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WISCONSIN
DEPT. OF NATURAL RESOURCES

February 28, 2017

Ignacio Arrazola
Acting Director
Land and Chemicals Division
U.S. EPA Region 5
77 W. Jackson Blvd. (L-8J)
Chicago, IL 60604-3507

Re: Tower Standard Site
14267 State Highway 70 West, Lac du Flambeau, Wisconsin
WDNR BRRTS #03-64-127899

Dear Mr. Arrazola:

I am writing to you to express the Department of Natural Resources' (DNR) concern as it relates to the pace of activities at the Tower Standard leaking underground storage site in Lac Du Flambeau, Wisconsin, and to share with you DNR's plans for moving forward at this site. As you are aware, this is a site undergoing cleanup in Wisconsin under the jurisdiction of the DNR, working with the responsible party and their environmental consultant. The state has jurisdiction due to the discharge of a hazardous substance on fee simple lands within the Lac du Flambeau reservation boundaries and the owners of that property are seeking reimbursement for costs under the Petroleum Environmental Cleanup Fund Act (PECFA).

During the May 26, 2016 meeting with the various parties involved with this site [i.e., DNR, EPA, Lac du Flambeau Tribal Natural Resources Department (TNR) and REI, the environmental consultant retained by the responsible party], the DNR stated that legislation passed by Wisconsin's Legislature in 2015 established a sunset date of June 30, 2020 for PECFA. After that date, the DNR will not have the ability to reimburse responsible parties using PECFA; however, those parties will still remain responsible for completing the response actions under state law. During the May meeting, the parties agreed to use the PECFA sunset date to establish a proposed schedule of investigative and remedial activities for this site. The goal was to complete as much cleanup work as possible by June 30, 2020.

Collaborative efforts between the DNR, EPA, TNR and REI led to PECFA-funded investigation activities in the fall of 2015 and in July 2016. The TNR also contracted separately for direct-push probing work in September 2016. These investigations helped to delineate the residual contamination source area as well as the outer limits of the groundwater contamination plume.

However, since the July-to-September 2016 phase of investigation and subsequent data evaluation, the rate of site progress has slowed considerably, as have the communications between the parties. The project is now several months behind the schedule laid out following the May 2016 meeting. The DNR is concerned that the lack of recent progress will mean that a response action will not be implemented in time to achieve closure before the PECFA sunset date. With this concern in mind, the DNR intends to work directly with the responsible party and REI to get the project back on track for closure within the PECFA funding window, to the extent that is possible given the delays to date.

As a first step, DNR will approve a cost request for installation of additional monitoring wells and piezometers to fill in gaps in the site's groundwater monitoring network. We anticipate that the well installations will occur yet this winter, once weather conditions improve. The depths and locations of these wells have previously been discussed between DNR, EPA and TNR staff and, although there has not been complete agreement on proposed locations, we anticipate that decisions will be made by DNR before the drilling work is scheduled. To the extent that it can, DNR will use feedback from the parties to make this decision.

More importantly, the DNR believes that addressing the residual contaminant source area is essential to eventually bringing this case to closure. Therefore, the DNR will instruct the responsible party and their consultant to begin evaluating options for response actions to address the source area. As part of the evaluation process, REI can utilize the findings of the proposed Remedial Action Options Report being prepared for EPA by Bristol Environmental Remediation Services, LLC, if and when that document becomes available. However, in order to meet PECFA timeline projections, the DNR is to requesting that the responsible party implement a response action this summer.

The DNR recognizes that there are multiple regulatory authorities involved with the cleanup at the site. As noted in previous meetings with the parties associated with this site, the DNR has authority to require the responsible party to meet the requirements spelled out in Wisconsin Statutes § 292 and in the Wisconsin Administrative Code §§ NR 700 rule series, and within the financial limitations imposed by the state's PECFA reimbursement rules. The DNR's authority to require response actions does not go beyond the scope of those environmental laws.

It is imperative that we get back to proactive management of this site, re-establish effective communications and develop a pathway to closure. DNR is working to ensure that we take advantage of the PECFA funding while it is still available.

Please feel free to contact me or members of my staff if you have any questions. I can be reached at (608) 267-6713 or darsi.foss@wisconsin.gov.

Sincerely,

Darsi Foss

Darsi Foss, Director
Remediation & Redevelopment Program

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