January 6, 2006

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
	)	
Material License Application	)	ASLBP No. 06-843-01
	)	

NRC STAFF RESPONSE TO
BOARD ORDER OF DECEMBER 22, 2005

INTRODUCTION

On December 22, 2005, the Atomic Safety and Licensing Board ("Board") in the above-captioned proceeding issued an order related to certain protected information in Pa'ina Hawaii's ("Pa'ina) irradiator application. The Order directed the NRC Staff ("Staff") to file a brief description of each identified segment of Safeguards Information-Modified handling (SGI-M) in the application.

DISCUSSION

The Staff has redacted SGI-M information from the following portions of the application: pages 28, 32, 33, and 44 (Figure 9-D) and Figure 1 of both GI-204 and GI-205. The redacted information provides contingency planning information, detailed operational security response or actions, detailed security system features or capabilities, details of security equipment installation, and program planning information revealing how the Pa'ina irradiator facility may, if licensed, implement the any compensatory measures similar to those delineated in Attachment 2 to the earlier Compensatory Measures Order to panoramic and underwater irradiators authorized to possess greater than 10,000 curies of byproduct material in the form of

sealed sources.[1] These specific pieces of information when combined with other safety and security information in the application form a viable description of methods, techniques, and information advantageous to an adversary in planning or attempting a malevolent act. The specific portions of the application redacted are described in greater detail below.

The redacted SGI-M in the first paragraph on page 28 of the application, specifically the second sentence and phrases within the third and fourth sentences, provides program planning information revealing how the Pa'ina irradiator facility may implement the compensatory measures delineated in any Compensatory Measures Order. The redacted SGI-M in the third paragraph on page 28 provides detailed security system features or capabilities, contingency planning information, and detailed operational security response or actions. This information, when compiled with other information, reveals how the Pa'ina irradiator facility may implement the compensatory measures delineated in a Compensatory Measures Order. The redacted SGI-M on page 32, the closing phrase of the fourth paragraph and a phrase in the fifth paragraph, provides program planning information, detailed operational security response or actions, and detailed security system features or capabilities. When combined with other information, the redacted SGI-M on page 32 reveals how the Pa'ina irradiator facility may implement the compensatory measures delineated in a Compensatory Measures Order. The redacted SGI-M on page 33 provides detailed security system features or capabilities and operational security response or actions. This, combined with other information, reveals how the Pa'ina irradiator facility may implement the compensatory measures delineated in a Compensatory Measures Order. The redacted SGI-M within the titles of the diagrams on page 44 (Figure 9-D) and in Figure 1 of both GI-204 and GI-205 provides program planning

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[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," 68 Fed. Reg. 35,458 (June 13, 2003).

information revealing how the Pa'ina irradiator facility may implement the compensatory measures delineated in a Compensatory Measure Order. The information redacted from the figures, combined with other redacted information, would provide facility specific details of security equipment installation thus further revealing how the Pa'ina irradiator facility may implement the compensatory measures delineated in a Compensatory Measures Order.

In the Staff pleading filed on December 19, 2005[2], the Staff stated that the petitioners, Concerned Citizens of Honolulu ("Concerned Citizens"), do not have a need to know the redacted information at the present time because such information is not necessary for Concerned Citizens to form an admissible contention. In its Order, the Board stated that the need-to-know standard is not applicable to the redacted information in the application, but that Concerned Citizens must still show that access to such information is necessary for it to file a complete supplemental reply. Concerned Citizens should not be granted access to the above-described information, under either the need-to-know standard or the Board's "necessity" test. In addition to the reasons more fully discussed in the Staff Response, this information relates to the applicant's ability to meet the provisions of the Compensatory Measure Order should such an order be issued to Pa'ina in the future.[3] At this time, however, such an order has not been issued to Pa'ina and cannot be used as the baseline for the Staff to evaluate Pa'ina's application. Therefore, the information is irrelevant to this licensing proceeding.

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[2] NRC Staff Response to Petitioner's Response to December 8, 2005 Order and Motion to Review Protected Information and File Supplemental Reply (Dec. 19, 2005) ("Staff Response")

[3] Because the exact provisions of any potential Compensatory Measures Order are related to the threat situation in existence at the time the Order is issued and becomes effective and because one or more ongoing rulemaking activities address some of the same issues as in the earlier Compensatory Measures Order, the exact provisions of any future order or even the necessity for a future order will be determined at the time Pa'ina becomes a licensee.

CONCLUSION

The above describes, in as much detail as possible without revealing SGI-M, the information redacted by the Staff, as well as the Staff's reasons for the redactions. This information should not be released to Concerned Citizens at this time.

Respectfully submitted,

/RA/

Margaret J. Bupp
Counsel for NRC Staff

Dated at Rockville, Maryland
this 6th day of January, 2006

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NUCLEAR REGULATORY COMMISSION

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PA'INA HAWAII, LLC	)	Docket No. 30-36974-ML
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(Honolulu, Hawaii Irradiator)	)	ASLBP No. 06-843-01
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO BOARD ORDER OF DECEMBER 22, 2005" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 6th day of January, 2006.

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