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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:  
Charles Bechhoefer, Presiding Officer  
Fredrick J. Shon, Special Assistant

OFFICE OF THE  
RULEMAKING  
ADJUDICATION AFF

In the Matter of:

ATLAS CORPORATION  
(Moab, Utah)

Docket No. 40-3453-MLA-4  
April 26, 1999

ASLB No. 99-763-05-MLA

RESPONSE BY REQUESTOR, SARAH M. FIELDS, TO ATLAS CORPORATION'S  
APRIL 8, 1999, REQUEST TO PLACE HEARING IN ABEYANCE

I. Background

Atlas Corporation (Atlas) filed a motion in the present proceeding entitled "Atlas Corporation's Request to Place Hearing in Abeyance" on April 8, 1999 (Atlas' Request). Atlas requested that any hearing which might ensue in response to Sarah M. Fields' February 18, 1999, request for a hearing in response to a notice in the Federal Register (64 Fed. Reg. 2919, January 19, 1999) be held in abeyance pending the outcome of Atlas' Chapter 11 bankruptcy proceeding. See "Atlas Corporation's Request to Place Hearing in Abeyance", submitted to the Atomic Safety and Licensing Board Panel, U. S. Nuclear Regulatory Commission (NRC), by David C. Lashway, Counsel for Atlas Corporation, Docket No. 40-3453-MLA-4, ASLB No. 99-763-05-MLA, April 8, 1999.

II. Discussion

A. Atlas' Request is an unwarranted attempt to delay the proceeding and avoid consideration of the issues which have been proposed to be

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the subject of the proceeding. This petitioner requests a prompt resolution of the issues which have been proposed to be considered in the present proceeding.

B. Atlas' Request is vague and unsubstantiated. For example, in the "Discussion", Atlas refers to extensive settlement negotiations and a "proposed plan" (Atlas' Request, page 2). This requestor does not have reasonable access to the "proposed plan". To the best of this requestor's knowledge, the "proposed plan" is not yet on the public record.

Also, Atlas refers to, but does not name, "several environmental organizations and others" who are involved in the Chapter 11 bankruptcy settlement negotiations (Atlas' Request, page 2).

Further, Atlas' Request states that "pursuant to the proposed plan, Atlas would be released from its license under relevant provisions of the Atomic Energy Act". (Emphasis added.) Atlas does not cite either the "relevant provisions of the Atomic Energy Act" or the relevant NRC regulations implementing such Atomic Energy Act provisions. See Atlas' Request.

Atlas has proposed, to the U. S. Bankruptcy Court, that it be released from its license. See Atlas Corporation's Amended Motion For Order Rejecting Materials License For Moab Uranium Tailings Site Pursuant to 11 U.S.C. Section 365(a), submitted to the U. S. Bankruptcy Court for the District of Colorado by Attorneys for Atlas Corporation, February 26, 1999. (Attachment A.) Also, see Atlas Corporation's Amended Motion For Order Abandoning Moab Uranium Tailings Site Pursuant to 11 U.S.C. Section 554(a), submitted to the U. S. Bankruptcy Court For the District of Colorado, by Attorneys for

Atlas Corporation, February 26, 1999. (Attachment B.)

C. The present proceeding has not been noticed to be a bankruptcy proceeding, an enforcement proceeding, or a Part 40 license termination proceeding (see above).

10 CFR Part 2, Subpart L--Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, Section 2.1201 (Scope of subpart) states:

(a) The general rules of this subpart govern procedure in any adjudication initiated by a request for a hearing in a proceeding for--

(1) The grant, transfer, renewal, or licensee-initiated amendment of a materials license subject to parts 30, 32 through 35, 39, 40, or 70 of this chapter;

(2) The grant, renewal, or licensee-initiated amendment of an operator license subject to part 55 of this chapter.

10 CFR Part 2, Subpart B--Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties, Section 2.200 (Scope of subpart) states:

(a) This subpart prescribes the procedure in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend, or revoke a license, or to take other action as may be proper, against any person subject to the jurisdiction of the Commission.

