Richard A. Du Bey | 206.470.3587 | RDuBey@scblaw.com

SHORT CRESSMAN & BURGESS PLLC

August 8, 2017

Via Email: stillman.sarah@epa.gov; wester.barbara@epa.gov

Sarah Stillman
Barbara Wester
Office of Regional Counsel
U.S. EPA Region 5 (MI-9J)
77 West Jackson Blvd.
Chicago, IL 60604-3590

Re: ***Lac du Flambeau Reservation LUST Sites***
Status of Excavation Feasibility Study Task Order 3012

Dear Ms. Stillman and Ms. Wester:

Erik Olson informed me that you have taken over his role as counsel to EPA Region 5 with regard to the Haskell Lake / Tower Standard Site (Site). This leaking underground storage tank (LUST) site is located on fee land within the exterior boundaries of the Lac du Flambeau Reservation. As you know, we represent the Lac du Flambeau Band of Lake Superior Chippewa Indians (Tribe), a sovereign Indian Tribe whose government is recognized by the United States, and on the Tribe's behalf, we are inquiring about the status of Excavation Feasibility Study Task Order 3012 (Revised Task Order), which was agreed to by the Tribe and EPA is to be implemented at the Site.[1]

A. Background

On February 23, 2017, the Tribe met with EPA Region 5 representatives to discuss the October 5, 2016 technical memo prepared by Bristol Environmental Remediation Services, LLC (Bristol), which identified potential remedial alternatives for consideration at the Site. Several of the alternatives provided for excavation of all contaminated source soils at the Site, which is the Tribe's preferred remedy. During the February 23, 2017 meeting EPA agreed to have its contractor develop a feasibility report on the excavation of source material at the Site and a draft report was to be prepared this summer. EPA and the Tribe also agreed that additional monitoring wells should be installed at the Site and EPA agreed to take the lead in recommending that the Wisconsin Department of Natural Resources (WDNR) install the new monitoring wells. Finally, EPA agreed that if funding permitted, EPA would pay for installation of those additional monitoring wells.

[1] A copy of the Revised Task Order is attached for your reference as Exhibit A.

792315.8/026843.00008

In its March 20, 2017 letter to the WDNR, EPA confirmed its agreement with the Tribe.[2] In this letter, EPA stated that the Tribe "has the authority under its legal code to address threats to the environment on all lands and waters within the reservation."

EPA also informed the WDNR that it was EPA's understanding that the WDNR would "continue work installing additional monitoring wells and piezometers to fill in the gaps in the site's groundwater monitoring network," and that EPA was "working on proposals related to the site investigation to fill data gaps and complete the monitoring well network so that decisions can be made regarding remedial actions." It was EPA's position that "[c]ompleting the monitoring well network is essential, as existing data on site conditions in not complete." EPA went on to inform the WDNR that "EPA and the Tribe will coordinate input on suggested sampling locations based on all available site data," and that "EPA is in the process of tasking the federal coordinator with development of a feasibility study on excavation of source material [and that] [a] draft report is expected in summer 2017." Perhaps most importantly, it was EPA's position that "residual contamination will remain a concern following source removal, requiring additional monitoring, analysis and further potential remedial action."[3]

During a meeting on March 23, 2017, the Tribe provided EPA with verbal comments on an EPA revised task order and the Tribe subsequently provided EPA with written comments on April 14, 2017.[4] On May 24, 2017, EPA sent the Tribe a revised version of the task order in response to the Tribe's comments (Revised Task Order). The following day EPA and the Tribe had a call with WDNR and a contractor, REI, which was facilitated by Anthony Greenwater, director of EPA's Tribal and International Affairs Office. During this call, EPA advised that the delay in finalizing the Revised Task Order, now expected by late summer 2017, was attributed to "Headquarters backlog."[5] However, during a follow-up call between the Tribe and EPA on June 30, 2017, EPA advised the Tribe that despite the assurances that EPA had made during the May 25, 2017 call, in fact the Revised Task Order had not yet even been submitted to Headquarters by Region 5 because the Tribe has not provided written approval of the Revised Task Order. This was the first time that EPA informed the Tribe of this concern. Nevertheless, the Tribe provided EPA with its written approval of the Revised Task Order later that day.[6]

