

December 17, 2002 (11:29AM)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

U.S.ARMY

(Jefferson Proving Ground Site)

Docket No. 40-8838-MLA

ASLBP No. 00-776-04-MLA

MOTION TO DEFER HEARING
PENDING COMPLETION OF TECHNICAL REVIEW

Save The Valley, Inc. (STV) respectfully moves the Atomic Safety and Licensing Board (ASLB or Board) to defer the hearing requested in the above captioned matter until after the Nuclear Regulatory Commission (NRC) Staff has completed its technical review.

1. In this proceeding, the ASLB is considering whether to approve an amendment to Material License No. SUB-1435 previously issued to the Department of the Army (Army) which would authorize decommissioning under restricted conditions pursuant to 10 CFR § 20.1403 of the depleted uranium (DU) ordnance testing site at the Jefferson Proving Ground (JPG) near Madison, Indiana. This proceeding falls within the scope of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings."

2. The U.S. Army submitted its first decommissioning or license termination plan ("LTP") in late 1999. Notice of opportunity for hearing was published in December, 1999. See LBP-01-32, at 2 (November 7, 2001). In response, STV filed a timely request for hearing, which was granted in LBP-00-9, 51 NRC 159 (2000).

3. The NRC Staff gave the original LTP a "cool reception" and allowed the Army a chance to address and rectify its numerous perceived deficiencies. In response, the Army

submitted in June 2001 a revised LTP which was materially different from the one it had filed in 1999. See LBP-01-32, at 2 (November 7, 2001). On September 27, 2001, the NRC Staff informed the Army that it was withholding acceptance of the new LTP on administrative review due to a number of deficiencies. See LBP-01-32, at 4. The Staff also informed the Army that it viewed the second LTP as superseding the first. See Memorandum and Order, LBP-01-32, at 4 (November 7, 2001).

5. After receiving assurances that the June 2001 LTP would go through the process of public comment solicitation and an opportunity for request of a hearing, STV moved that its request for hearing be held in abeyance to conform to a new timeline for review by the NRC staff because the second LTP was very different from the first. The Presiding Officer found that although the second, revised LTP was a new plan, the Presiding Officer found that analytically there was no material difference between the then current situation and the more typical one where a plan is submitted which then must undergo substantial revision before a hearing can be held on the plan. See LBP-01-32, at 7 . The Presiding Officer also found that the Army had not withdrawn its application and the NRC Staff had not formally denied it but rather the two parties were working to cure the deficiencies and develop a new LTP. Id. The Presiding Officer granted STV's request that the proceedings continue to be held in abeyance subject to conditions. See LBP-01-32, 10 .

6. On June 27, 2002 the Army submitted a second revised LTP. STV submits that comparison of this latest LTP with the previous two iterations has led STV and would lead a reasonable person to believe that it is significantly and materially different from the earlier submissions. This conclusion is buttressed by the fact that the Army's third LTP together with

its environmental report has been accepted by the NRC Staff for a full technical review which means it must be materially different from the earlier two LTPs which were rejected.

7. The NRC Staff reported that it had accepted the Army's most recent LTP, together with the environmental report that was submitted by the Army in connection with that plan, in an October 17, 2002 memorandum. This memorandum also reported that the LTP will receive a full technical review that is projected to require two full years for completion.

8. In response, on October 24, 2002, the Presiding Officer issued a Memorandum and Order, which included the following comment and invitation on page 3:

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.

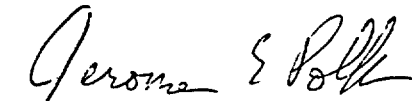
9. On November 14, 2002, the NRC published in the Federal Register its Notice of Consideration of Amendment Request For The U.S. Army's Jefferson Proving Ground Facility at Madison, In, And Opportunity For Providing Comments And Requesting a Hearing (Notice of Consideration) with regard to the Army's third LTP. Concurrent with this Motion on December 12, 2002, STV submitted a new request for hearing in response to the NRC's November 2002 Notice of Consideration.

10. Thus, in response to the Presiding Officer's invitation of October 24, STV respectfully requests that the hearing it has requested in this proceeding be deferred until completion of the NRC Staff's technical review. STV submits that this action will not delay ultimate action on the U.S. Army's LTP while permitting STV to base its written presentation in

this matter on a complete Hearing File. STV further submits that this action would be consistent with similar action taken under comparable circumstances in the Sequoyah Fuels Corp. case. See Memorandum and Order, at 3-4, Docket No. 40-8027-MLA-4, ASLB No. 99-70-09-MLA (March 23, 2000). In the Sequoyah case, the Presiding Officer accepted the State of Oklahoma's view that the hearing it had requested should be deferred until completion of a delayed NRC Staff technical review because "[t]he Hearing File must be complete when the parties present their formal presentations on the issues." Id., at 4.

WHEREFORE, Save The Valley, Inc., respectfully requests that the hearing it has requested in this proceeding be deferred until completion of the NRC Staff Technical Review, as well as all other relief just and proper under the circumstances.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:
Alan S. Rosenthal, Presiding Officer
Thomas D. Murphy, Special Assistant

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December 16, 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion have been served this 12th day of December, 2002 upon the following persons by electronic mail and by U.S. Mail, first class postage prepaid.

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