Superfund Memorandum of Agreement Between EPA Region 7 and the Quapaw Tribe at the Cherokee County Superfund Site –

Quapaw Tribe of Oklahoma
Introduction

- Tar Creek site is part of the Tri-State Mining District which comprises approximately 300 sq. mi. in Missouri, Kansas, and Oklahoma.
- Principal metals mined were lead and zinc.
- Mining peaked in Missouri around 1916, then shifted to Kansas and Oklahoma where it finally ceased in the 1970s.
Tribal Involvement

- Nine tribes were moved to NE Oklahoma from various areas of the country by treaty in the 1800s.
- The Quapaw Tribe was moved to northeast Oklahoma from their ancestral homelands in what is now Arkansas and eastern Oklahoma through a series of treaties in the 1800s.
- Lead and Zinc discovered on Quapaw tribal lands in the early 1900s.
Ore Deposits in the Tar Creek Area Were Found in the Boone Formation (Limestone) at Depths of 100 to 300 Ft.
History of “Quapaw Strip”

- Treaty of May 1, 1833, providing for a reservation for the Quapaw Nation in the far northeastern corner of present-day Oklahoma and the far southeastern corner of present-day Kansas.
I certify that I have examined the above map of
City and the towns thereof, made for Events & Co.'s
and find them carefully and accurately compiled.

J.R. McGuffie
County Clerk
History of “Quapaw Strip”

- Treaty of February 23, 1867, providing for a land cession by the Quapaw Tribe of most of the so-called “Quapaw Strip,” the portion of the Tribe’s reservation within the State of Kansas. The treaty reserved an allotment for a member of the Tribe within the Quapaw Strip.
History of “Quapaw Strip”

- Cherokee County (KS) Superfund Site and Tar Creek Superfund sites listed on the National Priorities List in 1983
History of “Quapaw Strip”

- In November 25, 2008, the Quapaw Tribe files comments opposing the “Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and Resource Conservation and Recovery Act, United States v. Blue Tee Corp., et al., No. 6:08-cv-1316 [D.J. Ref. 90-11-1-06017/1],” in part on the grounds that the EPA had failed to consult with the Tribe about the proposed remedy for the Treece and Baxter Springs subsites, which would impact the Tribe’s Indian country in Oklahoma.
History of “Quapaw Strip”

- Additionally, the Tribe argued that ongoing and proposed remedial actions in the Quapaw Strip portion of the Cherokee County site may impact existing tribal cultural and historic resources.
Negotiations: Tribe/EPA/DOJ

- In January 2009, EPA acknowledges it had failed to fulfill its obligations under Section 106 of the National Historic Preservation Act (HPA) to consult with the Quapaw Tribe about the potential effects of the remediation work at the Cherokee County Superfund Site. Shortly thereafter, the parties begin working on a HPA Section 106 Programmatic Agreement relating to the Quapaw Strip. The parties also discuss a SMOA as a possible means for the Tribe to have an opportunity to have input on future remedial decisions.
Negotiations: Tribe/EPA/DOJ

- A Superfund Memorandum of Agreement (SMOA) is defined in 40 CFR 300.505 as a document negotiated between EPA and a Tribe/State to establish specific ways in which the EPA and Tribe/State will work together during the remediation of a Superfund site. Regulations in 40 CFR 300.505 recommend that EPA initiate SMOAs with affected States and Tribes.
Negotiations: Tribe/EPA/DOJ

- The Justice Department, however, took the position that the Quapaw Tribe is not entitled to a SMOA because it does not have jurisdiction over land within the Cherokee Co. Superfund Site for purposes of 40 C.F.R. § 300.515(b).
Negotiations: Tribe/EPA/DOJ

- From January 2009 to December 2010, negotiations were ongoing concerning a HPA Programmatic Agreement relating to the mitigation of effects of remedial activities conducted by and for EPA within the Quapaw Strip.

- On December 3, 2010, a Section 106 Programmatic agreement relating to the Quapaw Strip is completed in draft form.
Negotiations: Tribe/EPA/DOJ

- On September 2011, the Final Quapaw Strip Section 106 Programmatic Agreement is signed by all parties.

- Under the Programmatic Agreement, the EPA agrees to fund a “Heritage Study” of the Quapaw Tribe’s history in the Quapaw Strip.
Negotiations: Tribe/EPA/DOJ

- August 2012- As a result of a long-pending fee-to-trust application, the Secretary accepts into trust, land for the Tribe within the Quapaw Strip.

- The Tribe believes this further demonstrates it’s standing to enter into a SMOA with EPA.
MISSOURI

Hwy 166

KANSAS

MISSOURI

QUAPAW STRIP

(Original Quapaw Reservation Land in what is now Kansas)

Quapaw Tribe Treaty Lands in OKLAHOMA

I-44
Negotiations: Tribe/EPA/DOJ

In May 2013, the Tribe presents to EPA an analysis of its jurisdiction within the Quapaw Strip, including its jurisdiction over its trust land. The Justice Department took the position that the proposed SMOA presents difficult issues, and will require specific determinations by the EPA. The Tribe responds that it seeks a SMOA, because it satisfies the requirements for such an agreement under law, and because a SMOA is the most appropriate document for the parties to negotiate under the circumstances.
The Tribe’s analysis is based on the relevant regulation, 40 C.F.R. § 300.515(b), which provides that an Indian tribe’s participation in remedial activities at a Superfund site may be documented in a SMOA, if the tribe is federally recognized, is performing governmental functions to “promote the health, safety, and welfare” of an affected population or to protect the environment, and has “jurisdiction over a site at which [Hazardous Substance Superfund]-financed response, including pre-remedial activities, is contemplated.”
Negotiations: Tribe/EPA/DOJ

- The Quapaw Tribe’s Kansas trust land is within its recognized Indian country jurisdiction for purposes of federal law, and the Tribe therefore exercises the jurisdiction necessary under 40 C.F.R. § 300.515(b)(3) to qualify for a SMOA in relation to the Cherokee County Superfund Site.
Negotiations: Tribe/EPA/DOJ

- May 28, 2013-After further discussions with the Justice Department and the EPA, the EPA accepts the Tribe’s analysis. Agreement is reached shortly thereafter on a SMOA to address future consultation and interaction between the EPA and the Tribe with respect to remediation decisions at the Superfund Site. The agreement subsequently is approved and signed by all the parties.
Negotiations: Tribe/EPA/DOJ

- June 5, 2013- Quapaw Tribe issues support letter relating to the proposed consent decree, indicating that the Tribe’s comments had been addressed through technical changes to the remedial plan, the Quapaw Strip Programmatic Agreement, and the SMOA.
Support Agency Cooperative Agreement

The Tribe is currently negotiating a “Support Agency Superfund Cooperative Agreement” as defined by 40 CFR 35.6240 with Region 7, which will provide a mechanism for EPA to fund the Tribe to provide “meaningful input” into the remedial actions at the Cherokee County Superfund site.