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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULING MAKING
ADJUDICATIONS STAFF

Before Administrative Judges:

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

In the Matter of:)	Docket No. 40-3453-MLA-3
ATLAS CORPORATION)	
(Moab, Utah))	ASLBP No. 99-761-04-MLA
)	
)	June 15, 1999

GRAND CANYON TRUST'S RESPONSES TO THE NRC STAFF'S ANSWERS TO
QUESTIONS PRESENTED IN THE PRESIDING OFFICER'S MAY 14, 1999 ORDER

INTRODUCTION

In an effort to make sense of its previous inconsistent representations about groundwater cleanup at this site, the NRC Staff, in its Answers to the Presiding Officer's Order, has developed an argument based on an artificial distinction between cleanup of existing groundwater contamination and cleanup of contamination caused in the future. Setting aside the fact that the contamination cannot be segregated and that cleanup will have to address whatever contamination exists at that point in time (whether caused by past discharges or discharges occurring after a cap is installed), the truth is that the NRC did not plan to address *any* kind of groundwater contamination – present or future – in the noticed license amendment. There was

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no suggestion in the published notice that groundwater would be cleaned up, and all NRC representations prior to January 1999 clearly indicated that groundwater remediation would be handled in a separate license amendment.

Now, the NRC has changed its course. In order to comply with the Endangered Species Act, the NRC announced in January that its license amendment would include those conditions identified by the U.S. Fish and Wildlife Service's biological opinion and that groundwater remediation would be addressed in this license amendment. Therefore, instead of setting cleanup standards for groundwater cleanup in a *future* licensing action, the NRC abruptly and at the last minute determined that those issues would be addressed in *this* licensing proceeding. Although fundamentally changing the nature of the proposed licensing action to add groundwater cleanup provisions, the NRC never noticed those proposed changes or provided any mechanism for public input. Now the NRC claims that, in fact, those new and improved license conditions have nothing to do with groundwater remediation, but instead are part of "reclamation." Besides being transparently false, these arguments reflect the latest of a long string of NRC maneuvers intended to prevent the Grand Canyon Trust's ESA claims from being heard in any forum.

Under the ESA, the Trust is entitled to have its claims heard, either in District Court or before the NRC. If the NRC's present position is correct and this license amendment does not address existing contamination or groundwater remediation, then it has effectively conceded that jurisdiction is proper in the District Court. If, on the other hand, groundwater remediation has become a part of this licensing action, then the Grand Canyon Trust and the public at large are

entitled to adequate notice of that fact in order to permit meaningful participation in the process and an opportunity to raise their claims administratively.

In the brief that follows, the Grand Canyon Trust respectfully submits specific responses to the NRC Staff's answers to questions presented by the Presiding Officer in the Order of May 14, 1999.

QUESTIONS AND RESPONSES

QUESTION 1

It is a fundamental principle of NRC adjudication that the scope of a materials license amendment proceeding is strictly confined to the matters relating to the license amendment set forth in the Commission's notice of opportunity for hearing. See, e.g., Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976). Here, the central concern of the Petitioners' hearing request and intervention petition (at 2-3, 5, 8, 9, 20, 22-25, 28, 30, 36) is groundwater cleanup at the Atlas site. The Staff's response to the intervention petition, however, does not address the scope of the Commission's April 7, 1994, notice of opportunity for hearing, 59 Fed. Reg. 16,665. Does the Commission's April 7, 1994, notice include within its scope groundwater remediation matters?

Grand Canyon Trust's Response

The Grand Canyon Trust agrees that the Commission's April 7, 1994 notice of opportunity for hearing did not include groundwater remediation matters within its scope. However, the Grand Canyon Trust does not agree with the NRC Staff's position that groundwater remediation continues to be the subject of a separate licensing action, rather than part of this licensing action. To the contrary, it is clear that recently added license conditions *do* address corrective actions necessary to clean up existing contamination and that those provisions were never noticed.

The U.S. Fish and Wildlife Service's July 1998 Biological Opinion made clear that the reclamation of the Atlas site, including surface reclamation and groundwater remediation are "interrelated" and must be considered as a whole in order to ensure protection of endangered fish. See BO at 4. Moreover, the NRC has acknowledged that "significant aspects of the groundwater CAP depend on the manner in which the tailings are permanently stabilized." See Exhibit 1 at 3. Because of the requirements outlined in the July 1998 BO, the NRC identified 7 conditions that it would require Atlas to commit to as part of the instant licensing action.¹ See id.

It is obvious that these new conditions address the substantive requirements and timing of groundwater remediation – both for the existing contamination and the contamination leaching into the aquifer in the future. The new conditions include a provision requiring Atlas to meet the ammonia standards specified in the July 1998 BO as well as strict time requirements for groundwater remediation planning and implementation. The new amendments relate directly to the groundwater remediation requirements set forth in the July 1998 BO, and hence, to the NRC's compliance with the Endangered Species Act. As the Trust has repeatedly emphasized, groundwater cleanup and protection of endangered fish are the crux of the Grand Canyon Trust's legal challenge. The text of the following new license conditions relate directly to the groundwater remediation and endangered species matters that the FWS addressed in the July

¹ The Grand Canyon Trust first received notice that the NRC was planning to introduce new license conditions based on a January 13, 1999 letter from NRC Chair Shirley Ann Jackson to Congressman George Miller. See Exhibit J to Petitioners' April 2, 1999 Reply Brief. The NRC informed Atlas of the 7 required conditions by letter on March 2, 1999, and Atlas agreed to the conditions with two revised dates by letter of April 15, 1999. See Exhibit 1 to this Brief at 3.

1998 BO and show conclusively that the NRC has added groundwater remediation matters to this licensing proceeding:

41. The licensee shall reclaim the tailings disposal area in accordance with the October 1998 submittal entitled "Final Reclamation Plan, Atlas Corporation Uranium Mill and Tailings Disposal Area" and revisions thereof, *with the following modifications:* . . .
 - A. The licensee shall commence dewatering the tailings in conformance with the U.S. Fish and Wildlife Service final biological opinion (FBO) of July 1998, Terms and Conditions 1.a. The licensee shall provide a design for the dewatering by December 31, 1999. The design should be such that dewatering can be completed by July 1, 2002.
 - B. The licensee *shall provide, by May 1, 2000, a revision to the corrective action program identified in license condition 17C that will meet ground-water standards within 7 years from the date of approval by NRC.*
 - C. *Before commencing construction of the final radon barrier, the licensee shall provide analyses, appropriately supported by necessary data, showing that the ammonia standards identified in item 2. of the reasonable and prudent alternative of the FBO will be met over the design life of the reclamation.*
 - D. Before commencing the reconfiguration of Moab Wash, the licensee shall provide a design that NRC, after consultation with FWS, finds acceptable to compensate for the loss of 0.5 acre of critical habitat, in conformance with item 5. of Terms and Conditions of the FBO.

See Exhibit 1 to the Brief (emphasis added). None of these license amendments were incorporated in the April 7, 1994 notice and opportunity for a hearing. The NRC has never provided notice and opportunity for a hearing on these issues.

The affidavit of Myron Fliegel, attached as part of the NRC Staff's Answers, discusses the NRC's normal practice of completing surface reclamation proceedings before considering groundwater remediation. Based on this affidavit, the NRC Staff attempts to support its position that the consideration of surface reclamation is separate from consideration of groundwater remediation issues in this licensing proceeding. However, the affidavit fails entirely to discuss or analyze the legal requirements imposed by the Endangered Species Act and the July 1998 BO. This is a critical omission. The effect of the ESA and the July 1998 BO, notwithstanding the NRC's normal practices, is to require the NRC to consider groundwater remediation matters as part of this licensing action. That is precisely why the NRC recently has introduced new conditions related to groundwater into this licensing proceeding. Indeed, until the FWS announced its groundwater remediation requirements, the NRC had no plan to include any such provisions in its license amendment, and it is fair to conclude that but for the FWS's requirements, it never would have included these conditions in its license amendment.

QUESTION 1a. - e.

- a. If yes (*i.e.*, the scope of the Commission's April 7, 1994, notice includes within its scope groundwater remediation matters), identify the provision or provisions of the Commission's April 7, 1994, notice where groundwater remediation is set forth as a matter within the purview of the proposed license amendment.
- b. If yes, explain fully (with citations to all applicable regulations and agency precedents) how the notice of opportunity for hearing that invites "any person whose interest may be affected by the issuance of a license amendment covering the proposal," 59 Fed. Reg. 16,665 (emphasis supplied), can be broader than the referenced license amendment application that the Staff's response (at 2) states does not contain any provision for addressing groundwater remediation.

