aid in establishing the general location.

- Smoke Control Zone - Maps available from SRCAA
- Former Federal Nonattainment Areas - Maps available from SRCAA

SRCAA recognizes the ultimate authority of DNR to issue permits for silvicultural burning in these smoke sensitive areas, without additional restriction, provided such requests are outside urban growth areas. It is not the intent of SRCAA to mandate DNR to issue written permits inside Smoke Sensitive Areas for fires that qualify under DNR's

rule burn requirements. DNR notes its authority to impose additional requirements, through the use of written burning permits, pursuant to WAC 332-24-205(13), even in situations where permits-by-rule might otherwise be used for program administration.

SRCAA's role in these situations will be to provide consultation to DNR, regarding potential air quality impacts. To the extent necessary, SRCAA and DNR agree to conduct joint inspections in these areas, in response to requests to burn silvicultural material, and for DNR to have discretion in applying the guidelines specified in *Management of Silvicultural Debris in the Nonattainment Areas of Spokane County* (July 1, 2004), in its present form, or as mutually amended by SRCAA and DNR. It is anticipated that the need to conduct joint inspections in these areas will be limited. A joint inspection may be necessary only in the situation where there is a question about how an individual burn may impact area residents or degrade air quality or visibility in a confined airshed.

Silvicultural Burning of Fire Dependent Ecosystems:
SRCAA recognizes the ultimate authority of DNR to issue permits for and conduct silvicultural burning to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. This authority of DNR also extends to fire dependent ecosystem burns, proposed for former nonattainment areas and urban growth areas. In these situations, SRCAA will provide consultation to DNR, regarding potential air quality impacts.

Residential Land Clearing Burning:
Residential land clearing burning consisting of materials cleared from less than 1 acre of forested land on a 5 acre or larger parcel of land in non-commercial ownership are allowed by SRCAA through December 31, 2010 pursuant to Section 6.01 (SRCAA Resolution 08-28 adopted 11/6/08 and effective 5/1/09). However, these types of land clearing burns may also have the effect of abating or prevention of a forest fire hazard and thereby fit the definition of silvicultural burning. In those situations where a residential land clearing burn consisting of materials cleared from less than 1 acre of forested land on a 5 acre or larger parcel of land in non-commercial ownership is determined by DNR to meet the criteria to be defined as silvicultural burning, SRCAA will defer the decision to DNR to approve the fire and issue the permit. In so doing, DNR acknowledges that the fire is silvicultural burning and subject to Chapter 332-24 WAC.

Silvicultural Burn Requests Associated With Forest Practice "Conversions":
When a burn request is received by DNR that results from activity under a "Conversion" Permit, DNR will review the request to determine jurisdiction. If DNR determines the activity qualifies as "Land Clearing" [WAC 173-425-030(9)], the area no longer meets the conditions of "Forest Land" [RCW 76-04-005(9)], and therefore is no longer under Forest Protection Assessment by the DNR, the request will be forwarded to SRCAA provided the referral is not made after December 31, 2010. If the area continues to meet

the conditions of "Forest Land" [RCW 76-04-005(8)], and therefore Forest Protection Assessment remains in effect, the request will remain under DNR jurisdiction.

IV. IMPAIRED AIR QUALITY

SRCAA will notify DNR, by established notification procedures, when poor air quality conditions are determined to exist that necessitates a partial or complete ban on outdoor burning, agricultural burning, and silvicultural burning by geographic area. Poor air quality conditions may include, but are not limited to impaired air quality conditions and air pollution episodes. When poor air quality conditions exist, all outdoor burning and agricultural burning will be suspended by SRCAA and silvicultural burning will be suspended by DNR in the geographical area(s) designated by SRCAA at the time a burn ban is declared (e.g., limited to the Smoke Control Zone, countywide, etc.).

Impaired Air Quality:
Impaired air quality may be declared, as provided by RCW 70.94.473(1)(b), in all or designated areas of Spokane County when particulate matter, two and one-half microns and smaller in diameter, is at an ambient level equal to the first stage of impaired air quality trigger value specified in RCW 70.94.473(1)b.

DNR burning information lines shall inform the public when silvicultural burning is not allowed. SRCAA burning information lines shall inform the public when open burning (recreational fires, fire training, noxious weed burning, social event fires, etc.), agricultural burning, and other burning is not allowed.

DNR will require burners to stop adding fuel to their fires and allow them to burn down until extinguished. Some DNR permits in sensitive areas will have requirements to actively extinguish fires during periods of impaired air quality.

V. COMPLAINTS

Complaints received by one agency, which may involve jurisdictional issues, such as a permit issued by the other agency, shall be immediately referred to the agency of jurisdiction.

Coordination between DNR and SRCAA will occur when the expertise of the other agency is needed and when joint coordination is required or mutually desirable.

VI. ENFORCEMENT

Outdoor burning requirements will be enforced by the agency of jurisdiction.

DNR will be immediately notified when SRCAA personnel have reason to believe that a violation of a DNR permit has occurred, or there is a threat to public health or safety. During business hours, notification should be made at the Northeast Region office. At other times, notify DNR by calling 1-800-562-6010. If the violation does not appear to

be a threat to public health or safety, then notification should take place on the next normal business day.

SRCAA will be immediately notified when DNR personnel have reason to believe that a violation of a SRCAA permit has occurred. SRCAA will be notified during normal business hours at (509) 477-4727 or by the next normal business day.

VII. RESOLUTION OF CONFLICT

In the event there are conflicts over jurisdiction, enforcement, or any other terms of this agreement, both agencies will communicate at the local level to try and resolve the conflict. In the event that resolution cannot be made at the local level of DNR, the next avenue will be through the Regional Manager at the Northeast Region. If resolution is not made at the regional level, the matter will be referred to the Resource Protection Division Manager in Olympia.

As cooperating agencies, both agencies agree to hold in reserve or postpone enforcement action until the conflict resolution process has been followed. Only when the conflict resolution process has not been successful, will enforcement action be initiated.

VIII. DURATION

This agreement replaces and supercedes all previous agreements and shall remain in effect until terminated by either agency. Notice to terminate shall be in writing to the Regional Manager of the DNR or to the Control Officer of SRCAA, with the agreement terminating sixty (60) days after receipt of such notice, unless an earlier date is agreed to by the parties, or amendments or other changes have been required by applicable federal, state, or agency laws, rules, regulations, or other provisions of the law.

Loren Torgerson — Date: 8/4/09
Manager, Northeast Region
Washington State Department of Natural Resources

William Dameworth — Date: 6-11-09
Control Officer
Spokane Regional Clean Air Agency