



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

JUN 23 2016

Mr. Jeff Mears
Environmental Area Manager
Oneida Nation of Wisconsin
Oneida Environmental Health and Safety Division
N7332 Water Circle Place
Oneida, Wisconsin 54155

Re: Memorandum of Agreement (MOA) for Federal Inspector Credentials

Dear Mr. Mears:

I am pleased to enclose the final Authorization and Agreement between the Oneida Nation of Wisconsin and the U.S. Environmental Protection Agency, Region 5, regarding the issuing of EPA federal credentials under Subtitle I (Underground Storage Tank Program) of the federal Resource Conservation and Recovery Act.

I look forward to the continued productive partnership between our respective offices.

If you have any questions regarding this matter, please contact me or your staff can contact Kevin Hill at (312) 886-6087.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures

Cc: Michael Arce, Oneida Environmental Health and Safety Division
(marce@oneidanation.org)

Jennifer Manville, R5 Indian Environmental Office

**AUTHORIZATION AGREEMENT
ENTERED INTO BY AND BETWEEN
THE ONEIDA NATION AND
THE U.S. ENVIRONMENTAL PROTECTION AGENCY
REGARDING ISSUANCE OF EPA INSPECTOR CREDENTIALS
UNDER THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT
SUBPART I**

I. Purpose

This Authorization Agreement (Agreement) is entered into by and between The Oneida Nation and the U.S. Environmental Protection Agency (EPA or Agency) for the purpose of authorizing Oneida Nation government employees to conduct inspections on EPA's behalf under the Resource Conservation and Recovery Act (RCRA), Subtitle I relating to underground storage tanks (USTs), 42 U.S.C. §6991 *et seq.* These inspections will occur within the boundaries of the Oneida Nation Reservation,¹ consistent with the definition of Indian country as defined at 18 U.S.C. Section 1151, and consistent with the September 2004, "Guidance for Issuing Federal EPA Inspector Credentials to Authorized Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA," and any subsequent updates, including updated inspector training requirements which supersede the inspector training requirements found within (Credentials Guidance). Updated inspector training requirements, effective October 1, 2014, can be found on the Inspector Wiki (<https://wiki.epa.gov/inspector>). Oneida Nation has requested that EPA Region 5 issue federal inspector credentials to eligible Oneida Nation inspectors so that they may conduct UST inspections pursuant to RCRA Section 9005,,42 U.S.C. §6991d. EPA Region 5 has determined that it is in EPA's interest and appropriate to issue these credentials. For the purposes of this Agreement, an eligible Oneida Nation inspector is one who has met the training requirements set forth in the Credentials Guidance. This Agreement was developed in accordance with the Credentials Guidance.

All activities related to the authorization of inspectors and issuance and use of federal credentials will be consistent with the Credentials Guidance and any other applicable EPA policies and directives. Nothing in this Agreement shall limit the authority of EPA under any federal law. EPA commits to implementing this Agreement to the fullest extent possible.

II. General Provisions

The parties agree that the following general provisions shall apply:

- A. Oneida Nation inspectors issued federal credentials are authorized representatives of EPA and will assist EPA in carrying out UST compliance monitoring responsibilities under RCRA Subtitle I. A federal credential cannot be used to carry out Tribal programs pursuant to Tribal law. A federally credentialed Oneida Nation employee shall not use these credentials in any manner related to implementation of programs or activities pursuant to Oneida Nation laws or regulations, as appropriate.

¹ For purposes only of defining the geographic area within which the federally credentialed inspector may work under this MOA, and without making a specific finding of jurisdiction, the boundaries of the Oneida Nation Reservation are those established pursuant to the Treaty with the Oneida, Feb. 3, 1838 (7 Stat. 566).

- B. Oneida Nation inspectors with federal credentials will use the credentials in accordance with this Agreement only to assist EPA in carrying out its responsibilities under RCRA Subtitle I. Oneida Nation inspections will conform to all requirements of federal law, regulations, applicable EPA guidance, the Region 5 UST Section Standard Operating Procedures (SOP) and this Agreement.
- C. An inspection conducted by an Oneida Nation inspector is for the purpose of gathering evidence and observing certain physical conditions and is not a determination of compliance with federal law.
- D. It is agreed that, for each inspection conducted by an Oneida Nation inspector using federal EPA inspector credentials, the Oneida Nation inspector will submit to EPA an inspection report and related inspection documentation in accordance with this Agreement. EPA is responsible for reviewing each report and the related documentation and for determining whether to pursue follow-up enforcement consistent with the January 17, 2001, OECA Final Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (the "Tribal Enforcement Guidance") and all other applicable EPA procedures and policies.
- E. This Agreement governs the activities of each Oneida Nation inspector who is authorized and receives a federal credential under RCRA for inspection activities under the UST program. Inspection activities will occur only within the Oneida Nation Reservation. Inspection activities may be conducted on the reservations of additional tribes in accordance with this Agreement. An Oneida Nation Tribal inspector may carry out inspection activities only for the program for which the Oneida Nation Inspector has been authorized as listed on the federal credential.

