

RAS # I-178

September 18, 2009

UNITED STATES OF AMERICA

DOCKETED
USNRC

NUCLEAR REGULATORY COMMISSION

September 21, 2009 8:00am

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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
MOTION TO CLARIFY OR, IN THE ALTERNATIVE, FOR
RECONSIDERATION IN PART OF THE AUGUST 27, 2009
INITIAL DECISION (filed September 8, 2009)

On September 8, 2009 Intervenor CONCERNED CITIZENS OF HONOLULU filed a Motion to Clarify/Reconsider by which it sought three things from this Board:

1. For this Board to "allow" for public comment of the Staff's transportation accidents analysis.
2. For this Board to revoke Pa'ina's license "pending compliance" with NEPA.
3. For this Board to declare that its dismissal of Amended Environmental Contention 5 was "without prejudice."

As to Intervenor's first request, Pa'ina doesn't believe that a further "comment period" is necessary because this proceeding has already far exceeded the normal time periods during which EA's are open for public comment.

Temp = SECH-041

D503

Indeed, this proceeding is now entering the third year after the EA was published in August 2007. Any person could have commented on the possibility of "transportation accidents" for over two years. Only Pa'ina is further prejudiced by Intervenor's request.

Furthermore, in the current posture of this all-too-long proceeding, Pa'ina's irradiator has clearly re-emerged as "categorically excluded" from NEPA documentation. This status means that no NEPA comment periods should be necessary herein, because there are no NEPA "transportation accident" studies for "categorically excluded" irradiators. Clearly, the "transportation accidents" contention has been mooted out by the prior dismissal of over 40 of Intervenor's environmental and safety contentions, along with all related sub-contentions.

In any event, insofar as the NRC Staff has yet to respond to this request of Intervenor, Pa'ina defers to the arguments of the NRC Staff.

As to Intervenor's second argument, Intervenor has utterly failed to show any valid grounds for the revocation of Pa'ina's license. Pa'ina has not done anything warranting the drastic relief so casually requested by Intervenor; rather, Pa'ina is awaiting the Staff's

completion of the EA process in order to initiate leasing and construction. As earlier found by this Board, there is no "imminent, irreparable harm" caused by Pa'ina's continued status as licensee.¹

In any event, insofar as the NRC Staff has yet to respond to this request of Intervenor, Pa'ina defers to the arguments of the NRC Staff.²

As to Intervenor's third request, i.e., that dismissal of Amended Environmental Contention 5 be deemed "without prejudice," this request clearly reflects Intervenor's actual strategy throughout this matter, which has been to stall and delay this case, even beyond the four years of delay already experienced. Without a doubt, Intervenor intends to manufacture or restate a "new" contention as to alleged environmental impacts, which will require more time for opposition briefs, etc.

Furthermore, as a practical and legal matter, Pa'ina's irradiator now qualifies as "categorically excluded," what with the dismissal of Intervenor's more than 40 contentions and subcontentions. Notably, "categorically excluded"

¹ Licensing Board Order (Temporarily Holding in Abeyance Stay Application)(Oct. 5, 2007). Indeed, because approximately forty (40) of Intervenor's contentions and sub-contentions have now been dismissed, there is now even less reason to revoke or otherwise sanction Pa'ina's license than existed in October 2007.

² Pa'ina reserves the right to request a bond of not less than \$5 million to be posted by Intervenor as security, should this Board indicate its willingness to grant the revocation request .

irradiators are not subjected to NEPA studies of "alternative sites," "alternative technologies" or possible "transportation accidents." Because Pa'ina's irradiator qualifies for "categorical exclusion," that status should bring finality to this case. Intervenor's third request should therefore be denied.

In any event, insofar as the NRC Staff has yet to respond to this request of Intervenor, Pa'ina defers to the arguments of the NRC Staff.

For the reasons stated hereinabove, Intervenor's Motion filed September 8, 2009 ought to be denied in toto.

DATED: Honolulu, Hawaii, September 18, 2009.



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

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-ML
)
Materials License Application) ASLBP No. 06-843-01
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "LICENSEE PA'INA HAWAII, LLC'S OPPOSITION TO INTERVENOR'S MOTION TO CLARIFY OR, IN THE ALTERNATIVE, FOR RECONSIDERATION IN PART OF THE AUGUST 27, 2009 INITIAL DECISION (filed September 8, 2009)" dated September 18, 2009 in the captioned proceeding have been served as shown below by deposit in the regular United States mail, first class, postage prepaid, this 18th day of September, 2009. Additional service has also been made this same day by electronic mail as shown below:

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DATED: Honolulu, Hawaii, September 18, 2009



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September 18, 2009

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Re: Docket No. 030-36974
ASLBP No. 06-843-01-ML
"Applicant Pa'ina Hawaii, LLC's
Opposition To Intervenor's Motion
To Clarify, Or, In The Alternative,
For Reconsideration In Part Of The
August 27, 2009 Initial Decision
(filed September 8, 2009)

Dear Secretary:

I represent the legal interests of Pa'ina Hawaii, LLC,
which has applied for a Materials License.

Pursuant to your regulations, please find enclosed an
original and two (2) copies of the above document.

This document was e-mailed to your office and to all
parties on the Certificate of Service on this date. Hard copies
were also mailed to each of the parties on this date.

If you have any questions or comments, please feel free to
contact my office. Tel: 808-523-5083; Fax: 808-523-5085; e-
mail: fpbenco@yahoo.com. Thank you.

Very respectfully yours,


Fred Paul Benco

Encl.

cc: All parties on Certificate of
Service