



DOCKET NUMBER  
BYPRODUCTS 40-3453-MLA-4  
UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D C 20555-0001

DOCKETED  
USNRC

February 25, 1999

'99 MAR -8 P2:30

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATION AFF

MEMORANDUM TO: G. Paul Bollwerk, III, Acting  
Chief Administrative Judge  
Atomic Safety and Licensing Board Panel

FROM: Annette L. Vietti-Cook, Secretary *Annette Vietti-Cook*

SUBJECT: REQUEST FOR HEARING OF SARAH M. FIELDS

Attached is a request for hearing submitted on February 18, 1999, by Sarah M. Fields. The request was submitted in response to the issuance of a notice of receipt of a license amendment request of the Atlas Corporation (Docket No. 40-3453). The proposed amendment would modify license condition LC 55 B.(2) by changing the completion date for ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan. The proposed completion date under the amendment would be July 31, 2006. The notice of the proposed amendment request was published in the Federal Register at 64 Fed. Reg. 2919 (January 19, 1999) (copy attached).

The request for hearing is being referred to you for appropriate action in accordance with 10 C.F.R. § 2.1261.

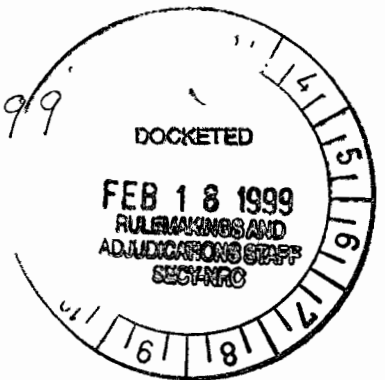
Attachments: As stated

cc: OGC  
CAA  
OPA  
EDO  
NRR  
Richard Blubaugh  
Atlas Corporation  
Sara M. Fields

20063

February 18, 1999

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555-0001  
Attention: Rulemaking and Adjudications Staff



HEARING REQUEST      Docket No. 40-3453      License No. SUA-917  
In Response to a January 19, 1999, Federal Register Notice  
Vol. 64, No. 11, pages 2919-2920

Pursuant 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings", I would hereby request a hearing in response to a "Notice of receipt of a request from Atlas Corporation to revise a site-reclamation milestone in License No. SUA-917 for the Moab, Utah facility and notice of opportunity for a hearing", published in the Federal Register on January 19, 1999 (64 FR 2919).

The January 19 Federal Register Notice (FRN), in its "Summary", indicates that the license amendment request dated December 22, 1998, proposes to change the date for the completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan. The license amendment request proposes to modify License Condition 55B(2) of License SUA-917 to extend the date for completion of ground-water corrective actions from December 31, 1998, to July 31, 2006. The Summary also states that Atlas Corporation proposes to revise the ground-water corrective action milestone pursuant to the reasonable and prudent alternative and mitigative measures which were stipulated in the Biological Opinion issued by the U.S. Fish and Wildlife Service on July 31, 1998, and that such reasonable and prudent alternative would require that the ground-water be cleaned up to relevant standards within 7 years from the date of Nuclear

Regulatory Commission approval of Atlas' revised ground-water corrective action plan.

There is no effective discussion in the Summary (or the FRN) of what the performance objectives specified in the ground-water corrective action plan are; what "relevant" cleanup standards are to be applied to the Atlas site; the date the NRC actually received, or expects to receive, Atlas' revised ground-water corrective action plan; or how the reasonable and prudent alternative and mitigative measures outlined in the Fish and Wildlife Service's Biological Opinion will implement the performance objectives specified in the current, or revised, ground-water corrective action plan, thereby satisfying the Nuclear Regulatory Commission's requirements at 10 CFR Part 40 Appendix A. There may be an aggravating regulatory incompatibility with respect implementation. Implementation of the Endangered Species Act by the Nuclear Regulatory Commission, notwithstanding its obligations under the Atomic Energy Act of 1954, is allowing regulatory confusion.

Ordinarily, information beyond what is offered in the Summary is found in the Supplementary Information portion of the notice. In the January 19 FRN the Supplementary Information goes immediately to isolated portions of License Condition 55: B and B(2).

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In accordance with 10 CFR 2.120<sup>c</sup>(e), the requestor will address the following:

- (1) The interest of the requestor in the proceeding.

Response: This requestor resides and works in Moab, Utah, less than three (3) miles from the edge of the Atlas site. This requestor is being, and has been, excluded from the Colorado River and Colorado River riparian areas within one and one-half miles of the Atlas site ("exclusion zone") as a direct result of Nuclear Regulatory Commission (NRC) failure to properly enforce, in its entirety, License Condition 55 of Specific Source Material License SUA-917.

This requestor has periodically resided in Moab since October of 1996. Requestor also resided in Moab for an extended period in 1987 and in 1988.

This requestor has, since October 1996, also lived on the Colorado River and participated in recreational and other activities on the Colorado up-river from the Atlas site. These subsistence, educational, and recreational activities include camping, cooking, hiking, birding, wildlife observation, and astronomical observation, all on a daily basis, in all seasons of the year. While on the Colorado River this requestor makes use of river water for all bathing and dishwashing and some clothes washing; burns drift-wood from the river for all cooking and heating; and, during the spring, summer, and fall, consumes fish which have lived their lives in the river. All these necessary activities have occurred over extensive periods of time--not just a weekend here and a weekend there.

This requestor is excluded from engaging in the above activities on public and private land within one and one-half miles of the Atlas site as a direct result of NRC failure to properly enforce, in its entirety, License Condition 55, and specifically, License Condition 55B(2).

(2) How the interests may be affected by the results of the proceeding,

including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in 2.1205(g) of this section.

Response: (1) The nature of the requestor's right under the Act to be made a party to the proceeding: This requestor has a right not to be excluded, in the manner discussed herein, from the private and public lands within one and one-half miles of the Atlas site without due process.

(2) The nature and extent of the requestor's property financial, or other interest in the proceeding: As explained above, requestor's livelihood is definitely impaired by the denial of necessary resources and opportunities found within one and one-half miles of the Atlas site. In addition, requestor is precluded from obtaining employment on or near the Colorado River within one and one-half miles of the site. Such employment opportunities do, in fact, exist.

Requestor's determination not to make use of the resources and opportunities within such exclusion zone is well founded. It is based on the consideration that any activities carried out within the exclusion zone, particularly those which involve river water, would be detrimental to this requestor's health and safety. There is an unacceptable risk. Such determination is based upon, inter alia, a review of the ground and surface water aspects of the following NRC official records:

- (a) Draft Environmental Impact Statement Related to the Reclamation of the Uranium Mill Tailings at the Atlas Site, Moab, Utah, NUREG-1531, U.S. Nuclear Regulatory Commission, January 1996
- (b) Final Technical Evaluation Report for the Proposed Revised Reclamation Plan for the Atlas Corporation Moab Mill, NUREG-1532, U.S. Nuclear Regulatory Commission, March 1997.
- (c) Revised Draft Biological Opinion for the Proposed Reclamation of the

Atlas Mill Tailings Site in Moab, Utah; U.S. Department of Interior, Fish and Wildlife Service, Mountain-Prairie Region; Denver, Colorado; April 14, 1998.

