

**MEMORANDUM OF UNDERSTANDING**

**amongst**

**The PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION; the REGION 3 AIR PROTECTION DIVISION OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY; and the FEDERAL LAND MANAGERS of the SHENANDOAH NATIONAL PARK, NATIONAL PARK SERVICE; JAMES RIVER FACE WILDERNESS, U.S. FOREST SERVICE; DOLLY SODS WILDERNESS and OTTER CREEK WILDERNESS, U.S. FOREST SERVICE; and the BRIGANTINE WILDERNESS, U.S. FISH and WILDLIFE SERVICE**

**THIS MEMORANDUM OF UNDERSTANDING (MOU) is executed by and amongst the Commonwealth of Pennsylvania, Department of Environmental Protection (PADEP); U.S. Environmental Protection Agency, Region 3 (EPA); Federal Land Managers of the Shenandoah National Park, National Park Service; James River Face Wilderness, U.S. Forest Service; Dolly Sods Wilderness, U.S. Forest Service; Otter Creek Wilderness, U.S. Forest Service; and the Brigantine Wilderness, U.S. Fish and Wildlife Service.**

**WITNESSETH:**

**WHEREAS**, the purpose of this Memorandum of Understanding (MOU) is to establish mutually acceptable guidelines for the effective protection of air quality related values (AQRVs) within the Shenandoah National Park and James River Face Wilderness in the Commonwealth of Virginia, Dolly Sods and Otter Creek Wildernesses in the State of West Virginia, and the Brigantine Wilderness of the State of New Jersey. The U.S. Department of the Interior, National Park Service; the U.S. Department of Agriculture, Forest Service; and the U.S. Department of the Interior, Fish and Wildlife Service, are empowered to manage and protect Class I areas and are responsible for ensuring that AQRVs including visibility in these areas are protected.

**WHEREAS**, this MOU is not a binding agreement nor does it create any legal rights, duties or obligations, which may be enforced by one party or the other in any judicial or administrative forum. This MOU is intended to establish a framework for operational procedures for the review of and comment on Prevention of Significant Deterioration (PSD) plan approval applications submitted to the PADEP which could have an impact in the Shenandoah National Park, James River Face Wilderness, Dolly Sods Wilderness, Otter Creek Wilderness, or the Brigantine Wilderness.

**WHEREAS**, the primary objective of this MOU is to assure the greatest degree of cooperation among the signatory agencies consistent with their respective mandates and responsibilities as determined under the federal Clean Air Act, (CAA), 42 U.S.C. § 7401 *et seq.*, as amended, and its promulgated regulations and the Pennsylvania Air Pollution Control Act (APCA), 35 P.S. § 4001 *et seq.*, as amended, and regulations promulgated thereunder.

**WHEREAS**, the EPA has the responsibility to assure compliance with the provisions of the CAA and the regulations adopted thereunder.

**WHEREAS**, this MOU is authorized, in part, under Section 102(a) of the CAA, 42 U.S.C. § 7402(a) which requires the EPA Administrator to “encourage cooperative activities by State and local governments for the prevention and control of air pollution.”

**WHEREAS**, Section 4(24) of the APCA, 35 P.S. § 4004(24), also provides that PADEP shall “cooperate with appropriate agencies of the United States.... with respect to the control, prevention, abatement, and reduction of air pollution.”

**WHEREAS**, under the CAA, the Federal Land Managers and the Federal officials charged with direct responsibility for management of the Shenandoah National Park, the James River Face Wilderness, the Otter Creek Wilderness, the Dolly Sods Wilderness, and the Brigantine Wilderness have the affirmative responsibility to protect the AQRVs of these lands.

**WHEREAS**, PADEP is empowered by the Pennsylvania General Assembly to implement the provisions of the CAA in the Commonwealth of Pennsylvania, the State Implementation Plan (SIP), and the APCA, 35 P.S. § 4001 *et seq.*, and regulations promulgated under the act. This MOU does not cover PSD permit applications for sources located in Allegheny or Philadelphia Counties, as the Allegheny County Health Department and the Philadelphia County Health Department administer and enforce PADEP-approved local air pollution control programs.

**WHEREAS**, this MOU also establishes a process to allow all of the signatory agencies to have access to all necessary information and sufficient opportunity to effectively execute the statutory and regulatory obligations of each agency.

**WHEREAS**, the intent of this MOU is to ensure the coordinated review of PSD plan approval applications in an expedited manner when a complete PSD plan approval application has been submitted to the PADEP.

