INLAND EMPIRE PUBLIC LANDS COUNCIL

TRANSITIONS

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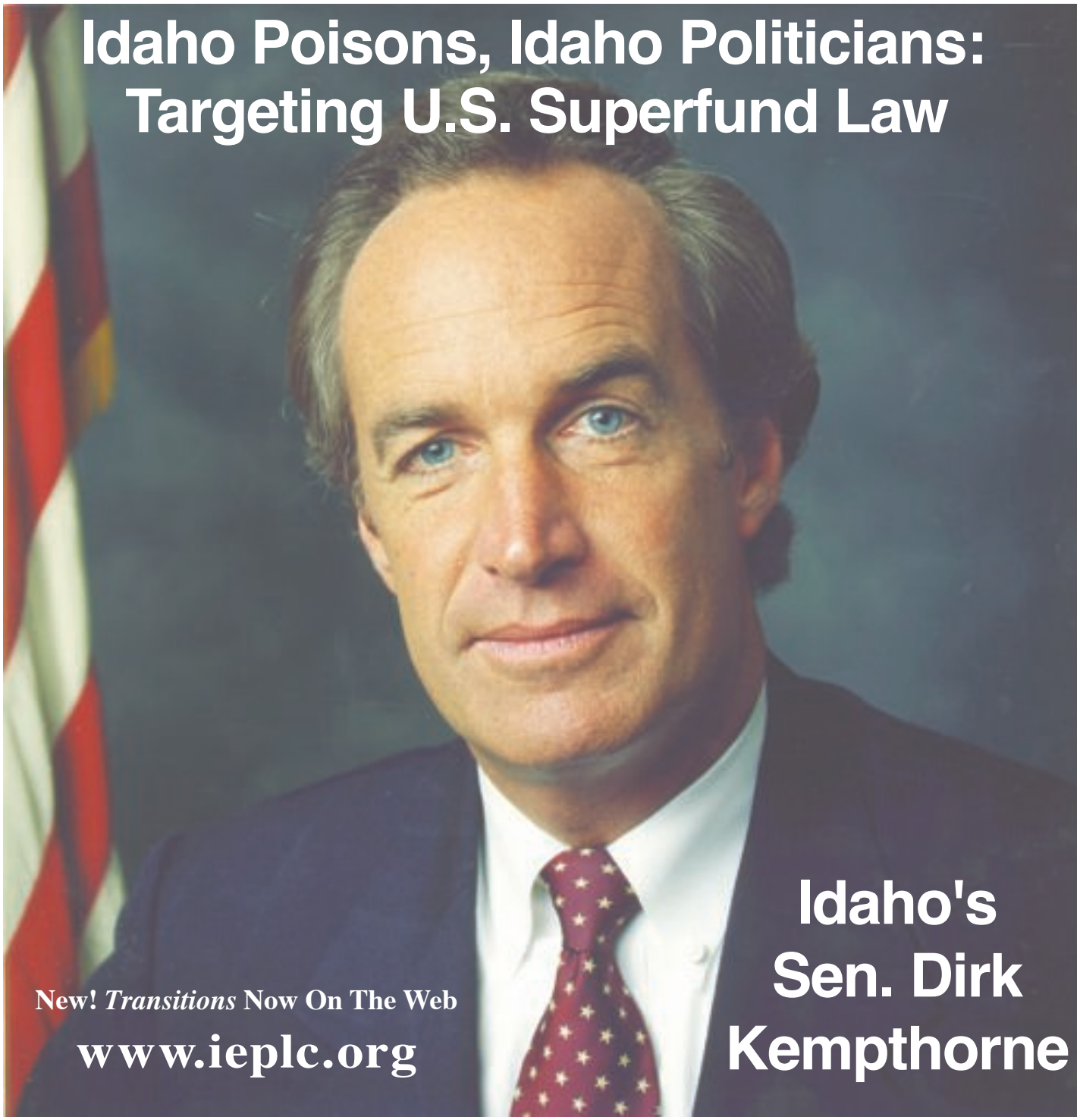

Idaho Poisons, Idaho Politicians: Targeting U.S. Superfund Law

Idaho's Sen. Dirk Kempthorne

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***TRANSITIONS* – Journal of the IEPLC**

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Targeting U.S. Superfund Law

by John Osborn, M.D.

In 1980, responding to the poisoning of communities such as New York's Love Canal, Congress enacted Superfund (or CERCLA, the Comprehensive Environmental Response, Compensation, and Liability Act) to clean-up industrial toxins and make polluters pay. Across America efforts to clean up thousands of toxic sites now may be jeopardized. For years Idaho politicians have assisted mining corporations to evade responsibility for cleaning up their mine wastes in the Coeur d'Alene River Valley. Now they are attempting to eviscerate Superfund nationwide.

"Local control" is frequently trumpeted by politicians as a reason to transfer clean-up authority from EPA to state government. But Coeur d'Alene is hundreds of mountainous miles north of Boise. In Boise corporate lobbyists write the laws. The governor is, at best, a wobbly backstop to protect the public interest. For the half million people in Washington and Idaho who live downstream from the mines, local control will not be achieved by transferring clean-up authority to Boise.

Idaho's attacks on Superfund law come at a time when a comprehensive clean-up of the Coeur d'Alene — and assigning clean-up costs to polluting corporations — are moving forward.

For almost a century the Boise-based state government milked the riches of the Coeur d'Alene for state coffers and looked the other way as mining companies dumped 165 billion pounds of toxic mine waste into the waters of the Coeur d'Alene. Lead has poisoned hundreds of children, killed thousands of swans, and other wildlife and fish. Lead, cadmium, zinc, and other poisons now wash from Idaho into Washington.

In 1983 EPA used CERCLA to protect people from the mine wastes by establishing the 21-square-mile Bunker Hill Superfund Site. Clean-up has focused on this arbitrary "box," largely ignoring the rest of the polluted river system that stretches 150 miles from the Montana stateline across north Idaho, through Spokane to the Columbia River.

In 1983 Idaho Attorney General Jim Jones filed a Natural Resource Damage lawsuit (under CERCLA) against mining companies for $50 million for estimated clean-up costs outside the Superfund "box." In the Legislature, money necessary for the lawsuit curiously disappeared from budget bills. In 1986 Idaho settled with mining corporations for $4.5 million. Coeur d'Alene clean-up costs are now estimated from $600 million to $1 billion.

In 1986 Idaho Senator Jim McClure persuaded the Reagan Administration to appoint a small-town Idaho attorney, Robie Russell, to lead EPA in the Pacific Northwest (Region 10). Russell used his federal authority to block his own EPA staff from cleaning up the Superfund box, thereby buying time for corporate interests to conduct salvage operations and transfer assets. Just before a damning Inspector General's report was issued in 1990, Russell resigned. McClure left the U.S. Senate the same year, and now hires out as a lobbyist and board member to mining corporations and others.

In 1996 Idaho Senator Larry Craig, the highest mining-PAC-paid member of Congress, introduced a bill for the Coeur d'Alene. This bill allows the polluting mining companies to escape liability by transferring clean-up authority from EPA to Idaho State government. Idaho State does not assume liability for clean-up costs. Under Craig's bill, no one — the polluting companies, the State, or the federal government — has a duty to clean up the pollution.

In early 1997 Idaho Senator Dirk Kempthorne co-sponsored Craig's Coeur d'Alene bill. By October he went further. Kempthorne, as an influential member of the Senate committee responsible for Superfund reauthorization, stated his intention to use the Coeur d' Alene as a model for changing the nation's Superfund law. This transfer of clean-up authority to Idaho state government is visible in legislation now before Congress.

Idaho's attacks on Superfund law come at a time when a comprehensive clean-up of the Coeur d'Alene — and assigning clean-up costs to polluting corporations — are moving forward. In the Coeur d'Alene Idaho State government continues to act as a corporate agent rather than as protector of the public interest.

(1) Idaho Poisons: U.S. Superfund Law

Superfund reform has groups edgy

It'll boost cleanup, lawmakers say; others fear weaker rules

By Susan Drumheller
Staff writer

COEUR d'ALENE—Soon after Labor Day, lawmakers returning to Washington, D.C., plan to tackle one of the top Republican priorities for this session—Superfund reform.

The lawmakers behind reform efforts claim their intent is to divert money from litigation into cleanup.

But local environmental groups and an attorney for the Coeur d'Alene Tribe fear the reform package will undermine current efforts to bring cleanup to the Coeur d'Alene Basin.

"After over a hundred years of heavy metals mining contamination of the Coeur d'Alene Basin, the only cleanup efforts undertaken to date have been brought about through the federal Superfund law," said Michele Nanni of the Inland Empire Public Lands Council.

"Now they want to weaken or eliminate these tools," Nanni said.

Reform legislation is moving more quickly in the Senate than in the House. The Senate has a hearing scheduled for Sept. 4 in the Environment and Public Works Committee, of which Sen. Dirk Kempthorne, R-Idaho, is a member. The committee is expected to vote on the bill soon after that, which means it could be on the Senate floor early this fall.

Staff members for committee Chairman John Chafee, R-R.I., won't reveal what the latest version of the Superfund bill says, but controversial provisions, such as limiting the liability of polluters, still are on the table, said a Chafee spokesman.

Nanni and Coeur d'Alene tribal attorney Howard Funke are concerned that lawmakers will try to eliminate the "interim loss" provision in the law. That provision holds polluters liable for the time that the public is denied enjoyment of the resources damaged.

"That's a standard target" of the Republicans, she said. "Superfund has been very powerful in getting companies to improve their pollution control and output. When you don't have those kinds of hammers and tools, it becomes business as usual."

The Coeur d'Alene Tribe and the federal government each are suing several mining companies in the Coeur d'Alene Basin for resource damages under the Superfund law.

Superfund reform language that came out of Idaho Rep. Mike Crapo's office has the tribe and Nanni particularly concerned.

The proposal limits the type of damages that can be claimed, calls for a $50 million cap on liability of all responsible parties, and is retroactive to litigation in progress.

"This is an attempt to gut the Natural Resource Damage claims brought by the tribe, plain and simple," Funke said.

Crapo spokeswoman Susan Wheeler said that judgment was premature, but she would not share the new proposal Monday.

In general, she said, "It's the intention to put more money into actual cleanup instead of litigation."

– 1905 –

PROTECT FROM TAILINGS

Senator Dubois Gets Department of Agriculture to Act.

Investigation Along the St. Maries River in the Coeur d'Alenes is Ordered.

WASHINGTON, D.C. FEB. 13.—The agricultural department, at the request of Senator Dubois, has today ordered a scientific investigation regarding the effect of mine tailings on the lands along the St. Maries river in the Coeur d'Alene mining district.

It is claimed that the various chemicals used by these mines in connection with their work, and deposited along the river banks, have proved most disastrous to all vegetable matter, and that during years past has caused the poisoning of thousands of cattle.

Senator Dubois said today that there is heavy litigation pending in the Idaho courts as the result of these foreign deposits along the St. Maries river and that something must be done for the protection of property holders in that vicinity. This, he believes, will be done after the department of agriculture makes a report of its findings.

— 1997 —

Make Corporate Polluters Pay

The Post's May 5 front-page article "Toxic Legacy Threatens Towns a World Apart" suggests that the enormous job of reclaiming Idaho's Silver Valley is being undermined by Superfund's liability system. That's not the problem. The problem is that the corporations that polluted the valley are balking at the requirement that they clean up the 21-square-mile Superfund site and restore damaged natural resources throughout the 1,500-square-mile Coeur d'Alene River Basin.

After extracting $5 billion in treasure from the valley, corporate polluters want to limit their liability. Thus, they are blaming other corporate polluters and the U.S. government. That's not a sign of weakness in the Superfund program. Rather, it's a sign of corporations deciding to fight in court rather than fix the damage they did to public health and the environment.

Since 1980 corporate polluters have opposed the simple proposition that they, and not the taxpayer, should be responsible for cleaning up pollution they caused. While legitimate reforms can improve Superfund's liability system and reduce litigation, letting corporate polluters off the hook is not one of them.

Administrative reforms initiated by the EPA have rectified some problems. I support codifying these in law and establishing a fairer distribution of costs among polluters who agree to do the cleanup and forgo litigation. Congress should not, however, absolve polluters of their cleanup responsibilities. This would deprive the cleanup program of billions of dollars, slow efforts to protect the public health and environment and unfairly shift the burden to innocent taxpayers.

FRANK R. LAUTENBERG
U.S. Senator (D-N.J.)
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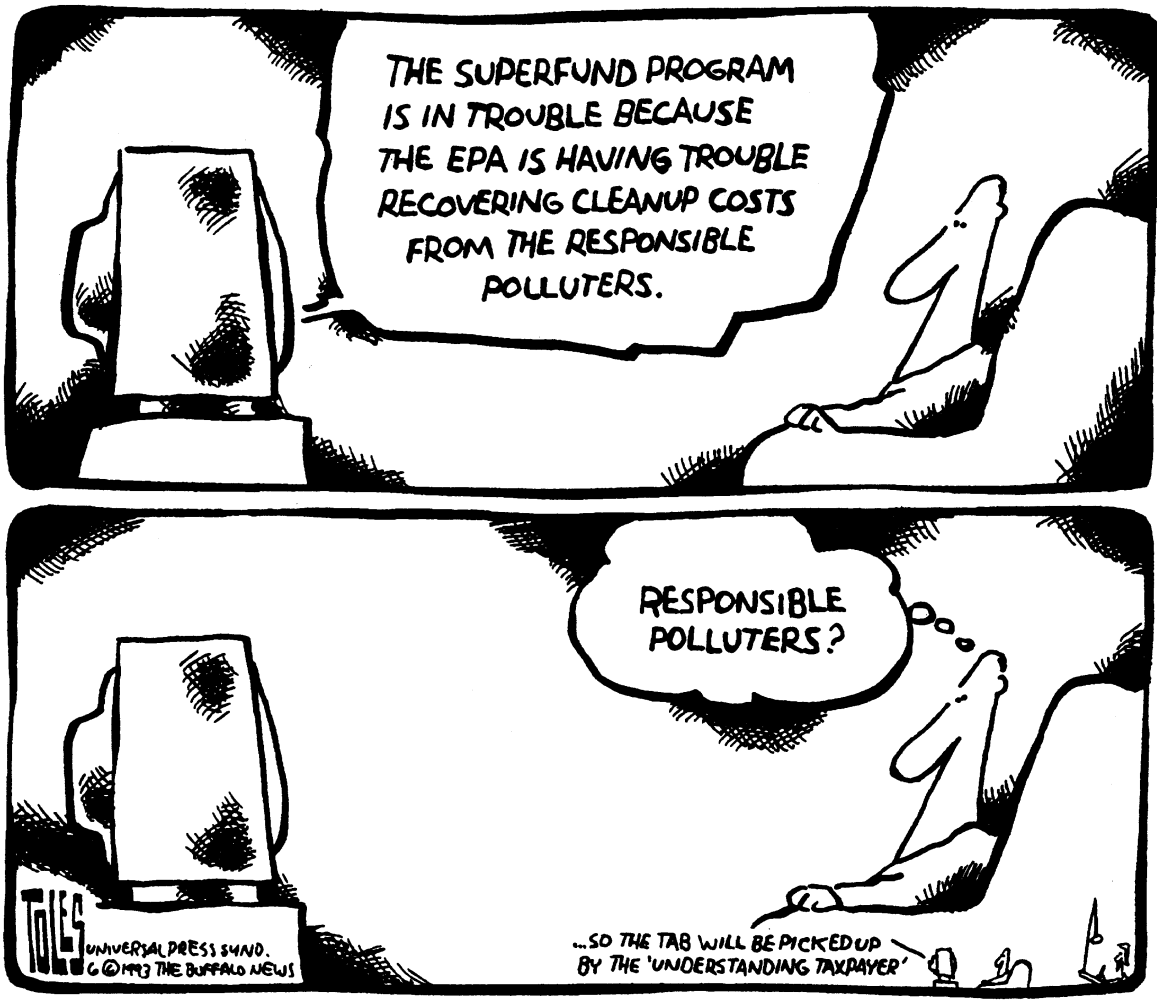

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U.S. SENATE FLOOR DEBATE

September 18, 1997
Dept. of the Interior and Related Agencies Appropriations Act, 1998

[excerpts]

Mr. BUMPERS. ... First of all, I want to make an announcement to the 262 million American people who know very little or nothing about this issue. The first announcement I want to make today is that they are now saddled with a clean-up cost of all the abandoned mining sites in the United States of somewhere between $32.7 and $71.5 billion. Now, let me say to the American people while I am making that announcement, you didn't do it, you had nothing to do with it, but you are going to have to pick up the tab of between $32 to $71 billion.

