

99-377,00-219,00-257

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

RESPONSE TYPE  FINAL  PARTIAL

DATE  
**NOV 16 2000**

REQUESTER  
**Ms. Kimberly Boggiatto**

#### 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 **TT** 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 **TT** 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)

Records have been referred to the Department of Energy, Department of Interior, Department of Justice, Council on Environmental Quality, Environmental Protection Agency, Securities and Exchange Commission for review and direct response to you.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed *Carol Ann Reed*

**PART II.A – APPLICABLE EXEMPTIONS**

APPENDICES  
**UU**

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
  - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
  - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
  - 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
  - The information is considered to be confidential business (proprietary) information.
  - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
  - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
  - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
  - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
  - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
  - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
  - (C) Disclosure would constitute an unwarranted invasion of personal privacy.
  - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
  - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
  - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

**PART II.B – DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Sandy M. Joosten	Executive Assistant, Office of the Secretary	Appendix UU		✓	

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOI/PA Appeal."

**APPENDIX TT  
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)</u></b>
1.	01/21/99	Qs & As on proposed legislation that would transfer responsibility for site reclamation to DOE (3 pages)
2.	02/04/99	Qs & As on describing the status and significant issues for the Atlas Site in Moab, UT (5 pages)
3.	02/25/99	Qs & As on Current Status of the Atlas Moab Tailings Site, including NRC review and the financial status of the company (5 pages)
4.	07/07/99	Qs & As on Qs & As on describing the status and significant issues for the Atlas Site In Moab, UT (5 pages)
5.	02/16/99	Commission memo from W. Travers, EDO re: Proposal by Atlas to transfer Moab site responsibilities (5 pages)

Re: FOIA/PA-99-377

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**APPENDIX UU  
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION//PAGE COUNT/EXEMPTIONS</u></b>
1.	02/23/98	Draft OCM paper from W. Travers, EDO re: Recommendations on response to options proposed by Atlas (8 pages) EX. 5

1/21/99

Question U.8.

Briefly describe the status and significant issues for the Atlas site in Moab, Utah?

Answer.

- The NRC staff published the Final Technical Evaluation Report in March 1997, which concluded that the reclamation plan proposed by Atlas meets the appropriate requirements in NRC regulations, primarily 10 CFR Part 40. The Final Environmental Impact Statement (FEIS), addressing comments on the January 1996 Draft Environmental Impact Statement (DEIS), is nearing completion. NRC staff was awaiting a final Biological Opinion (FBO) from the U.S. Fish and Wildlife Service (FWS) before proceeding towards finalization and publication of the FEIS. After several rounds of consultation between the two agencies, FWS issued the FBO in late July 1998. As that was the last required piece of information, NRC could have published the FEIS soon thereafter. However, because the analysis done in support of the FBO reached a different conclusion than NRC's analysis in the draft EIS, i.e., that Atlas' proposed plan is less effective in cleaning up the ground water than what NRC had determined, NRC delayed the issuance of the FEIS to further analyze, with contractor assistance, the expected performance of the tailings pile, and the impact of that performance on ground water, after reclamation. That analysis is complete and NRC is now incorporating the results into the FEIS. After publication of the FEIS, its availability will be noticed in the Federal Register by the U.S. Environmental Protection Agency. NRC must then wait at least 30 days before reaching a decision on the proposed reclamation plan.
- The ground water between the tailings and the Colorado River is contaminated and leaking contaminants into the river. 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. If it approves Atlas' reclamation plan, NRC will include those steps as license conditions.
- In September 1998, Atlas Corporation filed for bankruptcy under Chapter 11. Atlas is preparing a plan that will ensure that its proposed reclamation will be accomplished. It involves contracting the reclamation to a 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. 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

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- We are aware of efforts by several Congressmen to propose legislation that would transfer responsibility for site reclamation to the U.S. Department of Energy with the requirement that the tailings be moved to a location away from the Colorado River. We have concluded that Atlas' proposed onsite reclamation, while not presenting a radiological hazard, does raise environmental issues, primarily with respect to effects on two species of endangered fish in the Colorado River. Relocation of the tailings away from the Colorado River could resolve those issues. In the DEIS we evaluated an alternate disposal site 18 miles from Moab and found that relocation of the tailings to that site would have less long-term environmental impacts than stabilization in place, although short-term impacts, related to moving the tailings, would be greater. We are prepared to provide regulatory oversight, either similar to that provided under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, or any other manner Congress deems appropriate, if such legislation is promulgated.

