

**Revision to the Commonwealth of Pennsylvania**

**STATE IMPLEMENTATION PLAN**

**For Transportation Conformity**

**Volume II – Appendices**

**Submission to the United States Environmental Protection Agency**

**in fulfillment of the requirements of**

**Section 176 (c) of the Clean Air Act Amendments of 1990**

**Prepared by**

**The Pennsylvania Department of Transportation**

**Center for Program Development and Management**

**in cooperation with**

**The Pennsylvania Department of Environmental Protection**

**Bureau of Air Quality**

**January 2008**

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**Appendix 1: Provisions that must be addressed in the SIP Revision**

## **Title 40: Protection of Environment**

### PART 93—DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

#### Subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws

##### **§ 93.105 Consultation.**

(a) *General.* The implementation plan revision required under §51.390 of this chapter shall include procedures for interagency consultation (Federal, State, and local), resolution of conflicts, and public consultation as described in paragraphs (a) through (e) of this section. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.

(1) The implementation plan revision shall include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.

(2) Before EPA approves the conformity implementation plan revision required by §51.390 of this chapter, MPOs and State departments of transportation must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section, before making conformity determinations.

(b) *Interagency consultation procedures: General factors.* (1) States shall provide well-defined consultation procedures in the implementation plan whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures shall include at a minimum the following general factors and the specific processes in paragraph (c) of this section:

(i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;

(ii) The organizational level of regular consultation;

(iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;

(v) A process for responding to the significant comments of involved agencies; and

(vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

(c) *Interagency consultation procedures: Specific processes.* Interagency consultation procedures shall also include the following specific processes:

(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

(ii) Determining which minor arterials and other transportation projects should be considered “regionally significant” for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by §93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in §93.126 or §93.127; and

(vi) Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by §93.109(1)(2)(iii).

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in §93.104; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.

(4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed.

(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of §93.122.

(6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/ travel transportation surveys).

(7) A process for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in paragraph (a)(1) of this section, including Federal agencies.

(d) *Resolving conflicts.* Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the

involved agencies. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by §51.390 of this chapter shall define the procedures for starting the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) *Public consultation procedures.* Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.43. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

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### **§ 93.122 Procedures for determining regional transportation-related emissions.**

(a) *General requirements.*

(4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

(ii) The conformity implementation plan revision required in §51.390 of this chapter must provide that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled.

**§ 93.125 Enforceability of design concept and scope and project-level mitigation and control measures.**

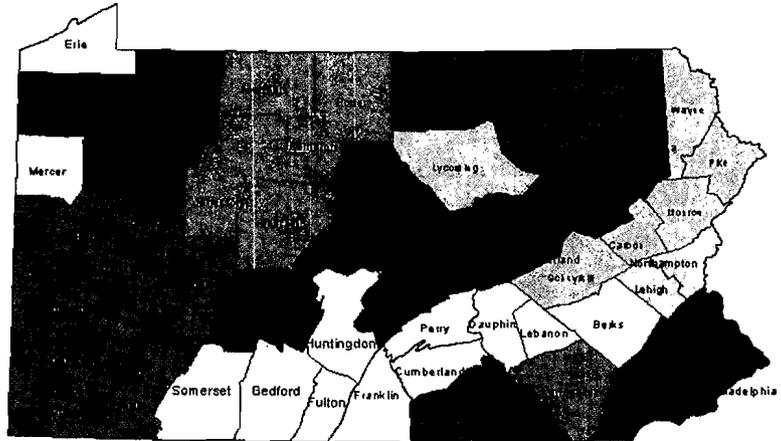
(c) The implementation plan revision required in §51.390 of this chapter shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

**Appendix 2: Maps**

**PENNSYLVANIA'S TRANSPORTATION PLANNING ORGANIZATIONS  
RURAL AND METROPOLITAN AREAS**



- Adams RPO
- Altoona MPO
- Centre MPO
- DVRPC MPO
- Erie MPO
- Franklin Non-Affiliated
- Harrisburg MPO
- Johnstown MPO
- Lancaster MPO
- Lebanon MPO
- Lehigh Valley MPO
- NEPA RPO
- North Central RPO
- Northwest RPO
- Northern Tier RPO
- Reading MPO
- Scranton-Wilkes Barre MPO
- SEDA COG RPO
- Shenango Valley MPO
- Southern Alleghenies RPO
- SPC MPO
- Williamsport MPO
- York MPO



MPO (Metropolitan Planning Organization)  
RPO (Rural Planning Organization)

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Note: Franklin County is referenced as an Independent County (IC) in this SIP revision.



# PA Ozone Nonattainment and Maintenance Areas Federal 8-Hour Ozone Standard (February 2007)



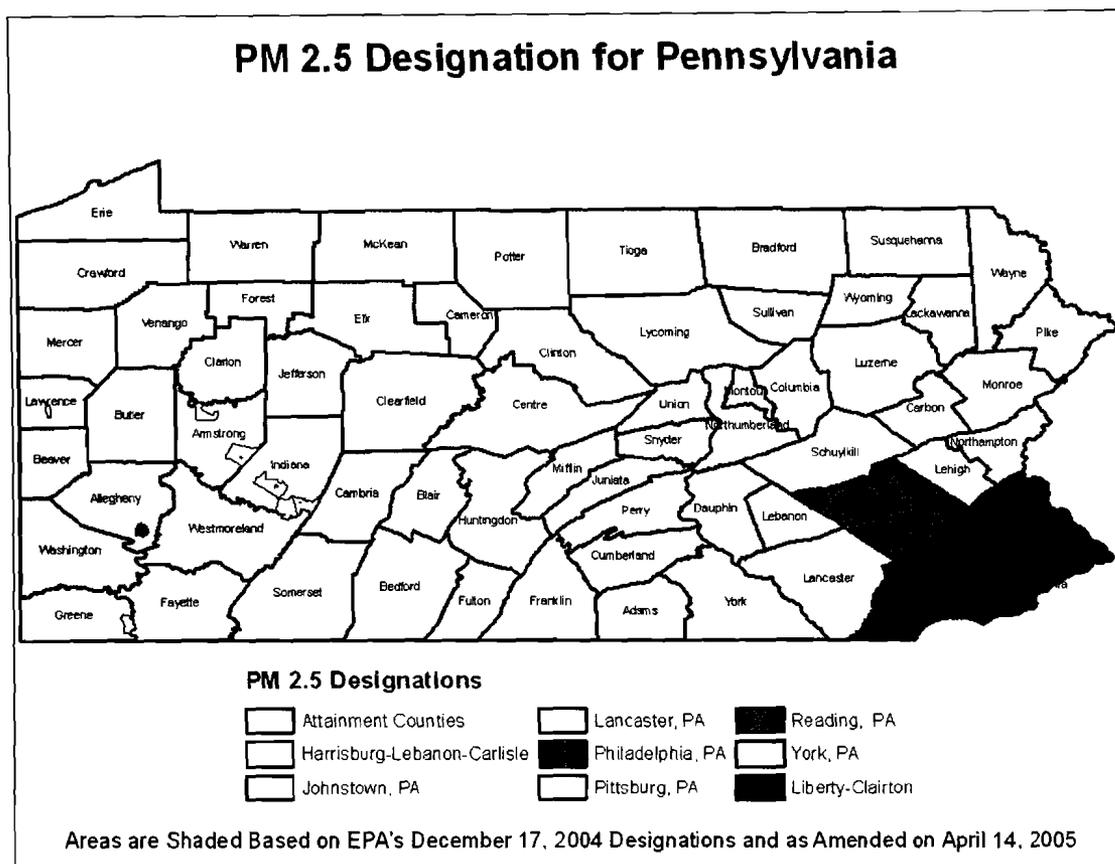
County in Nonattainment or Maintenance of Federal 8 Hour Ozone Standard
  County in Attainment of Federal 8-Hour Ozone Standard

Designations do not necessarily coincide with MPO, RPO or Independent County boundaries. All areas are whole counties.

Groupings of counties into nonattainment or maintenance areas are as follows:

EPA 8 Hour Ozone Nonattainment & Maintenance Area	PA Counties Encompassed
York	York, Adams
Allentown-Bethlehem-Easton	Carbon, Lehigh, Monroe, Northampton
Altoona	Blair
Erie	Erie
Franklin County	Franklin
Greene County	Greene
Harrisburg-Lebanon-Carlisle	Cumberland, Dauphin, Lebanon, Perry
Johnstown	Cambria
Lancaster	Lancaster
Philadelphia-Wilmington, Atlantic City – PA-DE-MD-NJ	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh-Beaver Valley	Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, Westmoreland
Reading	Berks

<b>EPA Ozone Nonattainment Area</b>	<b>PA Counties Encompassed</b>
Youngtown-Warren-Sharon – OH-PA	Mercer
Scranton-Wilkes-Barre	Lackawanna, Luzerne, Monroe, Wyoming
Clearfield and Indiana	Clearfield, Indiana
State College	Centre
Tioga County	Tioga

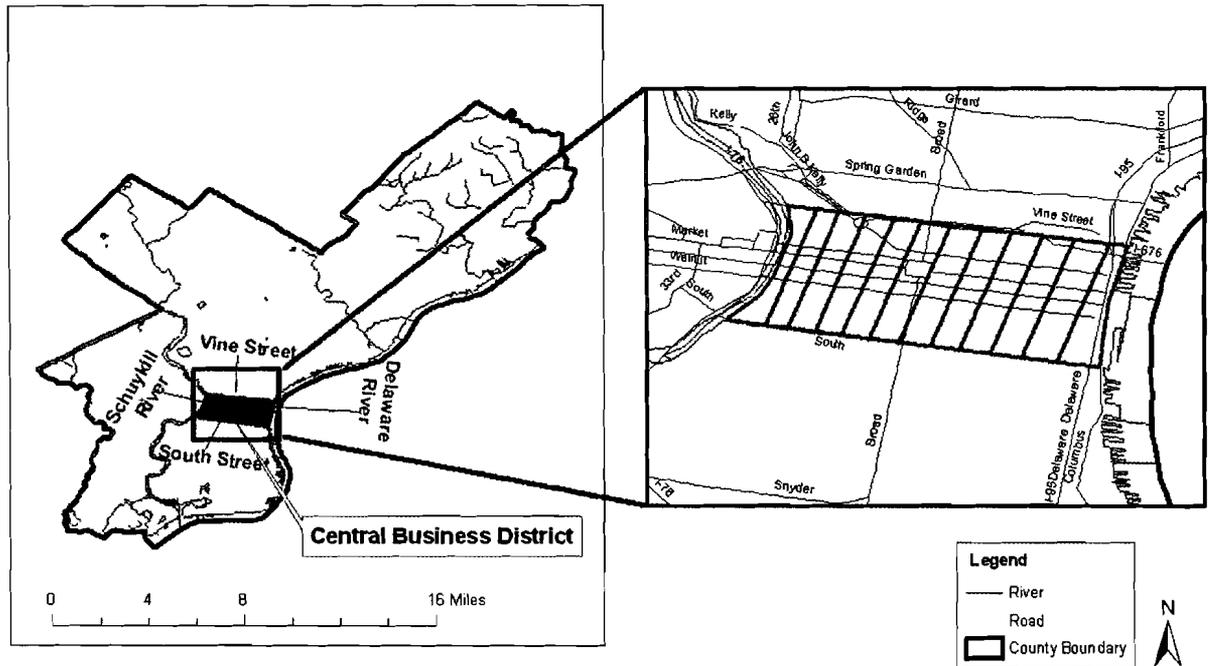


PM<sub>10</sub> areas in Pennsylvania consist only of the Liberty Clairton area, which includes the City of Clairton and the Boroughs of Glassport, Liberty, Lincoln and Port Vue, all in Allegheny County.

