



Stephen P Samuels

Member

614.559.7259 (t)

614.464.1737 (f)

ssamuels@fbtlaw.com

June 2, 2016

VIA ELECTRONIC MAIL

VIA OVERNIGHT DELIVERY SERVICE

National Freedom of Information Officer
United States Environmental Protection Agency
1301 Constitution Avenue, N.W., Room 6416J
Washington, DC 20004

Re: Freedom of Information Act Appeal, FOIA Request Number EPA-R5-2016-005111

Dear Sir or Madam:

This firm represents the Clermont County Office of Environmental Quality (“Clermont County”) in connection with its above-referenced Freedom of Information Act (“FOIA”) request to the United States Environmental Protection Agency (“US EPA”). I am writing to appeal the US EPA, Region 5, Land and Chemicals Division response to this FOIA request.

I. Facts

A. Clermont County seeks any and all information pertaining to the CECOS facility from February 1, 2015 to March 28, 2016.

On March 28, 2016, Ms. Hannah Lubbers submitted a FOIA request to US EPA on behalf of Clermont County seeking copies of any and all information, for the time period February 1, 2015 to March 28, 2016 pertaining to CECOS International, Incorporated, located at 5092 Aber Road, Williamsburg, Ohio (“CECOS facility”). See, *FOIA Request*, attached to this Appeal as Exhibit A. In an email to US EPA dated April 18, 2016, Ms. Lubbers agreed to extend the response deadline from April 25, 2016 to May 9, 2016 and to limit the scope of the FOIA to exclude Quarterly Toxic Substance Control Act (“TSCA”) and Semi-Annual Detection Monitoring Reports.

B. US EPA responds and withholds 60 documents claiming they are exempt from disclosure.

On May 6, 2016, US EPA, Region 5, Land and Chemicals Division, responded to the FOIA request (See attached Exhibit B) stating that it had located 2,897 pages of responsive

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releasable records and was uploading these records to the FOIA online database. As part of its response, US EPA included Enclosure A, an itemized list of documents released.

US EPA also included Enclosure B, a table of withheld material, which US EPA claimed it was entitled to withhold under Exemption 5 of FOIA. In total, US EPA withheld 60 documents under claims for deliberative process and/or attorney-client communications privilege. All 60 of these documents were withheld for deliberative process privilege and 39 of the 60 documents were also withheld as attorney-client privileged. The Enclosure B table contains the following fields:

Document/Material	Author	Recipient(s)	Date	Reason for Withholding	Estimate of Volume

Notably absent from the table in Enclosure B is any explanation why the 60 documents qualify for either privilege. Nor do the titles of the documents indicate why these documents would qualify to be withheld. Examples of the non-illuminating document titles include: “paletopography powerpoint”, “bedrock till interface with notes”, “Email – FW:CECOS Aber Road PCB results.” Therefore, US EPA has failed to meet its burden under FOIA and should produce the documents withheld within 20 days of receipt of this Appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

II. Argument

A. US EPA has not satisfied its burden of demonstrating that the documents withheld are exempt from disclosure.

Under FOIA, federal agencies are required to make available, upon request, records that are reasonably described. 5 U.S.C. § 552(a)(3)(A). Documents may be withheld if one of the FOIA exemptions applies. These exemptions are to be narrowly construed and the burden is on the agency to justify its action. *Rugiero v. U.S. Dept. of Justice*, 257 F.3d 534, 543 (6th Cir. 2001).

Exemption 5 of FOIA exempts from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. 5 U.S.C. § 552(b)(5). The privileges that are incorporated into Exemption 5 include the deliberative process privilege and the attorney-client communications privilege. *DOI v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8-9 (2001). In this case, US EPA contends that the documents withheld qualify for the deliberative process privilege, the attorney-client privilege, or both.

However, US EPA did not adequately describe the nature of the documents to justify withholding them. *Shafizadeh v. Bureau of Alcohol, Tobacco, and Firearms*, 229 F.3d 1152 (6th Cir. 2000) citing *Parke, Davis & Co. v. Califano*, 623 F.2d 1, 6 (6th Cir. 1980). The party in possession of the materials must explain the specific reasons for the agency’s nondisclosure.

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Ctr. for Int'l Env't Law v. Office of the U.S. Trade Representative, 505 F. Supp.2d 150, 158 (D.D.C. 2007). It does not suffice to simply declare that the documents are exempt. *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 151 (D.C. Cir. 2006). US EPA must *demonstrate* that an exemption applies.

