NRC FORM 464 Part I (6-1998)

U.S. NUCLEAR REGULATORY COMMISSION

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

FOIA/PA	RESPONSE NUMBER
99-377,00-219,00-257	16

RESPONSE TYPE ☐ FINAL ☑ PARTIAL

REQUESTER: Ms. Kimberly Boggiato

DATE: AUG 0 9 2000

PART I. -- INFORMATION RELEASED

☐ No additional agency records subject to the request have been located.

☐ Requested records are available through another public distribution program. See Comments section.

☐ APPENDICES ____ Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.

☑ APPENDICES BB Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.

☐ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.

☑ APPENDICES BB Agency records subject to the request are enclosed.

☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.

☑ We are continuing to process your request.

☐ See Comments.

PART I.A -- FEES

AMOUNT * $

* See comments for details

☐ You will be billed by NRC for the amount listed.

☐ You will receive a refund for the amount listed.

☐ None. Minimum fee threshold not met.

☐ Fees waived.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

☐ No agency records subject to the request have been located.

☐ Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.

☐ This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed Carol Ann Reed

FOIA-99-377
FOIA-00-219
FOIA-00-257

APPENDIX BB

RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with*)

NUMBER	DATE	DESCRIPTION/PAGES
1.	Undated	Memo to: J. Turdici, from J. Gray, subject: Exemption of Fees for Atlas Corp. and Successor Trustee/Licensee of the Moab Mill Site, (14 pgs.).
2.	10/5/89	Letter to R. Blubaugh from J. Montgomery, subject: Notice of Violation and Proposed Imposition of Civil Penalty - $6250 (NRC Inspection Rpt. No. 40-3453/89-01), (6 pgs.).
3.	2/14/90	Memo for: J. Lieberman from R. Martin, subject: Proposed Civil Penalty Imposition - Atlas Corporation, (3 pgs.) enclosing DRAFT Order Imposing Civil Monetary Penalty, (12 pgs.).
4.	6/4/97	Letter to Honorable A. Gore from House Representatives, re: Atlas Decommissioning, (2 pgs.).
5.	8/5/97	Letter to Honorable A. Gore from George Miller re: Radioactive Contamination of the Colorado River, (2 pgs.).
6.	10/7/98	Letter to Honorable Randy Cunningham from L. Callan, (2 pgs.) with enclosure, (3 pgs.).
7.	12/28/98	Letter to Honorable S. Jackson from R. Blubaugh, re: Atlas' Pending License Amendment, (6 pgs.).
8.	12/28/98	EDO Principal Correspondence Control Ticket, (2 pgs.).
9.	1/12/99	EDO Principal Correspondence Control Ticket, (1 pg.).
10.	1/12/99	Office of the Secretary Correspondence Control Ticket, (1 pg.).

11.	1/12/99	Letter to Honorable S. Jackson from R. Blubaugh re: Source Material License SUA-917, (2 pgs.).
12.	1/13/99	Envelope addressed to Honorable S. Jackson, (1 pg.).
13.	2/4/99	E-Mail from C. Poland to Multiple Addressee, subject: Request for Extension of Ticket G19990047-ACNW Action Plan, (1 pg.).
14.	2/17/99	Memo to: Multiple Addressee from Atlas Corp. Proofs of Claims, (2 pgs.).
15.	2/18/99	Letter to Honorable S. Jackson from G. Shafter and R. Blubaugh, re: Atlas Corp's Moab, Utah Uranium Mill Tailings Site, (4 pgs.).
16.	4/1/99	E-mail from P. Tressler to B. Lynn, J. Holonich, re: Extension on 19990141, (1 pg.).
17.	5/18/99	Letter to g. Shafter from S. Jackson re: Atlas Issues, (7 pgs.).
18.	6/22/99	Letter to S. Jackson from G. Zimmerman re: Atlas' Uranium Mine Tailings near Moab, Utah, (4 pgs.).
19.	2/2/00	Memo to S. Burns from M. Schwartz, subject: Whether Exemption from NRC Fees for the Trust and Trustee of the Moab Mill Site Creates a Conflict of Interest for Pricewaterhousecoopers LLP and the NRC, (2 pgs.).
20.	3/23/00	DRAFT Commission Paper for the Commission from J. Cordes, subject: Moab Mill Reclamation Trust, (17 pgs.).
21.	3/28/00	Memo to S. Treby from J. Greeves, subject: Generic Implications of Atlas Surety Settlement, (3 pgs.).
22.	4/10/00	Handwritten note to: Mike Fliegel and Tom Essig from Marjorie Nordlinger, (1 pg.), attaching DRAFT of letter to J. Surmeier from RD re: Amendments to Existing Source Materials License, (5 pgs.).
23.	4/20/00	Letter to D. Lashway from R. Wiygul re: Grand Canyon Trust v. Babbitt, (3 pgs.).

MEMORANDUM TO: James Turdici, Director
Division of Accounting and Finance
Office of the Chief Financial Officer

FROM: Joseph R. Gray
Associate General Counsel for
Licensing and Regulation

SUBJECT: EXEMPTION OF FEES FOR ATLAS CORPORATION AND SUCCESSOR TRUSTEE/LICENSEE OF THE MOAB MILL SITE

Atlas Corporation (Atlas) is the owner of the Moab Mill site in Grand County, Utah. The Moab Mill site currently is subject to the requirements set forth in NRC Source Materials License No. SUA-917. On September 22, 1998, Atlas filed a petition for relief under Chapter 11 of the Bankruptcy Code and since that date has been operating as a Debtor in Possession. The NRC filed a claim in the bankruptcy proceeding for estimated costs associated with further reclamation of the Moab Mill site and for unpaid licensing fees.

On April 28, 1999, with the Commission's consent, the NRC entered into an agreement with Atlas and the State of Utah (the other claimant in the bankruptcy proceeding) to resolve claims for reclamation costs and past fees. (See Moab Uranium Mill site Transfer Agreement, page 2, paragraph 3A, (attached).) Pursuant to that agreement, Atlas will transfer the Moab Mill site, along with other assets, to a reclamation trust. A Trustee/Licensee will be appointed by the NRC, with the concurrence of the State of Utah, who will be responsible for managing the trust assets as well as undertaking efforts to reclaim the Moab Mill site. The license for the Moab Mill site will be transferred from Atlas to the Trustee.

The settlement agreement reached by the NRC and Atlas included claims for past unpaid fees. Therefore, these fees will have been discharged in bankruptcy (when the bankruptcy court approves the settlement) and should no longer be carried. In addition to the past fees charged to Atlas, OGC is concerned about the potential impact of future fees associated with the NRC's licensing and oversight of the Trustee/Licensee and the reclamation of the Moab Mill site. The trust estate intended to be used for control and reclamation of the Moab Mill site will likely have very limited assets with which to complete the reclamation currently required by the license. To maximize the amount of funds available to the Trustee/Licensee to engage in reclamation work, we believe that the Trustee/Licensee should be exempt from NRC fees.

If you have any questions, please feel free to call Stephanie Martz, who can be reached at 415-1520.

Attachment: As stated

cc: John Greeves, NMSS/DWM

B6/1

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ORDER FOR SUPPLIES OR SERVICES

PAGE OF PAGES: 1 | 6

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER	2. CONTRACT NO. (If any)	6. SHIP TO:
09-30-1999	GS-23F-9758H	a. NAME OF CONSIGNEE

CONTINUATION PAGE

SCHEDULE OF PRICES

TASK 1: ANALYSIS OF SMALL ENTITY FEE

Labor Category	Est. Hours	Fixed Hourly Rates	Amount
Partner/Principal	8	$297.13	$ 2,377.04
Sr. Manager	24	$154.35	$ 3,704.40
Manager	64	$127.89	$ 8,184.96
Consultant III	160	$101.43	$16,228.80
TOTAL FOR TASK 1	256		$30,495.20

TASK 2: REVIEW THE FEE MODEL AND DEVELOP ALTERNATIVES FOR DETERMINING BEST METHODS of ALLOCATING COSTS

Partner/Principal	8	$297.13	$ 2,377.04
Sr. Manager	40	$154.35	$ 6,174.00
Manager	160	$127.89	$20,462.40
Consultant III	600	$101.43	$60,858.00
TOTAL FOR TASK 2	808		$89,871.44

OPTIONAL TASK

TASK 3 - DEVELOP INTERFACE BETWEEN AGENCY'S AUTOMATED BUDGET SYSTEM AND FEE MODEL SPREADSHEETS

Partner/Principal	8	$297.13	$ 2,377.04
Sr. Manager	8	$154.35	$ 1,234.80
Manager	56	$127.89	$ 7,161.84
Consultant II	200	$ 82.69	$16,538.00
TOTAL FOR TASK 3	272		$27,311.68

Security clause, 2052.204-71, "Site Access Badge Requirements" and "Site Access Badge Procedures"are hereby attached and made apart of this purchase order. These badge requirements and procedures are required in order for the contractor to work on-site anytime during the period of performance of this order at NRC's Headquarters in Rockville, Maryland.

CONTINUATION PAGE

A.1 2052.204-70 SECURITY

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See Attachment 1) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors, or others (e.g., bidders) who have or may have an NRC contractual relationship that requires access to classified information or matter, access on a continuing basis (in excess of 90 or more days) to NRC Headquarters controlled buildings, or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard National Security Information, Restricted Data, and Formerly Restricted Data. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding National Security Information, Restricted Data, and Formerly Restricted Data, and for protecting against sabotage, espionage, loss, and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and the retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained. The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information in whole

be necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it at the direction of the contracting officer. Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission which are subject to change as directed by the NRC Division of Security and the Contracting Officer. These changes will be under the authority of the changes clause.

(e) Definition of National Security Information. The term National Security Information, as used in this clause, means information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) Definition of Restricted Data. The term Restricted Data, as used in this clause, means all data concerning:

(1) design, manufacture, or utilization of atomic weapons;

(2) the production of special nuclear material; or

(3) the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

(g) Definition of Formerly Restricted Data. The term Formerly Restricted Data, as used in this clause, means all data removed from the Restricted Data category under section 142-d of the Atomic Energy Act of 1954, as amended.

(h) Security clearance personnel. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required. The contractor shall also execute a Standard Form 312, Classified Information Nondisclosure Agreement, when access to classified information is required.

(i) Criminal liabilities. It is understood that disclosure of National Security Information, Restricted Data, and Formerly Restricted Data, relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(k) In performing the contract work, the contractor shall classify all documents, material, and equipment originated or generated by the contractor in accordance with guidance issued by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, and equipment must provide that the subcontractor or supplier assign classification to all documents, material, and equipment in accordance with guidance furnished by the contractor.

[END-OF-CLAUSE]

A.2 Site Access Badge Procedures

The contractor shall ensure that all its employees, including any subcontractor employees and any subsequent new employees who are assigned to perform the work herein, are approved by the government for building access.

Within ten working days after award of a contract, execution of a modification of a contract or proposal of new personnel for contract tasks, the firm so notified must furnish properly completed security applications for employees. Timely receipt of properly completed security applications is a contract requirement. Failure of the contractor to comply with this condition within the ten work-day period may be a basis to void the notice of selection. In that event, the government may select another firm for award.

The government shall have and exercise full and complete control over granting, denying, withholding, or terminating building access approvals for individuals performing work under this contract. Individuals performing work under this contract shall be required to complete and submit to the contractor representative an acceptable Form 176 (Statement of Personal History), and two FD-258 (Fingerprint Charts) at least 48 hours prior to performing services at the NRC. The contractor representative will submit the documents to the Project Officer who will give them to the Division of Security. Since the NRC/government approval process takes 45 to 60 days or longer from receipt of acceptable security applications, the NRC may, among other things, grant or deny temporary building access approval to an individual based upon its review of the information contained in the GSA Form 176. Also, in the exercise of its authority, GSA may, among other things, grant or deny permanent building access approval based on the results of its investigation and adjudication guidelines. This submittal requirement also applies to the officers of the firm who, for any reason, may visit the work sites for an extended period of time during the term of the contract. In the event that NRC and GSA are unable to grant a temporary or permanent building access approval, to any individual performing work under this contract, the contractor is responsible for assigning another individual to perform the necessary function without any delay in the

contract's performance schedule, or without adverse impact to any other terms or conditions of the contract. The contractor is responsible for informing those affected by this procedure of the required building access approval process (i.e., temporary and permanent determinations), and the possibility that individuals may be required to wait until permanent building access approvals are granted before beginning work in NRC's buildings.

The contractor will advise the Project Officer, who, in turn, will advise the Division of Security, of the termination or dismissal of any employee who has applied for, or has been granted, NRC building access approval. It is the responsibility of the contractor to obtain and return to the Division of Security, any photo-identification or temporary badge of an individual who no longer requires access to NRC space.

[END-OF-CLAUSE]

STATEMENT OF WORK

ANALYSIS OF FEE RULE DEVELOPMENT

1. SUMMARY

The Office of the Chief Financial Officer of the U. S. Nuclear Regulatory Commission requires a contractor to provide expert advice and guidance concerning options on increasing the small entity fees assessed to licensees, reviewing the fee model and suggesting alternatives to the way fees are currently developed, and developing an electronic interface from the agency's automated budget system to our fee model spreadsheets.

2. BACKGROUND

The NRC is required by federal law and regulations to establish and have established fee policy and rulemaking for assessing fees to licensees and applicants in order to recover its budget authority. The following major federal laws and regulations form the basis of NRC's fee policy and rulemaking:

The Omnibus Budget Reconciliation Act (OBRA-90), Public Law 101-508, as amended, requires the NRC to recover approximately 100 percent of its budget authority in each fiscal year, less any amounts appropriated from the Nuclear Waste Fund (NWF). In order to accomplish this, two types of fees were established by the NRC: (1) license and inspection fees, which are established by 10 CFR Part 170, under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, to recover the costs for NRC providing identifiable services to specific applicants and licensees, such as the review of applications for the issuance of new licenses for approvals; and (2) annual fees, established by 10 CFR Part 171, under the authority of OBRA-90, to recover generic and other regulatory costs not recovered from the fees established by 10 CFR Part 170.

In addition, The Chief Financial Officers (CFO) Act (Public Law 101-576) requires the NRC to perform a biennial review of fees and other charges. To comply with this requirement of the CFO Act, the NRC has evaluated the historical professional staff utilized to process a licensing action for materials licensees, whose fees are based on the average cost method (flat fees). Based on the results of the biennial review, the NRC revises the licensing fees charged to reflect the cost to the agency for providing the services.

Currently, the NRC has two professional hourly rates which are used to determine or calculate license and inspection, and annual fees. The professional hourly rates are based on the NRC's direct FTEs and that portion of the NRC's budget that either does not constitute direct program support (contractual services costs) or is not recovered through the appropriation from the NWF or the General Fund.

The Energy Policy Act of 1992 (Public Law 102-486) required the NRC to solicit public comments on NRC's fee policy and issue a report to the Congress. In April 1993, the NRC solicited public comments in the Federal Register on changes to the fee policy , and in February 1994, a report was issued to the Congress entitled "Report to the Congress on the U.S. Nuclear

Regulatory Commission's Licensee Fee Policy Review Required by the Energy Policy Act of 1992". However, to date, no legislative relief has been promulgated to mitigate the issues of "fairness and equity" regarding the assessed fees or fee policy.

Also, in compliance with the Regulatory Flexibility Act of 1980, as amended (Public Law 96-354; 5 U.S.C. 601 et seq.), the NRC has established two tiers of small entity fees (for annual fee purposes only.). The NRC has defined what is a small entity for purposes of its regulations, per consultation with the Small Business Administration. NRC materials licensees who meet the NRC's size standards for small entities pay reduced fees.

The Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. NRC's fee rule has been determined to fall under the SBREFA as a "major" rule since the NRC is required to collect approximately 100 percent of the budget authority through fees. The NRC prepares a Small Entity Compliance Guide with each final rule. Furthermore, SBREFA, subtitle E, mandates that the final rule cannot become effective until 60 days after it is published in the Federal Register.

Over the past decade, there have been numerous studies, analyses, and working groups looking at the process of fees development in an effort to further improve, streamline. and simplify the process. NRC's Office of the Inspector General (OIG) conducted a study of how annual fees are derived, and the calculation of the hourly rate. The OIG's specific emphasis is to determine why generic costs are not included in the hourly rate charged under 10 CFR Part 170, but are rolled into the annual fees charged under 10 CFR Part 171. The concern is whether or not the NRC is fully recovering the costs under A-25 given the current methodology.

Industry continues to inquire about ways to reduce their fees and mitigate the "fairness and equity" issues of having to pay for costs which do not benefit them, e.g. the surcharge category which includes the exemption for Federal agencies who are exempt by law from paying IOAA fees, the small business subsidy, Agreement States' costs, International costs, the non-profit educational exemption, and generic and rulemaking costs associated with activities for which no NRC licensee currently exists to charge fees, and others.

Due to the NRC being in a continuous cycle of receiving an approved appropriation, developing a fee rule, getting it published for comment, folding in those comments into a final rule, publishing a final rule, issuing invoices for that fiscal year, collecting fees, responding to Congressional Q&A's on fees, replying to licensees' letters, and gearing up for the next year's fee rule, the agency does not have the resources to take the fresh look approach that is needed to perform an independent analysis of the entire process.

3. SCOPE OF WORK

The NRC requires a contractor to provide expert advice and guidance in performing the tasks outlined below. All services shall be requested and provided on a labor hour basis.

Task 1 - ANALYSIS OF SMALL ENTITY FEES

The Contractor shall review the small entity fees currently offered and determine options for increasing the annual fee amounts that are assessed for small entities. Currently, the annual fees are:

- $1,800 is the maximum small entity fee
- $400 is the lower level, small entity fee

Analyze the method for developing the existing small entity fees (two tiers), and determine if the method used is the most appropriate to implement the fee given the laws and regulations or whether alternatives exist which the NRC has not explored (keeping in mind that currently the small entity subsidy is passed on the non-small entity licensees through a surcharge.)

In FY 1991, when NRC first imposed annual fees on small materials licensees, it was determined that the annual fees would have a significant impact on a substantially large number of small entities, the NRC specifically requested comments from licensees on the proposed rule.

Based on comments received, NRC reviewed alternatives to assessing the full fee to all materials licensees and determined that establishing a maximum fee for small entities was appropriate.

Since the Regulatory Flexibility Act and implementing guidance were vague as to the amount to be charged, NRC examined its current fees and those assessed by six agreement states for those fee categories which were expected to have a large number of small entities. Based on that analysis, NRC established a small entity fee of $1800 in FY 1991. Subsequently, the fee charge was reexamined in 1992, and after comments the received from licensees as well as over 100 Congressional inquiries, a lower tier small entity fee of $400 was developed for small businesses and non-profit organizations.

Those two tiers of small entity fees ($1,800 and $400) have not been adjusted since the 1992 fee rule was implemented. The NRC believes it is time to take a fresh look at how the small entity fee threshold was derived and determine if adjustments need to be made reflective of such factors as: change in economic circumstances, inflation rate, CPI, trends in industry, how Agreement States are charging fees now, etc and given that annual fees for small materials licensees now include the cost of inspections, renewals, and amendments.

DELIVERABLES

The Contractor shall prepare and provide a DRAFT report to the NRC Task Manager, which shall include the results of this review; how the NRC determines small entity fees, and provide recommendations for increasing the small entity fees and the basis of that recommendation. This DRAFT report shall be provided to the NRC for review and comment, two (2) weeks prior to the completion date of this task. One week after receipt of the DRAFT report, the NRC shall review and provide comments to the contractor.

The Contractor shall prepare and provide a FINAL report to the NRC Task Manager, which shall incorporate comments provided by the NRC, one week after receipt of NRC's comments. This report is due on 11/1/1999.

Task 2 - REVIEW THE FEE MODEL AND DEVELOP ALTERNATIVES FOR DETERMINING BEST METHODS OF ALLOCATING COSTS

The Contractor shall review the current fee model employed at NRC and develop alternatives for the agency's cost allocation method.

