

September 5, 2008

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
)	
Materials License Application)	ASLBP No. 06-843-01-ML

TESTIMONY OF FREDERICK C. STURZ

Q.1. Please state your name, occupation, and by whom you are employed.

A.1. My name is Frederick C. Sturz. I am employed by the Nuclear Regulatory Commission (NRC), Office of Nuclear Security and Incident Response (NSIR), Division of Security Policy. Since July 2002, I have held the position of Senior Safeguards Technical Analyst. In this position, I am responsible for evaluating potential radiological consequences from the loss of control, theft, diversion, sabotage, and improper disposition of radioactive materials. I am also responsible for evaluating policies related to protective strategies against malevolent uses of radioactive material.

Q.2. Please explain your duties in connection with the NRC Staff's environmental review of the license application submitted by Pa'ina Hawaii, LLC.

A.2. I was a principal contributor to Appendix B of the Final EA, "Consideration of Terrorist Attacks on the Proposed Pa'ina Irradiator."

Q.3. What is the purpose of your testimony?

A.3. The purpose of my testimony is to respond to the portions of "Intervenor Concerned Citizens of Honolulu's Initial Written Statement of Position," August 26, 2008, (Intervenor's Statement of Position), which challenge the Staff's use and disclosure of references in the terrorism analysis in the Final EA.

Q.4. The Intervenor challenges the Staff's omission of "Decision-Making Framework for Materials and Research and Test Reactor Vulnerability Assessments, SECY-04-0222" (SECY-04-0222) from the Appendix B reference list. Intervenor's Statement of Position at 21-23. First, please explain how you used SECY-04-0222 in your terrorism analysis.

A.4. SECY-04-0222 contains the NRC's security assessment framework, which the NRC uses to screen and assess the effectiveness of security measures at NRC-regulated facilities. Based on the results of these assessments, the NRC develops security compensatory measures and issues orders or enacts regulations requiring licensees, including irradiation licensees, to implement certain measures. I explain this in the last paragraph on page B-6. The reason I mentioned the security assessment framework in the "Vulnerability" section of Appendix B on pages B-5 and B-6 was simply to provide background information on how the NRC assesses potential vulnerabilities at licensed facilities and ensures that licensees have adequate security measures in place.

I did not use SECY-04-0222 for the "Consequences" analysis in Appendix B, at pages B-5 through B-7. The consequences identified by the framework in SECY-04-0222 are limited to early fatalities. Because the scope of my inquiry was broader—for purposes of the "Consequences" analysis in Appendix B, I considered both early fatalities and other impacts from radiation—I did not rely on the consequences analysis in SECY-04-0222 when preparing the terrorism analysis in the Pa'ina EA.

Q.5. Why wasn't SECY-04-0222 included in the Reference List for Appendix B?

A.5. I did not intentionally omit SECY-04-0222 from the Appendix B References. I referred to the NRC's security assessment framework in SECY-04-0222 only to provide background information on how the NRC assesses potential vulnerabilities at licensed facilities and to explain the basis for NRC-mandated security compensatory measures, such as those Pa'ina may be required to implement. I did not rely on SECY-04-0222 for the "Consequences" analysis in the Pa'ina EA. Upon further review, after the Board admitted the Intervenor's

contention regarding disclosure of references, I realized that the Staff had referred to the security assessment framework without citing the document containing the framework, so I added SECY-04-0222 as a reference when the Staff produced its *Vaughn* index and hearing file update on July 31, 2008.

Q.6. The Intervenor challenges the sufficiency of the Appendix B reference list based on the omission of a reference cited in “Draft Vulnerability Assessment of Material Facilities,” a document prepared for the NRC by Sandia National Laboratory (Sandia Report). The Intervenor argues that the Staff should have included in the reference list, and thus redacted and produced for the public, “Physical Protection Vulnerabilities Assessment and Guidance Development for 10 CFR Part 36 Licensees” by R.H. Yoshimura, *et al.* (Yoshimura Report). Intervenor’s Statement of Position at 22 n.6. Why did the Staff not include the Yoshimura Report in the Appendix B Reference List?

A.6. I was aware of portions of the Yoshimura Report in the past, probably a year or more prior to beginning my work on the Pa’ina EA. However, I did not consult the Yoshimura Report when preparing Appendix B. The Yoshimura Report’s conclusions are summarized in the “Draft Vulnerability Assessment of Material Facilities,” and those conclusions are what I considered in preparing Appendix B. The “Draft Vulnerability Assessment of Material Facilities,” was listed as a reference in Appendix B. I did not list the Yoshimura Report as a reference because I did not directly consult the report itself when preparing Appendix B.

Q.7. The Intervenor implies that the Staff is withholding classified documents used by the Staff in developing Appendix B. Intervenor’s Statement of Position at 24. Is the Staff withholding any Appendix B references from public disclosure?

A.7. No, the Staff is not withholding any document, classified or otherwise, that was relied upon in developing Appendix B. The Staff has produced all of the references, some in redacted form. The Reference List is complete with the addition of SECY-04-0222, which was added to the record on July 31, 2008.

Q.8. Does this complete your testimony?

A.8. Yes.

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AFFIDAVIT OF FREDERICK C. STURZ

I, Frederick C. Sturz, do hereby declare under penalty of perjury that my statements in the foregoing testimony and my statement of professional qualifications are true and correct to the best of my knowledge and belief.

/Original signed by/

Frederick C. Sturz

Executed in Rockville, Maryland
this 5th day of September, 2008