- (d) Limited Groundwater Investigation of The Atlas Corporation Moab Mill, Moab, Utah; Oak Ridge National Laboratory; Grand Junction, Colorado; January 9, 1998.
- (e) Tailings Pile Seepage Model, The Atlas Corporation Moab Mill, Moab, Utah; Oak Ridge National Laboratory; Grand Junction, Colorado; January 9, 1998.
- (f) Supplemental Modeling and Analysis Report, Atlas Corporation Moab Mill, Moab, Utah; Oak Ridge National Laboratory; Grand Junction, Colorado; February 5, 1998.
- (g) Infiltration, Seepage, and Groundwater Contamination Modeling for The Atlas Corporation Uranium Mill Tailings Pile Near Moab, Utah; Amit Armstrong, et al.; Center for Nuclear Waste Regulatory Analyses; San Antonio, Texas; December 1998.
- (h) Review of the Center for Nuclear Waste Regulatory Analyses Flow and Solute Transport Models for the Atlas Site, Moab, Utah; William W. Woessner; Missoula, Montana; December 16, 1998.

It is a well documented fact that offsite radiological and non-radiological impacts from ground and surface water contaminated by the Atlas facility do, in fact, exist. For example:

"Under existing conditions, leachate, seeping from the tailings pile is diluted by groundwater of the Quaternary aquifer, which flows under the pile and toward the east entering the Colorado. ...The groundwater at the tailings pile would continue to be impacted until the entire leachable content of the pile had leached out. However, it is expected that the tailings will continue to leach well beyond the design life of the pile." (Draft Environmental Impact Statement, January 1996, page 4-13.)

"Given minimal dilution at record low flow conditions, however, uranium, gross alpha (nearly all from uranium and its daughters), ammonia, and molybdenum from tailings could constitute a significant fraction of the river's contaminant concentrations." (Draft Environmental Impact Statement, January 1996, page 4-27.)

Under these circumstances any activity which involves the use of Colorado River water or the burning of driftwood (which always involves

the inhalation of wood smoke) within one and one-half miles of the site would open up unacceptable exposure pathways. Consumption of fish caught within or near the exclusion zone would not be advisable, nor would the consumption of any waterfowl which feed on the plant and insect food available to them in the river near the site.

Requestor's life demands and requires (of necessity) access to the Colorado River, its resources and opportunities, to the greatest extent practicable in the vicinity of Moab, Utah.

Until such time as the ground-water corrective actions are complete and all performance objectives specified in a revised ground-water corrective action plan are met, requestor, of necessity, will continue to be unacceptably excluded from a large area adjacent the Atlas site. This requestor regards the risk to be unauthorized and unacceptable.

(3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest: The exclusion of this requestor from an area within one and one-half miles of the Atlas Mill site (as discussed above) could be mitigated as a result of an order which would issue in the context of the present proceeding, pursuant the Atomic Energy Act of 1954, as amended. The NRC could direct that an enforceable date certain be established, whereupon the ground-water corrective actions must be completed. However, the proposed completion date for the ground-water corrective action plan, as noticed on January 19, appears to be unsupported, unreasonable, and unrealistic. The proposed date of completion of the corrective action plan does not take into consideration the other enforceable interconnected and interrelated obligations laid out in License Condition 55.

(See Attachment A for License Condition 55, in its entirety.)

The Nuclear Regulatory Commission could issue an order demanding that such proposed amendment be supportable, reasonable, and realistic, and compatible with the time frames dictated by the balance of License Condition 55.

A review of the subject FRN does not provide sufficient information about either how the date of July 31, 2006, was actually arrived at, or why it is supportable, reasonable, and realistic. A review of the NRC staff licensing action history regarding License Condition 55 would further substantiate the conclusion that such milestone modification as is proposed by the January 19 notice would be arbitrary, capricious, and contrary to law. (See March 4, 1998, letter from Ms. Sarah M. Fields, requestor, to NRC staff and NRC and Environmental Protection Agency records cited therein, Attachment B. Note that, as of this date, requestor has not received a coherent reply to this March 4 submittal.)

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding.

Response: A. License Condition 55D of License SUA-917 states:

"Any license amendment request to change the target dates in Section B above must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee."

This requestor is concerned that the December 22, 1998, application at issue here might not have adequately addressed, if at all, such added risk to the public health and safety and the environment. The



January 19 FRN makes no mention of the requirements of License Condition 55D or the manner in which the December 22 application addresses such requirements.

If the December 22 application did not meaningfully address the requirements of License Condition 55D, quoted above, the NRC staff had the duty to return the December 22 application as incomplete and unacceptable for docketing. The Nuclear Regulatory Commission could order that this happen.

B. License Condition 55, at the beginning, states:

"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." (Emphasis added.)

This stipulation, along with License Condition 55B(2) itself, require that the ground-water corrective actions to be conducted, and completed in accordance with <sup>the</sup> milestone in License Condition 55B(2), "be conducted as authorized by License Condition No. 17". (See Attachment A for License Condition 17.)

License Condition 17 has not been amended to include either the as yet to be submitted revised ground-water corrective action plan or "the reasonable and prudent alternative and mitigative measures stipulated in the Biological Opinion issued by the U.S. Fish and Wildlife Service on July 31, 1998".

The January 19 FRN makes no mention of an amendment to License Condition 17 incorporating these new requirements, upon which a new milestone appears to be based, into License SUA-917. Such new

requirements need to be incorporated into the license before any new milestone can be established.

C. The proposed new milestone of July 31, 2006, appears to be predicated on an assumption that by July 31, 1999, the NRC will have approved licensee's revised ground-water corrective action plan.

Is this a reasonable and realistic assumption? I do not think so. The revised ground-water corrective action plan will not be submitted to the NRC until after the NRC makes a decision regarding Atlas' surface reclamation plan. There is no date certain for either of these two events. NRC staff has committed to providing an opportunity for a hearing on the revised ground-water corrective plan. The scheduling here appears to be a bit tight.

D. The proposed new milestone of July 31, 2006, also appears to be predicated on the assumption that the Atlas Corporation will be able to complete all necessary ground-water remediation (such that the ground-water will be cleaned up to relevant standards) within 7 years of NRC's approval of Atlas' revised ground-water corrective action plan. The old ground-water corrective action plan is an obsolete, paper plan. The revised plan has not even been submitted to the NRC, let alone been reviewed and approved and implemented.

Therefore, the proposed new groundwater cleanup completion date is without technical foundation. No new milestone should even be proposed until such a technical foundation has been established.

E. Atlas' December 22, 1998, proposed amendment is based on the idea that by satisfying various suggestions and stipulations outlined in

the July 1998 Biological Opinion Atlas will meet the performance objectives specified in the as yet to be submitted and approved revised ground-water corrective action plan, and thus the requirements of 10 CFR Part 40 Appendix A. Where has a determination been made (on the public record) by the NRC that such would be the case?

