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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL
(ASLBP)

+ + + + +

CONFERENCE

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IN THE MATTER OF:	:	Docket Nos.
U.S. ARMY	:	40-8838-MLA
(Jefferson Proving	:	ASLBP No.
Ground Site)	:	00-776-04-MLA

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Thursday,
October 18, 2001
Teleconference

The above-entitled matter came on for
teleconference, pursuant to notice, at 11:00 a.m.

BEFORE ADMINISTRATIVE JUDGES:

ALAN S. ROSENTHAL, Presiding Officer
THOMAS D. MURPHY, Special Assistant

1 APPEARANCES:

2 On Behalf of the NRC:

3 LISA CLARK, ESQ.

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9 On Behalf of the Licensee:

10 RICHARD C. WAKELING, ESQ.

11 of: U.S. Army Garrison Aberdeen Proving Ground

12 2201 Aberdeen Boulevard

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15 Aberdeen Proving Ground, Maryland 21005

16 On Behalf of the Intervenor:

17 RICHARD HILL,

18 President

19 of: Save the Valley, Inc.

20 P.O. Box 813

21 Madison, IN 47250

22 ALSO PRESENT:

23 THOMAS E. McLAUGHLIN

24 PAUL D. CLOUD

25 SHARON PERINI

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P-R-O-C-E-E-D-I-N-G-S

11:03 a.m.

ADMINISTRATIVE JUDGE ROSENTHAL: Alan Rosenthal. I think we're ready at this point to commence. This conference call, unlike the last one, is being stenographically transcribed. For that reason, I will ask each individual to identify him or herself when speaking so that the court reporter will be able to ascertain who is talking at a particular time.

The purpose of this call was set forth in some detail in my October 10 memorandum. I don't think that there needs to be elaboration with respect to the questions that I wish to have addressed at this telephone conference.

ADMINISTRATIVE JUDGE MURPHY: Judge Rosenthal?

ADMINISTRATIVE JUDGE ROSENTHAL: Yes.

ADMINISTRATIVE JUDGE MURPHY: This is Judge Murphy.

Before we start I think it would be a good idea to have everybody identify themselves for the court reporter.

ADMINISTRATIVE JUDGE ROSENTHAL: All right. That might be a good idea. All right. We'll

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1 start with the representatives of the licensee. Would
2 you identify yourselves?

3 MR. WAKELING: Yes. My name is Richard,
4 middle initial C. Wakeling. And I'm counsel for the
5 Army at Aberdeen Proving Ground in Maryland.

6 ADMINISTRATIVE JUDGE ROSENTHAL: All
7 right. Mr. Cloud?

8 MR. CLOUD: Yes. This is Paul D. Cloud,
9 and I represent the United States Army from the
10 environmental reuse perspective.

11 ADMINISTRATIVE JUDGE ROSENTHAL: All
12 right. Mr. Hill?

13 MR. HILL: Yes, sir. This is Richard
14 Hill and I'm with Save the Valley, the Intervenor.

15 ADMINISTRATIVE JUDGE ROSENTHAL: Thank
16 you. Staff?

17 MS. CLARK: This is Lisa Clark. Ad is Tom
18 McLaughlin on the phone?

19 MR. McLAUGHLIN: This is Tom McLaughlin.
20 Thomas G. McLaughlin. And I'm in the Division of
21 Waste Management.

22 ADMINISTRATIVE JUDGE ROSENTHAL: Okay.
23 For the record, Ms. Clark is the staff counsel in this
24 matter.

25 All right. With those introductions taken

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1 care of, I would simply note that I received this
2 morning a letter from Ms. Clark dated yesterday which
3 enclosed a letter that Mr. McLaughlin had sent also
4 yesterday to the licensee advising that the staff
5 considered the June 2001 revised decommissioning plan
6 to supersede the plan that had been previously
7 submitted in 1999 with a consequence that there would
8 be no further review undertaken on any versions of the
9 earlier plan. In other words, that the June 2001
10 version would be deemed to be the one now in effect.

11 Having said that, I'm going to turn first
12 to Ms. Clark. Ms. Clark, I assume that you have read
13 my October 10 memorandum. I wish to stress that the
14 views that were expressed therein are totally
15 tentative. I thought it advisable to set forth in
16 some detail where at this point I was coming out to
17 provide you with a full opportunity to explain to me
18 why I'm wrong. So, the ball is in your court.