#### Background.

- The FWS FBO provided ammonia standards in the Colorado River that must be met to provide protection of endangered fish. The standard identifies an acute concentration, which must not be exceeded in the river and a chronic standard, which can only be exceeded within a mixing zone whose maximum length is given in the standard. The performed a simple analysis, using ratios of past measurements of ground and surface water concentrations to determine if the standards would be met after reclamation of the tailings in place. The analysis showed that the acute standard will be met but was unable to show that the length of the mixing zone for the chronic standard will be within that required by the standard. The staff is now performing more sophisticated analysis of river dilution to address this issue.
- Staff actions to complete the FEIS include the following:
  - \* Peer review of the FEIS to ensure that the Reasonable and Prudent Alternative identified in the FWS FBO is appropriately addressed.
  - \* Analysis to determine if the staff can conclude that the ammonia standard identified in the FBO is likely to be met after reclamation.
  - \* If the staff can not show that the ammonia standard will be met, the staff will delay completion of the FEIS while it gives the licensee the opportunity to address the issue.
  - \* The staff will complete the FEIS, which will include its assessment of meeting the ammonia standard.
- NRC staff will be available to meet with Congressional staff to provide insight into the agency's actions and answer questions. Meetings with NRC staff will be set up through NRC's Office of Congressional Affairs.

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.

- Several local and environmental parties have sued FWS and NRC. The suits allege that FWS did not appropriately execute the Endangered Species Act in its FBO and that NRC should not proceed with its action on the Atlas proposal. The Department of Justice is representing both agencies in these matters.

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Question U.8. (A) Briefly describe the status and significant issues for the Atlas site in Moab, Utah?

Answer.

**NOTE: There may be significant developments with regard to a course of action for proceeding to a licensing decision by Monday 2/1. Therefore, an update to this answer may be needed on Tuesday 2/2.**

- The NRC staff published the Final Technical Evaluation Report in March 1997, which concluded that the reclamation plan proposed by Atlas meets the appropriate requirements in NRC regulations, primarily 10 CFR Part 40. The Final Environmental Impact Statement (FEIS), addressing comments on the January 1996 Draft Environmental Impact Statement (DEIS), is nearing completion. The DEIS concluded that the Atlas proposal was acceptable with respect to environmental costs and benefits. The major impact on the Colorado River would be a small mixing zone with elevated concentrations of several constituents, but the size of and concentrations within the mixing zone would be diminished from current conditions as a result of reduced ground-water contamination. NRC staff was awaiting a final Biological Opinion (FBO) from the U.S. Fish and Wildlife Service (FWS) before proceeding towards finalization. After several years of consultation with FWS, FWS issued the FBO in late July 1998. As that was the last required piece of information, NRC could have published the FEIS soon thereafter. However, because the analysis done in support of the FBO reached a different conclusion than NRC's analysis in the draft EIS, i.e., that Atlas' proposed plan is less effective in cleaning up the ground-water than what NRC had determined, NRC delayed the issuance of the FEIS to further analyze, with contractor assistance, the expected performance of the tailings pile, and the impact of that performance on ground-water, after reclamation. That analysis of ground-water impact is complete, and NRC is now using it to determine if the Colorado River standards identified by FWS as needed to protect endangered species can be met. The results of this analysis will be incorporated into the FEIS. After publication of the FEIS, its availability will be noticed in the Federal Register by the U.S. Environmental Protection Agency. NRC must then wait at least 30 days before reaching a decision on the proposed reclamation plan.
- The ground-water between the tailings and the Colorado River is contaminated and leaking contaminants into the river. 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 some time for EPA to promulgate regulations, which were then challenged in court, before NRC had effective standards it could implement 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. However, some details of the revised corrective action plan are dependent on the decision with respect to Atlas' proposal for tailings reclamation. In its biological opinion FWS identified, as a

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reasonable and prudent alternative, steps to expedite the ground-water cleanup. If it approves Atlas' reclamation plan, NRC will include those steps as license conditions.

- In September 1998, Atlas Corporation filed for bankruptcy under Chapter 11. Atlas is preparing a plan that will ensure that its proposed reclamation will be accomplished. It involves contracting the reclamation to a 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. 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.
- Several local and environmental parties have sued FWS and NRC. The suits allege that FWS did not appropriately execute the Endangered Species Act in its FBO and that NRC should not proceed with its action on the Atlas proposal.
- We are aware of efforts by several Congressmen to propose legislation that would transfer responsibility for site reclamation to the U.S. Department of Energy with the requirement that the tailings be moved to a location away from the Colorado River. We have concluded that Atlas' proposed onsite reclamation, while not presenting a radiological hazard, does raise environmental issues, primarily with respect to effects on two species of endangered fish in the Colorado River. Relocation of the tailings away from the Colorado River could resolve those issues. In the DEIS we evaluated an alternate disposal site 18 miles from Moab and found that relocation of the tailings to that site would have less long-term environmental impacts than stabilization in place, although short-term human health and environmental impacts, related to moving the tailings, would be greater. Additionally, there is a large cost difference between the Atlas proposal and the alternative (\$16 million versus approximately \$150 million). The staff, therefore, could not find the alternative to be obviously superior. We are prepared to provide regulatory oversight, either similar to that provided under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, or any other manner Congress deems appropriate, if such legislation is promulgated.