1. US EPA has not demonstrated that the 60 withheld documents qualify for an exemption under deliberative process privilege

US EPA's response to Clermont County's request fails to provide any justification for its decision to withhold 60 documents under the deliberative process privilege. To justify withholding documents, US EPA must show that they are documents that are "predecisional" and "deliberative". 5 U.S.C. § 552(b)(5). A document is predecisional if it was "received by the decision-maker on the subject of the decision prior to the time the decision is made." *Rugiero*, 257 F.3d at 550 (6th Cir. 2001). A document is deliberative if it is the result of a consultative process. *Id.* The guiding principle when deciding whether the deliberative process privilege applies is whether disclosure of the document would "expose an agency's decision-making process in such a way as to discourage discussion within the agency and thereby undermine the agency's ability to perform its functions. *Id.*, citing *Schell v. United States Dep't of Health and Human Servs.*, 843 F.2d 933, 939 (6th Cir. 1988).

In the instant matter, US EPA has not remotely demonstrated that the documents withheld are predecisional and deliberative. Given US EPA's complete lack of explanation, it is impossible to determine whether the 60 documents withheld were part of a deliberative process, what deliberate process was involved, and the role played by the documents in the putative deliberative process. *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 867 (D.C. Cir. 1980). To meet its burden, US EPA must show that it has withheld information exempt from disclosure, and this burden cannot be satisfied by sweeping and conclusory citations to an exemption. *Mead Data Cent., Inc. v. Dep't of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977). At the very least, US EPA must provide enough information to show "how each document fits into the deliberative process, and whether it is an essential element of that process...". *Parke, Davis & Co. v. Califano*, 623 F.2d 1, 6 (6th Cir. 1980).

US EPA must provide some contextual information to make this showing. When faced with this issue in *Shafizadeh v. Bureau of Alcohol, Tobacco, and Firearms*, 229 F.3d 1153 (6th Cir. 2000), the Sixth Circuit held that the Bureau of Alcohol, Tobacco, and Firearms' justification was not specific or detailed enough to support Exemption 5 when it stated that the document in dispute was "an internal ATF memorandum concerning an examination of an agency policy and contains 'deliberative information'". US EPA has provided even less justification for withholding documents in this case.

Further, the deliberative process privilege does not protect purely factual material or final agency opinions, statements, or policy and interpretations definitively adopted by the agency. *Environmental Protection Agency v. Mink*, 410 U.S. 73, 91 (1973); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 153 (1975). Many of the documents withheld appear from their title to contain purely factual material including: "paletopography powerpoint", "Email—FW:CECOS

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Aber Road PCB Results”, “3 pdfs of maps,” among many others. And given that at least 12 of the documents are undated, it is impossible to place them in time to determine whether they were predecisional or represent a final agency opinion.

Finally, US EPA must “show, by specific and detailed proof, that disclosure would defeat, rather than further, the purposes of FOIA.” *Mead Data Cent. Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977). US EPA has failed to provide any information addressing this issue.

Because US EPA has failed to meet its burden to show that these documents qualify for deliberative process privilege, they should be disclosed within 20 days of receipt of this appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

2. US EPA has not demonstrated that the 39 documents withheld as attorney-client communications qualify for this privilege.

US EPA has also withheld 39 of the 60 documents as attorney-client privileged communications, in addition to being protected under the deliberative process privilege. All of these documents are emails between US EPA staff and Erik Olson, Associate Regional Counsel.

US EPA must do more than merely show that an attorney was included on the communication to claim that the document is exempt from disclosure under attorney-client privilege. In order to qualify as attorney-client privileged communications, the communication must be (1) a confidential communication, (2) made by agency employees to counsel in his or her role as counsel, (3) at the direction of agency superiors, (4) in order to secure legal advice from counsel. *Upjohn Co. v. United States*, 449 U.S. 383, 394, 101 S. Ct. 677, 685, 66 L. Ed. 2d 584 (1981). US EPA has not made this showing.

By their titles, many of these documents appear to contain factual information that would not appear to be attorney-client privileged communications. For example, “Email—CECOS project update status”, “Email—RE: CECOS approved PC plan”, “Email—RE: CECOS Aber Road PCB results”.

Because US EPA has failed to meet its burden to show that these documents are exempt from disclosure under the attorney-client communications privilege they should be promptly disclosed.

B. US EPA is required to produce any “reasonably segregable” portions of the documents withheld.

US EPA must conduct a segregability analysis and provide to the requester a copy of the record sought after deletion (redaction) of the portions that are exempt. 5 U.S.C. 522(b); *Ctr. for Int’l Env’t Law v. Office of the U.S. Trade Representative*, 505 F. Supp.2d 150, 158 (D.D.C. 2007); *Public Citizen, Inc. v. OMB*, 598 F.3d 865, 876 (D.C. Cir. 2010). Only those portions of a predecisional document that reflect the give and take of the deliberative process may be

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withheld. *Public Citizen, Inc. v. OMB*, 598 F.3d 865, 876 (D.C. Cir. 2010)(citing *Access Reports v. Dep't of Justice*, 926 F.2d 1192, 1195 (D.C. Cir. 1991). There is no evidence that US EPA conducted a segregability analysis on the 60 documents withheld. Indeed, the table provided by US EPA in Enclosure B appears to list entire documents withheld.

