

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

E. Roy Hawkens, Chairman  
Dr. Anthony J. Baratta  
Dr. Michael F. Kennedy

In the Matter of

U.S. ARMY INSTALLATION COMMAND

(Schofield Barracks, Oahu, Hawaii, and  
Pohakuloa Training Area, Island of Hawaii,  
Hawaii)

Docket No. 40-9083

ASLBP No. 10-895-01-ML-BD01

December 17, 2009

ORDER

(Identifying Issues for Oral Argument)

This Board will hold oral argument on standing and contention admissibility issues presented in the hearing requests received from Cory Harden, Isaac Harp, Jim Albertini, and Luwella Leonardi (hereinafter referred to as Petitioners). Petitioners challenge the application of the U.S. Army Installation Command (Army) for a Source Material License to possess depleted uranium at the following two sites in Hawaii: Schofield Barracks, Oahu, and the Pohakuloa Training Area, Island of Hawaii.<sup>1</sup>

Oral argument will be held in January 2010 at the Atomic Safety and Licensing Board Panel's hearing room in Rockville, Maryland. The Army and the Nuclear Regulatory Commission (NRC) Staff will appear before the Board in the Rockville hearing room, and the Petitioners will participate by either videoconference or teleconference.<sup>2</sup> The Board is aware

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<sup>1</sup> See 74 Fed. Reg. 40,855 (Aug. 13, 2009).

<sup>2</sup> Because Ms. Harden and Ms. Leonardi have indicated they wish to participate by videoconference, the Board is in the process of locating a suitable videoconference facility. The Board is awaiting responses from Mr. Albertini and Mr. Harp as to whether they wish to participate by videoconference or teleconference.

that members of the public in Hawaii have expressed an interest in this proceeding, and the Board will therefore take steps to have the argument webstreamed for the benefit of those individuals. The Board will issue a subsequent order setting the format of the argument, the date and time of the argument, and the videoconference location.

The Board has identified below topical areas it wishes the participants to be prepared to discuss at oral argument. In discussing these topics, and in otherwise answering questions and presenting oral argument, the participants should not inject information, topics, or arguments that are new or that differ in any significant respect from the information and arguments contained in the original pleadings submitted to the Board. The following areas of concern are not all-inclusive, and the Board may inquire into other matters raised in the participants' pleadings.

A. All Petitioners

- (1) Please provide the following information: (1) the address of your physical residence; and (2) the distance from your physical residence to the closest boundary of the Army Installation for which a possession-only depleted uranium license is being considered by the NRC.

B. Isaac Harp

- (1) In your petition, you indicate that the granting of this license would pose a health threat to the land and residents of Hawaii. Please clarify the nature of this threat as it applies to you, and specify the factual foundation for your assertion of the potential for harm and injury.
- (2) In your petition, you state the Army may have used depleted uranium munitions in areas other than those discussed in the license application. Please provide the factual foundation for this assertion, including any information that would dispute the Army's findings.

- (3) Your petition invokes Executive Order 12898 and demands consideration of environmental justice in regard to the sites being considered in the subject license application. Please explain in greater detail your specific claim in regard to this specific executive order.

C. Luwella Leonardi

- (1) Your petition asserts that dust plumes emanating from the Army installation are responsible for health issues in your community. Please specify the factual foundation for this concern, including the basis for a conclusion that (1) the offending dust plumes emanate from the Army installation, (2) the dust plumes are radioactive, and (3) there is a causal connection between the dust plumes and health issues.
- (2) Your petition alleges that the Army transported contaminated soil to your community on the Waianae Coast. Please specify a factual foundation for this allegation, including the destination and purpose of the alleged shipments, their frequency, the length of time they have been occurring, and the nature of and type of the alleged contamination.

D. Jim Albertini

- (1) Please provide the factual foundation for the assertion in your petition that the Army fails adequately to acknowledge the inhalation hazard of depleted uranium oxide, including any information that would dispute the Army's findings.
- (2) Your petition indicates you were present when radiation monitors spiked to 75 counts per minute during a dust storm at Mauna Kea State Park. Please clarify the details of the event and explain why you attribute the spike to depleted uranium from the Army installation.

(3) Your petition indicates that you have visited the Mauna Kea State Park.

Please specify the distance of this park to the Army installation in question, as well as the purpose, frequency, and duration of your visits.

E. Cory Harden

(1) The NRC Staff asserts that the material you submitted on October 30, 2009 should not be considered because it was filed after the October 27, 2009 deadline and it was not accompanied by a request or justification for submitting it out of time. Please address the Staff's assertion.

(2) Please clarify the contention(s) being pled in your October 30, 2009 submission.

(3) Please clarify the contention being pled in your October 9, 2009 submission.

F. Army

(1) Please clarify the quantity of depleted uranium that is involved and the degree to which the Army has been able to identify the locations on the sites where this depleted uranium is located. Regarding these two issues of quantity and location, please address the Army's confidence in both the quantity of material and the possible locations, and the factual basis for such confidence.

(2) Please provide a map or other geographical depiction that (1) shows the boundaries of the military installations, and (2) shows the area(s) within the installations where depleted uranium exists. Please provide the distances between the depleted uranium areas and the boundaries of the military installations. The Army is directed to provide this to the Board and to serve it on the other participants by January 5, 2010.

(3) Please clarify the nature of current and prospective activities on these two installations with regard to live-fire exercises, and the location of such exercises in relation to the depleted uranium areas. Please address whether

the Army has a policy of maintaining a specific buffer distance between live-fire exercises and depleted uranium areas.

