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NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

Docket No. 40-8838-MLA

U.S.ARMY

SUB-1435

(Jefferson Proving Ground Site)

July 29, 2005

RESPONSE BY SAVE THE VALLEY, INC.
TO COMMISSION'S MEMORANDUM AND ORDER OF JUNE 20, 2005

In a March 31, 2005 Memorandum,¹ the Presiding Officer brought to the Commission's attention the circumstances that have seemingly ground 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. The Presiding Officer brought this matter to the Commission's attention because Petitioner Save the Valley, Inc. ("STV") has waited over five years for a hearing on its environmental and safety concerns regarding the U.S. Army's Depleted Uranium (DU) Test Site at the Jefferson Proving Grounds (JPG) near Madison, Indiana.

Because the Commission believes that the situation hinders public participation, leaves public safety issues unresolved, and thwarts its goal of expeditious adjudication, the Commission issued a Memorandum and Order on June 20, 2005, which directed the Army to detail its past and planned efforts to gather the information necessary for the Staff to complete its technical and environmental reviews. *See* CLI-05-13. Additionally, the Memorandum and Order directed the Staff to provide a

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

report to the Commission regarding the steps it plans to take to complete its reviews in light of the information provided by the Army. The Commission also invited STV to provide its views on the various aspects of the situation brought to the Commission's attention by the Presiding Officer.

STV has accepted the Commission's invitation to provide its views regarding the current situation because it does not believe that the reports of the Army and the Staff either fully acknowledge or meaningfully address the underlying concerns expressed by the Presiding Officer in his March 31, 2005 Memorandum. In particular, STV does not believe that the reports of either the Army or the Staff fully acknowledge or meaningfully address the Army's abject and willful failure to meet its obligations as a Commission licensee to propose, obtain approval for, and then implement *on a timely basis* the steps necessary to decommission and decontaminate the JPG DU site in accordance with applicable federal law and Commission regulations. Moreover, it appears to STV that the NRC Staff has been unable – at least to date – to correct this problem. Indeed, it seems to STV that the Staff has largely played Elmer Fudd to the Army's Bugs Bunny, busily shoveling dirt into the rascally rabbit's last escape hole while its wily rival is already emerging from another one either newly dug or recently reopened. But, STV is not laughing, because it views the resulting situation as pathetic, not comedic.

The Mayor of Madison, Indiana is not laughing at the Army's antics, either. In a letter attached to these Comments, Mayor Huntington expresses not only his own sentiments but those of most of his constituents when he tells the Commission:

The Army has extensively delayed (five years) any real action . . . regarding the termination of NRC License #1435. . . . We are frustrated and angry with the cavalier attitude exhibited by the Army regarding the decommissioning of JPG and the environment of Southeastern Indiana. . . . We are hopeful that your review of this matter will determine that the Army has been neglectful and irresponsible. . . .

As a necessary prelude to detailing its views regarding the causes and cures for this unfortunate situation, STV will describe – briefly – its long-standing interest in the JPG DU site and recount – necessarily at length – the sorry saga told by the six-year record of Commission proceedings relating to the site.

I. SAVE THE VALLEY'S INTEREST IN THE JPG DU SITE.

STV was incorporated in 1974 as a nonprofit environmental organization based in the Madison, Indiana area. STV was founded with the purpose of protecting the environment of the Ohio River Valley in Southeastern Indiana and Northeastern Kentucky between Lawrenceburg, Indiana and Louisville, Kentucky. This area includes the Jefferson Proving Ground and its surroundings.

The JPG site is located in Jefferson County, Indiana, which has a population of approximately 31,705 people. Madison is the nearest population center, with a population of approximately 12,000 people, or more than one-third of the Jefferson County population. There are approximately 86,000 people living in the counties within a 15 mile radius of the DU area.

Residents of the area surrounding JPG either use public water from a municipal system, or deep wells. Prominent water pathways on-site are Big Creek, Graham Creek, Otter Creek, Harberts Creek, and several smaller creeks that are sub-basins of the Muscatatuck River, White River, and the Ohio River. The Ohio River is located eight miles south of the JPG site.

