

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

February 16, 2011

ORDER

(Additional Questions for Applicant and the Staff)

The parties' answers to the questions in the Board's order of February 3, 2011, raise several additional questions. The identified parties should answer the following questions in accordance with the instructions in that earlier order.¹

Applicant:

Answer to question due February 23, 2011.

1. Because the Applicant may not have been aware of the Intervenor's answers filed February 10, 2011 when the Applicant filed its February 10, 2011 answers, does the Applicant wish to change its answers to Question 7?

The Staff:

Answers to questions due February 22, 2011.

1. What specific regulation or on point case precedent authorizes the Staff to grant a single materials byproduct license, or an amendment to such a license, for the licensed material to be used in multiple pool irradiators located at multiple diverse locations?

¹ See Licensing Board Order (Questions for Applicant, Staff and Intervenor) (Feb. 3, 2011) at 3 (unpublished).

2. If there is no specific regulatory authority or on point case precedent, is it the Staff's view that because the practice is not specifically prohibited by the regulations, it is permissible?
 - a. If so, does not such a view appear to contradict the provisions of 10 C.F.R. Part 36, Subpart B, setting forth the specific licensing requirements for irradiators, such as section 36.13 (“[t]he Commission will approve an application for a specific license for the use of licensed material in an irradiator if the applicant meets the requirements contained in this section”) (emphasis added) and section 36.15 (“[t]he applicant may not begin construction of a new irradiator prior to the submission to NRC of both an application for a license for the irradiator and the fee required by § 170.31”) (emphasis added)?
3. If it is the Staff's view that a single materials license may authorize the use of licensed byproduct material for multiple pool irradiators located in multiple diverse locations, how many such licenses for pool irradiators has the Staff granted?
 - a. If such is the Staff's view, does not that view conflict with, and undermine, the purpose of the Commission annual fee recovery regulations in 10 C.F.R. Part 171 and the fee recovery statutes underlying those regulations?

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 16, 2011

* 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.

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NUCLEAR REGULATORY COMMISSION

In the Matter of)
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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 (Additional Questions for Applicant and the Staff) 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 Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 16th day of February 2011.