- (4) In regard to current site monitoring activities, please clarify what, if any, monitoring is being performed for either airborne or groundwater radioactive contamination. Please address the assertion in Ms. Harden's submission that the Army's air monitoring program is based on "wrong protocols" and the "Army is not getting enough sample to [distinguish] depleted uranium from the natural [uranium because] . . . the sample size is too small."
- (5) In regard to the site characterization, please discuss the nature and results from any aerial radiation measurements that may have been made from either fixed-wing aircraft or helicopters. If aerial radiation surveys have been, or will be, conducted, please describe the methodology that was, or will be, used.
- (6) In regard to the assertions by the petitioners that contaminated soil is being removed from the installation(s) please clarify what, if any, activities are underway (or may be implemented in the future) to remove either depleted uranium or soil containing depleted uranium.
- (7) Please address when the Archives Search Report was made publicly available both in print and on a website.
- (8) The verified number of depleted uranium spotting rounds shipped to Oahu from the Lake City Ordnance Plant was 714 rounds in April 1962, yet the "worst case scenario" estimate of rounds used – based on training/qualification criteria, as well as the number of spotting rounds ordinarily fired per practice round – is 2,526 rounds. Please reconcile these two figures, and also address the possibility that additional rounds may have been shipped to Oahu from other ordnance depots.

- (9) Please address whether the Army intends to use depleted uranium munitions in the future at the relevant military installations.

G. NRC Staff

- (1) The Army's application states that the "Army has not determined that the Atomic Energy Act (Act) requires a possession-only license in the instant situation," but that it is nevertheless submitting an application to "promote cooperation between our agencies and to the extent required by the Act." Please address whether the Army is required to have a license in this situation.
- (2) Please explain the consequence if the Army is not granted a depleted uranium possession-only license for the two sites in this proceeding.
- (3) Please discuss the nature of license conditions that may be placed on the Army as a possession-only license holder, including whether such conditions could include the location and frequency of radiological monitoring, the ability to remove depleted uranium (or soil that might contain depleted uranium) from the site, and the permissibility of conducting live-fire exercises in areas where depleted uranium may be present.
- (4) The Staff states that Ms. Harden never specifies any injury-in-fact apart from the possibility that "very different conditions may eventually be written into the Army DU license" depending on the number of spotting rounds found to be used. Because the dose associated with a quantity of radioactive material depends on the amount present, please address how it is possible to characterize with specificity an injury-in-fact if, as alleged by Ms. Harden, the amount of radioactive material is unknown.
- (5) The Staff states that Ms. Leonardi's assertion that she has seen trucks from Schofield Barracks unload debris containing radioactive soil directly in back of her home is beyond the scope of this proceeding. Please address what the

regulations say with respect to the disposal of material held under a possession-only license.

- (6) The Staff states that Mr. Albertini's contentions should be rejected because they "fail[] to comply with the contention pleading requirements of 10 C.F.R. § 2.309(f)(1)." Please explain the basis of this statement, and identify with specificity the provision of section 2.309(f)(1) that Mr. Albertini allegedly fails to satisfy.
- (7) Please address whether Commission regulations require an applicant to fully characterize the type, amount, and location of material it will hold under a possession-only license. Also, address what percentage of a site is usually surveyed to determine a site's characteristics, and what is the legal and/or technical basis for the percentage.
- (8) Please address whether documents referenced in a license application are considered to be part of the application.
- (9) Please address whether the telephone conversation that took place on October 26, 2009 between the Office of the Secretary of the Commission and Ms. Harden constitutes good cause for the allegedly late filing of her October 30, 2009 Addendum.
- (10) It is claimed that (i) the Army's presence at the relevant military installations is illegal, and (ii) state or local laws may prohibit the Army from storing/possessing depleted uranium in the open at these installations. Please address whether the NRC Staff's review of the Army's possession-only license application extends to such claims, and provide statutory and/or regulatory support for your position.

- (11) Please address the claim that the NRC Staff should direct all military forces, domestic and foreign, that have trained in Hawaii since 1940 to search their classified and unclassified records for forgotten radioactive hazards.
- (12) Please be prepared to address the standing analysis in the following decisions as they relate to standing in this case:<sup>3</sup>
- i. Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90 (2000);
  - ii. Crowe Butte Res., Inc. (Northern Trend Expansion Area), CLI-09-12, 69 NRC \_\_ (slip op.) (June 25, 2009);
  - iii. Nuclear Fuel Servs., Inc. (Erwin, Tennessee), CLI-04-13, 59 NRC 244 (2004);
  - iv. Tenn. Valley Auth. (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15 (2002).

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>4</sup>

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E. Roy Hawkens, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
December 17, 2009

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<sup>3</sup> If a participant has difficulty accessing copies of the listed decisions, he or she may request assistance from the Board's law clerk by email, at [katie.tucker@nrc.gov](mailto:katie.tucker@nrc.gov).

<sup>4</sup> In addition to being filed through the e-filing system, copies of this Order were sent this day by Internet email to: (1) Cory Harden; (2) Jim Albertini; (3) Isaac Harp; (4) Luwella Leonardi; (5) counsel for the U.S. Army; and (6) counsel for the NRC Staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
U.S. ARMY INSTALLATION COMMAND ) Docket No. 40-9083-ML  
)  
(Depleted Uranium at Pohakuloa Training )  
Area and Schofield Barracks, Hawaii) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Identifying Issues for Oral Argument)** have been served upon the following persons by E-mail with additional service on representatives of the NRC Staff and the U.S. Army Installation Command by Electronic Information Exchange (EIE).

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Docket No. 40-9083-ML  
ORDER (Identifying Issues for Oral Argument)

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[Original signed by Linda D. Lewis]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 17<sup>th</sup> day of December 2009.