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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of
Moab, Utah Facility, License SUA-917
(Request for Extension of Site Reclamation Plan Milestone)
Docket No. 40-3453-MLA
ASLBP No. 97-723-02-MLA

Dear Administrative Judges:

Presented below is a second response to Presiding Officer's Memorandum and Order (Initial Order) dated February 12, 1997.

The undersigned hereby incorporates his January 30, 1997 request for a hearing, by reference, into this submittal as affirmed below.

The initial order of February 12 suggests that the undersigned address in detail certain interests, areas of concern, and circumstances which are required for a fair and impartial consideration of undersigned's January 30, 1997 request for a hearing.

The undersigned shall herein present certain relevant criteria and a discussion of footnote 1, found on page 2 of the February 12 Initial Order, and items I.A. 1., 2., and 3., found on pages 2 and 3 of the Initial Order.

The undersigned would respectively request to be permitted to address footnote 1 of the Initial Order which discusses a 10 C.F.R. 2.1231 hearing file and responds to undersigned's January 30 request for a NRC Local Public Document Room (LPDR).

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10 C.F.R. 2.1209 (Power of presiding officer) states, in pertinent part, that a presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order.

10 C.F.R. 2.1209 at (k) and (l), considering the above, indicates that the presiding officer has all powers necessary to recommend to the Commission that procedures other than those authorized by Subpart L be used in a particular proceeding and take any other action consistent with the Atomic Energy Act of 1954, as amended, and Title 10, Chapter 1 of the Code of Federal Regulations (10 C.F.R.).

Footnote 1, found on page 2 of the Initial Order and the instructions contained under "III. Referenced Documents" on page 8 of the Initial Order implemented in part such powers possessed by the presiding officer as are herein laid out above.

As a result, the undersigned has before him License Condition 55 of Source Material License SUA-917 (Condition 55) for the Moab, Utah facility and the December 20, 1996 Applicant/Licensee license amendment request (the Application). The undersigned also has before him the Federal Register Notice (FRN) of January 22, 1997 (62 Fed. Reg. 3313).

Condition 55 appears to mention the "approved reclamation plan", "the ground-water corrective action plan", and "License Condition No. 17". It also appears to reference a Memorandum of Understanding (MOU) with the Environmental Protection Agency (56 Fed. Reg. 55432, October 25, 1991) and "Applicable Amendments 21, 25, 26, 27". Such "Applicable Amendments" appear to have set forth and subsequently amended Condition 55.

Condition 55 states that the Licensee shall complete site reclamation in accordance with the approved reclamation plan.

Condition 55 states that the ground-water corrective plan shall be conducted as authorized by License Condition 17 in accordance with the "following schedules". It is important to note that the "schedules" are set forth in Condition 55 as described below.

Condition 55 appears to consist of four parts, styled A., B., C., and D.; and two "schedules" consisting of subparts, subparts 1., 2. and 3. of part A. and subparts 1. and 2. of part B.

Condition 55, part A., subpart 3 is the subpart which the Application would propose that the NRC amend. As shown above, such subpart is part of the schedule offered by Condition 55.

Condition 55A.(3) reads as follows:

"Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m²/s above background - December 31, 1996."

All the above listed parts and subparts (schedules) and referenced documents appear, as brought forward by Condition 55, to be irretrievably interrelated and demand co-mingled implementation. (However, see NRC Staff Board Notification dated February 21, 1997, signed by Sherwin E. Turk, found on the docket of this proceeding.)

The Application does not discuss Condition 55 beyond the subpart, Condition 55A.(3).

The Application appears to consist of three substantive paragraphs. Paragraph 1 requests an amendment to its source material license "Condition 55A.(3)". Paragraphs 2 and 3, numbered 1. and 2., allow reasons for such a request. Under "reasons" the Application depends upon "The Environmental Impact Statement" and "Technical Evaluation Report", "the proposed reclamation plan for the tailings pile", and certain other NRC permissions, estimations, etc. (However, see NRC Staff Board Notification dated February 21, 1997, signed by Sherwin E. Turk, found on the docket of this proceeding.)

The FRN appears to be a notice of a receipt of a request to amend a condition of a source material license and proposes to offer an opportunity for a hearing. This FRN references the Application, Condition 55, and the MOU.

The above described documents either explicitly reference or implicitly indicate and depend upon numerous NRC official records (including NRC criteria) which may be pertinent to this proceeding.

"A fair and impartial hearing according to law" (see 10 C.F.R. 2.1209 supra) would require that all such NRC official records be found upon the docket of this proceeding where a determination of relevance has been made by the Presiding Officer.

In addition, the undersigned would require all such NRC official records and relevant criteria in order to effectively supplement his hearing request.

The undersigned has been allowed by the February 12 Initial Order to address in detail certain criteria and factors contained in I.A. 1., 2., and 3. set forth on pages 2 and 3 of the Initial Order.

Such criteria and factors are required to be addressed by the undersigned in order for the Presiding Officer to make a determination as to whether or not a hearing should be granted.

The undersigned's January 30 request for a hearing, as incorporated by reference herein, was docketed (see 40-3453-MLA) on January 30, 1997, well within the 30 days allowed by the applicable FRN (see 62 Fed. Reg. 3313, January 22, 1997) (see also A. 3. of the Initial Order), and thus was timely.

The January 30 request for a hearing lays out the undersigned's areas of concern about the December 20, 1996 amendment request. (Particularly, see paragraph 2 of the request for a hearing.) (See also A. 2. of the Initial Order.)