This analysis should encompass a conceptual model of options including how the agency accomplishes:

- development of the hourly rate
- generating 100% fee recovery within Congressional and agency constraints
- whether to use the percent change method
- whether to use the rebaselining method
- determining best method of allocating costs to classes of licensees.

The NRC currently has a variety of classes of licensees: power reactor, non-power reactor, high-enriched fuel facility, low-enriched fuel facility, UF6 conversion facility, uranium recovery facility, byproduct material license, transportation approval, Spent Fuel Storage\Reactor Decommissioning, and various categories of fees within classes. For instance, byproduct materials licenses encompass another 30 or so fee categories.

The "fee models" employed by the NRC to perform annual calculations are complex and time-consuming. The budget is allocated to each class of licensees. For those costs which relate to activities not directly attributable to an existing licensee or class of license, NRC develops a surcharge category and allocates the surcharge to each class of licensee based on the percentage of the budget for that class.

The NRC developed two professional hourly rates based on the number of direct FTE's and the agency's budget. The hourly rates are used to determine the fees assessed for: fees for services and flat fees. A complete analysis of how the hourly rates is developed is included in NRC's fee rule.

The NRC revises its fee schedules currently based on one of two methods which are referred to as the "rebaseline" method or "percent change" method. The first being a complete analysis of the budgeted costs for each class of licensee. The second merely reflects a percentage change on last year's fees based on the percentage the budget has increased or decreased. Rebaselining being more complex and percent change the simple method.

While performing these analyses, the Contractor shall keep in mind the existing laws under which the agency operates. The hourly rate needs to assure recovery of full cost under IOAA. If legislation needs to be enacted to accommodate any of the recommendations, provide specific legislative language along with the deliverables.

DELIVERABLES

The Contractor shall prepare and provide a DRAFT report to the NRC Task Manager, which shall include the results of the contractor's review of the process utilized by NRC to develop the hourly rates, how to generate100 percent fee recovery, percent change and rebaselining, and provide recommendations for improving, and document all assumptions which were used to reach the recommendation. This DRAFT report shall be provided to the NRC for review and comment two weeks prior to the completion date of this task. One week after receipt of the DRAFT report, the NRC shall provide comments to the contractor.

The Contractor shall prepare and provide a FINAL report to the NRC Task Manager, which shall incorporate any comments provided by the NRC, one week after receipt of NRC's comments. This report is due on 2/29/2000.

OPTIONAL TASK

Task 3 - DEVELOP INTERFACE BETWEEN AGENCY'S AUTOMATED BUDGET SYSTEM AND FEE MODEL SPREADSHEETS.

Based on the outcome of Task 2, the Government reserves the right to exercise this optional task. If the optional task is exercised, a modification to this purchase will be issued so that the following services can be provided:

The Contractor shall provide expert advice and guidance in developing an electronic interface from the NRC's Budget System "CCRDS" to the agency's fee model spreadsheet.

Once the contractor becomes thoroughly familiar with the methodology employed in developing the fee model, the NRC will request a written evaluation detailing what would be required to develop an automatic interface from NRC's Budget System CCRDS to update the fee model spreadsheets. This is intended to eliminate the current time-consuming, manual entry of each line of data from *NRC's* budget program to the fee program.

4. DESCRIPTION OF DELIVERABLES

The Contractor shall provide all deliverables, other than periodic status reports, on a 3½ inch disc using WordPerfect 8.1 or other approved agency supported software.

Status reports shall be submitted to the NRC Task Manager on a weekly basis. The status report shall give the progress made by the contractor against an established project plan that includes accomplishments, planned activities, and issues/concerns.

5. REPORTING REQUIREMENTS

The NRC Task Manager shall have ad hoc access to key contractor personnel and have verbal (telephone) contact with key contractor personnel on an as needed basis. The focal point between the NRC and the contractor will be the NRC Task Manager.

6. GOVERNMENT FURNISHED MATERIALS

The Government will provide the quoter with a copy of the following documents:

- "Report to Congress on the U.S. Nuclear Regulatory Commission's Licensee Fee Policy Review"

- Federal Register Notice dated June 10, 1999 entitled "10 CFR Parts 170 and 171 Revisions to NRC's fee schedules;100% fee recovery, FY99; Final Rule"

- Federal Register Notice dated July 23, 1992 entitled "10 CFR Parts 170 and 171 Revision of Fee Schedules; 100% Fee Recovery, FY 1992; Final Rule"

- "Final Revisions to the NRC's License Fee Regulations in 10 CFR Parts 170 and 171" Dated July 8, 1991

7. GOVERNMENT FURNISHED SPACE

The NRC shall furnish office space to the contractor staff as needed.

8. MEETINGS

Meetings will be held at NRC Headquarters, 11545 Rockville, Pike, Rockville, Maryland. The meeting dates and time will be coordinated between the NRC Task Manager and the contractor's point of contact.

9. CONTRACTOR QUALIFICATIONS//PERSONNEL QUALIFICATIONS/TECHNICAL SKILL REQUIRED

The Contractor personnel assigned to this purchase order shall have qualifications and experience in cost analysis, rate-setting processes, general accounting and budgeting experience in the private and/or federal sector as follows. Financial Analysts, or staff in a similar labor category is anticipated.

- Experience in establishing rates to be charged for services rendered

- Knowledge and experience in assessing personnel costs, labor rates, management and support costs

- Experience is costing rates in various markets

- Experience and knowledge in the application of managerial cost accounting principles

- Experience in providing analyses consistent with Federal regulations and guidance

- Experience in conducting analyses with varied assumptions and ability to determine impact of those changes in assumptions

Specific experience in providing assistance in the above areas shall be submitted with organizational references to substantiate exceptional performance.

10. PERIOD OF PERFORMANCE

The period of performance for this order is as follows:

Task 1 - October 1, 1999 through November 1, 1999
Task 2 - November 2, 1999 through February 29, 2000
Task 3 - March 1, 2000 through March 31, 2000, if exercised

11. TRAVEL

No travel is anticipated.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

OCT - 5 1989

Docket No. 40-3453
License No. SUA-917
EA No. 89-110

Atlas Corporation
Atlas Minerals Division
ATTN: Richard Blubaugh
Regulatory Affairs Manager
743 Horizon Court, Suite 202
Grand Junction, Colorado 81506

Gentlemen:

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - $6250 (NRC INSPECTION REPORT NO. 40-3453/89-01)

This refers to the routine unannounced radiation safety inspection conducted on April 26-27, 1989, at Atlas Corporation's Moab Uranium Mill in Moab, Utah, and to the discussion of the inspection findings at an Enforcement Conference at the NRC's Uranium Recovery Field Office in Denver, Colorado, on June 2, 1989. The results of this inspection were provided to you in a report dated May 24, 1989.

The violation described in the enclosed Notice of Violation (NOV) involves Radon-222 releases to an unrestricted area, as measured at environmental Monitoring Station S-2, in excess of 220 percent of the maximum permissible concentration (MPC) permitted by 10 CFR 20.106, when averaged for calendar year 1988.

Since your mill shut down in January 1982, environmental monitoring has continued with semiannual environmental monitoring reports being submitted for review. A significant upward trend in radon-222 releases became apparent in 1985. During subsequent semiannual environmental monitoring report reviews, the increasing trend of radon-222 releases to unrestricted areas continued and was discussed with NRC. As a result of our reviews and discussions with you, it is apparent that you have been aware of this condition since the conclusion of the environmental monitoring period for calendar year 1986, and yet a corrective plan of action was not addressed by you until the enforcement conference on June 2, 1989.

Based on the steps Atlas agreed to at the enforcement conference, NRC issued a Confirmation of Action Letter (CAL) dated June 8, 1989, which confirmed Atlas' commitments to: 1) submit a corrective action plan within 45 days to reduce and maintain radon emanation rates within limits; and 2) implement an enhanced radon sampling program with results reported to NRC monthly. The corrective action plan was to be integrated with accelerated plans for reclamation of the tailings impoundment.

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NRC received Atlas' corrective action plan on July 9, 1989. Based on our review of the plan, NRC issued a letter to Atlas dated July 27, 1989, in which we indicated our general approval of the steps Atlas planned to take in the short term to address radon emanation and requested that Atlas provide supporting information and submit its corrective action plan in the form of a license amendment request. Atlas complied with this request in letters dated August 16 and August 25, 1989, and this matter remains under NRC review.

NRC recognizes the fluctuating nature of radon releases from mill tailings impoundments and, as you pointed out during the enforcement conference, we recognize that these releases will increase as licensees carry out dewatering activities required by the NRC. We also recognize that addressing this problem requires accelerated long-term reclamation plans and ensuring that short-term measures are consistent with these plans. However, licensees have a responsibility to achieve compliance with regulatory limits designed to protect the public or seek relief from such limits. In this case, it appears that Atlas Minerals did neither, notwithstanding your recognition of increasing levels of radon over the past three years and the attention of NRC on this matter. Rather, Atlas took a gamble in hopes that the sampling results for the latter part of 1988 would show a decline. Such an approach to regulatory requirements is not acceptable. Moreover, the fact that no members of the public were actually exposed to radon concentrations in excess of the limits for release rates at the site boundary is not controlling. Actual exposure is not necessary before there is a regulatory concern.

The failure to take steps to prevent radon-222 releases from your tailing impoundment exceeding the limits of 10 CFR Part 20 is considered a significant regulatory concern. Therefore, NRC has classified the violation in the enclosed Notice at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (1989) (Enforcement Policy).

To emphasize Atlas' responsibility to conduct its activities in compliance with radioactivity release limits and its responsibility to heed regulatory requirements, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $6,250 for the violation described in the enclosed Notice.

The base value for a Severity Level III violation for uranium mill licensees is $5,000. The escalation and mitigation factors in the Enforcement Policy were considered and on balance a 25% escalation of the base civil penalty was deemed appropriate. The penalty was increased by 100% due to Atlas' prior notice of a potential problem from environmental monitoring results. This was balanced against 25% mitigation of the penalty for Atlas' corrective actions, which were considered extensive but not prompt, and 50% mitigation for Atlas' past performance, which was good but not outstanding.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence. You may incorporate, by reference,

any information previously submitted to NRC in regard to your corrective actions and plans to prevent recurrence. The NRC will review your response to this Notice, including your proposed corrective actions, and the results of future inspections to determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

The responses directed by this letter and the enclosed Notice are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Public Law No. 96-511.

Sincerely,

John M. Montgomery
Acting Regional Administrator

Enclosure:
Notice of Violation and
Proposed Imposition
of Civil Penalty

cc:
Utah Radiation Control Program Director
NRC Public Document Room

bcc w/encl

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9/28/89	9/29/89	10/1/89	10/2/89
	GSanborn for JM per telecon		

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Atlas Corporation
Atlas Minerals Division
Grand Junction, Colorado

Docket No. 40-3453
License No. SUA-917
EA No. 89-110

During an NRC inspection conducted on April 26-27, 1989, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (1989), the Nuclear Regulatory Commission proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 20.106(a) requires that except as authorized, no radioactive material be released to an unrestricted area in concentrations which exceed the limits specified in Appendix B, Table II of 10 CFR Part 20, when averaged over one year.

Contrary to the above, radioactive material, specifically radon-222, was released to an unrestricted area in concentrations exceeding the limits specified in 10 CFR Part 20, Appendix B, Table II, when averaged for calendar year 1988, and the authorized exceptions did not apply. The radon-222 concentrations released were approximately 220 percent of the maximum permissible concentration.

This is a Severity Level III violation (Supplement IV).

Civil Penalty - $6,250.

Pursuant to the provisions of 10 CFR 2.201, Atlas Minerals (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice. This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation. If an adequate reply is not received within the time specified in this Notice, an order may be issued to show cause why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, or money order payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the cumulative amount of the civil penalties if more than one civil penalty is proposed, in whole or in part by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section V.B of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above (Reply to a Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

FOR THE NUCLEAR REGULATORY COMMISSION

John M. Montgomery
Acting Regional Administrator

Dated at Arlington, Texas,
this day of October 1989.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

FEB 14 1990

MEMORANDUM FOR: James Lieberman, Director, Office of Enforcement

FROM: Robert D. Martin, Regional Administrator

SUBJECT: PROPOSED CIVIL PENALTY IMPOSITION - ATLAS CORPORATION

EA No. 89-110

I am enclosing a draft letter and order imposing a $5,000 civil penalty upon Atlas Corporation for a violation of 10 CFR [illegible] limits for releases of radon-222 to unrestricted areas. The proposed civil penalty in this case was $6,250.

In denying the violation, the licensee's principal argument is that the data relied upon to support the violation is derived from a monitoring point that is actually within the restricted area and thus is not indicative of radon-222 concentrations in unrestricted areas. Absent a detailed analysis to support this contention, which the licensee has not provided despite being given an additional opportunity to do so (see enclosed copy of our December 7, 1989 letter and Atlas' reply), we do not believe this argument should cause us to reconsider whether the violation actually occurred.

In considering the licensee's arguments for mitigation of the proposed civil penalty, we believe that only one factor is worthy of reconsideration -- the degree to which the base penalty is escalated for prior notice. While it is true that the licensee knew radon-222 levels were increasing, there is some validity to the licensee's position that it was taking steps to address these increasing levels (in that it was developing soil cover plans in 1988) and its related arguments against 100 percent escalation under this factor. As we noted when we transmitted our original enforcement proposal to your office in September 1989, controlling radioactivity releases from a mill tailings impoundment, unlike many other types of licensed activities, is not a simple matter of shutting a valve or discontinuing a particular activity. Given the fluctuating nature of these releases, we cannot conclude that a violation of 10 CFR Part 20 limits for calendar year 1988 was the only possible outcome that Atlas could have expected. Thus, while the noncompliant situation that resulted is not excused, we don't believe that full escalation under this factor is warranted. It is more difficult, however, to determine the appropriate adjustment in the application of this factor. If we were to apply 75 percent escalation for prior notice in this case and made no other adjustments to the enforcement action that was proposed in October 1989, the

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resulting civil penalty would be $5,000, an amount that Region IV believes appropriate as indicated by our original enforcement proposal. However, 50 percent escalation for prior notice may be just as appropriate, or more appropriate, just as 25 percent may be appropriate, depending upon how one views this situation. In our view, the base civil penalty of $5,000 is the appropriate civil penalty when all of the factors have been weighed.

We have addressed each of the licensee's remaining arguments in the enclosed draft order. For the reasons we discussed above and the reasons described in the enclosed draft, we recommend imposing a $5,000 civil penalty.

We are enclosing copies of our December 7, 1989 letter and the licensee's January 12, 1990 reply. Other documents relevant to this case were distributed previously. Please contact Gary Sanborn at FTS 728-8222 to discuss this recommended action.

John M Montgomery for
Robert D. Martin
Regional Administrator

Enclosures: As stated

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4c-3453 FEB 14 1990

cc w/Enforcement proposal via 5520:
JLieberman, OE
JGoldberg, OGC
RCunningham, NMSS

cc w/all Enclosures via Express Mail:
JLieberman, OE (4)
JGoldberg, OGC
RCunningham, NMSS

cc w/Enforcement proposal only:
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JGilliland
ABBeach, Director, DRSS
LAYandell, Deputy Director, DRSS
RHall, Director, URFO
OI Field Office
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

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Docket No. 40-3453
License No. SUA-917
EA No. 89-110

Atlas Corporation
Atlas Minerals Division
ATTN: Richard Blubaugh
Regulatory Affairs Manager
Republic Plaza
370 Seventeenth Street, Suite 3150
Denver, Colorado 80202

Gentlemen:

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY

This refers to Atlas Corporation's (Atlas) letters dated November 3, 1989, and January 12, 1990, in response to the Notice of Violation and Proposed Imposition of Civil Penalty sent to you by our letter dated October 5, 1989, and in response to our December 7, 1989, letter requesting clarification of certain points. Our October 5, 1989, letter and Notice described a violation of NRC's limits for releases of radon-222 from Atlas's Moab Uranium Mill site in Moab, Utah, to unrestricted areas. When averaged for calendar year 1988, radon-222 concentrations measured at Monitoring Station S-2 were in excess of 220 percent of the maximum permissible concentrations in 10 CFR Part 20 for releases to unrestricted areas.

To emphasize Atlas's responsibility to conduct its activities in compliance with radioactivity release limits and its responsibility to heed regulatory requirements, a civil penalty of Six Thousand Two Hundred and Fifty Dollars ($6,250) was proposed.

In response, Atlas denied that a violation of 10 CFR 20.106 occurred, basing its position on the location of the monitoring station, and disputed the issuance of the proposed civil penalty for a variety of reasons. After consideration of Atlas's responses, we have concluded for the reasons given in the Appendix attached to the enclosed Order Imposing Civil Penalty that the violation occurred as originally stated and that the proposed civil penalty, while appropriate, should be reduced by $1,250 to $5,000. Accordingly, we hereby serve the enclosed Order on Atlas Corporation imposing a civil monetary penalty in the amount of Five Thousand Dollars ($5,000) We will review the effectiveness of your corrective actions during subsequent inspections.

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In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,

Hugh L. Thompson, Jr.,
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Enclosures:
As Stated

cc:
Utah Radiation Control Program Director
NRC Public Document Room

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Atlas Corporation
Atlas Minerals Division
Denver, Colorado

Docket No. 40-3453
License No. SUA-917
EA No. 89-110

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Atlas Corporation (licensee) is the holder of Materials License No. SUA-917 issued by the Nuclear Regulatory Commission (NRC/Commission) on _____. The license authorizes the licensee to possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by the licensee's milling operations authorized by the license.

II

A routine, unannounced inspection of the licensee's activities was conducted April 26-27, 1989. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 5, 1989. The Notice stated the nature of the violation, the provision of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated November 3, 1989. The licensee

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provided additional information in a letter dated January 12, 1990, in response to NRC's December 7, 1989, request for clarification.

III

After consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operational Support has determined as set forth in the Appendix to this Order that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be reduced by $1,250.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The licensee pay a civil penalty in the amount of Five Thousand ($5,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk Washington, D.C. 20555.

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The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, and if applicable, a copy to the NRC Resident Inspector.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

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(b) whether, on the basis of such violation, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

Hugh L. Thompson, Jr.,
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Dated at Rockville, Maryland,
this day of 1990.

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EVALUATIONS AND CONCLUSIONS

Appendix to Order Imposing Civil Monetary Penalty

On October 5, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violation identified during an NRC inspection. Atlas Corporation responded to the Notice on November 3, 1989. Atlas denied the violation and disputed the proposed civil penalty for a variety of reasons. The NRC's evaluation and conclusions regarding the licensee's arguments are as follows:

Restatement of Violation

10 CFR 20.106(a) requires that except as authorized, no radioactive material be released to an unrestricted area in concentrations which exceed the limits specified in Appendix B, Table II of 10 CFR Part 20, when averaged over one year.

Contrary to the above, radioactive material, specifically radon-222, was released to an unrestricted area in concentrations exceeding the limits specified in 10 CFR Part 20, Appendix B, Table II, when averaged for calendar year 1988, and the authorized exceptions did not apply. The radon-222 concentrations released were approximately 220 percent of the maximum permissible concentration.

This is a Severity Level III violation (Supplement IV).

Summary of Licensee's Response to Notice of Violation

The licensee denied that the violation occurred and requested that the NOV be withdrawn. Atlas relied upon the following arguments:

1. In its November 3, 1989, reply, Atlas stated that NRC incorrectly characterized data from Sample Point S-2 as indicative of radon-222 concentrations in unrestricted areas. Atlas bases this position on its contention that S-2 is actually within a restricted area. Atlas expanded on this position in its January 12, 1990 reply to NRC's request for clarification. In that reply, Atlas stated that data from an additional sampling point across the Colorado River, 1,150 feet from S-2, can be considered "truly representative" of unrestricted area concentrations and that the river provides a buffer zone between S-2 and accessible unrestricted areas.

2. Atlas contended in its November 3 reply that NRC waived its right to issue the citation and propose a penalty for the same conduct that resulted in a Confirmation of Action Letter (CAL) on June 8, 1989, which Atlas considers an administrative enforcement mechanism.

