

January 23, 2007

Administrative Judge
Alan S. Rosenthal, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Paul B. Abramson
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

In the Matter of
U.S. Army
(Jefferson Proving Ground Site)
Docket No. 40-8838-MLA; ASLBP No. 00-776-04-MLA

Dear Administrative Judges:

Pursuant to 10 C.F.R. § 2.1203(a), the staff of the Nuclear Regulatory Commission ("Staff") herein notifies the Licensing Board and the parties that a hearing file has been created for this proceeding. The hearing file includes materials required pursuant to 10 C.F.R. § 2.1203, as well as the Staff's mandatory disclosures produced pursuant to 10 C.F.R. § 2.336(b). Materials in the hearing file may be accessed through the Agencywide Documents Access and Management System ("ADAMS"). An index containing the ADAMS accession number, date, and title or description of each item in the hearing file is appended hereto as Attachment 1. On or about Wednesday, January 24, 2007, the hearing file will be made available via the Electronic Hearing Docket ("EHD"), which may be accessed at the following URL: http://ehd.nrc.gov/EHD_Proceeding/home.asp. The hearing file will be contained in a sub-folder entitled, "Army MLA Hearing File" in the "U.S. Army - JPG- 40-8838-MLA" folder of the EHD.

As required by 10 C.F.R. § 2.336(b)(5), the Staff is producing a privilege log at this time, which is appended hereto as Attachment 2. Also attached is Affidavit of Thomas G. McLaughlin (with the attached Affidavits of Jon Peckenpaugh, Kenneth Kalman, and David Nelson). As discussed in the attached affidavits, some relevant material may not be available as a result of the agency's routine network maintenance. In addition, the Declaration of Keith I. McConnell

formally invoking the deliberative process privilege with respect to each of the documents in Attachment 2 is attached. The Staff will preserve and maintain all privileged documents during the pendency of this proceeding.

Sincerely,

/RA/

Marian L. Zabler
Counsel for NRC Staff

Enclosures: Hearing File Index
Privilege Log - Deliberative Process
Affidavit of Thomas G. McLaughlin (with attachments)
Declaration of Keith I. McConnell

cc: Service List

than 180 days, e-mails I sent before November 16, 2005, were purged from my computer. At that time, I thought my sent e-mails were being automatically archived but only appointments sent by me were. I was informed by the agency's Office of Information Services that these e-mails are not recoverable. I have since taken action to ensure that relevant e-mails have been retained. Any response to my e-mails that I received were archived. Thus, it is my belief that most of my initial e-mails were captured and retained in the e-mail thread associated with my initial e-mail and have been identified either in the hearing file index, or in the attached privilege log.

4. As the attached Affidavit from Jon Peckenpaugh indicates, Mr. Peckenpaugh reviewed the hydrology and risk assessment of the Army's Field Sampling Plan beginning in June 2005. Mr. Peckenpaugh did not take adequate action to preserve relevant e-mails that he may have sent or received in support of his review of the Army's application. Thus, as a result of the agency's routine system maintenance, e-mails sent or received by Mr. Peckenpaugh before July 2006, were purged from his computer. Mr. Peckenpaugh has since taken action to ensure that all relevant e-mails are retained. It is Mr. Peckenpaugh's belief, however, that many of his e-mails were retained either by the sender or recipient and have been identified either in the hearing file index, or in the attached privilege log.

5. As the attached Affidavit from Kenneth Kalman indicates, Mr. Kalman also did not take adequate action to preserve relevant e-mails that he may have sent or received in support of the Staff's review of the Army's application. Mr. Kalman served as Acting Project

Manager from June 4, 2006 until October 14, 2006. Thus, as a result of the agency's routine system maintenance, e-mails sent or received by Mr. Kalman from June 2006 until July 2006 index, or in the attached privilege log.

6. As the attached Affidavit from David Nelson indicates, Mr. Nelson reviewed the health and safety aspects of the Army's Field Sampling Plan beginning in June 2005. Mr. Nelson did not take adequate action to preserve relevant e-mails that he may have sent or received in support of his review of the Army's application. Thus, as a result of the agency's routine system maintenance, e-mails sent or received by Mr. Nelson from September 2005 to July 2006 were purged from his computer. Mr. Nelson has since taken action to ensure that all relevant e-mails are retained. It is Mr. Nelson's belief, however, that many of his e-mails were retained either by the sender or recipient and have been identified either in the hearing file index, or in the attached privilege log.

7. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Original signed by

Thomas G. McLaughlin

Executed in Rockville, MD
this 23rd day of January, 2007

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Original signed by

Jon Peckenpaugh

Executed in Rockville, MD
this 23rd day of January, 2007

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Original signed by

Ken Kalman

Executed in Rockville, MD
this 23rd day of January, 2007

January 23, 2007

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))

AFFIDAVIT OF DAVID NELSON

I, David Nelson, do hereby state as follows:

1. I am employed in the Division of Waste Management and Environmental Protection in the Nuclear Regulatory Commission's ("NRC") Office of Federal and State Materials and Environmental Management Programs. I served as a health physicist from September 2005 to the present reviewing the health and safety aspects of the U.S. Army's application for an amendment to license SUB-1435 (Docket No. 040-08838) proposing an alternate schedule for the submission of a decommissioning plan for Jefferson Proving Ground, Madison, Indiana.

2. As part of my review, I sent and received e-mails. However, I did not take adequate action to preserve relevant e-mails that I may have sent or received in support of my review of the Army's application. Thus, as a result of the agency's routine system maintenance which includes a periodic purge of all e-mails older than 180 days, e-mails I sent or received were purged from my computer. I have since taken action to ensure that all relevant e-mails are retained. It is my belief, however, that many of my e-mails associated with my review of the application were retained either by the sender or recipient and have been identified either in the hearing file index, or in the attached privilege log.

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Original signed by

David Nelson

Executed in Rockville, MD
this 23rd day of January, 2007

January 23, 2007

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))

DECLARATION OF KEITH I. MCCONNELL

I, Keith I. McConnell, do hereby state as follows:

1. I am employed as Deputy Director of the Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs. My management responsibilities include oversight of the NRC staff's review of the U.S. Army's application for an amendment to license SUB-1435 (Docket No. 040-08838) proposing an alternate schedule for the submission of a decommissioning plan for Jefferson Proving Ground, Madison, Indiana.

2. As part of my responsibilities in preparing the hearing file and mandatory disclosures for this proceeding, NRC staff members under my supervision identified several documents as privileged because they contain information concerning the Staff's deliberative process. Those documents are listed in Attachment 2 to the January 23, 2007, submission of the Staff's Hearing File.

3. I have personally reviewed the documents identified as privileged in Attachment 2, and have determined, in accordance with the guidance set forth in Management Directive 3.4, that these documents contain predecisional information concerning the Staff's review of the Army's application. All documents contain either the Staff's analyses, recommendations,

opinions, or evaluations, and may not necessarily reflect the final agency position with respect to the matters discussed therein. Each of the documents comprises part of the deliberative process necessary to the Staff's review of the Army's application.

4. Further, I have determined that disclosure of these documents could result in harm to the agency, in that it would (a) disclose the preliminary views of individual Staff members and/or the Staff prior to reaching a final agency decision, and could thus create confusion as to the actual policy or views of the NRC staff; (b) hinder the efficiency of the Staff, in that forced disclosure of their internal discussion could serve to chill future deliberations and could interfere with its ability to engage in free exchange of opinions and analyses prior to publishing our final decisions; or (c) imply or suggest incorrectly that the opinions of Staff members involved in these communications were actually final decisions of the agency.

5. Accordingly, I formally invoke the deliberative process privilege with respect to each of the documents listed in Attachment 2 to the January 23, 2007, submission of the Staff's Hearing File.

6. I hereby certify that the foregoing is true and complete to the best of my knowledge, information, and belief.

Original signed by

Keith I. McConnell

Executed in Rockville, MD
this 23rd day of January 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the letter notifying the administrative judges and the parties that the hearing file and mandatory disclosures, privilege log, accompanying declaration, and affidavits 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 by e-mail, this 23rd day of January 2007.

Alan S. Rosenthal, Esq., Chair *
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555
E-mail: rsnthl@comcast.net
src2@nrc.gov
daw1@nrc.gov

Atomic Safety and Licensing Board Panel*
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555
(Hardcopy only)

Richard Hill, President **
Save the Valley, Inc.
P.O. Box 813
Madison, IN 47250
E-mail: phill@venus.net

Dr. Paul B. Abramson*
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555
E-mail: pba@nrc.gov

Dr. Richard F. Cole*
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-mail: rhc@nrc.gov

Office of Commission Appellate Adjudication *
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
Washington, D.C. 20555
E-mail: OCAAMAIL@nrc.gov

Office of the Secretary *
Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
Washington, D.C. 20555
E-mail: HEARINGDOCKET@nrc.gov

Michael A. Mullett, Esq. **
Mullett & Associates, LLC
309 West Washington Street
Suite 233
Indianapolis, IN 46204-2721
E-mail: mmullett@mullettlaw.com

Frederick P. Kopp, Esq. **
John J. Welling, Esq. **
Larry D. Manecke, Esq. **
Commander
U.S. Army Garrison
Rock Island Arsenal
ATTN: AMSTA-RI-GC
(J. WELLING, L. MANECKE, AND
F. KOPP)
1 Rock Island Arsenal Place
Rock Island, IL 61299-5000
E-Mail: koppf@ria.army.mil
wellingj@ria.army.mil
maneckel@ria.army.mil

/RA/

Marian L. Zobler
Counsel for the NRC Staff