

RAS 12335

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 10/04/06

ATOMIC SAFETY AND LICENSING BOARD

SERVED 10/04/06

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

October 4, 2006

MEMORANDUM AND ORDER
(Further Deferring Evidentiary Hearing)

This materials licensing proceeding involves the request of the Department of the Army (Licensee) to be granted a five-year period in which to conduct the site characterization activities necessary to formulate a satisfactory decommissioning plan for its Jefferson Proving Ground site located in Madison, Indiana. Such a plan is necessary because there is currently accumulated on that site a significant quantity of depleted uranium munitions as a result of the testing of tank penetration rounds that was concluded well over a decade ago.

Before the Board is the granted hearing request of a local organization, Save the Valley, Inc. (Intervenor), which has concerns regarding the adequacy of the specific site characterization activities that have been proposed by the Licensee. On July 19, 2006, the Board held a prehearing conference with counsel for those two parties and the NRC Staff, in which considerable attention was given to whether the best course was to proceed at this time with an evidentiary hearing and, if so, on which of the particular concerns raised in the hearing request.

A week later, on July 26, the Board entered an order (unpublished), in which it gave effect to conclusions reached during the course of the conference. As the order noted, there

was general recognition that the details of the site characterization remained in a state of flux and, thus, agreement among the parties that it would be fruitful for the Licensee and Intervenor to consult regarding the issues of concern to the Intervenor. Given this agreement, the order stated, no useful purpose would be served by proceeding to hold an evidentiary hearing in advance of such consultation.

Accordingly, the order announced the deferral of such a hearing and went on to provide the Licensee and Intervenor with an opportunity to bring together their technical consultants to explore the accommodation of the Intervenor's concerns and to discuss the future process of updating and revising the Licensee's site characterization plans. Noting the Staff's expressed willingness to participate in such consultations, the order directed the submission of a joint status report on their progress no later than September 29.

The status report was filed on its due date. It recites in considerable detail the course of the negotiations to date, which involved four meetings between the Licensee and the Intervenor and two additional meetings between their counsel (in all of which meetings the Staff and/or its counsel were also participants). Although, for the reasons outlined in the report, no agreement has yet been reached on any of the matters of concern to the Intervenor, the recital appears fully to justify the averment (Joint Status Report on Settlement Negotiations at 2-3 (Sept. 29, 2006)) that "sufficient progress has been made in framing the negotiation process and discussing the first of the substantive issues to warrant the continuation of the negotiations for at least another thirty days." On the strength of that averment, the report requests that the proceeding continue to be held in its present state of suspension with the parties to furnish another status report no later than November 9, 2006.

The request is hereby granted. We are satisfied from the recitations in the September 29 status report that, notwithstanding the understandable difficulties that have been encountered in the endeavor to resolve the Intervenor's concerns, the negotiations have

commendably been conducted in good faith and responsibly. Moreover, in the final analysis, the objective of all of the parties to this proceeding is the same: to ensure that, at the end of the five year period, the Licensee will be in a position to present to the NRC Staff a site decommissioning plan that will be found satisfactory because, among other things, it is based upon an adequate site characterization. That being so, it is equally apparent that it is much preferable that, if at all possible, the matters of concern to the Intervenor receive resolution through the informal negotiation process now in progress rather than in an adversarial setting. It is heartening that the parties to the proceeding appear to share that view.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

Alan S. Rosenthal, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 4, 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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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (FURTHER 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 MEMORANDUM AND ORDER (FURTHER DEFERRING
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 4th day of October 2006