The Mineral Policy Center says there are 557,000 abandoned mines in the United States. Think of that—557,000 abandoned mines, and 59 of those are on the Superfund National Priority List. Mining has also produced 12,000 miles of polluted streams. ...

This came out of the *New York Times* two days ago. It is a shame that every American citizen can't read this. It's called "The Blame Slag Heap."

"In northern Idaho's Silver Valley the abstractions of the Superfund program—'remediation,' 'restoration,' 'liability'—meet real life. For over a century, the region's silver mines provided bullets for our soldiers and fortunes for some of our richest corporations. The mines also created a toxic legacy: wastes and tailings, hundreds of billions of pounds of contaminated sediment.

"In 1996—13 years after the area was declared the nation's second-largest Superfund site, the Justice Department filed a $600 million lawsuit against the surviving mining companies. The estimated cost of cleanup ranges up to a billion dollars. The Government sued after rejecting the companies' laughably low settlement offer of $1 million."

A $1 billion cleanup, and the company that caused the damage offers $1 million to settle.

The companies, however, have countersued.

They are countersuing the Federal Government, and do you know what they allege? They say it happened because the U.S. Government failed to regulate the disposal of mining wastes.

Can you imagine that? The company is suing the Government because the Government didn't supervise more closely. The story closes out by saying, "Stop me before I kill again."

Mr. President, I ask unanimous consent the article from *The New York Times* be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

The New York Times
September 16, 1997

THE BLAME SLAG HEAP

BY MARK SOLOMON

SPOKANE Wash.

In northern Idaho's Silver Valley, the abstractions of the Superfund program — "remediation", "restoration," "liability" —meet real life.

For over a century, the region's silver mines provided bullets for our soldiers and fortunes for some of our richest corporations. The mines also created a toxic legacy: wastes and tailings, hundreds of billions of pounds of contaminated sediment, leaching into a watershed that is now home to more than half a million people.

In 1996,13 years after the area was declared the nation's second-largest Superfund site, the Justice Department filed a $600 million lawsuit against the surviving mining companies. The estimated cost of the cleanup ranges up to a billion dollars. The Government sued after rejecting the companies' laughably low settlement offer of $1 million. If the companies don't pay, the Federal taxpayers will have to pick up the tab.

Idaho mining's hypocrisy defense.

The companies, however, have countersued, alleging, among other things, that the Government itself should be held responsible. Why? Because it failed to regulate the disposal of mining wastes.

Do I believe my ears? In this era of deregulation, when industry seeks to replace environmental laws with a voluntary system, are the companies really saying that if only they had been regulated more they would have stopped polluting? I've heard the Government blamed for a lot of things, but regulatory laxity was never one of them — until now.

– continued on page 7

In fact, Idaho's mining industry has long fought every attempt at reform. In 1932, for example, a Federal study called for the building of holding ponds to capture the mines' wastes. The companies fought that plan for 36 years, until the Clean Water Act forced them to comply.

Now Congress is debating the reauthorization of the Superfund, and industry wants to weaken the provision on damage to natural resources. If the effort succeeds, what will happen in 50 years. Will the polluters sue the Government, blaming it for failing to prevent environmental damage?

Quick, stop them before they kill again.

Mr. CRAIG. Will the Senator yield specifically to his last comment?

Mr. BUMPERS. I yield for a question.

Mr. CRAIG. Does the Senator know about the new science that comes out of the study of the Superfund site in Silver Valley, ID? Does he understand also that mediation on the Superfund is now tied up in the courts — conducted by the State of Idaho — that has really produced more cleanup and prevented more heavy metals from going into the water system, and the value of that? Does he also recognize that the suit filed by the Attorney General was more politics and less substance?

A $1 billion cleanup, and the company that caused the damage offers $1 million to settle

Mr. BUMPERS. That is a subjective judgment, is it not?

Mr. CRAIG. I believe that is a fact. Thank you.

Mr. BUMPERS. Is it not true that the company has countersued the Federal Government saying, "You should have stopped us long ago"? Isn't that what the countersuit says —"You should have regulated us more closely"?

Mr. CRAIG. But the countersuit says that based on today's science, if we had known it then, which we didn't — you didn't, I didn't, and no scientist understood it — then we could have done something different. But as of now this is not an issue for mining law; this is an issue of a Superfund law that doesn't work, that promotes litigation. That is why the arguments you make are really not against mining law reform, which you and I support in some form. What you are really taking is a Superfund law that is tied up in the committees of this Senate, is nonfunctional, and produces lawsuits.

Mr. BUMPERS. Can you tell me where the Superfund law says if you were ignorant of what you were doing and caused the damage, you are excused? Do you know of any place in the Superfund where there is such language as that?

Mr. CRAIG. What I understand is we have a 100-year-old mine where we are trying to take today's science and, looking at it based on your argument, move it back 100 years. We should be intent on solving today's problems and not arguing 100 years later.

Mr. BUMPERS. Is the State of Idaho willing to take over this cleanup site and absolve the U.S. Government of any further liability?

Mr. CRAIG. My guess is that the State of Idaho with some limited assistance would champion that cause.

I have introduced legislation that would create a base of authority. We believe it would cost the Federal Government less than $100 million. The State would work with some matching moneys. They would bring in the mining companies and force them to the table to establish the liability. Guess what would happen, Senator. We would be out of the courts. Lawyers would lose hundreds of thousands of dollars in legal fees. And we would be cleaning up Superfund sites that have been in litigation for a decade, by your own admission and argument.

Mr. BUMPERS. Senator, the U.S. Government has sued this company for $600 million. The Government estimates that the cleanup cost is going to be $1 billion. The Senator comes from the great State of Idaho, and I am sure they don't enjoy ingesting cyanide any more than anybody else in any other State would.

But the Senator would have to admit that Idaho couldn't, if it wanted to, clean up, this site. It doesn't have the resources. It is the taxpayers of this country that are stuck with that $1 billion debt out there with a company which brashly says, "If you would have regulated us closer, we wouldn't have done it." That is like saying, "If you had taken my pistol away from me, I wouldn't have committed that murder."

Mr. CRAIG. If you would yield only briefly again — I do appreciate your courtesy — there is not a $1 billion price tag. That is a figment of the imagination of some of our environmental friends. There is no basis for that argument. There isn't a reasonable scientist who doesn't recognize that for a couple hundred million dollars of well-placed money, that problem goes away. But, as you know, when you involve the Federal Government, you multiply it by at least five. That is exactly what has gone on here.

I will tell you that for literally tens of millions of dollars, the State of Idaho, managing a trust fund, has shut down more abandoned mines, closed off the mouths of those mines, and stopped the leaking of heavy metal waters into the Kootenay River, and into the Coeur d'Alene, and done so much more productively, and it has not cost $1 billion. Nobody in Idaho, including our State government, puts a $1 billion price tag on this.

This is great rhetoric, but it is phony economics.

Mr. BUMPERS. Mr. President, let me just say to the Senator from Idaho that my legislation for 8 long years has been an anathema to him. I am not saying if I were a Senator from Alaska, Idaho, or Nevada I wouldn't be making the same arguments.

But I want to make this offer. It is a standing offer. If the State of Idaho will commit and put up a bond that they will clean up all those abandoned mine sites in that State, that they will take on the responsibility, and do it in good order, and as speedily as possible, I will withdraw my amendment. I don't have the slightest fear. We all know that this is a Federal problem. It is a Federal responsibility to clean up these mine sites. The only way we can do it is to get some money out of the people who got the land virtually free and who have left us with this $30 billion to $70 billion price tag.

(2) Idaho Poisons: Children, Swans, Washington Waters

Lead poses risk across CdA basin

Tests find elevated levels outside Superfund site

By Susan Drumheller
Staff writer

CATALDO, Idaho — Yard soil, dust and paint pose a risk of lead poisoning throughout the Coeur d'Alene River basin outside the Superfund site, according to test results released Wednesday night.

The study shows that some of the most contaminated yards were found in Burke Canyon, Mullan, Osburn and Wallace.

By notifying the public of the widespread contamination in household dust and lawns, officials hope residents who didn't have their children's blood tested last year will bring their children in for blood tests scheduled next week.

widespread contamination in household dust and lawns

Burke Canyon had the highest percentage of yards and household dust containing dangerous levels of lead. The average household there had about four times the amount of lead in dust that federal guidelines consider safe.

One home in Wallace had dust measuring 47,626 parts per million — 47 times higher than federal guidelines. A yard in Mullan had more than 20 times the amount considered safe.

While advising one resident that the results from his sod didn't indicate a need to replace his yard, a state official acknowledged that no amount of lead is healthful.

"Clearly, the lower down you get, the better off you are," said Dick Schultz, a state health administrator. "There's not really a threshold above which everything goes to hell in a handbasket."

The Coeur d'Alene basin health study was conducted by the state Department of Health and Welfare with a grant from the federal Agency for Toxic Substances and Disease Registry.

Earlier this year, the state released information from blood and urine tests taken last summer.

Now, analysts will look at all the results and see whether there's a direct relationship between contaminated household environments and high lead or cadmium levels in residents.

no amount of lead is healthful

A final report is several months away.

The survey was conducted in the basin from the Idaho/Montana border to Lake Coeur d'Alene. Although 815 households participated in soil sampling, researchers didn't get a large number of blood samples from young children, the population most at risk from lead poisoning.

Lead poisoning in children can cause brain damage and other health problems.

"We had a real good solid environmental sampling, but some people said, 'Show me the problem before I put my kids through this,'" said Jerry Cobb of the Panhandle Health District.

State researchers counted 231 children under the age of 6 in the basin last summer, but only 47 had their blood tested. Of those, seven children, or 15 percent, had elevated blood lead levels.

Burke Canyon, the lower basin and Nine Mile Canyon had the highest proportion of children with elevated blood lead levels, but officials aren't sure whether that's representative of the entire basin.

Schultz said the concern was that the children tested were atypical: "That the parents who are most concerned, and have the cleanest kids, brought their kids in to be tested."

Children could be exposed by breathing or eating lead-tainted dirt, or drinking contaminated water.

Very few homes had water that exceeded drinking water standards.

Other sources could be old paint that contains lead. The study found 44 percent of 748 homes tested with lead exterior paint and 30 percent with lead interior paint.

Elevated blood lead levels have been found for years inside the 21-square-mile Bunker Hill Superfund Site, where a now-defunct lead smelter released lead into the air at record levels in the '70s. Yards inside the Superfund site with more than 1,000 parts per million lead are being replaced with clean dirt.

The lead problem elsewhere in the basin is primarily from mine tailings, which have washed downstream over the decades and up into some yards during floods.

Mining industry experts contend that lead in tailings is not as easily absorbed as the lead from the smelter emissions.

Yet mining officials have approached the state and the Environmental Protection Agency to propose helping with the intervention and education of families with lead-poisoned children in an effort to reduce lead exposure.

"The mining companies want to get this resolved as much as everyone else," said Holly Houston, spokeswoman for mining companies.

The 1996 survey was the first to examine whether the tailings pose a health risk in the basin.

"It's the first time we actually have a good solid data base," Cobb said. "Now we have to find the money to fix it."

A second meeting to explain study results is scheduled for 7 p.m. today at the Silver Hills Middle School in Osburn.

Ill effects of lead on kids traced

A Silver Valley childhood in '70s means poorer health, study finds

By Craig Welch
Staff writer

KELLOGG—Adults exposed to poisonous levels of lead as children here now suffer reduced nerve function, neurological problems and infertility at higher rates than other adults.

Former Silver Valley children also report more cases of anemia, arthritis and urinary tract conditions—problems often linked to lead exposure.

Silver Valley residents did poor on tests showing how well the nervous system worked.

These are the results of a long-awaited federal study of adults who were age 9 or younger in Shoshone County in the mid-1970s.

The study, released Wednesday, is the first to examine actual health effects of people who were kids in Pinehurst, Kellogg, Smelterville and Wardner when toxic mining-related lead and zinc emissions were at their highest.

Health experts long have suspected growing up in the shadow of the Bunker Hill mine could lead to a legion of mental and physical disorders.

Previous studies, however, merely documented high lead exposure and risks.

Silver Valley kids face ... maladies linked to lead exposure during childhood development.

"It's certainly significant," said Jerry Cobb, who supervises lead monitoring in the Silver Valley. "It shows there are problems suffered by those people."

Scientists with the federal Agency for Toxic Substance and Disease Registry last year tracked 1,466 current and former lead-exposed valley residents and interviewed 917. More than 280 of them were taken to Spokane and subjected to a battery of surveys and medical tests.

Investigators evaluated motor skills, coordination, vision, vocabulary and sensitivity to vibration. They tested kidney and nervous system functions and interviewed participants about other medical conditions. A similar group of Spokane residents was tested for comparison.

The more lead, the poorer the performance in cognitive tests.

"They had us recall number sequences, they did balance tests and they shocked us to check our response time," said Cal Davis, 30, of Pinehurst. "I thought I did pretty good."

As a group, the Silver Valley residents — who as kids had lead levels four to eight times higher than what's now considered safe — did poor on tests showing how well the nervous system worked.

Twice as many Silver Valley residents — 43 percent — reported experiencing five or more neurological disorders such as reading, memory or concentration problems. The Silver Valley group also performed worse on grip tests, was less able to feel vibrations and had more difficulty identifying missing pieces of visual patterns than the other group.

The same held true for infertility. While 4 percent of the Spokane group reported being unable to conceive, the rate jumped to 10 percent for Silver Valley residents.

Interpreting the results is difficult.

Researcher Lynette Stokes, an Atlanta-based epidemiologist would not say the Silver Valley kids faced lead-related "sicknesses." She characterized the maladies as "effects" linked to lead exposure during childhood development.