PM<sub>2.5</sub> areas in Pennsylvania are encompassed to the county boundary as shown on the above map by color, except as follows:

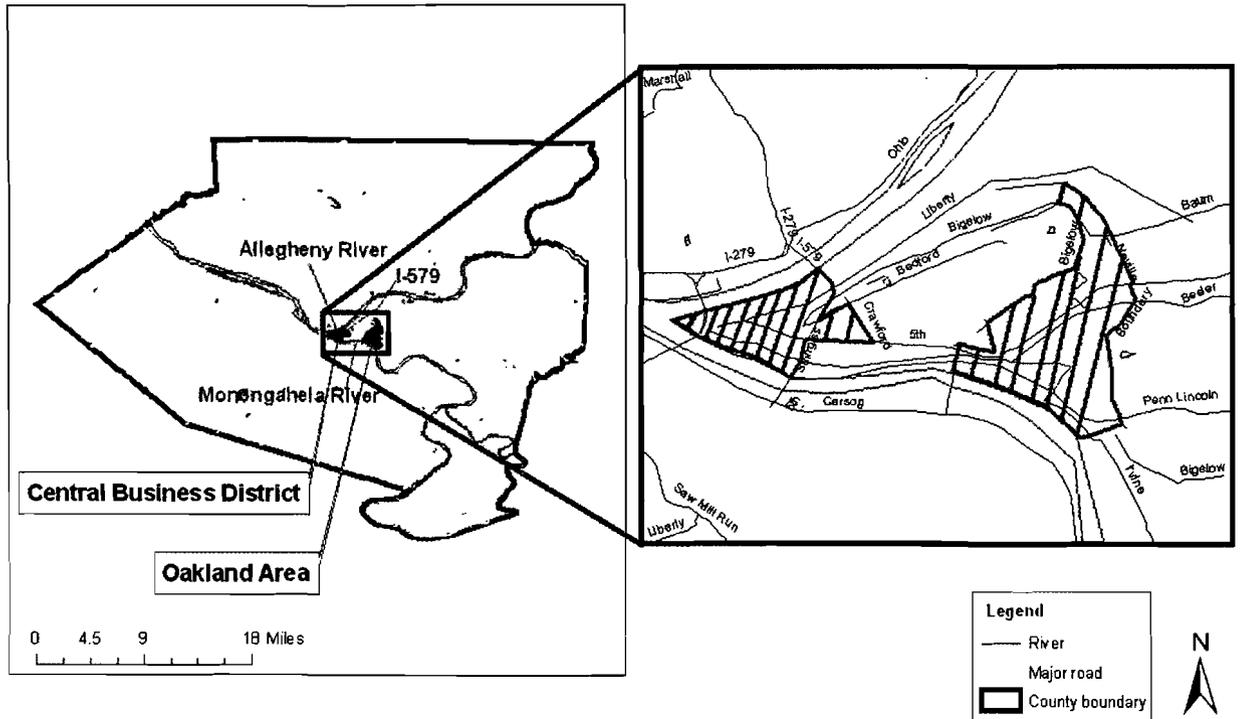
- Indiana County: Municipalities of West Wheatfield, Center, and East Wheatfield Townships, and Armagh and Homer City boroughs.
- Armstrong County: Plumcreek and Washington Townships and Elderton Borough
- Liberty-Clairton in Allegheny County: Glassport, Liberty, Lincoln, and Port View Boroughs, and Clairton City.
- Allegheny County: Remainder not included in the Liberty-Clairton area.
- Greene County: Monongahela Township.
- Lawrence County: Portions of Taylor Township south of New Castle City.

## Map of CO Maintenance Areas in Pennsylvania: Philadelphia County



Note: The CO maintenance areas in Philadelphia County include the high traffic areas within the Central Business District (CBD) and certain other high traffic density areas. The CBD is generally defined as the area in Philadelphia bounded to the north by Vine Street, to the south by South Street, to the west by the Schuylkill River, and to the east by the Delaware River.

## Map of CO Maintenance Areas in Pennsylvania: Allegheny County



Note: The CO maintenance areas in Allegheny County include the high traffic density areas within the CBD and certain other high traffic density areas. The CBD is generally the downtown triangle bounded by the Allegheny River, the Monongahela River and I-579; other high traffic density areas is considered the Oakland neighborhood of Pittsburgh.

**Appendix 3: Executed MOAs**

**METROPOLITAN PLANNING  
ORGANIZATIONS**

**ALTOONA**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

ALTOONA AREA TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of July, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Altoona Area Transportation Study (AATS), a Metropolitan Planning Organization (MPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, AATS is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. AATS is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. (Highways) or Chapter 53 of Title 49 (Mass Transportation) [CII] to conform with State (SIP) or Federal

(FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R. Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Blair County as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel

compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity

state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 *et seq.* and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## II. CONSULTATION PROCESS

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

AATS is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## III. ENFORCEMENT

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 *et seq.*) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for

Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the

right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna A. Weaver

BY: James D. Ritz  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Karen Yordy

BY: Thomas W. Felle  
Deputy Secretary

ATTEST:

ALTOONA AREA TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION

Wesley Buckel

BY: Richard T. Horner

Title: MPO Staff

Title: MPO Secretary

Approved as to legality and form

COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION

BY: [Signature] 7/11/07  
Assistant Counsel  
Department of Transportation

BY: Richard C. Lepley II 7/12/07

BY: for Michael A. Blaine  
Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Ausa Shinkora  
Chief/Assistant Counsel  
Department of Environmental  
Protection

BY: N/A

Approved as to legality and form

BY: Amelia Elliot 7/31/07  
Office of Attorney General

**APPROVED FOR FORM AND LEGALITY**

By [Signature]  
Deputy General Counsel

JUN 12 2007

**METROPOLITAN PLANNING ORGANIZATION  
BLAIR COUNTY (ALTOONA MSA)**

FORMERLY  
COORDINATING  
COMMITTEE OF THE  
ALTOONA AREA  
TRANSPORTATION STUDY  
(AATS)

**301 Valley View Boulevard  
Altoona, PA 16602-6409**

**(814) 940-5978  
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JAMES D. RITZMAN, P.E.  
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TERRY L. WAGNER  
WAYNE HIPPO  
MARK E. GEIS  
JOSEPH R. DODSON  
RAYMOND E. AMATO  
ROBERT R. PHEASANT  
DONALD A. RUGGERY  
SCOTT G. CESSNA

RICHARD T. HAINES, AICP  
SECRETARY

**RESOLUTION**

**BE IT RESOLVED** that the Coordinating Committee of the Altoona Area Transportation Study (AATS) which serves as the Metropolitan Planning Organization (MPO) for Blair County authorizes the Chairman or Secretary of the MPO to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

SIGNED:

By Wesley L. Burket

Wesley L. Burket, AICP

By Richard T. Haines

Richard T. Haines, AICP  
MPO Secretary

Date: July 25, 2007

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RECEIVED  
PERIODIC REPORTS

**CENTRE**

**MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

**AND**

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**CENTRE COUNTY METROPOLITAN PLANNING ORGANIZATION**

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of July, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Centre County Metropolitan Planning Organization, (CCMPO).

**W I T N E S S E T H:**

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, the CCMPO is a Metropolitan Planning Organization (MPO), and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. The CCMPO is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. (highways) or Chapter 53 of Title 49 (mass transportation) to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Centre County as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005, made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implementing the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the CCMPO, and the local transportation agencies will participate in the consultation process through their representatives on the CCMPO; and,

WHEREAS, in order for the CCMPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the CCMPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

**I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the CCMPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the CCMPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

The CCMPO is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The CCMPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna L. Weaver

BY: James D. Kelly  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

\_\_\_\_\_

BY: Thomas H. Full  
Deputy Secretary

ATTEST:

CENTRE COUNTY METROPOLITAN PLANNING  
ORGANIZATION

Robert A. Crum, Jr.  
Robert A. Crum, Jr.  
Title: Secretary

BY: Daniel D. Klees  
Daniel D. Klees  
Title: Chair

Approved as to legality and form

for **COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION**

BY: Patrick O. Kelly 6/29/07  
Assistant Counsel  
Department of Transportation

BY: Richard C. Lepley II 6/29/07

BY: Michael H. Fline  
for Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Susan Shinkema  
Chief/Assistant Counsel  
Department of Environmental  
Protection

BY: N/A

Approved as to legality and form

**APPROVED FOR FORM AND LEGALITY**

BY: Angie M. Allison 7/31/07  
Office of Attorney General

By: [Signature]  
Deputy General Counsel

**Centre County Metropolitan Planning Organization (CCMPO)**

***RESOLUTION 2007-1  
Authorization to Execute Legal Agreements***

WHEREAS, Title 23 U.S.C. Section 34, and Title 49 U.S.C. Section 1607 require that a continuing, cooperative and comprehensive transportation planning process be carried out by state and local officials in all metropolitan areas in the United States; and,

WHEREAS, Metropolitan Planning Organizations (MPOs) are the organizations designated as being responsible, together with state governments, for conducting the continuing, cooperative, and comprehensive planning process; and,

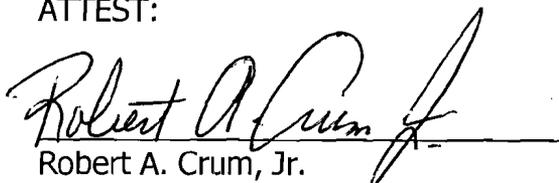
WHEREAS, the Centre County Metropolitan Planning Organization (CCMPO) is the MPO designated as being responsible, together with the Commonwealth of Pennsylvania Department of Transportation (PennDOT), for conducting the required continuing, cooperative, and comprehensive planning process in the Centre County, Pennsylvania Metropolitan Statistical Area;

WHEREAS, the Coordinating Committee of the CCMPO is the decision-making body responsible for meeting the federal regulations and requirements relative to MPOs;

NOW, THEREFORE, BE IT RESOLVED by the CCMPO Coordinating Committee that the Coordinating Committee's Chair, or in the absence of the Chair, the Coordinating Committee's Vice-Chair, is authorized to execute contracts and agreements with the Commonwealth of Pennsylvania and the United States government on behalf of the CCMPO for highway and mass transit planning and programming activities.

I certify that this Resolution was adopted by the CCMPO Coordinating Committee at its meeting on April 24, 2007.

