

June 15, 2006

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
USNRC

June 16, 2006 (8:48am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)
Pa'ina Hawaii, LLC) Docket No. 030-36974
) ASLBP No. 06-843-01-ML
Materials License Application)

APPLICANT PA'INA HAWAII, LLC'S
RESPONSE TO ASLB ORDER DATED JUNE 8, 2006

I. PROCEDURAL BACKGROUND.

On June 8, 2006 the Atomic Safety and Licensing Board ("ASLB") ordered the parties herein to address the "applicability and relevance" of the section of Pa'ina Hawaii, LLC's Application entitled "Training (familiarization) for Off-Site Individuals (Not Employees Of The Licensee) Who Must Be Prepared To Respond To Alarms: Emergency Response Personnel (ERP)."

This Order appears to be the consequence of Applicant's Motion to Dismiss Safety Contentions #4 and #6 (filed April 18, 2006), and also Intervenor's Motion For Leave To Amend Safety Contentions #4 And #6 filed May 1, 2006.

II. PA'INA HAWAII, LLC'S APPLICATION ITEM #8 IS RELEVANT FOR SEVERAL REASONS.

TEMPLATE = SECY-037

SECY-02

The ASLB asked whether the Application's Item #8 (Training for Off-Site Individuals) is "applicable and relevant" in considering whether Amended Safety Contention #6 ought to be admitted.

Pa'ina responds that "yes," Item #8 is relevant for at least three reasons: (A) Item #8 is relevant because it clearly demonstrates the lateness of the proposed Amended Safety Contention #6; (B) Item #8 clearly demonstrates that Petitioner "waived" its challenge to training procedures for off-site individuals; and (C), Item #8 demonstrates that the proposed Amended Safety Contention #6 still fails to state any admissible contention as a matter of law.

A. Item #8 Demonstrates That Petitioner's Amended Safety Contention #6 Is Much Too Late.

Item #8 was clearly part of a public document as early as June/July 2005. Item #8 in the original Application has not been changed or altered. At all times, Item #8 stated generally that training would be given to all local ERP's.

Petitioner failed to specifically challenge or even mention any deficiencies in Item #8 in its October 3, 2005 Petition.

Approximately 10 months passed between the original Application's Item #8, and Petitioner's May 1, 2006 Motion to

Amend. Clearly, proposed Amended Safety Contention #6 is untimely.

B. Item #8 Also Demonstrates That Petitioner Waived Its Amended Safety Contention #6.

Item #8 also serves to confirm the fact that Petitioner "waived" its Amended Safety Contention #6 because it did not "find" or "discover" any new information (or lack thereof).

Thus, Item #8 of the Application generally addresses training of off-site emergency personnel. Item #8 was a public record as far back as June 2005. Petitioner obviously reviewed the Application before it filed its original Petition on October 3, 2005.

However, in its October 3rd Petition, Petitioner failed to specifically challenge, contest or even mention Item #8, as required by 10 C.F.R. Sec. 2.309(f)(i). Petitioner also failed to provide a "concise statement" or provide any expert opinion specifically addressing or contesting the training of off-site ERP's, as required by 10 C.F.R. Sec. 2.309(f)(v). Furthermore, Petitioner failed to specifically identify "Item #8" as being inadequate, as required by 10 C.F.R. Sec. 2.309(f)(vi).

Only very belatedly, on May 1, 2006, did Petitioner for the first time mention "emergency responders" and (for the first

time) specifically allege that training or notification of off-site ERP's must be detailed.

Yet, Item #8 had been a public record for 10 months. Thus, there was no "new" information (or absence thereof) upon which Petitioner could base its claim of "newly-discovered" facts.

Petitioner knew about Item #8 in 2005, but clearly "waived" its contention that Item #8 is legally inadequate. Item #8 was always in the Application, but Petitioner failed to raise any contention challenging #8.