The Tribe was not informed until July 7, 2017 during a call between EPA, WDNR, and REI, that EPA decided to unilaterally abandon the excavation remedy, despite EPA's assurances to the contrary as set out in the agreed Revised Task Order and correspondence referenced herein. Earlier that same day, the Tribe had sent an email to EPA requesting the status of the Revised Task Order on account of the alleged "Headquarters backlog."[7] While a July 12, 2017 email[8] from EPA

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[2] A copy of this letter is attached for your reference as Exhibit B.
[3] *Id.*
[4] A copy of the Tribe's email to EPA with its written comments is attached for your reference as Exhibit C.
[5] Reference to the "Headquarters backlog" was made by Robert Egan of EPA Region 5.
[6] A copy of the Tribe's approval of the Revised Task Order is attached for your reference as Exhibit D.
[7] A copy of the Tribe's email is attached for your reference as Exhibit E.
[8] A copy of EPA's July 12, 2017 email is attached for you reference as Exhibit F.

indicates EPA's preference for disinvesting from evaluating the excavation remedy, as of the date of this letter EPA has failed to respond to this status request.

The Tribe is disappointed and questions EPA's apparent decision to abandon its government-to-government commitment to proceed with the Revised Task Order and excavation feasibility study at the Site. Similarly, we understand that Regional Director Bob Kaplan, recognizing the importance of the Tribe's concerns with EPA's commitments regarding the Site, has agreed to meet with President Wildcat to address the Tribe's concerns. We hope Mr. Kaplan and President Wildcat will be able to resolve this important matter during their in-person meeting on August 15th.

Please note that as a part of the Tribe's ongoing effort to learn more about EPA's intentions at the Site, we recently submitted a FOIA request regarding EPA's communications with WDNR, REI, and third parties related to the Site.

We cannot over-emphasize the importance of a complete investigation and effective remediation of the Site to the Tribe. Not only has the contamination at the Site frustrated the Tribe's efforts to protect the environment and return this fee land to trust status in concert with federal policy, but the Tribe has yet to investigate some 25 other LUST sites on its reservation which cannot be effectively addressed before EPA agrees to fulfill its commitments to the Tribe regarding this Site. Unfortunately, EPA's recent unilateral actions indicate that EPA may not share the Tribe's interests in utilizing available resources to complete clean-up activities in a timely manner, as indicated by EPA's unilateral delay of the Revised Task Order. Nevertheless, we hope to work with you to address the Tribe's concerns, in part, by finalizing the Revised Task Order and facilitating implementation of the excavation feasibility study for the Site.

We hope to receive your response about the status of the Revised Task Order as soon as possible and to hopefully resolve this issue so that it does not continue to be a focal point at the policy meeting between RA Kaplan and President Wildcat scheduled for August 15, 2017. We are available at your convenience to discuss these and other matters of joint interest.

Sincerely,

SHORT CRESSMAN & BURGESS PLLC

FOR

Richard A. Du Bey

RAD:jbl
cc: President Wildcat
Larry Wawronowicz
Dee Allen
Kristen Hanson

792315.8/026843.00008

Attachments:

Ex. A – Revised Task Order;
Ex. B – March 20, 2017 EPA Letter;
Ex. C – Tribe's April 14, 2017 Email to EPA w/ Written Comments
Ex. D – Tribe's June 30, 2017 Approval of the Revised Task Order;
Ex. E – Tribe's July 7, 2017 Email Requesting a Status of the Revised Task Order; and
Ex. F – EPA's July 12, 2017 Email re: Disinvesting from Excavation Remedy.

Exhibit A

Contract No. EP-W-012-009 Task Order 3012 /Amendment _____

Title: Site Investigation/Characterization and Remediation - Tower Standard LUST Site (aka Haskell Lake Area Petroleum Contamination Site), Lac du Flambeau, WI – Region 5 – Interim Action Source Area Excavation Feasibility Study/Cost Estimate, Data Table and COC List Development, Surveying of Monitoring Wells, 4DIM Data Image Revisions, Technical Memo Revisions

PERFORMANCE WORK STATEMENT

1. General Information

Project Officer
Christine Edwards
202-564-2182
edwards.christine@epa.gov

Subject Matter Expert (SME)
Robert Egan
(312) 886-6212
(312) 692-2911 fax
egan.robert@epa.gov

Tribal Contact
Kristen Hanson
(715) 588-4290
khanson@ldftribe.com

2. Site Name/General Task Order Information

Site Name: Tower Standard LUST Site (identified by the LDF Band as Haskell Lake Area Petroleum Contamination Site)
Site Location: Lac du Flambeau, Wisconsin
Tribe: Lac du Flambeau Band of Lake Superior Chippewa Indians

This Task Order is for contractor support to perform an Interim Action Source Area Excavation Feasibility Study evaluation of excavation and disposal as an interim action measure at the site, the upload and interpretation of future groundwater data for visualization of the extent and degree of contamination in groundwater at and downgradient of the site, the development of a master data table and Contaminant of Concern (COC) list, location and elevation surveying of all monitoring wells, sampling of groundwater monitoring wells, and revision of three Technical Memos previously produced for the Tower Standard project.

