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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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| In the Matter of) | Docket No. 40-8838-MLA |
| U.S.ARMY) | ASLBP No. 00-776-04-MLA |
| (Jefferson Proving Ground Site)) | September 29, 2006 |
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JOINT STATUS REPORT ON SETTLEMENT NEGOTIATIONS

On July 19, 2006, the Board convened a prehearing conference of counsel for the Department of the Army (Licensee or Army), Save the Valley, Inc. (Intervenor or STV), and the NRC Staff (Staff)(collectively Parties) in the Council Chambers of the Madison City Hall, Madison, Indiana. As stated in the Board's June 28, 2006 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 its 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) depleted uranium impact area so that it can prepare a suitable decommissioning plan. The Licensee's plan envisions that the actual site characterization will evolve over the course of a five year period; a fact that all parties and the Board recognized. The Board has stated that the matters raised by Intervenor all relate, in one way or another, to the conduct of the site characterization activities. During the course of the conference, the Board inquired of the parties whether there would be mutual interest in consultations to explore the possibility of resolving or, at least, narrowing the issues for hearing. When counsel for the Parties indicated that there was a mutual interest in such consultations, the Board expressed its

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intent to enter an order deferring the hearing in this matter pending the results of such consultations and concluded the conference. The Parties then met to schedule the first of the contemplated consultations.

On July 26, 2006, the Board issued its Order deferring the hearing and directing the Licensee and Intervenor (with NRC Staff participation if it so elected) to meet for the foregoing purposes and to submit a status report to the Board no later than Friday, September 29, 2006. The Order required that report to 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 was to be filed jointly by the Licensee and Intervenor, with the Staff having the election to join in that filing, to file its own report, or not to join or submit a report. In the event that material matters remained unaddressed or unresolved, the Licensee and Intervenor were instructed to indicate, in the joint report, the matter(s) at issue and their respective positions. This joint report is submitted to respond to that direction.

On August 1, 2006, the Parties notified the Board of their mutual intent to treat their consultations as confidential settlement negotiations. The Army and STV have conferred and consulted to date on four different occasions: August 2, August 7, August 22, and September 15. In addition, counsel for the Army and STV have held additional conferences on September 18 and September 25. The Staff and/or its counsel has participated in each of these conferences and consultations.

To date, no agreement has been reached regarding any of the matters raised by STV. However, the Parties all concur 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 same terms heretofore established, with another joint status report to be submitted not later than November 9, 2006.

The principal difficulty which the Parties have experienced in reaching agreement on the matters raised by STV is the necessarily iterative and open-ended nature of the five-year JPG site characterization process. As a result, the Parties have attempted to identify the issues requiring near-term resolution and also to define a process for further consultation and negotiation at key future decision points relating to other issues, including a practical procedure for timely dispute resolution at those future decision points.

By agreement of the Parties, the first set of substantive issues addressed related to hydrogeologic sampling. Of particular importance in these discussions has been the siting of additional sampling wells. While the Parties are in agreement regarding the need for the additional wells, as well as the general criteria to be used in siting those additional wells, they have been unable to agree to date as to all of the information needed to properly site those additional wells. Specifically, the Parties have been unable to agree to date on the need for stream gain/loss data prior to siting the additional wells. However, STV has advanced a proposal to resolve this dispute which the Army has accepted in principle, subject to STV's agreement to certain limiting conditions and agreement of the Parties on a complete package of proposals that would constitute a settlement of all issues between STV and the Army. In addition, the Staff will be convening a public meeting with the Army (in which STV will have the opportunity to observe and ask questions at the end) on October 12, 2006, in which the Army will present its updated plans regarding the siting of the monitoring wells. This public meeting should provide all Parties with additional information and

perspective in reaching agreement on the specific terms of the proposal for siting the new wells that can then be included in a complete package of proposals that would constitute a settlement of all issues between STV and the Army.

By agreement of the Parties, the second set of substantive issues addressed to date relate to the reporting and analysis of radiologic sampling results as part of assessing site hydrogeology. Of particular importance in these discussions have been the protocols and criteria for identifying, quantifying, and evaluating the migration (if any) of DU introduced to the JPG site by the Army's D U munitions testing program. It is noted that STV believes the scope of such identification, quantification and evaluation efforts should encompass each of the various separate radioactive isotopes which the literature says are components of DU, i.e. U-238, U-234, U-235, U-236 and trace transuranics.. The Army disagrees and believes that such efforts to detect migration should be centered on DU without attempts to identify or quantify its separate components..