(b) This subpart prescribes the procedure in cases initiated by the staff to impose civil penalties pursuant to section 234 of the Act and section 206 of the Energy Reorganization Act of 1974.

The primary issue in this proceeding is whether or not the license amendment proposed by Atlas on December 22, 1998, should be approved by the NRC. Atlas has not adequately substantiated the relationship between Atlas' December 22 Part 40 source material license amendment request and Atlas' Chapter 11 bankruptcy proceeding.

D. Atlas has requested that the "NRC amend License Condition 55B(2)

pursuant to the reasonable and prudent alternative and mitigative measures stipulated in the Biological Opinion issued to the NRC by the U. S. Fish and Wildlife Service on July 31, 1998, or, alternatively, some date as otherwise determined by the staff". In the December 22 amendment request, Atlas did not specify a particular ground-water corrective action plan completion date. See Request to Amend Condition 55B.(2) Groundwater Corrective Action Deadline, License No. SUA-917, Docket No. 40-3453, from Mr. Richard E. Elubaugh, Executive Vice President, Atlas Corporation, to Mr. King Stablein, NRC, December 22, 1998.

The Fish and Wildlife Service's Biological Opinion's reasonable and prudent alternative (at b.) requires that Atlas Corporation "cleanup contaminated groundwater to the extent necessary to meet relevant standards within 7 years from Atlas' receipt of Nuclear Regulatory Commission approval of the revised ground-water corrective action plan". See "Final Biological Opinion for the Proposed Reclamation of the Atlas Mill Tailings Site in Moab, Utah", U. S. Fish and Wildlife Service, July 31, 1998, pages 84-94. (Attachment C.)

The Federal Register which noticed the receipt of Atlas' December 22 license amendment request to revise a site reclamation milestone indicated (under "Summary") that "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", and that "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".

Under "Supplementary Information", the notice advises that the portion of License Condition 55B(2) with the proposed change would read as follows:  
"(2) Projected completion of ground-water corrective action plan--July 31, 2006" (64 Fed. Reg. 2919, January 19, 1999).

Apparently, it is NRC staff who has made the determination as to what specific ground-water corrective action milestone would be "within 7 years from Atlas' receipt of Nuclear Regulatory Commission approval of the revised ground-water corrective action plan". The specific date NRC staff chose was July 31, 2006--exactly 7 years after July 31, 1999. Therefore, I would conclude that NRC staff expects to approve Atlas' (as yet to be submitted) revised ground-water corrective action plan on or before July 31, 1999.

However, on March 2, 1999, NRC staff sent a letter to Atlas regarding a "Draft License For Completion of Surface Reclamation". See letter from Mr. N. King Stablein, Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, NRC, to Mr. Richard Blubaugh, Atlas Corporation, March 2, 1999. In the March 2 letter, NRC staff advised Atlas that before the NRC can complete its licensing action, it will need a commitment from Atlas to accept certain measures. After such a commitment, NRC would then amend Atlas' license to include, amongst others, the following license condition:

41. The licensee shall reclaim the tailings disposal area in accordance with the October 1996 submittal entitled "Final Reclamation Plan, Atlas Corporation Uranium Mill and Tailings Disposal Area" and revisions thereof, with the following modifications:

...

B. The licensee shall provide, by October 15, 1999, a revision

to the corrective action program identified in license condition 17.C. that will meet ground-water standards within 7 years from the date of approval by NRC.

(Attachment D.)

Since NRC staff currently intends to require Atlas to submit the revised ground-water corrective action plan by October 15, 1999, the milestone schedule noticed in the January 19 Federal Register now appears not only to be a bit tight, but actually impossible.

Any delay in the present proceeding and the participation of attorneys, experts, etc., will not alter this fact.

E. Atlas' Request of April 8 states that their financial difficulties would be exacerbated by the commencement of another administrative proceeding requiring it "to retain attorneys, experts, etc., to defend its license request" (Atlas' Request, page 2). However, there is no such requirement under 10 CFR Part 2, Subpart L. Subpart L does not require the participation of attorneys, experts, etc.