3. Atlas contended in its November 3 reply that there are extenuating circumstances that warrant dismissing the NOV. Specifically, Atlas stated that NRC issued an order over Atlas's objections in 1987 which caused radon-222 emanation from the site to increase. Atlas contends that this order effectively rescinded an earlier license amendment which directed

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Atlas to control airborne emissions by maintaining water cover over the tailings.

NRC Evaluation of Licensee's Response to Notice of Violation

1. In regard to whether data obtained from S-2 is indicative of radon-222 concentrations released to unrestricted areas, NRC notes that Atlas's 1984 application for license renewal described this sample point as being ". . . at the middle of the east property boundary and . . . generally downwind from the predominant wind direction." This application also stated that the specified sampling locations met the criteria of Regulatory Guide 4.14, including the criteria of having sites "at or near the site boundaries and in different sectors that have the highest predicted concentrations of airborne particulate." Atlas included a map with its renewal application that showed S-2 adjacent to the property line. NRC factored this information into its environmental evaluations and has always regarded data from this sample point as indicative of releases to unrestricted areas. In determining whether a violation of 10 CFR 20.106 occurred, NRC does not consider relevant Atlas's arguments that the data from an additional sampling point across the river from S-2 are "truly representative" of radon-222 concentrations in unrestricted areas. In that Atlas has represented Sample Point S-2 as adjacent to the site boundary and downwind of the predominant wind direction, and in that radon-222 concentrations at this location, when averaged for calendar year 1988, exceeded 10 CFR Part 20 limits by more than a factor of two, NRC staff concludes that Atlas has provided insufficient justification for withdrawing the NOV.

2. The CAL issued on June 8, 1989, followed NRC's enforcement conference with Atlas and merely confirmed Atlas's agreement to take steps designed to correct the violative condition. The actions agreed to by Atlas were actions that NRC would expect a licensee to take to preclude remaining in a violative condition. NRC's issuance of a CAL confirming these actions does not preclude consideration of escalated enforcement action for the violation that made these actions necessary. NRC staff concludes that Atlas's argument in regard to this has no merit.

3. NRC's 1987 order to Atlas to discontinue adding water to the tailings was based on the need to initiate actions to reduce groundwater contamination and the need to begin the process of drying out the tailings in preparation for long-term reclamation of the site. Atlas was informed and was fully aware that compliance with the order could result in increased radon levels. In NRC staff's view, Atlas's argument that this is an extenuating factor has no merit. As a licensee of the Commission, Atlas is responsible for meeting NRC requirements. In this case, there was nothing to preclude Atlas from taking interim steps to prevent airborne emissions from exceeding NRC limits. In addition, Atlas did not avail itself of the option in 10 CFR Part 20 to seek an exemption and to establish alternate limits. NRC staff concludes that Atlas's argument has no merit.

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Summary of Licensee's Request for Mitigation of the Civil Penalty

The licensee made the following arguments in its November 3 letter in regard to the appropriateness of the civil penalty and the factors that NRC relied upon to derive the amount of the civil penalty:

1. Atlas cited stockpiled ore as a factor contributing to higher radon-222 concentrations, stated that Atlas was aware of the need to consolidate and/or remove this material and stated that in discussions of this matter with NRC, NRC had never indicated that measures to address this matter should be implemented on an expedited basis. Atlas cited this as an extenuating circumstance, largely outside of Atlas's control, that should be considered in assessing the appropriateness of imposing a penalty.

2. Atlas stated that NRC's escalation of the base civil penalty by the maximum 100 percent for "prior notice" was arbitrary and unjustifiable. Atlas supported this contention by claiming that it did take effective steps to address this issue by developing soil cover plans, that additional sampling was undertaken across the Colorado River from S-2 and that data from this point gave Atlas no reason to suspect that unrestricted area concentrations of radon-222 would exceed NRC limits.

3. Atlas stated that NRC should grant mitigation of the civil penalty due to Atlas's having immediately reported initial higher radon levels in 1987 and its having compiled and reported to NRC through the submission of environmental monitoring program results the data for the last calendar quarter of 1988 shortly after it became available in early 1989.

4. Atlas stated that in accordance with Section V.G. of the Enforcement Policy, NRC should refrain from proposing any penalty. Atlas based this on its having identified the problem, on its having taken comprehensive corrective action, on the violation being neither reasonably preventable nor reasonably correctable due to similar concerns or prior notice of the problem and on the violation being neither willful nor indicative of a breakdown of management controls.

NRC Evaluation of Licensee's Request for Mitigation of the Civil Penalty

1. NRC agrees that stockpiling of ore may be a factor contributing to higher radon-222 levels. However, NRC staff disagrees that this was a matter that was largely outside of Atlas's control and considers irrelevant Atlas's statement that NRC did not indicate to Atlas a need to expedite measures to address this matter. As noted earlier, the licensee is responsible for complying with NRC requirements. NRC staff sees no basis for considering this an extenuating circumstance that should be considered in determining the appropriateness of the penalty.

2. Atlas's claim to have had no prior knowledge of a potentially violative condition neglects evidence to the contrary. The data collected for three years preceding Atlas's violation of NRC limits, which showed increasing radon-222 levels, gave Atlas sufficient notice that a

potentially violative condition existed. In addition, NRC had expressed its concern about increasing radon-222 levels to Atlas. NRC acknowledges that Atlas did initiate measures to address this matter -- the development of soil cover plans -- and did install an additional sampling point in an effort to assess the significance of the increasing radon-222 levels. Although Atlas's corrective measures were not implemented in time to prevent the violation from occurring, NRC staff concludes that 75 percent escalation under the "prior notice" factor is more appropriate.

3. NRC does not agree that Atlas should be given any credit under the terms of the Enforcement Policy for having "identified" the violation. Atlas merely compiled data as part of its routine environmental monitoring program and provided that data to NRC. NRC notes that NRC, not Atlas, did the necessary calculations to conclude that radon-222 levels at S-2, when averaged for calendar year 1988, exceeded NRC limits. Thus, Atlas was merely complying with the requirements of its license to collect and submit data to NRR. NRC staff concludes that no adjustment of the penalty is warranted.

4. NRC notes that for the discretionary provisions of Section V.G. of the Enforcement Policy to apply, all of the factors must be satisfied. In that NRC disputes Atlas's claim that it "identified" the violation and disputes Atlas's claim that the violation was not reasonably preventable, NRC staff sees no merit to Atlas's argument that the civil penalty should be mitigated in its entirety based on these provisions of the Enforcement Policy.

Summary of Licensee's Proposal for Resolution

Atlas states in its November 3, 1989, reply that it would agree to an arrangement whereby the NOV would be withdrawn until its corrective actions were complete and would agree to NRC's reinstatement of the NOV and the penalty should NRC find that Atlas has not taken the required steps. Atlas states that the resources of NRC and Atlas would be better directed at correcting the problem than toward administrative hearings and other legal proceedings that would yield no benefit to either party.

NRC Evaluation of Licensee's Proposal for Resolution

NRC agrees that the resources of both parties would better be directed toward correction of the problem. NRC notes, however, that Atlas must take corrective actions for the problem regardless. The purpose of NRC's enforcement action is to encourage Atlas to remain in compliance and avoid future noncompliance. NRC staff sees little relationship between Atlas's corrective actions and NRC's decision to take an enforcement action for the violation of NRC requirements that made such corrective actions necessary.

DRAFT

NRC Conclusion

Based on NRC's evaluation of the licensee's response, NRC staff concludes that the violation occurred as originally stated, that Atlas has provided no information that would cause NRC to alter its view that the violation is a significant regulatory concern, and that the NRC has applied its Enforcement Policy correctly in determining that a monetary civil penalty is appropriate. Based on Atlas's arguments regarding the appropriateness of escalating the base civil penalty by 100 percent for "prior notice," NRC concludes that 75 percent escalation under this factor is more appropriate. This results in an adjusted civil penalty of $5,000. Accordingly, the NRC staff concludes that a civil penalty of $5,000 should be imposed by order.

JUN 12 1997

U.S. House of Representatives

Committee on Resources

Washington, DC 20515

June 4, 1997

Honorable Albert Gore, Jr.
The Vice President
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. Vice President:

We are writing to express our deep concern with the manner in which the Nuclear Regulatory Commission is handling the decommissioning of the Atlas Corporation Moab Mill in Utah. Several Executive Branch agencies are involved in development of the remediation proposals currently under consideration, and there is an obvious need for significantly improved coordination in order to address a serious danger to residents and to the environment of Utah, Arizona, Nevada and California.

Ten and a half million tons of toxic wastes generated by the now-defunct Atlas Mine are stored in the tailings pond which is located adjacent to the Colorado River. The tailings are radioactive and contain high concentrations of ammonia, arsenic, lead, vanadium, selenium, mercury, molybdenum, nickel, and other toxic metals left by the leaching process used to separate uranium form ore. ***The tailings are leaking alpha radioactive material in the Colorado river at levels 1,300 times above the EPA Maximum Concentration Limit.***

The tailings pond, built in the 1950's, is not lined, and as a result, ***these radioactive and toxic wastes are seeping down through the aquifer into the Colorado River***. In addition, the tailings pond is located on seismically unstable land. Water from the Colorado River makes up a significant part of the drinking water supply for Los Angeles, San Diego, Las Vegas, Phoenix and Tucson, and is used additionally to irrigate hundreds of thousands of acres of agricultural lands. Moreover, the tailings pond, which may be designated as critical habitat for four endangered species, is situated between Canyonlands and Arches National Parks.

We understand that the NRC is ready to approve leaving the tailings pond in place rather than requiring removal to a safer location. We are deeply concerned that the risks to drinking water supplies, human health and the environment have been grossly underestimated in the decision-making process. Leaving a tailings pile of the size and state of the Atlas site in place adjacent to the Colorado River does not make sense. In the event of flood, the Colorado River could easily be contaminated.

The National Park Service, the Environmental Protection Agency, the Fish and Wildlife Service, and many state and local government agencies have all expressed concerns about the quality of scientific data and information upon which NRC decisions have been and will be based.

Moving the tailings may not immediately halt the contamination, but, would remove the source of the contamination. By placing the tailings in a more modern and technologically safe situation, the threats from earthquakes, high water, flooding would be eliminated. In every similar case under the jurisdiction of the Department of Energy, tailings have been moved away from riverbeds

BB/H

Honorable Albert Gore, Jr.
June 4, 1997 - page two

to lined and protected areas. Yet, the NRC seems determined to perpetuate rather than resolve this dangerous situation in the case of the Atlas site.

We ask that you personally intervene through the Council on Environmental Quality to bring a more reasonable solution to the table that will provide greater safeguards for those who rely on the Colorado River, and to resolve disagreements within the Executive Branch on how to resolve this serious contamination crisis.

Sincerely,

GEORGE MILLER

SAM FARR

WALTER CAPPS

NEIL ABERCROMBIE

BOB FILNER

RONALD DELLUMS

LUCILLE ROYBAL-ALLARD

ANNA ESHOO

ELLEN TAUSCHER

FORTNEY PETE STARK

HOWARD BERMAN

BRAD SHERMAN

NANCY PELOSI

ESTEBAN TORRES

MATTHEW MARTINEZ

HENRY WAXMAN

MAXINE WATERS

GEORGE BROWN, JR.

TIM KOLBE

LORETTA SANCHEZ

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

August 5, 1997

The Honorable Albert Gore, Jr.
The Vice President
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. Vice President:

On June 5, 1997, 19 other Members of Congress and I wrote to you asking for your personal intervention in resolving a dispute within the Administration over radioactive contamination of the Colorado River.

On June 27, the Fish and Wildlife Service issued a draft Biological Opinion, pursuant to section 7 of the Endangered Species Act, on the proposed plan to cap *in situ* the Atlas mill tailings pile in the floodplain of the Colorado River near Moab, Utah. Due to the many impacts to endangered species that would likely continue after the Atlas Corporation constructed the permanent cap, the Service has determined that the proposed action will jeopardize the continued existence of the Colorado squawfish, razorback sucker, humpback chub and bonytail chub.

Although one month has passed, the Nuclear Regulatory Commission has neither contacted the Fish and Wildlife Service regarding the biological opinion nor announced its decision on the proposed decommissioning plan in light of the jeopardy opinion.

This is a serious lapse as the Atlas mine is likely in direct violation of Section 9, the "take" provisions, of the Endangered Species Act. According to the Service, the Colorado squawfish, for example, may be spawning in the Colorado River at this time. Death is certain should the larvae come into contact with the high concentrations of ammonia currently being dispersed into the Colorado River from the tailings pile.

According to the Fish and Wildlife Service, even the NRC has indicated that moving the tailings away from its current location is the environmentally preferable alternative. However, the NRC is concerned that the Atlas Corporation would declare bankruptcy if forced to pay the costs of moving the tailings. In light of the jeopardy opinion, however, short of some as yet undescribed plan to stop the ongoing leakage from the unlined pile, it would appear that the tailings must be moved.

BB/5

Further, the NRC itself has not done a full cost analysis, instead relying on data provided by the Atlas Corporation itself. The Atlas Corporation has provided at different times several different estimates on the various cost factors. The Grand Canyon Trust, a public interest group, has also undertaken an analysis of the cost factors and has arrived at a different conclusion as to the cost of moving the tailings. Further, the Atlas Corporation/NRC cost estimates do not include any costs for remediating the groundwater contamination. Instead they have chosen to separate this issue from the NRC decision on decommissioning. In light of the jeopardy opinion, this makes little sense. Any option for leaving the tailings in place would require some sort of ground water treatment. A responsible cost analysis should incorporate the cost to remediate groundwater as well as relocation of the tailings.

The NRC has chosen to narrowly view its responsibilities in this matter --- to approve, approve with modification, or disapprove the decommissioning plan. A coordinated federal response is clearly required if this situation is to be satisfactorily resolved to provide a satisfactory level of protection not only to the four fish species but to others who may well face danger from the continued contamination of the Colorado River from the Atlas uranium tailings.

Sincerely,

GEORGE MILLER
Senior Democratic Member
Committee on Resources

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 7, 1998

The Honorable Randy Cunningham
United States House of Representatives
Washington, DC 20515-0551

Dear Congressman Cunningham:

I am responding to your September 14,1998, letter to Mr. Dennis Rathbun. In that letter, you provided the names of two constituents who had contacted you to express some concern about a uranium mill tailings pile near the Colorado River in Moab, Utah. The individuals were advocating that either the U.S. Nuclear Regulatory Commission (NRC) or the U.S. Department of Energy (DOE) be required to move the tailings from their current location. Your letter also provided a copy of a recent *San Diego Union Tribune* article about the site.

To respond to your letter, I would like to start by providing some background information on the tailings pile, and NRC's regulatory authority over the site. The site is owned by Atlas Corporation, which holds NRC license SUA-917. As the licensee for the site, Atlas is the party responsible for the reclamation of the facility and the long-term stabilization of the tailings. The Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), as amended, established the NRC regulatory authority over the uranium mill tailings at the Atlas site. In accordance with UMTRCA, the U.S. Environmental Protection Agency (EPA) promulgated standards for the reclamation of tailings piles, and NRC conformed its regulation to those EPA standards. The NRC regulations appear in 10 CFR Part 40, Appendix A (which include the EPA standard), and require that the tailings reclamation be designed to be effective in controlling radiological hazards for 1000 years.

In implementing its UMTRCA responsibilities, NRC's mission is to judge licensee proposals for the reclamation of uranium mill tailings to determine if they meet the requirements contained in Part 40, Appendix A. As you may be aware, Atlas filed for bankruptcy protection on September 22, 1998. NRC is currently assessing with Atlas the impact of the bankruptcy filing on reclamation of the tailings. However, NRC has no legislative authority to undertake any reclamation work at the Atlas site. NRC has been evaluating the Atlas proposal for on-site reclamation over the last several years to determine if the Atlas plan complies with the applicable regulations. Under the existing regulatory framework, NRC's options are limited to either: (1) accepting the Atlas proposal; (2) accepting the Atlas proposal with modifications; or (3) denying the application. If NRC were to deny the Atlas proposal, and mandate that Atlas move the tailings, Atlas could request a hearing, under the NRC rules of practice in 10 CFR Part 2, or decide to modify the denied proposal and resubmit it to NRC. Although UMTRCA gave DOE the responsibility of reclaiming a number of abandoned uranium mill tailings sites, DOE has no authority to reclaim the Atlas site. As noted above, Atlas, as the current NRC licensee, is the party responsible under UMTRCA for reclaiming the Moab tailings.

BB/6

The Atlas reclamation strategy to stabilize the tailings along the Colorado River north of Moab is similar to that employed by other licensed mills, and by DOE in carrying out its responsibilities under UMTRCA. The NRC review of the Atlas proposal has included two equally important aspects: a safety review to determine compliance with NRC requirements in Part 40, Appendix A, and an environmental review to determine if the impacts from the proposal are acceptable. In March 1997, NRC completed its safety review, and concluded that the proposed on-site stabilization met Part 40, Appendix A. This is documented in NUREG-1532, "Final Technical Evaluation Report for the Proposed Revised Reclamation Plan for the Atlas Corporation Mill." We are currently finishing our environmental review, and expect to publish a Final Environmental Impact Statement in the first quarter of 1999. NRC published NUREG-1531, "Draft Environmental Impact Statement Related to Reclamation of the Uranium Mill Tailings at the Atlas Moab Site, Moab, Utah," in January 1996. Copies of both NUREG-1531 and 1532 are provided for your use and information.

In closing, I want to assure you that NRC recognizes that the Colorado River is a vital natural resource that must be adequately protected. Toward that end, NRC staff will ensure that the reclamation plan proposed by Atlas Corporation provides reasonable assurance that public health and safety and the environment are protected. If Congress were to decide that the Federal government should move the tailings, then NRC would work within that legislative framework to ensure reclamation of the Atlas tailings in a manner that protects the public and the environment.

I trust that this letter will help you in responding to the concerns of your constituents, and clarifies our position.

Sincerely,

L. Joseph Callan
Executive Director
for Operations

Enclosures: As stated

NUREG–1532

Final Technical Evaluation Report for the Proposed Revised Reclamation Plan for the Atlas Corporation Moab Mill

Source Material License No. SUA 917
Docket No. 40-3453
Atlas Corporation

U.S. Nuclear Regulatory Commission

Office of Nuclear Material Safety and Safeguards

March 1997

NUREG–1531

Draft Environmental Impact Statement Related to Reclamation of the Uranium Mill Tailings at the Atlas Site, Moab, Utah

Source Material License No. SUA 917
Docket No. 40–3453
Atlas Corporation

U.S. Nuclear Regulatory Commission

Office of Nuclear Material Safety and Safeguards

January 1996

The Atlas reclamation strategy to stabilize the tailings along the Colorado River north of Moab is similar to that employed by other licensed mills, and by DOE in carrying out its responsibilities under UMTRCA. The NRC review of the Atlas proposal has included two equally important aspects: a safety review to determine compliance with NRC requirements in Part 40, Appendix A, and an environmental review to determine if the impacts from the proposal are acceptable. In March 1997, NRC completed its safety review, and concluded that the proposed on-site stabilization met Part 40, Appendix A. This is documented in NUREG-1532, "Final Technical Evaluation Report for the Proposed Revised Reclamation Plan for the Atlas Corporation Mill." We are currently finishing our environmental review, and expect to publish a Final Environmental Impact Statement in the first quarter of 1999. NRC published NUREG-1531, "Draft Environmental Impact Statement Related to Reclamation of the Uranium Mill Tailings at the Atlas Moab Site, Moab, Utah," in January 1996. Copies of both NUREG-1531 and 1532 are provided for your use and information.

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I trust that this letter will help you in responding to the concerns of your constituents, and clarifies our position.