3. Tasks

Task 1: Statement of Work/Performance Work Statement/Specifications (Budget) – The contractor shall contact the Administrative Task Order Manager within five (5) business days upon receipt of the government's Task Order Performance Work Statement to discuss the scope of the work before the contractor submits its Performance Work Statement/Specifications (budget). The contractor shall have ten (10) business days following the conference call to submit its Performance Work Statement/Specifications (budget) electronically to the Contracting Officer and Administrative Task Order Manager.

The Performance Work Statement/Specifications (budget) shall include: (1) a narrative description of its technical approach to perform the work; (2) estimated budget that includes the contractor's staffing plan according to the labor categories for this work, and other than direct costs (e.g., material, equipment, permits, taxes) subcontractor(s)); (3) deliverable (milestone) schedule; (4) certification pursuant to 1552.209-72 that the contractor is or is not aware of any potential Organizational Conflicts of Interest for the work outlined in the Government's Performance Work Statement; and (5) any other requested information. The contractor's cost component must include a breakdown of costs for each major task and/or subtask and an overall summary for the full task for the prime and any subcontractor(s).

Work will <u>not</u> commence until the contractor is in receipt of an approved Task Order signed by the Contracting Officer.

Deliverable: Conference Call with Administrative Task Order Manager
Due Date: Within five (5) business days upon receipt of Performance Work Statement

Deliverable: Performance Work Statement/Specifications (Budget)
Due Date: Within ten (10) business days after Conference Call

NOTE: Enforcement activities are not included in this Task Order.

Task 2: Site Characterization/Report Preparation *(from Contract Level PWS Task 3 – Site Characterization [Assessment])*

All access issues shall be referred to the EPA Region 5 SME for resolution.

Subtask a: Conference Calls to Discuss Planning and Progress-

It will be necessary to discuss site issues/status as the Task Order work progresses. The contractor shall participate in conference calls with the EPA and tribal representatives prior to field activities, preparation of draft reports and draft data table(s), to facilitate review of visualization program images, and as necessary to enable EPA and the Tribe to provide comment and ask questions regarding documents and site progress. At least one call will be held after each draft document is submitted for review by EPA and LDF to discuss comments.

Assume 20 hours total for conference calls including participation by the contractor's project manager and one senior engineer.

Deliverable: Conference Calls
Due Date: Within one week prior to any field mobilization and following submittal of draft reports, data tables, draft 3D visualization images, etc., others as necessary.

Subtask b. Prepare an Interim Action Source Area Excavation Feasibility Study

The contractor shall develop an Interim Action Feasibility Study and cost estimate for the evaluation of excavation and disposal as an interim action method for contaminated soil above and below the water table. The Report shall evaluate the feasibility of this method to meet interim action stabilization goals. The goal is to remove source material contributing to soil and groundwater contamination in excess of Lac du Flambeau (LDF) Tribal Cleanup Standards. The Report shall also include a detailed cost estimate for all aspects of this clean-up method, including design, pre- and post-excavation sampling, pilot scale testing, site access control, transportation and disposal, equipment and personnel costs, etc. Additional field sampling and/or pilot scale testing is expected to be necessary as part of the analysis of the interim method. The goal of the cost estimate is to come as close as possible to the actual costs as if the method will be implemented.

Deliverable: Draft Interim Action Source Area Excavation Feasibility Study Report
Due Date: 90 days following Task Order funding approval

Deliverable: Final Interim Action Source Area Excavation Feasibility Study Report
Due Date: 21 days following receipt of comments from EPA/LDF

Subtask c: Field Work

1. The contractor shall conduct the following activities. The field work shall consist of:

    - Surveying of all monitoring wells following installation of the next set of wells in spring/summer of 2017. Water levels from all wells during the field effort. Assume a total of 34 wells.

Deliverable: Comm encement of field work
Due Date: Beginning after installation of the next set of wells, expected in spring/summer 2017.