"Each of these effects is not an illness," she said. "An individual who can't feel a vibration is not sick."

But the study did indicate the Silver Valley group more often faced learning and retention problems.

"The more lead, the poorer the performance in cognitive tests," she said.

For Davis, who lives on disability payments, sees specialists for sleep disorders and can't concentrate long on anything, the study answered nagging questions.

"You pick up a magazine, you read that these things are all related and you wonder 'is that what's wrong with me?'" Davis said. "I think now that that's some of it."

But others, like Brenda Woodbridge, 29, aren't sure what to conclude.

Woodbridge lives in Seattle, is healthy and not worried that her childhood in lead-exposed Pinehurst might haunt her.

"With cancer and everything else out there these days, it's out of my control," she said.

But she thinks of her younger brother and his learning disabilities.

He was born in 1974, after a smelter fire that kicked off the worst period of pollution in Pinehurst.

She found him in bed as a child, crying about how kids and teachers "thought he was dumb."

"That's pretty upsetting, having somebody close to you, and having to wonder if something could have caused that," she said. "But there's never a way to prove it."

Mine waste suspected in bird deaths

Wildlife service has collected 311 carcasses, the most since 1953

By Susan Drumheller
Staff writer

COEUR d'ALENE—Record numbers of dead birds are turning up this year along the lower Coeur d'Alene River, and mining pollution has been fingered in several deaths.

As of June 9, the U.S. Fish and Wildlife Service has collected 311 dead birds and another 11 mammals and reptiles. Of 18 birds tested, 14 died of lead-poisoning unrelated to lead shot or sinkers.

Test results on another 80 or more birds won't be available until late July, said Dan Audet, wildlife service biologist.

A Monday press release on the waterfowl deaths had mining representative Holly Houston crying foul.

"It seems to me like they're trying to scare the public," Houston said of the agency. "Just because it's a dead bird doesn't mean it's been leaded."

The agency released preliminary results because of public requests for information about the deaths, Audet said. Some residents who had helped collect the animals wanted to know what killed them, he said.

More dead animals have been recorded so far this year than any time since 1953, when 200 dead tundra swans and 115 Canada geese were collected by state wildlife agents.

So far this year, 170 dead tundra swans have been collected, 93 Canada geese, 26 mallards and 22 other ducks.

Audet attributed the high number of deaths to a larger number of birds migrating through the area this year, and the availability of more waterfowl habitat because of high water.

The majority of animals were collected before May's flooding, he said.

Many were discovered in areas known to have high concentrations of lead. Swans and some other types of waterfowl ingest lead-laced sediment as they feed in the wetlands.

"We still have a substantial problem in the Coeur d'Alene Basin with lead poisoning," Audet said. "It doesn't seem to be getting any better."

Houston said one reason it's not getting better is that federal agencies and the Coeur d'Alene Tribe are spending money on studies and litigation instead of cleanup.

The wildlife agency is a party to the multimillion-dollar federal lawsuit against mining companies for the loss of natural resources in the Coeur d'Alene Basin due to heavy metal pollution from historic mining practices.

High water churns up lead in lake

Panhandle health official warns against drinking untreated lake water

By Susan Drumheller
Staff writer

COEUR d'ALENE—Spring's high waters have stirred up lead in the turbid waters of Lake Coeur d'Alene, posing a health concern for people who drink directly from the lake, environmental health officials said Tuesday.

The state Division of Environmental Quality received lab results Tuesday from several samples taken this month around Lake Coeur d'Alene.

In Carlin and Mica bays, raw samples from the lake showed lead levels that exceeded drinking water standards, according to agency.

Lead is a toxin that can cause developmental and behavioral problems in children.

Samples of tap water from lakeside water systems showed no detectable levels of lead, except for one. That one is a summer camp at Mica Bay that uses a cartridge filtration system.

"The water systems that have good filtration are taking all the lead out," said Steve Tanner, water quality specialist for the agency.

– continued ***Lead In Lake****, page 12*

Warning: contents can be hazardous

North Idaho College student Kym Morrison studies for final exams at an NIC beach picnic table surrounded by high water.
Jesse Tinsley/The Spokesman Review

Spokane River toxics traced to Silver Valley

Mining industry takes issue with results of USGS heavy metals test

By Karen Dorn Steele
Staff writer

The heavy metals pollution moving into Washington in the Spokane River is definitely from Idaho's Silver Valley, the U.S. Geological Survey said Monday.

Measurements taken in the river at Post Falls during this spring's peak runoff show that Lake Coeur d'Alene is an "inefficient trap" for many of the metals traveling downstream from Kellogg and Cataldo, the agency said in a new report.

On May 22, some 8.5 tons of zinc, 1.65 tons of lead and one-third of a ton of copper were measured, according to the report.

The metals were both dissolved in the river water and trapped in sediment moved downstream by unusually heavy flows. This year's runoff, with its high concentrations of metals, is "unusual" but likely to reoccur every 10 years, the agency said.

While they don't violate drinking water standards, the contaminants "substantially exceed" what's considered safe for aquatic life—and are dramatically higher than heavy metals in rivers not polluted by mining, said Paul Woods of the Geological Survey.

The agency did a computer analysis of rivers without mining activities to get a "background" heavy metals figure, said Woods, a water quality expert in Boise.

The Spokane River last May had 30 times more zinc, 26 times more lead and 1.6 times more copper than an unpolluted river, he said.

The agency's test results are in accord with new river data released last week by the Washington Department of Ecology.

The tests don't show the river's overall water quality is bad and don't prove that the pollution is coming from mines in the Silver Valley, said Laura Skaer of the Northwest Mining Association.

"I think it's still speculation as to how much of these metals are contributed by mining and by the Superfund site, and how much is natural runoff," she said.

The mining group supports a comprehensive river study, Skaer said.

"We don't oppose that. But I'd like to see what the results are in the summertime, in the fall, and when we have non-flood events. They are still comparing a short-term event with long-term exposure, and I think there's a leap of logic there," she said.

Woods is convinced the Bunker Hill Superfund site is causing the pollution.

The site is a 21-square-mile area polluted by the now-defunct Bunker Hill lead smelter.

It's undisputed that recent floods have carried tons of lead into Lake Coeur d'Alene: 68 tons in one day in February 1995; 500 tons during record floods in February 1996.

But until recently, when both the USGS and the comprehensive efforts to test the Spokane River, the extent of downstream pollution wasn't well tracked.

Between 1991 and 1992, Lake Coeur d'Alene trapped 42 percent of the lead and 32 percent of the zinc carried into it, primarily from the Coeur d'Alene River, the Geological Survey said.

The agency's Spokane River measurements are the first in a 10-year federal study of rivers in the Northern Rockies under the National Water Quality Assessment Program, one of 59 river systems under study nationwide.

In 1996, when heavy floods washed 500 tons of lead into Lake Coeur d'Alene, USGS didn't have the money to take Spokane River measurements, Woods said.

That year, the river was running at 50,000 cubic feet per second. This year, it was running at 39,000 cfs on May 22, Woods said.

"This May was expected to be very high, but it only represented a 10-year flood," Woods said.

The agency says most of the zinc washed downstream is coming from within the Silver Valley Superfund site at Kellogg, where cleanup is under way.

But the lead isn't. It's coming from farther downstream near Cataldo, Woods said.

"We are trying to get a handle on how much remediation there should be upstream from Lake Coeur d'Alene for the Spokane River to meet water quality criteria. We are getting closer to quantifying that," he said.

Earlier this year, Gov. Gary Locke approved spending $300,000 to study pollution in the Spokane River. The study, coordinated by the state attorney general's office, may be a first step toward a Washington state lawsuit against the Idaho mining companies that polluted the Coeur d'Alene Basin.

It also could lead to a negotiated agreement to clean up the entire river basin in Idaho and Washington.

Lead In Lake – *Continued from page 10*

"Anyone who does draw water out of the lake, it would be worthwhile for them to sample their water, if they're concerned about it, or get an alternative source," Tanner said.

An estimated 2,500 people use the lake for drinking water in the summer.

The elevated lead levels are caused by sediments disturbed in the spring runoff, Tanner said. Normally, lead is not detectable in the lake's water.

After last year's flooding, health officials issued a warning against drinking untreated lake water. Boiling will not remove lead from water.

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The highest sample last year was 49 parts per billion (ppb). The federal drinking-water standard is 15 ppb. The highest concentration the state agency has found this spring is 20 ppb in Carlin Bay, Tanner said.

The state agency asked the four community water systems that draw from the lake to test their water weekly this spring, instead of the usual monthly. The water systems serve 743 residents.

The Idaho Conservation League and the Kootenai Environmental Alliance wrote a letter to Ken Lustig of the Panhandle Health District on Monday, asking that the lake water be tested daily.

"Given the seriousness of last year's situation, we feel that comprehensive, daily monitoring by professional staff is the appropriate response to this and future high-water situations," the letter reads.

Lustig and Tanner both agreed that daily monitoring is not necessary. Tanner said the concentrations probably do not change much from day to day, and the main health threat is chronic—or long-term—exposure.

No one should be drinking untreated water from the lake anyway, Lustig said. The threat of disease from microorganisms is a year-round concern, he said.

"We have advocated for years that open bodies of water should not be used as culinary water supplies," Lustig said. "It's not a prudent practice."

The state has no oversight over individuals who choose to use the lake as their source of drinking water, he added.

"People can drink out of a muddy footprint if they want to," he said. "One has to assume some responsibility to make sure you do it properly."

Lustig was more inclined to follow-up on the letter's suggestion that testing be done of the public beaches after the flood waters recede.

The health district's beach monitoring program was discontinued in 1993 because of lack of money, but even then it never tested for heavy metals.

Lustig is looking into whether some of the district's money that's now used for testing blood-lead levels in the Silver Valley can be diverted to testing lead concentrations on the beaches.

"What we're talking about here is a pathway of exposure," he said. "In the fishing access areas, we know these flood-laden sediments have heavy metal contaminants. ... Are there heavy metals in the particles that deposit on the beach?"

Children typically ingest lead when they get dirty and then stick their hands in their mouths. Toddlers are most susceptible to lead-poisoning and its long-term effects.

The source of the lead is assumed to be historic mining practices in the Silver Valley. Mining representatives point out that the concentrations of metals in the lake have dropped dramatically since the mid-'70s.

While Idaho is conducting weekly tests of Lake Coeur d'Alene, Washington state's Department of Ecology is testing the Spokane River every week for heavy metals.

"We needed to take advantage of these high flows," explained Jani Gilbert, department spokeswoman.

The testing is part of a larger effort to gather more data on heavy metal pollution in the river.

The state attorney general is contemplating a lawsuit against mining companies because of alleged natural resource damages to the river from upstream mining practices. The attorney general's office was appropriated $300,000 this year for a study of pollutants in the river.

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(3) Idaho Poisons: Jim Jones

State of Idaho v. The Bunker Hill Company, et al.

Statement of Jim Jones

regarding
The 1985 State of Idaho settlement with several mining companies
pursuant to the
state's Natural Resource Damages claim under CERCLA
at the
Bunker Hill NPL

December 30, 1997

In 1982, the area affected by mining and smelting pollution in the Silver Valley of Idaho was declared a National Priority List (NPL) site under the federal CERCLA ("Superfund") law. Included in the provisions of Superfund is the designation of federal, state, and tribal (where applicable) trustees to recover damages to the natural resources (NRD) of the affected area from the Potentially Responsible Parties (PRPs) and to apply the recovered funds to the restoration of the affected natural resources. Superfund also requires that the State match 10% of any expenditures authorized from the federal Superfund under a Record of Decision (ROD) entered by the Environmental Protection Agency (EPA) after EPA has conducted a Remedial Investigation/Feasibility Study (RIFS).

On December 9, 1983, acting in my capacity as Attorney General of the State of Idaho, I authorized the filing of a legal action against Bunker Hill Company, Gulf Resources and 500 John Does (the "Companies") to effect the trust responsibilities of the State under the NRD provisions of CERCLA. The amount claimed, $50,000,000, was an estimate and not based on an actual assessment of damages.

In 1985 I made a request to the Idaho Legislature, asking for $300,000 to assess the damages and to pursue the claim against the Companies on behalf of the trust responsibilities of the State. The request was approved by the Legislature's Joint Finance/Appropriation Committee and sent to the two chambers with a "do pass" recommendation.

The appropriation was approved in the Senate. The appropriation was not acted upon in the House. The Legislature adjourned without taking final action on funding on the litigation against the Companies under NRD.

In face of the failure of the Legislature to appropriate adequate funds to develop the NRD claim against the Companies, I elected to place the state's complaint in a holding position in the hope of attaining the requisite funding in the next Legislative session. Prior to that session, then-Governor John Evans, acting independently of the Attorney General's Office, entered into settlement discussions with the Companies utilizing his in-house counsel, attorney Pat Costello. Mr. Costello advised us that the Governor was going to settle the case with or without my concurrence. My office then participated in drafting a settlement that placed the State in the best position under these circumstances.

No assessment of the extent of the damages to the natural resources was conducted by the State prior to the settlement's finalization. The State intended to utilize the cash settlement with the Companies to satisfy all or part of the state's matching fund obligations.

[*Jim Jones was the Attorney General for the State of Idaho from January of 1983 to January of 1991. In his capacity as Attorney General, Jones was responsible for the filing of* State of Idaho v. The Bunker Hill Company, et al. *in 1983.*]

(4) Idaho Poisons: Robie Russell / Jim McClure

Damaging Influences

By Ed Hughes

When Robie G. Russell was appointed the Regional Administrator of the Environmental Protection Agency in 1986, many Idahoans were pleased.

After all, he was a former resident and University of Idaho law student. James McClure pushed hard to have Reagan appoint him and hailed the appointment as bringing "balance" to the staff. He was reappointed by the Bush Administration as Regional Administrator in 1989. Since he resigned the post on February 9, 1990, information has surfaced from federal investigations through the EPA's Inspector General's office that indicates he delayed or inadequately enforced eleven or twelve hazardous waste cleanups in three states, most notably the Bunker Hill Superfund site in the Silver Valley of north Idaho.

Under Russell's tenure as Regional Administrator of the Environmental Protection Agency, the only real "protection" was given to Bunker Limited Partnership (BLP), meaning the interests of Duane B. Hagadone, Harry F. Magnuson, Jack W. Kendrick, and R.M. MacPhee (trustee for the Magnuson family trusts).

Under Russell's tenure as Regional Administrator of the Environmental Protection Agency, the only real "protection" was given to Bunker Limited Partnership (BLP), meaning the interests of Duane B. Hagadone, Harry F. Magnuson, Jack W. Kendrick, and R.M. MacPhee (trustee for the Magnuson family trusts). These men, as Bunker Limited Partnership, bought the Bunker Hill properties, including the smelter area and the Bunker Hill mine in 1982 from Gulf Resources and Chemical Corporation.

According to the Inspector General's Special Review, Russell "would not allow" the Hazardous Waste Division (HWD) staff to order Bunker Limited Partnership (BLP) to respond to various concerns of the EPA. Further, while he "refused to allow the Hazardous Waste Division to notify Bunker Limited that they were a Potentially Responsible Party (PRP)," Bunker Limited Partnership transferred "all of BLP's assets to newly formed corporations through various stock options and property transfers."

