



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

2000-0252

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RESPONSE TYPE FINAL PARTIAL

REQUESTER

Sarah Fields

DATE

JUL 17 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 A 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 A 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 *
\$

- 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.

* See comments for details

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 A

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

| NUMBER | DATE | DESCRIPTION/PAGES |
|---------------|-------------|--|
| 1. | 4/1/98 | Letter to J. Holonich from R. Blubaush, re: License No. SUA-917, Docket No. 40-3453 ESA Section 7 Consultation, (3 pgs.). |

RICHARD E. BURBAUGH
Vice President Environmental
and Governmental Affairs

April 1, 1998

VIA FACSIMILE: (301) 415-5397
Joseph J. Holomich, Chief
U.S. Nuclear Regulatory Commission
High-Level Waste and Uranium Recovery
Project Branch (MX-T719)
Division of Waste Management
Washington, D.C. 20555-0001

Re: License No. SUA-917, Docket No. 40-3453
ESA Section 7 Consultation

Dear Mr. Holomich:

The purpose of this letter is to clarify, for the record, our understanding of the relationship between the surface reclamation and the groundwater corrective action plans for our uranium mill and tailings site near Moab, Utah, specifically with respect to completing the consultation under section 7(a)(2) of the Endangered Species Act (ESA). First, it is our understanding that NRC considers the review of the current groundwater corrective action plan (CAP) as a separate licensing action. This determination by the NRC is well documented in the "Atlas Technical Evaluation Report" (TER) and other comments and correspondence by NRC. In our comments on the draft biological opinion (BO), Atlas pointed out that the two actions are separate and should be treated as such for purposes of section 7(a)(2).

Although we understand the distinction between the two actions, it has become apparent during the ESA consultation discussions that further clarification of this matter would be helpful with respect to completing the section 7(a)(2) consultation process. The following discussion presents Atlas' views of the manner in which the two licensing actions should proceed.

As discussed in Atlas' comments on the BO, the section 7(a)(2) consultation process on the surface reclamation plan should be completed first. NRC should issue its decision on that plan at the earliest opportunity. Assuming the surface reclamation plan is approved, Atlas would then proceed with implementation of the plan and accelerate the completion of the updated groundwater CAP. NRC would review the CAP and consult with the FWS as appropriate. No irreversible or in retrievable impacts would occur because groundwater corrective actions can be implemented during or after surface reclamation activities.

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The updated groundwater CAP will evaluate a series of corrective action alternatives as required by NRC regulations. Corrective action alternatives to be evaluated will include tailings dewatering by vertical band drains as well as horizontal and vertical wells to reduce drainage from the tailings pile to insignificant levels thus effectively removing the source of contaminants to groundwater. These dewatering technologies have been used successfully for many years to dewater tailings and other low permeability materials. In addition to dewatering technologies, other corrective action alternatives that involve both active and passive treatment of groundwater downgradient of the tailings pile will be evaluated. All corrective action alternatives will be carefully evaluated relative to:

1. effectiveness at improving water quality in the Colorado River
2. constructability, and
3. cost

Furthermore, as required by NRC regulations, the updated groundwater CAP will include a demonstration that the preferred alternative results in groundwater concentrations that are "as low as reasonably achievable."

Atlas could proceed with its approved surface reclamation plan while consultation and NRC decisionmaking on the groundwater plan are underway. Although we believe any amendment to the surface cover design to be unnecessary, the construction schedule will accommodate a review period of at least one year before the radon/infiltration barrier is installed. This should be sufficient time to finally determine if any modification to the cover design is necessary due to groundwater concerns. This approach would provide for a section 7 review on the groundwater CAP that ensures its timely completion early during the surface reclamation process.

In any event, even if the surface reclamation were to begin, this action would not be irreversible and would itself have no negative impact on the affected species. In fact, any surface reclamation would benefit both humans and the Colorado River ecosystem by reducing future contaminants over the long term from the existing environmental baseline. Additionally, surface loading during reclamation would actually help to accelerate dewatering of the pile by creating higher pressures on the liquids in the pore space of the pile. So reclamation would also provide near term benefits by further reducing contamination in the environmental baseline. Further, during this time, contaminated soils in the mill area and between the pile and the river would be excavated and placed on the pile and thus would also no longer be a potential source of contaminants to the environment.

We trust we have clarified the remaining regulatory process as an approach that is both workable and appropriate to the circumstances involved in this case. Atlas, NRC and FWS should be able to proceed under this approach and incorporate our mutual understanding in the revised draft biological opinion as the basis for further consideration and refinement.

Atlas is seeking a resolution to this licensing process. To the extent there is merit in discussing what we believe to be the appropriate approach in this matter in greater detail, Atlas is certainly willing to meet with NRC and FWS to do so. Please advise us to your disposition in this regard.

Joseph J. Holowick, NRC
Atlas Section 7 Consultation
May 29, 1998
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Parties recognize actual times may be shorter or longer depending upon variables beyond the control of Atlas or its contractor(s) or changes to the current knowledge base.

In order to keep the process moving and to minimize the time to develop the final biological opinion, Atlas will provide the Service a copy of this letter by facsimile today. Accordingly, we will expect the final biological opinion by June 30, 1998. So as to avoid any future problems and prevent confusion, we request to be provided with a copy of that document before it is issued in final. The purpose of our review would not be to raise additional issues or submit comments but to ensure that the understandings achieved to date and that will be achieved on the issues to be discussed are properly presented and resolved. We request a copy of the document five days in advance of its release date, or by June 25. Our understanding would be that only major concerns would be raised and that if such concerns are present a good faith effort will be made to resolve them expeditiously.

We trust this letter satisfies the need expressed by the Service and look forward to resolving the remaining issues and questions associated with completing the section 7 consultation for this site. Please direct any questions about this consent or the timeframes to me at (303) 629-2436 or to my assistant, Jude Deitron, at (303) 629-2437.

Sincerely,


Richard E. Blubaugh

cc: The Honorable Jamie R. Clark
Bradley Campbell
Molly McUisic, Esq.
Hugh Thompson
Ralph Morgenweck

Reed Harris
Don Baur, Esq.
Grant Ohland
Anthony Thompson, Esq.

U. S. Fish & Wildlife Service
Please acknowledge receipt of this facsimile by signing below and returning a signed copy to Atlas via facsimile. The hard copy will follow by regular mail.

Receipt Acknowledged.