

MEMORANDUM OF AGREEMENT

WHEREAS, the State of Wisconsin and the Oneida Tribe of Indians of Wisconsin agree that the the protection of their environment and the management of their resources is best accomplished through cooperation; and

WHEREAS, the State of Wisconsin and the Oneida Tribe of Indians of Wisconsin desire to avoid, to the greatest extent possible, jurisdictional disputes regarding the protection of their environment and the management of their resources; and

WHEREAS, the State of Wisconsin and the Oneida Tribe of Indians of Wisconsin wish to recognize each others' duties and responsibilities to protect the environment for the benefit of all citizens of the State of Wisconsin;

NOW THEREFORE, the State and the Tribe enter into this Memorandum of Agreement (the "Agreement") and agree as follows:

I. DEFINITIONS

"EPA" means the federal environmental protection agency.

"Reservation" means the Oneida Indian Reservation, as established by the Treaty with the Oneida, 7 Stat. 588, February 3, 1838.

"State" means the State of Wisconsin.

"Treatment as a State" means a federal delegation of authority, effective upon application by a Tribe and approval by the EPA to implement federal environmental programs in designated areas in the same manner as a state.

"Tribal Lands" means all lands within the Reservation held in trust by the federal government for the Oneida Tribe of Indians of Wisconsin or its members, or owned in fee by the Oneida Tribe of Indians of Wisconsin or its members, and lands contiguous to the Reservation held in trust by the federal government for the Oneida Tribe of Indians of Wisconsin or its members.

"Tribe" means the Oneida Tribe of Indians of Wisconsin.

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**BUREAU OF
LEGAL SERVICES**

I. HUNTING, FISHING AND GATHERING RIGHTS

A. The Tribe has no intent to seek off-Reservation hunting, fishing and gathering rights at the present time.

B. Should the Tribe decide in the future to pursue any action relating to off-Reservation hunting, fishing or gathering rights, the Tribe agrees to enter into consultations with the State to discuss the scope and extent of such rights, as well as possible alternatives to litigation. Such consultations shall occur prior to the Tribe's taking any legal action to affirm that off-Reservation hunting, fishing and gathering rights exist.

C. The State agrees to use its discretion not to enforce state license requirements, bag limits, size limits, seasons and tagging requirements (except for required CITES tags) for the immediate family of Oneida tribal members (children, spouses, parents) who are hunting or trapping wild animals for which there is an open season under state law provided:

1. The family members are hunting or trapping on tribal lands within the boundaries of the Reservation.
2. The family members have been issued a license to hunt and trap by the Tribe.
3. The family members are complying with all applicable tribal regulations.

D. The State agrees to use its discretion not to enforce state license requirements, bag limits, size limits, or seasons for the immediate family of Oneida tribal members (children, spouses, parents) who are fishing in waters within the Reservation, provided:

1. The family members have been issued a license to fish by the Tribe.
2. The family members are complying with all applicable tribal regulations.

E. Consultation. The State and Tribe agree to meet annually to discuss scheduling of their respective hunting and fishing seasons and to exchange information regarding fish and game management.

III. AIR QUALITY

A. Class I Redesignation

1. The Tribe agrees not to request redesignation of any Reservation lands or other off-Reservation lands to Class I status under the federal Clean Air Act Prevention of Significant Deterioration (PSD) program, except where such redesignation request is made jointly by the State and the Tribe.

2. The State recognizes that it may be appropriate for the Tribe to identify and define special natural resource attributes or Air Quality Related Values (AQRVs) located on Reservation lands that may warrant extra consideration from an air management perspective, therefore the State agrees:

a. To discuss and consider on a government to government basis, within the State's authority, any AQRVs defined by the Tribe that may be affected by a new or modified PSD major source located outside the boundaries of the Reservation.

b. That whenever a Clean Air Act PSD permit application for a new major source or major modification located outside the boundaries of the Reservation that may affect Reservation lands is submitted to the State, the following notification requirements shall be followed:

i. The State shall provide the Tribe notice of the proposed PSD permit within 30 days after receiving a complete permit application. Notification shall be made by submitting to the Tribe a copy of the complete permit application.

ii. The State shall provide to the Tribe any correspondence with the PSD permit applicant regarding air quality permitting requirements, including but not limited to monitoring and modeling requirements.

iii. The State shall provide the Tribe notice of any public hearings regarding a PSD permit at least 30 days in advance of such hearing. A copy of the preliminary determination of permit approval shall be directed from the State to the Tribe on the same day as such notice is directed to the applicant.

