10941

DOCKETED
USNRC

'90 OCT 18 P2:40

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge
Peter B. Bloch

In the Matter of	)	
	)	
THE CURATORS OF THE UNIVERSITY OF MISSOURI	)	Docket Nos. 70-00270-MLA 30-02278-MLA
	)	
(Byproduct License No. 24-00513-32; Special Nuclear Materials License No. SNM-247)	)	Re: TRUMP-S Project ASLBP No. 90-613-02-MLA

INTERVENORS' RENEWED REQUEST FOR STAY PENDING HEARING

On May 10, 1990, Intervenors submitted their request for hearing and stay pending hearing. On June 15, 1990, the Presiding Officer deferred action on the request for a stay, ordering that intervenors may renew this request at a time when adequate information is available to them and to the Board for a reasonable decision to be reached.

Intervenors at this time respectfully renew their request for a stay. The information available falls far short of what intervenors consider should reasonably have been made available. However, the motion to complete the hearing record has been denied, the University is proceeding with dangerous experiments with transuranics, and it is imperative to renew the motion now. Having consulted with the Individual Intervenors, Intervenors represent that both groups join in this Request.

9010300254 901018
PDR ADOCK 07000270
C PDR

D503

THE FACTS

Since the order of June 15, some additional information has been acquired. First and foremost, the record establishes what intervenors suspected from the beginning.

> No safety evaluation report or environmental assessment was written. The hearing file consists solely of the two applications and the two amendments . . .

Letter from Colleen P. Woodhead, Counsel for NRC Staff, to Administrative Judges, June 21, 1990. As the Presiding Officer observed, "there were no accompanying findings whatsoever." Order of July 9, page 5, n.4. Also, there was no SAR. In short, the Staff has never made any determination that the applicant's proposed equipment and facilities are adequate to protect health and to minimize danger to life or property, or that the applicant's proposed procedures to protect health and to minimize danger to life or property are adequate. Indeed, the Staff has apparently never seen those procedures.

It has also been learned that the strange two-page document entitled "Summary of the TRUMP-S accident analysis at the University of Missouri Research Reactor (MURR). June 5, 1990 revision" is as meaningful as a three-dollar bill. This document was attached to an affidavit filed by the applicant apparently on June 15, 1990, the date of the ruling by the Presiding Officer, and intervenors had no opportunity to point out any of its deficiencies to the Presiding Officer before the ruling deferring action on the stay. This document, as its title demonstrates, was created long after the licenses were amended, and after intervenors had filed their request for hearing and request for stay. It has now been established, by the University's production, in a Missouri Sunshine Law case, of all safety analyses at MURR, that there is no "accident analysis" of which this

strange document might truly be a "summary." Nor does the University admit to any earlier draft (of either the "summary" or the "accident analysis" if any) of which this strange document might be alleged to be a revision. The facts elicited thus far support the inference that there never was any such document.

Nevertheless, this "summary" is now available, and adds considerable weight to safety concerns, as will be noted below. In addition, in the same filing on June 15 the University furnished an affidavit of Dr. J. Steven Morris, the inadequacies of which were not before the Presiding Officer at the time ruling on the motion for stay was deferred. The inadequacies of this affidavit, also, add weight to safety concerns about the TRUMP-S project.

A more detailed analysis of these matters will be presented in the following pages.

ARGUMENT

As the Presiding Officer pointed out in deferring action on a stay on June 15, 1990, the Presiding Officer may issue a stay pursuant to 10 CFR § 2.1263.[1] As the Presiding Officer further noted in the order of June 15, 10 CFR § 2.788(e)

---

[1] Intervenors adhere to their contention that actions taken pursuant to the license amendments should be stayed because (1) the Atomic Energy Act requires that a hearing be conducted (at least upon request) before a license amendment can be permitted to go into effect, as distinguished from afterwards, and (2) the National Environmental Policy Act, together with implementing regulations of the Council on Environmental Quality, requires that either an environmental impact statement be prepared, or an environmental assessment be prepared and a finding of no significant impact be filed and documented, before the license amendment can be granted. Intervenors also adhere to their contention that nuclear proliferation is a concern which is highly relevant to this proceeding. However, in view of the disposition of these contentions in the past by the Presiding Officer, intervenors will not reargue these points at this time, but will preserve them for review in whatever forum may be available.

