

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'99 FEB 17 P2:50

Before Administrative Judges:

Thomas S. Moore, Presiding Officer  
Frederick J. Shon, Special Assistant

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

In the Matter of  
  
ATLAS CORPORATION  
(Moab, Utah)

Docket No. 40-3453-MLA-3

ASLBP No. 99-761-04-MLA

February 17, 1999

SERVED FEB 17 1999

ORDER

On January 27, 1999, Petitioners, Grand Canyon Trust, et al., filed a petition to intervene and a request for a hearing with respect to a proposed amendment of the materials license of the Applicant, Atlas Corporation. That amendment seeks to revise the Applicant's reclamation plan for mill tailings. The Commission's notice of opportunity for hearing on the proposed license amendment was published on April 7, 1994. See 59 Fed. Reg. 16,665 (1994). On February 8, 1999, the Secretary of the Commission forwarded the petition to the Acting Chief Administrative Judge for appropriate action and, on February 10, 1999, he designated the Presiding Officer for the proceeding.

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Pursuant to 10 C.F.R. § 2.1209, the Presiding Officer sets forth the following directives regarding the conduct of this proceeding:

1. Answers to Petitioners' Intervention Petition

The Applicant shall file an answer to the Petitioners' intervention petition by Friday, March 12, 1999. Further, pursuant to 10 C.F.R. § 2.1213, the Presiding officer finds that the resolution of the issues set forth in the intervention petition will be aided materially by the NRC Staff's participation in this proceeding. Accordingly, the Staff is hereby directed to participate in the proceeding. The Staff shall file an answer to the intervention petition by Friday, March 19, 1999.

In addition to whatever substantive responses the Applicant and the Staff wish to make in their answers to the arguments set forth in the Petitioners' intervention petition regarding the standing of the various Petitioners and their various areas of concern, the Applicant and the Staff shall fully address each and every argument raised by the Petitioners concerning the timeliness of the filing and whether the petitioners have met the late-filing standard set forth in 10 C.F.R. § 2.1205(1)(1). (See Grand Canyon Trust, et al., Request for Hearing and Petition for Leave to Intervene at 27-38 (Jan. 27, 1999)). In addressing the question of whether the Petitioners' delay in filing its petition was "excusable" within the meaning of section 1205(1)(1)(i), the

Applicant and the Staff also should address, not only the full regulatory history of the term, but whether that term is directly analogous to the "good cause" standard in 10 C.F.R. § 2.714(a)(1)(i). Additionally, Applicant and the Staff may wish to address whether the "excusable" delay standard is one used in the rules of other federal administrative agencies or courts and, if so, the parameters of that standard. Similarly, in the event the Applicant or the Staff make any claim of undue prejudice or undue delay pursuant to section 1205(1)(1)(ii) as part of their respective responses to the Petitioners' late-filed petition, they shall (1) detail the complete facts and circumstances underlying the claim; (2) provide a complete explanation as to how they are prejudiced or injured by the late-filing; and (3) explain fully the magnitude of the prejudice or injury.

## 2. Reply to Answers

The Petitioners shall file a reply to the answers of the Applicant and the Staff by Friday, March 26, 1999.

## 3. Notice of Appearance

The attorneys or representatives for the Petitioners, the Applicant, and the NRC Staff each shall file a notice of appearance in conformity with the requirements of 10 C.F.R. § 2.713(b) by February 26, 1999. Each attorney or representative also should include in the appearance notice a facsimile number and an internet e-mail address, if available.

4. Service on the Presiding Officer and the Administrative Judge appointed as a Special Assistant

Pursuant to 10 C.F.R. §§ 2.722 and 2.1209, Administrative Judge Frederick J. Shon has been appointed to assist the Presiding Officer in this proceeding.

For each pleading or other submission filed before the Presiding Officer in this proceeding, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. § 2.1203(c) and serving a copy on every other participant in accordance with 10 C.F.R. § 2.701(b), a participant should serve conforming copies on the Presiding Officer and the Special Assistant by one of the following methods:

a. Regular Mail. To complete service on the Presiding Officer and the Special Assistant via United States Postal Service first-class mail, a participant should send conforming copies to them at the following address:

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

For regular mail service, the NRC Staff may use the NRC internal mail system (Mail Stop T3 F23) in lieu of first class mail.

b. Overnight or Hand Delivery. To complete service on the Presiding Officer and the Special Assistant via overnight (e.g., express mail) or hand delivery, a participant should send conforming copies to them at the following address:

Atomic Safety and Licensing Board Panel  
Third Floor, Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738

c. Facsimile Transmission. To complete service on the Presiding Officer and the Special Assistant by facsimile transmission, a participant should (i) send one copy by rapidfax to the attention of the Presiding Officer and the Special Assistant at (301) 415-5599 (verification (301) 415-7399); and (ii) that same date, send conforming copies to the Presiding Officer and the Special Assistant by regular mail at the address given in paragraph 4.a. above.

d. E-Mail. To complete service on the Presiding Officer and the Special Assistant by e-mail transmission, a participant should (i) send the filing (which should include the certificate of service) as a file (preferably in WordPerfect 5.1 or 6.1 format) attached to an e-mail message directed to the Presiding Officer and the Special Assistant (Internet IDs: [tsm2@nrc.gov](mailto:tsm2@nrc.gov), [fjs@nrc.gov](mailto:fjs@nrc.gov); NRC Agency Upgrade of Technology for Office Systems (AUTOS) Wide Area Network (WAN) System IDs: TSM2, FJS); (ii) for any attachments or exhibits to a pleading that cannot be transmitted by e-mail, send those documents to the Presiding Officer and the Special Assistant by separate facsimile transmission or other means that will ensure receipt by the due date; and (iii) send paper conforming copies that same date to

the Presiding Officer and the Special Assistant by regular mail at the address given in paragraph 4.a. above.

e. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail. To be timely, any pleading or other submission served on the Presiding Officer and the Special Assistant by hand delivery, facsimile transmission, or e-mail must be received by the Presiding Officer and the Special Assistant no later than 4:30 p.m. Eastern time on the date due.

f. Service on other Participants. If the Presiding Officer directs that service of a pleading should be made on it by one or more of the methods outlined above (e.g., facsimile or e-mail with conforming paper copies to follow by mail), the participant serving the pleading should make service on all other participants and the Office of the Secretary by the same or a comparable method.

#### 5. Motions for Extension of Time

For any motion for extension of time filed with the Presiding Officer in this proceeding, except upon a showing of good cause, the participant requesting the extension shall:

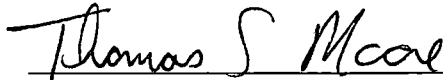
a. Ascertain whether and when any other participant intends to oppose or otherwise respond to the motion and apprise the Presiding Officer of that information in the motion; and

b. Serve the motion on the Presiding Officer so that it is in his hands at least three business days before the due date for

the pleading or other submission for which an extension is sought.

It is so ORDERED.

Presiding Officer



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Thomas S. Moore  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
February 17, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
ATLAS CORPORATION  
(Moab, Utah)

Docket No.(s) 40-3453-MLA-3

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER RE DIRECTIVES have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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

Administrative Judge  
Thomas S. Moore  
Presiding Officer  
Atomic Safety and Licensing Board Panel  
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Washington, DC 20555

Administrative Judge  
Frederick J. Shon  
Special Assistant  
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LB ORDER RE DIRECTIVES

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2300 N Street, NW  
Washington, DC 20037

Dated at Rockville, Md. this  
17 day of February 1999

  
Office of the Secretary of the Commission