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Title: U.S. Army, JPG Site
Limited Appearance Hearing

Docket Number: 40-8838-MLA; ASLBP No.: 00-776-04 MLA

Location: Madison, Indiana

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Tuesday,
July 18, 2006

ALAN S. ROSENTHAL, Chairman
PAUL B. ABRAMSON, Member
RICHARD F. COLE, Member

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P R O C E E D I N G S

(6:30 p.m.)

CHAIRMAN ROSENTHAL: Good evening ladies and gentlemen. I am Alan S. Rosenthal. Sitting with me on my left is Paul B. Abramson, on my right Richard F. Cole. The three of us are administrative judges of the United States Nuclear Regulatory Commission and, as such, are members of an NRC Licensing Board that has been assigned to conduct a proceeding involving the United States Army's Jefferson Proving Ground site located here in Madison. I might add that we are accompanied by two members of the Board's support staff, Debra Wolf and Ashley Prange.

As many of you might be aware, between 1984 and 1994 the Army conducted on its JPG site accuracy testing of depleted uranium tank penetration rounds. Because the employment of radioactive materials was involved, it was necessary for the Army to obtain an NRC materials license in order to conduct this testing. And, once the test activities were concluded, under NRC regulations the Army became obligated to furnish the Commission with a plan for decommissioning the site; in other words, a plan calling for either removal of the radioactive material from the site or the institution of alternative

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1 measures that would equally ensure the protection of
2 the public health and safety.

3 Although the Army first presented such a
4 site decommissioning plan for NRC approval well over
5 six years ago, for reasons that I will not dwell upon
6 this evening neither it nor a revised plan was found
7 acceptable by the Commission's technical staff. What
8 is currently before this Licensing Board is, instead,
9 a proposal by the Army to be given a five year period
10 in which to come forth with a new decommissioning plan
11 that would safety Commission requirements. As part of
12 the proposal, the Army has identified certain programs
13 that it intends to pursue during the five year period
14 for the purpose of obtaining sufficient information
15 regarding site conditions to enable it to formulate an
16 acceptable decommissioning plan.

17 As permitted by NRC regulations, a local
18 organization, Save the Valley, Incorporated, has
19 challenged several aspects of the proposal as being
20 insufficient to accomplish the ultimate purpose of
21 providing an acceptable decommissioning plan at the
22 end of the five-year period. The Board has already
23 determined that at least one of the challenges meets
24 the standards imposed by Commission regulations for
25 consideration at a hearing that will take place here

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1 in Madison at a later date. At a conference to be
2 held beginning at 9:00 o'clock tomorrow morning in the
3 Council Chambers of the Madison City Hall, the Board
4 will discuss with the lawyers for the three parties to
5 the proceeding, Save the Valley, the Army and the
6 Commission's technical staff, the question as to
7 which, if any, of Save the Valley's other challenges
8 should be included in the hearing. Interested members
9 of the public may attend tomorrow's conference as
10 spectators.

11 At the eventual hearing, which likewise
12 will be open to interested members of the public as
13 spectators, the parties to the proceeding will be
14 provided an opportunity to present evidence in support
15 of or in opposition to each of the challenges to the
16 proposal that has been determined by the Board
17 following tomorrow's conference to be worthy of
18 further consideration. What the Board is conducting
19 this evening, called in NRC parlance a limited
20 appearance statement session, is entirely different in
21 purpose and format.

22 Specifically, pursuant to a notice
23 published in the Federal Register on June 12,
24 interested members of the public are being given the
25 opportunity at this time to present an oral and/or

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1 written statement setting forth their position on
2 matters of concern relating to the proceeding.
3 Although not constituting testimony or evidence, these
4 statements nonetheless might help the Board and/or the
5 parties in their consideration of the issues presented
6 in the proceeding.