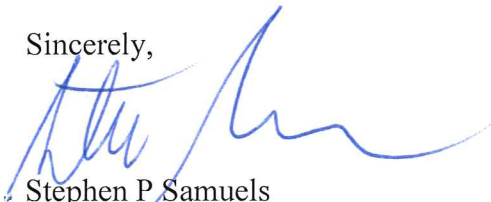
To the extent that portions of the 60 withheld documents contain information that is legitimately predecisional and deliberative or attorney-client privileged, *that* information should be redacted and the remainder of the document produced.

III. Conclusion

Clermont County respectfully requests that US EPA produce the documents responsive to FOIA Request Number EPA-R5-2016-005111 and respond to this appeal within 20 days as required by 5 U.S.C. § 552(a)(6)(A)(ii).

If you have any questions regarding this appeal, please do not hesitate to contact me directly at 614-559-7259.

Sincerely,



Stephen P Samuels

cc: Hannah Lubbers, Clermont County Office of Environmental Quality
Paul Braasch, Clermont County Office of Environmental Quality

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BOARD OF COUNTY COMMISSIONERS
ROBERT L. PROUD • EDWIN H. HUMPHREY • DAVID H. UIBLE
WATER RESOURCES DEPARTMENT

March 18, 2016

Christine Klemme
Region V, Freedom of Information Officer
United States Environmental Protection Agency
FOIA Office (MEI-9J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Re: Freedom of Information Act Request
CECOS International, Inc.
Aber Road Facility, Williamsburg, Ohio
Clermont County, Ohio

Ms. Klemme,

On behalf of the Board of Commissioners of Clermont County, Ohio, we do hereby request that you make the following records available relating to the CECOS International Facility, 5092 Aber Road, Williamsburg, Ohio 45176:

- 1) Any and all information pertaining to the above-referenced site for the time period of February 1st, 2015 through present. Information includes, but is not limited to: photographs, notes, letters, ledgers, worksheets, brochures, notebooks, diaries, calendars, charts, tables, papers, agreements, contracts, acknowledgements, analyses, transcripts, meeting minutes of any kind, correspondence, drafts, electronic media (e-mails, disks, etc.), data processing disks, tapes or compact discs, and computer-produced interpretation thereof, instructions, schedules, reports, etc.;
- 2) These documents are requested for programs under RCRA. It is our understanding that David Petrovski is the contact person for the site in RCRA;
- 3) These documents are also requested for the TSCA program. It is our understanding that Jae Lee is the contact person for the site in TSCA; and
- 4) With regard to these documents, we also hereby request copies of violations, potential violations or regulatory deficiencies under any statute for this site.
- 5) All documents listed in Enclosure B of the FOIA 05-FOI-2014-004269.

We would appreciate it if you could provide us with an estimate of the volume of documents to assist us in our planning efforts. If the list is short, we would appreciate it if you could provide a list of the documents so that we can determine whether or not we would like you just to copy and forward the documents or whether we would like to copy and review the documents.

If any records are withheld, please state the title, author, date, address, and the list of persons or entities receiving or who received copies, the type of each record withheld, and indicate the grounds by which the record is not being made available.

Thank you in advance for your attention to this request. If you have any questions, please contact me at 513-732-7894 or email me at hlubbers@clermontcountyohio.gov

Sincerely,

Hannah Lubbers
Project Manager
Clermont County
Office of Environmental Quality

Enclosures (1)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 24 2014

REPLY TO THE ATTENTION OF:

Hannah Gonzalez
Project Manager
Clermont County Office of Environmental Quality
101 E. Main Street
Batavia, Ohio 45103

Re: Freedom of Information Act Request
Number EPA-R5-2014-004269

Dear Ms. Gonzalez:

This letter is the final response of the U.S. Environmental Protection Agency, Region 5, to your Freedom of Information Act (FOIA) request dated March 7, 2014. You requested any and all information in EPA Region 5 files pertaining to the CECOS International, Inc., Aber Road Facility in Williamsburg, Ohio (CECOS facility) for the time period of February 1, 2012 to the date of your request. The Region 5 FOIA Office has assigned your request to the Land and Chemical Division (LCD) and the Water Division for response. This response covers records within the control of the Land and Chemicals Division and the Office of Regional Counsel (ORC). The Water Division does not have any records responsive to your request.

EPA's response to your request was originally due on April 3, 2014, but through various communications with Sharon Travis of LCD and Erik Olson of ORC, you agreed to extend the response deadline to June 23, 2014. You also limited the scope of your request so as not to include documents related to the revised Resource Conservation and Recovery Act (RCRA) Post-Closure Plan, dated October 2012, which you already possess.

We have searched our records and have located records responsive to your request. Enclosure A is an itemized list of the documents we are releasing. However, we are unable to provide you with other documents responsive to your request because we have determined that they are exempt from mandatory disclosure under Exemption 5 of FOIA, 5 U.S.C. § 552(b)(5). Exemption 5 protects inter- or intra-agency documents that would not be available by law to a party in litigation with the agency. This includes the attorney/client and deliberative process privileges recognized under common law. An itemized list of the withheld material, along with the basis for withholding and an estimate of the volume of withheld materials, is provided in Enclosure B to this letter.