In other words, Russell refused to comply with the "normally routine actions" of the Hazardous Waste Division (HWD) and "refused to allow HWD to notify Bunker Limited that they were a Potentially Responsible Party." Eventually, his own EPA staff secretly contacted the Agency for Toxic Substance and Disease Control, a division of the Center for Disease Control, at the site. Their results made it impossible for Russell to shirk his responsibilities any longer. By then, however, the Potentially Responsible Party of Bunker Limited Partnership had no assets with which to reimburse the Superfund for the costs of clean up. Bunker Limited Partnership assets have been manipulated, according to a lawsuit against BLP by Gulf Resources, into corporations and partnerships which have "no bona fide business purpose beyond avoidance of responsibility and insulation of assets."

This is a serious accusation because Superfund provides the initial monies up front to do its work and then is reimbursed from the responsible parties afterward. If Superfund cannot recover the costs of cleaning up the nation's largest Superfund site, we taxpayers will suffer the costs, likely to reach more than $150,000,000.

The Bunker Hill Superfund Site, listed on the National Priorities List in 1983, is one of the most complex toxic waste cleanup sites in the nation. Over a hundred years of mining and over 70 years of smelter operations have devastated Silver Valley. Concentrations of heavy metals, especially lead, remain frightening. Residues from the production of sulfuric acid, zinc oxide, and phosphate fertilizers are also among the waste. The area downwind from the smelter is largely defoliated because of the alarming acid level of the soil. The soil contains extremely high levels of lead; according to the Inspector General's report, "in some areas the lead level in the soil is so high that it could be mined."

Since the local health department first tested the blood-lead level of local children in 1974, the necessity of addressing the cleanup of toxins has been well known to HWD, as have the attitudes of the corporate owners. Gulf Resources and Chemical Corporation purchased the mine, the smelter complex, and the central impoundment area in 1968. Then throughout the 1970's its Bunker Hill Company established what the Inspector General's report called a "history of noncompliance and obstructionism toward HWD's efforts to enforce air emission regulations."

Surprisingly, the staff at HWD "did not anticipate a continuation of these (obstructive and delaying) tactics" after the Bunker Limited Partnership purchased the Company in November of 1982. Because the president of BLP, Jack Kendrick, had also been the president of the old company, they probably should have. Given what occurred over the last half of the 1980's it is certain they should have.

In July of 1985, the Hazardous Waste Division staff learned through a newspaper advertisement that Bunker Limited was disposing of material and equipment located in and around the smelter. Concerned about health hazards, they requested a meeting. Bunker Limited denied the request and insisted it was not engaged in an extensive salvage operation. In late 1987, HWD learned that

this was untrue when a staff member observed a salvage company "removing large quantities of railroad ties and rails" from the smelter complex. Three of the ties were tested and one revealed 589,286 parts per million of lead. These ties are rumored to have been sold to landscape companies in Spokane; some were reportedly offered to the Kellogg Ernst Store. Subsequent visits to the area revealed huge holes in the sides of the smelter complex where equipment had literally been ripped from the building, apparently for salvage.

Why did it take two years for this deceit to emerge? Robie Russell, the man who both Senator James McClure and BLP President Jack Kendrick claimed, "added balance to the staff," is part of the answer. Apparently, the balance he provided was the dead weight that keeps a seesaw standing still. Hazardous Waste Division Director, Charles Findley, told the Inspector General's office that while it was routine to inform the Regional Administrator (Russell) of the status of each Superfund site, it was not normal to require that he approve such documents. However, several members of the HWD staff said Russell "took an unusual interest" in the Bunker Hill Superfund "and gave verbal orders that no document could be issued or action taken relative to this site without his prior approval."

In late 1987 ... a staff member observed a salvage company "removing large quantities of railroad ties and rails" from the smelter complex. Three of the ties were tested and one revealed 589,286 parts per million of lead. These ties are rumored to have been sold to landscape companies in Spokane ...

Russell's unusual interest in the Bunker Hill Superfund Site, combined with his stated belief that problems could be resolved through "informal negotiations," meant that known problems were neither properly addressed nor sensibly solved.

A classic example, the response to HWD concern was raised by an October, 1986, fire in the lead smelter facility. In November, 1986, the HWD staff drafted an administrative order to require Bunker Limited to take action to minimize the potential for fire and ensure adequate fire fighting capability at the facility. Russell suggested an "informal" response, that they call BLP officials to negotiate an agreement. However, on December 2, 1986, Hazardous Waste Division Director, Charles Findley, "formally" requested a meeting to discuss the fire hazard. At the December 11 meeting, BLP agreed to implement several of EPA's suggestions, but would not agree to allow an inspection of the property until July, 1987. Why Russell accepted this refusal is both inexplicable and inexcusable.

The toxic substances that would have been released in a major fire in the smelter area could have endangered countless lives and called for an evacuation of the area, apparently of little concern to Bunker Limited Partnership or to Robie Russell.

During that 1987 inspection, HWD staff observed that various fire prevention measures had been taken and some fire fighting equipment installed, but in subsequent visits they observed most of that equipment had been dismantled. The toxic substances that would have been released in a major fire in the smelter area could have endangered countless lives and called for an evacuation of the area, apparently of little concern to Bunker Limited Partnership or to Robie Russell.

His "informal" approach produced "continually stated" promises from BLP officials that they wanted to cooperate, they were not trying to deceive the EPA, and they did not plan an extensive salvage operation. Meanwhile, huge sections of the smelter itself disappeared and a company was contracted to salvage nine miles of railroad ties and rails. One can only wonder what BLP considers "extensive."

During the years of continual salvage, Bunker Limited also disturbed "large quantities" of asbestos-containing material, and despite repeated requests from HWD staff and "verbal orders" from the Regional Administrator (Russell) no attempts were made by Bunker Limited to contain the material. Charles Findley took official action in a November 12, 1987, letter to BLP without notifying Russell. In the letter he stated that any future action at the site would be governed by an administrative order to ensure proper handling of contaminated material. Findley said he took this action because he did not believe Russell would approve.

This led to Russell's calling a meeting January, 19, 1988, during which he belittled the issues identified in the November 12, 1987, letter and argued that there would be no need to issue an administrative order because "reasonable people could discuss these issues and reach an agreement." Although these "reasonable people" had already misled or lied to EPA for over two years about their salvage operations, the administrative order was never completed. Bunker Limited managers continued throughout 1988 to deny they were doing anything wrong, and they continued to deny access to their facilities. So, Russell was either intentionally ignorant of the situation or woefully naive in his refusal to allow his regional Hazardous Waste Division to take enforcement action.

Earlier that same month two internal memos addressed to Russell recommended that Bunker Limited be named a Potentially Responsible Party (PRP) immediately, but according to HWD staff Russell refused to accept the recommendation and "adamantly opposed sending BLP a PRP notice letter."

This is significant because at the January 19, 1988, meeting Russell is alleged to have discussed the negative financial impacts federal "enforcement action" would have on the Bunker Limited Partnership. Cecil Andrus's assistant, Chuck Moss, who was at the meeting in his capacity as Deputy Director of Health and Welfare for the State of Idaho, said he didn't remember if negative impacts were actually discussed at the meeting. But he did say that it was known by all those at the meeting that Bunker Hill Mining Company (of which Jack Kendrick was also president and which is one of many spinoffs of BLP) intended to make a public offering of newly issued shares of stock in a few weeks. Furthermore, he said

that because the stock options were to be offered in a few weeks, delaying official notification for a few weeks would not be of any consequence; so, it didn't matter to him that Bunker Limited would not be named a Potentially Responsible Party immediately.

The public offering took place on April, 20, 1988, long before Bunker Limited was named potentially responsible. Finally, on October, 18, 1988, Findley sent a Potentially Responsible Party notice letter and an attached request for information about the condition of the site which said in part, "In addition to notifying you of Bunker Limited Partnership's potential CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) liability at the Bunker Hill Superfund Site, EPA is requesting that you provide the following information" about the status of the property, the mine, and the salvage.

Russell's "informal approach" and interference with the normal functions of his Hazardous Waste Division staff served only the interests of Bunker Limited Partnership at the expense of the environment, the people of Silver Valley, and the taxpayers he was appointed to serve.

Clearly, this was an official letter of notification, but all HWD staff members interviewed by the Inspector General said that Russell "took every opportunity to make the point that the letter was not a notice letter, and BLP was not a PRP." It's impossible to know whether he intentionally blocked the obviously necessary enforcement actions of his HWD staff or was merely incompetent. However, he did admit to the Inspector General's investigators that he did not know what a standard PRP notice letter looked like.

The Inspector General's report – ... (Russell) "blocked or delayed any formal enforcement actions initiated against BLP despite the recommendations of the HWD staff."

Almost a year later in early October, 1989, Findley sent another letter to BLP President, Jack Kendrick, part of which states, "Despite repeated requests to Bunker Limited over the past year for this information, Bunker Limited has chosen not to respond." Their refusal to respond is understandable since any response on BLP's part would have amounted to an acceptance of some responsibility as well as represented a departure from their well established pattern of delaying action.

It was also early October, 1989, when the Agency for Toxic Substance and Disease Registry (ATSDR), after having been "secretly contacted" by EPA staff, issued a Public Health Advisory for the Bunker Hill smelter complex. Such advisories are only issued under extraordinary conditions where hazardous substances may pose a serious threat to human health and the environment, and fewer than six have been issued since the inception of the Superfund program.

Robie Russell: "Nobody died out there, so what was the problem."

Russell's ignorance of the situation was revealed again when he asked at an HWD management meeting who the ATSDR was and if the Region should try to block the study. His Hazardous Waste Division staff told him it was part of the Center for Disease Control and it could not be stopped. His insensitivity emerged when he said, "Nobody died out there, so what was the problem."

At this point Russell reversed his position and allowed the second notice letter and information request to Bunker Limited. On October 13, 1989, in a memo to the Regional Counsel, Bunker Limited's attorney stated that "BLP does not own any part of the Bunker Hill complex identified in the information report."

The Inspector General's report on Russell's actions explains why: "During the period between August 1986 through October 1989, the RA (Russell) blocked or delayed any formal enforcement actions initiated against BLP despite the recommendations of the HWD staff." As a result, "The partners have transferred all of BLP's assets to newly formed corporations through various stock and property transfers." Thus, Russell's "informal approach" and interference with the normal functions of his Hazardous Waste Division staff served only the interests of Bunker Limited Partnership at the expense of the environment, the people of Silver Valley, and the taxpayers he was appointed to serve. To give some perspective to the sadly complicated transfer of assets, the Pintlar and Gulf Resources suit against Bunker Limited and its spinoffs allege that at one time all outstanding shares of stock of White Pine Timber Company were owned by Duane B. Hagadone, Jack W. Kendrick and R. M. MacPhee (trustee for trust agreements for the five children of Harry F. Magnuson). They paid a total sum (shared among the three) of $10,000 for the White Pine shares. Later, Bunker Hill Mining Company, Inc. issued 1,696,275 -shares of common stock to Hagadone, 1,696,275 to MacPhee, and 1,130,850 to Kendrick in return for all outstanding shares of White Pine Timber Company. Thus their $10,000 collective investment became worth over $9,000,000 when the public stock offering took place in 1988. This amazing allegation represents just one of several such transfers which in the words of the Inspector General's report mean, "collection for the Superfund cleanup activity is going to be substantially more difficult."

If there is a bright side to this mess, it is that the public is now aware of these horrors and that the cleanup is going on. Sadly, the public is also more likely than ever to have to pay the bill for the clean up because it has taken so long to establish Potentially Responsible Parties. There are now 14. Whether Robie Russell knew what he was doing and was guilty of gross malfeasance by using the power of his appointment to forsake his responsibilities is debatable. If he did not, then there's little doubt he was ignorant, insensitive, and incompetent.

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Craig's ties to mining go beyond Idaho

Senator defends mining interests, across West, collects contributions from mining PACs

By Betsy Z. Russell Staff writer

BOISE—Idaho Sen. Larry Craig has repeatedly pushed to turn over billions of dollars worth of public lands and minerals to mining companies—some of them big contributors to his campaign.

Craig says he's always supported the mining industry because its health is important to Idaho, and his campaign contributions reflect that. But two of his big contributors are companies that want to mine in Colorado and Nevada.

Supporters of campaign finance reform say this is just the kind of situation that shows why reform is needed.

"It raises at least the perception that public policy can be purchased," said Lloyd Leonard, legislative director for the League of Women Voters. "People don't trust their government, and we need to do something about that."

A sweeping campaign finance reform bill came up for consideration in the Senate last week. It would have eliminated PAC contributions, among other reforms. Craig, along with Idaho Sen. Dirk Kempthorne, voted against it. It died on a 54-46 vote.

Craig defended his support for—and from—the mining industry.

"When you're supporting the industries of the state and the jobs of the state, therefore you're supporting the people of the state," he said in an interview.

"Mining is a very important part of the Idaho economy," he added. "It creates a lot of jobs and vitality."

According to the Idaho Department of Commerce, mining accounted for about 2,700 jobs in Idaho in 1995, about half of 1 percent of the state's jobs. It also produced about eight-tenths of 1 percent of Idaho's gross state product.

Craig has been a leader in the Senate in pushing for mining law reforms acceptable to the industry. The push has come in the face of widespread dissatisfaction with the General Mining Law of 1872, which allows mining companies to buy, or "patent," public lands for $2 to $5 an acre if they find minerals on them.

The mining industry contends it spends large sums to develop the mines, creating jobs and tax revenue in the process.

Patenting of public lands was cut off by Congress in October 1994. Congress slapped a one-year moratorium on mining patents, which has since been extended for another year.

When the moratorium went into effect, there were more than 600 patent applications on file. Of those, 373 were far enough along in the approval process that the government decided to let them through. They're now being processed.

The other 233 hadn't gotten as far. The moratorium put them in limbo.

Craig has repeatedly offered legislation to lift the moratorium. He also proposed changes designed to make future patenting more acceptable to taxpayers. But his legislation would allow the 233 pending patents to go through under the old rules.

The Mineral Policy Center, a Washington, D.C., group that long has clashed with the industry over mining law reform, says the 233 patent applications contain more than $15.5 billion in publicly owned minerals.

"That's just assessing a few of the large ones," said Vice President Jim Lyon. "If the moratorium is lifted, those will be processed and given away at 5 bucks an acre or less."

The list includes the Mount Emmons Mine in Colorado, with $3 billion in minerals and the Jerritt Canyon Mine in Nevada, with $1.1 billion in gold.

Mount Emmons is owned by Cyprus-Amax Minerals Co., which gave Craig $5,000 through its PAC for the 1994 election cycle alone. He received another $2,000 in December 1994 from five key Cyprus-Amax employees in Colorado and Arizona. The company and its affiliates have donated a total of $17,300 to Craig's campaigns since 1989.

Jerritt Canyon is owned by FMC Corp. and a South African firm called Anglo/American. FMC has given $13,000 to Craig campaigns since 1989.

Craig said he believes companies that applied for patents have "property rights," and he's sharply critical of Interior Secretary Bruce Babbitt for not processing the backlog of approved applications more quickly.