- c. If yes, explain fully how such a notice of hearing is consistent with the agency's position (evidenced, *inter alia*, by Petitioners' Exhibits F, G, H, and I) both prior and subsequent to the April 7, 1994, notice that groundwater remediation was not part of the proposed license amendment action.
- d. If yes, what agency documentation comparable to that contained in Petitioners' Exhibits F, G, H and I, substantiates the Staff's position that the agency considered groundwater remediation an integral part of the proposed license amendment that is subject of the Commission's April 7, 1994, notice of opportunity for hearing.
- e. If yes, explain fully how such a notice of hearing that includes within its purview groundwater remediation at the Atlas site is consistent with the statements in the Staff's response (at 2, 6, 13 n.7, 15-16) that the agency intends to address groundwater remediation at the Atlas site in a second licensing action.

Grand Canyon Trust's Response

The NRC Staff answered "no" to Question 1. The Grand Canyon Trust agrees that the answer to Question 1 is "no." Therefore, questions 1.a to 1.g are not applicable.

QUESTION 1.f

- f. If not (*i.e.*, the scope of the Commission's April 7, 1994, notice does not include groundwater remediation), explain how the Petitioners, pursuant to the April 7, 1994, notice, could have raised groundwater cleanup concerns in accordance with the time periods set forth in the notice and 10 C.F.R. § 2.1205(d)(1), without running afoul of the fundamental principle of NRC adjudication that the scope of a materials license amendment proceeding is confined to the matters relating to the license amendment set forth in the Commission's notice of opportunity for hearing.

Grand Canyon Trust's Response

In its Answer to this question, the NRC staff claims that, "The issues concerning future groundwater and river water contamination from the stabilized tailings pile under the site reclamation plan . . . were apparent as part of the original amendment request." The NRC Staff states that "If the Petitioners are concerned with the site reclamation plan as it relates to the prevention of future groundwater and surface water contamination, then they had full opportunity to raise that issue within the applicable time limitations." However, as the Grand Canyon Trust explained fully in its April 2, 1999 Reply Brief, the severity of groundwater and river contamination and the impacts on endangered fish were not known at the time of the original amendment request. See Petitioner's Reply Brief at 6-9. It is completely unreasonable to expect that the Grand Canyon Trust could have anticipated in 1994 that contamination from the site was causing jeopardy to or a take of endangered native fishes in the Colorado River, because at that time neither the NRC nor the FWS had anticipated or documented such impacts. See id. Numerous studies had to be conducted before the NRC or the FWS or anyone understood the severity of groundwater and surface water contamination at the site and the impacts to endangered fish. See id. As the Grand Canyon Trust noted in its Reply Brief, one can only imagine how swiftly the NRC would have rejected an attempt to bring ESA claims in the spring of 1994. See id. at 7.

Moreover, the Grand Canyon Trust had no way of knowing that the NRC would, at the eleventh hour, address groundwater in its license amendment. See id. at 9-14. The license amendments issued on May 28, 1999, as set forth in relevant part above, obviously relate to

groundwater remediation. Although they do not outline the details of, for example, a pump and treat program, they certainly set the standards that must be achieved by any such program and the timeframe for implementation. Arguably these fundamental conditions of a groundwater corrective action plan are more significant to the public than the nuts and bolts of implementation. The NRC Staff cannot ignore the seven new conditions it has placed upon the Atlas license amendment and the fact that it has never noticed these issues or provided opportunity for a hearing. These new conditions have enlarged the scope of this licensing proceeding to include the groundwater issues raised in the July 1998 BO. The public is entitled to a new notice and opportunity to intervene in the licensing action based upon the revised amendments.

While the NRC Staff apparently argues that the Grand Canyon Trust should have raised the ESA and groundwater cleanup issues back in 1994, it also appears to argue that the Grand Canyon Trust should raise them in a future licensing proceeding related to groundwater. To suggest that the issues of concern to the Grand Canyon Trust will be addressed in that future proceeding, however, ignores the significance of the current proceeding to the cleanup of the existing contamination. The groundwater corrective action plan, when proposed, will simply provide the nuts and bolts of how to implement and comply with the standards that are being set in this licensing action. The conditions in this licensing action, listed above, set forth the substantive requirements and timelines covering groundwater remediation at the Atlas site.

Moreover, due to the terms and conditions of the BO, the NRC is *required* to set groundwater standards in *this* licensing proceeding. This is precisely the reason why the NRC has introduced new groundwater conditions as part of the license amendments it approved May 28, 1999.

The Grand Canyon Trust will no longer be able to challenge these provisions in a *new* groundwater proceeding, because they clearly are part of *this* licensing action. If the Grand Canyon Trust were to intervene in the new groundwater proceeding, the NRC would be sure to argue that the conditions approved in this licensing proceeding are final and not subject to challenge. The Grand Canyon Trust must be permitted to intervene and to have a hearing on the groundwater issues and endangered species issues raised by these licensing amendments *now*, in *this* licensing proceeding.

QUESTION 1g.

- g. If not, explain how the statement in the Staff's response (at 8) that "there is no question that the [Petitioners'] Request for Hearing is untimely" because "[i]t was filed almost five years after publication of the notice of opportunity for hearing" is accurate when the subject matter of groundwater remediation -- the central concern raised in the intervention petition -- does not fall within the scope of the Commission's April 7, 1994, notice of opportunity for hearing.

Grand Canyon Trust's Response

The NRC Staff cannot rely on the rationale that groundwater issues are part of a separate licensing proceeding to excuse its insufficient April 7, 1994 notice. The NRC has clearly introduced groundwater issues by incorporating seven new conditions related to groundwater into license amendment 41 as part of this licensing action. Notice and an opportunity for a

hearing on these material issues is required. See e.g., Nuclear Info. and Resource Serv. v. NRC, 918 F.2d 189, 195 (D.C. Cir. 1990); Union of Concerned Scientists v. NRC, 735 F.2d 1437, 1443 (D.C. Cir. 1984).

The NRC Staff claims that, "The time lapse between the publication of the notice and the filing of the Petitioners' request for hearing combined with a lack of a good cause for the late filing is egregious and, on this basis alone, the Petitioners' request for hearing should be denied." The NRC Staff focuses solely on the passage of time from the original notice and suggests that this alone is reason to deny the Trust's petition. This petition is contrary to NRC caselaw. The revelation of new information and the deficiency of the original notice are valid reasons to admit intervenors. See e.g., In the Matter of Louisiana Energy Services (Claiborne Enrichment Center) 39 NRC 205, 1994 LEXIS 15; In the Matter of Rochester Gas & Electric Corp. (R.E. Ginna Nuclear Plant, Unit 1), 18 NRC 1231 (1983). In this case, new information about the impacts of the site on endangered species arose after the issuance of the July 1998 BO, and as a result of the BO, the NRC introduced new license amendment conditions related to the Grand Canyon Trust's concerns. The NRC Staff fails to adequately explain why the Grand Canyon Trust's petition is untimely in light of these facts.

Petitioners are requesting a hearing on the groundwater remediation conditions being imposed by the license amendments in this proceeding; although they are outside the license amendment request and the 1994 notice, they are nonetheless included in the license amendments. The petitioners should not have to wait for a groundwater corrective action plan proposal to get a hearing on these issues.

QUESTION 2.

Petitioners' Exhibit J is a letter dated January 13, 1999, from Chairman Jackson to Congressman Miller. The letter states (at 2-3) that

If NRC issues a license amendment to Atlas, the staff plans to require by license condition that Atlas revise the CAP and expedite groundwater cleanup in conformance with time frames identified in the FWS opinion. This would include accelerated dewatering of the tailings, groundwater cleanup within seven years of approval of a revised CAP, and monitoring of the groundwater and the Colorado River.

Do the matters identified in Chairman Jackson's January 13, 1999, letter also make up the substance of proposed license conditions 41A, 41B, and 41C in Staff Exhibit G?

Grand Canyon Trust's Response

The NRC's answer makes clear that these conditions *are* related to groundwater. The Grand Canyon Trust would also note that license condition 41C, which the NRC represents as an information-generating condition, requires the licensee to meet substantive ammonia standards identified in the July 1998 BO, including a chronic toxicity standard of 0.38 mg/l and an acute toxicity standard of 1.93 mg/l. See BO at 100.

QUESTION 2a.

- a. Do the matters quoted above from Chairman Jackson's letter and proposed license conditions 41A, 41B, and 41C in Staff Exhibit G relate to groundwater remediation at the Atlas site?

Grand Canyon Trust's Response

The NRC Staff's bald assertion that these license conditions do not prescribe any requirements of the CAP is flat wrong: all three conditions relate to groundwater remediation.

License Condition 41A, requiring dewatering of the tailings, is a first step in groundwater remediation. License condition 41B sets a timeframe for completion of groundwater cleanup, as required by the BO. License condition 41C requires Atlas to meet the substantive groundwater cleanup standards for ammonia set forth in item 2 of the "reasonable and prudent alternative" in the July 1998 BO, including a chronic toxicity standard of 0.38 mg/l and an acute toxicity standard of 1.93 mg/l. See BO at 100. License conditions 41B and 41C, in particular, explicitly set requirements for the contents of any CAP -- namely, the timeframe for implementation and the substantive standards that must be achieved.

