

**SPECIAL MEETING  
IDAHO STATE BOARD OF LAND COMMISSIONERS  
June 30, 1993**

On this date a special meeting of the Idaho State Board of Land Commissioners was held to consider the matter of the Triumph Mine listing as a superfund site. The meeting was held at 9 a.m., Wednesday, June 30, 1993, in the east conference room of the Joe R. Williams office building. Governor Andrus presided.

Those members present were:

Honorable Cecil D. Andrus, President, and Governor of the State of Idaho  
Honorable Pete T. Cenarrusa, Secretary of State  
Honorable Larry EchoHawk, Attorney General  
Honorable J. D. Williams, State Auditor  
Honorable Jerry L. Evans, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

Governor Andrus called the special meeting to order stating that the meeting was being held to consider one issue, that of the Triumph Mine superfund listing.

**Staff Overview:**

Assistant Director Jay Biladeau provided a brief overview of the issue. Mr. Biladeau stated that the state owns approximately 540 acres of public school endowment land near the community of Triumph. In 1922 the department issued an easement to the Federal Mining and Smelting Co. for approximately 43 acres for power and pump lines and to dump mill tailings from mine operations from adjoining lands. The easement was located in the northwest corner of the section for the consideration of approximately \$640. Two large tailings piles were formed as a result of the mining and approximately 20 acres of the westerly pile, the majority, lies on the endowment tract within the easement area.

In the late 1980's, the Triumph Mine site became a health risk issue. A concern for water quality because of possible contamination of surface groundwater from the mine site and the tailings piles brought DEQ into test the area in 1989. A potential problem was identified and the EPA was asked to also investigate the site. EPA conducted Phase 1 and Phase 2 samplings of the soil, water, air, wetlands, mine waste, and the tailings piles in 1991 and 1992. They also had the agency for toxic substances and disease registry evaluate the heavy metal health risk that might be associated with the tailings piles.

Triumph residents have also been involved in tests for lead and arsenic levels conducted by the State Division of Health done in late 1991 and mid-1992. While the levels identified were not necessarily above those acceptable, they did indicate an exposure to greater than normal levels of arsenic. The EPA puts considerable weight on potential health risks associated with exposure to hazardous substances. Last January, EPA Region 10 concluded that the potential health risk would best be addressed through the superfund process. They recommended the site be proposed to the National Priorities List (NPL) and on May 7 the site was proposed to that list. The proposal was published in the Federal Register on May 10 which started the 60-day comment period to end July 9.

There has been additional sampling since the listing proposal. The testing has included sampling the groundwater below the lower tailings pile and the wetlands towards the east fork of the Big Wood River. Early results have been fairly good.

The Department of Lands received a general notice letter June 10 from EPA identifying the state as a potential responsible party (PRP). Three parties were identified by the EPA: Triumph Minerals, Inc., Asarco, and the State. The EPA indicated in that letter that they do intend to conduct certain activities on the site this summer which could include mitigation of contaminated soils and mitigation of fugitive dust from contaminated unpaved roads. Additional actions could also be taken. Information concerning the EPA's proposed summer activities at the site has been requested. The letter notifies PRPs of their potential liability and encourages them to voluntarily perform or finance activities that the EPA determines are necessary at the site.

The department has requested a 60-day extension to the public comment period in order to adequately review the package. The department is also researching documents and records pertaining to the Triumph mine site for the purpose of identifying additional PRPs.

It appears the Board's primary alternatives at this time are to either not accept EPA's findings and recommendations and prepare for court action, or work with the PRPs for a timely, economical, clean-up of the site.

Jerry Evans inquired about the significance of the right-of-way deed that was granted at the time and if that is any different from the issuance of an easement. Mr. Biladeau explained that was the terminology of the time. It was an easement that was issued and at that time they were referred to as right-of-way deeds.

J. D. Williams asked if there has been any contact with the other PRPs. Mr. Biladeau said there has been minimal contact. Mr. Hamilton said the other two that were named were Asarco and Rupert House (who has designated Donna Rose as his representative).

