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NUCLEAR REGULATORY COMMISSION

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In the Matter of)
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U. S. ARMY)
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(Jefferson Proving Ground Site))
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Docket No. 40-8838-MLA-2

DEPARTMENT OF ARMY RESPONSE TO
ORDER DATED JUNE 20, 2005

The Commission issued an Order dated June 20, 2005, requesting that the Department of Army (Licensee) file a report detailing its past and planned efforts to gather the information necessary for the Nuclear Regulatory Commission (NRC or Commission) Staff to complete its technical and environmental reviews pertaining to the license application now under review.

BACKGROUND

On December 16, 1999, the Commission published a Federal Register notice providing an opportunity to seek a hearing on the application of the Licensee for an amendment to its outstanding materials license (SUB-1435). 64 Fed.Reg. 70,294. Under that license, the Licensee had engaged in artillery-

testing related activities between 1984 and 1994 on its Jefferson Proving Ground (JPG) site in southeast Indiana that had resulted in the accumulation on the site of a substantial quantity of depleted uranium (DU) munitions. The amendment sought by the Licensee called for the decommissioning of the site in accordance with a plan that had been submitted to the NRC Staff.

In response to the Federal Register notice, Save The Valley, Inc. (Petitioner or STV) filed a hearing request. The hearing request was granted in LBP-00-9, 51NRC 159 (2000). Upon motion of the Petitioner, and with the concurrence of Licensee, further proceedings were held in abeyance pending the outcome of further discussions between Licensee and the NRC Staff. Licensee did, however, submit quarterly status reports as per the order suspending the proceedings.

The 1999 site decommissioning plan submitted by Licensee had obtained NRC Staff acceptance on the administrative review that precedes the commencement of a full technical review. However, as a result of ongoing discussions with and submissions of information to NRC Staff, the Licensee indicated to the Presiding Officer in 2000 that material revisions to the decommissioning plan were a "distinct possibility".

Since the initiation of decommissioning efforts at JPG, it has been generally recognized by the Licensee and the NRC Staff that JPG is one of several license sites that could not meet the criteria for unrestricted release in their current status but possibly could in the future. Generally, these involved sites that had isotopes that could be addressed by "decay in place" or other options for meeting the release criteria.

Discussions were held by the Licensee with the NRC Staff in January, 2001, concerning the NRC's request for an environmental report (ER) in accordance with 10 CFR Part 51. The overall function of the ER was to update

and complete information to the NRC so that the NRC could prepare an Environmental Impact Statement (EIS) for the proposed JPG decommissioning. Licensee advised that it was working on a contract to support the preparation of this ER and that the estimated time frame for receipt of a draft ER to Licensee was approximately five months after the contract award. Delivery of a draft ER to Licensee was originally estimated for September 3, 2001, with submission to the NRC estimated for approximately October 31, 2001.

The original decommissioning plan was followed by extensive discussion with the NRC staff and as a result, the Licensee deemed that a new updated submittal was required. As noted above, the Licensee did, on June 27, 2001, submit to the NRC Staff a new decommissioning plan denominated its "final decommissioning/license termination plan" (LTP) that contained material revisions to the previously submitted request. As part of their review of this plan, the NRC Staff found that the LTP contained several deficiencies that would require correction before the LTP could be accepted on review. The Staff did note, however, that it considered the LTP to supersede the previously submitted plan and that the Staff would no longer consider that original plan any further.

The noted deficiencies, and subsequent requests for more complete data and refinement of modeling parameters, are related to the recognized problems of JPG in meeting current criteria for unrestricted release. Current monitoring models are those usually used in conjunction with applications for unrestricted release of a site. The models were not really intended for the "restricted release" situation. The Licensee and the NRC Staff at the time of submission of the above LTP and at present are looking to the eventual restricted release of JPG. Such restricted release includes continuing government ownership and access control of the site. In addition, site specific data heretofore collected by the Licensee was consistent with the sampling/monitoring parameters for use during license operation. Licensee and the NRC Staff now recognize that operational sampling/monitoring parameters currently being employed at JPG do not and will

not sufficiently support the dose modeling and criteria used for site release under the guidance for decommissioning/license termination efforts.

In light of the submission of the new LTP, the estimated time for submission by the Licensee of the ER to support the LTP was revised to approximately March 31, 2002. The estimated time frame for submission of Licensee's response to the NRC comments to the June 27, 2001 amendment, was also revised to March 31, 2002.

