

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

April 22, 2011

MEMORANDUM AND ORDER
(Terminating Proceeding)

In its Initial Decision, this Board returned to the NRC Staff its Environmental Assessment (EA), finding that it failed to provide any analysis of the alternative technology of electron-beam irradiation, alternative sites for the irradiator, and the environmental impacts that might occur from transport accidents of cobalt-60 sources.¹ Upon the Staff's and the Applicant's petition for review, the Commission, in CLI-10-18, affirmed the Board's ruling that the Staff's EA failed to analyze the electron-beam irradiator alternative and alternative irradiator sites, admitted the Intervenor's pending new amended transportation accident contention, and remanded the proceeding to the Board.²

¹ See Initial Decision (Ruling on Concerned Citizens of Honolulu Amended Environmental Contentions #3, #4, and #5) at 51-52, 100, 104, 108-09 (Aug. 27, 2009) (unpublished) [hereinafter Initial Decision].

² CLI-10-18, 72 NRC ___, ___ (slip op. at 55) (July 8, 2010). The history of this proceeding is recited in the Board's Initial Decision, see Initial Decision at 2-9. See also CLI-10-18, 72 NRC at ___ (slip op. at 3-12).

Eight days after the Commission's remand, on July 16, 2010, the Board established a schedule for the remainder of the proceeding keyed to the Staff's publication of a supplement to the EA.³ The Staff issued the draft supplemental EA in December 2010,⁴ followed by a Board-ordered and Commission-affirmed thirty (30) day public comment period.⁵ On March 1, 2011, the Staff issued the final supplemental EA, which inter alia, had the practical effect of mooted all outstanding contentions.⁶ On March 31, 2011, the Intervenor notified the Board that it did not intend to file any new or amended contentions regarding the final supplemental EA.⁷

The Staff has now moved to terminate the proceeding.⁸ In its motion, the Staff states that the Applicant supports the motion and the Intervenor "agrees there are no remaining issues

³ See Licensing Board Order (Requesting Scheduling Information) (July 16, 2010) (unpublished).

⁴ See Notice of Availability of Draft Supplement to the Environmental Assessment for the Proposed Pa'ina Hawaii, LLC Irradiator in Honolulu, HI, 75 Fed. Reg. 75,704 (Dec. 6, 2010).

⁵ See Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, Final Supplement to the Environmental Assessment Related to the Proposed Pa'ina Hawaii, LLC Underwater Irradiator in Honolulu, Hawaii (Mar. 2011) at 48 (ADAMS Accession No. ML110390325) [hereinafter Final Supplemental EA]; see also CLI-10-18, 72 NRC at ___ (slip. op at 2).

⁶ See Letter from Michael J. Clark, Counsel for NRC Staff, to Administrative Judges (Mar. 1, 2011) (serving the Board and the parties with the final supplement to the EA); Final Supplemental EA.

⁷ See Intervenor Concerned Citizens of Honolulu's Statement Re: New or Amended Contentions (Mar. 31, 2011).

⁸ See Motion to Terminate Proceeding (Apr. 11, 2011).

for the Board to resolve.”⁹ The Staff’s motion is granted and the proceeding is terminated.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE
/RA/

Paul Abramson
ADMINISTRATIVE JUDGE
/RA/

Anthony J. Baratta
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 22, 2011

⁹ See id. at 2.

* 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 Licensing Board "**MEMORANDUM AND ORDER (Terminating Proceeding) (LBP-11-12)**" have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate Adjudication Administrative Judge
U.S. Nuclear Regulatory Commission Thomas S. Moore, Chair
Mail Stop – O-7 H4M Atomic Safety and Licensing Board Panel
Washington, DC 20555-0001 U.S. Nuclear Regulatory Commission
Mail Stop - T-3 F23
Washington, DC 20555-0001

Catherine Scott, Esq. Administrative Judge
Michael J. Clark, Esq. Paul B. Abramson
Molly Barkman, Esq. Atomic Safety and Licensing Board Panel
Office of the General Counsel U.S. Nuclear Regulatory Commission
U.S. Nuclear Regulatory Commission Mail Stop - T-3 F23
Mail Stop - O-15 D21 Washington, DC 20555-0001
Washington, DC 20555-0001

David L. Henkin, Esq. Administrative Judge
D. Kapua'ala Sproat, Esq. Anthony J. Baratta
Earthjustice Atomic Safety and Licensing Board Panel
223 South King Street, Suite 400 U.S. Nuclear Regulatory Commission
Honolulu, HI 96813-4501 Mail Stop - T-3 F23
Washington, DC 20555-0001

Michael Kohn, President Fred Paul Benco
Pa'ina Hawaii, LLC Suite 3409, Century Square
P.O. Box 30542 1188 Bishop Street
Honolulu, HI 96820 Honolulu, HI 96813

[Original signed by Linda D. Lewis]
Office of the Secretary of the Commission

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