It appears that the applicable ground-water cleanup criteria now include both Atomic Energy Act of 1954, as amended, requirements and Endangered Species Act requirements. The Biological Opinion has become a standard or criteria to be met.

What is NRC policy regarding its implementation of the Endangered Species Act? Where has this policy been run by the public? Where was the opportunity for public input regarding the site-specific ground-water corrective action measures that appear in the Fish and Wildlife Service's Biological Opinion?

The NRC can order the NRC staff to come forward with a proposed policy. The NRC can clarify how it intends to implement the criteria alluded to in the FRN. The NRC could clarify the relationship between the Biological Opinion and the ground-water corrective action plan and the jurisdictional issues which have accrued.

(4) The circumstances establishing that the request for a hearing is timely in accordance with 2.1205(c).

Response: This requestor is responding to a Federal Register Notice dated January 19, 1999 (64 FR 2912), noticing the opportunity for a hearing. The notice allowed thirty (30) days in which to request a hearing. Requestor is submitting this hearing request on February 18, 1999, which is within the 30 day time period allowed.

- - -

This requestor reserves the right to supplement this petition upon the receipt of new information and pertinent NRC records.

Requestor is appearing pro se.

*Sarah M. Fields*

Sarah M. Fields  
P.O. Box 603  
Moab, Utah 84532-0603

Enclosures: Attachment A  
Attachment B

cc: Mr. Richard Blubaugh, Atlas Corporation  
Executive Director of Operations, NRC

**MATERIALS LICENSE**

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 (Public Law 93-438), and Title 10, Code of Federal Regulations, Chapter I, Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, and 70 and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess, and transfer byproduct, source, and special nuclear material designated below; to use such material for the purpose(s) and at the place(s) designated below; to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s). This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, as amended, and is subject to all applicable rules, regulations, and orders of the Nuclear Regulatory Commission now or hereafter in effect and to any conditions specified below.

<p>Licensee</p> <p>1. Atlas Corporation</p> <p>2. 370 17th Street, Suite 3150D Denver, Colorado 80202-5631 [Applicable Amendment: 9]</p>		<p>3. License Number</p> <p>SUA-917, Amendment No. 29</p>
		<p>4. Expiration Date</p> <p>Until terminated</p>
		<p>5. Docket or Reference No.</p> <p>40-3453</p>

<p>6. Byproduct, Source, and/or Special Nuclear Material</p>	<p>7. Chemical and/or Physical Form</p>	<p>8. Maximum Amount that Licensee May Possess at Any One Time Under This License</p>
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Natural Uranium

Any

Unlimited

9. Authorized place of use: The licensee's uranium milling facility located at Moab, Utah.
10. The licensee is hereby authorized to possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by the licensee's milling operations authorized by this license.
11. For use in accordance with statements, representations, and conditions contained in Sections 4.2.4, 5, and 7 (except 5.5.10 and 5.5.11), Appendices 5.3, 5.5.6, and 6.0 of the licensee's renewal application dated May 31, 1984, and submittals dated December 17, 1984, January 18, and June 5, 1985, and September 16, 1992. The mill site organizational structure shall be maintained as presented by submittal dated May 13, 1991, as revised by letter dated March 5, 1993.
- Whenever the word "will" is used in the above referenced sections, it shall denote a requirement.
- [Applicable Amendments: 12, 15, 18, 20]
12. DELETED by Amendment No. 18.
13. DELETED by Amendment No. 18.
14. The licensee is hereby exempted from the requirements of Section 20.1902(e) of 10 CFR 20 for areas within the mill, provided that all entrances to the mill are conspicuously posted in accordance with Section 20.1902 and with the words, "Any area within this mill may contain radioactive material."
15. The results of sampling, analyses, surveys and monitoring; the results of calibration of equipment; reports on audits and inspections; all meetings and

Attachment A p. 1

February 18, 1977

**MATERIALS LICENSE  
SUPPLEMENTARY SHEET**

License Number 1 SUA-917. Amendment No 29

Docket or Reference Number 40-3453

training courses required by this license; and any subsequent reviews, investigations, and corrective actions, shall be documented. Unless otherwise specified in NRC regulations, all such documentation shall be maintained for a period of at least 5 years.

16. DELETED by Amendment No. 18.

17. The licensee shall implement a compliance monitoring program containing the following:

A. Sample wells AMM-1, AMM-2 and AMM-3 on a quarterly frequency for chloride, nitrate, sodium, sulfate, pH, TDS and water level, and on a semiannual frequency for chromium, gross alpha, lead, molybdenum, nickel, radium-226 and 228, selenium, silver, uranium and vanadium. Additionally, the upper completion of well ATP-2 shall be sampled on a quarterly frequency for chloride, nitrate, sodium, sulfate, pH, TDS and water level.

B. Comply with the following ground-water protection standards at point of compliance wells AMM-2 and AMM-3, with background being recognized as well AMM-1.

chromium = 0.08 mg/l, gross alpha = 33 pCi/l, molybdenum = 0.05 mg/l, nickel = 0.06 mg/l, radium-226 and 228 = 5 pCi/l, selenium = 0.01 mg/l, vanadium = 0.04 mg/l and uranium = 4.0 pCi/l.

C. Implement a corrective action program that includes pumping dewatering wells PW1, PW4, PW6, PW7, PW8, PW9, and PW12 during periods of nonfreezing weather. Sufficient data shall be collected, for the constituents listed in Subsection A, to determine the mass of constituents that have been recovered by the corrective action program.

The licensee shall on a semiannual frequency, submit a ground-water monitoring report as well as submit a corrective action program review by December 31, of each year, that describes the progress towards attaining ground-water protection standards.

[Applicable Amendments: 3, 4, 8, 11, 13, 19]

18. Released equipment or packages from the restricted area shall be in accordance with the document entitled, "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of License for Byproduct or Source Materials" dated September, 1984. [Applicable Amendment: 18]

19. DELETED by Amendment No. 18.

Attachment A p. 2

February 18, 1997

**MATERIALS LICENSE  
SUPPLEMENTARY SHEET**

License Number SUA-917. Amendment No 29

Docket or Reference Number 40-3453

52. A. Construction of a roadway toward the center of the tailings impoundment for use by mobile equipment in the application and inspection of binding agents for dust control and to provide access during initial reclamation activities, shall be in accordance with submittals dated July 14 and August 19, 1988.

B. Any proposed changes to the roadway or its uses, as described in the licensee's July 14 and August 19, 1988 submittals, shall require prior approval of the NRC, in the form of a license amendment.

[Applicable Amendment: 2]

53. The licensee shall conduct fence line inspections on a monthly basis in accordance with their submittal dated March 22, 1989.

[Applicable Amendments: 7, 18]

54. The licensee shall implement the program for radon attenuation specified in the submittal dated July 19, 1989.

[Applicable Amendment: 10]

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:

(1) Windblown tailings retrieval and placement on the pile - December 31, 2000.

(2) Placement of the interim cover - Complete.

(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.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion.