7 The Federal Register notice invited
8 persons desirous of making an oral statement this
9 evening to submit a written request no later than July
10 7. I am advised that just one such request was
11 received by the prescribed deadline. That requester
12 will be heard first, for a period of no more than five
13 minutes. After his statement has been received, the
14 Board will entertain oral statements from others in
15 attendance, each likewise not to exceed five minutes
16 in length. Although it should be possible to
17 accommodate all those who wish to provide an oral
18 statement, in no event will the session go beyond the
19 8:30 p.m. closing time specified in the Federal
20 Register notice.

21 I might say in that connection that at
22 least insofar as the individuals that so far have
23 indicated a desire to present statements, there's no
24 danger of the session reaching 8:30.

25 At this point I will ask the first speaker

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1 to come to the table and that is the individual who
2 registered. Oh, before we get into this matter,
3 there's -- Judge Abramson has reminded me that I
4 should take note of the fact that the role of the
5 Licensing Board and the role of the Commission's
6 technical staff are quite different. The Commission's
7 staff is responsible for evaluating the application
8 and when it gets to a hearing, that hearing is
9 conducted and a decision is reached by a Licensing
10 Board which is totally independent of the Commission's
11 technical staff. The technical staff's role in the ad
12 judicatory proceeding before a Licensing Board, in
13 which it is represented by lawyers in the Commission's
14 General Counsel's Office, is to put forth before the
15 Board its own position with respect to the particular
16 matter in adjudication.

17 And that's why when this proceeding gets
18 to hearing, ultimately, there will be three parties to
19 it. There will be Save the Valley, presenting its
20 particular position on the various issues that it has
21 raised; there will be the Army which will be
22 presenting its position on those issues; and the third
23 party will be the Commission's staff which will be
24 presenting its position based upon its prior
25 evaluation of the proposal. And these three parties,

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1 as I indicated earlier, will be represented at
2 tomorrow's conference.

3 One final thing, normally you would be
4 seeing members of the Licensing Board, as well as the
5 lawyers appearing before it, in suits, usually dark
6 suits, with ties --

7 JUDGE ABRAMSON: No robes.

8 CHAIRMAN ROSENTHAL: No robes. The Board
9 does not employ robes. This evening, as you'll note,
10 and this will also be true at the conference tomorrow
11 morning, in view of the excessive heat which seems to
12 have afflicted Madison as well as the Washington, D.C.
13 area, we decided to relax the normal uniform
14 requirements. And that's why you'll be seeing -- you
15 see the members of the Board in shirtsleeves, without
16 ties and tomorrow morning's conference you'll see,
17 presumably, the lawyers participating, as well as the
18 members of the Board, similarly attired.

19 All right. So we'll now turn to the first
20 speaker, representing the Hoosier Environmental
21 Council. So would you come up to the table. If you'd
22 give us your name. You might spell your last name for
23 the benefit of our Reporter.

24 MR. WIENEKE: Thank you, Your Honors. My
25 name is Joel Wieneke. The last name is spelled W-I-E-

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1 N-E-K-E.

2 As you've acknowledged, I'm here today to
3 speak on behalf of the Hoosier Environmental Council.
4 To my knowledge the Hoosier Environmental Council has
5 a -- it's an environmental, non-profit organization of
6 the state and has members located in Jefferson County
7 and the two other counties in which portions of the
8 Jefferson Proving Ground are located.

9 I apologize if I'm not totally prepared.
10 I have a bar exam in six days.

11 So anyway --

12 JUDGE ABRAMSON: We're empathetic.

13 MR. WIENEKE: The material that I reviewed
14 in preparing for today, I noticed that there were a
15 lot of questions that still remain unanswered. As far
16 as -- especially concerning hydraulic conductivity
17 between streams, stream flow, the rates of water
18 infiltration. You have some evidence, at least, to
19 show that infiltration may be quick. The evidence is
20 there's low permeability in the soil types over much
21 of the area.

22 The Army has referred to the dissolution
23 of depleted uranium which is the, to my understanding,
24 the remaining source of the reason why we're here
25 today. And it's the reason why the NRC has

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1 jurisdiction over this. The dissolution rate of
2 depleted uranium is site specific. There's several
3 references to what the depletion rate is elsewhere.
4 However, I'm not convinced that it's ever been
5 answered what the dissolution rate is at this
6 particular site.

