

November 21, 2003 (1:43PM)

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

BEFORE THE PRESIDING OFFICER

In the Matter of )  
 )  
U.S. ARMY )  
 )  
(Jefferson Proving Ground Site) )  
 )

Docket No. 40-8838-MLA

ASLBP No. 00-776-04-MLA

November 13, 2003

MEMORANDUM

**INTRODUCTION**

Pursuant to Order of Presiding Officer, October 30, 2003, Department of Army (DA), Save the Valley, Inc., and NRC Staff were requested to file a memoranda addressing the following questions:

1. Does the fact that NRC Staff, on October 28, 2003, published in the Federal Register a notice of opportunity for hearing on the DA's application for a license amendment 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, 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 the Presiding Officer with regard to it?

**DISCUSSION**

In response to the first question, DA asserts its application for a license amendment for a five-year, renewable, possession-only license for depleted uranium munitions at its Jefferson Proving Ground Site which has been accepted for technical review and federal register notice for comment and opportunity for hearing on such license amendment request, requires the dismissal as moot the current hearing proceeding granted for the purpose of considering matters related to a previous license amendment request to decommission and terminate DA's license for the Site. DA is no longer engaged in decommissioning of its Jefferson Proving Ground Site and the NRC Staff is

no longer engaged in a technical review of DA's revised DP in support of such license amendment request.

In light of this response, DA does not consider a response to the second question as necessary.

### **CURRENT PROCEEDING**

By a March 23, 2000 Memorandum and Order (Granting Hearing Request and Directing the NRC Staff to Furnish Hearing File),<sup>1</sup> the Presiding Officer granted the hearing request of Save The Valley, Inc., to a proposed license amendment sought by DA that would permit, in accordance with 10 C.F.R. § 20.1403, the restricted release of the Jefferson Proving Ground Site on which there exists an accumulation of depleted uranium munitions utilized by DA pursuant to license SUB-1435.

By a February 6, 2003 Memorandum and Order (Rulings on Adequacy of Statement of Concerns and Motion to Hold Proceeding in Abeyance),<sup>2</sup> the Presiding Officer granted the Save the Valley's request for deferral of further proceedings pending the completion of a technical review by NRC Staff of the License Termination Plan (LTP) submitted by DA in support of its proposed license amendment to permit in accordance with 10 C.F.R. § 20.1403, the restricted release of the Jefferson Proving Ground Site.

By a April 21, 2003 Memorandum and Order (Directing Further Filing by NRC Staff as a Party to the Proceeding),<sup>3</sup> the Presiding Officer reaffirmed that for the reasons stated in LBP-02-03, 57 NRC \_\_\_\_ (February 6, 2003), the current proceeding is being held in a state of suspension to await the completion of the technical review of the plan that the NRC staff initiated the previous fall.

### **PENDING LICENSE AMENDMENT REQUEST**

NRC Staff completed a limited technical review of DA's revised LTP accepted for technical review on October 1, 2002, and determined DA needed to provide site specific data to support models regarding the potential for off-site transport of depleted uranium (DU). NRC has also acknowledged the collection of the data needed to support the models could create safety hazards to DA personnel and/or its contractors.

As a consequence of these determinations, on February 4, 2003, DA submitted in accordance with 10 CFR § 40.42(g)(2) a contingent request for an alternate schedule for submittal of a Decommissioning Plan for termination of Jefferson Proving Ground (JPG) license SUB-1435. The Army proposed a license amendment of SUB-1435 be negotiated to create a 5-year renewable possession only license for an indefinite time period. Contingent on the successful negotiation of an indefinite duration possession only license

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<sup>1</sup> U.S. Army (Jefferson Proving Ground Site), LBP-00-09, 51 NRC 159 (2000)

<sup>2</sup> U.S. Army (Jefferson Proving Ground Site), LBP-03-02 57 NRC \_\_\_\_ (February 6, 2003)

<sup>3</sup> U.S. Army (Jefferson Proving Ground Site), Docketed USNRC (April 21, 2003)

amendment, the Army would formally withdraw the revised Decommissioning Plan (June 2002) and Environmental Report (June 2002) for decommissioning of JPG administratively accepted by NRC for technical review on October 1, 2002.

In response to a March 19, 2003 Memorandum and Order by Presiding Officer, DA presented in its March 27, 2003 Quarterly Status Report (page 2) its view at that time of the impact that NRC staff acceptance of DA's February 4, 2003 contingent request would have on the current proceeding. DA's view reflected in the March 27, 2003 Quarterly Status Report was as follows: " DA submits that in the event, NRC Staff accepts its contingent request for an alternative schedule for submittal of a Decommissioning Plan and successfully completes the negotiation and issuance of a 5-year renewable possession only license that precipitates DA's withdrawal of its license amendment request to terminate License SUB-1435, revised Decommissioning Plan (June 2002) and Environmental Report (June 2002), further proceedings in this matter would be moot. DA's withdrawal of its license amendment request, Decommissioning Plan and Environmental Report which provided the basis for the grant of the hearing request would obviate the need for further proceedings in this matter to consider the adequacy of the withdrawn license amendment request, Decommissioning Plan and Environmental Report."