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40 - December 31, 1999.

(2) Projected completion of ground-water corrective actions to meet

Attachment A p. 3

- February 18, 1999

NRC FORM 374A  
(7-94)

U.S. NUCLEAR REGULATORY COMMISSION

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**MATERIALS LICENSE  
SUPPLEMENTARY SHEET**

License Number SUA-917. Amendment No 29

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performance objectives specified in the ground-water corrective action plan - December 31, 1998.

- C. Any license amendment request to revise the completion dates specified in Section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).
- D. Any license amendment request to change the target dates in Section B above must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

[Applicable Amendments: 21, 25, 26, 27, 28, 29]

56. Notification to NRC under 10 CFR 20.2202, 10 CFR 40.60, and specific license conditions should be made as follows:

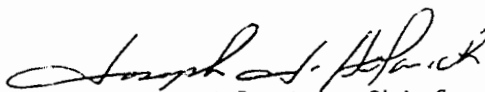
Required written notice to NRC under this license should be given to: Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Required telephone notification to NRC should be made to the Operations Center at (301) 816-5100.

[Applicable Amendment: 24]

FOR THE NUCLEAR REGULATORY COMMISSION

Dated: Dec 24, 1997



Joseph J. Holonich, Chief  
Uranium Recovery Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards

Attachment A p. 4



March 4, 1998

Ms. Karen D. Cyr  
General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555-0001

Mr. Joseph J. Holonich, Chief  
Uranium Recovery Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555-0001

Re: Docket No. 40-3453 and the Memorandum of Understanding  
of October 1991

Dear Ms. Cyr and Mr. Holonich:

Background

This writer, by letter of July 16, 1997, to Ms. Karen D. Cyr, General Counsel, NRC, inquired as to the status of the Memorandum of Understanding (MOU) Between the EPA (Environmental Protection Agency), NRC, and The [Affected Agreement] State of Colorado, Texas, and Washington Concerning Clean Air Act Standards for Radon Releases From Uranium Mill Tailings, Subparts T and W, 40 CFR Part 61.

The MOU was published by the EPA with an "Attachment A", within a Federal Register notice entitled "National Air Emission Standards for Hazardous Air Pollutants", "Notice of proposed rulemaking", 40 CFR Part 61, October 25, 1991, 56 FR 55432, 55434-55435. This October 25 Federal Register notice was not made publicly available by the NRC in the NRC Public Document Room (PDR). The actual MOU, dated October 17, 1991, was made publicly available by the NRC on August 7, 1997, in response to a Freedom of Information Act (FOIA) request (FOIA--BARRETT-97-227-970730) (911017:9708070093)\*.

Ms. Cyr responded to my July 16 letter on August 8, 1997. In her response she stated that "The MOU remains in effect at this time, and no changes have been made to it since its creation in 1991." (Ms. Cyr's August 8 response and my July 16 letter are not publicly available [NPA].)

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\*(Date of document:Accession number of document).

February 18, 1999

Attachment B

March 4, 1998

Page 2

Ms. Cyr also indicated in her August 8 letter that she had "forwarded [my July 16] request to NRC's technical staff so that they may provide a detailed response regarding events that have occurred since 1991 that may impact provisions in the Agreement."

Mr. Joseph J. Holonich, Chief, Uranium Recovery Branch, responded to my July 16 inquiry by undated letter (subsequently referred to on December 17, 1997, as "our September 30, 1997, letter") (970930:9710060278). Mr. Holonich's letter provided "a more detailed response to certain aspects of the questions" I raised.

This writer requested further clarification as to the status and force and effect of the MOU (and Attachment A) by an October 3, 1997, letter to Ms. Cyr and Mr. Holonich (971003:9712180362).

Mr. Holonich responded to my October 3 letter on December 17, 1997, addressing the status and force and effect of the MOU (and Attachment A).

Mr. Holonich's December 17 response states that:

[Various] schedules for placement of final radon barriers have been incorporated in the licenses for the NRC sites identified in Attachment A of the MOU. The MOU allows NRC and Agreement States to approve licensee requests to amend these schedules for reasons of technical feasibility, which include weather, litigation which compels delays to barrier placement, and other factors beyond the licensee's control. NRC has been publishing public notices in the Federal Register upon receipt and approval of licensee requests to modify reclamation schedules, as required under the MOU [emphasis added] [page 1, paragraph 4].

The MOU, referenced by Mr. Holonich's December 17 letter (supra), states, in pertinent part, under "NRC and Affected Agreement State Lead Actions":

2. NRC agrees to provide for public notice and comment by publishing in the Federal Register receipt of requests, intent to issue amendments, or intent to issue orders which (1) incorporate reclamation plans or other schedules for effecting final closure into licenses, and (2) amend reclamation schedules as necessary for reasons of technological feasibility (including inclement weather, litigation which compels delays to emplacement, or other factors beyond the control of the licensee) after the reclamation plans have been incorporated into licenses. The affected Agreement States agree to provide comparable public notice and comment [emphasis added]. [56 FR 55432, 55434, col. 3.]

The NRC referred to the above quoted portion of the MOU in "Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards", 10 CFR Part 40, Proposed Rule, November 3, 1993 (58 FR 58657), and in the Final Rule, June 1, 1994 (59 FR 28220).

These NRC proposed and final rules state:

The opportunity for public participation in the decisions made under [10 CFR Part 40, Appendix A] Criterion 6A would be in keeping with the MOU and the settlement agreement [see 58 FR 17230, April 1, 1993] and would be made through a notice in the Federal Register providing an opportunity for public comment on the proposed license amendment. This notice would also provide the opportunity to request an informal hearing in accordance with the Commission's regulations in 10 CFR part 2, subpart L. [58 FR 58657, 58662, col. 2, November 3, 1993, and 59 FR 28220, 28224, col. 2, June 1, 1994.]

The MOU and Docket No. 40-3453

The Applicant/Licensee for the Moab Mill, Moab, Utah (Docket No. 40-3453, License SUA-917), transmitted a letter to the NRC on December 19, 1997, to the NRC requesting a license amendment to License Condition (LC) 55A.(1) of License SUA-917 (971219:9801120219). The application sought to change the milestone (i.e., reclamation schedule) for cleanup of windblown tailings and disposal onto the tailings pile, from December 31, 1997, to December 31, 2000, due to factors beyond the control of the licensee.

The December 19 licensee request was made two days after Mr. Holonich's December 17 letter in which he stated that the "NRC has been publishing public notices in the Federal Register upon receipt and approval of licensee requests to modify reclamation schedules, as required under the MOU." (See supra.)

The MOU plainly states that the "NRC agrees to provide for public notice and comment by publishing in the Federal Register receipt of requests...which...amend reclamation schedules as necessary for reasons of technological feasibility...." (Emphasis added.) (See supra.)

The NRC did not publish a notice in the Federal Register of its receipt of the December 19 license amendment request, and thus did not provide for public notice and comment upon receipt of a license request to modify a Docket No. 40-3453 reclamation schedule, as required under the MOU. Nor was there notice of an opportunity to request a hearing pursuant 10 CFR Part 2, Subpart L. Only a year before, NRC staff

noticed a hearing opportunity regarding a reclamation milestone modification for the final radon barrier (Docket No. 40-3453) and received a hearing request (see VI. below).

