

RAS 3381

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

SERVED 09/10/2001

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of

U.S. ARMY

(Jefferson Proving Ground Site)

Docket No. 40-8838-MLA

ASLBP No. 00-776-04-MLA

September 10, 2001

MEMORANDUM

(Memorializing Telephone Conference)

On September 5, 2001, Judge Murphy and I held a telephone conference with representatives of the two parties to this materials license amendment proceeding, the intervenor Save the Valley, Inc. (STV) and the licensee Department of the Army (Army). At my request, NRC staff counsel participated in the conference even though the staff had elected not to become a party to the proceeding.

The conference was triggered by an August 28 electronic mail submission by STV that called my attention to the fact that the License Termination Plan submitted by the Army to the NRC staff in July 2001 was materially different from, and appeared to replace, the Army's earlier December 1999 Decommissioning Plan on the basis of which STV had sought a hearing. STV also noted that it had been orally advised by NRC staff counsel that the staff intended to solicit public comment on the new plan and, in a Federal Register notice, to provide an opportunity to request a hearing on it. In the circumstances, STV suggested, the appropriate course at this juncture would be a withdrawal or dismissal of its hearing request on

the 1999 plan that had been granted by me in March 2000, without prejudice to STV's right to request a hearing on the July 2001 plan in response to the Federal Register notice.

Early in the conference, staff counsel confirmed the correctness of the STV understanding as to the staff's intentions and agreed to furnish me in writing with information bearing upon when it is likely that the Federal Register notice related to the new plan will surface. Accordingly, the ensuing discussion focused on whether I should adopt the proposal set forth in the STV August 28 submission. In this connection, I explored with the parties whether there was might be another, more economical, way, of dealing with the current situation.

More particularly, I inquired as to whether it might be both possible and preferable simply to suspend further action in the pending proceeding to await the outcome of the staff's new Federal Register notice and a determination by STV regarding whether the substituted Army plan has satisfied its concerns. That inquiry was prompted by two considerations. First, despite the fact that the 2001 plan is deemed by the staff to be sufficiently different from the 1999 one to require a new Federal Register notice containing an opportunity to request a hearing, the two plans appear to give rise to the same issue. Specifically, what necessarily is of principal concern to the NRC and STV alike is the adequacy of the measures that will be taken by the Army to ensure that the depleted uranium munitions remaining on the Jefferson Proving Ground Site do not pose an unacceptable threat to the public health and safety. (In that connection, while I have not seen the 2001 plan, from what I was told at the conference it is essentially a much more detailed exposition of those measures.) Second, STV has already satisfied me of its representational standing to raise any concerns that its members might have in that regard.

In light of those factors, one might reasonably ask whether, should STV have concerns regarding the the adequacy of the 2001 plan, any useful purpose would be served by requiring it to file, and this or another presiding officer to consider and to rule upon, a brand new hearing request. Rather, it would seem to make practical sense in such circumstances to allow STV to proceed on its existing granted hearing request on a showing that its concerns with respect to the 2001 plan are as germane as were those advanced in the context of the 1999 plan. (Such a showing would not be required, of course, until after the new Federal Register notice either did or did not produce other intervenors.)

I decided, however, to withhold ultimate judgment on this matter to allow the parties to expand upon their orally-expressed views in the form of written submissions. Among other things that will be open for treatment in those submissions is whether, the Army having chosen to substitute the 2001 plan for the one that was at the foundation of the granted hearing request now before me, there might be a jurisdictional impediment to keeping this proceeding alive for any purpose and to any extent.

At the end of the conference, I gave STV ten days in which to file its memorandum. Because the tenth day is a Saturday, that deadline is automatically extended to Monday, September 17, 2001. The Army's response will be due on Monday, October 1, 2001. Although I did not provide such an opportunity to it during the conference, if it so desires the NRC staff may submit its views by the same October 1 deadline on the limited question of whether the treatment it has decided to accord the 2001 plan requires me as a jurisdictional matter to dismiss (or treat as withdrawn) the hearing request now before me. All memoranda shall be

filed and served by either Internet electronic mail or facsimile transmission with paper copies then placed in the U.S. mail.

BY THE PRESIDING OFFICER*

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 10, 2001

*Copies of this memorandum were sent this date by Internet electronic mail transmission to the representative of STV and counsel for the Army and the NRC staff.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM OF PRESIDING OFFICER MEMORIALIZING TELEPHONE CONFERENCE have been served upon the following persons by U.S. mail, first class, or through internal NRC distribution.

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Docket No. 40-8838-MLA
MEMORANDUM OF PRESIDING OFFICER
MEMORIALIZING TELEPHONE
CONFERENCE

[Original signed by Emile L. Julian]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 10th day of September 2001