LAC DU FLAMBEAU BAND
OF LAKE SUPERIOR
CHIPPEWA INDIANS

TRIBAL NATURAL RESOURCE DEPARTMENT

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Fish Culture - Fisheries Management - Wildlife Management - Water Resources - Environmental Protection - Conservation Law - Energy - Air Quality

CONFIDENTIAL ENFORCEMENT SENSITIVE COMMUNICATION

July 29, 2015

Margaret M. Guerriero, Director
Land and Chemicals Division
U.S. Environment Protections Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: *Consultation on Leaking Underground Storage Tank Sites*
July 22nd Initial Consultation Meeting

Dear Margaret:

As Director of the Natural Resource Department of the Lac du Flambeau Band of Chippewa Indians (the Tribe) and on behalf of the Tribal Council and Tribal Natural Resource staff, I want to express our thanks and appreciation for the consultation experience we shared on July 22, 2015. This initial consultation improved our government-to government relationship and moves towards further implementation of honoring EPA's 1984 Indian Policy.

Based on the discussion at the meeting, we have set out below our understanding of our agreed path forward with regard to each of the key issues on which we consulted. **We would appreciate your feedback and confirmation that the Tribe's understandings are consistent with yours.**

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1. The WI/EPA MOU regarding LUST matters in WI

   Action Item: EPA will be sending a letter to the State (likely from ORC to Wisconsin Department of Natural Resources Counsel, WDNR) that clearly states that this MOU does not address the issue of WI LUST jurisdiction over Indian country within the State of WI. And that Indian country is subject to exclusive federal jurisdiction pursuant to the RCRA-LUST program in the State of WI.

   Timeframe: EPA will prepare a draft letter for review by the Tribe and send written communication to the WDNR within two (2) weeks.

2. EPA recognition of the inherent sovereignty of the Lac du Flambeau Band of Chippewa Indians to develop, implement and enforce environmental programs within the exterior boundary of the Lac du Flambeau Indian Reservation (Reservation Environment).[1]

   Action Item: EPA will prepare a letter to the WDNR (may be combined with item #1 above) that informs the WDNR of EPA's position acknowledging the inherent sovereignty of the Tribe in general and with regard to the LUST program within the Lac du Flambeau Indian Reservation, and of EPA's exercise of its federal trust responsibility to recognize the Tribe as the primary government responsible for health and welfare of our Tribal membership and protection of the Reservation Environment, acting under Tribal law and in a manner consistent with the applicable federal law.

   Timeframe: Within two (2) weeks.

[1] *"Reservation Environment" as defined in Chapter 200, Hazardous Substance Control Code means all lands, air, surface water and ground water, natural resources, scared sites and traditional, spiritual and cultural properties located within the exterior boundaries of the Lac du Flambeau Indian Reservation.*

3. Lac du Flambeau Pilot LUST Program.

Action Item: EPA recognizes the program capacity and expertise of the Tribe and the Tribal Natural Resource Department (NRD) to implement and investigate and where appropriate enforce and remediate LUST Sites within the exterior boundaries of the Lac du Flambeau Reservation. And in particular the 25 "closed" LUST Sites previously investigated by the WI Department of Commerce or WDNR that were closed in accordance with the WI natural attenuation policies and practices and for which there is no data available to confirm that past remedial measures have achieved applicable Tribal cleanup standards. EPA will seek Pilot Program funding of the Tribal NRD so that the NRD may carry out an investigation of the on-Reservation Closed Sites under Tribal law, and EPA will work with the Tribal NRD to develop a cooperative agreement to implement this Pilot Program.

Timeframe: To be determined.

4. Tower Standard LUST Site.

Action Item: The Tribal NRD and EPA have commented on the draft SOW prepared by REI for WDNR for this Site. And EPA, the Tribe and WDNR wish to access the WI PECFA fund for the purpose of conducting further Site investigation activities. However, based on the WDNR's initial response to comments by EPA and the Tribe, it appears that the SOW prepared by REI will not result in the development of certain data that EPA and the Tribe believe is needed to properly characterize this Site. The data collected must provide adequate information to inform necessary remedial actions to address the current

data gaps and others that may subsequently be identified. EPA and the Tribe have agreed to undertake the following:

- EPA has identified funding in the amount of approximately $100,000.00 to be used to address agreed data gaps and to be committed for this purpose in FY-15.

- EPA and the Tribal NRD shall consult on the development of a 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 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.

Timeframe: Within 30 days and ongoing through FY-16.

5. Split Samples for work to be performed by the WDNR.

Action Item: EPA has agreed that it would be important for the Tribal NRD to have the opportunity to obtain split samples of the soils / groundwater obtained by the WDNR through its contractor REI with regard to the work to be performed at the Site. And, to help the Tribe accomplish this goal, EPA has agreed to provide funding from its LUST Program to obtain and process split samples at the EPA lab where the results of the analysis will be used to inform EPA and Tribal environmental staff and to be shared with the WDNR as appropriate to help inform the development of timely remedial action at the Site.

Timeframe: Immediately and as needed to follow the current WDNR Tower Site investigation.

6. Ongoing Consultation.

Action Item: It was agreed that the current LUST based consultation process would be ongoing for an undefined period of time to make sure all the issues identified during the July 22, 2015 meeting or that may arise during the course of subsequent discussions are addressed. Accordingly, the EPA and the Tribe have agreed to continue to consult at the technical staff, legal, and policy level on these important matters.

Timeframe: Ongoing

The initial consultation meeting resulted in a list of joint tasks and commitments by the EPA and the Tribe, which is a good start, but will not be meaningful if we do not continue to work together to achieve good results. This will be hard work, and we will likely disagree from time to time, so keeping the lines of communication open is imperative.

Again thank you for your time and please come back to Waaswaaganing. We look forward to your timely response.

Miigwech,

Larry Wawronowicz

cc: Henry St. Germaine, Tribal President
Richard Dubey, Short Cressman & Burgess PLLC

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