In a letter dated April 8, 2003, NRC Decommissioning Branch Chief, Mr. Gillen advised DA that NRC staff had concluded that because the collection of data needed to complete DA's revised Decommissioning Plan (DP) could create personnel safety hazards, licensee DA-a federal agency-was a stable and durable entity able to provide access controls and monitoring in accordance with NRC's requirements, extending the requirement for DA to submit its DP until necessary data can be safely collected and models validated, could be approved under 10 C.F.R. § 40.42(g)(2) as it presents no undue risk from radiation to the public health and safety and is otherwise in the public interest. NRC stated its willingness to consider amending DA's Materials License No. SUB-1435 to continue as a possession-only license provided DA addressed certain conditions for a possession-only license. Under this approach, NRC stated decommissioning will not be pursued until site-specific data needed for input to off-site transport models could be collected without undue risk to the health and safety of the public, including DA's employees and contractors, and the renewal of DA's license as a 5 year possession-only license would provide an opportunity to periodically evaluate any need for delay in completing the DP.

On September 17, 2003, DA submitted a letter of request for a license amendment to its Materials License No. SUB-1435 to create a 5-year renewable possession-only license. The license amendment request included DA's proposed Environmental Radiation Monitoring Program Plan For License SUB-1435 (September 2003). This request by DA made reference to its February 4, 2003 contingent request for an alternative schedule for decommissioning but did not specify the license amendment request for a 5-year renewable possession-only license was contingent.

By letter dated October 21, 2003, NRC notified DA that the information provided by DA in its letter requesting NRC amend Material License No. SUB-1435 to create a 5-

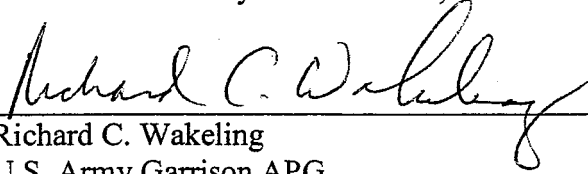
year renewable possession-only license, including the Environmental Radiation Monitoring Program Plan (September 2003), received by NRC on September 22, 2003 was accepted for technical review. Based on NRC's acceptance of On October 28, 2003, NRC Staff published in the Federal Register (68 Fed. Reg. 61,471) a notice of opportunity for hearing on DA's application for a license amendment that would provide it with a five-year, renewable, possession-only license in connection with the depleted uranium munitions at its Jefferson Proving Ground Site. The notice provides an opportunity for any person, including members of STV, Inc., whose interest may be affected by the proposed license amendment to file a request for a hearing.

DA maintains that NRC Staff acceptance for technical review of DA's request for license amendment to amend Materials License No. SUB-1435 to create a 5-year renewable possession-only license and notice of opportunity for hearing on DA's license amendment application supersedes and obviates the need for a hearing on the previously proposed license amendment sought by DA to permit, in accordance with 10 C.F.R. § 20.1403, the restricted release of the Jefferson Proving Ground Site. DA maintains the need for the Army to formally withdraw the prior license amendment request to permit, in accordance with 10 C.F.R. § 20.1403, restricted release supported by its revised Decommissioning Plan (June 2002) and Environmental Report (June 2002) for decommissioning of JPG administratively accepted by NRC for technical review on October 1, 2002 has been superseded and is no longer pending review and consideration by the NRC. DA maintains that NRC Staff acceptance for technical review of DA's request for license amendment to amend Materials License No. SUB-1435 to create a 5-year renewable possession-only license and notice of opportunity for hearing on DA's license amendment application constitutes approval of an alternative schedule for submittal of a decommissioning plan under 10 C.F.R. § 40.42(g)(2) and is an alternative to the requirement to submit a DP pursuant to 10 C.F.R. § 40.42(d). DA will formally withdraw its previous proposed license amendment request to permit, in accordance with 10 C.F.R. § 20.1403, the restricted release of the Jefferson Proving Ground Site and revised Decommissioning Plan (June 2002) and Environmental Report (June 2002) if deemed necessary to further establish the current license amendment request for a possession-only license is not contingent and that such previous proposed license amendment request having been superseded is no longer pending.

DA maintains the Presiding Officer should determine the current hearing granted for the purpose of consideration of issues associated with DA's previous license amendment request to permit, in accordance with 10 C.F.R. § 20.1403, the restricted release of the Jefferson Proving Ground Site is moot. NRC Staff's acceptance for technical review of DA's request for license amendment to amend Materials License No. SUB-1435 to create a 5-year renewable possession-only license, demonstrates DA licensee no longer has pending a license amendment request for the restricted release of the JPG Site, and because of personnel safety considerations is no longer engaged in collection of the data identified as necessary to decommission. Accordingly, NRC is no longer engaged in a further technical review of DA's LTP.

A determination that the current proceeding is moot will allow DA licensee, NRC Staff and interested persons whose interests may be affected by the license amendment request to create a 5-year renewable possession-only license the opportunity to provide comments and opportunity to request a hearing related to the purpose for which the existing license amendment application is accepted.

Dated this Thursday November 13, 2003



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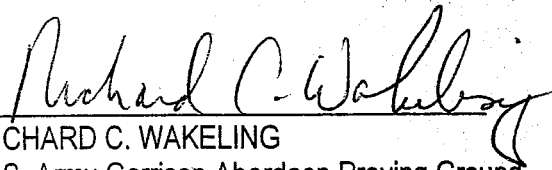
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DATE: 13 November 2003

  
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