

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

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

NRC STAFF'S COMMENTS IN RESPONSE TO
MEMORANDUM AND ORDER, DATED MARCH 19, 2003

INTRODUCTION

In his Memorandum and Order, dated March 19, 2003, the Presiding Officer invited the NRC staff (Staff), which is not a party to this proceeding, to provide its views on (1) the likelihood of the acceptance of an alternative proposal set forth in the U.S. Army's (Licensee) letter of February 4, 2003, to the Staff; and (2) the impact of such an acceptance on the current proceeding on the Licensee's 2002 Decommissioning Plans (DP). The Staff accepts the Presiding Officer's invitation and provides the following comments.¹

¹ Staff Counsel was advised by the Atomic Safety and Licensing Board Panel (ASLBP) telephonically on April 16, 2003, that the Presiding Officer considered that the Staff's voluntary response had been due on April 15, 2003, and inquiring into the Staff's filing intentions. Staff had two telephonic exchanges with the ASLBP, ending with an indication that the Staff had calculated that it had more time for any response it desired to provide, but advising the ASLBP that it would file a response by April 17, 2003. Subsequently, Staff looked further into the determination of the filing date and determined that under the Memorandum and Order, any filing it chose to provide was requested to be provided by April 16, 2003. This determination was based on the Office of the General Counsel's (OGC) datestamp on the Licensee's Quarterly Status Report indicating OGC's receipt of the same on April 1, 2003. Since the Memorandum and Order invited the Staff to provide its views withing 15 days of its receipt of the Army's status report, the staff calculates that any response it chose to provide was requested no later than April 16, 2003. The Staff has met that date by this filing.

DISCUSSION

The Licensee is facing a complicated decommissioning due to the extensive presence of unexploded ordinance (UXO) on the site under the NRC license. The UXO, as long as it remains explosive, poses a significant threat to personnel entering and doing ground sampling on the site. At the same time, the Staff has advised the Licensee that further site characterization is needed in order to determine whether the license can be terminated on a restricted-use basis. See, 10 C.F.R. Part 2, Subpart E.

Facing this dilemma, the Licensee has proposed a conceptual alternative to the Staff, in a letter provided to the Presiding Officer and parties by a Board Notification, dated March 11, 2003. That alternative would be accomplished by the NRC's approval, under 10 C.F.R. § 40.42(g)(2), of an alternative schedule for submittal of a DP. Instead, the licensee would maintain its possession-only license, which would be amended to be five-year renewable licenses until such time as the UXO is no longer explosive or there are safe ways available to handle UXO, permitting adequate site characterization.

Additional information on the alternative proposal is in the record, as an attachment to "Motion to Extend the Time for Save the Valley, Inc. to File Comments Regarding Contingent Request of the Department of the Army for a Possession-Only License Amendment," dated April 8, 2003. Attached thereto was a Commission Information Paper regarding "Jefferson Proving Ground Decommissioning Status," (SECY-03-0031, March 3, 2003). The Staff will also be providing very shortly a Board Notification attaching SECY-03-0031 and a more recent letter from the Licensee on the alternative proposal.

The Staff believes that the Board Notification and its attached letter will provide clarification of the matter at hand. Nevertheless, in order to facilitate an orderly development of the record, the Staff will provide a fuller statement of its views once the Board Notification has been received and reviewed by the Presiding Officer and the parties. In light of existing commitments of Staff Counsel

in other proceedings to which the Staff is a party, the Staff will provide its additional comments no later than April 30, 2003.

CONCLUSION

The Staff has provided the above comments in response to the Memorandum and Order. The Staff will augment this information with a fuller set of comments no later than April 30, 2003.

Respectfully Submitted

/RA/

Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 16th day of April, 2003

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S COMMENTS IN RESPONSE TO MEMORANDUM AND ORDER, DATED MARCH 19, 2003" in the above captioned proceeding have been served on the following through deposit in the U.S. Mail, first class, and through the Nuclear Regulatory Commission's internal mail system, as indicated by a single asterisk (*), or by e-mail, as indicated by a double asterisk (**), this 16th day of April, 2003.

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