

2015
MEMORANDUM OF AGREEMENT
FOR
TRANSPORTATION CONFORMITY EVALUATIONS

BY AND BETWEEN
THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
AND
THE REGIONAL AIR QUALITY COUNCIL
AND
THE DENVER REGIONAL COUNCIL OF GOVERNMENTS
AND
THE NORTH FRONT RANGE TRANSPORTATION AND
AIR QUALITY PLANNING COUNCIL

PURPOSE

This Memorandum of Agreement (MOA) is established for the purpose of defining the specific roles and responsibilities of the Air Pollution Control Division (APCD) of the Colorado Department of Health and Environment (CDPHE), the Regional Air Quality Council (RAQC), the Denver Regional Council of Governments (DRCOG), and the North Front Range Transportation and Air Quality Planning Council (NFRMPO) for transportation conformity evaluations and modeling for the Denver and North Front Range regions. Hereafter, the above are referenced as “parties,” and DRCOG and NFRMPO are referenced to as the “MPO(s)” (Metropolitan Planning Organization(s)).

Section 176(c) of the Clean Air Act Amendments of 1990 calls for conformity evaluations to be made for transportation plans, programs, and projects, and for these conformity determinations to be developed through an interagency consultation process. Title 23, Part 450 of the Code of Federal Regulations calls for a continuing, cooperative and comprehensive transportation planning process, including provision of complete information, opportunity for early and continuing public involvement, and access to technical and policy information used in developing transportation documents. These federal mandates are best carried out with the explicit understanding of how the state air quality agency and the MPOs will coordinate efforts, especially with regard to transmitting and analyzing data, and identifying key assumptions used in planning documents.

This MOA augments interagency consultation requirements set forth in federal law and Colorado Air Quality Control Commission (AQCC) Regulation Number 10, Section III. The MOA is to be used in conjunction with these federal and state requirements for transportation conformity determinations required under the Clean Air Act. Specifically, this MOA identifies the roles and responsibilities of RAQC, DRCOG, NFRMPO and APCD in conducting conformity evaluations and sets forth a procedural framework to ensure appropriate consultation and coordination between RAQC, DRCOG, NFRMPO and APCD in carrying out these responsibilities. It also clarifies what key assumptions and data are expected in draft documents and materials used in the interagency consultation process.

This MOA supersedes the prior agreements between the parties dated November 19, 1998 (DRCOG and APCD) and November 24, 1998 (NFRMPO and APCD).

CONFORMITY EVALUATIONS RESPONSIBILITIES

Conformity evaluations are conducted in association with new conformity determinations. The evaluations require the modeling and calculation of pollutant emissions.

MPO RESPONSIBILITIES

As defined in Regulation 10, Section III, MPOs are responsible for the development, maintenance, accuracy, and operation of the regional travel demand models which provide input data to the official emissions model. MPOs will notify APCD and RAQC staff once a need for a new conformity determination is identified and a schedule for conformity modeling has been established. The estimated time period over which APCD modeling work would be required will be defined. Any changes in the schedule will be discussed with APCD staff as soon as such changes are known by the MPO. When requesting APCD to model emissions, MPO staff will forward all necessary travel model data, for each staging year that will be modeled. The NFRMPO is responsible for travel modeling in the Ozone Northern Subarea and DRCOG is responsible in the Ozone Southern Subarea, as defined in the March 14, 2008 Memorandum of Agreement.

APCD RESPONSIBILITIES

The APCD is responsible for the development, maintenance, accuracy, and operation of the official emissions model. After receiving travel model inputs to the emissions model, the APCD will inform the parties regarding an estimated schedule for completion of the emissions results. After the APCD performs emissions modeling, it will provide the parties with the emission model output results as soon as possible.

RAQC RESPONSIBILITIES

The RAQC shall review travel and emissions modeling inputs and outputs and provide comments to the parties. The RAQC will provide technical support and advice regarding model modifications.

MODEL MODIFICATIONS AND CORRECTIONS

Once travel and emission models have been established, modifications and updates to those models by the APCD or MPO may occur for some of the following reasons: updated models, updated input information, such as fleet mix or travel demand model changes, or other issues that are discovered.

If a modification or correction is required in the travel or emissions model, the following steps should be led by the agency making the identification:

- Identify all affected parties and potential work items
- Notify the affected parties and provide an initial explanation
- If needed, call a meeting to review and explain the issue to all parties
- Establish timeline and assigned duties for implementing the modification or correction
- Obtain concurrence and approval for the process for implementation from all parties
- Ensure that the APCD or MPO updates the model with the new information for use with the next applicable conformity cycle
- Share and/or discuss model results with all parties

Changes to the models will be documented and provided to the affected parties and, if needed, may be incorporated into the applicable conformity determination report.

INTERAGENCY CONSULTATION PROCESS (OR GROUP)

An Interagency Consultation Group (ICG) has been established for consultation purposes as identified in Regulation 10. The APCD, DRCOG, and NFRMPO staff will submit technical data for review and recommendation by the ICG that is comprised of representatives from Federal Highway Administration (FHWA), Colorado Department of Transportation (CDOT), Environmental Protection Agency (EPA), Regional Air Quality Council (RAQC), Air Pollution Control Division (APCD), Upper Front Range Transportation Planning Region (UFR), Denver Regional Council of Governments (DRCOG), and North Front Range MPO (NFRMPO).

