

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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February 29, 2016

The Honorable Arthur Elkins
Inspector General
U.S. Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Inspector General Elkins:

The Committee on Science, Space, and Technology is investigating the U.S. Environmental Protection Agency's (EPA) action to limit the Pebble Mine in Bristol Bay, Alaska under section 404(c) of the Clean Water Act. On January 13, 2016, the U.S. EPA Office of Inspector General issued a report regarding EPA's decision to proceed with an action to limit or block the Pebble Mine under section 404(c) of the Clean Water Act.¹ In its limited review of the matter, the EPA OIG found that agency officials acted without bias or pre-determination with regard to the decision to invoke a 404(c) action.² Despite this finding, the EPA OIG also found that former EPA employee Phil North may have misused his position when working with groups petitioning the EPA to undertake a pre-emptive 404(c) action.³ Unfortunately, the EPA OIG's report suffers from a number of significant deficiencies, including the fact that the EPA OIG chose to review and analyze emails and communications from only three EPA officials rather than reviewing the entire established record.⁴ The EPA OIG's lack of investigative rigor displayed by this report has led many, including this Committee, to question the report's completeness and its conclusions.

As a matter of public record, numerous reports exist detailing a pattern of bias and pre-determination on the part of the EPA as it relates to the Pebble Mine and pre-emptive 404(c) action.⁵ The Cohen Group, a private consulting firm led by former Secretary of Defense William Cohen, issued an independent review of EPA's actions related to the Pebble Mine on October 6, 2015. This report found that EPA officials had unfairly treated the potential Pebble Mine in its Clean Water Act analysis and documented numerous instances in which EPA officials colluded with non-governmental organizations and operated under pre-determined conclusions to block development of the mine.⁶ Secretary Cohen's

¹ U.S. EPA Office of Inspector General, EPA's Bristol Bay Watershed Assessment: Obtainable Records Show EPA Followed Required Procedures Without Bias or Predetermination, but a Possible Misuse of Position Noted, Jan 16, 2016.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Staff Report, H. Comm. on Oversight and Gov't Reform, The U.S. Environmental Protection Agency's Unprecedented 404(c) Action in Bristol Bay, Alaska, Nov. 4, 2015; 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, 2016.

⁶ 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, 2016.

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findings rely on interviews and the review of email communications amongst numerous EPA officials.⁷ The EPA OIG's report appears to directly contravene the findings of Secretary Cohen's more robust review of the record on this matter.

In light of the apparent contradiction of the findings in these reports, Secretary Cohen produced an analysis of the EPA OIG's report. This analysis raises questions about the narrow scope employed in the EPA OIG's report as it pertains to EPA's use of a pre-emptive Section 404(c) action.⁸ Additionally, it addresses the decision made by the EPA OIG to review email communications from only three EPA custodians and only within the timeframe of January 1, 2008, through May 18, 2012, rather than the entire record available to the OIG for review.⁹ Finally, Secretary Cohen's analysis points out a number of areas of inquiry included in his report that bear the merit of legitimate inquiry that the EPA OIG report failed to examine.¹⁰ Most notably, the EPA OIG report failed to include scrutiny of the EPA's use of a hypothetical mine scenario as part of its scientific analysis as well as the interactions of Mr. North and other EPA officials with NGOs.¹¹

Given the conflicting conclusions reached by the EPA OIG report and Secretary Cohen's report, the Committee requests a briefing by the EPA OIG staff who produced the report in order to better understand the scope and parameters that were determined in the course of their analysis of this matter. Please contact my staff to schedule this briefing by March 7, 2016.

Attached to this letter please find a copy of Secretary Cohen's analysis of the EPA OIG report as well as an analysis conducted by Steptoe & Johnson.

The Committee on Science, Space, and Technology has jurisdiction over environmental and scientific programs and "shall review and study on a continuing basis laws, programs, and Government activities" as set forth in House Rule X.

If you have any questions about this request, please contact Joseph Brazauskas of the Science, Space, and Technology Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Lamar Smith
Chairman

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member, House Committee on Science, Space and Technology

Enclosure

⁷ *Id.*

⁸ Hon. William S. Cohen, Analysis of the Office of the Inspector General's Report Concerning the United States Environmental Protection Agency's Assessment of the Bristol Bay Watershed, Feb. 17, 2016.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*