Releasable records will be available to you via a link to the FOIAonline database that will be provided to you shortly in a separate email message. There is no fee for this response.

You may appeal this response by writing to EPA's National Freedom of Information Officer at the following address: EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, NW (2822T), Washington, DC 20460. Note that only items mailed through the U.S. Postal Service may be delivered to this address; if you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to EPA, 1301 Constitution Avenue, NW, Room 6416J, Washington, DC 20004. Alternatively, you may fax your appeal to (202) 566-2147 or send it by email to hq.foia@epa.gov. Your appeal must be made in writing and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar-day limit. The appeal letter should include the identification number of your request, 05-FOI-2014-004269. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

For your information, Region 5's Land and Chemical Division administers Federal programs mainly under the Resource Conservation and Recovery Act (RCRA), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA), and the Toxics Release Inventory program of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Please contact Erik Olson, Associate Regional Counsel, at 312-886-6829 or olson.erik@epa.gov if you have any questions about this matter.

Sincerely,



Margaret M. Guerriero
Director
Land and Chemical Division

Enclosures

Enclosure A

List of Documents Released, FOIA 05-FOI-2014-004269

Cecos land holdings pdf
CECOS location of units pdf
CECOS soil map pdf
East Fork Lake Tributaries pdf
East Fork Lake report pdf
ECHO report pdf
Evaluation list pdf
Facility detail report pdf
Financial assurance pdf
Meeting agenda pdf
My waters Mapper pdf
RCRA corrective action progress pdf
Monitoring point locations annotated pdf
Organic Solvent alteration of Hydraulic properties of rocks – annotated pdf
TSCA Approvals Annotated pdf
Watershed protection article – annotated
Email – March 28, 2013 from Erik Olson to Steve Johnson
Email – April 4, 2013 from Erik Olson to Steve Johnson
8 Emails – March 7, 2013 from Steve Johnson to Erik Olson
1 Email – March 4, 2013 from Debra Klassman to Erik Olson and Catherine Fox
1 Email – March 5, 2013 from Catherine Fox to Erik Olson
1 Email – March 5, 2013 from Catherine Fox to Christine Klemme
6 Emails – March 8, 2013 from Erik Olson to Steve Johnson and Christine Klemme
1 Email – March 4, 2013 from Christine Klemme to Erik Olson and Steve Johnson
1 Email – March 4, 2013 from Debra Klassman to Erik Olson
1 Email – March 4, 2013 from Cheryl Klebenow to Erik Olson and Debra Klassman

Enclosure B

List of Withheld Material, FOIA 05-FOI-2014-004269

Document/Material	Author	Recipient(s)	Date	Reason for Withholding	Estimate of Volume
Paleotopography Powerpoint	Steve Johnson	n/a	uncertain	Ex. 5 Deliberative	5 slides
Bedrock till interface with notes	Steve Johnson	n/a	2013	Draft, Deliberative	1 page
"Cecos Landfill, Aber Road Ohio Technical and Regulatory Review for Closure/Post-Closure Approval under the Toxic Substances Control Act" PowerPoint presentation, 7 drafts	Steve Johnson	n/a	May 3, 2013 – February 18, 2014	Ex. 5 Deliberative	340 KB
"Cecos Facility, Clermont Co. water resource risks" PowerPoint presentation	Steve Johnson	n/a	March 4, 2013	Ex. 5, Deliberative	27 Slides
Email – FW: CECOS Aber Road PCB results	Steve Johnson	Mary Setnicar, Brandon Pursel, Kenneth Bardo	April 18, 2012	Ex. 5, deliberative	2 pages
Draft "Cecos Geo Hazard Memo" – not formal memo, no recipient	Steve Johnson	n/a	Uncertain	Ex. 5, deliberative	4 pages
Cecos pre-oepa consultation meeting notes	Steve Johnson	n/a	April 19, 2012	Ex. 5, deliberative	5 pages
EPA/Clermont Co. Pre-meeting Discussion Cecos-Clermont County Agreement notes	Steve Johnson	n/a	December 12, 2012	Ex. 5, deliberative	6 pages
Anotated "review of the adequacy of the BFI/Cecos Aber Road Hazardous Waste Landfill facility closure and post-closure plans	Annotations: Steve Johnson Article: G. Fred Lee	N/a	Annotations undated.	Ex. 5, deliberative	43

