

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSES TO BOARD'S QUESTIONS

On February 3, 2011, the Atomic Safety and Licensing Board directed the parties to answer questions concerning Pa'ina's interest in an irradiator site on Kunia Road in Kunia, Hawaii.¹ The Board posed three sets of questions, one for each party. Below, the Staff presents the Board's questions for the Staff in bold text, followed by the Staff's answers.

1. Has the Staff received an application to amend License number 53-29296-01 from Pa'ina to change the irradiator site to 92-1780 Kunia Road, Kunia?

No. The Staff has, however, received an application to amend License number 53-29296-01 to add 92-1780V Kunia Road as a second location of use.

a. If so, when was the amendment application filed?

Pa'ina filed its amendment application on December 16, 2010. (ADAMS Accession No. ML110350544.) The Staff received the application on December 27, 2010.² On January 20, 2011, the Staff informed Pa'ina that, because its application was incomplete, the Staff was unable to begin its technical review of the application. (ADAMS Accession No. ML110200664.) The Staff voided Pa'ina's amendment application without prejudice, informing Pa'ina that the Staff would reinstate the application after Pa'ina submitted additional information. *Id.*

¹ Order (Questions for Applicant, Staff and Intervenor) (February 3, 2011).

² The NRC's public website provides a link to a list of "NRC Licensing Actions Received or Taken from December 1 [through] December 31, 2010." This list includes Pa'ina's December 16, 2010 amendment application. <http://www.nrc.gov/materials/miau/material-licensing-application.html>

b. Whether or not the Staff has received an amendment application, if the Staff has communicated with Pa'ina about such an amendment, when does it expect an amendment application to be filed?

Please see response to question 1a.

c. Once an amendment application is filed, is it the Staff's view that a notice of opportunity for hearing or other public notice would have to be filed?

If Pa'ina's amendment application is reinstated, the Staff would notify the public of the application through the NRC's website at <http://www.nrc.gov/materials/miau/material-licensing-application.html>. In this particular case, given the evident interest in Pa'ina's amendment application for the Kunia Road site, the Staff would also personally inform the Intervenor and the Board if Pa'ina's application is reinstated. Members of the public could request a hearing on the amendment application within the period specified in 10 C.F.R. § 2.309(b)(4). However, consistent with 10 C.F.R. § 2.105, the Staff would not be required to issue a *Federal Register* notice of opportunity for hearing in connection with Pa'ina's amendment application.

i. If not, in the Staff's view, what statute, regulation or case precedent negates the need to issue a notice of opportunity for hearing or other public notice?

Please see response to question 1c.

ii. If not, in the Staff's view, is a person still entitled by statute, regulation or case precedent to request a hearing?

Please see response to question 1c.

1. What statute, regulation or case precedent entitles a person to request a hearing on a license amendment application even if no notice is required?

Section 189 of the Atomic Energy Act of 1954 provides that members of

the public can request a hearing on a proceeding involving an amendment to an NRC license. The NRC's regulations at 10 C.F.R. Part 2 implement Section 189, and these regulations explain how a member of the public may request a hearing. The NRC's regulations in Part 2 also address the timing of hearing requests in proceedings for which a *Federal Register* notice of agency action is not published. 10 C.F.R. § 2.309(b)(4).

d. Once an amendment application is filed, is it the Staff's view that the extant Final EA and the December 2010 Supplement would have to be amended throughout and, as appropriate, changed to reflect the altered location and environmental impacts?

If the Staff were to reinstate Pa'ina's amendment application, it would not amend either the Final EA or the December 2010 Supplement as a result. Rather, the Staff would process the amendment application as a separate licensing action. The Staff would conduct a safety review of the amendment application, and it would also determine whether the categorical exclusion for irradiators at 10 C.F.R. § 51.22(c)(14)(vii) is properly applied to the proposed action.

i. If so, under the Staff's normal schedule, approximately how long would it take the Staff to effectuate those changes?

Please see response to question 1d.

ii. If so, and the Staff expedited its schedule, approximately how long would it take the Staff to effectuate those changes?

Please see response to question 1d.

e. NEPA documents aside, under the Staff's normal schedule, approximately how long would it take the Staff to review a license amendment application for a changed location and, if appropriate, to grant a license amendment?

As stated above, Pa'ina's amendment application is for a second location of use rather than a changed location. From the time the Staff begins its technical review, it would typically take approximately 90 days to reach a licensing decision on an amendment application similar to that which Pa'ina filed. Whether the Staff would actually be able to reach a licensing decision in 90 days depends on the quality of the data submitted by the applicant and on Staff resources.

f. NEPA documents aside, if the Staff expedited its schedule, approximately how long would it take the Staff to review a license amendment application for a changed location and, if appropriate, to grant a license amendment?

If the Staff expedited its schedule, it may be able to reach a licensing decision in approximately 45–60 days from the time it begins its technical review. However, this estimate likewise depends on the quality of the applicant's data and on Staff resources. At this time the Staff does not know whether, assuming Pa'ina's amendment application is reinstated, it would be feasible for the Staff to expedite its review of that application.

2. Has the Staff received an application for a materials license from Pa'ina for an irradiator to be located at 92-1780 Kunia Road, Kunia?

As stated above, the Staff has received an application from Pa'ina to amend its license to add the Kunia Road site as a second location of use. The Staff has not received an application from Pa'ina for a new license.

Respectfully submitted,

/RA/

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CERTIFICATE OF SERVICE

I hereby certify that today, February 7, 2011, the Nuclear Regulatory Commission Staff served copies of "NRC STAFF RESPONSES TO BOARD'S QUESTIONS" on the recipients listed below by electronic mail, as indicated by an asterisk (*); by deposit in the United States mail, as indicated by a double asterisk (**); or by deposit in the Nuclear Regulatory Commission's internal mail system, as indicated by a triple asterisk (***) .

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