**Background/Additional Information.**

- The FWS FBO provided ammonia standards in the Colorado River that must be met to provide protection of endangered fish. The standard identifies an acute concentration, which must not be exceeded in the river and a chronic standard, which can only be exceeded within a mixing zone whose maximum length is given in the standard. The staff performed a simple analysis, using ratios of past measurements of ground and surface water concentrations to determine if the standards would be met after reclamation of the tailings in place. The analysis showed that the acute standard will be

met but was unable to show that the length of the mixing zone for the chronic standard will be within that required by the standard. The staff is now performing more sophisticated analysis of river dilution to address this issue.

- Staff actions to complete the FEIS include the following:
  - Peer review of the FEIS to ensure that the Reasonable and Prudent Alternative identified in the FWS FBO is appropriately addressed.
  - Analysis to determine if the staff can conclude that the ammonia standard identified in the FBO is likely to be met after reclamation.
  - If the staff can not show that the ammonia standard will be met, the staff will delay completion of the FEIS while it gives the licensee the opportunity to address the issue.
  - The staff will complete the FEIS, which will include its assessment of meeting the ammonia standard.
- NRC staff will be available to meet with Congressional staff to provide insight into the agency's actions and answer questions. Meetings with NRC staff will be set up through NRC's Office of Congressional Affairs.
- The Grand Canyon Trust and other parties (the Trust) filed a petition pursuant to 10 CFR 2.206 on January 11, 1999 requesting that NRC take immediate actions to ensure the conservation of endangered species in the Colorado River near the Atlas site. The staff has sent an acknowledgment letter dated January 26, 1999 denying the request for immediate action and stating that the staff will consider the actions proposed by the Trust within a reasonable time. A Federal Register Notice is expected to be issued within a week or so.

Question U.8. (B) What happened with respect to the Final Environmental Impact Statement and what have we done to address the situation?

Answer.

**NOTE: There may be significant developments with regard to a course of action for proceeding to a licensing decision by Monday 2/1. Therefore, an update to this answer may be needed on Tuesday 2/2.**

- The Draft Environmental Impact Statement (DEIS) was published in January 1996. The DEIS comment period ended in April 1996. NRC staff, with contractor assistance, worked to address the comments received and to resolve issues with the National Park Service (NPS), a cooperating agency. A preliminary Final Environmental Impact Statement (FEIS) was sent to NPS in March 1997 and discussed by video conference in April 1997. A revised version of the preliminary FEIS was prepared that staff believed addressed NPS concerns.
- Concurrently, the staff attempted to consult with the U.S. Fish and Wildlife Service, in conformance with Section 7 of the Endangered Species Act. In November 1995, the staff transmitted a Biological Assessment (BA) to FWS, providing its analysis with respect to impacts to endangered species. After several meetings with FWS, the staff transmitted a supplement to the BA in January 1997, addressing FWS concerns and requests for additional data. In June 1997, FWS transmitted its Draft Biological Opinion (DBO) to NRC.
- NRC staff's review of the DBO identified significant concerns that were transmitted to FWS in August 1997. At the request of the Vice President, the Council on Environmental Quality (CEQ) became involved in the process and organized several meetings among high level officials of NRC, the Department of the Interior (DOI), and the Department of Energy (DOE). At the meetings, DOI expressed the need for more data from the Atlas site. It was agreed to have the Grand Junction field office of the Oak Ridge National Laboratory (ORNL/GJ) collect the data, with most of the funding coming from DOE. An analysis of infiltration into the tailings pile was funded by NRC. ORNL/GJ presented its findings in reports in January and February 1998. In addition to providing data collected at the site, the reports described analysis performed by ORNL/GJ that had not been agreed to by the parties meeting at CEQ. Review of that analysis by NRC staff identified significant flaws, which were identified to FWS in February 1998.
- FWS prepared a revised DBO in April 1998 which relied on the flawed ORNL/GJ analysis and repeated some of the errors that NRC staff had identified in the 1997 DBO. NRC staff initiated discussions with the FWS regional office in Denver (previously staff had dealt with the FWS field office in Salt Lake City, which has responsibility for projects in Utah). As a result of discussions and meetings involving FWS regional office management, progress was made in correcting most of the major deficiencies in the revised DBO and agreement was reached on the Reasonable and Prudent Alternative (RPA). However, although the RPA was acceptable to NRC staff and the licensee, it

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was not supported by the body of the opinion which still relied on the flawed ORNL/GJ analysis. Although this inconsistency was pointed out to FWS after NRC review of the draft Final Biological Opinion (FBO), it remained in the FBO that was transmitted to NRC in July 1998.