Subtask d: Revision of 4DIM Data Visualization Program

A High Resolution Site Characte rization effort has been underway at the site and 4D IM images have been developed. The contractor shall loadnew groundwater sampling data (samples collected after the new set of wells are installed) and any sample data from samples collected as part of the Interim Action Feasibility Study to the model to keep it up-to-date with data collection activities. In addition, the contractor shall respond to comments from LDF on potential errors in the data set

resulting in inaccurate image formation in the current version. A ny corrections shall be included in the first set of updated images.

The contractor shall have data uploaded to the SCRIBE database, m anaged by the EPA ERT Lab in New Jersey, after sampling da ta is received, as was done pr eviously under Task Order 3012 Amendment 0. The model shall then be updated as necessary to reflect the current data collection efforts. Assum e 30 hours of programm er effort to revise 4DIM im ages and participate in conference calls.

Subtask e: Data Tables

The contractor shall pro duce a master data table or tables, to include all sa mpling data for soil, groundwater, etc., from each sampling effort (EPA, Tribal, PECFA-contractor, USGS) from site work starting from the date of the site being re-opened for i nvestigation (February 2015). This table(s) shall be designed so that future data can be easily added to keep the table(s) up to date. Included with the table(s) shall be a list of Cont aminants of Concern whic h reflects historically detected contaminants, potential contaminants, water quality parameters, and site use. In addition, the table shall include any data quality notations pertinent to the results.

Deliverable: Draf t tables
Due Date: 30 days following Task Order funding approval

Deliverable: Final tables
Due Date: Within 15 days of receipt of comments from EPA/LDF

Subtask f: Revision of Previous Technical Memos

The contractor shall revise the three Technical Memos for this project in response to comments from the LDF Tribe. A conference call with LDFand EPA shall take place after written comments are received and before Tech Memo Revisions, and after the contractor's draft revisions are made and delivered. The tribe will prov ide comments on the documents to EPA for transmittal to the contractor. Final versions of th e revised tech memos shall be pr ovided to EPA and LDF in hard copy (two copies) and electronically (disk).

Deliverable: Draf t memos
Due Date: 30 days following receipt of LDF comments on the original memos

Deliverable: Final memos
Due Date: Within 30 days of receipt of comments on the draft revised memos

Performance Requirement	Performance Standard	Metric	Acceptable Quality Level	Monitoring System	Incentive Plan
Task 1-Work Plan/Budget Development	Prepare and submit work plan/budget proposal.	Brief technical proposal, description of contractor's approach to completion of requirement, including metrics and cost proposal that enables EPA to make a determination of price reasonableness	Delivery: 1. Conference Call with Administrative Task Order Manager to discuss SOW within 5 working days after receipt of Task Order SOW 2. Submission of Work Plan/Budget within 10 working days after conference call.	On-time Delivery	**Additional Award Option**
Task 2a – Conference Calls Support	Participate in conference calls	Participation in discussion on conference calls	Clear, concise, understandable	SME will ensure that there is agreement of all parties on planned site activities.	**Additional Award Option**
Task 2 – **Subtask b - CMS Report/ Conference Calls** **Subtask c – Field Work** **Subtask d – Revision of 4DIM Model** **Subtask e- Data Tables** **Subtask f- Tech Memo revisions**	Deliverables submitted in accordance with schedule.	Perform field and report preparation activities.	Field activities according to the approved QAPP and HASP. CMS Report provides all necessary information for the cost and evaluation of excavation as a feasible remedial method.	On-time delivery.	**Additional Award Option**

5. Period of Performance

From the date of Contracting Officer's Approval through _____, 2017.

This work is funded 100% LUST.

Exhibit B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 20 2017

REPLY TO THE ATTENTION OF:

Ms. Darsi Foss
Director
Remediation and Redevelopment Program
Wisconsin Department of Natural Resources
101 South Webster Street, Box 7921
Madison, Wisconsin 53707-7921

Dear Ms. Foss:

Thank you for your letter dated February 28, 2017, concerning remediation of the Tower Standard leaking underground storage tank (LUST) site and the role of the Petroleum Environmental Cleanup Fund Act (PECFA) in the clean-up work. The U.S. Environmental Protection Agency shares your interest in utilizing available resources to complete clean-up activities in a timely manner. We also understand your concern that remaining investigative and remedial activities take place before the June 30, 2020 PECFA sunset date to take advantage of the funding available under the PECFA program.

