

June 15, 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
)	ASLBP No. 06-843-01-ML
Materials License Application)	
_____)	

INTERVENOR CONCERNED CITIZENS OF HONOLULU'S RESPONSE
TO BOARD'S JUNE 8, 2006 ORDER REGARDING INTERVENOR'S
MOTION FOR LEAVE TO AMEND SAFETY CONTENTIONS #4 AND #6

Intervenor Concerned Citizens of Honolulu respectfully submits that the portion of the Pa'ina Hawaii, LLC 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)" is not relevant to Intervenor's amended Safety Contention #6, which challenges, among other things, Pa'ina's failure to address notification and training of outside emergency responders regarding natural disasters. Application at 22.¹ In analyzing this issue, the Board should bear in mind that 10 C.F.R. § 36.53(b) mandates "emergency or abnormal event procedures" for many different situations that might involve emergency response personnel. In addition to emergency procedures for natural disasters (the subject of Concerned Citizens' amended contention), section 36.53(b) requires emergency procedures for situations involving "[a] fire alarm," to which the fire department would normally respond, and "[a]n alarm

¹ Although there is no protected information on this page, the version on ADAMS is redacted. See 12/8/05 Protective Order at 2. Because the redacted information is relevant to Concerned Citizens' response to the Board's inquiry, the unredacted version of page 22 is attached hereto as Exhibit "5."

indicating unauthorized entry into the radiation room, area around pool, or another alarmed area,” which might call for the police’s involvement. 10 C.F.R. § 36.53(b)(7), (8); see also id. § 36.53(b)(9). Page 22 of the Application – which expressly addresses only situations in which non-employees “Respond to Alarms” – clearly relates to only the latter types of emergencies, not the natural disasters at issue in Safety Contention #6. Application at 22 (emphasis added).

That Pa’ina never intended page 22 to provide procedures to respond to natural disasters is confirmed by its litigation position that section 36.53(b)(9) does not apply to its facility. See 10/26/05 Pa’ina Answer to Hearing Request at 27-29. Accordingly, when Pa’ina submitted its Application, it did not think it was obliged to outline any emergency procedures to address risks from tsunamis, hurricanes and earthquakes. Moreover, when Pa’ina subsequently submitted its outline of natural disaster procedures, it notably did not reference the training described on page 22, reinforcing the conclusion there is no connection between the two. See Exh. 1: 3/9/06 Pa’ina Letter at 6-7; see also NUREG-1556, vol. 6, at 8-51 (outline must “specifically state the radiation safety aspects of the written emergency procedures”). Finally, in responding to both Concerned Citizens’ original contention the Application lacked any natural disaster procedures and its amended contention that the March 9, 2006 submittal failed to address the required training and notification of emergency responders regarding natural disasters, neither Pa’ina nor the Staff, both of whom surely were familiar with the Application’s contents, deemed page 22 relevant, belying any claims either party may belatedly make in response to the Board’s order.

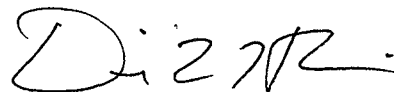
Comparison of Pa’ina’s March 9, 2006 natural disaster procedure outline with the contents of page 22 make clear the latter were not intended to address natural disasters. The March 9, 2006 outline provides that, following a natural disaster, Pa’ina personnel may enter the Restricted Area only in accordance with GI-101, which requires the use of personal dosimeters

and handheld survey meters. See 3/9/06 Pa'ina Letter at 7; Application, GI-101 at 1-2. In contrast, page 22 allows emergency responders "unrestricted access to the Restricted Area" and specifies that "[p]ersonnel dosimeters are not required."

The training outlined on page 22 obviously is not intended to address situations where natural disasters have damaged the facility, posing threats of radiation exposure to emergency responders. See 3/9/06 Pa'ina Letter at 7 (noting that, following a natural disaster, "there might be damage to the building and/or the irradiator"). Moreover, the Application fails to provide for notification of emergency responders in the event of a natural disaster, another significant deficiency highlighted in Concerned Citizens' amended Safety Contention #6. Thus, page 22 is not relevant to the Board's consideration of Concerned Citizens' pending motion for leave to amend its contentions.

Dated at Honolulu, Hawai'i, June 15, 2006.

Respectfully submitted,



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 Intervenor
Concerned Citizens of Honolulu

NRC Form 313, Item 8

Training for Individuals Working in or Frequenting Restricted Areas

Training (familiarization) for Off-Site Individuals (Not Employees Of the Licensee) Who Must be Prepared to Respond to Alarms:

Emergency Response Personnel (ERP):

Description:

Representative members of the local Police Department, Fire Department, Rescue Squad, or similar organizations. The purpose of this training course is to assure that the ERP are familiar with what they can and cannot do in emergency situations.

Authorization:

The ERP are authorized to respond to any emergency within the purview of their respective organization.

Access:

The ERP have unrestricted access to the Restricted Area to perform their respective duties during an emergency.

They DO NOT HAVE access to the inside of the pool.

Occupational Dosimetry:

Personnel dosimeters are not required.

Training (Seminar):

Instruction is performed annually, is a minimum of two hours in duration, and includes:

- A basic understanding of radiation units and units of radioactivity.

- A basic understanding of the irradiator and its safety systems (including a walk through of the Restricted Area).

- An understanding of the authority of the RSO and of the Shift Irradiator Operator.

- A full comprehension of all signs and postings directly relating to the Restricted Area and the irradiator as they pertain to them.

- A full understanding on how to respond to emergencies and whom to contact in the event of an emergency.

EXHIBIT **5**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on June 15, 2006, a true and correct copy of the foregoing document was duly served on the following via e-mail and first-class United States mail, postage prepaid:

Fred Paul Benco
Suite 3409, Century Square
1188 Bishop Street
Honolulu, Hawai'i 96813
E-Mail: fpbenco@yahoo.com
Attorney for Pa'ina Hawaii, LLC

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings & Adjudications Staff
E-Mail: HEARINGDOCKET@nrc.gov


Margaret J. Bupp
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
E-mail: mjb5@nrc.gov

Administrative Judge
Paul B. Abramson
Atomic Safety & Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: pba@nrc.gov

Administrative Judge
Thomas S. Moore, Chair
Atomic Safety & Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-Mail: tsm2@nrc.gov

Administrative Judge
Anthony J. Baratta
Atomic Safety & Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-Mail: ajb5@nrc.gov

Dated at Honolulu, Hawai'i, June 15, 2006.



DAVID L. HENKIN
Attorney for Intervenor
Concerned Citizens of Honolulu