QUESTION 2b.

- b. Identify any other proposed license conditions in Staff Exhibit G that relate to groundwater remediation at the Atlas site?

Grand Canyon Trust's Response

The Grand Canyon Trust concurs in the Staff's Answer to Question 2b.

QUESTION 2c.

- c. Is the license amendment referred to in Chairman Jackson's January 13, 1999, letter the same materials license amendment involving the Applicant's proposal to modify license condition 41 noticed by the Commission in the April 7, 1994, notice of opportunity for hearing, 59 Fed. Reg. 16,665?

Grand Canyon Trust's Response

The Grand Canyon Trust has no comment on the Staff's Answer to Question 2c.

QUESTION 2d.

- d. Are proposed license conditions 41A, 41B, and 41C in Staff Exhibit G part of the same materials license amendment action involving the Applicant's proposal to modify license condition 41 noticed by the Commission in the April 7, 1994, notice of opportunity for hearing, 59 Fed. Reg. 16,665?

Grand Canyon Trust's Response

The Grand Canyon Trust concurs in the Staff's Answer to Question 2d.

QUESTION 2e.

- e. Are the matters quoted above from Chairman Jackson's January 13, 1999, letter the "groundwater cleanup requirements" that "[t]he NRC intends to include...as part of any license amendment it issues to Atlas" as stated on page 13 of Petitioners' Exhibit L?

Grand Canyon Trust's Response

Despite the NRC's inexplicable denials, Chairman Jackson's letter clearly relates to groundwater cleanup requirements. In Petitioners' Exhibit L, which excerpts the NRC's Reply Memorandum in Support of Defendant Nuclear Regulatory Commission's Motion to Dismiss in the Utah District Court proceeding (Exhibit L of Petitioners' Reply Brief), the NRC states as follows:

As the plaintiffs know, the NRC is currently considering a significant license amendment to the Atlas site --- an amendment that would enable Atlas to close its operations there entirely, after completion of requisite reclamation and groundwater cleanup activities. As part of the license amendment proceeding, the NRC consulted with the U.S. Fish and Wildlife Service about potential effects to endangered fish in the Colorado River. The Fish and Wildlife Service's Biological Opinion, which the plaintiffs have already submitted in the record, states that the NRC should require Atlas to create a better groundwater cleanup plan, in order to comply with the ESA. *The NRC intends to include these*

groundwater cleanup requirements as part of any license amendment it issues to Atlas, as the plaintiffs know. See Letter of NRC Chairman Shirley Ann Jackson at 2-3, Jan. 13, 1999.

(Emphasis added). The NRC Staff maintains that the "matters referenced by the Chairman are being required for reclamation of the site" and are not "groundwater cleanup requirements" -- even though the NRC's District Court Reply Brief explicitly referenced the Chairman's Jan. 13, 1999 letter and called those same license conditions "groundwater cleanup requirements."

The new license conditions introduced by the NRC, 41A, 41B, and 41C, are derived from -- and in two cases -- refer explicitly to the "groundwater cleanup requirements" in the BO, to which the District Court brief refers. License Condition 41A, the dewatering provision, is "Term and Condition 1.a." of the BO. See Exhibit A at 13; BO at 98. License Condition 41B, the 7-year groundwater cleanup provision, is based upon Term and Condition 1.b. of the BO. See BO at 7-8. License Condition 41C, the ammonia standards provision, is derived from and refers directly to Term and Condition 2 of the BO, which requires an assurance that "ammonia levels will be reduced to levels avoiding future take of endangered fish." BO at 99; see Exhibit A at 13.

The NRC cannot with a straight face say that these conditions are not the same "groundwater cleanup requirements" referenced in the District Court brief above. The NRC stated in the District Court brief that "*The NRC intends to include these groundwater cleanup requirements as part of any license amendment it issues to Atlas, as the plaintiffs know.*"

(Emphasis added). This sentence directly references pages 2 and 3 of Chairman Jackson's letter, which states that the NRC will require

by license condition that Atlas revise the CAP and expedite groundwater cleanup in conformance with timeframes identified in the FWS opinion. This would include *accelerated dewatering of the tailings, groundwater cleanup within 7 years of approval of a revised CAP, and monitoring of the groundwater* and the Colorado River. The NRC is confident that its planned course of action will be a solution that is protective of the humans and wildlife that depend on the river.

(Emphasis added.) These conditions are identical to those in license conditions 41A, 41B, and 41C, which the NRC has now adopted in its new license amendments. In addition, the NRC Staff stated in its Answer to Question 2 that the license conditions discussed in the quoted portion of Chairman Jackson's letter relate to License Conditions 41A, 41B, and 41C. See NRC's Answers at 8-9.

The NRC's position that the matters discussed in the Shirley Jackson letter are different from those in the District Court brief is untenable. In answer to this Question, the NRC states that, "The NRC has not yet made any determination as to what will be required for groundwater cleanup." However, as the NRC acknowledged in its District Court Reply brief and in the Shirley Jackson letter, the NRC was making and has made several significant determinations as to the requirements for groundwater cleanup, including the standards that must be achieved in the Colorado River and the schedule for complying with those requirements. As Chairman Jackson's letter makes clear, these license conditions constitute the NRC's primary plan to protect endangered fish and water quality in and around the Colorado River. See Exhibit J to Petitioners' Reply Brief at 3 ("The NRC is confident that its planned course of action will be a

solution that is protective of the humans and wildlife that depend on the river.""). These matters are part of *this* licensing proceeding, not some future proceeding.

QUESTION 2f.

- f. Are the matters quoted above from Chairman Jackson's January 13, 1999, letter the matters comprising the "license amendment to Atlas that would require...a multi-year groundwater clean-up plan" that "the NRC is currently in the process of considering" as stated on page 5 of Petitioners' Exhibit M?

Grand Canyon Trust's Response

The Grand Canyon Trust has no comment on the Staff's Answer to Question 2f.

QUESTION 2g.

- g. When was Chairman Jackson's January 13, 1999, letter released by the agency to the public?

Grand Canyon Trust's Response

The Grand Canyon Trust has no comment on the Staff's Answer to Question 2g.

QUESTION 2h.

- h. Was Chairman Jackson's January 13, 1999, letter, as the Petitioners state in their reply (at 4, 10, 11), the agency's first statement that groundwater remediation would be addressed as part of the materials license amendment action initially noticed on April 7, 1994 at Fed. Reg. 16,665?

Grand Canyon Trust's Response

To the best knowledge of Petitioners, Chairman Jackson's January 13, 1999 letter was the agency's first statement that groundwater remediation would be addressed as part of the

materials license amendment action initially noticed on April 7, 1994. In response to the NRC Staff's Answer, please see the Grand Canyon Trust's Responses to questions 1, 2, 2a., and 2e.

The Grand Canyon Trust also notes that in its Answer to this Question, the NRC Staff concedes that Condition 41B, which sets a seven-year timeframe for groundwater cleanup, is related to groundwater remediation. This statement is not consistent with the NRC Staff's Answer to Question 1g., which states that "The issue of groundwater remediation . . . is beyond the scope of the license amendment request"

QUESTION 2i.

If the answer to question h is no, and assuming that the scope of the Commission's April 7, 1994, notice did not include groundwater remediation and the agency subsequently expanded the scope of the materials license amendment action to include matters relating to groundwater remediation, when, and by what action, did the agency expand the scope of the materials license amendment action to include matters relating to groundwater remediation?

Grand Canyon Trust's Response

The first public indication that the NRC intended to include groundwater in the instant licensing proceeding was in Chairman Jackson's January 13, 1999 letter. Subsequently, the NRC sent a letter to Atlas on March 2, 1999 notifying Atlas of the new license conditions. By letter of April 15, 1999, Atlas agreed to the conditions with revisions to two dates. On May 28, 1999, the NRC accepted Atlas' revisions and issued the license amendments. By these amendments, the NRC expanded the scope of the license amendment noticed in 1994 to include substantive standards and timeframes for groundwater remediation. Neither these amendments nor any groundwater remediation issues were part of the originally noticed license amendment.

QUESTION 3.

Assuming the substance of proposed license conditions 41A, 41B, and 41C in Staff Exhibit G relates to groundwater remediation and is part of the same materials license amendment action initially noticed on April 7, 1994, and, assuming further, that the scope of the Commission's April 7, 1994, notice did not include groundwater remediation and the agency subsequently expanded the scope of the materials license amendment action to include matters relating to groundwater remediation, when and how could the Petitioners challenge the proposed license conditions or raise other matters regarding groundwater remediation?

Grand Canyon Trust's Response

The original scope of the 1994 notice has been expanded, and the NRC has avoided the questions entirely. The appropriate time and place to raise issues related to the new license amendments is now and in this licensing proceeding. The NRC should be required to notice the issues being added to the license amendment and provide an opportunity for public input immediately. Moreover, the NRC should revoke or stay the license amendment pending public involvement.

QUESTION 4.