Between 1984 and 1994, the Army test fired depleted uranium (DU) projectiles which resulted in depositing approximately 220,000 pounds of DU projectiles and fragments at the JPG site. Members of STV live primarily on property or in communities near the site. Some of these members live on property that is traversed by Big Creek immediately downstream from JPG. Other STV

members hold property interests in land elsewhere which may be affected by DU migration. These STV members are concerned about the effects of DU migration on their health and property, as well as on human health and the environment in the Big Creek area generally. STV members, as well as local public officials, have expressed concern about the potential health effects to the general public of DU migration. STV, as an organization located in the general vicinity of the DU area, also has an interest in the air, land, wildlife and other natural resources that could be affected by the proposed license amendment. Because of the concerns of its members and its interests as an organization, STV has been represented on the JPG Restoration Advisory Board since its inception.

II. PROCEDURAL HISTORY OF COMMISSION REVIEW

In December, 1999, the Commission published a notice of opportunity for hearing in connection with the Army's application for an amendment to its materials license (SUB-1435) that would authorize the decommissioning of its JPG site. *See* 64 Fed. Reg. 70,294 (December 16, 1999). Under that license, the Army had engaged in activities on the site between 1984 and 1994 that had resulted in approximately 220,000 pounds of DU projectiles and fragments being deposited at the JPG site. In its application for amendment to its license, the Army sought authorization for the termination of its license and restricted release of the site. Before the amendment sought by the Army could be approved, however, the Commission would have to make the findings required by statute and regulation, to be documented in a Safety Evaluation Report and an Environmental Assessment.

In response to the December 1999 notice of hearing, STV filed a timely hearing request, citing multiple concerns, primarily with inadequate site characterization, monitoring, and remediation. This request was granted by the Presiding Officer based on a determination that STV had established, as

required by 10 C.F.R. § 2.1205(h), both its standing and the existence of at least one area of concern that was germane to the subject matter of the proceeding. See LBP-00-9, 51 NRC 159 (2000). That decision also noted that the Army had indicated “a distinct possibility that the current decommissioning plan will undergo revision in material respects” and had explicitly requested “that further proceedings be held in abeyance pending the outcome of its anticipated further interaction with the NRC Staff with regard to [that] plan.” Id., at 3. Nothing transpired on the adjudicatory front for some time after the decision granting the hearing request, apart from the submission by the Army of quarterly status reports. During that time, the Army also provided its decommissioning plan to STV for its consideration and received comments back from STV. Id.

In June, 2001, the Army furnished the NRC with an entirely new plan, which it characterized as its “final decommissioning/license termination plan.” Id. The new License Termination Plan (“LTP”) received a very cool reception from the NRC staff. Although the 1999 site decommissioning plan had obtained the staff acceptance on administrative review that generally precedes the commencement of a technical review, such acceptance of the 2001 LTP was withheld due to a number of deficiencies which the NRC Staff indicated required correction before it could initiate a technical review. Id., at 3-4. The NRC Staff also expressed a desire to discuss the deficiencies with the Army in order both to ensure that the licensee understood the Staff’s concerns and to develop a schedule for resubmission of the LTP. The Staff subsequently provided formal notification that it considered the 2001 LTP to supersede the 1999 Site Decommissioning Plan, with the consequence that the latter would receive no further review. Id., at 4.

After obtaining assurances that the 2001 LTP would go through the process of public comment

solicitation and an opportunity to request a hearing, STV moved that its request for hearing be held in abeyance to conform to a new timeline for review by the NRC staff because the second LTP was very different from the first. The Presiding Officer found that although the second, revised LTP was a new plan, analytically there was no material difference between the then current situation and the more typical one where a plan is submitted which then must undergo substantial revision before a hearing can be held on the plan. See LBP-01-32, at 7 . The Presiding Officer also found that the Army had not withdrawn its application and the NRC Staff had not formally denied it but rather the two parties were working to cure the deficiencies and develop a new LTP. Id. The Presiding Officer granted STV's request that the proceedings continue to be held in abeyance pending submission of the Army's new LTP. See id., at 10.

On June 27, 2002 the Army submitted its Revised Decommissioning Plan ("DP"). In the Revised DP, the Army identified the benefits of DU remediation at JPG to include: averted population dose, avoided regulatory and institutional costs, increased land value, aesthetics, and reduced public opposition. The total discounted benefit accruing from decontamination of the DU Impact Area to terminate the license without restrictions was estimated to range from \$268,286 to \$349,429 (see Table 7-1). The Army proposed, however, to do no remediation or monitoring and continued to rely solely on institutional controls. As a result, the Revised DP did not resolve the basic concerns previously expressed by STV regarding the Army's earlier plans.