19 MS. CLARK: Thank you, Your Honor. And I
20 appreciate reading this memorandum and order. And I
21 think this does require some clarification on my part.

22 Generally the way the staff conducts its
23 review of these decommissioning plans is that it comes
24 in and we do what we call the acceptance review. That
25 is primarily an administrative review, and it's done

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1 in order to determine whether the plan is complete,
2 whether it has all the necessary elements before we
3 begin our actual text review.

4 Ordinarily, not until the acceptance
5 review is completed and the plan is accepted for
6 technical review would there be a notice of hearing
7 phase. In other words, if the plan is deemed
8 incomplete, it's simply sent back to the applicant or
9 the licensee and no further review is undertaken.

10 So, I believe that ordinarily a plan would
11 not be really before the staff for review and subject
12 to a hearing request until the acceptance review has
13 been done and the plan has been accepted.

14 And this case represents a very unusual
15 and unique situation because I had a situation where
16 the 1999 plan was in fact accepted by the staff and
17 noticed for review. Ordinarily then the plan would
18 be, of course, subject to hearing and before the
19 staff. But in this case it was actually withdrawn, the
20 new plan was submitted. The new plan has not been
21 accepted by the staff.

22 ADMINISTRATIVE JUDGE ROSENTHAL: I
23 understand that. I think that was made very clear in
24 the papers that were previously filed. But my concern
25 arises in the context of what appears to me to be a

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1 license amendment application that has not been
2 withdrawn.

3 MS. CLARK: Correct.

4 ADMINISTRATIVE JUDGE ROSENTHAL: Now, am
5 I correct -- let me turn for a moment just to Mr.
6 Wakeling. Am I correct that the licensee has not
7 withdrawn its application?

8 MR. WAKELING: That's correct.

9 ADMINISTRATIVE JUDGE ROSENTHAL: All
10 right. And, Ms. Clark, am I correct in assuming that
11 the staff is not treating it as withdrawn?

12 MS. CLARK: The staff is treating it as I
13 guess it can't be withdrawn because that would
14 actually have to be an action that was taken by the
15 Army. But in our view that plan is a viable plan that
16 we are going to review. That in other words, it
17 considered that the new -- that this would be
18 completely superseded by a new decommissioning. For
19 that reason, we did not continue any technical review
20 of the 1999 plan.

21 ADMINISTRATIVE JUDGE ROSENTHAL: All
22 right. But wasn't there -- and this case may be
23 somewhat unusual, as you suggest, in that the former
24 plan was withdrawn rather than simply substantially
25 revised. But why should that consideration make a

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1 difference here?

2 The fact of the matter is that the Army
3 has a pending application for a license amendment. It,
4 obviously, down the road is desirous of having this
5 matter of the treatment that is to be accorded, this
6 accumulation of BU munitions solved, and it's going to
7 go through obviously an evolution of plan, in this
8 instance revised superseded plan, but in all instances
9 there's going to be a process in which everybody
10 concerned in going to be considering whatever plan is
11 on the table at the particular time.

12 Now, why in those circumstances shouldn't
13 the license amendment application be regarded as still
14 on the table with the consequence that the granted
15 hearing request is also on the table to be considered
16 ultimately in the context of whatever decommissioning
17 plan is put before the Board?

18 MS. CLARK: In the staff view, and I think
19 that's where the distinction is, we do believe there
20 is a pending application at this time for a
21 decommissioning plan.

22 We know that the Army is intending to
23 decommission. We know that they're planning to submit
24 an application, but we don't believe right now that in
25 fact we do have a pending plan. We believe the 1999

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1 plan is now mute and that the revised plan we received
2 has been rejected. Therefore, we don't believe there
3 is a pending plan. And I think that this is important
4 to us because this -- plan we would required be to --
5 we would be expending resources right now performing
6 a technical review. So from that -- point until we
7 have a -- plan we will not -- our full technical
8 review.

