Penobscot/EPA Tribal Environmental Agreement

July 1999

TRIBAL ENVIRONMENT AGREEMENT BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE PENOBSCOT NATION

I. PREAMBLE

This agreement is executed between the Penobscot Nation (the Nation or the Tribe), a federally recognized Indian Tribe and the United States Environmental Protection Agency (U.S. EPA) in order to better achieve mutual environmental-governmental goals in the government-to-government relationship between the Nation and the U.S. EPA. This Agreement provides the framework for a government-to-government relationship in support of the President's April 29, 1994 directive and the Administrator's Indian Policy of 1984 and July 1994, which are incorporated by reference herein. The government-to-government relationship respects the governmental sovereignty of the Nation and all of the authorities and powers vested in its duly elected Chief and Council. The U.S. EPA is implementing its federal trust responsibility with federally recognized Indian Tribes through this Agreement. This Agreement provides a framework for procedures and practices to maintain a good working relationship between the Tribe and the U.S. EPA.

To fulfill the intent of this Agreement, the Administrator's Representative, the Regional Administrator of the U.S. EPA, will identify and seek to remove impediments to working directly and effectively with the Nation, to assist in building strong environmental protection programs for the Tribe and to act consistent with our Federal trust responsibility in environmental protection matters affecting Penobscot Indian Territory.

II. PARTIES

The parties to this Agreement include the U.S. EPA, represented by its Regional Administrator, and the Penobscot Nation, represented by its Chief.

III. PURPOSE AND PRINCIPLES

The purpose of this Agreement is to outline the implementation process, procedures, and goals of the government-to-government relationship between the U.S. EPA. and the Penobscot Nation. This Agreement confirms the commitment by the parties to implement a government-to-government relationship, to promote and build strong environmental protection in Penobscot Indian territory. This relationship respects the sovereignty of the Nation and the trust responsibility of the United States, represented by the U.S. EPA. This agreement serves as a tool to enhance and improve communications between the parties.

This Agreement is intended to build confidence and trust between the parties in the government-to-government relationship. Not only is this process designed to implement an Agreement, it also is intended to "institutionalize" the spirit and principles within the organization represented by the parties.

This Agreement commits the parties to the initial task of providing more efficient and improved actions, including short and long term planning and program implementation to assist in developing and building strong environmental protection programs for the Tribe. This agreement outlines media specific tasks that need to be addressed and specific issues of common concern. The U.S. EPA Administrator has convened the Tribal Operations Committee, comprised of EPA Senior Management and Tribal Leaders, which has the mission to advance environmental protection, health, and safety and improve the conditions of Tribal health and the environment in Indian Country, including Penobscot Indian territory. This Agreement commits the parties to work toward implementing the Tribal Operations Committee recommendations, including distribution of authorities and resources to Tribes.

All principles, including the U.S. EPA's Indian Policy, will apply, including the Trust responsibility of the Agency and the promotion of stable funding, employment, capacity-building, infrastructure development and other factors for long-term program implementation (including the transfer of "state of the art" technologies). The Tribe recognizes that the U.S. E.P.A. has certain technical knowledge that would be helpful to it in its environmental decision-making processes. Conversely, the U.S. E.P.A. recognizes that the Tribe's cultural/traditional ecological knowledge and expertise can be helpful in its decision-making processes. The U.S. EPA recognizes and respects tribal environmental decisions based on traditional knowledge and will incorporate this knowledge, as appropriate, into the Agency's decision-making process.

This Agreement will remain flexible in addressing the Tribe's needs, as appropriate, and ensure common-sense approaches. Environmental justice principles will be used in the U.S. EPA's decision-making processes, including placement of a high priority on tribal cultural concerns such as subsistence needs and traditional practices and uses of natural resources.

The parties recognize that implementation of this Agreement will require a comprehensive educational effort, extending to all EPA New England regional offices, to promote the understanding of the unique relationship between both parties and the government-to-government relationship affirmed in this Agreement.

IV. GOALS, IMPLEMENTATION PROCESS AND RESPONSIBILITIES

The parties recognize that a key principle of this relationship is a requirement that the individuals working to resolve issues of mutual concern are accountable and act in a professional manner consistent with the Agreement.

EPA-New England shall perform in accordance with the principles of this Agreement and the laws and Treaties of the United States.