The MOU plainly states that the "NRC agrees to provide for public notice and comment by publishing in the Federal Register...intent to issue amendments...which...amend reclamation schedules as necessary for reasons of technological feasibility...." (Emphasis added.) (See supra.)

The NRC staff did not publish a notice in the Federal Register of its intent to issue an amendment in response to the licensee's December 19 request, therefore they failed to provide for public notice and comment upon approval of a licensee request to modify a reclamation schedule, as required under the MOU.

License Amendment 29 to SUA-917 was issued by the NRC on December 24, 1997, granting the three year extension to the windblown tailings retrieval milestone of LC 55A.(1) (971224:9801120208 and 971224:9801120203). The NRC has not published a notice in the Federal Register of the actual issuance of Amendment 29.

Docket No. 40-3453 - Implementation of the MOU

Please find below a review of the other license amendments to License SUA-917 which incorporate reclamation schedules for effecting final closure or amend reclamation schedules.

I. License Amendment 17 - License Condition 55

A. Receipt of Request - The Applicant Licensee applied for an amendment establishing specific reclamation schedules for the Moab Mill on November 21, 1991 (911121:9112270154).

The November 21 amendment request was in response to a letter of October 22, 1991 (911022:9112020269), from Mr. Ramon E. Hall, Director, Uranium Recovery Field Office (URFO), Region IV, NRC, requesting that the licensees of inactive Part 40 uranium recovery facilities submit, "in the form of a request for license amendment, a firm schedule for completion of (1) windblown tailings retrieval and placement on the pile, (2) placement of an interim cover, (3) placement of a final earthen cover to limit radon emissions to a flux of no more than 20 pCi/m<sup>2</sup>/s, (4) placement of erosion protection cover, and (5) completion of groundwater corrective actions." (Page 1, paragraph 1.) The October 22 NRC request was the initial implementation of the MOU for Docket No. 40-3453.

(The NRC's October 22, 1991, request for license amendment applications was part of an effort by the EPA and the NRC [and others] to recind 40 CFR Part 61, Subparts T and W, by establishing that the NRC's regulatory program provided protection of the public with an ample margin of safety under Section 112 of the Clean Air Act, as amended. As part of that effort, it was necessary for the NRC to establish firm, expeditious as practical, considering technological feasibility), enforceable milestones for effecting final closure of Part 40 uranium recovery facilities that had ceased operation.) (For further background, see list of pertinent Federal Register notices at Attachment 1 below.)

The NRC published the receipt of responses to their October 22 request for licensing actions regarding reclamation plans for 13 inactive Part 40 uranium recovery facilities (including the November 21, 1991, response) in the Federal Register (FRN) on December 6, 1991 (56 FR 63984). A corrected version of this notice was published on December 18, 1991 (56 FR 65749).

These Federal Register notices stated that "comments or questions regarding the responses may be directed to the Director, Uranium Recovery Field Office", Denver, Colorado. No specific comment period (e.g., a 30-day comment period) was established by the December 6 and 18 FRNs.

The December 18 FRN stated that the October 22, 1991, NRC request for proposed reclamation schedules "was made in accordance with a memorandum of understanding (MOU)... published in the Federal Register on October 25, 1991..."

The FRN of December 18 indicated that "As stipulated in the MOU, the NRC is noticing the receipt of responses to the NRC request of October 22, 1991, from the following licensees:...." (Emphasis added.)

The December 18 FRN also indicated that "In accordance with the above referenced MOU, the NRC intent to amend each license will be noticed and a 30-day period will be provided for receipt of comments." (Emphasis added.)

B. Issuance of Amendment 17 - NRC staff's intent to amend License SUA-917 to incorporate the reclamation schedules was noticed in the Federal Register on July 2, 1992 (57 FR 29541). The June 24, 1992 (920624: 9208060301) NRC staff memorandum forwarding this notice for publication in the Federal Register stated that "This Notice is a requirement of the Memorandum of Understanding between Environmental Protection Agency

and the NRC which was published in the Federal Register on October 25, 1991 (56 FR 55434)." (Emphasis added.)

The July 2 FRN established a formal 45-day period for the public to comment on the proposed licensing action. Comments were to be addressed to Mr. David Meyer, Rules and Directives Review Branch, Office of Administration, NRC. The NRC received one comment: from the Fish and Wildlife Service, Department of Interior (920828:9209040005). NRC staff forwarded the comment to the Applicant/License and requested that they respond to the comment's concerns (920917:9210140345). (No comments had been received for Docket No. 40-3453 in response to December 6 and December 18, 1991, FRNs.)

NRC staff issued License Amendment 17 on November 4, 1992, incorporating five reclamation milestones into License SUA-917 as License Condition 55 (921104:9211250253, 921104:9211250260, and 920624:9208060293). The actual issuance of License Amendment 17 was not noticed in the Federal Register.

## II. License Amendment 21 - License Condition 55A.(2)

A. Receipt of Request - April 22, 1994, the Applicant/Licensee requested an amendment to LC 55A.(2) extending the milestone for completion of the interim cover, from April 30, 1994, to April 30, 1995, citing reasons of technological feasibility (940422:9405050162). A one year extension of the other four reclamation milestones in LC 55 was also requested.

The NRC noticed the receipt of the April 22 amendment request in the Federal Register on May 11, 1994 (59 FR 24490). The May 11 FRN provided an opportunity for the public to request a formal hearing pursuant "the requirements set forth in the Commissions regulations, 10 CFR 2.105 and 2.714 [Subpart G]".

The May 11, 1994, FRN did not provide an opportunity for the public to comment on the April 22, 1994, amendment request to modify the reclamation schedules, as required under the MOU.

B. Issuance of Amendment 21 - The NRC did not publish a notice in the Federal Register of its intent to issue an amendment in response to the April 22 amendment request. Therefore, they failed to provide an opportunity for public comment upon the approval of a licensee request to modify a reclamation schedule, as required under the MOU.

The NRC staff issued Amendment 21 to SUA-917 on May 23, 1994, granting an extension of the interim cover milestone of LC 55A.(2), from April 30, 1994, to February 15, 1995. The NRC did not grant an extension of the other four reclamation milestones in LC 55, explaining that it would be premature to extend these dates prior to completion of the Environmental Impact Statement for the reclamation of the Moab Mill and final NRC staff action on the proposed reclamation plan. (The NRC staff did not make the letter forwarding Amendment 21 to the licensee, Amendment 21, and the accompanying Technical Evaluation Report available to the public. Instead, they were placed in the non-publicly available Central File.)

The actual issuance of Amendment 21 was noticed in the Federal Register on June 15, 1994 (59 FR 30814). The June 15 FRN did not invite public comment.

