

June 1, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

June 4, 2007 (9:15am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

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

INTERVENOR CONCERNED CITIZENS OF
HONOLULU'S AMENDED SAFETY CONTENTIONS #13 AND #14

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(c) and (f)(2) and this Board's May 1, 2006 order, intervenor Concerned Citizens of Honolulu hereby files amended Safety Contentions #13 and #14 in response to the issuance of the Final Topical Report on the Effects of Potential Natural Phenomena and Aviation Accidents at the Pa'ina Hawaii, LLC Irradiator Facility ("Final Topical Report") (ADAMS Accession No. ML071286333). While the Final Topical Report generally repeats the same flawed analysis from the Draft Topical Report, which Concerned Citizens challenged in its previously filed contentions, it does contain some new information considered by the Nuclear Regulatory Commission ("NRC") Staff and on which Pa'ina Hawaii, LLC is likely to rely to carry its burden of demonstrating its proposed irradiator would "protect health and minimize danger to life or property," as required by 10 C.F.R. § 30.33(a)(2). Concerned Citizens files these amended contentions "to raise specific challenges regarding the new information" set forth in the Final Topical Report. Duke Energy Corp. (McGuire Nuclear

Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002).

As detailed in Concerned Citizens' Contentions Re: Draft Environmental Assessment And Draft Topical Report (filed Feb. 9, 2007) ("2/9/07 Contentions"), the Draft Topical Report contained numerous deficiencies that precluded Pa'ina from relying on it to carry its burden of demonstrating compliance with 10 C.F.R. § 30.33(a)(2). As discussed herein, the Final Topical Report perpetuates many of these deficiencies, as well as introducing new ones. See infra Part III. The Board should admit Concerned Citizens' 2/9/07 Contentions, as amended herein, since the issues they raise are central "to the findings the NRC must make to support the action that is involved in the proceeding," and Concerned Citizens otherwise satisfies all requirements for filing these contentions. 10 C.F.R. § 2.309(f)(1)(iv); see infra Part IV.

II. PROCEDURAL AND FACTUAL BACKGROUND

On October 3, 2005, Concerned Citizens timely filed a request for hearing on Pa'ina's application for a license for possession and use of byproduct material in connection with the construction and operation of a commercial pool-type industrial irradiator using a cobalt-60 ("Co-60") source at the Honolulu International Airport. Among other issues, Concerned Citizens' hearing request included contentions regarding Pa'ina's failure to address risks of aviation accidents (Safety Contention #7), the NRC's failure to explain its application of a categorical exclusion to Pa'ina's proposed irradiator (Environmental Contention #1), and the NRC's failure to prepare an environmental assessment ("EA") or environmental impact statement ("EIS") (Environmental Contention #2). 10/3/05 Hearing Request at 15, 19-25.

On January 24, 2006, the Board granted Concerned Citizens' request for hearing, finding Concerned Citizens had standing and finding admissible its two environmental contentions.

Pa'ina Hawaii, LLC (Material License Application), LBP-06-04, 63 NRC 99 (2006).

On March 24, 2006, the Board issued an order admitting three of Concerned Citizens' safety contentions, including Safety Contention #7 challenging Pa'ina's "failure to assess the probability and consequences of aviation accidents at the proposed irradiator site." Pa'ina Hawaii, LLC (Material License Application), LBP-06-12, 63 NRC 403, 420 (2006).

On April 27, 2006, the Board accepted the NRC Staff's and Concerned Citizens' joint stipulation settling Environmental Contentions #1 and #2. Licensing Board Order (Confirming Oral Ruling Granting Motion to Dismiss Contentions) (Apr. 27, 2006). The stipulation provided, among other things, that the Staff would prepare an EA for Pa'ina's proposed irradiator to determine whether to prepare an EIS or a finding of no significant impact ("FONSI") and that, prior to making any final FONSI for the proposed irradiator, the Staff would put a draft decision out for public review and comment. Joint Stipulation and Order Regarding Resolution of Concerned Citizens' Environmental Contentions at ¶¶ 1-2 (Mar. 20, 2006).

In December 2006, the Staff issued the Draft EA and placed the Draft Topical Report on ADAMS (ADAMS Accession No. ML063560344), which addressed safety concerns including aviation crashes and natural disasters. Pursuant to the Board's May 1, 2006 and January 10, 2007 scheduling orders, Concerned Citizens submitted contentions relating to these documents on February 9, 2007, two of which – Safety Contentions #13 and #14 – directly challenged deficiencies in the Draft Topical Report. Pa'ina and the Staff filed responses to the 2/9/07 Contentions on March 8 and 12, 2007, respectively, and Concerned Citizens, in turn, filed a reply on March 19, 2007. The Board has not yet ruled on the admissibility of these contentions.

On May 8, 2007, the Staff posted the Final Topical Report on ADAMS, presenting new information Concerned Citizens now addresses by submitting timely, amended contentions pursuant to 10 C.F.R. § 2.309(c) and (f)(2) and this Board's May 1, 2006 order.

III. PA'INA HAS FAILED TO CARRY ITS BURDEN OF ESTABLISHING ITS PROPOSED IRRADIATOR WOULD "PROTECT HEALTH AND MINIMIZE DANGER TO LIFE OR PROPERTY" IN THE EVENT OF AN AVIATION ACCIDENT OR NATURAL DISASTER, AS REQUIRED BY 10 C.F.R. § 30.33(a)(2)

In its 2/9/07 Contentions, Concerned Citizens explained that, by relying on the Topical Report to address safety concerns, Pa'ina had failed to carry its burden to establish its proposed irradiator would be "adequate to protect health and minimize danger to life or property," as required by 10 C.F.R. § 30.33(a)(2). 2/9/07 Contentions at 4 (citing Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983) ("It is well established that the Applicant carries the burden of proof on safety issues.")). Concerned Citizens contended that, because the Draft Topical Report contained numerous factual and analytic deficiencies, it was "fatally flawed and wholly inadequate" to satisfy Pa'ina's burden of proof on safety. Id.

Specifically, Safety Contention #13 asserted the Draft Topical Report inadequately analyzed safety risks from aviation crashes by underestimating the annual probability of airplane crashes at the irradiator site and omitting any discussion of the consequences of an airplane crashing into the irradiator facility. Id. at 5-9. Safety Contention #14 claimed the Draft Topical Report's analysis of risks from natural phenomena was inadequate because it was based on factual inaccuracies and flawed assumptions and failed to consider all potential impacts. Id. at 9-15. As discussed below, the Final Topical Report fails to correct the draft's numerous deficiencies. Accordingly, Pa'ina cannot rely on the Final Topical Report to demonstrate its compliance with 10 C.F.R. § 30.33(a)(2).