The parties to this Agreement recognize that issues of mutual concern will be effectively addressed through communication that is clear, direct, and between persons authorized and responsible for addressing the concern.

The Nation and the U.S. EPA recognize that a system of accountability within each other's organization is critical to the successful implementation of this Agreement. Therefore, the Chief and/or his designee and the U.S. EPA Regional Administrator will direct appropriate staff to follow the principles and guidelines of the Agreement in working with corresponding representatives.

The environmental goal of the Penobscot Nation is to secure and maintain healthy natural resources, including their supporting ecosystems, belonging to, managed by, controlled by or appertaining to the Penobscot Nation. In particular, the Nation's immediate goal is to restore the natural resources of Penobscot River, including its water, sediments, fish and other biota so that its members may use the river and exercise their sustenance fishing rights without fear of harm or illness from hazardous substances.

The parties recognize that realization of these goals is within their mutual interests in the government-to-government relationship set forth herein.

V. COMMUNICATION AND CONFIDENTIALITY

The parties agree that in support of their common interests, documents and other information generated by the parties in furtherance of the U.S. EPA's trust and statutory responsibilities may be shared between the parties. The U.S. EPA agrees to coordinate and consult with the Nation on environmental matters that may impact upon the Nation, and the Nation agrees to provide views, advice, comments, recommendations, evaluations and other assistance as requested by the U.S. EPA to assist it in the performance of its duties.

The parties agree to protect, to the greatest extent permitted by law, communications in their possession which have been exchanged between the U.S. EPA (and any of its subdivisions or contractors), other Federal agencies and the Nation, and between the parties' technical representatives (including any attorneys and consultants to the U.S.

EPA and other Federal Agencies, or the Nation). The communications will be treated confidentially and specifically include those used by the U.S. EPA in the deliberative and decision-making processes necessary to carry out its statutory functions and responsibilities. The U.S. EPA will make its best efforts to protect all such communications, including those that predate this agreement that are requested under the Freedom of Information Act. The Nation also agrees to make its best efforts not to disclose to the public those communications which are in its possession.

United States Environmental Protection Agency

Dated: 07/27/99

By: _____

Its Regional Administrator

Penobscot Nation

Dated: 07/27/99

By: _____

Its Chief

EXHIBITS
A-through-C
(attached)

Exhibit A — Penobscot Nation Tribal Environmental Goals
(Adopted by Tribal Council)

Exhibit B-1 to B-9
Environmental Objectives

Exhibit C — Performance Partnership Grant
(1999 finalized PPG - to be updated yearly)

EXHIBIT A

Penobscot Nation
Tribal Environmental Goals

(adopted by Tribal Council 12/98)

Goal 1: Protect water quality, treaty reserved aquatic resources, and related aquatic and marine ecosystems.

Goal 2: Protect air quality that affects Tribal human, cultural, and ecosystem health.

Goal 3: Protect Tribal sustenance and wild foods and medicines.

Goal 4: Ensure environmentally safe Tribal homes, workplaces, schools, and ecosystems.

Goal 5: Support Tribal access to environmental data and information.

Goal 6: Foster environmental learning and stewardship among Tribal youth, the community, Tribal leadership and the general public.

Goal 7: Protect Tribal human, cultural and ecosystem health from toxic pollutants, including releases from accidental spills and improperly disposed waste.

Goal 8: Reduce transboundary risks to Tribal human, cultural and ecosystem health.

Goal 9: Adopt pollution prevention activities to minimize pollution generated from Tribal government and community activities.

EXHIBIT B

Environmental Objectives

(attached, B-1 through B-9)

B-1 Water Resources

B-2 Air Quality

B-3 Sustenance and Wild Foods

B-4 Safe Homes and Workplaces

B-5 Access to Information and Data

B-6 Environmental Education

B-7 Hazardous Waste and Accidental Spills

B-8 Transboundary Risks

B-9 Pollution Prevention

EXHIBIT B-1

Water Resources

Goal:

Protect water quality, treaty reserved aquatic resources, and related aquatic and marine ecosystems.

Objectives:

Assess water quality and aquatic resource conditions.

Manage and reduce risks to water resources and ecosystem integrity.

Participate in legislative, regulatory, and permitting proceedings.

Assess, manage, and reduce risks to wetland ecosystems and riparian habitats.

Assess, manage, and improve anadromous fish access and habitat.

