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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' ANSWER TO LICENSEE'S MOTION FOR PARTIAL RECONSIDERATION OF "MEMORANDUM AND ORDER (LICENSEE'S PARTIAL RESPONSE CONCERNING TEMPORARY STAY)"

Under date of November 16, 1990, Licensee has filed a motion for "partial reconsideration" of the Memorandum and Order of November 1. The motion is well titled. A thorough reconsideration would not lead to the relief sought.

The Licensee now admits:

1. The special nuclear material requested under SNM-247 includes plutonium 241 and 242, and americium 241, three isotopes not identified on the application.

2. That same requested material contains 1.94 curies, nearly three times the curie activity shown on the application (the Presiding Officer counts 1.992, and

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would count more than 2 if he based his calculations on the more conservative figures furnished by the Licensee; Intervenors will count more).

3. Section 4.3 of Regulatory Guide 10.3 provides in part:

> The special nuclear material requested should be identified by isotopes; chemical and physical forms; activity in curies, millicuries, or microcuries; and mass in grams.

The Licensee refuses to acknowledge these requirements, selectively quoting other portions of the Regulatory Guide. However, the Licensee cannot simply repeal these requirements by ignoring them.

The real curie activity of the special nuclear material requested is nearly three times the curie activity set forth in the application, and at the very least puts this application on the threshold of the 2-curie level which triggers various regulatory requirements. Misrepresenting the curie activity by this margin cannot be dismissed as insignificant. Instead of representing to the Staff and the public, in the application, that the curie activity of this special nuclear material was right on the threshold, Licensee represented to the Staff and the public that this material was far below the threshold. That cannot be dismissed as an insignificant misrepresentation. Omitting even a reference to the isotope that accounts for nearly twice as many curies as the isotopes identified cannot be dismissed as an insignificant omission.

Concealing the presence of a gamma emitter, americium 241, which requires special protective measures, and also omitting any reference to those special protective measures in the description of the equipment to be used to assure safety, cannot be dismissed as insignificant.

Nevertheless, the Licensee now asks the Presiding Officer to withdraw the extraordinarily gentle observation that "it would have been preferable" to disclose

the plutonium 241 on the application. That observation was the grandest understatement of this litigation. If it is to be replaced by a statement that disclosure of the plutonium 241 was required, Intervenors would have no objection.

The Licensee now asks the Presiding Officer to withdraw the similarly gentle comment that failure to disclose this material was "a mistake." Surely, however, the failure to disclose this material was either a mistake based upon ignorance of the presence of plutonium 241 and its significance in curies or a mistake in judgment if those facts were deliberately concealed. If the observation were to be replaced by a statement that the failure to disclose this material was "an error," Intervenors would have no objection.

As usual, the Licensee omits that portion of Regulatory Guide 10.3 quoted above, and selectively quotes (p. 3) the statement: "major dose-contributing contaminants present or expected to build up are of particular interest." Licensee underlines "dose-contributing contaminants" rather than "particular." Of course, major dose-contributing contaminants are of ***particular*** interest, but that sentence does not limit the general requirement that the material must be identified by isotope and by activity in curies, millicuries, or microcuries. The 1.21 curies omitted exceed a microcurie, which must be disclosed, by a factor of 1,210,000, and provide nearly two-thirds of the curie activity of this special material. The 1.21 curies can hardly be dismissed as insignificant. True, a major dosage may require identifying a tiny amount of microcuries, but a small dosage does not justify omitting most of the curies.

Licensee argues (p. 4) that the plutonium 241 is insignificant because it would require the same protective actions as are required for the plutonium 239 and plutonium 240. Assuming, arguendo, identity of protective actions for those

plutonium isotopes, this argument emphasizes the major significance of the failure to identify the americium 241, a gamma emitter, which requires special safety precautions, and the failure to identify the safety equipment needed to protect against gamma emitters in the description of equipment to be used. Even as to the plutonium 241, however, its significance relates not merely to safety equipment, but primarily to the fact that the curies which it contributes nearly treble the authorized curies, and bring the Licensee to the threshold level of 2, which requires compliance with other regulatory requirements.

Licensee complains (p. 5) that the regulation requiring identification of the isotopes and curies imposes upon the applicant "costly and time-consuming research and sophisticated calculations." Surely that complaint is not related to the failure to identify plutonium 241; the Licensee now claims that it knew from the beginning that it was going to have plutonium 241, so disclosure of that isotope would not have required one second of research or calculations, sophisticated or otherwise. Calculation of the curie content of the plutonium 241 should require little or no research for the expert. It would require calculation too sophisticated to be undertaken by the layman, but routine for somebody qualified to handle this material. An applicant who finds this calculation too sophisticated should not be handling these materials. The regulations require calculation and specification of the quantity of curies, and do not permit concealing them on the excuse that calculating them would take time.

CONCLUSION

The Memorandum could be clarified and improved by making the changes suggested above. Short of that, the motion should be denied.

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CERTIFICATE OF SERVICE

True copies of the foregoing were mailed this 26th day of November 1990, by United States Express Mail, postage prepaid, to:

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