As is the case with Atlas, at the present time this petitioner cannot afford to retain "attorneys, experts, etc."

### III. Conclusion

Considering the above, I would request that the hearing, if granted, not "be placed in abeyance pending the outcome of the bankruptcy proceeding".

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On April 22, I left messages with Judges Charles Bechhoefer and Frederick J. Shon, requesting a one weeks delay in the submittal of this response, due to illness. April 23 I was unable to reach Judge Bechhoefer.

I was able to reach Judge Shon who advised me that there would be no objection to a one week delay-to April 30.

Respectfully submitted this 26th day of April, 1999.

*Sarah M. Fields*

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

○  
Enclosures: As stated

○

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'99 APR 30 P2:45

In the Matter of:  
  
ATLAS CORPORATION  
  
(Moab, Utah)

Docket No. 40-3453-MLA  
ASLB No. 99-763-05-MLA  
OFFICE OF THE SECRETARY  
ADJUDICATIONS STAFF

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing RESPONSE BY REQUESTOR, SARAH M. FIELDS, TO ATLAS CORPORATION'S APRIL 8, 1999, REQUEST TO PLACE HEARING IN ABEYANCE have been served upon the following persons by U. S. mail, first class, in accordance with the requirements of 2.712.

Administrative Judge  
Charles Bechhoefer, Presiding Officer  
Atomic Safety and Licensing Board  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

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

Administrative Judge  
Frederick J. Shon, Special Assistant  
Atomic Safety and Licensing Board  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

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

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Washington, D. C. 20555-0001

Mr. Richard E. Elubaugh  
Vice President  
Atlas Corporation  
370 17th Street, Suite 3140  
Denver, Colorado 80202

Dated at Moab, Utah this 26th day of April 1999.

Sarah M. Fields  
Sarah M. Fields

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

FILED--  
BRADFORD L. BOLTON,  
CLERK

99 FEB 26 PM 4:20

IN RE:	)	
	)	
ATLAS CORPORATION,	)	U.S. BANKRUPTCY COURT
a Delaware corporation	)	DISTRICT OF COLORADO
EI#: 15-5503312	)	Case No. 98-23331 DEC
	)	Chapter 11
	)	
ATLAS GOLD MINING INC., a Nevada Corp.	)	Case No. 99-10889 DEC
EI#:84-1023843	)	Chapter 11
	)	
ATLAS PRECIOUS METALS INC., a Nevada	)	Case No. 99-10890 SBB
Corp., EI#: 87-0400332	)	Chapter 11
	)	
Debtors.	)	(Jointly Administered Under
	)	Case No. 98-23331 DEC)

**ATLAS CORPORATION'S AMENDED MOTION FOR ORDER REJECTING  
MATERIALS LICENSE FOR MOAB URANIUM TAILINGS  
SITE PURSUANT TO 11 U.S.C. SECTION 365(a)**

Atlas Corporation, by and through its counsel Sender & Wasserman, P.C. and for its Amended Motion for Order Rejecting Materials License for Moab Uranium Tailings Site Pursuant to 11 U.S.C. § 365(a) states as follows:

1. Atlas Corporation ("Atlas") filed its petition for relief under Chapter 11 of the Bankruptcy Code on September 22, 1998. Atlas Gold Mining Inc. and Atlas Precious Metals Inc. filed their petitions for relief under Chapter 11 of the Bankruptcy Code on January 26, 1999. Since the date of the filing of their petitions, the Debtors have been operating as Debtors in Possession.
2. Atlas is the fee owner of a closed uranium processing mill and adjoining property in Moab, Utah.
3. Atlas maintains the property pursuant to a Materials License (the "License") granted by the United States Nuclear Regulatory Commission (the "NRC"). A copy of the License is attached hereto as Exhibit A.
4. Pursuant to Section 365, Atlas requests authority to reject the License. Atlas is contemporaneously filing with this Motion a Motion to Abandon the Moab Uranium Tailings. Keeping the License would require use of funds which are otherwise necessary to Atlas' reorganization and the use of which to maintain the License will not be in the best interest of the

244

Attachment A  
p. 1 of 2

estate or the creditors. There is no benefit to the estate from maintaining the License. Atlas does not believe that there is any equity or value in the License.

