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SHORT CRESSMAN & BURGESS PLLC

August 9, 2016

Confidential Enforcement Sensitive Communication

VIA ELECTRONIC MAIL
VIA FIRST CLASS MAIL

Erik Olson
Office of the Regional Counsel
Region 5
United States Environmental Protection Agency
77 West Jackson Blvd., LC-8J
Chicago, IL 60604

Re: *Memorandum of Agreement*

Dear Erik:

As Natural Resource Director, Larry Wawronowicz, informed Deputy Director, Michael Harris on August 3rd, enclosed for your review is the first draft proposed Memorandum of Agreement between the Lac du Flambeau (LdF) and EPA Region 5 (MOA). The MOA provides for joint enforcement pursuant to each sovereign's inherent authority to protect human health and the environment within the exterior boundaries of the Lac Du Flambeau Indian Reservation (Reservation). Leaking underground storage tanks (LUST) present an imminent concern to the health of all people who reside or do business on the Reservation (Reservation Population) and to the lands, waters and natural resources of the Reservation (Reservation Environment). Accordingly, it is the Tribe's position that all LUSTs located within the Reservation Environment be remediated to meet applicable tribal and federal standards.

A variety of approaches have been undertaken to date to address the most troublesome LUST within the Reservation Environment, which has previously been referred to as the Tower Standard Site located near Haskell Lake (the Haskell Lake Site). The Haskell Lake Site is causing adverse impacts to the soil, groundwater, sediment, and surface waters of Haskell Lake. Unfortunately, to date little progress has been made toward implementation of an effective solution at the Haskell Lake Site. Presently, there are three sovereigns with different remedial goals attempting to perform work at this site (LdF, EPA, and the State of Wisconsin) and the lack of focused approach has not been helpful. Sporadic prior efforts at the Haskell Lake Site have resulted in limited site characterization, ineffective chasing of the plume, and an unsuccessful attempt to build a conceptual site model. In sum, very little has been done to characterize the source of the contamination that continues to pollute the Reservation Environment.

According to reports from EPA's own technical expert, the current plume chasing exercise is not working and what is really needed is a remedial strategy that focuses on removal of the source. Accordingly, a major purpose of this MOA is to define the basic regulatory structure for addressing LUSTs located within the Reservation Environment, whether located on fee or trust lands and to move forward with a focused regulatory approach for implementing source removal at the Haskell Lake Site.

To that end, this MOA is intended to identify specific steps and duties, to be undertaken by LdF and EPA, as we move forward to remove the source at the Haskell Lake Site. The MOA is in accordance with the EPA's 1993 Policy Statement regarding the UST/LUST National Native American Lands. According to the 1993 Policy Statement, EPA Regional Offices are responsible for ensuring the implementation of the UST program on Indian lands and are encouraged to work with tribes that have the capability to administer the UST program on tribal lands. This MOA also serves to implement EPA's 1984 Indian Policy, which directs the agency to take affirmative steps to encourage and assist tribes in assuming regulatory and program management responsibilities for reservation lands.

It is my understanding that our respective clients are in favor of the proposed MOA and that it is our task to fine tune the draft MOA over the next few weeks with the goal of presenting our clients with a final MOA by September 1, 2016.

Sincerely,

SHORT CRESSMAN & BURGESS PLLC

Richard A. Du Bey

RAD:ms
Enclosure
cc: Larry Wawronowicz
Dee Allen
Kristin Hanson
Michael Harris