**NOW, THEREFORE**, it is hereby resolved by the parties that:

#### **PROVISIONS:**

In accordance with the CAA and applicable regulations, the Federal Land Managers (FLMs) and EPA will be afforded the opportunity to review and comment on “draft” state air quality plan approvals (pre-construction permits) for PSD permit actions.

For plan approval applications submitted to PADEP, which are subject to the requirements of the PSD regulations, the following procedures will be followed:

(1) Program staff in the PADEP regional office responsible for reviewing the plan approval application will provide notifications to the FLMs and EPA that discussions have been held with representatives of a company, or companies, proposing to apply for a plan approval under the provisions of the PSD regulations; such notification shall be given as soon as practical, but not later than 30 days after the date on which the discussions were held. This notification requirement is not to be interpreted to mean that the PADEP will notify the FLMs or EPA as a result of inquiries from company representatives on plan approval requirements within the Commonwealth, even if the company indicates that the proposed facility may be subject to PSD review. However, once a company representative indicates to PADEP that an application will be submitted which is, or is likely to be, subject to the provisions of the PSD regulations, the appropriate regional office of the PADEP responsible for reviewing the plan approval application will provide to the FLMs and EPA basic information, as specified in paragraphs (a)-(f) of this provision, on the proposed source. Once the emissions information is supplied, the FLMs will advise PADEP and EPA within 30 calendar days regarding the need for and extent of further participation by the FLMs in the permit review process.

PADEP will encourage pre-application meetings with potential PSD plan approval applicants to discuss what information must be included with their application in order to satisfy the requirements for a complete application. The potential plan approval applicants will also be encouraged to provide PADEP with a modeling protocol for review in advance of conducting any air quality modeling, including Class I and Class II modeling, that will be needed in support of their application.

If a modeling protocol is submitted to PADEP by a potential applicant prior to the date of an actual plan approval application, the modeling protocol will be supplied to the FLMs as soon as practical. Basic information that will be provided to the FLMs includes, but is not limited, to the following:

- a. The name of the company.
- b. The type of facility proposed.
- c. The general location of the proposed facility.
- d. As much information regarding equipment and emissions as is available.
- e. An estimate of when a formal application is expected.
- f. A Class I air quality modeling protocol.

(2) Program staff in the PADEP regional office responsible for processing the plan approval application will notify the applicant that the FLMs and EPA are available for conference calls and pre-application or pre-hearing meetings upon request. When scheduling conference calls and meetings, all reasonable steps will be taken to provide advance notification of such and to accommodate the availability of all parties. While nothing in this MOU prohibits any of the signatories of this MOU from meeting with an applicant without the other parties, those signatory parties that participate during a conference call or meeting will fully inform those non-participating signatory parties about the results of such meetings. Copies of the agenda will be provided to all signatory parties prior to the scheduled call or meeting.

(3) Program staff in the PADEP regional office responsible for processing the permit and plan approval application will provide to the FLMs and EPA a copy of the following:

- a. PSD Plan Approval Application.
- b. Best Available Control Technology (BACT) analysis by applicant.
- c. Modeling analysis, including a specific listing of critical elements as specified in Paragraph (4) below.
- d. Visibility analysis.
- e. Other impact analyses, including AQRVs.
- f. Draft PSD plan approval, which will contain the enforceable mechanisms to assure compliance with the emission limits relied upon for the Class I modeling. These mechanisms will include certified a Continuous Emissions Monitoring System where practical and will utilize EPA approved test methods and procedures. The draft plan approval will be provided by e-mail to the signatory parties for review prior to the public comment period.
- g. The proposed PSD plan approval will be provided by e-mail on or before the first day of the public comment period along with the notice language.
- h. The PADEP engineering and modeling analysis report for the proposed PSD Plan Approval Application.
- i. Response to Public Comments Document.
- j. Final PSD plan approval and relevant revised documents (if applicable).

(4) Items specified in Paragraph (3) (a)-(j) of this MOU, will be transmitted to the FLMs and EPA as soon as possible after receipt from the applicant, and after an administrative completeness determination has been made by PADEP staff. Receipt of the information in Paragraph (3)(a)-(j) provided by PADEP to the FLMs will begin the FLM 60-day review/consultation period.