Making the same assumptions as in question 3, does 10 C.F.R. § 2.1205(d)(2)(ii) or (iii) require the Petitioners to wait until the license amendment is actually issued to request a hearing on groundwater remediation matters? Please explain fully.

Grand Canyon Trust's Response

The provisions of 10 C.F.R. § 2.1205(d)(2)(ii) and (iii) need not apply in this case because notice was originally published with regard to this proceeding. The problem in this proceeding is not that no notice was published but that the original notice was inadequate.

When an original notice becomes stale or significant new issues develop that change the proceeding, new notice must be issued. See In the Matter of Rochester Gas & Electric Corp. (R.E. Ginna Nuclear Plant, Unit 1), 18 NRC 1231 (1983); In the Matter of Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), 9 NRC 422 (1979).

Since the Presiding Officer's May 14, 1999 Order in which this Question was posed, the NRC issued the relevant license amendments on May 28, 1999. This question has become moot with the issuance of the license amendments on May 28, 1999. However, even if Petitioners were required to wait until after receiving actual notice of the issuance of the license amendments in accordance with 10 C.F.R. § 2.1205(d)(2)(ii), that event has occurred. Petitioners received actual notice of the license amendments by mail on June 7, 1999. Because thirty days after June 7, 1999 is earlier than 180 days after May 28, 1999 (the date any "application" was granted), the timing requirement of § 2.1205(d)(2)(ii) would supersede that of § 2.1205(d)(2)(iii).

In the event that the Presiding Officer determines that 10 C.F.R. § 2.1205(d)(2)(ii) applies and that Petitioners were required to wait until the license amendments were issued to request intervention, Petitioners renew their Request for Hearing and Leave to Intervene by this filing and ask that the Presiding Officer consider the Grand Canyon Trust's January 27, 1999 Request for Hearing and Petition for Leave to Intervene in support of such request.

QUESTION 5.

Making the same assumptions as in question 3, is 10 C.F.R. § 2.1205(d)(2)(i) or any other provision of the Commission's Rules of Practice applicable? If so, please explain.

Grand Canyon Trust's Response

For the same reasons that 10 CFR § 2.1205(d)(2)(ii) and (iii) do not apply, 10 CFR § 2.1205(d)(2)(i) does not apply. Please see the Grand Canyon Trust's Response to Question 4. To the extent that the Grand Canyon Trust received "actual notice of a pending application," the Trust was not informed of Atlas' acceptance of the conditions set by the NRC until it received the April 15, 1999 letter from Richard Blubaugh to the NRC in the packet of information related to the license amendments on June 7, 1999. Therefore, to the extent that Mr. Blubaugh's letter is considered an "application" by Atlas, the timing requirements of § 2.1205(d)(2)(ii) would still control.

QUESTION 6.

Has the Applicant consented to the imposition of proposed license conditions 41A, 41B, and 41C as requested in Staff Exhibit G and, if so, when?

Grand Canyon Trust's Response

The Grand Canyon Trust has no comment on the Staff's Answer to Question 6.

QUESTION 7.

Has the Staff issued to the Applicant the license amendment identified in the April 7, 1994, notice, 59 Fed. Reg. 16,665, including license conditions 41A, 41B, and 41C in Staff Exhibit G?

Grand Canyon Trust's Response

The Grand Canyon Trust has no comment on the Staff's Answer to Question 7.

QUESTION 8.

In its response to the intervention petition, the Staff states (at 2, 6, 13 n.7, 15-16) that groundwater remediation at the Atlas site will be the subject of a separate

licensing action. What is the Staff's currently anticipated schedule for initiating a separate licensing action regarding groundwater remediation?

Grand Canyon Trust's Response

The Grand Canyon Trust has no comment on the Staff's Answer to Question 8.

QUESTION 8a.

Does the Staff intend to initiate the separate licensing action regarding groundwater remediation with a notice of opportunity for hearing?

Grand Canyon Trust's Response

The Grand Canyon Trust has no comment on the Staff's Answer to Question 8.a.

QUESTION 8 b.

Will the matters quoted in question 2 from Chairman Jackson's January 13, 1999, letter and license conditions 41A, 41B, and 41C in Staff Exhibit G be subject to challenge and any appropriate remediation in the separate licensing action regarding groundwater remediation?

Grand Canyon Trust's Response

The Grand Canyon Trust agrees that license conditions 41A, 41B, and 41C will not be subject to challenge in a separate licensing action regarding groundwater remediation. These license conditions set forth substantive and temporal standards for groundwater remediation and are clearly part of this licensing proceeding. A future licensing action will focus on how to implement these standards, but critical issues concerning the content of the standards, timing of

groundwater remediation, and whether these measures are protective of endangered fish, are determined in this licensing action.

QUESTION 9.

In its response to the intervention petition, the Staff (at 16), citing Staff Exhibit G, states that “[w]hat the Staff has done is propose additional license conditions designed to require the Licensee to demonstrate that it will meet more stringent requirements.” With respect to proposed license conditions 41A, 41B, and 41C, does this statement simply mean that the conditions impose stringent groundwater remediation requirements on the Applicant?

Grand Canyon Trust’s Response

The Staff in its Answer states, “No, the statement refers to the fact that more stringent requirements are being placed on the licensee in the context of reclamation.” The Staff’s assertion that these groundwater conditions constitute surface “reclamation” does not make it so. Rather, the “more stringent requirements” imposed by 41A, 41B, and 41C clearly relate directly to the BO’s requirements to clean up the groundwater to levels that protect endangered species and to implement that cleanup on a strict timeframe. The Staff’s statement that these requirements occur “in the context of reclamation” does not change their fundamental character as substantive and temporal standards related to groundwater remediation.

QUESTION 9a.

If not, explain what this statement means?

Grand Canyon Trust’s Response

The Staff already has conceded that license condition 41B relates to groundwater remediation at the site. See Staff’s Answer to Question 2.a. License conditions 41A, 41B, and

41C are derived from the FWS' stricter requirements for groundwater cleanup as identified in the Terms and Conditions of the Reasonable and Prudent Alternative in the BO. See Grand Canyon Trust's Response to Question 2e. Obviously, the three license conditions embody stricter requirements, mandated by the FWS' BO, related to groundwater cleanup. The language of Chairman Jackson's January 13, 1999 letter, the text of the license conditions, and the NRC's District Court Reply Brief plainly refer to the same groundwater cleanup requirements. The Staff's argument that these "more stringent requirements" are not related to groundwater simply because they occur "in the context of reclamation" is a transparent but expedient argument simply to avoid any public input to or challenge of these conditions.

QUESTION 9b.

Specifically, do the "more stringent requirements" referred to by the Staff include groundwater remediation requirements?

Grand Canyon Trust's Response

Please see the Grand Canyon Trust's Responses to Questions 9 and 9a.

QUESTION 10.

What is the relationship, if any, between the instant materials license amendment action (and proposed license conditions 41A, 41B, and 41C in Staff Exhibit G) to the materials license amendment action currently before Judge Bechhoefer in Docket No. 40-3453-MLA-4?

Grand Canyon Trust's Response

The Grand Canyon Trust has no comment on the Staff's Answer to Question 10.

QUESTION 11.

In its intervention petition, the Petitioners state (at 1 n.1) that they previously filed with the NRC a petition pursuant to 10 C.F.R. § 2.206. What is the current status of that petition?

Grand Canyon Trust's Response

To the best of the Grand Canyon Trust's knowledge, that petition is still pending before the NRC.

QUESTION 14.

Assuming that the scope of the Commission's April 7, 1994 notice did not include groundwater remediation and the agency subsequently expanded the scope of the materials license amendment action to include matters relating to groundwater remediation, does the Presiding Officer pursuant to 10 C.F.R. Part 2, Subpart L, or any other regulatory provisions, have the authority to renotice the licensing action to include groundwater remediation matters in light of the agency's subsequent expansion of the scope of the licensing action and the length of time between the original notice and that subsequent expansion of the scope of the licensing action? Cf., Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALA-539, 9 NRC 422 (1979).

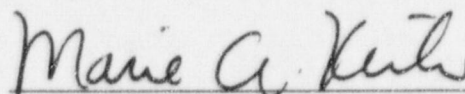
Grand Canyon Trust's Response

In this case, the original notice clearly *is* stale. As a result of the intervening review by the Staff and the revelation of new information about fish impacts at the site, the nature of the action has fundamentally changed. Groundwater remediation standards and timeframes are now included in the license amendment.

