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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 40-8838-MLA
U.S. ARMY)	
)	ASLBP No. 04-819-04-MLA
(Jefferson Proving Ground Site))	
)	July 10, 2006

**ARMY'S RESPONSE OBJECTING TO THE MOTION FOR LEAVE TO
FURTHER SUPPLEMENT CONTENTIONS OF SAVE THE VALLEY, INC.
FILED HEREIN ON JUNE 30, 2006**

INTRODUCTION

Pursuant to 10 C.F.R. § 323 (c), the Army hereby files its response objecting to the "Motion for Leave to Further Supplement Contentions of Save the Valley, Inc. Within Sixty (60) Days." For the reasons set forth herein, the Army submits that Save The Valley's ("STV") motion should be denied.

BACKGROUND

On 26 April 2006, the U. S. Department of the Army ("Army or Licensee") was notified of NRC approval of its application for the submission of an alternate schedule for the submission of a decommissioning plan for the Jefferson Proving Ground (JPG) facility pursuant to 10 C.F.R. § 40.42(g)(2).

By Memorandum and Order of 1 May, 2006, the Board provided STV with an opportunity to withdraw or to amend its existing contentions or to add new ones, in conformity to the requirements of 10 C.F.R. §2.309 (c) and (f)(2). On 31 May 2006,

TEMPLATE = SECY-037

SECY-02

STV filed its “Motion for Leave to Withdraw, Amend, and Supplement Contentions” along with the proposed amendment entitled “Final Contentions Of Save the Valley, Inc.”. On June 30, 2006, STV filed the instant motion.

DISCUSSION

I. REGULATORY FRAMEWORK

Licensee’s application is for NRC approval of an alternate decommissioning schedule pursuant to 10 C.F.R. § 40.42(g)(2). In both its “Motion” and its “Final Contentions,” STV continues to confuse Licensee’s application for an alternate decommissioning schedule with a Possession Only License Amendment (POLA).

The inquiry relevant to the approval of a § 40.42(g)(2) alternate decommissioning schedule is established by regulation. An alternate schedule must: 1) be necessary to the effective conduct of decommissioning; 2) present no undue risk from radiation to the public health; 3) be otherwise in the public interest.

A petitioner seeking to add to or amend its contentions must: first, demonstrate that such supplementation is timely in accordance with the factors enumerated at 10 C.F.R. §2.309(c); second, demonstrate clearly and convincingly that the addition or amendment is founded upon information not previously available to the petitioner. 10 C.F.R. §2.309(f)(2); and finally, new and amended contentions that withstand the above analysis must still meet the admissibility requirements in 10 C.F.R. § 2.309(f)(1).

STV’s motion fails to demonstrate that its amended or added contentions conform to the above-cited requirements.

II. STV’S CURRENT MOTION TO SUPPLEMENT

1. The Army objects to the timeliness of STV’s motion with respect to the document cited in paragraph 1 through 3 of the motion.

Under 10 C.F.R. § 2.323(a): “A motion must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises.” Section 2.309(c) requires a showing of good cause why an untimely motion should be considered. STV

indicates that the filing at issue in paragraph 1 was posted to ADAMS in mid-May, but not discovered by STV until June 5. The § 2.323(a) due date for filing a motion based upon that document was June 16.

The document at issue in paragraph 2 of the motion was posted June 16; and the due date was June 27.

The Coryell-Stearns study at issue in paragraph 3 of the motion shows on its face a copyright of 2005. A check by Army counsel of the *Molecular Carcinogenesis* website (<http://www3.interscience.wiley.com/cgi-bin/jissue/112211695>) shows that the study was first published on the web on November 20, 2005 and again in the January 1, 2006 issue. The §2.323(a) due date for a motion based upon this document would have been in January, 2006.

The Commission has emphasized that its rules on contention admissibility are “strict by design.” *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001). STV’s motion fails to comply with the § 2.309(c) requirement that good cause be shown why the motion should now be considered.

2. STV’s current motion fails to comply with 10 C.F.R. §2.309(f)(2).

For the reasons stated in section 1 above, STV’s motion fails to comply with the requirement of §2.309(f)(2) (iii) that the motion be submitted in a timely fashion based on the availability of the subsequent information.