5. The License requires that Atlas perform certain duties with respect to the supervising, maintenance, and reclamation of the uranium mill tailings site, and the NRC supervises and approves Atlas' plans and activities at the site. As a consequence, the License constitutes an executory contract as that phrase is used in § 365 and has been construed by the courts.

6. Atlas' rejection of the License in no way affects its rights to funds from the Department of Energy for reimbursement of remediation funds under Pub. L. 102-486, Title X, § 1001, Oct. 24, 1992, 106 Stat. 2946, codified at 42 U.S.C. § 2296a.

7. In support of the instant Motion, Atlas hereby incorporates the factual and legal arguments in its Objection to the Nuclear Regulatory Commission's Claim for Administrative Expense, filed with this Court on February 25, 1999.

WHEREFORE, Atlas Corporation prays that this Court enter its Order authorizing it to reject the License, and for such other and further relief as to this Court may seem just and proper.

DATED this 20 day of February, 1999.

Respectfully submitted

SENDER & WASSERMAN, P.C.

By:   
Harvey Sender, #7546  
Bonnie A. Bell, #14923  
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ATTORNEYS FOR ATLAS CORPORATION

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

FILED  
BRADFORD L. BOLTON  
CLERK

99 FEB 26 PM 4:18

U.S. BANKRUPTCY COURT  
DISTRICT OF COLORADO

IN RE: )  
)  
ATLAS CORPORATION, ) Case No. 98-23331 DEC  
a Delaware corporation ) Chapter 11  
EI#: 15-5503312 )  
)  
ATLAS GOLD MINING INC., a Nevada Corp. ) Case No. 99-10889 DEC  
EI#:84-1023843 ) Chapter 11  
)  
ATLAS PRECIOUS METALS INC., a Nevada ) Case No. 99-10890 SBB  
Corp., EI#: 87-0400332 ) Chapter 11  
)  
Debtors. ) (Jointly Administered Under  
) Case No. 98-23331 DEC)

**ATLAS CORPORATION'S AMENDED MOTION FOR ORDER ABANDONING MOAB  
URANIUM TAILINGS SITE PURSUANT TO 11 U.S.C. SECTION 554(a)**

Atlas Corporation, by and through its counsel Sender & Wasserman, P.C. and for its Amended Motion for Order Abandoning Moab Uranium Tailings Site Pursuant to 11 U.S.C. § 554(a) states as follows:

1. Atlas Corporation ("Atlas") filed its petition for relief under Chapter 11 of the Bankruptcy Code on September 22, 1998. Atlas Gold Mining Inc. and Atlas Precious Metals Inc. filed their petitions for relief under Chapter 11 of the Bankruptcy Code on January 26, 1999. Since the date of the filing of their petitions, the Debtors have been operating as Debtors in Possession.
2. Atlas is the fee owner of a closed uranium processing mill and adjoining property consisting of approximately 400 acres in Moab, Utah (the "Mill Property").
3. Unless the United States Nuclear Regulatory Commission approves the amendment of Atlas' Materials License to maintain and remediate the Mill Property and the proposed remediation plan, there is no value or equity which can be realized by the estate for distribution to creditors from the Mill Property and it is burdensome to the estate. This Amended Motion does not seek abandonment of any water rights arising from the Colorado River.
4. It is in the best interests of the estate to abandon the Mill Property pursuant to 11 U.S.C. Section 554(a).

241

Attachment B  
P. 1 of 2

12

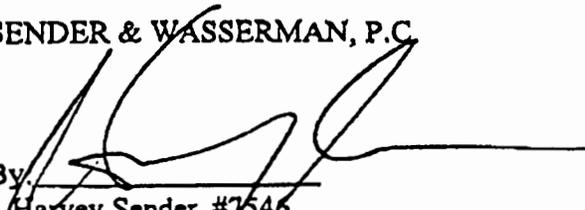
5. In support of the instant Motion, Atlas hereby incorporates the factual and legal arguments in its Objection to the Nuclear Regulatory Commission's Claim for Administrative Expense, filed with this Court on February 25, 1999.

