

October 4, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

ADDITIONAL INFORMATION REGARDING SAVE THE VALLEY, INC.'S,
NOTICE OF ADDITIONAL INFORMATION

INTRODUCTION AND BACKGROUND

The Staff of the Nuclear Regulatory Commission (Staff) hereby files its additional information regarding the "Notice of Additional Information on Which Petitioner Reserves Right to Rely for Purposes of Submitting New And/or Modified Contentions And/or Bases" (Notice) filed by Save the Valley, Inc. (STV), on September 26, 2006.

On July 26, 2006, in its "Order (Deferring Evidentiary Hearing)," (July 26 Order), the Atomic Safety and Licensing Board (Board) suspended STV's obligations 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. The July 26 Order also stated, "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." Order at 2-3.

In its Notice, STV informed the Board that, pursuant to the July 26 Order, STV was reserving the right to submit new and/or modified contentions and/or bases regarding twenty specific sources of information. STV's Notice listed the sources in three categories: information that became available in ADAMS since the Order (sources 1-3); information that was in ADAMS

prior to the Order but which STV had not completely reviewed (sources 4-8); and items from research literature which became available to STV experts after April 30, 2006 (sources 9-20).

Although not explicitly provided for in the July 26 Order, the Staff is providing this additional information to provide more precise dates when information became available.

DISCUSSION

The July 26 Order suspended STV's obligations "based upon the discovery of new and materially different information." Order at 2. Longstanding Commission precedent is that intervenors are "expected to raise issues as early as possible" and must "diligently uncover and apply all publicly available information to the prompt formulation of contentions."

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048, 1050 (1983).

It is the Staff's position that the meaning of "discovery of new . . . information" as stated in the July 26 Order must be viewed in light of *Duke's* requirements to uncover information diligently and raise issues as early as possible. To assist the Board in any future decisions regarding STV filings submitting new and/or modified contentions based on information sources listed in the Notice, the Staff is providing additional information regarding first-availability dates.

Information Available in ADAMS that STV had not Completely Reviewed

STV source 6: As stated in STV's Notice, the document's release date was June 16, 2006. The document was already one month old when the July 26 Order was issued.

STV source 8: As stated in STV's Notice, the document's release date was May 23, 2006. The document was already two months old when the July 26 Order was issued.

Information which Became Available after April 30, 2006

STV's Notice stated that the information sources below became available to STV after April 30, 2006. It is the Staff's position that the April 30, 2006 date is not significant to the July 26 Order. Accordingly, the information on dates information became available disregards the April 30, 2006 date, but instead discusses the age of the information relative to the July 26 Order.

STV source 9: This article was published online November 20, 2005. See <http://dx.doi.org/10.1002/mc.20155>. The information had been available for eight months when the July 26 Order was issued.

STV source 11: This article was published online November 5, 2004. See <http://dx.doi.org/10.1016/j.microc.2004.10.014>. The information had been available for twenty months when the July 26 Order was issued.

STV source 12: This article was published online May 13, 2006. See <http://pubs.acs.org/cgi-bin/abstract.cgi/esthag/2006/40/i12/abs/es051960u.html>. The information had been available for two months when the July 26 Order was issued.

STV source 15: This article was published online February 28, 2006. See <http://dx.doi.org/10.1016/j.jenvrad.2005.12.007>. The information had been available for five months when the July 26 Order was issued.

STV source 17: This article was available online June 28, 2005. See <http://dx.doi.org/10.1093/rpd/nci318>. The information had been available for thirteen months when the July 26 Order was issued.

STV source 19: This article appeared in an issue dated April 2006. See http://humanapress.com/index.php?option=com_journalshome&task=articledetails&category=journals&article_code=BTER:110:1:1. The publisher did not provide exact dates online regarding

when the April 2006 issue was available. It is reasonable to assume that the April 2006 issue had been available for three months when the July 26 Order was issued.

STV source 20: This article appeared in the May 2006 issue. See <http://www.health-physics.com/pt/re/healthphys/abstract.00004032-200605000-00008>. The publisher did not provide exact dates online regarding when the May 2006 issue was available. It is reasonable to assume that the May 2006 issue had been available for two months when the July 26 Order was issued.

CONCLUSION

Information listed in STV's Notice had been available online for up to twenty months at the time of the July 26 Order. The Board should consider the actual time the various sources of information became available when or if the Board considers any action associated with STV's Notice and STV's obligations 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 above sources of information.

Respectfully submitted,

/RA/

David E. Roth
Counsel for the NRC Staff

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

October 4, 2006

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NUCLEAR REGULATORY COMMISSION

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

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Respectfully submitted,

/RA/

David E. Roth
Counsel for the NRC Staff

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of "ADDITIONAL INFORMATION REGARDING SAVE THE VALLEY, INC.'S, NOTICE OF ADDITIONAL INFORMATION" and "NOTICE OF APPEARANCE" for David Roth in the above captioned proceeding have been served on the following by electronic mail with copies deposited in the Nuclear Regulatory Commission's internal mail system as indicated by a single asterisk or by U.S. Mail, first class, as indicated by a double asterisk this 4th day of October, 2006.

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