In an October 17, 2002 memorandum, the NRC Staff reported that it had accepted for technical review the Revised DP, together with the environmental report that was submitted by the Army in connection with that DP. The technical review was projected to require two full years for

completion. On November 14, 2002, the NRC published in the Federal Register notice of consideration of the Army's license amendment request and opportunity for interested parties to provide comments and request a hearing. *See* 67 Fed. Reg. 69,049.

On December 12, 2002, STV filed its comments and request for a hearing on the Revised DP. The principal concerns identified by STV were that the Revised DP did not meet certain criteria for restricted release established by 10 C.F.R. § 20.1403 and site characterization was inadequate to verify compliance with any of the requirements of 10 C.F.R. § 20.1403. Concurrently, STV moved to defer the requested hearing until completion of the NRC Staff's technical review of the Revised DP. The Army objected to STV's hearing request on the grounds that the identified concerns were not germane to approval of its Revised DP. However, if a hearing was to be held, the Army agreed it should be deferred. On February 6, 2003, the Presiding Officer granted both STV's request for a hearing and its motion to defer the hearing pending completion of the Staff's technical review. See LBP-03-02, at 5-7.

As it proceeded, the Staff's technical review raised some of the same concerns regarding the adequacy of the Army's site characterization that STV had identified. In fact, the Staff advised the Army that certain additional site-specific sampling and modeling would be required. In response, the Army expressed concern to the Staff that such site characterization activities would endanger the safety of DA and contractor personnel due to the presence of unexploded ordinance ("UXO"). As a result, on February 4, 2003, the Army submitted a contingent request for an alternate schedule for the filing of a decommissioning plan for the termination of its JPG license pursuant to 10 C.F.R. § 40.42(g)(2). The Army proposed negotiation with the Staff of a license amendment that would create a 5-year,

possession-only license renewable for an indefinite time period, i.e. "until such time as the UXO is no longer explosive or there are safe ways available to handle UXO, permitting adequate site characterization." See NRC Staff's Comments in Response to Memorandum and Order, dated March 19, 2003, at 2. The negotiations between the Army and the Staff culminated in the submission of a proposed POLA on September 22, 2003, which the Staff accepted for technical review on October 21, 2003.²

On October 28, 2003, the Commission published in the Federal Register notice of consideration of the Army's new POLA request and of the opportunity for interested persons to request a hearing. *See* 68 Fed. Reg. 61,471. In response, STV timely filed yet another hearing request on November 26, 2003, again accompanied by a motion asking that the hearing await the completion of the Staff's technical review of the new POLA proposal. Once again, STV cited as a reason for its hearing request concerns regarding inadequate site characterization. STV also raised legal concerns regarding the Army's request for an indefinite delay of decommissioning and challenged the factual basis for the Army's claims that UXO dangers warranted such delay. On January 7, 2004, the ASLBP granted both STV's request for a hearing in subocket 04-819-04 and its motion to defer that hearing pending completion of the Staff technical review. *See* LBP-04-01, at 3-5.

On June 1, 2004, the Presiding Officer issued an unpublished order in which he called upon the

²In the wake of those developments, and given that decommissioning was no longer being considered by either the Army or the Staff, the pending decommissioning proceeding instituted by STV was dismissed as moot on December 10, 2003. The dismissal was, however, expressly stated to be without prejudice to the subsequent filing by STV of a motion to revive that proceeding and its associated hearing should the decommissioning of the site once again receive active Staff consideration at the Army's behest. *See* LBP-03-28, 58 NRC 437.

NRC Staff to submit a report “setting forth with particularity the present state of the technical review and furnishing the Staff’s best current estimate as to when the review will be completed.” *See* LBP 05-09, at 4. In a June 8 response, the Staff stated that it had informed the Army in a May 20, 2004 letter that it required further information to complete its evaluation of the Environmental Radiation Monitoring (ERM) Program Plan that had been submitted in support of the Army’s most recent POLA request. The Army had been given until August 30, 2004 to supply the information and sought, assuming that it proved adequate, the Staff advised that it thought it could complete the technical review and issue an environmental assessment (EA) and safety evaluation report (SER) “between early January and early March 2005.” *Id.*

In an October 4, 2004 order (unpublished), the Presiding Officer took note of the August 30 deadline for the Army’s submission of the additional information and asked the Staff to advise whether it had been received and, if so, whether it was deemed sufficient to enable the issuance of an EA and SER no later than March, 2005. *Id.* In an October 14, 2004 response, the Staff reported that it was still in need of additional information to enable it to have “sufficient data to complete its evaluation of the ERM Program Plan and issue an EA and SER.” Staff thus no longer believed that the technical review might be completed by March, 2005. Rather, it anticipated “a delay of approximately two months in preparing its analyses commensurate with the additional time required for the Licensee to furnish the necessary information.” The Staff added that it “would be able to provide a more precise estimate for completion of its technical review following actual receipt of the requested information.” *Id.*, at 4-5.