requires that, in determining whether to grant a stay, the Presiding Officer will consider:

(1) whether intervenors have made a strong showing that they are likely to prevail on the merits;

(2) whether intervenors will be irreparably injured unless a stay is granted;

(3) whether the granting of a stay would harm the University; and

(4) where the public interest lies.

1. Intervenors have made a strong showing that they are likely to prevail on the merits

On June 15 the Presiding Officer noted that the papers filed by intervenors at that point "are impressive," but that the Presiding Officer was not prepared to act on this aspect of the stay motion until he had seen the application, any related safety evaluation report that may have been prepared, and the Staff documents issued along with the license. We now know that the Presiding Officer will never see any related safety evaluation report, because there never was one. He will never see any Staff documents issued along with the license, because there were none. The application contains nothing to suggest that anybody at the University, or at the NRC, has ever given a thought to the possible safety aspects of this proposed activity.

In determining whether intervenors have now met their burden of proof on likelihood of success on the merits, one must take the time to analyze and understand what that burden is. Intervenors have no burden to show that the proposed operation is unsafe. Intervenors will "prevail" if they demonstrate that the applicant has failed to carry its burden in obtaining a license amendment: more specifically, that the applicant has failed to demonstrate that the applicant is

qualified by training and experience to use the material as requested, that the proposed equipment and facility are adequate to protect health and minimize danger to life and property, and that the applicant's proposed procedures to protect health and to minimize danger to life or property are adequate. 10 CFR § 70.23(a)(2), (3), and (4). See also 10 CFR § 30.33(a)(2) and (3).

Until intervenors filed their request for hearing, there was not even a pretense at making such a showing. That alone requires issuance of a stay until these issues can be litigated. Intervenors' written presentation, filed herewith, and incorporated herein by reference, demonstrates many reasons why they must prevail.

Belatedly, the applicant has submitted, with its response to the request for hearing, an affidavit of Dr. J. Steven Morris dated June 14, 1990, and attached "summary" of a supposed "accident analysis" described as a "June 5, 1990 revision." A close analysis of these papers lends weight to the probability that the applicant will be unable to sustain its burden.

The so-called "summary" would be comical if this were not a serious matter. The author assumes that one gram of plutonium becomes airborne, and the fractional release factor is 1×10^{-6}. From these assumptions that author draws the remarkable "conclusion" that the total plutonium exhausted is 1 microgram. To label this a "conclusion," or this document an "analysis," is a hoax. The author has simply restated his assumption in terms of micrograms. Further, the entire "analysis" is dependent on one of the HEPA exhaust filter assemblies remaining functional, although the University's Fire Procedure calls for turning the ventilation and exhaust fans off before the personnel run from the building. Exhibit 12. The "summary" cites authorities to support its assumptions, but examination of those

factors, rather than the highest. In short, the "summary" is utterly devoid of substance. See Intervenors' Written Presentation and accompanying Declaration of the Review Panel, Exhibit 1.

Similarly, the affidavit of J. Steven Morris is without substance, as more fully explained in the Declaration of the Review Panel. In short, the applicant is incapable of assembling a safety analysis report which would support a finding that the equipment and facilities, and the applicant's training and experience, are adequate to protect health and minimize danger to life or property. If any such experiments are to be conducted anywhere, they should not be conducted in the middle of a city. That is why we have places like Los Alamos and Oak Ridge.

Further, there is no plan for dealing with a fire if one should occur. Fires involving these highly toxic transuranics are different from ordinary fires with which the local fire department is familiar. They require special treatment. Bringing a hose in through the door can permit great quantities of radioactive airborne particles to escape. Applying water to the fire may even cause an explosion. See Declaration of the Review Panel.

