



United States Department of the Interior



OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

BLM.ER.0685

MEMORANDUM

To: Director, Bureau of Land Management

From: Acting Associate Solicitor, Energy and Resources

Subject: Internal Management of the Atlas Asbestos NPL Site

The Environmental Protection Agency (EPA) has forwarded to my office a copy of a letter dated November 11, 1988 from Ed Haste, BLM State Director in California, to the EPA Regional Administrator for Region IX. In the letter, the State Director states that his office will be the "central contact point" and he "will coordinate all actions" by the BLM regarding "cleanups, negotiations and approvals for financial, legal or technical issues" involving the cleanup of hazardous substances at the Atlas mine site. This directly contradicts what we have been telling EPA and the Justice Department. The letter goes on to state that BLM will respond at Atlas on a site specific, rather than area-wide basis. This is also inconsistent with what we have been representing to Justice and EPA. Finally, the State Director suggests that a meeting scheduled to be held in Washington on December 1, 1988, which was planned and agreed to six weeks ago by all the involved parties, should be held, if at all, in California. This letter, which we learned of from EPA, has created confusion at EPA and Justice and has made it appear that we are not acting in good faith.

As you know, the Atlas Asbestos mine site is a federal facility on the EPA Superfund National Priorities List (NPL). EPA has put considerable pressure on this Department to accede to, and pay for, EPA's remedial action plan. The Justice Department Environmental Enforcement and Environmental Defense sections have also pressed for action by Interior. All of the parties have been involved in a series of meetings here in Washington to resolve important policy issues. At a September 29, 1988 meeting attended by Washington and regional EPA staff, Justice enforcement and defense attorneys, Solicitor's Office staff from Washington and California and BLM staff, we made a commitment to decide, in as short a time as possible, who has authority to speak for Interior and sign decision documents pertaining to remedial measures at the Atlas site. The site involves important policy issues and two Interior agencies (Reclamation and BLM). It will be a precedent for handling response actions at other sites. We have deep concerns about the way EPA has defined the site, whether EPA is pursuing the appropriate remedy and whether

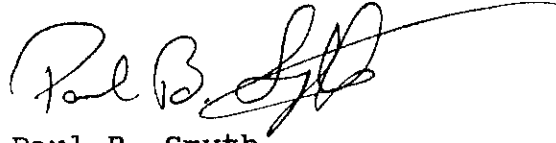
millions of dollars may be spent on a cleanup that will not appreciably reduce hazards to human health. EPA has never given us enough feasibility study or risk assessment data to make a rational response to its demands. EPA, for its part, is committed to an ambitious schedule which will be difficult or impossible to meet if Interior is not in agreement with EPA's data and proposed remedy. There is a potential for conflict between the agencies that will require direct negotiation between the Secretary of the Interior and the Administrator, EPA. Our efforts have been aimed at avoiding conflict and moving forward in a positive way.

We fully expect the BLM State office to have a major role in directing a response at this site. However, the decision as to who can make deals with EPA at sites involving multiple Interior agencies, millions of dollars and important national policy issues needs to be made at a high level in the Department and should involve the affected Assistant Secretaries.

Your Hazardous Materials staff in fact has prepared a decision document from you through the Solicitor to the Assistant Secretaries for Water and Science and Energy and Minerals which gives the background on the site, documents the discussions we have had to date with EPA and Justice and makes a recommendation that the California State Office be designated as the lead. This office has some reservations about the recommendation, given the precedential effect the cleanup actions at this site will have both legally and fiscally for the Department. We suggest that a meeting be set up soon with you or your representative, the Assistant Secretaries or their designated representatives and my staff to decide how the Department will proceed in this matter.

We have been working hard to avoid an adversarial relationship with EPA and Justice. EPA has consistently charged that Interior is delaying things and failing to act in good faith to meet our legal obligations. The State Director's letter lends support to that view. It has engendered mistrust and ill-will from EPA headquarters and regional staff and has genuinely undermined our efforts to work toward a reasoned solution at the Atlas site. Understandably, Justice and EPA staff are now asking us to explain what is going on and whether the State Director's letter constitutes a decision as to who is managing this NPL site. We would appreciate your assistance in responding to them and in hastening a decision as to the procedures the Department will use to respond to this and other NPL sites.

A copy of the State Director's letter is attached. If you have questions about this matter, you may contact Kristina Clark at 343-4444 or Steve Brown at 343-4146.



Paul B. Smyth

Attachment

cc: Tim Elliott