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2300 N STREET, N.W. WASHINGTON, D.C. 20037-1128 (202) 663-8000 FACSIMILE (202) 653-8007

November 11, 1997

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115 SOUTH UNION STREET ALEXANDRIA, VIRGINIA 22514-3361

201 LIBERTY STREET, S.W. LEESBURG, VIRGINIA 22075-2721

P.C.

ANTHONY J. THOMPSON, P.C. (202) 863-9198

> Mr. Joseph Holonich Chief, High Level Waste & Uranium Recovery Projects Branch U.S. Nuclear Regulatory Commission 11555 Rockville Pike Rockville, MD 20852

Re: Consent to Extension of the Consultation on the Surface Reclamation Plan for the Atlas Mill Tailings Site

Dear Joe:

Pursuant to 16 U.S.C. § 1536(b)(1)(B) and the Service's regulations set forth in 50 C.F.R. § 402.12(e), the Atlas Corporation hereby grants its consent to an extension of the consultation on the Nuclear Regulatory Commission review of the surface reclamation plan for the Atlas mill tailings site in Utah. This consent is for an extension according to the terms and timeframes set forth in the attached letter.

Any additional questions about this issue or requests for information may be directed to me or to Richard E. Blubaugh, Vice President of Environmental and Governmental Affairs of the Atlas Corporation.

Very truly yours,

Anthony J. Thompson

AJT/cls

Attachment cc: The Honorable Jamie R. Clark Bradley Campbell Molly McUsic, Esq. Richard E. Blubaugh

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ATLAS CORPORATION





ATLAS CORPORATION X

Republic Plaza, 370 Seventeenth Street, Suite 3050 Denver, CO 80202 Telephone: (303) 629-2410 Fax: (303) 629-2445

RICHARD E. BLUBAUGH Vice President Environmental and Governmental Affairs

November 10, 1997

Mr. Bradley Campbell, Associate Director Toxics and Environmental Protection Council on Environmental Quality 722 Jackson Place, NW Washington, D.C. 20503

Re: Consent on ESA Studies

Dear Mr. Campbell:

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 Phone # 303 - 629-2437
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Thank you for your letter of November 10, 1997 requesting that the Atlas Corporation consent to studies that would be undertaken to address issues which have been raised by the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA) in connection with the reclamation plan for our Moab, Utah mill tailings site. This letter provides Atlas' consent, and sets forth our general concerns over this decision-making process.

As you know, Atlas has been extremely frustrated with the delay that has been associated with obtaining approval of our plan. To a large extent, this delay has grown out of a dispute among federal agencies over the proper scope of review of Atlas' request. The delay and uncertainty arising from this dispute among federal agencies has placed Atlas in a very difficult business position. In addition to the escalating costs of regulatory compliance and site maintenance due to the delayed NRC decision, Atlas has been unable to complete potentially profitable deals with other mining companies that would have significantly strengthened the financial condition of the company in large part due to the "bankrupting" contingent liabilities associated with relocation of the pile. Atlas has lost its listing on the New York Stock Exchange and has had no CEO for many months, both in large part due to the tailings relocation issue.

It is against this backdrop that Atlas must consider the request for the new studies you have sent to us. Atlas shares CEQ's desire to move forward with a cooperative opproach to decisionmaking. We also appreciate the role that has been played not only by CEQ, but also policy officials at the Department of the Interior and NRC, to position this dispute in a manner such that a positive and constructive relationship can evolve among the parties involved in the decisionmaking. Those efforts have been worthwhile and have resulted in improved communications, for which we are grateful. Nevertheless, our bottom-line concern of achieving Mr. Bradley Campbell Consent on ESA Studies November 10, 1997 Page Two

a prompt final decision from NRC which is properly focused on the issues legitimately posed by our proposed reclamation plan is yet to be resolved.

To the interest of accepting your invitation to pursue a final consensus-based decision, and our why desire to cooperate with FWS in the ESA compliance process, we are prepared to accept the proposal outlined in the letters from you and FWS Director Clark. We do so, even though it is not apparent to Atlas how the proposed studies can be related to the reclamation plan upon which NRC requested FWS to constant. Our willingness to proceed with the studies is expressly conditioned upon the stipulations set forth in your letter and the letter from Ms. Clark.