EPA acknowledges that WDNR, like the other governments involved at the site, has its own set of regulatory requirements to consider. As we have indicated in previous correspondence, the federal LUST program applies within reservation boundaries, even when the contaminated property is owned by non-tribal members, and the Lac du Flambeau Band of Lake Superior Chippewa (LDF or the Tribe) has the authority under its legal code to address threats to the environment on all lands and waters within the reservation. While each government involved in the site has its own set of requirements to consider, we share a common goal of protecting human health and the environment. Therefore, we continue to believe that timely coordination between all governments is of vital importance.

We acknowledge the significant steps taken by DNR, EPA and LDF in 2015 and 2016. We note your plan to continue work installing additional monitoring wells and piezometers to fill in the gaps in the site's groundwater monitoring network, and your statements about addressing the residual contaminant source area. We similarly are working on proposals related to the site investigation to fill data gaps and complete the monitoring well network so that decisions can be made regarding remedial actions.

EPA and LDF staff have had recent, productive technical discussions consistent with the federal trust responsibility toward tribes regarding a path forward. EPA and LDF have agreed to the following next steps, which are consistent with the goals described in your letter.

1. Monitoring Well Network: Completing the monitoring well network is essential, as existing data on site conditions is not complete. EPA and the Tribe will coordinate input

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on suggested sampling locations based on all available site data including the revised 3D graphic representative model of the ground water plume and communicate these to WDNR.

2. Site Characterization: Sufficient site characterization data exists to design a source interim action at the site. Implementing such an action is consistent with Tribal clean-up procedures. EPA is in the process of tasking the federal contractor with development of a feasibility study on excavation of source material. A draft report is expected in summer 2017.
3. Residual Contamination: Residual contamination will remain a concern following source removal, requiring additional monitoring, analysis and further potential remedial action.

EPA is in the process of finalizing its modeling information and will share it with WDNR once complete. We will also be sharing the Corrective Action Recommendations Technical Memo being prepared by Bristol which will follow that model finalization. We intend to share all reports with WDNR as they are finalized.

We agree that it is important that the three governments re-establish effective communication with regard to this site. We intend to schedule regular communication meetings to accomplish that goal so we may discuss monitoring well installation, source removal planning, longer-term site closure requirements, timetables and procedures. EPA and LDF staff found the use of a facilitator in their recent technical discussions to be very helpful. Accordingly, we suggest that the next meeting or conference call among WDNR, EPA and LDF staff be facilitated by Anthony Greenwater, Director, Tribal and International Affairs Office, EPA Region 5.

Please feel free to contact me or members of my staff with any questions that you have. I can be reached at (312) 886-7152.

Sincerely,

Ignacio L. Arrázola
Acting Director
Land and Chemicals Division

Exhibit C

Melody Simmons

From:	Hanson, Kristen <KHanson@ldftribe.com>
Sent:	Friday, April 14, 2017 2:40 PM
To:	kamke.sherry@epa.gov; Greenwater.anthony@Epa.gov; Manville, Jennifer (manville.jennifer@epa.gov); Allen, Dee
Cc:	Wawronowicz, Larry
Subject:	FW: Request for Task Order Comments & RCRA Corrective Action Plan Guidance Document
Attachments:	RCRA CAP Final.pdf; Tower Standard Task Order PWS draft March 2017 kh comments 3.22.2017 updated 4.14.2017.docx

Sherry,

On Wednesday, Bob provided the source document referenced in the task order. Thank you for providing this. It was helpful to provide the missing Tribal Comments related to the task order activities specified in the source document.

The attached comments include those discussed and shared during our March 23 2017 meetings as well as several comments relating to the specifications tied to the provided document.

With these comments, I think both parties have a better understanding and expectations of work products. I look forward to participating in the conference call with EPA and Bristol as well as being provided Bristols T.O. written response (March 23, 2017 New Action Items And Agreements #7).

Kristen Hanson
Environmental Response Program Coordinator
Lac du Flambeau Tribal Natural Resource Department
Office: 715-588-4290
Cell : 715-614-4644

From: Kamke, Sherry [mailto:Kamke.Sherry@epa.gov]
Sent: Thursday, April 13, 2017 3:11 PM
To: Hanson, Kristen
Cc: Allen, Dee; Greenwater, Anthony; Manville, Jennifer; Egan, Robert
Subject: Request for Task Order Comments RCRA Corrective Action Plan Guidance Document

Kristen,

We are hoping to finalize the Tower Standard (Haskell Lake) task order soon. We want to be able to address all of your comments. Could you forward to us your written comments on the draft task order for the next set of work?