Mr. Cenarrusa said he has a document that states the Department of Interior, Defense Minerals Exploration Administration, owned that mine in 1954, and they might possibly be a PRP. Mr. Biladeau said the department has that letter and is investigating that.

**Division of Health -- Patricia McGavran, Ph.D.:**

Dr. McGavran, State Public Health Toxicologist, said they have done two blood-lead and urine-arsenic tests for Triumph residents. The first tests were done in 1991 and the second were done in July 1992. Some individuals participated in all of the screenings and some in just one, for a total of 31 adults and 11 children. The blood lead levels of the residents were not very high, ranging from about 1 to 19 micrograms per deciliter and the federal Center for Disease Control's blood level of concern for children is 10 micrograms per deciliter. All the children in Triumph were below that level of concern. All the levels above 10 were in adults. The arsenic levels ranged from the limit of detection to 50 micrograms per gram. Fifty is the level of occupational concern. That is the level at which a worker might be taken off the job until exposure can be reduced. It is also the level at which you might expect to see some symptoms of arsenic poisoning. Natural background levels for most people are about 10-15, and there are levels in the residents of Triumph that are greater than background which indicates that people are being exposed to higher than normal levels of arsenic, but not so high as to indicate seeing symptoms of arsenic poisoning.

Dr. McGavran said the exposure to lead and arsenic in Triumph does not represent an immediate health threat to residents, but the levels of contamination in the tailings piles and the soils are high enough to be of concern. Arsenic is a very potent carcinogen which causes cancer in people. So a primary health concern in Triumph is the long-term chronic increased risk of cancer from exposure to arsenic. Another concern in Triumph is children eating soil contaminated with arsenic.

In June they were requested by Triumph residents to conduct another blood-lead, urine-arsenic test, and that is being done July 1. They have done some educational programs for health care providers on toxic effects of lead and arsenic and how to interpret laboratory results. They have reviewed the expedited risk assessment that was conducted by the EPA, and they have been very interested in following the progress of the bioavailability study which is the swine study.

Dr. McGavran said that the important thing to remember about biological testing is that it does not come into play as a part of the scoring, and it's likely not to have a great effect in setting remediation goals. Remediation goals are usually based on health risk from exposure data, not from biological levels.

J. D. Williams commented that the arsenic has been there for a long time, and he wonders why there is no relationship between the actual impact of people living there now and the proposed ranking risk assessment process. Dr. McGavran suggested that is a question for the EPA.

**Idaho Department of Health and Welfare Division of Environmental Quality (DEQ):**

Joe Nagel, Administrator of the Division of Environmental Quality, stated that Mr. Biladeau did a very good job of summarizing the alternatives before the board. He has invited Mr. Wayne Grothier to speak about the implications of possible courses of action before the board.

In addition to that, his only comment is that the residents of Triumph have also requested that DEQ step in and act on behalf of the EPA. The superfund program is different than most other environmental programs in that they are not allowed to accept full delegation of the superfund program so that even if they should step in and act on behalf of EPA should the site be listed, the decisions ultimately are still made by EPA.

Governor Andrus asked if there has been any sampling of tissues of fish downstream to the west of those leaching ponds. Mr. Nagel said no. Governor Andrus said he thinks a question that has to be answered is whether any of those potential contaminants have found their way into the fishery.

Rob Hanson, Division of Environmental Quality, provided a preliminary review of the EPA record. He said that his review focused on the data and sampling collection efforts and making sure that the documentation that needed to be in the record was there. He has found the documentation to be complete. The acid preservation of unfiltered groundwater sampling method used at the site is a common technique used for drinking water, but in the future they would want them to take filtered and unfiltered samples. An additional concern with methodology is that when the EPA talks about elevated levels, they use background concentrations, saying that if something is three times greater than the background concentration, that is an elevated level. So whatever is determined to be the background concentration has a big impact on what is decided to be high or not. That is a contentious issue at Triumph. However, there are high concentrations of arsenic in some areas, so it would be difficult to argue there was no release of hazard substances. For a more detailed review, more documents are needed from EPA. They would need the raw data packages that come from the lab to verify the data validation and the field operations work plan in order to compare the field notes with the actual work plan and the quality assurance plan.