While the Parties have made considerable progress in communicating and clarifying their respective positions on these matters, they have been unable to reach agreement on even the broad parameters for such protocols and criteria. Indeed, the Parties now are collectively discussing to what extent this matter must be addressed now and to what extent it should be deferred to the future (projected to be late 2007) following the Army's submission of a formal Addendum planned at that time. STV remains concerned that the appropriate protocols and criteria need to be in place from the onset of FSP sampling in all media. STV is also concerned that the protocols and criteria which are appropriate for FSP sampling and conceptual site modeling (CSM) purposes are necessarily different from those which have heretofore been used for ERM purposes. However, STV also believes that the sampling data from the ERM network of sampling locations can and should be

considered along with the data from the FSP sampling process because appropriate time series data from all these sampling activities and locations will be critical to proper and timely site characterization. It is the Staff's position that because the EMR program was established to fulfill a license condition to monitor any releases of DU from the DU impact area whereas the FSP is designed to produce data for a conceptual site model, the testing protocols and criteria of the two programs need not be the same or integrated for proper and timely site characterization.

These are the only matters on which substantive discussions have occurred to date. However, the Parties have agreed that at least the following additional issue sets will be addressed in the further consultations they wish to conduct: additional biota and aerial sampling (if any); the protocols and criteria for identifying, quantifying, and evaluating the aerial and biological migration (if any) of DU introduced to the JPG site by the Army's Depleted Uranium (DU) munitions testing program; conceptual site modeling; and the modification of the Army's Environmental Radiation Monitoring (ERM) Program to incorporate sampling locations and reflect sampling results from the implementation of the Field Sampling Plan. It is again noted that STV believes the scope of such efforts should encompass each of the various separate radioactive isotopes which the literature says are components of DU. The Army disagrees and believes that such efforts to detect migration should be centered on DU without attempts to identify or quantify its separate components. Again, it is the NRC Staff's position that the ERM program and the FSP are separate."

Additionally, counsel for the Parties have discussed the parameters of the framework needed to address the future evolution of the JPG site characterization process over the next five years. While the details still need to be worked out, the Parties recognize that this framework should include the following principal elements:

a. As provided in the April 26, 2006 letter approving the Army's alternate schedule for the submission of a decommissioning plan (ADAMS accession no. ML053320014), the NRC Staff anticipates having annual (or more frequent) meetings to discuss the Army's progress in completing the site characterization and new decommissioning plan. These meetings should occur prior to the initiation of significant planned field activities.

b. The Army would provide STV in advance of the public meetings with the same materials provided to the Staff;

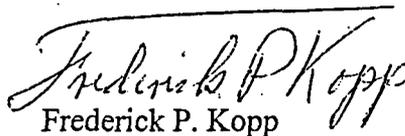
c. The Army would obligate itself to respond in writing to STV's questions and proposals associated with the planned field activities that are the subject of the public meetings; and

d. The possibility of the development of a process to resolve any disputes between STV and the Army that arise out of the planned field activities. The details of such a process will continue to be explored by the Parties.

In view of the progress made to date, the Parties would jointly and respectfully request that the Board authorize and direct that their consultations and negotiations continue for at least another thirty (30) days, on the same terms as heretofore established, with another joint status report due on or before Friday, November 10, 2006.

All parties have reviewed this report and each has authorized the undersigned to file on this report on their behalf.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

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Dr. Paul B. Abramson
Dr. Richard F. Cole

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CERTIFICATE OF SERVICE

I hereby certify that copies of the JOINT STATUS REPORT ON SETTLEMENT NEGOTIATIONS filed on September 29, 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 29th day of September, 2006:

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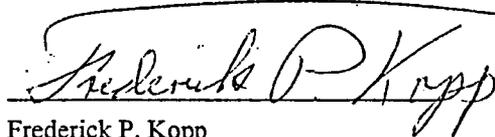
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