- The staff's earlier conclusion that the Atlas proposal to stabilize in place would be protective of the environment in the Colorado River, was not based on a detailed system analysis. Rather, it was based on several water balance analyses during and after mill operation; using these analyses the staff had concluded that the seepage of contaminated water from the pile to the ground-water had been in the range of 50 to 100 gallons per minute. Atlas' proposed reclamation would reduce this seepage by about an order of magnitude. Additionally, installation of a tighter cover, similar to covers installed by DOE at several of its tailings sites, would reduce seepage by another order of magnitude. As the contamination measured in the Colorado River, was in most instances less than an order of magnitude above water quality standards, staff concluded that the proposed design was acceptable, with the option of installing a tighter cover if needed. The need for a tighter cover would be determined during the review of revisions to the ground-water corrective action plan, which would involve a performance analysis of the ground-water system.
- The flawed analysis that FWS relied on in its FBO concluded that past seepage from the tailings pile had been much less than the NRC staff estimates, that the Atlas proposal would only reduce the seepage by a factor of about two and that the tighter cover would result in a total reduction of seepage of about an order of magnitude. Although the staff could have proceeded to issue the FEIS soon after receipt of the FBO, it was determined that a valid analysis of past seepage from the pile and future contamination of the ground-water was needed. The staff tasked the Center for Nuclear Waste Regulatory Analyses (CNWRA) to perform that analysis and contracted with an expert ground-water modeler (a professor at the University of Montana) to provide the technical oversight normally provided by the staff (this was done to try to avoid accusations that the staff controlled the outcome of the analysis).
- CNWRA's analysis confirmed the staff's previous order of magnitude estimates of seepage from the pile but concluded that maximum concentrations of constituents in the ground-water did not scale linearly (the two order of magnitude reduction in seepage from the pile resulted in only an order of magnitude reduction in maximum concentration in the ground-water near the river). As a result, the staff was unable, using simple ratios of past measurements of ground-water and surface water concentrations, to show that surface water standards identified by FWS in its FBO would be met. The staff is now performing more sophisticated analysis of river dilution to address this issue.

2/25/99

Question 5. What is the current status of the Atlas Mill tailings site, including NRC review and the financial status of the company?

Answer.

Background and Status

- The U.S. Nuclear Regulatory Commission (NRC) staff published the Final Technical Evaluation Report in March 1997, which concluded that the reclamation plan proposed by Atlas meets the radiological health and safety requirements in NRC regulations, primarily 10 CFR Part 40. The Final Environmental Impact Statement (FEIS), addressing comments on the January 1996 Draft Environmental Impact Statement (DEIS), is nearing completion. The DEIS concluded that the Atlas proposal was acceptable with respect to environmental costs and benefits. The major impact on the Colorado River would be a small mixing zone with elevated concentrations of several constituents, but the size of and concentrations within the mixing zone would be diminished from current conditions as a result of completing reclamation of the tailings and reducing the source of ground-water contamination. NRC staff was awaiting a final Biological Opinion (FBO) from the U.S. Fish and Wildlife Service (FWS) before proceeding towards finalization. After three years of consultation with FWS, FWS issued the FBO in late July 1998. As that was the last required piece of information, NRC could have published the FEIS soon thereafter. However, because the FWS analysis done in support of the FBO reached a different conclusion than NRC's analysis in the draft EIS, i.e., that Atlas' proposed plan is less effective in cleaning up the ground-water than what NRC had determined, NRC delayed the issuance of the FEIS. The delay was needed to further analyze, with contractor assistance, the expected performance of the tailings pile, and the benefit of that performance on ground-water, after reclamation. That analysis of ground-water impact was completed in late December 1998.
- The FWS FBO also provided ammonia standards in the Colorado River that must be met to provide protection of endangered fish. The standard identifies an acute concentration, which must not be exceeded in the river and a chronic concentration, which can only be exceeded within a mixing zone whose maximum length is given in the standard. NRC performed several analyses but was unable to conclude, with the confidence needed under Endangered Species Act (ESA), that the ammonia standard would be met by the reclamation. NRC informed Atlas that it would need to provide more data and perform additional analysis to resolve this issue. NRC stated that it will therefore issue the FEIS but would not be able to conclude that onsite reclamation will result in meeting the ammonia standard set out in the FBO.
- The ground-water between the tailings and the Colorado River is contaminated and leaking contaminants into the river. 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 some time for the U.S. Environmental Protection Agency (EPA) to promulgate regulations, which were then challenged in court, before NRC had effective standards it could implement in this area. Under NRC regulations, Atlas is conducting a ground-water corrective action plan to clean up

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ground-water to appropriate standards. Atlas has committed to revisit and revise that plan to expedite the cleanup. However, some details of the revised corrective action plan are dependent on the decision with respect to Atlas' proposal for tailings reclamation. In its biological opinion FWS identified, as a reasonable and prudent alternative, steps to expedite the ground-water cleanup. If it approves Atlas' reclamation plan, NRC will include those steps as license conditions.