III. Contacts

- A. The Chief of the Underground Storage Tanks Section is the coordinator for all Tribal UST activities in Region 5. The Chief of the Underground Storage Tanks Section and the Tribe hereby designate the following persons as the contacts for Inspection Activities for their respective program:

ONEIDA CONTACT

Michael Arce

Oneida Nation

Oneida Environmental Health and Safety Division

N7332 Water Circle Place

Oneida, Wisconsin 54155

Phone: (920) 869-4552

E-mail: marce@oneidanation.org

EPA CONTACT

Kevin Hill
U.S. EPA, Region 5
Lands and Chemicals Division
Underground Storage Tanks Section
77 West Jackson Boulevard [LR-8J]
Chicago, Illinois 60604
Phone: (312) 886-6087
Fax: (312) 582-5872
E-mail: hill.kevin@epa.gov

- B. The EPA Contact and the Oneida Nation Contact will be the primary contacts between EPA and the Tribe regarding UST inspection activities pursuant to RCRA Subtitle I. The contacts may be changed at any time with written notice to the other party.

IV. Procedures to Issue Credentials

- A. The Oneida Nation will identify individual inspectors in writing whom Oneida Nation proposes EPA authorize to receive federal credentials, addressing the matters set forth in the Credentials Guidance.
- B. Before being eligible to receive an EPA credential, an Oneida Nation inspector must complete appropriate training as described in the Credentials Guidance. The following training will be required:
1. Initial Health and Safety Training and any other health and safety training as identified by the inspector's supervisor.
 2. EPA's Basic Inspector Training.
 3. RCRA/UST media program specific training
 4. Training on the terms and conditions of this Agreement.
- C. The Oneida Nation inspector's supervisor will certify and provide documentation to the EPA Region 5 that the training has been completed by each Oneida Nation inspector prior to or when the Oneida Nation submits a request for a credential. The Oneida Nation inspector's supervisor will also provide annual verification and documentation of completion of annual refresher training including: Health and Safety annual refresher training, Basic Inspector Skills Training annual refresher training, and program-specific annual refresher training.
- D. EPA may, in its sole discretion, issue federal credentials to the identified Oneida Nation inspectors using the Credentials Guidance.
- E. In order to issue the credential, EPA must have two passport quality photographs of the Oneida Nation inspector and the information listed on the credential form (to be supplied by EPA).
- F. When the credential is issued, EPA will send it to the Oneida Nation Contact with an acknowledgement and receipt form (Form D) for the Oneida Nation inspector to sign. The Oneida Nation inspector's supervisor will send the completed and signed form back to EPA within three calendar days to verify receipt of the credential.

Inspection Activities

- A. Inspection plans, including a schedule of inspections, will be developed annually by EPA in consultation with the Oneida Nation. The EPA Contact will be responsible for providing the written inspection plan to the Oneida Nation Contact. The plan will identify RCRAIUST-specific inspection activities for the year. The inspection plan may be amended in writing by EPA in consultation with the Oneida Nation. Any concerns about planned inspections will be discussed by the respective contacts. The Oneida Nation inspectors will conduct inspections in accordance with the schedule set forth in the annual inspection plan or upon specific written request from EPA.
- B. The EPA Contact and the Oneida Nation Contact will conduct monthly calls (or more frequently, if necessary) to discuss inspection activities including the need to amend the schedule set forth in the annual inspection plan. The monthly conference call will be the opportunity for the Region to provide feedback to the Oneida Nation on the quality of inspections and inspection reports and any action taken by EPA in response to such reports. The calls will also provide an opportunity for the Oneida Nation to report progress, identify any problems or issues that may have been encountered and request needed assistance or information from EPA.
- C. The Oneida Nation Inspectors will conduct inspections in accordance with this Agreement, the Credentials Guidance, Region 5 UST SOP and other national and regional EPA policies. The Region 5 UST SOP and the inspection checklist [Appendix 1], "UST Inspection Checklist" dated March 31, 2008 [Appendix 2] are attached hereto.
- D. During inspections, the Oneida Nation Inspectors will deliver a copy of the fact sheet developed pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA) (to be provided by EPA) to all non-government entities (if present).
- E. The Oneida Nation inspector will submit to the EPA Contact an inspection report including photographs within 20 business days of completing each inspection, conducted with an EPA credential, in a format consistent with the Region 5 UST SOP. The inspection report will be sent electronically and followed with a hard copy. If circumstances require more time to complete inspections or an accurate report, the inspector should talk with the EPA Contact who may grant additional time to complete the inspections or report. EPA is responsible for determining whether a follow-up enforcement action is warranted and, if so, what the response will be.
- F. The Oneida Nation contact will be responsible for maintaining records related to the federal inspector credentials and to the inspections conducted under this Agreement. The Oneida Nation Contact will develop and keep up-to-date a file that contains documents verifying that each of the training requirements for the federal inspector credentials has been satisfied. When not carrying the federal credentials for use during an inspection, they will be kept in a secure location.
- G. In the event an Oneida nation inspector is refused entry onto any facility or otherwise is unable to conduct a full inspection under EPA authority, he or she shall immediately notify the EPA Contact by telephone (with a follow-up written notification within 24-hours). The Region will determine if EPA will carry out the inspection or seek a warrant.

