



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY  
MARQUETTE DISTRICT OFFICE



LIESL EICHLER CLARK  
DIRECTOR

October 1, 2020

VIA E-MAIL

Renewable World Energies, LLC  
Attn: Mr. Jason Kruescher  
100 South State Street  
Neshkoro, Wisconsin 54960

Dear Mr. Kruescher:

SUBJECT: Email Correspondence  
Submission No. HP1-7BPN-EB94H  
Site Name: 02-Au Train River Dam-Au Train Twp  
Project Name: Au Train Dam Modifications

Thank you for contacting the Michigan Department of Environment, Great Lakes, and Energy (EGLE) via e-mail on September 22, 2020, regarding Renewable World Energies, LLC's (RWE) concerns about EGLE oversight of the proposed Au Train River North Dam (Dam ID No. 152, FERC Project Number P-10856), modification project, as well as Correction Request items highlighted in EGLE's August 11, 2020 and August 27, 2020 correspondences. As was discussed via email, EGLE maintains that state permits are required under Part 31, *Water Resources Protection*, Part 301, *Inland Lakes and Streams*, and Part 303, *Wetlands Protection*, of the Natural Resources and Environmental Protection Act, as amended (NREPA).

RWE's September 22, 2020 email correspondence references that "FERC states on Page 22 of the attached 1997 FERC license for the Au Train Dam: 'I am not requiring that UPPCo identify mitigation for emergency violations of reservoir levels or that maintenance draw-downs greater than one foot require a Michigan DNR permit because it would conflict with the Commission's authority with respect to nonfederal water power projects under the FPA...'"

EGLE understands that the current proposed North Dam project is an intentional, permanent impoundment drawdown that would be achieved through significant structural dam modifications. It is neither an emergency violation nor a maintenance drawdown. While temporary drawdowns for maintenance of FERC regulated dams can sometimes be exempt from permit under Section 30103(1)(n) of Part 301, this project does not fit that exemption. Further, even when a project is exempt from Part 315 regulation due to FERC oversight, dam modifications require Part 301 authorization [Section 30102(b), (d), and (e)] from EGLE under state law.

Regarding wetlands, the 1997 FERC license statement above does not have bearing on EGLE authority regarding compensatory wetland mitigation for the proposed, permanent dewatering of Part 303 regulated wetlands. Section 30304(d) of Part 303 requires a permit to drain surface water from a regulated wetland. As such, unless a project meets a Part 303 exemption from permit under Section 30305, an EGLE permit is required. Historic operation of the Au Train Dam, and the resultant temporal wetland impacts caused by fluctuating impoundment levels,

qualified for such an exemption. Section 30305(2)(f) of Part 303 states a permit is not required for the "maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to this part or former 1979 PA 203." However, the currently proposed project is neither maintenance nor operation of a serviceable structure. It is the establishment a new, permanent, artificial water surface elevation in the impoundment through direct, structural dam modification. A Part 303 permit is required because the proposed, non-exempt activities will drain surface water from impacted wetlands [Section 30304(d)] and result in the creation and maintenance of a new use (i.e., an altered impoundment no longer used to generate hydropower) in any remaining littoral wetlands [Section 30304(c)].

It is our understanding that FERC cannot waive the state's authority under Parts 301 or 303.

Based the Part 301 and Part 303 sections noted above, the North Dam modification and permanent impoundment dewatering currently proposed do require an EGLE permit. Further, any impacts to regulated wetlands exceeding the Part 303 threshold for mandatory, compensatory wetland mitigation would necessitate such mitigation. Without the required permit application items, including the concerns addressed in the attached Correction Request, the application remains administratively incomplete and cannot be further processed until all the necessary information has been submitted.

If you have any questions regarding this letter or your application, please contact me at 906-250-6176 or [CastelloM@michigan.gov](mailto:CastelloM@michigan.gov). The information requested in the attached Correction Request should be submitted to EGLE through the MiWaters database at <https://miwaters.deq.state.mi.us/miwaters/external/home>. Please be sure to include the Submission Number HP1-7BPN-EB94H in future correspondences with our office. The status of your application can also be tracked online at <https://miwaters.deq.state.mi.us/miwaters/>.

Sincerely,



Marissa Castello  
Marquette District Office  
Water Resources Division

Enclosure:  
Au Train Correction Request

MC:SLS

cc: Ms. Amy Berry, EGLE  
Mr. Jeff Bridgland, EGLE  
Ms. Linda Hansen, EGLE  
Mr. Dan DeVaun, EGLE  
Ms. Amy Lounds, EGLE  
Mr. Ryan McCone, EGLE  
Ms. Elle Gulotty, DNR  
Mr. Cory Kovacs, DNR  
Ms. Jessica Mistak, DNR  
Mr. Brian Kreuzer, RWE

Mr. Peter Haug, Ayres Associates  
Ms. Kristi Dahlstrom, DNR  
Mr. Charlie Marsh, USFS  
Mr. Darren Kramer, DNR  
Mr. Brian Roell, DNR  
Mr. Patrick Hanchin, DNR  
Mr. John Pepin, DNR  
Ms. Stacy Welling Haughey, DNR  
Mr. Craig Brunet, DNR  
Mr. Mario Fusco, P.E., EGLE  
Ms. Eric Cowing, DNR  
Mr. John Zygaj, FERC