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

MAY 18 2016

REPLY TO THE ATTENTION OF:
WW-16J

RECEIVED
JUN 03 2016
BY

Ms. Lee Anne Devine
Chief, Regulatory Branch
U.S. Army Corps of Engineers
Louisville District
P.O. Box 59
Louisville, Kentucky 40201-0059

Subject: Proposed Seven Hills Mine, Warrick County, Indiana, LRL-2013-635-GJD

Dear Ms. Devine:

This letter is in response to the letter sent to Robert Kaplan, Acting Regional Administrator, from Mr. George DeLancey of your staff on May 11, 2016. Mr. DeLancey requested that the U.S. Environmental Protection Agency provide the U.S. Army Corps of Engineers (Corps) with information to support the 3(b) letter EPA submitted to the Corps on May 10, 2016.

The 1992 Memorandum of Agreement (MOA) between the EPA and the Department of the Army defines a process and time frames for resolving disputes, in an effort to issue timely permit decisions. Following the process in the MOA, EPA sent the Corps a 3(a) letter on April 14, 2016, within the public comment timeframe. Following the outline of the MOA, within 25 days of the end of the public comment period, the EPA may issue a letter stating that the project will have substantial and unacceptable impacts to an aquatic resource of national importance. EPA did not receive a response from the Corps to our April 14, 2016 letter, or any additional information on the proposed Seven Hills Mine, and subsequently submitted the 3(b) letter on May 10, 2016.

EPA has previously provided information to the Corps supporting the 3(b) determination for the proposed Seven Hills Mine. As Mr. DeLancey noted in his letter, EPA attached detailed comments to the April 14, 2016 letter. Those comments are the culmination of EPA's extensive and thorough review of the proposed project going back to 2013. The comments are based on the application materials, specific onsite resources, proposed impacts, site visits and initial water quality modeling conducted by EPA.

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EPA's input and detailed comments throughout the pre-application process, the joint EPA and U.S. Fish and Wildlife Service letter of March 17, 2016, and EPA's April 14, 2016 3(a) letter and attachments, are the basis for EPA's May 10, 2016 3(b) letter and support EPA's opinion on: 1) why there will be substantial and unacceptable impacts to aquatic resources of national importance: Pigeon Creek, its floodplain forested wetlands and the Ohio River; 2) why the specific permit must be denied as proposed to protect aquatic resources of national importance; and 3) how our determination was made. The letters are enclosed.

Please contact Wendy Melgin at (312) 886-7745, if your staff requires additional explanation of EPA's position. We look forward to continuing our coordination with you and the Fish and Wildlife Service on this project.

Sincerely,

Tinka G. Hyde

Tinka G. Hyde
Director, Water Division

Enclosures

March 17, 2016 USEPA and FWS Letter (w/attachments)
April 14, 2016 USEPA 404 Comment Letter (w/attachments)

cc: George DeLancey, Army Corps of Engineers (via email)
Michael Ricketts, Army Corps of Engineers (via email)
LeAnn Devine, Army Corps of Engineers (via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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CHICAGO, IL 60604-3590

MAY 10 2016

REPLY TO THE ATTENTION OF:

Colonel Christopher G. Beck
District Engineer
U.S. Army Corps of Engineers
Louisville District
P.O. Box 59
Louisville, Kentucky 40201-0059

FIRST PAGE of ATTACHMENT ONLY

Dear Colonel Beck:

On April 14, 2016, the U.S. Environmental Protection Agency reviewed and commented on the above referenced public notice and the related Clean Water Act (CWA) Section 404 permit application for discharges associated with United Minerals' proposed Seven Hills Mine, an approximately 2,700 acre open pit coal mine in the Highland-Pigeon Creek watershed southeast of Elberfeld in Warrick County, Indiana.

The EPA has previously participated in multiple interagency site visits, reviewed and commented on the preliminary plan, and jointly commented on this project with the U.S. Fish and Wildlife Service. As currently proposed, the project would directly impact 510.16 acres of wetlands (of which 463.18 acres are forested wetlands), 53,840 linear feet of streams and 72.85 acres of open water.

In the April 14, 2016 letter, the EPA indicated that the proposed project may result in substantial and unacceptable impacts to aquatic resources of national importance (ARNI) in accordance with Part IV, paragraph 3(a) of the August 1992 Memorandum of Agreement between the EPA and Department of the Army regarding section 404(q) of the CWA.

