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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION 90 NOV 19 P12:06

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
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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. 24-00513-32;	)	
Special Nuclear Materials	)	ASLBP No. 90-613-02-MLA
License No. SNM-247)	)	

INTERVENORS' MOTION FOR ORDER RECOMMENDING  
FORMAL HEARING, OR IN THE ALTERNATIVE  
REQUIRING ORAL PRESENTATIONS

Come now Intervenors and move that the Presiding Officer, pursuant to 10 CFR § 2.1209(k), recommend to the Commission that a formal hearing be held before considering the final decision, and before considering any possible vacation of the stay order. At the hearing all significant witnesses should be subpoenaed, and the parties should be afforded an opportunity to cross-examine them. In the alternative, in the event that no such formal hearing should result, Intervenors move that the Presiding Officer, pursuant to § 2.1235(a), require oral presentations by the parties, including testimony by significant witnesses, to be questioned by the Presiding Officer pursuant to proposals of Intervenors. Such a hearing should not be necessary, for the undisputed facts demonstrate that the license amendments at

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issue should be set aside, as is shown in Intervenor's motions for summary disposition. However, in the event that summary disposition is not granted, there are numerous other issues in this proceeding as to which there is widespread disagreement, which can only be resolved with oral testimony, and cross-examination. Without limiting those issues, Intervenor respectfully submit that the following matters can only be resolved with cross-examination.

*Area No. 1: Curie content of special nuclear material*

At page 55 of Intervenor's written presentation of October 15, Intervenor pointed out that there was wide disagreement over the isotopic and curie content of the special nuclear material which the Licensee has been licensed to possess and use. The disagreement over the isotopic content has been resolved: the Licensee now admits that plutonium 241 and americium are present. The disagreement over the curie content has been narrowed. The Licensee now admits that the curie content of this material is nearly three times the amount stated in the license application. However, there remains the question whether the curie content is more than 2. That question is not significant in terms of whether Intervenor should prevail, because the curie content is clearly nearly three times the amount licensed, and therefore the license amendment should be set aside, as set forth in the motion for summary disposition. But the question whether the curie content equals 2 curies would be significant with respect to triggering other regulatory requirements, in the event that the Presiding Officer should deny the motion for summary disposition.

The Licensee has acquired some hearsay estimates of curie content as of a certain date, which necessarily had a margin of error, based upon hearsay uncertified reports of some kind of effort to determine curie content, although the

Licensee does not admit the uncertainties. The Licensee has then chosen an estimate favorable to the Licensee, discarding one unfavorable to the Licensee, and applied to that estimate a formula which also includes a margin of error. Extending these approximations to the third decimal place, as though these were precise numbers to begin with, the Licensee manages to conclude that the total curie activity of this material is 1.994 curies. Any reasonable rounding of these estimates would bring the total to 2. However, if the Presiding Officer is going to take these estimates as being sufficiently precise to enable him to conclude that the total curies are less than 2, it will be necessary to hear expert testimony on this matter. All we have from Los Alamos Laboratory is a letter, which would normally be considered inadmissible hearsay. We need a witness from Los Alamos Laboratory, to tell us exactly what was done there, and exactly what conclusions were reached, on what basis. We should have an opportunity to present other witnesses as well, to provide a reasonable estimate of the curie content.

*Area No. 2: Testing in place*

At pages 56-57 of Intervenors' written presentation of October 15, 1990, Intervenors pointed out the need for oral testimony and cross-examination on this subject. Mr. Steppen should be produced and questioned.

*Area No. 3: Experience and Training of Staff*

At page 58 Intervenors pointed out some of the questions which should be asked on this score. Further questions should be asked in addition.

Only by cross-examination will we be able to learn when the Licensee's personnel learned that the special nuclear material license under SNM-247 contained americium. Why didn't the application for the amendment describe the



same gamma-protecting equipment as was described in the Part 30 license application? What procedures have been drawn up for handling and use of the plutonium? When were they drawn up? What procedures have been used?