#### Environmental Review

- The DEIS was published in January 1996. The DEIS comment period ended in April 1996. NRC staff, with contractor assistance, worked to address the comments received and to resolve issues with the National Park Service (NPS), a cooperating agency. A preliminary FEIS was sent to NPS in March 1997 and discussed by video conference in April 1997. A revised version of the preliminary FEIS was prepared that NRC staff believed addressed NPS concerns.
- In addition to preparing the FEIS, the NRC staff consulted with FWS, in conformance with Section 7 of the ESA. In November 1995, consistent with FWS regulations, the NRC staff transmitted a Biological Assessment (BA) to FWS, providing NRC's analysis with respect to impacts to endangered species. After several meetings with FWS, the NRC staff transmitted a supplement to the BA in January 1997, addressing FWS concerns and requests for additional data. In June 1997, FWS transmitted its Draft Biological Opinion (DBO) to NRC.
- NRC staff's review of the DBO identified significant concerns that were transmitted to FWS in August 1997. At the request of the Vice President, the Council on Environmental Quality (CEQ) became involved in the process and organized several meetings among high level officials of NRC, the Department of the Interior (DOI), and the Department of Energy (DOE). At the meetings, DOI expressed the need for more data from the Atlas site. It was agreed to have the Grand Junction field office of the Oak Ridge National Laboratory (ORNL/GJ) collect the data, with most of the funding coming from DOE. An analysis of infiltration into the tailings pile was funded by NRC. ORNL/GJ presented its findings in reports in January and February 1998. In addition to providing data collected at the site, the reports described analysis performed by ORNL/GJ that had not been agreed to by the parties meeting at CEQ. Review of that analysis by NRC staff identified significant flaws, which were identified to FWS in February 1998.
- FWS prepared a revised DBO in April 1998 which relied on the flawed ORNL/GJ analysis and repeated some of the errors that NRC staff had identified in the 1997 DBO. NRC staff initiated discussions with the FWS regional office in Denver (previously NRC staff had dealt with the FWS field office in Salt Lake City, which has responsibility for projects in Utah). As a result of discussions and meetings involving FWS regional office management, progress was made in correcting most of the major deficiencies in the revised DBO and agreement was reached on the Reasonable and Prudent Alternative (RPA). However, although the RPA was acceptable to NRC staff and the licensee, it was not supported by the body of the opinion which still relied on the flawed ORNL/GJ analysis. Although this inconsistency was pointed out to FWS after NRC review of the draft Final Biological Opinion (FBO), it remained in the FBO that was transmitted to NRC in July 1998.

- The NRC staff's earlier conclusion that the Atlas proposal to stabilize in place would be protective of the environment in the Colorado River, was not based on a detailed system analysis. Rather, it was based on several water balance analyses during and after mill operation; using these analyses the staff had concluded that the seepage of contaminated water from the pile to the ground-water had been in the range of 50 to 100 gallons per minute. Atlas' proposed reclamation would reduce this seepage by about an order of magnitude. Additionally, installation of a tighter cover, similar to covers installed by DOE at several of its tailings sites, would reduce seepage by another order of magnitude. As the contamination measured in the Colorado River, was in most instances less than an order of magnitude above water quality standards, staff concluded that the proposed design was acceptable, with the option of installing a tighter cover if needed.
- The flawed analysis that FWS relied on in its FBO concluded that past seepage from the tailings pile had been much less than the NRC staff estimates, that the Atlas proposal would only reduce the seepage by a factor of about two and that the tighter cover would result in a total reduction of seepage of about an order of magnitude. Although the NRC staff could have proceeded to issue the FEIS soon after receipt of the FBO, it was determined that a valid analysis of past seepage from the pile and future contamination of the ground-water was needed. The NRC staff tasked the Center for Nuclear Waste Regulatory Analyses (CNWRA) to perform that analysis and contracted with an expert ground-water modeler (a professor at the University of Montana) to provide the technical oversight normally provided by the NRC staff (this was done to try to avoid accusations that NRC controlled the outcome of the analysis).
- CNWRA's analysis confirmed the NRC staff's previous order of magnitude estimates of seepage from the pile but concluded that maximum concentrations of constituents in the ground-water did not scale linearly (the two order of magnitude reduction in seepage from the pile resulted in only an order of magnitude reduction in maximum concentration in the ground-water near the river). As a result, the NRC staff was unable, using simple ratios of past measurements of ground-water and surface water concentrations, to show that surface water standards identified by FWS in its FBO would be met. The NRC staff performed more sophisticated analysis of river dilution to determine if the FWS standards would be met. However, the level of uncertainty resulting from having limited data available was great enough that the NRC staff was unable to conclude, with the degree of confidence required by the ESA, that endangered fish would not continue to be jeopardized after reclamation.
- NRC plans to publish the FEIS in March 1999 with an open issue on whether Atlas' proposed reclamation will result in meeting the chronic ammonia standard. Atlas would need to provide more data and perform additional analysis to resolve the issue. NRC would be unable to approve the proposed reclamation plan until the issue is resolved.