A lengthy review process, contrary to being an excuse for the delay, is a reason to require renoticing. In R.E. Ginna Nuclear Plant, "lengthy staff review" was one of the contributing factors that resulted in delay of the proceeding and, in turn, made the original notice

stale. See In the Matter of Rochester Gas & Electric Corp. (R.E. Ginna Nuclear Plant, Unit 1), 18 NRC 1231, 1983 NRC LEXIS 32, *4, citing Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), 9 NRC 422 (1979). The fact that the Grand Canyon Trust has been involved in the review process is irrelevant to the question of whether this proceeding requires renoticing and whether the original notice is stale. The Grand Canyon Trust does not represent the entire public. Even with its close involvement, the Trust was not on notice of the NRC's intent to include groundwater provisions within this license amendment until January 1999. Regardless of the Trust's status in this case, the license amendments in this action were issued more than 5 years after the original notice was published, a delay that is squarely within the "5 to 10 years" that made the notice stale and required renoticing in Allens Creek. See id. at * 5. The original notice, which did not provide notice of the new groundwater amendments and which occurred more than five years before the license amendments were issued, is manifestly stale, and the public is entitled to a renoticing of the entire action. See id. at * 10-11.

Dated this 15th day of June, 1999.



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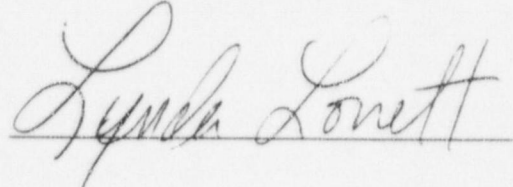
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Attorneys for
Grand Canyon Trust, et al.

CERTIFICATE OF SERVICE

I hereby certify that copies of "GRAND CANYON TRUST'S RESPONSES TO THE NRC STAFF'S ANSWERS TO QUESTIONS PRESENTED IN THE PRESIDING OFFICER'S MAY 14, 1999 ORDER" in the above-captioned proceeding have been served on the following by United States mail, and by facsimile or email (indicated by asterisk) on this 15th day of June 1999:

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U.S. Nuclear Regulatory Commission
Washington, D. C. 20555-0001
Fax: 301-415-5599, E-mail: tsm@nrc.gov



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OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

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USNRC

EXHIBIT 1



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 28, 1999

Mr. Richard E. Blubaugh
Vice President of Environmental
and Government Affairs
Atlas Corporation
370 Seventeenth Street, Suite 3140
Denver, CO 80202

SUBJECT: APPROVAL OF REVISED RECLAMATION PLAN AND EXTENSION OF
MILESTONE DATE IN LICENSE SUA-917 FOR THE MOAB, UTAH, URANIUM
MILL - AMENDMENT NUMBER 30

Dear Mr. Blubaugh:

The U.S. Nuclear Regulatory Commission (NRC) staff is amending License Conditions (LCs) 41, 55, and 56 of Source Material License Number SUA-917, for the Moab, Utah, uranium mill site. LC 41 is being modified to require reclamation of the tailings disposal area in accordance with Atlas Corporation's October 1996 reclamation plan, with additional specified conditions. LC 55B.(2) is being modified to revise the projected date for completion of ground-water corrective actions to July 31, 2006. LC 56 is being modified to reflect a change in NRC's organization.

By letter dated August 2, 1988, Atlas submitted a revised reclamation plan, to supersede the May 1981 plan identified in LC 41, for NRC's review and approval. After extensive review and interaction between NRC and Atlas and considerable public involvement, Atlas submitted a modified version, "Final Reclamation Plan, Atlas Corporation Uranium Mill and Tailings Disposal Area," in October 1996. The staff's assessment of the plan's compliance with NRC regulatory requirements is contained in NUREG-1532, "Final Technical Evaluation Report for the Proposed Revised Reclamation Plan for the Atlas Corporation Moab Mill," March 1997 and Supplement 1 to NUREG-1532, April 1999. The environmental impacts of the proposed reclamation were evaluated in NUREG-1531, "Final Environmental Impact Statement Related to Reclamation of the Uranium Mill Tailings at the Atlas Site, Moab, Utah," March 1999. Copies of those documents were sent to you previously.

By letter dated March 2, 1999, NRC identified 7 conditions that we would require Atlas to commit to in order for us to amend LC 41. By letter dated April 15, 1999, Atlas agreed to the conditions with revisions to two dates specified in the conditions. Those revised dates are based on the projected schedule of the Atlas bankruptcy proceeding and are acceptable to NRC. The revision to LC 41, therefore, contains the conditions identified in the March 2 letter with the dates modified to those in Atlas' April 15 letter.

By letter dated December 22, 1998, Atlas requested that the date, in LC 55B.(2), for the projected completion of ground-water corrective actions, be extended. The enclosed Technical Evaluation Report (TER) contains NRC's assessment of the licensing action and the

R. Blubaugh

-2-

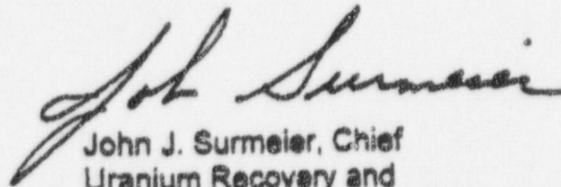
recommended license change. Based on this assessment, the projected date for completion of ground-water corrective actions in LC 55B.(2) is being changed from December 31, 1998, to July 31, 2006.

An environmental assessment for this action is not required, since it is categorically excluded under 10 CFR 51.22 (c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60 (b)(2).

Requests for hearing have been filed on Atlas' requested amendments to LCs 41 and 55B.(2) and, as a result, Presiding Officers have been appointed to consider these requests and conduct any hearings that may be held on these amendments. On May 14, 1998, the Presiding Officer granted the request for hearing on the amendment to LC 55B.(2). In accordance with 10 CFR 2.1205(m), the staff hereby issues the requested amendments, notwithstanding the pendency of the requests for hearing, based upon the evaluations contained in the documents identified above.

The license is being reissued to incorporate the changes identified above and is enclosed. If you have any questions, please contact me or Myron Fliegel, the NRC project manager for Atlas. I can be reached at (310) 415-7238 and Dr. Fliegel at (301) 415-6629.

Sincerely,



John J. Surmeier, Chief
Uranium Recovery and
Low-Level Waste Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-3453
Source Material License No. SUA-917
Amendment No. 30

Enclosures: As stated

cc: See attached list

TECHNICAL EVALUATION REPORT

DOCKET NO. 40-3453 LICENSE NO. SUA-917

LICENSEE: Atlas Corporation
FACILITY: Atlas Meab Uranium Mill
PROJECT MANAGER: Myron Fliegel
TECHNICAL REVIEWER: Myron Fliegel

SUMMARY AND CONCLUSIONS:

By letter dated December 22, 1998, Atlas Corporation (Atlas) submitted a request to amend License Condition 55 (LC 55) of Source Material License No. SUA-917. LC 55 lists the completion dates for reclamation milestones established as targets in the Memorandum of Understanding (MOU) with the U.S. Environmental Protection Agency (EPA) (56 FR 55432, October 25, 1991). Atlas requested that the license date for projected completion of ground-water corrective actions in LC 55B.(2) be changed from December 31, 1998, to a date pursuant to the reasonable and prudent alternative and mitigative measures stipulated by the U.S. Fish and Wildlife Service (FWS) in the Biological Opinion issued to NRC on July 31, 1998. The staff recommends that the license be amended to identify the projected completion of ground-water corrective actions by July 31, 2006.

DESCRIPTION OF LICENSEE'S AMENDMENT REQUEST:

The licensee requested that the date in LC 55B.(2) for the projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan (CAP) be revised pursuant to the reasonable and prudent alternative and mitigative measures stipulated in the Biological Opinion issued to the NRC by the FWS on July 31, 1998. Reclamation milestones in the MOU with EPA are in License Condition 55.

TECHNICAL EVALUATION:

Atlas stated that necessary revisions to the ground-water CAP have been delayed for reasons beyond its control. Atlas further stated that it cannot complete the ground-water corrective action until after the CAP is revised.

NRC has considered the revision to the ground-water CAP to be a separate action from the revision to the surface reclamation plan for the tailings. Further, because significant aspects of the ground-water CAP depend on the manner in which the tailings are permanently stabilized (and especially whether the tailings would be stabilized onsite or moved to another location) and that had not been decided, revision to the ground-water CAP was delayed for reasons beyond Atlas' control. As part of its review of Atlas' proposed tailings stabilization plan, NRC consulted with FWS in conformance with the Endangered Species Act. In its July 1998 Biological Opinion, FWS identified reasonable and prudent alternatives that are needed to protect endangered fish

Enclosure

in the Colorado River. Among them is the requirement that Atlas clean up contaminated ground water to relevant standards within 7 years from Atlas' receipt of NRC approval of the revised ground-water CAP. The revised date will meet the FWS requirement.

RECOMMENDED LICENSE CHANGE:

The staff recommends that a change to Source Material License SUA-917, LC55 B.(2) be made to reflect the revised date for the projected completion of ground-water corrective actions. The revised license condition will read as follows:

55. B. (2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan - July 31, 2006.

ENVIRONMENTAL IMPACT EVALUATION:

The staff has determined, under exclusions contained in 10 CFR 51.22 (c) (11), that further environmental documentation is not required for this amendment. The amendment is administrative, revising a date for completion of an activity. Therefore, an environmental assessment by this office for the proposed action is categorically excluded under 10 CFR 51.22 (c) (11), and is not required by 10 CFR 51.60 (b) (2).

