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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'00 MAR 27 P3:23

ATOMIC SAFETY AND LICENSING BOARD PANEL

ORIGINAL  
FILED  
ADMINISTRATIVE

Before Administrative Judges:

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

In the Matter of	)	Docket No. 40-8838-MLA
	)	
U.S. ARMY	)	ASLBP No. 00-776-04-MLA
	)	
(Jefferson Proving Ground Site)	)	March 16, 2000
	)	

Motion for Leave to File Out-of-Time

On 13 January 2000, Save the Valley (STV) filed a request for a hearing regarding the Notice of Consideration of Amendment Request for the U.S. Army Jefferson Proving Site (JPG) in Madison, Indiana. This request was served by mail on the Safety Division of the U.S. Army Development Test Command (DTC) on 18 January 2000. In accordance with 10 Code of Federal Regulations (CFR) § 2.710 and §2.1205(g), as the Licensee for the JPG site, DTC should have filed an answer no later than 28 January 2000.

DTC did not file an answer for two reasons. This request was received at the Safety Division and this office did not understand the nature of this request or the procedural requirements this request imposed upon their organization as the Licensee. As the request was addressed to the Secretary of the Nuclear Regulatory Commission (NRC) with a copy furnished to the DTC, the Safety Division thought this was only a matter for the NRC. It was not until the Safety Division received your Memorandum and Order, dated 24 February 2000, Granting Leave to STV

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to Supplement its Hearing Request that they realized this was a matter requiring legal assistance. This matter was then immediately brought to the attention of the DTC Legal Counsel.

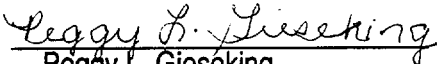
Further complicating this matter is the recent reorganization and transfer within the Army of the JPG site from DTC to the U.S. Army Soldier and Biological Chemical Command (SBCCOM). On 30 September 1999, operation and control of the JPG site was transferred from DTC to SBCCOM and in December 1999, SBCCOM began the process of preparing a license amendment request to transfer the NRC license for source material (SUB-1435) from DTC to SBCCOM. This license amendment request is currently being reviewed by the NRC staff so at this time there is dual responsibility for the JPG site concerning NRC matters within the Army.

As SBCCOM will ultimately be the license holder responsible for the implementation and compliance with the Decommissioning Plan at the JPG site, it was agreed during discussions between this office and DTC Legal Counsel on 06 March 2000 that the STV hearing request and follow-on actions associated with this administrative hearing be managed by SBCCOM, with coordination with and assistance by DTC, as appropriate. The SBCCOM Legal Counsel received a copy of the hearing request and the 24 February 2000 Memorandum and Order on 06 March 2000 and would like to file an answer to the issues raised in the STV hearing request, even though the time for doing so has passed.

This office respectfully requests the Board's consideration for this motion for leave to file out-of-time an answer in response to the issues raised in the 13 January 2000 hearing request by STV. The Army did not intentionally fail to file within the prescribed time frame, but rather missed the deadline due to a misunderstanding concerning the initial nature of the hearing request. The

Army also feels the granting of this request will not cause undue prejudice or injury to either STV or the NRC staff, but rather will assist both the Board and STV in addressing the issues raised with the JPG Site Decommissioning Plan.

Dated this Thursday, March 16, 2000

  
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Chemical Command  
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OFFICE OF  
PUBLIC AFFAIRS  
ADJUDICATION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion and Answer have been served upon the following persons by U.S. mail, first class.

Office of the Secretary  
Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

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 20555-0001

Administrative Judge  
Thomas D. Murphy, Special Assistant  
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DATE: 3/16/00

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Chemical Command