Governor Andrus asked if he has asked for those documents. Mr. Hanson said he has not. Governor Andrus asked him to request those from Mr. McKee who is present today.

#### **Overview of the Obligations of a Potential Responsible Party (PRP):**

Wayne Grothier said he is the director of Environmental Affairs for Unibar Corporation and VanWaters & Rogers of 6100 Caroline Point, Kirkland, Washington, which is North America's largest chemical distribution company. Prior to that, he was employed by EPA in Seattle for ten years, six in the superfund program.

Mr. Grothier described a situation they had in Boise where they had operated a small facility on the site now occupied by the Pier I Import store. The operation there included distributing perchloroethylene (perc) which is a dry cleaning fluid from an above-ground tank. Some of that got into the ground and contaminated the groundwater. Their corporation began at once to work on the immediate problems such as the public water supply hook-ups for affected residents and to also immediately work to install clean-up equipment for removal of this material from beneath the site. That approach accomplished saving a lot of the cost on studying exactly what had to be done since it was fairly obvious to them, being familiar with the regulatory process, that they knew where they needed to get as an end point and also knew that there were only certain things that could be done.

Their ability to thus avoid the superfund process was because of early action and their willingness to work with the state to make all the commitments that were needed to get to the same end point.

Mr. Grothier advised the board that a lot of time and money could be spent in going through a lot of testing and analyses and feasibility studies, or they could narrow it down right from the beginning as to what is possible and what can be done out there and try to focus the process towards that end point. Another thing their corporation chose to do in their Boise situation because they believed they were not responsible for all of the perc contamination in that area was to dive in and take on the work that needed to be done and come back later to search for those additional parties. One key was just in being open with the public as to what was coming up and being flexible in trying to address individual public concerns.

Some of the options the state has are to: 1) Challenge the listing process or challenge what the EPA is doing in carrying forward; 2) Let the EPA simply drive the process using superfund money, billing the state later; 3) Organize a PRP group among the major players and try to take over the process. His general view is that the state should just dive in and take control. Fighting the listing could be a losing argument; he would not choose to spend resources on that. There is an opportunity in taking control to save time and to save money to get to that end point faster. And also, address the public's concerns. There is a superfund accelerated clean-up model (SACUM) which provides for a lot of flexibility. There is an opportunity to use all of the flexibility in that process to again try to get through the transaction part. He strongly recommends that the PRPs meet very soon and start to take over this process.

#### **Potential Remedial Action -- Trey Harbert/Bill Russell/Jim Hazelwood:**

Trey Harbert, representing the Pentlar Corporation, Kellogg, said he was here on behalf of their sister company, Gulf Environmental Corporation. Mr. Harbert also introduced Bill Russell, general counsel for both corporations. Mr. Harbert said they have taken the expertise they developed from the Bunker Hill site, formed a new company, and have placed that expertise in the market place. Mr. Harbert said they have reviewed the work in Triumph and showed a slide presentation to explain some of their suggestions and proposals.

It was explained that Gulf Environmental Corporation is a group of multi-disciplinary professionals who were assembled to deal with problems at the Bunker Hill site. This is an attempt to take what was a disastrous corporate experience, the superfund site at Bunker Hill, and garner some value out of it by taking their expertise to others.