REFERENCES:

Letter from Richard E. Blubaugh to King Stablein, December 22, 1998.

Addressees for Letter Dated: 05/28/99

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MATERIALS LICENSE

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 (Public Law 93-438), and Title 10, Code of Federal Regulations, Chapter I, Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, and 70, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess, and transfer byproduct, source, and special nuclear material designated below; to use such material for the purpose(s) and at the place(s) designated below; to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s). This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, as amended, and is subject to all applicable rules, regulations, and orders of the Nuclear Regulatory Commission now or hereafter in effect and to any conditions specified below.

Licensee
Atlas Corporation

370 17th Street, Suite 3140
Denver, Colorado 80202-5631
[Applicable Amendment: 9]

3. License Number: SUA-917, Amendment No. 30

4. Expiration Date: Until terminated

5. Docket or
Reference No. 40-3453

6. Byproduct, Source, and/or
Special Nuclear Material

Natural Uranium

7. Chemical and/or Physical
Form

Any

8. Maximum Amount that Licensee
May Possess at Any One Time
Under This License

Unlimited

9. Authorized place of use: The licensee's uranium milling facility located at Moab, Utah.

10. The licensee is hereby authorized to possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by the licensee's milling operations authorized by this license.

11. For use in accordance with statements, representations, and conditions contained in Sections 4.2.4, 5, and 7 (except 5.5.10 and 5.5.11), Appendices 5.3, 5.5.6, and 6.0 of the licensee's renewal application dated May 31, 1984, and submittals dated December 17, 1984, January 18, and June 5, 1985, and September 16, 1992. The mill site organizational structure shall be maintained as presented by submittal dated May 13, 1991, as revised by letter dated March 5, 1993.

Whenever the word "will" is used in the above referenced sections, it shall denote a requirement.

[Applicable Amendments: 12, 15, 18, 20]

12. DELETED by Amendment No. 18.

13. DELETED by Amendment No. 18.

14. The licensee is hereby exempted from the requirements of Section 20.1902(e) of 10 CFR 20 for areas within the mill, provided that all entrances to the mill are conspicuously posted in accordance with Section 20.1902 and with the words, "Any area within this mill may contain radioactive material."

License Number SUA-917, Amendment No. 30

Docket or Reference Number 40-3453

MATERIALS LICENSE
SUPPLEMENTARY SHEET

15. The results of sampling, analyses, surveys and monitoring; the results of calibration of equipment; reports on audits and inspections; all meetings and training courses required by this license; and any subsequent reviews, investigations, and corrective actions, shall be documented. Unless otherwise specified in NRC regulations, all such documentation shall be maintained for a period of at least 5 years.

16. DELETED by Amendment No. 18.

17. The licensee shall implement a compliance monitoring program containing the following:

A. Sample wells AMM-1, AMM-2 and AMM-3 on a quarterly frequency for chloride, nitrate, sodium, sulfate, pH, TDS and water level, and on a semiannual frequency for chromium, gross alpha, lead, molybdenum, nickel, radium-226 and 228, selenium, silver, uranium and vanadium. Additionally, the upper completion of well ATP-2 shall be sampled on a quarterly frequency for chloride, nitrate, sodium, sulfate, pH, TDS and water level.

B. Comply with the following ground-water protection standards at point of compliance wells AMM-2 and AMM-3, with background being recognized as well AMM-1.

chromium = 0.08 mg/l, gross alpha = 33 pCi/l, molybdenum = 0.05 mg/l, nickel = 0.08 mg/l, radium-226 and 228 = 5 pCi/l, selenium = 0.01 mg/l, vanadium = 0.04 mg/l and uranium = 4.0 pCi/l.

C. Implement a corrective action program that includes pumping dewatering wells PW1, PW4, PW6, PW7, PW8, PWS, and PW12 during periods of nonfreezing weather. Sufficient data shall be collected, for the constituents listed in Subsection A, to determine the mass of constituents that have been recovered by the corrective action program.

The licensee shall on a semiannual frequency, submit a ground-water monitoring report as well as submit a corrective action program review by December 31, of each year, that describes the progress towards attaining ground-water protection standards.

[Applicable Amendments: 3, 4, 8, 11, 13, 19]

18. Released equipment or packages from the restricted area shall be in accordance with the document entitled, "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of License for Byproduct or Source Materials" dated September, 1984. [Applicable Amendment: 18]

19. DELETED by Amendment No. 18.

20. The licensee shall conduct and document at least five inspections of the tailings embankment per week (one per day, 5 days per week) and shall immediately notify the NRC, by telephone and telegraph, of any failure to the tailings dam which could result in a release of radioactive materials and/or of any unusual conditions which if not corrected could lead to such failure. This requirement is in addition to the reporting requirements of 10 CFR 20.

License Number SUA-917, Amendment No. 30

Docket or Reference Number 80-3453

MATERIALS LICENSE
SUPPLEMENTARY SHEET

[Applicable Amendment: 18]

21. A. The licensee shall decommission the Moab Mill facilities in accordance with policy and procedures described in submittals dated November 27, 1987, and March 29, and May 13, 1988.
- B. The licensee shall submit soil sampling criteria, including radium-226/gamma correlations at least 60 days prior to conducting soil sampling as a part of the mill decommissioning process.
- C. The licensee shall submit decontamination and decommissioning reports within 60 days of completion of the decontamination and decommissioning activities.
- D. The reports required by this condition shall include, as a minimum, the following information:
- (1) Employee exposure records including internal exposure time weighted calculations.
 - (2) Bioassay results.
 - (3) Inspection log entries and inspections.
 - (4) Training program activities, including safety meetings.
 - (5) Radiological survey and sampling data.
 - (6) Cross section drawings of all disposal areas and the proposed interim cover.

[Applicable Amendments: 3, 15]

22. Occupational exposure calculations shall be performed and documented within 1 week of the end of each regulatory compliance period as specified in 10 CFR 20.103(a)(2) and 10 CFR 20.103(b)(2). Routine samples taken in airborne ore dust and yellowcake areas shall be analyzed in a timely manner to allow exposure calculations to be performed in accordance with this condition.

Non-routine samples taken in ore dust and yellowcake areas shall be analyzed and the results reviewed by the Radiation Control Coordinator (RCC) within 2 working days after sample collection.

23. Standard written procedures shall be established and maintained for all activities involving radioactive materials that are handled, processed or stored. Written procedures shall be established for nonoperational (nonprocessing) activities to include in-plant and environmental monitoring, bioassay analyses, and instrument calibrations. Up-to-date copies of all written procedures shall be kept in the applicable work stations to which they apply.

License Number SUA-917, Amendment No. 30

Docket or Reference Number 40-3453

MATERIALS LICENSE
SUPPLEMENTARY SHEET

All written procedures, shall be reviewed and approved in writing by the RCC before implementation and whenever a change in procedure is proposed to ensure that proper radiation protection principles are being applied. The RCC shall perform a documented review of all existing procedures at least annually.

[Applicable Amendment: 18]

24. The personnel contamination surveys conducted, in accordance with Section 5.5.5.2 of the application, shall be documented and maintained. In addition, the licensee (RCC or qualified alternate) shall perform spot personnel surveys for alpha contamination at least quarterly on employees leaving the restricted area.
25. The licensee shall use a Radiation Work Permit (RWP) for all nonroutine work not covered by an existing procedure where the potential for significant exposure to radioactive materials exists. The RWP shall be approved by the RCC or an alternate, qualified by way of specialized radiation protection training, and shall at least describe the following:
 - A. The scope of work to be performed and the potential radiological hazards.
 - B. Any precautions necessary to minimize worker exposure to radioactive materials.
 - C. The radiological monitoring and sampling necessary prior to, during, and following completion of the work in order to assess any potential exposures.
26. Notwithstanding the representations in Appendix 5.3 to the renewal application, the licensee shall develop and implement procedures to ensure that visitors and contractors receive instruction and training in accordance with Section 19.12 of 10 CFR 19, prior to entering any restricted area.
27. The existing on-site catchment basin west of the S-X units shall be maintained in a condition and with enough remaining available capacity to assure the collection of any spillage of chemicals from hazardous chemical storage tanks within the graded area. Any storage tanks containing hazardous chemicals which are not located within the graded area shall be surrounded by individual containment dikes capable of containing all leakage.
28. Notwithstanding the representations in Section 5.5.5 of the licensee's application, the licensee shall conduct weekly alpha contamination surveys of lunch rooms and monthly surveys of change rooms, shower facilities and offices when they are in use.

[Applicable Amendment: 18]

29. A copy of the report documenting the annual ALARA audit in accordance with Section 5.1.4 of the renewal application dated May 31, 1984, shall be submitted to the NRC, for review within 30 days of completion of the audit report.