9 ADMINISTRATIVE JUDGE ROSENTHAL: Ms.
10 Clark, this is Judge Murphy.

11 You're cutting out.

12 MS. CLARK: Sorry.

13 ADMINISTRATIVE JUDGE MURPHY: From my
14 perspective, I don't know if everybody else is having
15 a problem.

16 MR. WAKELING: Yes, same with me. This is
17 Richard Wakeling.

18 MS. CLARK: Is this better? I was on the
19 speaker phone and I'll try speaking into the receiver.

20 ADMINISTRATIVE JUDGE MURPHY: Thank you.

21 ADMINISTRATIVE JUDGE ROSENTHAL: Ms.
22 Clark, I understand that the staff does not regard
23 itself as having a plan before it. But it does have,
24 does it not, a license amendment application before it
25 and, presumably, in some period of time the Army is

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1 going to come forth with another plan under the
2 umbrella of its pending license amendment application.
3 Now, why isn't that the critical consideration from
4 the standpoint of my jurisdiction rather than whether
5 at this precise moment we're between plans, rather
6 than there being a plan on the table?

7 MS. CLARK: Well, I guess I believe that
8 if a hearing were to be initiated, it would have to be
9 on a particular plan.

10 ADMINISTRATIVE JUDGE ROSENTHAL: Well, I
11 don't think there's any doubt about that. But talking
12 now about initiating a hearing. I think that what's on
13 the table is the question as to whether I have the
14 jurisdiction to grant the request of STV that is now
15 before me, that request being to hold the proceeding
16 in abeyance pending further developments. And the
17 further developments, I would assume, would be the
18 submission of a new plan that the Army would hope
19 would meet the objections of the staff with regard to
20 the plan that the staff has now rejected.

21 I mean, we're not talking about holding a
22 hearing now. We're talking about whether I should
23 hold this proceeding in abeyance to await further
24 developments. Now, what's wrong with that?

25 MR. WAKELING: Judge Rosenthal, this is

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1 Richard Wakeling.

2 ADMINISTRATIVE JUDGE ROSENTHAL: Right.

3 MR. WAKELING: I'd like to, I guess, add
4 something here to the equation.

5 When we had originally not objected to the
6 request to put the hearing in abeyance and we had
7 expressed our views on the jurisdictional matter, and
8 I guess we similarly were looking at this as a license
9 amendment application supported by, first, the
10 decommissioning plan and then subsequently a license
11 termination plan.

12 Now, since we expressed our lack of
13 objection to proceeding that way and thought that
14 there could be a jurisdictional basis, we've now
15 received the letter noting the deficiencies in some of
16 the license termination plan, and we also now have a
17 second letter that indicates that the NRC staff is of
18 the opinion that the prior submitted plan has been
19 superseded by the June 27th submission.

20 Well, one of the concerns that we have is
21 if this hearing is held in abeyance and you don't
22 relinquish jurisdiction, is it the role that STV would
23 be playing in the current review of the submitted
24 license termination plan with regard to their
25 acceptance review.

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1 We've already had the deficiency letter
2 serviced on Save The Valley in this proceeding and
3 there subsequently was an article in the Madison
4 newspaper indicating that six of the seven basis of
5 noted deficiencies in the acceptance review by the
6 staff were, at least as indicated in the article,
7 verbatim issues that STV had raised during their
8 participation in the license term plan development.
9 So, we're concerned that we're confronted with a
10 situation here where we have Save The Valley a little
11 bit ahead of the game here acting in a certain
12 capacity prior to license termination plan actually
13 being accepted and then the normal notice procedure
14 that would occur.

15 ADMINISTRATIVE JUDGE ROSENTHAL: All
16 right. Mr. Hill, do you want to comment on that?

17 MR. HILL: Once comment that I would have
18 is that I believe the article that Mr. Wakeling's
19 referring to did say that the deficiencies pointed out
20 by the NRC were nearly verbatim or maybe one of them
21 was close to being. So that's just as a matter of
22 clarification.

23 The main point that when I talked to the
24 reporter that I tried to make to the reporter was that
25 these were concerns, these deficiencies were some of

1 the same things that Save The Valley was concerned
2 about, and so how that, you know, eventually gets
3 reported in the paper is another thing. It's, you
4 know, out of our control once we talk to a reporter
5 about such things. So I wanted to kind of clear that
6 up a little bit.

7 As far as my feeling on the actual plan,
8 I don't see a lot of difference now between now and
9 what happened to what was going on before the
10 deficiencies were pointed out. I feel that there's
11 still a plan that the NRC is working on. I wouldn't
12 be thrilled about having to go through the entire
13 process if we should decide to request a hearing on
14 the plan when it gets to its final revised state.

