UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 10/11/07

SERVED 10/11/07

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. Paul B. Abramson
Dr. Richard F. Cole

In the Matter of	Docket No. 40-8838-MLA
U.S. ARMY	ASLBP No. 00-776-04-MLA
(Jefferson Proving Ground Site)	October 11, 2007

MEMORANDUM AND ORDER

This order will address several matters in preparation for the October 22, 2007 evidentiary hearing in this proceeding, which will commence at 10:00 AM (EST) on that date at Madison City Hall, 101 W. Main Street, Madison, Indiana.

I. Oral Argument on Legal Issues

Prior to the receipt of evidence and the questioning of witnesses, the Board will hold oral argument. The following legal questions are to be addressed by counsel:

1. What are the legal requirements governing the grant of this alternative schedule application?
2. What are the legal requirements governing the acceptability of a site characterization submitted in support of a decommissioning?

The Staff will be heard first, followed by the Licensee and the Intervenor in that order. Each party will be allotted 20 minutes to address the two questions.

II. Schedule of Hearing

Following the conclusion of the oral argument, the Board will accept the submission of exhibits. After a luncheon recess, the Board will begin its questioning of panels of witnesses on the following topics in the order listed:

1. Biota and Air Sampling: Dr. Henshel (STV), Mr. Condra (Staff), Mr. Schwartzman (Staff), Dr. McLaughlin (Staff), Mr. Barta (Army), Mr. Anagnostopoulos (Army), Mr. Skibinski (Army).
2. Karst Geology (Well Locations, FTA Study, EI Study, UXO Issues): Mr. Norris (STV), Mr. Pastorick (STV), Mr. Peckenpaugh (Staff), Mr. Eaby (Army), Mr. Snyder (Army).
3. Soil, Water, and Sediment Sampling and Sample Analysis Methods: Mr. Norris (STV), Mr. Condra (Staff), Dr. Ridge (Staff), Mr. Anagnostopoulos (Army), Mr. Eaby (Army), Mr. Snyder (Army).

The Board has no questions for Mr. Cloud and excuses him from attending the hearing.

The Board expects that its questioning of Panel 1 (Biota and Air Sampling) will be concluded by the end of the day on Monday and that its questioning of Panel 2 will begin on Tuesday. However, if the Board does not finish its questioning of Panel 1 by Monday evening, it will resume it following the completion of its questions for Panels 2 and 3. With the exception of STV witness Dr. Henshel, who is excused on Tuesday, the parties should have all of their witnesses available throughout the hearing. Assuming that the questioning of Panel 1 is completed as anticipated on Monday, Dr. Henshel will not need to reappear on Wednesday.

III. Exhibits

On October 9, 2007, the parties were sent instructions detailing the procedures to be followed for the submission of materials into the evidentiary record. This order repeats in large part those instructions; there are changes in Sections III.2, III.4, and III.5.

1. Procedures for Submission of Exhibits

   A. Exhibit Markings

Each exhibit should be marked as follows in the upper left corner &/or the top center of the exhibit: "[Party Name] Exh. #" and must be numbered sequentially. Remove from exhibits all prior markings.

B. Stamping Exhibits

Ms. Parish will provide to counsel the stamp that is to be used on all exhibits; it will be mailed out no later than Friday, October 12. Counsel must return the stamp to Ms. Parish at the conclusion of the hearing in Madison, Indiana. Prior to submission into evidence, each exhibit must be stamped and filled out. The stamp should be placed in the upper right corner of exhibit, unless doing so will obscure exhibit. The stamp must be filled out as follows:

In the matter of : U.S. Army (Jefferson Proving Ground Site)
Docket No.: 40-8838-MLA
Official Exhibit No.: [Party Name] Exh. #"
Offered by: Circle the appropriate party

No other portions of the stamp should be filled out.

C. Number of copies

Parties will submit two (2) stamped copies – one (1) original and one (1) copy. The Board will deliver the two copies to the Office of the Secretary after completion of the hearing. See 10 C.F.R. § 2.337(d). When submitting the exhibits, counsel should arrange them in two (2) piles ordered sequentially.

D. Exhibit List

Each set of exhibits will be preceded by an accompanying exhibit list marked: [Party Name] Exh. A. The list should indicate the Exhibit Number and a short descriptive title of the exhibit.

E. Prefiled Testimony

Written testimony will be received into evidence in exhibit form, see 10 C.F.R. § 2.1207(b)(2), marked as [Party Name] [Witness Name] Exh. # and should include all initial testimony, rebuttal testimony, sur-rebuttal testimony, and the witness's CV. No Personally

Identifiable Information (PII) should be included in any CV. All testimony must be signed by all individuals and appropriately sworn.

F. Exhibits to Prefiled Testimony

Any exhibit to prefiled testimony that a party desires to be included within the evidentiary record, excluding CVs, should be submitted as a separate exhibit.

2. Copies for the Board

Parties shall provide for the Licensing Board five (5) sets of all submitted exhibits discussed in Part II. Each set of exhibits must be submitted in a three-ring binder, in sequential order, beginning with the exhibit list (Exhibit A), followed by prefiled testimony and then all submitted exhibits. Each individual document should be tabbed accordingly. The copies provided to the Board need not bear the evidence stamp but must bear a proper exhibit number. The Board prefers double-sided copies.

3. Electronic Copies of Exhibits

Each party should provide one (1) set of CD-ROMs containing all submitted testimony and exhibits. The electronic version of the exhibits need not bear the evidence stamp but must bear a proper exhibit number. The Board prefers that exhibits be formatted with Word, WordPerfect, or PDF with hidden text.

4. New Exhibits

Absent compelling circumstances, any exhibit a party desires to submit to the evidentiary record (excluding a party's exhibit list) must have been submitted to the Board before October 12, 2007. See Licensing Board Order (Oct. 10, 2007) (unpublished). For exhibits submitted for the first time at the hearing, parties should follow the instructions in Section III.1 and, at the time of submission, provide copies of the exhibits to the other parties.

5. Submission of Exhibits at October 22 Hearing

Parties should provide electronic copies of their exhibits and exhibit list to the other parties as soon as possible (perhaps giving them the electronic and physical copies at different

times); at the very latest, the copies are to be provided at the beginning of the hearing on October 22. At the hearing, the Board will accept the submission of a party's exhibits all at once if that party attests to the accuracy of its exhibit list.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD[1]

/RA/

Alan S. Rosenthal, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 11, 2007

[1] Copies of this Memorandum and Order were sent this date by Internet electronic mail transmission to counsel for (1) the Licensee, (2) the NRC Staff, and (3) Intervenor.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

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

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

Administrative Judge
Paul B. Abramson
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
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

Susan L. Uttal, Esq.
David E. Roth, Esq.
James P. Biggins, Esq.
Andrea L. Silvia, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Michael A. Mullett, Esq.
Mullett & Associates, LLC
309 West Washington Street, Suite 233
Indianapolis, IN 46204-2721

Richard Hill, President
Save The Valley, Inc.
P.O. Box 813
Madison, IN 47250

Larry D. Manecke, Esq.
Commander
Rock Island Arsenal
ATTN: AMSTA-RI-GC (L. MANECKE)
1 Rock Island Arsenal
Rock Island, IL 61299-5000

Frederick P. Kopp, Esq.
U.S. Army Garrison - Rock Island Arsenal
Office of Counsel (AMSTA-RI-GC)
One Rock Island Arsenal
Rock Island, IL 61299-5000

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of October 2007