A. Amended Safety Contention #13:¹ The Final Topical Report Inadequately Analyzes Safety Risks From Aviation Crashes.

The Final Topical Report does not materially improve upon the draft's analyses of aircraft crash probability or consequences; indeed, in most places the final version merely incorporates verbatim language from the draft. Accordingly, Concerned Citizens re-alleges and incorporates herein Contention #13, as amended below. While the data inputted into the probability calculations appear to be slightly altered, the result is the same and continues to underestimate the probability of an airplane crashing into the irradiator. In addition, although the Final Topical Report provides some additional discussion of potential consequences, its analysis continues to be "too deficient to demonstrate Pa'ina's proposed irradiator is 'adequate to protect health and minimize danger to life or property[.]'" 2/9/07 Contentions at 5 (citing 10 C.F.R. § 30.33(a)(2)).

1. The Final Topical Report Underestimates Crash Probability.

The Final Topical Report continues to underestimate the probability of an aircraft striking Pa'ina's proposed irradiator. As set forth in the 2/9/07 Contentions, the Draft Topical Report underestimated the probability of a crash by a factor of 2 to 3, and the Final Topical Report does not address this deficiency in any way. 2/9/07 Contentions at 5-6 (citing Resnikoff Dec. ¶¶ 10-11) (probability is 1 in 2,786 or 1 in 1,757, depending on methodology, not 1 in 5,000).

While the Final Topical Report attempts to show how its 1 in 5,000 aircraft crash probability was overestimated, it continues to ignore significant factors that cut the other way. Final Topical Report at 2-16 to 2-17. For example, the Final Report continues to rely on

¹ For ease of reference, Concerned Citizens will not assign new numbers to the amended contentions presented herein; the numbers therefore remain the same as those used for the corresponding 2/9/07 Safety Contentions.

obsolete data and fails to account for unusually elevated crash rates at Honolulu International Airport and the higher proportion of crashes at landings than takeoffs. 2/9/07 Contentions at 6 (citing Resnikoff Dec. ¶¶ 11-14). Moreover, the Final Topical Report continues to use an unreasonably low number of aircraft operations at the Honolulu airport (apparently relying on a five-year average that includes the sharply reduced operations in the years following September 11, 2001) and fails to factor in the projected 20% increase in operations during the ten-year term of Pa'ina's license. Resnikoff Dec. ¶ 14, attached to 2/9/07 Contentions; Draft Topical Report at 2-13. Properly addressing these important factors results in a substantially higher crash probability estimate. 2/9/07 Contentions at 6-7. Because the Final Topical Report's analysis of the safety of Pa'ina's proposed irradiator is not based on an accurate assessment of the likelihood an airplane will hit the facility, a genuine dispute exists with regard to a material issue of law or fact, and Contention #13, as amended, is admissible. 10 C.F.R. § 2.309(f)(1)(iv).

2. The Final Topical Report Fails To Conduct A Meaningful Analysis Of Airplane Crash Consequences.

Even if the Board accepts the Final Topical Report's estimated crash rate probability of 1 in 5,000, the Final Topical Report's analysis of the consequences of an airplane crash is too deficient to carry Pa'ina's burden of demonstrating the safety of its proposed irradiator. As the Board noted in its April 30, 2007 order, the Draft Topical Report lacked "any context or description of the regulatory criteria by which the acceptability of [its] computed [crash rate] probability is to be assessed." Licensing Board Order at 3 (Posing Questions for the Parties) (April 30, 2007). The Final Topical Report likewise lacks analysis of the requisite standards. Moreover, it continues to ignore or unreasonably discount realistic accident scenarios and fails to provide data or calculations to demonstrate the design of Pa'ina's proposed irradiator would be

adequate “to protect health and minimize danger to life or property” in the event of an aviation accident. 10 C.F.R. § 30.33(a)(2).

In its 2/9/07 Contentions, Concerned Citizens challenged the Draft Topical Report’s failure to substantiate with any calculations its assumption the performance criteria set forth in 10 C.F.R. § 36.21 would ensure Co-60 sources at the Pa’ina irradiator would be robust enough to survive an aviation accident without being breached. 2/9/07 Contentions at 7. Remarkably, although the Staff previously conceded this aspect of Safety Contention #13 was admissible, it failed to ensure the Final Topical Report contained an “analysis of debris force from potential aviation accidents.” 3/12/07 Staff Response at 10. Instead of quantifying the impact of flying aircraft or building debris on the Co-60 sources and evaluating the likelihood radioactive material would be dispersed, the Final Topical Report improperly takes it on faith the performance standards in 10 C.F.R. § 36.21 – which were not designed to ensure safety in the event of aviation accidents – would be adequate to protect the public and environment.² Moreover, it completely ignores the potential for physical destruction of the sources to contaminate the pool water or allow dispersal of pulverized Co-60 via breaches in the pool lining, considering instead only rates of corrosion. See Final Topical Report at 1-3.

² The Final Topical Report notes that Co-60 sources provided by Nordion would also have passed ANSI test E65646, but fails to mention Nordion is only one of two possible suppliers of sources for the Pa’ina irradiator. Final Topical Report at 1-2; see also 6/27/05 Application at 3 (source manufacturer would be MDS Nordion, Inc. “And/or” REVISS Services, Inc.). There is no showing that sources from REVISS could pass ANSI test E65646 and, consequently, no basis for the Final Topical Report’s assumption that sources at Pa’ina’s proposed irradiator – all of which might come from REVISS – would satisfy the additional standards. In any event, the Final Topical Report lacks any calculations to back up its assumption the ANSI standards would be adequate to prevent dispersal of radioactive material in the event of an aviation accident. Thus, the requisite safety showing has not been made, even if all sources were assumed to come from Nordion.

The Final Topical Report likewise fails to provide any calculations to back up its assertion that “[i]t is not feasible that the source could be removed from the pool as the result of an aircraft crash.” Id. at 2-17. The report purports to contain such analysis, alleging on page 2-18 that “it has been shown that an aircraft crash will not be able to impart enough force to the source assembly to remove it from the source plenum and eject it from the bottom of the irradiator pool.” Nowhere, however, does the report actually present any calculations of the force an aircraft crash would impart or analysis of why that force would, allegedly, be insufficient to disperse Co-60.

The Final Topical Report slightly improves on the draft in that it at least mentions the potential for an aviation crash to cause a jet fuel fire at Pa‘ina’s proposed irradiator. See id. at 2-17 to 2-18. The single paragraph devoted to the topic is, however, rife with unsubstantiated assumptions that preclude reliance on its analysis to demonstrate the facility’s safety. The report initially assumes burning jet fuel will not come into contact with the sources, ignoring the potential for an aviation accident to breach the irradiator pool, allowing shielding water to escape. Then, without any calculations about rates of evaporation or the length of time a fuel fire would be expected to burn, the report baldly asserts the burning jet fuel “will not lead to a significant amount of evaporation of the pool water until the fuel is nearly depleted, at which time evaporation will be minimal.” Id. at 2-17. Such speculation cannot substitute for hard proof Pa‘ina’s design would be adequate to protect the public and environment.

