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USNRC

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

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Docket No. 40-8838-MLA

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ASLBP No. 00-776-04-MLA

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**MEMORANDUM OF SAVE THE VALLEY, INC.
REGARDING CONTINGENT REQUEST OF THE DEPARTMENT OF THE ARMY
FOR A POSSESSION-ONLY LICENSE AMENDMENT**

On October 28, 2003, the Staff published in the Federal Register a notice of opportunity for hearing on the application for a license amendment from the Department of the Army (“DA”) that would provide it with a five-year, renewable, possession-only license in connection with the depleted uranium munitions that are currently amassed on its Jefferson Proving Ground site (“DA Proposal”). 68 Fed. Reg. 61,471. In light of this development, on October 30, 2003, the Presiding Officer requested the DA, the Staff, and Intervenor Save the Valley, Inc., (“STV”) to file and to serve memoranda on or before November 13, 2003 addressing the following questions:

1. Does this development have the effect of now requiring the dismissal as moot of the proceeding in hand that is addressed to the previously submitted decommissioning plan for the site? If not, why not?

2. If not subject to dismissal at this time as moot, what then should be deemed the present status of that proceeding and what, if any, action should now be taken by this presiding officer with regard to it?

STV respectfully submits its requested Memorandum.

I. THE CURRENT PROCEEDING IS NOT MOOT – AT LEAST NOT YET.

STV does not believe that the current proceeding is moot – at least not yet.

As STV understands the DA Proposal, any DA withdrawal of the License Termination Plan (“LTP”) currently pending in this proceeding is *contingent* upon approval of the recently noticed possession-only license amendment (“POLA”) request. If the POLA request is denied, DA would *not* withdraw its pending LTP, but would proceed with its review to approval, modification, or denial by the Commission. Thus, the current proceeding could not become moot unless and until the Commission has approved the POLA request and the DA has withdrawn its LTP.

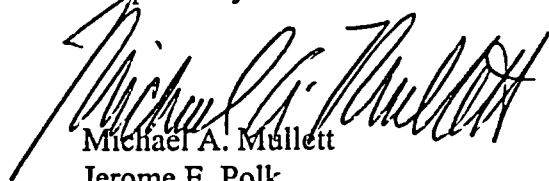
Moreover, approval by the Commission of the POLA request as filed would not resolve the decommissioning issues previously raised in this proceeding – it would simply defer those issues to a later time without specifying when that later time will be. That later time could be one year, five years, ten years, a hundred years, or more. That poses the obvious question to STV of whether approval of the DA Proposal would effectively result in preservation of the status quo at JPG for at least the foreseeable future and, potentially, indefinitely. STV doubts that 10 CFR § 40.42(g)(2) authorizes – or that the statute and rulemaking of which that regulation is the product ever intended – such an outcome. STV believes that such an outcome would pose fundamental

policy and legal issues, both for the Commission and for the local community.

II. THE CURRENT PROCEEDING SHOULD NOT BE DISMISSED – AT LEAST FOR NOW.

Consequently, it appears to STV that this proceeding should remain pending – at least for now. STV believes that this conclusion should be revisited at the time the POLA request is finally approved or denied by the Commission. If the POLA request is denied, this proceeding presumably would resume. If the POLA request is approved by the Commission but STV appeals, presumably DA will not withdraw its LTP and this proceeding would remain pending but in abeyance. If the POLA request is approved and STV does not appeal, presumably DA will withdraw its LTP and this proceeding would be dismissed.

Respectfully submitted.

A handwritten signature in black ink, appearing to read "Michael A. Mullett", is written over the typed name.

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Attorneys for Save The Valley, Inc.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing pleading have been served this 13th day of November, 2003, upon the following persons by electronic mail and by U.S. Mail, first class postage prepaid.

Administrative Judge Alan S. Rosenthal,
Presiding Officer
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3-F-23
Washington, D.C. 20555-0001

Adjudicatory File
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Administrative Judge Thomas D. Murphy
Special Assistant
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
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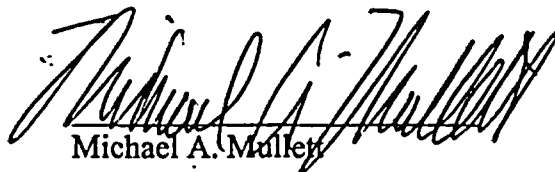
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November 13, 2003

Office of the Secretary
ATTN: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16-G-15
Washington, D.C. 20555

Re: Memorandum of Save The Valley, Inc. for Extension of Time - In re U.S. Army (Jefferson Proving Ground), Docket No. 40-8838-MLA, ASLBP No. 00-776-04-MLA

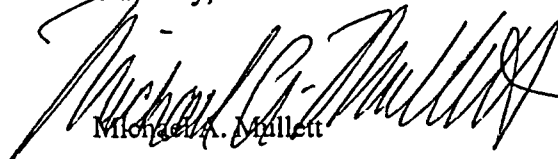
Dear Secretary:

Enclosed please find the original and two conforming copies of the Memorandum of Save the Valley, Inc., Regarding Contingent Request of the Department of the Army for a Possession-Only License Amendment for filing in the above referenced case. This pleading is also being forwarded electronically.

Also enclosed please find an additional copy of the Memorandum to be file stamped and returned to me in the enclosed self-addressed, stamped envelope.

Thank you.

Sincerely,



Michael A. Mullett