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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION


OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)	
)	
Pa'ina Hawaii, LLC)	Docket No. 030-36974
)	ASLBP No. 06-843-01-ML
Materials License Application)	

APPLICANT PA'INA HAWAII, LLC'S NOTICE OF APPEAL OF
LBP-06-04 AND LBP-06-12

Pursuant to 10 C.F.R. §2.311(a) and (c), Applicant Pa'ina Hawaii, LLC files this Notice of Appeal of the Atomic Safety and Licensing Board's January 24, 2006 Memorandum and Order and its March 24, 2006 Memorandum and Order which, among other things, admitted for litigation two (2) environmental contentions in the above-captioned proceeding, and a related safety contention. Attached with this Notice of Appeal is Applicant Pa'ina Hawaii, LLC's Brief.

DATED: Honolulu, Hawaii April 3, 2006.


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SECY-02

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APPLICANT PA'INA HAWAII, LLC'S BRIEF IN SUPPORT OF APPEAL FROM
LBP-06-04 AND LBP-06-12

INTRODUCTION

Pursuant to 10 C.F.R. §2.311(a) and (c), Applicant Pa'ina Hawaii, LLC ("Pa'ina") hereby appeals the two decision(s) of the Atomic Safety and Licensing Board ("ASLB") set forth in LBP-06-04 and LBP 06-12.

In LBP 06-04, issued on January 24, 2006, the ASLB concluded that Petitioner Concerned Citizens of Honolulu ("Concerned Citizens") proffered two (2) admissible Environmental Contentions. In LPB 06-12, issued on March 24, 2006, the ASLB concluded that Concerned Citizens stated three admissible Safety Contentions (#4, #6 and #7).

As will be discussed below, the ASLB erred in admitting the two Environmental Contentions, and the ASLB also erred in granting admissibility to the closely-related Safety Contention #7. Therefore, the ASLB's Orders admitting the two Environmental Contentions and Safety Contention #7 should be

reversed, and Concerned Citizens' requests for hearing should be denied in whole.

STATEMENT OF THE CASE

This case arose from the Application for a Material's License for installation of radioactive materials into a pool-type industrial irradiator. The Application was filed by Pa'ina on June 23, 2005. (See ML052060372) On August 2, 2005, the NRC published a "Notice Of Opportunity For Hearing" 70 Fed. Reg. at 44,396. The Notice stated that Pa'ina's irradiator qualified for "categorical exclusion." (Id.)¹ On October 3, 2005, Concerned Citizens filed its "Request For Hearing By Concerned Citizens of Honolulu ("Request for Hearing")."

Thereafter, on October 13, 2005 an Order issued establishing this Board to hear this case. See "Establishment of Atomic Safety and Licensing Board" filed October 13, 2005.

On October 26, 2005 Pa'ina filed its "Answer To Request for Hearing By Concerned Citizens Of Honolulu." On October 28, 2005 the NRC Staff ("Staff") filed its "Staff Response To Request For Hearing By Concerned Citizens Of Honolulu." After several

¹ Under the NRC's comprehensive regulations (10 C.F.R. Sec. 51.22), "categorical exclusions" have been deemed environmentally appropriate for relatively minor substantive, or purely "paper," activities including recordkeeping requirements (Subsection 51.22(c)(3)(ii)), procurement of general equipment and supplies (Subsection 51.22(c)(4)), and issuance of materials licenses for medical and veterinary purposes (Subsection 51.22(c)(14)(iv)).

procedural matters, Concerned Citizens on December 1, 2005 filed its "Petitioner's Reply In Support Of Its Request For Hearing."

By Order dated December 8, 2005, the ASLB in effect bifurcated this proceeding into two parts: (1) Concerned Citizens' standing and environmental contentions; and (2) Concerned Citizens' safety contentions.

