

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 12201

DOCKETED 09/06/06

COMMISSIONERS

SERVED 09/06/06

Dale E. Klein, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield
Gregory B. Jaczko
Peter B. Lyons

In the Matter of)
)
)

PA'INA HAWAII, LLC)
(Materials License Application))
_____)

Docket No. 30-36974-ML

CLI-06-25

MEMORANDUM AND ORDER

This adjudicatory proceeding stems from Pa'ina Hawaii, LLC's ("Pa'ina") application for a materials license to construct and operate an industrial irradiator adjacent to the Honolulu International Airport. On January 24 and March 24, 2006, the Commission's Atomic Safety and Licensing Board issued two orders which admitted for litigation, respectively, two intertwined environmental contentions and one closely-related safety contention.¹ On July 3, 2006, Pa'ina filed the instant appeal of the Board's two orders, asserting that the Board erred in admitting the three contentions and should instead have denied the petition to intervene in its entirety.

Pa'ina filed its instant appeal pursuant to 10 C.F.R. § 2.311(c). Appeals under that section must be filed within ten days of service of the appealed order(s). 10 C.F.R. § 2.311(a). Pa'ina filed its instant appeal on July 3rd, several months after the expiration of the ten-day filing periods for challenging the Board's January 24th and March 24th orders. We therefore dismiss

¹ LBP-06-4, 63 NRC 99, 108-15 (2006); LBP-06-12, 63 NRC 403, 418-20 (2006).

Pa'ina's appeal as untimely. Section 2.311 contemplates just one opportunity for license applicants like Pa'ina to appeal contention admissibility rulings - - at the outset of a proceeding, within ten days after a Board grants a petition to intervene, and only if the license applicant argues the petition should have been "wholly denied." That was not the case when Pa'ina filed an appeal earlier in this proceeding,² and our rules give no right to appeal now. Pa'ina's grievance must abide the Board's merits decision.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 6th day of September, 2006.

² See CLI-06-13, 63 NRC ___ (May 15, 2006).

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In the Matter of)

PA'INA HAWAII, LLC)

(Honolulu, Hawaii Irradiator Facility))

Docket No. 30-36974-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-06-25) have been served upon the following persons by electronic mail this date, followed by deposit of paper copies in the U.S. mail, first class, and NRC internal mail.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

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

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

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

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

David L. Henkin, Esq.
D. Kapua'ala Sproat, Esq.
Earthjustice
223 South King Street, Suite 400
Honolulu, HI 96813-4501
E-mail: : dhenkin@earthjustice.org
eching@earthjustice.org
kramos@earthjustice.org
ksproat@earthjustice.org

Michael Kohn, President
Pa'ina Hawaii, LLC
P.O. Box 30542
Honolulu, HI 96820
E-mail: mkohn@painahawaii.com

Fred Paul Benco
Suite 3409, Century Square
1188 Bishop Street
Honolulu, Hawaii 96813
E-mail: fpbenco@yahoo.com

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 6th day of September 2006