The critical elements referenced in Paragraph (3)(c) of this MOU are the following air quality model inputs as determined from anticipated emission limits for the proposed project. PADEP will provide the following critical elements:

- a.) SO<sub>2</sub> emission rates (3-hr, 24-hr and annual).
- b.) NO<sub>x</sub> emission rates (24-hr and annual).
- c.) PM-10 emission rates (24-hr and annual).
- d.) H<sub>2</sub>SO<sub>4</sub> emission rates (24-hr and annual).

The critical elements specified above, and referenced in Paragraph (3)(c), will be provided to the FLMs during this consultation period, but no later than 45 days prior to publishing a notice of a public hearing or "Notice of Intent to Issue". Such notice will be published in a newspaper of general circulation in the county of the plan approval application and in the *Pennsylvania Bulletin*. The PADEP will officially notify the FLMs by e-mail when the information specified in items Paragraph (3)(a)-(j) and Paragraph (4)(a)-(d) of this MOU have been transferred. If the FLMs anticipate making an adverse impact statement, they will notify the PADEP of their determination within 30 days of official receipt of this information and the FLMs will provide their written comments no later than two weeks after such notification.

(5) After all information identified in Paragraph (3) of this MOU has been provided to the FLMs and EPA, this information may be corrected or supplemented through modifications and additions to the original plan approval application which is received during the PADEP review period of the plan approval application. Any such additional information will be provided to the FLMs and EPA as soon as possible, but will not change the 60-day review/consultation period as established in Paragraph (4) above. If the applicant submits additional information during the review/consultation period, which represents a significant change to the plan approval application or draft plan approval, additional review time may be allowed, with the concurrence of all parties to this MOU. If these changes involve increases in the emissions of NO<sub>x</sub>, PM-10, SO<sub>2</sub> or H<sub>2</sub>SO<sub>4</sub>; or if these changes involve emission decreases of these pollutants which were needed in order to reduce or eliminate an adverse impact; or if any emission release parameters such as stack height, stack location or exhaust gas changes; then additional time to re-run and re-evaluate the visibility modeling and any other AQRV impact analysis affected by these changes will be provided. A mutually agreed upon extension of the review/consultation period of up to a maximum of 30 days may be granted. For time periods during the review of the PSD application, where PADEP has removed the applicant from the "clock" for purposes of the "Money-Back-Guarantee" Program, an equal time extension will occur in the time shown for review in the attached "PSD Permitting Interaction With EPA and FLMs" (Attachment 1).

(6) All PSD plan approval application information, including the engineering analysis report and the modeling analysis report prepared by the PADEP, described in the MOU and a draft plan approval will be provided to the FLMs and EPA no later than 30 days prior to any public hearing or notice in the *Pennsylvania Bulletin* of PADEP's intent to issue or deny the plan approval. The PADEP Air Program Manager in the regional office responsible for processing plan approval application will provide all applicable PSD permit information, including the air quality analyses information to the FLMs and EPA.

(7) The FLMs may provide, and the PADEP will consider when determining its appropriate action on a plan approval application covered by this MOU, any analysis performed by the FLM and received by PADEP within 2 weeks after PADEP provides a draft plan approval to the FLMs. If the preliminary analysis provided by any of the signatory FLMs would show that a proposed source for PSD permitting could have an adverse impact on AQRVs, including visibility, in areas identified in this MOU, PADEP will work with the FLMs to resolve issues relevant to any FLM adverse impact determination prior to proposing to issue the plan approval. If PADEP concurs with the adverse impact determination by the FLMs, PADEP will not issue the PSD plan approval and may take action to deny the plan approval. In the event that PADEP does not find that the FLM-provided preliminary analysis demonstrates to the satisfaction of PADEP that an adverse impact will result, the notice of hearing or proposed approval will contain an explanation of its decision, or a reference to where a complete explanation of such finding may be obtained. PADEP will also provide in the notice the FLMs adverse impacts comment, along with information where the complete text of the adverse comments can be obtained.

#### **IV. Effective Date**

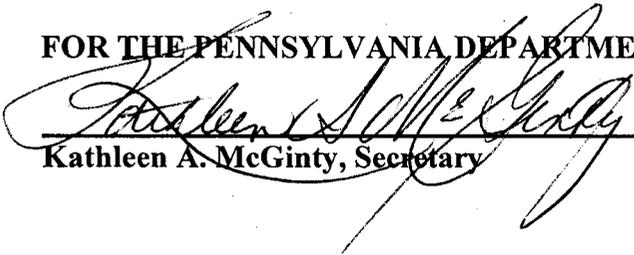
This MOU will become effective on the date of the last signature to the MOU.