By Memorandum and Order dated January 24, 2006, the ASLB found that Concerned Citizens had standing herein, and that Concerned Citizens had alleged two (2) Environmental Contentions which were admissible.² See Memorandum and Order (Ruling On Petitioner's Standing And Environmental Contentions), LBP-06-04, 63 NRC 1 (January 24, 2006)

Later, after additional briefing, the ASLB issued its second Memorandum and Order dated March 24, 2006 (LBP-06-12), which addressed the Safety Contentions of Concerned Citizens. In that Order, the ASLB found that Concerned Citizens' Safety Contentions #4, #6 and #7 were admissible, while the remaining safety contentions were dismissed. See Memorandum and Order

² The ASLB found that the two admissible Environmental Contentions were: (1) the Staff's failure to demonstrate why a "categorical exclusion" was appropriate where Applicant's site was near an airport, and allegedly subject to tsunamis, hurricanes and flooding; and (2) "special circumstances" are present which require an environmental assessment or an environmental impact statement. (January 24, 2006 Memorandum and Order, at Page 5.) The ASLB acknowledged that the two NEPA contentions were intertwined, raised "substantially similar" issues, and might be consolidated into one. Id., at 6.

(Ruling On Petitioner's Safety Contentions), LBP-06-12, 63 NRC
___ (March 24, 2006)³

Pa'ina appeals from the January 24th Order which granted admissibility of the two environmental contentions raised by Concerned Citizens, and from the March 24th Order which granted the closely-related Safety Contention #7.

STATEMENT OF THE ISSUES

The ASLB committed several errors in reaching its conclusion that Concerned Citizens had alleged two admissible Environmental Contentions as well as Safety Contention #7.

First, the ASLB misconstrued the NRC's historical regulatory policy that "irradiators" are to be granted "categorical exclusion" because the radioactive sources are inherently stable.

Second, there are no judicial decisions directing the NRC to do more than classify "irradiators" as categorically excluded (and therefore exempt from EA's or EIS's). The ASLB utilized cases involving the U.S. Forestry Service and the National

³ Pa'ina has already responded to the ASLB's March 24th Memorandum and Order by submitting outlines of emergency procedures to the NRC Staff, and consequently Pa'ina intends to move to dismiss Safety Contentions #4 and #6. Insofar as Safety Contention #7 relies upon and implicates Concerned Citizens' Environmental Contentions #1 and #2, then Pa'ina's arguments herein also apply to Safety Contention #7.

Marine Fisheries Service as the legal underpinning for granting admissibility to the contentions.

Third, the ASLB ignored or completely discounted the major geographical siting limitation which has been developed by the NRC, based upon studies and historical experience.

Finally, in granting Concerned Citizens' contentions, the ASLB improperly made factual assumptions and supplied (unfounded) information which favored Petitioner Concerned Citizens.

Based upon these unjustified actions, the ASLB erred in admitting Concerned Citizens' two Environmental Contentions and Safety Contention #7.

LEGAL STANDARDS

A. The Legal Standard For Granting A Request For A Hearing

10 C.F.R. §2.311(c) provides that an Order granting a request for hearing may be appealed by a party other than the requestor/petitioner on the question as to whether the requestor/petitioner should have been wholly denied. Furthermore, on an appeal, the Commission may consider all of the points of error raised on appeal, rather than simply whether the request/petition should have been denied in toto. See, e.g., Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear

Power Station), ALAB-869, 26 N.R.C. 13, 25-27 (1987); Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 N.R.C. 9, 19 (2001)

B. Legal Standards For Admission Of Contentions

For a requestor/petitioner to gain admission as a party, the requestor/petitioner must (after establishing standing) proffer at least one contention that satisfies the admissibility requirements of 10 C.F.R. §2.309(f). See 10 C.F.R. §2.309(a); see also Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 N.R.C. 328, 333 (1999). Thus, for a contention to be admissible, the requestor/petitioner must satisfy the following six requirements set forth in 10 C.F.R. §2.309(f) (1) (i) - (vi):

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the . . . petitioner's position on the issue and on which the petitioner intends to rely at the hearing, together with references to the specific sources and documents on which the . . . petitioner intends to rely to support its position on the issue; and

- (vi) Provide sufficient information to show that a genuine dispute exists with the . . . licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

The above six contention requirements are "strict by design." Dominion Nuclear Conn., Inc. (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001). A contention that fails to comply with any of these requirements will not be admitted for litigation. Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999)

The petitioner must do more than submit bald or conclusory allegations of a dispute with the applicant. Millstone, CLI-01-24, 54 NRC at 358. Furthermore, there must a specific factual and legal basis supporting the contention. *Id.* at 359. A contention will not be admitted if it is based only on unsupported assertions and speculation. See Fansteel, Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003)

If a petitioner fails to provide the requisite support for its contentions, then a Licensing Board may neither make factual assumptions that favor the petitioner, nor supply information

that is lacking. Louisiana Energy Services L.P. (National Enrichment Facility), LBP-04-14, 60 NRC 40, 56 (2004) (citing Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001))

DISCUSSION

A. The ASLB Erred When It Ruled That The Staff Must Explain All Of Its Reasoning For Having Granted Pa'ina's Irradiator "Categorical Exclusion."