ATTEST:

  
Robert A. Crum, Jr.  
CCMPO Secretary

By   
Daniel D. Klees  
Chair

DATE: April 24, 2007

x:\planning\mpo\airquality\2007aqmoa\ccmpoauthorizingresolution

**DVRPC**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH  
AIR MANAGEMENT SERVICES  
LOCAL AIR QUALITY AGENCY

AND

DELAWARE VALLEY REGIONAL PLANNING COMMISSION  
METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 3 day of January, 2008, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH, Air Management Services (AMS), the local air agency, and the Delaware Valley Regional Planning Commission (DVRPC), a Metropolitan Planning Organization (MPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, AMS is the local air quality agency which will participate in the interagency consultation process; and,

WHEREAS, DVRPC is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §5303. DVRPC is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. of the Federal Transit Act to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R. Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implementing the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable

highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, SEPTA has representatives on the MPO, and SEPTA will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

## I. GENERAL PROVISIONS

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## II. CONSULTATION PROCESS

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

DVRPC is designated as a Scenario 2 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

### III. ENFORCEMENT

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful

(as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_

BY: James D. Kelly  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Wanita J. Hoke

BY: Thomas R. Felt  
Deputy Secretary

ATTEST:

APPROVED AS TO FORM

CITY OF PHILADELPHIA DEPARTMENT OF  
PUBLIC HEALTH

PER Patrick K. O'Neill

BY: Juli Slomkowski  
Title: Health Commissioner

Air Management Services

ATTEST:

DELAWARE VALLEY REGIONAL PLANNING  
COMMISSION  
METROPOLITAN PLANNING ORGANIZATION

Jean L. McKinney  
Title: Executive Assistant

BY: [Signature]  
Title: Executive Director

ATTEST:

Approved as to legality and form

COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION

BY: \_\_\_\_\_  
Assistant Counsel  
Department of Transportation

BY: Richard C. Lyley II 12/17/07  
for Penn DOT **Comptroller**

BY: Michael Stelcine 12/12/07 **GM** **12/12/07**  
for Chief Counsel Department of Transportation **12/12/07**  
COMPTROLLER OF DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Susan Shambaugh  
Chief/Assistant Counsel  
Department of Environmental Protection

BY: [Signature]  
12/7/2007

Approved as to legality and form

BY: Amy McElliot 1/3/2008  
Office of Attorney General

**APPROVED FOR FORM AND LEGALITY**  
By: [Signature] 12/27/07  
Deputy General Counsel

**RESOLUTION**

*by the Board of the Delaware Valley Regional Planning Commission*

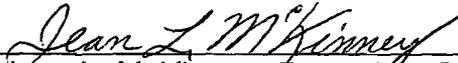
**Transportation Conformity State Implementation Plan  
Memorandum of Agreement**

**BE IT RESOLVED**, that the Board of the Delaware Valley Regional Planning Commission (DVRPC):

1. Authorizes the Executive Director to sign the Memorandum of Agreement between the Pennsylvania Department of Transportation, Pennsylvania Department of Environmental Protection, Philadelphia Air Management Services and Delaware Valley Regional Planning Commission, to enforce and assure compliance with the Transportation Conformity State Implementation Plan; and
2. Authorizes and directs Jean L. McKinney, Recording Secretary, to impress the official seal of the Commission and attest same on all documents as may be required.

Adopted this 25<sup>th</sup> day of October 2007 by  
the Board of the Delaware Valley Regional  
Planning Commission.

I hereby certify that this is a true and correct copy of  
Resolution No. B-FY08-001.

  
\_\_\_\_\_  
Jean L. McKinney, Recording Secretary

**ERIE**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

ERIE AREA TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 15<sup>th</sup> day of August, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Erie Area Transportation Study, a Metropolitan Planning Organization (MPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, Erie Area Transportation Study is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. The Erie Area Transportation Study is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. of the Federal Transit Act to conform with State (SIP) or Federal (FIP) air quality

implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Erie County as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel

compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity

state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

Erie Area Transportation Study is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable,

Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures

contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna L. Weaver

BY: James D. Kelly  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Karim Yorduf

BY: Thomas De Fall  
Deputy Secretary

ATTEST:

ERIE AREA TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION

[Signature]  
Title: TRMPO SECRETARY

BY: Thomas C. Hoffman  
Title: CHAIRMAN, ERIE MPO

Approved as to legality and form

\* COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION

*SM  
7/2/07*

BY: \_\_\_\_\_  
Assistant Counsel  
Department of Transportation

BY: Richard C. Zepley II 7/30/07

BY: Michael Heine  
Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Susan Shinderman  
Chief/Assistant Counsel  
Department of Environmental  
Protection

BY: N/A

Approved as to legality and form

APPROVED FOR FORM AND LEGALITY

APPROVED FOR FORM AND LEGALITY

By: [Signature] 8/7/07  
Deputy General Counsel

7

By: Amy M. Ellis 8/15/07  
Deputy Attorney General

JUN 07 2007



Thomas C. Hoffman  
Chairman

David K. Bossart  
Vice-Chairman

**ERIE AREA TRANSPORTATION STUDY • METROPOLITAN PLANNING ORGANIZATION**

**RESOLUTION**

**BE IT RESOLVED** that the Coordinating Committee of the Erie Area Transportation Study (EATS) which serves as the Metropolitan Planning Organization (MPO) for Erie County authorizes the Chairman and Secretary of the MPO to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

By

Jake S. Welsh  
Erie MPO Secretary

SIGNED:

By

Thomas C. Hoffman  
Erie MPO Chairman

Date: May 16, 2007

2007 JUN 11 PM 1:11

PERFECT COPY

**HARRISBURG**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

HARRISBURG AREA TRANSPORTATION STUDY  
A METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of July, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Harrisburg Area Transportation Study (HATS), a Metropolitan Planning Organization (MPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, HATS is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. HATS is the forum for cooperative

transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. of the Federal Transit Act to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R. Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Cumberland, Dauphin, and Perry Counties as nonattainment for ozone pollution, and Cumberland and Dauphin Counties as nonattainment for fine particulate pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air

Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into

the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### I. GENERAL PROVISIONS

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of

the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## II. CONSULTATION PROCESS

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

HATS is designated as a Scenario 2 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## III. ENFORCEMENT

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in

an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and

- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125 (c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna L. Weaver

BY: James D. Kelly  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Wanda J. Hoice

BY: Thomas R. Fall  
Deputy Secretary

ATTEST:

HARRISBURG AREA TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION

*Review* X

[Signature]

X BY: [Signature]  
Title: HATS Chairman

Title: HATS Secretary

Approved as to legality and form *for* COMPTROLLER OF DEPARTMENT OF TRANSPORTATION

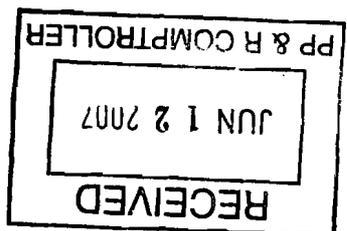
BY: [Signature]  
Assistant Counsel  
Department of Transportation

BY: Richard C. Zeply II 6/29/67

BY: Michael A. Levine  
Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF ENVIRONMENTAL PROTECTION

N/A

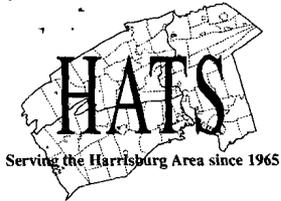


BY: *Susan Shickman* BY: N/A  
Chief/Assistant Counsel  
Department of Environmental  
Protection

Approved as to legality and form

BY: *Angie M. Elliot* 7/31/07  
Office of Attorney General

APPROVED FOR FORM AND LEGALITY  
By: *[Signature]*  
Deputy General Counsel



# HARRISBURG AREA TRANSPORTATION STUDY

PLANNING STAFF OFFICE: TRI-COUNTY REGIONAL PLANNING COMMISSION

112 MARKET ST., 2nd FLOOR, HARRISBURG, PA 17101-2015

(717) 234-2639

FAX (717) 234-4058

HATS@TCRPC-PA.ORG

## RESOLUTION

**BE IT RESOLVED** that the Coordinating Committee of the Harrisburg Area Transportation Study (HATS) which serves as the Metropolitan Planning Organization (MPO) for Cumberland, Dauphin, Perry and a portion of Lebanon Counties authorizes the Chairman and Secretary of the MPO to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

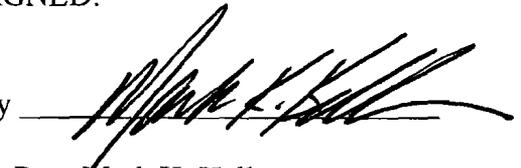
ATTEST:

By

  
Bruce Barclay  
HATS Secretary

SIGNED:

By

  
Rep. Mark K. Keller  
HATS Chairman

Date:

# **JOHNSTOWN**

**MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

**AND**

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**JOHNSTOWN AREA TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION**

THIS AGREEMENT, made and entered into this 28<sup>th</sup> day of August, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Johnstown Area Transportation Study (JATS), a Metropolitan Planning Organization (MPO).

**W I T N E S S E T H:**

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, JATS is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. JATS is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. (Highways) or Chapter 53 of Title 49 (Mass Transportation) to conform with State (SIP) or Federal

(FIP)air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Cambria County as nonattainment for ozone and fine particulate pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel

compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity

state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

JATS is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for

Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the

right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna A. Weaver

BY: James D. Vitek  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Karen C. Prody

BY: Thomas R. Fille  
Deputy Secretary

ATTEST:

JOHNSTOWN AREA TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION

David L. Berg  
Title: MPO Staff

BY: Bronson D. Bergoy  
Title: MPO Secretary

Approved as to legality and form

<sup>for</sup> COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION

BY: [Signature] 8/16/07  
Assistant Counsel  
Department of Transportation

BY: Richard C. Zeply II 8/28/07

BY: Michael A. Levine  
<sup>for</sup> Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Susan Sheikhera  
Chief/Assistant Counsel  
Department of Environmental  
Protection

BY: N/A

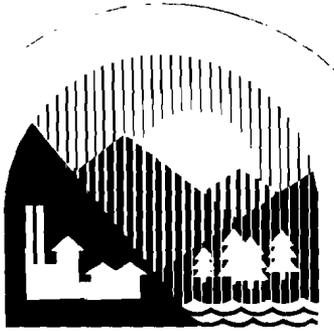
Approved as to legality and form

BY:

  
Office of Attorney General  
General Counsel

8/20/07

**CAMBRIA COUNTY  
PLANNING COMMISSION  
(814)472-2106**



**401 CANDLELIGHT DRIVE  
SUITE 213  
EBENSBURG, PA 15931**

**RESOLUTION**

**BE IT RESOLVED** that the Coordinating Committee of the Johnstown Area Transportation Study (JATS) which serves as the Metropolitan Planning Organization (MPO) or Rural Planning Organization (RPO) or Independent County (IC) for Cambria County authorizes the Secretary of the MPO/RPO/IC to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

By *David L. Belz*  
David L. Belz  
MPO/RPO Staff

SIGNED:

By *Bradford G. Beigay*  
Bradford G. Beigay  
MPO/RPO Secretary

Date: 7.2.07

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COUNTY PLANNING COM.  
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**LANCASTER**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

LANCASTER COUNTY TRANSPORTATION COORDINATING COMMITTEE  
A METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT made and entered into this 31<sup>st</sup> day of July, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Lancaster County Transportation Coordinating Committee (LCTCC), a Metropolitan Planning Organization (MPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, LCTCC is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. LCTCC is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. (Highways) or Chapter 53 of Title 49 (Mass Transportation) IC111 to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area;

or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R. Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Lancaster County as nonattainment for ozone and fine particulate pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity

provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific

conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## II. CONSULTATION PROCESS

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

LCTCC is designated as a Scenario 2 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## III. ENFORCEMENT

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to

mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125 (c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

#### IV. TERMINATION

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

.....

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna J. Weaver

BY: James D. White  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Warren J. Hoke

BY: Thomas W. Filler  
Deputy Secretary

ATTEST:

LANCASTER COUNTY TRANSPORTATION  
COORDINATING COMMITTEE  
METROPOLITAN PLANNING ORGANIZATION

J.P. 4/23/07  
MPO Secretary

BY: Molly E. Henderson  
MPO Chairperson

Approved as to legality and form f COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION

BY: [Signature] 6/29/07  
Assistant Counsel  
Department of Transportation

BY: Michael C. Ziegler II 6/29/07

BY: Michael J. Heine  
Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Susan Shipman  
Chief/Assistant Counsel  
Department of Environmental  
Protection

BY: N/A

Approved as to legality and form

APPROVED FOR FORM AND LEGALITY  
BY: [Signature]  
Deputy General Counsel

BY: Angie Elliot 7/31/07  
Office of Attorney General

# LANCASTER COUNTY

## Transportation Coordinating Committee

### MEMBERS

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION  
LANCASTER COUNTY BOARD OF COMMISSIONERS  
LANCASTER COUNTY PLANNING COMMISSION  
CITY OF LANCASTER

RED ROSE TRANSIT AUTHORITY  
LANCASTER AIRPORT AUTHORITY  
LANCASTER COUNTY TRANSPORTATION AUTHORITY  
LANCASTER COUNTY LEGISLATORS

50 NORTH DUKE STREET  
PO BOX 83480  
LANCASTER, PA 17608-3480  
TELEPHONE: (717) 299-8333  
FAX: (717) 295-3659

### LANCASTER COUNTY TRANSPORTATION COORDINATING COMMITTEE RESOLUTION

**BE IT RESOLVED** that the Lancaster County Transportation Coordinating Committee (LCTCC), which serves as the Metropolitan Planning Organization (MPO) for Lancaster County, authorize the Chairman and Secretary of the MPO to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

SIGNED:

By DF Royer  
David F. Royer  
MPO Secretary

By Molly S. Henderson  
Molly Henderson  
MPO Chairperson

Date: 4/23/07



**LEBANON**

**MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

**AND**

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**LEBANON COUNTY METROPOLITAN PLANNING ORGANIZATION**

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of July, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Lebanon County Metropolitan Planning Organization (LEBCO MPO).

