

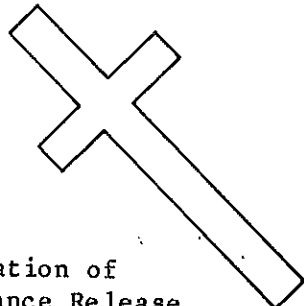
MEMORANDUM

DRAFT

To: Assistant Secretary, Lands and Mineral Management
Assistant Secretary, Water and Science
Solicitor

From: Director, Bureau of Land Management
Commissioner, Bureau of Reclamation

Subject: Transmittal of the Request from EPA and DOJ for Clarification of Authorities Regarding Major Decisions at Hazardous Substance Release Sites on Public Lands -- In the matter of the BLM's First National Priority List Site, Atlas Asbestos Mine --With Supporting Issue and Optiopns Paper



On September 29, 1988, Bureau of Land Management (BLM) staff and members of the Solicitor's Office staff met with representatives of the Environmental Branch of the Department of Justice (DOJ) and staffs of the Environmental Protection Agency (EPA), concerning the needs for cleanup at and in the area of the Atlas Asbestos Mine near Coalinga, California. At that meeting, EPA and DOJ requested written clarification, within 30 days, on a number of issues involving the Department of the Interior (DOI), the Bureau of Land Management (BLM) and the Bureau of Reclamation (BOR). The BLM has been named as a responsible parties in regard to the site and BOR has been threatened with similar action if they do not participate in the regional asbestos cleanup. ✓

The primary issue for EPA, currently, is who in DOI is authorized to sign an agreement with EPA under Section 120 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to commit the Bureau or Department to participation in the planning and cleanup of a hazardous substance release site on or affecting public lands. A subset of the first question is who is authorized to negotiate such an agreement with EPA. ①

At a secondary level, EPA would also like to know "what roles in the cleanup are BLM and BOR likely to want?" This question arises out of statutory limitations on EPA's own ability to act any further on Federal Lands or in situations where the problem is a naturally occurring substance. The alternatives that EPA is presenting are BLM^a lead, BOR^b lead, private^c lead with a, b, c, d bureaus subordinate, or some localized combination. This question also has some implications for funding by the bureaus. EPA also wants to know if there are any existing commitments or schedules by the bureaus to carry out cleanup work in the region (e.g., RMP scheduled work). Within 1-3 weeks, EPA plans to send for BLM consideration, a draft interagency agreement establishing a mechanism for selection of the final remedy (cleanup strategy) for the Atlas area, including a schedule for completion and a commitment to a future cleanup. 4

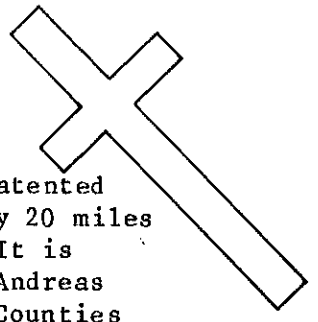
Both Justice and EPA are extremely anxious to resolve these issues quickly so that the final decisions can be made for the area and cleanup (and presumably litigation) can begin. EPA appears to be very committed to the November 1, 1988 deadline for answers to these questions. The Office of the Solicitor has

also expressed some interest in the outcome of these questions and has raised the same questions with BOR so that responses can be coordinated at the Departmental level. Deputy Assistant Secretaries Cason and Marchant requested that BLM prepare issue and options papers that can be used by both agencies and both Assistant Secretaries to bring this question to resolution.

