

AMERICAN RESOURCES



A horizontal line with a red star in the center, flanked by the words "AMERICAN RESOURCES" above and "POLICY NETWORK" below.

POLICY NETWORK

1701 Pennsylvania Ave NW, Suite 300 Washington, DC 20009 • 301-951-7005

May 6, 2013

The Honorable Senator Barbara Boxer
Chair, Senate Committee on Environment and Public Works
112 Hart Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Senator David Vitter
Ranking Member, Senate Committee on Environment and Public Works
516 Hart Senate Office Building
Washington, DC 20510

Dear Senator Boxer and Senator Vitter:

I'm writing to bring to your attention to some concerns about the Environmental Protection Agency's use of scientific research. For more than 40 years, American citizens have relied on the EPA to help protect our environment and our health through unbiased, data-driven policies and regulations based on the application of sound science. I was therefore troubled when I recently learned that Stratus Consulting, an environmental research firm with a longstanding relationship with the EPA, has admitted to filing a falsified research report.

The issue concerns environmental assessments that Stratus Consulting performed in a legal case brought against Chevron in an Ecuadorian court. In a letter publicly available on the EPA website that was uncovered as the result of a FOIA request dated April 3, 2012 to then-EPA Administrator Lisa Jackson, Joshua Lipton, President and CEO of Stratus Consulting, described the company's role as follows (see attached):

Stratus Consulting was hired to provide scientific assistance to attorneys representing a group of rural and indigenous Ecuadorians in their lawsuit in Ecuador against Chevron for large-scale environmental pollution damage in the Amazon rainforest. In the course of our work, we conducted technical analyses of Chevron's oilfield operations in Ecuador, the environmental contamination caused by those operations, and the resulting environmental impacts. Work on the project was similar to the type of environmental assessments Stratus Consulting has routinely performed for its U.S. federal and state government clients of the past two decades.

When Chevron discovered that Stratus Consulting and others had falsified these assessments – which were used to win a \$19 billion judgment in the Ecuadorian court – Chevron sued Stratus Consulting and others in a U.S. federal court, accusing the firm of racketeering and fraud.¹

¹ <http://m.prnewswire.com/news-releases/statement-of-stratus-consulting-regarding-chevron-countersuit-115216989.html>

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Just a few weeks ago, Stratus published a 28-page affidavit accompanied by 16 pages of individual declarations disavowing the research it had produced in Ecuador.

In a story that was widely covered by the media, including the *New York Times*,² Stratus Consulting Executive Vice President Douglas Beltman stated in his declaration for the affidavit, “I disavow any and all findings and conclusions in all of my reports and testimony on the Ecuador project.”³ Ann Maest, Managing Scientist for Stratus Consulting, in her own declaration, stated, “I now believe that the damages assessment in the Cabrera Report and Cabrera Response is tainted. Therefore, I disavow any and all findings and conclusions in all of my reports and testimony on the Ecuador Project.”⁴

As President of American Resources Policy Network, a non-partisan organization focused on data-driven policies regarding access to domestic mineral and metal resources, the admissions made by Stratus Consulting greatly concern me. In addition to the disclosures made by Mr. Lipton in his letter to Ms. Jackson, publicly available records show that the EPA has hired Stratus Consulting as a subcontractor for an array of environmental consulting projects, with total taxpayer-funded contract values in the tens of millions of dollars.⁵ The EPA has also cited research reports – both peer-reviewed studies and non-validated white papers – authored or co-authored by employees of Stratus Consulting.

Most recently, on Friday, April 26, the EPA released the second draft of “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska” (hereafter Bristol Bay Assessment), outlining the potential impacts of a hypothetical mine to develop the Pebble Deposit, which could prove to be the largest copper resource in American history.⁶

The Bristol Bay Assessment cites two documents – Kuipers et al. (2006)⁷ and Wobus et al. (2012)⁸ – authored by Ms. Maest, Managing Scientist for Stratus Consulting. These documents are cited a total of 11 times in the text of the Bristol Bay Assessment, and seven of those are in conjunction with Stratus Consulting (see attached).