B. On-Reservation Air Quality Program Administration

The parties recognize that the comprehensive and uniform regulation of air pollution sources within Reservation boundaries requires cooperation between the State and the Tribe, and that by jointly administering a cooperative permitting program, the parties can avoid disputes regarding their respective jurisdictions. Accordingly, within one (1) year of the effective date of this Agreement, the State and Tribe agree to establish a cooperative agreement to jointly plan and administer an air permitting program for lands within the exterior boundary of the Reservation. The cooperative agreement shall include but not be limited to the following provisions:

1. The Tribe agrees to promulgate air quality standards which are identical to State standards, and air quality regulations, including emission limits and reporting requirements, which are substantially equivalent to State regulations. Each party agrees to keep the other informed regarding the consideration of any revisions to air quality standards and regulations. Whenever either party adopts revisions to any air regulation potentially affecting Reservation and off-Reservation lands, said party will notify and consult with the other at least 60 days before seeking approval of such revisions. The parties agree to meet annually to discuss air quality standards and regulations. In this process, both parties will, in good faith, reflect the needs and concerns of the other for air quality on the Reservation. Nothing in this paragraph shall be construed in any manner so as to impact the legal position of either the Tribe or the State on which government has legal authority to adopt air quality standards and regulations for areas within the Reservation.

2. The Tribe agrees to develop an air pollution permitting ordinance governing the permitting of major, minor and indirect sources within the Reservation boundaries. Said ordinance shall include the following provisions:

a. Major Sources. Until such time as the Tribe has received Treatment as a State for purposes of Clean Air Act programs within the Reservation, any major source receiving a permit from the EPA pursuant to 40 CFR Part 71 will be considered authorized under the tribal ordinance.

b. Minor and Indirect Sources. The parties agree that any permit issued to a minor or indirect source located on the Reservation by either the Tribe or the State in conformance with the terms of the cooperative agreement developed under this Section shall be considered to have been issued by both parties and to be authorized under both Tribal and State law.

3. The State will be primarily responsible for permit applications for major, minor and indirect sources located on non-tribal lands within the Reservation. The Tribe will be primarily responsible for permit applications for major, minor and indirect sources located on tribal lands within the Reservation. Both parties agree to process permit applications in the following manner:

a. Upon receipt of a complete permit application by one party, that party will immediately forward the complete application to the other party for review.

b. The parties shall each review the permit application for compliance with applicable air quality standards and regulations and meet to discuss any concerns that either party may have with the application.

c. If the parties agree on whether or not a permit or permits should be issued to a particular applicant, the permit or permits shall be issued by the party who has primary responsibility pursuant to Section III.B.3. All permits shall contain language indicating that they are to be considered authorizations under the respective air quality standards and regulations of both parties, and shall be signed by the party with primary responsibility, with the other party signing in concurrence.

d. If the parties do not agree on whether or not a permit or permits should be issued to a particular applicant based upon an interpretation of the requirements contained in State or tribal air quality standards and regulations, the parties agree to submit the dispute for resolution in accordance with Section IX of this Agreement.

e. No permits shall be issued by either the State or the Tribe except in compliance with Section III.B.3.

4. The State shall be primarily responsible for the enforcement of air quality regulations on non-tribal lands within the Reservation.

5. The Tribe shall be primarily responsible for the enforcement of air quality regulations on Tribal Lands.

6. Either party shall have the option of entering into a contract with the other authorizing issuance, compliance determination, and enforcement of all air regulations, including permits, located within the Reservation.

7. The parties agree to the sharing of any financial assistance received under Section 103(b)(3) of the Clean Air Act, and Section 105 and 301(d) of the Clean Air Act, based on the responsibility and implementation of the cooperative agreement by each party.

C. Treatment as a State

1. After the establishment of the cooperative agreement with the State to plan and administer air quality programs on the Reservation, the Tribe agrees to:

a. Request federal delegation (Treatment as a State) authority for all Clean Air Act programs as specified in Section 301(d) promulgated regulations for all lands within the exterior boundary of the Reservation. The Tribe shall submit the cooperative agreement with the State developed pursuant to Section III.B. hereof as part of the Tribe's request. The Tribe agrees not to seek federal delegation of authority for non-tribal lands outside the boundaries of the Reservation.

b. Apply for federal financial assistance under Section 103 (b)(3) of the Clean Air Act (Air Assessment Grant), and Section 105 and 301(d) of the Clean Air Act (Air Program Grants).