Concerned Citizens vigorously disputes the Final Topical Report’s ultimate conclusion that “it is not possible for the burning jet fuel to damage the source assemblies” as unsupported by either calculations or empirical data. Id. Recent events in the San Francisco Bay area illustrate the catastrophic damage that fire from burning fuel can cause to steel structures. Sozen

Dec. ¶ 3. On April 29, 2007, a crash involving a tanker truck carrying 8,600 gallons of fuel led to the collapse of the steel structure for a highway overpass in Emeryville, California. Id. ¶ 4; Exh. 21: Demian Bulwa & Peter Fimrite, Tanker fire destroys part of MacArthur Maze, S.F. CHRONICLE, Apr. 29, 2007; Exh. 22: Photographs of tanker fire and damage to overpass, S.F. CHRONICLE, Apr. 30, 2007.³ A Boeing 767-200ER carries 23,980 gallons of fuel, nearly three times the amount of fuel involved in the Emeryville accident, and, thus, an aviation accident at Pa'ina's proposed facility could involve many times the amount of burning fuel involved in the Emeryville incident. Sozen Dec. ¶ 4; Exh. 23: Boeing, "Technical Characteristics – Boeing 767-200ER."

In Emeryville, the fuel fire raised temperatures in the steel structure high enough to cause buckling of the web in the supporting plate girders, even though the fire occurred in an essentially open environment. Sozen Dec. ¶ 5; see also Exh. 24: San Francisco Workers Get Free Transit After Partial Freeway Collapse, FoxNews.com, Apr. 30, 2007. In order to cause this type of instability in the overpass's structural steel elements, the fuel fire must have reached temperatures approaching 600 degrees Celsius or higher. Sozen Dec. ¶ 5. The Emeryville incident demonstrates that the Final Topical Report is inaccurate when it makes its unsupported claim on page 2-17 that "[j]et fuel burns in air at a temperature of up to 315 °C [599 °F]." Sozen Dec. ¶ 5. The Emeryville fire was nearly double that temperature, and perhaps even hotter. Id.

Significantly, the fire in Emeryville occurred in open air. A fire associated with an airplane crash into Pa'ina's proposed irradiator would likely occur in a more confined

³ Since these amended safety contentions incorporate by reference Safety Contentions #13 and #14 filed on February 9, 2007, including all exhibits filed in support of those contentions, Concerned Citizens has assigned the exhibits attached hereto the consecutive numbers immediately following the number assigned to the last exhibit submitted in support of the 2/9/07 Contentions.

environment, where much higher temperatures would be expected. Id. ¶ 6. The Final Topical Report fails to take into account this factor, further rendering its analysis unreliable. Id.

The Emeryville incident highlights the need for a serious analysis of the potential consequences of an aviation fuel fire involving Pa'ina's proposed irradiator and Co-60 sources, including providing defensible calculations. Id. ¶ 7. In the absence of such a quantitative analysis, there is no basis for the Final Topical Report's assumption that temperatures involved in an airplane crash cannot breach the sources, creating the potential for radiation releases.

The Final Topical Report also improperly downplays the consequences of a loss of shielding water due to an airplane crash, which threatens exposures above regulatory limits. See 2/9/07 Contentions at 8. The Final Topical Report concedes that "a reduction in the water level may result in increased dose rates in a well-collimated beam directly above the pool," but fails to present any analysis of what dose rates would be expected. Final Topical Report at 1-3. It then asserts the beam could be shielded with no environmental effect or significant increase in radiation exposure to facility workers or, by implication, to emergency personnel responding to an aviation accident. Id. The report's discussion is pure speculation, lacking any quantitative analysis of radiation exposure levels.

Although Concerned Citizens presented in its 2/9/07 Contentions credible scenarios in which a loss of shielding water could occur, including damage to the irradiator pool due to falling debris breaching the pool or a fuel fire melting the pool frame, the Final Topical Report fails to undertake a meaningful evaluation of the potential impacts of such an event. This is a serious concern that must be addressed; since the depth of the water table is at least 2 meters (6.6 feet) below the facility floor, any break in the pool lining could – as the Final Topical Report apparently concedes – severely reduce shielding. 2/9/07 Contentions at 8 (citing Resnikoff Dec.

¶ 17); see also Final Topical Report at 1-2 (claiming depth of water table is 2.4 m (8 feet) below the facility floor). The Final Topical Report improperly omits any quantitative analysis of potential radiation exposures to workers, first responders, and the public at large.

Finally, the Final Topical Report has no basis for dismissing potential safety concerns in the event an airplane crash destroys all monitoring equipment and/or incapacitating irradiator personnel. See 2/9/07 Contentions at 9 (citing Resnikoff Dec. ¶ 19; Sozen/Hoffmann Report at 5). The Final Topical Report asserts “the loss of operating monitoring equipment during an accident or natural phenomenon does not lead to the loss of control of radioactive material.” Final Topical Report at 1-3. Even if true, the inability to implement necessary emergency procedures threatens to put first responders and the general public in harm’s way. Such potential consequences must be thoroughly evaluated before Pa’ina’s proposed irradiator is deemed adequate “to protect health and minimize danger to life or property.” 10 C.F.R. § 30.33(a)(2).

For the foregoing reasons, the Final Topical Report continues to be inadequate to satisfy Pa’ina’s burden to demonstrate the safety of its irradiator from aviation accidents, and Safety Contention #13 should be admitted as amended.

B. Amended Safety Contention #14: The Final Topical Report Inadequately Analyzes Safety Risks From Natural Phenomena.

In almost all respects, the Final Topical Report’s discussion of safety risks from natural phenomena is essentially identical to the draft’s and, accordingly, Concerned Citizens generally re-alleges and incorporates herein by reference Safety Contention #14 as set forth in its 2/9/07 Contentions. The one material change involves the Final Topical Report’s discussion of safety risks from tsunami, which fails to remedy the deficiencies found in the Draft Topical Report.

The Final Topical Report properly deletes the draft's erroneous statements that the "Honolulu International Airport is above the evacuation zone" and that "tsunami waves are not considered a significant threat to the safe operation of Honolulu International Airport." Compare Draft Topical Report at 3-4, with Final Topical Report at 3-5 to 3-6. These corrections do nothing, however, to improve the adequacy of the overall analysis of threats from tsunami. The Final Topical Report fails to mention, must less analyze, the significant fact that Pa'ina's proposed irradiator site lies within the Hawai'i Civil Defense evacuation zone. As discussed in Concerned Citizens' original Safety Contention #14, the low elevation and relative flatness of the proposed irradiator site render it "potentially unsafe and susceptible to flooding by tsunamis," requiring a thorough analysis of potential safety risks, which the Final Topical Report fails to provide. Pararas-Carayannis Dec. ¶ 12, attached to 2/9/07 Contentions; see also 2/9/07 Contentions at 11-14.

While the "stylized fluid dynamic calculation" results set forth in the Final Topical Report estimate a lower velocity is required to lift the source out of the pool than the velocity stated in the draft, compare Final Topical Report at 3-5, with Draft Topical Report at 3-4, the analysis still fails to account for a tsunami's terminal characteristics, which involve a chaotic turbulent water mass, and not a structured wave form. See 2/9/07 Contentions at 13 (citing Pararas-Carayannis Dec. ¶ 30). The Final Topical Report does not, accordingly, improve on the draft, and its safety analysis continues to ignore credible impact scenarios, like flooding, while focusing only on implausible ones, like a wave pulling the source from the bottom of the irradiator pool.