Teleconferences were held between the Licensee and the NRC Staff in January, February, March, April, May and June of 2002 to discuss responses to the NRC comments to the LTP submitted in June 2001 and to discuss the contents of the environmental report (ER). As a result of the NRC comments, the estimated time for these submissions to the NRC was revised again to June 30, 2002.

Licensee submitted its ER and a revised LTP to NRC on June 27, 2002. A telephonic request by the NRC Staff for information to support the administrative review of the revised LTP and the ER was received by Licensee on September 9, 2002.

On October 1, 2002, the NRC Staff completed acceptance review of the revised LTP and the ER submitted by the Licensee in June 2002 and accepted the revised LTP and ER for technical review as documented in a letter to the Licensee on October 1, 2002. On October 17, 2002, Counsel for NRC Staff filed a memorandum indicating that the detailed technical review of the revised LTP and the ER was projected for completion by NRC Staff in October of 2004.

On October 24, 2002, Presiding Officer Rosenthal issued an order indicating his present inclination to proceed with the STV hearing. On December 16, 2002 Petitioner STV filed another motion to defer the hearing pending

completion of the technical review of the LTP. By unopposed order entered December 18, 2002, Licensee was given until January 17, 2003 to respond to STV's filings. Proceedings herein were suspended by order of February 6, 2003 pending completion of the technical review.

In the course of its review of the LTP and the revised DP, the NRC Staff voiced concerns in the areas of site-specific sampling and modeling. Both the Licensee and the Staff recognized that the presence of unexploded ordnance (UXO) on-site represented a serious potential personnel safety hazard in conjunction with any further on-site data gathering.

Additional teleconferences were held between the Licensee and the NRC Staff in November and December 2002 and January 2003 to discuss potential courses of action and options because of the presence of UXO. On February 4, 2003 Licensee sent the NRC Staff a letter containing a contingent request for an alternative schedule for submittal of the decommissioning plan under the LTP. Although formal application had not yet been made, discussions were underway between Licensee and the NRC Staff pertaining to the alternative approach of a possession-only, five year renewable license for JPG. An order was entered March 19, 2003 requesting the Licensee to provide detailed information regarding the status of negotiations which the Presiding Officer had assumed had already been initiated in response to Licensee's letter of February 4, 2003. Licensee's Quarterly Report of March 27, 2003 informed the Presiding Officer that no negotiations had as yet been initiated. Licensee had received no written acknowledgement by the NRC of its contingent request and had been informed that the contingent request was awaiting consideration by NRC Commissioners. The Licensee further stated its view that if the NRC granted the request for an alternative schedule and, therefore, issued a five year renewable license, it would withdraw its then current decommissioning plan/environmental report and the instant proceeding would be rendered moot.

CURRENT STATUS

The Licensee's proposal for the possession-only license grew out of the NRC Staff's identification of the same as a potential option for JPG. A general proposal for use of the 5 year renewable license option had been presented by the NRC Staff to the NRC Commission for its review and approval. This proposal had identified several licensed sites, including JPG that could not currently meet the criteria for unrestricted release in their current status but possibly could in the future. NRC Policy Issue, May 2, 2003, SECY-03-0069.

In further discussions with the NRC Staff, the renewable, possession only license appeared to be particularly suited to the JPG situation, as JPG meets the intent and criteria set forth by the NRC.

This type of license would act as an institutional control to maintain the restrictions necessary to meet the License Termination Rules (LTR) criteria. All the requirements of 10 CFR 20.1403, other than institutional controls, would be required for a possession-only license, including the public participation provisions and financial assurance.

Such an amended license could contain conditions for land use restrictions, monitoring, maintenance, reporting, and financial assurance that would be specified in the possession-only license. A Long-Term Care Plan implemented under the possession-only license could provide the detailed plans for restrictions, monitoring, reporting, and maintenance.

Concerns could be raised about lack of finality and departure from the LTR goal of license termination and no further NRC role. It was envisioned that at the end of the period of restricted site use, the possession-only license could be terminated. However, in some cases, the license would likely be permanent, but periodically renewable (e.g., every five years). This option could be used for any

restricted release site that is unable to establish acceptable institutional controls using other available options.

Environmental reviews would need to be done for the license amendment establishing the possession-only license. An opportunity for a hearing would be provided as part of the amendment process.

As a result of continuing discussions and negotiations, Licensee submitted a proposal on September 17, 2003 for issuance of a five-year possession-only license for JPG which would be renewable until such time as it became possible to perform the required site characterization safely.

