

July 3, 2007

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

July 5, 2007 (8:53am)

In the Matter of )  
Pa'ina Hawaii, LLC )  
Material License Application )  
\_\_\_\_\_ )

Docket No. 30-36974-ML  
ASLBP No. 06-843-01-ML

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

INTERVENOR CONCERNED CITIZENS OF HONOLULU'S REPLY  
TO STAFF'S RESPONSE TO AMENDED SAFETY CONTENTIONS #13 AND #14

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(2), Concerned Citizens of Honolulu files its reply to the Nuclear Regulatory Commission ("NRC") Staff's Response to Intervenor Concerned Citizens Of Honolulu's Amended Safety Contentions #13 And #14 (filed Jun. 27, 2007). Concerned Citizens originally filed Safety Contentions #13 and #14 on February 9, 2007, addressing the many omissions and deficiencies in the Draft Topical Report on the Effects of Potential Natural Phenomena and Aviation Accidents at the Proposed Pa'ina Hawaii, LLC Irradiator Facility ("Draft Topical Report"). On May 8, 2007, the NRC Staff posted on ADAMS the Final Topical Report on the Effects of Potential Natural Phenomena and Aviation Accidents at the Proposed Pa'ina Hawaii, LLC Irradiator Facility ("Final Topical Report").

On June 1, 2007, Concerned Citizens timely filed its Amended Safety Contentions #13 and #14, based on the material changes between the Draft and Final Topical Reports. As discussed in detail below, because the amended contentions are timely and this Board has

previously rejected the arguments the Staff raises, the Board should admit Amended Safety Contentions #13 and #14.

## II. AMENDED SAFETY CONTENTION #13 IS ADMISSIBLE

The Staff argues that the portion of Amended Safety Contention #13 concerning the improper aviation crash consequences analysis is not admissible, since “the [NRC] determined that no siting restrictions are necessary for irradiators, even when located near airports.” 6/27/07 Staff Response at 6. This Board previously considered and rejected this argument when it admitted Concerned Citizens’ Safety Contention #7, finding “the lack of a regulatory prohibition against siting an irradiator at an airport does not affirmatively establish that any airport location satisfies the general requirement of 10 C.F.R. § 30.33(a)(2)[.]” Pa’ina Hawaii, LLC (Material License Application), LBP-06-12, 63 NRC 403, 419 (2006). In reaching this conclusion, the Board recognized that, unlike the panoramic irradiators the NRC considered during the Part 36 rulemaking the Staff references, in which “radioactive sources ... would be relatively protected from damage [from an aviation accident] because they are generally contained within 6-foot thick reinforced-concrete walls,” the sources in Pa’ina’s proposed facility would be placed in a pool with only 6-inch concrete walls. Id. (emphasis added).

Consequently, in admitting Safety Contention #7, the Board found that “the probability and consequences of aviation accidents at the proposed irradiator site” are relevant to determining whether Pa’ina’s proposed irradiator “satisfies the general requirement of 10 C.F.R. § 30.33(a)(2).” Id. The Staff’s contrary position that the Board should consider only the likelihood of an aviation accident, but not its consequences (i.e., the potential for radiation releases that could harm the public and environment), to assess the safety of Pa’ina’s facility makes no sense. 6/27/07 Staff Response at 4 (conceding admissibility “of the portion of

amended Safety Contention #13 related to the probability calculation,” but objecting to the portion of the contention “related to the aircraft crash consequence analysis”).<sup>1</sup> Having previously found that both probability and consequences are relevant to determining compliance with 10 C.F.R. § 30.33(a)(2), the Board should admit Safety Contention #13, as amended to address the inadequacies of the modified analysis in the Final Topical Report.

### III. AMENDED SAFETY CONTENTION #14 IS ADMISSIBLE

The Staff’s claim Amended Safety Contention #14 is untimely ignores the Board’s previous finding that, in its February 9, 2007 filing, Concerned Citizens proffered “five new timely contentions,” including Safety Contention #14. 4/30/07 Order at 1 (emphasis added). Even had the Board not already rejected the Staff’s argument, the record clearly refutes the Staff’s assertion that Concerned Citizens waited too long to challenge “the absence of safety-related analysis of events caused by natural phenomena.” 6/27/07 Staff Response at 7 (emphasis omitted). As discussed in Concerned Citizens’ reply regarding its original contentions, from the outset of this proceeding, Concerned Citizens has challenged Pa’ina’s failure to demonstrate its facility would be safe in the event of a natural disaster. See 3/19/07 Concerned Citizens Reply at 4-5.

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<sup>1</sup> As Concerned Citizens explained in responding to the Staff’s answers to the questions the Board posed in its June 6, 2007 order, while evaluating consistency with NUREG-1556 is relevant to assessing the safety of Pa’ina’s proposed irradiator, a finding that Pa’ina’s application is consistent with that guidance does not, as the Staff claims, necessarily mean it complies with 10 C.F.R. § 30.33(a)(2)’s independent safety requirement. See 6/20/07 Concerned Citizens Response at 1-2. Indeed, even the Staff concedes that mere compliance with Part 36 is not enough when “unusual circumstances” are present. 6/27/07 Staff Response at 5. In this case, Pa’ina proposes to “place a source of up to a million curies of radioactivity on the grounds of the Honolulu Airport, a location ... that is subject to unique risks of aircraft crashes.” 4/30/07 Board Order at 6 (emphasis added). Under these unusual circumstances, the Staff is obliged to look beyond NUREG-1556’s checklist to determine whether Pa’ina “satisfies the general requirement of 10 C.F.R. § 30.33(a)(2) that an irradiator facility be ‘adequate to protect health and minimize danger to life or property.’” LBP-06-12, 63 NRC at 419.

The Board should also reject the Staff's argument that admitting Amended Safety Contention #14 would "significantly broaden[] the scope of the proceeding." 6/27/07 Staff Response at 7. Before it can decide whether to grant or deny Pa'ina's application to possess Cobalt-60, the NRC must first determine if Pa'ina has carried its burden of demonstrating its proposed irradiator would be "adequate to protect health and minimize danger to life or property." 10 C.F.R. § 30.33(a)(2). This inquiry necessarily includes evaluation of whether the natural disaster scenarios Concerned Citizens raises are credible and, if so, whether the proposed irradiator can adequately protect the public in the event such events occur. See, e.g., Private Fuels Storage, LLC (Independent Spent Fuel Storage Installation), LBP-05-29, 62 NRC 635, 2005 WL 3827592, at \*14 (2005). The Board should admit Amended Contention #14, as it fits squarely within the scope of this proceeding.

#### IV. CONCLUSION

For the foregoing reasons, Concerned Citizens respectfully requests that the Board admit Safety Contentions #13 and #14, as amended on June 1, 2007.

Dated at Honolulu, Hawai'i, July 3, 2007.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on July 3, 2007, 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:

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