Cc: KHanson@ldftribe.com[KHanson@ldftribe.com]
To: rdubey@scblaw.com[rdubey@scblaw.com]
From: Olson, Erik
Sent: Fri 4/21/2017 3:35:34 PM
Subject: Re: Groundwater modeling Data

Richard:

Thank you for touching base with your clients on this issue and helping us understand better their concerns. I will share your discussion our program staff and managers.

Regards,

Erik

From: Richard Du Bey <RDuBey@scblaw.com>
Sent: Thursday, April 20, 2017 6:02 PM
To: Olson, Erik
Cc: 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."*

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

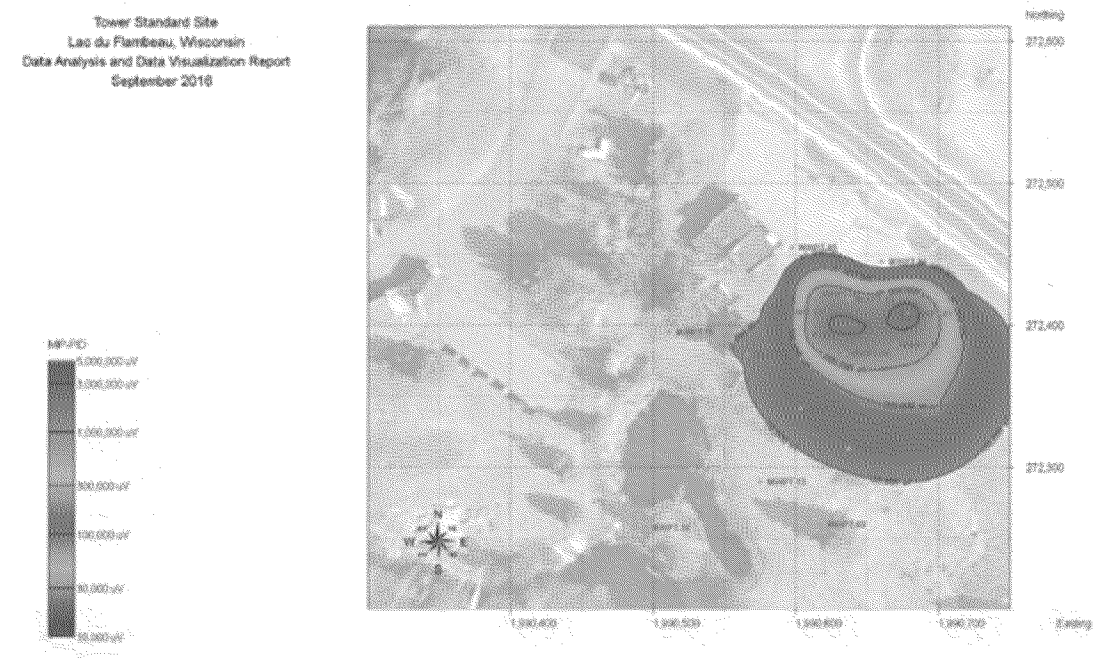
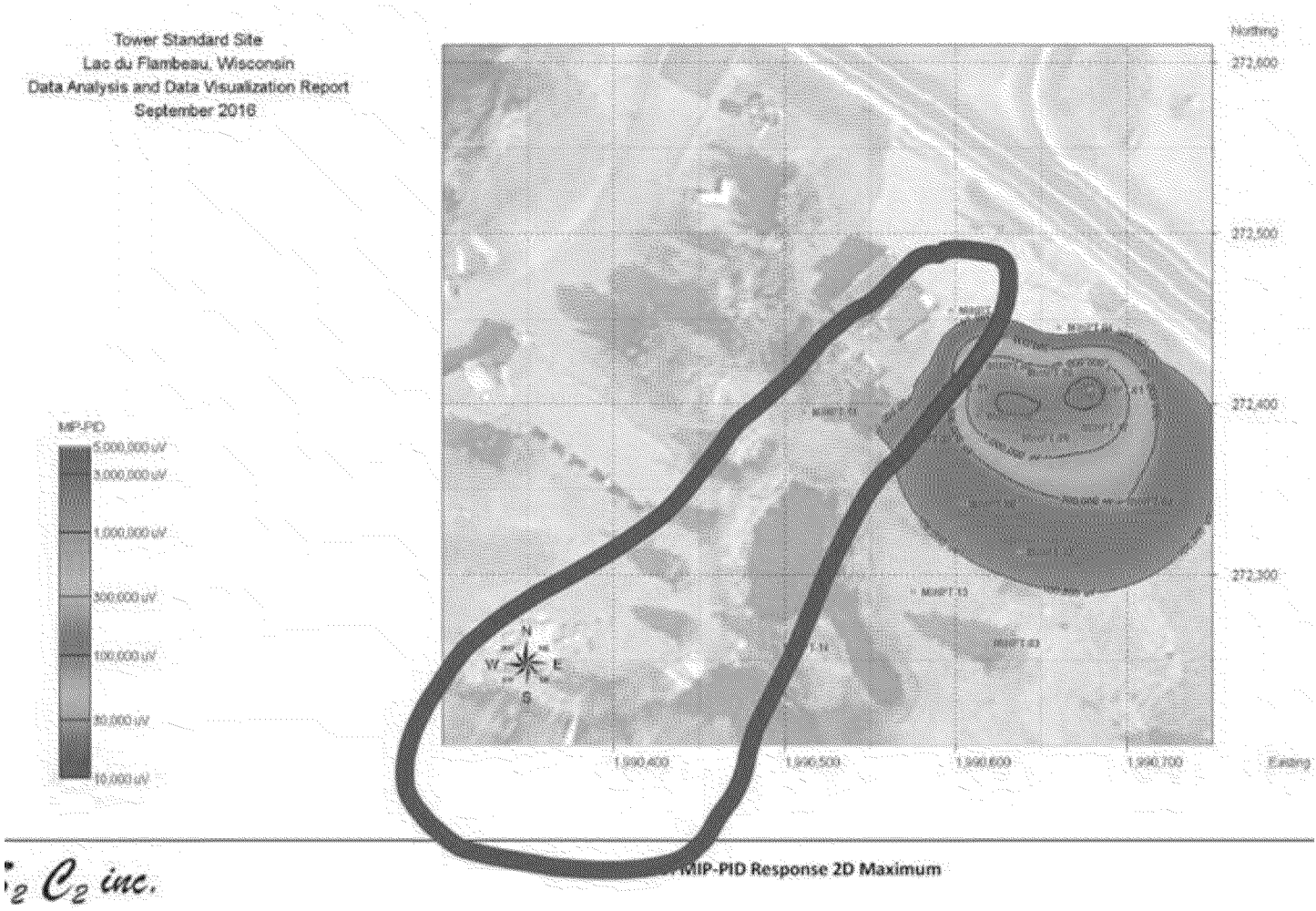


