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March 4, 2008

VIA CERTIFIED MAIL

Rick Cooper, Field Mgr. - Hollister Field Office
Bureau of Land Management ("BLM")
20 Hamilton Court
Hollister, CA 95023
Rick_Cooper@ca.blm.gov

Temi Berger, Dep. Reg'l Solicitor
Dept. of Interior - Pac. S.W. Reg.
Room E-1712
2800 Cottage Way
Sacramento, CA 95825

RE: Touhy Request – Questions Regarding CCMA Asbestos Warning Signs & Recreational Visitors

Dear Rick,

After a thoroughly pleasant conversation with Ms. Berger, I am including herein my *Touhy* request under 43 C.F.R. § 2.84. It largely follows the information request previously provided to you.

- (a) [Identify Employee or Record] We are interested in hearing from anyone who might have knowledge along the lines we are seeking (as described below). Our understanding is that yourself (Rick Cooper) and Tim Moore are probably the best sources of information on this front.

- (b) [Describe Relevance] Our client, Union Carbide, used to own a mine at the New Idria chrysotile deposit. In our litigation, we explore the relative carcinogenicity of different asbestos fiber types. The information we seek from BLM is relevant in that it goes to the evolving views and actions of the federal government of and in response to New Idria's chrysotile asbestos. The information we seek about off-roaders at New Idria may also lead to relevant evidence regarding the long-term public impact and perceptions of New Idria asbestos. More importantly, anecdotal information from BLM employees or off-roaders can help flesh out the truth (whatever that is) about New Idria chrysotile and can provide helpful, easy-to-understand insights into an otherwise dry and perhaps confusing set of historical facts.
 - a. [Pleadings] The information we are seeking is not specific to a single case, but is useful in assessing all of our cases for this client. As such, a copy of a Complaint or Answer in this case would be exemplary only. However, upon request, we will be happy to select a typical Complaint or Answer related to our representation if that would be helpful to

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processing this *Touhy* request. By and large, the nature of the actions are that someone who has contracted asbestosis or cancer/mesothelioma sues a number of companies, including our client, on the theory that even the most fleeting exposure to any type of asbestos in the building or drilling industry was the legal cause of his injury.

- (c) [Parties] Our client is Union Carbide. The plaintiffs vary from case to case.
- (d) [Information Not Publicly Available] The records that are publicly available detail the *resulting* policies of the BLM or the EPA. They do not reveal how those policies have evolved over time, or the *reasoning* behind certain policies or safety precautions. They certainly do not contain information on the off-roaders who have been coming to New Idria for decades. As such, the information we're interested in is not publicly available.
- (e) [No Record Would Suffice in Lieu of Testimony] While we are not seeking formal testimony at this time, no government record is likely to explain the thinking of the decision-makers involved in the subject of interest. Nor is there any known record of the off-roaders. The kind of colorful anecdotes that can help us understand the Whys of the history are not typically recorded. However, to the extent that the information we seek is contained in records, we would appreciate copies of those records.
- (f) [Substance of the Testimony Expected-Sought] We are interested in the following information, e.g., answers to as many of the following specific questions as we can obtain.
1. My understanding is that the asbestos-hazard warning signs up at Clear Creek Management Area ("CCMA") were put up at EPA's request because EPA was concerned that foot/bike/vehicle traffic at/near the New Idria deposit was stirring up dust that EPA deemed carcinogenic. Did BLM ever do any studies of its own to decide that New Idria's chrysotile was carcinogenic or harmful to human health, or did it just rely on the studies or word of other agencies (e.g., EPA)?
 2. What was the internal BLM decision-making process regarding the warning signs like? Was there a single person who decided to put up the signs? If so, who (name, position)? When? Was there any kind of public comment process about posting the signs or any inter-agency decision-making about the signs, or did BLM just decide on its own to put them up?
 3. When were asbestos warning signs first posted at CCMA?
 4. What was BLM's reasoning for putting up the warning signs (e.g., why did it feel warning signs were warranted)?
 5. What person or position selected the warning language used on the signs?

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6. Has the warning language changed over time? If so, what previous warning language was used?
7. The signs say that the asbestos dust "could" be hazardous to health; they do not say that asbestos at New Idria "is" hazardous to health. Why did BLM decide to refer to the asbestos there as a potential hazard rather than a known or actual hazard?
8. What is the "hazard" to "health" that the warning signs reference? In other words, what are the signs trying to warn readers about (i.e. what could happen if the signs are ignored)?
9. I've heard that off-roaders come up there every weekend and that they often rip down these warning signs. If that's true, how often would you estimate that BLM has found these signs ripped down over the years? How many signs have been ripped down over the years? By people?
10. How many of these warning signs are posted at CCMA and where are they located (e.g. on a map)?
11. Does BLM or any government agency that you know of receive calls or emails from concerned citizens after they have seen the signs? If so, what does the agency tell these worried citizens?
12. Does BLM or any government agency that you know of receive complaints from recreational visitors to CCMA about areas restricted from use because of asbestos? If so, what do these recreational visitors say?
13. How would you describe these recreational visitors in terms of why they come to CCMA, how long they've been coming, and how often they come?
14. **Are there any long-term recreational visitors to CCMA that you have contact information for? If so, is there anyone (or any non-governmental organization[s]) we might be able to contact to get more information about recreation at CCMA over the years?**
15. Is there any kind of medical monitoring program underway at CCMA? Was there? If so, by whom? If so, whom can we contact for more information about the results?
16. It is our understanding that the Atlas mine site at the New Idria deposit is an EPA Superfund site that EPA is actively trying to remove from the Superfund list ("de-list"). Why was Atlas made a Superfund site? KCAC mine is nearby: why was KCAC not made a Superfund site?

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(g) [Compliance with § 2.88] It is important to remember that we are not seeking an exhaustive production of records or formal testimony at this time. Although we would be content to obtain admissible evidence, that is not our primary goal here. Our primary goal is to understand the Whys at issue here by hearing from people who were closer to the matter than we are. We do not intend or anticipate any need to put any current government employee on the stand, nor are we planning to bring the government into any of the cases pending or anticipated against this client. We envision that the answers to our warning-sign questions (above) could be provided from memory and based on Mr. Cooper's and Mr. Moore's recollection. After discussion with Ms. Berger, we anticipate that the answers to our off-roader contacts questions (our top priority) could be provided in a single fax or email with minimal time involvement by government officials. As such, we do not have any reason to believe that your provision of answers to the above should take more than a handful of hours total and should, if anything, take considerably less time.

Please let me know what we can do facilitate a substantive response to our questions. If possible, we would appreciate it if you could get back to us on this via fax or email, as those forms of communication tend to be the most time-efficient. Thanks again for your time on this!

Warmest Regards,

LINER YANKELEVITZ
SUNSHINE & REGENSTREIF LLP

By



Tony Sain
Esq.

TMS