

**MEMORANDUM OF UNDERSTANDING
ESTABLISHING AN ONGOING, MULTI-
JURISDICTIONAL RELATIONSHIP FOR THE
ADOPTION, IMPLEMENTATION, AND ENFORCEMENT
OF FUGITIVE DUST CONTROL MEASURES IN THE
COACHELLA VALLEY**

This Memorandum of Understanding made the _____ day of _____, 2003, is entered into by the County of Riverside, Cathedral City, City of Coachella, City of Desert Hot Springs, City of Indian Wells, City of Indio, City of La Quinta, City of Palm Desert, City of Palm Springs, and City of Rancho Mirage (collectively, CITIES), the Coachella Valley Association of Governments (CVAG) and the South Coast Air Quality Management District (District).

I. This Memorandum of Understanding (MOU) is made with reference to the following recitals:

A. Air pollution remains a significant public health concern in many parts of California, and specifically in the Coachella Valley.

B. The Coachella Valley consists of the following local jurisdictions:

County of Riverside, Cathedral City, City of Coachella, City of Desert Hot Springs, City of Indian Wells, City of Indio, City of La Quinta, City of Palm Desert, City of Palm Springs, and City of Rancho Mirage. Each of these jurisdictions are members of the CVAG.

C. The District is an air district established pursuant to the California Health and Safety Code, beginning with Section 40400. Under State law, air districts have the primary responsibility for the control of air pollution from all sources, other than tailpipe emissions from motor vehicles. The District has the authority to adopt, implement, and enforce air quality rules and regulations; and, by prior agreement, the responsibility to provide technical expertise, outreach training, and enforcement support to the local agencies within its jurisdiction.

D. The CITIES that comprise the CVAG have local authority for controlling dust emissions from construction activities, disturbed vacant lands, unpaved roads and parking lots, and paved road dust. By prior agreement, these jurisdictions have lead responsibility for enforcing both local ordinances and approved Fugitive Dust Control Plans.

E. The transport of fugitive dust, as a result of man-made activities, is an ongoing challenge to promoting economic growth and meeting federal standards for airborne fugitive dust (PM10) in the Coachella Valley. The health impacts and public

nuisance potential of uncontrolled dust are a recognized concern of everyone who works or lives in this environment.

- F. PM10 levels in the Coachella Valley exceeded the federal standard in 1999 after six years of compliance. To reduce these levels and regain attainment status, the CITIES have individually adopted ordinances with measures for reducing fugitive dust emissions.
- G. A key element to implementing a successful program for reducing PM10 emissions and demonstrating sustained compliance is to establish a formal working relationship between the CITIES, CVAG and the District.
- H. Based on the foregoing, an ongoing cooperative relationship is hereby established between the CITIES, CVAG and the District to ensure the development and implementation of appropriate dust control plans, to comply with District regulations, to comply with the Federal Clean Air Amendments (CAA) mandates, and to help achieve attainment of federal and state air quality standards.

II. NOW, THEREFORE, in consideration of the mutual interests and benefits to be derived from the emissions reductions resulting from cooperative efforts of the CITIES, CVAG, and the District, the parties hereto agree as follows:

A. The CITIES will:

- 1. Take lead responsibility for adopting and enforcing both local ordinances and approved Dust Control Plans. A Dust Control Plan is a plan to control fugitive dust through the implementation of Coachella Valley Best Available Control Measures, such that fugitive dust emissions are in compliance with District Rule 403.
- 2. Approve Dust Control Plans for all qualifying activities or man-made conditions capable of generating fugitive dust emissions within their area of authority.
- 3. Follow the guidance provided in the most recently approved Coachella Valley Fugitive Dust Control Handbook (Handbook), and uniformly implement and enforce the Handbook provisions in the review and approval of Dust Control Plans.
- 4. After April 1, 2004 approve a Dust Control Plan only to an Operator who produces a signed "Certificate of Completion," issued by the District, demonstrating that the individual officially designated in the proposed Dust Control Plan as the person responsible for fugitive dust control at the site has completed the Coachella Valley Fugitive Dust Control Class. For purposes of this MOU, the term "Operator" includes any person, or his or her designee, that owns, leases, operates, controls, or supervises any potential fugitive dust generating operation that is subject to this MOU.

