

PREPARED BY	
DATE	

89
880222

MR. VICTOR STELO
EXECUTIVE DIRECTOR OF OPERATIONS (EDO)
UNITED STATES NUCLEAR REGULATORY AGENCY, WASHDC.

AS WRITER ADVISED YOUR OFFICE ON FEBRUARY 21, 1989
(890221) FIND BELOW PERTINENT PARTICULARITIES
AND DEFICIENCIES WITH REGARD A TELEGRAM WHICH
JOHN DARRK (THE WRITER) SENT TO THE COMESA (UNITED
STATES NUCLEAR REGULATORY COMMISSION (THE COMMISSION))
ON AUGUST 28, 1987 (REQ 870828) IN GOOD FAITH,

REQ 870828, AND 2 (TWO) SUBSEQUENT SUPPLEMENTS
THERE TO, DATED SEPTEMBER 10, 1987 (REQ 870910)
AND SEPTEMBER 18, 1987 (REQ 870918) RESPECTIVELY,

SEEM TO HAVE SOMEHOW FAILED THROUGH THE CRACKS
SOMEWHERE BETWEEN THE UNITED STATES NUCLEAR
REGULATORY COMMISSION (NRC) STAFF OFFICE OF THE
GENERAL COUNSEL (OBC) AND THE COMMISSION ITSELF.

REQ 870828 WAS LAST REFERENCED BY NRC ON
SEPTEMBER 10, 1987 (870910) AND INDICATED AS NOT
AVAILABLE ON OCTOBER 29, 1987 (871029) REMARKABLE,
BECAUSE, REQ 870828 WAS A SOLICITED REQUEST FOR A HEARING,

AND WAS RECOGNIZED AS SUCH IN NRC CORRESPONDENCE. INDEED
REQ 870822 HOWEVER PACKAGED WAS A PROMPT PUBLIC RESPONSE
TO A DANGEROUSLY DEFECTIVE MISINFORMED COMMISSION ORDER,
SUCH REQUEST FOR A HEARING WAS IN FACT SOLICITED BY THE
DOCKET 40-3453 (SUA 917, ATLAS MINERALS) SAID ORDER
(WHICH WAS SIGNED FOR THE COMMISSION) AND DATE JULY 31
1987. (NRC ORDER 870731)

SUCH ORDER ALTHOUGH ADDRESSED TO ATLAS MINERALS
A DIVISION OF THE ATLAS CORPORATION OF PRINCETON NEW
JERSEY (ATLAS), PROVIDED IN PART: (SUCH PROVISION WAS DEFECTIVE)

" ATLAS OR ANY OTHER PERSON WHO HAS AN INTEREST
ADVERSELY AFFECTED BY THIS ORDER MAY REQUEST
A HEARING ON THIS ORDER. "

THE WRITER QUICKLY RECOGNIZED, AFTER REVIEWING NRC
ORDER 870731 WHICH WAS RECEIVED UPON REQUEST
ON 870823, THAT THE WRITER HAD AN INTEREST (HEALTH
AND SAFETY) DIRECTLY ADVERSELY AFFECTED BY NRC
ORDER 870731. NOTWITHSTANDING NRC OBSTRUCTION, BY WAY OF
REQ 870828 AND SUPPLEMENTS (SUPRA) THE WRITER
PROMPTLY REQUESTED A HEARING ON THE ISSUE ALLOWED.

THE WRITER ALLEGED AT THAT TIME THAT NRC ORDER 870731

WAS FOR THE MOST PART LACKING IN "BASIS IN FACT." AND
 NREORDER 870731 WAS PROMULGATED IN "VIOLATION
 OF THE LAW" AND SHOULD NOT BE EMPLOYED AS OFFERED.