### III. License Amendment 25 - License Condition 55A.(2)

A. Receipt of Request - January 23, 1995, the Applicant/Licensee requested another extension of the interim cover milestone in LC 55A.(2), from February 15, 1995 to October 30, 1995, citing reasons of technological feasibility (950123:9502010350).

The NRC published a notice of the receipt of the January 23 request in the Federal Register on February 6, 1995 (60 FR 7075). The February 6, 1995, FRN noticed an opportunity to request a formal hearing pursuant "the requirements set forth in the Commission's regulations, 10 CFR 2.105 and 2.714 [Subpart G]."

The February 6 FRN did not provide an opportunity for the public to comment on the January 23, 1995, license amendment request, as required under the MOU.

B. Issuance of Amendment 25 - The NRC did not publish a notice of their intent to issue an amendment in response to the January 23 request to modify a reclamation schedule, as required by the MOU.

NRC staff issued Amendment 25 to SUA-917 on March 8, 1995, extending the milestone for placement of the interim cover in LC 55A.(2) to October 31, 1995 (950308:9503170057). The NRC did not publish a notice in the Federal Register of their issuance of License Amendment 25, as they did with Amendment 21.



IV. License Amendment 26 - License Condition 55A.(2)

A. Receipt of Request - On October 25, 1995, the Applicant/Licensee again requested an extension of the date for completion of the interim cover in LC 55A.(2), from October 31, 1995, to November 31, 1995, due to reasons of technological feasibility (951025:9511010408).

Then, on November 13, 1995, the Applicant/Licensee notified the NRC that placement of the interim cover was completed on November 10, 1995 (951113:9704020231).

Subsequently, the Applicant/Licensee requested a license amendment on January 9, 1996, reflecting the completion of the interim cover (960109:9602070181).

The NRC did not notice the receipt of the October 25 and January 9 license amendment applications in the Federal Register.

B. Issuance of Amendment 26 - The NRC did not publish a notice in the Federal Register of its intent to issue an amendment to SUA-917 in response to the October 25 and November 13, 1995, and January 9, 1996, Applicant/Licensee submittals.

NRC staff issued License Amendment 26 on January 22, 1996, reflecting the completion of the interim cover (960122:9601260265 and 960122:9601260267).

Issuance of Amendment 26 to License SUA-917 was noticed in the Federal Register on February 6, 1996 (61 FR 4495). This notice did not invite public comment.

V. License Amendment 27 - License Condition 55A.(1)

A. Receipt of Request - January 9, 1996 (see IV supra), the Applicant/Licensee also requested an amendment to LC 55A.(1) to extend the reclamation milestone for retrieval of windblown tailings and placement on the tailings pile, from December 31, 1995, to December 31, 1997 (960109:9602070181).

The receipt of the January 9 request to amend LC 55A.(1) was noticed in the Federal Register on February 6, 1996 (61 FR 4495-4496). The February 6, 1996, FRN provided an opportunity to request an informal hearing pursuant to 10 CFR Part 2, Subpart L. (Note that previously [see Amendments 21 and 25 supra] the hearing opportunities offered in the Federal Register were pursuant "the requirements set forth in the Commission's regulations, 10 CFR 2.105 and 2.714 [Subpart G].")



The February 6, 1996, FRN did not provide an opportunity for the public to comment on the January 9 application to alter a reclamation schedule, as stipulated by the MOU.

B. Issuance of Amendment 27 - Again, the NRC did not publish a notice in the Federal Register of its intent to issue an amendment in response to the January 9, 1991, amendment request, thereby failing to provide for public comment, as was contemplated by the MOU.

The issuance of Amendment 27 to extend the windblown tailings retrieval milestone, from December 31, 1995, to December 31, 1997, occurred on April 8, 1996 (960408:9604100155 and 960408:9604100164). A notice of the issuance of Amendment 27 was not published in the Federal Register.

#### VI. License Amendment 28 - License Condition 55A.(3)

A. Receipt of Request - A license amendment request to extend the milestone in LC 55A.(3) for completion of the final radon barrier, from December 31, 1996, to December 31, 2000, was submitted by the Applicant/licensee on December 20, 1996 (961220:9701060066). The application cited factors beyond the control of the licensee.

Notice of the receipt of the December 20 request to amend LC 55A.(3) was published in the Federal Register on January 22, 1997 (62 FR 3313). The January 22 FRN provided an opportunity to request an informal hearing under the provisions of 10 CFR Part 2, Subpart L. The NRC received a request for a hearing in response to this Federal Register (970210:9702140074).

The January 22 Federal Register notice did not invite public comment on the December 20, 1996 application, therefore, the NRC did not receive any comments. A Subpart L proceeding did not ensue, and there was no opportunity for intervention.

B. Issuance of Amendment 28 - As with the other milestone revision requests, the NRC did not notice in the Federal Register its intent to issue an amendment extending the final radon barrier milestone, as required by the MOU.

License Amendment 28 to SUA-917 was issued on March 4, 1997, extending the final radon barrier milestone from December 31, 1997, to December 31, 2000 (970304:9703130063 and 970304:9703130076). The issuance of Amendment 28 was not noticed in the Federal Register.

VI. License Amendment 29 - License Condition 55A. (1)

(See discussion on pages 3 and 4 supra.)

Considering the above, please respond to the questions laid out below regarding the implementation of the MOU on Docket No. 40-3453 and other applicable dockets. It would be helpful if your responses, where applicable, are docket, licensing action specific.

1. Does the NRC staff consider that the opportunities, or lack thereof, for public participation, as laid out above for Docket No. 40-3453, were/are in "keeping with the MOU"?

2. What is the NRC staff policy with respect the public availability of "actual MOU[s]" (memorandums of understanding) between the NRC and other entities? (See page 1 supra.)

3. In instances where the NRC staff has not placed such MOUs on the pertinent public NRC docket(s) in the NRC PDR, does the NRC staff consider publication in the Federal Register by some other entity of such MOUs sufficient, proper public notice? (See page 1 supra.)

4. What is the NRC staff policy with respect making both letters from the public which have been responded to by the NRC (non-predecisional), and the NRC responses thereto, promptly, upon disposition, publicly available on the pertinent docket(s)? (See page 1 supra.)

5. As indicated above (see page 2), NRC staff December 17, 1997 response asserts, in pertinent part, that "NRC has been publishing public notices in the Federal Register upon receipt and approval of licensee requests to modify reclamation schedules, as required under the MOU [emphasis added]." Does this mean that the NRC staff occasionally published such notices in such a place, under such and such circumstances? Does this NRC staff assertion mean that the NRC staff has been known to publish public notices about either receipt or approval of various requests to modify reclamation schedules? Would it be a proper interpretation of said NRC staff assertion to surmise that the NRC staff has been publishing public notices upon receipt and upon approval of licensee's requests to modify reclamation schedules, and that such is the requirement "under the MOU"?

6. Perhaps it would be helpful, given the above, to seek an explication of the NRC staff's interpretation of the operable October 1991 MOU between the NRC and various entities. Is it the NRC staff's interpretation that the MOU requires that the NRC "provide for public notice and comment" by publication in the Federal Register of: a) "receipt of requests", b) "intent to issue amendments", c) "intent to issue orders", where such requests, comments, orders 1) "incorporate reclamation plans" into licenses, 2) incorporate "schedules for effecting final closure into licenses", 3) "amend reclamation schedules as necessary"? (See page 2 supra.)