"Once you file for a patent you have created a right under the law," Craig said. "Bruce Babbitt is sitting on those property rights. He's violating the law. Larry Craig is saying, as a defender of property rights, move them, Bruce Babbitt. You have a responsibility to."

Opponents of the 1872 mining law say the public loses when mining companies pick up public land and minerals on the cheap.

"What may have been a good deal back in 1872 today represents a costly corporate subsidy, and a very bad deal for the U.S. taxpayer," said Susan Brackett, director of communications for the Mineral Policy Center.

Sen. Dale Bumpers, D-Ark., calls the mineral patents "the biggest scam going on in America today."

Bumpers is among those pushing for comprehensive reform of the mining law, including eliminating patents charging royalties and requiring reclamation after mining.

Craig has offered industry-backed alternatives, including a new version of patenting that calls for reversion of the land back to the public after mining is done.

Craig's legislation has made some headway. It was inserted into a huge budget bill last winter that passed both houses of Congress, but was vetoed by President Clinton. The mining provisions were among the president's reasons for the veto.

Last September, Craig added an amendment to an appropriations bill for the Interior Department to lift the patent moratorium. It passed the Senate but failed in the House. The House sent the bill back to a conference committee with specific instructions to reinstate the moratorium.

Lyon said that was the third time the House had voted against lifting the moratorium. "You just don't get that clear a message three times in this business," he said. "They want these mining giveaways to end."

Senators unveil CdA basin plan

Conservationists say Craig's cleanup proposal lets polluters off easy

By Susan Drumheller
Staff writer

COEUR d'ALENE—Idaho's Republican senators asked their fellow lawmakers Wednesday to help clear up one of the Inland Northwest's messiest environmental disputes.

Sens. Larry Craig and Dirk Kempthorne introduced legislation designed to end expensive litigation and jump-start cleanup in the Coeur d'Alene basin, which is lined with toxic tailings from a century of mining activity.

But as Craig applied the polish to his new cleanup bill Wednesday, critics were quick to tarnish it.

The bill is worse than the one Craig introduced last year, environmentalists said Wednesday.

"We have the mining companies able to avoid responsibility, the state of Idaho able to avoid any responsibility and the waters of the Coeur d'Alene washing the metals into Washington state," said Mark Solomon, director of the Inland Empire Public Lands Council.

Craig shot back that his critics are more interested in litigation than cleanup.

"It allows no one to walk away from their liability, but it recognizes that finances are finite," Craig said of his bill. "You can't milk a company dry . . . and destroy the very resource that can clean up the basin."

While Craig said he hoped his bill would be used as an example for rewriting the nation's Superfund law to avoid costly lawsuits, Solomon bemoaned the possibility.

"I would say this establishes so many bad precedents for the protection of the environment and public health, that even this Congress couldn't stomach it," Solomon said. "But Craig has a leadership position, and I wouldn't underestimate his ability to be a congressional deal-maker."

The bill sets up a 14-member commission charged with establishing a cleanup plan for the basin within two years. The commission is the same as the one the Idaho Legislature created last session—at Craig's request—over the objections of conservationists.

The action plan would include cost estimates for cleanup and assign responsibility for covering costs to the various parties involved in the cleanup, including mining companies.

Mining companies that cooperate would be granted immediate liability release. The new bill also would release the state and governor from liability resulting from the basin cleanup, or lack of cleanup.

Another new addition to the bill is to postpone litigation under federal law for five years after the bill passes, or two years after the governor approves the plan, or until an agreement on the action plan is reached.

The provision would put on hold, and potentially dismiss, the Coeur d Alene Tribe and federal government's lawsuit against four mining companies accused of polluting the Coeur d'Alene basin.

"This bill seems to let the polluters off more easily than it should," said Mike Medberry of the Idaho Conservation League.

Because the governor would have final say in how much each company must contribute, the risk is taxpayers might wind up paying the bulk of the costs, he said.

The bill calls for creation of a trust fund with both private and federal money that would be used for the cleanup. If Craig's bill passes, the Idaho delegation would have to ask Congress to appropriate money for the trust fund. The bill asks for $1 million up front to finance creation of the plan.

Holly Houston of the Coeur d'Alene Basin Mining Information Office disagreed that the bill was too easy on mining companies.

"Frankly, you have one member representing the mining industry on the commission . . . who has one vote in how many millions of dollars will be their responsibility," she said. "That can be kind of scary."

But, Houston said, the approach is better than the current lawsuit, which essentially places blame for a century of pollution on four companies.

"At least it starts the process of putting money toward cleanup, and that's good for the public," she said.

Reps. Helen Chenoweth and Mike Crapo plan to introduce companion legislation in the House. Gov. Phil Batt and Idaho Republican leaders expressed support for Craig's bill.

"Its an exciting day," said state Sen. Gordon Crow, R-Coeur d'Alene, who sponsored the state's legislation that mirrored Craig's bill. "We re hopeful it will go all the way through. Our intention is to affect positive cleanup and maintain a viable economy up there and mining jobs, which are some of the highest paying jobs in the state."

Idaho Senator Dirk Kempthorne On SUPERFUND

While Senator Craig's Coeur d'Alene bill, S 774 "addresses a specific Idaho problem, I believe it is a good model as we work to reauthorize Superfund and consider the issue of natural resource damages [NRD] across the United States. As you may know, the Senate Committee on the Environment and Public Works (EPW), of which I am a member, is currently working on Superfund legislation. As a member of that Committee, you may be sure I will be active in that effort and will work to bring much needed improvements to the NRD program."

[excerpt from a letter to Mark Solomon, October 15, 1997]

Idaho Senator Craig's Coeur d'Alene Bill, S. 774

- Transfers full decision-making authority for the clean-up to the Governor of Idaho in Boise. Indian Tribes and the Federal Government are relegated to seats on a 14-member advisory group (Coeur d'Alene River Basin Commission) where no seats are provided to Washington State or conservationists
- Gives the Governor of Idaho authority to release corporate polluters from CERCLA (Superfund) liability.
- Stays any current or pending court action under Superfund, the Clean Water Act, and the Solid Waste Disposal Act for pollution damages resulting from mining in the Coeur d'Alene Basin.
- The Governor Idaho can approve an "enforceable agreement" with the polluter for cleanup responsibilities, thereby dismissing legal action against the polluter.
- Neither the Governor nor Idaho State can be held liable if the clean-up plans prove inadequate.
- The Governor is directed to weigh the "viability of the mining and mining companies" in approving the scope of any cleanup required.

(6) Idaho Poisons: Idaho State Govt.

Lobbyists make their mark

Hired guns for Idaho business and industry exert significant influence on state legislation

By Betsy Z. Russell
Staff writer

BOISE— Idaho's lawbooks are littered with laws designed for—and in many cases, written by—individual businesses and industries.

The success of business lobbyists can be measured in laws such as the one that forbids auto dealers from displaying their vehicles at car shows outside their own county or the one that requires citizens to post a huge bond if they want to challenge a state timber sale.

Lobbyists, who outnumber lawmakers in Idaho nearly 3-to-1, have a significant impact on legislation. But experts say that's how the system is designed to work.

"It's such an ingrained part of our process that none of this strikes me as particularly surprising," said Jim Macdonald, a law professor at the University of Idaho.

"There's so much legislation out there—you can't expect it all to originate in the minds of the legislators."

This year, 137 of the more than 700 bills introduced listed a lobbyist as initiating sponsor. That's nearly 20 percent. And it doesn't count bills lobbyists brought to lawmakers, who then listed themselves as sponsors.

Estimates vary on what portion of Idaho's laws originate with lobbyists. Lobbyists estimate as many as half, but Mike Nugent, the Legislature's chief bill drafter, guesses about one-third.

Nugent's office won't work with a lobbyist unless a lawmaker requests it. "Those people up there are elected to represent the public interest," he said. "That's the filter."

Presenting their cause

Gov. Phil Batt expressed frustration many times this year over the role of lobbyists. He fumed over their influence when the gasoline tax bill nearly died in a dispute over an unrelated truck-weight bill, and he blamed them for killing a fee on restaurants to help pay for health inspections.

But Batt stops short of calling for lobbying reform. "Lobbyists are there to present their cause."

That hired-gun role gives lobbyists something of a bad reputation.

"I think there is a view that lobbyists' role in the legislative process is to hand out dollar bills. That's an erroneous view," said Chuck Lempesis, a longtime North Idaho political player who has been lobbying in recent years.

Last year, lobbyists reported spending $142,230 to wine and dine lawmakers. This year's figures still are being tallied, but the trend has been downward since 1990.

Knowing how things work and whom to talk to may be a lobbyist's most potent weapon.

Said Russell Westerberg, a former lawmaker from Soda Springs who has been lobbying for 20 years, "It's an understanding of the process more than any special access that makes a professional lobbyist essential."

Things have gotten bigger, more complex, more sophisticated in the last two decades, Westerberg said. "You've got to have somebody that understands the process."

He sees Idaho's system as better than the one in the U.S. Congress, where paid lobbyists represent foreign governments. With clients ranging from mining companies to The Hagadone Corp. to Silverwood Theme Park, "l represent Idaho interests," Westerberg said.

Lawmakers lack staff

Timber industry lobbyist Joe Hinson came to Idaho 14 years ago from Washington, D.C., and "this is a lot better," he said. "It's a much more honest process. You get legitimate votes, legitimate debates on the issues. Things aren't totally partisan."

In Washington, Hinson said, he often got the impression lawmakers didn't know much about the bills they were voting on because they left research to their staffs. But in Idaho, lawmakers don't have staffs unless they're in leadership; committee chairmen have a secretary.

"Coming here from Washington, I was surprised. When people got up on the floor to argue, they knew what they were talking about."

There are exceptions to that, of course. When Rep. Chuck Cuddy, D-Orofino, argued on the House floor for Hinson's bill to change a law that designates Idaho's lakeshores for recreation, he said environmentalists had used the law to delay legitimate timber sales.

Actually, no sales ever were delayed because of the issue. Hinson said that was just "an honest mistake" on Cuddy's part.

Hinson figures he has written or played a significant role in writing two dozen laws now on Idaho's books. "I like to write things. A lot of lobbyists don't," he said. "So I volunteer a lot."

Tim Brennan, who's retiring after 37 years of lobbying, helped write hundreds of bills and has been involved in nearly every piece of sales tax legislation as representative of the Idaho Retailers Association.

Hinson figures he has written or played a significant role in writing two dozen laws now on Idaho's books. "I like to write things. A lot of lobbyists don't," he said. "So I volunteer a lot."

"Most of us are association representatives who speak . . . for thousands of people," he said. "If we were dishonest, somebody finds out."

Legislators often turn to lobbyists for information on complex bills, Brennan said. "There's no way they can understand all of them. So they're dependent on the lobbyists they trust and the other legislators they trust."

Westerberg says he sees lobbying as part of the democratic process: People elect officials; then they lobby them to pass laws they like.

Asked if that leaves out citizens who can't afford lobbyists, he said hundreds of organizations and interests have lobbyists.

Citizen makes difference

Despite the army of lobbyists, individual citizens still can be heard in the Legislature. This year, a Meridian woman whose daughter had completed kindergarten in California but didn't meet Idaho's age requirement to start first grade challenged the requirement.

She went to the chairman of the House Education Committee, and when the first bill that included her requested change died, she went to the speaker of the House.

"She sat down and made her case," said Speaker Mike Simpson, R-Blackfoot. "I said 'OK,' we ran it and got it through."

Simpson chuckled that the Meridian woman's bill was signed into law while a package of workers' compensation reforms developed by the Idaho Association of Commerce and Industry, stalled.

"Everyone thinks we just bow down to IACI," he said.

A matter of philosophy

Macdonald, the Ul professor, said the success of business lobbyists is related directly to Republican dominance of the Legislature.

"I think when you have an overwhelmingly Republican Legislature, that is going to coincide with successful business lobbying. In an overwhelmingly Democratic Legislature, you might see labor, the environment and so-called liberal interests being more successful."

Simpson said, "We probably are more influenced by business-oriented lobbyists than others because I think that's more the philosophy of the legislators."

Courts have been favorable to the kind of legislation that's produced by the lobbying process, "even if they are obviously special-interest laws," Macdonald said. "The judicial branch defers to the legislative branch without asking too many questions about how it got enacted."

So, laws such as the car dealers' ban on exhibiting at auto shows in other counties stand. This winter, a Twin Falls auto dealer was kicked out of a sports and RV show at the Boise fairgrounds because of the law.

Brennan, who represents Idaho Automobile Dealers Association, said the dealers wanted the law to protect their franchises.

The car dealers' law has been on the books for years. But several special laws for individual businesses that were proposed this year didn't make it. A couple of them fell to Batt's veto when he said they didn't appear to be in the best interest of the state.

But other business bills, dealing with issues from banking to timber to mining, were signed into law.

Batt, who vetoed laws requested by a Boise sign company and by Silverwood Theme Park, said the nearly one-party Legislature—it's 80 percent Republican—creates "a real drive to get through the session, to not offend anybody's pet bill, to pass it on through.

"It puts a very big backstop responsibility on the governor."

CdA basin cleanup bill clears committee

Conservation groups say they would be excluded from panel overseeing cleanup

By Betsy Z. Russell
Staff writer

BOISE—Sen. Gordon Crow's new version of legislation to clean up mining contamination in the Coeur d'Alene basin leaves out conservation groups, but Crow said Wednesday their representation isn't needed.

"It depends how you define conservationist," he said, pointing to his bill's list of who should serve on a new commission to oversee the cleanup.

"One representative of the governor—that could be a conservationist. A representative of the Division of Environmental Quality—I would say that's the pre-eminent conservationist division within government."

Over the objections of environmental groups Crow's bill cleared the Senate Resources and Environment Committee Wednesday, and stepped onto a fast track toward passage before the end of the session.

Craig had hand in legislation

The bill was sought by U.S. Sen. Larry Craig, because it will mirror his proposed federal legislation seeking funding for basin cleanup.

"It is hoped that this will encourage Congress to provide the funds necessary for the cleanup," Larry Koenig of the DEQ told the committee.

But the legislation creates a new commission to oversee cleanup, replacing an existing system of citizen commissions already established by the DEQ. The existing groups include environmentalists, along with local residents, agency people, industry representatives, the Coeur d'Alene Tribe and more.

Mike Medberry of the Idaho Conservation League said, "Sen. Craig should structure his legislation to help local Idahoans, rather than demanding we restructure ours to suit his national agenda."

Medberry said the new commission should have "at least a seat or two for conservation interests."

Mark Solomon, executive director of the Inland Empire Public Lands Council, said the legislation doesn't account for concerns from the state of Washington, which receives the heavy metal pollution as it washes down the Spokane River.

"There are people who live in this basin, people who live on both sides of the state line," he said. "There will be Washington state involvement in anything that comes out of Congress. Their delegation is just as interested in this issue as ours."

The legislation is the product of meetings between Craig staff members, the governor's office, the attorney general's office, Crow and committee chairman Sen. Laird Noh, R-Kimberly.

Noh pulled back the original version of the bill and replaced it with a new version that calls for legislative oversight of the process.

