

*Respond on Monday*

*Jami Berger*

Dear Rick,

Temi Berger was a delight on the phone. She pledged to get us (via you?) the contact info on the OHVs and didn't seem to think our other questions were much of an issue. She only wanted them in a regulation-compliant format. So, here they are (again). Please confer with Temi and get back to us. Thanks!

Tony Sain

**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](mailto: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 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)?

BLM did place signs circa 1978, based upon published studies funded by BLM and performed by University of California at Berkley. This study was published in Science in 1979. EPA listed the Atlas Superfund site in 1984. In 1992 BLM funded a Human Health Risk Report for the CCMA.

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?

In this case, a potential hazard had been identified, BLM decided to inform the public of the potential hazard. It was an agency decision to put up the signs, see response to your question #4. There was no public comment process on the sign placement nor its language.

3. When were asbestos warning signs first posted at CCMA?

Some time prior to November 1978.

4. What was BLM's reasoning for putting up the warning signs (e.g., why did it feel warning signs were warranted)?

If a hazard has been identified and is known to a Federal agency, under the Federal Tort Claims Act, liability defense may be based upon using this knowledge and informing the public of these hazards, 28 USC Section 2680(h).

In November, 1979 published data (Science Vol. 206) of a BLM funded study concluded that ... "dustfall along roads and trails being used recreationally in the Clear Creek area of San Benito County was found to be 90 percent of more chrysotile asbestos. Personal samplers worn by motorcyclists ... showed concentrations 0.3 to 5.3 fibers/milliliter. ... To our knowledge this is the first demonstration of asbestos exposures of this magnitude, in size ranges known to be pathogenic, resulting from natural deposits not associated with mining, milling, or industrial use."

5. What person or position selected the warning language used on the signs?

Unknown, but could have been the then BLM Folsom District Manager.

6. Has the warning language changed over time? If so, what previous warning language was used?

Yes, earlier signs (circa 1978) said that "Caution - soils in this area could contain asbestos which may be hazardous to health".

Signs were updated circa 1993, to say " Caution – soils, dust and water in this area contain asbestos which could be hazardous to health".

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?

See response to your question #4.

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)?

Please refer to our fact sheet that is enclosed and is also referenced in our response to your question #11.

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?

These are very large signs and have been replaced due to vandalism less than 5 times in 15 years.

10. How many of these warning signs are posted at CCMA and where are they located (e.g. on a map)?

There is a public (county) road that bisects this area (CCMA). Along this road BLM has placed warning signs that informs the public about the asbestos.

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?

BLM does occasionally receive telephone calls about the warning signs. BLM has worked the EPA and others to develop a fact sheet, this has been enclosed.

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?

Many comments were received by BLM in response to the Clear Creek Management Area Proposed Resource Management Plan Amendment and Final Impact Statement. Photocopies of these letters and BLM's response can be provided at an additional cost.

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?

Much of the reasons for use of the CCMA was the perceived lack of regulations and entrance fees that are enforced at the nearby State of California Hollister Hills Vehicle Recreational Area (SVRA). However since January 2008, entrance fees are being collected at the CCMA and regulations are being enforced at the CCMA, however not at the same magnitude as at the Hollister Hills SVRA.

Some visitors have anecdotally mentioned that they have been visiting the CCMA for 10-15 years, some of this has been reported in the 1990 EPA Sunnyvale meeting, as was used in BLM's 1992 Human Health Risk Assessment for the Clear Creek Management Area. Additional data may be contained in EPA's 2008 Clear Creek Risk Report, when it is finalized next month.

**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?**

Salinas Ramblers is a motorcycle club with a web site, they have been involved with the CCMA for a very long time (20+ 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?**

Under OSHA, the medical monitoring program is required (HAZWOPER 1910.120) for those employees who work in a regulated area where asbestos exposure may be above the PEL and are required to wear respirators.

The "results" of the medical monitoring is protected under the Privacy Act. Of 1974, 5 USC Section 552a.

**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?**

EPA made these decisions; you need to contact that agency for their justification.

(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.