

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of)	
)	
UNITED STATES ARMY)	Docket No. 40-8838-MLA-2
(Jefferson Proving Ground Site))	
)	ASLBP No. 04-819-04-MLA
Madison, Indiana)	
Materials License Amendment)	

NRC STAFF REPLY TO "REQUEST FOR HEARING BY SAVE THE VALLEY INC.
RE: REQUEST FOR ALTERNATE DECOMMISSIONING PLAN SCHEDULE,"
AND "MOTION TO SCHEDULE HEARING FOLLOWING COMPLETION OF
TECHNICAL REVIEW," DATED NOVEMBER 26, 2003

BACKGROUND

The Intervenor in the previous Jefferson Proving Ground ("JPG") proceedings, Save the Valley, Inc. ("STV"), has petitioned for a hearing and intervenor status with respect to a proposed amendment published in the Federal Register on October 28, 2003 (68 Fed Reg 61,471). This is a new proceeding regarding the JPG site. Rather than dealing with decommissioning of the site, this proposed amendment deals with the issuance of a five year possession only license. The concept of this possession only license is that it would be renewable in five year increments upon review and approval of the NRC Staff ("Staff")

The Staff has today filed a notice indicating its intent to participate as a party in this proceeding. Accordingly the Staff is also responding in this reply to identified STV request and motion, under 10 C.F.R. § 2.1205(g).

STV has already, in the first of the decommissioning proceedings on JPG, pled its standing and its areas of concern. The Presiding Officer issued an order addressing the STV pleading and outlining the requirements that a petitioner under Subpart L is required to meet. *U.S. Army*

(Jefferson Proving Ground Site), LBP-00-9, 51 NRC 159 (2000). Accordingly, STV has had previous experience in this proceeding addressing standing and areas of concern and has received a ruling giving it further guidance with respect to the matters that it has to plead. The U.S. Army ("Licensee") filed on December 8, 2003 its "Response to Request for Hearing by Save the Valley, Inc. re Request for Alternate Decommissioning Plans Schedule."

DISCUSSION

Given that STV has already been provided with the necessary legal prerequisites for becoming an intervenor, it should be held scrupulously to the requirements both for standing and for germaneness of its areas of concern. STV addresses first its interest under section II of its hearing request. STV relies heavily upon the fact that it has previously been found to have standing in the series of decommissioning proceedings which have occurred regarding JPG. However, as the Staff noted in its "Memorandum in Response to Presiding Officer's Order dated October 30, 2003," (November 14, 2003), this proceeding is materially different, in the Staff's view, from proceedings on decommissioning proposals. The Staff asserted in that memorandum that any party, including STV, seeking intervention and a hearing regarding the possession only license application would have to address fully the ways in which it could be adversely impacted by this amendment and that petitioner would also have to meet the other pleading requirement in Subpart L of 10 C.F.R. Part 2.

STV fails to articulate clearly a basis for finding that it has standing in this proceeding. It refers in very general terms to the fact that it has members who live on property or in communities near the Jefferson Proving Ground, that some of its members live on property traversed by one of the waterways emanating from the JPG site, and that certain of its members hold property that may be adversely affected by depleted uranium ("DU") from the JPG site. Based upon LBP-00-9, STV is on notice that it needs to provide more specific information regarding the proximity of its

members to the JPG site and that it has to provide affidavits from these members authorizing STV to represent them in this proceeding.

STV addressed in this part of its pleading the timeliness of its filing. The Staff agrees that the STV filing is timely. However, the Staff asserts that STV should be required to amend its hearing request to provide the more specific information on its members and the affidavits authorizing STV representation addressed above.

With regard to the germaneness of the areas of concern raised by STV in Section III of its hearing request, the Staff finds the areas of concern to all be germane to this proceeding. Section 40.42(g)(2) is integral to the proceeding and the standards set out there for the grant of an alternate schedule for decommissioning would all have to be met in order for the Staff to take affirmative action with respect to the license amendment application. STV has structured its areas of concern around the specific requirements in section 40.42(g)(2). Accordingly, the Staff asserts that STV has raised germane areas of concern for this proceeding.

STV's "Motion to Schedule Hearing Following Completion of Technical Review" should in the Staff's view, be granted. The history of the decommissioning proceedings regarding JPG, supports a continued practice of deferring further substantive actions in this proceeding (*ie*, presentation of written submittals by the parties) until the Staff has completed its technical review. In the three decommissioning applications filed with respect to the JPG facility since 1999, the Presiding Officer has whenever so requested held the hearings on those applications in abeyance pending the completion of the Staff's technical review of the application. *See, U.S. Army* (Jefferson Proving Ground Site), LBP-01-32, 54 NRC 283 (2001).

CONCLUSION

For the reasons discussed above, the Staff respectfully requests that: 1) the Presiding Officer direct STV to supplement its hearing request to address with greater precision the location

of its members relevant to the JPG site and to provide affidavits of authorization from these members to STV regarding representation in this proceeding; 2) the Presiding Officer find that the hearing request was timely filed and that the areas of concern set forth in the request are all germane; and 3) that the Presiding Officer grant STV's request that the hearing be held in abeyance pending the completion of the Staff's review.

Respectfully submitted,

/RA/

Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 29th day of December, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of)
)
UNITED STATES ARMY) Docket No. 40-8838-MLA-2
(Jefferson Proving Ground Site))
) ASLBP No. 04-819-04-MLA
Madison, Indiana)
Materials License Amendment)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF REPLY TO "REQUEST FOR HEARING BY SAVE THE VALLEY INC. RE: REQUEST FOR ALTERNATE DECOMMISSIONING PLAN SCHEDULE," AND "MOTION TO SCHEDULE HEARING FOLLOWING COMPLETION OF TECHNICAL REVIEW," DATED NOVEMBER 26, 2003" in the above captioned proceeding have been served on the following through deposit in the Nuclear Regulatory Commission's internal Mail system (as indicated by a single asterisk "**") or by U.S. Mail, first class, and by electronic service (as indicated by a double asterisk "**") this 29th day of December, 2003.

Alan S. Rosenthal, Presiding Officer * **
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-mail: RSNTHL@aol.com
rsnthl@comcast.net

Michael Mullett, Esq. **
Jerome E. Polk, Esq. **
Mullett & Associates
309 West Washington Street
Suite 233
Indianapolis, IN 46204-2721
E-mail: jpolk@mullettlaw.com
MulletGEN@aol.com

Atomic Safety and Licensing Board Panel * **
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555

Office of the Secretary * **
Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555
E-mail: HEARINGDOCKET@nrc.gov

Richard Hill, President **
Save the Valley, Inc.
P.O. Box 813
Madison, IN 47250
E-mail: phill@venus.net

Samuel J. Walker, Esq. **
Commander
AMSTA-RIA-GC/ATTN:SWALKER
Rock Island Arsenal
Rock Island, IL 61299-5000
E-Mail: samuel.j.walker@us.army.mil

Adjudicatory File *
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555

Office of Commission Appellate
Adjudication *
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555

/RA/

Stephen H. Lewis
Counsel for NRC Staff