

March 16, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

| | | |
|------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| PA'INA HAWAII, LLC |) | Docket No. 30-36974 |
| |) | |
| Material License Application |) | ASLBP No. 06-843-01 |
| |) | |

STAFF RESPONSE TO PETITIONER'S
SUPPLEMENTAL REPLY IN SUPPORT OF ITS REQUEST FOR HEARING

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's ("Board") Order issued on March 10, 2006, the NRC Staff ("Staff") hereby responds to the "Petitioner's Supplemental Reply in Support of its Request for a Hearing" ("Supplemental Reply"). For the reasons discussed below, the Staff submits that the intervenors, Concerned Citizens of Honolulu ("Concerned Citizens"), have not submitted supplemental information resulting in an admissible contention.

DISCUSSION

On January 26, 2006, Concerned Citizens filed its Supplemental Reply. The Supplemental Reply relies on information not publicly available when Concerned Citizens filed its initial hearing request, but made available to the intervenors pursuant to a Protective Order. In its March 10, 2006 Order, the Board ordered the Staff and the applicants, Pa'ina Hawaii, LLC (Pa'ina), to file a response to the Supplemental Reply, treating the information contained in the Supplemental Reply as if it were part of Concerned Citizens' original safety contention 9 and "discuss whether with the additional information, [Concerned Citizens'] safety contention 9

meets, or fails to meet, each of the six criteria for an admissible contention set forth in 10 C.F.R. § 2.309(f)(1)(i)-(vi).” As supplemented, safety contention 9 fails to meet the requirements of 10 C.F.R. § 2.309(f)(1)(v) and (vi).

Safety contention 9 initially stated that “Pa’ina Hawaii improperly proposes to place a major sabotage target into the local community without adequate provision to address threats to the community.” In its supplemental response, they argue that “Pa’ina Hawaii has failed to design its irradiator to provide adequate protection from terrorist attacks, violating 10 C.F.R. § 30.33(a)(2)’s requirement that the applicant’s proposed facility ‘protect health and minimize danger to life or property.’” In its Supplemental Reply, Concerned Citizens cites several aspects of Pa’ina Hawaii’s planned security measures, which are withheld from public dissemination under 10 C.F.R. § 2.390, and states that these measures are inadequate to protect the public health and safety. As with the original safety contention 9, the Staff submits that safety contention 9, as supplemented, is inadmissible because it is not supported by relevant facts or expert opinion and does not show that a genuine dispute exists with respect to a material issue of law or fact. Thus, safety contention 9 as supplemented does not fulfill the requirements of 10 C.F.R. § 2.309(f)(v) and (vi).

10 C.F.R. § 2.309(f)(v) requires an intervenor to provide “a concise statement of the alleged facts or expert opinions which support the [intervenor’s] position on the issue and on which the [intervenor] intends to rely at the hearing.” Concerned Citizens has cited three articles as support for its contention. The first, Public Interest Report, *Dirty Bombs: Response to a Threat*, (March/April 2002) (Exhibit F), contains information on dirty bombs, their potential sources, and their potential effects. However, the report does not contain any information related to the type of security needed at a materials licensee, and, thus, does not provide any information relevant to the issue raised by the intervenors, namely, whether or not the proposed security measures at the irradiator are adequate. In fact, the article notes that irradiator

materials are less susceptible to being acquired by terrorists than other scenarios discussed in the article. While the article generally advocates reviewing security at all materials facilities on a national and international basis, it does not specifically identify any security issue concerning irradiators generally, and certainly not anything specific to the Pa'ina situation. (Exhibit F, pp. 7-9). Thus, this article provides no basis that would provide the focus on an issue of law or material fact specific to the Pa'ina application that would justify admission of a contention. The second and third articles both relate to the recent closure of an irradiator on the campus of the University of Hawaii. National Nuclear Safety Administration Press Release (April 13, 2005) (Exhibit H); Environment Hawaii, *Homeland Insecurity on the UH Campus* (Nov. 2005) (Exhibit S). Exhibit S, in particular, includes information related to security breaches at the University of Hawaii irradiator. However, Concerned Citizens does not provide any link between an now-closed irradiator whose operators left the irradiator unlocked and unattended and the adequacy of the proposed access control plans for the Pa'ina irradiator, which do not contemplate leaving the irradiator unlocked and unattended. Concerned Citizens also has not provided any expert opinion regarding the sufficiency of the actual security measures planned for the Pa'ina irradiator. Rather, the remainder of the support for the contention consists merely of conclusory statements regarding the "weak security measures" at the proposed irradiator. Therefore, Concerned Citizens has not complied with 10 C.F.R. § 2.309(f)(1)(v).

In its response to initial safety contention 9, the Staff noted that Concerned Citizens had not complied with 10 C.F.R. § 2.309(f)(1)(vi) because the original hearing request did not include any reference to any law or regulation related to security allegedly not complied with by the Pa'ina application. In its Supplemental Response, Concerned Citizens states that Pa'ina's proposed security plans violate 10 C.F.R. § 30.33(a)(2)'s requirements and, as discussed above, cites aspects of the which it alleges are inadequate to protect the public health and safety. This information is not sufficient to meet the burden of 10 C.F.R. § 2.309(f)(1)(vi), which

requires that a contention: "Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application . . . that the [intervenor] disputes and the supporting reasons for each dispute." Here, the intervenors have pinpointed aspects of the proposed security measures at the facility that Concerned Citizens contends are inadequate to protect the public health and safety, but, as discussed above, they have offered no support for these conclusions. Therefore, Concerned Citizens has failed to comply with 10 C.F.R. § 2.309(f)(1)(vi).

CONCLUSION

For the foregoing reasons, safety contention 9, as supplemented, should not be admitted.

Respectfully Submitted,

/RA/

Margaret J. Bupp
Counsel for NRC Staff

Dated at Rockville, Maryland
this 16th day of March, 2006

March 16, 2006

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NOTICE OF WITHDRAWAL

Notice is hereby given that, effective March 16, 2006, I will withdraw my appearance in the captioned matter. All mail and service lists in this proceeding should be amended to delete my name after this date.

Respectfully submitted,

/RA/

Steven C. Hamrick
Counsel for NRC Staff

Dated at Rockville, Maryland
this 16th day of March, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PA'INA HAWAII, LLC) Docket No. 30-36974-ML
)
(Honolulu, Hawaii Irradiator))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "STAFF RESPONSE TO PETITIONER'S SUPPLEMENTAL REPLY IN SUPPORT OF ITS REQUEST FOR HEARING" and "NOTICE OF WITHDRAWAL" for Steven C. Hamrick in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 16th day of March, 2006.

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/RA/

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