#### Financial Status

- On September 22, 1998, Atlas filed for bankruptcy under Chapter 11. On October 1, 1998, Atlas met with NRC staff to discuss the effect of its bankruptcy on the reclamation of the Moab mill site. At that meeting, Atlas stated that it estimated the cost of

completing reclamation at the Moab site, including costs to comply with the FBO, as approximately \$19 million. Atlas identified approximately \$22 million of assets that it stated would allow it to complete reclamation using a turnkey contractor who would assume responsibility for managing the reclamation of the site and would also assume the risk of increased reclamation costs. At a February 12, 1999 meeting with NRC staff, however, Atlas stated that the proposal from the turnkey contractor was approximately \$28 million and that this cost put such a contract beyond Atlas' financial resources.

- Atlas proposed three options to accomplish surface reclamation at the Moab site. Two options involve transferring money to a trust, which would then be responsible for site reclamation. After the transfer, 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 some ground-water clean up. However, even under this option, the amount of funding applied to ground-water cleanup may still be insufficient to complete the job. The third option identified would have NRC and Atlas agree on an organized default and termination of the license.
- NRC is considering Atlas' proposed options, as well as other courses of action. NRC is engaged in discussions with the CEQ, the Department of Justice, DOE, EPA, and DOI in an attempt to coordinate a unified Federal approach to resolving this situation.

#### Additional Information

- The Grand Canyon Trust and other parties have sued FWS and NRC. The suits allege that FWS did not appropriately execute the Endangered Species Act in its FBO and that NRC should not proceed with its action on the Atlas proposal. Additionally, Grand Canyon Trust and other parties filed a petition to intervene and a request for a hearing with respect to Atlas' proposed amendment to its license that would incorporate the proposed reclamation plan.
- The Grand Canyon Trust and other parties also filed a 2.206 petition requesting that NRC take immediate actions to ensure the conservation of endangered species in the Colorado River near the Atlas site. The staff has sent an acknowledgment letter dated denying the request for immediate action and stating that the staff will consider the actions proposed by the Trust within a reasonable time.
- We are aware of efforts by several Congressmen to propose legislation that would transfer responsibility for site reclamation to DOE with the requirement that the tailings be moved to a location away from the Colorado River. Although we have concluded that Atlas' proposed onsite reclamation does not present a radiological hazard, we are unable, at this time, to conclude that the effects on two species of endangered fish in the Colorado River are acceptable. Relocation of the tailings away from the Colorado River would eliminate the need to address that issue as it relates to long-term effects of stabilization of the tailings. In the DEIS we evaluated an alternate disposal site 18 miles from Moab and found that relocation of the tailings to that site would have less long-term environmental impacts than stabilization in place, although short-term impacts, related to moving the tailings, would be greater. Additionally, there is a large cost difference between the Atlas proposal and the alternative (\$28 million versus approximately \$150

million). The staff, therefore, could not find the alternative to be obviously superior. We are prepared to provide regulatory oversight, either similar to that provided under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, or any other manner Congress deems appropriate, if such legislation is promulgated.

Question U.8. (A) Briefly describe the status and significant issues for the Atlas site in Moab, Utah?

Answer.

- On May 28, 1999, the staff approved the reclamation plan proposed by Atlas, subject to six conditions, and revised the license. The most significant conditions require the licensee to: dewater the tailings by July 2002, provide a revised ground-water corrective action plan by May 2000, and provide analysis, before commencement of construction of the final radon barrier, showing that ammonia standards will be met in the Colorado River.
- The Final Environmental Impact Statement (FEIS) was published in March 1999. The FEIS concluded that the Atlas proposal will significantly reduce the impact of contaminants entering the Colorado River but that a rigorous determination of whether the ammonia concentration requirements specified in the final Biological Opinion (FBO) prepared by the U.S. Fish and Wildlife Service (FWS) could not be made without additional analysis. The FEIS concluded that all other environmental aspects of the proposed action were acceptable. The FEIS had been delayed pending the FBO, which after several rounds of consultation between the two agencies, was issued by FWS in late July 1998. Because the analysis done in support of the FBO reached a different conclusion than NRC's analysis in the draft EIS, i.e., that Atlas' proposed plan is less effective in cleaning up the ground water than what NRC had determined, NRC delayed the issuance of the FEIS to further analyze, with contractor assistance, the expected performance of the tailings pile, and the impact of that performance on ground water, after reclamation. The results of that analysis was incorporated into the FEIS. The NRC staff published the Final Technical Evaluation Report (FTER) in March 1997, which concluded that the reclamation plan proposed by Atlas meets the appropriate requirements in NRC regulations, primarily 10 CFR Part 40. A supplement, updating the information in the FTER, was published in April 1999.
- The ground water between the tailings and the Colorado River is contaminated and leaking contaminants into the river. 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 standards it could implement 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 FBO, identified as a reasonable and prudent alternative, steps to expedite the ground-water cleanup. The revised license, issued May 28, 1999, includes those steps as license conditions.
- In September 1998, Atlas Corporation filed for bankruptcy under Chapter 11. A

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reorganization plan, transferring responsibility for the Moab site to a Trust, has been approved by the creditors, including NRC, and is awaiting approval by the bankruptcy court. Atlas' assets related to the Moab site, including \$5.3 ?? from the surety, will be transferred to the Trust. It is unlikely that the assets transferred to the Trust will be sufficient to complete reclamation and ground-water remediation. NRC staff is in the process of choosing a Trustee. On June 17, 1999, the State of Utah decline the staff's April 28, 1999, request that it become the Trustee. The staff is now considering several private organizations and expects to make a decision soon.