Sincerely,

Original Signed by
L. J. Callan

L. Joseph Callan
Executive Director
for Operations

Enclosures: As stated

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OFC	URB*		TECH ED*		DWM*		NMSS*		DEDR	
NAME	JHolonich/bg		EKraus		JGreeves		CPaperiello		HThompson	
DATE	9/28/98		9/25/98		9/29/98		10/01/98		10/5/98	

OFC	EDO		OCA							
NAME	LJCallan		DRathbun							
DATE	10/5/98		10/7/98							

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16257

ATLAS CORPORATION

Republic Plaza, 370 Seventeenth Street, Suite 3050
Denver, CO 80202
Telephone: (303) 629-2440 Fax: (303) 629-2445

RICHARD E. BLUBAUGH
Executive Vice President

December 28, 1998

D BY SECY

98 JAN 31

The Honorable Dr. Shirley Jackson
Chairman
U.S. Nuclear Regulatory Commission
Two White Flint North
Rockville, Maryland 20852-2738

Re: **Source Material License SUA-917, Docket 40-3453**

Dear Madam Chairman:

We appreciate very much the time and attention you have given to Atlas Corporation's pending license amendment. In particular, we are pleased that you and Commissioner Merrifield made the time to visit our uranium mill and tailings site near Moab, Utah. Clearly, it is appropriate that your focus is on Atlas' ability to remediate the site, not just in terms of the surface reclamation, but also on the groundwater cleanup. While we had the opportunity to discuss groundwater related issues during your visit, there were some things I was not fully prepared to discuss in detail without further review with our technical consultants. The purpose of this letter is to follow up with more detailed information on groundwater cleanup which, we hope, results in a greater degree of confidence by you and the other commissioners that, 1) groundwater cleanup is technologically feasible, and, 2) that Atlas and its contractors have the capability of implementing the groundwater cleanup with the pile being capped in place.

Since meeting with you and Commissioner Merrifield on December 17, 1998, I have consulted with Harding Lawson Associates (HLA), our technical consultants, for an updated report on the status of their efforts regarding the groundwater corrective action plan (GWCAP). Presented herein is a summary review of the status of the evaluation of alternatives for the GWCAP, as well as a brief, but pertinent, review of the background for this issue.

Background

The 1979 Final Environmental Statement not only states approval for capping the pile in place, it also acknowledges the existence of contaminated seepage from the tailings pile to the shallow groundwater and eventually to the Colorado River. Recognition in that earlier environmental analysis of a small quantity of seepage from the pile indicates that this is not a new issue. The only new finding related to this issue is that ammonia is the contaminant of concern; and that

BB/1

because it may present a threat to an individual member of an endangered species of fish in the Colorado River.

In 1987 Atlas Corporation contracted with an independent third party for the evaluation of the groundwater monitoring program at the Atlas uranium mill and tailing site. A report of that evaluation was submitted to NRC in February 1988 and additional information was provided April 15, 1988. Then in March 1989, Atlas submitted a GWCAP that was subsequently amended in June 1989. These studies presented by Atlas in conjunction with the independent analysis by NRC staff resulted in the NRC approved GWCAP that was implemented in 1990 and is still in operation today. Atlas submits an annual report on the amount of contaminants and liquid removed from the tailings pile as a result of this continuing tailings dewatering program.

The 1989 GWCAP proposal documents the independent consultant's assessment of a number of alternatives that include dewatering, barrier wall, bottom seal, pump and treat methods, and removal to an alternate site. This study's conclusions include the following points:

- Institutional controls will preclude public use of the groundwater in perpetuity.
- Health risk at the point of exposure is negligible.
- As the groundwater regime returns to pre-mill conditions, the water quality will change to a natural brine, with recharge flushing from the Colorado River only. The brine will cause the groundwater to be unfit for consumption or use.

The brine/fresh-water interface is approximately seventy feet below ground surface near the tailings pile. The brine contains salt (total dissolved solids/TDS) at concentrations in excess of 100,000 milligrams per liter (mg/l).

The GWCAP currently being implemented by Atlas was based on the conclusion by NRC staff that existing groundwater contamination was not amenable to active remediation. If groundwater remediation is determined to be practicable, as a result of revisiting the GWCAP, then resulting environmental impact to the Colorado River will be less than that already identified in the draft EIS. (NUREG - 1532, p. A-35, 1997)

We recognize that the previous analyses are now nearly ten years old and that more effort is now required to determine what the final groundwater corrective action plan should be to sufficiently remediate the groundwater at the site. Although NRC considers revisiting the GWCAP as a separate licensing action due to groundwater cleanup strategies and methodologies being contingent on the decision for surface reclamation of the tailings, Atlas has been working toward a revised GWCAP with the technical assistance of Harding Lawson Associates (HLA), the independent consultant. As we proceed to completion of the GWCAP, we must emphasize the following points:

- There is a large underground reservoir of brine relatively near the surface, and this brine is unusable. Further, as the saturated mound of tailings liquor decreases over time, the brine will likely seek a higher level resulting in increased TDS concentrations in the shallow alluvial groundwater. This condition has been observed on the east side of the river in the wetlands.
- Experience from past attempts to use the shallow groundwater as a water source upgradient from the mill site indicates that it is unusable as reliable water source.
- Since the groundwater flow is to the river from either side of the river, any contaminated groundwater from the site will not be available or accessible to downstream users, nor will the groundwater from the site flow to the other side of the river.
- There are no concentrations of radionuclides, metals or other constituents that present a threat to human health and safety in the river, even though uranium and molybdenum are slightly elevated in the mixing zone (point of exposure).
- The mixing zone, as identified by HLA after the sampling program in December 1997, is limited to approximately fifty feet from the shoreline, or about five percent of the river's width.
- Ammonia has been identified as the constituent of concern due to the potential threat to an individual fish of an endangered species. This potential threat only exists at periods of low flow in the river. At higher flows we have been unable to detect ammonia.

From a design basis, both the dewatering necessary to consolidate the tailings prior to placing the radon/precipitation barrier, as well as the barrier itself, are legitimate components of the GWCAP. These actions will result in benefit to groundwater remediation by reducing the amount of contamination that will ultimately be released to the groundwater and surface water systems. The relatively impermeable barrier, or cap, will preclude or minimize the infiltration of precipitation resulting in a significantly reduced seepage rate for the long-term. Nevertheless, we acknowledge the need to determine what might be done to reduce the ammonia concentrations between the tailings and the river. Investigating and evaluating a variety of technologies that could be implemented at our site is the current priority of Atlas and HLA.

Status Review of Groundwater Remediation Alternatives

While dewatering of the pile in order to accelerate consolidation of the pile was a highly probable action related to the surface reclamation plan, the Section 7 consultation process between NRC, Atlas and the U.S. Fish and Wildlife Service solidified dewatering as a necessary action. Consequently, the surface reclamation plan for the Atlas tailings pile has been enhanced to include the dewatering to accelerate consolidation of the tailings and to reduce future seepage from the tailings pile into underlying groundwater. Although tailings dewatering and the placement of the design cover will improve groundwater quality directly beneath and downgradient of the tailings pile, it is anticipated that the effects of these improvements will not be realized in reduced discharges to the Colorado River for a number of years. This is also true if the pile were to be moved. As a result, three alternatives are currently being considered for the

cleanup of groundwater discharging to the Colorado River downgradient of the tailings pile. These alternatives are: 1) passive groundwater treatment with a permeable reactive wall, 2) extraction and treatment of groundwater contaminated with ammonia using an extraction trench, and 3) extraction and treatment of groundwater contaminated with ammonia, uranium, and other contaminants using an extraction trench. The second alternative includes treatment of extracted groundwater using an enhanced evaporation system with disposal of solid residues onsite in a waste disposal cell. The third alternative includes treatment of extracted groundwater using reverse osmosis equipment with disposal of solid residues onsite in a waste disposal cell. Atlas assumes that NRC will approve alternate concentration limits (ACLs) for application of the first two alternatives. ACLs are optional for the third alternative but will affect the final cost. A summary of each of these alternatives is provided below:

1. Passive Groundwater Treatment for Ammonia using a Permeable Reactive Wall

This alternative consists of the construction of a permeable reactive wall into the aquifer downgradient of the tailings pile to intercept and treat groundwater flowing toward the Colorado River. The reactive wall would be constructed to a depth of 30 to 40 feet and extending for a length of 2100 feet (the approximate width of the ammonia plume discharging to the Colorado River). The reactive wall would be constructed of zeolitic reactive media that would provide anion exchange sites for ammonia and other anions (e.g., sodium, potassium, and calcium). As a result, ammonia concentrations would be reduced as groundwater flows through the reactive wall. While we assume that the zeolitic reactive media would require periodic replacement as anion exchange sites are used and the resulting effectiveness of the reactive media is reduced, at this time there is insufficient data to specify the period, with a high degree of confidence. Given the travel times from the tailings pile to the proposed location of the reactive wall, it is assumed that the permeable reactive wall would need to be maintained for a period of approximately 10 years. This technology is considered experimental for insitu applications such as the subsurface treatment of groundwater with little performance or cost data available. Consequently, laboratory testing and field scale pilot testing would be required to collect the data necessary to design and construct a full scale system. The preliminary cost estimate is in the range of $3 to $4 million.

2. Groundwater Extraction and Treatment for Ammonia

This alternative consists of the construction of a groundwater extraction trench into the aquifer downgradient of the tailings pile to intercept and treat ammonia contaminated groundwater flowing toward the Colorado River. The extraction trench would be constructed to a depth of 30 to 40 feet and extend for a length of approximately 2100 feet (the approximate width of the ammonia plume discharging to the Colorado River). The extraction trench would be filled with coarse gravel and would also contain an impermeable liner on the side adjacent to the Colorado River. This impermeable liner will serve to minimize the inflow of water from the Colorado River resulting from groundwater extraction. Similarly, groundwater extraction rates will be minimized to reduce upconing of the naturally occurring brines located just below the shallow alluvial groundwater. It is anticipated that the groundwater extraction trench would operate at flow rates of approximately 40 gallons per minute. Given the travel times from the tailings pile to the proposed location of the extraction trench, it is assumed that the extraction trench and evaporation pond would need to be operated and maintained for a period of at least 10 years.

Extracted groundwater would be evaporated in a seven acre pond equipped with pumps and spray nozzles to enhance evaporation rates. Solid residues remaining would be collected and deposited in a small waste disposal cell constructed directly adjacent to the existing tailings pile. This alternative utilizes technologies that are proven and widely used at a number of uranium mill tailings sites. The preliminary cost estimate is in the range of $6 to $8 million.

3. Groundwater Extraction and Treatment for Ammonia and Other Contaminants

This alternative consists of the construction of two groundwater extraction trenches into the shallow alluvial groundwater layer downgradient of the tailings pile and the former mill site to intercept and treat ammonia, uranium, and other contaminants in groundwater flowing toward the Colorado River. These other contaminants include vanadium, molybdenum, and various dissolved cations and anions. At this time the need for remediation of contaminants other than ammonia is uncertain. However in the event that the State of Utah demand to exercise their regulatory authority and if they refuse to accept ACLs, groundwater remediation of these other contaminants may be required and is being considered. Consequently, this alternative considers the construction of two extraction trenches. The first extraction trench would be constructed downgradient of the tailings pile to a depth of 30 to 40 feet and extending a length of 2100 feet (the approximate width of the contaminant plume downgradient of the tailings pile). The second extraction trench would be constructed downgradient of the former mill site to a similar depth and extending a length of 1400 feet (the approximate width of the contaminant plume downgradient of the mill site). Both extraction trenches would be constructed in a manner consistent with that described for the previous alternative. Again, as with the previous alternative, groundwater extraction rates will be minimized to reduce upconing of naturally occurring brines. It is anticipated that the groundwater extraction trenches would operate at a combined flow rate of approximately 80 gallons per minute. Given the low mobility of some of the other contaminants listed above, it is assumed that the extraction trenches and evaporation pond would need to be operated and maintained for a period of approximately 30 years. Extracted groundwater would be treated using reverse osmosis equipment with effluent waters discharged to the Colorado River. Solid residues remaining after filter pressing would be deposited in a small waste disposal cell constructed directly adjacent to the existing tailings pile. This alternative utilizes technologies that are proven and widely used at a number of uranium mill tailings sites. The preliminary cost estimate is in the range of $20 to $25 million.

Summary

From Atlas' perspective, considering the background presented above, particularly given the site-specific conditions, the potential application of alternate concentration limits (ACLs) at this site is a an option that must be considered. Also, we are evaluating the possible application of supplemental standards as defined under the Title I program that are available to the Department of Energy at its uranium mill tailings sites. We believe this option is available to

Atlas under the existing law and regulations so long as we can demonstrate that such alternative will not endanger life or property or the common defense and security and is otherwise in the public interest. The bottom line in this instance is that ammonia, as the potential threat to an individual of an endangered fish species, might be used to justify the

relocation of this pile at the cost of hundreds of millions of dollars and the viability of a company that has demonstrated its patriotic loyalty, its commitment to its legal obligations, and its willingness to continue to find a cooperative means to resolve this issue in a technically sound and cost-effective manner.

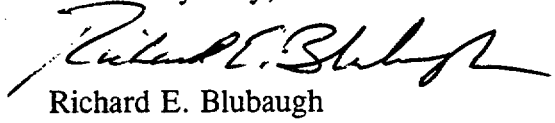
It is clear in our minds that in the long-term, with dewatering and capping, concentrations of ammonia and the other constituents will continue to decline as they have been. We are still studying the treatment alternatives and waiting for the final decision on surface reclamation. With respect to the groundwater treatment alternatives, we are not yet able to say which alternative will be best for this site. However, as far as the long-term reduction of ammonia concentrations, any plan to move the pile will have to deal with the same issue. Unfortunately, in that event, such remedial actions will most likely be years away due to legal and legislative (including funding) details, and even more study.

It is important here to reiterate a cogent point concerning the benefits of Atlas' proposal. Dewatering and capping will yield benefits to human health and the environment in both the short term and the long term. It will be disappointing indeed if the federal government opts to ignore the short term benefits of Atlas' surface reclamation plan even if it decides to move the pile in the long term.

We hope this gives you the additional information necessary to complete your evaluation and decision process. If you have any further questions, please call or have Mike Weber contact us or our counsel, Tony Thompson with Shaw Pittman Potts & Trowbridge. Tony can be reached at (202) 663-9198.

Your visit to our site and the attention you have given to Atlas' situation is very much appreciated. We look forward to a prompt resolution of the pending surface reclamation issue. Best wished for health and prosperity in the new year.

Yours very truly,



Richard E. Blubaugh

cc: The Honorable Commissioner Jeffrey S. Merrifield
The Honorable Commissioner Greta J. Dicus
The Honorable Commissioner Nils J. Diaz
The Honorable Commissioner Edward McGaffigan, Jr.
Joseph Holonich
Gregg B. Shafter
Tony Thompson, Esq.
Harvey Sender, Esq.
Grant Ohland
Dale Edwards

EDO Principal Correspondence Control

FROM: DUE: 01/14/99 EDO CONTROL: G19980762
DOC DT: 12/28/98
FINAL REPLY:

Richard E. Blubaugh
Atlas Corporation

TO:

Chairman Jackson

FOR SIGNATURE OF : ** GRN ** CRC NO: 98-1176

Paperiello, NMSS

DESC:

SOURCE MATERIAL LICENSE SUA-917, DOCKET 40-3453 - URANIUM MILL & TRAILINGS SITE, MOAB, UTAH

ROUTING:

Travers
Knapp
Miraglia
Norry
Blaha
Burns
Merschoff, RIV
Cyr, OGC

DATE: 12/30/98

ASSIGNED TO: CONTACT:

NMSS Paperiello

SPECIAL INSTRUCTIONS OR REMARKS:

DWM

1/9/99

Rec'd 12/30/98

ACTION: STABLEIN
Due to DWM 1/7/99

cc: GREEVES
HC LYNCH
JOHNSON
ABRAMS

BB/8

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

PAPER NUMBER: CRC-98-1176 LOGGING DATE: Dec 29 98

ACTION OFFICE: EDO

AUTHOR: RICHARD BLUBAUGH
AFFILIATION: COLORADO

ADDRESSEE: CHAIRMAN JACKSON

LETTER DATE: Dec 28 98 FILE CODE:

SUBJECT: SOURCE MATERIAL LICENSE SUA-917, DOCKET 40-3453

ACTION: Direct Reply

DISTRIBUTION: CHAIRMAN, COMRS.

SPECIAL HANDLING: SECY TO ACK

CONSTITUENT:

NOTES: OCM #16257

DATE DUE: Jan 14 99

SIGNATURE: DATE SIGNED:
AFFILIATION:

EDO --G19980762

ACTION

EDO Principal Correspondence Control

FROM: DUE: 02/02/99

EDO CONTROL: G19990033
DOC DT: 01/12/99
FINAL REPLY:

Richard E. Blubaugh
Atlas Corporation

TO:

Chairman Jackson

FOR SIGNATURE OF : ** PRI ** CRC NO: 99-0038

Chairman

DESC:

DELAY OF LICENSING ACTION -- SOURCE MATERIAL LICENSE SUA-917, DOCKET 40-3453

ROUTING:

Travers
Knapp
Miraglia
Norry
Blaha
Burns
Cyr, OGC
Merschoff, RIV

DATE: 01/21/99

ASSIGNED TO: CONTACT:

NMSS Paperiello

SPECIAL INSTRUCTIONS OR REMARKS:

R

BB/9

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

PAPER NUMBER: CRC-99-0038 LOGGING DATE: Jan 20 99

ACTION OFFICE: EDO

AUTHOR: RICHARD BLUBAUGH
AFFILIATION: COLORADO

ADDRESSEE: CHAIRMAN JACKSON

LETTER DATE: Jan 12 99 FILE CODE:

SUBJECT: SOURCE MATERIAL LICENSE SUA 917, DOCKET 40-3453

ACTION: Signature of Chairman

DISTRIBUTION: CHAIRMAN, RF

SPECIAL HANDLING: SECY TO ACK

CONSTITUENT:

NOTES: OCM #16456

DATE DUE: Feb 4 99

SIGNATURE: DATE SIGNED:
AFFILIATION:

K

EDO --G19990033
BB/10

16456

ATLAS CORPORATION

Republic Plaza, 370 Seventeenth Street, Suite ~~3050~~ 3140
Denver, CO 80202
Telephone: (303) 629-2440 Fax: (303) 629-2445

RICHARD E. BLUBAUGH
Executive Vice President

January 12, 1999

VIA FACSIMILE: (301) 415-1757
The Honorable Dr. Shirley Jackson
Chairman
U.S. Nuclear Regulatory Commission
Two White Flint North
Rockville, Maryland 20852-2738

Re: **Source Material License SUA-917, Docket 40-3453**

Dear Madam Chairman:

We have been informed by NRC staff that, on your instructions, the technical evaluation report (TER) will be amended to be consistent in every respect with the final EIS, and then the revisions to the TER are to be made subject to public comment. The impact to the schedule is approximately one month. Being unable to elicit a clear understanding as to the reason and timing for this decision from the staff, we hereby request an explanation from your office. This unprecedented action is a surprise to us. Amending or supplementing the final TER has not been discussed with us before today.

We are well advised that not only is this procedure unprecedented, it is unnecessary. Even if it is determined that changes to the TER are necessary, it is not necessary to solicit public comment when the changes contemplated are minor administrative changes, are not substantive and do not change the substance of the TER; which we understand to be the case here. While Atlas Corporation's management appreciates that the final EIS is essentially complete, we must object to your decision to again delay the final licensing action. While you, no doubt, are aware of the history behind this licensing action, it must be emphasized that Atlas has been given assurance after assurance by NRC that this licensing process was going to be completed in so many months or weeks until finally we now are talking about years, more than ten years from the initial licensing action and nearly five years from the commencement of this EIS. It would seem that this is long enough for public scrutiny on this licensing action.

We were informed of yet another delay with the issuance of the final EIS, which we had been told we could expect January 13, 1998. Apparently a "glitch" will result in a delay of a few more days while the corrections are made by NRC's consultant. We do try to be patient.