#### **V. Understanding of the Parties**

This MOU sets forth the entire understanding amongst the parties on this matter and does not create any contractual obligations with respect to the signatory agencies or any other parties. The parties acknowledge and understand that the MOU may only be modified or terminated in writing as an amendment to this MOU. The request for any such modification or termination of the MOU must be submitted in writing to all signatory agencies for review and concurrence at least 60 days in advance of the effective date of the desired modification or termination.

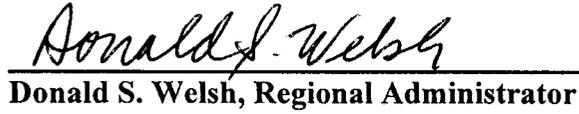
IN WITNESS THEREOF, the parties acknowledge the foregoing as the terms and conditions of their understanding and hereto have executed this Memorandum of Understanding as of the last date written below.

FOR THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

  
Kathleen A. McGinty, Secretary

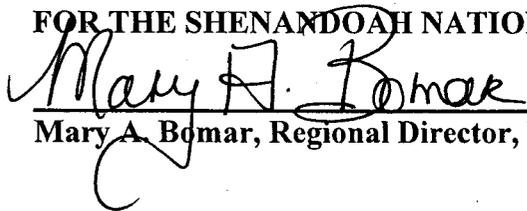
Date: 8/30/06

FOR REGION 3, REGIONAL ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

  
Donald S. Welsh, Regional Administrator

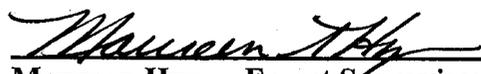
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FOR THE SHENANDOAH NATIONAL PARK, NATIONAL PARK SERVICE

  
Mary A. Bomar, Regional Director, National Park Service, Northeast Section

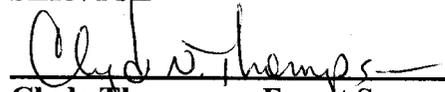
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FOR THE JAMES RIVER FACE WILDERNESS, U.S. FOREST SERVICE

  
Maureen Hyzer, Forest Supervisor, George Washington and Jefferson National Forest

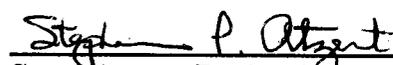
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FOR THE DOLLY SODS AND OTTER CREEK WILDERNESSES, U.S. FOREST SERVICE