Define culturally relevant tribal designated uses for water resources.

Improve community and public awareness of water resources conditions and their impact on tribal aquatic resources.

Continue to develop Tribal capacity for assessing and managing water resources.

Continue to carry out water quality monitoring cooperative agreements.

EXHIBIT B-2

Air Quality

Goal:

Protect air quality that affects Tribal human, cultural, and ecosystem health.

Objectives:

Assess air quality conditions.

Identify air quality threats to ecosystem and human health, including wild foods and medicines.

Monitor air quality pollutants of concern to the Tribe.

Identify sources of air quality problems.

Participate in air quality legislative, regulatory, and permitting proceedings.

Improve community awareness of air quality conditions.

Continue developing Tribal capacity for assessing and managing air quality.

EXHIBIT B-3

Sustenance and Wild Foods

Goal:

Protect Tribal sustenance and wild foods and medicines.

Objectives:

Assess the condition of Tribal wild foods and medicines.

Identify threats to the abundance and quality of wild foods and medicines.

Monitor contaminant levels in wild foods and medicines.

Identify sources of contamination in foods and medicines.

Participate in legislative, regulatory, and permitting proceedings to protect Tribal wild foods and medicines.

Develop partnerships for culturally appropriate health assessments and preventative measures.

Improve community awareness of the conditions of wild foods and medicines.

EXHIBIT B-4

Safe Homes and Workplaces

Goal:

Ensure environmentally safe Tribal homes, workplaces, schools, and ecosystems.

Objectives:

In cooperation with the Tribal health providers,

assess environmental conditions in Tribal homes, workplaces, schools, and ecosystems;

identify unsafe conditions such as lead paint, radon, radioactivity, toxic building materials, or storage of toxics;

take steps to solve problems and improve community awareness;

continue to develop Tribal capacity for assessing and managing environmental health.

EXHIBIT B-5

Access to Information and Data

Goal:

Support Tribal access to environmental data and information.

Objectives:

Assess Tribal access to environmental data and information.

Identify Tribal data and information needs (ongoing).

Continue to build information and databases for Tribal natural resources and environmental threats.

Continue to develop Tribal capacity for accessing and managing environmental data and information.

Continue to develop Tribal capacity for sharing data and communicating information to partners in environmental protection and to the community.

EXHIBIT B-6

Environmental Education

Goal:

Foster environmental learning and stewardship among Tribal youth, the community, Tribal leadership and the general public.

Objectives:

Continue to develop Tribal capacity for environmental information sharing, education and outreach.

Develop partnerships for information sharing, education and outreach.

Cooperate with Tribal education and career services to develop on-the-job training opportunities in environmental protection for Tribal members.

EXHIBIT B-7

Hazardous Waste and Accidental Spills

Goal:

Protect Tribal human, cultural and ecosystem health from toxic pollutants, including releases from accidental spills and improperly disposed waste.

Objectives:

Assess potential for hazardous wastes and accidental spills to threaten Tribal health and resources.

Develop partnerships to reduce risks and prevent hazardous releases.

Develop the technical capacity to detect and monitor hazardous releases, spills, or wastes that threaten Tribal resources.

Develop partnerships to ensure adequate resources are in place for emergency responses that will protect Tribal health and resources.

Develop partnerships for culturally appropriate risk assessments, risk reduction, protection, and clean-up of waste, industrial and agricultural sites that threaten Tribal resources

Improve community awareness of threats posed by improperly disposed waste and potential accidental spills.

EXHIBIT B-8

Transboundary Risks

Goal:

Reduce transboundary risks to Tribal human, cultural and ecosystem health.

Objectives:

Assess transboundary threats to Tribal health, resources and ecosystems.

Identify sources of transboundary problems.

Develop partnerships for culturally appropriate risk assessment, risk reduction, and protection from transboundary risks.

Improve community awareness of transboundary risks.

Continue to develop Tribal capacity for assessing and managing transboundary risks.

EXHIBIT B-9

Pollution Prevention

Goal:

Adopt pollution prevention activities to minimize pollution generated from Tribal government and community activities.

Objectives:

Assess Tribal needs for pollution prevention.

Continue to develop technical and scientific capacity for assessing and managing pollution prevention activities.

Continue to develop community awareness of pollution prevention.

Continue to implement pollution prevention activities where appropriate.