Finally, in a March 3, 2005 order (unpublished), the Presiding Officer once again endeavored to determine where matters stood. In its March 18 response to that order, the Staff advised that the

information the Army had supplied in November, 2004 and January, 2005 was “not sufficient to allow the Staff to proceed with preparation of an EA or SER.” Id., at 5. The Staff went on to note that, based upon a January 31, 2005 letter that it had received from the Army, it was not clear “how the Licensee intends to proceed.” At the Staff’s request, however, the Army “agreed to provide a letter clarifying its planned path forward with regard to the pending license amendment request.” Pending that clarification, the Staff was “not in a position to provide an estimated issuance date for the EA and SER.” Id.

Given the extended delay in the Staff’s technical review and the continued uncertainty regarding the Army’s intentions, the Presiding Officer issued a Memorandum on March 31, 2005, bringing the unsatisfactory state of, and the protracted delays in, the Army’s decommissioning activities at the JPG site to the Commission’s attention. *See* LBP 05-09, 61 NRC _____. Before the Commission acted on the Presiding Officer’s Memorandum, however, the Army submitted a letter clarifying the intent of its pending POLA request on May 25, 2005. In particular, the Army clarified that, rather than delay decommissioning at the JPG site indefinitely, it intended to submit a decommissioning plan for restricted release of the site within five years of approval of its POLA request. In view of this clarification, the Staff considered the May 25, 2005 letter to be a new POLA request superseding the Army’s September 22, 2003 POLA request and therefore directed publication of its June 27, 2005 Federal Register notice of opportunity for comment and request for hearing. *See* 70 Fed. Reg 36,964 (June 27, 2005).

In the interim, on June 20, 2005, the Commission issued a Memorandum and Order directing the Army and the Staff and inviting STV to respond to the Presiding Officer’s March 31, 2005

Memorandum. The Army submitted its response on July 8, 2005, and the Staff submitted its response on July 20, 2005. On July 19, 2005, the Army sent a letter to the Staff formally withdrawing its September 22, 2003 POLA request and confirming that its May 25, 2005 letter constituted a new POLA request. On the same date, the Army also filed a separate motion to dismiss ASLBP subocket 04-819-04. STV's responses to both the Commission's June 20, 2005 Memorandum and Order and the Army's July 19, 2005 motion to dismiss are due on or before July 29, 2005.

III. STV'S VIEWS REGARDING THE ARMY'S ABJECT AND WILLFUL FAILURE TO PERFORM ITS TIMELY DECOMMISSIONING AND DECONTAMINATION OBLIGATIONS AT THE JPG DU SITE.

From STV's perspective, the express and central purpose of 10 C.F.R. § 40.42 is timely decommissioning and decontamination of nuclear material sites – especially but not exclusively (former) SDMP sites. Here is what the NRC said in proposing the rule in 1993:

Over the past several years, the Nuclear Regulatory Commission (NRC) has identified over 40 nuclear material sites that warrant special attention by the Commission. The sites have buildings, former waste disposal areas, large piles of tailings, ground water, and soil contaminated with low levels of uranium or thorium (source material) or other radionuclides. Consequently, they present varying degrees of radiological hazard, cleanup complexity, and cost. At some sites, licensees are financially and technically capable of completing cleanup in a reasonable timeframe, whereas at other sites, the licensee or responsible party is unable or unwilling to perform cleanup. In addition, the sites are currently in various stages of decommissioning. At some sites, licensees have initiated decommissioning, whereas at other sites, decommissioning has not yet been planned or initiated.

In 1990, the NRC implemented the Site Decommissioning Management Plan (SDMP) to identify and resolve issues associated with the timely cleanup of these sites. The SDMP does not include mere routine decommissioning cases. The SDMP has been effective in ensuring coordination and resolution of some of the policy and regulatory issues affecting site decommissioning. Progress on actual site remediation, however, continues to be slow. The limited progress to date prompted the Commission to direct the NRC staff to initiate actions to accelerate the cleanup of SDMP sites. The staff

developed, and on April 3, 1992, the Commission approved, an Action Plan to describe NRC's case-by-case approach for accelerating remediation of sites listed in the SDMP.