5. Require that the Operator submits two (2) copies of the approved Dust Control Plans, for those sites greater than or equal to ten (10) acres, to the District within ten (10) days from the date of approval for use by the District's compliance staff.
6. Issue an approved Dust Control Plan within a reasonable period of time. The City shall inspect each site to determine compliance with the approved Dust Control Plan at least every thirty (30) days from the start of the project. In addition, a dust control inspection shall be performed by the city within seven (7) days of receiving a notice of project initiation or a notice of project completion.
7. Require a bond, a cash Certificate of Deposit, or an equivalent form approved by the City, in an amount equal to at least two thousand dollars (\$2,000.00) per acre for projects with more than 5,000 square feet of disturbed surfaces. Such funds shall be in an amount sufficient to completely stabilize all disturbed areas in the event that the Operator fails to adequately control dust, or abandons the site in lieu of mitigating fugitive dust problems; and shall be easily accessible to the City in order to initiate stabilization measures without a significant delay.
8. Immediately notify the District when a site is "red tagged," or shut down, or cited for non-compliance with a local ordinance or Plan condition.
9. Ensure that, when a site is "red tagged," all construction and earth-moving activity ceases and all efforts are directed to mitigating fugitive dust through the application of water or dust suppressants.
10. Provide the Operator with specific information regarding the steps that must be taken before a site will be "un-tagged."
11. Require conspicuously placed signs that identify a manned 24-hour phone number for reporting dust complaints to the Operator, based on the most recently approved Handbook guidelines.
12. Require an Environmental Observer, with the authority to enforce the Dust Control Plan, at all sites greater than or equal to fifty (50) acres. The Environmental Observer will have duties and responsibilities in accordance with the local dust control ordinance and the Coachella Valley Fugitive Dust Control Handbook. Identification of an Environmental Observer shall be a prerequisite for approval of the Dust Control Plan. Failure of the Operator to continuously maintain an Environmental Observer at the site or available on-site within 30 minutes of initial contact shall constitute a violation of the Dust Control Plan.
13. Require all appropriate enforcement staff with duties and responsibilities relating to the enforcement of local dust control ordinances and approved Dust Control Plans to attend and complete the District's Coachella Valley Fugitive Dust Control Class.
14. Require that the staff person responding to a dust complaint have code enforcement status, or the authority to enforce a local ordinance or Plan.

15. Require staff who review and/or approve Dust Control Plans to attend and complete the District's Coachella Valley Fugitive Dust Control Class.
16. Assign a city staff member with the single responsibility of determining compliance with local Dust Control Plans and ordinances at earth moving activities. If such an individual cannot be assigned, the jurisdiction will provide documentation to the District (i.e. policy guidance documents, certificates of staff attendance at the District's Coachella Valley Dust Control Class) demonstrating that the existing staff have been trained and informed of the high priority regarding handling of fugitive dust issues, and ensuring that the fugitive dust program will receive comparable or better coverage than can be provided by a single dedicated individual.
17. Conduct random, unannounced inspections at construction sites. The purpose of the site inspection will be to determine compliance with an approved Dust Control Plan, determine compliance with the local ordinance, and ensure that the project supervisor has read and understands the Plan.
18. Develop and maintain record-keeping logs for each site that document all compliance actions taken by the City, including the implementation of corrective measures required to enforce an approved Dust Control Plan. These records shall be made available to District staff upon request.
19. Adopt by ordinance a penalty program for violators of Dust Control Plans or local ordinances where the initial violation will be established at a level that ensures progressive penalties for repeated violations. The penalty for three or more violations within one year period shall be prosecuted at a minimum level consistent with a misdemeanor violation. The use of verbal warnings shall be discontinued.
20. Coordinate site inspections with the District so that both jurisdictions can evaluate instances of non-compliance with any ordinances, plans, or regulations.
21. Provide the District with an inventory of public unpaved roads and unpaved parking lots within each of their jurisdictions within 90 days of the MOU's effective date. The inventory shall include: the location and average daily traffic estimates of unpaved roads; and location and size (in square feet) of unpaved parking lots.
23. Take measures (signage or speed control devices) to reduce vehicular speeds to 15 miles per hour on unpaved public roads with between 20 and 150 average daily trips within 60 days of submitting the unpaved road and unpaved parking lot inventories to the District.
24. Where City owns a cumulative distance of six or less miles of public unpaved roads with each segment having 150 or more average daily trips, pave such roads or apply and maintain chemical dust suppressants in accordance with the manufacturer's specifications for a travel surface and the performance standards established in the city's respective dust control ordinance based on the following schedule:
 - a. one-third of qualifying unpaved roads within one year of ordinance adoption; and