Figure 5: MIP-PID Response 2D Maximum



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.

This model shows two separate plume, one near the road, and a separate plume near the lake rising from the bedrock. In many places, the model does not represent actual site data and extends the plume to the east in areas of known clean areas.

The Tribe is aware that the model is able to provide source data as it was displayed in a webinar in fall 2016 with S2C2.

Source data for the model was requested

2/21/2017 – Model Source data was requested during short webinar with Bob Egan and Tom Kady. Tribe offers questions that neither Tom or Bob can answer- they offer to ask modeler and get back with Tribe

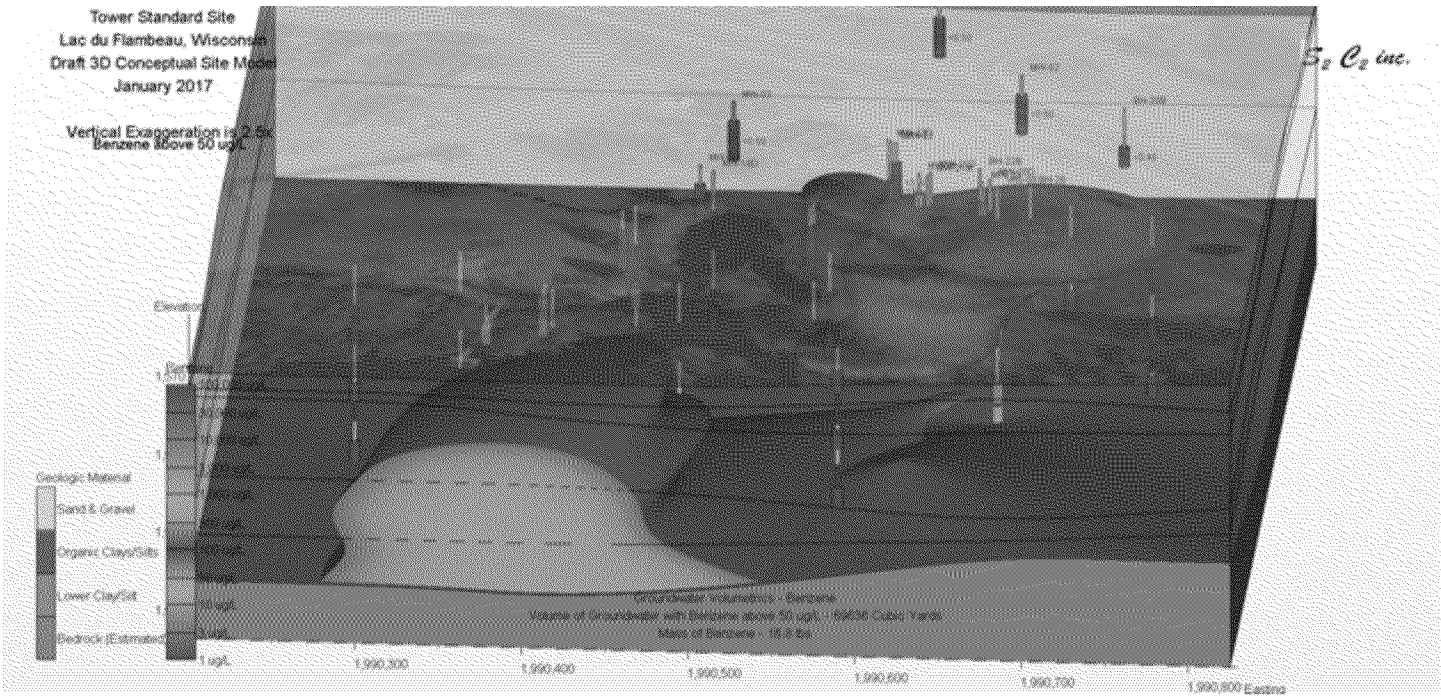
2/23/2017- Model Source Data was requested in EPA-Tribe also provides Tribal Comments and Tribal Contractor Comments during Meeting- We were told the EPA thinks the source data used in the model is also found in a separate software database entitled Scribe- Tribal Staff find Scribe data does not agree with model in some places where the model appears to be manipulated. Also, not all site data appears in Scribe.

3/16/2017- Model Source data requested in email for well placement planning

3/23/2017 – Model Source data requested in email – Detailed model comments, questions, and source data requested (comments attached)

4/14/2017- Model Source Data requested in detailed task order comments

Tribal Comments include model extends further to the east than data supports



Model 2 shows 2 separate plumes, one near the road and one rising from the bedrock near the lake. This interpretation is not likely and different than what reasonable data interpretation suggests.

Model 3

The February 17, 2017 offer from Mr. Arrazola for Tribal participation in a webinar with the modeler finally occurs on April 3,2017, with urging from Tribal Indian Office. To our surprise, the presentation was on a new model (Model 3), and had not been provided to the tribe. The new model separates data into 6 separate models instead of putting all data into one model. Without access to the model source data, it will take tribal staff some time to provide detailed review and comment.

The concern is that site decisions are based on a misrepresentation of site conditions. Before tribal endorsement of modeled representation of site conditions, the Environmental Response Program would like to review and comment.

-

Request for Tribal review and comment in advance of sharing EPA interpretive documents and figures-

The Tribal Environmental Manager did request a chance to review interpretative figures and documents prior to sharing with the responsible party. It should be noted that all site soil, groundwater, and vapor data has been shared with the state and state contractor. In an email dated February 16th (attached), Dee Allen responds to Acting LC Director, Ignacio Arrazola and requests the following:

"We respectfully request in advance of the publication of EPA figures and documents on the EPA website and therefore provided to the Responsible Party, that the Tribe receives the opportunity to review, provide comment, and furthermore that our comments are considered before sharing with the responsible party through the EPA website."

Kristen Hanson

Environmental Response Program Coordinator

Lac du Flambeau Tribal Natural Resource Department

Office: 715-588-4290

Cell : 715-614-4644

From: Richard Du Bey [mailto:RDuBey@scblaw.com]
Sent: Monday, April 17, 2017 11:37 AM
To: Hanson, Kristen
Subject: Groundwater modeling Data

Confidential Communication

Dear Kristen,

I spoke with Erik last Friday and he relayed EPA staff concern, based on their recent meeting with Tribal staff, about the Tribe's potential objection to EPA sharing groundwater modeling data with the WDNR. I informed Erik that I was not aware of that concern and that data is generally not something that would be confidential and subject to nondisclosure, but that I would follow up. I understand that you will be meeting with EPA staff again tomorrow. Could you please let me know whether the Tribe has taken a position regarding disclosure and if so, what the basis of that objection might be?

Thanks,

Richard

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