To: Richard Du Bey[RDuBey@scblaw.com]
Cc: Arrazola, Ignacio[arrazola.ignacio@epa.gov]; Harris, Michael[harris.michael@epa.gov]; Greenwater, Anthony[greenwater.anthony@epa.gov]; Victorine, Gary[victorine.gary@epa.gov]; Kamke, Sherry[Kamke.Sherry@epa.gov]; Egan, Robert[egan.robert@epa.gov]
From: Olson, Erik
Sent: Tue 5/9/2017 5:51:34 PM
Subject: RE: Groundwater modeling at Haskell Lake Site

Richard:

Thank you for this information, which I have shared with my program clients. We now have a more full understanding the Tribe's concerns with the model, and have revised our proposed qualifying language we suggested previously, which we propose would accompany the transmission of model access information to the state:

"The data visualization program for the Haskell Lake Area (Tower Standard) has not yet incorporated all technical comments and corrections from the Lac du Flambeau Band of Lake Superior Chippewa Indians (LDF). Neither EPA nor LDF consider the data visualization program sufficient, in its current form, for final site characterization. In addition, LDF believes that the data visualization program is not consistent with the their current understanding of a Conceptual Site Model and does not accurately represent existing site data.

However, the data visualization program is already a useful tool in the identification of critical data gaps. EPA and LDF relied on both raw data and the data visualization program in jointly proposing and justifying additional monitoring wells. Contingent on available funding from all sources, both LDF comments and data collected from the new wells will be incorporated into the data visualization program. Future iterations of the data visualization program are expected to more accurately depict site conditions, inform remedial planning, and provide significant support to cleanup efforts."

It also may not be unreasonable for Lac du Flambeau to consider providing their comments on the model to the state, so that the Tribes concerns are accurately relayed. EPA continues to believe that offering the existing model in support the well placements now is a better option than losing the ability to influence well placements by the delays associated with ongoing work on the model.

My understanding is that there may still be a phone call between tribal staff and EPA staff this afternoon to discuss this issue.

Regards,
Erik

Erik H. Olson
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U.S. Environmental Protection Agency, Region 5
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(312)886-6829

-----Original Message-----
From: Richard Du Bey [mailto:RDuBey@scblaw.com]
Sent: Monday, May 08, 2017 11:37 PM
To: Olson, Erik <olson.erik@epa.gov>
Cc: KHanson@ldftribe.com; Dee.allen@ldftribe.com; lwawronowicz@ldftribe.com; Joshua B. Lane <JLane@scblaw.com>

Subject: Groundwater modeling at Haskell Lake Site

Confidential Enforcement Sensitive Communication

Dear Erik,

I have been directed to share the following information with you and your clients in advance of tomorrow's facilitated discussions between EPA and the Tribe. The purpose here is to ensure that all Meeting participants are fully informed of the technical issues under discussion. In short, the implementation of an effective remedy at the Haskell Lake LUST Site requires a strong technical foundation. The Tribe's goal is to work with EPA to build that foundation and then to present that data jointly with EPA to the WDNR.

The information is set below and is supported by the attached materials please share this information with the EPA folks attending tomorrow's meeting and with the facilitator.

The fundamental problem is that the EPA has not complied with its agreement reached during the EPA-Tribe facilitated meetings, that Tribal Comments would be accepted and incorporated into the model prior to release to the State. The Tribe has expressed similar comments on model files repeatedly and for quite some time (since December 2016). The April shared files have alarming gross misrepresentations that directly affect the CSM. With the new source material provided, critical data input errors, data removed at the clients request, and added skewed data points, have all been identified. The result is a visualization that is not consistent with our CSM and misrepresents existing site data.

EPA has stated that it has exhausting all of its funding for modeling resources and that is preventing Tribal comments and identified shortcoming from being incorporated or corrected. However, it is my understanding that the Tribe is offering to pay for the additional work so that the EPA contractor could work with the Tribe and accept Tribal input data to be incorporated into the model, resulting in a Tribe-EPA agreed CSM.

Although EPA is considering qualifying the model files with the following statement:

'EPA and the Lac du Flambeau Band believe that the model, while not an exact visual representation of site conditions, is useful at this point to provide visual reference and reasoning for well placement and data gap identification. '

The Tribe believed that it would be beneficial for EPA to acknowledge that there are critical gross misrepresentations in the data before sharing the files with the State. The concern is that the misrepresentations may be misconstrued as EPA endorsement of these errors and misrepresentations.