C. There Is No Legal Requirement (No Federal Regulation) Which Requires Full And Detailed Emergency Procedures Pre-Licensing As Contended By Petitioner Related To Item #8, And Thus Any Contention Based Upon Item #8 Is "Beyond The Scope" Of These Proceedings.

Item #8 also demonstrates that there is no legal requirement, i.e., no federal regulation, which requires full and detailed emergency procedures at this stage of Pa'ina's licensing application.

One can imagine the many reasons that there are no such legal requirements at this stage. For example, the technological advances of the irradiator to be utilized would obviously affect the training of outside ERP's. The actual, final location and specific siting of the irradiator would dictate which ERPs should be notified. If the telephone numbers

of any ERP's were to change between now and post-licensing, a tedious licensing amendment would be required. Thus, at this stage, detailed and complete ERP procedures pursuant to Item #8 would be premature.

Because detailed and complete procedures would be premature at this stage of the licensing application, a contention based upon Item #8 must be considered "beyond the scope" of these proceedings in violation of 10 C.F.R. Sec. 2.309(f)(iii).

D. Applicant Did Not Address Item #8 Because That Item Was Believed By Applicant To Be Encompassed By Applicant's Citation Of 58 Fed. Reg. 7717.

The NRC fully set forth its reasoning regarding the requirement for emergency "outlines" during the license application procedure. Fed. Reg. Vol. 58 Fed. Reg. 7717 (Feb. 9, 1993) In its May 10, 2006 Opposition filed herein, Applicant quoted extensively from that particular NRC Statement of Consideration in order to rebut Petitioner's broad contention that detailed, complete emergency procedures are required at this stage of the proceedings.

"Item #8" was never specifically mentioned by Petitioner in its Motion to Amend. Nevertheless, Dr. Resnikoff referred to "emergency responders" in Paragraph 14 at Page 5 of his March 26, 2006 Declaration (filed May 1, 2006). However, Dr.

Resnikoff's conclusory arguments in Paragraph 14 were directly rebutted by the NRC's February 9, 1993 Statement of Consideration regarding "outlines" which had been quoted by Applicant.

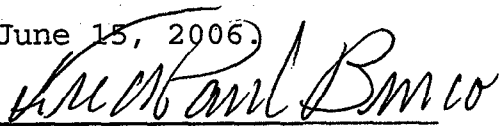
Thus, in drafting its May 10, 2006 Opposition, Applicant believed that the NRC's broad rationale encompassed and rebutted each and every one of Petitioner's contentions that full and detailed emergency procedures need be contained in an application for a materials license.

Consequently, Applicant did not specifically address Item #8.

III. CONCLUSION.

Applicant Pa'ina Hawaii, LLC submits that the proposed Amended Safety Contention #6 should be rejected/denied, on the grounds set forth above as well as the grounds set forth in Applicant's May 8, 2006 Opposition.

DATED: Honolulu, Hawaii, June 15, 2006.


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CERTIFICATE OF SERVICE

I hereby certify that true copies of "APPLICANT PA'INA HAWAII, LLC'S RESPONSE TO ASLB ORDER DATED JUNE 8, 2006" in the captioned proceeding have been served as shown below by deposit in the regular United States mail, first class, postage prepaid, this 15th day of June, 2006. Additional service has also been made this same day by electronic mail as shown below:

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June 15, 2006

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Re: Docket No. 030-36974
ASLBP No. 06-843-01-ML
"APPLICANT PA'INA HAWAII, LLC'S
RESPONSE TO ASLB ORDER DATED JUNE
8, 2006"

Dear Secretary:

I represent the legal interests of Pa'ina Hawaii, LLC, which has applied for a Materials License. Please find enclosed an Original and two (2) copies of the above document to be filed in this case.

If you have any questions or comments, please feel free to contact my office. Tel: 808-523-5083; Fax: 808-523-5085; e-mail: fpbenco@yahoo.com. Thank you very much.

Very respectfully yours,



Fred Paul Benco

cc: All parties on Certificate of
Service