MATERIALS LICENSE
SUPPLEMENTARY SHEET

30. In addition to the tailings embankment surveillance and inspection program specified in Section 4.2.4 of the licensee's renewal application dated May 31, 1984, the licensee shall comply with the following:
- A. Notwithstanding any statements to the contrary, the professional responsible for the annual technical evaluation report shall ensure that all field inspectors are trained to recognize and assess signs of possible distress or abnormality.
 - B. All routine inspection reports shall be dated and maintained on file at the mill site for use in developing the annual report.
 - C. The results of ground-water sampling and piezometer and pond level measurements shall be maintained in graphical form and on file at the mill site for use in developing the annual report. The licensee shall adhere to commitments made in their July 8, 1991, submittal modifying the number of piezometers monitored.
 - D. The annual technical evaluation report shall include an assessment of the hydraulic and hydrologic capacities, water quality and structural stability of the tailings impoundment.
 - E. A copy of each annual technical evaluation report shall be submitted to the NRC, within one (1) month of its completion.
- [Applicable Amendment: 15]
31. In addition to the requirements in Section 5.2 of the renewal application, the Radiation Control Coordinator (RCC) shall have the minimum education, training, and experience as detailed in Section 2.4.1 of Regulatory Guide 8.31 dated May 1983. [Applicable Amendment: 18]
32. Radiation survey instruments shall be calibrated at least semiannually or at the manufacturer's suggested interval, and after each repair, whichever is sooner. All radiation survey instruments shall be checked for proper operation using a radiation check source prior to each day's use. Portable air sampling equipment shall be calibrated after repair and at least quarterly or at the manufacturer's suggested interval, whichever is sooner. Flow rates on portable samplers shall be checked and documented prior to each day's use. Fixed continuous air samplers shall be calibrated after repair and at least quarterly or at the manufacturer's suggested interval, whichever is sooner. Flow rates on fixed continuous air samplers shall be checked each time the sampling head is changed.
33. The licensee shall implement an interim tailings stabilization program as specified in the March 16, 1987 submittal. In addition, this program shall include written procedures which are of sufficient detail to describe inspection methodologies, management notifications and implementation of corrective actions to assure compliance to Criterion 8 of 10 CFR 40, Appendix A. As a minimum,

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the licensee shall perform at least weekly, a documented inspection to assure the effectiveness of the control methods used. Corrective actions taken shall be documented in response to inspection findings. Corrective actions shall be completed within 30 days unless a longer period is approved in writing by the NRC.

34. The licensee is authorized to dispose of byproduct material contaminated solid wastes generated at the Moab Mill in the sump collection pond as described in the licensee's submittal dated February 29, 1984.
35. Notwithstanding representations made in Section 4.3 of the renewal application the licensee shall not dispose of materials other than uranium mill tailings, spent resins, raffinate, vanadium waste residues, liquids or residues contained in the catchment basin described in Condition No. 27, or liquid sanitary wastes in the tailings pond, without the specific authorization of NRC. If liquid sanitary wastes are discharged to the tailings pond, written authorization shall first be obtained from the Utah Bureau of Water Pollution Control. A copy of the written authorization shall be submitted to NRC prior to the discharge of the liquid sanitary waste.

The licensee shall be permitted to discharge as necessary any liquids or solids to the tailings impoundment from the catchment basin as described in License Condition No. 27 that are generated during the decommissioning phase of the mill.

[Applicable Amendment: 18]

36. DELETED by Amendment No. 18.
37. Reclamation phase modifications to Moab Wash shall be as specified in the "Pilot Channel" option of the licensee's submittal dated October 13, 1983 with the following modifications:
- A. The pilot channel bottom shall be sloped at a 1% grade away from the tailings pile (i.e., to the north).
- B. Excavation material shall be used to backfill the entire length of the existing Moab Wash channel, with the fill sloped away from the tailings pile. Any remaining excavation material shall be used to construct a berm on the south side of the pilot channel to increase channel capacity.

In addition, operational phase modifications to Moab Wash shall be maintained in accordance with the licensee's submittal dated October 26, 1982.

38. Mill tailings other than samples for research shall not be transferred from the site without specific prior approval of the NRC. The licensee shall maintain a permanent record of all transfers made under the provisions of this condition.
39. Atlas shall, in accordance with submittals dated February 25 and June 29, 1987, develop methods and procedures prior to reclamation, to ensure that:

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- A. The entire area of contaminated soil southeast of the tailings impoundment, consisting of approximately 6.6 acres with an estimated volume of 25,000 cubic yards, is placed in the tailings pond and otherwise ensure that the entire area is decontaminated consistent with 10 CFR Part 40, Appendix A, Criterion 6.
- B. The entire area west of State Highway No. 279 identified as exceeding Ra-226 levels provided in 10 CFR Part 40, Appendix A, Criterion 6, shall be removed and placed in the tailings pond prior to final reclamation. By our letter dated February 25, 1987, background for the area west of State Highway No. 279 is 5.5 pCi/gm Ra-226.
- C. Records of all surveys and soil analyses of the section southeast of the tailings impoundment and west of State Highway No. 279 shall be maintained until the NRC authorizes their disposal.

40. DELETED by Amendment No. 18.

41. The licensee shall reclaim the tailings disposal area in accordance with the October 1996 submittal entitled "Final Reclamation Plan, Atlas Corporation Uranium Mill and Tailings Disposal Area" and revisions thereof, with the following modifications:

- A. The licensee shall commence dewatering the tailings in conformance with the U. S Fish and Wildlife Service final biological opinion (FBO) of July 1998, Terms and Conditions 1.a. The licensee shall provide a design for the dewatering by December 31, 1999. The design should be such that dewatering can be completed by July 1, 2002.
- B. The licensee shall provide, by May 1, 2000, a revision to the corrective action program identified in license condition 17-C that will meet ground-water standards within 7 years from the date of approval by NRC.
- C. Before commencing construction of the final radon barrier, the licensee shall provide analyses, appropriately supported by necessary data, showing that the ammonia standards identified in item 2. of the reasonable and prudent alternative of the FBO will be met over the design life of the reclamation.
- D. Before commencing the reconfiguration of Moab Wash, the licensee shall provide a design that NRC, after consultation with FWS, finds acceptable to compensate for the loss of 0.5 acre of critical habitat, in conformance with item 5. of Terms and Conditions of the FBO.
- E. Comply with item 6. of Terms and Conditions in the FBO by:
- (1) Monitoring for southwestern willow flycatcher
 - (2) Implement construction activities in such a way as to minimize loss of southwestern willow flycatcher habitat and revegetate disturbed area with willow plantings.
- F. Before commencing construction activities, the licensee shall obtain NRC approval of a plan to implement the following mitigative measures identified in the FEIS:

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- (1) Minimization of emissions of fugitive dust during reclamation (Section 4.1.7).
- (2) Spill prevention and control and erosion control applicable to the Atlas site and borrow areas (Section 4.5.2.6).
- (3) Interception and storage of sediment-and contaminant-laden runoff through use of adequate drainage control, retention, and treatment ponds, silt fences, and other means as necessary (Section 4.5.2.6).
- (4) Avoidance of major earth-moving operations (such as the relocation of Moab Wash) during periods of high thunderstorm potential where and when feasible (Section 4.5.2.6).
- (5) Avoidance of siting potential borrow areas immediately adjacent to streams (Section 4.5.2.6).
- (6) A survey by a qualified botanist to determine if *Jones-cycladenia* is present in the vicinity of the proposed Kane Creek quarry site before any activities are initiated at the site. If the species is present, the licensee would be required to develop appropriate mitigative measures in consultation with the FWS to ensure that populations are protected from disturbance (Section 4.6.4.1).
- (7) Limitations on the use of the Potash quarry site to the December through February period to avoid impacting recreational use of the Potash boat ramp (Section 4.7.3.2).
- (8) Topographic and vegetative restoration of borrow areas as required by the State of Utah Division of Oil, Gas and Coal Mining (Section 4.5.2.6 and 4.7.4.3).

[Applicable Amendment: 18, 30]

42. The licensee shall maintain an NRC-approved financial surety arrangement, consistent with 10 CFR 40, Appendix A, Criteria 9 and 10, adequate to cover the estimated costs, if accomplished by a third party, for decommissioning and decontamination of the mill and mill site, for reclamation of any tailings or waste disposal areas, ground-water restoration as warranted and the long-term surveillance fee. Within 3 months of NRC approval of a revised reclamation/decommissioning plan, the licensee shall submit, for NRC review and approval, a proposed revision to the financial surety arrangement if estimated costs in the newly approved plan exceed the amount covered in the existing financial surety. The revised surety shall then be in effect within 3 months of written NRC approval.

