

November 10, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

November 14, 2005 (7:50am)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 CONCERNED CITIZENS OF HONOLULU'S  
RESPONSE TO MODIFIED NRC STAFF MOTION FOR  
PROTECTIVE ORDER GOVERNING DISCLOSURE OF INFORMATION

I. INTRODUCTION

Petitioner Concerned Citizens of Honolulu takes no position on whether the Atomic Safety and Licensing Board should limit access to information the Nuclear Regulatory Commission ("NRC") Staff has identified as Safeguards Information-Modified Handling ("SGI-M") to only those individuals who have completed a background check or fingerprint verification. Concerned Citizens does, however, have serious concerns about the impact of imposing a background check requirement on its ability to prepare a timely reply in support of its hearing request. Should the Board decide to impose a background check requirement, Concerned Citizens respectfully asks the Board to modify the current reply deadline to ensure Concerned Citizens will have a full seven days to prepare its reply after both its counsel and its experts secure authorization to review, and have received, an unredacted copy of Pa'ina Hawaii's June 20, 2005 materials license application.

TEMPLATE = SECY - 037

SECY - 02

## II. DISCUSSION

During the November 2, 2005 telephone conference herein, the Board instructed the NRC Staff promptly to provide Concerned Citizens with an unredacted copy of Pa'ina's application, under a protective order, if necessary. The Board also extended the time for Concerned Citizens to file its reply in support of its hearing request until seven days following Concerned Citizens' receipt of the unredacted application.

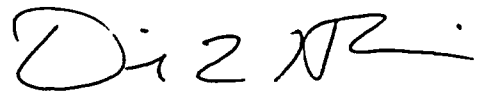
The background check requirements set forth in the NRC's June 13, 2003 Order Imposing Compensatory Measures constitute safeguards information to which Concerned Citizens lacks authority to access. See 68 Fed. Reg. 35,458 (June 13, 2003). Accordingly, Concerned Citizens cannot comment meaningfully on whether, as the NRC Staff now urges, the Board should limit access to information the NRC Staff has identified as SGI-M to only individuals who have completed a background check or fingerprint verification. One thing, however, is certain: requiring such procedures will significantly increase the time before Concerned Citizens' counsel and experts secure access to a complete, unredacted copy of Pa'ina's application and, thus, are in a position to participate fully in drafting a reply to the NRC Staff's and Pa'ina's oppositions to Concerned Citizens' hearing request.

Should the Board adopt the NRC Staff's recommendation to require background checks, Concerned Citizens respectfully asks the Board to modify the deadline for filing Concerned Citizens' reply to seven days after Concerned Citizens' lead counsel, David Henkin, and its experts have all secured authorization to access, and have actually received, the complete, unredacted application. Otherwise, Concerned Citizens' seven days to reply might run even though none of its experts – whose input is vital to prepare a complete response to the NRC

Staff's and Pa'ina's claims – had yet received clearance to review the unredacted application.<sup>1</sup>  
Absent a modification of the deadline, there would be no way to ensure the background checks for Concerned Citizens' counsel and its experts would be completed at the same time and, thus, no way to ensure Concerned Citizens would have an adequate opportunity to prepare its reply.

Dated at Honolulu, Hawai'i, November 10, 2005.

Respectfully submitted,



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<sup>1</sup> Such a situation was not likely to arise under the NRC Staff's original proposed protective order, since Concerned Citizens' experts would have been required only to execute the attached Confidentiality and Non-Disclosure Agreement to be authorized to review the unredacted application.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on November 10, 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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Attorney for Pa'ina Hawaii, LLC

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U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
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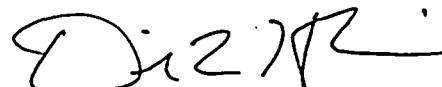
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Dated at Honolulu, Hawai'i, November 10, 2005.

  
\_\_\_\_\_  
DAVID L. HENKIN  
Attorney for Petitioner  
Concerned Citizens of Honolulu



EARTHJUSTICE

BOZEMAN, MONTANA    DENVER, COLORADO    HONOLULU, HAWAII  
INTERNATIONAL    JUNEAU, ALASKA    OAKLAND, CALIFORNIA  
SEATTLE, WASHINGTON    TALLAHASSEE, FLORIDA    WASHINGTON, D.C.

## TRANSMITTAL LETTER

TO: Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attention: Rulemakings and Adjudications Staff

FIRST CLASS MAIL

FROM: David L. Henkin

*DLH/ev*

DATE: November 10, 2005

RE: NRC Docket No. 030-36974  
Pa'ina Hawaii, LLC, Irradiator in Honolulu, HI

| COPIES  | DATE     | DESCRIPTION   |
|---|----------|---|
| Original and two copies                           | 11/10/05 | CONCERNED CITIZENS OF HONOLULU'S RESPONSE TO MODIFIED NRC STAFF MOTION FOR PROTECTIVE ORDER GOVERNING DISCLOSURE OF INFORMATION; CERTIFICATE OF SERVICE |
| <input type="checkbox"/> For Your Information.    |          | <input checked="" type="checkbox"/> For Filing.   |
| <input type="checkbox"/> For Your Files.          |          | <input type="checkbox"/> For Recordation.   |
| <input type="checkbox"/> Per Our Conversation.    |          | <input type="checkbox"/> For Signature & Return.  |
| <input type="checkbox"/> Per Your Request.        |          | <input checked="" type="checkbox"/> For Necessary Action.   |
| <input type="checkbox"/> For Review and Comments. |          | <input type="checkbox"/> For Signature & Forwarding.  |
| <input type="checkbox"/> See Remarks Below.       |          |   |

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