

Allen letter to Hill, July 20, 2000.

Dear Greg:

Thank you for working with the U.S. Fish and Wildlife Service (Service) in carrying out the provisions in the Third Assessment Plan Addendum: Lower Fox River/Green Bay NRDA (Addendum), which was published on May 25, 2000. That Addendum establishes a process by which the Federal, Tribal, and State governments who have asserted trusteeship for natural resources that have been injured as a result of the release of PCBs into the Fox River and Green Bay Environment will work towards developing a single, unified, joint Restoration and Compensation Determination Plan.

As part of that process, you have requested that the Service share with the Wisconsin Department of Natural Resources (WDNR) copies of the code and models that were developed and used by the economists who were hired by the federal/tribal co-trustees to conduct the recreational fishing study.

As you know, the Service would prefer to hire an experienced natural resource economist, jointly chosen by the Service and the WDNR, to conduct a joint evaluation of both the co-trustees' study and the potentially responsible parties' (PRP) study. A joint evaluation would eliminate the possibility of having not only two recreational fishing valuation studies, one conducted by the co-trustees and one conducted by the PRPs, but two evaluations, one conducted by the co-trustees and one conducted by the WDNR pursuant to the State/Company Agreement (January 1997).

However, given the WDNR's rejection of the Service's offer to pay for a joint evaluation, the Service does not want to hinder the WDNR's ability to conduct its own evaluations as part of the State/Company Agreement. Therefore, I am directing Stratus Consulting, Inc. to transmit the co-trustees' recreational fishing valuation model to Lancaster Consulting, LLC, which WDNR has identified as the consultant that will perform its evaluation pursuant to the State/Company Agreement.

The materials will be sent directly from Stratus Consulting, Inc. to Lancaster Consulting, LLC. Those materials are confidential and protected from public disclosure in accordance with the terms of the confidentiality provisions of the July 11, 1997, Intergovernmental Partners' Memorandum of Agreement (MOA), and the Confidentiality Agreement incorporated by reference and attached thereto as Appendix A. These computer programs were developed in contemplation of litigation, and the Service has therefore determined them to be privileged and confidential. In addition, Stratus Consulting, Inc., the company whose economists developed these products, has asserted that the model and codes are proprietary and confidential business information, because disclosure is likely to result in substantial harm to their competitive position. As you know, 18 U.S.C. § 1905 contains provisions that explicitly address the confidentiality of business information, including criminal sanctions that could be imposed against any person who discloses confidential business information entitled to protection. Stratus Consulting, Inc. will correspond with Lancaster Consulting, LLC, to confirm that the materials will be treated as confidential business information, before the materials are transmitted. However, an exchange of letters between Stratus Consulting, Inc. and Lancaster Consulting, LLC should not take more than a few days.

In the mean time, I would appreciate your immediate attention in transmitting the data and models produced by the PRPs' consultant, Triangle Economics Research, since you have determined that they are public documents subject to Wisconsin's open records laws. As a reminder, you committed to send these data and models in each of our previous two meetings. I am also looking forward to seeing your draft letters memorializing our joint review of the existing pathway and injury determinations referenced in the Addendum, and discussed in each of our two previous meetings.

Please let me know if you have any concerns regarding the economics information or its confidentiality. I hope that this will be useful to you as we proceed towards completing the process set out in the Addendum.

Sincerely, P. David Allen II