



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

February 10, 2006

The Honorable Linda Lingle
Governor of Hawaii
Honolulu, Hawaii 96813

Dear Governor Lingle:

I am responding to your letter, of January 13, 2006, in which you indicated your desire to better understand how the U.S. Nuclear Regulatory Commission (NRC) addresses the safety, health, and environmental considerations of irradiators. You were particularly interested in the irradiation facility that Pa'ina Hawaii, LLC (Pa'ina) was proposing, in its application for an NRC license.

On June 27, 2005, NRC received an application from Pa'ina for the possession and use of radioactive material, to be used in a commercial pool-type industrial irradiator to be built on Honolulu International Airport property. The request was to use this commercial irradiator to irradiate fresh fruit and vegetables, bound for the mainland from the Hawaiian Islands, as well as for irradiating cosmetics, and pharmaceutical products.

We have begun the technical review of the irradiator application. However, our review is not complete at this time. NRC's technical review of the application primarily focuses on the radiation safety, physical security, and emergency preparedness aspects of the radioactive material used in the irradiator. Additionally, the NRC staff reviews the irradiator's design and radiation safety program as these programs apply to the safety of employees, the public, and the environment. Other Federal agencies, such as the U.S. Food and Drug Administration and the U.S. Department of Agriculture, are responsible for determining the food types and products that can be used for human consumption after being irradiated. In addition to meeting NRC requirements, the applicant, Pa'ina, must comply with all applicable Federal, State of Hawaii, and municipal regulations.

NRC has determined, by regulation, that certain licensing and regulatory actions are categorically excluded from a complete environmental review except in special circumstances as outlined in Title 10 of the *Code of Federal Regulations* Part 51.22(b).¹ Specifically, 10 CFR 51.22(c)(14)(vii), excludes irradiator applicants from the need to develop an environmental assessment. The basis for this is explained in NRC's "Statements of Consideration" for 10 CFR Part 51.22 (49 FR 9352, March 12, 1984). Part of the basis is that personnel exposures during the use of irradiators are normally less than 5 percent of the limits described in 10 CFR Part 20, "Standards for Protection Against Radiation." Another part of the basis is that there are no releases of radioactive material during normal operations of an irradiator. All categorical exclusions described in 10 CFR Part 51 were reviewed by the Council on Environmental Quality (CEQ), which oversees and ensures that Federal agencies meet their obligations under

¹ Special circumstances are determined by the NRC upon its own initiative or upon request of any interested person.

the National Environmental Policy Act (NEPA). The CEQ determined that NRC's NEPA procedures (i.e., 10 CFR Part 51) addressed all sections of the CEQ regulations required to be addressed by 40 CFR 1507.3(b), "Agency Compliance" [with NEPA].

Although 10 CFR 51.22(c)(14)(vii) excludes irradiator applicants from developing an environmental assessment, a request for a 10 CFR Part 2 hearing has been submitted by Earthjustice (Petitioner) on behalf of Concerned Citizens of Honolulu. The hearing request included two environmental contentions: (a) that the NRC should have conducted an analysis of whether special circumstances exist that would require the NRC to complete an environmental impact statement or environmental analysis; and (b) that such special circumstances do, in fact, exist. The petition for a hearing was reviewed by the NRC's Atomic Safety and Licensing Board (ASLB). The ASLB found that the petitioner's first environmental contention and the first portion of the petitioner's second environmental contention were admissible. Therefore, on January 24, 2006, the ASLB granted the petitioner's request for a hearing. The admissibility of additional contentions are still being reviewed by the ASLB.

For additional information, I am enclosing NRC's fact sheet about commercial irradiators. This addresses: (a) safety review and requirements; (b) licensing and inspection processes; (c) accidents and contamination events; (d) shipment and disposal of radioactive sources; (e) security of radioactive sources; (f) emergency procedures; and (g) decommissioning.

NRC regulates the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. Accordingly, safety is the most important consideration in evaluating license applications and assessing the performance of our licensees. We ensure that applicants, such as Pa'ina, have appropriate procedures, facilities, and staff qualifications in place before making a decision on a final license. If construction is authorized, NRC will conduct inspections during the irradiator construction phase to ensure that the facility is constructed in a manner that can safely support licensed activities. If the license is issued authorizing commercial operation, NRC will routinely inspect the operating irradiator to ensure that regulatory requirements are met and Pa'ina's performance does not fall below an acceptable level.

I trust that this information responds to your concerns. If you have further questions, please feel free to contact William Maier, NRC Region IV State Liaison Officer at (817) 860-8267.

Sincerely,

/RA/

Bruce S. Mallett
Regional Administrator

Enclosure: As stated

cc w/Enclosure: (See Next Page)

The Honorable Linda Lingle

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cc w/Enclosure:

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