

May 1, 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 RESPONSE TO APPLICANT PA'INA HAWAII, LLC'S
MOTION TO DISMISS SAFETY CONTENTIONS #4 AND #6

INTRODUCTION

On April 18, 2006, the applicant, Pa'ina Hawaii, LLC ("Pa'ina") filed "Applicant Pa'ina Hawaii, LLC's Motion to Dismiss Safety Contentions #4 and #6" ("Motion to Dismiss").¹ For the following reasons, the Staff supports the Motion to Dismiss.

PROCEDURAL BACKGROUND

On June 23, 2005, Pa'ina filed an application for a license for possession and use of byproduct material in connection with a proposed irradiator to be constructed and operated at the Honolulu International Airport in Honolulu, HI. The Staff published a notice of opportunity for a hearing in connection with the application in the Federal Register on August 2, 2005. 70 Fed. Reg. 44,396 (Aug. 2, 2005). On October 3, 2005, Concerned Citizens of Honolulu ("Concerned Citizens") filed a request for a hearing in accordance with 10 C.F.R. § 2.309.

After responses to the hearing request were filed by the parties, the Board issued a Memorandum and Order on January 24, 2006 finding that Concerned Citizens has standing to intervene and had proffered two admissible environmental contentions. In a later Memorandum

¹ The Motion to Dismiss was served on the parties via electronic mail on April 18, 2005 and counsel for the NRC Staff ("Staff") at 11:40 p.m. Eastern Daylight Time. Pursuant to 10 C.F.R. 2.306, one additional business day has been added to the response date.

and Order on March 24, 2006, the Board found that Concerned Citizens had submitted three admissible safety contentions, Safety Contentions 4, 6, and 7. Safety Contention 4 alleges that the application “fails to describe emergency procedures for accidents involving a prolonged loss of electricity.” Safety Contention 6 alleges that the application did not contain information regarding emergency procedures for events involving natural disasters.²

On January 25, 2006, the Staff requested information from Pa’ina regarding fifteen areas of deficiency identified in the license application, including the sufficiency of the outlines of emergency procedures related to events involving natural disasters, and on March 9, 2006, Pa’ina submitted an outline of emergency procedures related to natural disasters. See ADAMS ML0609307620. In addition, on March 31, 2006, Pa’ina submitted an outline of emergency procedures related to prolonged loss of electricity. See ADAMS ML0610006400. Pa’ina’s Motion to Dismiss followed on April 18, 2006, in which Pa’ina argued that Safety Contentions 4 and 6 should be dismissed as moot based on its submission of these additional outlines.

DISCUSSION

Safety Contentions 4 and 6 are both contentions of omission, alleging that essential portions of an irradiator application were not included in Pa’ina’s original application. Licensees operating irradiators must have in place full emergency procedures for a variety of emergency and abnormal events including prolonged loss of power and the effects of natural phenomena appropriate for the geographical location of the facility. 10 C.F.R. § 36.53(b)(6) and (9). At the application stage, however, *applicants* need only submit “an outline of the written operating and emergency procedures listed in § 36.53 that describes the radiation safety aspects of the procedures.” 10 C.F.R. § 36.13(c). In crafting this requirement, the Commission considered requiring full procedures to be submitted at the application stage, but ultimately determined to

² Safety Contention 7 concerns the alleged failure of the application to address the likelihood and consequences of an air crash at the facility, but is not relevant to the motion currently before the Board.

require instead “an outline that describes the operating and emergency procedures in broad terms that specifically state the radiation safety aspects of the procedures.” “Licenses and Radiation Safety Requirements for Irradiators,” 58 Fed. Reg. 7715, 7717 (Feb. 9, 1993).³

At this point in the licensing process, the Staff has not completed its technical review of the license application and the supplemental information provided by Pa’ina on March 9 and March 31, 2006.⁴ However, an initial review has been conducted to determine if the new information appears to address the deficiencies that formed the bases for Safety Contentions 4 and 6. Based on that initial review, it appears that the supplemental information meets the requirements of 10 C.F.R. § 36.13(c) and is consistent with the guidance provided in NUREG-1556. With respect to emergency procedures for a prolonged loss of power (characterized by Pa’ina as an “abnormal event,” consistent with 10 C.F.R. § 36.53(b)), Pa’ina has provided an outline describing the procedures to be followed in broad terms, but specifically noting the radiation-safety aspects of the procedures, namely, checks of safety monitors that may be affected by a loss of electrical power. Pa’ina has also now provided an outline describing in broad terms the emergency procedures to be followed in response to natural hazards including tsunamis, hurricanes, earthquakes, tornados, and any event that may lead to flooding, loss of building power, damage to the irradiator or significant damage to the building. This outline includes greater detail on the radiation safety aspects of the procedures including shutting down the irradiator, protecting personnel, and monitoring radiation levels after the

³ In reviewing applications to determine whether they comply with 10 C.F.R. § 36.13(c), the Staff is guided by NUREG-1556, Volume 6, “Consolidated Guidance About Materials Licenses: Program-Specific Guidance About 10 CFR Part 36 Irradiator Licenses.” While not binding on license applicants, NUREG-1556 also provides guidance to licensees in developing acceptable license applications. NUREG-1556 requires that applications include “an outline that specifically states the radiation safety aspects of the emergency procedures” required by 10 C.F.R. § 36.53(b). NUREG-1556 at 8-51.

⁴ The complete technical review, which will involve some contractor support to the Staff in specific areas, is not expected to be complete until March, 2007, as stated during the April 26, 2006 telephone conference between the Board and the parties.

emergency has passed.

Based on the above, it appears that Pa'ina has remedied the omissions referenced in Safety Contentions 4 and 6. As the Commission recently stated, "where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the NRC Staff in an environmental impact statement, the contention 'is moot.'" *USEC, Inc. (American Centrifuge Plant)*, 63 NRC ___, CLI-06-09, *slip op.* at 14. Therefore, the Staff supports Pa'ina's Motion to Dismiss Safety Contentions 4 and 6.

CONCLUSION

For the foregoing reasons, the Staff supports Pa'ina's Motion to Dismiss Safety Contentions 4 and 6.

Respectfully Submitted,

Margaret J. Bupp
Counsel for NRC Staff

Dated at Rockville, Maryland
this 1st day of May, 2006

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(Honolulu, Hawaii Irradiator))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANT PA'INA HAWAII, LLC'S MOTION TO DISMISS SAFETY CONTENTIONS #4 AND #6" 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 1st day of May, 2006.

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