15 ADMINISTRATIVE JUDGE ROSENTHAL: Thank
16 you.

17 Mr. Wakeling, while I understand your
18 concern, I don't understand what its jurisdictional
19 significance is. Why isn't it from a jurisdictional
20 standpoint enough that you have left your license
21 amendment application, in effect, and rather than
22 coming up with simply a revision of your former plan,
23 which certainly wouldn't have called for a termination
24 of the proceeding, you have chosen perhaps at the
25 staff's instigation to, in effect, withdraw that plan

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1 and substitute another one? Now, what difference does
2 it make?

3 I mean, you're presumably going to address
4 the staff's concerns. Before too much longer, I would
5 assume, there's going to be another plan on the table.
6 Why in that circumstance should STV be put in a
7 position of having to go back to the starting gate
8 rather than simply waiting to see what plan evolves?

9 MR. WAKELING: On a jurisdictional basis,
10 you know, we've already submitted our position on that
11 and it has not been changed.

12 ADMINISTRATIVE JUDGE ROSENTHAL: Okay.

13 MR. WAKELING: And we have never formally
14 withdrawn the '99 decommissioning plan. Through
15 interaction with the staff we were advised to request
16 for additional information and changes in regulatory
17 guidance and things of this nature, we agreed to -- I
18 guess we're referring to it as substantially revised
19 the earlier submitted and accepted plan. And, you
20 know, we went along with that. So, we have never
21 formally or officially withdrawn either the license
22 amendment or the decommissioning plan.

23 We now have this letter back from staff
24 indicating that they're considering the prior plan
25 superseded.

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1 ADMINISTRATIVE JUDGE ROSENTHAL: Oh, you
2 did not withdraw the 1999 plan? I had thought that
3 you had formally withdrawn it and substituted for it
4 the June 2001 plan, but I'm wrong about that?

5 MR. WAKELING: Well, we're getting into a
6 matter of semantics here.

7 ADMINISTRATIVE JUDGE ROSENTHAL: I
8 appreciate that.

9 MR. WAKELING: That, you know, I don't
10 know we said the magic words that we hereby withdraw
11 the 1999 decommissioning plan and submit and instead
12 the rated license termination plan as our submission
13 in support of the license amendment application, but
14 that's in effect what has happened.

15 And I guess the only other concern that we
16 had had was that if somehow the '99 decommissioning
17 plan is considered to have been withdrawn, that any
18 information contained in that plan, you know, might
19 still be available to us for support of the current
20 LTP plan or the environmental report that we need to
21 submit. And I guess with discussions with counsel,
22 Ms. Clark, it was indicated that well we could just
23 reference information there that we might need to rely
24 on.

25 ADMINISTRATIVE JUDGE ROSENTHAL: Well,

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1 you're right, of course, this is largely a matter of
2 semantics, but I think it's probably fair to say that
3 from the Army's standpoint it was substituting the
4 June 2001 plan for the earlier one without getting
5 into the matter as to what the continuing status of
6 the earlier plan might have been. But the staff
7 clearly is regarding the former plan as not calling
8 for any further review on its part.

9 All right, Ms. Clark, is there anything
10 else you want to add to this?

11 MS. CLARK: I don't believe so, Your
12 Honor.

13 I appreciate that Mr. Hill would be
14 required and the Judges here would be required to do
15 additional work under these circumstances. But we
16 believe that the jurisdictional issue really is
17 centered on whether there is a case in controversy in
18 existence.

19 ADMINISTRATIVE JUDGE ROSENTHAL: Well, let
20 me ask you this, posing in this instance instead of
21 coming up with a new plan with a different label, the
22 licensee had taken the plan that it initially put
23 before the staff and had been referenced in the notice
24 of opportunity for hearing and had revised it in
25 significant respect and put it again before the staff

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1 under the same title it had initial; in that instance
2 would the staff position on the jurisdictional
3 question be the same?

4 MS. CLARK: I believe that if it was
5 simply a revision of the original plan --

6 ADMINISTRATIVE JUDGE ROSENTHAL: Oh, it's
7 called a revision, but in point of fact when you look
8 at it it's quite different than the original plan.

9 MS. CLARK: Well, I think that is the case
10 here where it was considered -- and I think it was the
11 understanding between the staff that this was -- it
12 was called revised, I believe. It was titled revised,
13 but the staff believed that it was, in fact, a new
14 plan that was submitted and that it was necessary for
15 us to treat it as a new plan.

