

RAS 10874

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

DOCKETED 12/22/05

SERVED 12/22/05

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Paul B. Abramson
Dr. Anthony J. Baratta

In the Matter of
PA'INA HAWAII, LLC
(Honolulu, Hawaii Irradiator Facility)

Docket No. 30-36974-ML

ASLBP No. 06-843-01-ML

December 22, 2005

ORDER

In an order accompanying our December 8, 2005 protective order, we indicated that it appeared that the Petitioner, Concerned Citizens of Honolulu, had abandoned its claim that it needed the information redacted from the irradiator application of Pa'ina Hawaii, LLC (Applicant) in order to file an adequate and complete reply to the answers of the NRC Staff and the Applicant to the Petitioner's request for a hearing. This being so, we directed the Staff not to provide the Petitioner any protected information covered by the protective order without our further express order. In an immediate response to our order, the Petitioner stated that it had not abandoned its claim of need for the redacted information and again requested it.¹

On December 19, 2005, the Staff filed a response to the Petitioner's request for the redacted information.² Relying upon 10 C.F.R. § 73.21(c), the Staff first asserts that the

¹ Petitioner's Response to December 8, 2005 Order and Motion to Review Protected Information and File Supplemental Reply (Dec. 8, 2005) at 1-2.

² NRC Staff Response to Petitioner's Response to December 8 2005 Order and Motion
(continued...)

category of information it redacted as Safeguards Information-Modified Handling (SGI-M) is limited to persons having a need-to-know.³ It next asserts, apparently based upon its reading of the Petitioner's pleadings, that the Staff has determined that the Petitioner does not have a need-to-know the redacted SGI-M

in the first paragraph on page 28 [of the application], the second sentence and phrases within the third and fourth sentence; in the third paragraph on page 28, the second and third sentences; on page 32, the closing phrase of the fourth paragraph and a phrase in the fifth paragraph; on page 33, a phrase at the end of the final paragraph; and a designation within the titles of the diagrams on page 44 (Figure 9-D) and in Figure 1 of both GI-204 and GI-205.⁴

Finally, the Staff indicates that the remainder of the redacted information "previously redacted as SGI-M constitutes only information protected under 10 C.F.R. § 2.390."⁵

By December 30, 2005, Petitioner's counsel and expert both shall execute the "Confidentiality and Non-Disclosure Agreement" attached to our December 8, 2005 protective order. The Petitioner shall promptly thereafter file original executed agreements with the Secretary of the Commission and counsel for the NRC Staff, and shall serve copies on the Board and the Applicant within two business days of receipt of the original executed agreements, the Staff shall provide the Petitioner's counsel only the information redacted from the Applicant's irradiator application pursuant to 10 C.F.R. § 2.390. By January 6, 2006, the Staff shall file a brief description of each identified segment of redacted SGI-M, without

²(...continued)
to Review Protected Information and File supplemental Reply (Dec. 19, 2005) [hereinafter Staff Response].

³ Id. at 2.

⁴ Id. at 4.

⁵ Id.

revealing the deleted information, so that the Petitioner can determine whether such information is necessary for it to file a complete supplemental reply.⁶

In the event the Petitioner no longer seeks the SGI-M identified and described by the Staff in its January 6, 2006 filing, it shall notify the Board of that fact by January 11, 2006. Should the Petitioner believe that the redacted SGI-M is necessary for it to file a complete supplemental reply, it shall file, by January 13, 2006 its detailed and specific explanation why

⁶ Although the Staff asserts that, pursuant to 10 C.F.R. § 73.21(c), access to SGI-M information is limited to individuals having a need-to-know (Staff Response at 2), that regulatory provision is inapplicable to the information redacted from the Applicant's irradiation application as SGI-M. There is no current agency regulation dealing with SGI-M and the definition of safeguards information in 10 C.F.R. § 73.2 is insufficiently broad to cover the redacted information involved here. For this reason, we exercised our broad authority under section 147(a) of the Atomic Energy Act, as amended, 42 U.S.C. § 2167 (2000) to protect safeguards information and specifically defined "protected information" in our December 8, 2005 protective order to include information that meets the definition of SGI-M in the Commission's 2003 order imposing compensatory measures on irradiators. See Protective Order (Regarding Disclosure and Use of Protected Information) (Dec. 8, 2005) at 1-2 and n.1.

such redacted information is necessary for it to file a complete supplemental reply. Any response to the Petitioner's January 13, 2006 filing should be filed by January 18, 2006.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

Thomas S. Moore, Chairman

Rockville, Maryland
December 22, 2005

*Copies of this order were sent this date by Internet e-mail transmission to counsel for the (1) Applicant; (2) Petitioner; and (3) Staff.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 22nd day of December 2005