7 And those two questions, the hydraulic
8 conductivity, the dissolution rates of the depleted
9 uranium, are definitely key to any inquiry that's
10 going to eventually lead to a decision on
11 decommissioning of the Army's license.

12 Some studies that I've seen show that
13 dissolution or corrosion rates of depleted uranium
14 could be as long as 20,000 years. But yet we're
15 talking about decommissioning in five years of a
16 project that just ended 12 years ago.

17 I think that keeping that in mind, it's
18 going to be very difficult to get a true grip on what
19 the potential effects are going to be in the future
20 years at this site, in this whole watershed, through -
21 - wherever the ground water ends up. I assume that a
22 large portion of this ground water ends up in the Ohio
23 River which flows then on into the Mississippi. I
24 can't speak as far as what the actual effect will be
25 on those bodies of water or international waters in

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1 general, because I don't have that expertise.

2 But you will be presented, hopefully, in
3 your pursuit of this matter, evidence in regards to
4 that. And I encourage you to consider both the
5 information presented by the Army and by Save the
6 Valley and take it very seriously, as I know that you
7 will. And keep in mind there are a lot of questions
8 that remain unanswered.

9 One thing that I do remember from
10 reviewing the Army's responses to requested
11 information from the Board, in regards to deer samples
12 and tissue samples taken from those deers. In 1993 to
13 my recollection, five deers were sampled and yet the
14 testers weren't even sure if they were sampling the
15 kidney tissue of those deers or not. The organs were
16 assumed to be the kidneys. Well, that leaves a lot of
17 questions out there. Especially when we're saying
18 that the remaining buildup of depleted uranium is
19 going to be in the kidneys of those samples. And
20 there was only one deer that was tested in 1994. That
21 doesn't seem to be a very good sample set of the
22 population there.

23 And in fact, of all the deers that were
24 taken throughout the year, there is no evidence of
25 where those samples were harvested from. We don't

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1 know if they were harvested from inside the DU area,
2 we don't know if these were animals that may have
3 occasionally visited there. We don't know if these
4 animals never even visited there at all.

5 So I would ask that -- I don't know what
6 the Army's study currently entails, but definitely ask
7 for more complete and more rigorous tissue samples
8 from deer populations and a consideration of other
9 indicators species.

10 There was a request for information on the
11 condition of the monitoring wells because there was
12 evidence showing that they had -- were growing
13 vegetation, they weren't all locked. I believe the
14 Army replied and stated that they had been locked and
15 I assume the vegetation removed. I don't really know
16 what the effects of that would be on the current
17 samples taken. However, that's definitely a concern.
18 These monitoring wells should be continuously assured
19 that they are going to be kept in a locked condition
20 and other things like that.

21 For all these reasons and for the reasons
22 that there's several outlying questions that still
23 have yet to be answered by the Army, I appreciate the
24 fact that a study is being conducted currently but I
25 request that the Board not look towards

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1 decommissioning at this time. To keep the Army under
2 the jurisdiction. If the Army is able to relinquish
3 this connection with the NRC, it may be difficult for
4 potential injured victims many, many years in the
5 future to be able to address their injuries to tie it
6 into what has happened at this place and be able to
7 seek compensation for their injuries. Thank you.

8 CHAIRMAN ROSENTHAL: Well, I would just
9 stress that the Commission is not going to lose
10 jurisdiction over this matter. The Army is still
11 going to be obligated to present to the Commission a
12 decommissioning plan. The Commission's regulations
13 specifically require that. And that plan will have to
14 receive Commission approval before the Commission
15 terminates the materials license and terminates its
16 jurisdiction.

17 MR. WIENEKE: Okay.

18 CHAIRMAN ROSENTHAL: So that's a concern
19 that you need not have, that there's going to be a
20 relinquishment of Commission jurisdiction any time
21 soon.