2. The State agrees to recommend to EPA that EPA approve any Tribal application for Treatment as a State for Clean Air Act programs submitted in conformance with the terms of this Section III.C.

3. In the event that it is determined that either party does not have the authority to establish the cooperative agreement set forth in paragraph III.B., the parties agree to begin additional consultations in order to develop an alternative program for the comprehensive and uniform application of air quality standards and regulations on the Reservation. In the event that the EPA does not formally approve the cooperative agreement between the State and the Tribe as a part of the Tribe's request for federal delegation authority under Section 301(d) of the Clean Air Act, the parties agree to negotiate an alternative agreement for the implementation of Clean Air Act programs within the Reservation.

D. Exchange of Information

In recognition that the mutual exchange of information between the State and the Tribe facilitates the management of natural resources and protection of the environment, the parties agree to honor reasonable requests for natural resource information necessary for the implementation of the cooperative agreement described in Section III.B. Additionally, the parties agree to share any and all preliminary information associated with potential major, minor or indirect source permits where such a permit application would be processed in accordance with the terms of this Agreement.

IV. WATER QUALITY

A. Treatment as a State

The Tribe agrees that applications for TAS status under the Clean Water Act shall be limited to grant programs, including but not limited to, applications under Section 106 (Pollution Control), 205j1 (Water Quality Management Planning), 319 (Non-Point Source Management) and 314 (Clean Lakes). Funds received under these programs shall be used for purposes consistent with the aforementioned grant programs.

B. On-Reservation Water Quality Program Administration

1. The parties recognize that in lieu of TAS status, the Tribe may use its inherent sovereign authority to establish water quality standards, a water quality certification program, and a program of discharge permits applicable to dischargers from Tribal Lands. The system of water quality standards, water quality certification, and discharge permits shall be substantially equivalent to Sections 303, 401 and 402 of the Clean Water Act. The water quality standards established by the Tribe shall be consistent with those established in Chs. 102 through 105, Wis. Adm. Code.

2. The State will be primarily responsible for permit applications and water quality certification for sources located on non-Tribal lands within the Reservation. The Tribe will be primarily responsible for permit applications and water quality certification for sources located on Tribal Lands within the Reservation. Both parties agree to process permit applications and requests for water quality certification in the following manner:

- a. Upon receipt of a complete permit application or request for water quality certification by one party, that party will immediately forward the complete application or request for water quality certification to the other party for review.
 - b. The parties shall each review the permit application or request for water quality certification for compliance with applicable water quality standards and meet to discuss any concerns that either party may have with the application.
 - c. If the parties agree on whether or not a permit or permits should be issued to a particular applicant, or whether a permit or permits should be certified, the permit(s) and certification(s) shall be issued by the party who has primary responsibility pursuant to Section IV.B.2.
 - d. If the parties do not agree on whether or not a permit or permits should be issued to a particular applicant, or whether a permit or permits should be certified, the parties agree to submit the dispute for resolution in accordance with Section IX of this agreement.
 - e. No permits or certifications shall be issued by either the State or by the Tribe except in compliance with this section.
4. The State shall be primarily responsible for enforcement of water quality regulations on non-Tribal lands within the Reservation.
 5. The Tribe shall be primarily responsible for enforcement of water quality regulations on Tribal Lands within the Reservation.
 6. Either party shall have the option of entering into a contract with the other authorizing the issuance, compliance determination, and, to the extent possible, enforcement of all water regulations, including permits, issued within the Reservation.
 7. The parties agree that all storm water discharge permits issued to on-Reservation dischargers, whether issued by the State pursuant to NR 216 or by the Tribe pursuant to tribal law, shall be individual permits, and fully subject to the requirements of this Agreement. General permits shall not be considered adequate authorization for on-Reservation discharges of storm water.

8. By entering into this Agreement, the parties intend to cooperatively implement and jointly administer on-Reservation water quality standards, permitting and certification programs. The parties agree to submit the cooperative agreement developed pursuant to this Section IV.B. to EPA for EPA's review in accordance with Section 518(d) of the Clean Water Act. Neither the State nor the Tribe shall request that EPA make a determination that either party has exclusive authority to implement Clean Water Act programs in Reservation waters while this Agreement is in effect.

In the event that it is determined that either party does not have the authority to establish the cooperative agreement set forth in this Section, the parties agree to begin additional consultations in order to develop an alternative program for the comprehensive and uniform application of water quality standards and regulations on the Reservation. In the event that the EPA does not recognize the cooperative agreement between the State and the Tribe pursuant to Section 518(d) of the Clean Water Act, the parties agree to negotiate an alternative agreement for the implementation of Clean Water Act programs within the Reservation.