While this is the first such major case and has many precedent setting characteristics, it is also a case filled extrordinarily complex technical and legal issues and risk assessments on which there is less than consensus. We have attached an Issue Paper on the problems in the Coalinga, CA area as well as an Options Paper on the primary issue. BLM recommends that the secondary issues should be handled by an inter-bureau task group in close coordination with the State Office and Regional level.

ccs: 101, 110, 200, 500, 700, 800, 200-Howell, 509RF, 509 Staff circ.
SD California, AM-Hollister, DM-Bakersfield, CASO-Kennedy
DAS-Cason, AS/LMM-Neibauer
DAS-Marchant, BOR-Commissioner, BOR-Las Vegas-Gore
SOL-Elliot, SOL-Clark, SOL-Brown, SOL-Bangert, SOL-Smythe, SOL-Geigle
OPA-Taylor,

ISSUES PAPER
ATLAS ASBESTOS MINE (BLM)/ARROYO PASAJERO (BOR) AREA
NEAR COALINGA, CA - EPA ACTION OR OVERACTION
A DEPARTMENT OF THE INTERIOR COORDINATION PROBLEM



The Situation: The Atlas Asbestos Mine is an abandoned, partially patented mine located mostly on public lands, in Fresno County, approximately 20 miles northwest of Coalinga, California in the Hollister Resource Area. It is located halfway between Los Angeles and San Francisco near the San Andreas Rift Zone, at the meeting point of Fresno, San Benito and Monterey Counties. The mine is part of the Bureau of Land Management's (BLM) Clear Creek Management Area, a 55,000 acre, serpentine rock zone made up almost entirely of a huge asbestos outcropping (called the New Idria Formation), in the San Benito Mountains. The Clear Creek Management Area is comprised of portions of four drainage basins, the largest of which is Los Gatos Creek, in which the Atlas mine is located.

In 1984, the Environmental Protection Agency (EPA) listed the Atlas Mine, along with the Coalinga Mine, located about three miles away on private land, on their National Priority List (NPL) of hazardous substance release sites. The grounds for these designations were never entirely clear, but seemed to be based on the assertion of risk to drinking water from non-point source runoff of asbestos from the two mines into the Los Gatos Creek basin. EPA's assessment of this situation has changed at least once since then, and the Remedial Investigation/Feasibility Study (RI/FS) design has changed with it.

According to EPA, the risk of lung cancer in the area is created by particles of asbestos that have eroded from the 425 acre Atlas mine, the 150 acre Coalinga mine and the smaller Butler mine, and been carried by runoff through several square miles of erodible soils in the New Idria Formation. From there, according to this theory, the particles flow through a system of streams in the Los Gatos Creek basin, 30 or so miles into the Arroyo Pasajero and to a point past the town of Huron where the creek empties onto the flood impoundment near the California Aquaduct. On this journey, the Los Gatos Creek is joined by streams that drain the Juniper and Joaquin Ridges, both noted for natural outcroppings of asbestos at the soil surface.

The Arroyo Pasajero is the mouth of the Los Gatos Creek basin, where it empties onto the valley floor, two miles northwest of the town of Huron and two and a half miles east of the California Aquaduct. The aquaduct is a barrier to the flow of water and sediment at the flood stage in the wet season. The flood waters pond and evaporate behind 30 foot high, 4 mile long dikes and the asbestos laden sediments dry and are annually plowed by farmers for soil preparation and crop planting. According to EPA, the plowing raises dust clouds that block the sun in the area for days at a time and spread asbestos fibers more than 100 miles downwind. The EPA has never included the Arroyo Pasajero on the NPL despite their assertion of the risk of lung cancer from airborne particles of asbestos that come from the diked fields each spring. The Bureau of Reclamation has not been officially named as a responsible party for the release from the area, but they remain a potentially responsible party and claims have been made against BOR for asbestos related losses as well as flooding.

WEST ?

Available Data: For unknown reasons, EPA has yet to publish any of the RI/FS, even in draft. The Remedial Investigation (RI) and the list of proposed alternative solutions to be considered in the Feasibility Study are months late for review and consultation by the public and the designated responsible parties. In the last two weeks BLM received unofficial copies of a one page summary of the RI and a three page summary of the list of alternatives which has clearly developed far beyond any point of consultation. We were informed at that time, that the draft RI and FS would be circulated, separately, within 1 to 3 months for 30 day agency reviews, but that they would not contain the essential "risk assessment" sections because EPA was still having trouble correcting those sections. Without the risk assessments there is no justification for any action under CERCLA. Without the risk assessment there is no way to measure the cost effectiveness of proposed alternative solutions either comparatively or individually. Without the risk assessment there is no case. EPA is silent on when these risk assessment sections will be available; the Agency is adamant, however, that the Agency's decision on what will be done about the site will be made in early spring of 1989.

