

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

January 23, 2003 (2:46PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

In the Matter of)	Docket No. 40-8838-MLA
)	
U.S. ARMY)	ASLBP No. 00-776-04-MLA
)	
(Jefferson Proving Ground Site))	January 17, 2003
)	

**RESPONSE TO REQUEST FOR HEARING AND COMMENTS
ON REVISED DECOMMISSIONING PLAN BY SAVE THE VALLEY, INC.**

On 16 December 2002, Department of Army (DA) received notice of a Request for Hearing and Comments on Revised Decommissioning Plan by Save the Valley, Inc. (STV). Pursuant to Memorandum and Order (Granting Request to Hold Proceeding in Abeyance), LBP-01-32, at 12, (November 7, 2001), DA provides this response "confined to the question of whether a germane area of concern has been adequately identified in the statement" by STV outlining its areas of concern with the DA revised License Termination Plan (LTP), June 27, 2002. DA provides this response with the understanding that admittance of an area of concern does not constitute a determination of the merits specified in the area of concern (50 NRC 409).

Areas of concern identified in the Request for Hearing and Comments on Revised Decommissioning Plan by STV, December 16, 2002 are set forth in Part III, pgs. 8-14. STV asserts DA's LTP is inadequate and deficient in meeting certain of the requirements of 10 CFR § 20.1403 and site characterization is inadequate to verify compliance with any of the requirements of 10 CFR § 20.1403.

STV asserts the Army fails to meet the criteria of 10 C.F.R. § 20.1403 for the following reasons: 1) the Revised LTP fails to satisfy the ALARA standard; 2) the LTP does not provide adequate institutional controls; 3) the LTP does not provide adequate financial assurance, only a commitment to request additional financial resources in the future; 4) the Army has not responded to prior public criticism of its decommissioning plan by proposing solutions to problems presented, but has instead offered only additional or expanded explanations for why problems will not be solved or alleviated; 5) the revised LTP does not protect the public from residual activity if institutional controls fail.

ALARA Standard

STV asserts the LTP fails to satisfy the ALARA standard. STV asserts the definition of ALARA (10 CFR § 20.1003) creates a standard which requires both an evaluation of considerations in addition to economic costs and benefits and requires a comparison of the Army's proposed plan to other restricted release alternatives which include partial remediation and continued monitoring in addition to institutional controls.

DA maintains NRC regulations at 10 C.F.R. § 20.1403(a) and § 20.1403(e) only require ALARA analysis where restricted conditions are working and where restricted conditions have failed, respectively. DA's position is further supported by NUREG-1727, NMSS Decommissioning Standard Review Plan (SRP), September 2000, page 5-31, Section 5.3. STV's assertion that other restricted release alternatives which include partial remediation and continued monitoring are outside the scope of regulatory requirements and are not germane to proposed license termination amendment sought by DA.

STV asserts DA's ALARA analysis is incomplete and inaccurate in failing to consider the toxic effects of DU. DA maintains NRC regulations at 10 C.F.R. § 20.1403 require compliance with radiological criteria for license termination under restricted conditions as set forth therein. Other regulatory agencies are responsible for control of hazardous constituents. See 62 FR 30958, 39084. The NRC license issued to DA did not encompass any potential toxicological effects that may be associated with DU and is outside the scope of the license termination amendment sought by DA. Accordingly, STV's assertion that the Army may be required by state or federal agencies other than NRC to engage in mitigation and monitoring (page 12) is speculative and not germane to DA's net public or environmental harm analysis.

Adequacy of Institutional Controls

STV asserts institutional controls in DA's LTP are inadequate because the Army has already found migration of DU into soil, groundwater, and native flora and institutional controls cannot stop migration outside the current DU impact area. Furthermore, it is asserted that DA's on-site water use restrictions will not prevent migration to off-site water sources, and the institutional controls will not prevent on-site exposure to trespassers. 10 C.F.R. § 20.1403(b) requires the licensee to make provision for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year. 10 C.F.R. § 20.1003 defines "critical group" as meaning the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances. DA's Revised LTP, Appendix F Risk Analysis, contains a risk assessment with two exposure scenarios, an

occasional site user and a resident farmer. The risk assessment demonstrates that regulatory exposure criteria in 10 C.F.R. § 20.1403(b) and (e) for those individuals reasonably expected to receive the greatest exposure at the site are met. Institutional control requirements are not designed to prevent alleged migration of radiological exposure off the site but to ensure that exposure on the site fall within permissible exposure limits. Accordingly, STV's alleged inadequacy of institutional controls attributable to alleged off-site migration of DU is not germane.