STRONG WORDS, HOWEVER UNDERSTATED; SUBSEQ
 UENT 40-3453 NEGOTIATIONS, HEARINGS AND MOST
 IMPORTANTLY NRC LICENSING ACTIONS MORE THAN
 RAISE THE QUESTION WHETHER A BETTER ALLEGATION
 WOULD HAVE BEEN THAT NREORDER 870731

WAS RETICULATED PREVARICATION THROUGHOUT. FORGIVE
 ME BUT "MATERIAL MISSTATEMENT OF FACT" JUST DOES
NOT DO THE SITUATION AS IT HAS DEVELOPED ANY JUSTICE.

WRITER REALIZES THAT THIS LETTER IS A BIT AFTER THE
 FACT, HOWEVER, NEW INFORMATION WHICH I HAVE RE-
 CEIVED MORE THAN SUBSTANTIATES SUCH AN ASSERTION.

AND WRITER IS IN THE PROCESS OF REQUESTING A HEAR-
 ING ON THE MATTERS OF FACT AND LAW ENUNCIATED ELSEWHERE.

HOWEVER, THE FATE OF WRITER'S 870828 REQUEST
 FOR A HEARING IS UNRESOLVED AND SHOULD BE
 RESOLVED BEFORE ANY SUBSEQUENT LITIGATION

4
IS DELAYED OR CONFUSED BY PROCEDURAL LOOSE ENDS.

THE WRITER HAS BEEN VERBALLY INFORMED BY
BY OGC THAT THE COMMISSION SILENCE WITH
REGARD REQ 870828, REQ 870910 AND
REQ 870918 SHOULD BE CONSTRUED AS A
DENIAL OF WRITER'S REQUEST FOR A HEARING.

SUCH HEARSAY DOES NOT RESOLVE THE QUESTION.
WRITER WOULD PREFER A TIMELY WRITTEN
DENIAL WITHIN OFFICIAL CHANNELS AS IS PROPER,

OR AT BEST WRITTEN ACKNOWLEDGE THAT
THE COMMISSION RECEIVED REQ 870728 AND
SUPPLEMENTS (SORA) AND CHOSE FOR WHAT
EVER REASON NOT TO ALLOW AN APPROPRIATE RESPONSE.

I HAVE WRITTEN TO BWMR. STEAD BECAUSE I MUST
DETERMINE UPON WHICH SIDE OF THE NRC STAFF -
COMMISSION STAFF "EX PARTE VIEL" REQ 870918 IT SEEM
SITS UNACKNOWLEDGED AND, I NEED TO KNOW WHO THEY
THERE ARE PREDECISIONAL CONSIDERATIONS INVOLVED.

IF YOUR JURISDICTION IS NOT INVOLVED PLEASE
FORWARD THIS TO THE SEC'Y. FOR COMMISSION
RESPONSE (HOWEVER, WRITER WOULD APPRECIATE.

1
2
3
4 THAT WRITER BE INFORMED OF SUCH EDO ACTION.)

5
6 UNDOUBTEDLY, MR. STELLO, YOU RECOGNIZE THAT "MAKE
7 A 5 USC 552 REQUEST!" WOULD BE
8 AN ALTERNATIVE TO A TIMELY FORTHRIGHT RESPONSE
9 TO HIS QUERY TO THE EDO. HOWEVER, I WOULD ASK, WOULD YOU,

10
11 UNFORTUNATELY, 5 USC 552 (FOIA) REQUESTS, WHERE
12 THE WRITER HAS TRIED, HAVE BEEN TREATED WITH CON-
13 TEMPTUOUS CRITICISM BY NRC STAFF IN THE PAST. AND
14 TOO THE NRC FOIA MISSION HAS BECOME AN OVERLOADED,
15 UNDER STAFFED, SHORT FUNDED CATCH ALL FOR SEN-
16 SITIVE INQUIRIES FROM CONCERNED MEMBERS OF THE PUBLIC.

17
18 THE WRITER HAS NO CONFIDENCE IN SUCH A SOLUTION AT
19 THIS TIME. UNFORTUNATE, CONSIDERING EDO RESPONSIBILITIES.

20
21 WELL, THANK YOU FOR YOUR CONSIDERATION. IF MORE
22 INFORMATION IS REQUIRED I WILL BE CONTACTING YOUR
23 OFFICE APPROPRIATELY.