These SDMP contaminated sites are symptomatic of the need for definitive NRC regulations which specify acceptable time periods for decommissioning nuclear material facilities when the licensed activities have ceased. If decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices at the inactive facility or the inactive portion of the operating facility may become lax as key personnel relocate and management interest wanes. In addition, bankruptcy, corporate takeover, or other unforeseen changes in the company's financial status may complicate and perhaps further delay decommissioning.

The issuance of a rule to establish timeliness criteria for decommissioning nuclear materials licensee facilities would avoid future problems resulting from delayed actions on cleanup of contaminated inactive facilities, and minimize the difficulties associated with a case-by-case approach to requiring timely decontamination and decommissioning.

See 58 Fed. Reg. at 4099-4100.

In particular, the NRC proclaimed:

The lack of definitive criteria as to when licensees shall commence and complete decommissioning their facilities has resulted in instances where the Commission has had to issue orders to establish schedules for timely decommissioning. Because timeliness in decommissioning is a generic issue, the Commission is proposing to amend its regulations to clearly delineate the licensee's responsibility for timely decommissioning. **The proposed rule would provide the needed regulatory basis for compelling decommissioning in a timely manner. In addition, the proposed rule would place a limit on the time permitted to decontaminate and decommission and place the burden of proof directly on the licensee to demonstrate that a longer period of time is required for completing decommissioning.**

See 58 Fed. Reg. at 4100 (emphasis added).

Here, as STV views it, the procedural history at the JPG DU site demonstrates a patent failure of both the Army and the Staff to "place a limit on the time permitted to decontaminate and decommission" the site. Instead, the time for the Army to submit an acceptable DP has been extended

again and again, so that the earliest such a plan may now be expected is 2010, *sixteen years* after DU munitions testing ceased at the site in 1994. As the Presiding Officer so aptly stated in his March 31, 2005 Memorandum:

As a result of its failure over an extended period – justified or unjustified – to provide the information the Staff requested, the Licensee has, in effect, possessed the very POLA that is the subject of the present proceeding. Indeed, it might be reasonably said that it has had the equivalent of such a license for the entire eleven years or so since it ceased the testing of the DU munitions. It seems highly unlikely that such was the contemplation of the Staff or the Commission at the time of the grant of the materials license under which the testing was performed – to the contrary, we think it most probable that the expectation was that, upon cessation of operations at the JPG site, a decommissioning plan would be forthcoming in relatively short order.

LBP-05-09, at 6-7. Indeed, it would appear to STV that only the Presiding Officer's timely intercession with the Commission has prevented Staff acquiescence in an Army plan to delay *indefinitely* not only site decommissioning and decontamination, but even site characterization.

In STV's view, the procedural history of the JPG DU site also shows a failure to "place the burden of proof directly on the licensee to demonstrate that a longer period of time [than the presumptive 24-months following site closure] is required for completing decommissioning." Instead, the burden has effectively been placed on STV to demonstrate that a shorter period than forever is required. This effectively turns the Timely Decommissioning Rule on its head and creates precisely the type of situation which the Rule was adopted to correct and prevent: the indefinite postponement of the decommissioning and decontamination of licensed sites. And, it does so at one of the former SDMP sites – where similar problems in the past provided the principal impetus for promulgation and adoption of the Rule.

NRC regulations also state that an alternate schedule for the filing of a decommissioning plan

may be approved only if it meets three requirements:

1. It is necessary to the effective conduct of decommissioning operations;
2. It presents no undue risk from radiation to the public health and safety; and
3. It is otherwise in the public interest.

10 CFR § 40.42(g)(2). From STV's vantage point, however, the procedural history at the JPG DU site demonstrates that the Army has been attempting to use an alternate schedule as a means to avoid the effective conduct of decommissioning operations without the effort and expense of a proper assessment of radiation risk to the public health or safety and without any meaningful differentiation between the Army's short-term institutional interest in saving money and the long-term public interest in site decommissioning and decontamination.

