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

INTERVENORS' MOTION
FOR SUMMARY DISPOSITION OF PART 70 LICENSE AMENDMENT

Pursuant to § 2.1209 the Presiding Officer has the authority to regulate the course of the hearing, to take appropriate action to avoid delay, and to take any other action consistent with the Act and Chapter 2 of Title 10. Under § 2.749 the Presiding Officer shall summarily dispose of any matter brought before him if there is no genuine issue as to any material fact and the moving party is entitled to a decision as a matter of law, as is the case here.

On October 25 the Intervenors moved for summary disposition respecting the Part 30 license. That motion is pending. Intervenors now move for summary disposition of the Part 70 license, as well. Granting both motions will bring the litigation to an end.

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What Intervenors are supposed to show, in order to prevail, is "any deficiency or omission in the license application," with a statement of reasons why the deficiency is material, and a statement of what relief is sought. 10 CFR § 2.1233(c). Intervenors have done that. As to at least three fundamental deficiencies, the facts are no longer in dispute.

1. It is undisputed that the license application failed to identify the plutonium 241 included in the "special nuclear material requested," as required by § 4.3 of Regulatory Guide 10.3. The licensee admits that the isotope is present, and was not identified in the application. The Presiding Officer has now acknowledged that the isotope is present, and was not identified in the application. That it must be identified in the application is further acknowledged by the Presiding Officer's order of November 1, 1990, at page 7, ruling that he will consider the application amended to include this information.

Accordingly, on this point Intervenors are entitled to judgment as a matter of law.

2. It is now admitted that the application failed to disclose the curie content of this "special nuclear materials requested." Section 4.3 of Regulatory Guide 10.3 requires that the special nuclear material requested be identified by "activity in curies, milicuries, or microcuries." Even the Licensee now admits that the activity in curies is nearly triple the amount stated in the application. The Presiding Officer has now recognized that this is true, in his order of November 1. That these curies must be disclosed with a reasonable degree of accuracy is not only established by Regulatory Guide 10.3, but also recognized by the Presiding Officer in ordering that he will consider the application amended to contain this information. But the license application did not contain this information.

There is no dispute as to these facts. Intervenors are entitled to judgment as a matter of law.

3. There is no dispute that the special nuclear material requested in the Part 70 license application included americium, nor is there any dispute that the license amendment application failed to disclose the americium. The Licensee admits this. The Presiding Officer has recognized this.

Further, there is no dispute that the license application fails to include a description of the facilities and equipment (e.g., a thick metal shield) necessary in the handling and use of this gamma emitting isotope, as such equipment was identified in the Part 30 license application. The applications are before the Presiding Officer, and speak for themselves.

Because all of these facts are not disputed, Intervenors are entitled to judgment as a matter of law.

The materiality of these deficiencies is obvious. If the license application does not disclose the isotopes, as explicitly required by Regulatory Guide 10.3, of what use is the application? How can the Staff evaluate the application, in terms of safety or anything else, if the isotopes are not even disclosed?

If the curies are not even disclosed with a reasonable degree of accuracy, how can the Staff evaluate the application in terms of safety or anything else? If the curies in fact are right at the threshold level of 2 (plus or minus a few decimals), which triggers various other regulatory requirements, but the application tells us the curies are approximately 1/3 of that quantity, how can the Staff or anyone else know that a closer look is needed, to determine whether the other regulatory requirements are applicable? If in fact there is an undisclosed gamma emitting isotope in a significant quantity, but the application indicates no awareness

of that fact, and indicates no safety equipment or precautions to deal with gamma emitters, how can the Staff or anyone else determine that this special nuclear material will be handled safely?

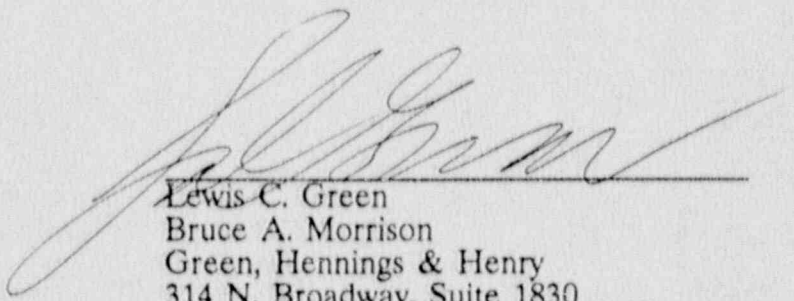
It is hard to think of anything more material, and fundamental, to be disclosed in the application than the isotopes and curies, and safety equipment.

Nevertheless, at page 6 of the Memorandum and Order of November 1, 1990, the Presiding Officer declared: "this omission is not fatal to the application." The reasoning is not clear. The Presiding Officer cited Regulatory Guide 10.3, which explicitly requires that the isotopes and curies should be identified specifically. Omitting two of the isotopes altogether, including a gamma emitter, and understating the curies by approximately two-thirds, and failing to provide any equipment to deal with the gamma emitter, should be as "fatal" as any omission which Intervenors can imagine. What could be worse?

The Presiding Officer also quoted from Regulatory Guide 10.3 the sentence "Major dose-contributing contaminants present or expected to build up are of particular interest." That sentence does not excuse these grand omissions for two reasons. First, the sentence emphasizes what is of particular interest; it does not eliminate the requirement that isotopes and curies be identified. Second, the americium present and expected to build up is clearly sufficient in quantity to contribute a dosage considerably in excess of allowable limits, and is likely to do so if the Licensee and the laboratory personnel are not aware that a gamma emitter is present, and fail to take appropriate precautions. The omission of any reference to these isotopes in the license application prevents the Staff and the public from properly evaluating the application, and is therefore a material omission.

CONCLUSION

The facts set forth are not in dispute. The license application is fatally defective. We should spend no more time or money on this litigation. The license should be summarily set aside.



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CERTIFICATE OF SERVICE

True copies of the foregoing were mailed this 14th day of November, 1990, by first class mail, postage prepaid, to:

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