

BRIEFING STATEMENT

Prepared for: Assistant Secretary - Policy, Management and Budget

Submitted: September 2, 1992

ISSUE: Proposed Settlement of Litigation at the Atlas Asbestos Mine Superfund Site, California

The Atlas Asbestos Mine site (site) covers 435 acres (all but 10 acres public lands) near Coalinga, California. The mine operated from 1963 to 1979. The site was listed on EPA's National Priorities List in 1984. Cleanup costs are estimated at \$8 million. The identified, viable private Potentially Responsible Parties (PRPs) are Atlas Asbestos and Vinnell Mining and Minerals Corp (A&V). Bureau of Land Management (BLM) and Bureau of Reclamation (BR) have been identified by the U.S. Environmental Protection Agency (EPA) as Federal PRPs. A&V contend that BLM is responsible for at least one-third of the remediation costs based on its ownership and on its alleged control of the mine site. Cleanup at the site has not begun. In 1991, A&V filed suit against BLM for recovery of past and future costs associated with the Atlas remediation. The BR has not been approached to share remediation costs.

The BLM has reached a tentative settlement of the A&V lawsuit. The terms of the proposed settlement are that BLM agrees to:

- 1) perform a 5-year revegetation study at the site and if feasible implement a revegetation program,
- 2) maintain the portion of White Creek Road which crosses the site to minimize airborne releases of asbestos,
- 3) construct and maintain fencing around the site,
- 4) conduct routine patrolling and monitoring of the site, and
- 5) contribute \$25,000 per year toward operation and maintenance costs at the site.

These terms are in accordance with EPA's Record of Decision for the site.

The Court ordered a stay in the lawsuit until 9-21-92 in order to finalize a settlement. If no agreement is in place by this date, it is likely litigation will resume.

In 1991, EPA notified BLM that as a PRP at the site it was required to enter into a CERCLA Section 120 Agreement. The BLM would not agree to a CERCLA Section 120 Agreement with EPA due to concerns that BLM could be held liable for cleanup of the entire site and that EPA would pursue BLM for reimbursement of past costs associated with the site. The EPA was not willing to modify the CERCLA Section 122 Consent Decree it has with A&V because it wanted to hold A&V fully liable for remediation of the site.

Without a CERCLA Section 120 Agreement covering BLM at the site, A&V have proposed entering into a judicial consent decree with BLM that would be enforceable by the Court, not EPA.

There is a question as to what legal authority exists whereby BLM can reimburse A&V for stipulated penalties and associated legal costs incurred if BLM fails to perform. The A&V is also looking for a mechanism to invoke injunctive relief in case of BLM failure to perform. The DOI SOL is preparing the legal analysis needed to document precedent that will allow this type of settlement. The DOJ is awaiting DOI's legal analysis.

IMPACT ON INTERIOR (DOI): The BLM has spent over \$1 million on the site to date on fencing, on road work, and on patrolling. Thus many of the terms of the proposed settlement are already being carried out by BLM. The BLM management, DOI SOL, and DOJ agree that the proposed settlement is probably the best that can be arranged.

If SOL can find a legally sound precedent to support the proposed settlement, the precedent may give DOI a non-CERCLA avenue with which to settle litigation at other hazardous materials sites. Those sites which most likely fall within this arena are where bureau involvement has been limited in scope such a minimal property ownership or the removal of a few tons of ore for research purposes.

The EPA has notified BLM that it is seeking reimbursement for past expenditures (\$1.1 million) at the site. This reimbursement request is not associated in any way with the proposed settlement.

It is unlikely that EPA will want a CERCLA Section 120 Agreement at this site.

RECOMMENDED ACTION: If SOL can find legally sound precedent to support the proposed settlement and receives the concurrence of DOJ, AS, PMB should support the proposed settlement.

The AS, PMB must be involved in the decisions determining when non-CERCLA avenues will be used to deal with CERCLA sites.

PROGRAM CONTACT: Robert M. Wilson or Mary Josie Blanchard, Office of Environmental Affairs, Hazardous Materials Division, 208-7877.