On October 30, 2003, Presiding Officer Alan S. Rosenthal entered an order directing the parties to address the issue of mootness of the pending proceeding. Subsequently, that proceeding was dismissed without prejudice by order of December 10, 2003.

Following further discussions centering on the potential personnel hazard described by the Licensee, the NRC Staff transmitted its Request for Additional Information (RAI) on the pending license amendment to the Licensee by letter dated May 20, 2004. The information sought pertained to the need for additional information to support NRC's evaluation of the proposed changes to the environmental radiation monitoring program plan for JPG. The Staff requested that the Licensee respond by August 30, 2004.

At the time, this August 30, 2004 response date was recognized as an estimate of what should have been sufficient. Subsequently, a public meeting was held at NRC Headquarters on July 28, 2004 to assist the Licensee in providing its response to the RAI. In the course of the meeting the Licensee requested a clarification of the Staff's request for additional data on the solubility of DU. The Staff committed to provide an answer within forty-five days. The

Staff and the Licensee then agreed that the Licensee would provide responses to the RAIs by November 1, 2004.

On November 1, 2004, Licensee forwarded to the NRC Staff its final responses to the RAIs.

In the meanwhile, on October 5, 2004 the NRC Staff requested Licensee to provide specific details about the parameters needed for off-site transport modeling that could not then be collected due to the presence of UXO. Licensee was asked to respond within 45 days. The Licensee responded, by letter dated November 8, 2004, stating that the Licensee was reviewing the data requirements in light of changes necessary for its environmental monitoring program to address the possession only license request. It was anticipated that this review would include details concerning the off-site transport modeling requirements. The Licensee requested an extension of time to respond from November 15, 2004 to February 1, 2005 so as to complete its evaluation and include any further information in its response. The NRC Staff allowed the extension request by letter dated December 1, 2004.

Subsequently the Licensee responded to the NRC's outstanding requests for further information in its letter of January 31, 2005. The letter addressed the necessary off-site transport modeling parameters, as well as the Licensee's plans to fill data gaps on the DU Impact Area. In response to the Presiding Officer's March 3, 2005 Order, the NRC Staff filed a Response on March 18, 2005 stating their position that the information contained in Licensee's responses of November 1, 2004 and January 31, 2005 was not sufficient to allow the Staff to proceed with the preparation of an EA or SER. The Staff Response further stated that the Licensee had agreed to provide a letter clarifying its planned path forward with regard to the pending license amendment request.

In a letter to the Licensee dated March 22, 2005, the NRC Staff notified the Licensee that it had "(1) failed to provide any details of the sensitivity analysis used to establish the parameters needed for offsite transport models or that a one time sampling/data collection event will be sufficient to collect these parameters, and (2) failed to provide the Army's plan to fill data gaps acknowledged in its response to NRC's Request for additional information on the ERM program."

By its letter of March 25, 2005, the Licensee stated:

"...it is the intent of the Department of the Army to continue with its request for approval of an alternate schedule for submittal of a decommissioning plan pursuant to 10 CFR section 40.42(g)(2). As outlined in our letter of 4 February 2003, we propose that a license amendment for SUB-1435 be negotiated with the Nuclear Regulatory Commission (NRC) that would create a 5-year renewable possession only license for an indefinite time period. Contingent upon successful negotiation ... 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 1 October 2002.

This proposed amendment would allow sufficient time to identify the locations for placing of additional groundwater monitoring wells, which will correct Environmental Remediation Monitoring (ERM) deficiencies and allow for the collection of more site specific data to augment or replace the theoretical model data used in the Request for Termination. There does remain risk to human safety in placing wells and gathering additional site specific data in areas with unexploded ordnance (UXO). However, based upon further Army review (including the efforts recently conducted by the Army Environmental Center at JPG) and the use of explosive ordnance disposal personnel to identify areas acceptable for soil intrusive activities, the Army believes the risk can be reduced to a point where wells can be placed and other site specific data can be obtained

in certain areas within the zone of UXO. If approved by the NRC, and contingent upon funding, the Army plan is to begin implementing these additional actions in fiscal 2006, with an estimated 5 to 7 years being required to complete the additional actions. The details of that plan are being prepared by the Army and will be submitted to the NRC in accordance with the request from the NRC dated March 22, 2005. Subsequent to the completion of the gathering of additional site specific information the Army would then provide the NRC with a revised decommissioning plan and/or environmental report..."