To be clear, these are not peer-reviewed studies; they are non-validated white papers. Kuipers et al. (2006) was funded by Earthworks, which the white paper itself describes as:

A non-profit organization dedicated to protecting communities and the environment from the destructive impacts of mineral development in the U.S. and worldwide. The organization’s mission is to work with communities and grassroots groups to reform government policies,

² http://www.nytimes.com/2013/04/13/business/research-recanted-in-oil-pollution-case-in-ecuador.html?_r=0

³ <http://www.scribd.com/doc/135569522/Declaration-of-Douglas-Beltman-former-top-environmental-expert-for-Ecuadorians-suing-Chevron>

⁴ <http://www.scribd.com/doc/135573650/Declaration-of-Ann-Maest-of-Stratus-Consulting>

⁵ <http://www.epa.gov/oam/ptod/ek1rptv.pdf>

⁶ <http://cfpub.epa.gov/ncea/bristolbay/recordisplay.cfm?deid=242810>

⁷ http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=513581

⁸ http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=513585

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*improve corporate practices, influence investment decisions and encourage responsible materials sourcing and consumption.*⁹

This issue of unbiased research was raised with the EPA, which then conducted its own peer-review of the two white papers co-authored by Ms. Maest in the time between the first and second drafts of the Bristol Bay Assessment. This was to ensure that the white papers were, “of sufficient scientific quality and credibility to be incorporated into the second external review draft of the Bristol Bay Assessment.”¹⁰

Regarding Kuipers et al. (2006), the first peer-reviewer listed is David A. Atkins, former Managing Scientist for Stratus Consulting.¹¹ Kuipers et al. (2006) references two publications by Mr. Atkins, including one that he co-authored with Ms. Maest. Perhaps, having been tasked with peer-reviewing work citing his own research and that of his co-author, it is no surprise that Mr. Atkins affirmed the scientific integrity of Kuipers et al. (2006), and concluded that it is fit to include in the Bristol Bay Assessment. It is worth noting that Mr. Atkins is also a peer-reviewer for the Bristol Bay Assessment.¹²

It is also important to note that in addition to the EPA, Stratus Consulting and Ms. Maest have been hired by numerous advocacy groups, including some explicitly opposed to the development of the Pebble Deposit. For example, one such group, the Center for Science in Public Participation (CSP2), states on its website that, “Since 2007 CSP2 has been providing technical support to a loose coalition of groups opposed to the proposed [Pebble] mine ... CSP2 also utilized consultants ... Ann Maest, Ph.D., and Cam Wobus, Ph.D., from Stratus Consulting to provide technical support on geochemistry and hydrology.”¹³

The Bristol Bay Assessment is particularly problematic because it is being conducted before a mine permitting process has been initiated, and it relies too heavily on environmental impact based in part on research from Stratus Consulting and Ms. Maest – which have now admitted in U.S. federal court proceedings to having presented falsified research.

My organization educates policymakers, decision-makers and the general public on the economic importance of metals like copper for manufacturing, defense, hi-tech and green-tech applications, and we're concerned that, in the case of Pebble, the EPA could stop what may be the largest-ever domestic copper resource before the permitting process has begun – and based on research presented by authors who have admitted falsifying their findings in other environmental studies.

⁹ http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=513581

¹⁰ <http://cfpub.epa.gov/ncea/bristolbay/recordisplay.cfm?deid=182065>

¹¹ http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=513568

¹² <http://www.pebblescience.org/pdfs/Final-Peer-Review-Report-Bristol-Bay-1.pdf>

¹³ <http://www.csp2.org/projects>

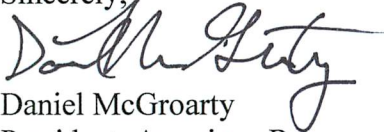
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The EPA plays a key role in ensuring that mineral extraction projects are environmentally sound – a role that rests on the agency's reputation for relying on unbiased and credible scientific research being beyond reproach. We therefore hope that in light of the facts outlined above, the EPA will withdraw Ms. Maest's research from the Bristol Bay Assessment. Given the recent admissions made by Stratus Consulting and its researchers, we also hope that the agency will conduct a thorough review of its relationship with Stratus Consulting, including work contracted directly to the firm and its employees, as well as scientific studies published by the firm and its employees that the EPA has referenced to make any policy or support any regulatory actions.

Sincerely,



Daniel McGroarty
President, American Resources Policy Network
1701 Pennsylvania Ave NW, Suite 300
Washington, DC 20009
<http://americanresources.org/>

CC:

The Honorable Senator Ron Wyden
Chairman, Senate Energy and Natural Resources Committee

The Honorable Senator Lisa Murkowski
Ranking Member, Senate Energy and Natural Resources Committee

The Honorable Congressman Darrell Issa
Chairman, House Oversight and Government Reform Committee

The Honorable Congressman Elijah Cummings
Ranking Member, House Oversight and Government Reform Committee

The Honorable Congressman Lamar Smith
Chairman, House Committee on Science, Space and Technology

The Honorable Congressman Eddie Bernice Johnson
Ranking Member, House Committee on Science, Space and Technology

Mr. Bob Perciasepe
Acting Administrator, Environmental Protection Agency

Ms. Gina McCarthy
Assistant Administrator of the Office of Air and Radiation, Environmental Protection Agency

Ms. Nancy Sutley
Chair, White House Council on Environmental Quality

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Document citations for Kuipers et al. (2006) and Wobus et al. (2012) and references to them in the text of the Bristol Bay Assessment are listed below:

Kuipers, J. R., A. S. Maest, K. A. MacHardy, and G. Lawson. 2006. *Comparison of Predicted and Actual Water Quality at Hardrock Mines: The Reliability of Predictions in Environmental Impact Statements*.