24
25 W. ATTACHMENTS

JOHN DARKE

BOX 701

COTTER QUEEN STATION

BISBEE, ARIZONA 85603

ATTACHMENTS W. CHRONOLOGY OF
PERTINENT RECORDS & EVENTS FOR
890222 LETTER J. DARKE TO V. STELLIO (EDD)

870828 BY TELEGRAM TO COMMISSION J. DARKE
REQUESTS HEARING PURSUANT COMMISSION
870731 ORDER (BEFORE 870829 DEADLINE)

870831 J. DARKE REQUEST FOR HEARING REC'D
BY NRC REGION W ADMINISTRATOR WASHINGTON
TEXAS

* 870902 RECEIPT OF J. DARKE REQUEST FOR
HEARING ACKNOWLEDGED BY DIRECTOR NRC
URFO DENVER, WHO ADVISED THAT
REQUEST FOR HEARING BEING FORWARDED
TO NRC OGC WASHINGTON

* 870910 COPIES OF 870828 REQUEST FOR
HEARING SENT BY NRC OGC TO J. DARKE
AS REQUESTED

870910 FIRST SUPPLEMENT TO J. DARKE 870828
REQUEST PER 870731 ORDER

870911 (870909?) ATLAS' REQUEST TO NRC FOR
HEARING REQUEST AND OTHER INFORMATION ABOUT
J. DARKE PURSUANT 870813 CONTACT WITH NRC (?)

870918 SECOND SUPPLEMENT TO J. DARKE HEARING
REQUEST OF 870828 ADVISING OF
UNAVAILABILITY OF PERTINENT DOCUMENTS

* 870925 COMMISSION ORDER SILENT WITH REGARD
870828 REQUEST FOR HEARING, OR
SUPPLEMENTS. ORDERS HEARING ON OTHER MATTERS.

* 871029 NRC NOTIFIES AILAS THAT J. DARKE 870828
REQUEST FOR HEARING CANNOT BE
PROVIDED

871029 NRC 10 CFR PART 2 APPENDIX A
"HEARING FILE" FORWARDED TO
NRC ALL CONTENTS NOT PUBLIC.

871109 J. DARKE THIRD SUPPLEMENT TO 870828
REQUEST FOR HEARING AND PETITION
TO INTERVENE IN PART 2 APPENDIX A
PROCEEDING PER COMMISSION 870925 ORDER

* 880225 REVOCATION OF COMMISSION 870731
ORDER BY NRC STAFF NO MENTION
OUTSTANDING J. DARKE 870828 REQUEST
FOR HEARING PER COMMISSION 870731 ORDER

880229

LAST PLEADING BY NRC STAFF IN
PART 2 APPENDIX A PROCEEDING
SET BY COMMISSION 870925 ORDER
DOES NOT RECOGNIZE 880225
NRC STAFF DELEGATION OF COMMISSION
870731 ORDER.

LAST PLEADING CHARACTERIZES
J. DARKE 870828 REQUEST
FOR HEARING AS UNMENTIONABLE,

880406

PART 2 APPENDIX A HEARING
TERMINATED WITHOUT RULING ON
871109 OR EVEN ACKNOWLEDGING
870828 REQUEST FOR HEARING
(WHICH CALLED FOR SEPARATE PROCEEDINGS)
SUCH TERMINATION WITHOUT PRE-
JUDICE TO NRC STAFF OR J. DARKE.

890222

J. DARKE LETTER TO U. STEIG (NRC ED) REGARDING HISTORICAL AND
PRESENT STATUS OF 870828 REQUEST
FOR HEARING PER COMMISSION 870731
ORDER (NOT 871005 ORDER)

JUL 31 1987

DISTRIBUTION:
Docket File 40-3453
PDR/DCS
HPettengill
DSmith
RBangart

URFO:HJP/RDS
Docket No. 40-3453
License No. SUA-917

Atlas Minerals
Division of Atlas Corporation
ATTN: Richard R. Weaver, President
353 Nassau Street
Princeton, New Jersey 08540

Gentlemen:

We have completed our review of your February 5, 1987 letter in response to our letters of December 31, 1986 and January 29, 1987, which requested, pursuant to §2.108, 10 CFR Part 2, that you submit by February 13, 1987, an acceptable surety to demonstrate compliance with Criteria 9 and 10 of Appendix A, 10 CFR Part 40.