The ICG will meet as needed to review data pertaining to conformity determinations and advise in a timely fashion. In this way, the assumptions and procedures used in transportation and air quality modeling can be reviewed by staff before the final modeling is performed. Data to be submitted to the ICG for review as part of the regular transportation planning process should be sufficient for making decisions and may include transportation network and land use assumptions, descriptions of any calibrations or updates to the travel model, and updates or changes to the air quality model. If changes which could affect air emissions modeling or evaluations are made after the above data have been reviewed by the ICG, these differences will be disclosed to the ICG and to the other parties to this MOA prior to initiating the final air quality modeling.

Per Regulation 10 section III.H.2, the APCD, shall decide if the conformity determination needs to be reviewed by the AQCC (non-routine) or solely by APCD (routine).

AQCC CONFORMITY REVIEW

The MPO will follow the procedures identified in the AQCC Procedural Rules calling for a public meeting by the AQCC for purposes of commenting on the MPO's non-routine conformity determinations. The parties acknowledge the initial conformity determination document must be available to the Commission office at least 15 days prior to requesting that the AQCC schedule a public meeting, and the final conformity determination document must be available to the Commission office at least 30 days prior to the AQCC's public meeting at which the conformity determination is scheduled to be discussed. The initial document should contain all modeling results and the appropriate supporting materials, and the final documents should contain any updates, revisions or corrections. The Commission can entertain deviations from this schedule on a case-by-case basis.

The Division will provide the MPO with a copy of its written comments, if any, on the conformity determination at the same time it provides them to the AQCC. All AQCC comments on determinations of conformity shall be forwarded to the MPO by APCD. Any AQCC appeal of such conformity determination will follow the procedure outlined in Regulation 10. After review, the APCD will send the MPO a letter of concurrence of a positive conformity determination. If the AQCC does not concur on the conformity determination made by the MPO, this disagreement is forwarded to the Governor's Office unless the parties revise the conformity determination.

LIMITATIONS

1. Nothing in this MOA impairs or otherwise affects the authority of the heads of the signatory party over their organizations.
2. This MOA is intended to outline an agreement among the parties and does not create or confer any right or benefit on any person or party, private or public. Nothing in this MOA is intended to

restrict the authority of any signatory to act as provided by law or regulation, or to restrict any agency from enforcing any laws within its authority and jurisdiction.

3. This MOA in no way restricts signatory parties from participating in similar activities with other public or private agencies, organizations, and individuals.
4. Nothing in this MOA shall obligate any signatory party to obligate or transfer any funds, nor does it supplement existing statutory authorities of the signatory party agencies.
5. This MOA, consisting of five (5) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements concerning this MOA, whether written or oral.

EXECUTION, MODIFICATION AND TERMINATION OF AGREEMENT

It is mutually agreed and understood by all signatory parties that:

1. Any party to this agreement may suspend it by a 60-day written notice to the other parties. If this occurs, the parties agree to consult further to determine whether the issues can be resolved and the agreement re-implemented in an amended form.
2. Changes to the scope of this MOA shall be made by the issuance of a multilaterally executed modification. These changes are to be mutually agreed upon between the parties to this MOA, shall be incorporated by written instrument, executed and signed by all parties to this MOA and are effective as of the date of the last signature obtained.
3. This MOA may be executed in counterparts. A copy with the original signature pages affixed will constitute the original MOA. The effective date shall be the date of the final signatory party agency's signature, and the MOA shall remain in effect until modified or dissolved.
4. This MOA may not serve as the basis for any challenges or appeals.
5. Colorado Open Records Act (CORA). Any information furnished by any parties under this Memorandum is subject to the Colorado Open Records Act (24-72-201 to 24-72-309, C.R.S.).
6. RESPONSIBILITIES OF PARTIES. The subject parties intend to handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party intends to carry out its separate activities in a coordinated and mutually beneficial manner.
7. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOA shall obligate the subject parties to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the parties will require execution of separate agreements and be contingent upon the availability of appropriated funds. This MOA does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
8. ESTABLISHMENT OF RESPONSIBILITY. This MOA is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against any of the signatory parties, including but not limited to, their agencies, their officers, or any other person.
9. AUTHORIZED REPRESENTATIVES. By signature below, the signatory party certifies that the individuals listed in this document as representatives of the signatory party are authorized to act in their respective areas for matters related to this agreement.
10. GOVERNMENTAL IMMUNITY: The parties do not waive their governmental immunity by entering into this MOA and retain all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOA.

11. The parties agree that exclusive venue for any action related to performance of this agreement shall be in the City and County of Denver, Colorado.

The undersigned parties hereby agree to the responsibilities and procedures described above.

Lisa M. Wolk

for
Larry Wolk, Executive Director &
Chief Medical Officer
Colorado Department of Public Health and Environment

5.28.15

Date

Ken Lloyd

Ken Lloyd, Executive Director
Regional Air Quality Council

March 31, 2015

Date

Jennifer Schaufele

Jennifer Schaufele, Executive Director
Denver Regional Council of Governments

March 25, 2015

Date

Terri Blackmore

Terri Blackmore, Executive Director
North Front Range MPO

May 7, 2015

Date