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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

'90 DEC 27 P3:48

Before Administrative Judge  
Peter B. Bloch

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
PLANNING

In the Matter of )  
 )  
THE CURATORS OF )  
THE UNIVERSITY OF MISSOURI )  
 )  
(F product License )  
No. 24-00513-32; )  
Special Nuclear Materials )  
License No. SNM-247) )

Docket Nos. 70-00270  
30-02278-MLA  
RE: TRUMP-S Project  
ASLBP No. 90-613-02-MLA

LICENSEE'S RESPONSE TO  
"INTERVENORS' MOTION TO STRIKE AFFIDAVIT  
OF DR. SUSAN M. LANGHORST . . . ."

On November 12, 1990, Intervenors filed a motion (the "Reconsideration Motion, Part I") seeking reconsideration of the Memorandum and Order (Licensee's Partial Response Concerning Temporary Stay), LBP-90-38 (Nov. 1, 1990). On November 21, 1990 Licensee filed its response to such motion, including the Affidavit of Dr. Susan M. Langhorst Regarding Relative Radiological Risk Associated with Trace Americium-241 in Plutonium Standard (the "Langhorst Affidavit"). On December 12, 1990, Intervenors filed the instant motion (the "Motion to Strike Langhorst Affidavit") requesting that the Presiding Officer strike the Langhorst Affidavit.

For the reasons set forth below, the instant motion should be denied.

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Intervenors refer to page 2 of LBP-90-38 where the Presiding Officer stated that, in moving for reconsideration of such order, Intervenors "may not submit new evidence with respect to the temporary stay." Motion to Strike Langhorst Affidavit at 2. Intervenors argue that the submission of the Langhorst Affidavit by the Licensee "conflicts with the spirit, if not the letter, of the Memorandum and Order." Id.

To the contrary, it was the Intervenors, in the Reconsideration Motion, Part I, who violated "the spirit, if not the letter, of the Memorandum and Order." For example, Intervenors made the following factual assertions. They alluded to the fact that Am-241 is a gamma emitter, alleged that it is 50 times as toxic as Pu-241 and asserted that the 70 millicuries of Am-241 contained in the Licensee's plutonium standard "is more than enough to administer a dose far in excess of allowable limits, unless special precautions are taken." Reconsideration Motion, Part I at 9. Intervenors asserted that Applicants "will never think of monitoring the americium possessed under this Part 70 license ...." Id. at 11. In discussing the 70 millicuries of Am-241 within the plutonium standard, Intervenors asserted that such Am-241 "is far more dangerous than the plutonium," that "[i]t requires entirely different safety procedures and equipment," that "applicant did not understand that americium was present in the material," and that the application is deficient because it did not include safety procedures and equipment of the type described in the application for americium under the Part 30

license, including "a thick metal shield and special handling tools to protect the operating personnel ...." Id. at 11-12.

All of these factual assertions constituted an attempt to submit new evidence, although this attempt was made through the unsworn statements of the attorney signing the motion rather than through sworn affidavits. Licensee properly chose to respond to new factual assertions through a sworn affidavit by a knowledgeable expert, rather than through unsworn statements by its attorney.

In any event, the Motion to Strike the Langhorst Affidavit is academic. Intervenors subsequently repeated their assertions regarding the alleged inadequacies of Licensee's "facilities and equipment (e.g., a thick metal shield)" for the handling of the Am-241 contained in the plutonium and regarding Licensee's alleged lack of awareness of the presence of this gamma emitter and its alleged failure "to take appropriate precautions." See Intervenors' Motion for Summary Disposition of Part 70 License Amendment at 3, 4 (Nov. 14, 1990). Although Intervenors did not support such motion with sworn affidavits, Licensee's response incorporated by reference the Langhorst Affidavit. Licensee's Response to "Intervenors' Motion for Summary Disposition of Part 70 License Amendment" at 2 (Dec. 3, 1990). In denying Intervenors' motion for summary disposition, the Presiding Officer noted that Intervenors' argument concerning "the need to use a thick metal shield to handle americium" will be decided as "part of the decision on the written filings."

Memorandum and Order (Pending Motions, Including Those Related to Possession of <sup>241</sup>Pu), LBP-90-45, slip op. at 20, n.25 (Dec. 19, 1990). Obviously, Licensee is entitled to have the Langhorst Affidavit considered as part of the Presiding Officer's decision on Intervenor's factual arguments, and the affidavit cannot be stricken from the record.

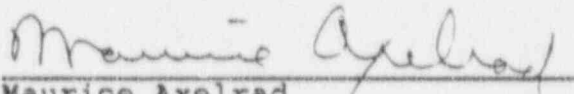
It is apparent that underlying the instant motion is Intervenor's continuing misunderstanding regarding whether Licensee should be allowed to submit responsive information when Intervenor alleges an "inadequacy" in the application. See Motion to Strike Langhorst Affidavit at 2. As the Presiding Officer has definitively ruled, there is no doubt that Licensee is permitted to file new information in response to allegations of Intervenor. 1/ LBP-90-45 at 17.

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1/ Intervenor also accuses Licensee of submitting "new evidence along with some responsive motion to which Intervenor are not even permitted to reply at all ...." Motion to Strike Langhorst Affidavit at 2. Licensee does not understand the term "responsive motion," which may be a typographical error. Licensee is not aware of any motion that Licensee has filed (whether or not Intervenor would characterize it as a "responsive motion"), to which Intervenor have not been allowed to respond. If Intervenor meant to state "response to an Intervenor's motion," then it is accurate that Intervenor do not have the right to answer Licensee's response to Intervenor's motions. It is Intervenor's responsibility to provide all its support for any requested action in any motion that it may file. Licensee provides the support for its position with its response. The Presiding Officer then rules based upon the two pleadings. There is no authorized loop of answers to responses and further responses to answers; and Intervenor cannot assume that they will have the ability to file supporting information endlessly.

Intervenors' Motion to Strike the Langhorst Affidavit  
should be denied.

Respectfully submitted,



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Date: December 26, 1990



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

CERTIFICATE OF SERVICE

I hereby certify that copies of:

1. "Licensee's Motion For Partial Reconsideration Of 'Memorandum And Order (Pending Motions, Including Those Related To Possession Of <sup>241</sup>Pu;'" and
2. "Licensee's Response To 'Intervenors' Motion To Strike Affidavit Of Dr. Susan M. Langhorst ....'"

were served upon the following persons by deposit in the United States mail, postage prepaid and properly addressed on the date shown below:

The Honorable Peter B. Bloch  
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U.S. Nuclear Regulatory Commission  
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Attn: Chief, Docketing & Service Section  
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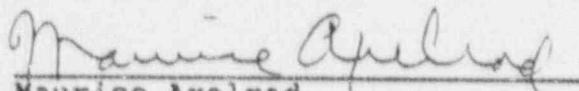
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