For several reasons, the ASLB erred in granting admissibility to Concerned Citizens' first Environmental Contention. The ASLB framed the first Environmental Contention as follows:

"The Petitioner's first environmental contention states that 'the NRC unlawfully failed to consider whether any extraordinary circumstances precluded application of the categorical exclusion to Pa'ina Hawaii's license application.' Relying upon a series of precedents in the United States Court of Appeals for the Ninth Circuit, the federal circuit court encompassing Hawaii, the Petitioner asserts that the Staff has omitted a necessary step in its NEPA analysis, which in essence requires an explanation of the applicability of a categorical exclusion where special circumstances necessitating an environmental review have been alleged. According to the Petitioner, an explanation is required because 'the NRC cannot avoid its statutory responsibilities under NEPA merely by asserting that an activity it wishes to pursue will have an insignificant effect on the environment.'" (LBP-06-04, at Pages 10-11)

As set forth below, however, Concerned Citizens' first Environmental Contention fails as a matter of law to set forth a valid claim, and should be dismissed.

1. Concerned Citizens' First Environmental Contention, Which Alleged That A Staff Explanation As To Why It Afforded "Categorical Exclusion" Was Not Accomplished Herein And Therefore Was A Significant Omission, Has No Basis In NRC Regulations, And In Fact Is A Direct Challenge To Those Regulations.

The NRC, after numerous notices, hearings, expert testimony and modifications of proposed regulations, has already determined that "irradiators" to be built in accordance with its regulations are "categorically excluded" from further, time-consuming, redundant and expensive environmental reviews. 10 C.F.R. §51.22(c)(14)(vii).

Thus, by its very design, its built-in safety features, and other safeguards, a typical Category III (underwater) irradiator such as Pa'ina's has been fully evaluated by the NRC in light of the applicable NRC environmental regulations, Pa'ina's irradiator has been found to be in conformance with those NRC regulations, and Pa'ina's irradiator has been properly granted "categorical exclusion" under those regulations.

The environmental considerations relevant to Pa'ina's irradiator are subsumed in the NRC's comprehensive regulatory scheme.

Consequently, because Pa'ina has satisfied the NRC Staff's technical criteria, Concerned Citizens' first Environmental Contention is nothing more, nothing less, than a direct and substantive challenge to the NRC's regulations, i.e., 10 C.F.R. §51.22(c)(14)(vii). Such a direct challenge is not permitted. 10 C.F.R. §2.335(a); see also Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207 218 (2003)

2. The ASLB Erred In Applying Judicial Precedent Which Had Nothing To Do With Category III Irradiators Or The NRC.

In order to overcome the very explicit "categorical exclusion" previously granted to irradiators by the NRC, (and thereby grant validity to the Concerned Citizens' first contention), the ASLB at Page 11 (Footnote 36) cited several judicial decisions from the 9th Circuit Court of Appeals which had been relied upon by Concerned Citizens.⁴

First, however, those decisions did not involve the super-highly regulated nuclear materials industry; indeed, those

⁴ Alaska Center for the Environment v. U.S. Forest Service, 189 F.3d 851, 859 (9th Cir. 1999); Jones v. Gordon, 792 F.2d 821, 828 (9th Cir. 1986); Steamboaters v. FERC, 759 F.2d 1382 (9th Cir. 1985). The ASLB then went on to cite its own case, Wilderness Watch & Public Employees for Environmental Responsibility v. Mainella, 375 F.3d 1085, 1096 (11th Cir. 2004)

decisions dealt with non-nuclear forestry, marine and other matters.⁵

Second, and just as importantly, there are no "special circumstances" in this case as a matter of law. Concerned Citizens alleged in its pleadings that hurricanes and flooding, tsunamis and possible airplane crashes created "special circumstances" which in turn might require the preparation of an EA or EIS. However, during the review process for 10 C.F.R Part 36 which was conducted in 1993, the NRC announced:

"The NRC considered whether there should be siting requirements dealing with the possible flooding of the irradiator or tidal waves. The NRC decided that no siting requirements with respect to possible flooding or tidal waves could be justified on health and safety basis because flooding of the facility would not destroy the integrity of the shielding walls." Fed. Reg. Vol. 58, No. 25 at 7725.