On October 1, 1998, Atlas, its counsel and the independent contractors met with NRC staff to discuss plans for fulfilling our obligation even though the company had just filed for relief under Chapter 11 of the Bankruptcy Code. Shortly after that meeting we were told that it

BB/11

looked reasonably probable that the final EIS would be available in December. Nothing was said about amending the TER. After your visit to the Site in December, we learned that the final EIS would be delayed a few weeks. Nothing was said about amending the TER. Even if amending the TER is required, distributing minor administrative changes for public comment is not. The effort, cost and time involved is not necessary. The licensee will be significantly harmed if this process results in yet more delay. In fact, the objectives of reclaiming the site and cleaning up groundwater contamination could be in serious jeopardy if this procedure is followed. However, the plaintiffs in *Grand Canyon Trust, et al v. Secretary of Interior, FWS and NRC* will be pleased as they will have prevailed in obtaining the delay (stay) without intervention from the Court.

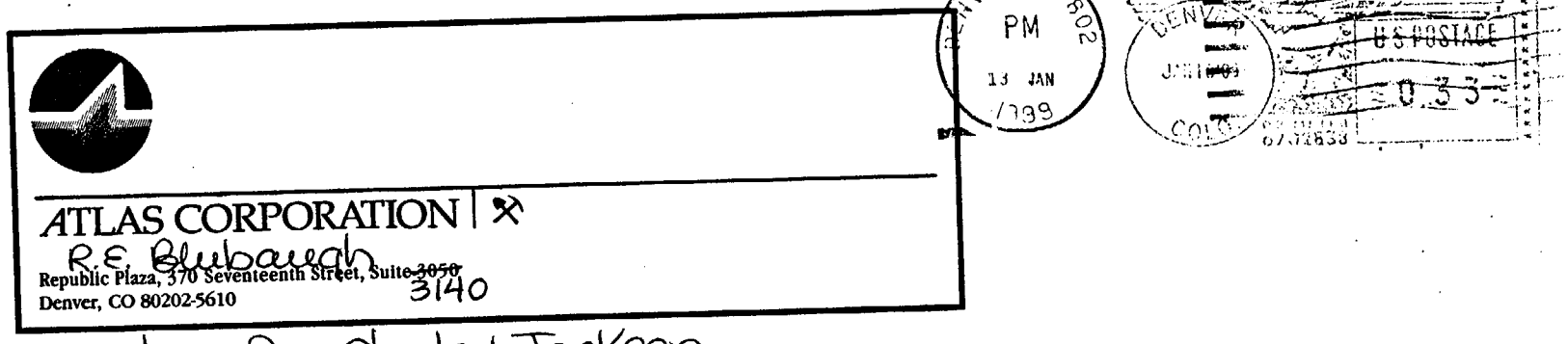
Atlas Corporation strongly objects to the unnecessary action of amending the TER and reissuing it for public comment. We respectfully request that the NRC reconsider this decision. Of the options available to NRC, Atlas suggests that, 1) NRC not amend the TER, rather address any changes necessary in the actual license amendment; or, 2) NRC amend the TER, note therein that the changes made were not substantive, and not seek public comment. Alternatively, NRC could shorten the review period to fifteen days on the basis that only the changes need to be reviewed, not the whole document.

Atlas requests that it receive your response to this petition - to reconsider this procedural decision - at the earliest opportunity. This matter will affect management's decisions pertaining to the reorganization plan and the bankruptcy. Your attention to this request is appreciated.

Yours very truly,

Richard E. Blubaugh

cc: The Honorable Senator Robert Bennett
The Honorable Senator Orrin Hatch
The Honorable Representative Chris Cannon
The Honorable Commissioner Jeffrey S. Merrifield
The Honorable Commissioner Greta J. Dicus
The Honorable Commissioner Nils J. Diaz
The Honorable Commissioner Edward McGaffigan, Jr.
Joseph Holonich
Gregg B. Shafter
Tony Thompson, Esq.
Harvey Sender, Esq.
Grant Ohland
Dale Edwards



ATLAS CORPORATION
R E Blubaugh
Republic Plaza, 370 Seventeenth Street, Suite ~~3050~~ 3140
Denver, CO 80202-5610

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1999

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The Hon. Dr. Shirley Jackson
Chairman
U.S. NRC
Two White Flint North
Rockville, MD 20852-2738 FIRST CLASS MAIL

20852/2738

BB/12

2/5- pkg to NMSS/DOCK

From: Catherine Poland
To: Joseph Holonich, Patricia Tressler
Date: Thursday, February 04, 1999 3:45 PM
Subject: Re: Fwd: Request for extension of Ticket G19990047--ACNW Action Plan

Joe:

I just talked to Patty and she forgot to mention that Jackson can sign the letter for both of the EDOs.

Cathy

>>> Patricia Tressler 3:38:56 PM 2/4/99 >>>
Mr. Blaha has approved your extension request. The new due dates are as follows:

1. WITS 199800192 - 2/19/99 - JTB

2. G19990033 - 2/11/99 N - 2/8 } UEB

3. G19980762 - 2/11/99 N - 2/8 } UEB

If you have any questions, please let me know. Thanks,

Patty :-)

>>> Joseph Holonich 02/04 7:10 AM >>>
Jim,

Attached is the justification for extending the subject ticket.

Also, I need to get a two-week extension on 199800192. We are supposed to provide the ORNL NUREG on formerly licensed sites to Ohio. Presently the NUREG is being finalized by ORNL. Once we receive it and have forwarded it to publications, we will provide Ohio a copy of the camera-ready document, followed by the published NUREG. The NUREG is expected to be here within the week.

Finally, I need a couple of days on 199900033 and 19990762. These are two responses to letters the Chairman receive from Atlas. Both are due on Friday. We have a letter for the Chairman's signature complete. However, one ticket is for Carl's signature, and the other is for the Chairman's signature. It makes no sense to split the response like this so I need to check with SECY to confirm one letter from the Chairman is okay. Otherwise, we're go to go with these.

Thanks,

Joe
6708

CC: Betty Lynn, John Buckley, John Greeves, Martin ...

5

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 17, 1999

MEMORANDUM TO: Michael F. Weber, OCM/SAJ
Bradley W. Jones, OCM/GJD
Maria E. Lopez-Otin, OCM/NJD
Steven F. Crockett, OCM/EXM
Lynne D. Stauss, OCM/JSM

FROM: James Turdici, Director
Division of Accounting and Finance
Office of the Chief Financial Officer

SUBJECT: ATLAS CORPORATION PROOFS OF CLAIMS

At the request of Commissioner McGaffigan's staff the following answers are provided to the questions posed on February 12, 1999. Atlas Corporation filed for Chapter 11 bankruptcy on September 22, 1998.

Q. What is the amount of outstanding bills, including interest and penalties for Atlas Corporation?

A. Atlas has negotiated several payment plans with the NRC since 1996 and therefore their debt extends back to that year. The agency submitted 3 Proofs of Claims for Atlas Corporation:

1) Date Filed: October 12, 1998
Amount: $441,303.72 *(includes interest and penalties)*
For outstanding invoices: FY 1997 Invoices $339,521.26
FY 1998 Invoices $101,782.46

2) Date Filed: January 6, 1999
Amount: $32,646
For work performed by the agency for the period March 1, 1998 to September 21, 1998.

3) Date Filed: January 12, 1999
Amount: $44 million (estimated)
As an unsecured priority claim for unliquidated costs for reclamation of the 400 acre site near Moab, Utah, on which is located a 130 acre mill tailings pile.

BB/14

Q . What is the normal process for billing and debt collection?

A. The agency follows the following steps:

1. Issue initial Invoice
2. Issue 2nd notice after 30 days of initial invoice (add interest and penalties)
3. Issue 3rd and final notice after 60 days of initial invoice (add additional interest and penalties)
4. Call alerting organization of intent to revoke license after 90 days from initial invoice
5. Issue Order Revoking License (normally within 120 days of initial invoice) (add additional interest and penalties)
6. After 30 days without payment, license is revoked. Must reapply to continue use of materials
7. Prior to 180 days, refer eligible debt to Treasury (add additional interest and penalties)

Not all debt may be referred to Treasury. Payment plans (as in the case of Atlas) may be negotiated and therefore are not referred to Treasury. Also, bankruptcy cases may not be referred to Treasury.

The NRC is precluded from commencing or continuing an adverse proceeding against Atlas Corporation which is based upon failure to pay licensing fees. For example, if a licensee is in Chapter 11 Bankruptcy (i.e. reorganization), the NRC cannot pursue any debts incurred prior to the date of filing the bankruptcy petition. A stay of creditor actions against Atlas went into effect when the bankruptcy petition was filed. The automatic stay provides for a period of time in which all judgments, collection activities, foreclosures, and repossession of property are suspended and may not be pursued on any debt or claim that arose before the bankruptcy petition was filed.

Any questions may be addressed to Jim Turdici on (301) 415-7338.

cc: J. Funches, CFO
P. Rabideau, DCFO
C. Cain, RGN-IV/DNMS
G. Cant, OE
M. Fliegel, NMSS/DWM/URB
S. Lewis, OGC
M. Schwartz, OGC
B. Smith, NMSS/IMNS/OB
L. Tremper, OCFO/DAF/LFARB
R. Turtil, NMSS/DWM/LLDP

f. Hion: Paperiello, NMSS
Ref. G19990033
Due to EDO: 3/9/99

ATLAS CORPORATION
Republic Plaza, 370 Seventeenth Street, Suite 3050
Denver, CO 80202
Telephone: (303) 629-2440 Fax: (303) 629-2445

cys: Travers
Knapp
Miraglia
Norry
Blaha
OGC
RIV

GREGG B. SHAFTER
PRESIDENT

February 18, 1999

VIA FACSIMILE: (301) 415-1757
The Honorable Dr. Shirley A. Jackson
Chairman
U.S. Nuclear Regulatory Commission
Two White Flint North
Rockville, Maryland 20852-2738

Re: Atlas Corporation's Moab, Utah Uranium Mill Tailings Site

Dear Chairman Jackson:

The Technical Evaluation Report (TER) determining that Atlas Corporation's (Atlas) proposed reclamation plan for its Moab, Utah uranium mill and tailings site satisfies NRC's technical criteria and that the site is suitable for on-site stabilization was issued two years ago. Recently, based on further assurances provided by NRC staff at various levels, Atlas represented to its shareholders and creditors that the reclamation plan meets NRC criteria for site closure, with the understanding that our groundwater corrective action plan would have to be updated. This sequential approach is based on NRC's previously established policy requiring licensing action first on the surface reclamation plan and then, based on that determination, action would be taken on the groundwater corrective action plan. However, at a meeting held last Friday at your offices, Mr. Paperiello advised Atlas that this is not the case. In fact, Atlas was advised that there exists "insufficient data" related to the groundwater issue to take action on the surface reclamation licensing action.

Suffice it to say, we were stunned. The fact that the expert regulatory agency that has, along with its predecessors, regulated this facility since the 1950s, cannot complete an Environmental Impact Statement (EIS) and license amendment for site closure in five years is, to say the least, mind boggling. The fact that the Commission's inability to efficiently fulfill its regulatory oversight responsibilities entrusted to it by Congress will result in the demise of Atlas as a business entity is, indeed, a sad commentary. Should this Commission's decisions, or indecision, force the company into Chapter Seven bankruptcy liquidation proceedings, it is conceivable that, along with the recent Louisiana Enrichment Services (LES) debacle, the Commission's ability to function as the primary regulatory agency entrusted to implement the

BB/15

Atomic Energy Act (AEA) and Uranium Mill Tailings Radiation and Control Act (UMTRCA) could be questioned.

On October 1, 1998, at a meeting held at your offices, we were told by NRC Staff that the final EIS was to be released before Christmas. Then, after a meeting with Atlas on-site at Moab, you were quoted as saying that the final EIS would be issued in late January, 1999. Shortly thereafter, however, NRC Staff advised us that it would be delayed for "clerical" reasons. Then we were notified that additional Staff evaluation would delay the EIS until early February. We understand now that if and when it is issued, there will be no license amendment allowing Atlas to commence site closure because the surface stabilization plan will not ensure, with adequate certainty, that the arbitrarily derived ammonia standard for chronic exposure of the endangered species in the river will be satisfied. This decision is in direct conflict with the Commission's position throughout the consultation process with the Fish and Wildlife Service (FWS) that surface stabilization and groundwater corrective actions are "separate" regulatory requirements. Surface stabilization was never, and is not now, intended to solve all potential groundwater issues. Rather, by your own policy, groundwater issues are properly addressed through the groundwater corrective action plan. This approach is clearly evidenced by the separate actions taken by the Department of Energy (DOE) on the Title I sites.

In its final biological opinion under the Endangered Species Act (ESA) on Atlas' proposed reclamation plan, the FWS set forth a reasonable and prudent alternative that allowed surface reclamation to proceed, based on certain commitments and time frames for implementation of the groundwater corrective action plan. Thus, even though Atlas disagreed with FWS' conclusion that surface and groundwater reclamation and remediation are interrelated actions under the ESA, all parties involved in the final biological opinion agreed upon a process that allowed the Atlas surface closure plan to proceed. Now, for reasons unexplained, NRC has tied surface closure to ammonia contamination in the river and improperly and unreasonably refused to issue a license amendment authorizing surface reclamation - - a decision, if adhered to, that likely will have multiple unfortunate consequences for NRC, the environment and, of course, Atlas and its constituents.

Let me now turn to other pressing legal issues and discuss why they must be addressed immediately in light of the "reality" of Atlas' present financial situation. In October 1998, and again last week, Atlas presented the NRC Staff a framework for a negotiated settlement of Atlas' liability at the Moab site. Your staff counsel has conferred with the Department of Justice bankruptcy counsel here in Denver, as well as Atlas' bankruptcy counsel, to confirm that failure to reach a negotiated settlement will result in all parties, NRC included, fairing far worse than is necessary.

In light of the above, we believe that NRC must assert federal preemption over 11e(2) byproduct material, including both its radiological and non-radiological components, if a

negotiated settlement is to become a reality. With respect to Atlas' bankruptcy proceeding, Atlas has already filed an objection to the State of Utah's $77 million claim and plans to file an objection to the NRC's $44 million claim later this week. If NRC properly asserted preemption over 11e(2) byproduct material, the State would lack a basis for recovery; therefore, the bankruptcy court may allow Atlas to expend funds for site closure. If, however, NRC fails to assert preemption, we doubt that the bankruptcy court would allow Atlas to expend funds for site closure if Atlas could not terminate its license (even if we satisfied the NRC's requirements) because the State of Utah's claim would still exist. If we do not act quickly and stop the litigation that has commenced, it will take on a life of its own and the bankruptcy court will determine what NRC and the State of Utah are entitled to following extensive briefing by all parties involved at substantial cost to the State of Utah, Atlas, and the NRC. In any event, the conclusion of this litigation will be irrelevant because, as stated above, NRC and State demands will never be met.

Recognizing this fact, Atlas has been engaged in extensive discussions with various parties, including the State of Utah, NRC Staff, members of Congress, counsel for Grand Canyon Trust, members of Grand County Council, and others, regarding Atlas' willingness to dedicate, with the bankruptcy court's approval, significant funds and assets toward closure of this site to ensure the health and safety of the public and increased protection of the environment. If the deal cannot be structured within the next 2-3 weeks, however, Atlas likely will not be able to get the bankruptcy court's approval for reorganization as proposed to NRC. If that happens, NRC will be stuck without a viable licensee, a $6.5 million bond for a $20 million surface cleanup, and an inability to move forward on surface reclamation itself for the reasons it claims it cannot authorize Atlas to do so. As a result, it is likely that most of the $6.5 million bond money will be spent on site maintenance, leaving the Commission with a politically sensitive site for which it has insufficient monies and no ability to address in the near term. This leaves only the hope that Congress will appropriate additional funds necessary for onsite stabilization (which Atlas' proposal can achieve) or the hundreds of millions of dollars necessary to relocate the tailings pile.

Just prior to adjournment of the meeting last Friday, we were asked by NRC Staff if it was acceptable to Atlas that the final EIS be issued on March 3, 1999. I want to reiterate our response for your edification. Since the EIS will not be accompanied by the license amendment sought by Atlas for over five years, it matters little if, or when, the EIS is issued. Atlas is seeking to: (1) negotiate an orderly withdrawal from this license pursuant to the AEA; (2) contribute substantially more assets toward closure rather than to frivolous litigation; and, (3) to provide a meaningful resolution that, at least in part, protects human health and the environment.

The technical merits of a particular point of view matter little at this point. The reality of the situation is that if we are unable to identify a path toward a solution by the end of this

month, Atlas will be forced to continue with its efforts to abandon the Moab site within the framework of the bankruptcy.

We look forward to your reply and a possible meeting with representatives from NRC, the DOE, the Department of Interior, the Justice Department, and the Council on Environmental Quality, representatives of relevant congressional oversight committees, or others, that may assist in our efforts to bring about an orderly withdrawal of Atlas from its license and ensure that previously expended funds and currently available resources will result in an environmentally suitable closure rather than in frivolous litigation, no site closure, and final destruction of a licensee that tried its very best to fulfill its AEA responsibilities. If such a meeting can be arranged, the representatives must be empowered with the authority to take action toward a creative and rational solution, and not possess the regulatory mindset reflected all too often by inaction.

Sincerely,

Gregg B. Shafter
President

Richard E. Blubaugh
Executive Vice President

cc: Senator Pete Domenici
Senator Frank Murkowski
Senator Robert Bennett
Senator Orrin Hatch
Congressman Chris Cannon
Congressman James Hansen
Commissioner Greta J. Dicus
Commissioner Nils J. Diaz
Commissioner Jeffrey S. Merrifield
Commissioner Edward McGaffigan, Jr.
Molly McUsic, DOI
Bradley Campbell, CEQ
Frank Moraglia, NRC
Jack Tillman, DOE
Richard Lawson, NMA
Joseph Colvin, NEI
Anthony Thompson
Harvey Sender
Don Baur

From: Patricia Tressler
To: Betty Lynn, Joseph Holonich
Date: Thu, Apr 1, 1999 1:49 PM
Subject: Re: Extension on 19990141

Your extension request has been approved. The new due date for G19980762 & G19990033 is 4/7/99. If you have any questions, please let me know. Thanks,

Patty :-)

>>> Joseph Holonich 04/01 1:15 PM >>>
Jim,

We need an extension on the subject ticket. We are in the process of finalizing it, and plan to have it to Carl by tomorrow. Carl would need a day or two to review it, so I would like to propose next Wednesday to the EDO. Please let me know if that is okay.

Thanks,

Joe

CC: Catherine Poland, Charlotte Abrams, John Greeves...

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BB/14

Central files

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

May 18, 1999

Distribution: 5/26/99
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G19990033, G19980762
EDO r/f

40-3453

Mr. Gregg B. Shafter, President
Mr. Richard E. Blubaugh, Executive Vice President
Atlas Corporation
370 Seventeenth Street, Suite 3140
Denver, Colorado 80202

Gentlemen:

I am responding to the Atlas Corporation letters to me dated December 28, 1998, January 12, 1999, and February 18, 1999. The Atlas situation has evolved rapidly and many of the issues raised in your letters have been superseded by events.

As you know, since Atlas has filed for bankruptcy, the Nuclear Regulatory Commission (NRC) actively has been engaged in the negotiations to work out a settlement. One of the major issues in those negotiations is the mechanism to accomplish the reclamation of the Moab site. Recent settlement discussions have focused on setting up a Trustee, with funding from the Atlas estate, to reclaim the Moab site, with Atlas being relieved of that responsibility. As such, I will address briefly only your most recent concerns regarding the NRC staff review of the Atlas proposal for reclamation.

The particular concerns you identified in your February letter were: 1) your belief that the staff chose to include cleanup of the site ground water in its evaluation of the Atlas reclamation; 2) the length of time for the NRC review; and 3) the need for the NRC to exercise sole jurisdiction over both the radiological and non-radiological aspects of the Atlas cleanup.

Since it began work on the Environmental Impact Statement in April 1994, the NRC staff has always considered long-term impacts to the Colorado River as part of what is needed to determine the acceptability of the Atlas proposal. To determine whether the Atlas on-site stabilization proposal is environmentally acceptable, the NRC must ascertain whether these standards will be met over the design life of the tailings reclamation. However, although it is an important review item for closure of the Atlas site, the specific approach that Atlas would use to clean up the existing ground-water contamination has not been, and still is not, part of the tailings reclamation review.

