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G. Paul Bollwerk, Esq.  
Administrative Judge  
Presiding Officer  
Atomic Safety and  
Licensing Board (ASLB)  
U.S. Nuclear Regulatory  
Commission (NRC)  
Washington, D.C. 20555

Dr. Charles W. Kelleher  
Administrative Judge  
Special Assistant  
Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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

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Dear Administrative Judges:

Presented below is a response to Presiding Officer's March 11, 1997 Memorandum and Order (Permitting Additional Filing).

Background

A previous Order in the present proceeding, the Presiding Officer's Memorandum and Order (Initial Order) which was dated February 12, 1997, also allowed the undersigned to file a supplement to undersigned's original January 30, 1997 request for a hearing.

The February 12 suggested that the supplement address in detail, among other things, the undersigned's interest in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons why the undersigned meets the judicial standards for standing, "so as to be permitted a hearing".

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The undersigned subsequently, by way of response to the February 12 Initial Order, came forward with a "second response" dated March 3, 1997. Notwithstanding such response, the question remained - whether or not the undersigned, as an interested person, is really, really interested.

The Memorandum and Order (Permitting Additional Filing), signed by the Presiding Officer on March 11, 1997, states that the undersigned has not provided any detail as to what the undersigned means by "in the vicinity" of the Moab facility or how the undersigned and family would suffer "direct harm" as a result of residing "in the vicinity" of the Moab facility.

Such Memorandum and Order (Permitting Additional Filing) would further indicate that under agency case law to establish interest (i.e., standing), the undersigned must make a showing that the undersigned's proximity to the facility is such that the Moab facility and activities related to that facility that are relevant to the license amendment at issue will affect the undersigned's interest.

Further, the Memorandum and Order would hold that the undersigned is expected to attempt to show, given such proximity, how the Moab facility and any relevant activities at the facility will affect the undersigned's interest.

"In the Vicinity"

Undersigned does not habituate the restricted area of the Moab facility.

Undersigned does not habituate the boundary of the restricted area of the Moab facility.

However, the undersigned and family - of necessity - ordinarily obtain all their potable water, utilized for drinking and cooking, from a source that is within a short walk of such restricted area of the Moab facility.

Undersigned and family - of necessity - consume fuel wood (driftwood) from the Colorado River which flows by such restricted area.

Undersigned and family - of necessity - often bathe with or in the waters of the Colorado River.

The undersigned and family - of necessity - often use a public telephone a short walk from the restricted area of the Moab facility. The undersigned and family do not possess a private telephone.

The undersigned and family are frequently - of necessity - in close proximity to the restricted area of the Moab facility by reason of numerous necessary activities.

Undersigned and family are frequently - of necessity - in close proximity to the restricted area of the Moab facility by way of recreational, educational, and other activities on public and private lands which envelope the Moab facility.

The undersigned and family are frequently - of necessity - in close proximity to the restricted area of the Moab facility by way of the transportation corridors which immediately surround the restricted area at the Moab facility. Such transportation corridors are utilized by the undersigned and family for, among other things, local travel because there are no alternative applicable routes available.

Further, with respect such transportation corridors, the undersigned and family are precluded from necessary navigation of the Colorado River in close proximity to the restricted area of the Moab facility in that certain components, systems, or structures found within or nearby such restricted area in fact, or may, impede or obstruct such navigation. See 33 U.S.C. 401-413, and particularly 407.

The undersigned and family are otherwise, for the most part, precluded from necessary amenities provided by the Colorado River where such river's riparian areas, or largest wetlands, are proximate (a short walk) to the restricted area of the Moab facility.

"Direct Harm" in the Vicinity

The undersigned would offer that, given the necessary activities and proximity of such activities to the restricted area of the Moab facility, the undersigned and family most probably intercept numerous overloaded exposure pathways (some radiological) which originate within the restricted area of the Moab facility.

Further, the undersigned would offer that such noxious exposure pathways are, for the most part, an artifact of NRC programmatic regulatory breakdown exhibited at the Moab facility.

The undersigned would offer that such NRC programmatic regulatory breakdown is the immediate, direct, cause of activities which take place in the restricted area of the Moab facility.

Further, such activities result in direct harm directly attributable to the overloaded exposure pathways most probably intercepted by the undersigned and family while engaged in activities proximate to such restricted area.

Direct Harm to/Affect on Undersigned  
and Family's Interest Relevant Herein

What is relevant herein should be found in an Applicant/  
Licensee December 20, 1996 application for an amendment to  
SUA-917 and the Federal Register at 62 Fed. Reg. 3313-3314 of  
January 22, 1997, announcing the receipt of such application  
and offering a hearing opportunity.

