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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 AMENDMENT
TO ENVIRONMENTAL CONTENTION 3 RE: TRANSPORTATION ACCIDENTS**

I. INTRODUCTION

On December 21, 2007, the Atomic Safety and Licensing Board admitted several portions of intervenor Concerned Citizens of Honolulu's Environmental Contention 3, including the challenge to the Nuclear Regulatory Commission ("NRC") Staff's failure to consider in its environmental assessment ("EA") "transportation accidents involving the shipment of Co-60 sources to and from [Pa'ina Hawaii, LLC's] proposed irradiator." 12/21/07 Board Order (Ruling on Admissibility of Intervenor's Amended Environmental Contentions) at 17-18. Over a year later, in responding to Concerned Citizens' Supplemental Statement of Position on March 5, 2009, the Staff, for the first time, presented an analysis of the likelihood "any radiation would be released as the result of an accident occurring during the transport of cobalt-60 to Pa'ina's irradiator." 3/5/09 Staff Response to Intervenor's Supplemental Statement of Position at 36. Pursuant to 10 C.F.R. § 2.309(c) and (f)(2) and the Board's May 1, 2006 order, Concerned Citizens seeks leave to amend the portion of Environmental Contention 3 related to transportation accidents "to raise specific challenges regarding the new information" set forth in the Staff's latest submittal. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2;

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Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002); see also 5/1/06 Board Order at 2-3.

As discussed below, the Staff's newly minted analysis of transportation accidents does not cure its violations of the National Environmental Policy Act ("NEPA"). As a threshold matter, the Staff failed to make even a preliminary analysis of transportation accidents available to the public during the comment period on the draft EA, violating NEPA's public participation requirements, and, thus, cannot rely on its belated analysis to satisfy NEPA. See Part III, infra. Moreover, even if the Staff otherwise could properly rely on an analysis prepared long after issuance of the Final EA, the information presented in its March 5, 2009 response falls far short of satisfying NEPA's mandate to take a "hard look" at potential environmental impacts from transportation accidents. Klamath-Siskiyou Wilderness Center v. Bureau of Land Management, 387 F.3d 989, 1001 (9th Cir. 2004). See Parts IV and V, infra.

The Board should admit Concerned Citizens' amendment to Environmental Contention 3 since the issues it raises 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 this amended contention. 10 C.F.R. § 2.309(f)(1)(iv); see Part VI, infra.

II. PROCEDURAL AND FACTUAL BACKGROUND¹

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

¹ The facts of this case have been set forth in detail several times. Accordingly, Concerned Citizens will focus here on only those facts most relevant to its amendment to Environmental Contention 3.

Citizens' hearing request included contentions regarding the NRC's failure to explain its application of a categorical exclusion to Pa'ina's proposed irradiator (Environmental Contention 1) and failure to prepare an 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 its two environmental contentions were admissible. Pa'ina Hawaii, LLC (Material License Application), LBP-06-04, 63 NRC 99 (2006).

On April 27, 2006, the Board accepted the NRC Staff's and Concerned Citizens' joint stipulation settling Environmental Contentions 1 and 2. 4/27/06 Board Order (Confirming Oral Ruling Granting Motion to Dismiss Contentions). 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. 3/20/06 Joint Stipulation and Order Regarding Resolution of Concerned Citizens' Environmental Contentions at ¶¶ 1-2.

In December 2006, the Staff issued the Draft EA (ML063470231) and placed on ADAMS the Draft Topical Report on the Effects of Potential Natural Phenomena and Aviation Accidents at the Pa'ina Hawaii, LLC Irradiator Facility ("Draft Topical Report") (ML063560344). See 71 Fed. Reg. 78,231 (Dec. 28, 2006). On February 8, 2007, Concerned Citizens timely submitted comments on the Draft EA challenging, among other things, the Staff's failure "to examine the likelihood and consequences of accidents involving transportation of Co-60 sources to and from the proposed irradiator, without which the facility could not function." 2/8/07 Earthjustice Letter at 5 (ML070470615). On February 9, 2007, Concerned Citizens timely filed environmental and

safety contentions relating to matters discussed in the Draft EA and Draft Topical Report, including a challenge to the Staff's failure to evaluate potential environmental impacts associated with transportation accidents. 2/9/07 Contentions re: Draft EA and Draft Topical Report at 20; see also 1/10/07 Board Order at 2.

On August 13, 2007, the Staff served its Final EA and associated FONSI. ML072250561. Four days later, the Staff issued NRC License No. 53-29296-01 to Pa'ina for possession and use of sealed sources in its proposed irradiator. ML072260171; ML072320269.