to protect public health and the environment.”					
Powerpoint fragment converted to pdf “TSCA Closure/Post Closure analysis Cecos Landfill Aber Road Ohio”	Steve Johnson	N/a	March 19, 2013	Ex. 5, deliberative	36 pages
Annotated EPA directive 9487.50-1A, “Waiver from Double Liner Requirements Pursuant to Section 3015(b)(1) and 40 CFR Section 265.301 (c) for Cecos International, Inc., Williamsburg, Ohio, Landfill Cell NO. 9”	Annotations by Steve Johnson	n/a	Annotations undated	Ex. 5, deliberative	3 pages
“Cecos Closure/ Postclosure water monitoring” pdf of notes.	Steve Johnson	n/a	Undated	Ex. 5, deliberative	17 pages
Closure/postclosure comments (notes)	Steve Johnson	n/a	Undated	Ex. 5, deliberative	1 page
“good vs. bad” notes	Steve Johnson	n/a	Undated	Ex. 5, deliberative	6 pages
“New Suit Could Open Door to Court Review of RCRA Orders after Sackett” annotated article	Daily News, annotations by Steve Johnson	n/a	Article dated January 11, 2013, annotations undated	Ex. 5, deliberative	2 pages
“Outline Cecos annual report” pdf notes	Steve Johnson	n/a	Undated	Ex. 5, deliberative	1 page
Annotated print out of Bloomington, Indiana City website regarding PCB sites	Author of Website unknown, annotations by Steve Johnson	n/a	Undated	Ex. 5, deliberative	7 pages
TSCA PostClosure Considerations pdf notes	Steve Johnson	n/a	June 11, 2013	Ex. 5, deliberative	5 pages
“Cecos Action Alternative” memo pdf	Steve Johnson	Mary Setnicar	May 15, 2013	Ex. 5, deliberative	2 pages

3 Pdfs of maps	Drawn and annotated by Steve Johnson	n/a	Undated	Ex. 5 deliberative	3 pages
25 Arc-GIS maps	Manipulated and Annotated by Steve Johnson	n/a	Undated	Ex. 5, deliberative	25 pages
Cecos Monitoring 2008, annotated, pdf in two parts.	Annotated by Steve Johnson	n/a	Document – 2008 Annotations undated	Ex. 5, Deliberative	34 pages
Email – Cecos Action Alternative re monitoring effectiveness	Steve Johnson	Mary Setnicar, Erik Olson, Brandon Pursel	May 15, 2013	Ex. 5, deliberative, attorney/client privilege	2 pages
Email – RE: CECOS project status	Mary Setnicar	Steve Johnson, Erik Olson, Tony Martig	March 12, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – TSCA Status-Closure	Steve Johnson	Mary Setnicar, Erik Olson, Tony Martig, Kenneth Bardo, Tammy Moore	March 19, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – Cecos Update	Steve Johnson	Erik Olson	March 22, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – RE: Cecos Update	Erik Olson	Steve Johnson	March 25, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – RE: Cecos Update	Steve Johnson	Erik Olson	March 25, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – CECOS approved PC plan	Mary Setnicar	Steve Johnson, Tammy Moore, Tony Martig, Erik Olson	March 28, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – FOIA Exemption [sic]; re:FW: CECOS Financial Assurance	Steve Johnson	Mary Setnicar, Erik Olson	April 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – Tasks, CECOS Project	Steve Johnson	Mary Setnicar, Erik Olson	May 2, 2013	Ex. 5, deliberative,	1 page

				attorney/client privilege	
Email – Cecos project update status	Steve Johnson	Mary Setnicar, Erik Olson	May 2, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – CWA considerations	Steve Johnson	Erik Olson, Mary Setnicar	May 3, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – Oh...I updated the slide show...see slides at 235+	Steve Johnson	Erik Olson, Mary Setnicar	May 3, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – Cecos Action Alternative regarding monitoring effectiveness	Steve Johnson	Mary Setnicar, Erik Olson, Brandon Pursel	May 15, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – Cecos PostClosure Plan considerations	Steve Johnson	Mary Setnicar, Erik Olson	June 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email –RE: Cecos PostClosure Plan considerations	Erik Olson	Steve Johnson, Mary Setnicar	June 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: Cecos PostClosure Plan considerations	Mary Setnicar	Steve Johnson, Erik Olson	June 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: Cecos PostClosure Plan considerations	Steve Johnson	Mary Setnicar, Erik Olson	June 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
IM – Conversation with Steve Johnson	Steve Johnson	Erik Olson	March 15, 2013	Ex. 5, deliberative, attorney/client privilege	3 lines
Email - Re:FOIA 2013-3256 on CECOS, FOIA denial material...Cecos International, Ohio, TSCA Closure	Steve Johnson	Erik Olson, Christine Klemme, Mary Setnicar	February 28, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - Cecos Inc. EPA Power Point Notes	Steve Johnson	Erik Olson, Christine Klemme	March 1, 2013	Ex. 5, deliberative, attorney/client privilege	1 page