- Grand Canyon Trust and other parties have sued FWS and NRC. The suits allege that FWS did not appropriately execute the Endangered Species Act in its FBO and that NRC should not proceed with its action on the Atlas proposal. The Department of Justice is representing both agencies in these matters. Additionally, Grand Canyon Trust and other parties have filed a petition to intervene and a request for a hearing with respect to the Atlas' license amendment that incorporated the reclamation plan.
- The Grand Canyon Trust and other parties also filed a 2.206 petition requesting that NRC take immediate actions to ensure the conservation of endangered species in the Colorado River near the Atlas site. The staff has sent an acknowledgment letter dated denying the request for immediate action and stating that the staff will consider the actions proposed by the Trust within a reasonable time. On May 27, 1999, the staff notified the petitioners that it was deferring action on the 2.206 petition, pending a decision on the petitioners' request for a hearing.
- Several Congressmen have proposed legislation that would transfer responsibility for site reclamation to DOE with the requirement that the tailings be moved to a location away from the Colorado River. We have concluded that Atlas' proposed onsite reclamation, while not presenting a radiological hazard, does raise environmental issues, primarily with respect to the effects on two species of endangered fish in the Colorado River. Relocation of the tailings away from the Colorado River could resolve those issues. In the FEIS we evaluated an alternate disposal site 18 miles from Moab and found that relocation of the tailings to that site would have less long-term environmental impacts than stabilization in place, although short-term human health and environmental impacts, related to moving the tailings, would be greater. Additionally, there is a large cost difference between the Atlas proposal and the alternative (\$19 million versus approximately \$150 million). The staff, therefore, could not find the alternative to be obviously superior. We are prepared to provide regulatory oversight, either similar to that provided under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, or any other manner Congress deems appropriate, if such legislation is promulgated.

#### Background/Additional Information.

- On June 15, 1999, at the Western Governors' Association meeting in Wyoming, Secretary of Energy Bill Richardson committed, to have DOE investigate the Atlas situation. On June 23, 1999, NRC staff participated in a meeting with DOE and representatives of Grand County, Utah, who were meeting with DOE as a followup to the

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07/07/99

**Secretary's statement. DOE staff stated that it will take the time necessary to fully investigate the situation but did not anticipate that it would take as long as six months. DOE also said that there was no immediate health and safety need for it to take emergency action and that the actions that the licensee or trustee will be required to take over the next couple of years would be likely be necessary whether the tailings will be stabilized in placed or moved to another location.**

- o NRC staff will be available to meet with Congressional staff to provide insight into the agency's actions and answer questions. Meetings with NRC staff will be set up through NRC's Office of Congressional Affairs.**

**Chairman/NMSS  
07/07/99**

Question U.8 (B) What happened with respect to the Final Environmental Impact Statement and what have we done to address the situation?

Answer.

- The Draft Environmental Impact Statement (DEIS) was published in January 1996. The DEIS comment period ended in April 1996. NRC staff, with contractor assistance, worked to address the comments received and to resolve issues with the National Park Service (NPS), a cooperating agency. A preliminary Final Environmental Impact Statement (FEIS) was sent to NPS in March 1997 and discussed by video conference in April 1997. A revised version of the preliminary FEIS was prepared that staff believed addressed NPS concerns.
- Concurrently, the staff attempted to consult with the U.S. Fish and Wildlife Service, in conformance with section 7 of the Endangered Species Act. In November 1995, the staff transmitted a Biological Assessment (BA) to FWS, providing its analysis with respect to impacts to endangered species. After several meetings with FWS, the staff transmitted a supplement to the BA in January 1997, addressing FWS concerns and requests for additional data. In June 1997, FWS transmitted its Draft Biological Opinion (DBO) to NRC.
- NRC staff's review of the DBO identified significant concerns that were transmitted to FWS in August 1997. At the request of the Vice President, the Council on Environmental Quality (CEQ) became involved in the process and organized several meetings among high level officials of NRC, the Department of the Interior (DOI), and the Department of Energy (DOE). At the meetings, DOI expressed the need for more data from the Atlas site. It was agreed to have the Grand Junction field office of the Oak Ridge National Laboratory (ORNL/GJ) collect the data, with most of the funding coming from DOE. An analysis of infiltration into the tailings pile was funded by NRC. ORNL/GJ presented its findings in reports in January and February 1998. In addition to providing data collected at the site, the reports described analysis performed by ORNL/GJ that had not been agreed to by the parties meeting at CEQ. Review of that analysis by NRC staff identified significant flaws, which were identified to FWS in February 1998.
- FWS prepared a revised DBO in April 1998 which relied on the flawed ORNL/GJ analysis and repeated some of the errors that NRC staff had identified in the 1997 DBO. NRC staff initiated discussions with the FWS regional office in Denver (previously staff had dealt with the FWS field office in Salt Lake City, which has responsibility for projects in Utah). As a result of discussions and meetings involving FWS regional office management, progress was made in correcting most of the major deficiencies in the revised DBO and agreement was reached on the Reasonable and Prudent Alternative (RPA). However, although the RPA was acceptable to NRC staff and the licensee, it was not supported by the body of the opinion which still relied on the flawed ORNL/GJ analysis. Although this inconsistency was pointed out to FWS after NRC review of the draft Final Biological Opinion (FBO), it remained in the FBO that was transmitted to NRC in July 1998.

