

RAS 14052

DOCKETED  
USNRC

August 24, 2007 (8:00am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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	)	ASLBP No. 00-776-04-MLA
	)	
(Jefferson Proving Ground Site)	)	August 24, 2007
_____		

**RESPONSE OF SAVE THE VALLEY, INC.  
TO ARMY'S MOTION TO STRIKE PARTS OF  
THE TESTIMONY OF ITS OWN WITNESS ANAGNOSTOPOULOS**

Intervener Save the Valley, Inc. ("STV"), by counsel, respectfully responds to the Army's motion to strike parts of the testimony of its own witness, Harold W. Anagnostopoulos, filed this date, as follows:

1. The Army's motion is correct that Mr. Anagnostopoulos has breached the confidentiality agreement among the Army, the Staff and STV with respect to the settlement negotiations between the parties conducted in this matter late last summer and early last fall.

2. The Army's motion is incomplete, however, in that it fails to state that Mr. Anagnostopoulos has also grossly mischaracterized crucial elements of those negotiations. Arguably, by filing the testimony of Mr. Anagnostopoulos in the form that it did, the Army has waived any claim of confidentiality it would otherwise have with respect to the positions and statements of Mr. Anagnostopoulos regarding the specific matters addressed in the parts of his testimony which the Army has moved to strike. However, absent specific direction from the Board, STV perceives little benefit to the record of this proceeding at this time of providing its own verified statement regarding the actual positions taken and statements made by Mr. Anagnostopoulos during the negotiations regarding the specific matters addressed in the parts of his

TEMPLATE = SECY-037

SECY-02

testimony which the Army has moved to strike.

3. Notwithstanding this perception on STV's part, STV must unequivocally and categorically dispute, on the record, the accuracy of certain statements of Mr. Anagnostopoulos which the Army has moved to strike, as follows:

a. It was *not* Mr. Anagnostopoulos who asserted in the negotiations that "[t]he real technical issue here is the uncertainty in the U-238 measurement, in the U-234 measurement, and the propagation of those uncertainties into the calculation of the U-238:U-234 ratio" associated with the Army's use of alpha spectroscopy (AS) to measure low levels of radioactivity at JPG;

b. It was *not* Mr. Anagnostopoulos who proposed in the negotiations "[a]nother analytical method, inductively coupled plasma - mass spectroscopy (ICP - MS), [as] a possible alternative to alpha spectroscopy for the evaluation of characterization samples at JPG."; and

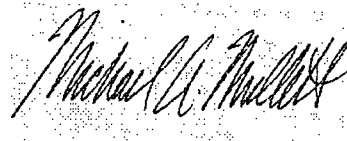
c. While he did inject another complicating phenomenon by way of rebuttal when the issue of fractionation was raised in the negotiations, it was *not* Mr. Anagnostopoulos who introduced the issue of fractionation or expressed concern regarding its implications for the evaluation of characterization samples at JPG.

4. Notwithstanding the inaccuracy of certain of the statements made by Mr. Anagnostopoulos regarding last year's negotiations among the parties which the Army has moved to strike, STV welcomes Mr. Anagnostopoulos' present position that "[t]he real technical issue here is the uncertainty in the U-238 measurement, in the U-234 measurement, and the propagation of those uncertainties into the calculation of the U-238:U-234 ratios" associated with the Army's use of alpha spectroscopy (AS) to measure low levels of radioactivity at JPG. Similarly, STV welcomes his present position that "a possible alternative to

alpha spectroscopy for the evaluation of characterization samples at JPG” is inductively coupled plasma - mass spectroscopy. Finally, STV welcomes Mr. Anagnostopoulos’ present position that the phenomenon of fractionation is another complicating factor with respect to the evaluation of characterization samples at JPG.

5. Having made this supplementary filing to dispute the accuracy of certain of the statements of Mr. Anagnostopoulos which the Army has moved to strike, STV supports the Army’s motion to strike.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael A. Mullett", is centered on the page. The signature is written in a cursive style with some ink bleed-through from the reverse side of the paper.

Michael A. Mullett, Senior Counsel  
Mullett & Associates  
309 West Washington Street, Suite 233  
Indianapolis, IN 46204  
Phone: (317) 636-0025  
Fax: (317) 636-5435  
E-mail: mmullett@mullettlaw.com

Attorney for Save the Valley, Inc.

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	)	ASLBP No. 00-776-04-MLA
	)	
(Jefferson Proving Ground Site)	)	August 24, 2007

---

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing "Response of Save the Valley, Inc., to Army's Motion to Strike Parts of the Testimony of Its Own Witness Anagnostopoulos" have been served this 24th day of August, 2007, upon the following persons by electronic mail and by U.S. Mail, first class postage prepaid.

Administrative Judge Alan S. Rosenthal Chair,  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3-F-23  
Washington, D.C. 20555-0001

Adjudicatory File  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3-F-23  
Washington, D.C. 20555

Administrative Judge Paul B. Abramson  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3-F-23  
Washington, D.C. 20555

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

Administrative Judge Richard F. Cole  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3-F-23  
Washington, D.C. 20555

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

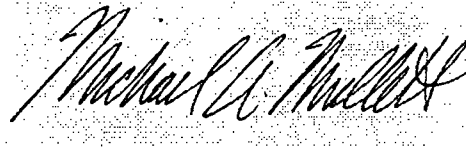
Office of the Secretary  
ATTN: Rulemaking and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16-G-15  
Washington, D.C. 20555-0001

David E. Roth  
Andrea L. Silvia  
Sara E. Brock  
Margaret J. Bupp  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission 0-15D21  
Washington, DC 20555-0001

Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16-G-15  
Washington, D.C. 20555-0001

Tom McLaughlin, Decommissioning Branch  
Division of Waste Management  
Office of Nuclear Materials and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

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



---

Michael A. Mullett  
Mullett & Associates  
309 West Washington Street, Suite 233  
Indianapolis, IN 46204  
Phone: (317) 636-0025  
Fax: (317) 636-5435  
E-mail: mmullett@mullettlaw.com

Attorney for Save the Valley, Inc.

# MULLETT & ASSOCIATES

## COUNSELORS AT LAW

Old Trails Building, Suite 233  
309 West Washington Street  
Indianapolis, IN 46204

---

Phone: (317) 636-0025

Fax: (317) 636-5435

August 24, 2007

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
ATTN: Rulemakings and Adjudications Staff

Re: Response of Intervener Save the Valley, Inc., to Army's Motion to Strike Parts of the  
Testimony of Its Own Witness Anagnostopoulos

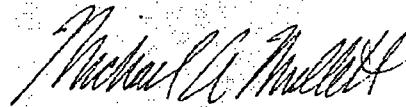
In the Matter of the U.S. Army (Jefferson Proving Ground Site), Docket No. 40-8838-MLA,  
ASLBP 00-776-04-MLA

Dear Secretary:

Enclosed please find for filing in the above-referenced docket the original and two conformed  
copies of the above-referenced filing, along with the related Certificate of Service.

Thank you for your assistance in this matter.

Respectfully submitted,



Michael A. Mullett  
Attorney for Save the Valley, Inc.

cc: Service List – Docket No. 40-8838, ASLBP 00-776-04