For the foregoing reasons, the Final Topical Report continues to be inadequate to satisfy Pa'ina's burden to demonstrate the safety of its irradiator from natural disasters, and Safety

Contention #14 should be admitted as amended.

IV. CONCERNED CITIZENS' CONTENTIONS SATISFY THE REQUIREMENTS FOR ADMISSION

A. The Contentions Satisfy 10 C.F.R. § 2.309(f)(1).

In the foregoing discussion and in its 2/9/07 Contentions, which are incorporated herein by reference, Concerned Citizens has provided specific statements of the factual and legal issues to be raised, a brief explanation of the basis for each amended contention, and a concise statement of the alleged facts and expert opinions which support Concerned Citizens' position on the issues and on which Concerned Citizens intends to rely at hearing, as required by 10 C.F.R. § 2.309(f)(1)(i), (ii) and (v). The core issues raised by Concerned Citizens' safety contentions – whether Pa'ina has failed to carry its burden of ensuring adequate protection for the public and environment in the event of aviation accidents or natural disasters involving the proposed irradiator – are within the scope of this proceeding and material to the findings the Board must make herein. See id. § 2.309(f)(1)(iii)-(iv); see also LBP-06-12, 63 NRC at 420 (Board must ensure compliance with 10 C.F.R. § 30.33(a)(2)). By pointing out the specific portions of the Final Topical Report it claims are deficient, as well as necessary information and analyses that that document fails to provide, Concerned Citizens has established its amended contentions present genuine disputes on material issues in accordance with 10 C.F.R. § 2.309(f)(1)(vi).

B. The Contentions Satisfy 10 C.F.R. § 2.309(f)(2).

Concerned Citizens' amended safety contentions challenge deficiencies in the Final Topical Report's analysis of the effects of natural phenomena and aviation accidents at Pa'ina's proposed irradiator. While the Draft Topical Report also addressed these potential impacts, the Final Topical Report's analysis differed in some material respects, as detailed above, and

Concerned Citizens seeks to amend its contentions to address only those differences. Prior to the Staff's posting of the Final Topical Report on ADAMS, the information upon which the proffered amended safety contentions are based "was not previously available," and that information "is materially different than information previously available," in conformity with 10 C.F.R. § 2.309(f)(2)(i) and (ii).

In accordance with the Board's May 1, 2006 order, Concerned Citizens filed its amended contentions regarding the Final Topical Report within 30 days of the report's May 8, 2007 posting on ADAMS, and, accordingly, the amended contentions are "timely." Id. § 2.309(f)(2)(iii).

C. 10 C.F.R. § 2.309(c).

As discussed in its 2/9/07 Contentions, Concerned Citizens does not believe consideration of 10 C.F.R. § 2.309(c) is required before the Board can admit timely filed contentions related to the deficiencies of documents submitted long after the original hearing petition had to be filed. 2/9/07 Contentions at 1 n.1 (citing, inter alia, Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 578 (2004) (noting section 2.309(c) and (f)(2) provide alternate means for intervenor to file new contention where subsequently filed document "provides information 'not previously available' that is 'materially different'"); and id. at 567 n.24 ("If new and materially different information later comes to light, we may entertain a motion for leave to file a new contention under 10 C.F.R. § 2.309(f)(2)").

Even if section 2.309(c)'s factors were relevant to the Board's decision, the Board still should admit the amended contentions. In analyzing contentions pursuant to section 2.309(c), "each factor is not necessarily applicable to the present case, nor is it necessary or appropriate to

assign each factor equal weight.” Licensing Board Order at 13 (Ruling on Admissibility of Two Amended Contentions) (June 22, 2006). “Rather, the first factor, ‘good cause,’ is the most important factor.” Id.

In this case, new analysis and conclusions were presented in the Final Topical Report relating to important safety issues, and Concerned Citizens “could not have possibly challenged facts or analyses that were not presented” at the time it filed its original hearing request. Licensing Board Order at 3-4 (Rejecting Motion to Dismiss) (Jan. 25, 2007). Since the Final Topical Report “provides entirely new information,” Concerned Citizens could not have challenged the adequacy of its analysis prior to its issuance on May 3, 2007, and, thus, had good cause for not filing its amended contentions earlier. Id. at 4; see also Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-04-33, 60 NRC 749, 754 (2004) (citing Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571, 577 (1982)) (“Newly available material information has long been held to provide good cause to file a new contention”).

The Board has previously held Concerned Citizens has standing to participate in this proceeding under either traditional judicial concepts of standing or proximity-plus standing, due to the “obvious potential for offsite consequences from the significant source of radioactivity housed within the irradiator.” LBP-06-04, 63 NRC at 107. Since the Board has already found Concerned Citizens’ “interest may be affected by this proceeding,” and no party has appealed that decision, Concerned Citizens unquestionably has a right to participate in this licensing proceeding. Id. at 103 (quoting 42 U.S.C. § 2239(a)(1)(A)); see also 10 C.F.R. § 2.309(c)(ii). As for the nature and extent of its “interest in the proceeding,” it is to avoid or minimize threats of injury from radiation exposure associated with the irradiator, including exposures that could

result from the types of accidents and other incidents the Final Topical Report is supposed to address. 10 C.F.R. § 2.309(c)(iii).

“The proposed irradiator will not be operated without approval and a license from the NRC.” LBP-06-04, 63 NRC at 105. Consequently, whether and the degree to which Concerned Citizens and its members face threats of injury from radiation is completely contingent on the ultimate decision on Pa‘ina’s license application. Since the hearing on this application is the only forum in which Concerned Citizens can seek to ensure Pa‘ina’s compliance with 10 C.F.R. § 30.33(a)(2), the factors set forth in section 2.309(c)(iv) and (v) weigh in favor of admitting the proffered contentions.

There are no other intervenors in this case, and, thus, no other existing parties who will or can represent Concerned Citizens’ interests. See 10 C.F.R. § 2.309(c)(vi).

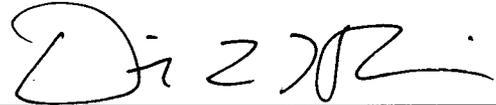
Admitting the proffered contentions would not broaden the issues in this licensing proceeding, since, with or without the contentions, the Board would be obliged to consider whether Pa‘ina’s proposed irradiator would adequately protect the public and environment from aviation accidents and natural disasters. See 10 C.F.R. § 2.309(c)(vii). While allowing Concerned Citizens to present evidence and argument regarding its contentions may increase the time necessary to complete the licensing proceeding, that factor alone does not militate against admitting the contentions. The primary effect of admitting the contentions would be to ensure the Board has a fully developed and sound record on which to base its ultimate decision, with Concerned Citizens’ experts providing information that otherwise would be missing from the proceeding. See id. § 2.309(c)(viii).

V. CONCLUSION

For the foregoing reasons, Concerned Citizens respectfully asks the Board to admit the amended safety contentions presented herein.

Dated at Honolulu, Hawai'i, June 1, 2007.

