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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'90 SEP 19 P4:54

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before Administrative Judge
Peter B. Bloch

In the Matter of)	
)	
THE CURATORS OF)	Docket Nos. 70-00270-MLA
THE UNIVERSITY OF MISSOURI)	30-02278-MLA
)	
(Byproduct License)	Re: TRUMP-S Project
No. 24-06513-32;)	
Special Nuclear Materials)	ASLBP No. 90-613-02-MLA
License No. SNM-247))	

**INTERVENORS' MOTION FOR ORDER REQUIRING APPLICANT TO
SERVE DOCUMENTS UPON PARTIES, AND REQUIRING STAFF
AND APPLICANT TO NOTIFY PARTIES AND PRESIDING OFFICER
OF NEW INFORMATION RELEVANT AND MATERIAL TO THE
MATTERS BEING ADJUDICATED**

Come now Intervenors and move for an order directing the Applicant to serve copies of all Staff-Applicant correspondence relating to the facility and other documents filed in Docket No. 70-00270 or 30-02278 upon the parties to this proceeding, and ordering both the Staff and the Applicant to notify the parties and the Presiding Officer of any new information which is relevant and material to the matters being adjudicated. In support of this motion Intervenors show that:

1. Intervenors have recently learned that the Department of Energy on July 19, 1990, completed a review of the TRUMP-S project under the National Environmental Policy Act, made a Finding Of No Significant Impact, and gave final approval to an Environmental Assessment prepared in February of 1990 respecting

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the TRUMP-S project at MURR. The action of July 19 has been known to the University since that date, or very shortly thereafter. The fact that a NEPA review was in progress for many months before July 19 has, Intervenor believe, been known to the Applicant for many months, probably since at least January of 1990. These circumstances bear upon the admitted area of concern relating to NEPA compliance. The Applicant had a clear obligation, as soon as the existence of the NEPA review became known, or as soon as the request for hearing was granted, whichever date is earlier, to inform the Presiding Officer and the parties of such information. *E.g., Duke Power Co., 6 A.E.C. 623, 625-26 (1973); Consolidated Edison Company of New York, Inc., 5 NRC 13, 15 (1977); Virginia Electrical and Power Co., 4 NRC 480, 491-92, n. 11 (1976); Georgia Power Co., 2 NRC 404, 408 (1975).*

2. On or about June 22, 1990, under date of June 15, 1990, the Applicant submitted to the Director, Nuclear Regulatory Commission Region III, a financial assurance statement and statement of intent applicable to the two licenses at issue here. These resulted in amendment No. 14 to License No. SNM 247, Docket No. 70-00270, dated August 8, 1990, and amendment No. 75 to License No. 24-00513-32, Docket No. 30-02278, dated July 23, 1990. The Applicant did not serve that submission upon the Intervenor (or the Presiding Officer, as far as Intervenor know), or even notify the Intervenor that it had been filed. The Staff did not serve the amendments on the Intervenor (or the Presiding Officer, as far as Intervenor know) or even notify the Intervenor that the licenses being litigated had been amended.

All correspondence between the Staff and the Applicant relating to the

facility is required to be served on the parties. *Carolina Power & Light Co.*, 7 AEC 229, 237 n.9 (1974); *Vermont Yankee Nuclear Power Corp.*, 7 AEC 159, 183 (1974). This includes the June 15, 1990, letter from the Applicant, and the transmittal of the amendment by the Staff to the applicant. Further, an amendment to the license, especially one which relates, as these amendments do, to financial assurance of ability to meet safety requirements, is an amendment which clearly must be served on all parties. Compare rulings of Judge Bloch in Case No. 70-25, Telephone Conference of March 15, 1990, pages 282-320.

In adopting Subpart L the NRC promised that those persons truly interested in a particular materials licensee's activities can keep abreast of pending matters by making periodic requests for information. 54 Fed. Reg. at 8271. These intervenors have gone beyond that. They are truly interested, and have even initiated a hearing. It is not necessary for them to send another letter to "appropriate NRC headquarters" every day. They are entitled to service of any new correspondence or license amendment or request, by virtue of their status as intervenors.

3. As long ago as June 14, 1990, the Applicant learned that there was a "major flaw in the facility design," in that the facility design does not provide two DOP tested HEPA filters, each tested in place, between the contamination source and personnel or public, in the case of an accidental pressurization of the exhaust line. See Exhibit 2 attached to Intervenor's application for temporary stay to preserve the status quo, filed August 20, 1990. This is obviously a serious matter, emphasized by the Applicant's independent consultant. It is clearly material to the safety issues being litigated. The Applicant unquestionably had a duty to notify the parties and the Presiding Officer immediately upon learning this information. See cases cited above.

CONCLUSION

The Applicant and Staff do not acknowledge their obligation to keep the parties and the Presiding Officer informed of significant developments. This is a continuation of the Rockwell-MURR-DOE-NRC Staff combined effort to get the TRUMP-S project started in secret, an effort which began at least as early as last January, and resulted in concealing significant developments from the parties and the Presiding Officer in the Rockwell hearings in the early part of 1990, as well as in the MURR hearings. The Applicant and the Staff should serve all Staff-Applicant correspondence and license amendments, and notify the parties and the Presiding Officer of new information bearing on the case, without a specific order requiring them to do so. But they are not doing so. The Presiding Officer should order that the Applicant and the Staff:

1. Serve upon the parties, and the Presiding Officer, all correspondence between the Staff and the Applicant relating to the facility and other documents filed in Docket No. 70-00270 or 30-02278, and
2. Notify the parties and the Presiding Officer of any new information which bears upon the TRUMP-S project.

A proposed form of order is attached hereto.

September 17, 1990

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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License No. SNM-247))	

ORDER
(New information)

it is hereby ordered that the Licensee and the Staff shall promptly:

1. Serve upon the parties, and the Presiding Officer, all correspondence between the Staff and the Applicant relating to the facility, and
2. Notify the parties and the Presiding Officer of any new information which bears upon the TRUMP-S project.

Peter B. Bloch
Presiding Officer

Bethesda, Maryland

CERTIFICATE OF SERVICE

True copies of the foregoing were mailed this 17th day of September, 1990, by first class mail, postage prepaid, to:

The Honorable Peter B. Bloch
Administrative Law Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

The Honorable Gustave A. Linenberger, Jr.
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