16 ADMINISTRATIVE JUDGE ROSENTHAL: All
17 right. Now, do you have any authority in the
18 Commission regulations for the position that a hearing
19 request that is granted in the context of a particular
20 plan must as a matter of law be terminated if the plan
21 is substantially revised to the point where the staff
22 would consider it a new plan?

23 MS. CLARK: I don't believe that's called
24 specifically in the regulations.

25 ADMINISTRATIVE JUDGE ROSENTHAL: So this

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1 is just the heartfelt opinion of the staff?

2 MS. CLARK: This is the staff, what the
3 staff determined to do with this particular amendment,
4 yes.

5 ADMINISTRATIVE JUDGE ROSENTHAL: On what
6 basis?

7 MS. CLARK: On the basis that the plan was
8 so significantly different and that, in fact, it was
9 so different that the original notice did not really
10 give adequate notice to the public of what the
11 contents of the plan were.

12 ADMINISTRATIVE JUDGE ROSENTHAL: Wait a
13 minute. I don't recall the original notice. I don't
14 have it right at hand.

15 MS. CLARK: Well, when I say notice, I do
16 mean that the idea is that whoever was to read the
17 notice would also look at the plan. The original plan
18 did not specify -- and I think most significantly did
19 not specify whether the release of the site would be
20 unrestricted or restricted. And I notice staff
21 believed it was very important that the public be
22 informed of the determination in that respect. And
23 that was one of the more significant reasons that it
24 was decided that this would have to be noticed and
25 treated as a new plan.

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1 ADMINISTRATIVE JUDGE ROSENTHAL: All
2 right. But even if it's renoticed, that means that an
3 opportunity would be provided to other persons or
4 entities apart from STV to seek a hearing. And I can
5 understand the staff coming to that conclusion, but I
6 don't understand why that would require STV to start
7 all over again with a completely new hearing request
8 in the context of this very same license application
9 amendment.

10 I mean, in other words, it seems to me to
11 be a quite different matter saying on the one hand
12 we're going to give other people the opportunity to
13 seek a hearing because of these drastic changes, and
14 on the other hand saying a hearing requested, it's
15 already being given intervention, must go back to the
16 starting gate. Isn't there a difference between the
17 two?

18 MS. CLARK: Well, certainly that's true.
19 But I think that in these circumstances that original
20 plan is no longer viable and the staff is no longer
21 considering it before us for review. So there is,
22 actually, no plan to--

23 ADMINISTRATIVE JUDGE ROSENTHAL: But there
24 will be one. Again, we're not talking about --

25 MS. CLARK: I would expect there will be

1 one. And I think this is -- I don't think this is a
2 situation that you would find typically, but this is
3 kind of a unique circumstance. And I just believe
4 that, you know, jurisdictional requirements are very
5 legal and they're technical and sometimes the
6 practical consequences may not make a lot of sense.

7 I wouldn't expect this to happen again.
8 Part of the reason this happened is because the staff
9 has revised -- conducting its acceptance reviews
10 differently. And I think it's very unusual. I don't
11 expect to ever see again where the original plan was
12 accepted and then the revised plan was not.

13 ADMINISTRATIVE JUDGE ROSENTHAL: Well,
14 haven't there been prior instances where a plan that's
15 submitted in connection with their license amendment
16 application undergoes quite substantial revision
17 during the course of the staff's review of it?

18 MS. CLARK: Absolutely. And it happens
19 with decommissioning plans that they undergo revision.

20 ADMINISTRATIVE JUDGE ROSENTHAL: Why is
21 it?

22 MS. CLARK: But what happened with this
23 plan, the original plan, what happened was the staff
24 had begun its technical review and we started to issue
25 requests for additional information. Now, it was the

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1 determination between the staff and the Army that the
2 requests for additional information would require so
3 much revision and would be so difficult to deal with,
4 that it was better to just start over again and submit
5 a new plan.

6 And so that's what the difference is, that
7 this particular plan did not remain pending and
8 subject to revision, which is very often what happens,
9 and will probably happen if and when a new plan is
10 submitted. So this is a kind of unique circumstance.

11 ADMINISTRATIVE JUDGE ROSENTHAL: Only, I
12 take it, because of the extent to which the plan first
13 under submission would have to be revised?

14 MS. CLARK: Correct.

15 ADMINISTRATIVE JUDGE ROSENTHAL: So this
16 is a matter of degree?

17 MS. CLARK: Well, the decision was made
18 because of the matter of degree. The Army could have
19 decided to keep going with that plan and just respond
20 to RAIs. But the decision was made instead to say
21 let's scrap the original plan and start with a new
22 one.