**W I T N E S S E T H:**

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, Lebanon County Metropolitan Planning Organization is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. Lebanon County Metropolitan Planning Organization (LEBCO MPO) is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of

1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. (Highways) or Chapter 53 of Title 49 (Mass Transportation) to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Lebanon County as nonattainment for ozone and fine particulate pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

**I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or

approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

Lebanon County Metropolitan Planning Organization is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems

necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by

Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

Edna L. Weaver

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

BY: James D. Ritz  
Deputy Secretary

ATTEST:

Wanda J. Hoke

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

BY: Thomas H. Foll  
Deputy Secretary

ATTEST:

Jill En  
Title: Commissioner

LEBANON COUNTY METROPOLITAN PLANNING  
ORGANIZATION

BY: William A. Carpenter  
Title: Commissioner

Approved as to legality and form <sup>for</sup> COMPTROLLER OF DEPARTMENT OF TRANSPORTATION

BY: [Signature] 6/25/07  
Assistant Counsel  
Department of Transportation  
BY: Richard C. Lepley 6/29/07

BY: Michael Heine  
Chief Counsel  
Department of Transportation  
COMPTROLLER OF DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Susan Shinkman  
Chief/Assistant Counsel  
Department of Environmental Protection  
BY: N/A

Approved as to legality and form

BY: Amy Williams 7/31/07  
Office of Attorney General

**APPROVED FOR FORM AND LEGALITY**  
By [Signature]  
Deputy General Counsel



**RESOLUTION**

**BE IT RESOLVED** that the Policy Board (Coordinating Committee) of the Lebanon County Metropolitan Planning Organization (LEBCO MPO) authorizes the Chairman and Secretary of the MPO to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

By

Commissioner Jo Ellen Litz  
LEBCO MPO Secretary

SIGNED:

By

Commissioner William G. Carpenter  
LEBCO MPO Chairman

Date: 4-26-07

**LEHIGH VALLEY**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

LEHIGH VALLEY TRANSPORTATION STUDY  
A METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 21<sup>st</sup> day of September, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Lehigh Valley Transportation Study, a Metropolitan Planning Organization (MPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, Lehigh Valley Transportation Study is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. Lehigh Valley Transportation Study is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. (Highways) or Chapter 53 of Title 49

(Mass Transportation) to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R. Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Lehigh and Northampton Counties as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter

of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures''; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United States Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### I. GENERAL PROVISIONS

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans

before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## II. CONSULTATION PROCESS

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

Lehigh Valley Transportation Study is designated as a Scenario 2 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## III. ENFORCEMENT

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125 (c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to

comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

IV. TERMINATION

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_

BY: James D. Ritz  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

\_\_\_\_\_

BY: Thomas F. Foll  
Deputy Secretary

ATTEST:

LEHIGH VALLEY TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION

[Signature]  
\_\_\_\_\_

BY: Michael N. Lavin  
\_\_\_\_\_

Title: MPG Member

Title: Secretary

Approved as to legality and form <sup>for</sup> COMPTROLLER OF DEPARTMENT OF TRANSPORTATION

BY: [Signature]  
Assistant Counsel  
Department of Transportation

BY: Richard C. Lepley II 8/28/07

BY: Michael J. Blum  
Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: [Signature]  
Chief/Assistant Counsel  
Department of Environmental Protection

BY: \_\_\_\_\_

Approved as to legality and form

BY: Angie M. Elliott 9/21/07  
Office of Attorney General

**APPROVED FOR FORM AND LEGALITY**  
By [Signature] 9/7/07  
Deputy General Counsel



# LEHIGH VALLEY TRANSPORTATION STUDY

C/O LEHIGH VALLEY PLANNING COMMISSION  
961 MARCON BOULEVARD, SUITE 310  
ALLENTOWN, PENNSYLVANIA 18109  
(610) 264-4544

## RESOLUTION

**BE IT RESOLVED** that the Coordinating Committee of the Lehigh Valley Transportation Study (LVTS) which serves as the Metropolitan Planning Organization (MPO) for Lehigh and Northampton counties authorizes the Secretary of the MPO to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

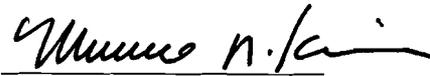
By



MPO Member

SIGNED:

By



LVTS Secretary

Date:

8/2/07

# READING

**MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

**AND**

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**READING AREA TRANSPORTATION STUDY  
A METROPOLITAN PLANNING ORGANIZATION**

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of August, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Reading Area Transportation Study, a Metropolitan Planning Organization (MPO).

**W I T N E S S E T H:**

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, Reading Area Transportation Study is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. Reading Area Transportation Study is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or

approved under Title 23 U.S.C. (Highways) or Chapter 53 of Title 49 (Mass Transportation) to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R. Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Berks County as nonattainment for ozone and fine particulate pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that

"EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or

approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

Reading Area Transportation Study is designated as a Scenario 2 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not

inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125 (c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State

Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna d. Weaver

BY: James D. Rihy  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Karyn Gorder

BY: Thomas Z. Filla  
Deputy Secretary

ATTEST:

READING AREA TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION

Donna M. Rauch

\* BY: Alan P. J.  
Title: MPO Secretary

Title: MPO Staff

Approved as to legality and form <sup>for</sup> COMPTROLLER OF DEPARTMENT OF TRANSPORTATION

BY: Paul D. ...  
Assistant Counsel  
Department of Transportation

BY: Michael C. Lyley II 8/19/07

BY: Michael H. ...  
Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Susan ...  
Chief/Assistant Counsel  
Department of Environmental Protection

BY: N/A

Approved as to legality and form

BY: Amy M. Delia 8/31/07  
Office of Attorney General

APPROVED FOR FORM AND LEGALITY  
By: [Signature]  
Deputy General Counsel

RECEIVED  
Office of Attorney General  
AUG 22 2007  
Legal Review Section

RECEIVED  
JUN 12 2007  
PP & R COMPTROLLER

**RESOLUTION OF THE  
READING AREA TRANSPORTATION STUDY  
CONCERNING  
TRANSPORTATION PLANNING, TRANSPORTATION CONFORMITY, AND THE  
STATE IMPLEMENTATION PLAN**

WHEREAS, the Clean Air Act, as amended in 1990, discussed implementing policy, criteria, and procedures for demonstrating conformity of plans, programs and projects in an applicable State Implementation Plan (SIP); and

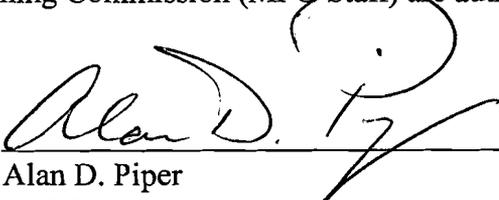
WHEREAS, Reading Area Transportation Study (RATS) is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with the Pennsylvania Department of Transportation (PennDOT), for conducting the continuing, coordinated, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. Reading Area Transportation Study is the forum for cooperative transportation planning and decision making in Berks County; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C.(Highways) or Chapter 53 of Title 49 (Mass Transportation) to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

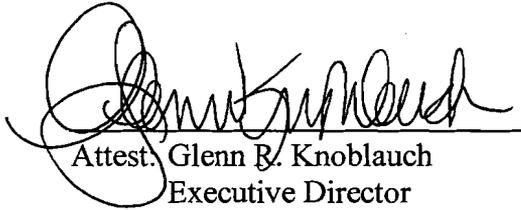
WHEREAS, RATS has executed a Memorandum of Agreement (MOA) that mandates an identified consultation procedure between PennDOT, RATS, Pennsylvania Department of Environment Protection (PennDEP), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and United States Environmental Protection Agency (EPA); and

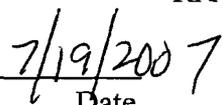
WHEREAS, this consultation procedure is further described in Section V, *Interagency Consultation/Resolution of Conflict/Public Involvement* in the Conformity SIP of the Commonwealth of Pennsylvania;

NOW THEREFORE, Be It Resolved, that (1) the RATS Coordinating Committee authorizes the submission of the executed MOA to PennDOT, and (2) the Secretary of RATS and the Executive Director of the Berks County Planning Commission (MPO Staff) are authorized to execute contracts and related documents.

  
Alan D. Piper  
RATS Secretary

  
Date

  
Attest: Glenn B. Knoblauch

  
Date

Executive Director

Berks County Planning Commission (MPO Staff)

**SCRANTON/WILKES-BARRE**

**MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

**AND**

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**LACKAWANNA-LUZERNE TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION**

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of July, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Lackawanna-Luzerne Transportation Study (LLTS), a Metropolitan Planning Organization (MPO).

**W I T N E S S E T H:**

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, LLTS is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. LLTS is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. of the Federal Transit Act to conform with State (SIP) or Federal (FIP) air quality

implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R. Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Lackawanna and Luzerne Counties as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel

compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United States Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity

Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

LLTS is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable,

Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the

right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna S. Weaver

BY: James D. Vity  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Wanda J. Hoke

BY: Thomas R. Fild  
Deputy Secretary

ATTEST:

LACKAWANNA-LUZERNE TRANSPORTATION  
STUDY  
METROPOLITAN PLANNING ORGANIZATION

Nancy Snee

BY: Adrian M. Mowli

Title MPD staff

Title: MPD Secretary

Approved as to legality and form

for COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION

BY: [Signature] 7/11/07  
Assistant Counsel  
Department of Transportation

BY: Richard Zeply II 7/12/07

BY: for Michael H. Kline  
Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Ausa Shinkona  
Chief/Assistant Counsel  
Department of Environmental  
Protection

BY: N/A

Approved as to legality and form

BY: Amy McEllister 7/31/07  
Office of Attorney General

APPROVED FOR FORM AND LEGALITY  
By [Signature]  
Deputy General Counsel

**RESOLUTION**

**BE IT RESOLVED** that the Coordinating Committee of the Lackawanna/Luzerne Transportation Study (LLTS) which serves as the Metropolitan Planning Organization (MPO) authorizes the Secretary of the MPO to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

SIGNED:

By Nancy Anee  
7/6/07  
MPO staff

By Anthony Manti  
7/6/07  
MPO Secretary

Date:

**SHENANGO VALLEY**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

SHENANGO VALLEY TRANSPORTATION STUDY  
A METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 7 day of December, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Shenango Valley Transportation Study, a Metropolitan Planning Organization (MPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, Shenango Valley Transportation Study is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. Shenango Valley Transportation Study (SVTS) is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. of the Federal Transit Act to

conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Mercer County as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter

of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United States Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans

before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

Shenango Valley Transportation Study is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125 (c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to

comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna L. Weaver

BY: James D. Wiley 10/10/07  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Wanda Hoke

BY: Thomas R. Fild  
Deputy Secretary

ATTEST:

SHENANGO VALLEY TRANSPORTATION STUDY  
METROPOLITAN PLANNING ORGANIZATION

David M. Giacomin

X BY: Marcus A. Hinkhouse  
X Title: chairperson

Title: MPO Sec.