No additional information has been provided that addresses EPA's concerns. Therefore, pursuant to Part IV, paragraph 3(b) of the August 1992 Memorandum of Agreement (MOA) between the EPA and the Department of the Army regarding section 404(q) of the CWA, EPA finds that this project, as proposed, will have substantial and unacceptable impacts to aquatic resources of national importance.

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APR 1 4 2016

REPLY TO THE ATTENTION OF:
WW-16J

Colonel Christopher G. Beck
District Engineer
U.S. Army Corps of Engineers
Louisville District
P.O. Box 59
Louisville, Kentucky 40201-0059

Subject: Comments on Public Notice LRL-2013-63[illegible]-GJD; Proposed Seven Hills Mine, Warrick County, Indiana.

Dear Colonel Beck:

The U.S. Environmental Protection Agency has reviewed the above referenced public notice and the related Clean Water Act (CWA) Section 404 permit application for discharges associated with United Minerals' proposed Seven Hills Mine, an approximately 1,700 acre open pit coal mine in the Highland-Pigeon Creek watershed southeast of Elberfeld in Warrick County, Indiana. The EPA has previously participated in multiple interagency site visits, reviewed and commented on the preliminary plan, and jointly commented on this project with the U.S. Fish and Wildlife Service (FWS) (Enclosure 1). As currently proposed, the project would directly impact 510.16 acres of wetlands (of which 46[illegible].18 acres are forested wetlands), 53,840 linear feet of streams and 72.85 acres of open water.

Based on our review of the previous and currently available information, and pursuant to Part IV, paragraph 3(a) of the 1992 CWA Section 404(q) Memorandum of Agreement between the EPA and Department of the Army, the EPA is hereby notifying the U.S. Army Corps of Engineers (Corps) that this project may have substantial and unacceptable impacts on aquatic resources of national importance.

The proposed Seven Hills project would mine through over 460 acres of floodplain forested wetlands and 10 miles of streams tributary to Pigeon Creek. From its headwaters, Pigeon Creek flows approximately 50 miles through the project area and bisects downtown Evansville, before joining the Ohio River. The EPA considers Pigeon Creek, its floodplain forested wetlands, and the Ohio River to be aquatic resources of national importance. Project area aquatic resources consist of contiguous tracts of increasingly rare floodplain forested wetlands. These wetlands are diverse and productive systems that are located on floodplains and inundated by flood waters. The Pigeon Creek floodplain forested wetlands filter nutrients, excess sediments and other

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MAR 1 7 2016

WW-16J

Colonel Christopher G. Beck
District Engineer
U.S. Army Corps of Engineers
Louisville District
P.O. Box 59
Louisville, KY 40201-0059

Re: United Minerals Company, LLC-Seven Hills Mine, LRL-2013-635-GJD

Dear Colonel Beck:

The U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service (FWS) (the agencies) have reviewed the Clean Water Act (CWA) Section 404 permit application (permit application) materials and the Public Notice for the subject project. The agencies appreciate the efforts by the Louisville District to involve the EPA, FWS and other agency partners in preliminary discussions and reviews of the proposed Seven Hills Mine and other mining activities proposed nearby.

United Minerals Company, LLC (United Minerals) proposes to impact 510.16 acres of wetlands (of which 463.18 acres are forested wetlands), 53,840 linear feet of streams and 72.85 acres of open water, for the construction of the 1,679.6 acre Seven Hills Mine in the Highland-Pigeon Creek watershed southeast of Elberfeld in Warrick County, Indiana. Approximately 648.5 acres of the site have been previously mined and reclaimed in the 1990s and are not proposed to be impacted for coal extraction. Both agencies have commented on the preliminary plan for this mine, and we want to highlight the following comments based on our reviews of the permit application and subsequent Public Notice.

The Seven Hills Mine is immediately west of the recently proposed High Point Mine and the nearby Liberty Mine. These three adjacent mines would cumulatively impact over 100,000 linear feet of streams and 600 acres of wetlands within the Highland-Pigeon Creek watershed. Given the scope and environmental impacts associated with these proposals, the agencies continue to believe that the projects should be evaluated in a coordinated fashion, and that an Environmental Impact Statement (EIS) should be prepared. This would allow for a more comprehensive analysis of cumulative impacts, and consideration of additional practicable alternatives that could meet the project purpose while avoiding and minimizing anticipated significant environmental impacts.

The agencies are concerned that the project's proposed CWA Section 404 discharges may result in unacceptable impacts to Pigeon Creek, its forested floodplain wetlands and tributaries, and

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