Respectfully submitted,



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

DECLARATION OF METE A. SOZEN, Ph.D. IN SUPPORT OF
CONCERNED CITIZENS' AMENDED SAFETY CONTENTIONS #13 AND #14

Under penalty of perjury, I, Dr. Mete A. Sozen, hereby declare that:

1. As previously stated, I am the Purdue University Kettelhut Distinguished Professor of Structural Engineering, and have a Ph.D. in Civil Engineering. Details regarding my more than 50 years of training and experience in the field of structural engineering were provided in my declaration dated February 8, 2007.
2. In my declarations in support of the contentions Concerned Citizens filed on February 9, 2007, I noted the failures of the draft Environmental Assessment and draft Topical Safety Report to analyze the potential for a high-temperature conflagration associated with an aviation accident to release radioactive Cobalt-60 into the human environment. While the final Topical Safety Report adds a paragraph discussing the potential consequences of a fuel fire following a plane crash, its analysis is flawed and cannot support a finding that Pa'ina's proposed irradiator design is safe.
3. Recent events in the San Francisco Bay area illustrate the catastrophic damage that fire from burning fuel can cause to steel structures, confirming both the need for the Nuclear Regulatory Commission to analyze seriously the consequences of an

airplane striking Pa'ina's proposed irradiator and illustrating the deficiency of the final Topical Safety Report's analysis.

4. On Sunday, April 29, 2007, a crash involving a tanker truck carrying 8,600 gallons of fuel led to the collapse of the steel structure for a highway overpass in Emeryville, California. See Demian Bulwa & Peter Fimrite, "Tanker fire destroys part of MacArthur Maze," S.F. Chronicle, Apr. 29, 2007, a true and correct copy of which is attached hereto as Exhibit "21;" see also Photographs of the tanker fire and resulting damage to the highway overpass which were posed on the S.F. Chronicle website on April 30, 2007, true and correct copies of which are attached hereto as Exhibit "22." An aviation accident at Pa'ina's proposed facility could involve far greater amounts of burning fuel. When fully loaded, the Boeing 767-200ER that Dr. Christophe Hoffmann and I used in our analysis of potential effects of an aviation crash (discussed in my February 8, 2007 declaration) carries 23,980 gallons of fuel, nearly three times the amount of fuel involved in the Emeryville accident. See Boeing, "Technical Characteristics – Boeing 767-200ER," a true and correct copy of which is attached hereto as Exhibit "23."

5. Based on my review of photographs of the incident as well as reports by agency officials, it is abundantly clear the temperatures in the steel structure reached levels that were adequate to cause buckling of the web in the supporting plate girders, even though the fire occurred in an essentially open environment. See "San Francisco Workers Get Free Transit After Partial Freeway Collapse," FoxNews.com, Apr. 30, 2007, a true and correct copy of which is attached hereto as Exhibit "24." In order to cause this type of instability in the overpass's structural steel elements, the fuel fire must have

reached temperatures approaching 600 degrees Celsius or higher. The Emeryville incident demonstrates that the final Topical Safety Report is inaccurate when it makes its unsupported claim on page 2-17 that "[j]et fuel burns in air at a temperature of up to 315 °C [599 °F]." The Emeryville fire was nearly double that temperature, and perhaps even hotter.

6. Significantly, the fire in Emeryville occurred in open air. A fire associated with an airplane crash into Pa'ina's proposed irradiator would likely occur in a more confined environment, where much higher temperatures would be expected. The final Topical Safety Report fails to take into account this factor, further rendering its analysis unreliable.

7. The recent incident in Emeryville highlights the importance of assessing the consequences of possible aviation accidents thoroughly, including damage to Pa'ina's proposed irradiator pool and Co-60 sources from burning fuel, to determine the likelihood that radioactive Co-60 may be introduced into the human environment.

I declare under penalty of perjury that the factual information provided above is true and correct to the best of my knowledge and belief, and that the professional opinions expressed above are based on my best professional judgment.

Executed at Söke, Turkey, on this 1st day of June, 2007.



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SFGate.com

Tanker fire destroys part of MacArthur Maze 2 freeways closed near Bay Bridge

Demian Bulwa and Peter Fimrite, Chronicle Staff Writer
Sunday, April 29, 2007



(04-29) 18:03 PDT OAKLAND -- Huge leaping flames from an exploding gasoline tanker melted the steel underbelly of a highway overpass in the East Bay's MacArthur Maze early this morning, causing it to collapse onto the roadway below and virtually ensuring major traffic problems for weeks to come.

The elevated roadway that fell carried eastbound traffic from the Bay Bridge onto Interstates 580 and 980 and state Highway 24. It draped like a blanket over a roadway below, a connector from southbound I-80 to I-880 that also was severely damaged.

The single-vehicle crash occurred on the lower roadway when the tanker, loaded with 8,600 gallons of unleaded gasoline and heading from a refinery in Benicia to a gas station on Hegenberger Road in Oakland, hit a guardrail at 3:41 a.m.

Engineers said the green steel frame of the I-580 overpass and the bolts holding the frame together began to melt and bend in the intense heat

-- and that movement pulled the roadbed off its supports.

California Highway Patrol spokesman Trent Cross said the driver of the tanker, James Mosqueda, 51, of Woodland (Yolo County), was traveling too fast in a 50 mph zone when his truck overturned and burst into flames.

Mosqueda, an employee of Sabek Transportation in San Francisco for 10 months, got out of the truck on his own after it overturned and hailed a taxi that took him to Kaiser Hospital in Oakland, witnesses and police said.

He has been transferred to the burn unit at St. Francis Hospital in San Francisco, where his father said he was "doing OK" this afternoon, having sustained burns on his face, neck and hands. The family expected Mosqueda to remain hospitalized two or three more days.

Cross said Mosqueda had a valid driver's license and there is no indication he was under the influence of alcohol or drugs when he crashed.

EXHIBIT 21

Oakland firefighters, the first public safety workers on the scene, arrived with two engines at 3:55 a.m., Capt. Cedric Price said.

"We didn't know it was a tanker truck that was involved. As soon as that was established we immediately upgraded to a large scale incident response team and added two more engines and two trucks," Price said.

Firefighters immediately noticed the upper connector ramp was buckling and seven minutes after they arrived -- at 4:02 a.m. -- it collapsed, Price said. Now there were no more structures threatened, the firefighters' approach shifted.

"With no structures or lives in jeopardy and with 8,000 gallons of flammable fuel involved, you're basically better off letting it burn itself out," said Price.

Firefighters used only water to control the blaze, which took about two hours, he said. Had there been lives at risk, firefighters would have used foam to fight the blaze, but it would have run off into the nearby Bay water, polluting it.

"That this didn't happen on a weekday morning might have been the only beauty of it," said Price.

With the help of protective gear and breathing devices, firefighter exposure to the fumes was minimal, according to Price. A total of 29 Oakland Fire Department personnel were on scene as well as one engine from Emeryville. A smaller crew of Oakland firefighters remained there through the early evening to watch for potential dangers.

