



Upper Peninsula Environmental Coalition
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Liesl Eichler Clark, Director
Michigan Department of Environmental Quality
P.O. Box 30473
Lansing, MI 48909-7973

January 22nd, 2019

Dear Director Eichler Clark,

Congratulations on your appointment to lead the MDEQ. We take your public commitment to clean water to be an encouraging sign of positive and needed change for Michigan's aquatic resources.

We wish to take this opportunity to bring to your attention the approval by your predecessor of the Aquila Back Forty Mine Wetland Permit in Menominee County.

Former DEQ Director Heidi Grether's approval of the Aquila Back Forty Wetland permit was clearly a political act, directly contradicting the recommendation of DEQ's own Water Resources Division (WRD). We believe strongly this permit is inconsistent with Parts 301 and 303 of and with Section 404 of the Clean Water Act.

DEQ's own Findings of Fact in this case stated: "After due consideration of the permit application, on-site investigation and review of other pertinent materials, the Water Resources Division finds that the project does NOT demonstrate that an unacceptable disruption to the aquatic resources of the State will not occur and that the activities associated with the project are NOT consistent with the permitting criteria for an acceptable impact to the resources regulated under Parts 301, Inland Lakes and Streams, and Part 303, Wetlands Protection." Similarly, the DEQ's decision letter was not an endorsement: "We have determined that the (Back Forty) project as proposed could not be permitted without additional supporting documentation because the hydrologic modeling provided does not define the anticipated impacts to aquatic resources."

In order to somehow justify approving the permit, former Director Grether attached a full 28 pages of Special Conditions. The serious hydrological concerns our group previously raised remain unaddressed. Aquila's mine will harm wetlands of the Menominee River and aquatic resources shared by Michigan and Wisconsin. The Menominee River and its adjacent wetlands certainly deserve better.

According to DEQ's own rules, specifically section 30319 of 1994 PA 451, as amended, MCL 324.30319R 281.922a Permit application review criteria, Rule 2a. (3) "A permit applicant shall provide adequate information, including documentation as required by the department, to support the demonstrations required by section 30311 of the act." In issuing a permit with 28 pages of Special Conditions, it is painfully obvious that the applicant did not meet this burden. Those conditions included the submittal of key additional information including "revised hydrologic modeling, an adaptive management plan, a comprehensive monitoring plan, and requisite wetland and stream mitigation." Under the Michigan law and the federal Clean Water Act this information must be provided BEFORE a wetland destruction permit is granted, not after.

The Clean Water Act requires compensatory mitigation based on the anticipated wetland functions and values to be impacted, and a clear demonstration that the proposal is the least environmentally damaging practicable alternative. According to the DEQ Water Resources Division's "Finding of Fact and Conclusion of Law", the "application does NOT demonstrate that a feasible and prudent alternative does not exist. The application fails to fully define the extent of impacts to regulated resources. In approving the permit, former Director Grether ignored the conclusions of those regulators who understood the permit application and its myriad failings.

In a "Wetland Augmentation Plan" subsequently submitted to the DEQ, Aquila hedged the validity of their data, claiming that "confirmation of the findings pursuant to the modeling can only be accomplished by wetland hydrology and vegetation monitoring during mining operations." Following a recalculation of their wetland impacts, Aquila reported a 50% increase in the

total acres of wetland impacts caused by dewatering. Rather than resolving state and federal concerns, the impacts were increasing.

Through the extensive, science-based review by our organization and other regional environmental groups, along with expert review by Dr. Kendra Zamzow and Dr. David Chambers of the Center for Science in Public Participation and independent hydrologist Dr. Tom Myers, it was demonstrated that the Back Forty mine is a disaster in the making.

In addition, the EPA initially filed strong objections to the permit application. In a March 2018 letter to the DEQ, they stated: "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 required by the CWA, and/or determine whether the applicant has minimized and avoided aquatic resource impacts, as required." In addition, EPA pointed out that Aquila "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." The EPA objected to "Aquila's failure to adequately characterize secondary impacts to wetlands and "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 EPA found that Aquila failed to provide adequate support for their determination that "offsite upland alternatives for some mine features (e.g., tailings storage) are not practicable", and that they did not provide "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."

EPA directed the DEQ to "resolve those concerns" within 90 days. If not resolved in that time, DEQ was "directed to deny the permit for the mine." But Aquila Resources and DEQ did not resolve these concerns. There is still NO finalized site plan or acknowledgement of planned underground mining facilities, NO approved plan to prevent leaching of toxins into the Menominee River, NO accurate hydrological model for the mine site, and the Back Forty wetland impacts remain UNKNOWN.

Unfortunately, EPA did not maintain their objection to issuance of this permit, which makes it all the more incumbent on the state to ensure that all the impacts are known prior to making a permit decision.

As stated at the outset of this letter, the Mining Action Group and our members are hopeful that your tenure leading the DEQ will be a departure from the shameful way in which the outgoing director has made decisions to favor industry at the expense of Michigan's aquatic resources and citizens. Therefore, we respectfully request that you immediately rescind the previous decision to issue this highly questionable permit for the Back Forty Mine, and deny the application for permit, as recommended by the professional staff of the DEQ pursuant to the Wetlands Protection, Natural Resources and Environmental Protection Act. Alternatively we request that you inform the applicant that they will need to amend their application to include all information required by state and federal law to allow an informed review of the application to proceed. We also respectfully request your response to this letter.

Sincerely,



Horst Schmidt
President

cc: Teresa Seidel, Schmidt, Heideman, Towner, Saari, Garske