Your February 5 submittal failed to satisfy our request, in that you have not submitted an acceptable surety, but have submitted only proposals for alternatives to the sureties described in Criteria 9 and 10. None of the proposals you have submitted have been found acceptable.

Failure to meet the criteria for licensing and the failure to submit information requested pursuant to §2.108, 10 CFR Part 2, warrant the denial of the renewal of License SUA-917. Accordingly, your application to renew license SUA-917 is denied.

The denial of your application also requires the issuance of the enclosed Order, which is immediately effective. The Order requires you to continue activities needed to keep the site in a safe condition. You are referred to the Order for the full scope of its requirements.

In accordance with §2.790, 10 CFR Part 2 of the Commission's regulations, a copy of this letter and the enclosed Order will be placed in the NRC's Public Document Room.

In accordance with §2.103(b), 10 CFR Part 2 of the Commission's regulations, notice is hereby given of your right to demand, within twenty (20) days from the date of this letter, a hearing on the denial of the renewal of your license and the accompanying Order.

The response directed by this letter and the accompanying Order is not subject to the clearance procedures of the Office of Management and Budget, as required by the Paperwork Act of 1980, P.L. 96-511.

URFO *26. Conc.*
HPettengill 11:lv
07/30/87

URFO *26. Conc.*
RDSmith
07/30/87

RIV: *10. DRSS*
RLBangart
8/1/87

RIV: *RC*
WLBrown
7/30/87

NMSS
MKnapp
07/30/87

26. Conc.
Pettengill
B. J. Dineen

OGC
MMalsch
07/30/87

26. Conc.
Pettengill
B. J. Dineen

NMSS
HThompson
07/30/87

26. Conc.
Pettengill
B. J. Dineen

RIV: RA
RMartin
07/31/87

8708260188 2pp

10.
JUL 31 1987

Atlas Minerals

-2-

Should you have any questions concerning this letter, we will be pleased to discuss them with you.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

Original signed by

Robert D. Martin

Robert D. Martin

Regional Administrator

Enclosure:
Order

cc w/enclosure:

Atlas Minerals

ATTN: Richard Blubaugh, Regulatory Affairs Manager

743 Horizon Court, Suite 105

Grand Junction, Colorado 81506

Larry F. Anderson, Director

Bureau of Radiation Control

Department of Health

P.O. Box 16700

Salt Lake City, Utah 84116-0700

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of:

Atlas Minerals
Division of Atlas Corporation
ATTN: Richard R. Weaver, President
353 Nassua Street
Princeton, New Jersey 08540

Docket No.: 40-3453
License No.: SUA-917

ORDER

I

Atlas Corporation, 743 Horizon Court, Suite 105, Grand Junction, Colorado 81506 (hereafter Atlas) was the holder of a specific source material license issued by the Nuclear Regulatory Commission (hereafter the Commission or NRC) pursuant to 10 CFR Part 40. The license, SUA-917, authorized Atlas to process natural ores containing source material and to possess uranium byproduct material in the form of uranium tailings and other discrete forms of uranium byproduct wastes generated by the Licensee's past milling operations. The license was issued for a five-year term ending June 30, 1984. Atlas has been operating under the timely renewal provision of 10 CFR 40.43(b). The application for renewal has been denied because of Atlas' failure to meet the requirements of 10 CFR Part 40 for a surety arrangement for decommissioning and reclamation of its site.

II

The rule requiring an acceptable financial surety arrangement, to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal site, is set forth in Criteria 9 and 10 of Appendix A to 10 CFR Part 40. This rule was first published in the Federal Register on October 3, 1980, becoming effective on November 17, 1980. That requirement was also specifically incorporated into Atlas' Source Material License SUA-917 on June 30, 1982 and required that Atlas have in effect an NRC-approved surety no later than January 1, 1983.