We want to get that moving toward cost estimates and eventual funding.

Thanks,
Sherry

From: Egan, Robert
Sent: Wednesday, April 12, 2017 8:59 AM
To: KHanson@ldftribe.com
Cc: Kamke, Sherry ; Dee.allen@ldftribe.com; Greenwater, Anthony ; Manville, Jennifer
Subject: RCRA Corrective Action Plan Guidance Document

Kristen,

After some additional searching, I was able to find the entire document, which is attached.

Bob Egan
Corrective Action Manager
Underground Storage Tanks Section
RCRA Branch
EPA Region 5
(312) 886-6212
(312) 692-2911 (fax)

From: Hanson, Kristen [mailto:KHanson@ldftribe.com]
Sent: Thursday, March 30, 2017 5:06 PM
To: Egan, Robert <egan.robert@epa.gov>
Cc: Dee.allen@ldftribe.com; Greenwater, Anthony <greenwater.anthony@epa.gov>; Manville, Jennifer <manville.jennifer@epa.gov>
Subject: Task Order Reference - RCRA Corrective Action Plan, Appendix request

Bob,

I am finalizing the comments on Task Order 3012 that were initially shared in our March 23rd meeting. Task Order 3012 References OSWER Directive 9902.3-2A and provides the following link:
https://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/gen_ca/rcracap.pdf
The Document and Table of Contents references Appendix A-G, but I was not able to find the referenced appendices via the link provided.
Could you please provide the Appendices to the referenced document.

Thank you,

Kristen Hanson
Environmental Response Program Coordinator
Lac du Flambeau Tribal Natural Resource Department
Office: 715-588-4290
Cell : 715-614-4644

Exhibit D

Melody Simmons

From: Hanson, Kristen <KHanson@ldftribe.com>
Sent: Friday, June 30, 2017 10:39 AM
To: egan.robert@epa.gov; Allen, Dee; Greenwater.anthony@Epa.gov; Manville, Jennifer (manville.jennifer@epa.gov)
Cc: Wawronowicz, Larry
Subject: FW: revised task order
Attachments: Tower Standard Task Order PWS draft v2 2017.docx

EPA provided the attached Task Order reflective of our February 2017 facilitated technical meeting agreements on May 24th and indicated that the Task Order was moving forward.

During today's call Bob offered that the Task Order has not moved forward and that Tribal Approval of the Revised Task Order in now required to move the Feasibility Study and other agreed site activities forward.

Please consider this Tribal Approval of the Attached Task Order to proceed with the EPA-Tribe agreed work.

For Reference, the #6 Action Item from the March EPA-Tribe Facilitated Technical Meeting is provided below along with Tribal Task Order Comment Tracking.

6. New task order:

a) Comments will be provided on draft task order and language will be clarified as needed (LDF, EPA). Bristol's written response will be shared with LDF (EPA). LDF will be invited to participate in teleconference with EPA and Bristol to discuss draft order, EPA comments and Bristol response (EPA).

3/23 LDF provided verbal comment and request missing parts of for scope of work spec document referenced in task order – OSWER Directive 9902.3-2A RCRA Corrective Action Plan, May 1994.
3/30 LDF email again request missing parts of SOW document referenced in T.O.
4/12 EPA provides Missing parts of OSWER Directive 9902.3-2A RCRA Corrective Action Plan
4/14 LDF provides complete T.O. comments

Kristen Hanson
Environmental Response Program Coordinator
Lac du Flambeau Tribal Natural Resource Department
Office: 715-588-4290
Cell : 715-614-4644

EPA-R5-2017-010506_0000035

From: Egan, Robert [mailto:egan.robert@epa.gov]
Sent: Wednesday, May 24, 2017 3:25 PM
To: Hanson, Kristen
Cc: Kamke, Sherry
Subject: revised task order

Kristen,

Here is a revised version of the task order with changes made based on your comments.

I increased the time for conference calls to 20 hours to make sure we have coverage for calls after each draft deliverable and 3D data image revision. I also changed the subcontractor 3D image work from 2 revisions to 30 hours of time, which I think will provide us with a better value and we can dictate what we want done as we progress through the next effort of data collection in the field. While you review this version I will speak to Tom Kady and ask him if 30 hours is adequate for the things we anticipate having done.

