



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

April 4, 1989

Mr. John F. Darke
P.O. Box 701
Copper Queen Station
Bisbee, AR 85603

Dear Mr. Darke:

I have been asked to respond to your letters of February 22, 1989 and March 29, 1989 addressed to Mr. Stello. Your letter asks about what happened to your petitions requesting a hearing in connection with the Order issued by the NRC to Atlas Minerals on July 31, 1987.

Your initial telegram request of August 31, 1987 and your subsequent correspondence were not explicitly addressed by the Commission when, on September 25, 1987, it ordered that a hearing be held in response to a request for hearing filed by Atlas in connection with the July 31, 1987 Order. Rather, the Commission established a Presiding Officer with jurisdiction to consider the denial of Atlas' renewal application. The Commission made the proceeding subject to the "Informal Hearing Procedures for Materials Licensing Adjudications," published in the Federal Register on May 29, 1987. The Presiding Officer had authority to consider petitions by persons other than Atlas to intervene in the proceeding; if such persons satisfied the requirements for intervention set forth in those rules.

On November 9, 1987 you submitted to the Presiding Officer a petition to intervene in the Atlas proceeding. At the Board's direction, on February 29, 1988 the NRC staff addressed your petition indicating:

your petition did not satisfy the applicable intervention standards;

if as a result of the then pending settlement between the NRC staff and Atlas a license were in fact granted, you would have an opportunity to petition for a hearing to contest the issuance of the license -- which appeared to be your intent.

Although the Presiding Officer's Memorandum and Order of April 6, 1988 did not address the merits of whether your petition would satisfy intervention standards, he nevertheless terminated the proceeding without granting your petition. You did not file an appeal of that decision in accordance with Commission rules.

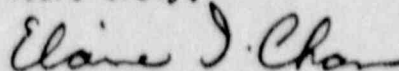
You were subsequently informed on April 13, 1988 that the staff had granted a renewal of license to Atlas on February 25, 1988. You did not file a request for hearing with respect to that license amendment within the time specified

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in "Informal Hearing Procedures for Materials Licensing Adjudications," published in the Federal Register on May 29, 1987.

The Presiding Officer's Order of April 6, 1988 terminated the proceeding on the Order issued to Atlas on July 31, 1987 and that Order is final. Your requests for hearing in connection with that proceeding are no longer pending before the NRC. If you have any questions regarding this matter I can be reached at (301) 492-1583.

Yours truly,



Elaine I. Chan
Counsel for NRC Staff

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NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Mr. John F. Darke
P.O. Box 701
Copper Queen Station
Bisbee, AZ 85603

In the Matter of
Atlas Minerals Division of
Atlas Corporation
(Source Materials License No. SUA-917)
Docket No. 40-3453

Dear Mr. Darke:

On May 8, 1989 you spoke to me on the telephone in reference to Ms Chans's letter to you of April 4, 1989 and a letter your wrote to Victor Stello on April 17, 1989. I have reviewed Ms. Chan's letter of April 4 and your letters of February 22, 1989, March 29, 1989, and April 17, 1989.

As she indicated, the Nuclear Regulatory Commission's Presiding Officer's Memorandum and Order of April 6, 1988, dismissed the proceeding which commenced in September 1987, as that proceeding was limited to considering whether the surety furnished by Atlas was sufficient and the Staff had been satisfied with Atlas' surety arrangements and renewed the subject license. You did not appeal that order. In that order you were expressly advised that:

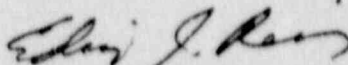
Whatever the merits of these positions may be, it is evident that there is little practical point in going forward with this proceeding. This proceeding necessarily must be limited to a consideration of the surety furnished by Atlas, yet the renewal of the license raises the possibility that other issues might be raised. It makes no sense to consider the surety issues in one proceeding and other issues in yet another. Both Atlas and Staff recognize that the granting of the renewed license affords interested parties the opportunity to request a hearing. Consequently, Atlas' motion to dismiss this proceeding is granted. In taking this action, I express no opinion on Mr. Darke's petition or Atlas' and Staff's responses to it. Consequently, this action is without prejudice to Mr. Darke's again raising the issues he has raised in this proceeding in connection with the renewed license, and without prejudice to Atlas and Staff raising the same objections to those issues as were raised in this proceeding.

You were informed on April 13, 1988, that the Staff had granted a renewal of the Atlas license on February 25, 1988. Despite this notice and the

statements in the decision of the presiding officer, you failed to request a hearing under the regulations of this Commission.

The Order of April 6, 1988, terminated the proceeding concerning the adequacy of the surety provided by Atlas. You did not appeal that order and it is final. You did not petition in a timely manner for a hearing after notice of the license renewal was given to you on April 13, 1988. The time to petition for such a hearing has expired and this matter is closed.

Sincerely,



Edwin J. Reiss
Deputy Assistant General Counsel
Reactor Licensing Branch