Crow said he met with Craig's s office three weeks ago to discuss concerns that Craig s legislation would let mining companies off the hook for cleanup through a "release of liability" clause. State officials feared that would mean the state would be stuck with liability for millions in cleanup costs.

"They heard," Crow said. "They are in the process definitely of amending that out."

Freeman Duncan, the attorney general's legislative liaison, told the committee that references in the bill's "statement of purpose" citing Craig s federal legislation were deleted because of the concerns.

Jim Yost, a top aide to Gov. Phil Batt, said Batt wants to "get some things done on the ground," and hopes the new commission can function like the existing Silver Valley Trustees, who have completed clean-up projects along tributaries to the Coeur d'Alene River.

The commission would only address heavy metal problems, leaving all other issues in the watershed to the existing DEQ citizen committees, Yost said.

"I think the commission can go to work and do some things," Yost told the committee. "There are three sites we're looking at for demonstration projects."

Crow said. "The fact of the matter is all these good groups working up there have accomplished little or nothing. This legislation is intended to put some money right into cleanup, not to lawyers, not to studies."

After the bill cleared the committee on a 9-3 vote, Crow said, "We were expecting the attack from the environmental groups."

Scott Brown. of the ICL's Coeur d'Alene office, responded with a list of Crow's $1,300 in mining industry campaign contributions in the past year. Crow formerly worked as a mining industry spokesman.

"Someone should remind Mr. Crow that he is a senator now and is supposed to represent all the people," Brown said.

Editorial – When will Batt end Idaho's holiday for polluters?

Can it be that Idaho legislators are giving business so much license to pollute this session that even a self-proclaimed pro-business governor is preparing to call a halt?

Of course it can. And if Phil Batt doesn't veto legislation permitting polluters to receive immunity by reporting their violations themselves, as he hinted Wednesday he might, he will find himself vetoing something worse down the road.

The Idaho Association of Commerce and Industry's bill Batt mentioned in an appearance before the Idaho Press Club is a fat target, though. As state Sen. Gary Schroeder, R-Moscow, pointed out before voting against it, the legislation gives polluters something other potential lawbreakers do not have. Which dope peddler, for example, wouldn't love to be able to get immunity from prosecution simply by revealing his own crime to the police after the fact?

And, as Batt noted Wednesday, the bill goes beyond that. It also guarantees that businesses' audits of their own pollution for regulatory agencies will remain secret from the people who ingest whatever pollutants are being discharged into the air or water.

"We should do everything we can to keep public records open to the public," Batt said.

Of course we should. And we should do more than that. We should take every step possible to prevent another abuse of the state by people like the Texas owners of the former Bunker Hill Co. in Kellogg.

Twenty years ago, those owners were faced with the destruction by fire of their main air pollution control device. They calculated it would be more profitable to operate the smelter without that device, including the cost of paying off the parents of subsequently poisoned children, than to shut down until the device were rebuilt.

They did that, posted record profits, paid off the families that sued and abandoned the smelter and Idaho. Idaho taxpayers are now paying twice to clean up the piles of poison those "businessmen" left in Kellogg, once through their federal income tax bill and again through their state income tax bill.

Before Batt decides what to do with this legislation, he should ask himself not what it would do for the many responsible, conscientious businesses operating in Idaho, but what it would do for a Bunker Hill. — J.F.

Lewiston Tribune *Lewiston, ID. March 10, 1995*

Editorial – Why so few tickets from Idaho's environmental cops?

Is Idaho-cleaner? Or just more lax?

The Idaho Division of Environmental Quality wasn't an aggressive environmental watchdog under Democratic Govs. Cecil Andrus and John Evans.

Andrus, in particular, was very friendly toward business, preferring to accommodate industry rather than crack down on pollution problems. As a result, agency of officials tended to let things slide. If they did act, it was with caution.

That's why the dramatic dropoff in enforcement actions by the agency under Republican Gov. Phil Batt is troubling. If the state's environmental regulators were reluctant to enforce the rules under the previous two administrations, what are they now?

Air quality violations have dropped from 17 to only four from the last two years of Andrus' administration through the first two of Batt's; hazardous waste violations, from 40 to only nine. In addition, consent orders—or binding agreements to alleviate pollution—have tumbled from 19 to three for air quality violations and from 39 to six for hazardous waste violations.

Business leaders hail such statistics as proof that the current administration has moved from "command and control to educate and participate." Moved? Neither Batt nor his predecessors ever were in command-and-control mode.

We do agree with a remark by Brent Olmstead, vice president of the Idaho Association of Industry and Commerce: "Why not work with businesses and prevent them from doing something rather than just punishing them?"

If the cooperative approach fails, however, regulators shouldn't be afraid to levy fines and penalties to protect Idaho's air, water and forests.

Rick Johnson, executive director of the Idaho Conservation League, contends Idaho businesses are getting away with more today. He makes a good point when he says: "It's like cops watching people driving down the highway. If you're not pulling over speeders, more people speed. Things get a little sloppy."

We hope the sharp decline in enforcement action means government and business have found a way to work together that benefits the environment. Certainly, more businesses are environmentally sound today. However, it's hard to imagine that voluntary compliance and Batt's decidedly pro-business policies and political appointments have discouraged pollution more than the halfhearted approach of the past.

If a cop almost never pulls out his ticket book, he loses credibility and invites abuse.

Neither side can offer specific proof that Idaho's environment is better or worse today. The enforcement statistics and the dark side of human nature simply raise a question.

Has Batt gone too far?

D.F. Oliveria/For the editorial board

Letter to the Editor:

Action better late than never

Idaho Division of Environmental Quality Director Wally Cory would have you believe the nasty federal government is beating up on poor little Idaho again in an effort to protect Idaho's water quality (Spokesman-Review. Feb. 28). Nothing could be further from the truth.

Here's just one example that directly affects the people of the Spokane-Coeur d'Alene area. In 1988, EPA disapproved of Idaho's "industrial use" designation for the South Fork Coeur d'Alene River. Approval of the designation would have meant any cleanup of heavy metals in the river would only be to a level necessary to support industrial uses. No fish, no wading.

This was a clear violation of the Clean Water Act's goal of restoring all the waters of the nation to be fishable and swimmable.

After disapproval, the state had 90 days to reclassify the river. If the state failed to act, EPA was to issue the designation promptly. The state did nothing. EPA did nothing.

In the meantime, millions of pounds of lead and other metals continued their relentless flow into Lake Coeur d'Alene and the Spokane River.

Last May the Inland Empire Public Lands Council and Idaho conservation groups said enough is enough—enough children have been poisoned, enough swans have died, enough promises have been broken—and went to federal court.

Now, with court-ordered backbone, EPA will act where Idaho hasn't and set the baseline for cleaning up the Spokane-Coeur d'Alene watershed. It's about time.

Mark Solomon
Inland Empire Public Lands Council, Moscow

DEQ backs off limits on worker memberships

Employees were told not to join environmentalists

By Marty Trillhaase
The Idaho Statesman

Idaho's state environmental protection unit last week told its employees that joining pro-environmental groups was off limits.

The Idaho Division of Environmental Quality has since backed off. But some of its about 375 employees suspect that the short-lived policy was part of a larger, industry-oriented agenda that began when GOP Gov. Phil Batt named Wallace Cory to head the agency.

"It's a symptom of an administration that doesn't trust employees," said a DEQ worker who asked to remain anonymous.

A Feb. 15 e-mail memo, obtained by the Idaho Statesman, said that DEQ employees were required to report any potential conflict of interest, including activities in volunteer organizations, or face "disciplinary actions up to and including dismissal."

The memo prompted another DEQ employee to wonder whether the agency intended to build an inventory of employee memberships "to be used for who knows what."

A second DEQ memo came Tuesday after several employees protested. It reversed the week-old policy. But assistant DEQ Administrator Jon Sandoval insisted that the agency never altered its policy in the first place.

"I don't understand why people are reacting the way they are," he said. "There's really no change from the way we've done business in the past."

DEQ employees remained skeptical

"The feeling I'm left with is they really stated their true intentions in the first one, and now they're backpedaling," an employee said.

The aborted policy runs afoul of Idaho's "little Hatch Act," which guarantees the right of state employees to political and civic activity. State personnel regulations also prohibit discrimination against employees based on "political or religious opinion."

The same regulations allow state agencies to establish conflict of interest policies, but those generally apply to employee moonlighting. In the 24 years he's served as Idaho's personnel director, Dick Hutchison says he's never heard of an employee being disciplined for activities in outside volunteer organizations.

"State employees could join the NRA (National Rifle Association) or things like that that may be viewed as politically not correct by some agencies," he said. "But you can't restrict the freedom of association."

After looking over the Feb. 15 memo Wednesday, Batt said he preferred an earlier DEQ policy that sought to keep employees from taking policy-making roles in outside organizations.

"They should have the opportunity for all the freedoms that anyone else has unless it interferes with their work," Batt said.

The Feb. 15 memo also drew fire from the two groups it named: the Idaho Conservation League and Idaho Rivers United.

"The 1st Amendment problems just jump off the page," said conservation league program liaison Karl Brooks.

Rivers United water policy director Marti Bridges said: "Employees are civil servants and not politicians and they should be treated as such. They have their own views on an off the job."

E-MAIL EXCERPT

- HERE'S AN EXCERPT from an e-mail memo sent to DEQ employees on Feb. 15:
  "Conflict of interest activities would include: any activity which may compromise our work as an agency, such as environmental action groups (Rivers United, Conservation League, actual employment with an industry DEQ is tying to obtain/maintain compliance, etc.)"
- ON TUESDAY, DEQ administrators sent a new memo that said:
  "In general, mere membership/contributions to an organization (church, environmental, etc.) is not construed as a conflict of interest and need not be reported."

Idaho Statesman *Boise, Idaho Feb. 23, 1995*

Editorial – Cory fights to give you the bill for Idaho mine wastes

Is letting Idaho mine operators off the hook for cleaning up their toxic wastes one of the "responsible alliances between governments and businesses" Division of Environmental Quality Administrator Wally Cory boasted of in a Turnabout column in Sunday's Tribune?

Only three days after Cory accused this page of falsely implying that DEQ is giving in to big business to permit increased pollution, Tribune reporter Michael Wickline revealed that Cory has endorsed federal legislation exempting all but one mine site in Idaho from federal Superfund regulations. Cory did that under the rationale that mine waste cleanup projects would be better regulated by the state itself. But Attorney General Al Lance says it wouldn't work that way.

Lance, who like Cory is a Republican, told Idaho Congressman Mike Crapo in a letter that the legislation Cory endorses would actually reduce the authority Idaho has over waste dumps like those at the defunct Blackbird and Triumph mines. And worse, it would leave state government holding the bag for the cleanup costs.

"This legislation takes control out of the states' hands and instead imposes a financial burden on them," Lance wrote.

Since receiving the letter, Crapo has backed away from proposing the amendment to the Superfund law Cory endorses. And a spokeswoman for Crapo says he does not want to do anything that will work against the state's interests.

If so, he will tread very carefully before excusing anyone from the Superfund program. And he will look outside his 2nd Congressional District to the one Idaho mine site that will remain under Superfund designation whether Cory's legislation succeeds or not

That site is the home of the former Bunker Hill mine and lead smelter at Kellogg. The Texas owners of Bunker Hill deliberately poisoned children with airborne lead in the 1970s before they abandoned the property in the early 1980s. Then they bled the parent company, Gulf Resources and Chemical Corp., of most of its assets, leaving much of the bill for cleaning up piles of poisons for the taxpayers.

Although Idaho is stuck for a portion of that bill, most of it will be picked up by the federal government, thanks to the Superfund law. That's because Superfund first goes after the people who leave the messes, and finances cleanup itself where it fails.

Under the legislation Cory endorses, neither the feds nor the state would go after those responsible for mine wastes, Lance says. And since the feds would be excused from liability as well, only state taxpayers would remain to pay the tab.

That might represent an alliance between government and industry, but it is hardly the responsible one Cory points to. Responsibility means people cleaning up after themselves, not asking government officials like Cory to find ways to relieve them of that burden. And it means government officials giving first priority to the interests of the voters they serve, not the industries they are supposed to regulate. — J.F.

Lewiston Tribune *Lewiston, Idaho Dec. 1, 1995*

Mining Corporations & Idaho Legislature – 1995

There's gold in them there legislators. . . In an amazing about face from its rhetoric about local control, the legislature obliged the mining industry in 1995 by passing a bill to prevent local communities from having a voice in decisions regarding mining activities. Apparently, some cities and counties have expressed interest in using their land use planning and zoning authority to make mining activities more compatible with other local uses. This is particularly true in communities where unrestricted open pit mining activity could hurt local tourism industries. With the passage of H233, the legislature has basically shielded the mining industry from being held accountable in government forums that are closest to the people: their city councils and county commissions.

Other items on the industry's shopping list that were successfully passed include: a repeal of existing laws protecting the 8 or 10 hour workday and overtime provisions for miners; and, exemptions from disclosing environmental audits to the public (see "Industry"). In addition, a Senate resolution urging the state to take action to protect Lake Pend Oreille from pollution generated by a Montana mining operation was successfully killed by the industry.

Status: H233, Preempts cities and counties from enacting or adopting ordinances to regulate surface mining. House passed, 3/2/95, Senate passed, 3/16/95, Signed, 3/22/95.

S1374, Repeals laws relating to a day's work in mines and smelters. Senate passed, 2/2/96, House passed, 3/1/96, Signed, 3/8/96.

51142, H682, Environmental Audit Protection Act and amendment (see "Industry ").

SCR133, Urges action to protect Lake Pend Oreille from pollution caused by mineral activity in Montana. Reported to Resources/Environment, 2/6/96. KILLED.

[from: David Bobzien and James Hansen, "Capitol Investments: an analysis of interest group investments and policy returns in the 53rd Idaho Legislature." *United Vision for Idaho. Undated]*

CdA basin plan punts on metals

Lack of limits pleases wastewater officials, but conflict with Clean Water Act possible

By Susan Drumheller
Staff writer

COEUR d'ALENE—The first step in the state's strategy for cleaning up the Coeur d'Alene River basin is beginning at the end—the Spokane River.

A plan for limits on metals pollution in the Spokane River and Lake Coeur d'Alene was approved by a governor-appointed commission Thursday, but the plan really doesn't change anything.

City wastewater officials like it because it doesn't limit the amount of metals that sewage treatment plants can dump into the river. But they fear the U.S. Environmental Protection Agency won't accept the plan because it could conflict with the Clean Water Act.

Critics are concerned that it sets the stage for letting mining companies upstream off the hook.

"What it does is it maintains the status quo," said Scott Brown, state issues director of the Idaho Conservation League. "That's not what this process is about."

The draft "Coeur d'Alene Lake-Spokane River Metals TMDL" (total maximum daily load) will be available soon in local libraries for public review. The Idaho Division of Environmental Quality is planning a 30-day public comment period before sending the document to the agency's administrator for approval.

After that, the document goes to the EPA, which has 30 days to approve or disapprove it. If the agency doesn't approve the document, it has another 30 days to write its own plan.

The plan does not include any specific limits on metals coming from the wastewater treatment plants. That could prompt the EPA to reject it.