On September 4, 2007, Concerned Citizens timely filed amended environmental contentions challenging the Final EA's failure to satisfy NEPA. See 12/21/07 Board Order at 4. Among other things, Amended Environmental Contention 3 reasserted Concerned Citizens' challenge to the Staff's complete failure to examine in its EA "the likelihood and consequences of accidents that might occur during the annual transport of Co-60 sources to and from the proposed irradiator." 9/4/07 Concerned Citizens' Amended Environmental Contentions at 18.

In opposing admission of the portion of Environmental Contention 3 challenging its failure to evaluate potential environmental impacts associated with transportation accidents, the Staff consistently argued that consideration of such impacts was "outside the scope of the present proceeding." 3/12/07 Staff Response to Contentions re: Draft EA and Draft Topical Report at 9; 9/20/07 Staff's Response To Amended Environmental Contentions at 11. The Board disagreed and, on December 21, 2007, admitted "the part of [Concerned Citizens'] contention challenging the Staff's failure to consider transportation accidents." 12/21/07 Board Order at 17; see also id. at 18-19.

On August 26, 2008, the Staff submitted its Initial Statement of Position on Amended Environmental Contentions 3 and 4, which once again presented the Staff's claim it "was not

required to analyze transportation impacts” in its EA. 8/26/08 Staff’s Initial Statement of Position at 57.

On March 5, 2009, the Staff submitted its Response to Intervenor’s Supplemental Statement of Position. In that document, the Staff, for the first time, presented an analysis of the likelihood that “radiation would be released as the result of an accident occurring during the transport of cobalt-60 to Pa’ina’s irradiator.” 3/5/09 Staff Response to Supplemental Statement of Position at 36. That analysis was prepared by Earl Easton, an NRC employee who did not “have any role in the NRC Staff’s environmental review of the license application submitted by Pa’ina Hawaii, LLC.” Staff Exh. 70: Easton Testimony at Q.2; see also id. at A.2. Indeed, Mr. Easton had “only become familiar with this case” in February 2009, a year and a half after the Staff completed its EA for Pa’ina’s proposed irradiator. Id. at A.2.

III. THE STAFF’S POST HOC ANALYSIS OF TRANSPORTATION ACCIDENTS CANNOT SATISFY ITS NEPA OBLIGATIONS

The Staff improperly seeks to rely on the analysis set forth in Mr. Easton’s testimony as “support for the Staff’s conclusion” that “there would be no significant environmental impacts associated with the transportation of sources.” 3/5/09 Staff Response to Intervenor’s Supplemental Statement of Position at 36. As this Board noted in admitting Amended Environmental Contention 3, the EA the Staff prepared for Pa’ina’s proposed irradiator “omitted any consideration of impacts from transportation accidents, the subject of the Intervenor’s challenge here.” 12/21/07 Board Order at 18 n.62. The Staff cannot satisfy its obligation under NEPA to take a “hard look” at the potential environmental impacts associated with Pa’ina’s proposed irradiator by relying on an analysis of transportation accidents prepared long after the public comment period on the Draft EA closed and the Final EA issued. Klamath-Siskiyou

Wilderness Center, 387 F.3d at 1001; see also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983) (“It is ... settled that the NRC has the burden of complying with NEPA”); Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC at 385 (“In the end, it is the NRC Staff that ‘bears the ultimate burden of demonstrating that environmental issues have been adequately considered’”).

The Staff’s reliance on an analysis of transportation accidents that was never put out for public review and comment during preparation of the EA ignores the vital role the public plays in “ensur[ing] that an agency is cognizant of all of the environmental trade-offs that are implicit in a decision.” California v. Block, 690 F.2d 753, 770-71 (9th Cir. 1982). The Ninth Circuit has long emphasized that “NEPA’s public comment procedures are at the heart of the NEPA process.” Id.; see also 40 C.F.R. § 1500.1(b) (“public scrutiny [is] essential” to ensuring the environmental information available to decision-makers is “of high quality”). For public review to serve NEPA’s purposes, analyses like Mr. Easton’s must be “reasonably available for inspection by potentially interested persons within the time allowed for comment.” 40 C.F.R. § 1502.21. The Staff cannot cure its prior omission by releasing documents over a year and a half after the close of the last public comment period on the Draft EA. See 72 Fed. Reg. 31,866 (June 8, 2007) (public comment period on draft Appendix B closed July 9, 2007). Allowing the Staff to buttress its analysis with information that was unavailable during the public comment period on the EA would “insulate[] its decision-making process from public scrutiny,” “render[ing] NEPA’s procedures meaningless.” Block, 690 F.2d at 771.

Moreover, allowing the Staff to justify its issuance of a license to Pa’ina based on previously unprepared and undisclosed information about transportation accidents would

undermine one of NEPA's central purposes: to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b) (emphasis added). The Staff's refusal to conduct any analysis of transportation accidents until forced to do so in the course of this proceeding makes a mockery of the statute's "informational role." Department of Transportation v. Public Citizen, 541 U.S. 752, 768 (2004). Citizens should not have to seek Board review to ensure the Staff "has indeed considered environmental concerns in its decisionmaking process;" the information in the EA itself is supposed to provide those assurances. Public Citizen, 541 U.S. at 768 (quoting Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, 462 U.S. 87, 97 (1983)).