Jennifer Summers, 36, was driving from her costume design job in San Francisco home to the Oakland hills just before 4 a.m. when she saw black smoke and realized the freeway was on fire. She quickly pulled off and looped around so she could see what was going on.

When she got out of her car, flames were shooting into the sky over multiple layers of freeway and she could hear loud crackling and explosions.

"There were bright, bright orange flames and they were huge," said Summers. "There were cars driving through the flames. The first cars slowed down like they didn't know what to do and then kept going. I was shocked."

Summers said dozens of vehicles stopped to watch the spectacle, which ended with a horrendous crash as the freeway collapsed in a torrent of fire and rubble.

"There was nothing you could do," she said. "I'm thinking, 'Oh my God, this is going to be a nightmare with the traffic problems we already have.'"

Isaac Rodriguez, a 53-year-old sanitation supervisor who works the graveyard shift at East Bay

Municipal Utility District's sewage treatment plant, said his supervisor called him about 3:45 a.m. and told him to leave work because of a nearby explosion.

Rodriguez went outside with a co-worker and saw the I-880 connector about 50 feet above him engulfed in fire with flames leaping up to the I-580 connector above that.

"It was massive," Rodriguez said. "I saw movement and there was a man up there. I started talking to the guy. Are you the truck driver? 'Yes.' He said, 'I'm burned. I got out as soon as I could.' "

The driver seemed disoriented.

"It looked at one time he was walking toward the truck again. I believe he was in shock," Rodriguez said.

Rodriguez said he regretted not thinking to send a vehicle up to get the injured man. He and a coworker stood for some 40 minutes watching the freeway burn.

"It looked like a big slab of plastic because it was melted. It's made of steel and concrete and it was bent at both angles of the pillar. It really looked fake. ... It was an event last night that I'm not going to forget for a long time. It was incredible because it was a roar.

No sign of the truck remains at the scene. One Caltrans worker there early this morning held up his thumb and forefinger an inch apart to describe how big the tanker is now.

John Goodwin, a spokesman for the regional Metropolitan Transportation Commission, said the maze is one of the worst spots for traffic in the Bay Area.

"Westbound 80 is already the most congested route in the Bay Area, and it has been for many years," said Goodwin. "Also, the route coming off the Bay Bridge eastbound from Treasure Island is number 10 on the regional congestion list, and with 580 gone there will be a huge impact on that already-congested route."

Gov. Arnold Schwarzenegger plans to announce this evening that some Bay Area transit agencies will offer free rides tomorrow.

Goodwin anticipates that the impacts of the latest disaster will extend to roads far beyond the East Bay.

"This really strikes at the very center of the Bay Area freeway network," he said, predicting the closure of the two overpasses will "have a ripple effect" across the region.

"It will put more traffic on the San Mateo Bridge, the Golden Gate and the Richmond-San Rafael bridge," Goodwin said.

Some 35,000 cars travel the two-lane I-880 connector each day, and 45,000 cars use the I-580 connector, which is three lanes, said Caltrans Director Will Kempton.

Kempton said rebuilding the I-580 connector will cost tens of millions of dollars. The extent of the damage to the I-880 connector cannot be determined, he said, until the debris is cleared off.

"Initial indications are that it has been severely damaged," Kempton said "It will obviously need some work."

This wasn't the first major crash to clog the crucial traffic corridor through Oakland. On Feb. 5, 1995, a tanker loaded with liquefied gas crashed and burned on the MacArthur Maze, killing the driver, injuring 10 other people and creating an all-day traffic jam.

Witnesses said at the time that the tanker, which was changing lanes when it skidded out of control, created a 100-foot-tall fireball after it crashed on the connector between westbound I-80 and eastbound I-580, which is immediately northeast of the scene of today's crash.

The 1989 collapse of the Cypress Structure during the Loma Prieta earthquake caused years of detours and traffic problems in the same area.

Traffic on the affected roadways remains light this afternoon, apparently because many drivers canceled plans that would have required driving.

But major backups are expected, especially tonight when the Golden State Warriors take on the Dallas Mavericks tonight in the fourth game of their playoff series and Oakland's Oracle Arena.

San Francisco Mayor Gavin Newsom, in a press conference in San Diego Sunday, said that he has spoken to Gov. Arnold Schwarzenegger's staff about the crash aftermath -- and particularly how to accomplish repairs quickly.

Newsom said state officials are "fastracking" the repairs by using some of the same shortcuts that got Interstate 10 rebuilt quickly after Southern California's Northridge earthquake in 1994.

As many as 40 people stood gawking at the disaster scene at various points today. Most stood in a Caltrans construction area under the freeway and took pictures. Some said they had heard what sounded like train cars crashing together in the nearby freight yard this morning before they saw what had happened.

Everyone agreed that the weekday commute is going to be horrible.

"It's just going to be outrageous," said Gary Lewis of Oakland. "You'll have all this traffic merging at one time."

"They need to go back to the drawing board," said Sandra Moore of Oakland, who had driven over the collapsed section the night before. "I'm sorry this had to happen, but this is a wake-up call."

Larry Gordon of Oakland, was riveted by the scene of scorched steel and hundreds of yards of melted pavement.

"It's incredible, amazing," he said. "If fire can do that a steel structure like this, what can the next earthquake do?"

Henry Geronimo, 44, of West Oakland, watched the cleanup operation from a fence along Mandela Parkway.

"Coming home is going to be a big big problem," said Geronimo, who commutes to work in San Francisco as draftsman. "Do you know how many terrorists are looking at this? They're getting ideas."

Wanda Realegeno, a 42-year-old Richmond resident, said she isn't looking forward to her commute to school near Oakland Coliseum, which normally takes her onto the I-800 connector that the truck was on when it crashed.

"This is amazing," she said. "It's almost as bad as the earthquake. I'm just thinking: how am I going to get to work tomorrow? I was trying to figure out my path."

Chronicle staff writers Carolyn Jones, Michael Cabanatuan, Rick DeVecchio and John Wildermuth contributed to this report.

