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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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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' ANSWER TO LICENSEE'S MOTION TO STRIKE
PART 10 OF INTERVENORS' WRITTEN PRESENTATION

Buried at the end of Licensee's response to Intervenor's motion for reconsideration of memorandum and order of October 15, 1990, is a motion to strike Part 10 of Intervenor's written presentation of October 15, 1990, relating to the absence of a decommissioning plan. As usual, the Presiding Officer immediately sustained the motion, without waiting for a response, although the rules clearly allow time for a response. Memorandum and Order of November 9, 1990. This procedure not only makes extra paper work, but also improperly imposes on the Intervenor the burden of changing the mind of the Presiding Officer, rather than permitting them to be heard before he makes up his mind. Notwithstanding the absence of due process of law, Intervenor here submit their answer to the motion.

The Presiding Officer has again been misled by Licensee's argument. The Order of June 15, 1990, admitted Intervenor's Area of Concern Number 1: "Areas

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of Concern 1, 2, 3, 4, 5 and 7 are admitted." Page 31. Nothing in the Order or the Memorandum rewrote the Intervenors' Area of Concern. The place to look, to find out what that Area of Concern is, is the Request for Hearing.

The Request for Hearing, at page 4, sets forth Area of Concern No. 1 as follows:

1. We are concerned about the potential for an accident such as a fire involving the nuclear materials to be used in the TRUMP-S project. Such an accident could release those very toxic materials and cause significant damage to public health and safety and to the environment, and specifically to many members of the petitioning organizations.

That is the concern that was admitted, and that is the concern we are litigating. Licensee may pretend that Intervenors were concerned only about adequacy of fire procedures, but the Intervenors have a right to speak for themselves, even in NRC proceedings.

It is true that adequacy of fire procedures is one part of this concern. Likelihood of a fire is also a part of this concern. Likelihood of a fire was the question of greatest interest to Judges Bloch and Linenberger in the first telephone conference. Likelihood of a fire has continued to be a subject of major concern throughout these proceedings, continuing through the Licensee's written presentation, and the Order vacating the stay, issued without a hearing and without any opportunity to demonstrate inadequacies in Licensee's submittal. Never has this concern been limited to adequacy of fire response procedures.

Indeed, if this Concern were so limited, it would be redundant. Area of Concern No. 4 was:

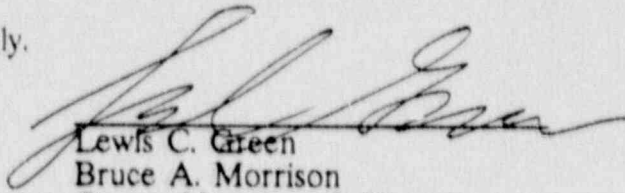
4. We are concerned about the adequacy of emergency response planning, particularly response to fire and plans for medical care of contaminated patients.

That concern explicitly, specifically brought fire response procedures into the proceeding. Concern No. 1 was obviously much broader. Licensee's contention *now* that Concern No. 1 was limited to fire procedures conflicts not only with the explicit language of the Request for Hearing, but also with Licensee's contention *then* that this was a "general concern regarding the potential for a fire." Licensee's Response to Request for Hearing, page 16. The ruling now that this Concern was so limited is a travesty.

When the Request for Hearing was filed, no decommissioning plan had been filed. If it had been, its deficiencies might well have been singled out for special mention in the Request. Eventually, it was filed without service on or notice to the Intervenors, in violation of the *McGuire* rule. Much later, Intervenors learned of its existence. At that time, Intervenors determined that it was not necessary to add to the excess of paper in this file by amending their Request for Hearing, because an inadequate decommissioning plan obviously increases the risk of an accident such as a fire, and its inadequacy is therefore encompassed within Area of Concern No. 1. One cannot seriously argue that inadequate financial assurance of decommissioning does not increase the risk of fire, not only by adding years to the exposure to risk, but also by adding the element of neglect.

CONCLUSION

The motion should be denied, and the Memorandum and Order of November 9 should be amended accordingly.



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CERTIFICATE OF SERVICE

True copies of the foregoing were mailed this 17 day
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