Approved as to legality and form ~~for~~ COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION

BY: Spencer Roth 10/23/07  
Assistant Counsel  
Department of Transportation

BY: Richard C. Zeply II 11/7/07

BY: Michael H. Gline  
Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Susan Shinkawa  
Chief/Assistant Counsel  
Department of Environmental  
Protection

BY: Robert J. Zeman  
12/7/2007

Approved as to legality and form

BY: Angela D. Lister 11/29/07  
Office of Attorney General

ACC 11/20/07  
acc



**Mercer County Regional Planning Commission**

**BE IT RESOLVED** that the Coordinating Committee of the Shenango Valley Area Transportation Study (SVATS) which serves as the Metropolitan Planning Organization (MPO) or Rural Planning Organization (RPO) or Independent County (IC) for Mercer County authorizes the Secretary of the MPO/RPO/IC to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

SIGNED:

By Daniel M. Gracenia

By Marcia A. Hirschmann

Daniel M. Gracenia  
MPO Secretary

MARCIA A. HIRSCHMANN  
MPO Chairman

Date: 9-24-07



**SPC**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

ALLEGHENY COUNTY HEALTH DEPARTMENT  
LOCAL AIR QUALITY AGENCY

AND

SOUTHWESTERN PENNSYLVANIA COMMISSION  
METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 20<sup>TH</sup> day of December, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Allegheny County Health Department, the local air quality agency, and the Southwestern Pennsylvania Commission (SPC), the Metropolitan Planning Organization (MPO). for the counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Washington and Westmoreland.

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, the Allegheny County Health Department is the local air quality agency which will participate in the interagency consultation process; and,

WHEREAS, SPC is the Metropolitan Planning Organization (MPO) for the counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Washington and Westmoreland and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §134 and Title 49 U.S.C. §5303-5306, 5323(k). SPC is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. (Highways) or Chapter 53 of Title 49 (Mass Transportation) to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R. Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Washington, and Westmoreland Counties as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule. Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air

Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implementing the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by Pennsylvania's Air Pollution Control Act (APCA), in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local public transportation agencies have representatives on the MPO, and the local public transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO and the local transportation agencies agree that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment

or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

## **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

SPC is designated as a Scenario 2 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its

geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

### III. ENFORCEMENT

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be

necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

#### **IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

Edna d. Weaver

ATTEST:

Karen Gordy

ATTEST:

Roger C. Westman

Title: AQ Manager

ATTEST:

Vincent M. Marano

Title: \_\_\_\_\_

Approved as to legality and form

BY: [Signature]  
Assistant Counsel  
Department of Transportation

BY: Michael McLine  
for Chief Counsel  
Department of Transportation

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

BY: [Signature]  
Deputy Secretary

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

BY: [Signature]  
Deputy Secretary

ALLEGHENY COUNTY HEALTH DEPARTMENT  
LOCAL AIR QUALITY AGENCY

BY: [Signature] 11/23  
Title: Director

SOUTHWESTERN PENNSYLVANIA COMMISSION  
METROPOLITAN PLANNING ORGANIZATION

BY: [Signature]  
Title: Secretary - Treasurer

COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION

BY: [Signature] 11/26/07

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Susan Shickma BY: N/A  
Chief/Assistant Counsel  
Department of Environmental  
Protection

Approved as to legality and form

BY: Amy M Elliott 12/20/07  
Office of Attorney General

**APPROVED FOR FORM AND LEGALITY**  
By [Signature] 12/11/07  
Deputy General Counsel

SOUTHWESTERN PENNSYLVANIA COMMISSION

RESOLUTION NO. 4-07

A RESOLUTION OF THE SOUTHWESTERN PENNSYLVANIA COMMISSION to authorize signature of the Transportation Conformity State Implementation Plan Memorandum of Agreement.

WHEREAS, the federal Environmental Protection Agency (EPA) and the US Department of Transportation (USDOT), in accord with the federal Clean Air Act and the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), require that each state cooperatively develop a Transportation Conformity State Implementation Plan (Conformity SIP), and

WHEREAS, the Conformity SIP details the process that will be used to perform conformity determinations, including a federally required interagency consultation process, and

WHEREAS, Metropolitan Planning Organizations (MPOs) are responsible under SAFETEA-LU and the Clean Air Act for transportation conformity determinations in designated nonattainment and maintenance areas; and

WHEREAS, MPOs, states, and other planning partners are responsible under SAFETEA-LU for conducting a continuing, cooperative, and comprehensive transportation planning process, and

WHEREAS, within Pennsylvania, SIP revisions are the statutory responsibility of the Department of Environmental Protection (PaDEP) under the Pa. Air Pollution Control Act and the federal Clean Air Act; SIP revisions are submitted by PaDEP to the EPA on behalf of the Commonwealth, and

WHEREAS, within Allegheny County the Allegheny County Health Department (ACHD) is responsible for air quality regulation, and

WHEREAS, within Pennsylvania, PennDOT is the state agency responsible for statewide transportation planning and programming, and

WHEREAS, PennDOT was designated as the lead agency in developing the Pennsylvania Conformity SIP in consultation with its planning partners and PaDEP, and

WHEREAS, the Pennsylvania Conformity SIP has been developed in accord with federal and state requirements; it includes interagency consultation procedures for each agency responsible for transportation planning, programming, and conformity within designated nonattainment and maintenance areas, and

WHEREAS, SPC, as the MPO responsible for transportation planning, programming and conformity within southwestern Pennsylvania's designated nonattainment and maintenance areas, is required to

sign a Memorandum of Agreement (MOA) with ACHD, PennDOT, and PaDEP indicating adoption of the Conformity SIP.

NOW THEREFORE BE IT RESOLVED that the Southwestern Pennsylvania Commission adopts the Pennsylvania Transportation Conformity State Implementation Plan.

RESOLVED FURTHER that the Southwestern Pennsylvania Commission authorizes its Chairman or Secretary-Treasurer to sign the Pennsylvania Transportation Conformity State Implementation Plan (SIP) Memorandum of Agreement.

I, Charles A. Camp, HEREBY CERTIFY that I am Secretary-Treasurer of the SOUTHWESTERN PENNSYLVANIA COMMISSION; that the foregoing resolution was adopted, in accordance with the By-Laws, by the Members of said Commission at a meeting duly called and held on the 30th day of April 2007, a quorum being present; and that said resolution is now in full force and effect.

IN TESTIMONY WHEREOF I hereto subscribe my name as Secretary-Treasurer.

  
Secretary-Treasurer

# Allegheny County Health Department

## DIRECTOR

Bruce W. Dixon, M.D.



**Air Quality Program**  
**301 39<sup>th</sup> Street Building 7**  
**Pittsburgh, PA 15201**  
**412-578-8103**

October 24, 2007

## BOARD OF HEALTH

Paul M. King, Esq., Q.E.P.  
Chair

Lee Harrison, M.D.  
Vice Chair

Al M. Ahmed, P.E.  
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James M. Flynn, Jr.  
Ann S. Francis, R.N.

Hon. Jan Rea  
Lidia C. Turzai, M.D.  
William Youngblood

Mr. Michael Baker  
Commonwealth Keystone Building - Sixth Floor  
400 North Street  
Harrisburg, PA 17120-0064

Dear Mr. Baker:

In response to your request for clarification regarding the status of the Transportation Conformity Agreement signatory for the Allegheny County Health Department, please be advised as follows.

The ACHD Director is the person charged under Pennsylvania law with the duty to abate nuisances detrimental to the public's health [16 P.S. §12012(d)]. The Director is also the Administrator of the ACHD, which operates under a mandate to prevent or remove conditions constituting menaces to public health [16 P.S. §12010(c)]. The Pennsylvania State Implementation Plan (SIP), a requirement of the Section 110 of the Clean Air Act, is intended to limit air pollution emissions so as to bring Allegheny County and Pennsylvania into conformity with national ambient air quality standards for criteria pollutants to protect public health and welfare [42 U.S.C.A. §7410 A(2)(d)(i)].

Air pollution is emitted by many stationary sources in Allegheny County, including industrial boilers, power plants, and industrial processes. Air pollution causes or contributes to a variety of health problems, including heart disease, asthma, and other respiratory ailments. As such, air pollution is a nuisance detrimental to the public's health.

Air pollution is regulated by Article XXI, the Rules and Regulations of the Allegheny County Health Department for Air Pollution Control. Any permits issued or regulations enforced by the Director or his designee under Article XXI are required by law to be issued or enforced with the intent of minimizing air pollution and thus preventing public health nuisances. All changes to Article XXI proposed by the Director, and approved by the Board of Health are required by law to be for the purpose of preventing or removing nuisances detrimental to public health, and not to the detriment of public health.



Therefore, it is within the Director's purview, both by virtue of his position as Administrator of the ACHD and as the person with the authority to prevent or abate nuisances in Allegheny County, to enter into an agreement limiting the Health Department's power to create rules detrimental to Pennsylvania's SIP.

I trust that this information satisfactorily addresses your questions in this matter. Please advise should you require anything additional.

Sincerely,



Roger Westman  
Manager, Air Quality Program  
Allegheny County Health Department.

RECEIVED  
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**YORK**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

YORK AREA METROPOLITAN PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of July, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the York Area Metropolitan Planning Organization (YAMPO), a Metropolitan Planning Organization (MPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, YAMPO is a Metropolitan Planning Organization (MPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. YAMPO is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. (Highways) or Chapter 53 of Title 49 (Mass Transportation) to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R. Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated York County as nonattainment for ozone and fine particulate pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity

procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the MPO, and the local transportation agencies will participate in the consultation process through their representatives on the MPO; and,

WHEREAS, in order for the MPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the MPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in

order to avoid the withholding of the federal funds for PennDOT, and MPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and MPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the MPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the MPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

YAMPO is designated as a Scenario 2 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established

that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA. (Created new section as suggested by Bill Calder)

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The MPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the

right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna C. Weaver

BY: James D. White  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Wanita J. Hoke

BY: Thomas R. Fick  
Deputy Secretary

ATTEST:

YORK AREA METROPOLITAN PLANNING  
ORGANIZATION

Leticia Bell  
Title: Secretary

BY: Douglas E. Kelly  
Title: MPO CHAIRMAN

Approved as to legality and form  COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION

BY: Patrick O'Hara  
Assistant Counsel  
Department of Transportation

BY: Richard C. Zepher # 6/29/07

BY: Michelle Hline  
for Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Susan M. [Signature]  
Chief/Assistant Counsel  
Department of Environmental  
Protection

N/A

Approved as to legality and form

BY: Amy M. Olliver 7/31/07  
Office of Attorney General

APPROVED FOR FORM AND LEGALITY

BY: [Signature]  
Deputy General Counsel



## YORK COUNTY PLANNING COMMISSION

28 EAST MARKET STREET, YORK, PENNSYLVANIA 17401-1580  
TELEPHONE: (717) 771-9870 FAX: (717) 771-9511

### RESOLUTION

**BE IT RESOLVED** that the Coordinating Committee of the York Area Metropolitan Planning Organization (YAMPO) which serves as the Metropolitan Planning Organization (MPO) for York County authorizes the Chairman and Secretary of the MPO to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

SIGNED:

By Felicia Dell  
Secretary 4/26/07  
Felicia Dell  
MPO/RPO Secretary

By 4-26-07  
Douglas E. Kilgore  
Douglas Kilgore  
MPO/RPO Chairman

Date:

