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STATE OF MICHIGAN
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 LANSING



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February 3, 2009

Chief
 Rules and Directives Branch
 Division of Administrative Services
 Mail Stop TWB-05-B01M
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555-0001

SUBJECT: Response to Request for Participation in the Scoping Process for the Environmental Review for the Fermi Nuclear Power Plant, Unit 3 Combined License Application

To Whom It May Concern:

The Michigan Department of Environmental Quality (MDEQ) has received your request dated December 31, 2008, to participate in the scoping process for the environmental review for the Fermi Nuclear Power Plant, Unit 3 combined license application (COL) and it has been referred to the MDEQ's Land and Water Management Division (LWMD) for response. Because the scoping request letter did not provide specific information on the proposed power plant and associated structures, we can only provide general comments regarding the LWMD's regulated natural resources located on the Detroit Edison Company (DEC) property in Monroe County, Michigan.

Although the LWMD will need additional information to thoroughly evaluate this project, we can provide the following comments regarding Federal Consistency, pertaining to State's Floodplain Regulatory Authority, found in Part 31, Water Resources Protection, Part 301, Inland Lakes and Streams, Part 303, Wetlands Protection, and Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA).

Federal Consistency

Staff of the MDEQ has conducted an initial review of the proposal which indicates that this project is located within Michigan's coastal management boundary and is subject to Federal Consistency requirements. Before the U.S. Nuclear Regulatory Commission can issue the proposed COL, staff of the LWMD will need to review the proposed project for Federal Consistency with Michigan's Coastal Management Program (MCMP), as required by Section 307 of the Coastal Zone Management Act, PL 92-583, as amended. This will happen after the final EIS has been submitted to our office with a request for Coastal Zone Management certification of Federal Consistency.

A determination of Federal Consistency with the MCMP requires evaluation of a project to determine if it will have an adverse impact on coastal land or water uses or coastal resources. Projects are evaluated using the permitting criteria contained in the regulatory statutes administered by the MDEQ. These statutes constitute the enforceable policies of the MCMP. The statutes that this project will be reviewed against for Federal Consistency are found in Michigan's NREPA. The COL proposes state regulated construction activities which will require state permits and may cause significant impacts, discussed in more detail below.

Floodplains

The drainage area for the unnamed tributary to Lake Erie at the site is less than two square miles, and does not fall under the state's Floodplain Regulatory Authority, found in Part 31 of the NREPA. A state floodplain permit will not be required from the LWMD at this site.

While Part 31 does not regulate the floodplains of the Great Lakes, it should be noted that the floodplain for Lake Erie affects the project site. The floodplain limits are shown on the Monroe County Flood Insurance Rate Map (FIRM) panel 26115C0259 D, dated April 20, 2000. The 1 percent annual chance (100-year) flood elevation and the 0.2 percent annual chance (500-year) flood elevation for Lake Erie have been computed to be 578.8 feet, National Geodetic Vertical Datum of 1929 (NGVD 29) and 579.7 feet, NGVD 29, respectively. The State building code requires that a critical facility (such as a power plant) constructed in the floodplain, be elevated or flood-proofed one foot above the 0.2 percent annual chance flood elevation.

Frenchtown Township is also designated as a Flood Risk Area (FRA) under Part 323, of the NREPA. Construction standards in the FRA program are similar to those found in the State building code and the National Flood Insurance Program (NFIP). Frenchtown Township has local permitting authority under the FRA Program and the building inspector should be closely involved in review throughout this project.

Wetlands

The wetlands on the property have been identified by DEC consultants and reviewed by MDEQ staff under MDEQ Wetland Identification Program (WIP) File 08-58-0003-WA. The WIP report dated November 7, 2008, identified the location and regulatory status of each wetland area under the authority of Part 303 of the NREPA.

