

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

99-377,00-219,00-257

18

RESPONSE
TYPE☐

FINAL

☒

PARTIAL

REQUESTER

Ms. Kimberly Boggiatto

DATE

AUG 18 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**
FF
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**
FF
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. ☐ None. Minimum fee threshold not met.
- ☐ You will receive a refund for the amount listed. ☐ 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

APPENDIX FF
RECORDS BEING RELEASED IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	Undated	Questions, Atlas Uranium Mill, Moab, Utah (3 pages)
2.	11/26/97	Memo to Chairman Jackson from H. L. Thompson, Subject: Status of Interactions with the Department of the Interior Regarding the Proposed Atlas Reclamation (5 pages)
3.	9/23/98	E-mail to Various Individuals from M. Fliegel, Subject: Atlas Bankruptcy Team Meeting (1 page)
4.	10/13/98	E-mail to Atlas BRT from M. Fliegel, Subject: Atlas bankruptcy review team (1 page)
5.	2/16/99	Memo to the Commission from W. D. Travers, Subject: Proposal by Atlas to Transfer Moab Site Responsibilities with attach 2/10/99 letter to R. Clark from H. Sender (5 pages)
6.	3/10/99	E-mail to B. Spitzberg from N. K. Stablein, Subject: Trustee for Atlas w/o attachment (1 page)
7.	3/10/99	E-mail to B. Spitzberg from N. K. Stablein, Subject: Trustee for Atlas w/attachment (2 pages)
8.	3/15/99	Memo to the Commission from W. D. Travers, Subject: Lessons Learned from the Atlas Environmental Impact Statement with attached Report on Lessons Learned and 2/12/99 Note to W. D. Travers from M. J. Diaz, Subject: Request for Information Re: Atlas (23 pages)
9.	3/15/99	Memo to the Commission from K. D. Cyr, Subject: Atlas-Moab ⁶ Bankruptcy Reorganization Agreement (2 pages)
10.	6/3/99	Affidavit of M. Fliegel with attachment (5 pages)
11.	3/17/00	Letter to P. Boudreaux and D. C. Lashway from R. Wiygul, S. Daggett, and M. Kirk, Subject: Interim Settlement Agreement with attached fax cover sheet (4 pages)

APPENDIX FF
RECORDS BEING RELEASED IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
12.	4/3/00	E-mail to B. Evans from J. Lusher, Subject: Atlas NOV Response Letter (1 page)
13.	4/3/00	E-mail to B. Evans from D. Rom, Subject: Atlas NOV Response Letter (1 page)
14.	4/3/00	E-mail to B. Evans, D. Rom, J. Lusher from T. Johnson, Subject: Atlas NOV Response Letter (1 page)
15.	9/22/98	Facimile transmission cover sheet with attachment addressed to various individuals from Bonnie A. Bell, Subject: Atlas Corporation - Various Motions Re: Post-Petition Financing (24 pages)
16.	6/4/99	NRC Staff's Response to the Grand Canyon Trust's Answers to Questions Posed in the Presiding Officer's May 14, 1999, Order (3 pages)

Questions

Atlas Uranium Mill, Moab, Utah

1. After your tour, is it clear that this tailings pile is a terrible hazard to the environment and the Colorado River and must be moved whatever the cost?

Background: It is obvious that the tailings pile is large and very close to the Colorado River. NRC's extensive environmental review shows that currently the tailings are effecting only a small area of the Colorado River and that the proposal to put a tight cover on the pile to reduce infiltration will significantly improve the situation in the river.

See FTER and FEIS conclusions.

2. How can your agency seriously consider a proposal to let such a hazard remain where it is when it should be obvious that the only acceptable solution is to move the tailings pile?

Background: Atlas has done extensive studies, and the NRC has gone to great lengths to analyze what they have done. Our conclusion is that leaving the tailings pile in place will be protect public health, safety, and the environment, including endangered fish in the Colorado River

See FTER and FEIS conclusions.

3. Do you believe it is in the best interests of cleaning up the site properly that it be turned over to the Department of Energy, as Secretary Richardson suggested last month?

Background: This is one possible solution. However, DOE does not have the authority nor the appropriations to clean up this site. Congressional action would be required to place the site under DOE jurisdiction and fund the reclamation. The NRC would not oppose such a plan. However, the benefits to be derived, considering the minimal improvements that would be gained if the pile were moved to an alternate site should be weighed against the considerable expenditure of government funds.

4. Could the Atlas site become a superfund site?

Background: It could. That is one result that could occur if Atlas were unable to reclaim the site. However, EPA has stated that if it became a Superfund site, it is more likely that it would be reclaimed in place than moved.

FF/1

5. Environmentalists have proven that the tailings pile is killing two endangered species of fish, the fish downstream of the pile are full of toxic materials, and the contamination of river water threatens the drinking water supply for millions in southern California. Why, in the face of all this, does NRC continue to favor leaving the tailings pile in place?

Background: FWS, in its Final Biological Opinion, concluded that current levels of contamination, primarily ammonia, in the river may be jeopardizing two species of endangered fish. The FBO identifies the levels of ammonia that would be protective of the fish. NRC concludes that the reclamation will reduce the levels of contaminants below that needed to protect the fish.

Additionally, currently millions of people safely use drinking water from the Colorado River. The small amount of constituents seeping into the river from the Atlas tailings are not measurable after mixing with river water, which naturally contains these constituents. The reclamation proposed by Atlas will significantly reduce the seepage from the tailings.

See FEIS and Biological Opinion.

6. How does the bankruptcy of Atlas effect the cleanup?

Background: Atlas is preparing a plan that will ensure that its proposed reclamation will be accomplished. It involves contracting the reclamation to a third party turnkey contractor, that in conjunction with a stop-loss insurance policy, would bear the risk of increased reclamation costs. However, this arrangement must be approved by the bankruptcy court.

The current surety of \$6.5 million would not be sufficient to reclaim the site.

See Bankruptcy.

7. The cost estimate for moving the pile is \$150 million. How can we expect a bankrupt company to find that much money? If NRC can't pay for it and DOE doesn't make it a superfund site, who will clean it up?

Background: If Atlas were to be disbanded, e.g., under a Chapter 7 bankruptcy, and the site were not put under Superfund, we believe it would take an act of Congress to move the tailings.

8. Do you know when the NRC's action will be complete, and when a cleanup effort could be started?

The NRC should be finished with its work in the first quarter of 1999. Work to cap the pile in place, if NRC approves that option, could start soon after.

9. When might a decision be reached on transferring responsibility for the site to DOE?

Background: That decision will lie with Congress and the DOE.

10. How is the NRC responding to the law suite filed by the Grand Canyon Trust, 3-D River Visions, the Sierra Club, Grand County and others regarding your apparent decision to allow the tailings pile to be left where it is?

Background: As of this date to our knowledge there has been no suit filed. Until such a lawsuit is filed and NRC lawyers have had an opportunity to review it, it would be premature, at the least, to respond. A lawsuit has been filed against Secretary Babbitt challenging the Biological Opinion issued by the Fish and Wildlife Service. We are not a defendant in that lawsuit. Earth Justice et al. have sent us a letter on October 12 stating their intent to sue NRC under the Endangered Species Act. That Act requires a 60 day notice period to elapse before lawsuits under certain of its provisions may be filed.

11. Everybody agrees that the groundwater is heavily contaminated and leaking toxic material into the Colorado River. Why has this situation not been remedied?

Background: The contamination in the ground water is the result of seepage from the pile that occurred years ago, when the mill was operating and there were no Federal requirements in this area. The passage by Congress of the Uranium Mill Tailings Radiation Control Act of 1978 brought the tailings and ground water contamination under Federal authority. It took several years for EPA to promulgate regulations, which were then challenged in court, before NRC had effective regulations in this area. Under NRC regulations, Atlas is conducting a ground water corrective action plan to clean up ground water to appropriate standards. Atlas has committed to revisit and revise that plan to expedite the cleanup. FWS, in its biological opinion, identified as a reasonable and prudent alternative steps to expedite the ground water cleanup.

12. The current surety of \$6.5 million is insufficient to reclaim the tailings in place. Where will the money to reclaim the site come from?

Background: Atlas is proposing to reclaim the site with the help of a turnkey contractor and stop loss insurance. Atlas states that it has sufficient assets to fund the reclamation, considering that it will be reimbursed by the Federal government for over half its costs. This reimbursement was authorized in the Energy Policy Act of 1992 and is intended to reimburse mill operators for the costs of reclaiming tailings derived from uranium sold to the Federal government. If Atlas' plan is approved, a mechanism to ensure sufficient funds, in the event of the inability of Atlas or the contractor to continue funding the reclamation, would be put into place.

MEMORANDUM TO:

Chairman Jackson

November 26, 1997

40-3453

FROM:

Hugh L. Thompson, Jr. **Original Signed by**
 Deputy Executive Director for Regulatory Programs

SUBJECT:

STATUS OF INTERACTIONS, WITH THE DEPARTMENT OF
 THE INTERIOR, REGARDING THE PROPOSED ATLAS
 RECLAMATION

Per your letter of September 5, 1997 to Kathleen McGinty, Chairman of the Council on Environmental Quality (CEQ), I was designated as the NRC representative to CEQ led discussions of uranium mill tailings at the Atlas site in Moab, Utah. The purpose of this memorandum is to bring you up-to-date on recent events related to the staff review of Atlas Corporation's proposed reclamation of its uranium mill site near Moab, Utah. As a result of several meetings arranged by the Council on Environmental Quality, the three principal parties (the Department of the Interior, the Nuclear Regulatory Commission, and Atlas) agreed to a data-collection and analysis effort consisting of five tasks to be performed by the Grand Junction office of Oak Ridge National Laboratory (ORNL/GJ). It was agreed that the ORNL/GJ work will be completed within 60 days from receipt of funds, which occurred on November 10, 1997. A revised draft biological opinion will be prepared by the Fish and Wildlife Service within another 30 days, followed by a 10-day comment period, with the final biological opinion (FBO) issued within another 30 days. The first four ORNL/GJ tasks are being funded by the Department of Energy and involve data collection regarding the existing contaminant plume. The last task, which NRC is funding, involves analysis to confirm the staff's earlier estimate of the seepage rate of contaminants from the tailings after stabilization. As a result of the agreements reached, FBO is planned to be issued by the end of March 1998. NRC would then be able to finalize and issue the Final Environmental Impact Statement by mid-summer.

The key personnel representing the various organizations involved in these discussions include: (1) Mr. Bradley M. Campbell, Associate Director, CEQ; (2) Ms. Molly McUsic, Counselor to the Secretary, U.S. Department of Interior; (3) Mr. Daniel Berkowitz, Deputy Assistant Secretary for Planning, Policy and Budget, Department of Energy; (4) Mr. Richard E. Blubaugh, Vice President, Atlas Corporation, and (5) myself representing the NRC.

cc: Commissioner Dicus

Commissioner Diaz

Commissioner McGaffigan

JCallan SECY, OGC, OPA, OCA, CIO, CFO

CONTACT: Myron H. Fliegel, NMSS/DWM

(301) 415-6629

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*see previous concurrence

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NAME	MFliegel		EKraus		RFonner		JHolonich		JGreeves	
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NAME	CPaperiello		HThompson							
DATE	11/20/97		11/19/97							

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MEMORANDUM TO: Chairman Jackson

FROM: Hugh L. Thompson, Jr.
Deputy Executive Director for Regulatory Programs
Office of the Executive Director for Operations

SUBJECT: STATUS OF INTERACTIONS, WITH THE DEPARTMENT OF
THE INTERIOR, REGARDING THE PROPOSED ATLAS
RECLAMATION

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cc: Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
JCallan
SECY, OGC, OPA, OCA, CIO, CFO

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

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NAME	CPaperiello		HThompson							
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MEMORANDUM TO: Shirley Ann Jackson, Chairman

FROM: Hugh L. Thompson, Jr.
Deputy Executive Director for Regulatory Programs
Office of the Executive Director for Operations

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(301) 415-6629

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NAME	CPaperiello	HThompson			
DATE	11/ /97	11 / /97			

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MEMORANDUM TO: Shirley Ann Jackson, Chairman

FROM: Hugh L. Thompson, Jr.
Deputy Executive Director for Nuclear Materials
Safety, Safeguards and Operations Support
Office of the Executive Director for Operations

SUBJECT: STATUS OF INTERACTIONS, WITH THE DEPARTMENT OF THE
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(301) 415-6629

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NAME	M Fliegel		E Kraus <i>VIA Fax</i>		R Fonner <i>NLO</i>	J Holonich			
DATE	11/10/97		11/18/97		11/18/97	11/19/97		11/ /97	
OFC	NMSS		DEDR						
NAME	CPaperiello		HThompson						
DATE	11/ /97		11 / /97						

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MEMORANDUM TO: Shirley Ann Jackson, Chairman

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

SUBJECT: STATUS OF INTERACTIONS WITH THE DEPARTMENT OF THE
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CONTACT: Myron H. Filegel, NMSS/DWM

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OFC	NMSS		DEDR							
NAME	CPaperiello		HThompson							
DATE	11/ /97		11/ /97							

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From: Myron Fliegel / *MASS*
To: JWH1, RHT, OWFN_DO.owf5_po.MES, OWFN_DO.owf5_po.SH...
Date: Wed, Sep 23, 1998 9:59 AM
Subject: Atlas bankruptcy team meeting

Atlas Corp. filed a petition for bankruptcy, under chapter 11, yesterday. NRC staff is in the process of reviewing Atlas' proposal for stabilization of its uranium tailings onsite near Moab, Utah but has not approved the plan.

NRC staff will be meeting with Atlas next week. We need to have a meeting of the Atlas bankruptcy team to discuss the situation. I have scheduled the meeting for Thursday, Sept 24 at 1:00pm in room T-07C1. Please let me know if you or a representative can not attend.

CC: LBB, MFW, JTG1

FF/3

From: Myron Fliegel *JWM SS*
To: Atlas BRT
Date: Tue, Oct 13, 1998 8:30 AM
Subject: Atlas bankruptcy review team

Based on responses to previous e-mail Atlas Bankruptcy Review Team has been revised to consist of the following members:

Geoffrey Cant
Mike Fliegel
Steve Lewis
Maria Schwartz
Brian Smith
Blair Spitzberg
Leah Tremper
Richard Turtill

FF/9



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

February 16, 1999

40-3453

MEMORANDUM TO: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers *William Travers*
Executive Director for Operations

SUBJECT: PROPOSAL BY ATLAS TO TRANSFER MOAB SITE
RESPONSIBILITIES

On February 12, 1999, Nuclear Regulatory Commission (NRC) staff met with representatives of Atlas Corporation. Atlas is in bankruptcy, under Chapter 11, and had met with staff on October 1, 1998, at which time it presented a plan to remediate its Moab site using a third party turnkey contractor. Since that time, Atlas has determined that it would have insufficient resources to conclude that proposal. On February 10, 1999, Atlas' bankruptcy attorney wrote to the Assistant U.S. Attorney involved in the bankruptcy proceeding (copy attached), with three proposed options to accomplish surface reclamation at the Moab site. These were discussed at the February 12 meeting.

