DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
477 Michigan Ave., 7th Floor
DETROIT, MICHIGAN 48226

August 25, 2017

Honorable Tammy Baldwin
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Baldwin:

I am writing in response to your August 18, 2017 letter concerning Aquila Resources' proposed Back Forty Mine project in Menominee County, Michigan.

The U.S. Army Corps of Engineers (Corps) does not have the authority to assume lead on this permit application unless directed by the U.S. Environmental Protection Agency (EPA). In Michigan, the Michigan Department of Environmental Quality (MDEQ) is authorized by EPA to administer the Clean Water Act (CWA) Section 404 permitting program in certain waters. The Back Forty project is within the assumed area. In its 2016 review of the Aquila Resources' permit application, EPA objected to MDEQ's issuance of a permit. The applicant withdrew the permit application and the state's file was closed in October 2016. Aquila Resources re-applied to MDEQ in January 2017. The Corps will comment on the application if requested by EPA during the public notice process, which has not yet occurred.

As background information, the CWA requires a Section 404 permit to discharge dredged or fill material into waters of the United States. The Corps administers the Section 404 permit program, unless a state obtains approval from the U.S. EPA to administer the permit program subject to EPA oversight. In areas where the state has assumed Section 404 authority, EPA oversees the state's Section 404 responsibilities and the state forwards copies of permit applications to the EPA for review. During its review, EPA considers any comments from the Corps and the U.S. Fish and Wildlife Service, and determines the Federal position. The Corps provides input to the EPA on the permit application. Permit review would revert to the Corps only when there is an unresolved EPA objection to the state's proposed permit.

Please contact me if you have any further questions.

Sincerely,

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Date: 2017.09.06 07:23:17 -04'00'

Dennis P. Sugrue
Lieutenant Colonel, U.S. Army
District Engineer

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U.S. Environmental Protection Agency, Region V