Wobus, C., A. Maest, B. Prucha, and D. Albert. 2012. *Potential Hydrologic and Water Quality Alteration from Large-scale Mining of the Pebble Deposit in Bristol Bay, Alaska: Results from an Integrated Hydrologic Model of a Preliminary Mine Design (review draft)*. Boulder CO: Stratus Consulting.

Chapter 7 – Mine Footprint

Pg. 258 - Wobus et al. (2012) cited “Open-water reaches corresponded with areas of high upwelling potential modeled by Wobus et al.”

Pg. 259 - Figure modified from Wobus et al.

Pg. 275 - “The only exception is an area of interbasin groundwater transfer that has been observed between the South Fork Koktuli River and Upper Talarik Creek (PLP 2011: Chapter 7, Wobus et al. 2012).”

Pg. 288 - “An assessment of hydrologic and water quality issues at the Pebble deposit was independently performed by Wobus et al. (2012).”

“Where assumptions were similar between this assessment and Wobus et al. (2012) modeling efforts, streamflow modification projections were similar.”

“Other significant divergences between streamflow alteration estimates in this assessment and Wobus et al. (2012) also are most likely due to differences in the location of the WWTP outfalls (Table 7-20).”

Pg. 289 - Charts featuring estimates from Wobus et al. (2012)

Chapter 8 – Water Collection, Treatment, and Discharge

Pg.341 - “Water quality degradation at metal mines in the United States have been reviewed and summarized in recent reports (Kuipers et al. 2006, Earthworks 2012).”

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Pg. 346 - “This uncertainty is demonstrated by the record of inaccurate water quality predictions contained in environmental impact statements for major hard rock metal mines in the United States (Kuipers et al. 2006).”

Pg. 349 - “An assessment of hydrologic and water quality issues at the Pebble deposit was independently performed by Wobus et al. (2012). Wobus et al. (2012) used the same set of available data (primarily the EBD [PLP 2011]) as this assessment and based their modeling on the same mining plan (Ghaffari et al. 2011). However, those authors made somewhat different assumptions in model implementation that gave different results.”

Chapter 14 – Integrated Risk Characterization

Pg.538 - “Reviews of U.S. mine records found that 60 to 93% of mines reported a water collection or treatment failure (Kuipers et al. 2006, Earthworks 2012). Improved design and practices should result in lower failure rates, but it is unlikely that failure rates would be lower than 10% over the life of a mine...”

**Correspondence Management System****Control Number: AX-12-000-6108****Printing Date: April 04, 2012 02:52:23****Citizen Information****Citizen/Originator: Beltman, Douglas****Organization:** Stratus Consulting
Address: P.O. Box 4059, Boulder, CO 80306-4059**Lipton, Joshua****Organization:** Stratus Consulting
Address: 1881 Ninth Street, Boulder, CO 80306**Constituent:** N/A**Committee:** N/A**Sub-Committee:** N/A**Control Information**

Control Number:	AX-12-000-6108	Alternate Number:	N/A
Status:	Pending	Closed Date:	N/A
Due Date:	Apr 18, 2012	# of Extensions:	0
Letter Date:	Apr 3, 2012	Received Date:	Apr 4, 2012
Addressee:	AD-Administrator	Addressee Org:	EPA
Contact Type:	EML (E-Mail)	Priority Code:	Normal
Signature:	DX-Direct Reply	Signature Date:	N/A
File Code:	404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.		
Subject:	United States Environmental Protection Agency Hardrock Mining Conference 2012 - Referencing Dr. Ann Maest		
Instructions:	DX-Respond directly to this citizen's questions, statements, or concerns		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	OEAE - Office of External Affairs and Environmental Education		

Lead Information**Lead Author:** N/A**Lead Assignments:**

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
(b) (5) Privacy	OEX	ORD	Apr 4, 2012	Apr 18, 2012	N/A
Instruction: N/A					

Supporting Information**Supporting Author:** N/A**Supporting Assignments:**

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

STRATUS CONSULTING
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JOSHUA LIPTON, PHD
President and CEO

April 3, 2012

The Honorable Lisa P. Jackson
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460
<via email>

Dear Ms. Jackson:

I am writing to you as President and Chief Executive Officer of Stratus Consulting, an environmental research consulting firm with offices in Boulder, Colorado and Washington, D.C. For more than 20 years, Stratus Consulting has provided expert technical support to our clients -- primarily federal, state, tribal and international governments -- in the areas of environmental science, economics and policy.

