

August 27, 2012



Ms. Melanie Haveman
U.S. EPA (WW-16J)
77 W. Jackson Blvd.
Chicago, IL 60604-3590
r5_cr595_comments@epa.gov.

SUBJECT: City of Marquette comment regarding the Marquette County Road Commission's application for a wetland fill permit for the construction of County Road (C.R.) 595

Dear Ms. Haveman,

Pursuant to the EPA Public Announcement No. 12-OPA058, released on July 30, 2012, please accept this correspondence as the official City of Marquette comment per SUBJECT. Any further consideration will be gratefully received, and the City will also provide comments at the Public Forum to be hosted on August 28th at Northern Michigan University, Don H. Bottums University Center, Ontario/Michigan/Huron Rooms, 1401 Presque Isle Ave., in Marquette.

EXECUTIVE SUMMARY

The City of Marquette supports the upgrade and improvement of existing paved county road segments, non-paved gravel segments, unimproved dirt segments, and established two-rut primitive trail segments that would result in the creation of County Road 595. The creation of a single improved four-season road that complies with all federal, state, and local environmental and transportation guidance will greatly reduce the uncontrolled mish-mash of damaging "road blazing" that currently occurs in the area. The City lauds the State of Michigan DEQ, US Army Corps of Engineers, and the EPA for providing several route options that take advantage of existing trail segments and that minimizes the impact to sensitive environmental areas and human interests.

The routes identified by the EPA crisscross an area that for over 150 years has hosted natural resource industries - including mining, timber and logging, hydro-electric power generation, furriers and fisherman - as well as four-season camps, homesteads, and recreational opportunities. The area still bears proof of that legacy. The land is dotted with the pits of early gold and silver prospectors, hunting camps, and clear-cut logging operations. It also bears the scars of an era when society and government didn't view balanced environmental sustainability with the same priority we hold today.

It should be noted that under the County proposal, if CR 595 is approved, the City would NOT be a direct party to any proposed segment of the CR 595 transportation routes, including logging and timber operations, mining operations, or transportation and export of final products. If approved, the City will receive no direct benefit from any segment of the plan. The City is heartened by the seven years of intensive planning, attention, and resources that have been committed by Federal, State, County, and private business interests toward the development of the principle route options.

If the plan is NOT approved, unfortunately, a similar level of effort has not been undertaken for any alternative, and would in effect be starting "from scratch". At the time of this writing, there are no City of Marquette plans for expanding local infrastructure to support increased heavy truck traffic. The route under consideration would create substantial negative social impacts, as well as drastically undermine decades of transitional economic development and tens of millions of dollars of investment supporting Marquette's current economy.

It cannot be overstated that the City lacks the resources necessary to mitigate all environmental, traffic safety, and environmental justice risks for any alternative route plan. NO funding has been identified at the federal or state levels that mitigate local government risks, and no other projects (i.e., federal or state plans that would create a heavy-truck traffic highway bypass or "ring highway") have been identified that would otherwise mitigate the impacts upon the City. No private sector interests have provided written plans, assurances, or funding commitments to assist in any compliance or mitigation requirements associated with their business mandates.

At the time of this writing, it appears that the full brunt of costs associated with any alternative route through the City would fall solely upon the City of Marquette – without any corresponding benefits.

Preparatory efforts would be needed prior to any traffic flow through the City, and would require comprehensive planning and review to address (if possible) the myriad requirements of federal and state law, including, but not limited to:

- Part 632 of Michigan's Natural Resources and Environmental Protection Act (NREPA), MCL§324.63201 – 324.63223, and its implementing rules R 425.101- 425.602,
- The federal Clean Air Act (CAA) and Clean Water Act (CWA),

- All federal and state transportation and transportation safety acts, rules, and regulations,
- Title VI of the Civil Rights Act of 1964, including 49 CFR Part 21 – Non-discrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,
- The Civil Rights Restoration Act of 1987, and Presidential Executive Orders 13166 and 12898,
- The federal Unfunded Mandates Reform Act of 1995.