With regards to possible airplane crashes,⁶ the NRC after exhaustive research and experience concluded that the geographical limitations upon siting an irradiator would be conditioned upon whether other occupied buildings are permitted

⁵ Indeed, there appears to be no federal court decision from any jurisdiction requiring the NRC to, redundantly, explain its substantive granting of "categorical exclusion" for irradiators. This may be due to the NRC's substantive preemption in nuclear-related matters: "By way of preface, the Commission restates its view that, as a matter of law, the NRC as an independent regulatory agency can be bound by CEQ's NEPA regulations only insofar as those regulations are procedural or ministerial in nature. NRC is not bound by those portions of CEQ's NEPA regulations which have a substantive impact on the way in which the Commission performs its regulatory functions." 49 Fed. Reg. 9,352 (March 12, 1984)

⁶ Pa'ina's proposed site for its irradiator is on State-owned land, outside the barricade/fence perimeter of Honolulu International Airport. The site is located amidst a group of other occupied industrial and commercial buildings.

to be built at the site. The NRC reasoned that because an irradiator's sources are non-volatile there was no unusual danger:

"The NRC considered whether there should be a prohibition against locating irradiators near airports because of risk of radiation exposures caused by an airplane crash. The NRC has concluded that a prohibition against placing an irradiator where other types of occupied buildings could be placed is not justified on safety grounds. The radioactive sources in an irradiator would be relatively protected by damage because they are generally contained within 6-foot thick reinforced-concrete walls and are encapsulated in steel. Even if a source were damaged as a result of an airplane crash, large quantities of radioactivity are unlikely to be spread from the immediate vicinity of the source rack because the sources are not volatile. With this protection, the radiological consequences of an airplane crash at an irradiator would not substantially increase the seriousness of the accident. Therefore, NRC will allow construction of an irradiator at any location at which local authorities would allow other occupied buildings to be built." (Emphasis added) Id., at 25.⁷

Thus, as a matter of law, because the sources on irradiators are "not volatile" but rather designed to be as non-dispersible as possible, a near-airport location does not create any "special circumstances" warranting an explanation, EA or an EIS.

To summarize: as a matter of law, neither hurricanes, flooding, tsunamis nor possible airplane crashes are "special circumstances" taking Pa'ina's irradiator out of its

⁷ Just as importantly, in the same excerpted quotation, the NRC set forth its significant geographical siting standard: if local zoning will permit other "occupied buildings" to be constructed, then an irradiator may be placed in that zoned area. This key siting standard will be discussed below.

"categorical exclusion." Consequently, the first Environmental Contention should have been dismissed.

3. The ASLB Misunderstood Or Failed To Recognize That After Extensive Study, The NRC Indeed Established A Major Siting Criteria For Irradiators, Which Siting Criteria Was Properly Applied In This Case.

The ASLB clearly erred in assuming that the NRC failed to fully consider geographical sites and natural phenomena in siting irradiators. The ASLB compounded its error by further assuming additional facts in favor of the Petitioner.⁸ These unfounded assumptions were applied very prejudicially against Pa'ina.

Thus, the ASLB erred both in assuming that the NRC had failed to study siting of irradiators, and the ASLB also erred in assuming that the NRC had failed to anticipate all siting situations. The ASLB stated:

"[The] history [of 10 C.F.R. Sec. 51.22, which defines "categorical exclusions"] does not support the view that the risks associated with the myriad possible locations for siting an irradiator were considered by the Commission in adopting the categorical exclusion . . . In addition, it is impossible to identify in advance the precise situations which might move the Commission in the future to determine special circumstances exist . . . Thus, the regulatory history does not even hint that the Commission considered the possible locations for proposed

⁸ The rule of law in the NRC: If a petitioner fails to provide the requisite support for its contentions, then a Licensing Board may neither make factual assumptions that favor the petitioner, nor supply information that is lacking. Louisiana Energy Services L.P. (National Enrichment Facility), LBP-04-14, 60 NRC 40, 56 (2004)(citing Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001))

facilities in adopting the categorical exclusion for irradiators, while the history of the special circumstances exception indicates that the consequences of siting an irradiator on the ocean's edge at the Honolulu Airport, subject to the risks of aircraft crashes, tsunamis, and hurricanes, are precisely the kind of circumstances for which categorical exclusion might not be appropriate. . . The Staff has failed to provide any reason to conclude that the threats endemic to this proposed site have ever been considered." (LBP -06-04 at 13-14)