It has come to our attention that a group funded by the Competitive Enterprise Institute has initiated an internet-based letter-writing campaign to pressure the U.S. EPA to exclude Stratus Consulting's scientists, including Dr. Ann Maest, from participating in the EPA's Hardrock Mining Conference being held in Denver this week. We have also learned that the Colorado arm of the Washington, DC-based conservative organization Americans for Prosperity is planning to rally outside the conference, targeting Dr. Maest and Stratus Consulting as well as the EPA more generally.

We are concerned that the organizations behind these efforts are unfairly -- and irresponsibly -- taking aim at the integrity and credentials of our scientists in an effort to promote their own political and ideological agenda. The entity promoting the rally, for example, says that it "believes the [EPA's] rogue regulators and biased scientists are destroying jobs, driving-up energy costs, crippling America's competitiveness and contributing to the country's economic crisis."

Dr. Maest is an internationally-renowned geochemist, formerly with the U.S. Geological Survey, who is serving her sixth year as an elected member of the National Academy of Sciences (NAS) Committee on Earth Resources. In addition to serving on other related NAS committees, Dr. Maest has published widely in peer-reviewed scientific literature, and has been an invited speaker on geochemical and earth resource issues at academic institutions, scientific

The Honorable Lisa P. Jackson
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meetings, government agencies, and numerous other national and international groups, including the United Nations. In short, she is an outstanding scientist with impeccable credentials who has made significant contributions to her field.

More broadly, Stratus Consulting stands by the quality, integrity, and reputation of our professional staff. Our senior staff have held staff positions at the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Geological Survey, and National Oceanic and Atmospheric Administration; have authored hundreds of peer-reviewed publications and presentations at national and international conferences; hold university appointments; have been appointed to serve on boards convened by the National Academy of Sciences and EPA's Science Advisory Board; have been recognized as part of the international panel that was awarded a Nobel Prize for its work on climate change; and are regularly invited to speak to national and international government agencies because of our technical expertise and reputation.

In advancing their current agenda, the organizations attacking Stratus Consulting and Dr. Maest are repeating unfounded and patently false allegations made by Chevron during its ongoing legal dispute over environmental pollution damage in the Amazon rainforest.

Here are the facts related to that dispute:

Stratus Consulting was hired to provide scientific assistance to attorneys representing a group of rural and indigenous Ecuadorians in their lawsuit in Ecuador against Chevron for large-scale environmental pollution damage in the Amazon rainforest. In the course of our work, we conducted technical analyses of Chevron's oilfield operations in Ecuador, the environmental contamination caused by those operations, and the resulting environmental impacts. Work on the project was similar to the type of environmental assessments Stratus Consulting has routinely performed for its U.S. federal and state government clients over the past two decades.

Released on the eve of the Ecuadorian court's \$18 billion judgment against the company, Chevron asserted a series of unfounded RICO claims against Stratus Consulting and many other parties. Chevron's claims against Stratus Consulting are false and represent a gross misuse of the federal courts. Stratus Consulting never engaged in the misconduct alleged by Chevron, and Chevron knows as much. That Chevron has knowingly filed a series of false charges against Stratus Consulting is reprehensible. It appears that Chevron's strategy is to use every possible tool – without regard to truth, facts or legal ethics – to confuse the issues surrounding its corporate history in Ecuador and avoid taking responsibility for its actions. Chevron's approach has included attempting to discredit the technical work performed by Stratus Consulting's scientists, not by addressing the technical facts and analysis themselves, but by concocting and publicly advancing a series of false accusations against us.

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I am dismayed that these outrageous attacks have spread to other venues and are now being used by politically motivated groups in an attempt to exclude our scientists from participating in public scientific discourse. The paper that Stratus Consulting is scheduled to present this week has absolutely nothing to do with the work that our scientists conducted on behalf of the Ecuadorian plaintiffs. It is, rather, a highly technical analysis of copper chemistry and bioavailability. I urge you to stand firm in the face of this pressure to ensure that reasoned discussion based on sound scientific inquiry may continue.

Thank you for your attention to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Lipton", written over the printed name.

Joshua Lipton, PhD
President and CEO