Two options involve transferring money to a trust, which would then be responsible for site reclamation. After the transfer, NRC would terminate the license and Atlas would be released from any further liability. Under one of these options, there would be insufficient money to actively clean up the ground water. The other option, involving a trustee, would have a less robust cover built and use the money saved for ground-water cleanup. The third option identified would have NRC and Atlas agree on an organized default and termination of the license.

Staff is in the process of evaluating Atlas' proposals and other options that may be available. The Office of the General Counsel is looking into the legal issues involved in the various options. Staff is evaluating the technical and regulatory implications of these options or potential variations that may be identified. Unless the Commission does not want to pursue any of the options identified in the letter, staff plans on preparing a Commission Paper with its recommendation by February 24, 1999. We would have a meeting with Atlas and appropriate Federal agencies during the week of March 8, 1999. Atlas must file its reorganization plan with the bankruptcy court by March 15, 1999.

We plan on moving forward along the lines discussed unless we hear otherwise from the Commission.

Attachment: As stated

cc: SECY OGC OCA OPA CIO CFO

240062

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

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HARVEY SENDER
ALSO MEMBER OF NEW MEXICO BAR
e-mail: sender@sendlaw.com

February 10, 1999

Robert Clark, Esq.
Assistant U. S. Attorney
1961 Stout St. #1100
Denver, CO 80294

RE: Atlas Corp.

Dear Mr. Clark:

In accordance with our conversations recently, the purpose of this letter is to summarize the status of the Moab situation and options currently available. As you are aware, the NRC, despite representations to the contrary, has still not acted on the proposed license amendment. In addition, as reflected in the liquidation analysis previously forwarded to you, both the NRC and the State of Utah have filed large and troublesome claims seeking administrative priority, \$44 million and \$77 million respectively. The Utah claim objection should be filed by the end of the week. I hope to have a copy for you before the meeting on Friday. Similar claim objections and related motions as to the NRC claim should be ready to be filed shortly thereafter.

As we have discussed, the continuing delays in the approval process, combined with the uncertainty about the nature of the remediation of the ground water, has driven up the price of any proposed third party remediation. The current estimate for surface reclamation, only, is approximately \$22,000,000. This cost is marginally achievable by allocating all of the potential Moab related assets to the reclamation. The ground water cost estimates range from \$500,000 to \$29,000,000. The \$500,000 number involves a ground water corrective action plan and the establishment of alternative concentration limits without any further remediation. The \$29,000,000 number involves not only prevention of ground water seepage but pumping and treating the ground water. There are two other ground water seepage proposals presented by HLA at costs of \$7.5 million and \$8.5 million respectively.

The EMSOURCE bid of \$27,775,000 combines the surface reclamation only bid with the risks of assuming the liability, new bonding, and environmental and stop-loss insurance. The price is simply not feasible for Atlas. In addition, one of the preconditions is the deposit of 50% of that amount, i.e. \$13.87 million, into the standby trust. Clearly payment of that sum by Atlas is well beyond the realm of possibilities.

The following reflects the available options to resolve the dispute, short of claims litigation in the Bankruptcy Court over the amount and priority of the claims of NRC and the State of Utah. In addition to objecting to the claim of the NRC, should it be necessary, Atlas would file a motion seeking to abandon the site under 11 U.S.C. 554 and to reject the license as an executory contract.

Attachment

under 11 U.S.C. 365.

1. Atlas transfers the land, the water rights and Title X receivables for future claims into the standby trust. The existing cash allocable to the bond would also go into the trust. The trust would hire Harding Lawson Associates (HLA) or some other contractor to do the surface reclamation and ground water to the extent it is limited to alternative concentration limits. To the extent a different solution to the groundwater issue is selected, additional funding for the trust would have to be obtained from federal or state sources. Upon transfer of the assets to the trust, Atlas would be released of any further liability.
2. Atlas transfers the same assets into the trust. The surface reclamation is performed based upon a 200 year design standard rather than a 1000 year design standard and is considered an interim design. This reduces the surface reclamation cost by \$3 to \$4 million. The additional resources are used to address ground water or other remediation issues. All of the other terms, as reflected in option one above, remain the same. As you know, there is currently proposed legislation to move the site and limit the liability of Atlas. This alternative should be attractive to the groups supporting such a move as it provides both a substantial time period to obtain the authorization and funding for moving the site and provides for a less expensive ground cover to be removed at a later date.
3. If NRC insists on the 1000 year ground cover and a ground water resolution in the \$5 to \$7 million dollar range, Atlas and NRC would agree on an organized default and termination of the license. Atlas would transfer the land and the rights to receive Title X receivables for future claims into the trust. NRC would presumably call the bond and transfer the proceeds into the trust. NRC may have an agreed general unsecured claim and not an administrative claim. NRC would share pro rata with the other creditors in the distribution to unsecured creditors.

Finally, it should be obvious that any cost effective and feasible solution requires either the agreement of the State of Utah or the joinder by the NRC in the claim objection on grounds of federal preemption.

I will be happy to address any questions or concerns at the meeting on Friday. If we can reach agreement in concept on one of these options quickly, we can then move forward to deal with clarifications and the necessary details to seek Court approval.

Very truly yours,


Harvey Sender

cc: Gregg Shafter
Tony Thompson
Howard Tallman
Richard Blubaugh

February 16, 1999

MEMORANDUM TO: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

signed by
W.D. Travers

FROM: William D. Travers
Executive Director for Operations

SUBJECT: PROPOSAL BY ATLAS TO TRANSFER MOAB SITE
RESPONSIBILITIES

On February 12, 1999, Nuclear Regulatory Commission (NRC) staff met with representatives of Atlas Corporation. Atlas is in bankruptcy, under Chapter 11, and had met with staff on October 1, 1998, at which time it presented a plan to remediate its Moab site using a third party turnkey contractor. Since that time, Atlas has determined that it would have insufficient resources to conclude that proposal. On February 10, 1999, Atlas' bankruptcy attorney wrote to the Assistant U.S. Attorney involved in the bankruptcy proceeding (copy attached), with three proposed options to accomplish surface reclamation at the Moab site. These were discussed at the February 12 meeting.

Two options involve transferring money to a trust, which would then be responsible for site reclamation. After the transfer, NRC would terminate the license and Atlas would be released from any further liability. Under one of these options, there would be insufficient money to actively clean up the ground water. The other option, involving a trustee, would have a less robust cover built and use the money saved for ground-water cleanup. The third option identified would have NRC and Atlas agree on an organized default and termination of the license.

Staff is in the process of evaluating Atlas' proposals and other options that may be available. The Office of the General Counsel is looking into the legal issues involved in the various options. Staff is evaluating the technical and regulatory implications of these options or potential variations that may be identified. Unless the Commission does not want to pursue any of the options identified in the letter, staff plans on preparing a Commission Paper with its recommendation by February 24, 1999. We would have a meeting with Atlas and appropriate Federal agencies during the week of March 8, 1999. Atlas must file its reorganization plan with the bankruptcy court by March 15, 1999.

We plan on moving forward along the lines discussed unless we hear otherwise from the Commission.

Attachment: As stated

cc: SECY OGC OCA OPA CIO CFO

CONTACT: M. Fliegel, NMSS/DWM *See previous concurrences
(301) 415-6629

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MEMORANDUM TO: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

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OFC	EDO						
NAME	WTravers						
DATE	2/ /99						

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From: N. King Stablein, NMSE
To: Blair Spitzberg, RIV
Date: Wed, Mar 10, 1999 9:26 AM
Subject: Fwd: Trustee for Atlas

Blair,

FYI as discussed a few minutes ago.

Cheers,

King

FF/6

From: N. King Stablein, *NKSS*
To: Blair Spitzberg *BS*
Date: Wed, Mar 10, 1999 9:27 AM
Subject: Fwd: Status of Atlas

Blair,

And more info per our discussion.

Cheers,

King

FFA

From: Joseph Holonich
To: Carl Paperiello
Date: Wed, Mar 10, 1999 6:05 AM
Subject: Status of Atlas

Carl,

Just to bring you up to date on Atlas. We continue to talk with the Department of Justice bankruptcy attorney, Bob Clark and the other parties. In our discussions, Bob has outlined a proposal to Atlas that if a trust is established for site reclamation, that it keep the surety until the cash value in the trust gets to what he believes we would get if the liquidation scenario happened. Under liquidation, we would call the surety and get \$6.5 million. In addition, Bob thinks we would get about another two million. Hence, as a start, he wants to get that amount of cash in the trust if we take the proposal to keep Atlas a going concern. Subsequently, we would get any additional Title X money that DOE reimbursed the trust for site reclamation work.

Two variables continue to complicate the scenario. Gina Guy, the Interior lawyer representing the Fish and Wildlife Service (FWS), raised the potential for FWS to send us a letter asking about reconsultation. I expressed some concern that such a letter could cause mischief in any law suits. She said that it would not be today, but could be some time in the future. I explained to her that my discussions with regional management from FWS indicated that they did not see a need to reconsult right now. They agreed that once we receive the revised ground-water program, we'll have better information as to what can be done to cleanup current-day contamination. That submittal would be for an amendment to revise the current ground-water program. As such, it is a new federal action requiring a consultation under the Endangered Species Act. Hence, I really don't see a need for any reconsultation on the current biological opinion. However, the question of reconsultation continues to be raised occasionally by Interior.

The second variable is the State of Utah. As I told you earlier, the State has indicated it wants to be a player in this process. What that means is still unclear. However, Utah raised several issues on yesterday's call with the stakeholders. First, it questioned if some of the Moab property offered by Atlas to fund reclamation could be sold. The State ground-water folks are concerned that there may be ground-water contamination under some of the property. It is my understanding that they are talking about property currently in the restricted area, but which could be sold once cleanup was complete. The complication is if NRC finds the property okay for release, the State of Utah still taking issue with ground water could stop any sale. This could delay the ability of any trustee to sale the property, and thus reduce the amount of cash that the trust could place towards reclamation.

Another area where the State of Utah raised questions was where the trust fund would be spent. Utah indicated that it wasn't sure if the money should be spent on ground-water cleanup of site reclamation. This questions indicated to me and OGC that Utah saw itself as a player in determining how the trust fund money got spent. This could complicate the scenario of getting the tailings reclaimed. We see no point in spending money on ground-water reclamation if you don't do something to significantly reduce the source of contamination, i.e. reclaim the tailings. Utah appears to be in line with the thinking of Grand Canyon Trust, et. al., lets spend money on the ground-water contamination, in hopes that money will eventually be made available to move the tailings.

We have another call with the federal folks today. We may include Utah once we clear all of the issues requiring federal discussions. Tomorrow we talk again with the stakeholders to go over where we are. This will allow Atlas to get something to the bankruptcy judge on Monday.

I'll keep you informed as things develop.

Joe

CC: Charlotte Abrams, Dan Martin, Frank Miraglia, J...



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

March 15, 1999

MEMORANDUM TO: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers *William Travers*
Executive Director for Operations

SUBJECT: LESSONS LEARNED FROM THE ATLAS ENVIRONMENTAL
IMPACT STATEMENT

The purpose of this memorandum is to transmit the results of a recent evaluation of lessons learned from the Atlas Environmental Impact Statement (EIS) (Attachment 1). The evaluation identified lessons learned from the development and review of the Atlas Final EIS (FEIS) and suggested improvements to the existing Office of Nuclear Material Safety and Safeguards (NMSS) EIS process to avoid a similar event in the future. The lessons learned also address Commissioner Diaz's note of February 12, 1999 (Attachment 2). Final staff plans to respond to the recommendations are pending and will be provided to the Commission in the future.

The evaluation, conducted by C.W. Reamer and Sandra L. Wastler over a 1-month period, included interviews with staff and contractors involved in development of the Atlas EIS and a review of selected correspondence and documents related to it. The report of the evaluation (copy attached) formulated answers to nine questions related to the Atlas EIS, in an attempt to identify what went wrong and what changes can be implemented in the future.

Overall, the evaluation found that no one action contributed to the problem but rather a series of factors resulted in the current situation. These factors include:

- The NMSS staff carried Atlas' burden for developing the information necessary for an EIS, specifically the information regarding threatened and endangered species.
- U.S. Nuclear Regulatory Commission (NRC) and U.S. Department of Interior/Fish and Wildlife Service (DOI/FWS) became involved in protracted (i.e., November 1995 until July 1998) consultations under the Endangered Species Act (ESA) that were outside staff's expertise and involved complex technical and regulatory disputes. In this the staff continued to carry Atlas' burden for developing information necessary to resolve DOI/FWS concerns.
- NMSS staff, rather than relying on its contractor, Oak Ridge National Laboratory (ORNL), decided to write the portion of the FEIS addressing threatened or endangered

CONTACT: Sandra L. Wastler, NMSS/DWM
(301) 415-6724
C. William Reamer, NMSS/DWM
(301) 415-6537

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standards for ammonia in the Colorado River).

- Although the FEIS was peer reviewed by others in the agency, it was not clear all reviewers' comments were addressed.
- The Atlas bankruptcy created time pressures that resulted in a tighter schedule than originally planned for issuing the FEIS after September 1998.
- The NMSS EIS process lacked clear guidance on EIS preparation, including format, level of detail, necessary responses from consulting agencies, alternatives, conclusions and supporting analyses necessary in the FEIS.

The evaluation also suggested changes, including the following recommendations:

- Continue steps in NMSS to develop guidance on the approach and the information needed to develop an EIS, including the topics identified in the Atlas lessons learned evaluation (e.g., procedures for compliance with ESA).
- Improve the level of skill in NMSS to prepare EISs by creating a unit in an existing branch that will have the appropriate technical skills (including biologist, etc., not currently on the staff) and who will be appropriately trained to complete EIS projects for all NMSS. [This unit would also selectively review, but not prepare, Environmental Assessments (EAs) in NMSS.]
- Promptly mobilize available legal and technical assistance (preferably within NRC, but through contractors when necessary) to respond if a proposed NMSS licensing action raises key non-radiological issues that are outside NMSS expertise.
- Use early peer review more effectively to evaluate NMSS EISs.
- Formally consult with the Office of the General Counsel on the procedural and regulatory aspects of the ESA and dealing with DOI/FWS.
- Repeat the training conducted by outside consultants on the EIS process for all NMSS staff so they have a working knowledge of when an EIS is required, and how to prepare EAs.