C. State Off-Reservation Activities

The State agrees not to lower its water quality standards for any waters impacting Tribal lands without the concurrence of the Tribe. The State further agrees to discuss in good faith Tribal requests to change State water quality standards for any waters affecting Tribal lands.

The Tribe agrees to provide the State with as complete a list as possible of surface waters which may impact Tribal Lands.

D. Tribal Standing

For purposes of requesting hearings under Sec. 283.41, 283.49 and 283.62 Wis. Stats., regarding the issuance of permits that may affect Tribal Lands, the State agrees to treat the Tribe in the same manner as an affected State.

E. If the litigation in either *State of Wisconsin v. U.S. EPA; and Carol Browner and Sokaogon Chippewa Community*, Case No. 96-C-90, or *State of Wisconsin v. U.S. EPA; and Carol Browner and Oneida Nation*, Case No. 96-C-329, (and/or the related cases *Jack Schweiner, et. al., v. U.S. EPA, et. al.*, Case No. 96-C-521 and *Brown County, et. al., v. U.S. EPA, et. al.*, Case No. 96-C-605) results in a decision on the merits which recognizes the authority of the EPA to grant TAS status for sections 303 and 401 of the Clean Water Act to either the Tribe or the Sokaogon Chippewa Community, the parties agree that they are not bound by the

provisions of this Section IV. The parties further agree to meet within 20 days of the aforementioned decision to determine an effective system of managing water quality on the Reservation which is acceptable to both parties.

V. OTHER FEDERAL ENVIRONMENTAL STATUTES

A. SDWA. The State and Tribe agree that certain provisions of the Safe Drinking Water Act (SDWA), for which the Tribe is eligible to be treated in the same manner as a state, are potentially useful to the Tribe for the purpose of regulating its water systems. Accordingly, nothing herein shall limit the ability of the Tribe to seek Treatment as a State under the SDWA for purposes of regulating public water systems owned and/or operated by the Tribe or its affiliates, or limit the ability of the Tribe to utilize SDWA authorities for the purpose of tribal wellhead protection.

The parties acknowledge that the SDWA may be interpreted to authorize the regulation of public water systems by the Tribe to the extent that those public water systems are located within the boundaries of the Reservation. The Tribe agrees not to seek Treatment as a State authority under the SDWA for purposes of regulating public water systems other than those owned or operated by the Tribe or its affiliates, unless such authority is sought in conjunction with the Tribe's participation in the development of a regional public water system.

The Tribe additionally agrees that it will not seek authority under the SDWA for any program(s) which would not be otherwise authorized under Wisconsin law. Specifically, the Tribe agrees that it will not seek authority for an underground injection control (UIC) program, so long as Wisconsin law does not authorize such programs.

B. CERCLA. At present, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) does not contain any Treatment as a State provisions. The parties agree to meet within sixty (60) days of the enactment of any future CERCLA Treatment as a State provision(s) to begin developing, in the spirit of the agreement(s) contained herein, a cooperative agreement regarding the implementation of CERCLA programs on the Reservation.

Nothing herein shall be construed to affect the relationship between the parties in the ongoing Fox River/Green Bay matter, including but not limited to either party's assertion of trusteeship in the Fox River/Green Bay Natural Resource Damage Assessment.

C. RCRA. At present, the Resource Conservation and Recovery Act (RCRA) does not contain any TAS provisions. The parties agree to meet within sixty (60) days of the enactment of any future RCRA Treatment as a State provision(s) to begin developing, in the spirit of the agreement(s) contained herein, a cooperative agreement regarding the implementation of RCRA programs on the Reservation.

D. OTHER/FUTURE TAS ENACTMENTS. In the event that Treatment as a State provisions are added to any other federal environmental laws, the parties agree that such enactments will be addressed in the manner detailed in Sections IV.B. and C. above.

VI. INFORMATION SHARING

The Parties agree to meet in January of each year to discuss (a) air and water quality standards and regulations affecting State or Tribal interests; (b) standards and regulations developed pursuant to the SDWA, CERCLA, RCRA, or any other state, tribal or federal environmental law which may affect the environment on or off the Reservation; (c) other environmental or conservation issues that may affect the State or the Tribe; and (d) financial programs that are available for the management of State and Tribal natural resources. This annual meeting is not intended to preclude or replace other discussions between the parties on issues of importance to either. In this process, each party will, in good faith, reflect the needs and concerns of the other for environmental quality on and off Reservation lands. Nothing in this paragraph shall be construed in any manner so as to impact the legal position of either the Tribe or the State on which government has legal authority to adopt environmental quality standards or regulations for areas within the Reservation.

