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NUCLEAR REGULATORY COMMISSION**DOCKETED 11/01/05****SERVED 11/01/05**

ATOMIC SAFETY AND LICENSING BOARD PANEL

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

November 1, 2005

MEMORANDUM AND ORDER
(Dismissing proceeding as moot)

On September 12, 2005, in LBP-05-25, 62 NRC ___, we held in abeyance the July 19, 2005 motion of the Department of the Army to dismiss this materials license amendment proceeding involving its Jefferson Proving Ground (JPG) site in Indiana on which a substantial quantity of depleted uranium (DU) munitions is now amassed. The basis of the motion was that, whereas the proceeding involved an application for a five-year renewable possession only license (POLA), the Army had now decided to abandon the POLA proposal in favor of seeking Commission approval of an alternate schedule for the submittal of a decommissioning plan for the JPG site. For the reasons set forth in LBP-05-25, which do not require repetition here, we concluded that, in the circumstances, the appropriate course was to reinstate a previously conditionally dismissed proceeding (Docket No. 40-8838-MLA) likewise concerned with the JPG site and the accumulated DU munitions;¹ to refer the reinstatement to the Commission for its consideration; and to await the Commission's response before acting on the motion to dismiss the proceeding at bar.

¹See LBP-03-28, 58 NRC 437, 440 (2003)

The Commission has now spoken. CLI-05-23, 62 NRC __ (Oct. 26, 2005). It has affirmed the reinstatement of Docket No. 40-8838-MLA, although directing that its further adjudication be conducted by a licensing board rather than by this presiding officer and special assistant. Accordingly, there is no longer any reason to keep the proceeding at bar alive and it is hereby dismissed as moot.

IT IS SO ORDERED.

BY THE PRESIDING OFFICER²

[Original Signed By]

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 1, 2005

²Copies of this memorandum and order were sent 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 (DISMISSING PROCEEDING AS MOOT) (LBP-05-30) have been served upon the following persons by U.S. mail, first class, or through internal NRC distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Alan S. Rosenthal, Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Paul B. Abramson, Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Sara E. Brock, Esq.
Margaret J. Bupp, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Michael A. Mullett, Esq.
Mullett, Polk & Associates, LLC
309 West Washington Street, Suite 233
Indianapolis, IN 46204-2721

Samuel J. Walker, Esq.
Commander
AMSTA-RIA-GC/ATTN: SWALKER
Rock Island Arsenal
Rock Island, IL 61299-5000

Richard Hill, President
Save The Valley, Inc.
P.O. Box 813
Madison, IN 47250

John J. Welling, Esq.
Commander
Rock Island Arsenal
ATTN: AMSTA-RI-GC (J. WELLING)
1 Rock Island Arsenal
Rock Island, IL 61299-5000

Docket No. 40-8838-MLA-2
LB MEMORANDUM AND ORDER
(DISMISSING PROCEEDING AS MOOT) (LBP-05-30)

Larry D. Manecke, Esq.
Commander
Rock Island Arsenal
ATTN: AMSTA-RI-GC (L. MANECKE)
1 Rock Island Arsenal
Rock Island, IL 61299-5000

Frederick P. Kopp, Esq.
U.S. Army Garrison - Rock Island Arsenal
Office of Counsel (AMSTA-RI-GC)
One Rock Island Arsenal
Rock Island, IL 61299-5000

[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 1st day of November 2005