NMSS management agrees with the thrust of these recommendations and will be proceeding with implementation plans.

Attachments: 1. Report on Lessons Learned
from the ATLAS EIS
2. Note to EDO from Commissioner Diaz
dated February 12, 1999

cc: SECY OPA OGC CIO OCA CFO

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We will keep the Commission informed on follow-up NMSS actions to address the Atlas lessons learned evaluation.

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dated February 12, 1999

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OGC CIO
OCA CFO

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**REPORT ON LESSONS LEARNED
FROM THE ATLAS ENVIRONMENTAL
IMPACT STATEMENT**

Attachment 1

1. What is the applicable NMSS process for developing the Atlas EIS?

Although NMSS does not have a specific procedure, the NMSS process for development of an environmental assessment (EA) or an environmental impact statement (EIS) is defined by the general framework in NRC's regulations implementing National Environmental Policy Act (NEPA) (e.g., 10 CFR Part 51). In general, each case is treated as unique, and the steps taken may vary for different types of facilities and locations. The Uranium Recovery Branch (URB/DWM/NMSS) usually writes the EAs for its licensing actions, and an URB contractor usually writes the EISs. NMSS heavily relies on contractor support to provide guidance on the necessary steps for development of an EIS and to provide the technical support in areas where NMSS does not have the expertise. However, steps to strengthen NMSS staff capability and involvement in EIS development and to develop guidance for the NMSS staff are already underway.

NRC compliance with the Endangered Species Act (ESA) is an incidental result of NRC compliance with NEPA. There are no specific NRC regulations specifically designed to facilitate compliance with ESA.

The steps applicable to development of the Atlas EIS appear to be as follows:

- The applicant requesting the licensing action (i.e., Atlas) submits an environmental report (ER) supporting its application for a license amendment which contains the necessary data and analyses to support NRC's issuance of a NEPA document (i.e., an EA and finding of no significant impact (FONSI)).
- The NRC staff conducts an acceptance review of the ER to verify it contains the data and analyses needed to complete an EA and FONSI. [The initial analysis of the ER was made by the Denver Field Office.]
- The NRC staff completes an EA and determines whether to issue a FONSI. [The determination to issue an EA and FONSI was made by the Denver Field Office.]
- The NRC staff determines, based on the response to public comment on the EA and FONSI, that it should prepare an EIS. [The determination was made by NRC Headquarters (HQ) after responsibility for the Atlas facility was transferred to HQ upon closure of the Denver Field Office.]
- The NRC staff reviews the ER to verify it contains the data and analyses needed to complete an EIS and requests the applicant to supplement the ER if additional information is necessary.

- The NRC staff contracts with a contractor (i.e., Oak Ridge National Laboratory (ORNL)) to conduct a scoping process under NEPA and to prepare and submit to NRC a draft of the draft environmental impact statement (DEIS) based on available data and analyses.
- The NRC contractor (i.e., ORNL) prepares and submits to NRC the draft DEIS based on available data and analyses.
- The NRC staff verifies the adequacy of the draft DEIS and publishes the DEIS for public comment. [The staff generally concentrates on radiological safety issues and technical areas where it has expertise and ensures that the information in the DEIS does not diverge from that in the technical evaluation report (TER). The staff does not have the necessary technical expertise (i.e., biologist, etc.) to independently verify all technical areas of the DEIS.]
- The NRC staff informs the Department of Interior/Fish and Wildlife Service (DOI/FWS) of the proposed licensing action, in accordance with ESA and applicable regulations. [The NRC staff essentially relied on the expertise of the contractor to guide it on the necessity for such actions and the guidance of OGC on the procedural and regulatory requirements. Today, the staff has guidance on implementing the consultation requirement in its TER review plan.]
- DOI/FWS identifies whether threatened or endangered species, or critical habitats, are present and, if so, initiates the consultation process with NRC and the applicant (i.e., Atlas).
- The NRC contractor (i.e., ORNL) prepares and submits to NRC a draft biological assessment (BA) based on available data and analyses.
- The NRC staff verifies the adequacy of the draft BA and submits the BA to DOI/FWS. [The NRC staff's ability to verify the adequacy of the draft BA is limited to those areas where staff has technical expertise.]
- DOI/FWS accepts the BA and begins preparation of a biological opinion (BO) for submittal to NRC which includes a finding with respect to whether the proposed action would likely jeopardize threatened and endangered species, or critical habitats, and that may include a reasonable and prudent alternative (RPA) to the proposed action, as appropriate. [There is an underlying assumption that DOI/FWS will act reasonably and within its own regulations, consistent with its mission and responsibility under ESA, and that any proposed RPA will be within NRC's jurisdiction to implement.]
- The NRC contractor (i.e., ORNL) prepares the draft final environmental impact statement (FEIS) based on available data and analyses and identifies the need, if any, for additional information to respond to the BO and RPA or to public comments on the DEIS.
- The NRC may request and the applicant (i.e., Atlas) may submit supplemental information including additional data and analyses, as necessary, to respond to public comments on the DEIS or the BO and RPA to support issuance of the FEIS.

- The NRC staff conducts an acceptance review of the supplemental information to verify it contains the information needed to complete the FEIS. [The NRC staff's ability to conduct an acceptance review of the supplemental information is limited to those areas where staff has technical expertise. It mainly relies on the contractor to determine the acceptability of the information.]
- The NRC contractor (i.e., ORNL) submits the draft FEIS to NRC.
- The NRC staff verifies the adequacy of the draft FEIS, submits the FEIS to EPA, and publishes the FEIS after completing the process with EPA. [Again, the NRC staff generally concentrates on radiological safety issues and technical areas where it has expertise and ensures that the information in the FEIS does not diverge from that in the TER. The staff does not have the necessary technical expertise (i.e., biologist, etc.) to independently verify all technical areas of the FEIS.]

2 How does the NMSS process assure that key environmental issues are identified and resolved in a timely and adequate manner?

- The applicant identifies and resolves the key issues when it submits an adequate ER.
- The NRC staff verifies that the ER identifies key issues and contains adequate data and analyses for their resolution, when it completes its acceptance review of the application.
- The NRC contractor verifies that the key issues are identified and resolved when it conducts NEPA scoping actions and submits an adequate draft DEIS.
- The NRC staff verifies that the DEIS identifies and adequately resolves key issues before it publishes the DEIS for comment.
- Members of the public and interested governmental agencies have the opportunity to identify new issues or question the adequacy of resolution of key issues in commenting on the DEIS.
- The NRC staff obtains an identification of key issues regarding threatened or endangered species by informing DOI/FWS of the proposed licensing action and obtaining DOI/FWS' response.
- The NRC contractor addresses any key issues regarding threatened or endangered species when it prepares and submits a draft BA.
- The NRC staff verifies that key issues regarding threatened or endangered species are adequately addressed before it submits the BA to DOI/FWS.
- DOI/FWS identifies and proposes an alternative to resolve any key issues regarding threatened and endangered species when it provides a BO and the RPA. [There is an assumption that DOI/FWS will act reasonably and within its own regulations, consistent with its mission and responsibility under ESA, and that any proposed RPA will be within NRC's jurisdiction to implement.]
- The NRC staff assures that any key issue regarding threatened and endangered species, raised by the DOI/FWS BO or RPA, are adequately addressed and resolved by requesting supplemental information from the applicant, and the applicant submits adequate information, addressing the BO and RPA, in response.
- The NRC contractor verifies that key issues — including issues regarding threatened or endangered species -- are identified and adequately resolved when it submits an adequate draft FEIS.
- The NRC staff assures key issues are identified and adequately resolved before it publishes the FEIS.
- The NRC staff assures key issues are adequately resolved by conditioning any approval of the applicant's proposed licensing action to require actions to mitigate environmental

impacts -- including impacts to threatened or endangered species -- to acceptable levels.

-
- * The staff generally concentrates on radiological safety issues and technical areas where it has expertise and does not independently verify the adequacy of all key issues because it does not have the necessary technical expertise (i.e., biologist, etc.). The NRC generally relies almost exclusively on the contractor in those areas where its expertise is lacking.

3. Was the NMSS process followed for the Atlas EIS?

The NMSS staff, with the assistance of its contractor (i.e., ORNL), completed both a draft and final EIS for the Atlas reclamation that adequately addressed all key environmental issues with the exception of the issue of the DOI/FWS ammonia standards for threatened and endangered species in the Colorado River. Because NMSS decided the staff, rather than the contractor, would write the hydrology analysis for the FEIS, the NMSS staff wrote the portion of the FEIS addressing the ammonia issue in the final EIS. In preparing the draft and final Atlas EIS, the NMSS process described in Question 1 above was implemented, except as follows:

- In 1994, after HQ determined to prepare an EIS in response to public comments, it did not ask the applicant (i.e., Atlas) to submit a supplemental ER.
- From November 1995 until July 1998, NRC and DOI/FWS were involved in protracted consultations under ESA. [After NRC submitted the BA to DOI/FWS in November 1995 to initiate consultations, DOI/FWS wanted to require additional data gathering and analyses, and it insisted the tailings pile should be moved rather than address the proposed action of in-place stabilization. A final BO and RPA on the proposed action were not issued by DOI/FWS until July 1998.]
- Following their issuance in July 1998, the NRC staff did not request the applicant to submit supplemental information addressing the final BO and RPA. [After agreement was reached on the approach to be taken in the final BO, the staff discussed a request to Atlas for a performance assessment to determine the impact of the ammonia on the fish in the river. Atlas was reluctant to provide such an assessment, and it appears the NRC staff was concerned that pressing the matter might undermine the agreement. In this same time frame, it appears NRC management decided it wanted an independent assessment -- which the Center for Nuclear Waste Regulatory Analyses (CNWRA) ultimately performed -- even though it was pointed out that the assessment was the responsibility of the licensee. Upon receipt of the final BO, the staff again discussed with Atlas the need for a performance assessment. Atlas said it was reluctant to do anything and wanted to wait until the CNWRA work was complete.]
- In Fall 1998, the NRC, rather than relying on the contractor (ORNL), decided to write the portion of the draft FEIS that addresses the key issues relating to threatened or endangered species.
- In November 1998, the NRC staff had the FEIS peer reviewed by others in the agency. However, it is not clear that questions raised by a peer review member on the ammonia standard were adequately addressed.
- During December 1998 and January 1999, the NRC staff did not verify that the draft FEIS adequately addressed the key issue related to threatened or endangered species (i.e., standard for ammonia in the river).

4. Did the NMSS process include adequate guidance and training for participants in developing the Atlas EIS, and did it provide for an appropriate level of skill within the staff and the appropriate use of contractors?

- At the time of the Atlas EIS, the NMSS process did not include clear guidance on the preparation of an EIS (or an ER), including format, level of detail, necessary approvals from consulting agencies, alternatives, etc. [NMSS is currently developing guidance on EISs.]
- The NMSS process did not include adequate guidance on when to request the applicant to provide supplemental information addressing the BO and RPA from DOI/FWS.
- The NMSS process did not include adequate guidance to define what is a sufficient conclusion and supporting analysis in the FEIS to adequately respond to the BO and RPA from DOI/FWS and permit NRC approval of the proposed licensing action.
- The URB staff was provided formal training by a contractor on the EIS process in 1997.

5. What are the reasons why the Atlas EIS did not resolve key environmental issues in a timely and adequate manner?

Timely resolution of the key environmental issue — i.e., impact of the proposed licensing action on threatened and endangered species in the Colorado River — was not achieved because:

- NRC compliance with NEPA led staff into a process under ESA that was outside staff's expertise and control.
- NRC's obtaining of the BO and RPA — in order to comply with ESA and regulations -- was delayed by technical and regulatory disputes between NRC and DOI/FWS.
- Staff interactions with the Salt Lake City office of the FWS may have shaded staff's view on the FWS' implementation of the ESA process, in that it may have appeared to staff that the FWS was more interested in supporting its argument that the tailings pile should be moved than in achieving reasonable compliance with ESA and FWS regulations.
- Staff's position that groundwater cleanup was an unconnected action that should not be a consideration in the grant or denial of the proposed license amendment to Atlas was not acceptable to DOI/FWS, as a basis for concluding the ESA process, and contributed to the complexity of the interactions with DOI/FWS. [Ultimately, however, NRC and the FWS reached an agreement that led to issuance of a BO and RPA containing FWS standards for in-place stabilization of the tailings pile. Further, although questions later arose with regard to achieving the FWS standards for ammonia in the river, they appear to be related to long-term stabilization of the pile.]
- No viable option appears to have been identified by the staff, or brought to the staff's attention by Atlas, that would have legally permitted NRC to issue the proposed license amendment to Atlas without completing the DOI/FWS process under ESA.
- After issuance of the final BO and RPA by DOI/FWS, the staff and management appear not to have had a uniform, clear, agreed-upon understanding of what conclusions and supporting analyses were necessary in the FEIS to adequately respond to the BO and RPA in order to issue a defensible FEIS. [For example, should the FEIS state "Atlas will be required to meet the FWS standards in the BO and RPA" or should it state "Atlas will meet the FWS standards during long-term stabilization?"]
- The analyses to support the proposed conclusions in the FEIS, once they were agreed upon, had not been completed before the FEIS was to be signed and, when completed, did not support the proposed FEIS conclusions.
- The proposed FEIS conclusions (as well as the conclusions in the DEIS) were based on an NRC staff technical argument that a tight cover (10^{-8}) on the tailings pile would reduce, by two orders of magnitude, the seepage from the pile and, thus, the concentration of ammonia in the groundwater such that the concentration of ammonia entering the river would be so low that dilution by the river would be sufficient to meet the DOI/FWS ammonia standards for the fish, as set forth in the BO and RPA. The staff argument appears to have been so focused on the seepage from the cover, and the

resultant linear reduction in ammonia concentrations to the groundwater, that the staff considered the calculation of the ammonia in the river to ensure that the DOI/FWS standards were met to be almost automatic, or a secondary consideration. It appears the staff may have overlooked possible warning signals that it may need to reexamine whether its argument was supportable. For example, in November, questions were raised by one of the peer reviewers on the FEIS asking "Is there a solution to the problem of toxic levels of ammonia?" and "Why are the toxic levels of ammonia acceptable to the staff?" It appears, however, that no one responded to this question which, if they had, might have led to doubt about the staff's analysis. Secondly, another possible warning signal was that the staff analysis, which was based on a linear relationship between the reduction in the groundwater concentration of ammonia and reduction in seepage from the pile due to the cover, was not supported by the December 1998 final CNWRA report. Ultimately, the linear reduction in groundwater concentrations of ammonia from a tight cover (10^{-8}) on the pile was not supported by additional analyses, the seepage from the cover was not proven to be determinative with respect to meeting the DOI/FWS standards, and the staff's technical argument therefore could not be supported.

