



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
CALIFORNIA STATE OFFICE  
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SACRAMENTO, CALIFORNIA 95825-1889

IN REPLY REFER TO

JUN 11 1991

1703  
(CA-930)

Mr. Dan Meer (H-6-2)  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Subject: Atlas Mine Superfund Site

Dear Mr. Meer:

This letter responds to a letter from Jerry Clifford, Deputy Director for Superfund, Hazardous Waste Management Division, Environmental Protection Agency (EPA), Region IX, to me, dated March 29, 1991. Mr. Clifford's letter states that the U.S. Department of the Interior (DOI), Bureau of Land Management (BLM), is required pursuant to Section 120 (a) (2) of CERCLA, to enter into an interagency agreement or Federal Facility Agreement (FFA) to perform the remedy selected for the Atlas Mine Operable Unit (OU) of the Atlas Mine Superfund Site.

EPA's letter further requests that by June 11, 1991, BLM provide EPA with "A statement of BLM's willingness to conduct the remedial action that is consistent with the Record of Decision and the proposed FFA . . . ." and also, that BLM provide a detailed response to the proposed FFA and the proposed Scope of Work. In accordance with this request, BLM provides the following response.

We believe that the "standard" FFA proposed by EPA to govern BLM's responsibility and future involvement at the Atlas Mine OU is inappropriate in this instance. It is our contention that BLM occupies the position of an "innocent landowner" at the Atlas Mine OU, and as such, its liability is limited in accordance with Section 107 (b) of CERCLA.

The premise for this position is as follows. Mining activities occurring at the Site (between 1961 and 1979) were conducted prior to the promulgation of the Federal Land Policy and Management Act (FLPMA), (43 U.S.C. § 1701 *et seq.*), and its implementing regulations (43 C.F.R. Part 3800). Under the 1872 Mining Law (30 U.S.C. § 22 *et seq.*), which was in effect during mining activities at the Site, BLM lacked a regulatory basis for limiting mining activity on validly located claims.

The 1872 Mining Law gave miners the statutory right to enter, prospect and mine minerals without requiring any approval from or providing any discretionary control to the United States. Nor did the United States derive any monetary payment or benefit in exchange for the extraction of minerals from the federal lands. It was only with the passage of FLPMA and its implementing regulations that BLM gained the authority to prevent undue and unnecessary degradation of the public lands. In sum, BLM neither contributed to the degradation of the Site, nor had the legal authority to control the activities of the mining claimants who did.

The FFA proposed by EPA would shift liability for remediation of the entire Atlas Site to BLM.' This proposal represents a drastic departure from the conclusions reached on this issue in meetings between EPA, DOI (Solicitor's Office), BLM, and the Department of Justice in 1988. The meetings, which were held to determine the roles and responsibilities of EPA and DOI-BLM during EPA's "fund-lead" management of the Atlas Site, resulted in an understanding that BLM was not, ipso facto, liable under CERCLA for remediation of abandoned mine sites located on the public lands.

In fact, this determination was consistent with the long-term cooperative effort which has existed between BLM and EPA at this Site since EPA's initial involvement in approximately 1983. To this extent, BLM has openly advocated to EPA its desire to have the mining claimants reclaim the Site in accordance with established mining practices.

It remains BLM's objective to see reclamation of the Atlas Mine Site performed by the mining claimants. BLM is prepared to perform certain tasks at the Site consistent with its continued presence as a federal land manager and a trustee for natural resources. Generally, these tasks focus on inspection of the remedial measures to be implemented at the Site by Atlas and Vinnell as set forth in the Atlas Mine OU ROD. A description of the tasks which BLM is prepared to accomplish is attached.

Further, if an interagency agreement between BLM and EPA is required pursuant to CERCLA § 120 (e) (2) at the Site, we believe that such a document should specifically reference those tasks

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'See, (e.g.), Section 3.1 (o) of EPA's proposed FFA which construes the term "Site" to include " . . . the 'federal facility' of the Atlas Mine Area OU . . . and the 'facility' as defined in CERCLA". Section 6.2 of the proposed FFA further provides that "The Department of the Interior, Bureau of Land Management ("BLM") agrees to undertake, seek adequate funding for, fully implement and report on the following tasks . . . (b) implementation of the remedy selected in the Record of Decision ("ROD") for the Site signed February 14, 1991 . . ." (emphasis added).

which BLM will perform, as well as expressly preclude BLM's liability for remediation of the entire Site.

Finally, on a related Site issue, BLM continues to take exception with EPA's inclusion of the entire Clear Creek Management Area (CCMA) within the Atlas Mine Superfund Site. The CCMA contains approximately 36 square miles of the New Idria Formation, a serpentine rock configuration containing large amounts of naturally occurring asbestos. The Atlas Mine OU overlays but a small portion of this naturally occurring formation. We believe that EPA's inclusion of the entire CCMA within the Site based on its determination that wind, water and vehicular traffic have transported asbestos from the mine site throughout the entire CCMA is not supported by its technical data for the Site. Accordingly, BLM insists that EPA delete the CCMA (except for the Atlas Mine OU) from the designated "Site" for the Atlas Mine Superfund Site.

BLM would welcome technical support from EPA in revising its management plan for the CCMA to minimize releases of airborne asbestos resulting from recreational uses. However, we do not believe that CERCLA provides EPA with the ability to control BLM's management activities in the CCMA absent data establishing a clear nexus between asbestos releases from the Atlas Mine OU and resulting contamination from this source within the entire CCMA.

Like EPA, we also look forward to continuing our cooperative effort with EPA to reclaim this site. Our points of contact on this matter are Richard F. Johnson, Deputy State Director, Lands and Renewable Resources, PFS 460-4720, and Clementine Berger, Attorney, Office of the Regional Solicitor, PFS 460-4831.

Sincerely,



Edward L. Hastey  
State Director

Enclosure

cc: Cy Jamison, Director, Bureau of Land Management

J. Steven Rogers, Attorney, U.S. Department of Justice,  
Environment and Natural Resources Division, Environmental  
Defense Section

John Wise, Deputy Regional Administrator, EPA, Region IX