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

DEC 2 1 2015

REPLY TO THE ATTENTION OF:

Mr. Larry Wawronowicz
Tribal Natural Resource Director
Lac Du Flambeau Band of Lake Superior Chippewa Indians
Post Office Box 67
2500 Highway 47 North
Lac Du Flambeau, Wisconsin 54538

RE: Tower Standard and Haskell Lake Petroleum Contamination

Dear Mr. Wawronowicz:

The U.S. Environmental Protection Agency received your December 2, 2015 letter in which you expressed your disappointment with the lack of progress at the Tower Standard leaking underground storage tank (LUST) site. EPA understands your concerns regarding work conducted at the site and delays in getting results for work performed under the State of Wisconsin's Petroleum Environmental Cleanup Fund Award (PECFA) program.

We agree that communication between all involved parties must be improved, but in light of the schedule you requested in your letter, it is important for EPA and the Lac du Flambeau Band of Lake Superior Chippewa to revisit expectations about the amount of time needed to get to a final remedy at the site. Given the site's complexity, even in the best of circumstances we envision that completing investigation and remediation activities will likely be a multiyear process. Although the pace of work may appear slow, in fact much has been accomplished since the field investigation began in September. Source area soil investigation, well installation, and groundwater sampling have been completed and data have been delivered.

As a result of our visit to the Lac du Flambeau reservation this past summer to consult with the Tribe, you sent EPA a letter on July 29, 2015 which laid out the path to which the Tribe and EPA had agreed going forward at the Tower Standard site. Your correspondence noted that "...EPA, the Tribe, and [Wisconsin Department of Natural Resources (WDNR)] wish to access the [Wisconsin] PECFA fund for the purpose of conducting further Site investigation activities." Your correspondence went on to bullet a number of agreed actions, including:

- EPA and the Tribal [Natural Resources Department (NRD)] shall consult on the development of a [statement of work (SOW)] to perform certain data gap work at the Site that the WDNR has stated it will not perform in a timely manner.
- EPA and the Tribal NRD will use best efforts to communicate with the WDNR in an effort to convince the State to enlarge the scope of its SOW to include those specific tasks that, if not

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performed, will result in data gaps which will impair the ability of WDNR to make a fully informed decision with regard to the implementation of a remedial strategy that implements effective corrective action at the Site.

- In recognition of the importance of Haskell Lake to the Tribe and of EPA's trust responsibility to help protect Tribal trust resources, the EPA has agreed to undertake, in close coordination with the Tribe and with direct participation by the Tribal NRD, a remedial investigation of the Site, to be conducted in parallel with the work to be performed by the WDNR, but independent of the state funded work, and for the specific purpose of supplementing the work to be performed by the WDNR so that adequate data may be available to implement a timely remedy at the Site.

EPA remains committed to addressing petroleum contamination at the Site, and believes that the plan to which we agreed in consultation with the Tribe remains the best course of action. That course includes both the use of the PECFA funds to conduct investigation and remediation work at the site and the use of federal funding and authority under EPA's leaking underground storage tank (LUST) program. We also believe that the development of the SOW, with direct participation by Tribal NRD, will be best informed by review of initial testing results already obtained.

Please be aware that if the tribe decides to forego the agreed upon process and asks the Region to fund the project exclusively, the process will take significantly longer. This is due to the fact that there is a limited amount of funding available annually and this site will compete with funding requests from EPA's other regions that have tribal LUST funding needs.

We currently have an approved task order to complete well installation, soil boring, and soil sampling that totals approximately $154,000. As discussed with Tribal NRD, we currently intend to move forward with a prioritized list of tasks funded by the trust fund, including cross section preparation, sampling beneath the lake bed, and other tasks. Before amending the task order we will coordinate with the Tribe. Our goal is to provide meaningful field data while conserving the money obligated for potential future project needs not addressed under the PECFA program. This will require EPA and the Tribe to effectively coordinate with the state's PECFA process.

EPA recognizes its trust responsibility toward the Tribe and endeavors to fulfill that responsibility at the site by carrying out the Agency's statutory authority under the LUST program. While I will be taking our joint concerns regarding information sharing and communication to WDNR management, I consider the receipt of recent soil and groundwater data and well installation data from the PECFA contractor and WDNR's request for comments from both the Tribe and EPA, both of which have occurred since your letter, as evidence of an evolving awareness on the part of WDNR and the PECFA contractor of the necessity to work in a collaborative fashion. However, if the Tribe no longer believes the best course of action is to proceed as previously agreed, please contact me to discuss other options.

Sincerely,

Margaret M. Guerriero
Director
Land and Chemicals Division