

September 16, 2005 (7:48am)

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

U.S.ARMY

(Jefferson Proving Ground Site)

Docket No. 40-8838-MLA

SUB-1435

September 15, 2005

**MOTION OF SAVE THE VALLEY, INC.
FOR FURTHER EXTENSION OF TIME
TO FILE REQUEST FOR HEARING**

Petitioner Save the Valley, Inc. (STV) hereby requests a further extension of time in which to file a request for a hearing on the most recent Possession Only License Amendment (POLA) request by the Department of Army (Army) for its Jefferson Proving Ground Site. Specifically, STV requests an extension of time to and including fourteen (14) days after issuance and service of the Commission's forthcoming Memorandum and Order resolving the matters referred to it by the Presiding Officer in ASLBP No. 04-819-04-MLA.

In support of its motion, STV represents to the Commission:

1. On May 25, 2005, the Army submitted a clarification of its POLA request of September 22, 2003, Commission consideration of which was noticed in the Federal Register of October 28, 2003. This POLA request is currently pending the hearing requested by STV on November 26, 2003, and approved by the Atomic Safety Licensing Board (ASLB) on January 4, 2004, in ASLB 04-819-04.

2. On June 19, 2005, the Commission staff determined that the clarification sought by the Army of its prior POLA request required notice of consideration and opportunity to request a

hearing, which was published in the Federal Register on June 27, 2005.

3. On July 19, 2005, the Army moved to dismiss as moot the proceeding pending in ASLB 04-819-04.

4. On July 29, 2005, STV filed its Response in Opposition to the Army's motion to dismiss, noting that the Army has simply clarified rather than abandoned its previously submitted POLA request, the concerns expressed by STV in its Request for Hearing in ASLB 04-819-04 were not moot as a result of the Army's recent clarification, and that dismissal of the proceeding would be prejudicial to STV, whose hearing request on the pending POLA had previously been approved and deferred pending Staff technical review. Alternatively, STV requested that it be relieved of the requirement to file yet another request for hearing on the Army's POLA in response to the June 27 Federal Register Notice, subject to it filing its statement of issues, contentions, evidence and argument following the completion of the Staff's technical review and the hearing record.

5. On August 2, 2005, the Presiding Officer in ASLB 04-819-04 issued a docket entry providing the Army and the Staff until August 15, 2005, to file Replies to the STV Response. The entry also set a conference call among the parties for August 24, 2005, to discuss the matters raised by the Army's motion to dismiss, the STV response, and the Army's and Staff's replies. To have been timely pursuant to the June 27, 2005 Federal Register Notice, an STV Request for Hearing would have needed to be filed not later than August 26, 2005. Accordingly, on August 3, 2005, STV requested an extension of time to file a Request for Hearing.

6. On August 22, 2005, the Commission granted STV's requested extension of time to a date no later than fourteen (14) days after issuance of the Presiding Officer's ruling on the

Army's Motion to Dismiss and STV's Response in Opposition, or by September 26, 2005, whichever comes first.

7. In the event, the Presiding Officer ruled on September 12, 2005, so STV's Request for Hearing would now be due September 26, 2005.

8. However, the September 12 Memorandum and Order of the Presiding Officer deferred a decision on the Army's Motion to Dismiss and STV's Response in Opposition. Instead, the Presiding Officer reinstated the proceeding (Docket No. 40-8838-MLA) that was conditionally dismissed in LBP-03-28, 58 NRC 437 ((2003) and referred that action to the Commission for its consideration. Pending the outcome of that consideration, further action both in the reinstated proceeding and on the motion to dismiss the proceeding in Docket No. 40-8838-MLA-2 was held in abeyance.

9. In his September 12, Memorandum and Order, the Presiding Officer noted, "We assume that, either sua sponte or on Petitioner's motion, the Commission will further extend the time for Petitioner's response to the June 27 Federal Register notice to await the outcome of the referral."

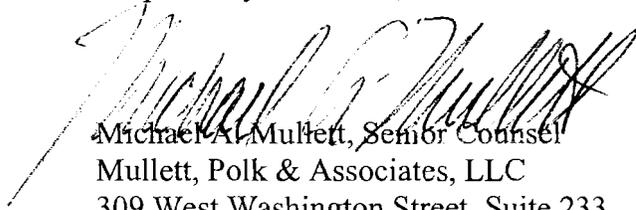
10. Self-evidently, there will be no need for STV to request a hearing on the Army's most recent POLA request in the event that the Commission affirms the action taken by the Presiding Officer in his September 12 Memorandum and Order or grants the alternative relief requested by STV in its Response in Opposition to the Army's Motion to Dismiss. However, should the Commission instead determine that the Army's Motion to Dismiss should be granted, Docket No. 40-8838-MLA should not be reinstated, and STV's request for alternative relief should not be granted, then STV would need to request a hearing on the Army's most recent

POLA request.

11. Based on the circumstances currently known to STV, a further extension of time to and including a date fourteen (14) days following the Commission's ruling on the matters referred to it by the Presiding Officer should be sufficient for STV to prepare its Request for Hearing, should the Commission's ruling necessitate such a filing.

WHEREFORE, STV respectfully requests that the Commission approve a further extension of time to file any Request for Hearing required in response to the June 27, 2006 Federal Register Notice regarding the Army's POLA for the JPG site to and including a date fourteen (14) days following the Commission's ruling on the matters referred to it by the Presiding Officer, as well as any other relief just and proper under the circumstances.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Further Extension of Time have been served this 15th day of September, 2005, upon the following persons by electronic mail (where indicated) and by U.S. Mail, first class postage prepaid.

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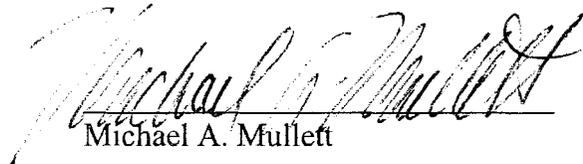
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September 15, 2005

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

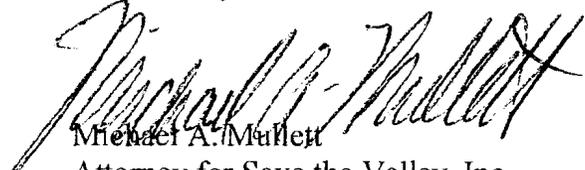
Re: Motion of Save the Valley, Inc., for Further Extension of Time to File Request for Hearing. - In the Matter of the U.S. Army (Jefferson Proving Ground Site), Docket No. 40-8838-MLA

Dear Secretary:

Enclosed please find for filing in the above-referenced docket the original and two conformed copies of the Motion of Save the Valley, Inc., for Further Extension of Time to File Request for Hearing.

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