Patricia B. Palacios
202 429 6757
ppalacios@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

Steptoe

November 7, 2022

Via Email and U.S. Postal Service

Freedom of Information Act Officer
National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460
Hq.foia@epa.gov

Re: Freedom of Information Act Request

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and implementing regulations of the U.S. Environmental Protection Agency ("EPA"), 40 C.F.R. Part 2, I hereby request a copy of the following items from EPA regarding EPA's *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 (May 2022)* ("Revised Proposed Determination"):

1. All communications regarding the Revised Proposed Determination between or among any employees of EPA.

2. All communications regarding the Revised Proposed Determination between or among any employee of EPA and any employee of any other state, tribal, or federal agency.

3. All communications regarding the Revised Proposed Determination between or among any employee of EPA and any employee, staff or representative of any member or committee, or any member of the U.S. House of Representatives or U.S. Senate.

4. All communications regarding the Revised Proposed Determination between or among any employee of EPA and any employee, staff, or representative of any member or committee, or any member, of the Alaska State Legislature.

5. All communications regarding the Revised Proposed Determination between any employee of EPA and any employee, staff or representative of the White House, Executive Office of the President, or Office of the Vice President.

6. All communications regarding the Revised Proposed Determination between or among any employee of EPA and any third party, excluding any public comments submitted regarding EPA Docket No. EPA-R10-OW-2022-0418.

For the purposes of these requests, "documents" or "communications" refers to any electronic, written, graphic, video, or audio matter, however produced or reproduced, whether draft or final versions, and including but not limited to correspondence, emails (including those on which either an employee of EPA or a party referenced in the above requests in carbon-copied or blind-carbon-copied), email attachments, notes, interoffice communications, reports, memoranda, minutes, summaries, telephone records, telephone message logs or slips, transcripts, call lists, PowerPoint presentations, spreadsheets, agendas, maps, photographs, data compilations, *Vaughn* indices, privilege logs, or calendars.

In responding to these requests, EPA's search should encompass, but should not be limited to, documents or communications sent to or from email addresses used by current or former EPA employees and representatives, regardless of whether such addresses are private or secondary addresses, personal email addresses or official EPA addresses. In responding to these requests, EPA need not release documents that a part of the Records of Decision or Final EIS, or any appendices of the Record of Decision or Final EIS, or any documents that are accessible via the website pebbleprojecteis.com.

If any documents or communications covered by this FOIA request have been deleted, destroyed, removed, or cannot be located, please provide all surrounding documents or communications as well as a list of all records that have been deleted, destroyed, removed, or cannot be located, a description of actions taken in response to the unavailable documents or communications, and any documents or communications relevant to or generated in connection with implementing those actions.

FOIA Exemptions

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information to appeal the denial. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(F). To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, addressees and recipients, date, length, general subject matter, and location of each item; and

2. Explanations and justifications for the denial, including identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions, identify and describe the withheld portions, specify the applicable

exemption, and provide the remainder of the record. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(F), (b).

I encourage you to release any records, or portions thereof, that may technically be shielded by exemptions if there is no purpose served by withholding the requested records. *Chrysler Corp. v. Brown*, 441 U.S. 281, 294-95 (1979) (holding that FOIA exemptions are discretionary). I note that FOIA provides that an arbitrary and capricious refusal to produce responsive documents will result in investigation initiated by special counsel to determine whether disciplinary action is warranted against the individual at the agency primarily responsible for the withholding. 5 U.S.C. § 552(a)(4)(F).

Timing and Mechanics of Production

I request that in responding to this letter, EPA comply with all relevant deadlines and other obligations set forth in FOIA and EPA regulations, and I look forward to receiving your response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. Part 2. Please produce records on a rolling basis; the search for—and deliberation concerning—certain documents should not delay the production of others that EPA has already retrieved and could turn over. Please note that I am interested in working with EPA to ensure that the burden associated with this FOIA request is minimized to the extent practicable, including discussing phased or prioritized document productions.

I prefer to receive electronic documents, and not paper copies, whenever possible. To the extent possible, I request that EPA provide the requested information in searchable, electronic format on CD, DVD, or external hard drives of sufficient size to contain the production. Electronic files should be provided in their original format, not in PDF containers. Individual emails, and their attachments, should be maintained as single msg files. If this is not possible, then emails and their attachments should be provided in either PST or NSF containers, thereby preserving all attachment information.

I understand that there may be fees and costs associated with this request, and I agree to pay any fees or costs up to $1,000.00 associated with making these materials available to us. If the costs will be in excess of $1,000.00, please advise me before such costs are incurred.

In responding to the present letter, please mail copies of all requested documents, indices and logs, and any invoice for reasonable FOIA fees to the undersigned.

Thank you for your assistance.

Sincerely,

Patricia B. Palacios

CERTIFIED MAIL™

Steptoe
STEPTOE & JOHNSON LLP

1330 Connecticut Avenue, NV
Washington, DC 20036-1795

7011 3500 0003 6740 7871

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1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

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