They have taken a good look at Triumph and recommend that the state jump into pro-active management of this situation which can save a lot of money. They have learned that you can find help in paying for this. The other PRPs are one obvious alternative, and they would be happy to provide some counsel to the staff in locating those. Finally, there are some insurance situations where some of the third party liability policies for property damage that the state may have carried at various points in history may be available to help pay for some of this. EPA has admitted that they want to avoid the problems at Triumph that they encountered at Aspen, and they've acknowledged that they may be required to modify policy to avoid some of the unnecessary burden to the community. EPA has talked

about the superfund accelerated clean-up model and has indicated that the SACUM principles are available to be considered at the Triumph site. There are SACKUM pilot programs which contemplate deviations from policies; the deviation should be properly justified and documented. Another SACKUM possibility available is the concept that in the case of early response actions, the site might be a candidate for a no-further-action decision and then deletion shortly after being listed on the NPL. The delisting process is a process which requires state involvement and it allows the deletion of a site from the list after a no-further-action decision.

Triumph is in many senses identical to Bunker Hill. There is more arsenic at Triumph but they believe that the arsenic is largely insoluble and probably bioavailable on a great basis. It's a simpler site and there are probably less active health concerns at this site, but there are residential construction immediately adjacent to the tailings pile, erosion through the tailings piles, and the wetland areas to deal with.

They advise immediate temporary remediation. There has been some thought that there may be recoverable silver in those piles. If that's true, that could be a way to help pay for the process. If there is an economic reprocessing of the tailings, that is something the state will want to consider. They understand the University of Idaho has already looked into this. They have been doing that at the Bunker Hill site in regard to lead, zinc and indium, and believe they are on the cutting edge of reprocessing. Then, the state will want to go into an expedited remedial investigation and feasibility study (RIFS). This is a part of documenting what it is you want to say to the EPA when you ask them to take a no-further-action decision step or a delisting. Done properly, with attention and duty, the RIFS process can be done in 8-10 months.

They think that in terms of immediate temporary remediation to seize control of the protectiveness issues and be sure there are no health issues up there, there are three things: 1) dust control; 2) water diversion to stop whatever erosion there is and a quick look at the mine drainage in that regard; and 3) do a residential soils replacement now. The standard wisdom is not to do residential soils replacement until the broader remediation is done, however, on this site there is a small enough number of residences so that the incremental cost of doing it now and then re-doing part of it later to deal with recontamination is very small. Managed properly, that is something that would not be terribly costly.

Some areas of concern at Triumph are that first, the clean-up and design would have to keep in mind the historical value of the area; and because of the resort nature of the area, a need to conduct action in a manner that minimizes the visual impact of the area; and the clean-up would have to be done in a way that maximizes future land use availability. It is important to be sensitive to the community character and to be aware of the wetlands as a driving force on this site, and it is important to make sure that the (clean-up) area doesn't get expanded. Measures that can be implemented to minimize the impact of remediation are dust control, staging of construction activities; working on a seasonal basis; doing much of the remediation in a localized place; community coordination-communication; selecting work crews with training so they are sensitive to the values; and minimizing movement of materials. It's important that the state agencies take a unified position in regard to this and provide support. It is important that local community and residents be brought into the process and put into a position of support. The Blaine County Commission should have a role. Industry and the PRPs are important.

## EPA Comments:

Lynn McKee, Director of the Idaho Office of the EPA, 422 West Washington St., Boise, introduced himself and Mark Masarik who is the manager of their hazardous waste staff in Boise. Mr. McKee said that the people who have testified here today have covered most of the issues and they have done an excellent job of that, and the counsel given here today is extremely worthwhile and valuable.

Mark Masarik clarified some points that were raised. First, there were some questions about the NPL scoring process. The scoring process is merely a screening tool for them to prioritize what sites they feel need further study. The score itself is not necessarily an indication of the hazard that is there. To explain the high score at Triumph vs. the lower score at Bunker Hill -- Bunker Hill was scored under the old system. The new system places more emphasis on sensitive environments and ecological concerns. There were questions regarding lack of symptoms and symptoms not being taken into account in the scoring process. EPA policy takes action on risks of 1 in 10,000 to 1 in a million. With the population size of Triumph, you may never see symptoms in that range of risks.

The Triumph site is an officially designated SACUM site for Region 10 and is the first site they are applying those principles to this early in the process. They are trying to use the flexibility they have under the law and they are trying to apply those principles as presented here.

