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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD PANEL '00 FEB 24 A11:37

Before Administrative Judges:

Alan S. Rosenthal, Presiding Officer
Thomas D. Murphy, Special Assistant

OFFICE OF GENERAL COUNSEL
REGULATORY AND
ADJUDICATIONS STAFF

SERVED FEB 24 2000

In the Matter of

U.S. ARMY

(Jefferson Proving Ground
Site)

Docket No. 40-8838-MLA

ASLBP No. 00-776-04-MLA

February 24, 2000

MEMORANDUM AND ORDER
(Granting Leave to Supplement
Hearing Request)

On December 16, 1999, the Commission published in the Federal Register a notice to the effect that it was considering the issuance of an amendment to the materials license held by the U.S. Army (Licensee) in connection with its Jefferson Proving Ground Site (JPG) located in Madison, Indiana. See 64 Fed. Reg. 70,294 (1999). That license sanctioned the use, storage, and testing of depleted uranium (DU) munitions at JPG. Under its authority, between 1984 and 1994 the Licensee had conducted accuracy testing of DU tank penetration rounds at that site. The proposed license amendment would authorize the decommissioning of the site,

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on which the licensed material is currently being kept in a restricted area known as the "Depleted Uranium Impact Area".

The Notice of Consideration went on to provide an opportunity for hearing with regard to the proposed license amendment. On January 13, 2000, an organization based in Madison, Indiana, Save The Valley, Inc. (Petitioner), submitted a timely request for such a hearing in the form of a letter signed by its president.

The hearing request recited that Petitioner is a nonprofit organization incorporated in 1974 and having as its purpose the environmental protection of an area of southeastern Indiana and northern Kentucky that includes JPG and its environs. Petitioner is said to have members living near the JPG boundaries. In addition, according to the request, some of Petitioner's members live on property traversed by a waterway, known as Big Creek, that also goes through the DU area. Those individuals live downstream from that area and assertedly are concerned about the potential of DU migration onto their property and the possible resultant impact upon both human health and the biological environment surrounding the waterway.

The hearing request goes on to identify questions raised by Petitioner's examination of the Licensee's decommissioning plan. They relate to the extent of the DU cleanup; future monitoring of the DU area and areas

downstream; and the procedures that will be employed to ensure that the DU area remains restricted.

The hearing request having been served by mail on its representative specified in the Notice of Consideration, the Licensee's answer was due to be filed no later than January 28, 2000. See 10 C.F.R. §§ 2.710, 2.1205(g). As of this date, however, no answer has been received and, at my request, Licensing Board Panel counsel recently informed a representative of the Licensee that, if it should elect to file one at this juncture, the answer must be accompanied by a motion for leave to file out-of-time that must explain the reason for the tardiness. For its part, in a February 17, 2000 letter, the NRC staff advised that, exercising the option accorded to it by 10 C.F.R. § 2.1213, it had decided not to participate as a party in the proceeding.

1. As has been seen, Petitioner seeks to obtain a hearing as the representative of members of its organization who are concerned regarding some aspects of the decommissioning of the JPG. It is settled in Commission jurisprudence that, to establish that it has the requisite representational standing to make such a request, an organization must identify at least one of

its members by name and address and demonstrate how that member may be affected (such as by activities on or near the site) and show (preferably by affidavit) that the group is authorized to request a hearing on behalf of the member.

Northern States Power Co. (Independent Spent Fuel Storage Installation), LBP-96-22, 44 NRC 138, 141 (1996), citing Houston Lighting and Power Co. (South Texas Project, Units 1 & 2), ALAB-549, 9 NRC 644, 646-47 (1979).

Petitioner's hearing request plainly does not meet that requirement. While Petitioner avers that there are members of its organization who are potentially affected by the proposed license amendment, none is identified by name and address. Nor has at least one affected member supplied the required statement that Petitioner has been authorized to represent him or her.

While Petitioner does not have an absolute right to supplement its hearing request to cure this defect, I am clothed with the authority now to allow it to do so. See Babcock & Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-24, 36 NRC 149, 152 (1992). In the totality of circumstances, I see no good reason to withhold that opportunity from Petitioner. Its president, who submitted the hearing request, apparently is a lay person and, insofar as I am aware, has had no prior occasion to become familiar with the Commission's case law respecting what must be done by an organization to establish representational standing.

Accordingly, leave is hereby granted to the Petitioner to supplement its hearing request by the filing and service upon the Licensee, no later than Friday, March 10, 2000, of

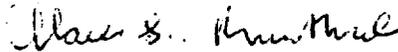
the statement(s) of one or more of its members who assert a concern associated with the Licensee's DU decommissioning plan that is at the root of the proposed license amendment. Any statement so furnished (preferably in the form of an affidavit) should provide the address of the member and indicate where his or her property is located in relation to the JPG and/or the waterway referred to in the hearing request. It further should identify the precise nature of the member's interest and concern, which may include (if such be the case) the perceived potential impact of the decommissioning upon business or recreational activities engaged in by that member in the vicinity of the JPG. Finally, it should explicitly state that Petitioner, through its president, is authorized to represent the member's interest. The failure to submit one or more such statements by the prescribed deadline will subject the hearing request to summary dismissal.

2. There are a few additional matters worthy of present mention. To begin with, the Rules of Practice require (10 C.F.R. § 2.713(b)) persons appearing in a representative capacity in an NRC proceeding to file a written notice of appearance that shall state his or her name, address and telephone number, as well as the name and address of the person (or organization) on whose behalf he or she appears. Both the Petitioner and the Licensee should satisfy this requirement forthwith.

In this connection, it will expedite the course of the proceeding measurably if, to the extent possible, the filing and service of documents by mail be preceded by the transmission of copies thereof by e-mail or facsimile transmission to me, as well as to Judge Murphy, the Office of the Secretary and the other participant. To this end, my e-mail address is AXR@NRC.GOV and that of Judge Murphy and the Secretary are, respectively, TDM@NRC.GOV and HEARINGDOCKET@NRC.GOV. The Licensing Board Panel's facsimile transmission number is 301-415-5599 and that of the Secretary is 301-415-1101. Petitioner's e-mail address and facsimile transmission numbers appear on its hearing request and presumably, upon receipt of this order, the Licensee promptly will supply to both the Petitioner and me its information along that line.

It is so ORDERED.

BY THE PRESIDING OFFICER


Alan S. Rosenthal
ADMINISTRATIVE JUDGE

This order is issued pursuant to the authority of the Presiding Officer designated for this proceeding.

Rockville, Maryland

February 24, 2000

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING LEAVE TO SUPPLEMENT HEARING REQUEST) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

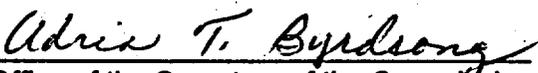
Administrative Judge
Thomas D. Murphy, Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dal M. Nett
U.S. Army Test and Evaluation Command
314 Longs Corner Road
Aberdeen Proving Ground, MD 21005

Administrative Judge
Alan S. Rosenthal, Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dennis C. Dambly, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Richard Hill, President
Save the Valley, Inc.
P.O. Box 813
Madison, IN 47250


Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of February 2000