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

SEP 02 2015

REPLY TO THE ATTENTION OF:

Larry Wawronowicz, Tribal Natural Resource Director
Lac du Flambeau Band of Lake Superior Chippewa
418 Little Pines
Lac du Flambeau, Wisconsin 54538

RE: Consultation on Tower Standard Leaking Underground Storage Tank Site

Dear Mr. Wawronowicz:

Thank you for your July 29, 2015 letter regarding our recent consultation at Lac du Flambeau. I agree that the meeting on your reservation was a positive step in our government to government relationship. Thank you and the members of the Tribal Council for your hospitality.

Your letter described the steps you understood that we would pursue as a result of our consultation, and requested our feedback on those steps. We are largely in agreement with your description of our agreed actions, and below I outline what the U.S. Environmental Protection Agency has done since our consultation meeting and how we propose to proceed.

On August 6, 2015, I sent a letter to Wisconsin Department of Natural Resources (WDNR) regarding the Tower Standard site and EPA and Tribal jurisdiction. I have attached a copy of that letter for your reference. I believe that letter addresses the concerns you raised in points one and two of your letter regarding the WDNR/EPA Memorandum of Agreement and regarding sovereignty.

With regard to your third issue, "Lac du Flambeau Pilot LUST Program," EPA will assist the Tribe to address leaking underground storage tank issues on the reservation, either by providing funding to the Tribe's Department of Natural Resources to develop Tribal capacity under a pilot program or by making available EPA internal resources, or some variation of the two. Currently, we are evaluating whether we could fund the tribe under our existing statutory authorities through a cooperative agreement or, failing that, other means by which EPA could provide the Tribe assistance to do this work. I will provide you with an update on our efforts on this topic within the next month.

For the Tower Standard site, your fourth issue, my staff have been working on a draft work plan for work at the site to supplement the work being done by the contractor under the state Petroleum Environmental Cleanup Fund Award (PECFA) program. Bob Egan of my staff has been in contact with your staff on this effort and we expect to move forward with certain key investigations this fall, including subsurface soil sampling and the installation of groundwater monitoring wells.

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EPA has also made progress on your fifth issue, "Split Samples for work to be performed by WDNR." EPA has confirmed that our Region 5 laboratory can process split soil samples collected during the PECFA-funded field work for many of the parameters of interest and Region 5 staff plan to be present at the collection of the samples.

Finally, you asked that we hold open our formal government to government consultation as we ensure that we meet the goals set in our initial consultation meeting. I support keeping the lines of communication open between the Tribe and the Region so that we can perform the important work before us.

If you have any questions or concerns regarding this matter, please contact me at (312) 886-0399 or your staff can contact Sherry Kamke at (312) 353-5794.

Sincerely,

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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REPLY TO THE ATTENTION OF:

August 06, 2015

Darci Foss, Bureau Director
Remediation and Redevelopment Program
Wisconsin Department of Natural Resources
101 South Webster Street, P.O. Box 7921
Madison, Wisconsin 53707-7921

RE: Tower Standard Site, Lac du Flambeau Reservation

Dear Ms. Foss:

This letter follows up on our discussions and a conference call between Wisconsin Department of Natural Resources (WDNR), the Lac du Flambeau Band of Lake Superior Chippewa Department of Natural Resources, and the U.S. Environmental Protection Agency, Region 5, on Friday, May 15, 2015, regarding the Tower Standard Leaking Underground Storage Tank (LUST) site, located on non-member owned fee land within the reservation boundaries of the Lac du Flambeau Reservation.

I want to call your attention again to EPA's authority to undertake action at the site and determine whether the site, ultimately, has been cleaned up to relevant federal cleanup and tribal levels. EPA carries out its statutory and regulatory responsibilities and authorities under RCRA Subtitle I, Underground Storage Tank requirements, Subchapter IX, 42 U.S.C § 6991 *et seq.* and EPA's *Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks,* 40 CFR Part 280, in Indian country, as defined at 18 U.S. C. § 1151. This includes all land within the boundaries of a reservation, including lands that may be owned by non-tribal members. Section 9013 of RCRA, 42 U.S.C. §6991*l*, explicitly directs EPA to implement and enforce requirements concerning underground storage tanks located, among other places, wholly within the boundaries of an Indian reservation. EPA implements the underground storage tank program in Indian country regardless of whether a state has state program approval to operate in lieu of the federal program under Section 9004 of RCRA, 42 U.S.C. § 6991c. Furthermore, "One Cleanup" memoranda of understanding like the agreement between EPA and WDNR in Wisconsin do not limit federal or tribal jurisdiction within the boundaries of any Indian reservation.

I greatly appreciate the outstanding working relationship of EPA and WDNR in Wisconsin, and expect that we will continue that relationship. EPA is supportive of any cooperative relationship between WDNR and the Band at the Tower Standard site that conducts activity under the state program, as long as it respects the sovereignty of the Band. As I indicated in our phone

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conversation, I suggest that the Band, EPA and WDNR meet to discuss the necessary work that needs to be done at the Tower Standard site and what each party may contribute to the site characterization and cleanup.

Sincerely,

Margaret Guerriero,
Director
Land and Chemicals Division

cc:

Larry Wawronowicz, Tribal Natural Resource Director, Lac du Flambeau Band
Richard A. Du Bey, Short, Cressman & Burgess PLLC