22 MR. WIENEKE: Can I ask you a question --

23 JUDGE ABRAMSON: Well, generally we don't
24 answer questions.

25 CHAIRMAN ROSENTHAL: No, we don't answer

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1 questions.

2 JUDGE ABRAMSON: But let me just add to
3 that. That the current status of this litigation is
4 that the Army has asked for a delay of five years
5 before they have to submit their decommissioning plan,
6 so that they can characterize the site. The big
7 problem here has been characterizing the site.

8 So what's going to be going on in the next
9 increment is characterizing the site before they
10 submit their decommissioning plan and then that will
11 be submitted to the staff and the staff will review
12 it. We sit only as a Board to adjudicate matters that
13 get litigated. And right now what's being challenged
14 is the plan to do --

15 MR. WIENEKE: Okay.

16 JUDGE ABRAMSON: So that's where we are.

17 CHAIRMAN ROSENTHAL: Thank you. I might
18 stress that the reason that the members of the Board
19 have not been taking notes is that this evening's
20 session, in common with the conference tomorrow
21 morning, is being stenographically transcribed. So
22 that the Board will have the benefit, in writing, of
23 the comments of the speakers this evening. And that
24 being the case, there's no necessity for us to be
25 engaging in writer's cramp at this point.

1 All right, the second speaker.

2 JUDGE ABRAMSON: Betsy -- somebody from
3 the City of Madison. Could you spell your name for
4 us, please?

5 MS. VONDERHEIVE: Vonderheive. V, as in
6 Victory, O-N-D-E-R-H-E-I-N-E.

7 JUDGE ABRAMSON: And it's Betsy, is that
8 correct?

9 MS. VONDERHEIVE: Yes.

10 JUDGE ABRAMSON: Thank you.

11 MS. VONDERHEIVE: I have to say -- I have
12 to point out that the previous speaker and I have both
13 worn our dark suits.

14 JUDGE ABRAMSON: Congratulations.

15 CHAIRMAN ROSENTHAL: But that was a matter
16 of choice, not as a matter of necessity.

17 MS. VONDERHEIVE: Okay. I'm here
18 representing Mayor Al Huntington who was unavoidably
19 called to Indianapolis and could not be here. But he
20 feels very strongly about this issue and asked me to
21 read a letter to you for the record indicating his
22 feelings about this matter.

23 Dear Chairman Rosenthal:

24 Thank you for accepting my comments for
25 the record regarding the Department of the Army

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1 application to amend NRC materials license number Sub-
2 1435. Speaking on behalf of the citizens of Madison
3 and the affected population located downstream in the
4 Wabash Valley Watershed, I strongly oppose any
5 amendments to this license which will relieve the Army
6 of its humanitarian responsibility.

7 In the interest of public safety and
8 protection of human consumables, that is, livestock,
9 produce, and milk within the watershed, it is
10 absolutely essential that a complete and thorough site
11 characterization be established and followed on a
12 timely basis. In accordance, an appropriate
13 decommissioning plan must be put in place to assure
14 both public health and safety.

15 To insure public confidence, accommodation for
16 reasonable access to the site must be guaranteed.

17 While proposed sampling plan is laudable,
18 I question whether we are looking in the right places
19 and just how long the testing should be conducted.
20 Due to the unknown characteristics of depleted
21 uranium, the proposed five year window of time for
22 testing is absolutely irresponsible and
23 unconscionable. It could be very well twenty years or
24 longer before radiological or chemical breakdown of
25 the DU begins to occur. Protection against airborne

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1 and surface water migration of potential hazardous
2 chemicals must be assured by expanding the testing
3 period to a minimum of 25 years and expanding the JPG
4 DU testing area with more monitoring wells to the west
5 and southwest. This concern for human safety is
6 supported by a study at Northern Arizona University
7 which finds that depleted uranium can cause genetic
8 mutations.

9 Lastly, the Department of the Army must
10 guarantee sufficient appropriations to fund all
11 aspects of the DU Liability. Otherwise, suspected
12 problems and actual incidents will become the
13 financial burden of the EPA, the NRC and IDEM.

