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

OCT 19 2016

REPLY TO THE ATTENTION OF:
WW-16J

Ex. 6 - Personal Privacy
Humanities Faculty, College of Menominee Nation
Ex. 6 - Personal Privacy

Dear Ex. 6 - Personal Privacy

Thank you for your October 3, 2016, email message to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding your concerns about Aquila Resources' proposed Back 40 mine project, located northwest of Stephenson, Michigan. In your message you raise concerns related to Menominee tribal cultural and archaeological sites, and risks to the Menominee River from acid mine drainage.

As you note, the Michigan Department of Environmental Quality (MDEQ) has primary responsibility for regulating the Back 40 mine as the permitting authority. This includes implementing federal requirements under Section 402 of the Clean Water Act (CWA) (regulating wastewater discharges into waters of the United States), Section 404 of the CWA (regulating discharges of fill into waters of the U.S.) and the Clean Air Act (CAA). MDEQ also operates a separate Permit to Mine program under state authority.

EPA maintains an oversight role for MDEQ permits which implement federal requirements under the CWA and the CAA. EPA is currently reviewing MDEQ's proposed permit under CWA Section 402, and the draft air pollution construction permit issued pursuant to Michigan's Part 2 minor source construction permitting program. EPA will take your comments into consideration as it completes its review of these permits. I note that MDEQ is taking public comments on both of these draft permits, as well as the proposed Permit to Mine until November 3, 2016. I recommend that you take this opportunity to provide your comments, questions and concerns directly to MDEQ.

EPA objected to the issuance of a Michigan wetlands and inland lakes and streams permit (CWA Section 404) on August 15, 2016, because Aquila had not demonstrated compliance with the CWA Section 404. EPA also noted concerns regarding cultural resources and requested that MDEQ confirm its coordination with Michigan's State Historical Preservation Officer and Tribal archeologists. A copy of EPA's August 15, 2016 letter is attached for your reference. On September 23, 2016, Aquila withdrew its CWA Section 404 application with the intention of reapplying to MDEQ, in which case there would likely be another public comment period and hearing for the wetlands and inland lakes and streams permit at a later date, and EPA would restart its oversight review of the project based on the new application.

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Thank you for your interest in this matter, and for providing comments regarding the proposed Back 40 mine. If you have any questions please contact Peter Swenson at 312-886-0236.

Sincerely,

Christopher Korleski,
Director, Water Division

Attachment