ATLAS CORPORATION
Republic Plaza, 370 Seventeenth Street, Suite 3050
Denver, CO 802[illegible]
Telephone: (303) 629-2440 Fax: (303) 629-2445

GREGG B. SHAFTER
PRESIDENT

February 18, 1999

VIA FACSIMILE: (301) 415-1757
The Honorable Dr. Shirley A. Jackson
Chairman
U.S. Nuclear Regulatory Commission
Two White Flint North
Rockville, Maryland 20852-2738

Re: Atlas Corporation's Moab, Utah Uranium Mill Tailings Site

Dear Chairman Jackson:

The Technical Evaluation Report (TER) determining that Atlas Corporation's (Atlas) proposed reclamation plan for its Moab, Utah uranium mill and tailings site satisfies NRC's technical criteria and that the site is suitable for on-site stabilization was issued two years ago. Recently, based on further assurances provided by NRC staff at various levels, Atlas represented to its shareholders and creditors that the reclamation plan meets NRC criteria for site closure, with the understanding that our groundwater corrective action plan would have to be updated. This sequential approach is based on NRC's previously established policy requiring licensing action first on the surface reclamation plan and then, based on that determination, action would be taken on the groundwater corrective action plan. However, at a meeting held last Friday at your offices, Mr. Paperiello advised Atlas that this is not the case. In fact, Atlas was advised that there exists "insufficient data" related to the groundwater issue to take action on the surface reclamation licensing action.

Suffice it to say, we were stunned. The fact that the expert regulatory agency that has, along with its predecessors, regulated this facility since the 1950s, cannot complete an Environmental Impact Statement (EIS) and license amendment for site closure in five years is, to say the least, mind boggling. The fact that the Commission's inability to efficiently fulfill its regulatory oversight responsibilities entrusted to it by Congress will result in the demise of Atlas as a business entity is, indeed, a sad commentary. Should this Commission's decisions, or indecision, force the company into Chapter Seven bankruptcy liquidation proceedings, it is conceivable that, along with the recent Louisiana Enrichment Services (LES) debacle, the Commission's ability to function as the primary regulatory agency entrusted to implement the

Atomic Energy Act (AEA) and Uranium Mill Tailings Radiation and Control Act (UMTRCA) could be questioned.

On October 1, 1998, at a meeting held at your offices, we were told by NRC Staff that the final EIS was to be released before Christmas. Then, after a meeting with Atlas on-site at Moab, you were quoted as saying that the final EIS would be issued in late January, 1999. Shortly thereafter, however, NRC Staff advised us that it would be delayed for "clerical" reasons. Then we were notified that additional Staff evaluation would delay the EIS until early February. We understand now that if and when it is issued, there will be no license amendment allowing Atlas to commence site closure because the surface stabilization plan will not ensure, with adequate certainty, that the arbitrarily derived ammonia standard for chronic exposure of the endangered species in the river will be satisfied. This decision is in direct conflict with the Commission's position throughout the consultation process with the Fish and Wildlife Service (FWS) that surface stabilization and groundwater corrective actions are "separate" regulatory requirements. Surface stabilization was never, and is not now, intended to solve all potential groundwater issues. Rather, by your own policy, groundwater issues are properly addressed through the groundwater corrective action plan. This approach is clearly evidenced by the separate actions taken by the Department of Energy (DOE) on the Title I sites.

In its final biological opinion under the Endangered Species Act (ESA) on Atlas' proposed reclamation plan, the FWS set forth a reasonable and prudent alternative that allowed surface reclamation to proceed, based on certain commitments and time frames for implementation of the groundwater corrective action plan. Thus, even though Atlas disagreed with FWS' conclusion that surface and groundwater reclamation and remediation are interrelated actions under the ESA, all parties involved in the final biological opinion agreed upon a process that allowed the Atlas surface closure plan to proceed. Now, for reasons unexplained, NRC has tied surface closure to ammonia contamination in the river and improperly and unreasonably refused to issue a license amendment authorizing surface reclamation - - a decision, if adhered to, that likely will have multiple unfortunate consequences for NRC, the environment and, of course, Atlas and its constituents.

Let me now turn to other pressing legal issues and discuss why they must be addressed immediately in light of the "reality" of Atlas' present financial situation. In October 1998, and again last week, Atlas presented the NRC Staff a framework for a negotiated settlement of Atlas' liability at the Moab site. Your staff counsel has conferred with the Department of Justice bankruptcy counsel here in Denver, as well as Atlas' bankruptcy counsel, to confirm that failure to reach a negotiated settlement will result in all parties, NRC included, fairing far worse than is necessary.