- Although Atlas appears to have agreed to the general approach taken in the final BO and RPA (i.e., identification of standards in the river for ammonia) and was asked by NRC to prepare an analysis that would provide a basis to respond to the BO and RPA when it was issued, Atlas, for unknown reasons, was reluctant to do the performance assessment of the impact on the river, due to in-place stabilization of the pile, that the staff wanted done. It also appears that NMSS management did not want to pressure the licensee to do the analysis.
- The Atlas bankruptcy created time pressures that resulted in a tighter schedule than originally planned for issuing the FEIS after September 1998, which may have distracted the staff from completing the supporting analyses that were necessary to confirm the staff's technical argument and support the conclusions with respect to the BO and RPA that were necessary for a defensible FEIS.

6. What changes to the NMSS process are needed to provide greater assurance that any future EIS addresses key environmental issues in a timely and adequate manner?

- Reiterate the need for NMSS to develop clear detailed guidance on the approach and the information needed to develop an EIS. Understanding that this is being done, the guidance should specifically address the following:
 - Define compliance with ESA (including information on the consultation process with DOI/FWS or the National Oceanic and Atmospheric Administration, as the case may be); establish procedures to document NRC compliance with the ESA process (including any agreements on the timing or scope of a BO and RPA); describe the involvement of the applicant in the ESA process; and provide for the timely identification of necessary and acceptable conclusions, together with supporting analyses, for inclusion in the FEIS to respond to a BO and RPA.
 - Define a process for resolving key environmental issues in the EIS, including: (i) identifying key issues early; (ii) defining the necessary and acceptable conclusions to address the issues in the FEIS; and (iii) assembling the data and analyses needed to support the conclusions in the FEIS so as to identify possible gaps.
 - Ensure the applicant addresses issues raised by the EIS process by: (i) identifying the circumstances when the NRC staff should request the applicant to provide supplemental information to address public or agency comments on the DEIS, before issuance of the FEIS and approval of the proposed licensing action; and (ii) define the actions to be considered by the staff if the applicant declines to provide the requested information.
- Improve the staff's level of skill to prepare NMSS EISs by:
 - Reorganizing NMSS such that there is a section with the appropriate technical skills (including biologist, etc.) and provide training to complete NMSS EIS projects, or alternatively --

developing a list of staff available from NMSS, or even outside of NMSS, with the appropriate technical skills that could be called on to assist the different NMSS divisions with development of their EISs. This could be a specific list of names, all or part of which could be called together as a team to review and develop all or parts of an EIS. Several key people, if not all, on this list would also be trained, in depth, on the NEPA process.
 - Promptly mobilizing available legal and technical assistance (preferably within NRC, but through contractors if necessary) to respond when a proposed licensing action raises key non-radiological issues that must be resolved before the action can be taken or when it involves consideration under NEPA of Federal or State environmental laws unfamiliar to staff.

- Using early peer review more effectively particularly with respect to staff technical arguments on key non-radiological issues raised in the NEPA process.
- Formally consulting with OGC on the procedural and regulatory aspects of ESA and dealing with DOI/FWS.

7. How does the NEPA process tie into the NRC licensing action, including the NRC approval process for the applicant's proposed licensing action and the staff technical evaluation report?

- The NRC staff must adequately address all environmental and safety concerns before a license or license amendment is issued.
- In the Atlas case, the licensing action and TER address reclamation of the tailings pile, including erosion and radon emanation, but not groundwater contamination; groundwater contamination is the subject of a later, separate licensing action addressing the licensee's proposed groundwater cleanup and corrective action program.
- The NEPA process, and the Atlas EIS, address environmental impacts, including impacts on groundwater, associated with reclamation of the tailings pile in place and reclamation of the tailings by transfer to another site.

8. What are stakeholders' roles in this process; what are NRC's expectations of stakeholders, including the licensee, the Fish and Wildlife Service and any other agencies, relative to NRC's action; and how do we respond to stakeholder actions?

From the general framework in NRC's regulations implementing NEPA (10 CFR Part 51), we have formulated the stakeholders roles in the NEPA process, relative to NRC's proposed action, that are presented below. [There is no detailed NRC guidance on consultations with DOI/FWS or other agencies other than incorporation of DOI/FWS consultation into the TER review plan.]

- The applicant is to provide an adequate ER (and supplement information, as needed), addressing environmental issues, including adequate data and analyses, to support completion of the NEPA process for the requested licensing action, including issuance of a DEIS and FEIS if necessary, and including consultation with DOI/FWS under ESA and implementation of the BO and RPA.
 - NRC expects the applicant to carry the burden of addressing environmental issues with adequate data and analyses and to implement the BO and RPA.
 - When the applicant (i.e., Atlas) was reluctant to do so, NRC's response was not to require Atlas to do it; rather, NRC assumed a portion of the applicant's responsibility to provide adequate information and, thus, assumed a portion of the applicant's burden to address the BO and RPA with adequate data and analyses.
- NRC heavily relies on contractors to assist NRC in carrying out its responsibilities under NEPA in those instances when an EIS is to be prepared.
 - NRC expects the contractor to provide guidance on the necessary steps for NRC's development of an EIS and compliance with NEPA, including incidental processes under ESA and other environmental laws, and to provide the technical support in areas where NRC does not have the expertise.
 - When the contractor failed to handle aspects of the EIS relating to hydrology in an acceptable manner, the staff took the responsibility on itself.
- DOI/FWS reviews the proposed licensing action for potential impact on threatened and endangered species and initiates consultation with NRC as necessary, including review of the BA for the action and provision of a BO and RPA.
 - NRC expects that DOI/FWS will act reasonably and within its own regulations, consistent with its mission and responsibility under ESA; complete the consultation process in a timely manner; and provide a BO and RPA that is technically sound, appropriate to the proposed licensing action and within NRC's jurisdiction to implement.
 - When DOI/FWS prepared a draft BO and RPA to the effect that "the pile must

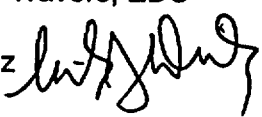
be relocated," NRC's response was to oppose the DOI/FWS position, believing it to be technically incorrect and outside the agency's authority.

- NRC also opposed DOI/FWS' position that groundwater cleanup and tailings reclamation were connected actions, although it was indisputable that tailings reclamation would impact concentrations of ammonia in the groundwater.
- To address the resultant impasse, NRC voluntarily participated in a mediation-type process conducted by the Council on Environmental Quality -- along with the applicant.
- Ultimately, the NRC -- with the assent of the applicant (i.e., Atlas) -- agreed on an approach to the BO and the RPA with DOI/FWS to complete the consultation process.

9. Did the need for and the process of obtaining the biological opinion add anything unique to either the NEPA process or the safety review in this case?

- DOI/FWS made demands for data and analyses regarding groundwater contamination that NRC could not control.
 - After agreement was reached on what additional data and analyses would be obtained, DOI/FWS ultimately obtained and relied on other information.
 - DOI/FWS' action led the staff to believe that additional analyses were needed to counter the DOI/FWS analyses.
 - When the applicant was reluctant to undertake the additional analyses that were needed, the staff had to hire a contractor to do so.
- DOI/FWS expanded the relevant issues associated with the proposed licensing action beyond those anticipated by staff.
 - DOI/FWS was able to insist, through the leverage of ESA compliance incidental to NEPA, that protection of endangered and threatened species in the Colorado River -- from releases during long-term stabilization of the tailings pile -- was relevant to the NRC's proposed licensing action on tailings reclamation.
 - NRC -- with the assent of the applicant -- ultimately agreed to a BO and RPA that, if implemented, would permit reclamation of the tailings pile in place.
 - However, in effect, the DOI/FWS process created a new issue with respect to the proposed license amendment for Atlas, that is, implementation of the DOI/FWS standards for ammonia in the river during long-term stabilization.
- The process of obtaining the BO delayed the approval of the proposed licensing action in ways the NRC could not control.
 - DOI/FWS erroneously relied on arguments that releases from the Atlas pile were contaminating areas on the opposite side of the Colorado River.
 - DOI/FWS proposed an RPA, whereby the NRC would require the applicant to move the tailings pile, that was not supported by adequate analyses.

February 12, 1999

NOTE TO: William D. Travers, EDO
FROM: Nils J. Diaz 
SUBJECT: REQUEST FOR INFORMATION RE: ATLAS

I have just been informed by my staff of NMSS's plan to issue a Final Environmental Impact Statement (FEIS) for the Moab site, with one open item pertaining to ammonia contamination of the Colorado river, and of the intention to inform the Atlas Corporation of this determination. While I recognize that NRC staff is acting within its purview in this planned action, and that the actions may even be required, the fact that they are now needed is of serious concern. It raises questions on our project management ability, scheduling, licensees' "due process," and the awareness and "know-how" of when the Commission needs to be "fully and currently informed." Regardless of the outcome of the FEIS, Atlas, like any of our licensees, deserves timely consideration and disposition of its case, rather than the series of surprises that have recently cropped up, and of which our assistants were only recently informed.

I find this turn of events unacceptable, both in the specifics of the Atlas case, and in what it says about the care needed to handle these types of cases. Therefore, I am looking forward to learning how we will ensure that this sort of occurrence is not repeated.

cc:
Chairman Jackson
Commissioner Dicus
Commissioner McGaffigan
Commissioner Merrifield

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EDO --G19990081

ACTION

EDO 3/3
EDO to 3/9

EDO Principal Correspondence Control

FROM:

DUE: 02/26/99

EDO CONTROL: G19990081

DOC DT: 02/12/99

FINAL REPLY:

Commissioner Nils J. Diaz

TO:

Travers, EDO

FOR SIGNATURE OF :

** GRN **

CRC NO:

DESC:

ROUTING:

REQUEST FOR INFORMATION REGARDING ATLAS

Travers
Knapp
Miraglia
Norry
Blaha
Burns

DATE: 02/17/99

ASSIGNED TO:

CONTACT:

NMSS

Paperiello


SPECIAL INSTRUCTIONS OR REMARKS:

Provide lessons learned to EDO by 2/26/99.

due DWM
3/2

due NMSS
3/3

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cc:
Chairman Jackson
Commissioner Dicus
Commissioner McGaffigan
Commissioner Merrifield

EDO --G19990081



OFFICE OF THE
GENERAL COUNSEL

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

March 15, 1999

40-3453

MEMORANDUM FOR: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Karen D. Cyr *Karen Cyr*
General Counsel

SUBJECT: ATLAS-MOAB BANKRUPTCY REORGANIZATION
AGREEMENT

As a result of negotiations completed on March 12, 1999, the parties to the Atlas bankruptcy proceeding tentatively reached agreement in principle on a settlement and reorganization plan to be submitted to the bankruptcy court. Parties to the proceeding include Atlas Corp. [the debtor], NRC [represented by Assistant United States Attorney Bob Clark], the State of Utah, ACSTAR [bond agent for Atlas], and various unsecured creditors. OGC and NMSS participated in the discussions and advised Mr. Clark. Although not parties to the bankruptcy proceeding itself, counsel for the Fish and Wildlife Service (FWS) and representatives of Earth Justice and the Grand Canyon Trust also participated in the discussions. The environmental groups have brought suit against FWS and NRC under the Endangered Species Act (ESA).¹

A joint motion to extend the time for filing the plan, which was due March 15 under an extended deadline, will be filed today on the basis of the agreement in principle. The settlement and reorganization plan will be reduced to writing and formally submitted to the bankruptcy court in about 30 days. The significant features of the settlement plan are as follows –

- Atlas will transfer certain assets to a reclamation trust, will reorganize into a new entity and will be relieved of further financial liability for the maintenance and reclamation of the Moab site. Some stock in the

CONTACT: Stephen G. Burns (415-1740)
Joseph R. Gray (415-1740)

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¹The environmental and local groups who have sued the NRC and FWS under the ESA are not parties to the bankruptcy settlement, and are expected to continue to pursue their ESA claims, which currently are pending both before a federal district court in Utah and before the NRC (in a hearing request and in a petition for enforcement action under 10 C.F.R. 2.206).

reorganized Atlas will be distributed to the unsecured creditors and to the reclamation trust.

- The reclamation trust, which will be established and regulated under NRC order (or other appropriate licensing action) to maintain and reclaim the Moab site, will receive the following assets after the court's confirmation of the reorganization plan: (1) \$5.25 million in cash from Atlas/ACSTAR (the reclamation bond issued by ACSTAR with a face value of \$6.5 million, currently held for the benefit of the NRC to be used for reclamation of the Moab site, will be dissolved); (2) the assignment of Title X receivables due from DOE after April 1999 (estimated to amount to at least \$1.5 million) for reclamation work performed and paid for by Atlas prior to the date of approval of the reorganization plan (these funds should be paid to the reclamation trust in increments in April 2000 and April 2001); (3) the Moab site and all the land and water rights (the water rights and certain uncontaminated portions of the Moab site have stand-alone value and might be sold by the reclamation trustee independent of, and prior to, any reclamation work at the site); and (4) 2.5 percent of the stock in the reorganized Atlas.²

Under bankruptcy procedures, the agreement would be effective 30 days after the court's confirmation (approval) of the plan, which should occur by early September 1999. Although the possibility of complete reclamation absent an additional infusion of funds from some other source remains highly uncertain, the plan is expected to provide a greater contribution to reclamation from Atlas's estate than would have been expected in the event of liquidation of Atlas.

OGC will work with NMSS to draft the appropriate order and other related documents to establish NRC regulatory oversight over the reclamation trust consistent with the settlement plan.

DISTRIBUTION:

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² Following the issuance of the order/licensing action by the NRC and under the general oversight of the NRC, the reclamation trustee will use these assets to undertake reclamation of the Moab site. As reclamation work is completed and paid for, the reclamation trustee would submit corresponding claims for Title X reimbursement to DOE. Payments for these additional Title X claims will be used by the reclamation trustee for Moab site reclamation and/or maintenance.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of)
)
ATLAS CORPORATION) Docket No. 40-3452-MLA-3
)
Moab, Utah)

AFFIDAVIT OF MYRON FLIEGEL

I, Myron Fliegel, being duly sworn, declare as follows:

1. I am competent to make this affidavit, and the opinion expressed herein are based on my best professional judgment. I am employed by the U.S. Nuclear Regulatory Commission as a Senior Project Manager in the Uranium Recovery & Low Level Waste Branch, Division of Waste Management, in the Office of Nuclear Material Safety and Safeguards. A statement of my professional qualifications is attached.