The undersigned would contend that the December 20, 1996 Applicant/Licensee license amendment request at issue, on its face, does not meet the requirement contained in SUA-917 Condition 55 at part C. Such requirement would state that any license amendment request to revise certain completion dates must demonstrate that compliance was not technologically feasible.

The second and third paragraphs of the Application address administrative infeasibility (i.e. reclamation plan not complete and final, Technical Evaluation Report not complete and final, Environmental Impact Statement not complete and final, and subsequent permission to commence work not forthcoming). (See paragraph 2 of the Application.)

(The original "deadline" was based on the assumption the proposed reclamation plan would be approved by the NRC and NRC projected completion of Environmental Impact Statement is mid-whatever.) (See paragraph 3 of the Application.)

The third paragraph of the Application also addresses a couple of assumptions (ie. assuming contractor mobilization begins, and final radon barrier will not be completed) which on their face are ^{NOT} relevant to technological feasibility or other factors beyond the control of the Licensee.

The undersigned would contend that the Application must, but does not, demonstrate that compliance with SUA-917, as amended by Condition 55, was not technologically feasible.

The undersigned would contend that omission is fatal with respect the granting of the amendment.

The undersigned would here contend that such NRC programatic regulatory breakdown as characterized in paragraphs 2 and 3 of the Application (and paragraph 2 of the undersigned's hearing request) was not necessarily beyond the Applicant/Licensee's control.

The December Application was amended on February 21, 1997 by a NRC Staff Board Notification (see reference above).

That Board Notification, pursuant "10 C.F.R. 2.1213", offers that the NRC Staff has reviewed the licensee's application and that the Staff is in agreement with the licensee's statement that an extension of the milestone date is required in order to allow completion of certain reviews.

That Board Notification further would offer that the NRC Staff is in agreement with the licensee's statements concerning schedular matters.

In addition, the NRC Staff February 21 Board Notification offers that the site reclamation plan and NRC Staff's evaluation thereof (TER) are not at issue in the present proceeding.

That same NRC Staff Board Notification, by way of supplementing the Applicant/Licensee's December Application, would offer that the NRC Staff's TER, with respect to the licensee's site reclamation plan, is expected to be completed in about 2 months, and the TER's related Environmental Impact Statement should be completed in about 6 months.

The Board Notification also indicates that it would endorse the three year licensee implementation period. Such offered assumptions (see above) are consistent with NRC Staff's "expectations".

The undersigned would contend that the Application, as supplemented by the above 10 C.F.R. 2.1213 appearance by the NRC Staff, addresses administrative feasibility, not technological feasibility, in spite of certain NRC Staff expectations as are laid out in the Board Notification.

Was the NRC Staff February 21 Board Notification in part (paragraph 2) an offering of proof at the behest of the Applicant/Licensee?

Whether or not the Application is considered to have been amended or supplemented by the February 21 Board Notification, the undersigned has additional concerns about the Application at issue in this proceeding.

The undersigned would contend that the ground-water corrective action plan could not be conducted as authorized by License Condition No. 17 in accordance with the schedule as is proposed to be amended by the Application, whether or not such Application is supplemented by the Board Notification of February 21, 1997.

The undersigned would contend that the Application provides no information as to how the proposed new deadline for completion of the final radon barrier will be in accordance with the ground-water corrective action plan. (See SUA-917 Condition 55, first paragraph above 55A.)

The undersigned would contend that the Application provides no information which would indicate that the proposed new deadline for completion of the final radon barrier is any more realistic than the date which would be amended by the December Application, given the NRC-DWM-ONMSS programmatic regulatory breakdown alluded to by the Application. (See the December 20 Application, paragraphs 2 and 3.)

The undersigned's interest in the proceeding is set forth in undersigned's January 30 request for a hearing which has been incorporated by reference into this response to the Initial Order and is affirmed below. (See A. 1. of Initial Order.)

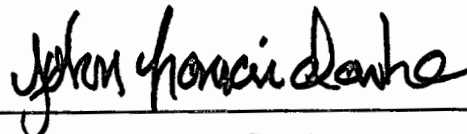
That interest (the health and safety of the requestor and his family, who reside in the vicinity of the Moab facility) would be challenged by the granting of the amendment proposed by the Application as offered by the Applicant/Licensee submittal of December 20, 1996.

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The undersigned and his family would suffer direct harm, radiological and other wise by such granting.

If the above matters of fact and law, interests, areas of concern, and circumstances do not meet the applicable criteria and factors set forth in the Initial Order by items I. A. 1., 2., and 3., the undersigned would be pleased to supplement this second response upon the re-establishment of the NRC Local Public Document Room at Moab, Grand County, Utah.

Affirmant



John Francis Darke
Member of Public

At Moab, Grand County, Utah
Monday, March 3, 1997

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In the Matter of

Moab, Utah Facility
License SUA-917

Docket No. 40-3453-97 ML MAR 11 A10:23

(Request for License Amendment)

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CERTIFICATE OF SERVICE

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Attention: Chief,
Docketing and Service Branch

I hereby certify that copies of the foregoing Second Response have been served on the above persons by U.S. mail, first class, in accordance with the requirements of 10 C.F.R. 2.1203(c) and 2.701(b) and 2.1203(e).

Dated at Moab, Utah this
3rd day of March 1997


John Francis Darke