H. Oneida Nation Inspectors will not receive information subject to a business confidentiality claim (as defined in 40 C.F.R. § 2.201). EPA will be responsible for seeking and maintaining any such information.

V. Requirements Following Issuance of Credentials

- A. EPA credentials are valid for no longer than three years from the issuance date and may be reissued as EPA determines appropriate. In making this determination pursuant to this Agreement, EPA will consider whether the Oneida Nation inspector has complied with the terms of this Agreement.
- B. Each authorized Oneida Nation inspector will undergo annual refresher training including, Health and Safety Annual refresher training, Basic Inspector Skills annual refresher training, and media program-specific annual refresher training as specified in the Credentials Guidance, and subsequent training updates. The Oneida Nation inspector's supervisor will submit documentation of the completion of all annual refresher training to EPA upon completion of the training.
- C. EPA may suspend or revoke its authorization of an Oneida Nation inspector at any time for failure to comply with the terms of this Agreement. Upon suspension or revocation, EPA will require immediate return of the credential. If this occurs, the Oneida Nation Contact will notify the EPA Contact and return the credential to the EPA Contact within 7 days from the time the Oneida Nation Contact received notice that EPA had revoked the credential. Oneida Nation may revoke its employees' EPA credentials for its own reasons.
- D. The Oneida Nation will return an EPA credential at any time upon the request of EPA, pursuant to subsection (C). In addition, the credential will be returned to EPA if:
1. an authorized Oneida Nation inspector resigns, transfers, or is no longer employed in an area requiring RCRA UST inspector credentials;
 2. the credential has expired;
 3. the credential is no longer required;
 4. authorization is suspended;
 5. authorization is revoked;
 6. a credential that was lost or stolen and replaced is found/recovered; or
 7. this Agreement is terminated.
- E. Safeguarding the credential:
1. The credential is to be safeguarded at all times. When not carrying the credential, the inspector will ensure that it is secure (e.g., locked in a secure location).
 2. Oneida Nation Inspectors will not allow anyone to photocopy the EPA-issued credential. During inspections, the inspector will not relinquish the credential.
 3. If a credential is misplaced or stolen, the Oneida Nation inspector will report this immediately to his/her supervisor, and the Oneida Nation will report this to EPA as soon as possible, but no later than 72 hours after discovering that the credential is missing. Notice to EPA should be given to the EPA Contact identified above.

VI. EPA-Oneida Nation Inspector Relations

- A. The Oneida Nation shall ensure that the Oneida Nation inspectors understand and agree that the services to be delivered under this Agreement by the Oneida Nation inspectors are non-personal services and that they recognize and agree that no employer-employee relationship exists or will exist under this Agreement between EPA and the Oneida Nation. The Oneida Nation and EPA, therefore, agree as follows:

Oneida Nation inspectors under this Agreement shall not:

1. Be placed in a position of command, supervision, administration or control over EPA personnel, or over personnel operating under any EPA contracts, or become a part of the EPA organization. They must conduct activities in accordance with this Agreement and applicable law.
2. Be used in administration or supervision of EPA procurement activities.
3. Be entitled to any federal employment entitlements or benefits, including but not limited to unemployment compensation or workman's compensation.