2. In this declaration I will provide an explanation of the differences between the ground-water remediation or cleanup plan and the site reclamation plan.

3. Ground-water contamination is considered in two separate areas of the Staff's regulatory review of the licensee's proposals. One area of consideration concerns the present contamination of the ground water near the Atlas site (between the pile and the Colorado River). Efforts to clean up the ground water are addressed in the "ground-water corrective action plan" ("ground-water CAP" or "CAP"). This is referred to as "groundwater remediation" in the Presiding Officer's Order of May 14, 1999. The existing ground-water contamination is independent of the reclamation of the tailings and stabilization of the site. That is, the contaminants are already in the ground-water and

FF/10

reclamation of the tailings will not remove the ground-water contamination. Cleanup of the existing ground-water contamination is not part of the proposed licensing action and never was part of it.

The other area of concern to the Staff, *future* effects on ground water (and the Colorado River), is considered in the reclamation of the tailings pile, which is the subject of the license amendment and the Federal Register notice. How the proposed reclamation of the tailings will effect ground water and surface water *in the future* is a major component of the review of the proposed reclamation plan. This aspect of ground-water contamination, i.e, the effect of the proposed tailings reclamation on ground water in the future, has always been an important consideration in the licensing action now pending before the Presiding Officer.

4. The contamination of the ground water was caused by seepage from the unstabilized tailings pile. The Atlas mill operated from 1956 to 1984. During that time, the tailings pile grew as a slurry of tailings and processing fluids were continually added to it. A pond of contaminated water was permanently on the top of the pile of tailings, which was saturated with contaminated water. This contaminated water seeped out of the bottom of the pile into the natural ground water and eventually contaminated the ground water from below the pile to the Colorado River.

5. Licensees are required, in 10 C.F.R. Part 40, Appendix A, Criterion 5D, to institute a ground-water CAP when it is determined that ground-water standards have been exceeded. On June 22, 1990, a CAP was incorporated into the Atlas license, in condition 17 (amendment 11). The CAP relies on "natural flushing" in which the contamination will naturally move through the ground water to the Colorado River. In addition, the CAP includes wells on the tailings pile that pump water to the surface where it is evaporated. This is intended to dry out the source of contamination seeping into the ground water.

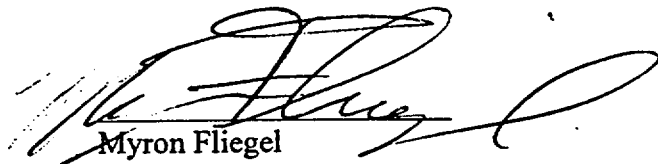
While data indicate that the ground-water quality is improving, the Staff concluded that it would like to revisit the CAP to see if ground-water cleanup can be expedited. *See*, Letter from Joseph Holonich to Richard Blumbaugh, dated July 11, 1998, attached. However, the details of a revised CAP would be dependent on whether tailings would be stabilized in place or moved to another location. The reasons for this dependence on the ultimate location of the tailings are that the ground-water standards to be applied to many constituents for cleanup would likely be alternate concentration limits (ACLs). 10 C.F.R. Part 40, Appendix A, Criterion 5B(5) and (6). ACLs are designed to protect health and safety at the point of exposure. In the event that tailings are stabilized onsite, the site would be transferred to the U.S Department of Energy (or the state of Utah if it chose to become the custodian) for perpetual custodial care and the point of exposure would likely be at the river bank. Thus, higher levels of contaminants in the ground water may be acceptable since the ground water would be unavailable for use. If the reclamation involved moving the tailings to a new location, the existing site would have to be cleaned up to an unrestricted use standard. ACLs for ground-water cleanup would have to recognize the potential for ground-water use anywhere on the site. The March 30, 1994, notice of intent to prepare an Environmental Impact Statement (EIS) noted that the Staff was considering alternate sites for reclamation. *See* 59 Fed. Reg. 14, 912 (1994). Because the Staff had not made a determination to approve onsite reclamation, consideration of a revised CAP was postponed until after the Staff decision on tailings reclamation.

6. In its review of the proposed reclamation plan for tailings stabilization, the Staff considered the effects of the reclamation on the ground water and the surface water (Colorado River). But these considerations are confined to the effects in the future, after the site reclamation has been completed. This was also identified as part of the EIS review. *Id.* The EIS considered both

the current and anticipated future situations. The major environmental concern was the effect on the Colorado River and its biota. However, as the only pathway from the tailings to the river is through the ground water, effects on the ground water were considered in detail.

The EIS described the existing contamination in the ground water and the Colorado River. It also contained estimations of the past seepage of contaminants from the tailings pile to the ground water. Because the estimated travel time of ground water, from the edge of the pile to the river, is about 20 years, the existing ground-water contamination is derived from seepage that occurred when the mill was operating. The staff also estimated seepage from the pile, at steady state conditions, after reclamation and concluded it would be about an order of magnitude lower. Additionally, a tighter cover than proposed by the licensee could be built, with the potential of reducing seepage by another order of magnitude. Based on the magnitude of the existing environmental impacts in the river and the reduction in seepage from the tailings that would result from the reclamation, the Staff concluded that the environmental impacts of the onsite reclamation would be acceptable.

7. The foregoing and attached professional qualifications is true and correct to the best of my knowledge, information and belief.


Myron Fliegel

Sworn and subscribed to before me
this 3rd day of June, 1999



Notary Public

My commission expires: *March 1, 2002*

PROFESSIONAL QUALIFICATIONS STATEMENT

Myron Fliegel
Uranium Recovery & LLW Branch
Division of Waste Management

I am a Senior Project Manager in the Uranium Recovery & Low Level Waste Branch, Division of Waste Management, in the Office of Nuclear Material Safety and Safeguards. My duties include planning, managing, and participating in projects involving the policy, safety, and environmental considerations associated with the NRC program of licensed uranium recovery facilities. I have been the NRC project manager for the Atlas facility since April of 1995. From April 1987 to April 1994, I served as a Section Leader, responsible for supervision of projects and activities related to the NRC's uranium recovery program, primarily the program regulating licensed uranium recovery facilities. Previous NRC experience includes management and supervision of the waste management hydrology program and management and supervision of hydrologic engineering aspects of nuclear power plant licensing reviews. Earlier, I was a technical reviewer assigned to evaluating flooding potential and other hydrological aspects of nuclear power plants.

My employment with NRC (formerly AEC) dates from August 1974 in the area of hydrologic engineering, physical oceanography, and limnology with the Office of Nuclear Reactor Regulation. My responsibility in the licensing review of nuclear facilities was in the areas of flooding vulnerability, adequate water supply, and surface and ground water acceptability of effluents.

From 1972 to 1974, I was a Staff Scientist (later Research Associate) at Lamont-Doherty Earth Observatory of Columbia University. I was in charge of the data analysis in connection with a large scale oceanographic effort being conducted in the Arctic. From 1965 to 1972, I was a Graduate Assistant at Lamont-Doherty. My dissertation work, which began in 1968, involved study of the thermal behavior of, and internal waves in, one of the Finger Lakes of western New York.

My formal education consists of study in physics and mathematics at the City College of New York where I received a B.S. in physics in 1965 and study in geophysics and oceanography at Columbia University where I received a Ph.D. in physical oceanography and limnology in 1972.

FROM : EARTHJUSTICE LEGAL DEFENSE

FAX NO. : 303 623-8083

Mar. 17. 2000 02:45PM P1

22

**EARTHJUSTICE**
LEGAL DEFENSE FUNDBOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
JUNEAU, ALASKA NEW ORLEANS, LOUISIANA SAN FRANCISCO, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

March 17, 2000

File: 812-NRC

Paul Boudreaux **VIA FACSIMILE: 202-305-0275**
United States Department of Justice
Environmental Division
601 Pennsylvania Avenue, N.W., Room 5000
Washington, D.C. 20004

David C. Lashway **VIA FACSIMILE: 202-663-8007**
Anthony J. Thompson
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 Paul and Dave:

Based on the parties' conversation on March 14, 2000, this letter is to set out what we believe would be an appropriate framework for an interim settlement agreement in the Atlas tailings litigation. Please note that this letter is for settlement purposes only. The purpose of such a settlement would be to give the parties the opportunity to seek a long-term solution to the Atlas problem through appropriate Congressional action. The key elements of a settlement would be as follows:

- The NRC and the FWS would agree to reinitiate consultation on reclamation of the Atlas tailings site immediately. The consultation would be for the purpose of evaluating all aspects of groundwater cleanup at the site, including how groundwater cleanup will be carried out, whether it is feasible at the site, and how it will be financed, as well as any other matters that are relevant to the reclamation.
- The NRC, FWS, and the Trustee would agree that once consultation is reinitiated, neither the NRC nor its licensee may authorize or undertake any "irreversible and irretrievable commitment of resources" as set forth in section 7(d) of the ESA. As a result of that mandate, the settlement agreement would set forth a list of activities deemed allowable under section 7(d). The concept behind the allowable

LAW FIRM FOR THE ENVIRONMENT
1631 GLENARM PLACE, SUITE 300, DENVER, CO 80202-4303
T: 303 623-9466 F: 303 623-8083 E: ejusco@earthjustice.org W: www.earthjustice.org

Paul Boudreaux, Esq.
David C. Lashway, Esq.
March 17, 2000
Page 2

activities would be that the Trustee may not undertake activities that would prejudice the ultimate outcome of the cleanup. In other words, the Trustee could proceed with certain tasks, such as dewatering the pile, that would be needed regardless of whether the pile is capped in place or whether the pile is removed and the site cleaned up to unrestricted use. The list of acceptable activities would be drafted to assure to the greatest degree possible that the Trustee would not be hampered or delayed in fulfilling its mandate to protect public health and safety in keeping with section 7(d).

- The NRC would agree to administratively stay that portion of the May 28, 1999 decision to amend Materials License SUA-917 dealing with the placement of the cap on the pile, until the publication of a new or revised Biological Opinion.
- The Grand Canyon Trust et al, the NRC, and the Trustee would agree to jointly request a stay of the intervention proceeding before the Atomic Safety and Licensing Board, Docket No. 40-3453 until (1) the publication of a new or revised Biological Opinion or (2) the date of *sine die* adjournment of the 106th Congress, whichever comes first.
- The Grand Canyon Trust et al. would voluntarily dismiss all of its claims in Grand Canyon Trust v. NRC, No. 99-70922 (9th Circuit).
- The Grand Canyon Trust et al. would voluntarily dismiss the Claims for Relief numbered 7, 12, 14, and 15 in the Third Amended Complaint in Grand Canyon Trust v. Babbitt, Civ. No. 2:98CV08035 (D. Utah). In addition, the Grand Canyon Trust, the NRC, the FWS, and the Trustee would agree to jointly seek a stay of the remaining Claims for Relief numbered 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, and 13 in the Third Amended Complaint in U.S. District Court until (1) the publication of a new or revised Biological Opinion or (2) the date of *sine die* adjournment of the 106th Congress, whichever occurs first.
- Payment by the federal entities of the Grand Canyon Trust's reasonable fees and costs to date.

FROM : EARTHJUSTICE LEGAL DEFENSE

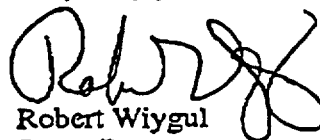
FAX NO. : 303 623-8063

Mar. 17 2000 02:46PM P3

Paul Boudreaux, Esq.
David C. Lashway, Esq.
March 17, 2000
Page 3

If this general framework seems workable, we should set a time as soon as possible to discuss the details of an acceptable agreement. Because Judge Sam has us on a fairly tight leash, we would appreciate a response to this letter by Wednesday March 22, 2000.

Very truly yours,



Robert Wiygul
Susan Daggett
Marie Kirk

RW/SD/MK/11

cc: Cullen Battle
Gabrielle Sigel
Marjorie Nordlinger
Lisa Clark
Gina Guy
Dave Hutchinson
Bill Hedden
Lawson Legate
Dave Bodner
Joseph Knighton
Ken Sleight
M. Darren Vaughan
Dusty Simmons

*Reithing*

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FROM: Department of Justice
Environment and Natural Resources Division
Wildlife and Marine Resources Section
601 Pennsylvania Avenue, N.W.
Room 5000
Washington, D.C. 20004

Fax No. (202) 305-0275
Voice No. (202) 305-0210
0216

SENT BY: Paul Boudreaux

DATE 3-17-2000

TO: Gina Gay, DOI

FAX NO. 303-231-5363

M Nordlinger, NRC

FAX NO. 301-415-3200

FAX NO. _____

FAX NO. _____

FAX NO. _____

MESSAGE:

NUMBER OF PAGES SENT (INCLUDING COVER PAGE): _____

From: John Lusher, *NMSS*
To: Bob Evans, *RIV*
Date: Mon, Apr 3, 2000 6:46 AM
Subject: Re: Atlas NOV Response Letter

Bob,

I concur with the letter 04/03/00.

I don't think that the radon would be in equilibrium with its daughters at the nearest resident . 1) because they are too close to the site boundary; 2) if there is any breeze at all it would not reach equilibrium for a distance of several miles.

On the bottom of the first page of Stephen A. McGuire's paper, he also indicates that at a distance of several miles from the source, the short-lived daughters of radon-222 will not be near equilibrium with radon-222 and will have activities below that of radon-222.

>>> Bob Evans 04/02 1:04 PM >>>

Please concur with the attached letter or provide me with your proposed changes.

Basically, we are asking for more information about the tailings pile repairs, we are accepting their response to the LLD problem, and we are deferring the URI.

I will confirm this with Blair and John L., but I decided to turn the radon issue over to ORISE. We need environmental samples to confirm whether or not the radon is or is not in equilibrium with its daughters. The license does not require PWC to take these types of samples, and I understand that the NRC has money in a pot for ORISE's assistance in any manner we so choose.

Let me know your comments ASAP so we can get the letter out. Thanx.

Rob

FF/12

From: Dan Rom *WRMS*
To: Bob Evans *REV*
Date: Mon, Apr 3, 2000 8:07 AM
Subject: Re: Atlas NOV Response Letter

Bob:
I have no problems with your letter.
DSR

>>> Bob Evans 04/02 1:04 PM >>>
Please concur with the attached letter or provide me with your proposed changes.

Basically, we are asking for more information about the tailings pile repairs, we are accepting their response to the LLD problem, and we are deferring the URI.