If a solution could be identified quickly, i.e., within the minimum mandatory three to five year study timeframes identified within federal and state law, it is further anticipated that neighboring jurisdictions and communities situated along the alternative route share the same concerns as Marquette, and undoubtedly are equally concerned with their ability to meet contingent responsibilities. Given potential impacts to business interests regarding road availability, broad parallel efforts not unlike those for the proposed CR 595, would need to be initiated immediately to collect required data, affect necessary agreements, and enable shortest implementation timelines.

Failure to adopt a comprehensive plan will potentially pit jurisdictions against each other, and could potentially result in lasting impacts with profoundly greater negative consequences. Communities which enjoy the direct benefits of timber, logging, and mining activities as substantial parts of their local employment base and economic development strategy, would negatively view the efforts of any other jurisdiction that challenged or impaired private sector investment and development. Disagreements could create lasting barriers to inter-local cooperation. The failure to holistically address issues and risks will force communities to act in their own self-interest, and would undermine nascent state and local efforts supporting improved regional economic development.

DISCUSSION

The City understands it is important to balance all policy interests, and further appreciates divergent views that must be considered. This is a challenge shared equally between all levels of Government. Therefore, it is important to contemplate not only expected outcomes, but also the potential consequences if CR 595 is not approved. Specifically, it is important to consider the consequences of any alternative that would require Marquette to become a direct party on a transportation route.

To this end, the City has been engaged in discussion with the Marquette County Road Commission, Northern Michigan University, neighboring townships, non-profit organizations, potential industrial users of CR 595, and private citizens to assess the impacts of additional heavy truck traffic for predominantly south- and west-bound traffic using CR 550 and originating primarily from northern areas of Marquette County. As a result, three areas of broad concern arise for the City that will require extremely thorough study prior to practical consideration – including environmental impacts, transportation safety, and environmental justice.

For the purpose of illustration, this discussion will use the potential impact of a single additional user of an alternative CR 550 route that would require City of Marquette support - specifically, non-ferrous mining traffic that would result from Rio Tinto operations originating at the Yellow Dog Plains. Rio is the sole company currently engaged in this type of business, so this example serves both to illustrate the importance of understanding “pre-” and “post-” operational impacts, as well as providing the basis to extrapolate further impact should additional non-ferrous mining operations be undertaken.

Marquette and Rio Tinto have recently begun discussion to better understand what they might propose, and as such are using the following assumptions for “ballpark” consideration:

For the transportation segment through the City of Marquette:

- Period of operation: 24 hours/day, 7 days/week, 365 days/year.
- Number of transits in single 24-hour period: 100 (50 round trips)
- Number of transits per year: 36,500
- Number of transits for projected seven (7) year operation: 255,500
- Single round trip distance traveled: six (6) miles
(Distance traveled within Marquette out of a total round trip route of 80 miles)
- Total distance to be traveled within Marquette (miles): 1,533,000
(For the current anticipated seven-year mine lifespan).

Environmental Impacts

The potential environmental impacts of Rio Tinto operations have been the subject of intense public interest, and are currently under legal challenge. The City of Marquette sees no merit in either supplanting or informing EPA expertise regarding the environmental risks from sulfide mining – there are many other parties already willing to do so. Rather, the specific consequences for Marquette need to be identified and understood.

The City of Marquette is renowned for environmental stewardship that balances the needs of sustainability with strong environmental preservation and stewardship. In particular, Marquette understands that its most valuable resource is Lake Superior, and has invested tens of millions of dollars in protecting wetlands, restoring coastal areas, and preserving thousands of acres of land that host streams, tributaries, and headwaters, and the rich biodiversity therein. Marquette has been a member of the Great Lakes and Saint Lawrence Cities Initiative (GLSLCI) since 2005, and cooperates with several federal, state, and local governments and non-profit organizations on environmental sustainability issues. As a community that pumps all of its drinking water from Lake Superior, as well as one with over 3,000 street-side storm drains that empty directly into Lake Superior (over 400 of which lie directly on the alternative route), an intense understanding of all potential point and non-point pollution sources is tantamount to survival.