WHEREFORE, Atlas Corporation prays that this Court enter its Order authorizing it to abandon the above-described real property fee interest, and for such other and further relief as to this Court may seem just and proper.

DATED this 26 day of February, 1999.

Respectfully submitted

SENDER & WASSERMAN, P.C.

By 

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ATTORNEYS FOR ATLAS  
CORPORATION

Attachment B  
D. 2062

GRAND COUNTY PUBLIC LIBRARY  
25 SOUTH 1st EAST  
MOAB, UTAH 84532

FINAL BIOLOGICAL OPINION FOR THE PROPOSED RECLAMATION  
OF THE ATLAS MILL TAILINGS SITE IN MOAB, UTAH

*Final Final*

*Attachment C  
7.1 of 5*

It is the Service's biological opinion that implementation of the proposed action: (1) is likely to jeopardize the continued existence of the Colorado squawfish, razorback sucker, humpback chub, and bonytail chub by depleting water from the Colorado River system and; (2) is likely to jeopardize the continued existence of Colorado squawfish and razorback sucker by degrading water quality and; (3) is adversely modifying designated critical habitat by degrading water quality to the point that it appreciably diminishes the value of designated critical habitat. The Service further concludes that the permanent loss of 0.5 acres and temporary modification of an additional unspecified amount of designated critical habitat will not appreciably diminish the value of designated critical habitat in the survival and recovery of Colorado squawfish and razorback sucker.

*Southwestern Willow Flycatcher.* It is the Service's biological opinion that implementation of the capping of the tailings pile in place and relocation of Moab Wash, as proposed, is not likely to jeopardize the continued existence of the southwestern willow flycatcher. No critical habitat exists for this species within the action area, therefore, none will be destroyed or adversely modified. However, the proposed action will result in the loss of 0.5 acres of flycatcher habitat, reducing the amount of available habitat for nesting, breeding and migration. The available information indicates that all remaining potential habitat, throughout the flycatchers range, is important to the continued survival of the species. The Service believes that it is reasonable to expect that flycatchers may be nesting on the Atlas property, and that the disturbance associated with capping the pile may result in the loss of a nesting site or nest.

REASONABLE AND PRUDENT ALTERNATIVE

Regulations (50 CFR 402.02) implementing section 7 of the Endangered Species Act define reasonable and prudent alternatives as alternative actions, identified during formal consultation, that (1) can be implemented in a manner consistent with the intended purpose of the action, (2) can be implemented consistent with the scope of the action agency's legal authority and jurisdiction, (3) are economically and technologically feasible, and (4) would, the Service believes, avoid the likelihood of jeopardizing the continued existence of the listed species or resulting in the destruction or adverse modification of critical habitat.

The Service's responsibility is to protect, now and long-term, listed fishes in the Colorado River near Moab, to protect designated critical habitat in the river and the 100-year floodplain, and to undertake appropriate actions to promote recovery of listed species. Based on the most recent Oak Ridge

Attachment C  
p. 2 of 5

National Laboratory studies undertaken pursuant to agreement with the Nuclear Regulatory Commission and furnished to the Service, the Service believes that the long term release of contaminants into the Colorado River will continue indefinitely with the current groundwater corrective action plan and absent any remedial action other than the proposed capping of the pile in place.

In modeling the pile drainage, Oak Ridge National Laboratory/Grand Junction (1998c) concluded that the bulk of the tailings water would passively drain in 100 years, with 238 years required to reach steady state conditions (where inflow in the form of precipitation equals outflow or leaching) (ORNL 1998c). It is the Service's opinion that this length of time to reduce contaminant levels in the river and remove the jeopardy to endangered fish would not be biologically and legally acceptable.

