

## 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

April 22, 2003

MEMORANDUM

(Addendum to April 21, 2003 Memorandum and Order)

As noted in my April 21, 2003 memorandum and order, in its April 16, 2003 filing the NRC Staff informed me that it planned to submit shortly an additional Board Notification in this proceeding. The filing acknowledged that on April 8, 2003, as an appendage to a motion, the intervenor Save the Valley, Inc. had furnished me and the licensee Army with a copy of SECY-03-0031. That was the March 3, 2003 document in which the NRC Executive Director for Operations had informed the Commissioners of the Staff's intended action with regard to the proposal that the Army had presented to it in a February 4, 2003 letter. Nonetheless, according to the April 16 filing, the promised Board Notification would have as attachments that information paper of over two months standing, together with what was described without elaboration as "a more recent letter from the licensee" on the February 4 proposal.

At the time of the preparation of the April 21 order, the Board Notification was not as yet in hand. I saw no reason, however, to hold up issuance of that order to await its receipt and examination. The receipt of yet another copy of SECY-03-0031 seemed to serve no useful purpose. Insofar as the promised more recent letter from the Army was concerned, I could not understand why its content had not been disclosed in the April 16 filing. At the same time,

given that another order would be forthcoming following the Staff's additional filing due at the end of next week, I concluded that, assuming that the letter proved to have some significance, it could appropriately be considered in that order.

The Board Notification is now in hand (2003-02, dated April 17, 2003). Attached to it is, indeed, SECY-03-0031. The other attachment, however, turns out not to be the advertised letter from the Army to the NRC Staff. Rather, it is a letter that the Staff sent to the Army on April 8, 2003 (coincidentally, the same day that Save the Valley furnished SECY-03-0031 in connection with a motion). In it, the Staff advised the Army that the February 4 proposal could be approved and that it wished to meet with Army representatives to work out the details of the license amendment that would be required to implement the proposal.

Had Staff counsel undertaken in his April 16 filing to refer to the content of the letter, the mischaracterization of its source obviously would not have occurred. Be that as it may, the April 17 Board Notification provides me with no information of any real significance that had not already been supplied by either the Army or Save the Valley (although it does explain why the Staff thought it was necessary to put SECY-03-0031 before the Commissioners). It does appear, however, that there is no longer a need to receive an answer to the second question posed in the April 21 order. The other two questions posed in that order still are to be addressed in the Staff's supplemental filing due on May 2, 2003.

BY THE PRESIDING OFFICER<sup>1</sup>

**/RA/**

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Alan S. Rosenthal  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 22, 2003

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<sup>1</sup> Copies of this memorandum were sent this date by Internet electronic mail transmission to the counsel for the parties and the NRC Staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM (ADDENDUM TO APRIL 21, 2003 MEMORANDUM AND ORDER) have been served upon the following persons by U.S. mail, first class, or through internal NRC distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Alan S. Rosenthal, Presiding Officer  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Thomas D. Murphy, Special Assistant  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dennis C. Dambly, Esq.  
David A. Cummings, Esq.  
Stephen H. Lewis, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dal M. Nett  
U.S. Army Test and Evaluation Command  
314 Longs Corner Road  
Aberdeen Proving Ground, MD 21005

Richard C. Wakeling, Esq.  
U.S. Army Garrison Aberdeen Proving Ground  
2201 Aberdeen Boulevard  
Office of the Staff Judge Advocate,  
AMSSB-GJA (Bldg. 310)  
Aberdeen Proving Ground, MD 21005-5001

Richard Hill, President  
Save the Valley, Inc.  
P.O. Box 813  
Madison, IN 47250

Michael A. Mullett, Esq.  
Jerome E. Polk, Esq.  
Mullett & Associates  
309 West Washington Street, Suite 233  
Indianapolis, IN 46204-2721

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LB MEMORANDUM (ADDENDUM TO APRIL 21, 2003  
MEMORANDUM AND ORDER)

[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 22<sup>nd</sup> day of April 2003