

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

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

July 16, 2010

ORDER
(Requesting Scheduling Information)

A. In furtherance of establishment of the schedule for this proceeding as required by the Commission's remand in CLI-10-18, 72 NRC __ (July 8, 2010), the NRC Staff shall, by an e-mail to the Licensing Board members,¹ provide the Licensing Board by July 30, 2010 its best estimate of the date on which it will issue a draft amended Environmental Assessment (EA) or a draft supplement to its EA (hereinafter referred to as draft amended EA) on the material license application submitted by Pa'ina Hawaii, LLC to build and operate an irradiator. Such draft amended EA shall be fully compliant with the Commission's decision in CLI-10-18, the National Environmental Policy Act, all applicable precedents of the United States Court of Appeals for the Ninth Circuit, and the Licensing Board's earlier August 27, 2009 Initial Decision.² The draft

¹ This proceeding began before the Commission's Electronic Information Exchange (EIE) rule became effective. See 10 C.F.R. § 2.305(c). The parties, however, shall provide a copy of all filings by e-mail to the Board, the Board's law clerk Matthew Rotman, at matthew.rotman@nrc.gov, and all other parties in addition to complying with the service requirements of 10 C.F.R. § 2.305(c)(3), (c)(4), and (e).

² Licensing Board Initial Decision (Ruling on Concerned Citizens of Honolulu Amended Environmental Contentions #3, #4, and #5) (Aug. 27, 2009) (unpublished) [hereinafter Initial Decision].

amended EA shall address the alternative technology of an electron beam irradiator, alternative geographic (i.e., site) locations for the proposed irradiator, and the environmental consequences of accidents that might occur during the annual transport of cobalt-60 sources to and from the proposed irradiator.³

Allowing no less than a thirty (30) day period for written public comments limited to those same three subjects, the Staff shall, in the same July 30, 2010 e-mail, provide the Board its consequent best estimate of the date on which it will issue a final amended EA, taking into account, as appropriate, any substantial, substantive public comments.⁴

The Board is cognizant of the Commission's direction to hold an oral hearing on the remaining contentions in this proceeding. Before the Board can productively hold any hearing, however, the Staff must supplement its EA, and the Intervenor, Concerned Citizens of Honolulu, must have an opportunity to challenge the Staff's final amended EA. An oral hearing will provide the greatest utility only after the Staff has completed its analysis of the issues identified above, and the Intervenor has had an opportunity to challenge the Staff's analysis.

Once the Board has received from the Staff its July 30, 2010 submission, the Board will promulgate a more detailed proceeding schedule keyed to the date the Staff expects to issue its final amended EA. The Board is mindful of the fact that the Staff cannot anticipate with absolute certainty the number of comments to its draft amended EA to which it must respond in the final amended EA. The Board has every confidence, however, that, from the proceeding to date, the Staff now has a comprehensive understanding of its obligation in preparing an appropriate draft amended EA⁵ so that it may reasonably forecast a time estimate in which to prepare the final amended EA. Should the Staff's forecast for the issuance date of either the draft or final

³ See CLI-10-18, 72 NRC at ___ (slip op. at 27-31, 31-38, 38-49). See generally Initial Decision at 100, 108, 51-52.

⁴ See CLI-10-18, 72 NRC at ___ (slip op. at 50); Initial Decision at 20.

⁵ See CLI-10-18, 72 NRC at ___ (slip op. at 21-23, 25-27); Initial Decision at 10-13, 15-16, 20, 55-56, 103.

amended EA subsequently change, the Staff shall immediately inform the Board and the other parties so that, if necessary, the proceeding schedule can be adjusted accordingly.

B. The following scheduling information is provided regarding the proceeding after issuance of the Staff's draft amended EA.

1. The Staff shall, on or before the date it issues its draft amended EA, update the hearing file pursuant to 10 C.F.R. § 2.1203(c), specifically including the ADAMS accession number of each hearing file document. In addition to any other hearing file updates, the Staff shall, no later than the date it issues the final amended EA, again update the hearing file.

The Board will not entertain the filing of any amended or new contentions on the Staff's draft amended EA. As it did previously in this proceeding,⁶ the Board expects the Intervenor to file comments on the draft amended EA during the public comment period in the event the Staff, in the Intervenor's view, has not adequately addressed the electron beam irradiator alternative, alternative sites for the proposed irradiator, and the environmental impacts of transportation accidents involving cobalt-60 sources.

