

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

December 8, 2003 (3:30PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before Administrative Judges:  
, Presiding Officer  
, Special Assistant

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In the Matter of

U.S. ARMY

(Jefferson Proving Ground Site)

Docket No. 40-8838-MLA

ASLBP No. 00-776-04-MLA.....

December 8, 2003

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**RESPONSE TO REQUEST FOR HEARING BY SAVE THE VALLEY, INC.  
RE REQUEST FOR ALTERNATE DECOMMISSIONING PLAN SCHEDULE**

The Army responds to the request for hearing by Save the Valley, Inc. (STV) dated November 26, 2003 as follows:

**PROCEDURAL BACKGROUND**

By letter dated 4 February 2003, DA in accordance with 10 C.F.R. § 40.42(g)(2) made a contingent request for an alternative schedule for submittal of a Decommissioning Plan for the termination of the Jefferson Proving Ground (JPG) license SUB-1435 (attachment 1). DA proposed that a license amendment for SUB-1435 be negotiated with NRC that would create a 5-year renewable possession-only license for an indefinite time.

By letter dated April 8, 2003, NRC responded to the proposal made in DA's 4 February 2003 letter (attachment 2). Concerning the contingent request for an alternative schedule for submittal of a Decommissioning Plan, NRC stated,

“The staff has concluded that under the unique circumstances of this case, where the collection of data to complete the DP in itself could create personnel safety hazards, and the licensee-a federal agency-is a stable and durable entity that can provide access controls and monitoring in accordance with NRC's requirements, extending the requirement to submit a DP until the necessary data can be safely collected and models validated could be approved under 10 CFR

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. With a possession-only license, the Army will continue to conduct environmental monitoring as part of its radiation protection program. The collection of environmental monitoring data will ensure that no depleted uranium (DU) is migrating off-site.”

Concerning DA’s proposal for amending DA’s current possession-only license SUB-1435, the NRC stated,

“Accordingly, NRC will consider amending the existing license for JPG to continue as a possession-only license and delay further development of the DP until validated models can be established, provided the following are addressed as license conditions for a possession-only license: 1) criteria for levels of DU in the environmental media sampled under the radiation protection program, and a monitoring program with an action plan if the levels were exceeded; 2) a 5-year renewal requirement; and 3) continued access restrictions to the DU impact area. The proposed license amendment should give details about the sampling frequency, type, and location of monitoring wells.”

Based on the guidance provided by NRC in its letter of April 8, 2003, DA submitted its request for a license amendment to license SUB-1435 to create a 5-year renewable possession-only license and a revised Environmental Radiation Protection Program Plan (September 2003). (See ADAMS under accession number ML032731017).

On October 28, 2003, the Nuclear Regulatory Commission (NRC) published in the Federal Register notice of the receipt by NRC on September 22, 2003 of a request by DA for a license amendment that would create a 5-year renewable possession-only license for Source Materials License SUB-1435 for the Jefferson Proving Ground site in Madison, Indiana, that NRC had determined on October 21, 2003 that the information provided by DA was sufficient to begin a technical review, and of the opportunity for interested persons to request a hearing. 68 Fed. Reg. 61471.

#### **RESPONSE TO MATTERS RAISED BY STV, Inc.**

For sake of clarity, DA will follow the format used by STV to respond to matters raised by STV in its request for hearing.

DA asserts STV’s characterization of its request for hearing as represented in the title of its request, “REQUEST FOR HEARING BY SAVE THE VALLEY, INC. RE REQUEST FOR ALTERNATE DECOMMISSIONING PLAN SCHEDULE” is in error and not responsive to DA’s proposed license amendment request which is to create a 5-year possession-only license which was noticed by the NRC on October 28, 2003 (68 Fed. Reg. 61471) as the basis for providing an opportunity for interested persons to request a hearing. DA asserts STV’s request for hearing is more appropriately reflected in the first paragraph of the request for hearing where

STV states, “In accordance with this Federal Register notice, and pursuant to 10 C.F.R. Part 2, Subpart L, Save the Valley, Inc. (“STV”) respectfully submits its Request for Hearing on the Army POLA.”

**I. PROCEDURAL HISTORY AND FACTS**

**A. Procedural History and Facts of the Case**

DA asserts STV’s recitation of “Procedural History and Facts of the Case” contained in Section I.A. that relate to any previous license amendment request by DA to terminate and decommission the JPG site under restricted conditions in 10 C.F.R. § 20.1403 are not germane to those matters to be considered by NRC in issuing a license amendment that would create a 5-year renewable possession-only license for SUB-1435. DA notes STV recognizes this distinction as reflected in the request for hearing where STV states, “STV recognizes that the Army’s POLA request differs materially from its earlier submissions. In particular, the Army is now proposing to defer indefinitely rather than begin promptly the decommissioning of JP.” (Last paragraph, page 5 of Request for Hearing).