After making these two assumptions, both of which favored the Petitioner, the ASLB set forth another rather far-fetched assumption involving Hawaii's live volcano. This assumption also strongly favored the Petitioner:

"Indeed, the Staff's approach [in granting "categorical exclusion" to Pa'ina's irradiator] only begs the question whether any location would prompt the Staff to consider special circumstances associated with a proposed siting. For example, it is virtually certain that the Commission did not specifically consider the risks associated with placing an irradiator in the caldera of Kilauea" (LBP-06-04 at 14)

Thus, the ASLB assumed without facts that the NRC has no standards for siting irradiators, and consequently, the Staff could even approve locating an irradiator inside a live volcano without noting any "special circumstances."⁹

⁹ The ASLB reasoning in granting Petitioner's second contention was apparently based upon the following syllogism:

Major premise: The NRC has never established any siting standards for irradiators.

Minor premise: Irradiators can be sited in live volcanos and will still get "categorical exclusion" status, i.e., no special circumstances, and therefore no explanations, EA's or EIS's need be prepared.

Conclusion: Pa'ina's irradiator could be located in Kilauea Volcano, and no explanations, EA or EIS need be accomplished.

Unfortunately, from Pa'ina's viewpoint, the ASLB assumed without any factual basis that the County of Hawaii (where Kilauea is located) has no prohibitive zoning barring placement of "occupied buildings" in Kilauea Volcano. Logically, from Pa'ina's point of view, since both the ASLB's major premise and minor premise are unfounded, the ASLB reached a false conclusion.

In reality, all of the ASLB's assumptions were incorrect. In 1993, the NRC after extensive study of the effects of tidal waves, floods and airplane crashes clearly stated its siting standard for irradiators: "Therefore, NRC will allow construction of an irradiator at any location at which local authorities would allow other occupied buildings to be built." (Fed. Reg. Vol. 58, No. 25, at 7726)

To summarize this Part A: Petitioner's Contention #1 was actually a frontal challenge to the classification of relatively-benign irradiators as "categorically excluded" in 10 C.F.R. Sec. 51.22(c)(14(vii)); there is no judicial precedent supporting the ASLB's ruling that the NRC Staff provide an explanation of its "categorical exclusion" of Pa'ina's irradiator; the NRC has extensively studied the issue of properly-sited irradiators, and has adopted the "zoning for occupied buildings" standard; and the ASLB engaged in unwarranted assumptions which at every turn improperly favored Concerned Citizens.

The admissibility of Concerned Citizens' first Environmental Contention ought to be reversed, and the Contention ought to be dismissed as a matter of law.

Lukhard v. Reed, 481 U.S. 368 (1987) (where both major and minor premises are false, conclusion is false); SDC Development Corp. v. Mathews, 542 F.2d 1116 (9th Cir. 1976) (where minor premise is erroneous, conclusion is wrong).

- B. The ASLB Also Erred When It Ruled That The "Special Circumstances" (Natural Phenomena And Airplane Crashes) Alleged By Petitioner Constituted A Second, Valid Contention.

Closely intertwined with Contention 1, discussed supra, was Contention 2 admitted by the ASLB. The ASLB stated:

"With respect to the portion of Petitioner's second environmental contention alleging special circumstances stemming from the threats of tsunamis, hurricanes and aviation accidents, the Petitioner again has proffered a contention meeting the necessary pleading requirements of 10 C.F.R. Sec. 2.309(f) and it is admitted." LBP-06-04 at 17-18.

However, this second Environmental Contention is merely the "other side of the same coin" of the first Environmental Contention. This second contention should also fail as a matter of law because it fails to state a valid contention. As noted above:

1. As a matter of law, there are no "special circumstances" applicable to this site. The NRC extensively studied the siting possibilities for irradiators with non-dispersible sources, and the NRC concluded that if a jurisdiction permitted "occupied buildings" in the area or zone, then irradiators would also be allowed.

2. There is no judicial decision which requires the NRC to (redundantly) further explain its rationale for "categorical

exclusion" of irradiators, over and above its half century of extensive studies and experience.