Based on subsequent discussions with the Nuclear Regulatory Commission and Atlas Corporation, active drainage of the pile was considered. An active drainage plan would significantly reduce the length of time required to drain the pile, resulting in less contaminated water reaching the Colorado River and a reduction in the length of time contaminated tailings leachate would continue to jeopardize the endangered fish. Atlas Corporation subsequently committed to specific time frames for dewatering the pile to the extent necessary to place the radon and infiltration barrier and meeting water quality standards in the Colorado River. It is the Service's opinion that these time frames, identified below, are based on the best available technology and professional judgement and, appear to be a reasonable approach to removing jeopardy to the endangered fish in the shortest feasible period of time.

A reasonable and prudent alternative, consisting of five (5) parts, has been developed to avoid the likelihood of jeopardy to the endangered Colorado River fishes from Atlas tailings pile contamination, from destruction and adverse modification of critical habitat and from water depletion from the Colorado River. The Service recognizes that removing the jeopardy to the endangered fish from the contaminated leachate will require time and has taken this into consideration in the following reasonable and prudent alternative and in the incidental take statement. However, should the time frames identified below not be met, the Service would reinitiate consultation.

Because this biological opinion has found jeopardy and destruction and adverse modification of critical habitat, the Nuclear Regulatory Commission is required to notify the Service of its final decision on implementation of the reasonable and prudent alternative.

Attachment C  
p. 3 of 5

The reasonable and prudent alternative is identified below:

1. While the Nuclear Regulatory Commission has concurred that a Revised Groundwater Corrective Action Plan is necessary for the Atlas site, no specific plan is currently available, nor has one been proposed as part of the action under consultation. This biological opinion identifies that the effects of leaching from the tailings pile, as well as other sources on the Atlas property, is jeopardizing the endangered Colorado squawfish and razorback sucker and adversely modifying critical habitat for one to two miles, depending on flows and other variables. Therefore, a revised groundwater corrective action plan is necessary to reduce leaching from the pile and other sources such that the fish are no longer jeopardized and the habitat is no longer adversely modified. To avoid jeopardy to the listed fishes from leachates seeping to the Colorado River from contaminated groundwater, the Nuclear Regulatory Commission shall:

a.) require Atlas Corporation to actively dewater the tailings pile to the extent necessary to place the radon barrier and infiltration barrier, which is the final portion of the cap. This is to be accomplished within 30 months from Atlas's receipt of Nuclear Regulatory Commission approval of the dewatering design. Any water actively withdrawn from the pile must be disposed of in a manner that will not result in impacts to listed species;

b.) require Atlas Corporation to cleanup contaminated groundwater to the extent necessary to meet relevant standards within 7 years from Atlas's receipt of Nuclear Regulatory Commission approval of the revised groundwater corrective action plan. Any accepted groundwater remediation plan must be designed to achieve cleanup in the shortest feasible period of time, and be designed to minimize the mixing zone in the Colorado River. Relevant standards shall include the ammonia concentrations as identified below as well as other constituents regulated by the Nuclear Regulatory Commission and surface water quality standards for the protection of aquatic life as identified in Utah Administrative Code 51-317 dated December 19, 1997. While several of these constituents are not specifically known to individually jeopardize the endangered fish at levels identified below the Atlas tailings pile, as previously identified under the "Effects of the Proposed Action", the synergistic and/or additive effects of elevated concentrations of the known tailings contaminants may be adversely affecting Colorado squawfish and razorback sucker, and:

Attachment C  
p. 4 of 5

c.) expedite approvals of Atlas's barrier design and revised groundwater corrective action plan so that jeopardy to the listed species is removed within 10 years from receipt of this final biological opinion and;

d.) reinstate consultation with the Service for those portions of any revised groundwater program that may affect endangered or threatened species.

e.) monitor surface water quality in the Colorado River at and downstream of the Atlas site as necessary to insure compliance with the above time frames and ammonia standards identified below. Reports of the monitoring shall be supplied to the Service's Salt Lake City Field Office annually.