Further, the motion fails to demonstrate either: that the information contained in the documents was previously unavailable to it in the numerous other documents submitted or studies conducted, as required by § 2.309 (f)(2)(i); or how the information materially differs from information previously available to STV, as required by § 2.309(f)(2)(ii).

According to the Verified Statement of Charles H. Norris (Norris Affidavit), paragraphs 6 and 7, the October 2005 Monitoring report merely confirms data reported from 2003 onward. Neither the affidavit nor the motion demonstrates that the information is materially different from the data or conclusions in the applicant's previous

documents. 10 C.F.R. § 2.309(f)(2)(ii).

3. By merely asking for additional time to submit amendments, rather than stating what the amended contentions would be, STV's motion fails to demonstrate a likelihood that there would be amendments or that any such amendments would be admissible under 10 C.F.R. § 2.309(f)(1).

The finding of information, even previously unavailable information, is not tantamount to the raising of new, additional contentions. The motion essentially asks the Board to "take a flier" that within 60 days STV can come up with some new contentions.

The motion, as supplemented by the Norris affidavit, demonstrates that the outcome is more likely to be to the contrary.

Section 40.42(g)(2) creates a three-part inquiry for approval of an alternate decommissioning schedule. An alternate schedule must: 1) be necessary to the effective conduct of decommissioning; 2) present no undue risk from radiation to the public health; 3) be otherwise in the public interest.

STV's motion fails to demonstrate that identifiable issues will be raised which would be within the scope of this proceeding, contrary to § 2.309(f)(1)(iii) and (iv).

In paragraph 4 of its motion, STV states that the new information sources "materially impacts the understanding of the JPG facility..." Nowhere does the motion clearly and concisely focus on the issues raised by § 40.42(g)(2). How does this "new" information show an undue risk from radiation to the public health? How does this new information show that an alternate schedule is not otherwise in the public interest?

In its emphasis on the monitoring results and the fracture trace analysis, STV is skipping over the scope of this proceeding and attacking a future decommissioning based on what it claims is incorrect or insufficient data. As stated in the Army's response filed herein on June 20, the Board has no authority to look beyond the license amendment application before it and speculate on events that might occur in the future. See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-86-21, 23 N.R.C. 849, 854 (June 27, 1986).

The Coryell-Stearns study is beyond the jurisdiction of the NRC entirely. The opening paragraph of that study makes clear that it is about the chemical, rather than the radiological, effects of Depleted Uranium: "The hypothesis being tested was that if DU as UA is chemically genotoxic then the mutation spectrum induced by the heavy metal should be distinct from that produced spontaneously or by H₂O₂." Molecular Carcinogenesis, vol. 45, pg. 60.

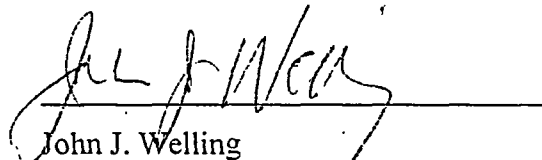
Likewise, STV's speculation, that there exists at the JPG site a "heretofore unreported source of enriched uranium" (STV Motion, para. 6), goes beyond the scope of the Army's current license and is therefore beyond the scope of these proceedings.

CONCLUSION

For the aforementioned reasons, Licensee submits that STV's "Motion For Leave To Further Supplement Contentions" should be denied.

Dated this Monday, July 10, 2006.

Respectfully Submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

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

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In the Matter of)	
U.S. ARMY)	ASLBP No. 00-776-04-MLA
)	
(Jefferson Proving Ground Site))	July 10, 2006
_____)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the U. S. Army's "Response Objecting To The Motion For Leave To Further Supplement Contentions Of Save The Valley, Inc. Filed Herein On June 30, 2006" in the above-captioned proceeding have been served on the following persons by U. S. Mail, first class, and (as indicated by asterisk) by e-mail this 10th day of July, 2006:

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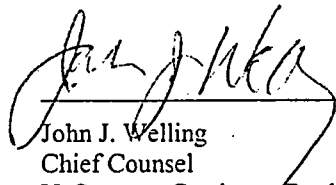
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Dated July 10, 2006



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