Similarly, the Board expects that the Staff will appropriately and adequately address in the final amended EA all substantial, substantive public comments on these three subjects. In light of the Commission's directives regarding the content of the Staff's environmental documents, the Board expects the final amended EA to address fully all remaining issues raised to date as well as any substantive issues raised upon the Staff's draft amended EA, such that it will not give rise to new or amended contentions challenging the sufficiency of the final amended EA.

2. Should the Board's optimism prove unfounded, however, all new or amended contentions on the three subjects addressed in the final amended EA shall be filed within thirty (30) days of the issuance of the final amended EA. Pursuant to 10 C.F.R. §

⁶ See Initial Decision at 4 n.19.

2.309(f)(2), any new or amended contentions shall be accompanied by the required motion for leave to file such contentions and shall separately and specifically address each of the factors set forth in 10 C.F.R. § 2.309(f)(2). In order to avoid the complex contention pleadings of earlier filings in this proceeding, each new or amended contention challenging the final amended EA shall, with the exception of the labelling scheme and the joint contention requirements, follow the format for contentions set forth in Section III.A.2 of U.S. Department of Energy (High-Level Waste Repository: Pre-Application Matters, Advisory PAPO Board), LBP-08-10, 67 NRC 450, 453-56 (2008).

3. Answers to any new or amended contentions shall be filed within twenty (20) days of the filing of any new or amended contentions. All answers shall follow the format of the contention and address, as appropriate, each of the 10 C.F.R. § 2.309(f)(1) factors for contention admissibility. Nonspecific answers that provide only a boiler-plate objection are inappropriate and shall be subject to being stricken.

4. The Intervenor's reply to any answer shall be filed within seven (7) days of the filing of the answer.

5. Barring any unforeseen circumstances and Board member schedule conflicts, the Board will endeavour to issue its ruling on the admissibility of any new or amended contentions within thirty (30) days of the filing of Intervenor's reply. For the same reasons set forth in the Board's earlier scheduling order, the Board will not entertain, and the parties shall not file, any motions for summary disposition.⁷

6. Pursuant to 10 C.F.R. § 2.1207(a)(1), all parties' initial written statements of position and initial written testimony, in question and answer format, shall be filed within thirty (30) days of the Board's ruling on the admissibility of any new or amended contentions. In accordance with 10 C.F.R. § 2.1207(a)(2), all parties' written responses

⁷ See Licensing Board Order (Scheduling Order) (July 17, 2008) at 2 (unpublished). See also Initial Decision at 7 n.33.

to initial written statements and rebuttal testimony in response to initial written testimony (again in question and answer format), shall be filed within twenty (20) days of the filing of initial argument and testimonial filings.

7. As permitted by 10 C.F.R. § 2.1207(a)(3)(i), each party's proposed questions for the Board's consideration to propound to any other party's witnesses shall be filed within twenty (20) days of the filing of the parties' initial written testimony.

8. Finally, pursuant to 10 C.F.R. § 2.1207(a)(3)(ii), each party's proposed questions regarding any other party's rebuttal testimony shall be filed within ten (10) days of the filing of the parties' rebuttal testimony. The parties' proposed questions filed pursuant to this paragraph and paragraph 7 need be filed only with the Board and need not be served on any other party.

Once the Board issues its ruling on the admissibility of any new or amended contentions, the Board will develop, in consultation with the parties, and considering availability of suitable hearing facilities, the earliest dates for any hearing. The Board currently intends to reserve two sets of hearing dates as soon as the Staff issues its draft amended EA so that all parties can avoid scheduling conflicts.

Finally, to minimize service errors and ensure that all parties have current e-mail addresses for one another, each party shall file a new notice of appearance containing all the

information required by 10 C.F.R. § 2.314(b). Such notice shall be filed by July 23, 2010 with an e-mail copy electronically transmitted to the Board on that same date.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 16, 2010

* Copies of this 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)
)
PA'INA HAWAII, LLC) Docket No. 30-36974-ML
)
(Honolulu, Hawaii Irradiator Facility))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (REQUESTING SCHEDULING INFORMATION) 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 Nancy Greathead]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 16th day of July 2010.