7. Does the MOU require that the NRC provide for public notice and comment on reclamation plans, by publication in the Federal Register of receipt of licensee requests to incorporate reclamation plans into licenses, and by publication in the Federal Register of NRC staff's intent to issue amendments which incorporate reclamation plans into licenses? (See page 2 supra.) If so, how has this stipulation of the MOU been implemented by the NRC?

8. Is the final rule (59 FR 28220, June 1, 1994), quoted in pertinent part on page 3 (supra), a final agency position, or commitment, with respect public participation in decisions made "under" (involving) 10 CFR Part 40, Appendix A, Criterion 6A?

9. Have opportunities for public participation under the MOU consistently included, beyond a provision for public comment, an opportunity to request a hearing in accordance with the Commission's regulations in 10 CFR Part 2, Subpart L (or Subpart G), as contemplated by the final rule cited supra?

10. Pursuant the 1991 MOU, under what circumstances has the NRC staff offered, with or without public notice and comment opportunities, Subpart G (formal) hearing opportunities? (See pages 3, 6 at II., and 7 at III. supra.)

11. What has been the NRC staff's rational for providing such formal hearing opportunities? What are the procedural criteria?

12. Pursuant the 1991 MOU and/or the 1994 final rule cited supra, under what circumstances has the NRC staff offered, with or without public notice and comment opportunities, Subpart L (informal) hearing opportunities? (See pages 3, 8 at V., and 9 at VI. supra.)

13. What has been the NRC staff's rational for providing such informal hearing opportunities? What are the procedural criteria?

Ms. Karen D. Cyr and Mr. Joseph J. Holonich  
March 4, 1998  
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This writer would appreciate a prompt, thorough ("detailed") reply to the above questions.

In responding, please recognize that although the questions are based on information contained in numerous NRC and EPA official records, some of which have been cited above (or listed in Attachment 1), the pertinent entity records which might allow more specific questions about this matter are either not on the public record or woefully inaccessible.

Sarah M. Fields  
P. O. Box 603  
Moab, Utah 84532-0603

Enclosure: Attachment 1

Federal Register Notices

The MOU and Docket No. 40-3453

1. Environmental Protection Agency, 40 CFR Part 61, "National Emission Standards for Hazardous Air Pollutants; Radionuclides", Final rule and notice of reconsideration, December 15, 1989, Vol. 54, No. 240, pp. 51654-51715.
2. Environmental Protection Agency, 40 CFR Part 61, "National Emission Standards for Hazardous Air Pollutants", Notice of proposed rulemaking, October 25, 1991, Vol. 56, No. 207, pp. 55432-55435.
3. Nuclear Regulatory Commission, "Notice of Receipt of Responses to Request for Licensing Actions Regarding Reclamation Plans for Inactive Uranium Recovery Facilities", December 6, 1991, Vol. 56, No. 235, p. 63984.
4. Nuclear Regulatory Commission, "Receipt of Responses to Request for Licensing Actions Regarding Reclamation Plans for Inactive Uranium Recovery Facilities", December 18, 1991, Vol. 56, No. 243, p. 64749.
5. Environmental Protection Agency, 40 CFR Part 61, "National Emission Standards for Hazardous Air Pollutants", Final rule, December 31, 1991, Vol. 56, No. 251, pp. 67537-67542.
6. Environmental Protection Agency, 40 CFR Part 61, "National Emission Standards for Hazardous Air Pollutants", Proposed rule, December 31, 1991, Vol. 56, No. 251, pp. 67561-67569.
7. Environmental Protection Agency, 40 CFR Part 192, "Health and Environmental Standards for Uranium and Thorium Mill Tailings", Advanced notice of proposed rulemaking, December 31, 1991, Vol. 56, No. 251, pp. 67569-67571.
8. Nuclear Regulatory Commission, Docket No. 40-3453, "Notice of Intent to Amend Source Material License SUA-917 for the Moab Mill to Incorporate Reclamation Schedules", July 2, 1992, Vol. 57, No. 128, pp. 29541-29542.
9. Environmental Protection Agency, "Proposed Settlement; Uranium Mill Tailings Disposal Litigation", Notice of proposed settlement; opportunity for public comment", April 1, 1993, Vol. 58, No. 61, 17230-17231.

10. Environmental Protection Agency, 40 CFR Part 192, "Health and Environmental Standards for Uranium and Thorium Mill Tailings", Proposed rule, June 8, 1993, Vol. 58, No. 108, pp. 32174-32186.
11. Nuclear Regulatory Commission, 10 CFR Part 40, "Uranium Mill Tailings Regulations; Conforming NRC Requirements to EPA Standards", Proposed rule, November 3, 1993, Vol. 58, No. 211, pp. 58657-58664.
12. Environmental Protection Agency, 40 CFR Part 192, "Health and Environmental Standards for Uranium and Thorium Mill Tailings", Final rule, November 15, 1993, Vol. 58, No. 218, pp. 60340-60356.
13. Environmental Protection Agency, 40 CFR Part 61, "National Emissions Standards for Hazardous Air Pollutants", Proposed rule, February 7, 1994, Vol. 59, No. 25, pp. 5674-5688.
14. Nuclear Regulatory Commission, Docket No. 40-3453, "Atlas Corp; Receipt of Application From Atlas Corp. To Amend Condition 55 of Source Material License No. SUA-917", May 11, 1994, Vol. 59, No. 90, p. 24490.
15. Nuclear Regulatory Commission, 10 CFR Part 40, "Uranium Mill Tailings Regulations; Conforming NRC Requirements to EPA Standards", Final rule, June 1, 1994, Vol. 59, No. 104, pp. 28220-28231.
16. Nuclear Regulatory Commission, Docket No. 40-3453, "Issuance of Amendment 21 to Source Material License SUA-917 Amending License Condition (LC) 55 for Atlas Corporation's (ATLAS') Uranium Mill Facility at Moab, UT", June 15, 1994, Vol. 59, No. 114, p. 30814.
17. Environmental Protection Agency, 40 CFR Part 61, "National Emissions Standards for Hazardous Air Pollutants", Final rule, July 15, 1994, Vol. 59, No. 135, pp. 36280-36302.
18. Nuclear Regulatory Commission, Docket No. 40-3453, "Receipt of Application From Atlas Corp.", February 6, 1995, Vol. 60, No. 25, p. 7075.
19. Nuclear Regulatory Commission, Docket No. 40-3453, "Notice of Issuance of Amendment 26 to Source Material License SUA-917 Amending License Condition (LC) 55 for Atlas Corporation's (Atlas') Uranium Mill Facility at Moab, Utah", February 6, 1996, Vol. 61, No. 25, p. 4495.

