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October 7, 2008 (8:00am)

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OFFICE OF SECRETARY,  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

October 6, 2008

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  
"Licensee Pa'ina Hawaii, LLC's  
Response To NRC Staff's Motion  
To Dismiss . . . ."

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 the above document.

This document was 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](mailto:fpbenco@yahoo.com). Thank you.

Very respectfully yours,

  
Fred Paul Benco

Encls.

cc: All parties on Certificate of  
Service

Template Secy-037

DS-03

October 6, 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. 030-36974
	)	ASLBP No. 06-843-01-ML
Materials License Application	)	

LICENSEE PA'INA HAWAII, LLC'S RESPONSE TO  
NRC STAFF'S MOTION TO DISMISS PORTIONS  
OF AMENDED ENVIRONMENTAL CONTENTIONS  
AND STATEMENT OF POSITION REGARDING  
REQUEST FOR LEAVE TO SEEK SUMMARY  
DISPOSITION

Licensee PA'INA HAWAII, LLC ("Pa'ina") submits herein its response to the NRC STAFF's ("Staff") Motion to Dismiss/Request for Leave filed September 26, 2008. The STAFF's Motion seeks to weed out those contentions of INTERVENOR CONCERNED CITIZENS OF HONOLULU ("Intervenor") that have no further viability.

First, on August 25, 2008 Pa'ina filed its own Motion to Reinstate, which sought to reinstate the "categorical exclusion" status for its proposed irradiator. The Motion to Reinstate was filed because, for all intents and purposes, this case has reverted back to the identical litigation posture that it had in August 2005, when Pa'ina's irradiator had "categorical exclusion" status.

Thus, subject to that Motion to Reinstate, Pa'ina supports the Motion to Dismiss filed by the NRC Staff.

What should be stated, but hasn't been, is the fact that all of the minor or non-points raised by Intervenor were subsumed in the NRC's public consideration and subsequent adoption of 10 C.F.R. Part 36, Part 51, and Part 20. All of the minor or non-points raised by Intervenor were subsumed by the "categorical exclusion" of irradiators found in 10 C.F.R. Sec. 51.22(c)(14)(vii). Finally, all of the minor or non-points were subsumed in the NRC's 1993 Statement of Considerations ("SOC") which formed the basis of the Commission's March 17, 2008 Memorandum and Order (CLI-08-03)

Because the minor or non-points raised by INTERVENOR have all been subsumed by the Commission in its regulations and SOC, this matter has been relegated to a mere "question-and-answer" session characterized, not by weighty or relevant issues, but rather irrelevant, trivial matters.<sup>1</sup> If Intervenor or any members of the public wish to learn about the finer details or nuances of underwater irradiators, Co-60, or earthquakes on Oahu, there are

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<sup>1</sup> If, as has already been determined, there are no safety impacts "on-site or off-site" due to Pa'ina's proposed irradiator, of what remaining material consequence is it that natural phenomena occasionally occur in Hawaii, albeit not in Pa'ina's vicinity? Likewise, if Pa'ina's proposed underwater irradiator will have no on-site or off-site safety impacts, of what material consequence is the study of energy-hogging, unreliable and inadequate e-beam with x-ray irradiators? There is none, and there is no reason for such a study.

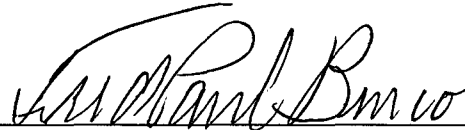
academic courses freely available to them in many universities throughout the country. Private tutorials are also presumably available.

However, because all of the minor points and non-points raised by Intervenor were already repeatedly subsumed by the Commission as noted above, then this matter has been reduced to the "gratuitous analyses" condemned by the Commission in its March 17, 2008 Memorandum and Order.

This case has no remaining weighty issues left. Subject to that condition, Pa'ina supports the Motion to Dismiss of the Staff.

DATED: Honolulu, Hawaii

October 6, 2008



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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "LICENSEE PA'INA HAWAII, LLC'S RESPONSE TO NRC STAFF'S MOTION TO DISMISS PORTIONS OF AMENDED ENVIRONMENTAL CONTENTIONS AND STATEMENT OF POSITION REGARDING REQUEST FOR LEAVE TO SEEK SUMMARY DISPOSITION" dated October 6, 2008 in the captioned proceeding have been served as shown below by deposit in the regular United States mail, first class, postage prepaid, this October 6, 2008. Additional service has also been made this same day by electronic mail as shown below:

Administrative Judge  
Thomas S. Moore, Chair  
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Dr. Anthony J. Baratta  
Administrative Judge  
Atomic Safety and Licensing Board  
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DATED: Honolulu, Hawaii, October 6, 2008.

A handwritten signature in cursive script, reading "Fred Paul Benco", is written over a horizontal line.

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