Below the Tribe has set out, for EPA's information, an expedited detailed review along with comments regarding 2 of the 6 4dim files (attached). The word doc includes pictured labeled examples of misrepresentation. In addition, the table below references critical misrepresentation for all 6 4 dim files.

Data Visualization File

Slide #

Concern

Tower_HRSC_CSM_Groundwater.4dm

7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25

Misrepresentation- Tank Basin, Piping Island, and Piping Excluded from Plum- Data Input Error

Tower_HRSC_CSM_GroundwaterVolumetrics.4dm

1,2,3,4,5,6,7,8,9,10,11

Misrepresentation- Tank Basin, Piping Island, and Piping Excluded from Plum- Data Input Error
- see attached figure

Tower_HRSC_CSM_DirectSensing.4dm

2,3,4,5,6,7,8,9,11,12,13,14,15,16,17,18

Misrepresentation- Visualization extends further east than data supports, representation skewed east- likely to due added data control points

Tower_HRSC_CSM_Geology.4dm

Interbeded sands silts and clay from 0-15 not represented- Eric's stated qualifier covers this is a less critical issue

Tower_HRSC_CSM_Soil.4dm

13,14,15,16,17,18

Removed BH17 data- interpretation excludes Kozaks Property from Soil Impacts- cuts soil contamination in 1/2- excludes tank basin, piping and pump islands from contaminated area

Tower_HRSC_CSM_SoilVolumetrics.4dm

8,9,10,11,12,13,14,22,23,24,25,26,27,28

Removed BH17 data- interpretation
cuts soil contamination in 1/2- excludes, piping and pump islands from contaminated area

From: Olson, Erik [mailto:olson.erik@epa.gov]
Sent: Thursday, May 04, 2017 12:21 PM
To: Richard Du Bey <RDuBey@scblaw.com<mailto:RDuBey@scblaw.com>>
Cc: Kamke, Sherry <Kamke.Sherry@epa.gov<mailto:Kamke.Sherry@epa.gov>>; Egan, Robert <egan.robert@epa.gov<mailto:egan.robert@epa.gov>>
Subject: Re: Groundwater modeling Data

Richard:

Thank you for providing the explanation regarding the Lac du Flambeau Band's concerns with releasing

the model to the state at this point, which I now understand do not rely on an incorrect assumption that the model is somehow confidential and not releasable. I have reviewed your message with our LUST program, and EPA agrees that the model is not an exact representation of conditions at the site. While there are certainly limitations to any model, the current site model interprets our existing data in such a way that among other things, supports the locations EPA and the Tribe have together chosen to recommend for the installation of additional monitoring wells to WDNR and the contractor doing work funded under PECFA.

EPA and the Tribe share the goal of moving forward at the site, as the Tribal leadership has reminded our leadership. Developing a more perfect model at this point takes time and money away from doing so, and impedes our progress. EPA will certainly update the model when we secure more contract funding to do so, and as the parties develop more data, in order that future iterations of the model can be used as an effective tool for helping to identify appropriate remedial actions. EPA expects to continue to involve the Tribe in this modeling work.

At this point, the model provides visual reference and reasoning for well placement and data gap identification. In light of the Tribe's concerns, we propose to preface the release of the model to the state with language that points out the potential inaccuracies of the model, and the purpose for which we provide access to the model at this time:

'EPA and the Lac du Flambeau Band believe that the model, while not an exact visual representation of site conditions, is useful at this point to provide visual reference and reasoning for well placement and data gap identification. '

We welcome your comments and recommendations on this language, which we would like to receive before close of business next Tuesday, May 9, so that we can together provide evidence supporting our proposed well locations and move forward together at the site. WDNR has informed our program staff that it will move forward with choosing proposed well locations without input from EPA and the Tribe if we do not come to a consensus and start discussing our ideas with the state very soon.

If you would like to further discuss the situation or the proposed disclaimer language please give me a call.

Regards,

Erik

From: Richard Du Bey <RDuBey@scblaw.com<mailto:RDuBey@scblaw.com>>
Sent: Thursday, April 20, 2017 6:02 PM
To: Olson, Erik
Cc: KHanson@ldftribe.com<mailto:KHanson@ldftribe.com>
Subject: FW: Groundwater modeling Data

Confidential Enforcement Sensitive Communication

Dear Erik,

Thanks for reaching out to discuss the reason why Tribal professional staff are reluctant to share certain modeling data, regarding the Haslell lake LUST site, that was generated by EPA's contractor. As you and I discussed on April 14, quality controlled, properly handled, and analyzed groundwater and soil sampling data should not be subject to claims of confidentiality, but should be openly disclosed and used to determine the nature and extent of contamination. However, that is not the issue that we are currently dealing with at the Haskell lake Site. It is not a question of whether quality data should be released, it is a question of whether a potentially inaccurate and non-representative computer generated model should be used as the basis for remedial decision-making.