23 ADMINISTRATIVE JUDGE ROSENTHAL: But
24 supposing the Army had done that? Suppose you came
25 back to the Army and you said look it, the plan on the

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1 table in our view requires very, very substantial
2 revision. We think it would be advantageous for you
3 to just pull that plan back and substitute another
4 one. And the Army had said to you well, we appreciate
5 that view but I think we're going to stick with the
6 plan we have and we'll try to make the changes in
7 that plan that will meet staff approval.

8 Now, in that circumstances, in other
9 words, the Army instead of choosing to withdraw the
10 plan or whatever, substitute another plan, chooses to
11 leave that plan in effect but to substantially revise
12 it. What, in that circumstance, would be your
13 position on jurisdiction?

14 MS. CLARK: You know, it's hard for me to
15 speculate, because I don't know what kind of action
16 the staff would take.

17 Assuming that we had already accepted it
18 for review, which if we had not, then we would simply
19 reject it and send it back. If we had already
20 initiated our technical review, I don't know. I'm just
21 not sure if we could reject it at that point or if --
22 but as long as the staff considered it a viable plan
23 and it was continuing its review, certainly we retain
24 -- you would retain jurisdiction.

25 MR. WAKELING: This is Richard Wakeling.

1 And since we have never -- I guess we
2 agreed to revise the '99 plan with the license
3 termination plan, which had been accepted. We would
4 prefer to choose the license termination plan as
5 modifications taken during the technical review and
6 that the plan has already been accepted and is now in
7 the technical review stage and requests for additional
8 information were requests for additional technical
9 comments.

10 ADMINISTRATIVE JUDGE ROSENTHAL: Well,
11 what do you have to say to that, Ms. Clark?

12 MS. CLARK: I'm sorry, could you repeat
13 that? I'm not sure I understand.

14 MR. WAKELING: Well, I don't want to go
15 back to square one and start the clock all over again
16 and say that the prior decommissioning plan that was
17 submitted was withdrawn, because we didn't withdraw
18 it.

19 MS. CLARK: Uh-huh.

20 MR. WAKELING: Based upon information
21 provided to us by the staff and changes of regulatory
22 guidance and format and required information, we
23 agreed to go ahead and do something called a brand new
24 license termination plan in accordance with new reg
25 17.27, or whatever the number is, because we felt that

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1 it would be easier for both us and the staff in
2 reviewing the revised submission to put it in that
3 format with that type of information than it would to
4 go back and try and change the decommission plan and
5 incorporate all the changes into, I guess, the prior
6 format of the decommission plan. So that's what we
7 agreed to do, and that's what we did, still at the
8 same license amendment request pending. And now this
9 is a later submission that we're trying to accomplish
10 and now without us ever having formally requesting
11 that this be a withdrawal or indicated that in our
12 view this was a plan that superseded, was in lieu of
13 and a substitute for the prior plan, we're just
14 accommodating the request of the staff to make this
15 easier for both sides involved.

16 Now, I mean, we already had an acceptance
17 review. Now if we go back to square one, you know,
18 we're back to just trying to get the acceptance review
19 accomplished, which based upon the deficiencies noted,
20 you know, we have presumably some more work to do.

21 There's also a prior environmental impact
22 statement that was submitted with the prior
23 decommissioning plan. And now that we've been
24 subsequentially informed after we had gotten into the
25 license termination plan revision process, you know,

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1 a certain way, that we'd progressed so far that there
2 was now going to be a requirement for an environmental
3 report.

4 So, you know, we as the licensee just see
5 us being put into the situation where, you know, we've
6 already made it a certain way in the process here; a
7 plan was submitted and accepted and it was going under
8 technical review, there was a notice for hearing, we
9 have an intervenor. And now the substantial revisions
10 have been made and we're happy to have the revisions
11 in the LTP commented on by whomever, but we fail to
12 see how it works to our advantage of the licensee here
13 whose trying to get this accomplished to go back to
14 square one.

15 MS. CLARK: Yes. So you're saying that
16 it's -- you prefer -- I'm sure you certainly would
17 have preferred that it was accepted this time?