As we have discussed, timing is critical to Atlas. Our corporate interests can not tolerate continued uncertainty over an extended period of time. It is for this reason that we consider litigation to be a serious option. Although we do not prefer the risks, costs, and conflict associated with litigation, this option would at least provide / clas with a clear picture of where it stands on the issues in dispute.

Because Atlas cannot accept delay beyond the time frame discussed in your letter, we need to position ourselves procedurally to move forward with litigation immediately upon the end of the time period we are agreeing to. For that reason, Atlas will soon send to the Secretary of the Interior notice of Atlas' intent to sue pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540(g), for failure to comply with the requirem ant; for timely completion of consultation and issuance of a biological opinion as set forth in Section 7(b) of the FSA, 16 U.S.C. § 1536(b), and the regulations set forth in 50 C.F.R. § 402.14(e). Other claims under the ESA will be detailed in that letter. We are taking the step of sending that notice to protect our interests and ensure that a mechanism will be available for Atlas to enforce the time frame for completion of the ESA consultation process and the schedule that you have outlined, and to which we are prepared to agree.

With these understandings expressed. Atlas will grant its consent to extend the consultation period as discussed in the letters from you and Ms. Clark. A separate letter will be sent to NRC for this purpose. While Atlas does not concede that the studies or their results are necessary or appropriate for the issues under review by NRC, Atlas pledges its good faith commitment to assist in carrying out the studies and ensuring that all relevant data are considered and analyzed properly. We reserve the right to challenge the outcome of the studies and the manner in which they are used.

Atlas grea properties the effort that is being made by CEQ and others to put this decisionmaking process on a proper track. We will continue to work with CEQ and the other involved NOU-11-1997 09:25

Mr. Bradley Calipbell Consent on ESA Stidies November 10, 1997 Page Three

agencies to move forward with the approach. Please let me know what else Atlas can do to further this cooperative relationship.

Very Truly Yours,

Rive. Buch

Richard E. Blubsugh



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Jamie Clark Molly McUsic Hugh Thompson Guy Martin Antbony Thompson

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EXECUTIVE OFFICE OF THE PRESIDENT OOUNCIL ON ENVIRONMENTAL QUALITY WASHINGTON, D.C. 20503

November 10, 1997

Richard E. Blubaugh Vice President of Environmental and Governmental Affairs Atlas Corporation Republic Plaza 370 Seventeenth Street, Suite 3050 Denver, Colorado 80202

Dear Mr. Blubaugh:

I appreciate your willingness to meet recently with the Council on Environmental Quality (CEQ), the Nuclear Regulatory Commission (NRC), and the Department of the Interior (DOI) to discuss the reclamation plan proposed by the Atlas Corporation (Atlas) for the uranium mill tailings site at Moab, Utah.

I am writing to propose further studies that would be undertaken at the federal government's expense to resolve questions concerning the proposed reclamation plan. These studies are described in the enclosures to this letter, and are intended to assist the NRC in furnishing the "best available" information to the United States Fish and Wildlife Service (FWS) in accordance with the Endangered Species Act (ESA).

Atlas' consent to the conduct of these studies is essential. My objective in requesting Atlas' consent is both to further a cooperative relationship among the parties involved in reviewing the reclamation plan and, to the extent possible, to facilitate the finelization of the biological opinion. It is CEQ's firm belief that the prospects for achieving an outcome that meets the objectives of all parties will be significantly enhanced if these studies can be undertaken and conducted in a cooperative manner, with full and fair consideration given to the views of all involved participants.

CEQ has coordinated this effort to obtain Atlas' consent to the studies and to extend the consultation period with the primary objectives of averting future conflicts among the parties, ensuring that all decisions are based on sound science, enhancing the quality of information available concerning issues that have been in contention, and promoting a resolution of those issues that is satisfactory to all parties. Atlar' consent also responds to three practical concerns. First, because these studies and the resulting analytical process will take several months to conduct and incorporate into an ESA biological opinion, FWS needs the approval of NRC and its licensee, Atlas, to extend the time for completion of the ongoing Section 7 consultation process under the ESA. Second, some of these studies cannot be conducted without access to Atlas property and other assistance from the company that the consent would permit. Finally, Atlas has considerable expertise on the issues to be addressed in these studies that might be offered to

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Richard E. Blubaugh Page 2

NRC and FWS during the study period.