In Michigan, transportation of acid-producing materials is specifically included under Part 632 of Michigan's Natural Resources and Environmental Protection Act (NREPA), MCL§324.63201 – 324.63223, and its implementing rules R 425.101-425.602, which also addressed compliance requirements of the federal Clean Air Act (CAA) and Clean Water Act (CWA). Part 632 specifically states that a local unit of government may enact, maintain, and enforce ordinances, regulations, or resolutions affecting mining operations if the ordinances, regulations, or resolutions do not duplicate, contradict, or conflict with this part. In addition, a local unit of government may enact, maintain, and enforce ordinances, regulations, or resolutions regulating the hours at which mining operations may take place and routes used by vehicles in connection with mining operations. However, such ordinances, regulations, or resolutions shall be reasonable in accommodating customary nonferrous metallic mineral mining operations, and do not prohibit a local unit of government from conducting water quality monitoring.

Transportation activities are subject to the same review and scrutiny as any other mining activity. The mining, reclamation, and environmental protection plan must include "...provisions to prevent the release of contaminants to the environment from ore or waste rock during transportation." R 425.203(c)(xviii) (emphasis added). Further, the rules include "transportation of overburden, waste rock, ore and tailings" in the definition of "mining activity." R 425.103(1)(a)(vi).

Anticipated non-point source environmental impacts will result from normal operation of trucks and associated traffic, and include direct discharges to the environment; I.E., inadvertent roadside waste releases; liquid effluent precipitating into route-side soils and water-tables, including inadvertent fuel releases; or atmospheric emissions, such as engine exhaust, residual mine dust, and other inadvertent dust precipitating from cargo exposed to air and soil; as well as change the quality of the environment - specifically ambient air quality, water quality objectives, or ambient noise. Of course, more severe point-source impacts may occur in the event of accidents or other errors in the transportation process. Any route that traverses Marquette from the north will cross numerous watersheds, streams, and direct tributaries within 1,500 feet and potentially on the direct shoreline of Lake Superior in the event of detour or bypass requirements.

Given the "ballpark" transportation assumptions stated earlier, understanding the aggregate impact of 255,000 potential exposure events on the City environment, NERPA Part 632 requirements specify mining activities "shall occur only under conditions that assure that the environment, natural resources, and public health and welfare are adequately protected." MCL §324.63202(e). In that the EPA, the World Health Organizations, and other federal, state, and private research bodies have scientifically studied the Nickel Sulfide to be a known hazardous material that impacts the environment, as well as creating health issues through human exposure, it is reasonable that the City will need a comprehensive understanding of potential impacts in order to formulate appropriate control and mitigation strategies.

Unfortunately, at the time of this writing, no pre-activity environmental baseline studies have been undertaken for any proposed route through Marquette, and NONE of the required Rio Tinto plans that have been submitted for review to the State include detailed information describing impacts within the City of Marquette, including the mandatory Environmental Impact Assessment (R 425.202); Mining Plan (specifically, R 425.203 (xviii)); or Contingency Plan (R425.205).

Further, for areas along any proposed alternative route within the City, it should be noted that specific requirements stated under R 425.202 (3) have not been met: "*For the conditions and features listed in subrule (2)(d), (e), (g), and (gg) of this rule, the required characterization of seasonal or long-term variations in the condition or feature shall be satisfied by a combination of documented observations of pertinent data over a period of at least **2 years** at the monitoring site and records of pertinent data at other sites having documented similar conditions or credible regional studies from acknowledged sources.*"

Until statutory compliance issues are resolved and impacts and mitigation are better understood, the City cannot support any alternative that would route this type of traffic through Marquette. It should be further noted that the City lacks the necessary expertise or funding to undertake a comprehensive 2-year study of all associated environmental impacts (as noted previously) , and that any associated monitoring and analytic studies would need to be supported by federal, state, county, non-profit, and commercial interests. It is further anticipated that neighboring jurisdictions and communities situated along the alternative route share the same concerns as Marquette, and undoubtedly will require similar studies in order to meet statutory requirements that ensure their public health and welfare, and environmental objectives are adequately protected.