2. The leachate constituent of most significant concern to the Service is ammonia. The fact that the proposed action did not specifically address ammonia, and that initially during consultation it was uncertain what levels of ammonia in the water would remain after the proposed action was implemented, it was not possible for the Service to conclude that ammonia concentrations would be reduced to levels that would remove jeopardy to the endangered fish. To assure that ammonia levels will be reduced to levels avoiding future jeopardy to the endangered fish, the Nuclear Regulatory Commission shall incorporate, whether by order or through the request of Atlas Corporation, ammonia as a new constituent in the license held by Atlas Corporation. The Nuclear Regulatory Commission shall require Atlas Corporation to meet the following ammonia standards for surface water at and below the Atlas tailings pile:

a.) The chronic toxicity standard of 0.38 mg/l (see Appendix A for an explanation of this number) total ammonia as N shall not be exceeded in the Colorado River outside of the mixing zone as allowed by the State of Utah water quality standards for the protection of aquatic life. These standards are promulgated in R317-2-5 and allow for the following mixing zone: "A mixing zone is a limiting portion of a body of water, contiguous to a discharge, where dilution is in progress but has not yet resulted in concentrations which will meet certain standards for all pollutants. At no time, however, shall concentrations within the mixing zone be allowed which are acutely lethal as determined by bioassay or other approved procedure...The size of the chronic mixing zone shall not exceed 2,500 feet.". The 2,500 foot mixing zone shall begin at the most upstream point in the Colorado River

Attachment C  
p. 5 of 5



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 2, 1999

Mr. Richard Blubaugh  
Vice President of Environmental  
and Government Affairs  
Atlas Corporation  
370 Seventeenth Street, Suite 3050  
Denver, CO 80202

SUBJECT: DRAFT LICENSE FOR COMPLETION OF SURFACE RECLAMATION

Dear Mr. Blubaugh:

As was discussed with you during our February 26, 1999, telephone conversation, the "Final Environmental Impact Statement Related to Reclamation of the Uranium Mill Tailings at the Atlas Site, Moab, Utah," (FEIS) NUREG-1531 is nearing completion. Our expectation is that the FEIS will be available this week, and will be sent to the printer and distributed shortly thereafter. The FEIS will conclude that the Atlas proposed on-site reclamation, with recommended mitigation, will significantly reduce the impact of contaminants entering the Colorado River, but a rigorous determination of whether the proposed action will meet ammonia concentration requirements specified in the U.S. Fish and Wildlife Service (FWS) final biological opinion (FBO) issued in July 1998, cannot be made without additional data and analyses by the applicant. All other environmental aspects of the proposed action are acceptable with the condition that Atlas fulfill the reasonable and prudent alternative (RPA) and the reasonable and prudent measures (RPMs) outlined in the FBO. The FEIS will state that the RPA and RPMs in the FBO that identified requirements for Atlas would be included as conditions in your license. The FEIS will also identify mitigative measures not included in the Atlas proposal that the staff concludes are necessary from an environmental standpoint. We, therefore, will include all these items in a license condition addressing your proposal. Additionally, the "Final Technical Evaluation Report for the Proposed Revised Reclamation Plan for the Atlas Corporation Moab Mill," (FTR) NUREG-1532 identified four conditions that would need to be in your license to ensure the performance of the radon barrier.

Before the U.S. Nuclear Regulatory Commission (NRC) can complete its licensing action, we will need a commitment from Atlas to accept these measures. We would then amend your license, and replace condition 41 with the following:

41. The licensee shall reclaim the tailings disposal area in accordance with the October 1996 submittal entitled "Final Reclamation Plan, Atlas Corporation Uranium Mill and Tailings Disposal Area" and revisions thereof, with the following modifications:
  - A. The licensee shall commence dewatering the tailings in conformance with the final biological opinion (FBO) Terms and Conditions 1.a. The licensee shall provide a design for the dewatering by June 15, 1999. The design should be such that dewatering can be completed by December 31, 2001.