Email - Re:FOIA 2013-3256 on CECOS, FOIA denial material...Cecos International, Ohio, TSCA Closure	Erik Olson	Steve Johnson, Christine Klemme, Mary Setnicar	March 1, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - FW: Cecos FOIA response: Old E-mails	Steve Johnson	Erik Olson, Christine Klemme	March 1, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - FW: FOIA 2013-003256/CECOS	Steve Johnson	Erik Olson, Christine Klemme	March 1, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: FOIA 2013-003256/CECOS	Erik Olson	Steve Johnson, Christine Klemme	March 7, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: FOIA 2013-003256/CECOS	Christine Klemme	Erik Olson, Steve Johnson	March 7, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - Cecos FOIA	Steve Johnson	Christine Klemme, Erik Olson	March 7, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: CECOS Aber Road PCB results	Erik Olson	Steve Johnson, Christine Klemme	March 8, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: 9 Fw: Meeting with Clermont County to Discuss the CECOS Landfill	Erik Olson	Steve Johnson, Christine Klemme	March 8, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: 10 Fw: Meeting with Clermont County to Discuss the CECOS Landfill	Erik Olson	Steve Johnson, Christine Klemme	March 8, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: FOIA 2013-3256 from H. Gonzalez regarding CECOS	Erik Olson	Steve Johnson, Christine Klemme	March 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 06 2016

REPLY TO THE ATTENTION OF

Ms. Hannah Lubbers
Project Manager
Clermont County Office of Environmental Quality
4400 Haskell Lane
Batavia, Ohio 45103

Re: Freedom of Information Act Request, Number EPA-R5-2016-005111

Dear Ms. Lubbers:

This letter is the response of the U.S. Environmental Protection Agency, Region 5, Land and Chemicals Division (LCD) to your FOIA request received on March 28, 2016. You requested any and all information, for the time period of February 1, 2015 to the date of your request, pertaining to CECOS International, Incorporated, located at 5092 Aber Road, Williamsburg, Ohio (CECOS facility).

EPA's response to your request was originally due on April 25, 2016, but in an email dated April 18, 2016, you agreed to extend the response deadline to May 9, 2016. You also limited the scope of your request so as not to include Quarterly Toxic Substance Control Act (TSCA) and Semi-Annual Detection Monitoring Reports, which you already possess.

We have searched our records and have located 2897 pages of releasable records related to the CECOS facility and have uploaded these records to the FOIAonline database. All releasable records will be available to you via a link to the FOIAonline database that will be provided to you in a separate email message. Enclosure A is an itemized list of the documents we are releasing. However, we are unable to provide you other documents responsive to your request because we have determined that they remain exempt from mandatory disclosure under Exemption 5 of FOIA, 5 U.S.C. § 552(b)(5). Exemption 5 protects inter- or intra-agency documents that would not be available by law to a party in litigation with the agency. This includes the attorney/client and deliberative process privileges recognized under common law. An itemized list of the withheld material, along with the basis for withholding and an estimate of the volume of withheld materials, is provided in Enclosure B to this letter.

This response includes information from LCD; one or more other Region 5 Divisions also are assigned and have already provided separate responses. No bill will be issued for our response to this request since our costs do not exceed the minimum billing amount of \$14.

You may appeal this denial of records to EPA's National Freedom of Information Officer at the following address: EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460. However, note that only items mailed through the U.S. Postal Service may be delivered to this address. If you are submitting your appeal via hand delivery, courier service or overnight delivery, address it to National Freedom of Information Officer, EPA, 1301 Constitution Avenue, N.W., Room 6416J, Washington, D.C. 20004. You also may submit an appeal by email to hq.foia@epa.gov. Your appeal must be made in writing and submitted no later than 30 calendar days from the date of this letter. EPA will not consider appeals received after the 30 calendar day limit. The appeal letter should include the "EPA-R5" number listed above. For quickest possible handling, the appeal letter and envelope should be marked "Freedom of Information Act Appeal."

For your information, Region 5's Land and Chemical Division administers Federal programs mainly under the Resource Conservation and Recovery Act (RCRA), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA), and the Toxics Release Inventory program of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Please contact Erik Olson, Associate Regional Counsel, at 312-886-6829 or olson.erik@epa.gov, if you have any questions about this matter.

Sincerely,

Michael D. Harris ^{for M.G.}

Margaret M. Guerriero
Director
Land and Chemical Division

Enclosures

Enclosure A
List of Uploaded Records - EPA-R5-2016-005111
CECOS International - OHD087433744

