

RAS 10758

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

DOCKETED 11/22/05

SERVED 11/22/05

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Paul B. Abramson
Dr. Anthony J. Baratta

In the Matter of

PA'INA HAWAII, LLC

(Honolulu, Hawaii Irradiator Facility)

Docket No. 30-36974-ML

ASLBP No. 06-843-01-ML

November 22 , 2005

ORDER

In its November 21, 2005, response to our November 16 Order calling upon the Staff to have, inter alia, a Staff safeguards security expert review and approve the second draft proposed protective order it submitted to us, the Staff proposes that a reference to Attachment 3 of the Commission's Security Order¹ should be included in the protective order to provide the applicable instructions for the handling, storing, and transmitting of Safeguards - Modified Handling information. With regard to protected information, we find the bare reference to, or incorporation by reference of, such important material insufficient properly to advise persons of their obligation. To avoid any misunderstanding by those subject to the order, all provisions for the marking, handling, storing, and transmission of protected information shall be detailed in the order. Therefore, the Staff is instructed to file, by the close of business, Tuesday, November 29, 2005, a third revised proposed draft protective order that expressly includes all necessary

¹ See In the Matter of All Panoramic and Underwater Irradiators Authorized to Possess Greater than 370 TerraBecquerels (10,000 Curies) of Byproduct Material in the Form of Sealed Sources; Order Imposing Compensatory Measures (Effective Immediately), 68 Fed. Reg. 35,458 (June 13, 2003).

provisions for the protection of protected information. The Staff shall ensure that its safeguards security expert review and approve the proposed protective order and expressly indicate that approval in its filing with the proposed protective order.

Further, with regard to background checks, in its November 9, 2005 modified motion for a protective order, the Staff indicates that the Commission's Security Order limits access to persons considered trustworthy and reliable after a background check, consisting of a criminal record check, verification of identity and employment eligibility, and a verification of employment or education for a three-year time period.² However, notwithstanding this express set of requirements, the Staff then states that, "[i]n order to avoid delay ... in this particular case," it would accept a fingerprint check in lieu of a background check.³ We are frankly puzzled by the Staff's above-quoted explanation for accepting only a fingerprint check, which appears to trade security for a savings in time. If a fingerprint check alone is adequate in this instance to establish a person's trustworthiness and reliability, then the Staff should, in a filing accompanying its third proposed draft protective order, fully explain to us why . If the Staff cannot fully explain why a fingerprint check is adequate here, then it should so state. In either case, the Staff should incorporate into its third proposed draft protective order all the steps a person needs to follow to obtain any necessary security approval. Those steps should include

² See Modified NRC Staff Motion for Protective Order Governing Disclosure of Information (Nov. 9, 2005) at 2.

Id. at 2 n. 5.

a recitation of the names, offices, addresses, and telephone numbers of the NRC Staff to be contacted, the forms to be filed, and the cost of the process.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD****

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

/RA/

Paul B. Abramson
ADMINISTRATIVE JUDGE

/RA/

Anthony J. Baratta
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 22, 2005

**** Copies of this order were sent this date by Internet e-mail transmission to counsel for the (1) Applicant; (2) Petitioner; and (3) Staff.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER 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 Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 22nd day of November 2005