

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD PANEL

'97 FEB 12 A9:51

Before Presiding Officer:
G. Paul Bollwerk, III, Administrative Judge

Special Assistant:
Dr. Charles N. Kelber, Administrative Judge

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In the Matter of
ATLAS CORPORATION
(Moab, Utah Facility)

Docket No. 40-3453-MLA
ASLBP No. 97-723-02-MLA
February 12, 1997

MEMORANDUM AND ORDER
(Initial Order)

In this proceeding, licensee Atlas Corporation (Atlas) has applied for an amendment to its 10 C.F.R. Part 40 source materials license, License No. SUA-917, for its Moab, Utah facility. The requested amendment would modify License Condition 55 A.(3) to extend by four years the completion date for placement of the final radon barrier on the tailings pile at that facility. On January 14, 1997, the NRC staff issued a notice of receipt of this amendment request and of opportunity for a informal adjudicatory hearing, which was published in the Federal Register on January 22, 1997. See 62 Fed. Reg. 3313 (1997). By letter dated January 30, 1997, petitioner John Francis Darke has asked for a hearing relative to the Atlas amendment application and requested that formal hearing procedures be used.

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In accordance with my authority under 10 C.F.R. § 2.1209, I set forth the following directives regarding the conduct of this proceeding:

I. Schedule for Additional Filings
Regarding Petitioner's Hearing
Request

A. Supplement to Petitioner's Hearing Request

On or before Monday, March 3, 1997, petitioner Darke may file a supplement to his January 30, 1997 hearing request.¹ In that supplement, the petitioner should address in detail the following items:

1. His interest in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons why he meets the judicial standards for standing so as to be permitted a hearing, with particular reference to the factors set forth in 10 C.F.R. § 2.1205(h);
2. His areas of concern about the December 20, 1996 Atlas license amendment request;

¹ In his January 30, 1997 hearing request, petitioner Darke asked that a local public document room be established near the site of the Moab facility. Pursuant to this memorandum and order, the petitioner will be provided with copies of the license condition and the amendment request at issue, if he does not have them already. Consequently, I see no reason to seek establishment of a local public document room at this time.

If petitioner Darke is successful in establishing that he has standing and has presented litigable areas of concern so that his hearing request should be granted, under the procedures governing informal adjudications a staff-complied hearing file containing the documents relevant to this proceeding will be made available to him either by serving that file on him or placing the file in a local library or other publicly accessible facility. See 10 C.F.R. § 2.1231(a)(1).

3. The circumstances establishing that his hearing request is timely; and
4. The special factual circumstances or issues involved in this proceeding that support the use of the formal hearing procedures set forth in 10 C.F.R. Part 2, Subpart G.

Any factual information provided in support of the petitioner's supplement (such as statements providing details regarding the petitioner's proximity to the facility) should be set forth in an accompanying affidavit that (a) is notarized, or (b) states that all statements in the affidavit are true to the best of the affiant's knowledge and belief and are made under penalty of perjury.

B. Licensee's Answer to Petitioner's Hearing Request and Supplement

Any Atlas answer to petitioner Darke's January 30, 1997 hearing request and any supplement thereto shall be filed on or before Tuesday, March 18, 1997.

C. Staff Participation

On or before Friday, February 21, 1997, the staff shall inform the Presiding Officer whether it wishes to participate as a party to this adjudication. If the staff decides to participate as a party, its answer to petitioner Darke's January 30, 1997 hearing request and any supplement thereto likewise shall be filed on or before Tuesday, March 18, 1997.

II. Administrative Matters

A. Notice of Appearance

If they have not already done so, within ten days of the date of this memorandum and order, each attorney or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R.

§ 2.713(b). In each notice of appearance, in addition to providing a business address and telephone number, if an attorney or representative has a facsimile number and/or an Internet e-mail address, the attorney or representative should provide that information as well.

If petitioner Darke wishes to represent himself in this proceeding, within ten days of the date of this order he should file a written notification of that election that provides a daytime telephone number and a facsimile number and/or an Internet e-mail address, if he has one.

B. Service on the Presiding Officer and the Special Assistant

For each pleading or other submission filed before the Presiding Officer or the Commission in this proceeding, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R.

