

RAS 3393

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 09/17/01
SERVED 09/17/01

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 17, 2001

MEMORANDUM

(Requesting NRC Staff to Address Jurisdictional Question)

As authorized at the September 5, 2001 telephone conference in this materials license amendment proceeding, intervenor Save the Valley, Inc. (STV) has now formally requested in a September 13 filing that the proceeding be held in abeyance. The basis of the request is that the licensee Department of the Army (Army) has replaced its December 1999 Decommissioning Plan, upon which the granted STV hearing request had been founded, with a July 2001 License Termination Plan. The latter plan is seemingly regarded by the NRC staff as being sufficiently different from the prior one as to require the solicitation of public comment on it and the according of a fresh opportunity to request a hearing.

These recent developments had come to light, and had been discussed at some length, in the course of the September 5 conference. As noted in my September 10 memorandum memorializing that conference, I had suggested that, in the totality of circumstances, the sensible course might be that which STV now proposes. I went on in the memorandum, however, to raise (at p. 3) a question respecting whether there might be a jurisdictional impediment to keeping this proceeding alive for any purpose and to any extent. Given that the

plan that triggered the granted hearing request has now been replaced, it seemed at least arguable that my only permissible course would be to dismiss the proceeding. In that event, should STV have concerns with regard to the more recent plan, it would be free to submit a new hearing request in response to the forthcoming notice of opportunity to do so.

STV has chosen not to address that question in its September 13 filing. Presumably, the Army will do so in its response now due on October 1. It nonetheless seems to me that, even though it has elected not to be a party to the proceeding, the NRC staff definitely should be heard on the present jurisdictional significance, if any, of its decision to solicit public comment and to provide an opportunity to request a hearing on the July 2001 plan.

In the September 10 memorandum, I invited the submission of such staff views. I am now converting that invitation into an explicit request that they be furnished on or before the current October 1, 2001 deadline for the filing of the Army's response to the STV proposal.

In making this request of the staff, I should not be understood as retreating from the opinion expressed in the September 10 memorandum that there appear to be good practical reasons for adopting the course that STV now advocates. As sensible as that course might seem, however, its adoption hinges upon its acceptability as a jurisdictional matter. Manifestly, it is my responsibility to ensure that any action taken in response to the developments that have

followed the grant of the hearing request last year is well within the outer bounds of my authority as the assigned presiding officer for this proceeding.

BY THE PRESIDING OFFICER*

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 17, 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.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
U.S. ARMY) Docket No. 40-8838-MLA
)
(Jefferson Proving Ground Site))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM (REQUESTING NRC STAFF TO ADDRESS JURISDICTIONAL QUESTION) have been served upon the following persons by U.S. mail, first class, or through internal NRC distribution.

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
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dennis C. Dambly, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

Richard C. Wakeling, Esq.
U.S. Army Garrison Aberdeen Proving Ground
2201 Aberdeen Boulevard
Office of the Staff Judge Advocate,
AMSSB-GJA (Bldg. 310)
Aberdeen Proving Ground, MD 21005-5001

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

Docket No. 40-8838-MLA
LB MEMORANDUM (REQUESTING NRC
STAFF TO ADDRESS JURISDICTIONAL
QUESTION)

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 17th day of September 2001