



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 22 2005

By Facsimile and 1<sup>st</sup> Class Mail

Christopher A. Amato, Esq.  
Dreyer Boyajian, LLP  
75 Columbia Street  
Albany, New York 12210

Re: Onondaga Lake Superfund Site: Onondaga County, New York  
Consultation with Onondaga Nation

Dear Mr. Amato:

This letter is written in response to your letter to me dated September 14, 2005 concerning the policy of the United States Environmental Protection Agency ("EPA") regarding consultation with the Onondaga Nation as it relates to the Onondaga Lake Superfund Site. Your letter was characterized as the Nation's final effort to avoid commencement of litigation concerning the Site and requested my prompt response. My reply is intended to explore the efforts EPA and the Nation can make together to make such litigation unnecessary.

At the outset, due to the fact that your letter was prepared in anticipation of potentially imminent litigation, and my having been informed of your prior request that all contact between EPA and the Nation be through counsel, I send this letter in the context of a reply to your September 14, 2005 letter. I request that you bring my reply to the Nation's Council of Chiefs since it would otherwise have been my intent to communicate my thoughts directly to them, rather than through counsel.

As you are aware, I have only assumed the position of EPA Regional Administrator very recently. I have been briefed by EPA staff concerning the past events recounted in your September 14, 2005 letter. While the perceptions of the Nation and EPA staff concerning these past events differ, there is common ground in the shared belief that improvements in the quality of nation-to-nation consultation are both necessary and desirable. I cannot change what's past, I can only offer my hand in a commitment that I will make every effort as EPA Regional Administrator to work with the Nation to improve the quality of nation-to-nation consultation in the future.

Although as EPA Regional Administrator I am not a practicing attorney, I am an attorney by training and former experience and, consequently, I am not unfamiliar with litigation. I am strongly of the opinion that litigation of issues concerning nation-to-nation consultation would be counterproductive since it would serve to harden lines that, in the mutual interests of EPA and the Nation, instead should be softened.

It is my understanding that the current impasse in the discussions between counsel for EPA and the Nation concerning consultation with respect to two subsites, Geddes Brook/Ninemile Creek and the Salina Landfill, has focused on jurisdictional issues. In my opinion, a continued concentrated focus on jurisdictional issues is unlikely to yield the mutually desired result of meaningful consultation between EPA and the Nation concerning these subsites and other important environmental matters within the Nation's geographical area of interest. Instead, I would like to explore with the Nation means of strengthening consultation, recognizing that jurisdictional issues may not be resolvable short of litigation.

I understand that it is the current view of the Nation that, in light of its experience with respect to the Onondaga Lake Bottom subsite remedy selection process, it needs a further commitment from EPA before it can expend additional resources in a process in which it has lost confidence. It is in this area that I think we should concentrate our efforts.

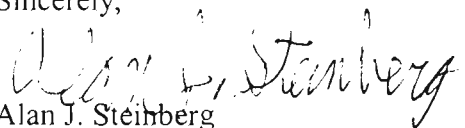
I would like to meet with the Council of Chiefs to discuss these matters. I am aware that there is an annual leadership meeting with the Indian Nations scheduled for the week of November 14<sup>th</sup>. While I look forward to participating in that meeting, discussion of these Onondaga Lake matters should proceed independently, given the importance of the Site.

With respect to Site-specific matters, we can address procedures to ensure that the views of the Nation will be adequately considered in prospective consultations concerning Onondaga Lake subsites. We can also address ways to assure the Nation that such consultations will be meaningful, given the limited financial resources of the Nation that are available for technical assessment of complicated environmental matters. Such consultations will be conducted on a nation-to-nation basis. EPA will conduct any such future meetings. EPA will ensure that all necessary technical support will be provided at future meetings, including making appropriate technical documents, staff, and consultants accessible. Further, with respect to the Onondaga Lake Bottom subsite, New York State and EPA have responded to the technical comments that the Nation submitted on the Proposed Plan. We look forward to meeting with you to discuss the Nation's comments and the State's and EPA's responses. As you are aware, EPA has been in discussion with New York State concerning environmental issues with Indian Nations. We are hopeful that these processes will lead to improvements in nation-to nation consultation between EPA and the Nation.

Again, I would be grateful for the opportunity of meeting with the Council of Chiefs to discuss these matters, so that we can have a meaningful discussion of how best to make the consultation process work. As Janice Whitney discussed with you, October 11, 2005 would be the first available date for me and other Region 2 personnel that would attend such a meeting. I await your response concerning whether a meeting can be scheduled for that date or, if not, please contact George Shanahan at 212-637-3171 or Janice Whitney at 212-637-3790 on my

staff, to discuss an alternative date so that I can make the necessary travel arrangements to come to the Nation for such a meeting.

Sincerely,

  
Alan J. Steinberg  
Regional Administrator

cc: Joseph Heath, Esq.  
Dale Desnoyers, NYSDEC