Based on the WIP report, a significant portion of the DEC property contains regulated wetlands, with most of the wetlands on the site being Great Lakes coastal wetlands. With historic losses of greater than 95 percent of the coastal wetlands of western Lake Erie, the wetlands on site represent a very important and rare natural resource for the State of Michigan. The Environmental Report describes the wetland impacts as moderate. In fact, it appears that the project as proposed would be one of the largest impacts to coastal wetlands in the history of Michigan's wetland statute.

Under Part 303, permits are required for any wetland dredging, filling, draining, and/or maintaining a use or development in a wetland. The location, type, function, and value of the wetlands on site should be considered during design and any impacts avoided and minimized to the greatest extent possible. Any proposed impact areas should be identified (including impacts from temporary and permanent parking, construction activities, and transmission lines) and reviewed through an environmental assessment of the site that evaluates plant and animal species and habitat diversity, water quality functions, fish and wildlife habitat, the location of rare or imperiled communities, threatened and endangered species, and any other important features of the wetland areas. All feasible and prudent alternatives to temporary and permanent impacts should be considered (including alternative configurations, acquiring adjacent properties, etc.). If the project will be phased, an overall site plan will be needed and reviewed as part of the alternatives analysis for the first permit application.

Wetland impacts will require wetland mitigation and a combination of wetland restoration and preservation of on-site or off-site rare wetland communities (e.g., Lake Erie coastal wetlands, lake plain prairies, etc.) should be considered.

February 3, 2009

Inland Lakes and Streams

It appears that at least one stream flows through the DEC property, regulated under Part 301 of the NREPA. We recommend that all stream areas be identified and that any potential impacts be avoided and minimized in the planning process. Stream impacts that can not be avoided in the construction process may require stream mitigation. Typical mitigation for stream impacts include stream restoration using natural channel design principals, maintaining and/or establishing streamside buffers, and installing stream crossings that clear span the stream to bankfull width.

Great Lakes Bottomlands

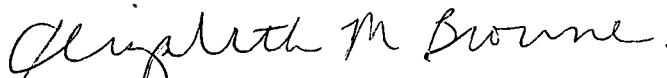
Part 325, of the NREPA, regulates construction activities such as fills, docks, seawalls, dredging, outfall/intake pipes etc. and occupations of Great Lakes public trust bottomlands and waters. Part 325 requires the DEQ to protect the natural resources, public trust, and riparian rights of property owners when issuing a permit for construction activities in the Great Lakes.

An application for a permit will be required pursuant to Part 325 for any construction activity in Lake Erie below the natural ordinary high water mark at the site, including the wetlands connected to Lake Erie north and south of the power plant complex.

Although no other MDEQ divisions have comments on this project at this time, we recommend that the NRC and DEC maintain communications with the appropriate MDEQ staff throughout the planning, permitting, and development processes. The LWMD will be in contact with those divisions, as well as coordinating with the Michigan Department of Natural Resources (MDNR) on their fisheries and wildlife comments and the U.S. Army Corps of Engineers, as this project progresses. Based on our preliminary review of potential impacts to rare resources on the site, the LWMD may have significant concerns about this project. We recommend that DEC schedule a pre-application meeting with us as soon as possible. The pre-application form can be found under "Information" at www.michigan.gov/deqwetlands.

Thank you for the opportunity to participate in the scoping process for the environmental review for the Fermi Nuclear Power Plant, Unit 3 COL. If you need further information or assistance, please contact Mr. Christopher Antieau, of my staff, at 517-373-3894, or you may contact me.

Sincerely,



Elizabeth M. Browne, Chief
Land and Water Management Division
517-373-1170

cc: Mr. John Konik, U.S. Army Corps of Engineers
Ms. Mindy Koch, Deputy Director, MDNR
Ms. Sharon Hanshue, MDNR
Mr. Jim Sygo, Deputy Director, MDEQ
Mr. George Bruchmann, MDEQ
Mr. William Creal, MDEQ
Mr. Vinson Hellwig, MDEQ
Mr. Christopher Antieau, MDEQ
Ms. Katherine David, MDEQ