The Applicant/Licensee December 20 reads as it reads. However,  
the Federal Register Notice of January 22, beyond certain  
procedural imperfections (which were remedied by the February  
12 Initial Order at 2. and 3.), should as corrected read, in  
part, as follows:

55. The licensee shall complete site reclamation  
in accordance with the approved reclamation  
plan. The ground-water corrective action  
plan shall be conducted as authorized by  
License Condition No. 17 in accordance with  
the following schedules.
  - A. To ensure timely compliance with target  
completion dates established in the  
Memorandum of Understanding with the  
Environmental Protection Agency (56 FR  
55432, October 25, 1991), the licensee shall  
complete reclamation to control radon  
emissions as expeditiously as practicable,  
considering technological feasibility, in  
accordance with the following schedule:
    - (3) Placement of final radon barrier  
designed and constructed to limit radon  
emissions to an average flux of no more  
than 20 pCi/m<sup>2</sup>/s above background -  
December 31, 2000.
  - C. Any license amendment request to revise the  
completion dates specified in Section A must  
demonstrate that compliance was not techno-  
logically feasible (including inclement  
weather, litigation which compels delay to  
reclamation, or other factors beyond the  
control of the licensee).

(See citation below.)

With respect the above representation of Condition 55, also see undersigned's March 3 second response to Presiding Officer's February 12 Initial Order, page 2, paragraph 5 / through page 3, paragraph 5, where the undersigned has previously discussed Condition 55.

The undersigned must herein reiterate that a correct characterization of Condition 55, even as amended (however, see March 5, 1997 Board Notification found on the record of this proceeding, signed by S. E. Turk, Counsel for NRC Staff), would demand recognition that Condition 55 is irretrievably interrelated to other NRC licensing actions and would demand harmonious co-mingled implementation. Neither the Applicant/Licensee's December 20 application, nor the March 4, 1997 NRC Staff issuance would allow such recognition.

The failure of the NRC Staff thus far to harmoniously implement Condition 55, even as recently amended by Amendment 28, has resulted, is resulting, and will result in the overloaded exposure pathways and resultant direct harm discussed above.

The December 20 application at issue herein must be revisited by the NRC Staff and an appropriately amended Condition 55 should be issued.

It is contemplated that the re-issued Condition 55 would contain perfected subparts, including Condition 55A.(3), and that such subparts, and particularly 55A.(3), would thereupon be harmoniously implemented.

Otherwise, the direct harm to undersigned and family outlined above shall continue unabated.

The undersigned is not requesting the impossible of the NRC Staff. The NRC Staff has already agreed to come forward with a license condition which could be harmoniously implemented. License Condition 55 itself indicates that commitment. See Condition 55, the paragraph above 55A., and particularly Condition 55A. which cites a Memorandum of Understanding (MOU) with the Environmental Protection Agency (56 FR 55432, October 25, 1991).

The undersigned has previously requested that such Memorandum of Understanding ride with the record of the present proceeding. See March 13, 1997 third response to Presiding Officer's February 12 Initial Order, particularly paragraph 2 of such response.

The undersigned would hereby respectfully request that such MOU be placed on the record of this proceeding.

The Presiding Officer can order that the December 20 application at issue herein be revisited by the NRC Staff and that an appropriately crafted Condition 55 be issued. See 10 C.F.R. 2.1209, 10 C.F.R. 2.1141 (Settlement of proceedings), and 10 C.F.R. 2.1251 (Initial decision and its effect).

If granted a hearing, the undersigned would show in further detail the specific necessity of such revisitation and amendment of particularly 55A.(3).

Id certum est quod certum reddi potest, sed id magis certum est quod de semetipso est certum

If the above offered details are not sufficient or if the Presiding Officer would require specific \* examples of NRC programmatic regulatory breakdown driven Moab facility restricted area activities, the undersigned would be pleased to supplement the present pleading upon the re-establishment of the NRC Local Public Document Room at Moab, Grand County, Utah.

Affirmant

*John Francis Darke*

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John Francis Darke  
Member of Public

At Moab, Grand County, Utah  
Monday, March 24, 1997

\* RELEVANT *jd* 3/24



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License SUA-917

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CERTIFICATE OF SERVICE

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

Administrative Judge  
Charles N. Kelber  
Special Assistant  
Atomic Safety and  
Licensing Board  
U. S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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

Anthony J. Thompson, Esq.  
Shaw, Pittman, Potts  
and Trowbridge  
2300 N Street N.W.  
Washington, D.C. 20037-1128

Administrative Judge  
G. Paul Bollwerk, III  
Presiding Officer  
Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Lawrence J. Chandler, Esq.  
Office of the General  
Counsel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555  
Attention: Chief,  
Docketing and Service Branch

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

Dated at Moab, Utah this  
24th day of March 1997

  
John Francis Darke