

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 10091
COMMISSIONERS:

DOCKETED 06/20/05

SERVED 06/20/05

Nils Diaz, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield
Gregory B. Jaczko
Peter B. Lyons

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

Docket No. 40-8838-MLA-2

CLI-05-13

MEMORANDUM AND ORDER

In a March 31, 2005 Memorandum,¹ the Presiding Officer brought to the Commission's attention the circumstances that have seemingly brought the above-captioned proceeding to a halt, and suggested that the Commission might like to take steps within its powers to bring about some resolution. For the following reasons, we order the staff and Licensee to report directly to the Commission on what steps are being taken to resolve this matter.

Between 1984 and 1994, the U.S. Army tested depleted uranium (DU) tank penetration rounds at Jefferson Proving Grounds using an NRC materials license. The army concluded testing more than ten years ago, but a substantial quantity of DU has been left on the site. After deciding that decommissioning the site would be hazardous due to the presence of unexploded ordnance, the army sought a possession-only license.

Petitioner Save the Valley, Inc., raised environmental and safety concerns over the

¹U.S. Army (Jefferson Proving Ground Site), LBP-05-9, 61 NRC __ (2005).

effects of leaving DU munitions onsite that the Board found to be germane.² After granting petitioner's request for a hearing, the Board held the proceedings in abeyance until the staff could complete its technical review and issue an environmental assessment and Safety Evaluation Report on the possession-only license.

The NRC staff reported back to the Board that it could not complete its technical and environmental reviews until it received additional information from the Army. In March, the staff informed the Board that it was still not certain when the Licensee will furnish the necessary information.

The Board brought this matter to our attention because the petitioner has waited over five years for a hearing on its environmental and safety concerns. This situation hinders public participation, leaves public safety issues unresolved, and thwarts this agency's goal of expeditious adjudication.

We, therefore, order the licensee to provide a report to the Commission by July 11, 2005, detailing its past and planned efforts to gather the information necessary for the staff to complete its technical and environmental reviews. Additionally, by July 20, the staff is ordered to provide a report to the Commission regarding the steps it plans to take to complete its reviews in light of the information provided by the licensee. We understand that on May 25, 2005, the applicant submitted to the staff in a publicly available submittal several hundred pages of new information related to this license.³ The staff regards the new information as a new license amendment request superseding the earlier application for a possession-only license. The staff should include a discussion of whether the applicant's recently submitted information will allow it to proceed with its evaluations related to this new license amendment

²LBP-04-1, 59 NRC 27 (2004).

³See ADAMS document Accession Number ML051520319.

application. Also in their filings, the licensee and the staff should describe the practical impacts on their respective activities in the event the staff approves or disapproves of the pending application. Petitioner is also invited to provide its views on all of these matters by July 30, 2005.

IT IS SO ORDERED.

For the Commission⁴

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 20th day of June, 2005

⁴ Commissioners McGaffigan and Lyons were not present for affirmation of this Memorandum and Order. Had they been present, they would have affirmed their prior votes.

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 COMMISSION MEMORANDUM AND ORDER (CLI-05-13) have been served upon the following persons by electronic mail this date, followed by deposit of paper copies in the U.S. mail, first class, and NRC internal mail on June 21, 2005.

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COMMISSION MEMORANDUM AND ORDER
(CLI-05-13)

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 20th day of June 2005