

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

December 9, 2005 (8:30am)

In the Matter of)
Pa'ina Hawaii, LLC)
Materials License Application)
_____)

Docket No. 30-36974-ML
ASLBP No. 06-843-01-ML

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

PETITIONER'S RESPONSE TO DECEMBER 8, 2005 ORDER AND MOTION
TO REVIEW PROTECTED INFORMATION AND FILE SUPPLEMENTAL REPLY

Pursuant to the Board's November 21, 2005 order, petitioner Concerned Citizens of Honolulu filed a reply in support of its request for hearing that addressed both standing and Concerned Citizens' environmental contentions. Concerned Citizens' second environmental contention – that the Nuclear Regulatory Commission's failure to prepare an environmental assessment or environmental impact statement for Pa'ina Hawaii's proposed irradiator violates the National Environmental Policy Act – is inextricably related to its contentions regarding safety and related issues, which demonstrate the potential for releases of radioactive material from the Pa'ina Hawaii irradiator to the environment. See 10/3/05 Hearing Request at 10-18, 20-21; 12/1/05 Reply at 8-22, 25. Accordingly, to the best of its ability and based on the redacted information available to it, Concerned Citizens discussed those issues in its December 1, 2005 reply.

In so doing, Concerned Citizens did not, as the Board assumed in its December 8, 2005 order, intend to abandon its request to review a complete, unredacted version of Pa'ina Hawaii's application. On the contrary, Concerned Citizens' withdrawal of its contention regarding improper redaction of the application was expressly based on "the Board's various orders

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SECY-02

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providing assurances Concerned Citizens will soon have the opportunity to review a complete, unredacted version of Pa'ina Hawaii's application." Reply at 22. As discussed during the November 2, 2005 teleconference, unless and until Concerned Citizens is permitted to review the application in its entirety, it will be unjustly deprived of the opportunity to respond fully to the Staff's and Pa'ina Hawaii's answers to its hearing request. See 11/2/05 Tr. at 10.

Pursuant to 10 C.F.R. § 2.323, Concerned Citizens respectfully asks the Board to modify its December 8, 2005 order to conform to its instructions at the November 2, 2005 teleconference, that, following issuance of a protective order and "execution of the affidavit of nondisclosure by Mr. Henkin and his experts, the unredacted application should be turned over to him, and his time in which to file a reply will run ... seven days from the date of receipt of that unredacted application." Id. at 6.

In accordance with 10 C.F.R. § 2.323(b), counsel for the Staff and for Pa'ina Hawaii were provided a copy of a draft of this motion and the attached proposed order, and were given an opportunity to comment. Counsel for the Staff intends to file any necessary response to the instant motion in writing. Counsel for Pa'ina Hawaii intends to oppose Concerned Citizens' motion.

Dated at Honolulu, Hawai'i, December 8, 2005.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

| | | |
|--|---|------------------------|
| In the Matter of |) | |
| Pa'ina Hawaii, LLC |) | Docket No. 30-36974-ML |
| |) | ASLBP No. 06-843-01-ML |
| (Honolulu, Hawaii Irradiator Facility) |) | |
| _____ |) | |

ORDER

In issuing our December 8, 2005 order, we had understood that, in filing its December 1, 2005 reply, Petitioner, Concerned Citizens of Honolulu, had abandoned its claim that it needs the information redacted from the irradiator application of Pa'ina Hawaii, LLC (Applicant) in order to address adequately the answers of the Applicant and the Staff regarding Petitioner's safety contentions. In response to our order, Petitioner has clarified that it did not intend to abandon that claim.

To ensure that Petitioner has the opportunity to respond fully to the answers of the Applicant and the Staff, we hereby modify our December 8, 2005 order as follows:

1. Upon execution of the Confidentiality and Non-disclosure Agreement attached to our December 8, 2005 Protective Order by Petitioner's counsel and experts and upon completion

of a fingerprint verification for each individual pursuant to paragraph 2 of the Protective Order, an unredacted copy of the application shall be turned over to Petitioner's counsel.

2. Petitioner's time in which to file a supplement to its December 1, 2005 reply shall run seven (7) days from the date of Petitioner's counsel's receipt of the unredacted application.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Dated at Rockville, Maryland
this ____ day of December, 2005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on December 8, 2005, a true and correct copy of the foregoing document was duly served on the following via e-mail and first-class United States mail, postage prepaid:

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Dated at Honolulu, Hawai'i, December 8, 2005.



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