STV has been especially concerned by the reason which the Army put forward in its 2003 POLA request for indefinite delay in even site characterization – an alleged threat to the safety of Army personnel due to risks associated with unexploded ordinance (UXO) at the JPG DU site. Frankly, STV views the Army's representations to the Commission in support of that request to have been bogus and disingenuous. As STV showed in its Request for Hearing on that POLA request, the presence of UXO at the JPG site does not actually preclude the performance of the activities required for adequate site characterization without undue risk to the safety of the DA employees and contractors performing the activities. Indeed, the Army's own actions demonstrate this point. The Army has entered the site numerous times in the past to collect samples of DU and soil and to install monitoring wells. Moreover, in its current sampling and safety plans for additional site characterization, the Army almost completely disregards the hazards of UXO and defines no specific procedures for dealing with

the very hazard which was formerly presented as insurmountable. *See* STV Request for Hearing, filed November 26, 2003, at 10-12.

In its most recent request for a POLA authorizing a single additional five-year delay in the submission of a decommissioning and decontamination plan, the Army concedes that STV was correct: the activities necessary to acquire the data to characterize the JPG DU site adequately *can* be conducted without undue risk to its personnel. *See* May 25, 2005 Letter re Jefferson Proving Ground, Alan G. Wilson to Dr. Tom McLaughlin, with appended Field Sampling Plan (FSP) and Health and Safety Plan (HASP). In recognizing the need for and feasibility of appropriate characterization of the JPG DU site, notwithstanding the presence of UXO, the Army has taken, *potentially*, a major step forward toward the site decommissioning and decontamination required by federal law and Commission regulations. STV values and appreciates this potential – potential that it wants to see realized as promptly and fully as possible. But, STV is very much concerned that this potential will *not* be realized because the FSP, HASP, and timetable and budget submitted by the Army in support of its most recently requested POLA are inadequate and deficient in meeting the standards of 10 CFR § 40.42(g)(2). *See* Comments by Save the Valley, Inc. re Request for Alternate Decommissioning Schedule, submitted July 27, 2005.

STV recognizes and appreciates that the Army's most recent POLA request proposes to address serious deficiencies in site characterization previously identified by the NRC Staff and STV which have heretofore precluded development of an appropriate decommissioning and decontamination plan for the JPG DU site. Additionally, in SAIC the Army has hired a contractor with the experience and expertise to design and conduct the necessary site characterization activities and analyses. Finally,

in proposing a Health and Safety Plan, the Army is recognizing the reality that the necessary site characterization activities may be safely performed notwithstanding the presence of UXO at the JPG DU site.

However, STV has three general areas of significant concern regarding the Army's most recent proposals:

1. The Field Sampling Plan ("FSP") has a number of serious and glaring deficiencies which, if not corrected, will prevent the FSP from providing the data necessary for proper site characterization.

See STV's July 27, 2005 Comments, at 11-16.

2. The Health and Safety Plan ("HASP") has a number of serious and glaring deficiencies which, if not corrected, will impede the Army in conducting the field sampling activities necessary for proper site characterization. *See* STV's July 27, 2005 Comments, at 16-18.

3. The timetable and budget for implementing the FSP and HSP and then finally preparing and submitting a decommissioning plan for JPG are too vague and indefinite to truly represent an alternate schedule for decommissioning as contemplated by 10 CFR 40.42(g)(2). *See* STV's July 27, 2005 Comments, at 18-20.

These concerns lead STV to question the seriousness and sincerity of the Army's intentions with respect to effective performance and timely implementation of its most recent POLA proposal because the FSP and HASP, taken together as submitted, do *not* constitute a credible plan for JPG DU site characterization. As a result, the current five-year POLA request appears to STV to be no more than the first installment on the indefinite POLA with five year renewals proposed in 2003 but supposedly withdrawn by the Army recently. Indeed, in its own July 8, 2005 report to the

Commission, the Army states very tellingly albeit equally inaccurately:

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 the 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.

Army Report, at 2. Plainly, the Army now believes – and says that both it and the Staff have long believed – that enough is already known about the JPG DU site to be sure that the best approach to decommissioning and decontamination is simply to wait, effectively in perpetuity, for the DU to “decay in place.” In this long-held and self-confessed belief by the Army, STV sees the real reason for the repeated bureaucratic paper shuffles and delays which have occurred in lieu of timely site characterization, decommissioning, and decontamination activities over the past decade.

The “decay in place” hypothesis explains not only the studied indefiniteness of the Army’s alternate schedule for decommissioning and decontamination at JPG, but also the intentional vagueness of its funding. All the Army says in its May 25 letter to the NRC Staff is, “All actions under the plan are subject to funding of course.” There is no specific budget for the overall plan, its principal components, or the individual years in the five-year implementation period. There is no formally expressed or executed statement of intention on the part of an Army official with the authority to approve or even to request the necessary funds. In effect, little or nothing will be done at JPG because little or nothing will be spent at JPG.

