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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-00-09

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ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

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

ORIGINAL FILED
MAR 23 2000
ADJUTANT GENERAL

SERVED MAR 23 2000

In the Matter of

U.S. ARMY

(Jefferson Proving Ground
Site)

Docket No. 40-8838-MLA

ASLBP No. 00-776-04-MLA

March 23, 2000

MEMORANDUM AND ORDER

(Granting Hearing Request and Directing
the NRC Staff to Furnish Hearing File)

Before me is the January 13, 2000 hearing request of Save the Valley, Inc. (Petitioner), as supplemented on March 9 in accordance with the authorization contained in my February 24 order (unpublished). The hearing request addresses a proposed 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, in accordance with 10 C.F.R. § 20.1403, the restricted release of the site on which there is currently an accumulation of depleted uranium (DU) munitions that had been utilized by the Licensee under the aegis of the license.

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On March 17, the Licensee filed a belated answer to the hearing request. It was accompanied by a motion for leave to file it out-of-time that, for good cause shown, is hereby granted. In addition, as sanctioned by my March 13 order (unpublished), on March 20 the Licensee responded briefly to the supplement to the hearing request.

A. Under the Commission's Rules of Practice, in deciding whether to grant this timely hearing request as supplemented, I must determine whether (1) the request specifies areas of concern that are germane to the subject matter of the proceeding; and (2) the Petitioner has satisfied the judicial standards for standing. If both of these questions receive affirmative answers, that is the end of the present inquiry. See 10 C.F.R. § 2.1205(h).

I do not understand the Licensee to challenge in its recent filings either the Petitioner's specification of a germane area of concern or the sufficiency of the demonstration of standing contained in the supplement to the hearing request. And my independent examination of what the Petitioner has placed before me leaves me in no doubt that the requirements of section 2.1205(h) have been amply satisfied.

To begin with, the hearing request identifies with particularity several areas of concern with regard to the proposed decommissioning of the JPG. No useful purpose would be served by an extended recitation of them here.

Suffice it to say that they relate to such issues as the extent of the proposed cleanup of the accumulated DU material; future monitoring requirements; and restrictions upon further use of the area in which the DU material has been stored. These issues are indisputably germane whether or not the Petitioner's articulated concerns are ultimately found to warrant the denial or alteration of the decommissioning plan as now presented.

On the matter of its standing, in the supplement to the hearing request the Petitioner supplied the affidavits of three of its members, including the organization's president who had signed and submitted the request on its behalf. The content of those affidavits is adequately summarized in the March 13 order. As there appears, all three affiants live in close proximity to the JPG and are particularly concerned regarding the potential impact of the decommissioning activity on a waterway that abuts the property of two of them and is used for recreational purposes by the third. In addition, the organization president has been expressly authorized to represent the other affiants. In these circumstances, there likewise can be no doubt that Petitioner, an organization said to be particularly concerned about the protection of the environment in southeastern Indiana (which includes the JPG), fulfills the requirements for representational standing.

Accordingly, the hearing request is, as it must be, granted.

B. The grant of the hearing request is subject to an appeal by the Licensee to the Commission in accordance with the terms of 10 C.F.R. § 2.1205(o). (For its part, the NRC Staff has elected not to participate in the proceeding and, to this point at least, I find no cause to require it to do so.) Any such appeal must be filed within ten (10) days of the service of this order. Within fifteen (15) days of the service of the appeal brief, the appeal may be opposed by the Petitioner in the manner prescribed in section 2.1205(o).

C. In light of the grant of the hearing request and the provisions of 10 C.F.R. § 2.1231(a), it now becomes incumbent upon the NRC staff to prepare and to file the hearing file no later than Monday, April 24, 2000. That file shall contain a chronologically numbered index of each item contained in it. Moreover, each file item shall be separately tabbed in accordance with the index and be separated from the other file items by a substantial colored sheet of paper that contains the tab(s) for the immediately following item. Additionally, the items shall be housed in hole-punched three ring binders of no more than four inches in thickness.

D. I will enter an order at a subsequent date calling for a telephone conference with the parties to discuss,

among other subjects, the scheduling of further proceedings in this matter. I note at this juncture only that how expeditiously the case will move forward obviously will be heavily influenced by, among several other things, the degree of completeness of the hearing file to be submitted by the staff next month.

In this connection, the Licensee's March 17 answer points to a distinct possibility that the current decommissioning plan will undergo revision in material respects. Indeed, the Licensee explicitly requests (answer at 6) that further proceedings be held in abeyance pending the outcome of its anticipated further interaction with the NRC staff with regard to the decommissioning plan. On this score, it is also worthy of note that the Licensee commendably has indicated its willingness "to work with [Petitioner] on [its] issues, with the goal of addressing these issues in the Revised plan and avoiding the need for a hearing" (ibid). In short, insofar as concerns the need for and timing of further adjudicatory action, it would appear that at present the situation is quite fluid and that there is thus a real possibility of settlement of any existing differences between the parties. Needless to say, the parties are encouraged to pursue that possibility.

It is so ORDERED.

BY THE PRESIDING OFFICER*



Alan S. Rosenthal
ADMINISTRATIVE JUDGE

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

Rockville, Maryland

March 23, 2000

* Copies of this memorandum and order were sent this date by Internet e-mail transmission to representatives of the Licensee and the Petitioner, as well as counsel for the NRC Staff.

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 HEARING REQUEST AND DIRECTING THE NRC STAFF TO FURNISH HEARING FILE) 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.

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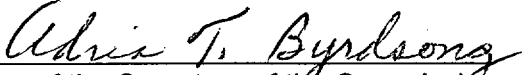
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Docket No. 40-8838-MLA
LB MEMORANDUM AND ORDER
(GRANTING HEARING REQUEST
AND DIRECTING THE NRC STAFF
TO FURNISH HEARING FILE)


Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 23rd day of March 2000