In Columbia, the Local Emergency Planning Commission ("LEPC") has not even met for over a year. The responsible fire official has never been notified that these materials will be located in Columbia, or will be the subject of experiments with induced heat. The University has never submitted to the LEPC any Material Safety Data Sheets (furnishing information concerning hazardous materials) concerning materials located at the reactor site. The local fire department's plan for a fire involving any of these radioactive elements is simple: we won't fight the fire! See Declaration of Henry Ottinger, Exhibit 2. These facts, together with the facts previously demonstrated, including the extraordinary fact that the emergency response hospital facilities are located within one mile of the experimental facility, and will have to be evacuated in case of an emergency, demonstrate that the

University could not reasonably be expected to sustain its burden of showing that its proposed operations will be adequate to protect health and minimize danger to life or property. See Declaration of Mark Haim, Exhibit 4. If these experiments are to be conducted at all, such danger could not be minimized without moving the experiment to a remote site, surrounded by a substantial buffer zone.

Even if one were to assume that the applicant will develop safeguards which will be deemed adequate by the NRC, the intervenors have already sustained their burden on this stay motion, and will have prevailed in the final hearing at least by requiring imposition of those new safeguards. Accordingly, intervenors have fully sustained their burden.

2. Intervenors will be irreparably injured unless a stay is granted

On June 15 the Presiding Officer determined that intervenors had failed to sustain their burden of showing that their alleged injury is "both certain and great," quoting from an agency decision. Assuming, arguendo, that these two adjectives are controlling, intervenors have now sustained that burden. Again, it is essential to take the time to analyze and understand what this burden is, before determining whether it has been sustained.

Intervenors do not have the burden of showing that they certainly, conclusively, will suffer an immediate, agonizing death unless a stay is granted. Agonizing death is not the "injury" we are considering. Under the statute and regulations, intervenors are entitled to a definitive assurance, based upon careful analysis of all relevant facts, that the proposed operation definitely will protect health and minimize danger to life or property. The irreparable injury which is not to be inflicted on the intervenors is forcing the intervenors to live in the shadow of an operation which lacks this definitive assurance. That injury is both certain and great. Its certainty is beyond dispute. The Staff has admitted that there never was any safety evaluation. There is nothing in the hearing file remotely resembling

a definitive assurance that the proposed operation will be adequate to protect health and minimize danger to life or property.

This injury is also great. These intervenors represent individuals who live or work within a mile or two of the facility. If anything should go wrong, they could become radiation victims. Surely, the NRC would agree that being irradiated is a "great" injury, and being subjected to the risk of irradiation without a determination of safety is also a "great" injury. Further, the extent of the concern of the Intervenors is demonstrated not only by their participation in this proceeding, but also by their aggressive (and thus far largely unsuccessful) efforts to obtain information about this proposed activity from the University under Missouri's Sunshine Law, and their bringing Professor Warf and Mr. Hirsch to Columbia for a public meeting on July 10, 1990, attended by a capacity audience of approximately 280 people.

In summary, intervenors have more than sustained their burden that, without a stay, their injury will be both certain and great.

3. Any supposed "harm" to the University from a stay is minimal

In its response to the original request for stay, the University emphasized that it was imperative to conduct these experiments during the summer months when [the first phase of the project] is required to provide full or partial salary support for 11 individuals" (p. 37). The University also argued that "loss of this summer would impact the availability of currently committed personnel, jeopardize the University's ability to undertake the TRUMP-S project and risk causing the University to lose the TRUMP-S project entirely." On the basis of this response, the Presiding Officer concluded that the University would be harmed by the issuance of a stay, and that this factor weighs in favor of the licensee (Order of June 15, p.27).

That claim of harm is no longer available to the University. The schedule

of activities has "slipped" by many weeks. The summer is gone.

If the NRC Staff and the University had been forthcoming, we could have reached a conclusion of the hearing long ago. Any further "delay," which would be directly traceable to the recalcitrance of the Staff and the University, will have no substantial impact on the University. The University has cried "wolf" before. Any renewed claim of "harm" should be documented by detailed affidavits, or affirmations.

