



STATE OF OKLAHOMA
OFFICE OF THE
SECRETARY OF THE ENVIRONMENT

February 17, 2005

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
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Blue Tee Corp.
C/O Ms. Terrance Gileo Faye
Bapst, Calland, Clements, and Somnir, P.C.
1 North Maple Avenue
Greensburg, PA 15601

Re: Notice of Intent to Perform, and Invitation to Participate in, a Natural Resource Damage Assessment at the Tar Creek Superfund Site, Ottawa County, Oklahoma

Dear Ms. Faye:

Please be advised that the Natural Resource Trustees listed below have conducted a Preassessment Screen ("PAS") for releases of hazardous substances at the Tar Creek Superfund Site in accordance with Title 43 § §11.23 through 11.25 of the Code of Federal Regulations. A copy of the PAS is enclosed for your reference. Blue Tree Corp. has been identified by the United States Environmental Protection Agency ("EPA") as a Potentially Responsible Party ("PRP") at this site. Based on the PAS, the Trustees have concluded that there is a reasonable probability of making a successful claim against the PRPs for damages with respect to natural resources for which the United States, State of Oklahoma or an Indian Tribe may assert trusteeship. Accordingly, it is the intention of the Trustees to proceed with a Natural Resource Damage Assessment in accordance with § 9607 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); § 1321 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* ("FWPCA"); the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300; the Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11; Executive Order 12580 as amended; and other applicable Tribal, State and Federal laws, regulations and directives. A similar Notice of Intent letter is being provided to each of the other PRPs identified by the EPA at this site to date¹.

¹ By participating in the transmission of this Notice of Intent to conduct a Natural Resource Damage Assessment for the Tar Creek Site to PRPs identified by the EPA as required by 43 C.F.R. § 11.32, the Director, Region 2, of the U.S. Fish and Wildlife Service, who is the authorized official for the Secretary of the Interior at the Tar Creek Site, is neither asserting nor admitting liability for releases of hazardous substances on behalf of the U.S. Department of the Interior or the United States.

The PAS was prepared at the direction and on behalf of the Eastern Shawnee Tribe of Oklahoma, the Miami Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, the Peoria Tribe of Indians of Oklahoma, the Seneca-Cayuga Tribe of Oklahoma, the Wyandotte Nation, the State of Oklahoma, and the Secretary of the Interior (hereinafter "Trustees"). These entities act in their respective capacities on behalf of either the public or an Indian tribe as a Trustee for natural resources that are injured or potentially injured by releases of hazardous substances, including but not limited to cadmium, lead and zinc, from the Tar Creek Site to the extent authorized by CERCLA. 42 U.S.C. § 9607 (f) and 40 C.F.R. Subpart G. These Trustees have formed a Trustee Council pursuant to 43 C.F.R. §11.32 to cooperate and coordinate the assessment of injured natural resources that may be coexisting, contiguous or under concurrent jurisdiction. The Oklahoma Secretary of Environment has been designated by agreement of the Trustees to act as Lead Administrative Trustee for the Trustee Council. Other Tribal governmental entities may also be natural resource Trustees but are not currently participating on the Trustee Council or in the PAS.

The Tar Creek Site consists primarily of an undefined area covering approximately 40 square miles in Ottawa County, Oklahoma, including the Oklahoma portion of a former lead and zinc mining area, the Picher Mining Field, and any other area where hazardous substances from mining or milling in Ottawa County has been deposited, stored, disposed of, placed, or otherwise come to be located. Releases of hazardous substances, including but not limited to cadmium, lead and zinc, into the environment from mining and milling activities and associated wastes began in the late 1800's and will continue until the Tar Creek Site is fully remediated. Hazardous substances continue to be released from waste piles, mill ponds, mines, soils, groundwater and surface water resulting in widespread distribution of hazardous substances beyond the primary mining and milling areas. The resources that were identified in the PAS as potentially impacted by releases of hazardous substances from mining and milling activity include, but are not limited to, surface waters, sediments and biota in the Tar Creek, Neosho River, Spring River, and Grand Lake watersheds; groundwater in the Boone and Roubidoux formations that flow beneath the Tar Creek Site; and land, soil, air, and biota in the vicinity of the towns of Commerce, Cardin, Picher, Quapaw, Miami, and North-Miami, Oklahoma.