That concern is described below in an email sent to me on April 18th that I have been authorized to share with you. In short, the Tribe's concerns are a direct reaction to EPA's reluctance to validate its use a model that appears to flawed and will result in a mischaracterization of the Site. The Tribe's position, as further described below, is summarized below.

"We have requested source data, particularly where the graphic representation is substantially different than known data. We have not been provided source data (an model output file), but have been shown source data does exist in 2 very short webinar presentation (fall 2016, April 2016). If the model is being offered as EPA's interpretation of site conditions- than the model will mischaracterize the site. There is room for Tribal review, comment and incorporation to better reflect the interpretation- Tribal Comments have been offered on Model 1 and 2 with no response."

It is the Tribe's position that the modeling process and input data described below should be subject to an open and candid technical dialogue- between the EPA and the Tribe—and that the model then be modified as may be necessary, so that it accurately represents site conditions at the Haskell lake LUST site, before it may be used to further our collective goal of informed decision making among EPA, the Tribe and the WDNR.

Please feel free to share this communication with your clients.

Richard

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Short Cressman Names Managing Partner for 2017-18. March 8, 2017 by SCBLaw Staff. SEATTLE, March 8, 2017 - Short Cressman & Burgess PLLC, one of Seattle's oldest law ...

[SCB_anniversary-logo_email-signature]

This email may contain confidential information, work product, or attorney-client privileged communications. If you are not the intended recipient, please delete this email and notify the sender.

From: Hanson, Kristen [mailto:KHanson@ldftribe.com]
Sent: Tuesday, April 18, 2017 9:55 AM
To: Richard Du Bey <RDuBey@scblaw.com<mailto:RDuBey@scblaw.com>>
Cc: Allen, Dee <dee.allen@ldftribe.com<mailto:dee.allen@ldftribe.com>>; Wawronowicz, Larry <lwawronowicz@ldftribe.com<mailto:lwawronowicz@ldftribe.com>>
Subject: RE: Groundwater modeling Data

Good Morning Richard,

Thank you for the email and information from Mr. Olson and that the division is anticipating Tribal Objection to sharing the 3-d graphic interpretation (a.k.a “The model”) of the plume. You are correct that all data for the site has been shared.

The graphic representation is an interpretation. Three models have been shared with the Tribe and the Tribe has provided detailed comments on the first two models (Although we understand that EPA has 6 or 7 versions of the model). The third model shared with the Tribe was only just provided after a webinar with the modeler subcontractor S2C2 on April 3, 2017. Therefore, there was no opportunity for Tribal review or comment on Model #3 in advance of the S2C2 webinar.

We have requested source data, particularly where the graphic representation is substantially different than known data. We have not been provided source data (an model output file), but have been shown source data does exist in 2 very short webinar presentation (fall 2016, April 2016). If the model is being offered as EPA’s interpretation of site conditions- than the model will mischaracterize the site. There is room for Tribal review, comment and incorporation to better reflect the interpretation- Tribal Comments have been offered on Model 1 and 2 with no response.

Model 1

The plume shown in model 1 is based on the incomplete data set and extends further to the east than existing data suggests, does not account known site data, and does not show the plume path from the source area to the lake including the MW16 well nest.

[cid:image002.png@01D2C5A2.47761320]

[cid:image003.jpg@01D2C5A2.47761320]

The Area in red is known substantial contaminated groundwater plume, and is not included or represented in the graphic representation.

It was our understanding that the model was being updated to include all data (including the known plume area) and would not be ready until the week after Thanksgiving.

Model figures from this model have been shared with the State.

Model 2

EPA had these model files for quite some time and the Tribe requested them for months. The division was resistant to share these files. The 4dim graphic figure files (model) were provided to the Tribe on February 17, 2017 though a email from Ignacio L. Arrázola, the acting Land and Chemical Director. Mr. Arrazola also offers the Tribe a conference call with the modeler, S2C2. This call isn't offered to the Tribe until 4/3/2017 and only because of the Indian Office facilitation.