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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE PRESIDING OFFICER

In the Matter of)

ATLAS CORPORATION)

Moab, Utah)

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)

Docket No. 40-3452-MLA-3

OFFICE OF STAFF ATTORNEY
RULES AND ADJUDICATION
ADJUDICATION STAFF

NUCLEAR REGULATORY COMMISSION STAFF'S RESPONSE
TO THE GRAND CANYON TRUST'S ANSWERS TO QUESTIONS
POSED IN THE PRESIDING OFFICER'S MAY 14, 1999, ORDER

On May 28, 1999, Grand Canyon Trust, *et al*, (Petitioners) submitted answers to questions posed by the Presiding Officer's Order of May 14, 1999. Because their response misstates certain positions taken by the Nuclear Regulatory Commission Staff (Staff), thereby contributing to the confusion which lead to the issuance of the May 14, 1999, Order, the Staff is providing the following response to the Petitioner's answers.

As detailed in the Nuclear Regulatory Commission Staff's Answers to the Questions Posed by the Presiding Officer in the May 14, 1999, Order, filed June 4, 1999, (Answer), the Staff has not undertaken any review of cleanup of existing groundwater contamination in relation to the review of the license amendment which was noticed on April 7, 1994, and approved on May 28, 1999. The only component of the amendment which has any relation to groundwater remediation is the scheduler requirement, in license condition 41B, that the licensee submit a revised Corrective Action Plan (CAP) for groundwater cleanup by May 1, 2000.

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The Staff has not taken any other position in the District Court proceeding, as claimed by Petitioners. In fact, what the Staff said in that proceeding was that it had required Atlas to create a better groundwater cleanup plan as part of the license amendment in accordance with advice provided by the Fish and Wildlife Service in its Biological Opinion. NRC's Reply Memorandum in Support of Defendant Nuclear Regulatory Commission's Motion to Dismiss at 13. Thus, the scope of April 7, 1994, amendment has never been expanded to include consideration of cleanup of existing groundwater contamination. For this reason, Petitioner's argument that their delay in filing was excusable because of the Staff's decision to expand the scope of the license amendment must be discounted.

The issue which is the subject of the amendment, reclamation, is relevant to groundwater contamination in one very specific way. In the context of reclamation, the Staff considers the extent of any future contamination of the groundwater that will occur once reclamation is complete and a steady state has been achieved. Even if the Biological Opinion presented some new information on this subject which Petitioners did not have access to before, they have provided no basis for their claim that six months was necessary to prepare an intervention petition on this narrow issue.

Indeed, Petitioners have stated that they had no intention of intervening on the issue of reclamation of the site attributing their delay in filing to the fact that they were under the impression that this license amendment proceeding related only to reclamation. In their words:

At the time the Trust sent its October 12, 1998, notice letter to the NRC and its supplemental notice letter on November 13, 1998, concerning the NRC's violations of the ESA, the NRC was still maintaining that groundwater cleanup would be addressed at some future, undetermined point in time - *not in this licensing action*.

Therefore, one of the principal purposes of the Trust's federal court litigation was to require the NRC to do exactly what it now claims to be doing: to include groundwater remediation in *this* license amendment. Certainly, at the time the Trust filed its lawsuit, it had no reason to believe that intervention in this licensing action on the basis of its groundwater concerns was necessary or would have been successful.

Grand Canyon Trust's Answers to Questions Presented in the Presiding Officer's May 14, 1999, Order at 11.

As discussed above, and in our Answer, the Staff is not yet considering a plan to clean up the existing groundwater contamination at the Atlas site. The Staff will begin its review once the revised CAP is received from the licensee. Once receipt of the CAP is noticed, Petitioners will have the opportunity to intervene on issues concerning groundwater cleanup. Until that time, intervention on groundwater cleanup issues is premature. Intervention on the amendment concerning reclamation of the Atlas site, which was noticed over six years ago, is simply too late.

Respectfully submitted,



Lisa B. Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of June 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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'99 JUN -4 P3:24

BEFORE THE PRESIDING OFFICER

OFFICE OF SECURITY
RULEMAKING AND
ADJUDICATIONS STAFF

In the Matter of)

) Docket No. 40-3452-MLA-3

ATLAS CORPORATION)

Moab, Utah)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC COMMISSION STAFF'S ANSWERS TO QUESTIONS POSED BY THE PRESIDING OFFICER IN THE MAY 14, 1999, ORDER" AND "NRC COMMISSION STAFF'S RESPONSE TO THE GRAND CANYON TRUST'S ANSWERS TO QUESTIONS POSED IN THE PRESIDING OFFICER'S MAY 14, 1999, ORDER" in the above-captioned proceeding have been served on the following by deposit into the United States mail, or through deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by asterisk via e-mail this 4th day of June 1999.

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Adjudicatory File (2)

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