

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY**

HEARING CHARTER

Examining EPA's Predetermined Efforts to Block the Pebble Mine

Thursday, November 5, 2015
10:00 a.m. – 12:00 p.m.
2318 Rayburn House Office Building

PURPOSE

The Committee on Science, Space, and Technology will hold a hearing entitled *Examining EPA's Predetermined Efforts to Block the Pebble Mine* on Thursday, November 5, 2015, in Room 2318 of the Rayburn House Office Building. The hearing will examine the U.S. Environmental Protection Agency's (EPA) intention to use Section 404(c) of the Clean Water Act to block the Pebble Mine from development before the project applies for any permits. The Committee is concerned that EPA did not rely on sound science in deciding to undertake a pre-emptive action to limit the Pebble Mine. This hearing follows the Committee's 2013 hearing examining the science that EPA collected with regard to this matter.

WITNESS LIST

Panel 1

- **The Honorable William S. Cohen**, President and Chief Executive Officer, The Cohen Group
- **Mr. Charles Scheeler**, Senior Counsel, DLA Piper

Panel 2

- **Mr. Tom Collier**, Chief Executive Officer, Pebble Limited Partnership
- **Hon. Rick Halford**, Former Alaska Senate President

BACKGROUND

The Pebble Mine is a proposed copper, molybdenum, and gold mine located near Lake Iliamna within the Bristol Bay watershed in Alaska. According to the developers of the mine, the total value of the resources on the site is over \$300 billion and would create thousands of high-paying jobs for Alaskans.¹ The Pebble Limited Partnership (PLP), the group that owns the mining claim, has spent millions of dollars undertaking environmental and geological studies in

¹ The Pebble Partnership, available at <http://www.pebblepartnership.com/why.html#section-jobs> (last visited Oct. 30, 2015); Krista Langlois, *Pebble Mine: Alaska Sides with Mining Corporation, Tribes Back EPA*, High Country News, July 8, 2014, available at <https://www.hcn.org/blogs/goat/the-fight-for-bristol-bay-alaska-sides-with-mining-corporation-tribes-back-epa>.

the course of preparing for the numerous permit applications required to develop the mine.² PLP has yet to reach the stage in its planning where it is ready to submit a mine plan and permitting applications for use in National Environmental Policy Act (NEPA) and Clean Water Act reviews.³ Despite this fact, EPA has decided to use Section 404(c) of the Clean Water Act to limit the development of the Pebble Mine resource.

In July 2014, EPA issued a proposed determination, pursuant to Section 404(c) of the Clean Water Act, to limit the scope of the development of the Pebble Mine before it had applied for any permits under the law.⁴ EPA states that it took this action “because of the high ecological and economic value of the Bristol Bay watershed and the assessed unacceptable environmental effects that would result from the [Pebble Mine development].”⁵ PLP believes that EPA’s action amounts to a de-facto “veto” of the project and would prevent any development of the mining claim. EPA claims that its proposed determination is the culmination of years of scientific review, the findings of which were released in January 2014 in a report entitled: “Final Report, An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.”⁶

Any development project that requires the discharge of material into waterways requires a permit issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act. Section 404 of the Clean Water Act requires permits for the “discharge of dredged or fill material into the navigable waters at specified disposal sites.”⁷ The regular permitting process requires that a project undergo evaluation through the NEPA process. However, Pebble Mine has been treated differently by EPA. The agency has asserted that it has the authority under section 404(c) of the Clean Water Act to conduct an evaluation of the mine outside of the normal NEPA process and before a project has applied for any permits or submitted an official mine plan.⁸ EPA has never used section 404(c) in this preemptive fashion for a project similar to the Pebble Mine in the history of the Clean Water Act. This action represents a significant expansion of the authority of EPA under the Clean Water Act.

On October 6, 2015, a report was released by the Cohen Group that raised questions about the fairness and biased nature of EPA’s use of section 404(c) of the Clean Water Act with

² The Pebble Partnership, available at <http://www.pebblepartnership.com/environment.html> (last visited Oct. 30, 2015).

³ Hon. William S. Cohen, Report of an Independent Review of the United States Environmental Protection Agency’s Actions in Connection with its Evaluation of Potential Mining in Alaska’s Bristol Bay Watershed, Oct. 6, 2015, available at <http://files.cohengroup.net/Final/Final-Report-with-Appendices-compressed.pdf>.

⁴ U.S. EPA, Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act Pebble Deposit Area, Southwest Alaska, July 2014, available at http://www2.epa.gov/sites/production/files/2014-07/documents/pebble_pd_071714_final.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ U.S. EPA, Clean Water Act, Section 404, available at <http://water.epa.gov/lawsregs/guidance/wetlands/sec404.cfm>.

⁸ U.S. EPA, Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act Pebble Deposit Area, Southwest Alaska, July 2014, available at http://www2.epa.gov/sites/production/files/2014-07/documents/pebble_pd_071714_final.pdf.

regard to the Pebble Mine.⁹ The Cohen report, basing its claims on documents obtained from the EPA and interviews conducted in the course of investigation, also found that EPA employees based in EPA's Region 10 office may have had inappropriate contact with outside stakeholders opposed to Pebble Mine.¹⁰ Moreover, these same EPA employees seem to have arrived at a predetermined conclusion to use section 404(c) to stop the Pebble Mine before any scientific evidence was gathered regarding the impacts of the Pebble Mine.¹¹ The report also found that these employees were instrumental in preparing the scientific assessment that EPA used as a basis for its section 404(c) determination.¹²

⁹ Hon. William S. Cohen, Report of an Independent Review of the United States Environmental Protection Agency's Actions in Connection with its Evaluation of Potential Mining in Alaska's Bristol Bay Watershed, Oct. 6, 2015, available at <http://files.cohengroup.net/Final/Final-Report-with-Appendices-compressed.pdf> .

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*