Also, I included making changes to the 3D images based on your last set of comments. I wasn't sure if you will be pursuing that on your own but wanted it covered just in case. I can remove it if you are funding that work. Regarding the tech memo revisions, I expect that Bristol will want to see your comments on them in order to provide an accurate cost estimate.

I have not put together my own cost estimate yet. We may exceed what money we have available for all this work to be completed, but we hope to hear from HQ soon about our allocation for this year. Once we hear back from Bristol, we can decide if we need to split off some of the work into another task order.

Please let me know if you have any questions about the changes.

Bob

Bob Egan
Corrective Action Manager
Underground Storage Tanks Section
RCRA Branch
EPA Region 5
(312) 886-6212
(312) 692-2911 (fax)

Exhibit E

From: Hanson, Kristen
Sent: Friday, July 7, 2017 1:32 PM
To: Barrows.judy@Epa.gov
Cc: Allen, Dee
Subject: Excavation Feasibility Study Task Order Status- Region Reports HQ has delayed task order and is backlogged-

Good Afternoon Judy,

We are requesting your assistance in reference to the status of the attached task order for the Haskell Lake Site. The region reported that the task order that includes an interim action excavation feasibility study has been delayed because of Headquarters Backlog (May 25 tech call notes attached). The Tribe has been anticipating source area excavation for years and have expiring contributing funds. For reference I have included some source soil interim action excavation history and recent events.

Source Soil Interim Action Excavation History:
2015
Source Soil excavation was proposed to EPA in April 2015 in a meeting in Chicago with Tribal and EPA legal, Gary Victorine, Sherry Kamke, Bob Egan, and Tribal Management and Staff. Tribal Staff put forth the Natural Resource Director's expectation that source soil removal occur by August 2015. The Tribe had been requesting assistance since November 2011.

Source Soil excavation was extensively discussed during the July 2015 EPA-Tribal Initial Consultation Meeting on Lust Sites within the Lac du Flambeau Reservation. During EPA's consultation visit in July 2015, Tribal costs estimates and scopes of work for interim action was shared with EPA's technical staff, Bob Egan. With only the historical cleanup for reference, the tribe had estimated the costs for a) source area delineation work ~$30,000 b) source soil removal and trucking to the Lincoln county Landfill $70,000 (cost for our Tribal Roads Department to complete excavation, trucking, backfill, and compaction work estimate 1200 cubic yards), and landfill disposal costs ~ $41,400.

Source area soil sampling was included in August 2015 EPA Task Order to delineate the source area. Unfortunately the task order was never implemented.

By the fall of 2015, the Tribe had received notice of partial interim action funding from the BIA Midwest Regional Director. The funding would only include source area excavation, trucking, and backfill. The Tribe shared notice of the potential funding to EPA Staff assigned to the project, Bob Egan. Mr. Egan was willing work with this funding with EPA work commitments to source area delineation, excavation planning, and landfill disposal. With support from EPA, the Tribe accepted the funding. It was expected that this work would be completed before the funds expired- September 2016.

Also, during the fall site conditions started to reveal themselves. Napl was observed in soil cores and well cuttings. Source Soils were identified at and below the water table. State soil sampling work took place, but the state program limited soil sampling to only soils above the water table.

2016

By March 2016 the Tribe received notice that a different scope of work than the agreed August Task Order would take place in expedited fashion before funding disappeared. The work did include soil borings in the source area. The EPA contractor and EPA agreed that the method proposed (single tube geoprobe borings) would likely not be successful for collection of soil samples in the source area at depth below the water table. Unfortunately timing and contracting restrictions prohibited modifying the scope of work to be reflective of known site conditions. The work would need to go forward a few days after the Tribe received the Sampling Work plan for comment. The Tribe offered to pay for the addition of LIF tooling add-on ($3500/day) to make the scope of work more useful. Recovery below the water table was poor and a few questionable samples were collected. Soil Lab reports arrived after the EPA contract ended and have not yet been evaluated.

In March of 2016, EPA agreed to move forward with excavation interim action evaluation and planning. A report was expected to evaluate existing site data, determine degree and extent of source area, and interim action planning.