3. The ASLB's use of false assumptions to conclude that "special circumstances" existed surrounding Pa'ina's irradiator was highly improper and erroneous. (Pa'ina would submit that since the County of Hawaii presumably prohibits the placement of "occupied buildings" in Kilauea Crater, siting an irradiator in the Crater would create "special circumstances" triggering further study and documentation.)

To summarize: Environmental Contention #2, alleging that further environmental explanation was necessitated by "special circumstances" consisting of natural phenomena and possible airplane crashes, failed to state a cause of action. Concerned Citizens had provided no facts which create genuine disputes for hearing; instead, the ASLB's unwarranted assumptions and conclusions sought to fill the legal void. As a matter of law, the ASLB's granting of admissibility of Environmental Contention #2 should be reversed, and the Contention should be dismissed.¹⁰

CONCLUSION

As set forth above, the Board erred in granting admissibility to Concerned Citizens' Environmental Contentions

¹⁰ As noted in Footnote #3 above, Pa'ina submits the same arguments against the admissibility of Concerned Citizens' Safety Contention #7.

#1 and #2. Likewise, the Board erred in granting admissibility to Concerned Citizens' Safety Contention #7.

10 C.F.R. §36.13 states that: "The Commission will approve an application for a specific license for the use of licensed material in an irradiator if the applicant meets the requirements contained in this section." Pa'ina filed its Application in reliance upon these provisions.

Based upon the specific arguments and reasons stated above, the Commission should reverse the ASLB's rulings admitting Concerned Citizens' two Environmental Contentions and its Safety Contention #7, and deny the Petition in its entirety.

DATED: Honolulu, Hawaii April 3, 2006.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Fred Paul Benco".

Fred Paul Benco
Attorney for Applicant
Pa'ina Hawaii, LLC

CERTIFICATE OF SERVICE

I hereby certify that copies of (1) "APPLICANT PA'INA HAWAII, LLC'S NOTICE OF APPEAL OF LBP-06-04 AND LPB-06-12" and (2) "APPLICANT PA'INA HAWAII, LLC'S BRIEF IN SUPPORT OF APPEAL FROM LBP-06-04 AND LBP-06-12" in the captioned proceeding have been served as shown below by deposit in the regular United States mail, first class, postage prepaid, this 3rd day of April, 2006. Additional service has also been made this same day by electronic mail as shown below:

Administrative Judge
Thomas S. Moore, Chair
Atomic Safety and Licensing Board
Mail Stop: T-3-F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: tсм2@nrc.gov)

Dr. Anthony J. Baratta
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop-T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: AJB5@nrc.gov)

Margaret J. Bupp
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington D.C. 20555-0001
E-Mail: mjb5@nrc.gov

Administrative Judge
Dr. Paul B. Abramson
Atomic Safety and
Licensing Board
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Office of the Secretary
U.S. Nuclear Regulatory
Commission
ATTN:
Rulemakings and
Adjudication Staff
Washington, DC 20555-
(e-mail: hearingdocket@nrc.gov)

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DATED: Honolulu, Hawaii, April 3, 2006



FRED PAUL BENCO
Attorney for Applicant
Pa'ina Hawaii, LLC

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April 3, 2006

Office of the Secretary
U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudication Staff
Washington, DC 20555-0001
Also Via E-Mail: HEARING DOCKET@nrc.gov

Re: Docket No. 030-36974
ASLBP No. 06-843-01-ML
(1) Applicant Pa'ina Hawaii, LLC's
Notice Of Appeal Of LBP-06-04
And LBP-06-12
(2) Applicant Pa'ina Hawaii, LLC's
Brief In Support Of Appeal From
LBP-06-04 And LBP-06-12

Dear Secretary:

I represent the legal interests of Pa'ina Hawaii, LLC, which has applied for a Materials License.

Pursuant to your regulations, please find enclosed an original and two (2) copies of both of the above documents.

Both of these documents were e-mailed to your office and to all parties on the Certificate of Service on this date. Hard copies were also mailed to each of the parties on this date.

If you have any questions or comments, please feel free to contact my office. Tel: 808-523-5083; Fax: 808-523-5085; e-mail: fpbenco@yahoo.com. Thank you.

Very respectfully yours,


Fred Paul Benco

Encls.

cc: All parties on Certificate of
Service