

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 7853

ATOMIC SAFETY AND LICENSING BOARD PANEL

DOCKETED 06/01/04

SERVED 06/01/04

Before Administrative Judges:

Alan S. Rosenthal, Presiding Officer
Dr. Paul B. Abramson, Special Assistant

In the Matter of

U.S. ARMY

(Jefferson Proving Ground Site)

Docket No. 40-8838-MLA-2

ASLBP No. 04-819-04-MLA

June 1, 2004

MEMORANDUM AND ORDER

(Calling upon the NRC Staff to Furnish Status Report)

The Department of the Army (Licensee) possesses NRC materials license SUB-1435. Over the course of a number of years concluding in the early 1990s, under the aegis of that license it conducted activities on its Jefferson Proving Ground (JPG) site that resulted in the accumulation on that site of a substantial quantity of depleted uranium (DU) munitions.

Well over four years ago, the Licensee sought a license amendment that called for the decommissioning of the JPG site in accordance with a plan that had been submitted to the NRC Staff. For reasons of no present moment, without any adjudicatory consideration of it that plan was substantially revised and then shelved last year. In its place, through the filing of a new license amendment application, the Licensee has proposed the grant to it of a five-year, possession-only license (POLA) that would be renewable until such time as it once again deemed itself in a position to put forth a decommissioning plan.

LBP-04-01, 59 NRC 27 (2004), granted the hearing request of Petitioner Save the Valley, Inc. addressed to this new POLA proposal. Also granted in that order was the Petitioner's unopposed request that further proceedings in this matter be held in abeyance to

await the completion of the Staff's technical review of the proposal. Upon such completion, the order stipulated, the Staff was promptly to provide notification to that effect.

It is now close to five months since the issuance of LBP-04-01 on January 7 of this year. Given that the required notification has not been forthcoming, presumably the Staff technical review is still in progress. In the circumstances, the Staff is now being called upon to provide a report setting forth with particularity the present status of the technical review and furnishing the Staff's best current estimate as to when the review will be completed.

In seeking this information, it is recognized, of course, that we lack the authority either to oversee the progress of the technical review or to direct its completion by a date certain. Nonetheless, it does not seem inappropriate to be concerned regarding whether the Staff is currently attaching as much priority to the conduct and completion of the review as its resources will permit. It is now more than a decade since the DU munitions activity on the JPG site came to an end and, as above noted, several years have elapsed since the first proposal for dealing with the amassed munitions surfaced.¹ That being so, it seems beyond dispute that the individuals residing in the vicinity of the site, many of whom are represented by this Petitioner, are entitled to a reasonably expeditious determination by the Staff reviewers respecting the acceptability of the substitute proposal currently before them.²

¹ Moreover, according to the Federal Register notice providing an opportunity for a hearing on the POLA proposal, on October 21, 2003 the NRC Staff determined that the Licensee had submitted sufficient information to enable the commencement of a technical review. See 68 Fed. Reg. 61,471 (October 28, 2003). Thus, it is now more than seven months since the technical review might have been initiated.

² The Petitioner also had filed a successful hearing request with regard to the now-discarded decommissioning plan. Its members thus have been waiting for a very substantial period of time for so much as a temporary resolution of the DU munitions problem that is now under consideration. To be sure, the major responsibility for this state of affairs is properly left at the Licensee's doorstep. That fact does not, however, lessen Petitioner's right to expect to a seasonable completion of the technical review of the latest proposal.

The Staff status report referred to above shall be filed and served within ten days of the date of this order. If so inclined, any other party to the proceeding may file and serve comments on the report within ten days of its receipt of the report by electronic transmission.

It is so ORDERED.

BY THE PRESIDING OFFICER³

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 1, 2004

³ Copies of this memorandum and order were sent this date by Internet electronic mail transmission to the counsel for the parties.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
U.S. ARMY) Docket No. 40-8838-MLA-2
Jefferson Proving Ground Site)
Madison, Indiana)
)
(Materials License Agreement))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (CALLING UPON THE NRC STAFF TO FURNISH STATUS REPORT) have been served upon the following persons by U.S. mail, first class, or through internal NRC distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 1st day of June 2004