Transportation Safety

Mining activities in the region will result in a substantial increase in heavy truck traffic flows on local road systems. As a result, ensuring the suitability of the infrastructure along any proposed route becomes the principal safety goal, and requires a thorough understanding of existing and potential risks, and appropriate mitigation. According to the National Highway Transportation Safety Authority, as well as the U.S. Department of Labor, Bureau of Labor Statistics, Census of Occupational Injuries, risks associated with this activity include:

- Contact with Objects (on roads, or on the side of the road)
- Exposure to Harmful Substances
- Collisions between:
 - Vehicles Moving in Opposite Directions
 - Vehicles Moving in Intersections
 - Vehicles Moving in the Same Direction

- Non-Collision incidents:
 - Jack-knife
 - Ran off the road
 - Pedestrian or other non-power vehicle struck by vehicle
- Collision with Train or other vehicle
- Assaults and violent acts

Different risks require different mitigation - and all transportation requirements must be supported by well-maintained roads and safety infrastructure. Within the City of Marquette, mitigation would require substantial improvements to basic road construction and infrastructure; improved traffic separation and safety controls for specific route segments, and additional controls and infrastructure necessary to mitigate discharges and ambient impacts associated with NERPA R 425.202 (I.E., Residential dwellings, places of business, places of worship, schools, hospitals, government buildings, or other buildings used for human occupancy all or part of the year; existing and proposed infrastructure and utilities; and areas actively maintained for public recreation.) Further, this same plan must address intentional or accidental releases of hazardous substances caused by accidents involving project vehicles carrying hazardous substances including fuel during the use of roads could lead to contamination of soils, surface waters, and/or groundwater.

It should be noted all surface and subterranean improvements would require durable, industrial strength construction engineered to endure the anticipated additional 76,650,000 ton/miles (as defined by the U.S. Bureau of Transportation Statistics) beyond existing capacity and four-season municipal requirements. Significant changes to roads could lead to disruption of natural or engineered drainage patterns, changing the risk of flooding and potentially affect local stormwater flows. Use of existing City roads without necessary improvements would lower planned life-span, increase maintenance and reconstruction requirements, and ultimately fail to mitigate associated transportation risks. None of the existing City roads or infrastructure along the proposed alternative route currently satisfies these requirements. Indeed, many segments of the route have identified roadways in Marquette's twenty-year capital improvement plans (required by the Michigan Department of Transportation) that already are in need of substantial maintenance and repair.

Of course, even with effective route improvements, the probability of risks identified earlier can only be reduced, but not completely eliminated. An

effective emergency response capability must be available to address any unforeseen contingencies.

Based upon statistics available through the Department of Transportation National Highway Transportation Administration, as well as Michigan Traffic Crash Facts, it is a statistical probability that there will be 5 fatal traffic accidents that may occur for the 1.5 miles of travel through Marquette, and substantially more accidents that may annually result in injuries or minor damage. Understanding the conditions and characteristics of such accidents would identify emergency response requirements – under both normal and catastrophic circumstances.

Rio Tinto clearly understands traffic safety risks, as evidenced by roads program, driving policies, and vehicle operations standards and protocols for other mining projects around the globe. For these other projects, they note specific preference for direct links between mining and processing activities; they also note specific preferences for routes that do not traverse communities, homesteads, or other populated areas. The number one risk to mining operations are traffic accidents, and Rio has identified the likelihood of serious or fatal accidents (jackknives, roll-over collisions) to increase by a factor between four and ten times greater for unimproved gravel roads as for four-season, improved impervious surfaces – based upon experience in terrains unlike the Upper Peninsula of Michigan - in which it never snows.