In a further clarifying letter of May 25, 2005, Licensee stated that it was abandoning its plan for contingency five-year renewal periods. Instead, it was seeking NRC approval of an alternate schedule for submittal of a decommissioning plan pursuant to 10 CFR section 40.42 (g) (2) and one 5 year period for the execution of appropriate site characterization, with the Licensee presenting the NRC a definitive license termination plan at the end of that period. As stated in the Licensee's May 25 letter: "There is still risk to human health and safety in placing the wells and engaging in the gathering of site specific data in the areas with unexploded ordinance. However, monitoring and information gathering processes employed to date have left gaps in the information gathered, and the Army will have to now assume those risks in order to fill in the gaps in information to ensure that its future decommissioning plan provides the maximum safety to the local populace."

A Field Sampling Plan accompanied this May 25 letter and detailed the Licensee's sampling plans.

Since the time that Licensee first submitted its proposal for issuance of the possession-only license, the exact nature and extent of the requirements to be imposed on the license holder as conditions of the possession-only license have been changing and evolving. As a result, Licensee and the NRC Staff have been engaged for the last year and a half in discussions concerning the prerequisite and

continuing requirements incident to approval of the possession-only license. As discussions have progressed, for instance, the Licensee has come to believe that it is no longer necessary for Licensee to seek an indefinitely renewable possession-only license. Accordingly, its May 25, 2005, letter to the NRC staff seeks to amend its application by withdrawing the provision for a renewable license.

The NRC Staff responded on June 16, 2005 that they were treating the application for an amendment of license SUB-1435, dated May 25, 2005, as superceding the September 2003 license amendment and were discontinuing their review of that 2003 request. The Staff announced that it had completed its administrative review of the 2005 amendment and were accepting the application for a more complete technical review. The NRC Staff so notified the Presiding Officer and prepared a Federal Register notice.

Licensee has been notified that funding for the first two years of its five year plan has been approved. Funding for the FY 06 efforts is currently being reprogrammed and expected to be obligated by August 2005. Funding for FY 07 has been approved and scheduled (subject to the availability of funding) for obligation in 3-4 quarter of FY 06. Licensee expects that Congress will likewise fund the final three years.

CONCLUSION

This has been a prolonged proceeding. There have been numerous requests by the NRC for information, and then more detailed information, from the Licensee. Licensee has responded to each such request in as expeditious and timely a manner as possible. No response to a request for additional information has been rejected. No complaints pertaining to the same have been filed. All responses have complied with the Timeliness Rule.

Licensee is actively engaged in achieving a workable termination of its current license. Previous submissions to the NRC Staff, together with ongoing monitoring, have already cost Licensee approximately \$600,000.00 (\$500,000.00 for previous submissions; \$100,000.00 for monitoring).

Prior gaps in the Licensee's information have in part been the result of its preference for avoiding exposing personnel to the hazards inherent at a site containing unexploded ordnance. These concerns have also prompted a number of amendments to Licensee's plan in order to alleviate some of these concerns.

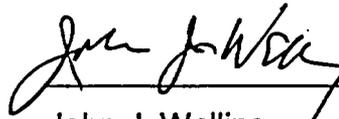
Licensee has always been and continues to be concerned about the hazards posed by the UXO. The DU area at JPG coincides with the area most heavily impacted by the UXO hazard. However, seeking approval for a restricted release license termination allows for the most manageable condition via access controls and continued Army land ownership following license termination.

There is no indication of migration based on licensee's sampling from the wells currently in place. Such sampling is done every six months. Based on this and other information available, it is not believed that the public has been or will be exposed to an undue risk from radiation to public health and safety either as a result of the lengthy prior proceedings or as a result of the additional extended time proposed.

Assuming NRC staff approval of the May 25, 2005 Licensee submittal/plan/request, the Army would (subject to the availability of funds) continue with the collection of the additional site specific data and correction of the ERM deficiencies that would result in the submittal of a revised restricted release license termination plan and/or environmental report at the conclusion of the 5 year effort.

Should NRC staff disapprove the May 25, 2005 Army submittal/plan/request, the Army would enter into discussions with NRC staff as to the most appropriate path forward in accordance with existing regulations.

Dated this Thursday, July 7, 2005.



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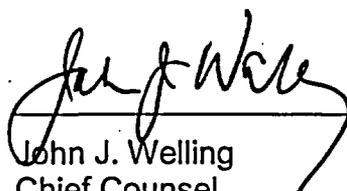
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