18 MR. WAKELING: Oh, absolutely, and we have
19 a previous submission that was accepted --

20 MS. CLARK: Right.

21 MR. WAKELING: -- and it was in the
22 technical review stage.

23 MS. CLARK: Right.

24 MR. WAKELING: But there was a request for
25 additional information, which we, you know, agreed to

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1 meet and there were discussions about staff of both
2 agencies, and there was new regulations or guidance
3 that was -- had been developed. And I guess both
4 staff as a matter of easiest way to proceed here to
5 fulfil and meet everybody's requirements that it would
6 be reformatted and recharacterized and -- the prior
7 notice that was put out on the original plan did
8 indicate that it was for restricted release. So there
9 was a notice that that was the approach that was being
10 taken, and that was being requested that we've known
11 all along that there's UFO sitting out there and we
12 can't address it and get to it. So that was the way
13 that we were going to be compelled to have to go.

14 So, you know, that hasn't changed either.
15 The nature of the license amendment modification that
16 we're actually attempting to seek here.

17 MS. CLARK: Well, I don't know that I
18 understand your concerns. I don't know that this is
19 really the forum to get into the technical -- what the
20 staff found was deficient.

21 I understand that there is a meeting
22 scheduled. I believe it's next Tuesday between --

23 MR. WAKELING: Right. We're meeting on
24 the 23rd.

25 MS. CLARK: Yes. And that would probably

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1 be the best time to -- and our technical reviewer will
2 be there for us and to discuss with the staff the
3 aspects that they found deficient, and the best way to
4 address those issues so that the plan will be accepted
5 for review.

6 ADMINISTRATIVE JUDGE ROSENTHAL: All
7 right. But, Ms. Clark, am I correct in my view that
8 the staff, even though it does not currently have a
9 decommissioning plan before it, or at least does not
10 regard itself as having a decommissioning plan before
11 it, the staff recognizes that this is an ongoing
12 process in which it's very likely going to have the
13 Army submit revisions to the current plan in an
14 endeavor to accomplish the ultimate objective that it
15 had in seeking the license amendment?

16 MS. CLARK: Yes, that's true. And, in
17 fact, the staff will be meeting with them to discuss
18 the particulars of what needs to be put into the plan.

19 ADMINISTRATIVE JUDGE ROSENTHAL: Now, I
20 have one final question myself and then I'll open it
21 up to see whether Judge Murphy has any questions. And
22 that is were to determine at this juncture that I had
23 the jurisdiction to simply hold this proceeding in
24 abeyance, how would the staff be disadvantaged or
25 prejudiced as a practical matter?

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1 MS. CLARK: As a practical matter, I don't
2 see any immediately consequences. The only thing that
3 I foresee is a problem with these types of things is
4 that if circumstances intervene and for some reason
5 the Army changes its mind or does not file a plan, then
6 we still have this outstanding hearing.

7 ADMINISTRATIVE JUDGE ROSENTHAL: Well, if
8 the Army chooses not to file a plan and that fact is
9 brought to my attention, at that juncture I could
10 certainly terminate the proceeding, couldn't I?

11 MS. CLARK: That's correct.

12 ADMINISTRATIVE JUDGE ROSENTHAL: So that's
13 not something that needs to concern me at this point,
14 does it, or the staff for that matter?

15 MS. CLARK: Not at this point, no. It's
16 hard to foresee what might happen.

17 MR. WAKELING: This is Richard Wakeling.
18 Yes, it's our intent at this juncture to
19 proceed and to accomplish the goal that we've been
20 pursuing here all along. And I don't know, obviously
21 we're hopeful that it would be successful in that
22 effort, but again trying to look into the future I'm
23 hard pressed to think of a circumstance where we would
24 go ahead and withdraw it and decide not to continue to
25 pursue this. But it's always an option, I guess.

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1 ADMINISTRATIVE JUDGE ROSENTHAL: Ms.
2 Clark, has this issue to your knowledge arisen before?

3 MS. CLARK: Not that I know of.

4 ADMINISTRATIVE JUDGE ROSENTHAL: Today's
5 the first impression?

6 MS. CLARK: I can't say that I've done
7 extensive --

8 ADMINISTRATIVE JUDGE ROSENTHAL: No, no,
9 I wouldn't --

10 MS. CLARK: Yes, but not that I'm aware
11 of.

12 ADMINISTRATIVE JUDGE ROSENTHAL: Not that
13 you're aware of.

14 All right. Judge Murphy, do you have any
15 questions?

16 ADMINISTRATIVE JUDGE MURPHY: Yes. I want
17 to follow up on your last question, and that is to Ms.
18 Clark. Regardless of what this decision Judge
19 Rosenthal makes, is it still the staff's intent to
20 renote this proceeding and to open it up again for
21 a hearing?