14 Those of us who choose to live in the
15 Madison area and the Wabash Valley Watershed have a
16 right to expectations of personal safety from depleted
17 uranium. This is a matter which I take very seriously
18 and trust that you will join me in my concerns by
19 holding the Department of the Army further
20 accountable.

21 Sincerely yours, Albert G. Huntington, Mayor, City of
22 Madison.

23 CHAIRMAN ROSENTHAL: Will you please give
24 the letter to Ms. Wolf and give it to the Reporter, if
25 you would, and I would like the letter than included

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1 in the transcript.

2 MS. VONDERHEIVE: Thank you very much.

3 CHAIRMAN ROSENTHAL: Thank you very much.

4 JUDGE ABRAMSON: Thank you for coming.

5 CHAIRMAN ROSENTHAL: Mr. Hill I think is
6 the next --

7 MR. HILL: Oh, I don't intend to speak.
8 Did you say Hill?

9 CHAIRMAN ROSENTHAL: Yes, I thought you --

10 JUDGE ABRAMSON: Yes, you signed up -- you
11 just signed in?

12 MR. HILL: I just signed it because there
13 was a sheet to sign in. I'm President of Save the
14 Valley and we're a party, so this is not for us.

15 CHAIRMAN ROSENTHAL: Is there anybody
16 else?

17 JUDGE ABRAMSON: That wishes to speak.
18 Come forward.

19 CHAIRMAN ROSENTHAL: Come forward.

20 JUDGE ABRAMSON: Give us your name.

21 MR. ROBB: My name is Joe Robb, R-O-B-B.
22 I'm the Refuge Manager of Big Oaks National Wildlife
23 Refuge located on the former Jefferson Proving Ground.
24 Just a brief statement. As you may know,
25 that there is a 50,000 acre national wildlife refuge

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1 over the way on the former Jefferson Proving Ground
2 and we're involved in several types of habitat and
3 management -- wildlife population management of the
4 property.

5 We also oversee public use of the property
6 in accordance to a memorandum of agreement that was
7 signed by the U.S. Fish and Wildlife Service, the Army
8 and the Air Force, which helped establish the National
9 Wildlife Refuge.

10 I just, as the manager of the property,
11 understand there's lots of things to consider about
12 the decommissioning plan. It's something that
13 directly effects our management and we want the best
14 information available to make our management
15 decisions. Since we're liable for the decisions and
16 management activities that the Fish and Wildlife
17 Service makes.

18 So I understand that there's lots of good
19 information being gathered now. I want to encourage
20 the Board to oversee the types of information that's
21 being taken. I think it's always a good thing to get
22 as much information so that decision can be made.
23 Especially, when assessing risk. Assessing risk, as
24 you well know, is a very difficult decision weighing
25 on public health and safety and versus costs versus

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1 actual -- actual risk. And it's a difficult decision.

2 So I would laud your efforts, the Army,
3 the Nuclear Regulatory Commission and the Board and
4 outstanding parties who are interested in this issue
5 to come to the best decision possible. Because it
6 affects how I manage the property in future years.
7 Thank you.

8 CHAIRMAN ROSENTHAL: Well, thank you.

9 Anyone else that...

10 (No response.)

11 CHAIRMAN ROSENTHAL: Well, before
12 concluding the session I would just again stress that
13 tomorrow morning's conference is open to the public as
14 spectators. It will be in the Council Chambers at
15 City Hall commencing at 9:00 o'clock. But I would
16 like to stress, however, that this will not be a
17 hearing in which any evidence is received. There will
18 be no witnesses. What we will be dealing with
19 tomorrow morning is strictly the question as to what
20 issues that have been presented by Save the Valley in
21 its various submissions, are to be included in the
22 hearing that will ultimately be held.

23 In other words, what issues are relevant
24 to the adequacy or inadequacy of the Army's proposal,
25 which has been challenged in various respects by Save

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1 the Valley.