Since that time, the NRC staff members have attempted to establish Atlas' compliance with the surety arrangement requirement.

The Commission's regulations also require that demonstration of an acceptable surety arrangement be provided as part of an application and prior to issuance of a new license or renewal of an existing license. Since Atlas has not provided an acceptable surety, the Commission has denied the pending application for renewal of License SUA-917.

8708266190 YP

III

The denial of the license renewal request will result, of course, in the termination of licensed activities at the site. Therefore, it is necessary to impose by Order requirements needed to protect public health, safety, and the environment with respect to the contamination and wastes produced by past operations.

This Order is effective immediately because the public health, safety or interest demands that Atlas continue to maintain the site in a safe condition. The site is a repository for approximately 11 million tons of unreclaimed and unstabilized mill tailings as well as the associated milling facilities that constitute a present hazard to health and safety. It is now appropriate to commence decommissioning, decontamination and reclamation of the site. NRC regulations in 10 CFR Part 40 require a financial surety to assure that decommissioning, decontamination and reclamation will be carried out.

IV

Accordingly, pursuant to Section 62, 63, 69, 81, 84, 161b, 161c, 161i, 161o, 182, 186, and 275 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 40, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Atlas Corporation is authorized only to possess byproduct material (mill tailings), stocks of unprocessed ore onsite, and the contaminated buildings, equipment and other property, at its uranium milling facility at Moab, Utah.
- B. Atlas shall not receive additional byproduct waste, receive equipment or materials contaminated with byproducts, receive additional ores, nor shall Atlas process existing uranium bearing ores or discharge any solids or liquids to the tailings impoundment or operate process circuitry, other than needed to perform routine or preventive maintenance, without prior written approval of the NRC.
- C. Atlas shall comply with and maintain the mill site and tailings disposal areas in accordance with the requirements stated in Appendix A to this Order.
- D. Atlas shall, within 60 days of the date of this Order, submit a proposed detailed plan for decommissioning and decontamination of the milling facilities.
- E. If Atlas fails to answer this Order, or if this Order is sustained after hearing, Atlas shall then commence immediately to decontaminate and decommission the mill site in accordance with an NRC-approved plan submitted pursuant to paragraph D above to this Order, and to reclaim the tailings disposal area in accordance with Conditions 10 and 11 of Appendix A to this Order.

- F. Within 60 days of the date of this Order, Atlas shall establish an effective, NRC-approved financial surety arrangement, to cover all costs for mill decommissioning, decontamination and site reclamation, including the mill tailings disposal area, and maintain such arrangements thereafter until the NRC gives its final approval to the completion of the decommissioning, decontamination and reclamation of the mill site and tailings disposal areas. The amount of the financial surety arrangement shall in no case be less than \$6,000,000.

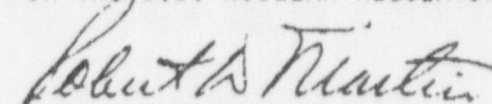
V

Atlas may file within 20 days of the date of this Order a written answer under oath or affirmation which sets forth the matters of fact and law on which the licensee relies for relief from any part of this Order. Atlas may also answer by consenting to this Order. If Atlas fails to answer within the specified time, this Order shall be final without further proceedings.

Atlas or any other person who has an interest adversely affected by this Order may request a hearing on this Order within 20 days of the date of its issuance. Any answer to this Order or request for hearing shall be submitted to the Regional Administrator, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. Copies also shall be sent to the General Counsel, Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than Atlas requests a hearing, that person shall describe specifically, in accordance with 10 CFR Part 2.714(a)(2), the nature of the person's interest and the manner in which that interest is affected by this Order. AN ANSWER TO THIS ORDER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF SECTION IV OF THIS ORDER.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order shall be sustained.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION



Robert D. Martin
Regional Administrator

Dated at Arlington, Texas,
this 31st day of July 1987.

