

May 26, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

May 27, 2006 (8:00am)

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

INTERVENOR CONCERNED CITIZENS OF HONOLULU'S  
OPPOSITION TO APPLICANT PA'INA HAWAII, LLC'S REQUEST TO  
STRIKE INTERVENOR'S REPLY TO APPLICANT'S OPPOSITION TO  
MOTION FOR LEAVE TO AMEND SAFETY CONTENTIONS #4 AND #6

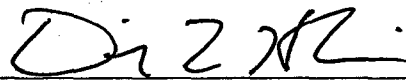
Intervenor Concerned Citizens of Honolulu opposes applicant Pa'ina Hawaii, LLC's May 26, 2006 request to strike Concerned Citizens' reply to applicant's opposition to the pending motion for leave to amend Safety Contentions #4 and #6. While Pa'ina styled its request in the form of a letter, it is clearly a motion, subject to 10 C.F.R. § 2.323(b)'s requirement that the moving party make, prior to filing the motion, "a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion." Here, Pa'ina failed to make any effort to contact Concerned Citizens prior to filing its motion to strike, and, thus, the first Concerned Citizens learned of Pa'ina's concerns was upon receipt of Pa'ina's letter via electronic mail. Because Pa'ina failed to comply with section 2.323(b), its motion "must be rejected." 10 C.F.R. § 2.323(b).

Had Pa'ina complied with 10 C.F.R. § 2.323(c), Concerned Citizens would have had the opportunity to point out that, pursuant to 10 C.F.R. § 2.309(h)(2), Concerned Citizens was not required to seek leave to file a reply in support of its proffered amended contentions. Rather, the

regulations expressly allow Concerned Citizens to “file a reply to any answer within seven (7) days after service of that answer.” Id. § 2.309(h)(2). Since Concerned Citizens’ filed its reply on May 17, 2006, seven days after Pa’ina filed its answer on May 10, 2006, Concerned Citizens’ reply was both proper and timely. Accordingly, even were the Board to reach the merits of Pa’ina’s motion to strike, it should reject it.

Dated at Honolulu, Hawai‘i, May 26, 2006.

Respectfully submitted,



---

DAVID L. HENKIN  
Earthjustice  
223 South King Street, Suite 400  
Honolulu, Hawai‘i 96813  
Tel. No.: (808) 599-2436  
Fax No. (808) 521-6841  
Email: [dhenkin@earthjustice.org](mailto:dhenkin@earthjustice.org)  
Attorney for Intervenor  
Concerned Citizens of Honolulu

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on May 26, 2006, 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:

Fred Paul Benco  
Suite 3409, Century Square  
1188 Bishop Street  
Honolulu, Hawai'i 96813  
E-Mail: fpbenco@yahoo.com  
Attorney for Pa'ina Hawaii, LLC

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attn: Rulemakings & Adjudications Staff  
E-Mail: HEARINGDOCKET@nrc.gov

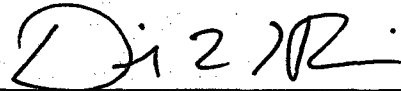
Margaret J. Bupp  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop - O-15 D21  
Washington, DC 20555-0001  
E-mail: mjb5@nrc.gov

Administrative Judge  
Paul B. Abramson  
Atomic Safety & Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: pba@nrc.gov

Administrative Judge  
Thomas S. Moore, Chair  
Atomic Safety & Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-Mail: tsm2@nrc.gov

Administrative Judge  
Anthony J. Baratta  
Atomic Safety & Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-Mail: ajb5@nrc.gov

Dated at Honolulu, Hawai'i, May 26, 2006.



DAVID L. HENKIN  
Attorney for Intervenor  
Concerned Citizens of Honolulu



**TRANSMITTAL LETTER**

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

**FROM:** David L. Henkin *DLH*

**DATE:** May 26, 2006

**RE:** Pa'ina Hawaii, LLC (Materials License Application), Docket No. 030-36974-ML,  
ASLBP No. 06-843-01-ML

<u>ENCLOSURES</u>	<u>DATE</u>	<u>DESCRIPTION</u>
Original and two copies:	5/26/06	INTERVENOR CONCERNED CITIZENS OF HONOLULU'S OPPOSITION TO APPLICANT PA'INA HAWAII, LLC'S REQUEST TO STRIKE INTERVENOR'S REPLY TO APPLICANT'S OPPOSITION TO MOTION FOR LEAVE TO AMEND SAFETY CONTENTIONS #4 AND #6; 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 type="checkbox"/> For Necessary Action.       |
| <input type="checkbox"/> For Review and Comments.      | <input type="checkbox"/> For Signature & Forwarding. |
| <input checked="" type="checkbox"/> See Remarks Below. |  |

**REMARKS:** Please note that this filing responds to applicant Pa'ina Hawaii, LLC's letter of today's date.