In Bering Strait Citizens for Responsible Development v. United States Army Corps of Engineers, 524 F.3d 938 (9th Cir. 2008), the Ninth Circuit recently held:

An agency, when preparing an EA, must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process.

Id. at 953 (emphasis added). Here, the Staff not only failed to provide the public with sufficient environmental information regarding transportation accidents during the EA's preparation, but "omitted any consideration of impacts from transportation accidents" from both draft and final documents. 12/21/07 Board Order at 18 n.62 (emphasis added). This omission is fatal to compliance with NEPA's public participation mandate, requiring circulation for public review and comment of a revised draft EA that includes discussion of transportation impacts.

The Staff's claim its failure to address transportation impacts in the Final EA is harmless since members of the public concerned about the inadequacy of the Staff's belated analysis can seek leave to file a late-filed contention or "participate in the hearing as a non-party under the provisions of 10 C.F.R. § 2.315," 3/5/09 Staff Response to Intervenor's Supplemental Statement

of Position at 46, improperly seeks to shirk its burden to “[m]ake diligent efforts to involve the public in preparing and implementing [its] NEPA procedures.” 40 C.F.R. § 1506.6(a). In Bering Strait Citizens, the Ninth Circuit made clear that the litmus test for determining if NEPA’s public participation requirements are satisfied is whether “the permitting agency actively sought and achieved public participation” in the preparation of its EA. 524 F.3d at 952 (emphasis added). It is up to the Staff to ensure information about Pa’ina’s proposed irradiator is “widely disseminated throughout the community and environmental information [is] reasonably and thoroughly tendered to the public ... before issuing its EA,” so the public will have ample opportunity to provide input. Id. at 953 (emphasis added). NEPA does not allow the Staff to erect obstacles to public participation by forcing members of the public to monitor ADAMS after the issuance of an EA to determine if and when the Staff submits a new analysis and then to hire a lawyer in the hope of getting a chance to submit input via a late-filed contention pursuant to 10 C.F.R. § 2.309 or limited appearance or amicus brief pursuant to 10 C.F.R. § 2.315.

Nor does the NRC’s hearing process allow the Staff to cure defects in its EA by adducing evidence at hearing that “substantially modif[ies]” the information set forth in the EA. Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 705 (1985). In Limerick, the Appeal Board concluded that Commission practice permitted amendment of a NEPA document based on evidence presented at hearing, but only because the new evidence “did not substantially modify” the analysis set forth in the initial environmental review. Id. Significantly, in Limerick, the NEPA document in question “did emphasize the dominant contributors to total risk and did disclose the means by which a professional could estimate the other forms of risk.” Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2), LBP-84-31, 20 NRC 446, 551 (1984) (emphasis added). In contrast, the EA put out for

public review here “omitted any consideration of impacts from transportation accidents” associated with Pa‘ina’s proposed irradiator. 12/21/07 Board Order at 18 n.62 (emphasis added). Thus, contrary to the Staff’s claims, this is “a case where the Staff’s testimony addresses broad areas of environmental impact about which the EA is silent.” 3/5/09 Staff Response to Intervenor’s Supplemental Statement of Position at 41.

“[I]t is not a licensing board’s function to backstop the staff’s responsibility for conducting NEPA analyses.” Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), ALAB-479, 7 NRC 774, 793 (1978). Accordingly, “an inadequate environmental analysis by the staff may not always be remediable simply by taking more evidence into account at a subsequent licensing board hearing.” Id. Where, as here, the Staff seeks to present an analysis of environmental impacts that was completely absent from its EA, the Staff’s evidence “depart[s] so markedly from the positions espoused or information reflected in the [EA] as to require formal redrafting and recirculation for comment ... before the licensing board gives any further consideration to the subjects involved.” Allied-General Nuclear Services (Barnwell Facility), ALAB-296, 2 NRC 671, 680 (1975); cf. Bering Strait Citizens, 953 (agency must provide “as much environmental information as is practicable, prior to completion of the EA, so that the public has a sufficient basis to address those subject areas that the agency must consider in preparing the EA”) (quoting Sierra Nevada Forest Protection Campaign v. Weingardt, 376 F. Supp. 2d. 984, 991 (E.D. Cal. 2005)).

IV. THE STAFF HAS NOT TAKEN THE REQUISITE “HARD LOOK” AT POTENTIAL IMPACTS FROM TRANSPORTATION ACCIDENTS

As discussed above, the Board should reject the Staff’s post hoc attempt to cure the EA’s omission of any discussion of the potential environmental impacts associated with transportation

accidents and, instead, should require the Staff to circulate for public review and comment a revised draft EA containing any new analysis it now proposes. Even if the Board could properly consider the Staff's proffered testimony, however, it should still find the Staff failed to comply with NEPA's command to take a hard look at potential impacts from accidents involving shipments of Co-60 sources to and from Pa'ina's proposed irradiator.

