

RAS 12023

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

DOCKETED 07/26/06

SERVED 07/26/06

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

July 26, 2006

ORDER

(Deferring Evidentiary Hearing)

On July 19, 2006, this Board convened a prehearing conference with counsel for the Department of the Army (Licensee), Save the Valley, Inc. (Intervenor), and the NRC Staff in the Council Chambers of the Madison City Hall, Madison, Indiana. As stated in the June 28 scheduling order, the purpose of the conference was to address matters pertaining to the scope of the forthcoming evidentiary hearing that were left open in our February 2, 2006 memorandum and order granting Intervenor's hearing request. LBP-06-06, 63 NRC 167 (2006).

The license amendment at issue has at its root the need to perform site testing to enable the Licensee to characterize the Jefferson Proving Ground (JPG) site so that it can prepare a suitable decommissioning plan. The Licensee notes that the actual site characterization will evolve over the course of the five year period; a fact that all parties and the Board recognize. The matters raised by Intervenor all relate, in one way or another, to the conduct of the site characterization activities. The details of those activities appear to be in a state of flux and the parties agree that it would be fruitful for the Licensee and Intervenor to consult regarding both the issues of concern to Intervenor and how the activities might be

adapted to consider those concerns. That being so, there is no utility in proceeding at this time with an evidentiary hearing on those matters.

In furtherance of these consultations, the Board finds it appropriate to provide the Licensee and Intervenor an opportunity to bring together their technical consultants to explore accommodation of the concerns raised by Intervenor in its hearing request and to discuss the future process for updating and revising Licensee's site characterization plans. The parties expressed agreement with this approach, and Staff counsel indicated that members of the NRC technical staff would participate.

Therefore, the Board hereby directs the Licensee and Intervenor (with NRC Staff participation if it so elects) to meet for the foregoing purposes and to submit a status report to the Board no later than Friday September 29, 2006. That report should detail any agreements the parties were able to reach regarding the Intervenor's concerns, their plans for future meetings and collaboration regarding development of the site characterization, and any resultant changes that have been made to the current site characterization plans. This report shall be filed jointly by the Licensee and Intervenor, and the Staff may elect to join in that filing, to file its own report, or it may elect not to submit a report. In the event that material matters remain unaddressed or unresolved, the Licensee and Intervenor shall indicate, in the joint report, the matter(s) at issue and their respective positions.

In the circumstances, until further notice the Board's suspension of the parties' obligations under 10 C.F.R. §§ 2.336 and 2.1206 remains in effect. In addition, Intervenor's obligation under 10 C.F.R. § 2.309(f)(2) to file timely any motion for leave to submit amended or new contentions based upon the discovery of new and materially different information, is also suspended. As new information is developed or disclosed, the Intervenor shall give notice to the Board of such new information, such notice serving to toll the clock regarding any obligation

to file an amended or new contention in respect thereof until such time as the consultation process has ended by election of either Licensee or Intervenor to withdraw therefrom (upon the occurrence of which such party shall promptly notify the Board). If the parties desire that information revealed during these consultations be treated as settlement discussion information and therefore not admissible in this litigation, the parties shall so notify this Board in writing prior to commencement of the consultations. After receipt of the status report(s), the Board will issue such further order relating to this proceeding as necessary.

Any objections to this order, or requests for clarification, must be filed no later than Monday July 31, 2006.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

IRA

Alan S. Rosenthal, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 26, 2006

¹ Copies of this Order were sent this date by Internet electronic mail transmission to the counsel for the parties.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

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

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LB ORDER (DEFERRING EVIDENTIARY HEARING)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 26th day of July 2006