I will confirm this with Blair and John L., but I decided to turn the radon issue over to ORISE. We need environmental samples to confirm whether or not the radon is or is not in equilibrium with its daughters. The license does not require PWC to take these types of samples, and I understand that the NRC has money in a pot for ORISE's assistance in any manner we so choose.

Let me know your comments ASAP so we can get the letter out. Thanx.

Rob

FF/13

R1

From: Terry Johnson, NMSS NMSS NMSS
To: Bob Evans, Dan Rom, John Lusher
Date: Mon, Apr 3, 2000 8:38 AM
Subject: Re: Atlas NOV Response Letter

I like the style and the tone of the letter and concur in this action. It would be helpful if the licensee could provide us with some photographic documentation of the repairs that were made. That way, we can get a better idea if they need to do more or if we need to do another followup inspection. We'll probably need to do a followup, anyway, because of the public attention.

I suggest the addition of one sentence at the end of the third paragraph that ends with ".....after February 8, 2000."

Add this (or something like it): This information should include photographs of the repairs that were made and measures that were taken to prevent erosion of contaminated material from the cell.

Let me know if you need anything else.

>>> Bob Evans 04/02 1:04 PM >>>

Please concur with the attached letter or provide me with your proposed changes.

Basically, we are asking for more information about the tailings pile repairs, we are accepting their response to the LLD problem, and we are deferring the URI.

I will confirm this with Blair and John L., but I decided to turn the radon issue over to ORISE. We need environmental samples to confirm whether or not the radon is or is not in equilibrium with its daughters. The license does not require PWC to take these types of samples, and I understand that the NRC has money in a pot for ORISE's assistance in any manner we so choose.

Let me know your comments ASAP so we can get the letter out. Thanx.

Rob

CC: Blair Spitzberg

*ask for
report*

FF/14

SENDER & WASSERMAN, P.C.

1999 Broadway, Suite 2305

Denver, Colorado 80202

303/296-1999

303/296-7600 Facsimile

FACSIMILE TRANSMISSION COVER SHEET

TO:	Eric Ryback of Linder Dividend Fund, Inc.	FAX NUMBER:	314 727-3866
	U.S. Nuclear Regulatory Commission Chief		301 415-5397
	Corporacion Andina de Fomento		011 582-209-2406
	Environmental Protection Agency		415 744-1796
	Teamsters Pension Trust Fund of PA		
	Atlas Corp. 1978 Retirement Plan		303 629-2445
	Curt and Ana Goldschmidt c/o Steven M. Banzha		520 795-0177
	U.S. Nuclear Regulatory Commission		301 415-5387
	John M. Devancy		Via Federal Express
	Catherine Weaver		303 789-2949
	Shaw Pitman Potts & Trowbridge (attn: Tony Thompson)		202 663-8007
	Hurdling-Lawson Associates		303 292-5411
	Freeborn & Peters		303 628-4240
	J&H March & McLennan (attn: Gerald Hayes)		303 313-8430
	Douglas R. Cook		702 826-0599
	Coudert Brothers		212 626-4120
	Perkins Coie		206 583-8500
	Panamerican Mine Services, Inc.		011 591-2-366-731
	IRS - CTOCIT		303 784-6110
	IRS District Counsel (attn: John Weeda)		303 844-3294
	Industrial Finance Co.		541 484-6123

FROM: Bonnie A. Bell**Client Number:** 54501**Date:** September 22, 1998**NUMBER OF PAGES TRANSMITTED (Including Cover Sheet):** 21**Description:** ATLAS CORPORATION - Various Motions Re: Post-Petition Financing.**Original to follow:**

If there is a problem with this transmission, please contact Beth

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FF/13

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:

ATLAS CORPORATION
a Delaware corporation

EIN: 15-5503312

)
)
) Case No. 98-23331 DEC
) Chapter 11
)
)

NOTICE OF HEARING ON EMERGENCY MOTION FOR INTERIM ORDER
AUTHORIZING POST-PETITION FINANCING PURSUANT TO
11 U.S.C. §364(c)(1) and (2)

NOTICE IS HEREBY GIVEN that Atlas Corporation, Debtor herein, applied to this Court for an Order Authorizing Post-Petition Financing pursuant to 11 U.S.C. §364(c)(1) and (2). The Debtor has further filed an Emergency Motion requesting approval of financing to meet its expenses during the notice period of the Motion.

NOTICE is hereby given that the Court has scheduled a hearing on the Emergency Motion for Interim Order Authorizing Post-Petition Loan pursuant to 11 U.S.C. §364(c)(2) for Friday September 25, 1998 AT 1:30 p.m. in COURTROOM A, UNITED STATES BANKRUPTCY COURT, 721 19TH STREET, FIFTH FLOOR, DENVER, COLORADO 80202-2503.

Dated this 22nd day of September, 1998.

SENDER & WASSERMAN, P.C.

By: Bonnie A. Bell

Harvey Sender, #7546

Bonnie A. Bell, #14923

1999 Broadway, Suite 2305

Denver, Colorado 80202

(303) 296-1999

Fax No. (303) 296-7600

E-mail: kswpc@idcomm.com

ATTORNEYS FOR DEBTOR

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

20 SEP 22 PM 3:03

U.S. BANKRUPTCY COURT
DISTRICT OF COLORADO

IN RE:

ATLAS CORPORATION
a Delaware corporation

EIN: 15-5503312

Case No. 98-23331 DEC
Chapter 11

**EMERGENCY MOTION FOR INTERIM ORDER AUTHORIZING
POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §364(c)(1) and (2)**

Atlas Corporation, by and through its counsel Sender & Wasserman, P.C. and for its Emergency Motion for Interim Order Authorizing Post-Petition Financing Pursuant to 11 U.S.C. §364(c)(1) and (2), hereby states as follows:

1. The Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code on September 22, 1998 and since that date has been operating as a Debtor in Possession.
2. Prior to the Petition Date, the Debtor was principally engaged in the exploration, development and exploitation of mineral resource properties. The Debtor has five subsidiaries including: (i) 100% ownership in Atlas Precious Metals, Inc. incorporated under the laws of the State of Nevada which holds the property referred to as Grassy Mountain and portions of the Gold Bar claim block; (ii) 100% ownership of Atlas Gold Mining Inc., incorporated under the laws of the State of Nevada which holds the mineral resources and other assets and infrastructure at the Gold Bar mine; (iii) 100% ownership in Arisur, Inc., a Grand Cayman corporation which owns and operates mines in Bolivia, South America through a Bolivian branch; (iv) 100% ownership in Surameco Metals, Inc.; and (v) ownership of approximately 61% of the stock of Cornerstone Industrial Mineral Corporation ("Cornerstone") (formerly known as Phoenix Financial Holdings, Inc.).
3. The Debtor continues to operate its businesses as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No Creditors' Committees have yet been appointed.
4. The Debtor is in the process or has negotiated a Deposit Agreement with Seven Peaks Mining, Inc. ("Deposit Agreement") pursuant to which Seven Peaks will make or will cause a direct or wholly owned subsidiary to make and Offer for all of the issued and outstanding common shares of Cornerstone Industrial Mineral Corporation. Cornerstone produces and processes perlite for sale to end-users.

5. The Debtor is in need of post-petition financing to assist it in meeting its necessary operating expenses and working capital needs during the Chapter 11 proceeding. Seven Peaks Mining, Inc. has agreed to provide a credit facility in an amount not to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000) subject to the provisions of the Agreement for Debtor in Possession Financing, ("the Loan Agreement"). Contemporaneous with the filing of this Motion, the Debtor has filed a Motion for Order Authorizing Post-Petition Financing Pursuant to 11 U.S.C. §364(c)(1) and (2) ("Post-petition Loan Motion"), which loan will be secured by a security interest upon the Debtor's ownership interest (18,352,991 common shares) in Cornerstone Industrial Minerals Corporation (hereinafter "Collateral"). The Loan Agreement is attached to Post-Petition Loan Motion.

6. Under the terms of the Agreement for Debtor in Possession Financing, Seven Peaks has agreed to advance \$250,000 to the Debtor upon entry of an Order authorizing interim financing to assist it in meeting its operating obligations. The Debtor is not currently able to meet its operating obligations, including its payroll, without the infusion of additional financing. It is critical to the Debtor's ability to reorganize that it be able to meet its post-petition obligations, including payroll to preserve the value of the Debtor's assets. The agreement that the parties are negotiating for the sale of Cornerstone is as a going concern. Thus its continued operations are necessary to preserving value for the estate. Further, the ability to continue to operate is critical to the Debtor's ability to avoid the incurrence of environmental liabilities.

7. The Debtor requests that this Court enter an Order under Federal Rule of Bankruptcy Procedure 4001(c) authorizing the Debtor to draw immediately on the line of credit to meet these expenses its operating expenses in an amount not to exceed \$250,000 to avoid immediate and irreparable harm to the estate pending a final hearing. A budget setting forth the necessary expenses is attached hereto as Exhibit A.

8. **THE DEBTOR REQUESTS THAT THIS COURT HOLD AN EMERGENCY HEARING ON THE INTERIM USE OF LOAN PROCEEDS AS SOON AS POSSIBLE IN ORDER THAT THE DEBTOR MAY BE ABLE TO MEET ITS OPERATING EXPENSES DUE AND PAYABLE DURING THE 15 DAY NOTICE PERIOD.**

WHEREFORE the Debtor respectfully requests that this Court enter its order authorizing the Debtor to immediately obtain credit on the terms and conditions set forth herein and in the Motion for Authority to Incur Post-petition Loan to meet the obligations in an amount up to \$250,000 as set forth in the Budget attached hereto as Exhibit A and for such other and further relief as the Court deems just.

Dated this 22nd day of September, 1998.

Respectfully submitted

SENDER & WASSERMAN, P.C.

By *Daniel A. Bell*

Harvey Sender, #7546

Bonnie A. Bell, #14923

Daniel J. Garfield, #

1999 Broadway, Suite 2305

Denver, Colorado 80202

(303) 296-1999

Fax No. (303) 296-7600

E-mail: kswpc@idcomm.com

ATTORNEYS FOR DEBTOR

Atlas Corporation
Cash requirements**9/23/98 to 10/15/98**

Opening cash balance

9,746

Cash expenditures:

Payroll and taxes	38,820
Employee medical benefits	7,500
Temporary personnel	4,000
Office rent	8,198
Office equipment/other rentals	1,374
Telephone	2,700
Utilities	3,800
Insurance payments	58,164
Office supplies	1,200
Parking	400
Payroll processing service	300
Lead payments	1,096
Travel expenses - trip to D.C.	8,500
Vendor advances	10,000
Subsidiary advances	25,000
Stock transfer fees	4,500
SEC filing fees	200
Newswire services	550
Due diligence expenses	15,000
Miscellaneous expenses	3,000
Total expenditures	<u>194,302</u> (194,302)

Interest income

20,000

Anticipated cash deficit

(164,555)

TOTAL P.02

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:

ATLAS CORPORATION
a Delaware corporation

EIN: 15-5503312

92 SEP 21 PM 3:34

Case No. 98-2333 DEB
Chapter 11

**MOTION FOR ORDER AUTHORIZING POST-PETITION
FINANCING PURSUANT TO 11 U.S.C. §364(c)(1) and (2)**

Atlas Corporation, by and through its counsel Sender & Wasserman, P.C. and for its Motion for Order Authorizing Post-Petition Financing Pursuant to 11 U.S.C. §364(c)(1) and (2), hereby states as follows:

1. The Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code on September 22, 1998.
2. Prior to the Petition Date, the Debtor was principally engaged in the exploration, development and exploitation of mineral resource properties. The Debtor has five subsidiaries including: (i) 100% ownership in Atlas Precious Metals, Inc. incorporated under the laws of the State of Nevada which holds the property referred to as Grassy Mountain and portions of the Gold Bar claim block; (ii) 100% ownership of Atlas Gold Mining Inc., incorporated under the laws of the State of Nevada which holds the mineral resources and other assets and infrastructure at the Gold Bar mine; (iii) 100% ownership in Arisur, Inc., a Grand Cayman corporation which owns and operates mines in Bolivia, South America through a Bolivian branch; (iv) 100% ownership in Suramco Metals, Inc.; and (v) ownership of approximately 61% of the stock of Cornerstone Industrial Mineral Corporation ("Cornerstone") (formerly known as Phoenix Financial Holdings, Inc.).
3. The Debtor continues to operate its businesses as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No Creditors' Committees have yet been appointed.
4. The Debtor is in the process of or has negotiated a Deposit Agreement with Seven Peaks Mining, Inc. ("Deposit Agreement") pursuant to which Seven Peaks will make or will cause a direct or wholly owned subsidiary to make an Offer for all of the issued and outstanding common shares of Cornerstone Industrial Mineral Corporation. Cornerstone produces and processes perlite for sale to end-users.
5. The Debtor is in need of post-petition financing to assist it in meeting its necessary operating expenses and working capital needs during the Chapter 11 proceeding. Seven Peaks

Mining, Inc. has agreed to provide a credit facility in an amount not to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000) subject to the provisions of the Agreement for Debtor in Possession Financing, ("the Loan Agreement") a copy of which is attached hereto as Exhibit A.

6. The pertinent terms of the Loan Agreement are as follows:

- a. The total principal balance of the loan shall be \$750,000. Lender agrees to advance \$250,000 to Debtor upon approval by the Bankruptcy Court of the Debtor's Motion for Interim Order Approving Debtor in Possession Financing. Lender agrees to fund the remaining \$500,000 upon entry of an order by the Bankruptcy Court approving the Debtor in Possession Financing.
- b. The Loan shall bear interest on the outstanding principal amount at the rate of ten percent (10%) per annum. Interest on each of the Loans shall be payable monthly, in arrears, on the earlier of (i) the first Business day of the month and (ii) the date when such Loan become shall become due (whether at maturity, by reason of prepayment or acceleration or otherwise).
- c. The outstanding principal balance of the Loan shall be due and payable upon the earlier of (i) one year following the date of this Agreement and (ii) the closing of the sale of the Debtor's interest in Cornerstone. In the event that the sale is closed, pursuant to paragraph 3(c) of the Deposit Agreement, the amount outstanding under this Agreement shall be credited against the purchase price under the Deposit Agreement. This Agreement shall also be subject to the provisions of paragraph 12(c) of the Deposit Agreement which provides that in the event that Seven Peaks terminates the Deposit Agreement without cause under certain conditions of the Deposit Agreement, Atlas shall be entitled to retain the first \$250,000 provided by Seven Peaks under this Agreement, plus interest.
- d. As security for the Loan, Debtor grants to Lender, and Lender is provided a first and prior security interest and lien, effective from the Petition Date, upon the Debtor's ownership interest (18,352,991 common shares) in Cornerstone Industrial Minerals Corporation (hereinafter "Collateral"). The Debtor is currently in possession of the Collateral. Within five days following an advance of funds under this Agreement, the Debtor will deposit the Collateral into a mutually acceptable third party escrow account to be held under the terms of Debtor in Possession Financing Agreement and the Deposit Agreement. The Agreement provides that the lien shall be a first and prior lien in and upon the Collateral as such liens are provided for under sections 364(c)(2) and (3) of the Bankruptcy Code and that the liens granted under the Agreement shall not be subject to, subordinate to, or ~~pari passu~~ with any other lien granted under Section 364(d) of the Bankruptcy Code.
- e. To further secure repayment of the Loan but only to the extent that the Lender is not adequately protected by the Collateral, Lender shall also have a superpriority administrative expense claim over all administration expenses of any kind specified

under sections 503(b) or 507(b) of the Bankruptcy Code as provided for in section 364(c)(1) with the exception of professional fees approved by order of the Bankruptcy Court. Lender has specifically agreed that its superpriority administrative expense claim is subject to a carve out for professional fees approved by Order of the Bankruptcy Court.

