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United States Department of the Interior



BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE
2800 COTTAGE WAY, ROOM E-2845
SACRAMENTO, CALIFORNIA 95825-1889

IN REPLY REFER TO:

1703
CA-930

March 6 1991

Memorandum

To: Director (100), Room 5660, MIB
From: State Director, California
Subject: Atlas Asbestos Superfund Site

On February 14, 1991, the Regional Director of the Environmental Protection Agency issued a Record of Decision (ROD) for the Atlas Asbestos Mine Operable Unit of the Atlas Asbestos Mine Superfund Site. A copy of the ROD is attached. The Bureau is named as one of the potentially responsible parties at the Atlas Mine Operable Unit.

SUMMARY OF THE RECORD OF DECISION

The Record of Decision states that this Superfund Site consists of four geographically distinct areas, two of which involve the Bureau. These two are the Atlas Mine Area (or Operable Unit) and the Clear Creek Management Area.

Regarding the Clear Creek Management Area, EPA indicates it will take no action in the area at the present time because the Bureau is committed to revising its Clear Creek Resource Management Plan. The revision will address the issue of airborne asbestos emissions and the threat to public health. Refer to pages v, 1 and 5. While we commented to EPA of our serious concern about their including the entire Clear Creek Management Area in their ROD, EPA nevertheless included this area within the Site. We have worked closely with EPA to reach this agreement and anticipate that through revision of the management plan we will satisfy EPA's concerns to the extent that no further EPA action will be necessary for this area. See our letter to EPA of January 4, 1991, and their response of February 13, 1991, both of which are attached.

The Atlas Mine Operable Unit is an area of about 450 acres which had been mined for and used to mill asbestos. The Atlas Corporation, Vinnell Mining and Minerals Corp., Wheeler Properties, Inc., the California Mineral Corp., and the Bureau are named in the ROD as potentially responsible parties (PRPs) (see pages 2 and 3). The Bureau is named because of its ownership of the land upon which the mining occurred.

The Record of Decision calls for seven actions to be taken to remediate the Site (see page iv). We are preparing to negotiate with the two viable PRPs (Atlas and Vinnell) to agree upon the Bureau's level of participation in responsibility for accomplishing EPA's selected remedies. In past discussions with these PRPs we have steadfastly maintained that BLM's degree of responsibility for remediation of the site is at most, extremely minimal. It is this position we intend to pursue in negotiations with the PRPs on the issue of allocation of remediation responsibilities and cost at the Site.

BLM's Negotiating Points

With the aid of our Regional Solicitor's office we have had face-to-face discussions with Atlas and Vinnell representatives and their lawyers. I have personally met with a vice-president of Atlas to discuss our position on the remedies. Referring again to the seven items shown on page iv of the ROD, I plan to discuss them with the PRPs as follows:

- Agree the Bureau will accomplish the revegetation pilot project (p. iv, item 4), but not agree to implement revegetation if it is found to be appropriate. We currently are preparing a revegetation plan for an asbestos mine operation adjacent to the Atlas site. The Atlas pilot project can be worked together with this other effort and we feel this is an appropriate role for the Bureau. This remedial action is explained on pages 13-14, 23-24 and 41-42.
- Not agree to be responsible for any of the other six action items. One aspect of item 3, construction of diversions and dams, is who will take responsibility for long term (30 years) operation and maintenance of these structures. In previous verbal discussions the PRPs have agreed to construct the diversions and dams but have not agreed to operation and maintenance responsibilities for them. They feel that as part of the Bureau's responsibilities as a PRP, we should take on this work. Details of EPA's expectations regarding the construction, operation and maintenance is shown on pages 22 through 24. We are willing to take on responsibility for minimal operation and maintenance (for example to continue our presence in the area through normal patrols and to observe and report on the condition of the constructed dams and diversions, fences and the road). We are unwilling, however, to take on the long term responsibilities for repair and/or replacement of any of the structures or fences damaged by earthquake, flooding, or for long-term air and water quality testing and monitoring. We estimate our cost of the work we are willing to do to be approximately \$20,000 per year.

Other Matters

We anticipate starting negotiations with EPA on a CERCLA Section 120 agreement within the next 45 to 60 days. A 120 agreement is required as part of the remediation process for all Federal facilities with hazardous waste contamination. The agreement will cover BLM's responsibilities for remediation. We also expect EPA to seek reimbursement from the PRPs (including the Bureau) for the approximately \$3 million they spent on their Remedial Investigation/Feasibility Report. We are working with our Regional Solicitor's office on these, and all matters concerning the Atlas Superfund Site.