- b. remainder of qualifying unpaved roads within three years of ordinance adoption. (Note: treatments in excess of annual requirements can apply to future years.)
25. Where a City owns a cumulative distance of more than six miles of public unpaved roads with each segment having 150 or more average daily trips, stabilize such roadways based on the following schedule:
- a. at least two miles paved or four miles stabilized with chemical dust suppressants in accordance with the manufacturer's specifications for a travel surface and the performance standards established in the local dust control ordinance within one year of the MOU's effective date; and
 - b. at least two miles paved or four miles stabilized with chemical dust suppressants in accordance with the manufacturer's specifications for a travel surface and the performance standards established in the local dust control ordinance annually thereafter until all qualifying unpaved roads have been stabilized. (Note: treatments in excess of annual requirements can apply to future years).
26. Stabilize within six months of the MOU's effective date unpaved public parking lots with at least one of the following strategies:
- a. pave; or
 - b. apply and maintain dust suppressants in accordance with the manufacturer's specifications for a travel surface and the performance standards established in their respective dust control ordinance; or
 - c. apply and maintain washed gravel in accordance with the performance standards established in their respective dust control ordinance.
27. Apply and maintain any temporary unpaved public parking lots (those that are used 24 days or less per year) with chemical dust suppressants, in accordance with the manufacturer's specifications for a travel surface and the performance standards established in their respective dust control ordinance prior to any 24-hour period when more than 40 vehicles enter and park. Temporary unpaved parking lots greater than 5,000 square feet will be stabilized in accordance with the disturbed vacant land requirements contained in the local dust control ordinance during non-parking periods.

B. The DISTRICT will:

- 1. Approve and issue Fugitive Dust Control Plans for operations that do not require a local jurisdiction's grading permit or building permit (such as, aggregate producers, landfills, schools, water districts, California Department of Transportation, and flood control maintenance activities).
- 2. Respond to fugitive dust complaints and take any appropriate measures for non-compliance with District rules and regulations, Dust Control Plan conditions, or local ordinance requirements.

3. Continue to provide outreach and training in the form of Coachella Valley Fugitive Dust Control classes, offered at no charge, to all interested parties.
4. Issue Certificates of Completion to each individual who completes the Coachella Valley Fugitive Dust Control Class. This Certificate and the accompanying wallet-sized card are valid for two years and may be renewed by submitting a request to the District. Upon approval by the District, this renewal will be valid for an additional two years.
5. Develop and implement an abatement and enforcement policy that addresses repeat violations at the same site of District fugitive dust control regulations.
6. Assign an inspector to conduct inspections exclusively in the Coachella Valley, provide outreach and training in the form of the Coachella Valley Fugitive Dust Control Class, and respond to fugitive dust complaints.