- f. In the event of conversion of the Debtor's bankruptcy case to a case under Chapter 7 of the Bankruptcy Code, the superpriority administrative expense claim shall be junior to the approved fees and expenses of administration of the Chapter 7 proceeding. The Debtor shall not, without Seven Peak's express written consent, incur expenses of administration under Section 506(c) of the Bankruptcy Code for maintaining and preserving the collateral which might have priority over the liens granted to Seven Peaks under this Agreement.

7. The Debtor is unable to obtain unsecured credit to meet its operating and payroll expenses. The Debtor believes that the financing proposed herein will be sufficient to allow it to make sufficient payments to meet such expenses, to meet its working capital requirements, and to permit a successful reorganization. The post-petition financing is critical to the Debtor's ability to service its business operations and to preserve the value of its assets.

8. The Debtor does not have any secured creditors other than parties issuing bonds secured by certificates of deposit arising from the Debtor's environmental clean-up obligations.

9. The Debtor submits that this post-petition financing is in the best interests of the estate. The Debtor has been unable to obtain financing solely on an unsecured, administrative, or superpriority basis, pursuant to 11 U.S.C. § 364(b) or (c).

10. The lender is acting in good faith in extending credit on the terms described in this Motion and the Debtor in Possession Financing Agreement. The lender and the Debtor have negotiated the terms of the credit facility and the Term Sheet at arm's length and in accordance with reasonable business terms. Accordingly, the lender is entitled to the protections afforded under 11 U.S.C. § 364(e).

11. Pursuant to Fed. R. Bankr. P. 4001(c)(2), the Court may commence a final hearing on this Motion 15 days after service. This Motion is being served by hand delivery or facsimile to the United States Trustee and the twenty largest unsecured creditors of the Debtor.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order authorizing the Debtor to incur post-petition financing on the terms and conditions set forth in the Agreement for Post-Petition Financing attached hereto as Exhibit A pursuant to the provisions of 11 U.S.C. §§364(c)(1) and (2) and for such other and further relief as the Court deems just.

SEP 23 1998 04:03:39M

FAX NO.

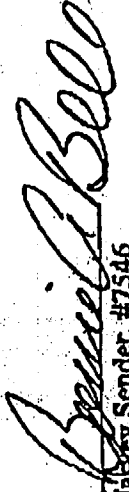
NO. 535

P. 16/270/21

Dated this 22nd day of September, 1998.

Respectfully submitted

SENDER & WASSERMAN, P.C.

By: 
Harvey Sender, #7546
Bonnie A. Bell, #14923
1999 Broadway
Suite 2305
Denver, Colorado 80202
(303) 296-1999
Fax No. (303) 296-7600
E-mail: kswpc@idcomm.com

ATTORNEYS FOR DEBTOR

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:

ATLAS CORPORATION
a Delaware corporation

EIN: 15-5503312

Debtor.

Chapter 11

Case No. 98-23331 DEC

AGREEMENT FOR DEBTOR IN POSSESSION FINANCING

This Agreement for Debtor in Possession Financing (this "Agreement") is entered into by and between Atlas Corporation, debtor-in-possession (in such capacity, the "Debtor" or "Borrower") and Seven Peaks Mining, Inc., (the "Lender" or "Seven Peaks") (the "Agreement") acting through their undersigned attorneys.

Background

A. On September 22, 1998, (the "Petition Date"), the Debtor filed with this Court a petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101 et seq. (the "Bankruptcy Code").

B. Prior to the Petition Date, the Debtor was principally engaged in the exploration, development and exploitation of mineral resource properties. The Debtor has five subsidiaries including: (i) 100% ownership in Atlas Precious Metals, Inc. incorporated under the laws of the State of Nevada which holds the property referred to as Grassy Mountain and portions of the Gold Bar claim block; (ii) 100% ownership of Atlas Gold Mining Inc., incorporated under the laws of the State of Nevada which holds the mineral resources and other assets and infrastructure at the Gold Bar mine; (iii) 100% ownership in Arisur, Inc., a Grand Cayman corporation which owns and operates mines in Bolivia, South America through a Bolivian branch; (iv) 100% ownership in Suramco Metals, Inc.; and (v) ownership of approximately 61% of the stock of Cornerstone Industrial Mineral Corporation ("Cornerstone") (formerly known as Phoenix Financial Holdings, Inc.).

C. The Debtor continues to operate its businesses as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No Creditors' Committees have yet been appointed.

EXHIBIT A

D. The Debtor is in the process or has negotiated a Deposit Agreement with Seven Peaks Mining, Inc. pursuant to which Seven Peaks will make or will cause a direct or wholly owned subsidiary to make an Offer for all of the issued and outstanding common shares of Cornerstone Industrial Mineral Corporation. Cornerstone produces and processes perlite for sale to end-users.

E. The Debtor is in need of post-petition financing to assist it in meeting its necessary operating expenses and working capital needs during the Chapter 11 proceeding. Seven Peaks Mining, Inc. has agreed to provide a credit facility in an amount not to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000) subject to the provisions hereof.

Now, subject to the following terms and conditions, the Debtor and Lender hereby agree as follows:

Section 1. *Loans.* Upon the terms and subject to the conditions set forth in this Agreement, Lender agrees to make to the Borrower revolving loans (each individually, a "Loan" and collectively, the "Loans"), in an amount to not exceed \$750,000. Lender agrees to advance \$250,000 to Debtor upon approval by the Bankruptcy Court of the Debtor's Motion for Interim Order Approving Debtor in Possession Financing. Lender agrees to fund the remaining \$500,000 upon entry of an order by the Bankruptcy Court approving the Debtor in Possession Financing.

Section 2. *Interest.* The Loan shall bear, and the Borrower agrees to pay, interest on the outstanding principal amount at the rate of ten percent (10%) per annum. Interest on each of the Loans shall be payable monthly, in arrears, on the earlier of (i) the first Business day of the month and (ii) the date when such Loan become shall become due (whether at maturity, by reason of prepayment or acceleration or otherwise). Interest on each Loan shall accrue from day to day from and including the date of the making of such Loan to and excluding the due date or the date of any repayment thereof. Interest on each Loan shall be computed on the basis of a 365/366-day year and paid for the actual number of days elapsed.

Section 3. *Maturity.* The outstanding principal balance of the Loan shall be due and payable upon the earlier of (i) one year following the date of this Agreement and (ii) the closing of the sale of the Debtor's interest in Cornerstone. In the event that the sale is closed, pursuant to paragraph 3(c) of the Deposit Agreement, the amount outstanding under this Agreement shall be credited against the purchase price under the Deposit Agreement. This Agreement shall also be subject to the provisions of paragraph 12(c) of the Deposit Agreement which provides that in the event that Seven Peaks terminates the Deposit Agreement without cause under certain conditions of the Deposit Agreement, Atlas shall be entitled to retain the first \$250,000 provided by Seven Peaks under this Agreement, plus interest.

Section 4. *Prepayments.* So long as an Event of Default has not occurred and is continuing, the Loans may be prepaid in whole or in part at any time without penalty or premium. All prepayments shall be applied first to unpaid interest and then to principal.

Section 5. *Grant of Security Interest.* As security for the Loan, Debtor hereby grants to Lender, and Lender is hereby provided a first and prior security interest and lien, effective from the Petition Date, upon the Debtor's ownership interest (18,352,991 common shares) in Cornerstone Industrial Minerals Corporation (hereinafter "Collateral"). The Debtor is currently in possession of the Collateral.

Section 6. *Perfection of Postpetition Liens.* The liens and security interests in the Collateral securing the Loan shall be deemed automatically perfected upon the entry of the Interim Order, and Lender shall not be required to file or record any documents to take further steps in order to perfect such liens and security interests. Within five days following an advance of funds under this Agreement, the Debtor will deposit the Collateral into a mutually acceptable third party escrow account to be held under the terms of this Agreement and the Deposit Agreement. Nevertheless, if Lender shall, in its sole discretion, elect for any reason to file or record any financing statements, deeds of trust, notices or other documents with respect to the Collateral, Debtor shall execute the same upon Lender's request. Lender is authorized to effect such filings and recordings and such filings and recordings shall be deemed to have been made on the Petition Date. Debtor shall perform all acts, and execute and comply with the terms of such other documents, instruments and agreements which Lender may require or may be otherwise deemed necessary by Lender in its sole discretion to effectuate the terms and conditions of this Agreement.

Section 7. *Superpriority Administrative Expense Claim.* To further secure repayment of the Loan but only to the extent that the Lender is not adequately protected by the Collateral, Lender shall also have a superpriority administrative expense claim over all administration expenses of any kind specified under sections 503(b) or 507(b) of the Bankruptcy Code as provided for in section 364(c)(1) with the exception of professional fees approved by order of the Bankruptcy Court. Lender hereby agrees that its superpriority administrative expense claim is subject to a carve out for professional fees approved by Order of the Bankruptcy Court. The aforementioned liens shall be a first and prior lien in and upon the Post-Petition Collateral as such liens are provided for under sections 364(c)(2) and (3) of the Bankruptcy Code. The liens granted hereunder shall not be subject to, subordinate to, or pari passu with any other lien granted under Section 364(d) of the Bankruptcy Code. In the event of conversion of the Debtor's bankruptcy case to a case under Chapter 7 of the Bankruptcy Code, the superpriority administrative expense claim shall be junior to the approved fees and expenses of administration of the Chapter 7 proceeding. The Debtor shall not, without Seven Peak's express written consent, incur expenses of administration under Section 506(c) of the Bankruptcy Code for maintaining and preserving the collateral which might have priority over the liens granted to Seven Peaks under this Agreement.

Section 8. *Events of Default.* The occurrence of any one or more of the following events, acts or occurrences shall constitute an event of default (an "Event of Default") hereunder:

(a) *Failure to Make Payments.* The Borrower shall fail to pay, within ten (10) days of when due, any principal (whether at stated maturity, upon acceleration, or otherwise) or interest on any Loan,; or

(b) *Breach of Certain Covenants.* The Borrower shall fail duly and punctually to perform, comply with or observe any agreement, covenant, or obligation to be performed, observed or complied with by it under this Agreement.

(c) *Events in Bankruptcy Case.* The Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, or a Chapter 11 trustee shall be appointed in the Bankruptcy Case.

(d) *Modification of the Debtor in Possession Loan.* The Bankruptcy Court enters an order modifying the terms of this Agreement without the consent of Seven Peaks.

(e) *Failure to Obtain Approval to Utilize Cash Collateral.* The Borrower to the best of its knowledge has no secured lender with rights to cash collateral. To the extent it is determined that a lender exists with rights to cash collateral, a failure to obtain approval under Section 363 of the Bankruptcy Code to use cash collateral of any secured lender holding a security interest in cash collateral.

Section 9. *Remedies.* Upon the occurrence of an Event of Default, Lender may, in its sole discretion: (i) upon the entry by the Bankruptcy Court of an order authorizing such action (the application for which order shall be heard by the Bankruptcy Court on not more than five (5) Business Days' facsimile notice at which the only issue shall be whether an Event of Default has occurred and is continuing), declare the principal of and accrued interest in the Loan forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; (ii) exercise any rights or remedies under the this Agreement; and (iii) exercise any and all other remedies available under applicable law.

If upon or after the occurrence of any Event of Default, the Lender elects to exercise remedies under this Agreement, the Lender shall have, and may exercise, any and all of the rights, powers and remedies of a secured party under the Uniform Commercial Code or any other applicable statute, as the same may be amended from time to time, all of which rights, powers and remedies shall be cumulative and not exclusive, to the extent permitted by applicable law.

(i) In addition to all its other rights, powers and remedies under this Agreement and Applicable Law, the Lender shall have the right, all at the Lender's sole option any or all of the following:

- a) to foreclose the security interest in the Collateral by any available judicial procedure or without judicial process;

b) to collect by legal proceedings or otherwise all dividends, distributions, interest, principal or other sums now or hereafter payable upon or on account of the Collateral;

c) to enter into any extension or reorganization agreement or any other agreement relating to or affecting the Collateral and, in connection therewith, deposit or surrender control of any Collateral or accept other property in exchange therefor;

d) to settle, compromise or release, on terms acceptable to the Lender, in whole or in part, any amounts owing on the Collateral

(ii) Borrower shall, at the Lender's request, assemble the Collateral and make it available to the Lender at a place to be designated by the Lender. Borrower shall make available to the Lender all computer and other equipment of Borrower containing books and records pertaining to the Collateral (and the assistance of the employees of Borrower having responsibility for such equipment) and to use such computer and other equipment at no charge for the purpose of obtaining information pertaining to the Collateral, including by making copies of computer and other files and records.

(iii) The Lender may, if it so elects, seek the appointment of a receiver in a court of competent jurisdiction other than the Bankruptcy Court to take possession of Collateral and to enforce any of the Lender's remedies. The rights, remedies and powers of any receiver appointed by a court shall be as ordered by the court.

(iv) The Lender shall have the right to sell, lease, or otherwise dispose of all or any Collateral in its then existing condition, at public or private sale or sales, with or without representations or warranties, all as the Lender, in its discretion, may deem advisable. The Lender shall not be obligated to make any sale of the Collateral regardless of notice of sale having been given. If sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Lender until the sale price is paid by the purchaser or purchasers thereof, but the Lender shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. The Lender may purchase all or any part of the Collateral at public or, if permitted by Applicable Law, private sale, and in lieu of actual payment may apply against such purchase price any amount of the Obligations. Borrower agrees that any sale of Collateral conducted by the Lender in accordance with this Section 10 shall be deemed to be a commercially reasonable sale under Section 9-504 of the UCC.