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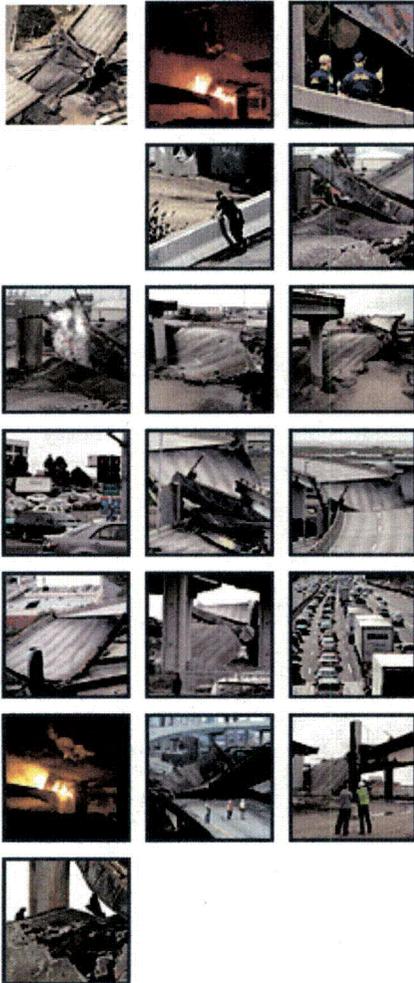
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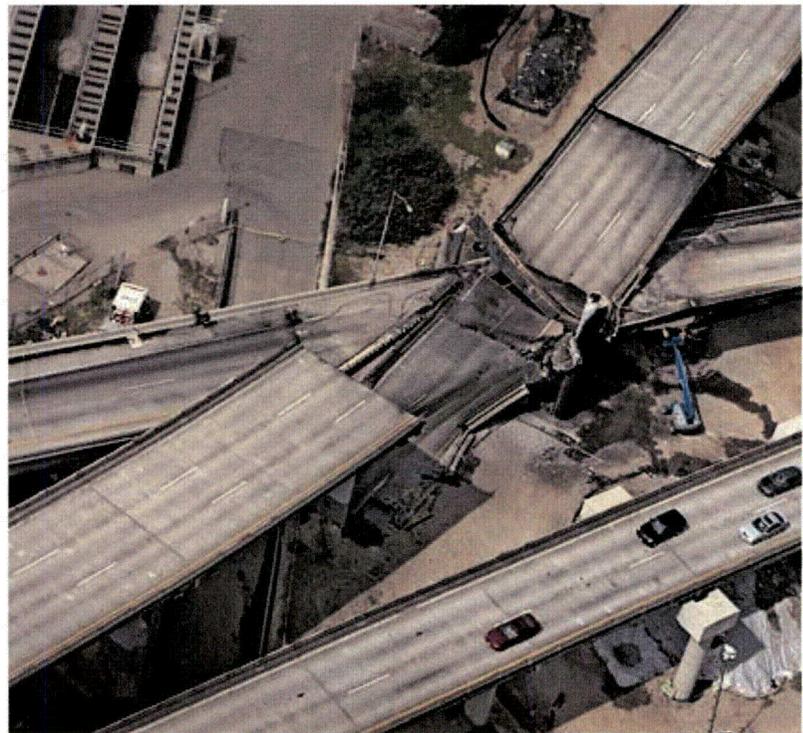
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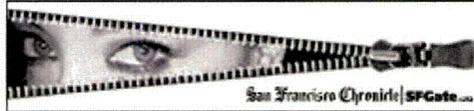
Aerial photos of the I-580/I-880 collapse caused by a tanker truck April 29, 2007. Special to the Chronicle photo by Robert Campbell



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EXHIBIT 22



Peek Inside the World of Violet Blue

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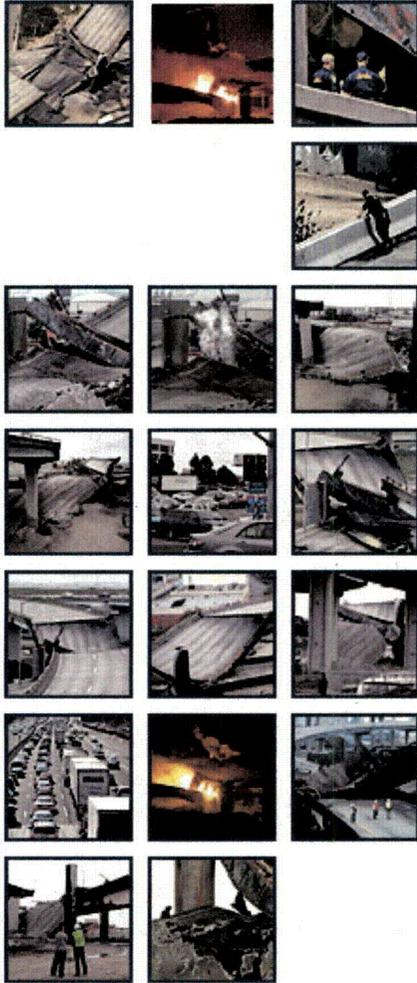
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THE MAZE MELTDOWN / Highway buckles: Tanker overturns connector, igniting thousands of gallons of gas -- key over crash: Eyewitness sees driver emerge from inferno

The scene as a tanker truck caught fire beneath the I-580 overpass
Special to The Chronicle photo by Philip Liborio Gangi



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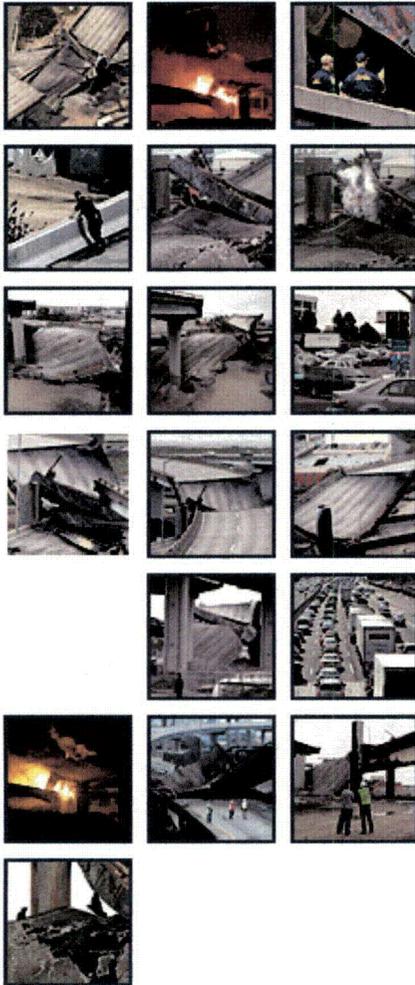
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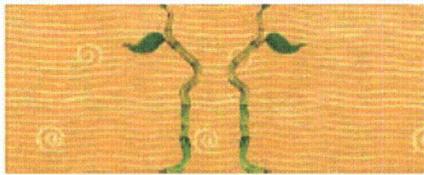
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THE MAZE MELTDOWN / Highway buckles: Tanker overturns connector, igniting thousands of gallons of gas -- key over crash: Eyewitness sees driver emerge from inferno

At approximately 3 a.m. Sunday, a tanker truck exploded, causing collapse. Chronicle photo by Lacy Atkins



