

11200

DOCKETED
USNRC

'90 DEC 17 P 4:32

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
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 TO STRIKE AFFIDAVIT OF DR. SUSAN M. LANGHORST, MARKED LICENSEE'S EXHIBIT 15, FILED WITH LICENSEE'S RESPONSE TO "INTERVENORS' MOTION FOR RECONSIDERATION . . . AND EMERGENCY ORDER . . . PART I," DATED NOVEMBER 21, 1990

Come now Intervenors and move to strike the affidavit of Dr. Susan M. Langhorst regarding relative radiological risk associated with trace americium-241 in plutonium standard, consisting of nine pages, dated November 16, 1990, attached to Licensee's Response to "Intervenors' Motion for Reconsideration . . . and Emergency Order . . . Part I," dated November 21, 1990. In support of this motion Intervenors show that:

1. On November 1, 1990, the Presiding Officer issued a Memorandum and Order (Licensee's Partial Response Concerning Temporary Stay). At page 2, the Presiding Officer stated that Intervenors were prohibited from replying to

D503

Applicant's response, but that they may, however, move for reconsideration of this decision within ten days on the ground that "I have acted erroneously on the information that is before me. They may not submit new evidence with respect to the temporary stay."

2. On November 12, 1990, Intervenor's filed their motion for reconsideration of that Memorandum and Order. They did not submit any new evidence, although Intervenor's believe that they should be permitted to submit new evidence when that evidence affects the safety of the public.

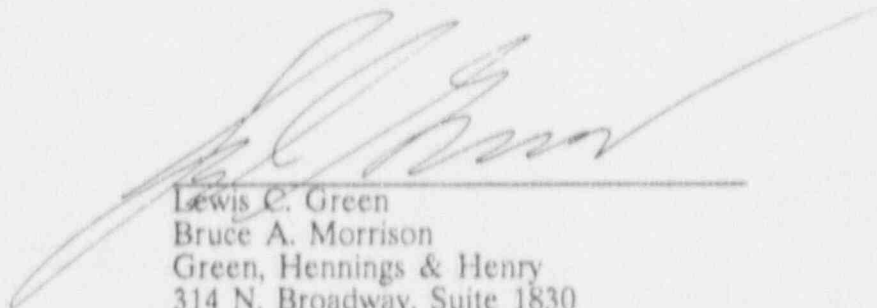
3. On November 21, 1990, the Licensee filed its response to that motion. The Licensee attached to its response an eight-page affidavit of Dr. Susan M. Langhorst, entitled Licensee's Exhibit 15.

4. Intervenor's were expressly forbidden to submit any new evidence with respect to the temporary stay. The motion was expressly limited, according to the Memorandum and Order, to whether the Presiding Officer "acted erroneously on the information that is before me."

5. Submission of further affidavits or evidence by the Licensee, in response to the motion for reconsideration, conflicts with the spirit, if not the letter, of the Memorandum and Order. If the Intervenor's are forbidden to submit new evidence, why does the Licensee have the right to submit new evidence?

6. This submission by the Licensee is part of the continuing process whereby the Licensee attempts to plug holes in the original application by submitting new evidence, long after Intervenor's have demonstrated the inadequacy of the application. When possible, the Licensee submits the new evidence along with some responsive motion to which Intervenor's are not even permitted to reply at all, even seven or eight months after the license amendment was issued. This

process makes a farce of the proceeding. The Atomic Energy Act requires that there be a hearing, not a non-hearing. The affidavit should be stricken.



Lewis C. Green
Bruce A. Morrison
Green, Hennings & Henry
314 N. Broadway, Suite 1830
St. Louis, Missouri 63102
(314) 231-4181
Attorneys for Intervenors

CERTIFICATE OF SERVICE

True copies of the foregoing were mailed this 12th day
of December, 1990, by first class 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

The Honorable Gustave A. Linenberger, Jr.
Administrative Law Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Maurice Axelrad, Esq.
Newman & Holtzinger, P.C.
Suite 1000
1615 L Street, N.W.
Washington, DC 20036

Director
Research Reactor Facility
Research Park
University of Missouri
Columbia, Missouri 65211

Ms. Betty H. Wilson
Market Square Office Building
P. O. Box 977
Columbia, MO 65205

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing and Service Branch
(original plus two copies)

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety Licensing and Appeal
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(three copies)

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

90 DEC 17 PA:32

RECEIVED
USNRC