

March 4, 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
PA'INA HAWAII, LLC	)	Docket No. 30-36974-ML
	)	
Materials License Application	)	ASLBP No. 06-843-01-ML

NRC STAFF'S RESPONSE TO PA'INA'S FEBRUARY 23, 2010 MOTION

On February 23, 2010, Pa'ina Hawaii, LLC filed a "Motion for Order/Direction that NRC Staff Study Two Alternative Sites for Proposed Irradiator, and/or for Commission to Expedite Appeal and/or for Commission to Establish Schedule for Decision." As the motion's title reflects, Pa'ina requests that the Commission take three actions, either jointly or alternatively. The Staff takes no position regarding Pa'ina's requests that the Commission expedite the appeal in this proceeding<sup>1</sup> or establish a schedule for issuance of its decision.<sup>2</sup> Because the issue of whether the Staff must consider alternative sites for Pa'ina's irradiator is presently before the Commission,<sup>3</sup> at this time it would be premature for the Commission to order the Staff to evaluate such sites. The Staff therefore opposes that part of Pa'ina's motion.

Respectfully submitted,

*/RA/*

Michael J. Clark  
Molly L. Barkman  
Counsel for the NRC Staff

Dated at Rockville, Maryland  
March 4, 2010

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<sup>1</sup> By "appeal" the Staff understands Pa'ina to be referring to the petitions for review that Pa'ina and the Staff filed with the Commission on October 6 and October 14, 2009, respectively. "Applicant Pa'ina Hawaii, LLC's Petition for Review of the August 27, 2009 Initial Decision of the Atomic Safety and Licensing Board" (Adams Accession No. ML092881165) (October 6, 2009); "NRC Staff's Petition for Review of Board's Initial Decision" (ADAMS Accession No. ML092880009) (October 14, 2009).

<sup>2</sup> Although Pa'ina's motion states that the Staff supports its requests for an expedited decision and a schedule for issuance of the decision, Motion at 10 n.9, the Staff in fact stated that it was taking no position regarding these requests. (Attachment A.)

<sup>3</sup> Pa'ina Petition at 3-6; Staff Petition at 19-23.

**Barkman, Molly**

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**From:** Clark, Michael  
**Sent:** Friday, February 19, 2010 4:37 PM  
**To:** Fred Benco; David Henkin  
**Cc:** Barkman, Molly  
**Subject:** RE: Pa'ina Hawaii, LLC

Fred,

The Staff takes no position regarding your requests that the Commission expedite its decision in this case or issue a schedule for its decision. Because the issue of whether the Staff must consider alternative sites for Pa'ina's irradiator is presently before the Commission, the Staff believes that at this time it would be premature for the Commission to order the Staff to evaluate the sites you have identified. The Staff would therefore oppose that part of your request.

Please let me know if you have questions.

Mike Clark  
Office of the General Counsel  
United States Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, Maryland 20852-2738  
Phone: (301) 415-2011  
Facsimile: (301) 415-3725

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**From:** Fred Benco [mailto:fpbenco@yahoo.com]  
**Sent:** Thursday, February 18, 2010 10:16 PM  
**To:** Clark, Michael; David Henkin  
**Cc:** Michael Kohn  
**Subject:** Pa'ina Hawaii, LLC

Dear Counsel,

My client seeks your concurrence to file a motion before the NRC requesting:

1. An expedited appeal, or additionally/alternatively,
2. A schedule for decision on Pa'ina's and the Staff's Petitions for Review, or additionally/alternatively,
3. Without prejudice to the pending Petitions for Review, an order/direction from the Commission to the Staff for the Staff to immediately review two alternative sites, whose addresses are: 3209 Ualena Street, Honolulu, Hawaii 96819, and also 92-1860 Kunia Road, Kunia, Hawaii 96759.

Please let me know your responses by Friday, February 19, 2009 if possible.

Thank you.

Fred Paul Benco  
1188 Bishop Street  
Suite 3409  
Honolulu, HI 96813  
Tel: (808) 523-5083

Fax: (808) 523-5085

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC Staff's Response to Pa'ina's February 23, 2010 Motion" was served on the recipients listed below by deposit in the United States mail and through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (\*) and by electronic mail as indicated by a double asterisk (\*\*) on this 4<sup>th</sup> day of March , 2010.

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*/RA/*

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Molly L. Barkman  
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