22 MS. CLARK: At the time that we completed
23 an acceptance review of a newly revised plan, yes. It
24 is our intent to notice it at that point.

25 ADMINISTRATIVE JUDGE MURPHY: So even if

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1 Judge Rosenthal holds this proceeding in abeyance,
2 you're going to renotice it and open it up to the
3 public for a hearing?

4 MS. CLARK: Correct.

5 ADMINISTRATIVE JUDGE MURPHY: Okay.

6 ADMINISTRATIVE JUDGE ROSENTHAL: All
7 right.

8 ADMINISTRATIVE JUDGE MURPHY: That's the
9 only question I have, Judge Rosenthal.

10 ADMINISTRATIVE JUDGE ROSENTHAL: Anything
11 else that anyone has to say?

12 MR. WAKELING: Yes. This is Richard
13 Wakeling.

14 A point of clarification on this on when
15 you would renotice this action, is it going to be
16 renoticed as a brand new action or one that's already
17 pending --

18 MS. CLARK: No, as a new action.

19 MR. WAKELING: -- and that people would
20 be, you know, intervenors and already granted the
21 hearing requests on a prior plan, or how is that all
22 going to be done?

23 MS. CLARK: It would be noticed as a new
24 action, a licensing --

25 ADMINISTRATIVE JUDGE ROSENTHAL: Under

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1 that same license amendment application, would it not
2 be?

3 MS. CLARK: I'm not sure about that if it
4 would be the same technically how that would work out.

5 ADMINISTRATIVE JUDGE ROSENTHAL: There's
6 only one license application -- license amendment
7 application before the house, is there not? It's not
8 been -- that's not been withdrawn. It's still there
9 and it's purpose is to reach --

10 MS. CLARK: Well, I think though that when
11 the staff rejected -- and honestly, I haven't thought
12 about that this particular aspect in detail. But I
13 think when the staff rejected the plan that that
14 license application would no longer be in effect --

15 ADMINISTRATIVE JUDGE ROSENTHAL: Oh.

16 MS. CLARK: Well, I'm not certain.

17 ADMINISTRATIVE JUDGE ROSENTHAL: Let me
18 put it to you this way; if you can find some basis in
19 the Commission's regulations for that position, I
20 would like you to provide it for me in writing.

21 MS. CLARK: Yes, I would have to look into
22 that, because that's just something I hadn't --

23 ADMINISTRATIVE JUDGE ROSENTHAL: And maybe
24 you could do that within the next ten days?

25 MS. CLARK: Okay.

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1 ADMINISTRATIVE JUDGE ROSENTHAL: Because
2 I looked in the regulations myself and I, frankly,
3 couldn't find anything that suggested that that was
4 the case.

5 Anything further?

6 MR. WAKELING: Nothing from the Army here,
7 Richard Wakeling.

8 ADMINISTRATIVE JUDGE ROSENTHAL: Mr. Hill?

9 MR. HILL: No, I don't think I really have
10 anything of substance to add.

11 ADMINISTRATIVE JUDGE ROSENTHAL: All
12 right. In that circumstance, I'm going to terminate
13 the conference call and relieve all of the
14 participants except for Ms. Clark.

15 Ms. Clark, I would appreciate it if after
16 everyone else is off the line, you would remain on it
17 because I would like to discuss a matter in another
18 case.

19 MS. CLARK: Very well.

20 ADMINISTRATIVE JUDGE ROSENTHAL: Which I
21 understood you're the lead counsel.

22 MS. CLARK: Correct.

23 ADMINISTRATIVE JUDGE ROSENTHAL: I will
24 not need the reporter for that purpose, so I will
25 request the reporter and Mr. Hill, Mr. Wakeling, Mr.

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1 Cloud and Mr. McLaughlin and also there's no need for
2 you, Judge Murphy to sign off and I'll then talk with
3 Ms. Clark.

4 Okay?

5 (Whereupon, at 11:46 p.m. the above-
6 entitled matter was adjourned.)
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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: U.S. Army Jefferson
Proving Ground Site
Docket Number: 40-8838-MLA
ASLBP Number: 00-776-04-MLA
Location: (Telephone Conference)

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Gary Gross
Official Reporter
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