This result effectively turns the relationship between the NRC as regulator and the Army as licensee on its head, making the Army the ultimate authority by virtue of its budgeting decisions and funding requests as to whether and when the JPG site is characterized, decommissioned and

decontaminated in accordance with NRC regulations. As STV views it, this inverted relationship promises nothing other than continuation of the pattern of repeated delays and changes in Army plans which has characterized the past ten years and caused the Presiding Officer to perceive that an unacceptable situation had developed with respect to JPG decommissioning and decontamination which required Commission attention and consideration.

IV. REQUESTED RESOLUTION OF CURRENT UNACCEPTABLE SITUATION.

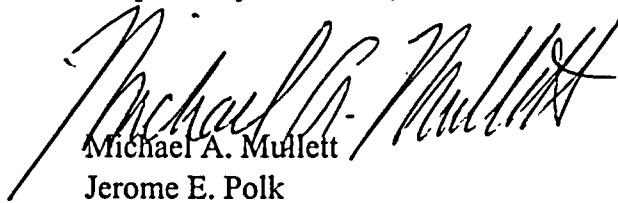
STV requests that the Commission take heed of the Presiding Officer's Memorandum and give credence to STV's Comments and direct the Army, with guidance as needed from the Staff, to modify appropriately and resubmit promptly the proposed FSP, HASP, and alternate decommissioning schedule and budget commitments. The Commission should then set a definite and reasonable schedule for the Staff to complete the required technical review and the ASLBP to conduct the previously authorized hearing to test the adequacy of the Army's site characterization plan. The Commission should further direct the Army to submit a complete and compliant plan for site decommissioning and decontamination within twelve (12) months of completion of its approved site characterization plan. Finally, the Commission should set a definite a reasonable schedule for the Staff to complete the required technical review and the ASLBP to conduct the previously authorized hearing to test the adequacy of the Army's decommissioning and decontamination plan.

Any changes in the resulting timetable established by the Commission should be conditioned on good cause shown and subject to express, prior Commission approval. Failure of the Army to meet Commission-established deadlines or present Commission-mandated plans which comply with Commission-established requirements should result in referrals for Commission enforcement, written

chain of command notifications, and requests for inclusion of such referrals and notifications in the permanent personnel files of the two most senior Army officers responsible for the non-compliant plan development and/or implementation.

As has long been recognized and often been said by those in the Army's enlisted ranks, "There is the right way – and then there is the Army way." In STV's view, the key to resolving the current unacceptable situation with respect to the Army's site characterization, decommissioning, and decontamination activities at the JPG DU site is for the Commission to change "the Army way" to "the right way" by employing effectively those time-honored leadership techniques in which every military organization has been schooled and drilled: command and control.

Respectfully submitted,



Michael A. Mullett

Jerome E. Polk

Mullett, Polk & Associates, LLC

309 West Washington Street, Suite 233

Indianapolis, IN 46204

Phone: (317) 636-5165

Fax: (317) 636-5435

E-mail: jpolk@mullettlaw.com

mmullett@mullettlaw.com

Attorneys for Save the Valley, Inc.

Attachment (1)

Albert G. Huntington
MAYOR



101 W. MAIN STREET
MADISON, INDIANA 47250-3775
(812) 265-8300
FAX (812) 265-3349
Email: cityhall@seidata.com

City of Madison
OFFICE OF THE MAYOR

July 22, 2005

U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: NRC License #1435/JPG

Dear Sirs:

It is with great concern for the environmental health and safety of the residents of our region that I express my extreme displeasure and impatience regarding the fate of the depleted uranium at the Jefferson Proving Ground (JPG.) The Army has extensively delayed (five years) any real action associated with this request for a hearing regarding the termination of NRC License #1435. It appears to us that the Army has essentially ignored the order of the NRC to comply with a request to supply additional information, offering instead insufficient data which further delays any realistic determination of the risks threatened to the citizens in Madison, Indiana and others in the Wabash Valley watershed.

Public participation in this discussion has been severely limited because of the Army's lack of effort. Save the Valley, Inc., as petitioner to the NRC for a hearing concerning the license, has been waiting for five years for some kind of response from the Army, despite the efforts of the NRC and others on their behalf. We are frustrated and angry with the cavalier attitude exhibited by the Army regarding the decommissioning of JPG and the environment of Southeastern Indiana.