# **RURAL PLANNING ORGANIZATIONS**

**Adams County Transportation Planning  
Organization**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

ADAMS COUNTY TRANSPORTATION PLANNING ORGANIZATION  
RURAL PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 30<sup>TH</sup> day of May, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Adams County Transportation Planning Organization (ACTPO), a Rural Planning Organization (RPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, ACTPO is a Rural Planning Organization (RPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. ACTPO is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. (Highways) of Chapter 53 of Title 49 (Mass Transportation) to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Adams County as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an RPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity

procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the RPO, and the local transportation agencies will participate in the consultation process through their representatives on the RPO; and,

WHEREAS, in order for the RPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the RPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in

order to avoid the withholding of the federal funds for PennDOT, and RPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and RPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the RPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the RPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

ACTPO is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established

that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The RPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna A. Weaver

BY: James D. Rhy  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Karyn Updey

BY: Thomas E. Fill  
Deputy Secretary

ATTEST:

ADAMS COUNTY TRANSPORTATION PLANNING  
ORGANIZATION  
RURAL PLANNING ORGANIZATION

Lucy Rott

BY: Philbert

Title: Vice Chair

Title: Chair, ACTPO

Approved as to legality and form

COMPTROLLER OF DEPARTMENT OF  
for TRANSPORTATION

BY: [Signature] 7/11/07  
Assistant Counsel  
Department of Transportation

BY: Richard C. Lepley II 7/12/07

BY: Michael D. Hines  
for Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Aura Shinkema  
Chief/Assistant Counsel  
Department of Environmental  
Protection

BY: N/A

Approved as to legality and form

BY: Angela Elliott 7/19/07  
Office of Attorney General

# Adams County Transportation Planning Organization

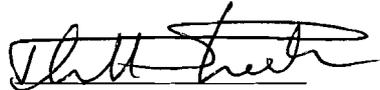
19 Baltimore Street, Suite 101  
Gettysburg, Pennsylvania 17325  
(717) 337-9824

## RESOLUTION

**BE IT RESOLVED** that the Adams County Transportation Planning Organization (ACTPO) which serves as the Rural Planning Organization (RPO) for Adams County authorizes the Chairperson and Vice-Chairperson of the RPO to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

By:

  
Theodore H. Streeter  
ACTPO Chair

SIGNED:

By:

  
Lucy Lott  
ACTPO Vice-Chair

Date: 5-30-07

**Northeastern Pennsylvania Alliance**

**MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION  
AND  
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND  
NORTHEASTERN PENNSYLVANIA ALLIANCE  
RURAL PLANNING ORGANIZATION**

**THIS AGREEMENT**, made and entered into this 25<sup>th</sup> day of June, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Northeastern Pennsylvania Alliance (NEPA), a Rural Planning Organization (RPO).

**WITNESSETH:**

**WHEREAS**, PennDOT is the state agency responsible for statewide transportation planning and programming; and

**WHEREAS**, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

**WHEREAS**, NEPA is a Rural Planning Organization (RPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. NEPA is the forum for cooperative transportation decision making; and,

**WHEREAS**, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C.(Highways) or Chapter 53 of Title 49 (Mass Transportation) to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

**WHEREAS**, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

**WHEREAS**, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make

conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

**WHEREAS**, EPA has designated Carbon, and Monroe Counties as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

**WHEREAS**, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

**WHEREAS**, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an RPO; and,

**WHEREAS**, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

**WHEREAS**, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

**WHEREAS**, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

**WHEREAS**, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

**WHEREAS**, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

**WHEREAS**, the local transportation agencies have representatives on the RPO, and the local transportation agencies will participate in the consultation process through their representatives on the RPO; and,

**WHEREAS**, in order for the RPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the RPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

**WHEREAS**, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

**NOW, THEREFORE**, the parties intending to be legally bound agree to the following:

## **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and RPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and RPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the RPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the RPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

NEPA is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things

not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125 (c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The RPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna L. Weaver

BY: James D. Rhy 9/4/07  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Karen Yordy

BY: Thomas W. Fidd  
Deputy Secretary

ATTEST:

NORTHEASTERN PENNSYLVANIA ALLIANCE  
RURAL PLANNING ORGANIZATION

Alan A. Baucom

BY: John K. Sox  
Title: President & CEO

Title: V.P. - Community /Gov't Services

Approved as to legality and form:

for **COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION**

BY: [Signature] 8/29/07  
Assistant Counsel  
Department of Transportation

BY: Richard C. Lepley II 9/6/07

BY: Michael H. Cline  
for Chief Counsel  
Department of Transportation

**COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

BY: Ausa Shickman  
Chief/Assistant Counsel  
Department of Environmental Protection

Approved as to legality and form:

**APPROVED FOR FORM AND LEGALITY**

BY: Amyll Elliott 9/2/07  
Office of Attorney General

By [Signature] 9/18/07  
Deputy General Counsel

Northeastern Pennsylvania Alliance



**RESOLUTION**

**OF THE  
NORTHEASTERN PENNSYLVANIA ALLIANCE (NEPA) BOARD OF DIRECTORS  
AUTHORIZING THE PRESIDENT & CHIEF EXECUTIVE OFFICER  
TO EXECUTE AGREEMENTS ON  
BEHALF OF THE NORTHEASTERN PENNSYLVANIA ALLIANCE AND THE  
NEPA RURAL PLANNING ORGANIZATION**

**BE IT RESOLVED** that the Northeastern Pennsylvania Alliance serving as the Rural Planning Organization (RPO) for Carbon, Monroe, Pike, Schuylkill and Wayne Counties authorizes the President and Chief Executive Officer of the Northeastern Pennsylvania Alliance to sign the Memorandum of Agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP), and all other such agreements as required by Federal and State agencies, in the course of meeting its obligations as a Rural Planning Organization.

ADOPTED THIS 25th DAY OF  
July, 2007

A handwritten signature in black ink, reading "Ernest D. Preate, Jr.", is written over a horizontal line. Below the signature, the name and title are printed.

Ernest D. Preate, Jr.  
NEPA Alliance Board Chairperson

**North Central Rural Planning Organization**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

NORTH CENTRAL PENNSYLVANIA REGIONAL PLANNING AND DEVELOPMENT  
COMMISSION  
RURAL PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of July, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the North Central Pennsylvania Regional Planning and Development Commission, a Rural Planning Organization (RPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, North Central Pennsylvania Regional Planning and Development Commission is a Rural Planning Organization (RPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. North Central Pennsylvania Regional Planning and Development Commission is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation

plans, programs, and projects which are funded or approved under Title 23 U.S.C. (Highways) or Chapter 53 of Title 49 (Mass Transportation) to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R. Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Clearfield County as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an RPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the RPO, and the local transportation agencies will participate in the consultation process through their representatives on the RPO; and,

WHEREAS, in order for the RPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the RPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or

approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and RPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and RPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the RPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the RPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 *et seq.* and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

North Central Pennsylvania Regional Planning and Development Commission is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 *et seq.*) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems

necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The RPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by

Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna A. Weaver

BY: James D. Kelly  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Wanda Hoke

BY: Thomas E. Fild  
Deputy Secretary

ATTEST:

NORTH CENTRAL PENNSYLVANIA REGIONAL  
PLANNING AND DEVELOPMENT COMMISSION  
RURAL PLANNING ORGANIZATION

[Signature]

BY: Em M. Bridges

Title: Deputy Director

Title: EXECUTIVE DIRECTOR

Approved as to legality and form *for* COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION 520825

BY: [Signature]  
Assistant Counsel  
Department of Transportation

BY: Richard C. Legley II 6/29/07

BY: Michael H. Hines  
*for* Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: [Signature]  
Chief/Assistant Counsel  
Department of Environmental  
Protection

BY: N/A

Approved as to legality and form

BY: Amy M. Miller 7/31/07  
Office of Attorney General

APPROVED FOR FORM AND LEGALITY  
By: [Signature]  
Deputy General Counsel



"PARTNERING FOR REGIONAL OPPORTUNITIES"  
www.ncentral.com

## NORTH CENTRAL PENNSYLVANIA REGIONAL PLANNING and DEVELOPMENT COMMISSION

651 Montmorenci Road, Ridgway, PA 15853

Phone: 814.773.3162 or 800.242.5872 Fax: 814.772.7045

07-01-752

### Authorizing Signature Resolution

"WHEREAS, the North Central Pennsylvania Regional Planning and Development Commission is the official Rural Planning Organization (RPO) for transportation planning and programming for Cameron, Clearfield, Elk, Jefferson, McKean and Potter counties, and

WHEREAS, the North Central Pennsylvania Regional Planning and Development Commission can enter into contracts with the Pennsylvania Department of Transportation, and

WHEREAS, the North Central Pennsylvania Regional Planning and Development Commission does this on a regular basis, and

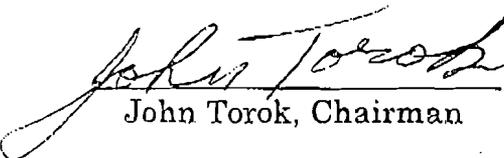
WHEREAS, in order to expedite routine contract execution, and

NOW THEREFORE BE IT RESOLVED THAT, this Commission hereby authorizes the Executive Director, Eric M. Bridges, and in his inability to do so for any reason whatsoever, Deputy Director, Howard Glessner, to sign all routine contracts, continuations and amendments on its behalf."

This resolution made this 24 day of January 2007.

ATTEST:

  
Carole Harshbarger, Secretary

  
John Torok, Chairman

**Northern Tier Rural Planning Organization**

MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

AND

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

AND

NORTHERN TIER REGIONAL PLANNING AND DEVELOPMENT COMMISSION  
RURAL PLANNING ORGANIZATION

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of July, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Northern Tier Regional Planning and Development Commission, a Rural Planning Organization (RPO).

W I T N E S S E T H:

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, Northern Tier Regional Planning and Development Commission is a Rural Planning Organization (RPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. Northern Tier Regional Planning and Development Commission is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or

approved under Title 23 U.S.C. of the Federal Transit Act to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Tioga and Wyoming Counties as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an RPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided

the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the RPO, and the local transportation agencies will participate in the consultation process through their representatives on the RPO; and,

WHEREAS, in order for the RPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the RPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

#### **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans

before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and RPO, transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and RPO transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the RPO regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the RPO's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 et seq. and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

Northern Tier Regional Planning and Development Commission is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in its geographic domain.

## **III. ENFORCEMENT**

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 et seq.) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a)(4)(ii) and 93.125(c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The RPO acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to

comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Edna L. Weaver

BY: James D. Nite  
Deputy Secretary

ATTEST:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

\_\_\_\_\_

BY: Thomas K. Fild  
Deputy Secretary

ATTEST:

NORTHERN TIER REGIONAL PLANNING AND  
DEVELOPMENT COMMISSION  
RURAL PLANNING ORGANIZATION

Frank A. Coshitzki

BY: Joseph J. [unclear]  
Title: BOARD CHAIRMAN

Title: 2nd Vice Chairman

Approved as to legality and form <sup>for</sup> COMPTROLLER OF DEPARTMENT OF TRANSPORTATION

BY: [Signature]  
Assistant Counsel  
Department of Transportation <sup>Kedestor</sup>

BY: Richard C. Zepley # 6129107

BY: Michael H. Hline  
<sup>for</sup> Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Ausa Shikman  
Chief/Assistant Counsel  
Department of Environmental Protection

BY: N/A

Approved as to legality and form

**APPROVED FOR FORM AND LEGALITY**  
[Signature]  
By [Signature]  
Deputy General Counsel

**APPROVED FOR FORM AND LEGALITY**  
By Amy M. Elliott 7/31/07  
Deputy Attorney General

07-05

**RESOLUTION  
OF THE  
NORTHERN TIER REGIONAL PLANNING  
AND DEVELOPMENT COMMISSION'S  
EXECUTIVE COMMITTEE  
CONCERNING  
AIR QUALITY CONFORMITY AND  
RURAL TRANSPORTATION PLANNING**

WHEREAS, Northern Tier Regional Planning and Development Commission is a Rural Planning Organization (RPO) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. Northern Tier Regional Planning and Development Commission is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. of the Federal Transit Act to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Tioga and Wyoming Counties as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe,

Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an RPO; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the RPO, and the local transportation agencies will participate in the consultation process through their representatives on the RPO; and,

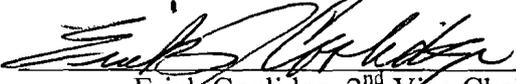
WHEREAS, in order for the RPO's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the RPO agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, BE IT RESOLVED, that the NTRPDC Executive Committee authorizes the execution of a Memorandum of Agreement (MOA).

