

March 20, 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
)	

NRC STAFF AND CONCERNED CITIZENS OF HONOLULU
JOINT MOTION TO DISMISS ENVIRONMENTAL CONTENTIONS

INTRODUCTION

On January 24, 2006, the Atomic Safety and Licensing Board issued an Order in the above-captioned proceeding admitting environmental contention 1 and a portion of environmental contention 2. Pursuant to the attached stipulation, discussed below, the NRC Staff ("Staff") and the intervenors, Concerned Citizens of Honolulu ("Concerned Citizens"), hereby move to dismiss environmental contentions 1 and 2. The applicant, Pa'ina Hawaii, LLC ("Pa'ina"), was consulted on the joint stipulation but elected not to become a signatory to the stipulation and has indicated that they may object to the dismissal.

DISCUSSION

The attached stipulation resolves all issues associated with environmental contentions 1 and 2. Through the stipulation, the Staff has agreed, without any admission of fact or law, to complete an Environmental Assessment concerning Pa'ina's application for an irradiator license to possess and use radiological materials. Before publishing any final finding of no significant impact, the Staff has agreed to publish a draft finding of no significant impact for public review and comment and to hold at least one public meeting in Honolulu, Hawaii regarding the draft finding of no significant impact. Concerned Citizens has reserved its right pursuant to

10 C.F.R. § 2.309(c) to file additional contentions challenging the adequacy of the Staff's NEPA review after the Staff publishes any final finding of no significant impact.

Both the Staff and Concerned Citizens consider that it is in the best interest of the public, the parties, and administrative efficiency to resolve environmental contentions 1 and 2 through the attached stipulation. Both parties consider the stipulation to be a fair and equitable resolution to the environmental issues in the above-captioned proceeding.

CONCLUSION

Pursuant to the joint stipulation discussed above, the Staff and Concerned Citizens hereby move to dismiss environmental contentions 1 and 2.

Respectfully submitted,

A handwritten signature in black ink that reads "Margaret J. Bupp". The signature is written in a cursive, flowing style.

Margaret J. Bupp
Counsel for NRC Staff

Dated at Rockville, Maryland
This 20th 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 "NRC STAFF AND CONCERNED CITIZENS OF HONOLULU JOINT MOTION TO DISMISS ENVIRONMENTAL CONTENTIONS" 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 20th day of March, 2006.

Administrative Judge * **
Thomas S. Moore, Chair
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555
E-Mail: tsm2@nrc.gov

Administrative Judge * **
Anthony J. Baratta
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555
E-Mail: ajb5@nrc.gov

Administrative Judge * **
Paul Abramson
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555
E-Mail: pba@nrc.gov

Office of Commission Appellate Adjudication*
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555

Office of the Secretary * **
ATTN: Rulemakings and Adjudication Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555
E-mail: HEARINGDOCKET@nrc.gov

David L. Henkin, Esq.
Earthjustice
223 South King Street, Suite 400
Honolulu, HI 96813
E-mail: dhenkin@earthjustice.org

Michael Kohn, President
Pa'ina Hawaii, LLC
P.O. Box 30542
Honolulu, HI 96820

Fred Paul Benco **
The Law Offices of Fred Paul Benco
Suite 3409 Century Square
1188 Bishop Street
Honolulu, HI 96813
E-mail: fpbenco@yahoo.com


Margaret J. Bupp
Counsel for NRC Staff

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
)	ASLBP No. 06-843-01-ML
Materials License Application)	
_____)	

JOINT STIPULATION AND ORDER REGARDING RESOLUTION
OF CONCERNED CITIZENS' ENVIRONMENTAL CONTENTIONS

WHEREAS, on January 24, 2006, the Atomic Safety and Licensing Board ("Board") issued an order granting the request of petitioner Concerned Citizens of Honolulu ("Concerned Citizens") for a hearing on the application submitted by Pa'ina Hawaii, LLC ("Applicant") to build and operate a commercial pool-type industrial irradiator at the Honolulu International Airport;

WHEREAS, the Board's January 24, 2006 order admitted for hearing Concerned Citizens' contentions regarding the Nuclear Regulatory Commission's ("NRC's") alleged failure to comply with the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq.;

WHEREAS, pursuant to 10 C.F.R. § 51.21, the NRC staff is willing to prepare an environmental assessment for the Applicant's proposed irradiator;

WHEREAS, the parties to this agreement have reached a settlement of Concerned Citizens' environmental contentions without any admission of fact or law, which they consider to be a just, fair, adequate and equitable resolution of these contentions; and

WHEREAS, it is in the interest of the public, the parties, and administrative economy to resolve Concerned Citizens' environmental contentions without protracted litigation;

NOW THEREFORE, the Parties agree as follows:

1. The NRC shall prepare an environmental assessment for the Applicant's proposed irradiator to determine whether to prepare an environmental impact statement or a finding of no significant impact.

2. Pursuant to 10 C.F.R. § 51.33, prior to making any final finding of no significant impact for the Applicant's proposed irradiator, the NRC staff shall prepare and issue a draft finding of no significant impact for public review and comment.

3. As part of the public comment period on any draft finding of no significant impact or draft environmental impact statement, the NRC staff will hold at least one public meeting in Honolulu, Hawai'i at which the public will have the opportunity to offer comment on the record.

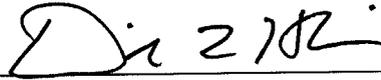
4. The NRC shall not make a decision on the Applicant's proposed irradiator until it has issued a final finding of no significant impact or record of decision following preparation of an environmental impact statement.

5. This stipulation resolves the environmental contentions in Concerned Citizens' October 3, 2005 Request for Hearing.

6. Concerned Citizens reserves its right pursuant to 10 C.F.R. § 2.309(c) to file additional contentions challenging the adequacy of any NEPA document that the NRC prepares regarding the Applicant's proposed irradiator.

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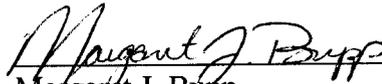
Dated at Honolulu, Hawai'i, MARCH 10, 2006.



David L. Henkin
Earthjustice
223 South King Street, Suite 400
Honolulu, Hawai'i 96813
Tel. No.: (808) 599-2436
Fax No. (808) 521-6841
Email: dhenkin@earthjustice.org

Attorney for Concerned Citizens

Dated at Rockville, Maryland, March 20, 2006.



Margaret J. Bupp
U.S. Nuclear Regulatory Commission
Office of the General Counsel
11555 Rockville Pike
Mail Stop: O15 D21
Rockville, MD 20852-2738
Telephone: 301-415-3722
Fax: 301-415-3725
E-mail: mjb5@nrc.gov

Attorney for NRC Staff

In the Matter of Pa'ina Hawaii, LLC, Docket No. 30-36974-ML, ASLBP No. 06-843-01-ML;
JOINT STIPULATION AND ORDER REGARDING RESOLUTION OF CONCERNED
CITIZENS' ENVIRONMENTAL CONTENTIONS

APPROVED AND SO ORDERED:

Dated:

ADMINISTRATIVE JUDGE
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of Pa'ina Hawaii, LLC, Docket No. 30-36974-ML, ASLBP No. 06-843-01-ML;
JOINT STIPULATION AND ORDER REGARDING RESOLUTION OF CONCERNED
CITIZENS' ENVIRONMENTAL CONTENTIONS