(v) In the event of default by the Borrower of its obligations owing hereunder, the outstanding obligations owing from Cornerstone to the Borrower shall not exceed one-million, four-hundred thousand dollars (\$1,400,000) and Borrower hereby agrees, in the event of default to waive any claim against Cornerstone which exceeds this amount.

Section 10. *Application of Proceeds.* Any cash proceeds received by the Lender in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral following the occurrence of an Event of Default may be held by the Lender as Collateral and/or then or at any time thereafter applied as follows:

- (i) first, to reimburse Lender for the costs and expenses incurred by it in disposing of the Collateral; and
- (ii) second, on account of the Loan.

Section 11. *Notice of Disposition.* Lender will send or otherwise make available to Borrower reasonable notice of the time and place of any public sale or of the time on or after which any private sale of any Collateral is to be made. Borrower agrees that any notice required to be given by the Lender of a sale or other disposition of Collateral, or any other intended action by the Lender, that is received in accordance with the provisions set forth in Section 13 five days prior to such proposed action, shall constitute commercially reasonable and fair notice thereof to the Borrower. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor and such sale may, without further notice, be made at the time and place to which it was so adjourned. Borrower hereby waives any right to receive notice of any public or private sale of any Collateral or other security for the Obligations except as expressly provided for in this Section.

MISCELLANEOUS PROVISIONS

Section 12. *Waivers; Modifications in Writing.*

(a) ***Failure or Delay.*** No failure, delay or discontinuance on the part of the Lender in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. The remedies provided for under this Agreement, in the Note and Security Agreement are cumulative and are not exclusive of any remedies that may be available to the Lender at law, in equity, or otherwise. No amendment, modification, supplement, termination, consent, or waiver of this Agreement, or the Note or Security Agreement, nor consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender.

(b) ***Limited Waiver.*** Any waiver of any provision of this Agreement or the Note or Security Agreement shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.03 shall be binding upon each holder of any Note, each future holder of any Note, and the Borrower. The Borrower agrees and acknowledges that it shall not be entitled to rely upon or assert any purported, implied, or oral modification hereof.

Section 13. Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be personally delivered or sent by courier, by overnight mail, by registered mail or certified mail, return receipt requested, postage prepaid, or by prepaid telex, telecopy or telegram (with messenger delivery specified) and shall be deemed to be given for purposes of this Agreement on the day that such writing is received by the intended recipient thereof. Unless otherwise specified in a notice sent or delivered in accordance with the foregoing provisions of this Section 13 notices, demands, instructions and other communications in writing shall be given to or made upon the respective parties hereto at the following addresses:

If to Lender:

Seven Peaks Mining Company, Inc.
1500 Big Run Road
Ashland, Kentucky 41102
Attention: Michael Stanley, President
Facsimile (606) 928-0450

with copy to

Robert A. Bassett, Esq.
Dorsey & Whitney, LLP
370 Seventeenth Street, Suite 4400
Denver, Colorado 80202-5644
(303) 628-1515
Facsimile (303) 629-3450

If to Borrower:

Atlas Corporation
370 Seventeenth Street
Suite 3140
Denver, Colorado 80202
Facsimile (303) 629-2445

with copy to:

Sender & Wasserman, P.C.
1999 Broadway, Suite 2305
Denver, Colorado 80202
Facsimile: (303) 296-7600

Section 14. Successors and Assigns; Assignment by Lender.

(a) **Binding Upon Successors and Assigns.** This Agreement and any amendments hereto shall be binding upon and inure to the benefit of and be enforceable by the Borrower and the Lender and their respective successors and assigns. The Borrower may not assign or transfer any interest hereunder.

(b) *Assignments by Lender.* The Lender may assign its Loans and its rights under this Agreement.

Section 15. *Governing Law.* This Agreement shall be deemed to have been made in the State of Colorado, and the validity of this Agreement and the construction, interpretation, and enforcement thereof, and the rights of the parties thereto, shall be determined under, governed by, and construed in accordance with the laws of the State of Colorado, without regard to principles of conflicts of law.

Section 16. *Jurisdiction and Venue.* To the maximum extent permitted by law, the parties agree that all actions or proceedings arising in connection with this Agreement, shall be tried and litigated only in the state and federal courts located in the City and County of Denver, State of Colorado. Borrower and Lender, to the extent they may legally do so, hereby waive any right each may have to assert the doctrine of *forum non conveniens* or to object to venue to the extent any proceeding is brought in accordance with this section and stipulate that the state and federal courts located in the City and County of Denver, State of Colorado shall have *personam* jurisdiction and venue over such party for the purpose of litigating any such dispute, controversy, or proceeding arising out of or related to this Agreement, to the extent permitted by law, service of process sufficient for personal jurisdiction in any action against Borrower or Lender may be made by registered or certified mail, return receipt requested, to Borrower's and Lender's addresses indicated in section 13. The Borrower and Lender agree that any final judgment rendered against it in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

Section 17. *Severability of Provisions.* Any provision of this Agreement which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating or impairing the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 18. *Effectiveness.* Each and every provision of this Agreement, and all obligations of the Borrower hereunder, shall remain in full force and effect and enforceable in accordance with their terms (except as enforceability is limited in accordance with the provisions hereof) until all of the loan obligations shall have been paid in full or otherwise satisfied.

Section 19. *Headings.* Article and section headings used in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or affect the construction of this Agreement.

Section 20. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement. This Agreement

shall become effective upon the execution of a counterpart hereof by each of the parties hereto. At Lender's discretion, Lender may accept facsimile signatures from the Borrower.

Section 21. *Complete Agreement.* This Agreement constitutes the entire agreement between the parties, and supersedes all prior discussions, negotiations, offers, understandings, and agreements with respect to the matters herein. There are no other understandings or agreements, and the Lender has not made any representations or promises, unless specifically set forth in this Agreement or in the DIP Financing Documents executed in connection herewith.

Section 22. *Interpretation.* This Agreement and each of the DIP Financing Documents executed in connection herewith shall be construed to liberally effectuate the rights and remedies of the parties hereto as expressed herein, and neither such principle of interpretation nor the express language of this Agreement or any of the DIP Financing Documents executed in connection herewith shall be impaired or adversely affected by any prior discussion, form or draft of this Agreement or any of the instruments and documents executed in connection herewith.

SEP 23 1998 10:36AM

FAX NO.

NO. 535 P. 26/27/21

SEP 22 98 TUE 10:46 AM

IN WITNESS WHEREOF, as of this _____ day of _____, 1998, the parties
hereto have caused this Agreement to be executed and delivered to of the date first set forth
above.

ATLAS CORPORATION

Craig B. Shafter, President

SEVEN PEAKS MINING, INC.

Michael Stanley, President
Michael Stanley, President

IN WITNESS WHEREOF, as of this 22nd day of September, 1998, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

ATLAS CORPORATION



Gregg B. Shafter, President

SEVEN PEAKS MINING, INC.

Michael Stanley, President

DRAFT**QUESTIONS - ATLAS URANIUM MILL, MOAB, UTAH**

9/22/98

1. Does the NRC have any comment about the Atlas Corporation bankruptcy filing?

The bankruptcy filing does not relieve the Atlas Corporation's obligation to remediate the uranium mill tailings.

NRC's continuing interest is that: (a) In the immediate future, the uranium mill tailings continue to be controlled, so as to protect public health and safety and (b) over the long term, that the tailings be reclaimed consistent with NRC requirements and in an environmentally acceptable way.

2. Will bankruptcy keep the site from being cleaned up?

No. Bankruptcy will not remove the requirement that the site be cleaned up in a way acceptable to the NRC.

3. What will NRC do now that Atlas has filed for bankruptcy protection?

First, we will request information from Atlas to demonstrate that the material can and will continue to be protected (e.g., with fences and a Radiation Safety Officer to check the site).

After that, we will look at what other actions may be appropriate.

4. Who will clean up the Atlas Corporation's tailings pile in Moab now?

Cleanup remains the responsibility of Atlas, the NRC licensee for the site and the mill tailings. Atlas has told us that they are looking at a plan to demonstrate that they can still clean up the tailings.

5. Atlas has a \$6 1/2 million surety for remediation of the tailings pile. Who holds that surety? How can it be accessed? What steps are taken by whom to get that money and who does it go to? Who controls its dispersal?

NRC holds the surety document and is the beneficiary. The surety is provided by Acstar Insurance Co. If NRC chooses to call the surety, it will be placed in a trust at Norwest Bank Colorado. NRC will control dispersal of funds. We are still evaluating whether we need to call in the surety.

6. About \$15 million is needed to stabilize the tailings on site. Where will the \$9 million difference between the \$6 ½ million surety and the \$15 million needed come from?

NRC has been trying to get the surety increased. The \$6 ½ was estimated to be sufficient to fund the plan initially approved by NRC for cleanup. However, it is not enough for the revised plan (for on-site stabilization).

Atlas is responsible for cleaning up the site. We believe they have some funds available for that purpose. If they are unable to complete cleanup, we will first call the \$6 ½ surety. Beyond that, we don't know.

7. If NRC decides that leaving the tailings on-site after stabilization is unacceptable, who will pay for another means of disposal (such as moving the tailings to a site 10 miles away, which one estimate says could cost \$150 million)?

See answer to #6, above.

8. Will the bankruptcy filing affect the NRC's decision-making process on whether on-site stabilization, as proposed by Atlas, is acceptable?

No. NRC will judge the Atlas plan for on-site stabilization on its merits—for compliance with our safety standards and environmental impacts. We have already determined that the plan meets our safety standards. We have not made a decision yet on the environmental impacts.

9. Will the bankruptcy filing delay NRC's decision on the acceptability of on-site stabilization?

It probably will not delay our decision. We have received what we need from Atlas to make a decision. Additional analysis is being done by an NRC contractor, the Center for Nuclear Waste Regulatory Analysis (San Antonio) and a professor from the University of Montana. That is proceeding independently.

NRC's current schedule for a decision on the acceptability of on-site stabilization is 1st quarter 1999.

10. Will the Atlas Corporation site in Moab become a Superfund site?

It could.

11. Is there any other former owner of the Moab site that could be brought in to pay for the remediation? For example, what about those local people who made millions of dollars off the site and off uranium around Moab—why not have them pay for the remediation? Who were the former owners of what is now the Atlas uranium mill tailings site?

No. We hold Atlas responsible.

Under Superfund, the government could look for prior owners. Uranium Reduction Company was the licensee for the site until 1962. We don't know if they are still in business.

12. Has this ever happened before?

It has not happened exactly this way to a uranium mill. A somewhat similar case was the American Nuclear Corporation mill in Wyoming, which ceased to operate but did not file for bankruptcy. The State of Wyoming held the surety and called it. Wyoming is now directing the reclamation of that site.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of)	
)	
ATLAS CORPORATION)	Docket No. 40-3452-MLA-3
)	
Moab, Utah)	

NUCLEAR REGULATORY COMMISSION STAFF'S RESPONSE
TO THE GRAND CANYON TRUST'S ANSWERS TO QUESTIONS
POSED IN THE PRESIDING OFFICER'S MAY 14, 1999, ORDER

On May 28, 1999, Grand Canyon Trust, *et al*, (Petitioners) submitted answers to questions posed by the Presiding Officer's Order of May 14, 1999. Because their response misstates certain positions taken by the Nuclear Regulatory Commission Staff (Staff), thereby contributing to the confusion which lead to the issuance of the May 14, 1999, Order, the Staff is providing the following response to the Petitioner's answers.

As detailed in the Nuclear Regulatory Commission Staff's Answers to the Questions Posed by the Presiding Officer in the May 14, 1999, Order, filed June 4, 1999, (Answer), the Staff has not undertaken any review of cleanup of existing groundwater contamination in relation to the review of the license amendment which was noticed on April 7, 1994, and approved on May 28, 1999. The only component of the amendment which has any relation to groundwater remediation is the scheduler requirement, in license condition 41B, that the licensee submit a revised Corrective Action Plan (CAP) for groundwater cleanup by May 1, 2000.

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The Staff has not taken any other position in the District Court proceeding, as claimed by Petitioners. In fact, what the Staff said in that proceeding was that it had required Atlas to create a better groundwater cleanup plan as part of the license amendment in accordance with advice provided by the Fish and Wildlife Service in its Biological Opinion. NRC's Reply Memorandum in Support of Defendant Nuclear Regulatory Commission's Motion to Dismiss at 13. Thus, the scope of April 7, 1994, amendment has never been expanded to include consideration of cleanup of existing groundwater contamination. For this reason, Petitioner's argument that their delay in filing was excusable because of the Staff's decision to expand the scope of the license amendment must be discounted.

The issue which is the subject of the amendment, reclamation, is relevant to groundwater contamination in one very specific way. In the context of reclamation, the Staff considers the extent of any future contamination of the groundwater that will occur once reclamation is complete and a steady state has been achieved. Even if the Biological Opinion presented some new information on this subject which Petitioners did not have access to before, they have provided no basis for their claim that six months was necessary to prepare an intervention petition on this narrow issue.

Indeed, Petitioners have stated that they had no intention of intervening on the issue of reclamation of the site attributing their delay in filing to the fact that they were under the impression that this license amendment proceeding related only to reclamation. In their words:

At the time the Trust sent its October 12, 1998, notice letter to the NRC and its supplemental notice letter on November 13, 1998, concerning the NRC's violations of the ESA, the NRC was still maintaining that groundwater cleanup would be addressed at some future, undetermined point in time - *not in this licensing action*.

Therefore, one of the principal purposes of the Trust's federal court litigation was to require the NRC to do exactly what it now claims to be doing: to include groundwater remediation in *this* license amendment. Certainly, at the time the Trust filed its lawsuit, it had no reason to believe that intervention in this licensing action on the basis of its groundwater concerns was necessary or would have been successful.

Grand Canyon Trust's Answers to Questions Presented in the Presiding Officer's May 14, 1999, Order at 11.

As discussed above, and in our Answer, the Staff is not yet considering a plan to clean up the existing groundwater contamination at the Atlas site. The Staff will begin its review once the revised CAP is received from the licensee. Once receipt of the CAP is noticed, Petitioners will have the opportunity to intervene on issues concerning groundwater cleanup. Until that time, intervention on groundwater cleanup issues is premature. Intervention on the amendment concerning reclamation of the Atlas site, which was noticed over six years ago, is simply too late.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa Clark", written in a cursive style.

Lisa B. Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of June 1999

NRC Form 8-C

(4-79)

NRCM 0240

COVER SHEET FOR CORRESPONDENCE

Use this Cover Sheet to Protect Originals of Multi-Page Correspondence.