Adopted this 19th day of April 2007.

  
\_\_\_\_\_  
Judy Mead, NTRPDC Board Chairman

  
\_\_\_\_\_  
Erick Coolidge, 2<sup>nd</sup> Vice Chairperson

**INDEPENDENT COUNTIES**

**Franklin County**

**MEMORANDUM OF AGREEMENT BETWEEN THE  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

**AND**

**PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**FRANKLIN COUNTY PLANNING COMMISSION  
Independent County**

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of July, 2007, by and between the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and the Pennsylvania Department of Environmental Protection (DEP) with the Franklin County Planning Commission, an Independent County (IC).

**WITNESSETH:**

WHEREAS, PennDOT is the state agency responsible for statewide transportation planning and programming; and

WHEREAS, DEP is the state agency responsible for statewide implementation of the Air Pollution Control Act, 35 P.S. §§4001, et seq. (APCA) and the Clean Air Act, 42 U.S.C. §§7401 et seq. (CAA); and,

WHEREAS, Franklin County Planning Commission is an Independent County (IC) and is the organization designated as being responsible, together with PennDOT, for conducting the continuing, cooperative, and comprehensive planning process under Title 23 U.S.C. §34 and Title 49 U.S.C. §1607. Franklin County Planning Commission is the forum for cooperative transportation decision making; and,

WHEREAS, Section 176 of the Clean Air Act Amendments of 1990, 42 U.S.C. Section 7506, requires federally funded transportation plans, programs, and projects which are funded or approved under Title 23 U.S.C. of the Federal Transit Act to conform with State (SIP) or Federal (FIP) air quality implementation plans; and,

WHEREAS, the CAA defines conformity to an implementation plan as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards, and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; and,

WHEREAS, on November 24, 1993, the Environmental Protection Agency (EPA) promulgated a conformity rule, 40 C.F.R Parts 51 and 93, (Conformity Rule) which required the MPOs and similar agencies and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans (Plan) and transportation improvement programs (TIPs) and projects before they are adopted, approved, or accepted; and,

WHEREAS, EPA has designated Franklin County as nonattainment for ozone pollution, a designation which initiates the transportation conformity provisions of the Clean Air Act for 20 years following redesignation to attainment.

WHEREAS, EPA has amended the Conformity Rule; Public Law 109-59, the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) passed on August 10, 2005 made additional changes to 40 C.F.R. Parts 51 and 93, including streamlining Conformity SIP requirements; and EPA issued guidance for Conformity SIPs on November 18, 2004 (memorandum from EPA's Suzanne Rudzinski to EPA Regional Air Directors, titled "Conformity SIP Guidance") and in February 2006 issued Interim Guidance for Implement the Transportation Provisions in the SAFETEA-LU; and

WHEREAS, the Conformity Rule mandates that applicable highway or transit projects which are approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT, PennDOT or an MPO or RPO or IC; and,

WHEREAS, the Conformity Rule requires the Commonwealth of Pennsylvania to develop detailed State conformity procedures; and,

WHEREAS, the preamble to the Conformity Rule states that "EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures"; and,

WHEREAS, the Commonwealth of Pennsylvania has developed detailed State conformity procedures which meet the requirements of the CAA and the Conformity Rule and these procedures are known as the Conformity State Implementation Plan; and,

WHEREAS, this agreement is authorized by the APCA, in order to implement in the Commonwealth of Pennsylvania, the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the Conformity State Implementation Plan is a requirement of the conformity provisions of the CAA and the regulations promulgated pursuant thereto; and,

WHEREAS, the local transportation agencies have representatives on the IC, and the local transportation agencies will participate in the consultation process through their representatives on the IC; and,

WHEREAS, in order for the IC's transportation projects to be included in the TIP, incorporated into the Statewide Transportation Improvement Program (STIP), and incorporated into the Plan, and forwarded to the FHWA/FTA for approval, the IC agrees that this MOA will be the mechanism to enforce and assure compliance with the Conformity State Implementation Plan and to satisfy the requirements of the APCA, the CAA and Conformity Rule; and,

WHEREAS, a transportation project in an area designated by the United State Environmental Protection Agency as nonattainment or maintenance for particulates must be found to be in conformity for this pollutant prior to being approved by the FHWA or FTA.

NOW, THEREFORE, the parties intending to be legally bound agree to the following:

## **I. GENERAL PROVISIONS**

(1) The foregoing paragraphs are made a part of this Agreement.

(2) Section 176 of the CAA and the Conformity Rule require transportation plans, programs and projects which are funded or approved under Titles 23 or 49 of the United States Code to conform with state or federal air quality implementation plans before they are approved, funded or constructed. The Conformity Rule requires Pennsylvania to develop and submit a conformity state implementation plan revision which is enforceable by DEP in order to avoid the withholding of the federal funds for PennDOT, and MPO, RPO, IC transportation plans, programs and/or projects. The signing of this Agreement and agreeing to comply with the Conformity State Implementation Plan will enable Pennsylvania to fulfill the requirements of the CAA, as amended by SAFETEA-LU (P.L. 109-59, August 10, 2005) and to allow PennDOT and IC transportation plans, programs and/or projects to proceed.

(3) This MOA encompasses the jurisdiction, present and future, of the IC regarding regional and project specific conformity requirements as may be applicable as a result of all or part of the IC's jurisdiction being subject to conformity requirements by Clean Air Act, 42 U.S.C. §§7401 *et seq.* and applicable regulations and guidance issued by EPA or DOT.

(4) This MOA incorporates by reference all other portions of the Pennsylvania Conformity State Implementation Plan Revision, of which it is a part.

## **II. CONSULTATION PROCESS**

Consultation, as required by 42 U.S.C. and specifically 40 C.F.R. Part 93, Section 93.105, will be accomplished through Volume I, Section V of the Pennsylvania Conformity SIP.

Franklin County Planning Commission is designated as a Scenario 1 agency.

Each MPO, Rural Planning Organization (RPO) and Independent County (IC) which is part of the consultation process will participate in consultations regarding issues directly relevant to it and the transportation plans, programs or projects in its geographic domain, and will not participate in issues not directly relevant to transportation plans, programs or projects outside its geographic domain and that are not anticipated to affect transportation or vehicular emissions in

its geographic domain.

### III. ENFORCEMENT

(1) Section 4 of the APCA (35 P.S. §4004) authorizes and requires DEP to implement the provisions of the CAA (42 U.S.C. §§7401 *et seq*) and to do any and all other acts and things not inconsistent with any provisions of the APCA which DEP deems necessary or proper for the enforcement of the APCA.

(2) The Interim Guidance for "Implementing the transportation conformity provisions in the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users" was issued in February 2006. This guidance established that States are only required to tailor all or portions of the following three sections of the federal rule to meet their individual circumstances:

- 40 CFR 93.105, which addresses consultation procedures;
- 40 CFR 93.122(a)(4)(ii), which addresses written commitments to control measures that are not included in an MPO's plan and TIP that must be obtained prior to a conformity determination and the requirement that such commitments must be fulfilled; and
- 40 CFR 93.125(c), which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments.

(3) This interagency MOA addresses the consultation procedures set forth in 40 CFR 93.105.

(4) Sections 93.122(a) (4) (ii) and 93.125 (c) are included in the Conformity SIP with the alternative language supplied by EPA.

(5) This agreement is part of the Conformity SIP revision required by the CAA and the federal conformity regulation, 40 C.F.R. Parts 51 and 93, has been entered into by the parties in order to implement the conformity provisions of the CAA and 40 C.F.R. Parts 51 and 93; is not inconsistent with any provisions of the APCA; is a "requirement" of DEP as provided in Section 8 of the APCA (35 P.S. §4008); and, DEP deems this agreement to be necessary and to be proper for the enforcement of the APCA.

(6) Failure to comply with the requirements of the Conformity SIP or this agreement is a violation of the state implementation plan, is a violation of the APCA and is unlawful (as provided by Section 8 of the APCA, 35 P.S. §4008).

(7) The IC acknowledges that DEP has the authority to issue such orders as are necessary to aid in the enforcement of the provisions of the APCA, 35 P.S. §4010.1, and such orders as are necessary to enforce this agreement and the Conformity State Implementation Plan and are within the authority granted by Section 10.1 of APCA (35 P.S. §4010.1).

(8) The parties further agree that if any party fails to comply with a provision of the conformity criteria and procedures contained in this Agreement, that the other parties have the right to file an appropriate action in any court of competent jurisdiction to enforce this Agreement.

(9) This MOA is applicable upon execution and replaces any prior MOA regarding transportation conformity under Title 42 U.S.C.

**IV. TERMINATION**

This Agreement shall be effective until (1) federal law no longer requires conformity of transportation plans, programs and projects to the state implementation plan and (2) PennDOT and DEP mutually agree to terminate this agreement by submission of a state implementation plan revision to the Environmental Protection Agency.

\*\*\*\*\*

IN WITNESS HEREOF, the Parties hereby execute and acknowledge the foregoing as the terms and conditions of this agreement.

ATTEST:

Edna J. Weaver

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

BY: James D. White  
Deputy Secretary

ATTEST:

Wanda J. Hoke

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

BY: Thomas R. Fidd  
Deputy Secretary

ATTEST:

Phil Tarquino  
Phil Tarquino, Director

FRANKLIN COUNTY PLANNING COMMISSION  
An INDEPENDENT COUNTY

BY: Lynn Clinton  
Lynn Clinton, Secretary

Approved as to legality and form

BY: Patricia O'Hara  
Assistant Counsel  
Department of Transportation

<sup>for</sup> COMPTROLLER OF DEPARTMENT OF  
TRANSPORTATION

BY: Richard C. Lyle II 6/29/07

BY: Michael H. Hline  
for Chief Counsel  
Department of Transportation

COMPTROLLER OF DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

BY: Susan Shirkman  
Chief/Assistant Counsel  
Department of Environmental  
Protection

BY: N/A

Approved as to legality and form

BY: Angela Elliott 7/31/07  
Office of Attorney General

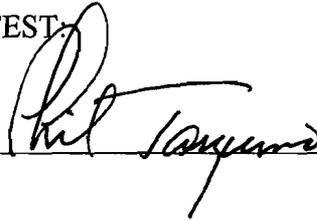
APPROVED FOR FORM AND LEGALITY  
By: [Signature]  
Deputy General Counsel

**SIGNATORY RESOLUTION SIP - 2007**

**BE IT RESOLVED** that the Franklin County Planning Commission which serves as the Independent County Planning Entity (IC) for Franklin County, Pennsylvania, authorizes the Secretary and the Director of the Franklin County Planning Commission to sign the agreement to enforce and assure compliance with the Transportation Conformity State Implementation Plan (SIP).

