

June 13, 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 BOARD ORDER DATED JUNE 8, 2006

INTRODUCTION

On June 8, 2006, the Atomic Safety and Licensing Board ("Board") issued an Order directing the parties in the above-captioned proceeding to provide supplemental filings related to the intervenor Concerned Citizens of Honolulu's ("Intervenor" or "Concerned Citizens") motion for leave to amend safety contentions #4 and #6. Specifically, the Board requests the parties' positions regarding the applicability and relevance of the section in the Pa'ina Hawaii, LLC ("Applicant" or "Pa'ina") application¹ entitled "Training (familiarization) for Off-Site Individuals (Not Employees of the Licensee) Who Must be Prepared to Respond to Alarms: Emergency Response Personnel (ERP)" to Concerned Citizens' Amended Contention #6. The Board also requests an explanation as to why, if that portion of the Application is relevant to Amended Contention #6, the parties' earlier responses did not address it. The NRC staff's ("Staff") response follows.

¹ Letter from Michael Kohn, President, Pa'ina Hawaii, LLC to Jack Whitten, Region IV, U.S. Nuclear Regulatory Commission, June 23, 2005 (ADAMS Accession Number ML052060372) ("Application").

DISCUSSION

The information included in the Application on training for offsite emergency response personnel is part of a larger description of planned training programs for all individuals who may require unescorted access to the facility as part of the normal course of their duties. Operating irradiators must have training programs in place and must make their training plans available for inspection in order to comply with 10 C.F.R. §§ 19.12, 30.7, 30.9, 30.10, 30.33, and 36.51(f). See NUREG-1556 at 8-18. These training plans are not required by 10 C.F.R. § 36.13 to be submitted at the application stage.² Nevertheless, in addition to the required description of irradiator operator training, the Applicant has submitted descriptions of planned training for radiation safety officers, operators-in-training, and emergency response personnel. From the description provided by Pa'ina, and based on the Staff's knowledge of training programs for emergency response personnel at other operating irradiators, the training provided to the emergency response personnel should acquaint them with the basic operation of the irradiator, radiation hazards, the location and use of emergency equipment, the location and operation of alarms, and other security features of the facility. Application at 22; see also NUREG-1556 at 8-14 to 8-18.

In so far as the application's description under the heading "Training (familiarization) for Off-Site Individuals (Not Employees of the Licensee) Who Must be Prepared to Respond to Alarms: Emergency Response Personnel (ERP)" describes training to be provided to emergency response personnel, it is related to the statement in NUREG-1556 that "The applicant should inform and/or train individuals in these organizations regarding the unique concerns and hazards associated with emergencies at the irradiator facility." NUREG-1556 at 8-50. In fact, if this statement were a regulatory requirement, rather than guidance, the

² However, 10 C.F.R. § 36.13(b) does require applicants to submit a description of the training to be provided to irradiator officers, which the Applicant has provided. Application at 17-19.

information provided by the applicant would satisfy such a requirement and, thus, would moot the Intervenor's Amended Contention #6.

However, as stated in the Staff's response to the Intervenor's Amended Contentions, inclusion of this information, as discussed in NUREG-1556, is suggested as guidance, not required by regulation. Therefore, the absence or presence of information related to training of emergency response personnel in the emergency procedure outlines is not an appropriate basis for an admissible contention. The Staff viewed the contention as focused on the adequacy of the *required* emergency procedure outlines specific to natural hazards and responsive to the requirements of 10 C.F.R. §§ 36.13(c) and 36.53(b)(9). For that reason, while the Staff noted that information related to training for emergency response personnel is not required to be in the emergency procedures outline in the application, the Staff did not specifically address the relevancy of the description of emergency response personnel training on page 22 of the Application.

On the other hand, to the extent the Intervenor's rely on allegations concerning the adequacy of training for emergency response personnel to support their late-filed contention, the contention is clearly untimely. With respect to this particular basis for the contention, the Intervenor's have provided no good cause for not raising the issue sooner, since the provisions discussing emergency personnel training cited by the Board were present in the original application and the Intervenor's were on notice as to the extent of the description of training for emergency personnel from the time of the original application. In sum, although the specific emergency procedure outline that is the subject of Amended Contention #6 was not available as part of the original license application, the information on page 22 of the Application regarding training for emergency response personnel is not new information, as required by 10 C.F.R. § 2.309(f)(2)(i). Thus, to the extent this is the only specific basis for the Intervenor's Amended Contention #6, even if information regarding training for emergency response personnel is

assumed to be relevant to the required emergency procedure outlines, the amended contention is untimely.

CONCLUSION

As discussed above, while the information in the Application regarding training for emergency response personnel has some general relationship to the concerns raised by the Intervenor in Amended Contention #6, the information is not required by regulation to be included in the application and is not, therefore, relevant to the admissibility of the contention. Even if it were found that this information is relevant to the contention proposed, the adequacy of emergency response personnel training would not be timely raised in Amended Contention #6, since the training description was available for review in the original application and Intervenor has provided no basis for not raising adequacy of the training in their original hearing request. Also, if information on emergency response personnel training is assumed relevant to a contention focused on the sufficiency of emergency procedure outlines, the description of Pa'ina's planned training program included in the Application would render Amended Contention #6 moot. For these reasons, the Staff did not discuss this information in its response to the Intervenor's Amended Contentions.

Respectfully Submitted,

/RA/

Margaret J. Bupp
Counsel for NRC Staff

Dated at Rockville, Maryland
this 13th day of June, 2006

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CERTIFICATE OF SERVICE

I hereby certify that copies of "STAFF RESPONSE TO BOARD ORDER DATED JUNE 8, 2006" 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 13th day of June, 2006.

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