



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

July 25, 2019

The Honorable R.D. James
Assistant Secretary of the Army (Civil Works)
U.S. Department of the Army
108 Army Pentagon
Washington, DC 20310-0108

Dear Mr. James:

I am writing in regard to EPA Region 10's July 26, 2019 deadline to provide notice under Part IV, paragraph 3(b) of the 1992 Memorandum of Agreement to implement CWA Section 404(q) (hereinafter referred to as the "MOA").

As you know, the U.S. Environmental Protection Agency (EPA) Region 10 submitted comments on July 1, 2019 to the U.S. Army Corps of Engineers, Alaska District on Public Notice POA-2017-00271 for a Clean Water Act (CWA) Section 404 permit dated March 1, 2019 (PN). In addition to the CWA Section 404 comment letter, EPA Region 10 also submitted comment letter under the National Environmental Policy Act and Section 309 of the Clean Air Act on the Alaska District's February 2019 Draft Environmental Impact Statement for the Pebble Project (CEQ Number 20190018; EPA Region 10 Project Number 18-0002-CUE). We understand that the Alaska District received over 100,000 comments on its Draft Environmental Impact Statement alone.

In the July 1, 2019 comment letter, Region 10 initiated the procedure outlined in Part IV, paragraph 3(a) of the 404(q) MOA. Pursuant to the MOA, once a letter is sent under paragraph 3(a), the Regional Administrator has 25 calendar days after the end of the public comment period to notify the District Engineer by letter that "the discharge will have substantial and unacceptable impact on aquatic resources of national importance." This 25-day period can provide an opportunity for the Corps District to better understand and consult with the EPA Region about the issues raised or provide additional information.

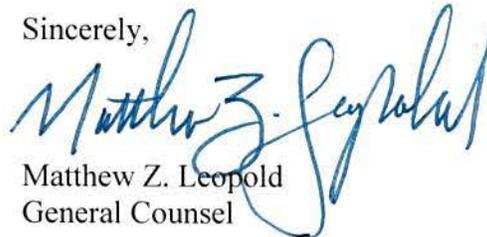
The overall timelines provided in the 404(q) MOA were developed to implement CWA section 404(q). Section 404(q) provides that "such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice for such application is published under subsection (a) of this section." 33 U.S.C. § 1344(q). While the timelines in 404(q) MOA are generally important to meet to facilitate efficiency and timeliness in the permitting process, the 404(b)(1) Guidelines recognize that the Guidelines

analyses and documentation depend on the significance and complexity of the discharge activity. 40 C.F.R. § 230.6(b).

Under the current timeline provided in the MOA, EPA would need to make a decision about whether to send a letter under paragraph 3(b) on or before July 26, 2019. Given the significance of the project, substantive issues raised in EPA's comment letters on the Alaska District's DEIS and 404 PN as well as the number of other comments received by the District which the Corps must devote resources to considering, EPA recognizes that it is not practicable for the Corps to engage in the activities described above in the 25 calendar days contemplated by MOA. As a result, we request your acknowledgement that under the particular circumstances here, fulfilling each of our agency's roles under the statute, regulations and MOA warrants taking more time for additional engagement in the 404(q) process.

The MOA was entered into by the Assistant Secretary of the Army for Civil Works and the Acting Assistant Administrator of Water. I have been delegated the authority to perform all functions and responsibilities retained by the Administrator or previously delegated to the Assistant Administrator for Water related to the Pebble Deposit Area. I am requesting, for purposes of this particular permitting proceeding, that we memorialize through an exchange of letters our agreement on or before July 26, 2019 to extend the deadline described in paragraph 3(b) beyond the 25 days contemplated in 404(q) MOA for this project.¹ Specifically, I am seeking an extension of the deadline to send a letter under paragraph 3(b) of the 404(q) MOA to 30 days after the Corps provides EPA with the preliminary drafts of decision documents, draft permit and Record of Decision, for its consideration. This agreement is an important step in EPA's continued efforts to work with the Corps on the CWA Section 404 permitting process, to appropriately address impacts from the proposed mine consistent with applicable law.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Z. Leopold". The signature is written in a cursive style with a large, looping "L" at the end.

Matthew Z. Leopold
General Counsel

¹ This letter and the Corps' response letter reflect a voluntary agreement that expresses the good-faith intentions of the Parties. Neither these letters nor the MOA referenced herein are intended to be legally binding, do not create any contractual obligations, or are not enforceable by any party. In addition, the letters and the MOA referenced herein do not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against the U.S. Army Corps or EPA, their officers or employees, or any other person.