ATTEST:

By

  
\_\_\_\_\_

Phil Tarquino, Director  
Franklin County Planning Commission

SIGNED:

By

  
\_\_\_\_\_

Lynn Clinton, Secretary  
Franklin County Planning Commission

Date:

4/5/07

FRANKLIN COUNTY PLANNING COMMISSION  
MEETING April 5, 2007 – 3:00 PM

Members Present: L. Clinton, C. Lawver, J. Middour, and R. Ross

Staff Present: P. Tarquino, S. Clayton, and R. Barvinchack

WELCOME

P. Tarquino opened the meeting and welcomed everyone in attendance.

APPROVAL OF MINUTES

The minutes of the February 1, 2007 meeting were approved on a motion by C. Lawver, seconded by R. Ross and approved by all (4-0-0).

PUBLIC COMMENT

None

STAFF REPORTS

S. Clayton reminded members of the Franklin County Municipal Summit being held on April 16, 2007, at the county's new jail. She then informed members that there are currently approximately 40 applicants in process for agricultural land preservation. Settlement on the last of these farms is projected to occur in late 2007 or early 2008.

BUSINESS

- A. South Central Pennsylvania Regional Goods Movement Study  
DCED requests that the Planning Commission review the study and provide an endorsement. A motion to send the letter of endorsement was made by J. Middour, seconded by L. Clinton, and approved by all. Approved 4-0-0.
- B. State Implementation Plan for Transportation Conformity  
PADOT is seeking a memorandum of agreement between planning entities and independent counties to coordinate with various state agencies to conduct air quality analysis for the county in meeting the guidelines of the Federal Highway Administration. A motion was made by C. Lawver to have L. Clinton and P. Tarquino as signatories as specified in the signatory resolution attached. The motion was seconded by R. Ross and approved by all. Approved 4-0-0. Additionally, the memorandum of agreement was approved for signature. Approved 4-0-0.
- C. DCNR Community Conservation Partnership Program Grant Application  
Greencastle Watershed Association is applying for a grant to purchase land for the purpose of wellhead protection. The intention is to then lease the land to the school district for passive recreation. The watershed association requests that the Planning Commission provide a letter of support that recommends the project for

approval. A motion to send the letter was made by R. Ross, seconded by J. Middour, and approved by all. Approved 4-0-0.

D. Greenway and Open Space Plan

The plan is currently being finalized and will likely be presented at the next meeting.

E. Southampton Township Agricultural Security Area

Members were provided with Southampton Township's updated Agricultural Security Area list and map for review. The only concerns with the list were the four parcels with conflicting zoning. Those parcels were located either entirely or partially in Commercial and/or Industrial zones. Staff recommended a letter to the township reminding them that any parcel located in the ASA is eligible for perpetual preservation through the county's Agricultural Land Preservation Program and that they should reconsider allowing such parcels to remain in the ASA to avoid potential incompatible land use issues in the future. A motion to send the letter to Southampton Township was made by C. Lawver, seconded by J. Middour and approved by all. Approved 4-0-0.

SUBDIVISION REPORT

The subdivision reports for February and March were approved as presented on a motion by R. Ross, seconded by L. Clinton and approved by all. Approved 4-0-0.

REMARKS

None

ADJOURNMENT

The meeting was adjourned at 3:45 p.m. on a motion by R. Ross, seconded by C. Lawver and approved by all. Approved 4-0-0.

**Appendix 4: Public Comments and Responses**

## Appendix 5 - Acronyms

## ACRONYMS

AADT	Annual Average Daily Traffic (July 1 and seasonally adjusted)	CMP	Congestion Management Plan
AASHTO	American Association of State and Highway Transportation Officials	CMS	Congestion Management System OR Contract Management System
AATT	Annual Average Truck Traffic	CMSA	Consolidated Metropolitan Statistical Area
ACT	Alternative Control Technique Documents	CNG	Compressed Natural Gas
ADA	Americans with Disabilities Act of 1990	CO	Carbon Monoxide (ppm) OR Central Office
ADTT	Average Daily Traffic	CO <sub>2</sub>	Carbon Dioxide (ppm)
AFV	Average Daily Truck Traffic	CPI	Consumer Price Index
AIRS	Alternative Fuel Vehicle	CTG	Control Technique Guidance
APCA	Aerometric Information Retrieval Systems	CV	Conventional Vehicle
APO	Air Pollution Control Act of 1992 (Pennsylvania)	DEP	Department of Environmental Protection
AQ	Average Passenger Occupancy	DEIS	Draft Environmental Impact Statement
AQP	Air Quality	DOI	Department of Interior
AQTF	Air Quality Program	DOT	Department of Transportation
AQTV	Air Quality Task Force	DVMT	Department of Transportation
AVI	Air Quality Related Values	DVRPC	Daily Vehicle Miles of Travel
AVO	Automatic Vehicle Identification	EA	Delaware Valley Regional Planning Commission
AVR	Average Vehicle Occupancy	ECO	Environmental Assessment
BEQ	Average Vehicle Ridership	ECONS	Employee Commute Option
BMS	Bureau of Environmental Quality (PADOT)	EDD	Energy Conservation and Safety
BMV	Bridge Management System	E/I/M	Economic Development District
CAA70	Bureau of Motor Vehicles	EIS	Enhanced Inspection/Maintenance
CAA77	Clean Air Act of 1970	EKMA	Environmental Impact Statement
CAA90	Clean Air Act Amendments of 1977	EPA	Empirical Kinetic Measurement Assessment
CAAA	Clean Air Act Amendments of 1990	EPACT	Environmental Protection Agency (United States)
CARB	Clean Air Act Amendments of 1990	EPS	Energy Policy Act of 1992
CBD	California Air Resources Board	EQB	Emissions Pre-Processor Systems
CE	Central Business District	ERC	Environmental Quality Board (PA)
CEE	Categorical Exclusion	ETC	Emission Reduction Credit
CFF	Categorical Exclusion Evaluation	ETRP	Employer Trip Coordinator OR
CFFV	Clean Fuel Fleet	ETTM	Employee Transportation Coordination
CFR	Clean Fuel Fleets Vehicles	FEIS	Employer Trip Reduction Program
CFV	Code of Federal Regulations	FFY	Electronic Toll and Traffic Management
CMAQ	Clean Fuel Vehicle	FHWA	Final Environmental Impact Statement
	Congestion Mitigation and Air Quality		Federal Fiscal Year
			Federal Highway Administration

FIP	Federal Implementation Plan	MPO	Metropolitan Planning Organization
FIPS	Federal Information Processor Systems	MPH	Miles Per Hour
FONSI	Finding of No Significant Impact	MSA	Metropolitan Statistical Area
FTA	Federal Transit Administration	NAAQS	National Ambient Air Quality Standards
FTP	Federal Test Procedure	NARC	National Association of Regional Councils
GM/BHP-HR	Grams per Break Horsepower Hour	NCHRP	National Cooperative Highway Research Program
GIS	Geographic Information System	NEPA	National Environmental Policy Act of 1969, as amended
GVWR	Gross Vehicle Weight Rating	NHB	Non-Home Based
HBW	Home-Based Work	NHS	National Highway System
HC	Hydrocarbons (Kg/day, Tons/yr)	NO <sub>2</sub>	Nitrogen Dioxide
HCM	Highway Capacity Manual	No <sub>x</sub>	Nitrogen Oxides
HDDV	Heavy Duty Diesel Vehicle	NO <sub>x</sub> RACT	Nitrous Oxides Reasonable Available Control Technology
HDBGV	Heavy Duty Gasoline Vehicle	NPRM	Notice of Proposed Rulemaking
HDV	Heavy Duty Vehicle	NSPS	New Source Performance Standards
HOV	High Occupancy Vehicle	NSR	New Source Review
HPMS	Highway Performance Monitoring System	O <sub>3</sub>	Ozone (ppm)
HP&R	Highway Planning and Research Funds (Federal)	OEM	Original Equipment Manufacturer
IC	Independent County	OMB	Office of Management and Budget (US)
ILEV	Inherently Low Emission Vehicles	OTC	Ozone Transport Commission
I/M	Inspection/Maintenance	OTR	Ozone Transport Region
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991	PA DER	Pennsylvania Department of Environmental Resources
ITE	Institute of Transportation Engineers	PA DOT	Pennsylvania Department of Transportation
NHS	Intelligent Vehicle Highway Systems	PAMPTA	Pennsylvania Association of Mass Transit Authorities
LAER	Lowest Achievable Emission Rate	P&R	Park and Ride
LDD	Local Development District	PennDOT	Pennsylvania Department of Transportation
LDDT	Light Duty Diesel Truck	PERC	Perchloroethylene
LDDV	Light Duty Diesel Vehicle	PHF	Peak Hour Factor
LDGT	Light Duty Gasoline Truck	PI&E	Public Information and Education
LDGV	Light Duty Gasoline Vehicle	PL	Metropolitan Planning Funds
LDT	Light Duty Truck	PM <sub>2.5</sub>	Particulate Matter less than or equal to 2.5 ug/m <sup>3</sup>
LDV	Light Duty Vehicle	PM <sub>10</sub>	Particulate Matter less than or equal to 10 ug/m <sup>3</sup>
LEV	Low Emission Vehicle	Plan	Long Range (transportation) Plan (also see LRP)
LOS	Level of Service	PMS	Pavement Management System OR Project Management System
LPG	Liquid Petroleum Gas	PPAQ	Post Processor for Air Quality
LPO	Lead Planning Organization	PPM	Parts Per Million
LRP	Long Range (transportation) Plan (also see Plan)	RACT	Reasonable Available Control Technology
MACT	Maximum Achievable Control Technology	RFA	Regulatory Flexibility Analysis
MOBILE	EPA's computer program used to run conformity -- latest version is number 6.2	RFG	Reformulated Federal Gasoline
MOU	Memorandum of Agreement	RFP	Reasonable Further Progress

RMS	Roadway Management System		
RMSE	Route Mean Square Error		
ROD	Record of Decision		
ROG	Reactive Organic Gases		
RPO	Rural Planning Organization		
RTIP	Regional Transportation Improvement Program		
RTP	Regional Transportation Plan		
RVP	Reid Vapor Pressure		
SAFETEA-LU	Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users,		
	Public Law 109-59; August 10, 2005		
SAMI	Safety and Mobility Initiative (PADOT)		
SIP	State Implementation Plan		
SMA	Statistical Metropolitan Area		
SO <sub>2</sub>	Sulfur Dioxide		
SOL	Strike-Off-Letter (PADOT)		
SOV	Single Occupancy Vehicle		
SOVCAP	Single Occupancy Vehicle Capacity Adding Project		
SPRPC	Southwestern Pennsylvania Regional Planning Commission		
STAMPP	Systematic Technique to Analyze & Manage Pennsylvania's Pavement (PADOT)		
STC	State Transportation Commission		
STEP	Short-range Transportation Evaluation Program		
STIP	Statewide Transportation Improvement Plan		
STP	Surface Transportation Program		
TAC	Technical Advisory Committee		
TAZ	Traffic Analysis Zone		
TCM	Transportation Control Measure		
TCP	Traffic Control Plan		
TDM	Travel Demand Management		
TDR	Travel Demand Reduction		
TIP	Transportation Improvement Program		
TLEV	Transitional Low Emission Vehicle		
TMA	Transportation Management Association OR Transportation Management Area		
TODF	Time of Day Factor		
TPD	Tons Per Day		
TPY	Tons Per Year		
TR	Traffic Route		
TRB	Transportation Research Board		
		TRO	Trip Reduction Ordinance
		TSM	Transportation System Management
		TYP	Twelve-Year Program (PADOT)
		UAM	Urban Air Shed Model
		UG/M <sup>3</sup>	Micrograms per Cubic Meter
		ULEV	Ultra Low Emission Vehicles
		UMTA	Urban Mass Transportation Administration (renamed FTA-- Federal Transit Administration)
		USC	United States Code
		VHT	Vehicle Hours Travelled
		VMT	Vehicle Miles Travelled
		VOC	Volatile Organic Compounds
		VPH	Vehicles Per Hour
		ZEV	Zero Emission Vehicles