In light of the above, we believe that NRC must assert federal preemption over 11e(2) byproduct material, including both its radiological and non-radiological components, if a

negotiated settlement is to become a reality. With respect to Atlas' bankruptcy proceeding, Atlas has already filed an objection to the State of Utah's $77 million claim and plans to file an objection to the NRC's $44 million claim later this week. If NRC properly asserted preemption over 11e(2) byproduct material, the State would lack a basis for recovery; therefore, the bankruptcy court may allow Atlas to expend funds for site closure. If, however, NRC fails to assert preemption, we doubt that the bankruptcy court would allow Atlas to expend funds for site closure if Atlas could not terminate its license (even if we satisfied the NRC's requirements) because the State of Utah's claim would still exist. If we do not act quickly and stop the litigation that has commenced, it will take on a life of its own and the bankruptcy court will determine what NRC and the State of Utah are entitled to following extensive briefing by all parties involved at substantial cost to the State of Utah, Atlas, and the NRC. In any event, the conclusion of this litigation will be irrelevant because, as stated above, NRC and State demands will never be met.

Recognizing this fact, Atlas has been engaged in extensive discussions with various parties, including the State of Utah, NRC Staff, members of Congress, counsel for Grand Canyon Trust, members of Grand County Council, and others, regarding Atlas' willingness to dedicate, with the bankruptcy court's approval, significant funds and assets toward closure of this site to ensure the health and safety of the public and increased protection of the environment. If the deal cannot be structured within the next 2-3 weeks, however, Atlas likely will not be able to get the bankruptcy court's approval for reorganization as proposed to NRC. If that happens, NRC will be stuck without a viable licensee, a $6.5 million bond for a $20 million surface cleanup, and an inability to move forward on surface reclamation itself for the reasons it claims it cannot authorize Atlas to do so. As a result, it is likely that most of the $6.5 million bond money will be spent on site maintenance, leaving the Commission with a politically sensitive site for which it has insufficient monies and no ability to address in the near term. This leaves only the hope that Congress will appropriate additional funds necessary for onsite stabilization (which Atlas' proposal can achieve) or the hundreds of millions of dollars necessary to relocate the tailings pile.

Just prior to adjournment of the meeting last Friday, we were asked by NRC Staff if it was acceptable to Atlas that the final EIS be issued on March 3, 1999. I want to reiterate our response for your edification. Since the EIS will not be accompanied by the license amendment sought by Atlas for over five years, it matters little if, or when, the EIS is issued. Atlas is seeking to: (1) negotiate an orderly withdrawal from this license pursuant to the AEA; (2) contribute substantially more assets toward closure rather than to frivolous litigation; and, (3) to provide a meaningful resolution that, at least in part, protects human health and the environment.

The technical merits of a particular point of view matter little at this point. The reality of the situation is that if we are unable to identify a path toward a solution by the end of this

month, Atlas will be forced to continue with its efforts to abandon the Moab site within the framework of the bankruptcy.

We look forward to your reply and a possible meeting with representatives from NRC, the DOE, the Department of Interior, the Justice Department, and the Council on Environmental Quality, representatives of relevant congressional oversight committees, or others, that may assist in our efforts to bring about an orderly withdrawal of Atlas from its license and ensure that previously expended funds and currently available resources will result in an environmentally suitable closure rather than in frivolous litigation, no site closure, and final destruction of a licensee that tried its very best to fulfill its AEA responsibilities. If such a meeting can be arranged, the representatives must be empowered with the authority to take action toward a creative and rational solution, and not possess the regulatory mindset reflected all too often by inaction.

Sincerely,

Gregg B. Shafter
President

Richard E. Blubaugh
Executive Vice President

cc: Senator Pete Domenici
Senator Frank Murkowski
Senator Robert Bennett
Senator Orrin Hatch
Congressman Chris Cannon
Congressman James Hansen
Commissioner Greta J. Dicus
Commissioner Nils J. Diaz
Commissioner Jeffrey S. Merrifield
Commissioner Edward McGaffigan, Jr.
Molly McUsic, DOI
Bradley Campbell, CEQ
Frank Moraglia, NRC
Jack Tillman, DOE
Richard Lawson, NMA
Joseph Colvin, NEI
Anthony Thompson
Harvey Sender
Don Baur