

October 1, 1997

Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555-0001

Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards

Dear Carl and Joe,

There appears to be regulatory disagreement with respect
"License SUA-917, Docket No. 40-3453, Comments on the Fish
and Wildlife Service's June 26, 1997 Draft Biological Opinion".
See August 6, 1997, Applicant/Licensee to NRC; August 7, 1997,
Applicant Licensee to NRC which encloses the August 6, 1997,
comments; August 8, 1997, NRC to State of Utah (Status of
State of Utah Actions on Groundwater); August 12, 1997, NRC
to U.S. F. and W.S.; and August 13, 1997, NRC to U.S. F. and
W. S.

Certainly there is further give and take, some of which has
found its way into the public record. However, the above NRC
records are probably representative.

Under cover of a letter dated August 12, 1997, from the
Director, ONMSS, to Mr. Terry Terrell, U. S. Fish and Wildlife
Service, in a document entitled "U. S. Nuclear Regulatory
Commission Staff Comments on U. S. Fish and Wildlife Service
Draft Biological Opinion on the Proposed Reclamation Plan for
the Atlas Mill Tailings Pile in Moab, Utah", the statement is
made with respect the FWS Biological Opinion that there are
"significant errors of fact, insufficient technical analyses,
and unsupported assumptions and interpretation".

160039

11-05/1

9710170088 971001
PDR ADOCK 04003453
C PDR



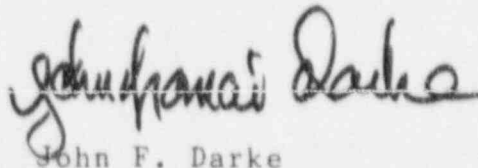
The undersigned would respectfully point out that the regulatory disagreement is about a source material license amendment application, not about regulatory jurisdiction, and that there is a health and safety issue which must be resolved.

The August 12 Director to Terrell letter states on page 2: "NRC can order licensees to take specific actions, but only upon finding of an imminent threat to public health and safety. Based on the current technical evidence, such a finding cannot be made with respect to the Atlas tailings". (Emphasis added.)

The undersigned has on numerous occasions requested that a Local Public Document Room be established in the vicinity of the Moab Mill. A determination as to whether or not there is current technical evidence available to support a FWS Biological Opinion or a finding that there is not an imminent threat to public health and safety requires a factual and legal basis for either determination be found upon the public record.

The undersigned would respectfully request that the Director and the NRC staff review the historical and current technical evidence specifically utilized over the years in making ~~the~~ ^{SUCH} no "imminent threat to public health and safety" determination, to assure that there are no "significant errors of fact, insufficient technical analyses, and unsupported assumptions and interpretation" upon which such no threat determinations are founded. Perhaps the FWS also reviewed what was available. Perhaps that's the problem in both instance..

Perhaps we are dealing with material misstatement of fact, by omission. Perhaps there is no adequate factual or legal basis for such NRC and FWS determinations available. It would appear that it is the NRC's responsibility to assure that the pertinent licensing documentation is readily available to agency decision makers and the public.



John F. Darke

P. O. Box 603
Moab, Utah 84532-0603

P. O. Box 1072
Los Alamos, New Mexico 87544

John Clark
70. Bon 603
170ab 4/21
84532-0603

Joseph J. Holovich, Chief
Wrecker Recovery Branch
Division of Waste Management
Office of Nuclear Materials
Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D. C.