VII. DURATION

This Agreement shall remain in effect for a period of ten (10) years unless terminated in accordance with Section VIII hereof. After the initial ten (10) year period, this Agreement shall automatically renew for an additional ten (10) year period unless either party gives the other notice, not less than ninety (90) days prior to the end of the initial ten (10) year term, of that party's intent not to renew the Agreement.

VIII. TERMINATION

This Agreement may be terminated by either party for cause, including but not limited to the failure of a party to abide by the terms of any arbitrator's decision rendered pursuant to Section IX hereof, upon one-hundred and eighty days (180) notice to the other party.

IX. DISPUTE RESOLUTION

A. Whenever, during the term of this Agreement, any disagreement or dispute arises between the parties as to the interpretation of this Agreement or any rights or obligations arising thereunder, all such matters shall be resolved, whenever possible, by meeting and conferring. Any party may request such a meeting by giving notice to the other, in which case such other party shall make itself available within fifteen (15) days thereafter.

If the dispute is not resolved at this initial meeting, a second meeting shall be held within 15 days. The second meeting shall involve the Secretary of the Department of Natural Resources and the Tribal Chair, or their designees.

B. In the event that the dispute is not resolved to the satisfaction of the parties within 15 days of the meetings held pursuant to Section IX.A., the dispute will be referred to a panel of arbitrators, whose arbitration will be governed by Chapter 788, Wisconsin Statutes. The arbitration panel will consist of one individual selected by the Tribe and one individual selected by the State. The arbitrators selected by the Tribe and the State will jointly select a third arbitrator. The decision of any two arbitrators will be final and binding on the parties hereto. Each party will pay one half of the costs of arbitration to the extent allowed under the respective laws of each party. Nothing herein shall be construed as a waiver of the sovereign immunity of either the State or the Tribe.

C. The dispute resolution provisions are an essential part of this Agreement, and if they are found to violate the sovereign immunity of either the State or the Tribe or should the courts otherwise determine that they lack jurisdiction to enforce this Agreement, the parties will take all steps necessary to create an effective enforcement mechanism which is mutually available to the parties.

X. SEVERABILITY

If any provisions of this agreement are determined to be prohibited by or invalid under the laws of the State or the Tribe, those provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions of this agreement.

XI. PRESERVATION OF JURISDICTION

Nothing in this Agreement shall be deemed a concession by any party as to the existence or lack of jurisdiction by the State over Tribal members or by the Tribe over non-members. Nothing herein shall be a grant of jurisdiction by the Tribe to the State or the State to the Tribe. This Agreement is not intended to alter the existing jurisdiction of any party, and by approving the Agreement, neither party is conceding or agreeing to any jurisdiction of the other party which would not otherwise exist. The acceptance of this Agreement shall not in any respect constitute a determination as to the merits of any allegation or contention, whether legal or factual, made by either party in any proceeding now or in the future.

XII. BINDING EFFECT

This Memorandum of Agreement shall be effective upon its signature by the State and the Tribe.


XIII. NO THIRD PARTY BENEFICIARIES

This Agreement is made and entered into for the sole protection and benefit of the Tribe and the State, and is not intended to create any benefit, obligation, or cause of action, whether direct or indirect, for any party not a signatory to this Agreement.

State of Wisconsin - Oneida Tribe of Indians of Wisconsin
Natural Resources Memorandum of Agreement
May 8, 1998
Page 14

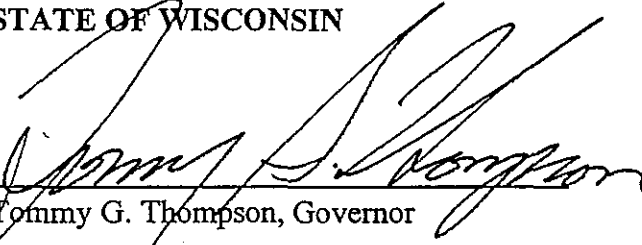
Dated this 8th day of May, 1998.

ONEIDA TRIBE OF INDIANS OF WISCONSIN



Deborah Doxtator, Chair

STATE OF WISCONSIN



Tommy G. Thompson, Governor