

JAN 4 1991

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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.

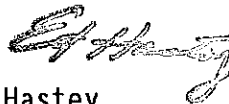
The draft ROD is silent on the role of the 1872 mining law and BLM's responsibilities under it. The reference to BLM as a Potentially Responsible Party (draft ROD, page 4) should explain that prior to the passage of the Federal Land Policy and Management Act in 1976, and the adoption in 1980 of surface 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  
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Regional Solicitor's Office (Berger)