**II. INTEREST OF THE INTERVENOR**

**A. STV has standing because it already has met the requirements for and been found to have standing earlier in this docket.**

DA contests the assertion by STV that it “has standing because it already has met the requirements for and been found to have standing earlier in the docket.” DA maintains any previous determination of STV’s standing in any other matter associated with Docket No. 4-8838-MLA does not automatically confer standing for purposes of the request for hearing for matters associated with the proposed issuance of a license amendment by NRC for a 5-year renewable possession-only license as noticed at 68 Fed. Reg. 61471.

**II. INTEREST OF THE INTERVENOR**

**B. Save the Valley has an interest in this proceeding**

DA expresses no opinion with regard to the factual bases asserted by STV in II.B. and the adequacy of such asserted bases to establish standing for purposes of the request for hearing by STV.

**II. C. STV’s request for a hearing is timely.**

DA does not contest the assertion by STV that its request for hearing in this matter is timely.

**III. STV’S AREAS OF CONCERN PURSUANT TO 10 CFR § 2.1250: THE REQUESTED POLA IS INADEQUATE AND DEFICIENT IN MEETING THE REQUIREMENTS OF 10 CFR § 40.42(g)(2).**

DA contests STV's areas of concern pursuant to 10 C.F.R. § 2.1250: the requested POLA is inadequate and deficient in meeting the requirements of 10 C.F.R. § 40.42(g)(2), as not germane. DA has requested a license amendment to SUB-1435 to create a 5-year renewable possession-only license. NRC by letter dated April 8, 2003 identified to DA three necessary conditions for issuance of a 5-year possession-only license. (Paragraph 4, April 8, 2003 letter and paragraph 3, PROCEDURAL BACKGROUND herein). DA asserts NRC's acceptance for technical review of DA's request for a 5-year possession-only license amendment acknowledges the existence of both a factual and regulatory basis for issuance of the requested license amendment and that any approved license amendment would be protective of public health and safety.

III. 2. The Army's updated Environmental Radiation Monitoring Plan is still inadequate in several material respects.

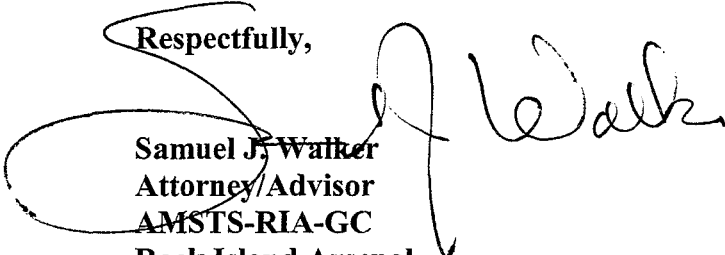
DA acknowledges submittal of an updated Environmental Radiation Monitoring Program Plan, September 2003 as part of its request for a license amendment to SUB-1435 to create a 5-year renewable possession-only license. DA contests STV's assertions that DA's Environmental Radiation Monitoring Program Plan is inadequate in any material respects. DA maintains its Environmental Radiation Monitoring Program Plan, September 2003 fulfills the three conditions identified to DA by NRC in its April 8, 2003 letter.

DA maintains that any failure to directly contest any other representations presented by STV in its request for hearing not be construed as agreement by DA with such representations.

DA concurrent with the filing of this response to STV's request for hearing is filing a response to STV's motion to delay the scheduling of any hearing which may be granted in this matter until after completion of NRC's technical review of the proposed license amendment to create a 5-year renewable possession-only license for SUB-1435.

Dated this

Respectfully,



Samuel J. Walker  
Attorney/Advisor  
AMSTS-RIA-GC  
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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL**

**Before Administrative Judges:  
, Presiding Officer  
, Special Assistant**

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

**Docket No. 40-8838-MLA  
  
ASLBP No. 00-776-04-MLA.....  
  
December 8, 2003**

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**CERTIFICATE OF SERVICE**

**I hereby certify that copies of the foregoing Response To Request For Hearing By Save The Valley, Inc. has been served upon the following persons by U. S. mail:**

**Office of the Secretary  
Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16-G-15  
Washington, DC 20555**

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

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

**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**

**Office of the Secretary  
Attn: Rulemaking & Adjudications  
Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16-G-15  
Washington, DC 20555**

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

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Dennis C. Dambly, Esq  
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Mail Stop – O-15 D21  
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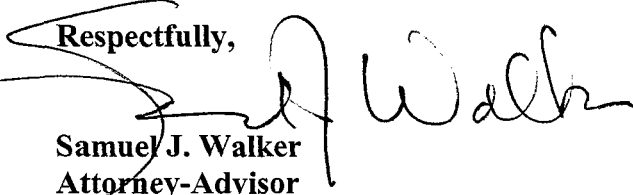
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Washington, DC 20555-0001

DATE: 8 December 2003

Respectfully,



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DEPARTMENT OF THE ARMY  
U.S. ARMY SOLDIER AND BIOLOGICAL CHEMICAL COMMAND  
5183 BLACKHAWK ROAD  
ABERDEEN PROVING GROUND, MARYLAND 21010-5424

DA FEB 2003

REPLY TO  
ATTENTION OF

Office of the Director, Stockpile,  
Industrial, Remediation and Restoration

Mr. Larry Camper  
Chief, Decommissioning Branch  
Division of Waste Management  
Office of Nuclear Material Safety and Safeguards  
US Nuclear Regulatory Commission  
Washington DC 20555

Dear Mr. Camper:

In accordance with 10 CFR 40.42 (g) (2), the US Army makes a contingent request for an alternative schedule for submittal of a Decommissioning Plan for the termination of the Jefferson Proving Ground (JPG) license SUB-1435. The alternative schedule is necessary due to the acknowledged unexploded ordnance and the personnel safety hazard that would be created should the Army be requested by NRC to provide additional site specific data during technical review to further validate termination of the JPG license under 10 C.F.R. § 20.1403, restricted conditions.

