

RAS 13722

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 06/06/07

SERVED 06/06/07

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Paul Abramson
Dr. Anthony J. Baratta

In the Matter of

PA'INA HAWAII, LLC

(Material License Application)

Docket No. 30-36974-ML

ASLBP No. 06-843-01-ML

June 6, 2007

ORDER

In our April 30, 2007, Order we posed a number of questions to the NRC Staff and indicated that, after reviewing the Staff's responses, we would then identify which of the questions the Applicant and the Intervenor should answer. Now that we have received the Staff's responses, we conclude that the better course is to permit the Applicant and the Intervenor, if either of them so choose, to respond to the Staff's answers. Any such voluntary response should be limited to ten pages and filed by June 13, 2007.

Additionally, the Staff shall respond to the following questions by June 13, 2007.

1. Reduced to its essence, the Staff's explanation in its May 21, 2007 response (at the top of p. 8) of its safety review of an irradiator application indicates that the Staff reviews the safety portion of the application to determine compliance with Volume 6 of NUREG 1556.¹

¹ See NRC Staff Second Response to the Licensing Board's April 30, 2007 Order (May 21, 2007) at 8 [hereinafter Staff May 21 Response]; NUREG-1556, "Consolidated Guidance About Materials Licenses," Vol. 6, "Program Specific Guidance About 10 C.F.R. Part 36 Irradiator Licenses" (Jan. 1999).

Further, compliance with that NUREG, in turn, suffices to demonstrate compliance with the applicable provisions of 10 C.F.R. Part 36 and 10 C.F.R. Part 20 and satisfaction of 10 C.F.R. § 30.33(a)(2) in the absence of extraordinary and unique circumstances. With respect to the Pa'ina Hawaii irradiator application, has the Staff concluded that the application satisfies 10 C.F.R. § 30.33(a)(2)?

- a. Did the Staff reach its safety conclusion by finding that the application met the requirements of Volume 6 of NUREG 1556 (Jan. 1999) and no extraordinary and unique circumstances existed requiring additional analysis? Stated otherwise, is it the Staff's view that compliance with Volume 6 of NUREG 1556, in and of itself and in the absence of extraordinary and unique circumstances, demonstrates compliance with 10 C.F.R. Parts 20 and 36 and all other applicable safety regulations including 10 C.F.R. § 30.33(a)(2)?
- b. What is the specific regulatory basis for the Staff's position that "extraordinary and unique circumstances" are a factor in determining compliance with 10 C.F.R. § 30.33(a)(2)? If no specific regulation or other authority exists, so state.
- c. Specify the portions of Volume 6 of NUREG 1556 that address the issues raised in the Intervenor's Safety Contention #13.
- d. The Staff asserts that it has found no "extraordinary and unique circumstances calling for additional analysis," to demonstrate compliance with 10 C.F.R. Parts 36 and 20 and 10 C.F.R. § 30.33(a)(2).² How did the Staff conclude that there were no "extraordinary and unique circumstances"? Provide a full discussion of the analysis performed by the Staff to make this determination, including an explanation of why the proposed site for this irradiator does not raise the risks

² Staff May 21 Response at 8.

from aircraft crashes, tsunamis, earthquakes, and hurricanes to the level necessary to constitute “extraordinary and unique circumstances.”

- e. With regard to the Staff’s safety review and any of its safety conclusions, did it rely, in whole or in part, upon the “Draft Topical Report on the Effects of Potential Aviation Accidents and Natural Phenomena at the Proposed Pa’ina Hawaii, LLC, Irradiator Facility”?

2. In responding to the Intervenor’s new contentions regarding the draft environmental assessment and draft topical report, the Staff stated it “does not contest the admissibility of the portion of Safety Contention #13 related to the probability analysis,” and further that it “does not object to the admission of the portions of Contention #13 related to analysis of debris force from potential aviation accidents.”³

The Board is at a loss to understand how the Staff on the one hand, in its March 12 response to the contentions, concedes the admissibility of Intervenor’s Safety Contention #13 and, on the other hand, in its May 21 response to our questions, insists that no safety review was performed regarding aircraft crash probabilities and consequences nor is any such review required.⁴

- a. Explain how the Staff, consistent with its concession of admissibility of Intervenor Safety Contention #13, can now claim in its response to our original questions that the Commission’s safety regulations effectively bar consideration of aircraft

³ NRC Staff Response to Intervenor Concerned Citizens of Honolulu’s Contentions Re: Draft Environmental Assessment and Draft Topical Report (Mar. 12, 2007) at 4.

⁴ See Staff May 21 Response at 3, 4 & n.3.

crashes and, therefore, do not permit establishing a threshold probability for design basis.⁵

- b. If Safety Contention #13 is admissible, as conceded by the Staff, what safety issues related to aircraft crash probabilities and consequences are to be litigated in light of the Staff's latest statement that no safety review has been performed or will be performed with respect to aircraft crash probabilities and consequences?

The Applicant and the Intevenor may file a response to the Staff's answer to the above questions by June 20, 2007.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Paul B. Abramson
ADMINISTRATIVE JUDGE

/RA/

Dr. Anthony J. Baratta
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 6, 2007

⁵ See id. at 2, 3.

* Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) Applicant Pa'ina Hawaii, LLC.; (2) Intervenor Concerned Citizens of Honolulu; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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PA'INA HAWAII, LLC) Docket No. 30-36974-ML
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)
(Honolulu, Hawaii Irradiator Facility))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 6th day of June 2007