

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

DOCKETED  
USNRC

October 2, 2001 (3:09PM)

Before Administrative Judges:

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

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In the Matter of  
U.S. ARMY  
(Jefferson Proving Ground Site)

Docket No. 40-8838-MLA  
ASLBP No. 00-776-04-MLA  
September 25, 2001

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MEMORANDUM AND  
Response to Request to Put Hearing Into Abeyance

On September 13, 2001 Save the Valley (STV), as authorized during a September 5, 2001 teleconference in this materials license amendment proceeding, filed a request that their January 13, 2000 hearing request, as supplemented on March 9, 2000, be put into abeyance to conform to a new timeline to be established by NRC staff for the federal register notice, opportunity for public comment and request for hearing for the License Termination Plan (LTP) submitted by the Army in July 2001.

By Memorandum (Memorializing Telephone Conference), dated September 10, 2001, the Presiding Officer authorized a written submission by the Army addressing whether "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.)," in lieu of STV filing a new hearing request. The Presiding Officer also invited the parties to

express their views on whether the submission by the Army of the substitute 2001 LTP for the 1999 plan that was the foundation of the granted hearing request presented a jurisdictional impediment to keeping the proceeding alive for any purpose and to any extent. This response addresses these issues raised under the current hearing request proceeding.

The Army does not object to STV's September 13, 2001, Request to Put Hearing Into Abeyance to conform to the new timeline to be submitted by the NRC staff for the Federal Register notice, opportunity for public comment and request for hearing for the LTP submitted by the Army in July 2001.

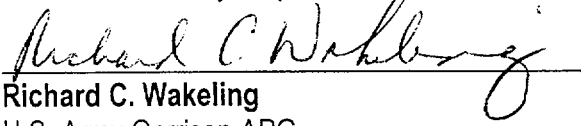
The Army does not object to allow STV to proceed on its existing granted hearing request conditioned on STV describing in detail its areas of concern with regard to the materials license amendment based on the Army July 2001 LTP in accordance with 10 CFR §2.1205(e) and such description is timely submitted in accordance with 10 CFR §2.1205(d), which requires filing within 30 days of the Federal Register notice of opportunity for hearing. The Army also reserves its right to file an answer within 10 days under 10 CFR §2.1205(g).

The current material licensing proceeding hearing is based on an Army-initiated amendment of its NRC Materials License SUB-1435, subject to Part 40 Domestic Licensing of Source Material, Chapter I-Nuclear Regulatory Commission, based on a 1999 Decommissioning Plan. In July 2001, the Army submitted a substantially revised LTP in support of the amendment of NRC Materials License SUB-1435. NRC staff has indicated that the substantially revised LTP requires another Federal Register notice and opportunity to request a hearing.

Requirements for persons to request a hearing under informal hearing procedures for adjudications in this materials licensing proceedings are contained in 10 CFR §2.1205. All requestors must meet the requirements contained therein to establish the basis for the presiding officer to determine that the specified areas of concern are germane to the subject matter of the proceeding, the petition is timely and that the requestor meets the judicial standards for standing (10 CFR §2.1205(h)). The presiding officer's determination under 10 CFR §2.1205(h) establishes the jurisdictional basis to grant the hearing request.

The Army is of the opinion that there would not be a jurisdictional impediment to the grant of a new hearing on the July 2001 LTP where STV's previously granted hearing request provides the basis to meet certain requestor hearing request requirements contained in 10 CFR §2.1205(e)(1) and (2), as long as STV meets the requirements of 10 CFR §2.1205(e)(3) and (4), i.e., description of areas of concern and timeliness, respectively. The Army would have to be afforded the opportunity to provide and answer within 10 days in accordance with 10 CFR §2.1205(g). This could provide the basis for the Presiding Officer to make the requisite 10 CFR §2.1205(h) determinations that areas of concern are germane; request was timely filed and judicial standing. This procedure could ensure that all hearing requests based on the July 2001 LTP by potentially affected persons are treated as prescribed by NRC regulations.

Dated this Tuesday, September 25, 2001

  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Memorandum and Response to Request to Put Hearing Into Abeyance have been served upon the following persons by certified U. S. mail:

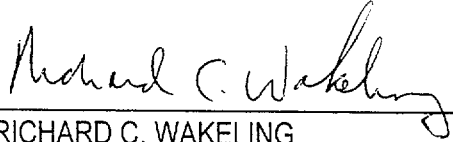
Office of the Secretary  
Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Alan S. Rosenthal, Presiding Officer  
Atomic Safety and Licensing Board Panel  
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Washington, DC 20555-0001

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Richard Hill, President  
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DATE: September 25, 2001

  
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U.S. Army Garrison Aberdeen Proving Ground