With the anticipation EPA soil data evaluation and , HRSC work was initiated by the State in July 2017. Although there was no work plan in place because of time constraints, it was agreed that the work (MIP or LIF or both) would include the source area and plume core. Unfortunately the source area was largely avoided resulting in EPA lacking reasonable source area data to evaluate in the forthcoming report. During the weeklong HRSC work and thereafter, The Tribe expressed concerns that the EPA contractor lacked source area data needed for the already contracted forthcoming interim action excavation report (the only source area data was 2 questionable soil samples, no source bottom depth established). With the importance of source area work a priority of the Tribe, the Tribe offered to conduct source area work with HRSC . The Tribe sought technical assistance from EPA and EPA's contractor and completed LIF work in early September 2017. Although Mr. Egan was invited and encourage to be present for this work, Mr. Egan was not available for the data gap source area work. The LIF report was received on September 20, 2017 and provided to EPA for inclusion in source area excavation planning. Mr. Egan advised that the Tribal data would not be included in EPA's interim action evaluation, but EPA's contractor choose to include the LIF data in their evaluation.

EPA Acting Regional Director participated in a call with Tribal Council on November 29, 2016 and Tribal Council expressed concerns that source soil removal had yet to be initiated. Regional Director Kaplan assured council that a source control was planned for this summer.

2017

EPA-Tribe facilitated technical meeting occurred in February and March. For EPA to move forward on source area interim action excavation planning, a feasibility study was needed and identified as an actionable task (see attached Feb 23rd meeting notes).

The Excavation Feasibility Study is referenced in EPA's March 20, 2017 letter with an anticipated completion date of summer 2017 (attached).

EPA notified the Tribe that the Excavation Feasibility Task Order was moving forward in an May 24th email.

During the May 25th tech meeting call, Mr. Egan reports that the Task Order that includes the Excavation Feasibility Study has been delayed due to HQ Backlog.

During a June 30th call with EPA, the Tribal Staff learned that the task order may not have been submitted to headquarters.

Your assistance is appreciated,

Sincerely,

Kristen Hanson
Environmental Response Program Coordinator
Lac du Flambeau Tribal Natural Resource Department
Office: 715-588-4290
Cell : 715-614-4644

EPA-R5-2017-010506_0000035

Exhibit F

Melody Simmons

From: Kamke, Sherry <Kamke.Sherry@epa.gov>
Sent: Wednesday, July 12, 2017 7:10 AM
To: Greenwater, Anthony; Saari, Christopher A - DNR; Dave Larsen (dlarsen@reiengineering.com); Egan, Robert; Allen, Dee; Hanson, Kristen; John.Robinson@wisconsin.gov
Subject: RE: notes, Haskell Lake/Tower Standard, 6 July 2017

Anthony,

I would like to request a correction/clarification to the Interim action assessment section of the notes.

I don't recall saying the last sentence of the paragraph below:

1. In a task order under development, EPA has been planning to assess the potential effectiveness of excavation. EPA does not expect to have that assessment until sometime this fall. WDNR, on the other hand, would typically produce a *Remedial Action Options Report* prior to choosing an interim action. If limited to excavation and AS/SVE, WDNR and REI thought a simplified document could be produced fairly quickly. It was unclear whether EPA's planned assessment would serve any purpose, given the WDNR document and the PECFA funding timeline. EPA (Kamke) stated that the Agency would prefer to disinvest from excavation.

I think the rest of the paragraph captures what I meant to say so I would recommend deleting the last sentence. If I did say something about disinvesting and it is important to keep a disinvesting statement in the text, I recommend that the text be restated to indicate that it says EPA prefers to disinvest from evaluating the excavation option if the Remedial Action Options Report evaluates it adequately.

I was trying to state that I don't believe it is a good use of federal funds to evaluate the excavation option if the PECFA process has already evaluated it and moved towards implementing an interim action.

From: Greenwater, Anthony
Sent: Tuesday, July 11, 2017 11:15 AM
To: Saari, Christopher A - DNR <Christopher.Saari@wisconsin.gov>; Kamke, Sherry <Kamke.Sherry@epa.gov>; Dave Larsen (dlarsen@reiengineering.com) <dlarsen@reiengineering.com>; Egan, Robert <egan.robert@epa.gov>; Dee.allen@ldftribe.com; KHanson@ldftribe.com; John.Robinson@wisconsin.gov
Subject: notes, Haskell Lake/Tower Standard, 6 July 2017

All: Here are the notes from the call on 6 July re Haskell Lake/Tower Standard.

V/r,
Anthony Greenwater, Director
Tribal and International Affairs
US EPA, Region 5
77 W Jackson Blvd., Chicago Illinois 60604
office: 312 353 8640
mobile: 312 257 1551

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