

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

'99 JUL -1 P3:17

Before Administrative Judges:

Thomas S. Moore, Presiding Officer  
Frederick J. Shon, Special Assistant

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATION STAFF

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In the Matter of:	)	Docket No. 40-3453-MLA-3
ATLAS CORPORATION	)	
(Moab, Utah)	)	ASLBP No. 99-761-04-MLA
	)	
	)	June 28, 1999

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GRAND CANYON TRUST'S SUPPLEMENTAL SHOWING OF TIMELINESS IN  
THE REQUEST FOR STAY OF LICENSE AMENDMENTS  
PURSUANT TO 10 C.F.R. § 2.1263

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Grand Canyon Trust, et al., respectfully submits this supplemental showing that its "Request for a Stay of License Amendments Pursuant to 10 C.F.R. § 2.1263" (hereafter "Request for Stay") is timely. The Grand Canyon Trust's Request for Stay in this action is timely because the NRC had a duty to serve the Grand Canyon Trust with notice of the issuance of the license amendments in this licensing proceeding, and, therefore, the Grand Canyon Trust had five extra days allowing for service by mail in which to request a stay.

The NRC issued license amendments 41 and 55B to Materials License SUA-917 on Friday, May 28, 1999 – the day before Memorial Day weekend. On June 2, the NRC Staff served the Presiding Officer, the Grand Canyon Trust, and other parties with notice of the

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RULEMAKINGS & ADMINISTRATIONS STAFF  
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*DGC, R/D5*

issuance of license amendments 41 and 55B. See Exhibit A. The Grand Canyon Trust received this notice by regular mail on June 7, 1999. See id. Two days later, on June 9, 1999, the Grand Canyon Trust filed its Request for Stay of the license amendments pending the outcome of this proceeding.

Petitioners have the right to request a stay of the license amendments in this action pending the outcome of the adjudication of this proceeding. See 10 C.F.R. § 2.1263; 10 C.F.R. § 2.788. Such a request must be filed with the adjudicatory decisionmaker before which the licensing proceeding is pending within 10 days of the staff's action. See 10 C.F.R. § 2.1263. When a party has a right or is required to do some act after the service of a notice or other paper, five days are added to the computation of time to account for service by mail. See 10 C.F.R. § 2.710.

Because this action is pending before the Presiding Officer, the NRC had a duty to serve notice of its issuance of the license amendments on the parties. See 10 C.F.R. § 2.712. (“[T]he Commission will serve all orders, decisions, notices, and other papers issued by it upon all parties.”). Recognizing this duty, counsel for the NRC served notice of the issuance of the license amendments upon the Presiding Officer, the Grand Canyon Trust, and other parties to this proceeding on June 2, 1999. See Exhibit A. Actual notice of the issuance of the license amendments was received in the office of the attorneys for Grand Canyon Trust by mail on June 7, 1999. See id.<sup>1</sup> As soon as the Grand Canyon Trust received notice of the license amendments, it acted promptly, within 48 hours, to request a stay. Taking into account the five extra days to allow for service by mail, the Grand Canyon Trust filed its Request for Stay on time – three days before the deadline. The five extra days for service was critical in this case,


because the issuance of the license amendments occurred on the eve of an extended holiday weekend. Because of the delayed mail, the Grand Canyon Trust had no actual notice of the issuance of the license amendments until June 7, 1999, the 10<sup>th</sup> day after the NRC issued the license amendments. Under the circumstances, Petitioners could not have assembled and filed a request for stay with the Presiding Officer before the close of business, 2:30 p.m. mountain time.

Because the Grand Canyon Trust has the right to five extra days for service by mail, the Grand Canyon Trust's Request for Stay in this licensing proceeding is timely.

Dated this 28<sup>th</sup> day of June 1999.



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<sup>1</sup> The NRC has not published any notice in the Federal Register of the issuance of the license amendments. In an online search of Federal Register documents, the Grand Canyon Trust found no notices announcing the issuance of the Atlas license amendments.

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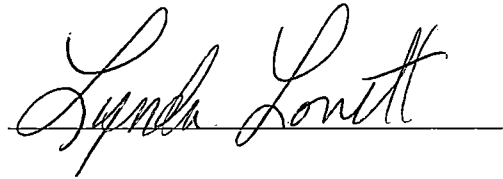
Attorneys for

Grand Canyon Trust, et al.

CERTIFICATE OF SERVICE

I hereby certify that copies of "SUPPLEMENTAL SHOWING OF TIMELINESS IN THE REQUEST FOR STAY OF LICENSE AMENDMENTS PURSUANT TO 10 C.F.R. § 2.1263" in the above-captioned proceeding have been served on the following by United States mail, and by facsimile or email (indicated by asterisk) on this 28<sup>th</sup> day of June 1999:

\*Administrative Judge  
Thomas S. Moore  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555-0001  
Fax: 301-415-5599, E-mail: tsm@nrc.gov



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U.S. NUCLEAR REGULATORY COMMISSION  
ADJUDICATIONS STAFF

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## **EXHIBIT A**



OFFICE OF THE  
GENERAL COUNSEL

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

June 2, 1999

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Presiding Officer  
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Washington, D.C. 20555

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

Dear Administrative Judges:

Enclosed for your information is a copy of the Staff's approval of the revised reclamation plan for Atlas and of an extension of the projected date for completion of groundwater corrective actions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa B. Clark".

Lisa B. Clark  
Counsel for NRC Staff

Enclosure: As stated

cc w/encls:

Anthony J. Thompson, Esq.  
Cullen Battle, Esq.  
✓ Marie A. Kirk, Esq.  
Gabrielle Siegel, Esq.  
Richard Blubaugh

Adjudicatory File (2)  
Atomic Safety and Licensing Board Panel  
Office of Commission Appellate  
Adjudication  
Office of the Secretary (2)