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Attachment 1 - Page 3

20. Nuclear Regulatory Commission, Docket No. 40-3453,  
"Atlas Corp.; Site Reclamation Milestone; Hearings",  
February 6, 1996, Vol. 61, No. 25, pp. 4495-4496.
21. Nuclear Regulatory Commission, Docket No. 40-3453,  
"Atlas Corporation", January 22, 1997, Vol. 62, No. 14,  
pp. 3313-3314.

Program, at (916) 657-2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653-6952 or TDD (916) 653-6934 at least one week prior to the meeting.

**SUPPLEMENTARY INFORMATION:** The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the State of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system. This group, known as the Bay-Delta Advisory Council has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the CALFED Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, California 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Roger Patterson,  
Regional Director, Mid-Pacific Region.  
[FR Doc. 99-968 Filed 1-15-99; 8:45 am]  
BILLING CODE 4310-94-M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, January 26, 1999.

**PLACE:** NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** Open.

#### MATTERS TO BE CONSIDERED:

7114 Brief of Aviation Accident: Pacific Grove, California, October 12, 1997, and proposed Safety Recommendations.

**NEWS MEDIA CONTACT:** Telephone: (202) 314-6100.

**FOR MORE INFORMATION CONTACT:** Rhonda Underwood, (202) 314-6065.

Dated: January 14, 1999.

Rhonda Underwood,  
Federal Register Liaison Officer.

[FR Doc. 99-1265 Filed 1-14-99; 3:57 pm]  
BILLING CODE 7533-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-3453]

### Atlas Corporation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of receipt of a request from Atlas Corporation to revise a site-reclamation milestone in License No. SUA-917 for the Moab, Utah facility and notice of opportunity for a hearing.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 22, 1998, a request from Atlas Corporation (Atlas) to amend License Condition (LC) 55 B.(2) of Source Material License SUA-917 for the Moab, Utah, facility. The license amendment request proposes to modify LC 55 B.(2) to change the completion date for ground-water corrective actions to meet performance objectives specified in the ground-water

corrective action plan. Atlas proposes to revise the date pursuant to the reasonable and prudent alternative and mitigative measures stipulated in the Biological Opinion issued by the U.S. Fish and Wildlife Service on July 31, 1998. The reasonable and prudent alternative states that ground water should be cleaned up to relevant standards within 7 years from Atlas' receipt of NRC approval of a revised ground-water corrective action plan.

**FOR FURTHER INFORMATION CONTACT:** Myron Fliegel, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Telephone (301) 415-6629.

**SUPPLEMENTARY INFORMATION:** The portion of LC 55 B.(2) with the proposed change would read as follows:

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—July 31, 2006.

Atlas' request to amend LC 55 B.(2) of Source Material License SUA-917, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within 30 days of the publication of this notice in the *Federal Register*. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be



served, by delivering it personally or by mail, to:

(1) The applicant, Atlas Corporation, Republic Plaza, 370 Seventeenth Street, Suite 3050, Denver, Colorado 80202. Attention: Richard Blubaugh; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 12th day of January 1999.

\_\_\_\_\_, the Nuclear Regulatory Commission.

\_\_\_\_\_, Staff Attorney.

\_\_\_\_\_, Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99-1076 Filed 1-15-99; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-309]

### Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station); Application of Exemption

#### Exemption

##### I

Maine Yankee Atomic Power Company is the holder of Facility Operating License No. DPR-36, which authorizes the licensee to possess the Maine Yankee Atomic Power Station (MYAPS). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility

consists of a pressurized-water reactor located at the licensee's site in Lincoln County, Maine. The facility is permanently shut down and defueled, and the licensee is no longer authorized to operate or place fuel in the reactor.

##### II

Section 50.54(w) of 10 CFR Part 50 requires power reactor licensees to maintain onsite property damage insurance coverage in the amount of \$1.06 billion. Section 140.11(a)(4) of 10 CFR Part 140 requires a reactor with a rated capacity of 100,000 electrical kilowatts or more to maintain liability insurance of \$200 million and to participate in a secondary insurance pool.

NRC may grant exemptions from the requirements of 10 CFR Part 50 of the regulations, which, pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security and (2) present special circumstances. Special circumstances exist when (1) application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)) or (2) compliance would result in undue hardship or costs that are significantly in excess of those incurred by others similarly situated. The underlying purpose of Section 50.54(w) is to provide sufficient property damage insurance coverage to ensure funding for onsite post-accident recovery stabilization and decontamination costs in the unlikely event of an accident at a nuclear power plant.

NRC may grant exemptions from the requirements of 10 CFR Part 140 of the regulations, which, pursuant to 10 CFR 140.8, are authorized by law and are otherwise in the public interest. The underlying purpose of Section 140.11 is to provide sufficient liability insurance to ensure funding for claims resulting from a nuclear incident or a precautionary evacuation.

##### III

On January 20, 1998, the licensee requested exemption from the financial protection requirement limits of 10 CFR 50.54(w) and 10 CFR 140.11. The licensee requested that the amount of insurance coverage it must maintain be reduced to \$50 million for onsite property damage and \$100 million for offsite financial protection. The licensee stated that special circumstances exist because of the permanently shutdown and defueled condition of MYAPS.

The financial protection limits of 10 CFR 50.54(w) and 10 CFR 140.11 were established to require a licensee to maintain sufficient insurance to cover the costs of a nuclear accident at an operating reactor. Those costs were derived from the consequences of a release of radioactive material from the reactor. Although the risk of an accident at an operating reactor is very low, the consequences can be large. In an operating plant, the high temperature and pressure of the reactor coolant system, as well as the inventory of relatively short-lived radionuclides, contribute to both the risk and consequences of an accident. In a permanently shutdown and defueled reactor facility, the reactor coolant system will never again be operated, thus eliminating the possibility of accidents involving the reactor. A further reduction in risk occurs because decay heat from the spent fuel decreases over time. This reduction in decay heat reduces the amount of energy available to heat up the spent fuel to a temperature that could compromise the ability of the fuel cladding to retain fission products.

Along with the reduction in risk, the consequences of a release decline after a reactor permanently shuts down and defuels. The short-lived radionuclides contained in the spent fuel, particularly volatile components such as iodine-131 and most of the noble gases, decay away, thereby reducing the inventory of radioactive materials that are readily dispersible and transportable in air.

Although the risk and consequences of a radiological release decline substantially after a plant permanently defuels its reactor, they are not completely eliminated. There are potential onsite and offsite radiological consequences that could be associated with the onsite storage of the spent fuel in the spent fuel pool (SFP). In addition, a site may contain a radioactive inventory of liquid radwaste, activated reactor components, and contaminated structural materials. For purposes of modifying the amount of insurance coverage maintained by a power reactor licensee, the potential consequences, despite very low risk, are an appropriate consideration.

To determine the insurance coverage sufficient for a permanently defueled facility, the cost of recovery from potential accident scenarios must be evaluated. At MYAPS, spent fuel is the largest source term on the site. The spent fuel is stored in the SFP, which uses water to cool the fuel. Wet storage of spent fuel possesses inherently large safety margins because of the simplicity and robustness of the SFP design. The