VII. Other Provisions

- A. The Oneida Nation will maintain a separate file for each EPA-requested inspection and EPA-requested inspection-related activity undertaken by Oneida Nation inspectors with federal credentials. The file(s) will be available for review or copying upon reasonable request by EPA representatives. The Oneida Nation will maintain the files in the manner specified above, and will retain the files for a period of at least five years from the date of the inspection. After this period, the Oneida Nation Contact shall forward the files to the EPA Contact. The Oneida Nation will adhere to the EPA National Policy from the Office of Compliance dated February 26, 2009, stating the requirements for retaining inspection field notes.
- B. The Oneida Nation and Oneida Nation inspectors will keep confidential, and not disclose to any third-party without EPA approval, any information concerning an inspection or inspection-related activities undertaken or to be undertaken by the Oneida Nation inspectors. Failure to abide by this may result in revocation of the federal credentials and termination of this Agreement.
- C. Federally credentialed Oneida Nation inspectors will be available as witnesses and to provide support in an EPA enforcement action related to their inspection. The EPA and the Oneida Nation inspector will consult to determine the most efficient means for Oneida Nation inspector participation. Prior to an Oneida Nation inspector being called to testify in an enforcement proceeding, the Oneida Nation inspector's supervisor will provide verification of the inspector's academic/professional credentials (e.g., educational background, work experience) to EPA at EPA's request.
- D. The Oneida Nation will ensure that there is no conflict of interest or the appearance of a conflict of interest for each Oneida Nation employee for whom a credential is needed in order to conduct inspections on behalf of EPA.

VIII. Cross Boundary Inspections

Inspections conducted under this Agreement are authorized only within the Oneida Nation Reservation. Inspections may be conducted on the reservations of additional tribes by meeting the following requirements:

- A. There must be a written agreement between Oneida Nation and the other tribes in place allowing the Oneida Nation inspector to conduct inspections on the reservation.
- B. A copy of this agreement referenced in Paragraph A must be sent to Region 5 for review and approval.
- C. Notice, in advance of the inspection, will be provided to the tribe where the inspection is being performed.
- D. EPA may also authorize cross-boundary inspections using EPA-issued credentials during an emergency despite the absence of written agreements but only after appropriate notification and agreement by the parties involved, as required by the September 30, 2004, "Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspection on Behalf of EPA."

IX. Reservation of Rights

- A. EPA and Oneida Nation reserve any and all rights and authority that they have, including but not limited to legal, equitable or administrative rights. EPA and Oneida Nation will retain full responsibility for their own actions, and neither assumes any responsibility for the actions of the other. Nothing herein affects or limits EPA's or Oneida's authority or ability to take any compliance monitoring or enforcement action authorized by its respective authority.
- B. This Agreement is solely between EPA and the Oneida Nation. Nothing herein is intended to create any right or benefit, substantive or procedural, enforceable by law or equity against the Oneida Nation, or EPA, their employees, officers, or any other person. Nothing herein waives any sovereign immunity from suit by third parties that Oneida Nation or EPA may have under federal and/or tribal law.
- C. Nothing in this Agreement, in and of itself, obligates EPA to expend appropriations or to enter into any contract, assistance agreement, DITCA, interagency agreement, or to incur other financial obligations. Any endeavor involving reimbursement or contribution of funds between the parties to this Agreement will be handled in accordance with applicable laws, regulations and procedures, and will be subject to separate subsidiary agreements that will be made in writing by representatives of both parties.

X. Indemnification and Insurance

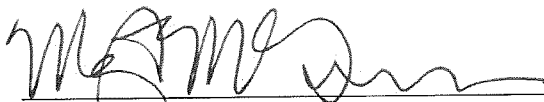
- A. It is expressly agreed and understood that this is a non-personal services Agreement, under which the professional services rendered by the Oneida Nation inspectors are rendered in their capacity as Oneida Nation employees. The Oneida Nation shall be solely liable for and expressly agrees to indemnify the EPA with respect to any liability producing acts or omissions by their employees or agents that may give rise to liability.

- B. The Oneida Nation shall be solely responsible for providing and maintaining any necessary and appropriate workers' compensation, employer's liability, comprehensive general liability (bodily injury), and comprehensive automobile liability (bodily injury and property damage) insurance, and/or such other insurance as Oneida Nation requires under its own respective requirements and policies governing the activities of Oneida Nation employees.

XI. Effective Date, Amendment and Termination

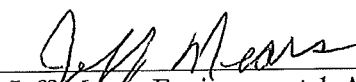
This Agreement shall be effective upon the later of the signatures below. This Agreement may not be amended except by written agreement executed by both parties. This Agreement shall continue in effect for three years from its effective date.

XII. Signatures



Margaret M. Guerriero
Division Director, Lands and Chemicals Division

Date: 6/23/2016



Jeff Mears, Environmental Area Manager
Oneida Nation

Date: 5/04/2016