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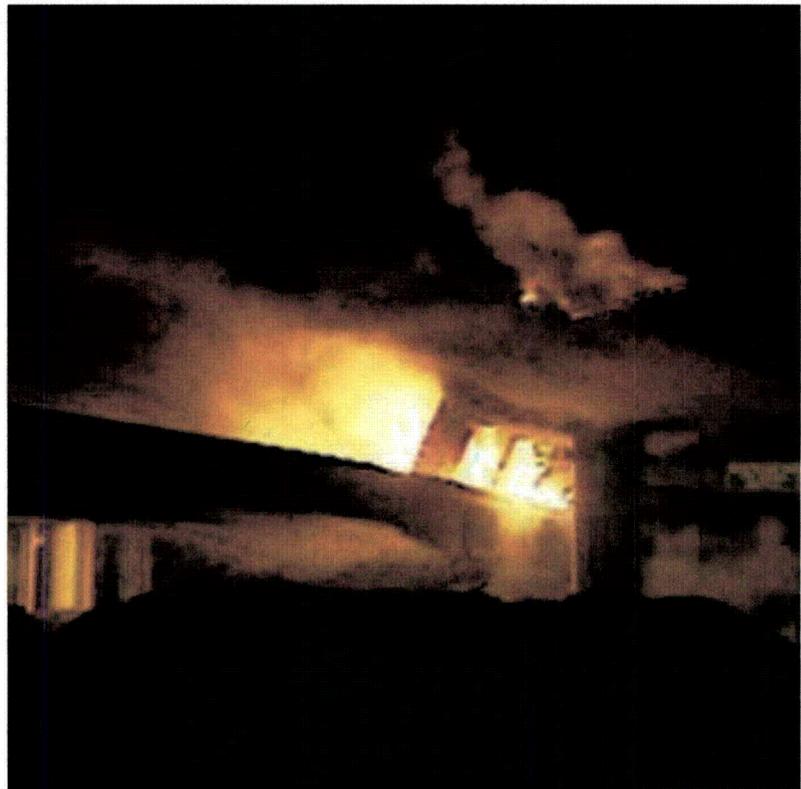
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THE MAZE MELTDOWN / Highway buckles: Tanker overturns on connector, igniting thousands of gallons of gas -- key overpass collapses: Eyewitness sees driver emerge from inferno

A section of freeway that funnels traffic onto the San Francisco-Oakland Bay Bridge is shown on fire, early Sunday April 29, 2007, after a gasoline tanker caught fire, authorities said. Associated Press photo by Bryan Carlin



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Technical Characteristics -- Boeing 767-200ER

Passenger Seating Configuration Typical 3-class Typical 2-class Typical 1-class	181 224 up to 255
Cargo	2,925 cu ft (82.9 cu m)
Engines maximum thrust	Pratt & Whitney PW4000 60,200 lb GE CF6-80C2 62,100 lb
Maximum Fuel Capacity	23,930 U.S. gal (90,770 L)
Maximum Takeoff Weight	395,000 lb (179,170 kg)
Maximum Range	6,590 nautical miles (12,200 km) Typical city pairs: New York to Beijing
Typical Cruise Speed at 35,000 feet	Mach 0.80 (530 mph, 851 kph)
Basic Dimensions Wing Span Overall Length Tail Height Interior Cabin Width	156 ft 1 in (47.6 m) 159 ft 2 in (48.5 m) 52 ft (15.8 m) 15 ft 6 in (4.7 m)

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EXHIBIT 23



San Francisco Workers Get Free Transit After Partial Freeway Collapse

Monday, April 30, 2007

Associated Press

OAKLAND, Calif. —

The threat of a nightmarish morning commute led many Bay Area residents to use public transportation Monday, one day after a fiery tanker crash caused a heavily trafficked section of freeway to collapse.

Westbound traffic into the city largely flowed as usual Monday morning, except for drivers slowing on interchange lanes headed to the Bay Bridge to look at the damage.

But officials warned the afternoon drive would bring bigger headaches as traffic leaving the city is diverted away from the collapsed eastbound segment.

The elevated section of highway that carries motorists from the San Francisco-Oakland Bay Bridge to a number of freeways was destroyed early Sunday when the heat of a burning gasoline tanker truck weakened part of one overpass, crumpling it onto another.

Authorities predicted that overall the crash would cause the worst disruption for commuters since the 1989 Loma Prieta earthquake damaged the Bay Bridge itself. The sight of the soaring freeway twisted into a fractured mass of steel and concrete was reminiscent of that quake's damage.

"The most worrisome thing is the afternoon commute coming out of San Francisco toward the maze because the traffic from the Bay Bridge fans out from across three freeways," said Jeff Weiss, a spokesman for the California Department of Transportation. "Taking away two-thirds of the capacity is really going to cause a bottleneck."

Nearly 75,000 vehicles used the damaged portion of the road every day. But because the accident occurred where three highways converge, authorities said it could cause problems for hundreds of thousands of commuters. State transportation officials said 280,000 commuters take the Bay Bridge into San Francisco each day.

To encourage motorists to switch to public transit, Gov. Arnold Schwarzenegger authorized free passage Monday on ferries, buses and the Bay Area Rapid Transit rail system. Extra trains were added and bus and ferry operators also expanded service.

Parking lots at outlying BART stations filled up earlier than usual for the morning commute.

"I'm mad," said Crystal McSwain, who has a commuter pass to take a trans-bay bus but switched to the more expensive BART. "My life is upside down, and I don't know how long it's going to take."

However, while some trains appeared more crowded than usual, BART officials said overall ridership did not appear greater than normal. Riders likely delayed their morning commute to avoid crowds, or stayed home, BART spokesman Jim Allison said.

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EXHIBIT 24

Transportation officials said it could take months to repair the damaged interchanges. Schwarzenegger declared a state of emergency to speed up cleanup and rebuilding efforts.

Despite the fire, the truck's driver walked away with only second-degree burns. James Mosqueda, 51, of Woodland, went to a gas station and called a taxi for a ride to a hospital, California Highway Patrol Officer Trent Cross said.

A preliminary investigation indicated Mosqueda may have been speeding on the curving road, he said. Mosqueda could not be reached for comment Monday; hospital officials would not transfer a call to him.

Police said he was headed from a refinery in Benicia to a gas station near the Oakland airport when the accident occurred early Sunday on the MacArthur Maze, a network of ramps and interchanges at the edge of downtown Oakland and about a half-mile from the Bay Bridge toll plaza.

Heat exceeded 2,750 degrees, softening and buckling steel beams and melting bolts, California Department of Transportation director Will Kempton said.

The cost of the repairs would likely run into the tens of millions of dollars, and the state was seeking federal disaster aid, Kempton said.

San Francisco Mayor Gavin Newsom said the accident showed how fragile the Bay Area's transportation network is, whether to an earthquake or terrorist attack.

"It's another giant wake-up call," Newsom said.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on June 1, 2007, 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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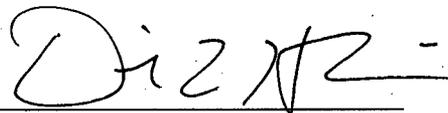
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Dated at Honolulu, Hawai'i, June 1, 2007.



DAVID L. HENKIN
Attorney for Intervenor
Concerned Citizens of Honolulu



EARTHJUSTICE

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June 1, 2007

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

Re: In the Matter of Pa'ina Hawaii, LLC, Docket No. 030-36974-ML, ASLBP No. 06-843-01-ML

To Whom It May Concern,

On behalf of Intervenor Concerned Citizens of Honolulu, we are filing an original and two copies of Intervenor's Amended Safety Contentions #13 and #14. Please note that the signature page for the declaration of Dr. Mete Sozen is a faxed copy. We did not receive the original in time for this filing (Dr. Sozen is currently out of the country), but will file it as soon as we receive it.

Sincerely,

David L. Henkin

DLH/tt
Enclosures

cc: Service list