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

MAR 0 8 2018

REPLY TO THE ATTENTION OF:
WW-16J

Ms. Colleen O'Keefe
Land and Water Management Division
Michigan Department of Environmental Quality
P.O. Box 30028
Lansing, Michigan 48909

Re: Public Notice No. 2NN-5PE0-MT3W, Aquila Resources Inc.

Dear Ms. O'Keefe:

The United States Environmental Protection Agency appreciates the opportunity to provide comments on the above-referenced Michigan Department of Environmental Quality's (MDEQ) December 8, 2017 public notice in which Aquila Resources, Inc., proposes to develop a new polymetallic mineral mine known as the "Back Forty" Project.

The U.S. Army Corps of Engineers (Corps) and the U.S. Fish and Wildlife Service (FWS) provided comments to the EPA on the proposed project and permit application. We provide these combined agency comments pursuant to Section 404(j) of the Clean Water Act (CWA), the regulations in 40 C.F.R. § 233, and as further prescribed in the Memorandum of Agreement (MOA) between the State of Michigan and EPA for implementation of the 404 permit program.

The federal agencies have identified specific concerns with the project as proposed. Our concerns include the deficiencies in the impacts analysis, the significance of aquatic resource impacts, alternatives analysis, and the demonstration of adequate compensation for wetland and stream impacts. Therefore, this project does not comply with the CWA Section 404(b)(1) Guidelines, and EPA objects to the issuance of a permit for this project as proposed.

Our detailed comments and objections; reasons for those comments and objections; and the steps that the MDEQ must take to eliminate the objections are enclosed. The comments and objections cover the following general concerns:

- The applicant has not provided a complete description of the project, including a final site plan identifying the final location of key project features, including storm water and waste management features. The proposed site layout is not consistent with the approved state Permit to Mine. Nor are all impacts of the project identified in the application, including impacts caused by any planned underground mining, a power plant, and mining water management systems. Without this information, the reviewing agencies cannot adequately assess the extent of the proposed mine's impact on aquatic resources as

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required by the CWA, and or determine whether the applicant has minimized and avoided aquatic resource impacts, as required.

- The mine pit is located next to a bluff above the Menominee River and the application currently lacks information that would allow the reviewing agencies to ensure mine pit integrity with respect to the boundary of the river and associated flood plain, including an analysis of slope stability and erosion at the river bank. The application lacks information regarding how the project will include means to stabilize these features, including to address U.S. Fish and Wildlife (and EPA) concerns regarding potential risks to the project and the river from heavy rains. Lack of this information means the reviewing agencies cannot understand the project's potential impact to aquatic resources.

- The application states that the project will not adversely affect water quality of the Menominee River but does not explain how the project will be managed to ensure discharges will meet water quality standards, including sufficient monitoring locations, minimization measures, and adaptive management procedures to prevent leaching of toxic compounds from mine storage facilities and from the mine pit into the River, a concern EPA shares with the Corps.

- The application does not adequately characterize the proposed project's secondary impact on wetlands because it lacks information regarding the extent of wetlands that will be impacted by the project and how these wetlands will be affected by the proposed project's Menominee River drawdown of some 125,000 gallons per day.

- The application does not contain adequate support for the applicant's determination that offsite upland alternatives for some mine features (e.g., tailings storage) are not practicable.

- The application has not provided needed information to determine whether some 500 acres of wetlands and uplands that were selected for preservation meet statutory requirements to be used as wetland and stream mitigation.

- We note that the applicant has not provided the information requested by MDEQ in letters of January 19, 2018, and March 2, 2018. Responses to these letters should significantly clarify outstanding concerns regarding the application.

In order to address EPA's objections, the MDEQ shall require the applicant to provide following:

- Complete responses to the questions concerns outlined in MDEQ's January 19, 2018 and March 2, 2018, letters;

- Adequate characterization of wetland impacts, including any secondary wetland or stream impacts;

- Additional details regarding monitoring, impact criteria, and specific adaptive management mechanisms sufficient to demonstrate avoidance and minimization of

impacts to aquatic resources and prevention of contamination and unanticipated discharges;

- Demonstration and supporting documentation that the mine site plan is protective of water quality throughout the life of mine and post-closure;

- Additional documentation of Menominee River bank stability/erosion potential to demonstrate mine integrity;

- Additional supporting documentation demonstrating that the preferred-alternative is the least environmentally damaging practicable alternative, e.g., documenting off-site alternatives for waste rock storage including cost-analysis; and

- Additional support documentation demonstrating that the proposed preservation area meets the requirements of the 2008 Federal Mitigation Rule.

This letter constitutes a federal objection to the issuance of a permit for this project. Pursuant to CWA § 404(j) and the CWA 404 MOA Section 5(d)-(e), the MDEQ has 90 days from the date of this letter to work with the applicant to resolve the issues raised above or deny the permit. The MDEQ may request a public hearing on EPA's objection. If the State does not satisfactorily resolve this objection within 90 days after the date of this letter, or within 30 days after the completion of the hearing if one is held, authority to process the CWA Section 404 permit transfers to the Corps by operation of law.

Thank you for the opportunity to provide comments on this application. We look forward to working with you to resolve the issues discussed in this letter. Please contact Melanie Burdick at (312) 886-2255 with any questions you may have.

Sincerely,

Christopher Korleski
Director, Water Division

Enclosure



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