Unfortunately, at the time of this writing, no pre-activity traffic safety baseline studies have been undertaken for any proposed route through Marquette, and NONE of the required Rio Tinto plans that have been submitted for review to the State include detailed information describing how to mitigate impacts within the City of Marquette, including the mandatory Environmental Impact Assessment (R 425.202); Mining Plan (specifically, R 425.203 (xviii); or Contingency Plan (R425.205). Further, Rio Tinto has provided no information to the City of Marquette (similar to that provided for their other global projects) about their route needs within the City – thereby providing NO insight as to the scope, cost, timeline, emergency management, or any other costs and issues that may confront Marquette.

Until statutory compliance issues are resolved and impacts and mitigation are better understood, the City cannot support any alternative that would route this type of traffic through Marquette. It should be further noted that the City lacks the funding necessary to undertake a comprehensive study of all associated road and infrastructure improvements and safety controls (as noted previously) – as

well as funding required for any associated studies or implementation activities necessary to meet federal and state road safety compliance standards and requirements. It is further anticipated that neighboring jurisdictions and communities situated along the alternative route share the same concerns as Marquette, and undoubtedly will require similar studies in order to meet statutory requirements that ensure their public health and welfare, and traffic safety objectives are adequately protected.

Environmental Justice

Marquette, like many communities, enjoys a history shaped by changing community priorities. As such, the use of City property, and development of its neighborhoods has been shaped through the choices of open commerce as well as opportunities to capitalize on federal and state programs and partnerships. Since 1850, the northern areas of Marquette were used for industrial activity, including a black-powder mill, a sawmill, electrical power generation, rail-road transportation, solid-waste refuse site, and industrial effluent (including an EPA SUPERFUND site) among other purposes. The neighborhoods that developed in close proximity were predominantly characterized by their low-value land prices, and low-income wage earners - people who couldn't afford to live farther away, and who endured industrial noise, pollution, occasional explosions, and other associated impacts. As these industries waned, the city took steps to reclaim these areas – as well as provide for the needs of associated low-income residents. As a result of focused efforts to successfully capture federal affordable housing resources during the last 40 years, the City has been able to expand housing opportunities for its lowest-income residents, provide resources for energy assistance improvements, and capital improvements to City infrastructure. This includes assistance supporting the disproportionately high concentration of minority and low-income children living in assisted conditions. The area continues to hold the City's lowest property values, and unfortunately, these same areas represent the predominant concentration of Marquette's minority and transient populations, as well as hosting the majority of Marquette's low-income population as outlined in the U.S. Census for 2010, Federal Spending profiles, and Property Tax Assessments.

Title VI of the Civil Rights Act of 1964, states that "No person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefit of, or otherwise be subjected to discrimination in any program or activity receiving Federal financial assistance."

As a recipient of federal funding provided through the Michigan Department of Transportation (directly, as well as through Act 51 allocations), the City of Marquette must file a Title VI Environmental Justice Plan with the State of Michigan that certifies compliance with 49 CFR Part 21 – Non-discrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964. Certification and assurance of compliance requires proof that the impact of any federal funding assistance does NOT result in discrimination that creates a disproportionate impact upon minority, low-income neighborhoods, or other populations identified by the Civil Rights Restoration Act of 1987, or Presidential Executive Orders 13166 and 12898. Failure to comply with this regulation results in the forfeiture or withholding of federal funds.

The proposed alternative route through Marquette's northern neighborhoods will exclusively and directly bear the environmental impacts of proposed truck traffic. The area will be the sole site for any environmental discharges, as well as the principal area impacted by ambient air quality, water quality objectives, or ambient noise issues. As a result, it is expected that any alternative route through Marquette using a northern access corridor will inherently create disproportionate impact in violation of Title VI of the Civil Rights Act of 1964 and all associated federal regulations and executive orders. The City would welcome any federal or state assistance, including specific EEO or Civil Rights studies or evaluations, litigation assistance, or relocation assistance that can further quantify the full scope of impact and mitigation requirements. The City believes that failure to address the requirements of low-income and minority residents would not only be unwise and unfair, but also potentially unlawful, and would result in material impact not only to the affected residents in the area, but for the community and state as a whole through the loss of federal transportation assistance and funding.