With respect to the timeliness of the review, NRC completed all aspects of the review within its control on a schedule that would allow for a decision to support your needs. However, the NRC could not complete its licensing action without the Fish and Wildlife Service (FWS) Final Biological Opinion. The consultation period with the FWS took over three years. In addition, there is a distinct possibility that the consultation period with the FWS could have been reduced, if Atlas had provided specific information requested at several meetings.

NLXQ
9997

Originated by: [MFliegel, NMSS]

BB/17

Your February letter also requested the NRC to exert sole jurisdiction over both the radiological and non-radiological aspects of the tailings reclamation. Although NRC has responsibility for regulatory oversight of the reclamation of uranium mill tailings under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), Congress did not explicitly establish exclusive Federal jurisdiction for the non-radiological aspects of tailings reclamation. To date, some States have been involved in regulating the non-radiological constituents in ground water at uranium recovery sites. However, the Commission plans to evaluate the issue of concurrent jurisdiction in coordination with its current ongoing effort to evaluate the entire regulatory framework for uranium recovery facilities.

It may interest you to know that as part of this uranium recovery framework evaluation, the staff recently forwarded three papers to the Commission for approval. The papers address the uranium recovery rulemaking plan and key issues on regulation of in-situ leach facilities, processing of alternate feed material, and use of tailings impoundments for disposal of other similar materials. At the direction of the Commission, these papers (SECY-99-011, 012, and 013) have been made publicly available in preparation for a public Commission briefing the week of June 14, 1999.

I trust that this letter responds to your concerns.

Sincerely,

Shirley Ann Jackson

cc: Senator Pete Domenici
Senator Frank Murkowski
Senator Robert Bennett
Senator Orrin Hatch
Representative Chris Cannon
Representative James Hansen
Molly McUsic, DOI
Bradley Campbell, CEQ
Jack Tillman, DOE
Richard Lawson, NMA
Joseph Colvin, NEI
Anthony Thompson, Shaw Pittman, Potts & Trowbridge
Harvey Sender, Sender and Wasserman
Don Baur, Perkins & Coie

In your December 28, 1998, letter, you discuss several approaches that Atlas might take to accelerate ground-water cleanup. Although the information you provided is useful to NRC in understanding options available for cleanup of existing ground-water contamination, the letter does not provide the level of information needed to support any licensing action. NRC would expect to see a detailed analysis of these various cleanup techniques, and their applicability to the site, discussed in a revised ground-water program.

Your January 12, 1999, letter raised a concern about the necessity of publishing a supplement to the Atlas Technical Evaluation Report (TER). The Atlas reclamation proposal is complex, and NRC needs to ensure that it can fully support whatever determination is ultimately made. When staff published the TER in March 1997, it concluded that, from a radiological health and safety perspective, the proposal was acceptable. The issues subsequently addressed in the final EIS were related to the environmental impacts associated with the proposed action. NRC needed to ensure that the TER was consistent with the environmental findings, and the issuance of a supplement to the TER was necessary and appropriate to accomplish that goal. The staff concluded that, although the TER was published for public comment, publication of a supplement to the TER as a draft for public comment was not necessary.

I trust that this letter responds to your concerns.

Sincerely,

Shirley Ann Jackson

Enclosure: As stated

cc: See attached

NOT FOR PUBLIC

This correspondence addresses policy issues previously resolved by the Commission, transmits factual information, or restates Commission policy.

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DATE	4/8/99		4/ 6 /99		4/16/99		4/ 16 /99		4/9/99	

OFC	NMSS*		DEDR		EDO		OCM			
NAME	CPaperiello		FMiraglia for		WTravers for		SAJackson			
DATE	4/9/99		4/ /99		4/23/99		5/18/99			

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not completed its analysis of the uranium recovery regulatory framework and, therefore, I will not address the jurisdiction issue in this letter. A copy of my letter to Ms. Sweeney is enclosed for your information.

In your December 28, 1998, letter, you discuss several approaches that Atlas might take to accelerate ground-water cleanup. Although the information you provided is useful to NRC in understanding options available for cleanup of existing ground-water contamination, the letter does not provide the level of information needed to support any licensing action. NRC would expect to see a detailed analysis of these various cleanup techniques, and their applicability to the site, discussed in a revised ground-water program.

Your January 12, 1999, letter raised a concern about the necessity of publishing a supplement to the Atlas Technical Evaluation Report (TER). The Atlas reclamation proposal is complex, and NRC needs to ensure that it can fully support whatever determination is ultimately made. When staff published the TER in March 1997, it concluded that, from a radiological health and safety perspective, the proposal was acceptable. The issues subsequently addressed in the final EIS were related to the environmental impacts associated with the proposed action. NRC wanted to ensure that the TER was consistent with the environmental findings. The issuance of a supplement to the TER was appropriate to document the consistency of the reviews. Supplementing the staff's safety evaluation in a later document is a common practice used by staff in its licensing of nuclear power plants. The staff concluded that, although the TER was published for public comment, publication of a supplement to the TER as a draft for public comment was not necessary.

I trust that this letter responds to your concerns.

Sincerely,

Shirley Ann Jackson

NOT FOR PUBLIC 04/16

Enclosure: As stated
cc: See attached

This correspondence addresses policy issues previously resolved by the Commission, transmits factual information, or restates Commission policy.

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DOCUMENT NAME: S:\DWM\URB\MHF\ CHAIRSP.WPD *See previous concurrence

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NAME	MFliegel:bg		EKraus		NRS NKStablein		by e-mail (attached)		JGreeves	
DATE	4/8/99		4/6 /99		4/8/99 4/16/99		4/16 /99		4/9/99	

OFC	NMSS*		DEDR		EDO		OCM			
NAME	CPaperiello		FMiraglia		WTravers		SAJackson			
DATE	4/9/99		4/ /99		4/ /99		4/ /99			

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evaluate the entire regulatory framework for uranium recovery facilities. At this time, NRC has not completed its analysis of the uranium recovery regulatory framework and, therefore, is not in a position to change the established Agency position on concurrent jurisdiction that has been in place for nearly 20 years. A copy of my letter to Ms. Sweeney is enclosed for your information.

In your December 28, 1998, letter, you discuss several approaches that Atlas might take to accelerate ground-water cleanup. Although the information you provided is useful to NRC in understanding options available for cleanup of existing ground-water contamination, the letter does not provide the level of information needed to support any licensing action. NRC would expect to see a detailed analysis of these various cleanup techniques, and their applicability to the site, discussed in a revised ground-water program.

Your January 12, 1999, letter raised a concern about the necessity of publishing a supplement to the Atlas Technical Evaluation Report (TER). The Atlas reclamation proposal is complex, and NRC needs to ensure that it can fully support whatever determination is ultimately made. When staff published the TER in March 1997, it concluded that, from a radiological health and safety perspective, the proposal was acceptable. The issues subsequently addressed in the final EIS were related to the environmental impacts associated with the proposed action. NRC wanted to ensure that the TER was consistent with the environmental findings. The issuance of a supplement to the TER was appropriate to document the consistency of the reviews. Supplementing the staff's safety evaluation in a later document is a common practice used by staff in its licensing of nuclear power plants. The staff concluded that, although the TER was published for public comment, publication of a supplement to the TER as a draft for public comment was not necessary.

I trust that this letter responds to your concerns.

Sincerely,

NOT FOR PUBLIC

Shirley Ann Jackson

Enclosure: As stated
cc: See attached

This correspondence addresses policy issues previously resolved by the Commission, transmits factual information, or restates Commission policy.

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MWeber	DGillen	MSchwartz	SBurns	SECY -CRC-99-0038	

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I trust that this letter responds to your concerns.

Sincerely,

Shirley Ann Jackson

NOT For Public

Enclosure: As stated

cc: See attached

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DOCUMENT NAME: S:\DWM\URB\MHF\ CHAIRSP.WPD *See previous concurrence

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DATE	4/ /99		4/ /99		4/ /99		4/ /99			

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has concluded that publication of a supplement to the TER as a draft for public comment, as we did for the TER itself, is not necessary.

I trust that this letter responds to your concerns.

Sincerely,

Shirley Ann Jackson

Enclosure: As stated

cc: Senator Pete Domenici
Senator Frank Murkowski
Senator Robert Bennett
Senator Orin Hatch
Representative Chris Cannon
Representative James Hansen
Molly McUsic, DOI
Bradley Campbell, CEQ
Jack Tillman, DOE
Richard Lawson, NMA
Joseph Colvin, NEI
Anthony Thompson, Shaw Pittman, Potts & Trowbridge
Harvey Sender, Sender and Wasserman
Don Baur, Perkins & Coie

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OFC	NMSS		DEDR		EDO		OCM			
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DATE	4/ /99		4/ /99		4/ /99		4/ /99			

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COLORADO RIVER BOARD OF CALIFORNIA
770 FAIRMONT AVENUE, SUITE 100
GLENDALE, CA 91203-1035
(818) 543-4676
(818) 543-4685 FAX

June 22, 1999

Ms. Shirley Ann Jackson
Chairman
Nuclear Regulatory Commission
REC'D BY SECY One White Flint North Building
11555 Rockville Pike
25 JUN 99 Rockville, MD 20852

Dear Chairman Jackson:

I want to take the opportunity to thank the Nuclear Regulatory Commission (NRC) for the action it took in responding to the Colorado River Board's letter of February 9, 1999, concerning the Atlas Corporation's uranium mine tailings near Moah, Utah. Mr. John Holonick, from your Rockville, Maryland office attended the Board's May 5th meeting in South Lake Tahoe, Nevada and did an excellent job in presenting the NRC's position regarding the mine tailings.

The issue of the mine tailings, however, was again discussed in some detail at the Board's June meeting and the Board concluded that it was unacceptable that contaminants from the pile are continuing to pollute the Colorado River and even after reclamation, as proposed by the Atlas Corporation, would continue but at a reduced rate. During the discussion, the Board voted to request the NRC, or the appropriate federal agencies, to remove the tailings to a remote location. The Board concluded that on-site capping of the mill tailings raised serious concerns due to the site's location adjacent to the Colorado River, and that the prudent and environmentally sound method of dealing with this problem would be to remove the tailings to another site.

The Colorado River Board understands the regulatory limitations of the NRC and, therefore, has supported H.R. 393, introduced by Rep. George Miller of California, that would require the Secretary of Energy to remove the tailings from the site and provide for groundwater remediation and additional water quality monitoring.

If you have any questions, give me a call at (818) 543-4676.

Sincerely,

Gerald R. Zimmerman
Executive Director

BB/18

c: Mr. John Holonick
Representative George Miller

Senator Barbara Boxer
Senator Dianne Feinstein

Representative Bob Filner
Representative Luis V. Gutierrez
Representative Scott McInnis
Representative Nancy Pelosi

7/9/99
Close Ticket
no response ACTION
per JSurmeier

EDO Principal Correspondence Control

FROM: DUE: 7/23/99

EDO CONTROL: G19990326
DOC DT: 06/22/99
FINAL REPLY:
40-3453

Gerald R. Zimmerman
Colorado River Board of California

TO:

Chairman Jackson

FOR SIGNATURE OF : ** GRN ** CRC NO: 99-0603

DESC:

ATLAS CORPORATION'S URANIUM MINE TAILINGS

ROUTING:

Travers
Knapp
Miraglia
Norry
Blaha
Burns
Merschoff, RIV
Cyr, OGC

NLXQ

DATE: 06/28/99

ASSIGNED TO: CONTACT:

NMSS Paperiello

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.

Ref. G19990088.

ACTION: Surmeier
Due to DWM Director's Office: 7/16

NRC FILE CENTER COPY

JG
JH

DWM Action
Due to NMSS Director's Office
By 7/20/99
Rec'd 7/6/99

99124

NO ACTION NECESSARY

John Surmeier
7/9/99

200008

7/7

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

PAPER NUMBER: CRC-99-0603 LOGGING DATE: Jun 25 99

ACTION OFFICE: EDO

AUTHOR: GERALD ZIMMERMAN
AFFILIATION: CALIFORNIA

ADDRESSEE: CHAIRMAN JACKSON

LETTER DATE: Jun 22 99 FILE CODE: MH&S 11 URAN. MILL.

SUBJECT: THANKFUL TO THE NRC FOR THE ACTION IT TOOK IN RESPONDING TO THE COLORADO RIVER BD'S LTR. 2/9/99 RE ATLAS CORP. URANIUM MINE TAILINGS

ACTION: Appropriate

DISTRIBUTION: CHAIRMAN, RF

SPECIAL HANDLING: NONE

CONSTITUENT:

NOTES:

DATE DUE:

SIGNATURE: DATE SIGNED:
AFFILIATION:

K

EDO --G19990326

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 2, 2000

OFFICE OF THE
GENERAL COUNSEL

40-3453

MEMORANDUM TO: Stephen G. Burns
Deputy General Counsel

FROM: Maria E. Schwartz MES
Attorney

SUBJECT: WHETHER EXEMPTION FROM NRC FEES FOR THE TRUST AND TRUSTEE OF THE MOAB MILL SITE CREATES A CONFLICT OF INTEREST FOR PRICEWATERHOUSECOOPERS LLP AND THE NRC

The Atlas Corporation (Atlas) was the owner of the Moab Mill Site (Site) in Grand County, Utah. On September 22, 1998, Atlas filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code. The NRC filed claims in bankruptcy against Atlas totaling approximately $44 million for estimated costs associated with further reclamation of the Site and for unpaid licensing fees.

The settlement agreement reached by the NRC and Atlas on April 28, 1999, included claims for past unpaid fees; and, as part of that agreement, Atlas agreed to transfer the Site, along with other assets, to a reclamation trust (Trust). Pursuant to the agreement, past unpaid fees would be discharged in bankruptcy. In addition to agreeing that past fees charged to Atlas should be waived, the Office of the General Counsel (OGC) also supported the position that the newly created Trust and the then-as-yet unnamed trustee for the Site, should also be exempt from future fees associated with the NRC's licensing and oversight of the Site. An August 9, 1999 memorandum from Joseph Gray in the Office of the General Counsel (OGC) to James Turdici, Director of the Division of Accounting and Finance, Office of the Chief Financial Officer (OCFO), entitled "Exemption of Fees for Atlas Corporation and Successor Trustee/Licensee of the Moab Mill Site," (Attachment 1) advances the position that the NRC should not assess fees from the reorganized Atlas or the future Trust or Trustee of the Site. The basis for this position was that by exempting the Trust and the trustee from such fees, the trustee would be able to maximize the amount of funds available from the Trust for reclamation work. The Commission took a similar position in a situation which occurred in the State of Wyoming. In that case, the Commission exempted Wyoming from paying unpaid and future NRC fees after an NRC licensee located in Wyoming, declared bankruptcy. The NRC transferred the bankrupt uranium facility to the State as the Trustee/Licensee and exempted it from NRC fees in order to maximize the funds available to the State for reclamation of the Wyoming site.

In November 1999, the NRC, with the concurrence of the State of Utah, appointed PricewaterhouseCoopers LLP (PWC) as trustee for the Site. PWC agreed to serve as trustee and to manage the Trust assets as well as to undertake efforts to reclaim the Site. The license for the Site was transferred, pursuant to an NRC Order, from Atlas to the Trust on January 3, 2000. In all discussions prior to PWC's appointment as the Trustee, it was clearly OGC and the

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NRC staff's intent that neither the Trust nor a trustee would be subject to NRC fees pursuant to 10 CFR Part 170 or Part 171.

The OCFO was aware that Atlas' unpaid NRC fees were included in the bankruptcy settlement agreement; however, before the OFCO had responded to OGC's memorandum agreeing that the trust and trustee should be exempt from future NRC fees, the OFCO notified OGC that the OFCO had entered into a contract with another division of PWC in October 1999 to undertake three tasks: 1) analyze small entity fees and determine options for increasing the annual fees amounts assessed for small entities; 2) review the fee model and develop alternatives for determining best methods of allocating costs, keeping in mind that the NRC operates on a full cost recovery basis under the Independent Offices Appropriations Act; and 3) (if undertaken) develop an interface between the agency's automated budget system and fee model. The OFCO questioned whether granting an exemption from NRC fees to PWC while PWC was involved with these tasks might create the appearance of a conflict of interest.

Both the Administration and Rulemaking and Fuel Cycle Divisions of OGC have reviewed this issue and conclude that the situation in which PWC is acting as Trustee for the Site and exempt from NRC fees, while working on an NRC task regarding fees, does not create a conflict of interest nor does it create the appearance of a conflict of interest for the following reasons: 1) the specified products that the OFCO has asked PWC to develop under its Order for Supplies or Services (Attachment 2), do not have any relationship to, or impact on, PWC's role as trustee, i.e. acting as a trustee under these circumstances does not constitute a category of licensee which was, or should have been, included within the scope of the tasks enumerated in the preceding paragraph; 2) had it not been exempted, PWC would have paid NRC fees as the trustee for the Site from the Trust assets; 3) pursuant to the settlement agreement which was approved prior to PWC's being named the trustee, the NRC had waived Atlas' payment of unpaid fees based on the fact that this approach would allow more money to be transferred to the Trust for reclamation of the Site; 4) OGC and the NRC staff had discussed exempting the then-as-yet unnamed trustee from future NRC fees in our development of a strategy for reclaiming the Site with as many private dollars as possible; OGC expressed its support for exempting the trustee for the Site from paying future NRC fees in its August memorandum. This memorandum was written several months before PWC was named the trustee, and, in fact, another entity was initially named trustee (September 27, 1999) which subsequently turned down the NRC's offer.

Attachments: As stated

March 23, 2000 SECY-00-0069

FOR: The Commissioners

FROM: John F. Cordes, Acting Director /RA/
Office of Commission Appellate Adjudication

SUBJECT: MOAB MILL RECLAMATION TRUST, Docket No. 40-3453-LT; Petition to Intervene

PURPOSE: To provide the Commission a draft order denying Mr. John F. Darke's request for a hearing.

BACKGROUND:

This materials license transfer proceeding involves a challenge by Mr. John Francis Darke to a staff order transferring Source Material License SUA-917 from Atlas Corporation ("Atlas") to the Moab Mill Reclamation Trust ("the Trust"). Neither Atlas nor the Trustee (PricewaterhouseCoopers, LLP) has filed a response to Mr. Darke's request for hearing, nor has the NRC staff sought to become a party. Consequently, the Commission has before it only Mr. Darke's initial request, together with his supplements to those documents.

The instant case differs from typical license transfer proceedings in that it was initiated by a staff order rather than an application for approval of license transfer. This peculiar procedural posture stems from the fact that, on September 22, 1998, Atlas filed for Chapter 11 bankruptcy protection and subsequently reached a Settlement Agreement with the NRC, the State of Utah and other entities to transfer its Moab Mill Site to the newly-established Trust. Under that agreement, the NRC was obliged to transfer Atlas's License SUA-917 to the Trust, and the Trust was in turn obliged to carry out the remediation of the site consistent with the terms of that license. The United States Bankruptcy Court for the District of Colorado approved the Settlement Agreement on December 1, 1999.

In accordance with its obligations under the Settlement Agreement, the NRC staff issued the transfer order on December 27, 1999, and published in the Federal Register a notice of the

Contact: **Roland M. Frye, Jr., OCAA**
415-3505

NOTE: CONTAINS ATTORNEY-CLIENT INFORMATION AND ADJUDICATORY MATERIAL -- LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

BB/20

issuance of that order as well as an opportunity for a hearing, under 10 C.F.R. Part 2, Subpart M, on the question whether the order transferring the license should be sustained. 65 Fed. Reg. 138 (Jan. 3, 2000). The notice explained that the agency had agreed to accept the Settlement Agreement in satisfaction of Atlas's regulatory responsibilities for remediation of the Moab site, to transfer the license to the Trust, and to limit the Trustee's liability to certain of Atlas's assets which had been or would be transferred to the Trust. The notice concluded that the Trustee's maintenance and remediation of the site would adequately protect the public health and safety and provide reasonable assurance of compliance with the Commission's regulations. On January 24, 2000, Mr. Darke filed a timely Request for Hearing under our Subpart M procedural regulations and subsequently supplemented that Request on February 9th, 11th, 22nd, and March 8th.