June 8, 2015 letter transmitting Administrative Order on Consent, O&M Progress Report Number 38
O&M Progress Report Number 38
December 10, 2015 letter transmitting Administrative Order on Consent, O&M Progress Report Number 39
O&M Progress Report Number 39
February 19, 2016 letter Regarding 2015 Supplementary Annual Hazardous Waste Report
February 20, 2015 letter Regarding 2014 Supplementary Annual Hazardous Waste Report
November 20, 2015 letter Regarding Financial Assurance for Post-Closure Care
January 2016 Detection Monitoring Program Report
June 2015 Detection Monitoring Program Report
April 2014 Detection Monitoring Program Report
January 2014 Detection Monitoring Program Background Event Data
July 2014 Detection Monitoring Program Background Event Data
October 2014 Detection Monitoring Program Report
2014 Annual Ground-Water Report Narrative
2014 Annual Ground-Water Report Transmission Letter
2015 Annual Ground-Water Report Narrative
2015 Annual Ground-Water Report Transmission Letter
September 2014 RCRA Post-Closure Plan
Excel Spreadsheets: <ul style="list-style-type: none"> • Facility Location Information • Groundwater Data Detection Monitoring Program • Params Detection Monitoring Program • Sampling • Well Detection Monitoring Program • Groundwater Data Compliance Monitoring Inspection TSCA 2014 • Params Compliance Monitoring Inspection TSCA • Sampling Compliance Monitoring Inspection TSCA • Facility Location Information • Groundwater Data Detection Monitoring Program 2014 • Params Detection Monitoring Program • Sampling Detection Monitoring Program • Well Detection Monitoring Program

Enclosure B
List of Withheld Material - EPA-R5-2016-005111
CECOS International - OHD087433744

Document/Material	Author	Recipient(s)	Date	Reason for Withholding	Estimate of Volume
Paleotopography Powerpoint	Steve Johnson	N/A	uncertain	Ex. 5 Deliberative	5 slides
Bedrock till interface with notes	Steve Johnson	N/A	2013	Draft, Deliberative	1 page
“CECOS Landfill, Aber Road Ohio Technical and Regulatory Review for Closure/Post-Closure Approval under the Toxic Substances Control Act” PowerPoint presentation, 7 drafts	Steve Johnson	N/A	May 3, 2013 – February 18, 2014	Ex. 5 Deliberative	340 KB
“CECOS Facility, Clermont Co. water resource risks” PowerPoint presentation	Steve Johnson	N/A	March 4, 2013	Ex. 5, Deliberative	27 Slides
Email – FW: CECOS Aber Road PCB results	Steve Johnson	Mary Setnicar, Brandon Pursel, Kenneth Bardo	April 18, 2012	Ex. 5, deliberative	2 pages
Draft “CECOS Geo Hazard Memo” – not formal memo, no recipient	Steve Johnson	N/A	Uncertain	Ex. 5, deliberative	4 pages
CECOS pre-oepa consultation meeting notes	Steve Johnson	N/A	April 19, 2012	Ex. 5, deliberative	5 pages
EPA/Clermont Co. Pre-meeting Discussion CECOS-Clermont County Agreement notes	Steve Johnson	N/A	December 12, 2012	Ex. 5, deliberative	6 pages
Annotated “review of the adequacy of the BFI/CECOS Aber	Annotations :	N/A	Annotations undated.	Ex. 5, deliberative	43

Road Hazardous Waste Landfill facility closure and post-closure plans to protect public health and the environment.”	Steve Johnson Article: G. Fred Lee				
Powerpoint fragment converted to pdf “TSCA Closure/Post Closure analysis CECOS Landfill Aber Road Ohio”	Steve Johnson	N/A	March 19, 2013	Ex. 5, deliberative	36 pages
Annotated EPA directive 9487.50-1A, “Waiver from Double Liner Requirements Pursuant to Section 3015(b)(1) and 40 CFR Section 265.301 (c) for CECOS International, Inc., Williamsburg, Ohio, Landfill Cell NO. 9”	Annotations by Steve Johnson	N/A	Annotations undated	Ex. 5, deliberative	3 pages
“CECOS Closure/ Postclosure water monitoring” pdf of notes.	Steve Johnson	N/A	Undated	Ex. 5, deliberative	17 pages
Closure/postclosure comments (notes)	Steve Johnson	N/A	Undated	Ex. 5, deliberative	1 page
“good vs. bad” notes	Steve Johnson	N/A	Undated	Ex. 5, deliberative	6 pages
“New Suit Could Open Door to Court Review of RCRA Orders after Sackett” annotated article	Daily News, annotations by Steve Johnson	N/A	Article dated January 11, 2013, annotations undated	Ex. 5, deliberative	2 pages
“Outline CECOS annual report” pdf notes	Steve Johnson	N/A	Undated	Ex. 5, deliberative	1 page
Annotated print out of Bloomington, Indiana City website regarding PCB sites	Author of Website unknown, annotations by Steve Johnson	N/A	Undated	Ex. 5, deliberative	7 pages