The Army proposes that a license amendment for SUB-1435 be negotiated with NRC that would create a 5-year renewable possession only license for an indefinite time period. Contingent upon the successful negotiation of an indefinite duration possession only license amendment for JPG, the Army would then 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.

Ms. Joyce Kuykendall, SBCCOM Radiation Safety Officer, may be contacted for additional information at (410) 436-7118, facsimile (410) 436-4445 or by email at [joyce.kuykendall@sbccom.apgea.army.mil](mailto:joyce.kuykendall@sbccom.apgea.army.mil).

Sincerely,

A handwritten signature in cursive script, appearing to read "John Ferriter".

Dr. John Ferriter  
Director, Stockpile, Industrial,  
Remediation and Restoration

April 8, 2003

Dr. John M. Ferriter, Director  
Operations, Remediation and Restoration  
U.S. Army Soldier and Biological Chemical Command  
AMSSB-RCB-RS  
5183 Black Hawk Road  
Aberdeen Proving Ground, MD 21010-5423

SUBJECT: STATUS OF JEFFERSON PROVING GROUND DECOMMISSIONING

Dear Dr. Ferriter:

In a letter dated February 4, 2003, the U.S. Army made a contingent request for an alternate schedule for submittal of a Decommissioning Plan (DP) for the termination of the Jefferson Proving Ground (JPG) license SUB-1435. The letter states that the unexploded ordnance (UXO) on site is a safety hazard. Therefore, the Army would not be able to provide site-specific data if required by the Nuclear Regulatory Commission (NRC) during the technical review of the current DP. The Army proposes a license amendment for SUB-1435 that would create a 5-year renewable possession-only license for an indefinite time period. If NRC were to grant the license amendment, the Army would then formally withdraw its DP since it no longer would be performing decommissioning.

From the initial limited technical review of the DP, the staff has determined that the off-site transport models will need to be validated before NRC could consider approval to terminate the Army's license and cease environmental monitoring. The Army has stated that many of the parameters used for modeling were determined from literature values of these parameters, not from actual field measurements. To validate the off-site transport models, site-specific data are needed. However, the Army notes that the collection of this data could result in an imminent personnel safety hazard because of the presence of UXO. The inability to validate the models severely limits the staff's options regarding approval of the DP.

The staff has considered the proposal in the February 4, 2003, letter. The staff has concluded that under the unique circumstances of this case, where the collection of data to complete the DP in itself could create personnel safety hazards, and the licensee—a federal agency—is a stable and durable entity that can provide access controls and monitoring in accordance with NRC's requirements, extending the requirement to submit a DP until the necessary data can be safely collected and models validated could be approved under 10 CFR 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. With a possession-only license, the Army will continue to conduct environmental monitoring as part of its radiation protection program. The collection of environmental monitoring data will ensure that no depleted uranium (DU) is migrating off-site.

Accordingly, NRC will consider amending the existing license for JPG to continue as a possession-only license and delaying further development of the DP until validated models can be established, provided the following are addressed as license conditions for a possession-only license: 1) criteria for levels of DU in the environmental media sampled under the radiation protection program, and a monitoring program with an action plan if the levels were exceeded; 2)



a 5-year renewal requirement; and 3) continued access restrictions to the DU impact area. The proposed license amendment should give details about sampling frequency, type, and location of monitoring wells.

Under this approach, decommissioning will not be pursued until site-specific data needed for input into the off-site transport models can be collected without undue risk to the health and safety of the public, including the Army's employees and contractors. Advances in UXO cleanup technology might allow for decommissioning in the future, although the time frame is uncertain. Nevertheless, it is recognized that it is not clear at this time when the data can be safely collected. Given the 5-year renewal period, the staff will be in a position to periodically revisit the need to continue the delay in completing the DP. Additionally, NRC inspections will continue to be conducted by the region.

We would like to hold a meeting at NRC headquarters which would be open to observation by interested individuals to further discuss the specific details of a license amendment. Please contact Tom McLaughlin, of my staff, at (301) 415-5869 to arrange the meeting. Following this meeting and submission of a formal amendment request, NRC intends to hold public meetings in the counties near the JPG site before acting on the amendment.

Sincerely,

**/RA/**

Daniel M. Gillen, Chief  
Decommissioning Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards

Docket No.: 040-08838  
License No.: SUB-1435

cc: JPG Distribution List