C. ADDITIONAL CONDITIONS AND REQUIREMENTS

1. Any party hereto has the right to terminate its participation in this MOU for any reason by giving thirty (30) days notice in writing to each party to this MOU.
2. This MOU may be amended or supplemented by mutual agreement effectuated in writing and duly executed by the parties.
3. This MOU shall be in full force and in effect when signed by all parties.
4. The signature page of this MOU is being executed in counterparts. When all parties have signed, all executed counterparts taken together shall constitute one and the same instrument. CVAG shall be responsible for receiving and retaining the originally executed signature pages of each party, for dating the MOU as of the latest date upon which it is executed as among the signatories thereto, and for providing a copy of the dated executed agreement to each of the parties.
5. This MOU integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties.
6. Each party acknowledges that it has had ample opportunity for review and approval of this document by its attorney, and that any waiver of representation is a result of independent decision.
7. Each party hereby warrants that its participation and execution of this MOU has been duly approved by its governing board.
8. All notices, requests and other communications under this MOU shall be in writing, and shall be (a) delivered personally, (b) sent via FedEx or similar private express mail service (hereinafter "FedEx"), (c) sent via facsimile, or (d) mailed, certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765
Attn:

Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

County of Riverside
4080 Lemon Street, 14th Floor
Riverside, CA 92502

Cathedral City
68-700 Avenida Lalo Guerrero
Cathedral City, CA 92234

City of Coachella
1515 6th Street
Coachella, CA 92236

City of Desert Hot Springs
65950 Pierson Blvd.
Desert Hot Springs, CA 92240

City of Indian Wells
44-950 Eldorado Drive
Indian Wells, CA 92210-7497

City of Indio
100 Civic Center Mall
Indio, CA 92201

City of La Quinta
78-495 Calle Tampico
La Quinta, CA 92253

City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260

City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

City of Rancho Mirage
69-825 Highway 111
Rancho Mirage, CA 92270

9. It is hereby agreed that no official, employee, or agent of any of the parties hereto shall have any personal interest, direct or indirect, in this MOU, nor shall any such official, employee, or agent participate in any decision relating to the MOU which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.
10. Neither party may assign any right or obligation under this MOU without the express written approval of the other parties.
11. This MOU shall be binding upon and shall inure to the benefit of the successors of each of the parties hereto.
12. This MOU shall be construed and interpreted in accordance with the laws of the State of California. Venue for resolution of any disputes under this MOU shall be in Los Angeles County.
13. In the event that any party fails to fulfill its obligations under this MOU, such party shall have thirty (30) days to cure its default upon written demand by any other party. Upon failure to cure any default, each party to this MOU shall have all such rights and remedies available to it under law, including the right to sue for specific performance.
14. Each party hereby agrees to indemnify, defend and hold harmless the other parties, their officials, agents, officers, and employees against any and all liabilities, obligations, lawsuits, administrative writs, claims, judgments, or penalties arising as a result of the party's actions conducted in performance of its duties under this MOU.

- SIGNATURE PAGES FOLLOW -

SIGNATORIES

TO THE MEMORANDUM OF UNDERSTANDING ESTABLISHING AN ONGOING,
MULTI-JURISDICTIONAL RELATIONSHIP FOR THE ADOPTION, IMPLEMENTATION,
AND ENFORCEMENT OF FUGITIVE DUST CONTROL MEASURES IN THE
COACHELLA VALLEY

Barry R. Wallerstein, D.Env.
Executive Officer
South Coast Air Quality Management District

Date

Approved as to form:
Kurt Wiese, District Counsel

Date

Coachella Valley Association of Governments

Date

Approved as to form:
CVAG General Counsel

Date

County of Riverside

Date

Cathedral City

Date

Date

City of Coachella

City of Desert Hot Springs

City of Indian Wells

City of Indio

City of La Quinta

City of Palm Desert

City of Palm Springs

City of Rancho Mirage

Date

Date

Date

Date

Date

Date

Date