2 And what basically will be done tomorrow
3 is, as was indicated to the parties in an order
4 scheduling this conference tomorrow morning, the
5 parties' counsel, counsel for each of the three
6 parties, will be given a brief opportunity at the very
7 outset to provide an overview of their position on the
8 questions as to what issues are worthy of evidentiary
9 consideration.

10 Following which counsel will be called
11 upon to respond to questions from the Board. Indeed,
12 it's the latter part that will occupy the major
13 portion of the conference. Because the Board has
14 before it a large amount of written material coming
15 from the three parties on the question as to what
16 issues should be considered at this evidentiary
17 hearing. And those written submissions have raised,
18 in the Board's mind, a number of questions. And this
19 conference's principle purpose is to allow the Board
20 to explore, with the parties -- more accurately with
21 their counsel, the questions that the written
22 submissions have raised.

23 So once again, anyone who is interested is
24 invited to attend and on behalf of the entire Board,
25 we thank you all very much for your presence this

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1 evening. We understand the local interest in this
2 matter. And we appreciate that interest and we
3 appreciate your presence this evening.

4 So at that point, the limited appearance
5 statement session is concluded.)

6 (Whereupon, at 7:00 o'clock p.m., the
7 limited appearance statement session was concluded.)
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CERTIFICATE


This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of:

Name of Proceeding: U.S. ARMY, JPG SITE, LIMITED
APPEARANCE HEARING

Docket Number: 40-8838-MLA;
ASLBP NO. 00-776-04 MLA

Location: MADISON, IN

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
thereafter reduced to typewriting by me or under the
direction of the court reporting company, and that the
transcript is a true and accurate record of the
foregoing proceedings.


GARY BALDWIN
Official Reporter
Neal R. Gross & Co., Inc.

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Albert G. Huntington
MAYOR



City of Madison
OFFICE OF THE MAYOR



101 W. MAIN STREET
MADISON, INDIANA 47250-3775
(812) 265-8300
FAX (812) 265-3349
email: mayor@madison-in.gov

July 18, 2006

Mr. Alan S. Rosenthal, Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop T3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: U.S. Army, JPG Site
Docket No. 40-8838-MLA
ASLBP No. 00-776-04 MLA

Dear Chairman Rosenthal:

Thank you for accepting my comments for the record regarding the Department of the Army application to amend NRC materials license No. Sub-1435. Speaking on behalf of the citizens of Madison and the affected population located downstream in the Wabash Valley Watershed, I strongly oppose any amendments to this license which will relieve the Army of its humanitarian responsibility.

In the interest of public safety and protection of human consumables, i.e. livestock, produce, and milk within the watershed, it is absolutely essential that a complete and thorough site characterization be established and followed on a timely basis. In accordance, an appropriate decommissioning plan must be put in place to assure both public health and safety. To insure public confidence, accommodation for reasonable access to the site must be guaranteed.

While the proposed sampling plan is laudable, I question whether we are looking in the right places and how long the testing should be conducted. Due to the unknown characteristics of depleted uranium, the proposed five year window of time for testing is absolutely irresponsible and unconscionable. It could very well be twenty years or longer before radiological or chemical breakdown of the DU begins to occur. Protection against airborne and surface water migration of


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potential hazardous chemicals must be assured by expanding the testing period to a minimum of 25 years and expanding the JPG DU testing area with more monitoring wells to the west and southwest. This concern for human safety is supported by a study at Northern Arizona University which finds that DU can cause genetic mutations.

Lastly, the Department of the Army must guarantee sufficient appropriations to fund all aspects of the DU Liability. Otherwise, suspected problems and actual incidents will become the financial burden of the EPA, NRC, and IDEM.

Those of us who choose to live in the Madison area and the Wabash Valley Watershed have a right to expectations of personal safety from DU. This is a matter which I take very seriously and trust that you will join me in my concerns by holding the Department of the Army further accountable.

Sincerely yours,



Albert G., Huntington
Mayor, City of Madison