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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD PANEL

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Before Administrative Judges:

Alan S. Rosenthal, Presiding Officer
Thomas D. Murphy, Special Assistant

Office of the
Administrative
Judges

SERVED MAR 13 2000

In the Matter of

U.S. ARMY

(Jefferson Proving Ground
Site)

Docket No. 40-8838-MLA

ASLBP No. 00-776-04-MLA

March 13, 2000

MEMORANDUM AND ORDER

(Granting Licensee Leave to Reply to
Supplement to Hearing Request)

On March 9, 2000, petitioner, Save the Valley, Inc., (Petitioner) filed the supplement to its hearing request that had been authorized by my February 24, 2000 order in this case involving a sought amendment to the materials license held by the U.S. Army (Licensee) in connection with its Jefferson Proving Ground Site (JPG) located in Madison, Indiana. The amendment would permit the decommissioning of the site on which there is currently stored depleted uranium munitions that had been utilized by the Licensee under the aegis of the license.

The supplement is addressed exclusively to the issue of the Petitioner's standing to represent its members in

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seeking a hearing on the proposed license amendment. It consists of the affidavits of three of Petitioner's members, one of whom is its president as well as the person who had signed the hearing request on the organization's behalf.

Each affidavit sets forth the home address of the affiant and avers that the property is located at a distance of five miles or less from the JPG. It then goes on to identify the possible impact that execution of the decommissioning plan advanced by the Licensee might have upon the affiant's interests. In this connection, all three of the affidavits focus particularly on the effect that the decommissioning assertedly might have on a waterway that abuts the property of two of the affiants and is used for recreational purposes by the third. In addition, Petitioner's president is expressly authorized by the other affiants to represent them in this matter.

1. For reasons of its own, the Licensee did not avail itself of the opportunity provided by the Commission's Rules of Practice to file a timely response to the hearing request. That being so, it reasonably could be regarded as having waived any claim that the hearing request is legally deficient and, accordingly, should be denied.

Nonetheless, because standing to institute or to participate in an NRC adjudicatory proceeding has

jurisdictional implications, it was my responsibility to make an independent determination with respect to whether the Petitioner has satisfied the well-established requirements for representational standing. As the February 24 order reflects, I found that the hearing request fell short in that respect. I further concluded, however, that an opportunity to remedy the deficiencies should be extended to Petitioner. As above noted, the supplement now before me was submitted in the pursuit of that opportunity.

At first blush, it appears to me that, as above described, the submitted affidavits fulfill the representational standing requirements set forth at page five of the February 24 order. If, however, it is of a different opinion, the Licensee may respond to the hearing request supplement. Any such response must be filed and served no later than Friday, March 24, 2000 and shall be strictly confined to the issue of whether the affidavits submitted in supplementation of the hearing request are sufficient to establish the Petitioner's representational standing. Stated otherwise, not having responded to the hearing request itself within the period provided in the Rules of Practice, the Licensee is now foreclosed from raising any other objection to the request and no such objection will be considered.

2. In the event that the hearing request is ultimately granted, all further proceedings in this matter will be governed by the relevant provisions of the Commission's Rules of Practice. Those Rules are to be found in Part 2 of Title 10 of the Code of Federal Regulations, the contents of which Code are now readily accessible on the Internet (www.nrc.gov/NRC/CFR/index.html). More specifically, of pertinence to this matter are (a) the Rules of General Applicability to be found in Subpart G beginning at section 2.700 of that Title; and (b) the Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings to be found in Subpart L beginning at section 2.1201 of the Title. The parties will be held accountable for total familiarity with the terms of those

two Subparts and will be expected fully to comply with them as the occasion arises.

It is so ORDERED.

BY THE PRESIDING OFFICER*

Alan S. Rosenthal

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

This order is issued pursuant to the authority of the Presiding Officer designated for this proceeding.

Rockville, Maryland

March 13, 2000

* Copies of this memorandum and order were sent this date by facsimile transmission to representatives of the Licensee and the Petitioner.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING LICENSEE LEAVE TO REPLY TO SUPPLEMENT TO HEARING REQUEST) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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

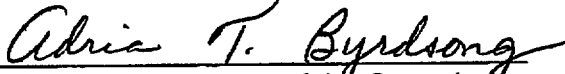
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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of March 2000