Adequacy of Financial Assurance

STV asserts DA's statement of intent is inadequate since it provides that the DA Commanding General for the site will request funds for implementation and maintenance of institutional controls to ensure compliance with restricted release criteria in 10 C.F.R. § 20.1403(b) and not making funds available or guaranteeing the availability of funding. DA receives money from Congress on an annual basis to fund operation and maintenance type activities for installations, including funds for implementation and maintenance of institutional controls at JPG. DA Commanding General is prohibited by law, 31 U.S.C. § 1341 from making a commitment to pay money for the implementation or maintenance of institutional controls in advance of an appropriation by Congress. This is the purpose for the designation statement of intent for federal governmental entities. STV's challenge to the adequacy of financial assurance is not germane since it seeks action DA is prohibited by law from taking.

Adequacy of Response to Public Comment

STV asserts DA has responded to public comments and concerns regarding exposure scenarios, institutional controls, enforcement of access controls, and license

termination alternatives with expanded discussions and not solutions to these issues. 10 C.F.R. § 20.1403(d) requires incorporation of advice from affected parties as appropriate. STV fails to specify any particular advice that was presented and not considered. A general assertion that DA failed to provide solutions, in whole or part, to concerns raised is not required and too vague to be considered germane. See 50 NRC 386, 399.

Failure to Protect Public from Residual Radioactivity
If Institutional Controls Fail

STV asserts the Revised LTP is inadequate for failing to adequately address the potential risk posed by trespassers in the event institutional controls fail. This concern is based on the premise that local officials are unlikely to aggressively pursue enforcement of trespass penalties and trespassers could remove DU fragments or rounds and expose the public. 10 C.F.R. § 20.1403(e) exposure criteria from residual activity at the site in the event institutional controls were no longer in effect are applied to the average member of the critical group. Individuals engaging in criminal trespass activities on site and who engage in the off-site transport of stolen items which are alleged to result in harmful radiological exposure to the general public are not considered part of the critical group to which the standard applies. Accordingly, this alleged deficiency is not germane to the criteria set forth in 10 C.F.R. § 20.1403.

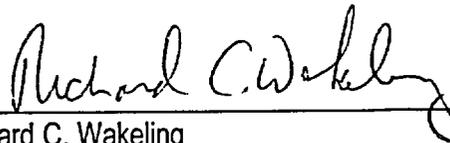
Site Characterization is flawed precluding
Verification LTP Meets Criteria

STV asserts DA's Dose Modeling and analysis of key phenomena affecting exposure pathways is inaccurate and incomplete.

Appendix C of Revised LTP contains a Risk Analysis that demonstrates compliance with criteria in 10 C.F.R. § 20.1403(b) and (e), as well as NRC regulatory guidance in NUREG-1727, NMSS Decommissioning Standard Review Plan (SRP), September 2000, 5.0 Dose Modeling Evaluations and section 5.3 restricted releases. Based on the 17 October 2002 memorandum from NRC to DA acknowledging acceptance of DA's Revised LTP submission, DA maintains assertions by STV to the effect that the Revised LTP is incomplete or inaccurate are without merit and not germane.

Finally, DA opposes the request by STV for leave to supplement its areas of concern (should STV's concurrently filed motion to defer hearing pending completion of technical review be granted) prior to hearing in the event additional concerns are discovered after more extensive review. NRC Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, 10 CFR § 2-1201-2-1263 do not provide for supplementation of areas of concern after completion of technical review by NRC staff. In accordance with 10 CFR § 2.1233, STV will be afforded an opportunity to submit a written presentation of concerns, after the receipt of the hearing file, which will include the technical review by NRC staff.

Dated this Friday, January 17, 2003



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response To Request For Hearing And Comments On Revised Decommissioning Plan By Save the Valley, Inc. has been served upon the following persons by U. S. mail:

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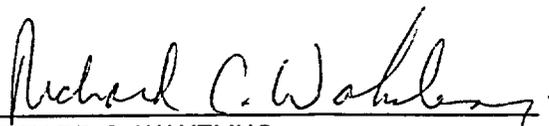
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