

RAS 4957

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

**DOCKETED 10/24/02
SERVED 10/24/02**

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

October 24, 2002

MEMORANDUM AND ORDER

This material license amendment proceeding involves the decommissioning of the Licensee Department of the Army's Jefferson Proving Ground (JPG) site in Indiana on which depleted uranium munitions are currently stored. The proceeding was initiated by the filing of a timely hearing request by Save the Valley, Inc. (STV) in response to a notice of opportunity for hearing published in the Federal Register in December 1999. That request was granted in early 2000 in LBP-00-9, 51 NRC 159.

For reasons spelled out in some detail in an order entered last November, the proceeding has never advanced to the hearing stage and is, at present, in a state of suspension. See LBP-01-32, 54 NRC 283. In a nutshell, what prompted the suspension was the decision of the Army to submit to the NRC Staff in June 2001 a revised so-called "final decommissioning/license termination plan" (LTP) that apparently was materially different from the decommissioning plan that had accompanied the filing of the license amendment application in 1999. The LTP had received a very cool reception from the Staff in the course of an administrative acceptance review. The Army thereupon had been given the opportunity to address the numerous perceived deficiencies and to endeavor to rectify them. The Staff had

further advised the Army that it deemed the LTP to supercede the decommissioning plan that had been submitted by the Army in 1999, with the consequence that the latter would receive no further review.

The grant in LBP-01-32 of the STV request to hold the proceeding in continued abeyance to await further developments with regard to the LTP was made subject to certain conditions. See 54 NRC at 290. First, the Army was to continue to furnish Judge Murphy and me with the quarterly status reports that had been previously directed. Second, should the Commission publish in the Federal Register a notice of opportunity for hearing in connection with the LTP or some successor JPG site decommissioning plan, within thirty (30) days of that publication STV was to file and serve a statement specifying its area(s) of concern, if any, relative to the plan in question. Within ten days of its receipt of the STV statement, the Army might file a response confined to the question of whether a germane area of concern has been adequately identified in the statement.

In an October 17, 2002 memorandum, the NRC Staff reported that it has now accepted the revised decommissioning plan before it, together with the environmental report that was submitted by the Army in connection with that plan. The plan will receive a full technical review that is projected to require two full years for completion. On October 23, further word was received from Staff counsel to the effect that the Staff intends to publish shortly in the Federal Register a new notice of opportunity for hearing that will be in the context of the just accepted plan.

In these circumstances, the conditions imposed in LBP-01-32 regarding a further statement on the part of STV and a possible response by the Army will soon come into play. So that STV will be aware of the precise date upon which its statement will be due, Staff

counsel has committed herself to inform both its counsel and that of the Army as soon as the notice has been published.

As above noted, the Staff expects the technical review to consume two years. The Staff has not provided any explanation as to why such a lengthy review period should be required. Be that as it may, that matter is not within my control. At the same time, it is not my present inclination to hold up further proceedings to await the outcome of the Staff review. Should, however, any party see the matter differently, it will be given an opportunity to express its views once the time for the filing of new hearing requests in response to the upcoming Federal Register notice has expired.

It is so ORDERED.

BY THE PRESIDING OFFICER*

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 24, 2002

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER DATED OCTOBER 24, 2002 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
LB MEMORANDUM AND ORDER
DATED OCTOBER 24, 2002

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 24th day of October 2002