

**RAS 11893**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

**DOCKETED 06/28/06**

**SERVED 06/28/06**

Before Administrative Judges:

Alan S. Rosenthal, Chairman  
Dr. Paul B. Abramson  
Dr. Richard F. Cole

In the Matter of

U.S. ARMY

(Jefferson Proving Ground Site)

Docket No. 40-8838-MLA

ASLBP No. 00-776-04-MLA

June 28, 2006

MEMORANDUM AND ORDER  
(Scheduling Pre-hearing Conference)

This license amendment proceeding involves the application of the Department of Army (Licensee) for approval of an alternate schedule for the submission of a decommissioning plan for its Jefferson Proving Ground site located in Madison, Indiana. Decommissioning will be necessary because, as a result of activities conducted on it some years ago under the aegis of a NRC materials license, a substantial quantity of depleted uranium munitions is currently amassed on that site.

As the parties to the proceeding have been previously advised, the Board intends to hold a stenographically recorded pre-hearing conference in the City of Madison on Wednesday, July 19, 2006. The conference will commence promptly at 9:00 a.m. (EDT) in the Council Chambers of the Madison City Hall, 101 W. Main Street. Participating counsel should arrange to be present at that location at least 15 minutes before that hour.<sup>1</sup>

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<sup>1</sup> As announced in a June 12, 2006 Federal Register notice, 71 Fed. Reg. 33,776, at 6:30 p.m. the prior evening in the Madison-Jefferson County Public Library, the Board will provide an opportunity for individuals concerned with one or more aspects of the alternate schedule proposal to present oral or written limited appearance statements. Presumably, the

(continued...)

By way of background, in LBP-06-06, 63 NRC 167 (2006), the Board granted the hearing request and petition for intervention of Save the Valley, Inc. (Intervenor) addressed to the alternate schedule proposal. This action was taken on the strength of a Board determination that at least one of the contentions contained in the request, as supported by one of the bases assigned for that contention, met the standards set forth in the provisions of the Commission's Rules of Practice governing the admission of contentions into a licensing proceeding. (Intervenor's standing to intervene in the proceeding was not in issue.) On the Intervenor's unopposed motion, however, the Board went on in LBP-06-06 to defer passing upon the viability of the other contentions and supporting bases set forth in the hearing request pending the completion of the NRC Staff's required technical review of the alternate schedule proposal.

Upon the completion of the technical review, as evidenced by the issuance of the Staff's environmental assessment and safety evaluation report (together with the requested license amendment based upon the conclusions reached in those documents), the Board entered a May 1 order (unpublished) establishing a schedule for supplemental filings by the parties. As stated in that order, any additional or amended contentions and supporting bases that might be advanced by the Intervenor were necessarily to be based exclusively upon information contained in the documents associated with the technical review that had not been previously available to that party.

Most of the filings authorized by the May 1 order are in hand. The final one being due by week's end, it is now appropriate to proceed with the holding of a pre-hearing conference to

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<sup>1</sup>(...continued)  
parties to the proceeding have made, or will make in advance of July 18, an endeavor to ensure that the content of the notice comes to the attention of persons in the Madison area who might be interested in making such a presentation.

address those matters pertaining to the scope of the forthcoming evidentiary hearing that were left open in LBP-06-06.

In that connection, the Board assumes that each of the three parties – the Intervenor, the Licensee, and the NRC Staff – will have fully developed in its written submissions its position on the myriad scope issues that the Board must decide in advance of an evidentiary hearing. Given that this Board will be fully familiar with the content of the various filings, the Board does not intend to permit the conference to serve as a vehicle for participating counsel to repeat what has been provided in writing. Rather, the principal focus of the conference will be to enable members of the Board to seek clarification from counsel regarding assertions or arguments that were presented in a particular filing.<sup>2</sup> At the same time, the parties should derive substantial benefit from the conference in that it will allow their participating counsel both to learn of and to respond to concerns of Board members with regard to what has been advanced in the written submissions.

At the outset of the conference, each party will be allotted a brief period (not to exceed 15 minutes in the case of the Intervenor and 10 minutes in the case of each of the other two parties) to provide an overview of that party's views and logic respecting the appropriate scope of the evidentiary hearing.<sup>3</sup> Once those statements have been concluded, no further formal presentations will be received from any of the parties. Rather, the balance of the conference (which the Board believes should be concluded within a two-hour time period) will be reserved for Board inquiries of counsel and the receipt of the responses thereto.

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<sup>2</sup> The purpose of the conference will be for the parties to provide assistance to the Board in the carrying out of its responsibility to determine the appropriate scope of the evidentiary hearing.

<sup>3</sup> In establishing those time limits, the Board took into account that, in large measure, the positions of the Licensee and the Staff coincide.

The precise format for the question and answer portion of the conference will be determined by the Board. In furtherance of the Board's goals in convening the prehearing conference, the Board expects every participating counsel, whether or not involved in the preparation of the filings submitted on behalf of the party he or she represents at the conference, to be fully conversant with every aspect of the position espoused in those filings and thus be fully capable of responding informatively to any questions that the Board might pose with regard to it.

It is the Board's further expectation that there will be a single participating counsel for each party, the name of that individual to be supplied to the service list by electronic message no later than noon on Monday, July 17, 2006. In the event that a party deems there to be a compelling reason for the participation of more than one counsel on its behalf, a request for leave to add a second participating counsel (along with the basis for the request) shall be filed and served no later than noon on Thursday July 13, 2006.

On that score, in no circumstance will the Board hear from other than previously-designated legal counsel. Furthermore, because this is not an evidentiary hearing on the substantive merits of any particular contention, although attendance by technical experts in the employ of one or another of the parties is obviously permissible, no such individual will be expected to play an active role in the conference.<sup>4</sup>

An endeavor has been made to anticipate in this order questions that the parties might have with regard to the conduct of the conference. Should any party nonetheless have additional questions in that regard, they should be promptly presented to Debra Wolf, the Panel

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<sup>4</sup> The scope issues that will be under consideration at the conference appear to be entirely legal in character. That being so, there should be no cause for any attempt to introduce into the conference any factual matters of a possibly controversial nature. Moreover, any non-controversial fact of possible relevance to the matter at hand should, of course, have been set forth in the written submissions.

law clerk assigned to this proceeding (DAW1@nrc.gov), by an electronic message served on the other parties. Ms. Wolf will then present them to the Board and communicate its response to the inquirer and the other parties.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>5</sup>

***/RA/***

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Alan S. Rosenthal, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
June 28, 2006

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<sup>5</sup> Copies of this Order were sent this date by Internet electronic mail transmission to the counsel for the parties.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (SCHEDULING PRE-HEARING CONFERENCE) have been served upon the following persons by U.S. mail, first class, or through internal NRC distribution.

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Docket No. 40-8838-MLA  
LB MEMORANDUM AND ORDER (SCHEDULING PRE-HEARING  
CONFERENCE)

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 28<sup>th</sup> day of June 2006