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October 30, 1990

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NOT ADMITTED IN D.C.

The Honorable Peter B. Bloch  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: University of Missouri - TRUMP-S Project  
Docket Nos. 70-00270, 30-02278-MLA  
ASLEP NO. 90-613-02-MLA

Dear Judge Bloch:

On October 20, 1990, as Presiding Officer, you issued a temporary stay of TRUMP-S experiments involving plutonium, neptunium and americium at Licensee's Alpha Laboratory. Memorandum and Order (Grant of Temporary Stay), LBP-90-35, \_\_\_ NRC \_\_\_ ("Temporary Stay Order") (issued on Oct. 20, 1990; reissued with editorial changes on Oct. 22, 1990). That order was issued essentially sua sponte. Intervenor's had not requested, nor made an explicit showing for, an immediate stay in Intervenor's Renewed Request for Stay Pending Hearing ("Renewed Stay Request") (Oct. 15, 1990). In fact, their lack of urgency was reflected by the fact that they filed their request by regular mail, rather than by overnight service, as had been contemplated when schedules were originally established.

Licensee was particularly surprised by the issuance of the temporary stay because, in a conference call 24 hours earlier, there was no indication that such an action was under consideration or that Licensee should file any information immediately in order to avoid a stay. In fact, the principal question discussed at length during that conference was Licensee's request that its time to respond to the Renewed Stay Request should be extended from October 30 to November 14. This is reflected in my "Summary of Actions Taken During Conference

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Call of October 19, 1990," which I prepared and filed at your request on the same day, and which you informed me that afternoon was essentially accurate.

The result of that conference call was that the Presiding Officer ordered only two issues to be addressed by October 30: (1) Intervenors' allegations that Licensee possessed plutonium in excess of 2 curies and that such curie content exceeded the amount authorized by the subject license amendment; and (2) Intervenors' allegation that the Columbia Fire Department would not fight a fire at the Alpha Laboratory involving radioactive materials, and that assurance is lacking of an adequate response by the Department to a fire relating to the TRUMP-S experiments. As to other issues, Licensee was to respond by November 14. Memorandum (Memorandum of Conference call of October 19, 1990) at 4, 5 (Oct. 30, 1990).

Since the temporary stay did not extend that schedule, enclosed is Licensee's Submittal in Accordance with "Memorandum (Memorandum of Conference Call of October 19, 1990)" ("Licensee's Submittal"), which responds to the foregoing two issues.

In Licensee's judgment, Intervenors' allegations have been utterly destroyed.

Licensee's Submittal demonstrates that its plutonium is a high-purity standard whose isotopic composition and activity are based upon reliable shipping documents supported by laboratory analyses. In accordance with NRC regulatory guidance, the trace contaminants present are not significant dose contributors and are properly omitted from the license application. Intervenors' accusations and sarcastic rhetoric were based upon a literature search, not fact, ignored information readily available from national laboratories and were riddled with errors and misrepresentations.

Intervenors' allegations concerning the Columbia Fire Department were also far off the mark. Licensee's Submittal includes an affidavit from Mr. Call, the Battalion Fire Chief, and his remarks were reported in a declaration by Mr. Ottinger submitted by Intervenors. Chief Call attests to the fact that the Columbia Fire Department will fight a fire involving radioactive materials at MURR and that Mr. Ottinger's declaration does not accurately reflect their conversations.

Intervenors also claimed that either Licensee does not have a plan that would apply to a fire at the Alpha Laboratory or

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that such plan is inadequate. Their filing simply ignores the MURR Facility Emergency Plan, even though it is part of the hearing file, as supplemented by the NRC Staff on August 16, 1990, and had been made available to them by Licensee on June 26, 1990. As demonstrated in detail in Licensee's Submittal, there is extensive evidence that there will be an adequate response to any fire at the Alpha Laboratory.

Thus, Licensee has provided overwhelming factual information with respect to the two immediate concerns that the Presiding Officer expressed during the conference call of October 19. It appears to Licensee that these two matters may have been of particular concern to the Presiding Officer because they were based on Intervenor's declarations proclaiming new and startling information: that Licensee, out of ignorance or stealth, was in violation of the plutonium possession limits of its license, 1/ and that a Battalion Fire Chief stated that the Columbia Fire Department would not fight a fire involving radioactive materials at the Alpha Laboratory.

Both of these claims by Intervenor's have been shown to be without foundation.

Licensee realizes that there are some other matters covered in the Temporary Stay Order. These are also without merit, 2/ and Licensee will address them in the course of

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- 1/ In a letter dated September 11, 1990, Intervenor's informed the Presiding Officer that one of the Intervenor's, together with other plaintiffs, had filed a lawsuit relating to the TRUMP-S Project against the Department of Energy on August 29, 1990. Paragraph 31.J of the Complaint in that lawsuit indicates that, as early as August 29, one of the Intervenor's was claiming that the NRC license issued to the University did not authorize the possession or use of the plutonium furnished for the TRUMP-S experiments. However, it appears that, at that time, either the Intervenor's did not believe the factual basis for such claim or they failed to inform the Presiding Officer of the "relevant and material" factual information that supported such claim.
  - 2/ For example, Intervenor's have alleged that the Licensee's application for a license for 25 curies of americium failed to comply with § 30.32(i). However, that regulation was not applicable to Licensee's application. The regulation did  
(continued...)

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responding to Intervenor's direct case and Renewed Stay Request or in other pleadings. However, as I mentioned during the October 19 conference call, Licensee wants to present a comprehensive direct case and cannot be expected to respond to every issue raised by the Intervenor within 10 days. Moreover, those other substantive matters involve subjects as to which, although Intervenor has expanded their previous presentations, there is ample evidence in previous pleadings and affidavits filed by Licensee to cast substantial doubt on the likelihood that Intervenor will prevail.

Licensee's Submittal has shown there is no basis for the two principal areas of Intervenor's allegations, which Licensee believes were the underpinning for the Temporary Stay Order and which Licensee assumes strongly colored the Presiding Officer's view of the other issues. Under these circumstances, there is nothing that prevents the Presiding Officer from promptly dissolving the Temporary Stay Order.

In this connection, Licensee would like to make two additional points. The first is that Intervenor's filings contain lengthy dissertations on generalities based on literature searches. But they have failed to identify a single credible accident resulting from any deficiency in the Alpha Laboratory that could cause harm to the public. They have thus failed to demonstrate that their alleged injury is "both certain and great."

The second point is that the Temporary Stay Order states that the consequences to the University caused by the temporary stay are primarily financial. That is not correct. The Intervenor's allegations as to the incompetence of the University and its staff, one of which was repeated in the Temporary Stay Order, have been picked up and repeated by local and national media. Licensee has shown these grossly unfair characterizations to be based on flawed allegations riddled with errors, but the stigma will persist unless the Presiding Officer acts. In addition, the Temporary Stay Order has needlessly

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not become effective until April 7, 1990, and Licensee's application was filed and the amendment was issued before that date.

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created concerns in the community, which only the Presiding  
Officer can alleviate.

Respectfully submitted,

*Maurice Axelrad*  
Maurice Axelrad

/tg

cc: Service List