*Area No. 4: Safety Analysis*

This subject was dealt with at pages 58-59 of Intervenors' written presentation of October 15. It is likely that cross-examination will be of increasing importance after the Licensee's response has been filed.

*Area No. 5: Decommissioning*

This subject was dealt with at page 59 of Intervenors' written presentation of October 15.

*Area No. 6: Steppen recommendations*

This subject was also dealt with at page 59.

*Area No. 7: Emergency plan*

We have a clear conflict of testimony. Two witnesses will testify that Mr. Call asserted that he would not fight a fire containing radioactive materials. Mr. Call now says they misunderstood him. Cross-examination of Mr. Call is imperative. Who talked to him and when? Who persuaded him to change his testimony?

At paragraph 40 on page 13 of his affidavit, Walter Meyer states that the Licensee has three additional improvements under consideration. Further interrogation is needed to determine what has happened to that consideration, and what is meant by these three items.

Witnesses from the Columbia Fire Department and the Local Emergency

Planning Commission are needed to testify as to the extent of the information which has been furnished by the Licensee, to enable adequate emergency response to take place, and to tell us whether either the Columbia Fire Department or the Local Emergency Planning Commission has requested any further cooperation.

Witnesses from the Licensee are needed to tell us whether the Licensee has any hazardous materials in the building housing the research reactor, and, if so, what, and how much, and whether and when the Local Emergency Planning Commission was notified of them, and why the Licensee failed to file with the NRC a certificate of compliance with the Community Right-to-Know Act.

The chief of the Columbia Fire Department is needed to tell us exactly what he would do to fight a fire involving americium, or neptunium, or plutonium, and how he learned what to do, and where this procedure is written down so that it can be followed by his department, and what training his personnel have in this respect, and what equipment is needed to fight such a fire, and whether he has that equipment.

Only by cross-examination can these facts be clarified.

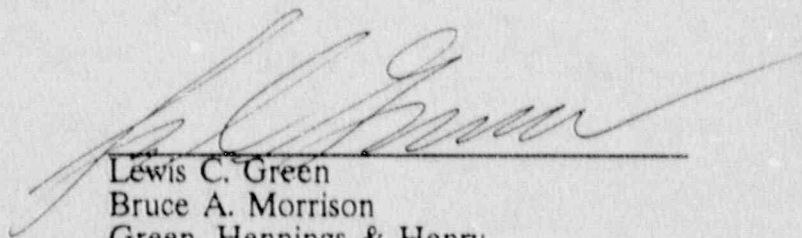
*Area No. 8: Communications between Licensee and NRC Staff*

We now have a great deal of confusion about when the Licensee told Dr. Adam what. Dr. Adam now states that, from April through August of 1990, he had "numerous conversations with Licensee representatives." He does not identify them. Dr. Adam now tells us that his July 26, 1990, affidavit was "inaccurate," but that the "inaccurate statement" was brought to his attention within the two weeks prior to November 2, 1990. However, the Licensee tells us that immediately after the July 26 affidavit was filed, the Licensee had informed the Staff that the amendment authorizing possession of 25 curies of americium exceeded the amount of americium

referenced in § 30.32(i).

Somehow everybody neglected to inform the tribunal of the inaccurate statement in the affidavit, until Intervenors brought it forth on October 15. Only interrogation of live witnesses can disclose who said what, when.

No doubt, after the Licensee's direct case has been filed, there will be numerous other matters which call for a hearing with cross-examination. It is already clear, however, that there are enough matters in dispute to require such a hearing, before the Presiding Officer could consider vacating the stay, or affirming the license amendments. Intervenors respectfully submit that the Presiding Officer should order a conference call, with a court reporter, for Friday, November 16, to afford the parties an opportunity to be heard on the question of the need for such a hearing before further findings are made or orders are entered.



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CERTIFICATE OF SERVICE

True copies of the foregoing were ~~mailed~~ <sup>faxed</sup> this 14<sup>th</sup> day of November 1990, ~~by United States Express 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

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U.S. Nuclear Regulatory Commission  
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