

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'S RESPONSES TO BOARD'S ADDITIONAL QUESTIONS

On February 16, 2011, the Atomic Safety and Licensing Board directed Pa'ina Hawaii, LLC and the NRC Staff to answer additional questions relating to Pa'ina's December 16, 2010 application for a license amendment.¹ In its application, Pa'ina asked that the NRC amend its byproduct materials license to add a second location of use at a site in Kunia, Hawaii.² The Board's questions for the Staff are in bold text below, followed by the Staff's answers.

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?

The Staff is unaware of any specific regulation or case precedent addressing the precise facts described by the Board.

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?

No. Merely because a practice is not specifically prohibited by NRC regulations does

¹ Order (Additional Questions for Applicant and the Staff) (February 16, 2011).

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.

not mean it is permissible. Conversely, merely because a practice is not specifically permitted by NRC regulations does not mean it is prohibited. The Staff's view is that NRC regulations do not necessarily prohibit, and in appropriate cases permit, the amendment of materials licenses to authorize possession and use of licensed material at multiple sites ("multi-site licenses").

Whether such an amendment may be granted is an issue the Staff assesses on a case-by-case basis, consistent with the guidance in NUREG-1556, "Consolidated Guidance about Materials Licenses," Volume 20, "Guidance about Administrative Licensing Procedures," Section 4.7, "Guidance for Multi-Site Licenses."³

- 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)?**

The Staff finds nothing in Part 36 that necessarily prohibits a multi-site license for the use of byproduct material in irradiators. In particular, the Staff sees no conflict with section 36.13. This is because a Part 36 licensee seeking to amend its license to add a second site is requesting that the Commission “approve an application” (an amendment application) “for a specific license” (the existing license) to be amended to allow “for the use of licensed material in an irradiator” (the new irradiator). The Staff also sees no conflict with section 36.15. An amendment application is, in fact, an application “for a license,” because the applicant is

³ If Pa’ina’s amendment application is reinstated, the Staff will apply the NUREG’s guidance in reviewing Pa’ina’s request to add a second location of use to its license.

requesting that its existing license be extended to the new irradiator. The Staff finds it significant that while section 36.15 refers to “a new irradiator,” it does not refer to “a new license,” language which would presumably prohibit a multi-site license. Finally, the Staff does not interpret the reference to “the fee required by § 170.31” as suggesting that a Part 36 licensee must necessarily apply for a new license and pay the associated fee before beginning construction of a new irradiator. Rather, this phrase is reasonably interpreted as stating merely that, where a fee is required for the requested licensing action, the applicant must pay that fee before beginning construction.

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?

The Staff has not granted any multi-site license for pool irradiators. However, prior to Pa’ina’s December 16, 2010 submittal, the Staff had not received any application for such a license. It should be noted that in fiscal year 2010 the NRC had only five licensees covered by category 3G in the fee schedules contained in sections 170.31 and 171.16. Category 3G applies to licenses for possession and use of over 10,000 curies of byproduct material in sealed-source irradiators. This category covers both panoramic irradiators and underwater irradiators like that proposed by Pa’ina.

Although the Staff has not previously received any amendment application for pool irradiators at multiple sites, it has issued at least one amendment under which a single license authorizes the use of byproduct material in multiple irradiators at the same site.⁴ There are also at least two Agreement State licensees with single licenses authorizing the use of byproduct

⁴ 3M Corp., Brookings, S.D. (Docket No. 030-14999). This licensee has two wet-source storage irradiators. These irradiators are “pool irradiators” as defined in 10 C.F.R. § 36.2.

material in multiple irradiators.⁵ In both cases, the irradiators are at the same or adjacent sites. Finally, apart from irradiators, the Staff has granted numerous license amendments authorizing multi-site licenses for facilities or devices that use byproduct or source material.

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?

Regardless of whether the Staff approves a multi-site license, the NRC will recover all amounts the agency is obligated to recover under the Omnibus Budget Reconciliation Act of 1990, 42 U.S.C. § 2214, as amended (OBRA-90). The NRC updates its user and annual fees each year to ensure that the agency complies with OBRA-90. These updates take into account NRC costs related to license amendments, including costs related to amendments for which no fee is charged. In other words, even if no fee is charged for a license amendment, the NRC costs associated with the amendment will be included in other licensee fees. Accordingly, multi-site licenses do not conflict with or undermine the purpose of OBRA-90.

Respectfully submitted,

/RA/

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Dated at Rockville, Maryland
this 22nd day of February, 2011

⁵ Pall Corporation, Hauppauge, N.Y. (Docket No. 030-36835); and Steris, Chester, N.Y. (Docket No. 030-36836).

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CERTIFICATE OF SERVICE

I hereby certify that today, February 22, 2011, the Nuclear Regulatory Commission Staff served copies of "NRC STAFF'S RESPONSES TO BOARD'S ADDITIONAL 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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