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07/07/99

- The staff's earlier conclusion that the Atlas proposal to stabilize in place would be protective of the environment in the Colorado River, was not based on a detailed system analysis. Rather, it was based on several water balance analyses during and after mill operation; using these analyses the staff had concluded that the seepage of contaminated water from the pile to the ground water had been in the range of 50 to 100 gallons per minute. Atlas' proposed reclamation would reduce this seepage by about an order of magnitude. Additionally, installation of a tighter cover, similar to covers installed by DOE at several of its tailings sites, would reduce seepage by another order of magnitude. As the contamination measured in the Colorado River, was in most instances less than an order of magnitude above water quality standards, staff concluded that the proposed design was acceptable, with the option of installing a tighter cover if needed. The need for a tighter cover would be determined during the review of revisions to the ground-water corrective action plan, which would involve a performance analysis of the ground-water system.
- The flawed analysis that FWS relied on its FBO concluded that past seepage from the tailings pile had been much less than the NRC staff estimates, that the Atlas proposal would only reduce the seepage by a factor of about two and that the tighter cover would result in a total reduction of seepage of about an order of magnitude. Although the staff could have proceeded to issue the FEIS soon after receipt of the FBO, it was determined that a valid analysis of past seepage from the pile and future contamination of the ground water was needed. The staff tasked the Center for Nuclear Waste Regulatory Analysis (CNWRA) to perform that analysis and contracted with an expert ground-water modeler (a professor at the University of Montana) to provide the technical oversight normally provided by the staff (This was done to try to avoid accusations that the staff controlled the outcome of the analysis).
- CNWRA's analysis confirmed the staff's previous order of magnitude estimates of seepage from the pile but concluded that maximum concentrations of constituents in the ground water did not scale linearly (the two order of magnitude reduction in seepage from the pile resulted in only an order of magnitude reduction in maximum concentration in the ground water near the river). As a result, the staff was unable, using simple ratios of past measurements of ground water and surface water concentrations, to show that surface water standards identified by FWS in its FBO would be met. The staff performed further analysis that indicated that standards would be met, but because of the uncertainties imposed by incomplete site data a definite conclusion could not be made.
- The Final Environmental Impact Statement (FEIS) was issued in March 1999 and concluded the Atlas proposal will significantly reduce the impact of contaminants entering the Colorado River but that a rigorous determination of whether the ammonia concentration requirements specified in the FBO could not be made without additional analysis. The FEIS concluded that all other environmental aspects of the proposed action were acceptable. The license amendment issued on May 28, 1999, requires that before the licensee can commence construction of the final radon barrier, it must provide analyses, appropriately supported by necessary data, showing that the ammonia standard would be met over the design life of the reclamation.

Chairman/NMSS  
07/07/99



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

February 16, 1999

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

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

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February 10, 1999

HARVEY SENDER  
ALSO MEMBER OF NEW MEXICO BAR  
e-mail: [hsendar@sendarwass.com](mailto:hsendar@sendarwass.com)

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

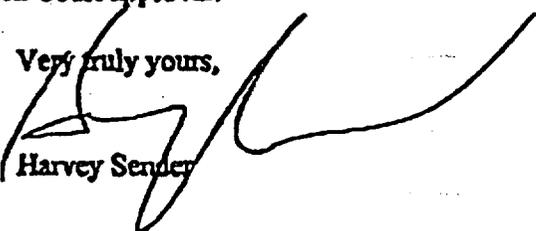
under 11 U.S.C. 365.

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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NAME	WTravers		OGC						
DATE	2/1/99		2/1/99						

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

FROM: William D. Travers  
 Executive Director for Operations

SUBJECT: PROPOSAL BY ATLAS TO TRANSFER MOAB SITE  
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NAME	MFliegel:bg		KStablein	JHornich		CPaperiello	FMiraglia
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NAME	WTravers						
DATE	2/ /99						