My schedule for initiating negotiations with Atlas and Vinnell include starting negotiations within the next three weeks. I would appreciate any suggestions you may have on this issue, and I will be glad to brief you or your staff on it in more detail.

Ed Hanks

Attachment
As stated

cc: DM, Bakersfield (w/o Attachment)
AM, Hollister (w/o Attachment)
Regional Solicitor (Berger) (w/o Attachment)
WO-700, MIB, Room 5617
WO-707 (Hyde), MIB, Room 3529

*I have told them
more than once
we will not
pay*

JAN 4 1991

1703
CA-930

Daniel McGovern
Regional Administrator
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94103

Dear Mr. McGovern:

I appreciate your meeting with me on December 20, 1990 and discussing our concerns with the draft record of decision for the Atlas Superfund Site. You agreed to accept additional comments on the draft record of decision. There are four concerns I feel are significant enough to ask you to revise the draft to accommodate.

My staff and I have tried to work closely with your staff over the past few years, in an environment of trust and common purpose. I felt we had agreed the Atlas Mine was put on the superfund list in error but would work together to reach a common sense solution to the problem. We have shared information and ideas with your staff; worked closely with the other responsible parties to develop a realistic mitigation plan for the Atlas Mine site; commented critically but constructively on the RI/FS; and I believe been more than open with you in all our discussions.

As I stated during our meeting I was surprised to learn you have included the Clear Creek management area as part of the Atlas site. My earlier understanding was that the Atlas site would be confined to the Atlas Mine site, and that the Clear Creek Management Area would be handled separately under the Bureau's land use planning process. Now, under your current direction and in the draft ROD you have expanded the Atlas Mine site to include areas completely outside the drainage, without any substantial justification. This causes me considerable concern. By including the Clear Creek Management Area in the site you will cover a land area that not only encompasses the Los Gatos Creek drainage to the south, but the Clear Creek drainage to the north. The latter drainage is north of the San Benito ridge and encompasses a large area not a part of the asbestos hazard area identified with the Atlas Mine site. In my mind this goes beyond EPA's original area of inclusion, and beyond the area of concern we discussed continuously with you.

While the EPA may have a legitimate interest in addressing all mining sites contributing to the asbestos problem, it is my feeling the inclusion of the entire Clear Creek Management Area within the Atlas site is unwarranted.

By including the Clear Creek Management Area within the Atlas site designation, EPA brings this total area under the purview of CERCLA and all its appurtenant regulations. This expanded area gives EPA long term management control over a large area, where the primary asbestos occurrence is from naturally occurring serpentine soils. I believe this goes far beyond what is warranted in the concern for protection of human health and safety. I am also concerned that future EPA staffing decisions may call into play the letter of the regulations rather than using a pragmatic, rule-of-reason approach to resource management in the area.

I propose the Atlas site be drawn to include the Atlas Mine site only (and whatever additional sites downstream from the mine site EPA deems appropriate). The Bureau's resource management plan for the Clear Creek Management Area will be the device under which appropriate land and resource management decisions can be made. We intend to develop this plan with full public participation, and arrive at management decisions in full counsel, and hopefully with EPA's concurrence.

I believe the tone and wording of the draft ROD leads a reader to reach conclusions which overstate the potential asbestos hazard from the Atlas Mine site. For example, page 5 of the draft ROD, paragraph 5, speaks to the "... unrestricted riding experience..." of the OHV user. This is incorrect. While the terrain and vegetation in the Clear Creek Management Area is such that unrestricted riding could occur, OHV use for the most part has traditionally been along existing roads and trails. Most of these roads and trails resulted from the numerous mining activities in the area. I suggest that reference be deleted from the text.

Other places in the text of the draft ROD liberally use words such as 'major', 'substantial' and 'imminent', without, I feel, a real basis. For example, on page i, paragraph 5, "... presents an imminent and substantial endangerment to public health ..." clearly overstates the situation. The area of naturally occurring asbestos in the exposed serpentine soils far exceeds that which has been caused by mining operations. Again, on page ii, paragraph 4, item 1, gives the reader the impression that 2.3 million cubic meters (the total amount of ore and mill tailings at the Atlas Mine site) will be washed down the drainages. This gives a false impression that all of the material will wash downstream. With the exception of some gullies, those tailings have been relatively stable for many years. With the fencing BLM has erected around the mine site, public access has been restricted. This further emphasizes my point that any future opportunity for erosion is minimized. I should point out again, as I have in the past, that there is only about 80 acres of drainage area above the Atlas Mine site, again emphasizing my point that the draft ROD overstates the erosion potential.