Attachment D  
D. 1043

- B. The licensee shall provide, by October 15, 1999, a revision to the corrective action program identified in license condition 17.C. that will meet ground-water standards within 7 years from the date of approval by NRC.
- C. Before commencing construction of the final radon barrier, the licensee shall provide analyses, appropriately supported by necessary data, showing that the ammonia standards identified in item 2. of the reasonable and prudent alternative of the FBO will be met over the design life of the reclamation.
- D. Before commencing the reconfiguration of Moab Wash, the licensee shall provide a design that NRC, after consultation with FWS, finds acceptable to compensate for the loss of 0.5 acre of critical habitat, in conformance with item 5. of Terms and Conditions of the FBO.
- E. Comply with item 6. of Terms and Conditions in the FBO by:
  - (1) Monitoring for southwestern willow flycatcher
  - (2) Implement construction activities in such a way as to minimize loss of southwestern willow flycatcher habitat and revegetate disturbed area with willow plantings.
- F. Before commencing construction activities, the licensee shall obtain NRC approval of a plan to implement the following mitigative measures identified in the FEIS:
  - (1) Minimization of emissions of fugitive dust during reclamation (Section 4.1.7).
  - (2) Spill prevention and control and erosion control applicable to the Atlas site and borrow areas (Section 4.5.2.6).
  - (3) Interception and storage of sediment-and contaminant-laden runoff through use of adequate drainage control, retention, and treatment ponds, silt fences, and other means as necessary (Section 4.5.2.6).
  - (4) Avoidance of major earth-moving operations (such as the relocation of Moab Wash) during periods of high thunderstorm potential where and when feasible (Section 4.5.2.6).
  - (5) Avoidance of siting potential borrow areas immediately adjacent to streams (Section 4.5.2.6).
  - (6) A survey by a qualified botanist to determine if Jones cycladenia is present in the vicinity of the proposed Kane Creek quarry site before any activities are initiated at the site. If the species is present, the licensee would be required to develop appropriate mitigative measures in consultation with the FWS to ensure that populations are protected from disturbance (Section 4.6.4.1).
  - (7) Limitations on the use of the Potash quarry site to the December through February period to avoid impacting recreational use of the Potash boat ramp (Section 4.7.3.2).
  - (8) Topographic and vegetative restoration of borrow areas as required by the State of Utah Division of Oil, Gas and Coal Mining (Section 4.5.2.6 and 4.7.4.3).

*Attachment D  
P. 2 of 3*

R. Blubaugh

-3-

- (9) A borrow transport plan to minimize impacts on socioeconomics and recreation (Section 4.7.1.6 and 4.7.5.6).
- (10) Develop quarry operations in portions of the Spanish Valley site that would not affect the intermittent stream present in that area (Section 4.6.3.1)

G. The licensee shall comply with the following conditions identified in the TER to ensure that the radon barrier will be effective in reducing radon emissions to appropriate levels:

- (1) Verify that the Ra-226 concentration in the coarse tailings is 241 pCi/g or less (Section 6.2.2).
- (2) Verify the parameter values for the "affected" soil (Section 6.2.2).
- (3) Verify that the characteristics of the clay used in the cover meet the parameter values used in the radon flux analysis (Section 6.2.3).
- (4) Provide justification, for NRC approval, of the radon barrier design, if the parameter values shown in Table 6-1 of the TER are not met.

A copy of a draft license is enclosed with this condition incorporated. Please review this condition, and provide NRC with your agreement to comply with all provisions in it. Your response will be needed before NRC can complete its licensing action.

If you have any questions, please contact me or Dr. Myron Fliegel, NRC's project manager. I can be reached at (301) 415-7238, and Dr. Fliegel can be reached at (301) 415-6629.

Sincerely,



N. King Stablein, Acting Chief  
 Uranium Recovery Branch  
 Division of Waste Management  
 Office of Nuclear Material Safety  
 and Safeguards

Docket No. 40-3453  
 License No. SUA-917

Enclosure: As stated

cc: See attached list

*Attachment D  
 P. 3 of 3*