§ 2.1203(c) and serving a copy on every other participant in accordance with sections 2.701(b) and 2.1203(e),² a

² Petitioner Darke is advised that henceforth each
(continued...)

participant should serve conforming copies on the Presiding Officer and on the Special Assistant by one of the following methods:

1. Regular Mail

To complete service via United States Postal Service first-class mail, a participant should send conforming copies to the Presiding Officer and the Special Assistant at the following address:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

For regular mail service, the staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first-class mail.

2. Overnight or Hand Delivery

To complete service via overnight (e.g., express mail) or hand delivery, a participant should send conforming copies to the Presiding Officer and the Special Assistant at the following address:

Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852

²(...continued)
filing he submits in this proceeding should be accompanied by a certificate of service (such as the certificate of service attached to this memorandum and order) that lists all those served with the document and states when and how service was made.

3. Facsimile Transmission

To complete service by facsimile transmission, a participant should (1) send one copy by rapifax to the attention of the Presiding Officer and the Special Assistant at (301) 415-5599 (verification (301) 415-7405); and (2) that same date, send conforming copies to the Presiding Officer and the Special Assistant by regular mail at the address given in paragraph II.B.1 above.

4. E-Mail

To complete service by e-mail transmission, a participant should (1) send the filing (which should include the certificate of service) as a file (preferably in WordPerfect 5.1 or 6.1 format) attached to an e-mail message directed to the Presiding Officer and the Special Assistant (Internet IDs: gpb@nrc.gov, cnk@nrc.gov; NRC Agency Upgrade of Technology for Office Systems (AUTOS) Wide Area Network (WAN) System IDs: GPB, CNK); (2) for any attachments or exhibits to a pleading that cannot be transmitted by e-mail, send those documents to the Presiding Officer and the Special Assistant by separate facsimile transmission or other means that will ensure receipt by the due date; and (3) send paper conforming copies that same date to the Presiding Officer and the Special Assistant by regular mail at the address given in paragraph II.B.1 above.

5. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail

To be timely, any pleading or other submission served on the Presiding Officer and the Special Assistant by hand delivery, facsimile transmission, or e-mail must be received by the Presiding Officer and the Special Assistant no later than 4:30 p.m. Eastern Time on the date due.

C. Motions for Extension of Time

For any motion for extension of time filed with the Presiding Officer in this proceeding, except upon a showing of good cause, the participant requesting the extension shall:

1. Ascertain whether and when any other participant intends to oppose or otherwise respond to the motion and apprise the Presiding Officer of that information in the motion; and

2. Serve the motion on the Presiding Officer so that it is in his hands at least three business days before the due date for the pleading or other submission for which an extension is sought.

D. Exhibits/Attachments to Filings

If a participant files a pleading or other submission with the Presiding Officer that has additional documents appended to it as exhibits or attachments, a separate alpha or numeric designation for each appended document (e.g., Exhibit 1; Attachment A) should be given to each appended

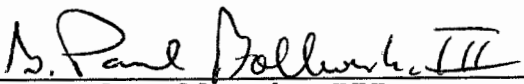
document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

III. Referenced Documents

By filing made on or before Friday, February 14, 1997, the staff should provide the Presiding Officer and the Special Assistant (and petitioner Darke if he does not have them) with copies of the following documents that are referenced in the staff's January 14, 1997 notice of receipt of amendment request and of opportunity for a hearing:

1. License Condition 55 A.(3) of Source Material License SUA-917 for the Moab, Utah facility; and
2. December 20, 1996 Atlas license amendment request.

It is so ORDERED.


G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 12, 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

ATLAS CORPORATION

(Request for License Amendment)

Docket No.(s) 40-3453-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (INITIAL ORDER) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles N. Kelber
Special Assistant
Atomic Safety and Licensing Board
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Richard Blubaugh
Atlas Corporation
Republic Plaza
370 17th St., Suite 3050
Denver, CO 80202

Administrative Judge
G. Paul Bollwerk, III
Presiding Officer
Atomic Safety and Licensing Board
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Lawrence J. Chandler, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

John F. Darke
Box 9999
Moab, UT 84532

Dated at Rockville, Md. this
12 day of February 1997

Abria T. Byrdson
Office of the Secretary of the Commission