The state took out any limits at the request of cities, citing a state law passed in 1995. The law exempts point sources (such as wastewater treatment plants or mines) from more regulation if they contribute less than 25 percent of the total pollution in a waterway that has been polluted before 1972.

In the case of the municipal wastewater plants, they together contribute less than .05 percent of the metals in the Spokane River.

Most upstream point sources, with the exception of perhaps the Bunker Hill Superfund Site, also contribute less than 25 percent of the load.

"The point sources aren't the big problem upstream either," said Geoff Harvey of DEQ. "Ninety percent of the load is non-point sources."

Non-point sources include historic mine waste that has settled in the banks of the South Fork of the Coeur d'Alene River and contaminated streambeds in its tributaries.

While active mines and wastewater treatment plants are not big contributors to the problem, the EPA would still like them included in the cleanup plan.

In a critique of the 1995 law, the EPA warned the state that the exemption could interfere with "cost effective and innovative" solutions.

Local wastewater utility officials are worried that the EPA will reject the state plan and write even more stringent limitations than Idaho officials originally suggested.

In a letter to the EPA's regional administrator in Seattle, wastewater utility officials from Coeur d'Alene, Post Falls, Rathdrum and Hayden called the current process of the Coeur d'Alene Basin Commission fatally flawed.

"It would seem to us that EPA will have no option available but to reject any such TMDL on the basis of obvious conflict with the Clean Water Act; the fact that it is a piece-meal approach; and that it does not consider the needs of Washington," the letter reads.

As an alternative, the utilities suggest creating a regional authority that includes Washington parties to come up with site-specific limits on metals loading in the Spokane River.

But the current process is under a strict timetable, requiring the Spokane River, Lake Coeur d'Alene and South Fork plans be submitted to the EPA by Dec. 31.

The schedule was negotiated by parties in a lawsuit the Idaho Conservation League filed charging that Idaho wasn't complying with the Clean Water Act and the EPA wasn't enforcing it.

Ground Water Pollution From Mining Activity

At it's November 1997 meeting, the Idaho Health and Welfare Board voted to insert the following language into the proposed ground water quality rule:

"Naturally occurring constituents found in ground water within a specified area surrounding an active mineral extraction area, as determined by the Department, will not be considered contaminants as long as all applicable best management practices ... are applied." (section 400.06)

We view this language as clearly inconsistent with the Clean Water Act.

[Letter to Philip Millam, Director, Office of Water, EPA Region 10 from Scott Brown, Idaho Conservation League, November 18, 1997.]

(7) Appendix 1: Toxins Timeline–Coeur d'Alene

Willful Pollution, Denial, and Resistance to Cleanup Measures on part of Mining Companies in Idaho's Coeur d'Alene, and role of the State of Idaho

1890 The U.S. Bureau of Mines reported complaints against the discharge of mining waste into the South Fork Coeur d'Alene River.

1903 Josiah Hill, a Shoshone County farmer, initiated a $12,000 pollution-damage suit against the Standard Mining Company.

1904 65 Kootenai County farmers filed two court actions against the mining companies in U.S. District Court. In these cases and the majority of the dozens that followed up to 1930, the mines successfully defended the preferential status of miners' water rights in organized mining districts, claimed the waste was harmless, and offered the economic importance of mining as justification for their dumping policies.

1905 Senator Dubois from Idaho requested Congressional action in the form of a scientific investigation of mine tailings, which "have proved most disastrous to all vegetable matter, and that during years past has caused the poisoning of thousands of cattle."

Up to 1926 Christ Luama filed suit over decreased yields, crop damage, and dead horses caused by mine tailings contamination on his property. The persistence of such court actions brought by farmers prompted the Mine Owners Association to begin buying "pollution easements" along the Coeur d'Alene River Valley, primarily in Kootenai County, that released the mines from all past and future pollution claims. They covered damage to crops and sickness, disease, or death of domestic animals "which may be caused by such mining and milling operations." The easements covered over 18,000 acres of land. Landholders were paid as little as $1 per acre and many ended up dying in the poor house.

1917 The Bunker Hill smelter began operating, emitting 300 pounds of lead into the atmosphere per day. These emissions damaged vegetation, ruined soil fertility, and allegedly killed livestock. During the next decade, the company began purchasing smoke easements in Shoshone County, which covered 6,000 acres—and 7,770 acres by 1940.

Mid-1920's The mining wastes began washing up on the beaches of the City of Coeur d'Alene and even farther across Lake Coeur d'Alene into the Spokane River. The mining industry acknowledged the outcries that followed with reassurances that "nothing serious" existed in these wastes and blamed discolored water on "natural erosion."

1929 A campaign for cleanup was launched by the *Coeur d'Alene Press*, in which a series of news articles documented the history of mine pollution and its devastating effects on ranching, agriculture, and fisheries. A response from the mining companies, reported at the time, quoted Stanley Easton (manager of the Bunker Hill & Sullivan Mining and Concentrating Co.) as saying "...there should be something definite in the way of proof that the mine tailings were in fact polluting the river."

1932 The Idaho legislature commissioned a study from Dr. M.M. Ellis - through the Bureau of Fisheries of the U.S. Department of Interior. Ellis' report revealed that no live fish were found in the Coeur d'Alene River, along with no plankton, zooplankton or bottom fauna. Further studies revealed the mining slimes had washed some twenty-five miles down the Spokane River—as far as Greenacres, Washington. Most notably, the Ellis report indicated that the Sullivan Mine in Kimberly, British Columbia—where regulations banned the direct discharge of mine wastes into streams—was easily able to contain the pollution in "tailings ponds." The mining companies disregarded the recommendations and continued to directly discharge their wastes into the South Fork Coeur d'Alene River.

1968 Thirty-six years later, the mining companies finally capitulated to federal and state pressure and constructed on-site settlement ponds similar to what Dr. Ellis had proposed in 1932.

1973-74 A fire at the Bunker Hill smelter baghouse damaged air emission controls. Rather than face a prolonged shutdown while the baghouse was repaired, the operating company Gulf Resources elected to

continue production and pump lead directly into the air. Minutes taken at a 1974 Gulf board of directors meeting show that the company decided the potential loss of profits outweighed the potential liability calculated for causing lead poisoning to 500 Kellogg children. In 1974, within one year of the baghouse fire, some of the highest Blood Lead Levels (BLLs) ever recorded in human beings were recorded in children living within a mile of the smelter. Further studies conducted by the Centers for Disease Control found that over 98% of the children had BLLs exceeding 40 µg/dl. The current CDC standard for blood lead poisoning is 10 µg/dl.

1980 Senator Jim McClure (R-ID) added a special amendment to the Clean Air Act allowing super-tall smokestacks to be built at Bunker Hill, against the recommendation of Ian Von Lindern of the Idaho Division of Environmental Quality (DEQ), who was subsequently forced out of his job by the Andrus Administration for refusing to sign the permit. These high smokestacks spread the acidic pollution further and denuded several square miles of hillsides surrounding the site.

1983 A Record of Decision under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) arbitrarily established a 21-square-mile box encompassing the Bunker Hill smelter, designating it a Superfund site.

1986 Senator McClure succeeded in having the Reagan Administration appoint Robie Russell as EPA Region 10 Administrator. Russell was an Idaho attorney with no significant experience in environmental management. Russell blocked his own EPA staff from interfering with "salvage operations" at the Superfund site in the Coeur d'Alene, risking public health while serving to enrich several Idaho speculators of Bunker LTD Partnership.

1986 The State of Idaho settles its "universe" of natural resource damage claims with four of the mining companies for $4.5 million, a tiny fraction of the estimated cleanup costs.

1989 Gulf Resources began transferring about $160 million out of the U.S., to avoid paying Coeur d'Alene cleanup costs and pensions for workers.

1990 McClure retired from the Senate and Larry Craig took his seat. McClure then established a D.C. consulting/lobbying firm with its biggest client the mining industry. McClure serves as the lead lobbyist in fighting the 1872 Mining Act reform effort. From 1990-92, McClure was appointed to the Board of Coeur d'Alene Mines.

1990 A report issued by the EPA Inspector General charged Robie Russell with obstructing cleanup measures at the Bunker Hill Superfund Site. Russell abruptly resigned prior to release of the I.G. report.

1991 The Coeur d'Alene Tribe took an unprecedented leadership role for an Indian tribe by filing a Natural Resource Damage (NRD) claim against the mining companies, to recover damages throughout the river basin beyond the boundaries of the 21-square-mile Superfund site.

1992 The Coeur d'Alene Tribe won a settlement with Coeur d'Alene Mines and Callahan Mining Corp. of $350,000 to help clear mine waste from the river at the Cataldo Mission, a sacred site for the northern Idaho tribe. Part of the area was recontaminated with heavy metals during subsequent flooding.

1992-3 The Washington State Department of Ecology (DOE) tested the water quality of the Spokane River and found elevated levels of zinc, cadmium, and lead—zinc year round, lead and cadmium during high flow periods. The cause was cited as mining pollution migrating from the Silver Valley in Idaho.

1993 The Washington DOE sent a letter of appeal to the Idaho Division of Environmental Quality (DEQ) requesting cooperation on addressing the pollution in the Coeur d'Alene/Spokane River watershed. Idaho did not respond.

1995 Former Governor Cecil Andrus was appointed to the Board of Directors for Coeur d'Alene Mines (one of the "responsible parties" identified at the Bunker Hill Superfund Site and one of the mining companies party to the 1986 Idaho damage settlement).

1995 The Washington DOE once again found elevated levels of lead, cadmium, and zinc in the Spokane River and attributed it to the mining pollution and related activities in the Coeur d'Alene River drainage.

1996 DOE sent another letter of appeal to DEQ requesting cooperation on a watershed approach, to address the heavy metals mining pollution situation. Idaho, again, did not respond.

1996 The Inland Empire Public Lands Council produced and distributed 17,000 10-minute "Get the LEAD Out!" videos, to educate citizens in Spokane and Coeur d'Alene on the heavy metals mining wastes polluting the Spokane/Coeur d'Alene watershed.

1996 The U.S. Department of Justice joined with the Tribe in filing an NRD suit. The Hecla Mining Company filed a

countersuit against the United States, claiming the government failed to regulate them enough on their historical releases (see 1932 entries regarding Dr. M.M. Ellis, above). The suit moved forward after the mining companies offered a meager $1 million toward cleanup. Estimated cleanup costs range from $600 million to $1 billion. The mining companies' own conservative estimates for cleanup are documented at around $120 million.

February 10, 1996 The U.S. Geological Survey estimated that one million pounds of lead were flushed into Lake Coeur d'Alene on this one day alone. The source of the lead loadings—the lower floodplain area downstream of the Superfund site—was mobilized by the floodwaters originating in the North Fork Coeur d'Alene region, where excessive logging and roadbuilding have reduced the watershed's capacity to contain snowmelt.

Spring floods of 1996 and 1997 Federal drinking water standards for lead were exceeded in Lake Coeur d'Alene.

April 1997 The Washington State (Republican-majority) legislature appropriated $300,000 to the Democratic Attorney General to conduct further studies on the Spokane River and to enable the state to pursue damages (against the mining industry).

April 1997 Dr. Mohammed Ikramuddin from Eastern Washington University makes a presentation to the Water Conference in Spokane, WA, on his studies using lead isotope "fingerprinting" on 100 water samples in the Spokane/Coeur d'Alene watershed, which traced lead from the Silver Valley mining district in Idaho to several area drinking water wells in the Spokane area.

May 5, 1997 Former Attorney General for the State of Idaho, Jim Jones, signed a deposition with the United States District Court stating that the 1986 NRD settlement between the state and the mining companies was not based upon any "formal or technical assessment of damages" and was essentially the product of political dealmaking. Documents accompanying the deposition reveal that Gulf Resources attempted to have the legal record show that the Texas-based company had never owned or operated the smelter at Bunker Hill.

June 1997 The U.S. Fish and Wildlife Service collected the highest number of dead birds along the Coeur d'Alene River since 1953: 311. As of June 9th, 18 of the carcasses were tested. Of those 18, 14 were found to have died of lead-poisoning unrelated to lead shot or sinkers. Mining pollution that has settled in this lower floodplain area was cited as the cause of the majority of the bird deaths, consistent with the conclusions of past studies.

June 1997 Several lawns located within the Superfund site, that had already been remediated and replaced with clean soil, were recontaminated during the Spring flooding. Parents raised concern for their children playing in yards.

July 1997 A Class Action lawsuit was brought against Coeur d'Alene Mines by its shareholders for violations of federal securities laws. This company is one of the Potentially Responsible Parties identified in the Bunker Hill Superfund case; one of the companies party to the Idaho damage settlement, and also one of the defendants named in the U.S. Department of Justice lawsuit. The complaint cites fraud and willful misrepresentation on the part of Coeur d'Alene Mines and its CEO and CFO (Chief Financial Officer) regarding its investments and financial performance of its ventures in New Zealand and Chile. The action was prompted particularly by the company's sudden write-off (in July 1996) of its entire $53 million investment in the Golden Cross Mine in New Zealand, due to serious environmental problems associated with its tailing dam there. The N.Z. mine is now due to close in December 1997. Action has since been taken by the N.Z. Parliament to ban all future mining in conservation areas throughout N.Z.

July 1997 A Coeur d'Alene Basin Health Study, conducted by the Idaho Department of Health and Welfare and the federal Agency for Toxic Substances and Disease Registry, was released. This represents the first time that Blood Lead Levels (BLLs) were tested outside (upstream and downstream) of the Bunker Hill Superfund Site. Results showed that BLLs were comparable to those measured within the Superfund site, approximately 3 times the national average.

July 1997 The Washington State Department of Ecology (DOE) and the U.S. Geological Survey (USGS) conducted separate tests on the water quality of the Spokane River and found elevated levels of lead, cadmium, and zinc flushing into the river from Idaho during high flow events (which corroborate earlier studies by USGS, DOE, and other researchers).

July 1997 The Washington State Attorney General sent a letter of appeal to the entire Washington Congressional delegation expressing concerns over Senator Larry Craig's "Coeur d'Alene River Basin Cleanup Bill" (S774). This bill not only excludes Washington state from any involvement in cleanup plans, it would also preclude the state from pursuing damages through legal means.

(8) Appendix 2: Targeting U.S. Superfund Law

Profound changes are being considered in the Superfund law that could threaten the Coeur d'Alene cleanup – and the cleanup of thousands of other toxic sites across America. An analysis of some of these proposals is outlined below.

Analysis Compiled by Michele Nanni,
Inland Empire Public Lands Council,
with assistance from the Natural Resources Defense Council (NRDC),
and Environmental Defense Fund (EDF)

1) TRANSFERRING FEDERAL CLEANUP AUTHORITY TO STATES

Under the current Superfund law, states are involved in the selection of remedies and may enter into cooperative agreements with EPA to carry out most cleanup activities on a site-by-site basis (as in the case of the Coeur d'Alene region). Final remedy selection is done by EPA.

Under S.8, the Title II provision directs EPA "to seek...to transfer" to states the responsibility to perform cleanups at non-federal listed facilities (Superfund-designated sites not owned by the U.S. Government). A state would be allowed to receive AUTHORIZATION (to implement its own program for cleanup at a Superfund site within its borders) or DELEGATION (to implement the federal CERCLA program at such sites).