Other Considerations

Marquette was founded in 1849 by Amos Harlow and the Marquette Iron Company. Today it is the largest city in Michigan's Upper Peninsula, and enjoys a high quality of life for residents nestled inside a beautiful natural setting along the southern shore of Lake Superior. Although mining is still a very important part of regional economic development, other local business sectors, such as Northern Michigan University, the Marquette Regional Medical Facility and associated businesses, recreation opportunities, and tourism have evolved to become far more important for sustaining a diverse economy. The City's

investment in place making over the last 40 years has resulted in establishing an internationally recognized community with vibrant and unique elements of livability.

As a result in Marquette, comprehensive, public-process based community planning is viewed as essential to achieving a sustainable balance of commercial, industrial, residential, and recreational land uses. At the time of this writing, there are no community plans, as required by a multitude of federal and state laws that provide for expanding City infrastructure to support increased heavy truck traffic – especially along the corridor proposed for alternative traffic. The route under consideration would create substantial negative social impacts, as well as drastically undermine years of transitional economic development and tens of millions of dollars of investment supporting Marquette’s current economy.

It should be noted once again that the city is NOT a direct party to any logging and timber operations, mining operations, or export of final products. There are virtually no active business sectors in the City; further, the City receives no direct benefit from associated operations. As the principal city of a transitional Micropolitan area, Marquette is focused on economic development that prepares it for the future – and in a manner that builds upon, rather than undermines, 60 years of on-going economic transition.

It cannot be overstated that the City lacks the resources necessary to mitigate all environmental, traffic safety, and environmental justice risks described herein. No funding has been identified at the federal or state levels that mitigate the risks, and no other projects (i.e., federal or state plans that would create a heavy-truck traffic highway bypass or “ring highway”) have been identified that would otherwise mitigate the impacts upon the City. In conversations with Rio Tinto, they have provided no written plans, assurances, or funding commitments to assist in any compliance or mitigation requirements associated with their private sector mandate. At the time of this writing, it appears that the full brunt of costs associated with any alternative route through the City would fall solely upon the City of Marquette.

Given there are no City plans necessitating these requirements, and given compliance with and enforcement of federal and state environmental protection laws present contingent responsibility upon Marquette, the imposition, in the absence of full consideration, of associated Federal mandates on the City of Marquette without adequate Federal funding, in a manner that may displace other essential State and local governmental priorities would appear to be in

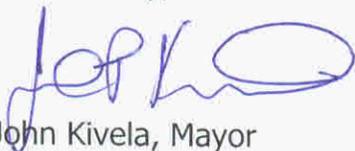
direct violation of the federal Unfunded Mandates Reform Act of 1995. Again, it is further anticipated that neighboring jurisdictions and communities situated along the alternative route share the same concerns as Marquette, and undoubtedly are equally concerned with their ability to meet contingent responsibilities.

On a final note, the failure to adopt a comprehensive plan for communities along the entire route will potentially result in lasting consequences with profoundly greater negative potential. Those communities which enjoy the direct benefits of timber, logging, and mining activities as substantial parts of their local employment base and economic development strategy, would negatively view the efforts of any other jurisdiction that challenged or impaired private sector investment and development. The local response would without doubt create a lasting barrier to inter-local cooperation. To be clear, the failure to holistically address issues and risks will force communities to act in their own self-interest, and would undermine nascent state and local efforts supporting improved regional economic development.

SUMMARY

The City of Marquette supports the upgrade and improvement of existing paved county road segments, non-paved gravel segments, unimproved dirt segments, and established two-rut primitive trail segments that would result in the creation of County Road 595. The creation of a single improved four-season road that complies with all federal, state, and local environmental and transportation guidance will greatly reduce the uncontrolled mish-mash of damaging "road blazing" that currently occurs in the area. The City lauds the State of Michigan DEQ, US Army Corps of Engineers, and the EPA for providing several route options that take advantage of existing trail segments, and that minimizes the impact to sensitive environmental areas and human interests.

Respectfully,



John Kivela, Mayor
City of Marquette