The above listed Indian Tribes, which are located within areas that are impacted or potentially impacted by the release of hazardous substances, act as Trustees for natural resources, including their supporting ecosystems, that belong to, are managed by, are controlled by, or appertain to the respective Indian Tribe, or which are held in trust for the benefit of such Indian Tribe or belong to a member of such Indian Tribe if such resource is subject to a trust restriction on alienation. 42 U.S.C. § 9607(f) and 40 C.F.R. § 300.610. The State of Oklahoma, through the Oklahoma Secretary of Environment, acts as a natural resource Trustee on behalf of the public for natural resources, including their

supporting ecosystems, at the Tar Creek Site within the boundary of the State or which belong to, are controlled by, are managed by, or appertain to the State. 42 U.S.C. § 9607(f) 40 C.F.R. § 300.605 and 27A Okl. St. Ann.1-2-101. The Secretary of Interior acts as a natural resource Trustee for natural resources at the Tar Creek Site which are managed or controlled by the U.S. Department of Interior. 42 U.S.C. § 9607(f) and 40 C.F.R. §300.600.

Based upon the PAS, the Trustees have determined that further investigation and assessment of injuries to natural resources is warranted. The PAS will be used to direct the investigation and assessments, but will not preclude consideration of other resources later found to be affected or other parties found to be responsible for releases of hazardous substances. As the first step in the formal assessment process, the Trustees intend to proceed with the development and completion of an Assessment Plan which will direct efforts to further evaluate the nature and extent of injuries at the Tar Creek Site.

In accordance with 43 C.F.R. §11.32, the Trustees hereby invite the participation of the PRPs in the development of the type and scope of the assessment, as well as in the performance of the assessment. To facilitate such participation, the Trustees would like to offer the PRPs an opportunity to enter into an agreement with the Trustees to conduct a cooperative assessment. Such an approach provides a number of benefits to the PRPS, the Trustees and the public including reduced assessment costs, increased efficiency and a focus on restoration.

We encourage you to communicate with other PRPs regarding their interest in participating in the assessment process and conducting a cooperative assessment for the Tar Creek Superfund Site. The Trustees intend to schedule a meeting with all of the interested PRPs to discuss their interest in conducting a cooperative assessment within the next sixty days. Please submit a written response to this notice within 30 days of your receipt to address the proposed meeting and your participation.

Sincerely,



Miles Tolbert
Oklahoma Secretary of the Environment
Lead Administrative Trustee, Tar Creek
Trustee Council

Enclosures

cc: Chief Charles Enyart, Eastern Shawnee Tribe of Oklahoma

Chief Floyd Leonard, Miami Tribe of Oklahoma
Chief Charles Todd, Ottawa Tribe
Chief John P. Froman, Peoria Tribe
Chief LeRoy Howard, Seneca-Cayuga Tribe of Oklahoma
Chief Leaford Bearskin, Wyandotte Nation
Mr. Dale Hall, Regional Director, U.S. Fish And Wildlife Service, Region 2
Mr. Louis Maruchau, The Doe Run Company
Mr. Douglas McAllister, ASARCO Incorporated
Ms. Theresa Noble Hill, Childress
Mr. Scott Jordan, DOJ
Mr. Marcus Martin, NL Industries
Mr. Gerald F. Masoudi, Counsel, NL Industries
Mr. Richard Ahrens, Counsel, Doe Run
Mr. Richard Greene, Regional Administrator, U.S. EPA, Region 6
Mr. James Barwick, Oklahoma Assistant Attorney General
Mr. Steve Thompson, Oklahoma Department of Environmental Quality
Ms. Ferella March, Oklahoma Department of Wildlife Conservation