

**MEMORANDUM OF UNDERSTANDING
HYDROGRAPHIC AREA 162 (HA162)**

BRIEFING PAPER

Hydrographic Area 162 - Memorandum of Understanding

The Nye County Board of Commissioners (NCBOC) has agreed to participate in a Memorandum of Understanding (MOU) process for the purpose of deferring nonattainment designation for Hydrographic Area 162 (HA162). The following presents information on the federal PM₁₀ standard, the MOU requirements and the commitments by all parties to implement the MOU.

Area encompassed by the MOU

The MOU encompasses the portions of Hydrographic Area 162 located within Nye County (Pahrump Valley).

The Particulate Matter (PM₁₀) standard

The Federal Clean Air Act (CAA) is the comprehensive law that regulates airborne emissions from area, mobile and stationary sources nation wide. This law authorizes the U.S. Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) to protect public health and the environment. The EPA has two NAAQS for particulate matter less than 10 microns (PM₁₀), the 24-hour standard and the annual standard.

The 24-hour standard

An area must have a monitored 24-hour average concentration below 150µg/m³ to meet the standard. If an area exceeds the standard more than three times in three years, it is subject to nonattainment designation. The Pahrump Valley area has exceeded the 24-hour standard 19 times in the last two years.

The annual standard

An area must have a monitored annual average concentration below 50µg/m³ to meet the standard. If an area exceeds the 3-year annual average, it is subject to nonattainment designation. The Pahrump Valley area exceeded the annual standard in 2002.

Protocol for the Memorandum of Understanding

This MOU was based on the fundamental principles set forth in the Early Action Compacts (EAC) Protocol and Memorandums of Understanding used in Region X. The Protocols establish a process that offers a more expeditious time line for achieving clean air than expected under EPA's implementation schedule. The Protocol allows a region or

area to enter into a memorandum of understanding, committing to develop and implement a detailed technical plan to attain the standard by 2007. MOU cooperative agreements have been developed by several areas within EPA's Region 10 (Alaska, Idaho, Washington) to achieve PM₁₀ standards on a more accelerated schedule than under the traditional CAA nonattainment process. Under these MOUs, the areas accelerated development and implementation of locally-initiated control plans. In response, EPA deferred nonattainment designations or bump-ups: the EPA proposes redesignation to nonattainment and then defers final action on the proposal in light of timely development of local plan to address the problem.

The principles of this MOU to be executed by Local, State and EPA officials are:

- Early planning, implementation and emission reductions leading to expeditious attainment and maintenance of the PM₁₀ standards;
- Local control of the measures to be implemented, with public input;
- State support to ensure technical integrity of the MOU;
- Deferral of nonattainment designation and related requirements so long as all terms and milestones are met; and
- Safeguards to return to traditional State Implementation Plan (SIP) requirements should terms and/or milestones be unfulfilled, with appropriate credit given for emission reduction measures implemented.

The state and local agencies have agreed that the MOU is the best approach and will improve air quality faster. The MOU process will have two components:

1. The Memorandum of Understanding – The MOU is an agreement to prepare and implement a Clean Air Action Plan (CAAP) for the Pahrump Valley. More specifically, the MOU sets measurable milestones for developing and implementing the Clean Air Action Plan;
2. Clean Air Action Plan (CAAP) – The CAAP serves as the area's official air quality improvement plan, with quantified emission-reduction measures. The CAAP will include all necessary elements of a comprehensive air quality plan, but will be tailored to local needs and be driven by local decisions. Moreover, the CAAP will be incorporated into the State's SIP and the State will be legally required to carry out this plan just as it would in designated in nonattainment areas. For example, development of the CAAP will require the same scientific diligence and undergo the same scrutiny as nonattainment area's SIPs, so that the emission reduction strategies selected will be adequate to ensure the area stays in attainment of the PM₁₀ standards.

Traditional Federal Regulatory Process for Nonattainment Areas

Areas in violation of the NAAQS and adjacent contributing areas are typically formally designated "nonattainment areas" by EPA. Designated nonattainment areas must meet certain Clean Air Act requirements, such as:

- **Attainment Plan** – Requires development of a plan showing how the area will reach attainment of the NAAQS.
- **Rate of Progress Requirements** - A certain percentage of pollutants must be reduced each year. Periodic demonstrations are submitted to show progress.
- **Specific attainment date** - Consequences of failure to reach attainment by the specified date include stricter control measures, stricter industrial source controls, and the withholding of transportation funds.
- **Reasonably Available Control Technology** – Requires assessment and implementation of all reasonably available control technologies for stationary sources.
- **New Source Review** - Requires review of all new or expanded major industrial operations to minimize air pollution typically by installing expensive control technologies.
- **Transportation Conformity** - Requires a demonstration that regional long-range transportation plans will not negatively impact air quality, or federal transportation funds can be withheld.
- **General Conformity** – Requires that federal agencies demonstrate that their actions will not negatively impact air quality. As an example, any BLM land transfer would be required to ensure that it “conforms” to the air quality plan for the area.
- **10-year maintenance plan** - Includes additional or continuing mandatory programs for 10 years following attainment.

MOU approach

Under this MOU, the participants agree to follow a CAAP that will outline the steps necessary to demonstrate attainment by 2009, and to maintain attainment through the maintenance plan. The CAAP will include a control strategy, consisting of several control measures for the area and deadlines by which these measures need to be completed or implemented. Control measures (also referred to as Best Available Control Measures or BACMs) are enforceable mechanisms put in place by the State or County that will eliminate or decrease dust from fugitive dust sources that have been identified in the emissions inventory as contributing to exceedances of the NAAQS for PM10. For example, under this agreement control measures will need to be identified and implemented for unpaved roads and undisturbed vacant land. The control strategy will outline when and how the control measures will be implemented and how they will be enforced.

The primary differences between the process outlined in the MOU and the traditional nonattainment are process are:

- The MOU is designed to achieve clean air sooner than under the traditional SIP process;
- The MOU would allow for more local control in selecting emission reduction measures.

- The MOU defers the nonattainment designation and related requirements, as long as the MOU terms and milestones are met;
- Transportation and nonattainment new source review permitting requirements would not take effect under the MOU.
- The long-term maintenance plan is 5 years.

Should any milestones be missed, the area will revert to traditional nonattainment/attainment requirements.

MOU Timeline

The MOU is designed to support a local, proactive approach to ensuring attainment of the annual and 24-hour PM₁₀ standards, and so protect human health. Under the MOU, all emission reductions necessary to attain the PM₁₀ standards by December 2009 must be implemented by the end of December 2006.

Signatories and their responsibilities

The individuals representing the entities that will sign this MOU are: the Administrator of the Nevada Division of Environmental Protection (NDEP), the Nye County Board of Commissioners (NCBOC) and the Regional Administrator of US EPA Region IX (EPA). The Pahrump Town Board (PTB) could become the fourth signatory.

NDEP will develop the emission inventories, work with the NCBOC to evaluate controls measures and develop an appropriate emissions reduction control strategy. NDEP will work with NCBOC, EPA, stakeholders and the public to develop and implement a CAAP that includes the control measures necessary to demonstrate attainment. The NCBOC will implement the emission reduction strategy through the adoption and enforcement of ordinances, and planning for the future development (planning road paving projects, housing developments...)

Conditions for modification or early termination

The MOU shall be effective upon signature by all parties, may be amended by mutual consent, and may be terminated by any party after giving 30 days written notice to each of the other parties

If a party's withdrawal from the agreement prevents remaining signatories from satisfying any terms and milestones of the original agreement, the agreement will be void and any nonattainment designation will become effective upon EPA action.