The draft ROD is silent on the role of the 1872 mining law and BLM's responsibilities under it. The reference to BLM as a Potentially Responsible Party (draft ROD, page 4) should explain that prior to the passage of the Federal Land Policy and Management Act in 1976, and the adoption in 1980 of surface management regulations under the Act, Congress had given BLM virtually no control over mining on the public land. It was prior to 1980 that Vinnell and Atlas had mined the area. It was also prior to that date that the other mines in the area also worked their properties. BLM had no Congressional mandate or regulations to control or direct the way operations took place.

I feel the requirement in the draft ROD to conduct a revegetation pilot study (page ii, paragraph 5, item 3) should be deleted. We have discussed this with your staff in the past and given them a copy of the study by our consultant, PTI Environmental Services. The study acknowledges that vegetation could be returned to the Atlas Mine wastes. However, they point out the problems associated with serpentine soils; providing soil amendments, fertilizer, and topsoil is expensive; the use of seed would likely have limited success; the use of seedlings (tubelings) would increase the chance of success but also increase the cost. With this knowledge, I feel a revegetation requirement will not demonstrate anything new and be an added burden and requirement on the responsible parties.

Additionally, the selected clean-up plan for the Coalinga Asbestos Mine site (Johns-Manville Coalinga Asbestos Mill site) requires implementing a revegetation pilot project, similar to the requirement in the Atlas draft ROD. This certainly appears to be a duplication of effort and an unwarranted cost to the Atlas responsible parties. At the same time, the Bureau has a requirement in the mining plan for the currently operating King City Asbestos mine, to revegetate their wastes. We are committed to preparing the revegetation plan for KCAC this spring, and the company will carry out the plan. With all this ongoing, we strongly urge EPA to delete the revegetation requirement from the Atlas draft ROD.

Thank you for the opportunity to comment on these items that are of the utmost importance to the Bureau. I would appreciate your staff informing me or Richard Johnson, my Deputy State Director for Lands and Renewable Resources of your decision on these recommendations prior to issuing the final ROD.

Sincerely,



Ed Hastey
State Director

cc: Director (707), Room 3529, MIB
DM, Bakersfield
AM, Hollister
Regional Solicitor's Office (Berger)

Johnson:jml:1/3/91
A:EPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105

February 13, 1991

OFFICE OF THE
REGIONAL ADMINISTRATOR

Ed Hastey
State Director
U.S. Bureau of Land Management
California State Office
2800 Cottage Way
Sacramento, California 95825-1889

Dear ^{Ed} Mr. Hastey:

Thank you for the Bureau of Land Management's letter of January 4, 1991 regarding the meeting on December 20, 1990 to discuss the Atlas Asbestos Mine Site Record of Decision ("ROD").

I appreciate the assistance that BLM has provided to EPA's staff during the remedy selection process for the Atlas Site. We look forward to continuing a close working relationship during the remedial design phase of the project.

With respect to your concerns about the inclusion of the Clear Creek Management Area ("CCMA") in the Atlas Site definition, EPA believes that the CCMA has been properly included as part of the Site. The Proposed Plan and the ROD make it very clear that EPA does not intend to take any action under CERCLA in the CCMA at this time. EPA's intent is to allow BLM to continue its management of the CCMA under a revised land use plan that takes into account the Agency's concerns about the asbestos problem. EPA believes that its involvement in the land use plan revision will be important and we are hopeful that the issue will be completely resolved in 1992.

Regarding the tone and wording in the Record of Decision, EPA believes that the wording used is accurate. However, we understand that the BLM may have different viewpoints on the issues discussed and the severity of the problem.


Regarding the ROD's description of BLM's PRP status, EPA believes that a detailed discussion of liability issues is inappropriate in a decision document addressing remedy selection. Therefore, we do not believe that a discussion of BLM's authority to control the actions of entities holding mining claims under the 1872 mining law can be properly included in the ROD.

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Regarding the revegetation pilot project, it is important to note that while the PTS Environmental Services study cites a number of potential problems with revegetating the disturbed areas, the study indicates that revegetation is technically feasible. Nevertheless, the BLM raises a valid point concerning the potential for a duplication with the Coalinga Mine Site revegetation project effort. In our upcoming negotiations, EPA will propose that the pilot projects at the two mine sites be coordinated to minimize any duplicative efforts and that the two projects be scaled to reflect the fact that the projects are similar. While the results of the revegetation effort at the King City Asbestos mine should be reviewed and may be helpful, EPA believes that a project conducted under EPA oversight is important.

Again, thank you for the assistance that your staff has provided. We look forward to working closely with the Bureau in the future.

Sincerely,


Daniel W. McGovern
Regional Administrator