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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

LICENSEE PA'INA HAWAII, LLC'S OPPOSITION TO INTERVENOR'S  
AMENDMENT TO ENVIRONMENTAL CONTENTION 3 RE:  
TRANSPORTATION ACCIDENTS (filed April 6, 2009)

A. Introduction.

Now comes Licensee PA'INA HAWAII, LLC ("Pa'ina") and asserts its opposition to Intervenor's April 6, 2009 Amendment to Environmental Contention 3 (Re Transportation Accidents).

There are several sound reasons for this opposition.

B. Intervenor's Purported Amendment Is Untimely.

There is a 10-day limitation after which motions based upon an "occurrence or circumstance" are filed too late.  
10 C.F.R. Sec. 2.323(a)

Here, where Intervenor alleges that the testimony of Earl Easton (submitted March 5, 2009) triggered an entire new contention; the Staff, on the other hand, submits that

the testimony was merely in explanation of testimony already provided, that Easton's testimony did not provide the basis for a new contention, and the Intervenor should have sought leave to file rebuttal testimony if it so wished.

Assuming arguendo that the Staff's argument is correct, then it is clear that the Amendment to Third Contention was filed too late, on April 6, 2009 instead of by the 10-day deadline, i.e., March 15, 2009.

In passing, it should be noted that Intervenor failed to provide a certification by its attorney that it had made a sincere effort to contact the other parties in an attempt to resolve the issue (this was never done by Intervenor).

For this reason, Amended Contention 3 ought to be dismissed/denied.

C. Transportation Of Cobalt-60 To Pa'ina's Site Is Beyond The Scope Of This Material Licensing Proceeding, And The Environmental Challenge To NUREG-0170 Is Raised Too Late.

Licensee Pa'ina reiterates that the transportation of radioactive materials to Pa'ina's site is beyond the scope of this material licensing procedure, and furthermore, the Intervenor has raised its environmental challenge all too late.

Pa'ina does not control the shipment of Cobalt-60 to its site. That transportation issue is regulated under 10 C.F.R. Part 71 and other, separate Department of Transportation ("DOT") regulations. Intervenor's contention fails to include the Federal DOT. Consequently, its challenge in this particular materials licensing procedure seeks improper relief from Licensee or the NRC Staff, or at the very least, incomplete relief. See, e.g., D.O.T. v. Public Citizen, 541 U.S. 752 (2004) (challenge to EA which targeted FMCSA, instead of President, denied)

What is more, Intervenor's challenge is again very untimely. NUREG-0170 was the subject of environmental studies in 1977, which makes Intervenor's current challenge to it and its results (albeit unstated) 32 years late.

Finally, it should be noted that Intervenor's transportation arguments are now spinning off into two diametrically opposed directions. On the one hand, in its February 2, 2009 Supplemental Written Testimony of Dr. Resnikoff, Intervenor argues that moving Pa'ina's site "a mere 10 miles from the airport" would reduce the chances of an aircraft accident a thousand-fold. However, Intervenor's argument would greatly increase the chances of a ground accident on Honolulu's extremely dense, crowded

highways and roadways, and what is worse, Intervenor presumably knows this in making its argument.

Intervenor's diametrically-opposed arguments would be laughable, were this licensing issue not so serious and the delays intended by Intervenor's contradictory quibbling not so obvious.

Intervenor's Amended Contention 3 Re Transportation ought to be dismissed/denied.

D. Conclusion.

For the reasons stated hereinabove, Pa'ina Hawaii, LLC submits that Intervenor's Amendment to Environmental Contention 3 Re: Transportation Accidents should be denied/dismissed.

Licensee Pa'ina has waited nearly four full years for the hearing requested by Intervenor in its initial Petition. Licensee Pa'ina requests that a hearing in this matter be set forthwith and without any more unnecessary and unwarranted delays.

DATED: Honolulu, Hawaii, May 1, 2009.



FRED PAUL BENCO  
Attorney for Licensee  
Pa'ina Hawaii, LLC

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "LICENSEE PA'INA HAWAII, LLC'S OPPOSITION TO INTERVENOR'S AMENDMENT TO ENVIRONMENTAL CONTENTION 3 RE: TRANSPORTATION ACCIDENTS (filed April 6, 2009)" dated May 1, 2009 in the captioned proceeding have been served as shown below by deposit in the regular United States mail, first class, postage prepaid, this May 1, 2009. Additional service has also been made this same day by electronic mail as shown below:

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DATED: Honolulu, Hawaii, May 1, 2009

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