TSCA Post Closure Considerations pdf notes	Steve Johnson	N/A	June 11, 2013	Ex. 5, deliberative	5 pages
“CECOS Action Alternative” memo pdf	Steve Johnson	Mary Setnicar	May 15, 2013	Ex. 5, deliberative	2 pages
3 Pdfs of maps	Drawn and annotated by Steve Johnson	N/A	Undated	Ex. 5 deliberative	3 pages
25 Arc-GIS maps	Manipulated and Annotated by Steve Johnson	N/A	Undated	Ex. 5, deliberative	25 pages
CECOS Monitoring 2008, annotated, pdf in two parts.	Annotated by Steve Johnson	N/A	Document – 2008 Annotations undated	Ex. 5, Deliberative	34 pages
Email – CECOS Action Alternative re monitoring effectiveness	Steve Johnson	Mary Setnicar, Erik Olson, Brandon Pursel	May 15, 2013	Ex. 5, deliberative, attorney/client privilege	2 pages
Email – RE: CECOS project status	Mary Setnicar	Steve Johnson, Erik Olson, Tony Martig	March 12, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – TSCA Status-Closure	Steve Johnson	Mary Setnicar, Erik Olson, Tony Martig, Kenneth Bardo, Tammy Moore	March 19, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – CECOS Update	Steve Johnson	Erik Olson	March 22, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – RE: CECOS Update	Erik Olson	Steve Johnson	March 25, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – RE: CECOS Update	Steve Johnson	Erik Olson	March 25, 2013	Ex. 5, deliberative,	1 page

				attorney/client privilege	
Email – CECOS approved PC plan	Mary Setnicar	Steve Johnson, Tammy Moore, Tony Martig, Erik Olson	March 28, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – FOIA Exemption [sic]; re: FW: CECOS Financial Assurance	Steve Johnson	Mary Setnicar, Erik Olson	April 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – Tasks, CECOS Project	Steve Johnson	Mary Setnicar, Erik Olson	May 2, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – CECOS project update status	Steve Johnson	Mary Setnicar, Erik Olson	May 2, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – CWA considerations	Steve Johnson	Erik Olson, Mary Setnicar	May 3, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – Oh...I updated the slide show...see slides at 235+	Steve Johnson	Erik Olson, Mary Setnicar	May 3, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – CECOS Action Alternative regarding monitoring effectiveness	Steve Johnson	Mary Setnicar, Erik Olson, Brandon Pursel	May 15, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – CECOS Post Closure Plan considerations	Steve Johnson	Mary Setnicar, Erik Olson	June 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email –RE: CECOS Post Closure Plan considerations	Erik Olson	Steve Johnson, Mary Setnicar	June 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: CECOS Post Closure Plan considerations	Mary Setnicar	Steve Johnson, Erik Olson	June 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page

Email - RE: CECOS Post Closure Plan considerations	Steve Johnson	Mary Setnicar, Erik Olson	June 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
IM – Conversation with Steve Johnson	Steve Johnson	Erik Olson	March 15, 2013	Ex. 5, deliberative, attorney/client privilege	3 lines
Email - Re: FOIA 2013-3256 on CECOS, FOIA denial material...CECOS International, Ohio, TSCA Closure	Steve Johnson	Erik Olson, Christine Klemme, Mary Setnicar	February 28, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - CECOS Inc. EPA Power Point Notes	Steve Johnson	Erik Olson, Christine Klemme	March 1, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - Re: FOIA 2013-3256 on CECOS, FOIA denial material...CECOS International, Ohio, TSCA Closure	Erik Olson	Steve Johnson, Christine Klemme, Mary Setnicar	March 1, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - FW: CECOS FOIA response: Old E-mails	Steve Johnson	Erik Olson, Christine Klemme	March 1, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - FW: FOIA 2013-003256/CECOS	Steve Johnson	Erik Olson, Christine Klemme	March 1, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: FOIA 2013-003256/CECOS	Erik Olson	Steve Johnson, Christine Klemme	March 7, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: FOIA 2013-003256/CECOS	Christine Klemme	Erik Olson, Steve Johnson	March 7, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email – CECOS FOIA	Steve Johnson	Christine Klemme, Erik Olson	March 7, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: CECOS Aber Road PCB results	Erik Olson	Steve Johnson,	March 8, 2013	Ex. 5, deliberative,	1 page

		Christine Klemme		attorney/client privilege	
Email - RE: 9 Fw: Meeting with Clermont County to Discuss the CECOS Landfill	Erik Olson	Steve Johnson, Christine Klemme	March 8, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: 10 Fw: Meeting with Clermont County to Discuss the CECOS Landfill	Erik Olson	Steve Johnson, Christine Klemme	March 8, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: FOIA 2013-3256 from H. Gonzalez regarding CECOS	Erik Olson	Steve Johnson, Christine Klemme	March 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - FOIA 2013-3256 from H. Gonzalez regarding CECOS	Christine Klemme	Erik Olson	March 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: CECOS Aber Road PCB results	Steve Johnson	Erik Olson, Mary Setnicar	March 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
Email - RE: CECOS Aber Road PCB results	Erik Olson	Steve Johnson, Mary Setnicar	March 8, 2013	Ex. 5, deliberative, attorney/client privilege	1 page
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Email - RE: CECOS Aber Road PCB results	Erik Olson	Steve Johnson, Mary Setnicar	March 11, 2013	Ex. 5, deliberative, attorney/client privilege	1 page