On the point of the bioavailability of arsenic, they don't necessarily agree that it's not available. Preliminary results from the pig study are showing a bioavailability of between 50 and 100%.

Governor Andrus asked Mr. Masarik to respond to the "potential health risk" that Dr. McGavran referred to. Mr. Masarik said it gets back to EPA's mandate which is currently to take action at a site before symptoms or before documentation of exposure has shown itself. It is a potential risk that is calculated.

J. D. Williams asked Mr. Masarik what it is about this area that makes it sensitive. Mr. Masarik said that the new scoring takes into account potential impacts of the wetlands, surface water, wildlife and other habitat, where the previous scoring model did not place that much emphasis on sensitive environments.

Gov. Andrus asked Mr. McKee if the state moves ahead with the other PRPs for remedial action, would EPA sign off as they go through in this expedited manner, and could that bring this to a change or a delisting, if in fact it is listed.

Mr. McKee said that if the state as a PRP were to assume the lead and coalesce with the other PRPs and move to do the necessary, that is one possibility. The other aspect of that is whether or not DEQ from a regulatory standpoint should assume the oversight responsibility that EPA would ordinarily provide in this kind of a project. From their point of view, either of those could be applicable in this case. They would intend that if the state wanted to assume both of those roles, that would do everything they could to facilitate that.

### Superfund Law and the Triumph Listing:

Allan Brock, Deputy Attorney General, provided some background on superfund law and the Triumph listing. Mr. Brock said there is not a lot to add to what has been said here, however, it is fairly clear that a current owner of the property upon which there is a release or a threatened release of a hazardous substance is liable and they will be liable regardless of when or how that property became contaminated. Assuming the listing is justified, and given that the state does own some property where there are some tailings, he would counsel to seek a solution outside the courtroom and seek to get this site cleaned up as soon as possible.

### Board Discussion:

Governor Andrus invited discussion by the board.

J. D. Williams commented that his initial impression from the presentations of the local people was that because there had been no manifestation of health problems to date in the area, that it was improper for EPA to make the proposed designation. However, he thinks from this presentation that it is the potential problem that has to be looked at. He thinks it is time to solve the problem and he has heard there have been few, if any, successful challenges under similar circumstances to EPA action. He thinks it is time to take the lead on it and to get some relief to those people up there.

Jerry Evans said this situation must be dealt with one way or another, but the board does not have the ability to spend money that has not been appropriated.

Mr. Cenarrusa said it is time for the state to take some leadership in this. The state is a PRP, and he thinks all the PRPs should get together and try to work this out. The residents there are seeking advice and help and they are under great stress.

### Motion:

Larry EchoHawk made the motion to direct the Department of Lands and legal counsel to take all actions necessary to represent the Land Board regarding the Triumph mine superfund listing, including but not limited to, responding to any administrative or legal proceedings and representing the board in any settlement negotiations. The board specifically encourages any action that will lead to a timely and economically sound clean-up of the site.

J. D. Williams seconded the motion.

Mr. EchoHawk said that he feels the board should prepare and submit comments within the timeframe that is allowable. The state should move quickly to identify PRPs that may need to be joined in this process and that the state ought to take control of this process. There are some things that the state could do immediately to mitigate in that area, and he thinks it is vital to keep the public informed about what the state is doing, specifically, the citizens that live in that area. Those people need to be informed and involved in the process, and include the legislative leaders because appropriations will be

needed at some point to meet the obligations. In the process of keeping people informed, the board should consider status reports almost on a monthly basis as we move ahead.

Governor Andrus inquired if it was implicit in the motion to move ahead immediately to meet with the already designated PRPs that have been officially notified by EPA. Mr. EchoHawk said that it was.


The motion passed unanimously.

With no further business to come before the board, the meeting was adjourned.

**STATE BOARD OF LAND COMMISSIONERS**

  
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President, and Governor of the State of Idaho

Countersigned:

  
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Secretary of State

  
\_\_\_\_\_  
Director