4. The public interest lies unequivocally in a determination of safety before the people of Columbia are put at further risk rather than afterwards

In his ruling of June 15, the Presiding Officer analyzed the public interest in terms of two factors: the value of the acquisition of knowledge, and the risk of exposure to ionizing radiation.

Let us assume, arguendo, that the acquisition of knowledge is generally in the public interest, although the TRUMP-S project, if successful, will aggravate, rather than solve, our national problems of radioactive waste disposal (see Declaration of the Review Panel, Exhibit 1), and will aggravate the risk of nuclear proliferation (see Declarations of George Bunn and Theodore Taylor, Exhibits 16 and 15). That assumption is not relevant to the question at hand. We have lived in the age of atomic energy for almost half a century, without the knowledge, if any, which might be gained by this research. Is that knowledge so urgently needed that it cannot await the outcome of an expedited, informal hearing? One cannot seriously support an affirmative response to that question. Even if we assume that acquisition of this knowledge is in the public interest, ultimately, its immediate acquisition, prior to completion of an informal hearing and a determination respecting safety, carries no implications whatever for the public interest.

The public interest here lies entirely with the safety of a community of more than 60,000 people, and the personnel in the lab, and with a full airing of

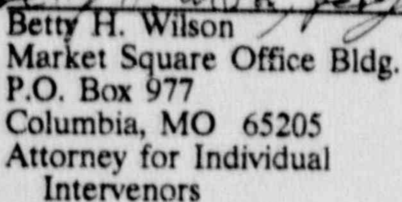
the concerns of all interested persons. The withholding of documents and information by the Staff and the University is destructive of public confidence in the program, and destructive of the public interest. The Declaration of the Review Panel (Exhibit 1) demonstrates that the University's belated "summary" of an alleged "accident analysis" is not worth the paper it is written on, and that there is a real danger of an event which would cause release of radioactive particles, resulting in concentrations in excess of those considered acceptable by the NRC, for a distance of several miles from the reactor site. The Declaration of Henry Ottinger (Exhibit 2) demonstrates that there is no effective emergency response plan, and that the local fire department would not even attempt to fight a fire involving transuranics.

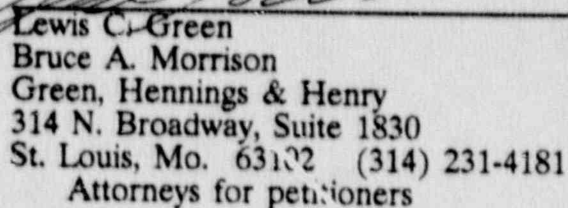
Intervenors will not belabor the obvious. It should not be necessary to point out that the overwhelming public interest lies in a determination of safety before the risk is undertaken, rather than afterwards.

CONCLUSION

The effectiveness of the license amendments at issue here should be stayed pending final determination of this hearing.

Respectfully submitted,





Betty H. Wilson
Market Square Office Bldg.
P.O. Box 977
Columbia, MO 65205
Attorney for Individual Intervenors

Lewis C. Green
Bruce A. Morrison
Green, Hennings & Henry
314 N. Broadway, Suite 1830
St. Louis, Mo. 63102 (314) 231-4181
Attorneys for petitioners

CERTIFICATE OF SERVICE

True copies of the foregoing were mailed this 15th day of October, 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.
Administrative Law Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Maurice Axelrad, Esq.
Newman & Holtzinger, P.C.
Suite 1000
1615 L Street, N.W.
Washington, DC 20036

Director
Research Reactor Facility
Research Park
University of Missouri
Columbia, Missouri 65211

Ms. Betty H. Wilson
Market Square Office Building
P. O. Box 977
Columbia, MO 65205

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Branch
(original plus two copies)

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety Licensing and Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(three copies)

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555

DOCKETED USNRC
90 OCT 18 P2:40
OFFICE OF SECRETARY DOCKETING & SERVICE BRANCH