United States Environmental Protection Agency
Regional Administrator
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

DEC 04 2012

Dan Wyant, Director
Michigan Department of Environmental Quality
P.O. Box 30473
Lansing, Michigan 48909-7973

Dear Mr. Wyant:

On April 23, 2012, the U.S. Environmental Protection Agency, in consultation with the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service, submitted an objection, under Section 404(j) of the Clean Water Act, 33 U.S.C. § 1344(j), and federal regulations at 40 C.F.R. § 233.50(e), to the issuance of a wetlands fill permit relating to the construction of proposed Marquette County Road 595. On August 28, 2012, at the request of the Michigan Department of Environmental Quality (MDEQ), EPA held a public hearing on the objection in Marquette, Michigan, as required by Section 404(j) of the Act and 40 C.F.R. § 233.50(g).

EPA has reviewed the comments received during the hearing process and has prepared a Responsiveness Summary, which is enclosed. EPA has also reviewed all additional information provided to date by the permit applicant, the Marquette County Road Commission, and by MDEQ. EPA must now notify MDEQ as to whether EPA will reaffirm, modify or withdraw the Agency's objection, pursuant to Section 404(j) of the Act and 40 C.F.R. § 233.50(h).

EPA has decided to withdraw the Agency's objection regarding the permit applicant's Alternatives Assessment for the County Road 595 project. However, construction of County Road 595 would have significant direct and indirect impacts on high quality wetland and stream resources, as well as on wildlife. Clean Water Act Section 404(b)(1) Guidelines require minimization of impacts to the extent practicable and require compensation for any unavoidable impacts. To date, EPA has not received adequate plans to minimize impacts or a comprehensive mitigation plan that would sufficiently compensate for unavoidable impacts. Accordingly, EPA reaffirms the Agency's objection regarding Minimization of Impacts and Compensatory Mitigation. EPA has attached detailed requirements for impact minimization and compensatory mitigation for the County Road 595 project.

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Under Section 404(j) of the Act and 40 C.F.R. § 233.50(h)(2) and (j), MDEQ has thirty days from the date of receipt of this letter to satisfy EPA's reaffirmed objection by issuing a permit that includes minimization and mitigation plans consistent with the requirements set forth in Attachment 2 or to notify EPA that MDEQ intends to deny the permit. Absent such action by MDEQ, authority to process the permit application transfers to the Corps of Engineers.

If you have further questions, please call me at (312) 886-3000, or your staff may contact Peter Swenson, EPA Water Division, at (312) 886-0236.

Sincerely,

Susan Hedman
Regional Administrator

Enclosures