DISCUSSION:

Mr. Darke seeks to excuse himself from having to satisfy the Commission's requirements to demonstrate standing and proffer at least one admissible issue. This position clearly lacks merit. Mr. Darke also offers a number of arguments why the Commission should overturn a staff order approving the license transfer. Some of these arguments focus on the absence of an application to which Mr. Darke can respond, but they ignore his obvious opportunity to respond to the staff's order itself. The remainder of his arguments attempt to address the order but fail to satisfy the Commission's standards for admissibility, usually because they provide inadequate evidentiary support to pass regulatory muster. The attached draft order rejects Mr. Darke's request for hearing and terminates the proceeding.

If the Commissioners require further documentation from the record or would like to discuss this matter, please contact either Roland Frye or me.

RECOMMENDATION:

I recommend that the Commission approve the issuance of the attached order.

Enclosure: Draft Commission Order

NOTE: CONTAINS ATTORNEY-CLIENT INFORMATION AND ADJUDICATORY MATERIAL -- LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Richard A. Meserve, Chairman
Greta Joy Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of)
)
MOAB MILL RECLAMATION TRUST)
) Docket No. 40-3453

CLI-00-__

MEMORANDUM AND ORDER

This license transfer proceeding involves a challenge by Mr. John Francis Darke to a staff order transferring Source Material License SUA-917 from Atlas Corporation ("Atlas") to the Moab Mill Reclamation Trust ("the Trust"). Neither Atlas nor the Trustee (PricewaterhouseCoopers, LLP) has filed a response to Mr. Darke's request for hearing,[1] nor

[1] Given that Mr. Darke is unrepresented by counsel, we will assume that his Request for Hearing was also intended to be construed as a petition to intervene. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1247 (1984), rev'd in part on other grounds, CLI-85-2, 21 NRC 282 (1985); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 546 (1980); Kansas Gas & Electric Co. (Wolf Creek Generating Station), ALAB-279, 1 NRC 559, 576-577 (1975); Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Units 1 & 2), ALAB-136, 6 AEC 487, 489 (1973). For this same reason, as well as for
(continued...)

has the NRC staff sought to become a party. Consequently, we have before us only Mr. Darke's initial request, together with his supplements to those documents. For the reasons set forth below, we deny Mr. Darke's request for hearing and terminate the case.

BACKGROUND

The instant case differs from prior license transfer proceedings in that it was initiated by a staff order rather than an application for approval of license transfer. This peculiar procedural posture stems from the fact that, on September 22, 1998, Atlas filed for Chapter 11 bankruptcy protection and subsequently reached a Settlement Agreement with the NRC, the State of Utah and other entities to transfer its Moab Mill Site to the newly-established Trust. Under that agreement, the NRC was obliged to transfer Atlas's License SUA-917 to the Trust, and the Trust was in turn obliged to carry out the remediation of the site consistent with the terms of that license. The United States Bankruptcy Court for the District of Colorado approved the Settlement Agreement on December 1, 1999.

In accordance with its obligations under the Settlement Agreement, the NRC staff issued the transfer order on December 27, 1999, and published in the Federal Register a notice of the issuance of that order as well as an opportunity for a hearing, under 10 C.F.R. Part 2, Subpart M, on the question whether the order transferring the license should be sustained. See 65 Fed. Reg. 138 (Jan. 3, 2000). The notice explained that the agency had agreed to accept the Settlement Agreement in satisfaction of Atlas's regulatory responsibilities for

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[1](...continued)
the personal reasons set forth in Mr. Darke's Request for Hearing at 8 and Exhibit B, we grant his request for additional time to supplement his initial Request and admit his four supplemental submissions into the record.

remediation of the Moab site, to transfer the license to the Trust, and to limit the Trustee's liability to certain of Atlas's assets which had been or would be transferred to the Trust. The notice concluded that the Trustee's maintenance and remediation of the site would adequately protect the public health and safety and provide reasonable assurance of compliance with the Commission's regulations. On January 24, 2000, Mr. Darke filed a timely Request for Hearing under our Subpart M procedural regulations and subsequently supplemented that Request on February 9th, 11th, 22nd, and March 8th.

ANALYSIS

To intervene as of right in a license transfer proceeding, a petitioner like Mr. Darke must raise at least one admissible issue (and must also demonstrate standing). To demonstrate that issues are admissible under Subpart M, a petitioner must

ɜs (factual and/or legal) that petitioner seeks to raise,

t those issues fall within the scope of the proceeding,

> (3) demonstrate that those issues are relevant and material to the findings necessary to a grant of the license transfer application,
>
> (4) show that a genuine dispute exists with the applicant regarding the issues, and
>
> (5) provide a concise statement of the alleged facts or expert opinions supporting petitioner's position on such issues, together with references to the sources and documents on which petitioner intends to rely.

See 10 C.F.R. § 2.1308; Nine Mile Point, CLI-99-30, 50 NRC at 342 (and cited authority).

We conclude that Mr. Darke has failed to proffer an admissible issue.[2] His request for a hearing turns largely, if not exclusively, on a hyper-technical claim that only "applications," not staff transfer orders, can trigger the Subpart M hearing process. We reject Mr. Darke's semantics-driven position. The hearing notice in this case made it clear to any reasonable person how and when to seek a hearing.

Before reaching the admissibility of Mr. Darke's issues, as such, we first examine his attempt to excuse himself from our regulatory requirements regarding demonstration of standing and proffering at least one admissible issue. Mr. Darke's argument (which, frankly, we find quite difficult to follow) appears to be that the case's peculiar procedural posture (described above) excuses him from satisfying these two requirements. As best we can decipher Mr. Darke's argument, he reaches this conclusion by relying on both this proceeding's initiation by a staff order rather than a license transfer application[3] and the staff order's purported failure to support its ruling with "full information."[4] Mr. Darke apparently assumes that these two factors

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[2] Based on Mr. Darke assertions regarding his many activities in the immediate vicinity of the Moab facility, he appears to have satisfied the agency's requirements for standing in license transfer proceedings. See Georgia Power Co. (Vogtle Elec. Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32-39 (1993). However, because we rest out decision on the patent inadmissibility of the issues Mr. Darke seeks to raise, we need not inquire closely into the question of his standing.

[3] Request for Hearing at 2-3; Third Supplement, dated Feb. 22, 2000, passim.

[4] See Request for Hearing at 3, 4, 6; Third Supplement at 7 [misnumbered as page 4]. Mr. Darke's Request for Hearing (at 3, 4) quotes both the Proposed Subpart M Rule, 63 Fed. Reg. 48,644 (Sept. 11, 1998), and Section 184 [miscited as Section 84] of the Atomic Energy Act, 42 U.S.C. § 2234 to the effect that "no license ... shall be transferred ... unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act." (Emphasis added.) Mr. Darke attributes this purported failure to the absence of an application. Request for Hearing at (continued...)

combine to prevent (and therefore excuse) him from his obligation to satisfy the filing (standing and issue) requirements of Subpart M (particularly 10 C.F.R. § 2.1306).[5] From all this, Mr. Darke draws the further novel conclusion that he can overturn the staff's order merely by showing that the order was not based on "full information." See Request for Hearing at 4; Third Supplement at 7 (misnumbered as page 4).

Mr. Darke's argument places form over substance. Although the case's genesis from a staff order rather than a license transfer application renders this proceeding unusual, it hardly suspends the procedural rules requiring a demonstration of standing and a proffer of at least one admissible issue. Nor does it render compliance with such rules impossible, as Mr. Darke suggests. Indeed, Mr. Darke has pointed to no filing requirement in 10 C.F.R. § 2.1306 with which he could not comply simply by substituting the words "staff order" for "application" -- which is precisely what the Federal Register notice invited Mr. Darke to do.[6] He could challenge the staff order on the same grounds that a petitioner could have challenged a typical

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[4](...continued)
4.

[5] Request for Hearing at 2 ("Apparently, [section] 2.1306(a) does not apply"), 3 ("Apparently, [section] 2.1306(b)(2)(i) does not apply"), 4 (the staff order "should reflect, via its findings, 'full information' .... The ... order does not reflect such and, thus, should not be sustained"), 6 ("That order was not based on "full information" ... and, thus, does not provide the information required to address the interrogatories contained in 10 C.F.R. § 2.1306"), 7 (sections "2.1308(a) ... and 2.1306(b)(3) both presuppose an application and ... [t]hus I cannot fully connect the perceived harm done with the proposed NRC action except in general terms despite the fact that I have shown above why the ... order should not be sustained (no 'full information' as required by Sec. 84 [sic])"), 7 (sections "2.1306(c)(1) and (2) would not apply given the apparent absence of an application").

[6] 65 Fed. Reg. at 140 ("The issue to be considered at such hearing shall be whether this Order transferring the license should be sustained").

license transfer application.[7] Having disposed of Mr. Darke's threshold procedural argument, we turn now to the four issues he raises.

A. Inexperience of New Management Imposes Increased Risk

Mr. Darke claims that he is more reluctant than before to enter the Moab facility's 1.5-mile wide exclusion zone for fear of both radiological and non-radiological exposure. He believes that the Settlement Agreement's installation of inexperienced new management has increased the danger of such exposure:

> "[i]f the NRC does it [i.e., transfers the license,] I will be excluded from the exclusion zone described herein without due process.... [T]he proposed new management at the Moab, Utah, facility and site would be responsible to a 'learning curve' where stepping into the Atlas Corporation's shoes, as a trustee. Such a learning curve would allow added risk to myself if I were to sojourn in the exclusion zone.... [T]he radiological and non-radiological exposure pathways found at the exclusion zone will be under new management if the ... order is sustained.... The resultant added incremental risk of exposure I find forbidding, not reassuring Learning curves have their ways.[8]

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[7] Cf. "Standard Review Plan on Foreign Ownership, Control, or Domination," 64 Fed. Reg. 52,355 (Sept. 28, 1999); NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" at 12 (Rev. 1, Feb. 1999) ("... reviewers should review transfers for their potential impact on the licensee not only to determine the adequacy of funds for safe operation and decommissioning, but to ensure that the licensee maintains adequate technical qualifications and organizational control and authority over the facility."). However, the Commission has agreed to limit the Trustee's liability for remediation and maintenance of the site to the amount available to the Trust from Atlas's assets, plus any other assets that may become available to the Trust. See 65 Fed. Reg. at 139. Consequently, the financial qualifications of the Trustee would not fall within the scope of this proceeding.

[8] Request for Hearing at 7-8 (emphasis in original). See also Request for Hearing, Exhibit A; Second Supplement, dated Feb. 11, 2000, at 1 ("the learning curve would allow added [incremental] risk to myself if I were to sojourn in a [hazardous] exclusion zone. I don't dare go to the hazard." (internal quotation marks omitted; brackets in original)), 2 ("The [staff] order proposes, in that it allows new

(continued...)

However, the only factual, expert or documentary support (as required by 10 C.F.R. § 2.1306(b)(2)(iii)) which Mr. Darke offers for his concern about the new management's "learning curve" is a recent letter from this agency's Office of Nuclear Material Safety and Safeguards ("NMSS") transmitting a Notice of Violation and an Inspection Report to the Trustee. The NMSS letter states in relevant part that:

> The NRC has determined that two violations ... occurred. The first violation involved your failure to take corrective actions within 30 days to repair erosion damage on the tailings impoundment. This finding was a concern ... because of the potential for further degradation and subsequent release of licensed material outside of the confines of the restricted area. It appears that the onsite staff could not repair the damaged interim cover because you do not have earth-moving equipment needed to perform these types of repairs.
>
> The second violation involved your failure to implement the lower limits of detection specified in the license for environmental and effluent monitoring program samples. This issue is of concern ... because the same problem was identified and cited during a previous inspection. Long-term corrective actions taken in response to the previous violation were not effective in preventing a repeat of the problem.
>
> ******
>
> [Moreover,] the NRC inspectors could not confirm whether or not you have adequately demonstrated compliance with the dose limit for individual members of the public as required by 10 CFR 20.1302.

See Second Supplement at 2-3, quoting NMSS Letter, dated Feb. 4, 2000.

The NMSS letter does not support the admissibility of this issue. The inspection on which Mr. Darke relies was conducted December 14-15, 1999, prior to the December 30 date on which the Trustee became the licensee of the Moab facility. The asserted violations were thus clearly attributable to Atlas rather than the Trustee. Consequently, we cannot

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[8] (...continued)
management at the exclusion zone, a new incremental risk that aggravates the present hazard").

conclude that the violations asserted by the NRC staff in the Notice of Violation (and in the cover letter quoted by Mr. Darke) reflect in any way on the competence of the Trustee.[9] Given the absence of any other support for Mr. Darke's issue, we find it inadmissible.

B. Insufficiency of the Staff Order

Mr. Darke states that, if granted a hearing, he would show that the staff order is not based on "full information" and that an application (rather than the staff order) is instead required in order to satisfy this regulatory and statutory requirement. See Third Supplement at 6 (misnumbered as 3); Fourth Supplement, dated March 8, 2000, at 5. It is unclear to us whether this is merely a rephrasing of Mr. Darke's threshold argument that the absence of an application deprives him of the ability to satisfy the regulatory requirements to demonstrate standing and proffer at least one admissible issue.[10] If it is merely such a rephrasing, then we reject it on the grounds set forth above.

If Mr. Darke intended it to be an independent issue, then we reject it as lacking the required level of specificity. In the peculiar context of this case, the staff's order stands squarely in the shoes of a license transfer application. Mr. Darke has had a full opportunity to

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[9] Moreover, even a Commission reversal of the NRC staff's order in this proceeding and a reinstatement of Atlas as the licensee would have no effect on the existence of the violations alleged in the NMSS letter. Therefore, to the extent Mr. Darke is claiming injury based on the three matters addressed in the staff's above-quoted cover letter, those claims are not subject to redress in this license transfer proceeding.

[10] This inference is supported by the fact that Mr. Darke elsewhere complains that the Federal Register notice failed to give him "proper notice." See Fourth Supplement at 3.

challenge the accuracy and sufficiency of that order,[11] but has pointed to nothing specific that he finds lacking. As we state in another order also issued today (GPU Nuclear, Inc. (Oyster Creek Nuclear Generating Station), CLI-00-__, 51 NRC ___, ___, slip op. at 6 (March __, 2000)), our Subpart M regulations do not allow mere "notice pleading;" the Commission will not accept "the filing of a vague, unparticularized [issue], unsupported by affidavit, expert or documentary support." See North Atlantic Energy Serv. Corp. (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219 (1999) (citation and internal quotation marks omitted). We will not convene hearings -- which require a substantial commitment of agency resources and frequently call for decisions on tight time frames -- in the absence of a genuine dispute rooted in facts or expert opinion. General assertions or conclusions such as those proffered by Mr. Darke will not suffice.

C. Inapplicability of Part 40

Mr. Darke next asserts that Part 40 is inapplicable to this proceeding. See Third Supplement at unnumbered page 1 and passim. In this regard, he first suggests that Part 40 cannot apply to this case because the Trust "may not be a person to which ... Part 40 would apply, if the trustee were an NRC contractor." See Third Supplement at unnumbered page 3. Mr. Darke ignores the fact that the definition of "person" in 10 C.F.R. § 40.4 includes "trust." Moreover, Mr. Darke never explains the relevance of this argument, nor do we see any.

Second, Mr. Darke criticizes the staff order for failing to indicate whether the license at issue was "general" or "specific." Mr. Darke considers this omission relevant because

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[11] Indeed, given our ruling above accepting all four supplements to his Request for Hearing, he has had far more opportunity than any other petitioner in our license transfer proceedings to date. Under 10 C.F.R. §§ 2.1306 and 2.1307(b), petitioners are permitted only two filings -- the petition to intervene and a reply to any answer thereto.

10 C.F.R. § 40.20 permits general licenses to become effective without the filing of applications but requires that specific licenses be issued upon the filing of an application. See Third Supplement at unnumbered page 4. Mr. Darke appears again to be revisiting his earlier assertion that he lacks sufficient information due to the lack of an application. If so, we reject it on the same grounds that we disapproved the earlier assertion. If not, we reject it for failure to explain how this omission bears on the question whether the staff order transferring the license should be sustained.

Third, Mr. Darke asserts generally that the repeated references in Part 40 to "'application' [and] 'applicant,' ... provokes the question whether or not such parts of [Part 40] would apply." See Request for Hearing at 13 (handwritten addition); First Supplement, dated Feb. 9, 2000, at 2; Third Supplement at unnumbered page 1. The mere fact that the proceeding does not stem from an "application" provides us no more reason to exempt the Trustee's license from the provisions of Part 40 than it did to exempt Mr. Darke's submittals from the provisions of Subpart M. In any event, Mr. Darke never indicates what regulations he does consider applicable, assuming Part 40 is inapplicable, nor does he state what relief he seeks as a result of Part 40's alleged inapplicability.

D. Legal Bar to Implementing the Settlement Agreement

In his final argument, Mr. Darke asserts that implementation of the Settlement Agreement is unauthorized by law. See Fourth Supplement at 3. We disagree. Both the Atomic Energy Act and the Commission's own regulations specifically permit transfers of Part 40 licenses as long as the Commission (1) secures full information, (2) gives its consent in writing to the transfer, and (3) finds that the transfer is in accordance with the provisions of the Atomic Energy Act. See AEA, § 184, 42 U.S.C. § 2234; 10 C.F.R. § 40.46.

As explained above, Mr. Darke has not successfully challenged the Commission's compliance with the first of these three legislative conditions in this proceeding. By challenging the staff order in which the agency consented to the transfer in writing, Mr. Darke implicitly concedes that the Commission complied with the second condition. His sole attempt at undermining the Commission's compliance with the third condition is to ask "Where is the public record that would reveal as to whether or not such sign off once removed happened 'pursuant to' the proper statute -- Section 184 of the [AEA] ...." See Fourth Supplement at 4 (sic). Mr. Darke apparently wants the Commission to create such a "public record" by "memorializ[ing]" the pre-Settlement Agreement discussions in the form of "an 'application' by an applicant." See Fourth Supplement at 5. However, Mr. Darke fails to tell us what kind of relevant information he would expect to obtain though this "memorialization." Again, we find the staff order provides Mr. Darke with sufficient information to base a challenge to the transfer.

Moreover, it is quite likely that the settlement discussions at issue are confidential in nature and therefore subject to privilege, rendering them inaccessible for the kind of "application" Mr. Dark contemplates. See Fed. R. Evid. 408, "Compromise and Offers to Compromise":

> Evidence of (1) furnishing or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention

> of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

See also Fiberglass Insulators, Inc. v. Dupuy, 856 F.2d 652, 654 (4th Cir. 1988).

Finally, as a signatory to the Settlement Agreement -- an agreement blessed by a United States Bankruptcy Court -- the Commission is legally obliged to implement those conditions of the agreement which fall within the Commission's charge. Consequently, this agency would run afoul of the law if we failed to implement the Settlement Agreement.

C. Procedural Irregularities

Subpart M clearly mandate that each filing in a license transfer adjudication must be served on all entities on the Commission's official service list and that proof of service must accompany the filing. See 10 C.F.R. § 2.1313 (b), (d). The NRC staff December 27, 1999, order reiterated this service requirement and provided an almost-complete service list (omitting only the Office of Commission Appellate Adjudication). By letter dated February 10, 2000, the Commission's Office of the Secretary reminded Mr. Darke of these service-related obligations and provided him with a copy of a complete service list. (The Office of the Secretary also served Mr. Darke's Request for Hearing and First Supplement on those entities that were on the official service list.)