It is known from the the summary and from discussions of early results at the local level that there are significant analytical problems working with asbestos and that resultant data limitations have severely constrained the accuracy of the models used to track the particles in the environment. The "Summary of Results From the Atlas/Coalinga RI" provides several examples of these problems:

"Quantification of the asbestos levels in soil, water and air have wide ranges due to problems with the analytical techniques for asbestos; all ranges will be presented in the final RI. No 'black and white' decisions can be made based on data or risk models." [emphasis in original]

"Soil results from similar samples range from N[one] D[etectable] to 98% [asbestos fibers] due to quantification problems..."

"Concentrations [of asbestos fibers in water samples] above the mine site is greater than what is running off..."

"Model efforts show 5-37% of the asbestos entering the creeks come directly from the [mine] sites..."

"Differentiation between natural and mined asbestos is not possible."

There are many troublesome aspects to this situation, both technical and legal that should be resolved before DOI makes a final call on an agreement with EPA for cleanup.

Decisions Involved: In order to include the future level of signature for all similar decisionmaking under CERCLA into the analysis on this first major site, three type of decisions must be considered -- (1) approval of entry by a bureau or the Department into an interagency agreement with EPA under the provisions of Section 120(e)(2) of CERCLA for remedial action on a National Priority List (NPL) site; (2) decision records (and any associated intergovernmental agreements with State regulators) for actions resulting from an RI/FS at a non-NPL site for which the bureau or the Department are liable; and (3) decisions on agreements or settlements with other responsible parties, private or governmental, of allocation of liability or cost sharing at an NPL or non-NPL site on lands for which the Secretary has jurisdiction.

Currently the only expression of position known is that the Secretary plans to at least review all CERCLA 120(e)(2) agreements before signature. It is, however, assumed that the delegation will be generally symmetrical within the Department, that is, it will be the same for BLM, BOR and other bureaus.

Alternatives: There are basically three alternatives regarding the level of authority (signature) for decisions on remedial actions on hazardous substance release sites on public land or other lands for which bureaus of the Department of the Interior are liable under Section 120 of CERCLA.

Section 120 and Executive Order 12580 delegate the decisions to the Secretary of the Interior. The Secretarial level generally includes delegation to the Undersecretary and the Assistant Secretaries.

The second alternative level of authority or signature is that of bureau or agency heads (e.g., the Director or Commissioner). Each of the decision authorities appears to be redelegatable to at least this level.

The third level of authority or signature is that of State or Regional Directors. The specific authority to redelegate to this level is not quite as clear, but neither is it specifically prohibited.

Analysis:

I. Secretarial Level -- The Secretary, Undersecretary, or Assistant Secretaries would have to sign each "NPL 120 agreement", record of decision for non-NPL site and settlement of liability or cost sharing. It is assumed that in most cases, this would be based on the administrative record and recommendation of the agency or agencies with liability, as well as any consultations required by law.

Pro: The signature authority of the Secretarial Level is unambiguous. The Secretary has already expressed the desire to at least review each Section 120 agreement with EPA before it is signed. There is no question about the authority of the Secretary to commit the Department to multimillion dollar expenditures. Most decisions could be made by Assistant Secretaries. The only exception might be where more than one Assistant Secretary has jurisdiction (as is the case in the Atlas/Arroyo Pasajero area). Many EPA records of decision on RI/FSs are "officially" made at the regional level, but all involving other agencies are reviewed by EPA Administrator's Office and by DOJ.