PACKAGE: 870901-8709160380

10100/3875#76

ACH: 8709100142

DATE: 870902

PAGES: 1

L1: ACK RECEIPT OF J DARK 870828 TELEGRAM TO RD MARTIN RE
L2: INTEREST IN 870731 ORDER TO ATLAS CORP. ATLAS WOULD PROTECT
L3: PUBLIC HEALTH & SAFETY BY MAINTAINING SITE IN SAFE CONDITION
L4: PRIOR TO & DURING DECOMMISSIONING & RECLAMATION PERIOD.

FICHE: 425901308-425901308

PFL: ADOCK-4003453-C-870902

PACKAGE: 870902-8709100142

10100/2345#77

ACH: 8709030029

DATE: 870812

PAGES: 1

L1: CONFIRMS 870810 TELCON GRANTING APPROVAL TO EXTEND 20-DAY
L2: RIGHT TO DEMAND HEARING IN DENIAL OF RENEWAL OF LICENSE &
L3: ACCOMPANYING ORDER TO 30 DAYS.

FICHE: 424731003-424731003

PFL: ADOCK-4003453-C-870812

PACKAGE: 870812-8709030029

10100/642#78

ACH: 8708260190

DATE: 870731

PAGES: 11

L1: ORDER DIRECTING MAINT OF MILL SITE & TAILINGS DISPOSAL AREAS
L2: AS STATED & ESTABLISHMENT OF HRC-APPROVED FINANCIAL SURETY
L3: ARRANGEMENT TO COVER COSTS OF MILL DECOMMISSIONING
L4: DECONTAMINATION & SITE RECLAMATION.

FICHE: 423311301-423311310

PFL: ADOCK-4003453-C-870731

PACKAGE: 870731-8708260188A

10100/639#79

ACH: 8708260188

DATE: 870731

PAGES: 2

L1: ADVISES THAT APPLICATION FOR RENEWAL OF LICENSE SUA-917
L2: DENIED BASED ON FAILURE OF 870205 RESPONSE TO MEET 861231 &
L3: 870129 REQUESTS FOR ACCEPTABLE SURETY. ORDER REQUIRING
L4: CONTINUANCE OF ACTIVITIES TO KEEP SITE SAFE ENCL.

FICHE: 423311299-423311310

PFL: ADOCK-4003453-C-870731

PACKAGE: 870731-8708260188*

10099/7241#80

ACH: 8708180358

DATE: 870812

PAGES: 2

L1: RESPONDS TO 870807 TELCON RE AVAILABILITY OF DOCUMENTS TO
L2: PUBLIC RE ATLAS U MILL LOCATED IN MOAB UT. DOCUMENTS RE



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
URANIUM RECOVERY FIELD OFFICE
BOX 25325
DENVER, COLORADO 80225

SEP 2 1987

URFO:HJP
Docket No. 40-3453

Mr. John Dark
P.O. Box 901
Moab, Utah 84523

Dear Mr. Dark:

We are in receipt of a copy of your telegram to Mr. Robert D. Martin on August 28, 1987, regarding your stated interest in the July 31, 1987 Order to Atlas Corporation. Unfortunately, the transmittal quality of this telegram and the citations provided do not enable us to clearly establish what your specific concerns are relative to issuance of this Order. On the assumption that you may be seeking to join any forthcoming proceedings as an adversely affected party, I have referred a copy of your telegram to our Office of the General Counsel.

As you will note in the Order, it was issued "immediately effective." This means that even if Atlas were to request a hearing, they must adhere to the dictates of the Order throughout any hearing, if one were held. The purpose of the Appendix A to the Order was to assure that Atlas would protect the public health and safety by maintaining the site in a safe condition prior to and during the period of decommissioning and reclamation.

The NRC does not provide resident inspectors for any of the 19 uranium mills it currently regulates. The NRC does periodically perform site safety inspections, and the most recent inspection of the Atlas site occurred on August 13, 1987.

Sincerely,

R. Dale Smith, Director
Uranium Recovery Field Office
Region IV

cc: J. Rutberg, OGC

~~8709100147~~ 10.