The bill allows a state to make an application to EPA to gain "authorization." EPA then has 180 days to decide whether to approve. If EPA does not issue a decision within that time period, transfer of responsibility to the state is automatically granted. In the case of "delegation" EPA is given 120 days, after which the application is deemed to have been approved.

SUPERFUND BILLS

- **S. 8** (and latest revision dated 8/28/97) Senate Environment and Public Works Committee (with member Senator Kempthorne R-ID)
- **H.R. 2727** (Congressman Boehlert R-NY) House Transportation and Infrastructure, Water Resources Subcommittee
- **H.R. 3000** House Commerce Committee (with member Congressman Crapo R-ID)
- **H.R. 2750** (the Barcia/Dooley bill) - introduced 11/9/97

The bill also provides "Expedited Authorization," where if a state meets any three of a list of five criteria, it may operate a state cleanup program in lieu of the federal program. EPA has 90 days to review the state's "self-certification," after which the transfer of responsibility to the state is deemed to have been granted. None of these criteria mandate having strong public participation procedures in place.

Ramifications for CdA Basin

The State of Idaho technically meets three out of five criteria and would, therefore, be able to take over cleanup of the CdA Basin using a STATE cleanup program instead of CERCLA (the State of Idaho recently exempted mining sites from having to meet groundwater quality standards). Transfer of cleanup authority to Idaho would also remove any federal oversight or involvement in cleanup plans and activities.

Public participation is subverted by the processes of obtaining either authorization or delegation. Citizens and EPA are precluded from challenging transfer of sites to state authority. Once the transfer occurs, citizens and EPA are also precluded from enforcing cleanup agreements. The public needs and deserves an effective federal backstop where states fail to carry out their environmental responsibilities with respect to cleanup of the country's most toxic sites, just as air and water pollution programs.

H.R. 2727, Sections 604 and 703 would allow one of the trustees (the state, federal government, or Indian tribe) to assume a lead role in decision-making over the other trustees. This could lead to additional litigation by the other trustees and could result in the State of Idaho becoming the controlling authority over cleanup in the Coeur d'Alene Basin, despite other trustees (e.g., Indian Tribes,

Washington State) being downstream recipients of the heavy metals contamination.

H.R. 3000 would allow states to take over decision-making at Superfund sites without any public input as to whether the state has the capacity to do so. Default approvals would be granted as in S.8. Once the state obtains authority, EPA is barred from any involvement at the site unless the state requests it or unless EPA undergoes the lengthy process of withdrawing the state's authority.

2) WEAKENING OF CLEANUP STANDARDS

Current Superfund law recognizes a responsibility to protect future generations from a toxic legacy. It states a preference for remedies that involve treatments that permanently reduce or eliminate volume, toxicity, and mobility of contaminants.

S. 8, Title IV, emphasizes cost considerations, which will likely tilt remedies toward less-protective outcomes. S.8 also exempts on-site activities from hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). This exemption would result in Superfund sites being the ONLY locations in the U.S. where untreated hazardous waste soils can lawfully be placed in substandard landfills. At the Bunker Hill Superfund Site this exemption may risk further pollution of the Coeur d'Alene River from a substandard massive central toxic repository called the C.I.A. (Central Impoundment Area).

Under H.R. 3000, several provisions would weaken current cleanup standards, including the following examples:

- A loophole potentially allows clean groundwater to become contaminated, because remedies are only required when groundwater is identified as a future drinking water source. Even then, contamination is allowed to spread if the groundwaters can be estimated to regain purity by the time they are needed for drinking. H.R. 3000 only requires the monitoring of groundwater contamination, "as appropriate."
- Requires the cleanup effort to use site-specific information provided by polluters and does not allow EPA to discard data that is scientifically invalid, etc. In the Coeur d'Alene Basin, the Hecla Mining Corporation succeeded in having Idaho taxpayers fund a study intended to justify weakening standards on lead and other metals pollution in the Coeur d'Alene River's South Fork: the resulting proposals would increase lead levels 50 times the national standard for short term exposure to aquatic life.
- There is no requirement that the cleanup option of "institutional controls" be permanent, universally applicable, etc. Also, such controls would be allowed to lapse without review. Institutional controls at the Bunker Hill Superfund Site include permitting requirements for soil disturbing land projects that could disrupt the protective plastic lining that separates lead-contaminated soil from the clean soil placed over it.
- The bill weakens cancer-risk clean-up standards, and is silent on noncancer health impacts. H.R. 3000 requires that cancer risk evaluations for certain compounds be reviewed and based on "central estimates," thereby underestimating the risks to children and other vulnerable groups. These reviews can then be challenged by polluters in court. In the Coeur d'Alene basin, children suffer lead poisoning (blood lead levels greater than 10 μg/dl) at six times the national rate; the rate for all age groups is three times the national rate. H.R. 3000 also bars further cleanup of lead-in-soils until additional studies are completed.
- Governors could block any new site from being added to the Superfund program simply by withholding their concurrence. A governor need not give any explanation or assurance that such sites would be adequately cleaned up. This encourages corporate polluters to invest heavily in governors' elections to avoid clean-up costs. Provisions (also contained in S.8) that limit new listings of sites and Superfund liability would undermine the law's deterrent effect and be a "green light" to corporate polluters.

H.R. 2750 would weaken cleanup standards by repealing (1) the existing requirement for permanent remedies and (2) the preference for treatment over mere containment. The bill would also weaken cleanup standards in the following ways:

- It allows pollution to spread right up to a "facility" boundary, risking further contamination of clean waters. The Coeur d'Alene pollution has resulted in a "facility" boundary stretching 150 miles from the Montana stateline, across Idaho, and into eastern Washington.
- "Institutional controls" would lack permanence, enforceability, public disclosure, and universal applicability. H.R. 2750 allows the institutional controls to lapse without review(as in H.R. 3000). And should these controls fail, the bill also fails to require remedial action.
- Requires EPA to use data supplied by polluters in making cleanup decisions, even when the data are shown to be either biased or unreliable.
- Requires remedies to be re-opened without assurance that any changes made would not weaken cleanup plans.
- Fails to establish community-oriented information offices that would help provide meaningful access to information and enhance a community's ability to participate effectively in cleanup decisions. This is also the case with H.R. 3000 and S. 8.

3) REDUCTIONS IN LIABILITY FOR POLLUTERS

H.R. 2727, Section 612, greatly curtails polluter liability for restoring natural resources. Restoration would be limited to those resources currently "used" by the public, totally freeing polluters of liability for damages to pristine and ecologically important resources not currently in "use" by the public.

Sections 606 and 705 would significantly limit liability for loss of resources that occurred prior to restoration or in the absence of restoration (for example, if restoration is not feasible or cost-effective). Recovery for losses that occurred prior to December 11, 1980 would be prohibited. Also, polluters would potentially be excluded from being held liable for monitoring, oversight, and enforcement costs.

H.R. 3000 would allow polluters who generated and transported waste prior to 1987 to escape liability under various circumstances, *seven years* after the Superfund law was enacted.

H.R. 3000 also creates new, highly fact-specific standards for EPA to meet as an additional burden of proof in assessing liability, contamination, and cleanup plans. Thus, polluters may more readily challenge EPA, and delay or prevent cleanups from proceeding, resulting in increased litigation costs. The bill also prevents EPA from recovering from polluters the costs of enforcement, which means such costs would be shifted to taxpayers. In addition, provisions in the bill would slow cleanups by several years, because EPA would be barred from issuing cleanup orders until allocation of liability is complete (unless deemed a "public health emergency"). This means that EPA would have to do the work itself and then seek reimbursement.

H.R. 2750 contains several provisions which would relax liability for polluters that are determined to be "responsible parties" at Superfund sites. An example is that EPA could, on a site-by-site basis, exempt "small" businesses from liability if they have fewer than 60 full-time-equivalent employees or less than $5 million in annual gross revenues. This risks even more delays as so-called "small" businesses fight to escape liability for their pollution.

H.R. 2750 also allows massive resources to be diverted from cleanup activities through the "orphan share fund" provisions.

4) WEAKENING OF NATURAL RESOURCE DAMAGE PROVISIONS

The current Superfund law recognizes the comprehensive array of values associated with natural resources. The law allows trustees to factor in "heritage" or "nonuse" values - the values people place on a pristine wilderness, wildlife, pure flowing rivers teeming with fish, an unpolluted landscape - into their restoration decisions and to recover damages for the impairment of these values for the public. The law also allows trustees to recover for the "interim" losses that may be suffered up until the time the natural resources are restored. This provision helps minimize delays in cleanup, since the parties responsible for the pollution could be held liable for damages over the period in which the public is denied the resources.

Also, the Natural Resource Damage (NRD) provision of the current law provides for restoring the resource to the condition it was prior to the damage.

Under S.8, Title VII, recovery for impairment of heritage or "nonuse" values would be prohibited. This essentially has the effect of valuing least our most pristine and endangered resources. Furthermore, it precludes recovery of any interim lost uses that occurred prior to December 11, 1980. In addition, the range of alternatives considered by the trustee must include an alternative that relies on "natural recovery" as a restoration method, and consideration of the availability of replacement or alternative resources. This, coupled with the requirement that "cost-effectiveness" be considered in the selection of alternatives, makes "natural recovery" a preferred option for cleanup. In the Coeur d'Alene, the polluting mining companies could virtually walk away from $600 million to $1 billion in restoration costs. Taxpayers, not polluters, would pay.

S.8 specifically states that all current Natural Resource Damage Assessment (NRDA) cases be re-done under these revised conditions, the only exception being the Clark Fork Superfund Site in Montana. This means that the Coeur d'Alene Tribe and federal government's NRDA would need to be re-done, despite the large amount of money and effort that is already been expended on the assessment.

H.R. 2727, Sections 608 and 707, would require "de novo" review of all aspects of NRDAs and would eliminate the current provision of a "rebuttable presumption" to a trustee's assessment of natural resource damages. These actions would produce the following negative effects: 1) encourage more prolonged and expensive litigation; 2) significantly prolong the timeframe for restoration; and 3) reduce incentive for the trustee to develop a public record, with opportunity for notice and public comment.

Sections 603 and 701 would potentially reduce the range of natural resources for which trustees may recover damages. Such resources that some states fear might not be covered under the proposed language include wildlife that is not currently actively managed by the state, air resources, etc.

Section 609 would require trustees to analyze costs and benefits of each restoration alternative, analyze the incremental costs and benefits of each alternative, and give preference of selection to any alternative for which incremental costs are justified by incremental benefits. This would be difficult and time-consuming and would tend to minimize environmental values, which can be difficult to quantify in economic terms.

Sections 614 and 709 would force the above, and other, changes in the law to apply to cases that have already been filed and assessments that have already been substantially completed (as in the case of the Coeur d'Alene basin NRDA). This would mean that millions of taxpayer dollars would be wasted and restoration would be delayed for many more years while assessments are re-done to conform with the new legislation. The only exemption would be the Clark Fork case in Montana.

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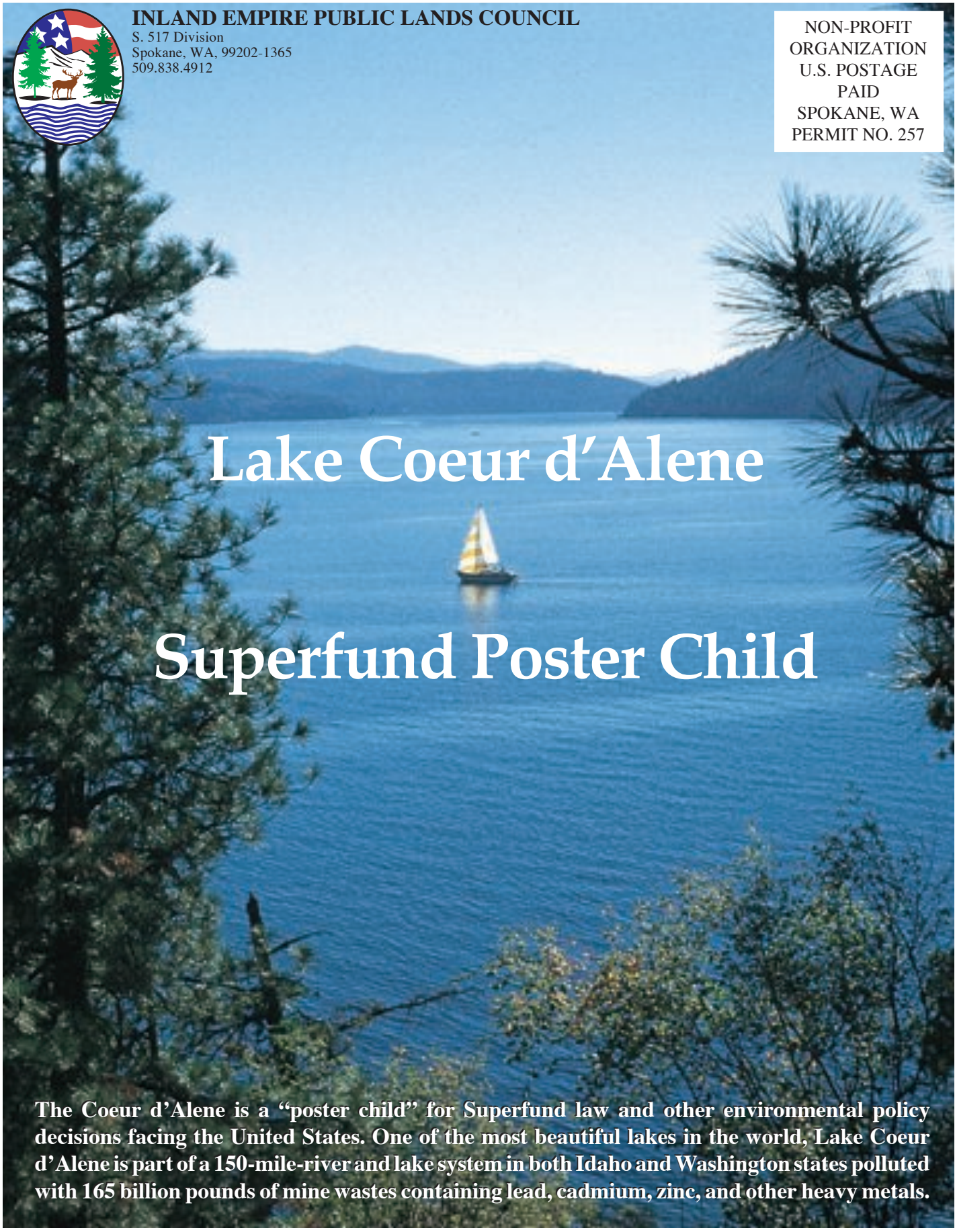

Lake Coeur d'Alene

Superfund Poster Child

The Coeur d'Alene is a "poster child" for Superfund law and other environmental policy decisions facing the United States. One of the most beautiful lakes in the world, Lake Coeur d'Alene is part of a 150-mile-river and lake system in both Idaho and Washington states polluted with 165 billion pounds of mine wastes containing lead, cadmium, zinc, and other heavy metals.