A full assessment of ground water must take place to protect the people living to the west of JPG, which is the direction of flow in the Wabash Valley watershed. Likewise, Big Creek, which flows through the center of the DU impact area, must be assessed, as it is used for fishing, swimming and as a source of drinking water for livestock, pet, and wild animals in the downstream counties of the watershed. There is also the danger to human health that may result from the heavy metals in the DU. The public has a right to expect the assay of actual pieces of the DU from the site so that people in this area will understand any further potential hazards to their health.

I appreciate the opportunity to offer the position of the City of Madison in regard to NRC License #1435. We are hopeful that your review of this matter will determine that the Army has been neglectful and irresponsible in its proceedings and that assessment of the DU must continue for the foreseeable future.

Sincerely,

Albert G. Huntington
Mayor

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of

U.S.ARMY

(Jefferson Proving Ground Site)

Docket No. 40-8838-MLA

SUB-1435

July 29, 2005

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response have been served this 29th day of July, 2005; upon the following persons by electronic mail (where indicated) and by U.S. Mail, first class postage prepaid:

Administrative Judge Alan S. Rosenthal,
Presiding Officer
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3-F-23
Washington, D.C. 20555-001
rsnthal@comcast.net

Paul B. Abramson, Special Assistant
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop - T-3 F23
Washington, D.C. 20555-0001
pba@nrc.gov

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

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16-G-15
Washington, D.C. 20555

Richard Hill, President
Save the Valley
P.O. Box 813
Madison, IN 47250
phill@venus.net

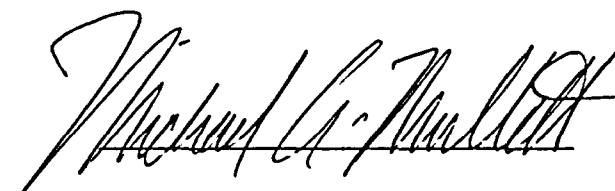
Office of the Secretary
ATTN: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16-G-15
Washington, D.C. 20555
hearingdocket@nrc.gov

Jack R. Goldberg
Shelley D. Cole
Sara E. Brock
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop 0-15D21
Washington, D.C. 20555-0001
jrg1@nrc.gov
sdc1@nrc.gov
seb2@nrc.gov

SherVerne R. Cloyd
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
src2@nrc.gov

Tom McLaughlin, Decommissioning Branch
Division of Waste Management
Office of Nuclear Materials and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
tgm@nrc.gov

John J. Welling, Chief Counsel
Larry D. Manecke, Commander
Samuel J. Walker, Commander
Frederick P. Kopp
U.S. Army Garrison-Rock Island Arsenal
Office of Counsel (AMSTA-RI-GC)
One Rock Island Arsenal
Rock Island, IL 61299-5000
wellingj@ria.army.mil
samuel.j.walker@us.army.mil
maneckel@ria.army.mil
koppf@ria.army.mil



Michael A. Mullett
Mullett, Polk & Associates, LLC
309 West Washington Street, Suite 233
Indianapolis, IN 46204

Attorney for Save the Valley, Inc.

MULLETT, POLK & ASSOCIATES, LLC

ATTORNEYS AT LAW

Old Trails Building, Suite 233

309 West Washington Street

Indianapolis, Indiana 46204-2721

Tel:(317) 636-5165 / Fax: 317-636-5435

*Michael A. Mullett, Senior Counsel
Jerome E. Polk, Lead Counsel*

July 29, 2005

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001.
ATTN: Rulemakings and Adjudications Staff

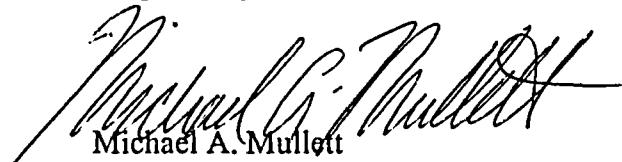
Re: Response by Save the Valley, Inc. to Commission's Memorandum and Order of June 20, 2005
In the Matter of the U.S. Army (Jefferson Proving Ground Site), Docket No. 40-8838-MLA

Dear Secretary:

Enclosed please find for filing in the above-referenced docket the original and two conformed copies of the Response by Save the Valley, Inc. to the Commission's Memorandum and Order of June 20, 2005.

Thank you for your assistance in this matter.

Respectfully submitted,


Michael A. Mullett
Attorney for Save the Valley, Inc.

cc: Service List – Docket No. 40-8838-MLA