I understand that Atlas' consent and participation in the study process do not constitute acquiescence in the need for these studies or the value of the resulting information. Instead, this consent and participation represent Atlas' good faith commitment to a cooperative working relationship with the agencies involved.

I further understand that Atlas has concerns about the need for these studies, the purpose for which the data would be used, and the potential delay that could result. Taking these concerns into account, if Atlas does grant its consent, the following limitations will be imposed on the work to be undertaken:

(1) The studies will be completed and the data derived from those studies will be analyzed, as appropriate, and provided to FWS, NRC, and Atias, within sixty (60) calendar days of the date that the Department of Energy issues its charge number for the work. If this charge number is not issued on or about November 10, Atlas will be provided with an opportunity to reconsider its consent to these studies

(2) The studies will be conducted by the Grand Junction office or other units of the Oak Ridge National Laboratories (ORNL). No costs for these ORNL studies will be paid by Atlas.

(3) All non-Atlas personnel with access to the site will comply with Atlas and NRC policies and requirements regarding health, safety, and radiation control measures.

In addition, I recognize that Atlas' consent is premised on the agreement by FWS to the timetable and terms described in the attached letter.

If you have additional concerns about the proposed studies, please refer them to me as soon as possible. I appreciate Atlas' willingness to proceed with the studies and to work cooperatively with the Federal agencies involved. We look forward to receiving Atlas' consent to proceed and hope to be able to continue to work together on this matter.

Very truly yours,

Brady M. Caphall

Bradley M. Campbell Associate Director

cc: Molly McUsic Hugh L. Thompson

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CHQ



United States Department of the Interior

FISH AND WILDLIFE SERVICE Washington, D.C. 20240

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Mr. Bradley M. Campbell Associate Director Council on Environmental Quality 722 Jackson Place, N.W. Washington, D.C. 20503

Dear Mr. Campbell:

I am writing with respect to the studies that have been proposed as part of the ongoing consultation under section 7 of the Endangered Species Act on the Nuclear Fegulatory Commission's consideration of Atlas Corporation's proposed reclamation plan for the Atlas uranium mill tailings site at Moab. Utah. These studies were discussed in detail in a meeting on October 21, 1997, attended by representatives of Atlas, the Fish and Wildlife Service, and NRC. The Service agrees to the following with respect to issuing a final biological opinion on the proposed reclamation plan (all time is in calendar days):

- 1) The Service will issue a revised draft biological opinion to NRC within 30 days of the receipt of the data, and deliver it to NRC. The Service understands NRC will transmit a copy of the draft opinion to Atlas. NRC and Atlas will have 10 days to submit to the Service written comments on the revised draft opinion. Should the Service, NRC or Atlas ("the parties") so request, the parties shall meet during this 10 day period to discuss the comments. The Service will issue a final biological opinion within 30 days of receiving the written comments from NRC and Atlas.
- 2) If, absent other arrangements agreed to by the parties, the Oak Ridge Wational Laboratories, the Service, NRC, or Atlas fails to meet any of its deadlines described in this letter or the letter from Mr. Brad Campbell to Mr. Richard Blubaugh dated November 10, 1997, then the Service will issue the final biological opinion within 30 days of the date the parties reach an impasse (As determined by a written statement from Atlas, FWS, or NRC of a desire to terminate the process) concerning any continuation of this process.

As NRC and Atlas are sware the Service is under an imit. diate obligation to issue a final biological opinion on the proposed reclamation plan, unless Atlas consents in writing pursuant to 50 C.F.R. 402.14(g)(5) to an extension of the deadline for providing a final opinion. We understand that Atlas will provide this written consent to the Service in the near future.

Sincerely. Keppept Od DIRECTOR

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ce: Hugh Thompson Molly McUsic As NRC and Atlas are aware, the Service is under an immediate obligation to issue a final biological opinion on the proposed reclamation plan, unless Atlas consents in writing pursuant to 50 C.F.R. 402.14(g)(5) to an extension of the deadline for providing a final opinion. We understand that Atlas will provide this written consent to the Service in the near future.

Sincerely, Keppept Od DIRECTOR

ce: Hugh Thompson Molly McUsic

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