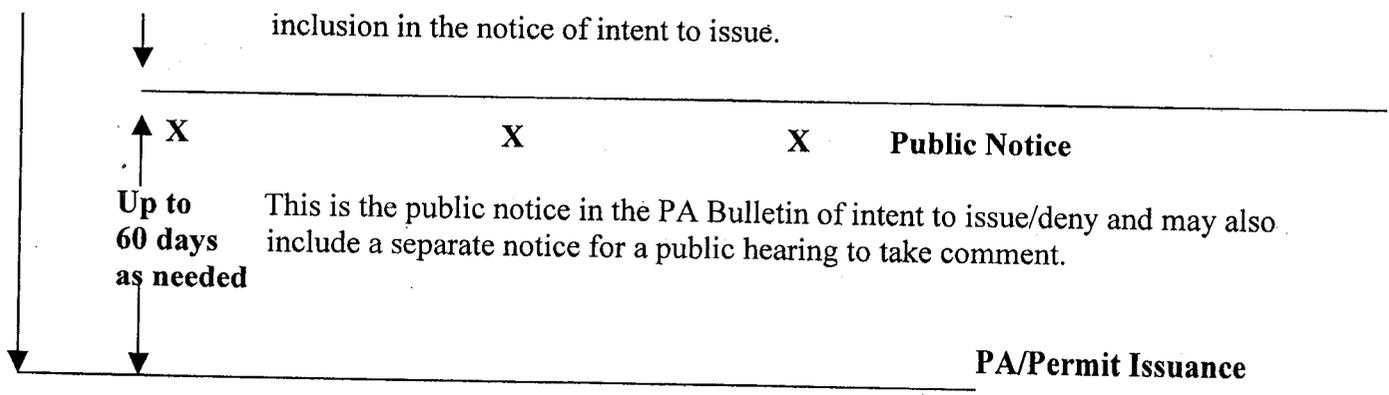
  
Clyde Thompson, Forest Supervisor, Monongahela National Forest

Date: 6/6/2006

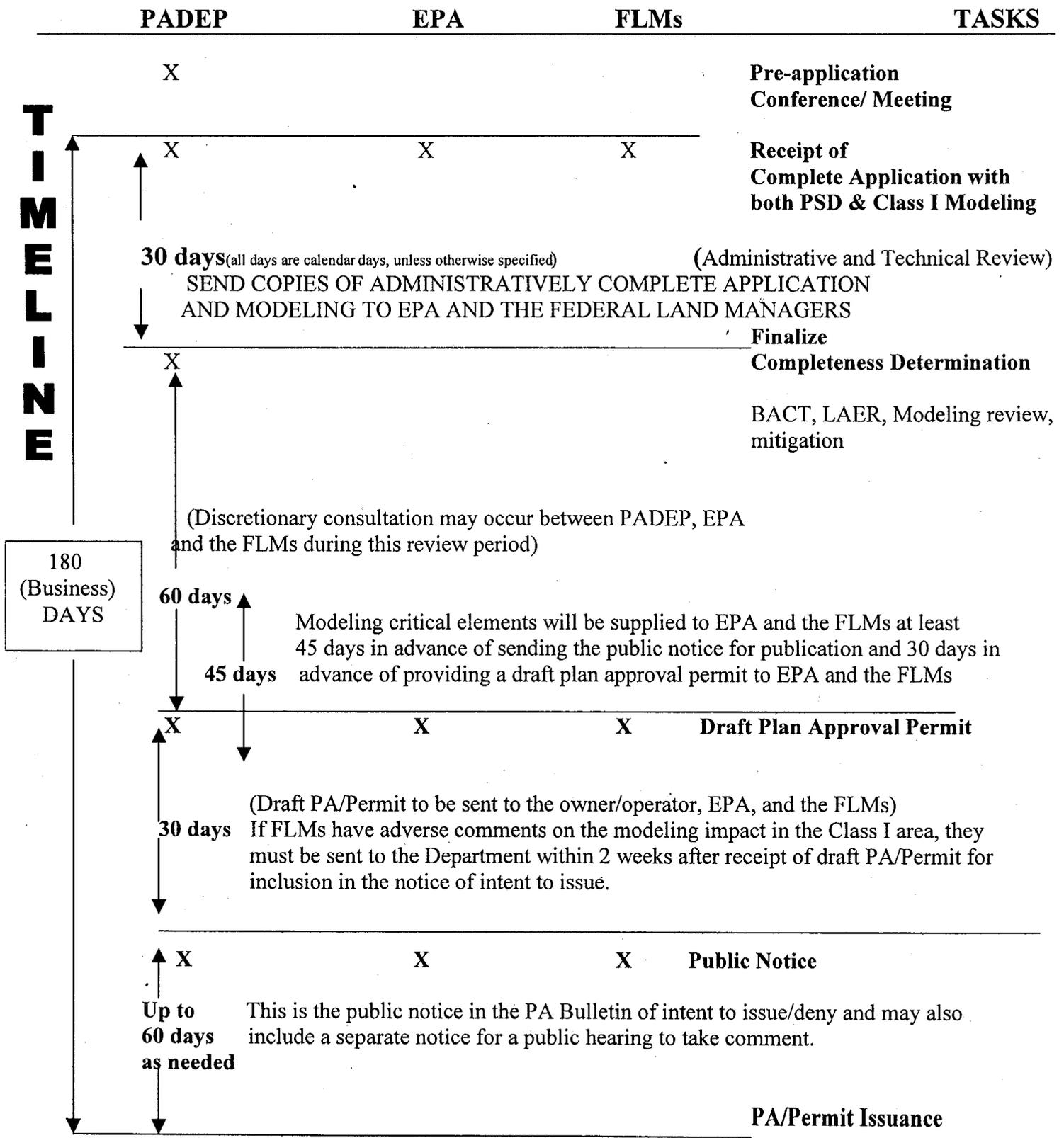
FOR THE BRIGANTINE WILDERNESS, U.S. FISH AND WILDLIFE SERVICE

  
Steve Atzert, Project Manager, Edwin B. Forsythe National Wildlife Refuge

Date: 6/16/2006



**Attachment 1**  
**PSD PERMITTING INTERACTION WITH EPA and FLMs**



180  
(Business)  
DAYS