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SHORT CRESSMAN & BURGESS PLLC

May 20, 2015

SENT VIA EMAIL AND FIRST CLASS MAIL

Quinn L. Williams
Natural Resources Section Chief
Bureau of Legal Services
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921

Re: *Haskell Lake/Tower Standard Site*

Dear Quinn:

Thank you and your colleagues for taking the time to discuss the cleanup of the Haskell Lake/Tower Standard site (Site) last week. The discussion was useful in that it identified both the commonalities and differences between the State and the Lac Du Flambeau Band of Lake Superior Chippewa Indians (the Tribe). Although both governments are committed to cleaning up the Site in an expeditious manner, it is important for the State to understand that remedial actions will not be complete until the Site is cleaned up to the Tribe's applicable cleanup standards, in a manner consistent with Tribal law. In this instance, as the key State and Tribe groundwater standard appears to be identical, there may not be any regulatory inconsistencies, as long as the soil is addressed and the remedy is effective to achieve the Tribe's groundwater cleanup levels without reliance on natural attenuation. The Tribe was, and remains, willing to defer matters of jurisdiction for another day, however, it appears that the State is unwilling to engage in a process that respects the sovereignty of the Tribe and acknowledges that the subject on-reservation Site must be cleaned up to comply with the Tribe's cleanup standards.

The Tribe proposed a fair and reasonable path forward that respects the sovereignty of each of the three governments (State, Federal and Tribal). Simply put, the Tribe proposed that, for the purpose of this Site, no sovereign would assert sole regulatory jurisdiction, but instead all three sovereigns will work together as co-regulators, and apply the most stringent applicable cleanup standards. This approach would result in each of the sovereign's standards being met and their laws upheld.

While the State is bound to operate under the State Code, which defines its ability to clean up contaminated Sites, the Tribe is likewise bound to its Tribal laws which require contaminated sites within the exterior boundaries of the reservation to achieve Tribal standards. Accordingly, any cleanup of the Site must achieve Tribal standards. In the Tribe's view, the State, Tribe and EPA should use best efforts to work together and find a solution acceptable to

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all three governments. Although a formal MOU is not necessary, mutual respect and a common understanding of the path forward is necessary.

In sum, this letter will put the State on notice that the Tribe reserves its legal options and, at this time, does not intend to actively oppose the planned State remedial action at the Site. Rather, the Tribe takes the position that because the prior State cleanup was not effective, the State has a continuing obligation to address the unresolved environmental concerns at the Site. In doing so, the Tribe expects that the State will fully cooperate with the Tribe and contemporaneously provide EPA and the Tribe with all draft documents and other Site related date and materials. As discussed last week, the Tribe will provide the State with its comments in a timely manner.

The Tribe will be providing the Site owner/operator with notice of liability under applicable Tribal law and, if necessary – following the State remedial action – pursue such further remedial action as may be necessary to bring the Site into compliance with applicable Tribal law.

Please call if you have any questions.

Sincerely,

SHORT CRESSMAN & BURGESS PLLC

Richard A. Du Bey

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