Despite these repeated notices of his obligations, Mr. Darke failed to provide proof of service of his Second, Third and Fourth Supplements. Indeed, we have no basis to believe that he ever served these Supplements on any of the required entities other than the Office of the Secretary. Moreover, Mr. Darke not only failed to provide proof of service for a Freedom of Information Act ("FOIA") Request that he submitted into the record by letter dated

March 11, 2000, but he also went so far as to ask the Office of the Secretary to serve the last of these documents for him (which that Office has done, albeit with some reluctance).[12]

This is not the first proceeding in which this agency has admonished Mr. Darke regarding service. The NRC's Licensing Board in an earlier adjudication involving the same Moab facility instructed Mr. Darke "that henceforth each filing he submits in this proceeding should be accompanied by a certificate of service (such as the certificate of service attached to this memorandum and order) that lists all those served with the document and states when and how service was made." See Atlas Corp. (Moab, Utah Facility), Docket No. 40-3453-MLA, unpublished Memorandum and Order (Initial Order) at n.2 (Feb. 12, 1997). Because of Mr. Darke's pro se status, the Board admitted the unserved pleadings (just as we have in this proceeding). Id. However, our patience with Mr. Darke's consistent flouting our service regulations is at an end.[13] We are instructing the Office of the Secretary to reject and return to

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[12] In the FOIA request, Mr. Darke sought a copy of the Bankruptcy Court's December 1st order and an April 29, 1999 "Moab Uranium Mill Transfer Agreement."

[13] We note that Mr. Darke has ignored other instructions from this agency in the past. See Atlas Corp. (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 427 n.4 (1997), aff'd, CLI-97-8, 46 NRC 21 (1997):

> In my initial order, I also advised Petitioner Darke that it generally is the practice for participants making factual claims regarding the circumstances that establish standing to do so in affidavit form that is notarized or includes a declaration that the statements are true and are made under penalty of perjury. See Initial Order at 3. As Licensee Atlas notes, Petitioner Darke apparently has made no effort to comply with this guidance. See Atlas Response at 5. Providing this assurance of the accuracy of factual representations about standing is important; nonetheless, because Petitioner Darke appears pro se and generally is making

(continued...)

Mr. Darke any filings in any future proceedings that do not comply with our service requirements.

CONCLUSION

For the reasons set forth above, the Commission

(1) grants Mr. Darke's request for additional time to supplement his initial Request for Hearing,

(2) admits his four supplemental submissions into the record,

(3) concludes that he has proffered no admissible contentions, and

(4) terminates the proceeding.

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[13](...continued)
representations about himself (rather than about other individuals), I am not dismissing this case because of his failure to comply with this instruction.

Cf. Atlas Corp., CLI-97-8, 46 NRC at 22:

"Here, we see no legal error or abuse of discretion in the Presiding Officer's refusal to grant standing to Mr. Darke, given his failure to offer more than general responses to the Presiding Officer's reasonable and clearly articulated requests for more specific information about Mr. Darke's proximity-based standing claims. The four opportunities that Mr. Darke had to specify his claims were entirely adequate."

IT IS SO ORDERED.

For the Commission

Annette L. Vietti-Cook

Secretary of the Commission

Dated at Rockville, Maryland,
this ____ day of March, 2000.

March 28, 2000

MEMORANDUM TO: Stuart Treby
Assistant General Counsel for Rulemaking
and Fuel Cycle
Office of the General Counsel

FROM: John T. Greeves, Director **/RA by Joseph J. Holonich Acting for/**
Division of Waste Management

SUBJECT GENERIC IMPLICATIONS OF ATLAS SURETY SETTLEMENT

As part of the settlement agreement in the Atlas Corporation bankruptcy, the U.S. Nuclear Regulatory Commission (NRC) agreed to accept $5.25 million as payment of the financial surety maintained by Atlas in conformance with Criterion 9 of 10 CFR Part 40, Appendix A, and condition 42 of NRC license SUA–917. The NRC-approved surety instrument was a performance bond issued by Acstar Insurance Company of New Britain, Connecticut, in favor of the NRC in the amount of $6.5 million. The decision to accept less than the full amount of the surety was made by the NRC staff from the Office of the General Council (OGC) and the Office of Nuclear Material Safety and Safeguards under advice from the U.S. Department of Justice attorney representing the NRC in the bankruptcy proceeding. The decision was made, based upon the surety instrument and the actions that Acstar could take, that accepting $5.25 million was the best we could do.

As a result of this situation, a number of questions arise with respect to the manner in which we use and rely on financial assurance instruments. We have always assumed that if the need arose, we could call the financial surety and expect to receive its full value. If this is not the case, we need to take steps to correct it. We, therefore, request your legal advice on several issues and questions to allow us to develop a strategy to avoid a similar situation in the future.

1. Was the Atlas situation unique or is there a generic problem with all sureties or a class of sureties?

   From our prospective, the Atlas situation evolved in a manner that would appear to be typical of instances in which a surety would be called. The company was experiencing increasing financial difficulties, but was fulfilling its reclamation responsibilities under its license. It filed for bankruptcy when it could not meet a non-NRC financial obligation. It filed under Chapter 11, with the intent of reorganizing and represented to the NRC that it

CONTACT: M. Fliegel, NMSS/DWM
(301) 415-6629

BB/21

would be able to complete the reclamation. It was only later, when it became apparent that we needed to call the surety, that Acstar resisted paying the face value of the surety.

If the reason that Acstar was successful in paying less than the face value of the surety was because of a defect in the specific instrument for Atlas, please identify that defect. We can, with OGC assistance, review all other surety instruments to determine if that defect exists and then take steps to correct the defect.

2. If there is a generic problem with a class of sureties, we request your opinion on remedies.

   If there is a generic defect with a class of sureties, can we correct that defect? If so, we request OGC assistance in recommending revisions to surety instruments for that class. If there is no practical way to remedy the defect with that class of surety instruments, we request your advice on whether we should initiate steps to eliminate that class from the list of acceptable types of financial surety.

3. If there is a generic defect in all surety instruments, what can we do?

   If all of our financial surety instruments suffer from the same defect, what remedies would OGC suggest? We need to create a mechanism that will give us reasonable assurance of collecting the full value of a surety if the need arises.

   If the problem arose because of the bankruptcy proceeding, we request OGC suggestions on ways to avoid this in the future. Are there ways that we can keep the surety out of a bankruptcy proceeding should the situation arise with another licensee? If not, do we have any other recourse but to call the surety in anticipation of a bankruptcy filing?

In summary, we request OGC assistance in determining why we were unable to collect the face value of the surety in the Atlas case and what steps we can take to prevent this from happening in the future. We request an OGC response in 30 days. Please coordinate your response with Larry Camper, Chief of the Decommissioning Branch, who has the lead responsibility for financial assurance.

cc: S. Burns, OGC
J. Gray, OGC
W. Kane, NMSS
M. Virgilio, NMSS

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cc: S. Burns, OGC J. Gray, OGC W. Kane, NMSS M. Virgilio, NMSS

DISTRIBUTION: File Center NMSS r/f URLL r/f CNWRA DCB r/f
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***See previous concurrence**

DOCUMENT: ADAMS\NMSS\DWM\URLL\SURETY.WPD Accession # **ML003689969**

OFC	URLL*		URLL*		DCB*			DWM*	
NAME	MFliegel:bg /s/		TEssig /s/		LCamper /s/			JGreeves JJH for	
DATE	03/22/00		03/23/00		03/ 27/00			03/28/00	

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(Initials) (Date)

For — Mike Fliegel
Tom Essig
Joe Hobaica
from Majestic Nordigen X1616
We are considering a written reply —
Please phone as soon as you have
had a chance to think about it —

also see p. 100 of the Bio —
where it says "At no time, however,
shall concentrations within the mixing
zone be allowed which are acutely
lethal "
Is that a problem for us as
a result of the U.S.G.S. prelim. opinion

BB/28

ATTORNEY WORK PRODUCT PRIVILEGE
ATTORNEY-CLIENT PRIVILEGE
PREDECISIONAL DOCUMENT

DRAFT - GUY/HOFFMAN April 7, 2000

John J. Surmeier, Chief
Uranium Recovery Branch
Division of Nuclear Material Safety and Safeguards
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Surmeier:

Thank you very much for your letter dated_____ enclosing a copy of the requested amendments to the existing Source Materials License previously held by the Atlas Corporation and transferred to PriceWaterhouseCoopers (PWC) as the reclamation trustee. In your letter you inquire whether or not the Service believes the decision by the Nuclear Regulatory Commission (NRC) concerning the requested amendments requires reinitiation of consultation pursuant to Section 7 of the Endangered Species Act. For purposes of the Section 7 regulations, the Service considers the reclamation plan, as licensed by the NRC, as ongoing NRC-authorized action.

Prior to the NRC affording the Service the opportunity to consider the proposed license amendments, our two agencies discussed the concerns raised by the Fish and Wildlife Service (Service) in a conference call on February 24, 2000. Both agencies decided to set up the call as a followup to the Service's letter to the NRC on May 20, 1999, and the NRC's response to the Service on September 24, 1999, to help us determine the status of the implementation of the Service's Final Biological Opinion (Opinion) at the Atlas Mill Tailings Site near Moab, Utah, and whether reinitiation of Section 7 consultation is needed at this time. We carefully considered your response to our concerns as stated in your letter of March 3, 2000.

As discussed below, the Service believes that reinitiation is required only with respect to new information concerning effects of the delay in implementing the dewatering and groundwater plan

and additional information which documents localized fish mortalities at the site. This appears to pertain to License Conditions 41 and 55. All other aspects of the existing Opinion, including the incidental take statement, remain in effect.

As you are aware, the Opinion, which I signed on July 29, 1998, contemplates that the reclamation of the site will be implemented over a period of up to ten years, and recognizes that the Opinion may need to be modified in response to developments and new information arising during the implementation period.

The Service believes that new information exists as that term is used in 50 C.F.R. §402.16. The regulation provides that reinitiation is required when "new information" reveals effects of the action which impact listed species in a way not previously considered or if the "identified action" (in the biological opinion) is subsequently modified in a manner that way not previously considered in the opinion. The Service believes that reinitiation is required on the specific issues delineated in this letter. The remainder of the Opinion, including the incidental take statement, remains in effect.

New info is summary info - not been discussed

Please note that the Service does not intend that the trustee or its contractors stop work on the dewatering plan during the pendency of the reinitiation based on your statement that dewatering is a requirement whether or not the tailings are capped in place or Congress acts to authorize and fund their removal. The Service does not believe that continuing efforts with respect to the dewatering of the pile and disposal of the removed fluid in an acceptable manner would constitute a violation of §7(d) of the Endangered Species Act. The Service does, however, need information about the possibility of expedited implementation of groundwater and dewatering actions. Specifically, the reinitiation needs to address any interim measures that can be implemented to reduce adverse impacts to listed species caused by contaminated groundwater during the pendency of the site reclamation.

Like the dewatering plan, the Service believes that continuing work on the development of the groundwater corrective action plan should continue, and that such work does not constitute a violation of §7(d).

New Information:

(1)Bioassay studies. The Service has just learned that the interim, preliminary report of bioassay studies conducted by the Columbia Laboratory, United States Geological Survey (as provided in the Opinion, p. 89) appears to suggest a higher level of

DRAFT SUBJECT TO CHANGE

mortality and morbidity to listed fishes in the Colorado river at the site than had previously be thought to exist. A copy of the interim report dated March 27, 2000, is enclosed.

The report demonstrates that the area of highest mortality to the tested surrogates occurred in the 160 meters downstream of the point marked D2. The Service requests that consultation be reinitiated for the purposes of determining what, if any, interim measures might be implemented by the trustee to reduce the discharges at these points and reduce the ongoing harm to listed fish until completion of the reclamation. The Service requests reinitiation of consultation with the NRC to determine what might be done on an interim basis to reduce the discharges of contaminants at the site. We note that your March 2 letter states that "PWC is working with another company to develop an accelerated ground-water cleanup program . . . and that PWC's contractor has already informally identified possible intervention measures that may accelerate cleanup of the groundwater."

[2] Delay in submitting groundwater corrective action and dewatering plans. The Order Transferring the License to the Trustee (Transfer Order) dated December 28, 1999, and the Notice of License Transfer (Notice) published in the Federal Register (65 FR 138) on January 3, 2000, both recite that certain delays in site reclamation will occur as a result of the bankruptcy of the previous licensee, Atlas Corporation, and the delay in transferring the license to the trustee. Your March 2 letter stated that the groundwater plan will not be submitted until March 2001, rather than in May 2000, as stated in your September 24, 1999, letter. Indeed, your March 2 letter states that "the estimated dates are not final, and that PWC (the trustee) is currently in the process of determining when it will be able to submit these plans."

The proposed license amendment provides for a dewatering plan by June 30, 2000 (instead of December 31, 1999) and for dewatering to be complete by December 31, 2002 (instead of July 1, 2002). The amendments necessarily push back the compliance dates even if all goes well and the NRC promptly approves the plans.

Also delayed - by at least ten months - is preparation and submission of the groundwater corrective action plan from May 1, 2000 to March 31, 2001. This plan must be expeditiously completed if groundwater standards are to be met within 7 years from approval by the NRC of the plan. There is no indication as to how long NRC approval might take.

DRAFT

The Service therefore requests that the NRC reinitiate on the specific issues of the effect of the delay in finalizing groundwater cleanup on listed species and utilization of how existing financial resources can best serve the needs of the species.

The Opinion (p.86 and p. 98) requires that dewatering be accomplished with 30 months from the date of the NRC's approval of the dewatering design. The Service requests that the NRC provide more specific information about the cost, funding, and anticipated implementation of the dewatering plan in order to ensure that Reasonable and Prudent Alternative 1(a) on page 86 and the Term and Condition implementing that RPA can be appropriately addressed.

dewatering

In light of the new information, the Services requests reinitiation as to Reasonable and Prudent Alternative (RPA) 1(b) and the Terms and Conditions implementing the RPA with respect to any means that may be available to reduce the contamination on an interim basis until the permanent groundwater corrective action plan has been formulated and implemented.

GW cleanup

If the NRC has any additional information that would be helpful in refining the Opinion to address the changed circumstances that have developed over the last 18 months, we welcome the opportunity to work with both the NRC and its trustee(applicant/licensee). I reiterate our commitment to work with you in good faith on these issues, but I cannot ignore this new information relating to scheduling and the results of the bioassays.

Please contact Reed Harris, Field Supervisor of the Service's Utah Ecological Services field Office, within 10 working days with your response to our request. He can be contacted at (801)524-5001 #126; his address is U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115.

Sincerely,

RD

CC:??????

EARTHJUSTICE
LEGAL DEFENSE FUND

BOZEMAN MONTANA DENVER COLORADO HONOLULU HAWAII
JUNEAU ALASKA NEW ORLEANS LOUISIANA SAN FRANCISCO CALIFORNIA
SEATTLE WASHINGTON TALLAHASSEE FLORIDA WASHINGTON D.C.

April 20, 2000

VIA FACSIMILE: 202/663-8007
HARD COPY TO FOLLOW

David C. Lashway, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N St., N.W.
Washington, D.C. 20037

Re: Grand Canyon Trust v. Babbitt, Civil No. 2:98CV0803S (D. Utah)

Dear David:

I appreciated your taking the time to talk to me on Tuesday about PriceWaterhouse's concerns related to the re-initiation of endangered species consultation at the Atlas site. As I told you, it would be most helpful to me if you could explain in writing for me the basis of Price Waterhouse's concerns that it might be subject to take liability if consultation is reinitiated. This would help me understand your concerns, so I can respond to them in a useful way.

In any case, lacking that basis I will still try, as you requested, to respond to what I understood to be your concerns. I am sure you will set me straight if I have misunderstood or gotten anything wrong.

As I understand your position, the Trustee intends to quit all work at the site if Judge Sam's opinion invalidates the biological opinion. The Trustee intends to stop work because it believes it would be sued by other plaintiffs for taking endangered fish, or potentially even prosecuted by the federal government for criminal "take." Based on Paul Boudreaux's letter of April 13, 2000, he apparently agrees with this analysis in concluding that a reinitiation of consultation would derail the cleanup plan.

I want to make it clear that we do not believe that it is necessary for the trustee to stop dewatering and consolidation work at the site in the event that consultation is re-initiated. As explained below, there is essentially no possibility that the Trustee could be sued for take, and there are mechanisms readily available to insure that even that remote possibility can be dealt with.

First, if the NRC and FWS undertake a "tiered" or "incremental step" consultation pursuant to 50 C.F.R. § 402.14(k), a Biological Opinion with incidental take statement can be kept in place. Consistent with these regulations, the Trustee and the FWS could consult first on those aspects of the plan that are fully understood and that the Trustee is currently performing (e.g., dewatering, consolidating waste on the pile, and cleaning up the surrounding property). I believe we could reach an agreement that these activities do not predetermine the ultimate decision about how to remediate the pile, and apparently the funds are available to carry them out.

LAW FIRM FOR THE ENVIRONMENT
1631 GLENARM PLACE, SUITE 300, DENVER, CO 80202-4303
T: 303 623-9466 F: 303 623-8083 E: [illegible] W: [illegible]

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With a Section 7(d) finding from the FWS that these activities do not constitute an irreversible and irremievable commitment of resources, the Trustee would be free to continue with these activities under the protection of an incidental take statement, while expeditiously determining how and whether the ultimate remediation can be carried out. Consultation would continue with respect to the remaining aspects of the plan (e g., groundwater cleanup, capping and the final disposition of the pile) and biological opinions would be issued with respect to each of those aspects as soon as possible. This process addresses the kind of circumstances at issue with the Atlas site, and provides interim procedural protections to the species – and parties like the Trustee - in the face of uncertainty about future actions.

There are at least a couple of options for protecting the Trustee from any potential liability in the period between a judgment and the issuance of a revised, incremental step biological opinion.

First, the parties could enter into a consent decree, signed by Judge Sam, that would effectively insulate the defendants from any additional liability and that would prevent any other party – private or governmental – from suing the defendants on the violations covered by that consent decree. It is well established that a consent decree has res judicata and collateral estoppel effect and, as a result, that neither the plaintiffs in this action nor any other potential plaintiffs could bring an ESA claim for take (or any other claim already litigated) against any of the defendants. Moreover, any claims of potential concern not included in the existing litigation can be covered by a consent decree through the simultaneous filing of an amended complaint and the joinder of any other necessary parties. We have successfully used this kind of mechanism in a Clean Water Act case, and I would be happy to send you an example.

Alternatively, the plaintiffs would be agreeable to having Judge Sam stay enforcement of his judgment for a finite period of time to allow the defendants to reinitiate and complete consultation on the first tier of this consultation. Because the FWS has already analyzed the impacts of dewatering and consolidating the waste on the pile, as a practical matter it should not take more than a month to re-issue an opinion confirming that these activities do not constitute jeopardy to the fish. By staying the judgment, the biological opinion would remain in effect until the new biological opinion is issued.

While the focus of this letter is on responding to the concerns you have expressed, I do not believe those concerns are well-founded, and I would urge you to reconsider them.. Criminal prosecutions for "take" under the ESA are limited to the situation in which a person "knowingly violates" the statute. These cases are rare, and they are brought against individuals who intentionally kill endangered species, usually for profit. It is not possible that an employee carrying out legitimate cleanup functions would be prosecuted under this provision; this is particularly so since the Justice Department has repeatedly taken the position in pleadings that cleanup activities at the Moab site are good for the endangered fish. Likewise it is extremely

unlikely that any private entity would bring an action for take based on the Trustee carrying out basic cleanup at the site.

There are undoubtedly variations on the ideas set out above that could be negotiated to fit the circumstances of this particular case, if the Trustee and the government are committed to continuing appropriate work at the site while coming into compliance with the ESA. We remain committed to trying to work through the Trustee's stated concerns about ESA liability and are confident that a solution exists to address any concerns you or the trustee may have.

I should finally note that, legal considerations aside, leaving the current biological opinion in place is a serious detriment to a final, responsible cleanup of the Atlas site. One of the key reasons that the current legislation providing adequate funding for cleanup of the Atlas site is not moving is that the capping plan has received the seal of approval from the NRC and the FWS. We hope the Trustee will consider being part of the solution to this problem.

Please let us know one way or the other if you would like to discuss these options further.

Very truly yours,

Robert Wiygul
Attorney for Grand Canyon Trust, et al.

RWII

Cc: Paul Boudreaux