Annual updates to the surety amount, required by 10 CFR 40, Appendix A, Criteria 9 and 10, shall be submitted to the NRC at least 3 months prior to the anniversary date which is designated as December 31 of each year. If the NRC has not approved a proposed revision to the surety coverage 30 days prior to the expiration date of the existing surety arrangement, the licensee shall extend the existing surety arrangement for 1 year. Along with each proposed revision or annual update, the licensee shall submit supporting documentation showing a breakdown of the costs and the basis for the cost estimates with adjustments for inflation, maintenance of a minimum 15 percent contingency fee, changes in engineering plans, activities performed, and any other conditions affecting estimated costs for site closure. The basis for the cost estimate is the NRC approved reclamation/decommissioning plan or NRC approved revisions to the plan. The

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previously provided guidance entitled, "Recommended Outline for Site Specific Reclamation and Stabilization Cost Estimates," outlines the minimum considerations used by the NRC in the review of site closure estimates. Reclamation/decommissioning plans and annual updates should follow this outline.

Atlas' currently approved surety instrument, Performance Bond No. 5652 issued by the Acstar Insurance Company of New Britain, Connecticut in favor of the NRC, shall be continuously maintained in an amount no less than \$6,500,000 for the purpose of complying with 10 CFR 40 Appendix A, Criteria 9 and 10, until a replacement is authorized by the NRC.

The Licensee shall maintain a Standby Trust (Trust arrangement for the benefit of NRC. The currently established Trust is with Northwest Bank of Colorado N.A.

[Applicable Amendments: 5, 14, 18, 22, 24]

43. Prior to termination of this license, the licensee shall provide for transfer of title to byproduct material and land, including any interests therein (other than land owned by the United States or the State of Utah), which is used for the disposal of such byproduct material or is essential to ensure the long term stability of such disposal site to the United States or the State of Utah, at the State's option.
44. DELETED by Amendment No. 18.
45. Before engaging in any activity not previously assessed by the NRC, the licensee shall prepare and record an environmental evaluation of such activity. When the evaluation indicates that such activity may result in a significant adverse environmental impact that was not assessed, or that is greater than that assessed in the Final Environmental Statement (NUREG-0453), the licensee shall provide a written evaluation of such activities and obtain prior approval of the NRC for the activity.
46. Prior to disturbing any presently undisturbed soils for mill related activities (including borrow area for tailings reclamation cover) in the future, the licensee shall have an archeological survey conducted of the site(s) to be disturbed. The Utah State Department of Development Services and the U.S. Department of the Interior shall be contacted by the licensee prior to the survey to provide assistance or comment in planning such a survey. The completed survey shall be submitted to the NRC for review and approval to proceed prior to any disturbance of presently undisturbed areas.
47. The licensee shall conduct an annual survey of land use (grazing, residence, wells, etc.) in the area within two miles of the mill and submit a report of this survey annually to the NRC. This report shall indicate any differences in land use from that described in the licensee's previous annual land use report. The report shall be submitted by March 31 of each year.
48. The results of the effluent and environmental monitoring programs required by this license shall be reported in accordance with 10 CFR 40, Section 40.65 with copies of the report sent directly to the NRC. Data from the effluent and environmental monitoring program shall be reported in accordance with the format in the previously provided guidance entitled, "Sample Format For Reporting Monitoring Data."

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49. The licensee shall conduct an environmental and effluent monitoring program as specified in the renewal application in accordance with Table 5.5-8 during normal operations and Table 5.5-9 during periods of extended shutdown with the following modifications:

- A. Air particulate samples shall be analyzed for U-nat, Ra-226 and Th-230, quarterly.
- B. The analysis of quality control samples shall be in accordance with Section 3 of Regulatory Guide 4.15.

C. Lower limits of detection utilized for sample analysis shall be in accordance with Section 5 of Regulatory Guide 4.14.

- D. Soil and vegetation sampling shall be analyzed annually for Ra-226 and Pb-210.
- E. Notwithstanding the ground-water monitoring specified in Tables 5.5-8 and 5.5-9, the licensee shall monitor the ground water as described in License Condition No. 17.
- F. DELETED by Amendment No. 23.

[Applicable Amendments: 1, 3, 4, 11, 23]

50. The licensee shall conduct a bioassay program in accordance with Section 5.5.4 of the renewal application with the following additions:

- A. Laboratory surfaces used for in-house bioassay analyses shall be decontaminated to less than 25 dpm alpha (removable) per cm² prior to analysis of samples.
- B. Anytime an action level of 15 ug/l uranium for urinalysis is reached or exceeded, the licensee shall document the corrective actions which have been performed in accordance with Revision 1 of Regulatory Guide 8.22, dated January 1981. This documentation shall be submitted to the NRC as part of the semiannual report required by 10 CFR 40.65 and Condition No. 48 to this license. ★ ★ ★ ★
- C. Anytime an action level of 35 ug/l for two consecutive specimens or 130 ug/l uranium for specimen for urinalysis is reached or exceeded, the licensee shall document the corrective actions which have been performed in accordance with Revision 1 of Regulatory Guide 8. This documentation shall be submitted to the NRC, within thirty (30) days of exceeding the action level.

51. DELETED by Amendment No. 6.

- 52. A. Construction of a roadway toward the center of the tailings impoundment for use by motor equipment in the application and inspection of binding agents for dust control and to provide access during initial reclamation activities, shall be in accordance with submittals dated July 14 and August 19, 1988.

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- B. Any proposed changes to the roadway or its uses, as described in the licensee's July 14 August 19, 1988 submittals, shall require prior approval of the NRC, in the form of a license amendment.

[Applicable Amendment: 2]

53. The licensee shall conduct fence line inspections on a monthly basis in accordance with their submittal dated March 22, 1989.

[Applicable Amendments: 7, 18]

54. The licensee shall implement the program for radon attenuation specified in the submittal dated July 19, 1989.

[Applicable Amendment: 10]

55. The licensee shall complete site reclamation in accordance with the approved reclamation plan. The ground-water corrective action plan shall be conducted as authorized by License Condition No. 17 in accordance with the following schedules.

- A. To ensure timely compliance with target completion dates established in the Memorandum Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991) the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

- (1) Windblown tailings retrieval and placement on the pile - December 31, 2000.
- (2) Placement of the interim cover - Complete.
- (3) Placement of final radon barrier designed and constructed to limit radon emission to an average flux of no more than 20 pCi/m²/s above background - December 31, 2000.

- B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion.

- (1) Placement of erosion protection as part of reclamation to comply with Criterion 6 Appendix A of 10 CFR Part 40 - December 31, 1999.
- (2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan - July 31, 2006.

- C. Any license amendment request to revise the completion dates specified in Section A shall demonstrate that compliance was not technologically feasible (including inclement weather, litigation, which compels delay to reclamation, or other factors beyond the control of the licensee).

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- D. Any license amendment request to change the target dates in Section B above must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

[Applicable Amendments: 21, 25, 26, 27, 28, 29, 30]

56. Notification to NRC under 10 CFR 20.2202, 10 CFR 40.60, and specific license conditions should be made as follows:

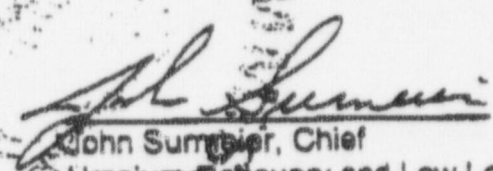
Required written notice to NRC under this license should be given to: Chief, Uranium Recovery and Low Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, 20555.

Required telephone notification to NRC should be made to the Operations Center at (301) 816-5100.

[Applicable Amendment: 24, 30]

FOR THE NUCLEAR REGULATORY COMMISSION

Dated: 5/28/99


John Summer, Chief
Uranium Recovery and Low Level
Waste Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

★ ★ ★ ★ ★

Nuclear Regulatory Commission

Office of Public Affairs

Washington DC 20555

Telephone: 301/415-8200 -- E-mail: opa@nrc.gov

No. 99-113

May 28, 1999

NRC ISSUES LICENSE AMENDMENT APPROVING STABILIZATION PLAN FOR ATLAS URANIUM MILL TAILINGS PILE IN UTAH

The Nuclear Regulatory Commission has signed a license amendment approving a plan for the Atlas Corporation to stabilize in place its uranium mill tailings pile near Moab, Utah.

The tailings pile resulted from operations of a uranium mill at the Moab site from 1956 until 1984. The facility has been owned by Atlas since 1962. Uranium is no longer processed at the site, and the mill has been dismantled except for one building.

The Atlas plan includes (1) re-grading the tailings to enhance drainage off the pile and (2) installing an earth and rock cover system over the pile. This cover system is intended to minimize radon escape, infiltration of rain water into the tailings (thus minimizing infiltration of tailings contaminants into the groundwater), and tailings erosion potentially caused by surface runoff from rain or flooding of the Colorado River.

The NRC issued a draft environmental impact statement on the proposal for public comment in January 1996 and held public meetings in Moab in April 1994, February 1996, and September 1998 to discuss the proposal. The agency issued a Final Environmental Impact Statement on the plan in March.

The NRC also issued a final technical evaluation report in March 1997, which concluded that Atlas' plan to dispose of mill tailings on site met NRC technical requirements.

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