The stated purpose of Mr. Easton's testimony is "to address whether there are any reasonably foreseeable environmental impacts associated with the annual shipment of cobalt-60 sources to Pa'ina's irradiator." Easton Testimony at A.3. Specifically with respect to transportation accidents, Mr. Easton opines that "[a]n accident that would result in the release of Cobalt 60, and that could result in a significant environmental impact is not a reasonably foreseeable event." Id. at A.7.² While Mr. Easton provides some limited analysis regarding the "frequency of accidents that would breach a Type B package used to ship cobalt-60" (albeit critically flawed analysis, as discussed below), he provides no quantification of the impacts that might ensue should such an accident occur. Id. Instead, Mr. Easton merely asserts:

In the extremely unlikely event that a breach in a cobalt-60 shipping package should occur, it is unlikely that cobalt-60 would be widely dispersed into the environment. The impact from such an event would be very localized and, with proper recovery, short-lived.

Id. (emphasis added).

It is well-established in the Ninth Circuit that "[g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided." Klamath-Siskiyou, 387 F.3d at 994 (quoting Neighbors of

² While Mr. Easton speaks in terms of what is "reasonably foreseeable," his analysis, if believed, supports, at most, a conclusion there is a low probability of significant impacts from a transportation accident involving Co-60 sources. See Resnikoff Declaration ¶ 9. NEPA deems impacts "reasonably foreseeable" – and requires their analysis and public disclosure – "even if their probability of occurrence is low." 40 C.F.R. § 1502.22(b)(3).

Cuddy Mountain v. United States Forest Service, 137 F.3d 1372, 1380 (9th Cir 1998)). If it is possible objectively to quantify an impact, NEPA requires that the agency do so. Id. Here, the Staff has not offered any justification for Mr. Easton's failure to quantify either the likelihood a transportation accident would result in wide dispersal of Co-60 or the consequences should such an accident occur. Moreover, even assuming Mr. Easton were correct in concluding that a localized impact is most the likely outcome, no explanation is provided for his failure to quantify the likelihood of such an incident or the magnitude of impacts that would result.

As Dr. Marvin Resnikoff discusses in his attached declaration, even where transportation accidents do not result in wide dispersal of radioactive material, significant impacts can occur. The release of a single 17-curie iridium-192 radiographic source as a result of a transportation accident outside Houston, Texas, in 1988 resulted in exposures of several individuals to excessive radiation doses. Resnikoff Declaration ¶ 6. Without the benefit of any quantified analysis, the NRC and the public are improperly left to speculate about the likelihood of such harmful health impacts occurring should Pa'ina's proposed project go forward. See 40 C.F.R. § 1500.1(b) ("NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken"), (c) ("The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences")

In addition to failing to provide the requisite quantification of impacts, the Staff violated its duty to ensure the information set forth in Mr. Easton's testimony was "of high quality" and that his discussion and analysis had "scientific integrity." Id. §§ 1500.1(b), 1502.24; cf. Western Watersheds Project v. Bureau of Land Management, 552 F. Supp. 2d 1113, 1129 (D. Nev. 2008) (40 C.F.R. § 1502.24 applies to EAs). Numerous methodological flaws and factual inaccuracies

preclude Mr. Easton's analysis from providing the requisite hard look at potential transportation accidents.

Central to Mr. Easton's conclusion that significant impacts from transportation accidents are unlikely is his claim that, "during the past 30 years, there has never been a reported case of a release of radioactive material from a Type B package during either routine transportation or for shipments involved in an accident." Easton Testimony at A.6; see also id. at A.7 ("In practice, there has never been a release of radioactive material from a Type B package ... for shipments involved in an accident"). This claim, however, is factually incorrect. As discussed in Dr. Resnikoff's testimony, since 1979, there have been at least two reported transportation accidents involving Type B packages that have resulted in releases of radioactive material. Resnikoff Declaration ¶¶ 5-6 & Exhs. A & B. As noted above, the accident in 1988 involving a shipment of a 17-curie radiographic source resulted in several individuals receiving excessive radiation doses. Id. ¶ 6. In light of these two actual accidents involving releases from Type B casks, Mr. Easton's claim that an accident resulting in the release of the far greater quantities of Co-60 that would be transported to and from Pa'ina's proposed irradiator is not "reasonably foreseeable" is simply not credible. Easton Testimony at A.7.

In addition, the geographic scope of Mr. Easton's analysis is far too narrow to satisfy NEPA's mandate to take a hard look at the potential impacts of Co-60 shipments involving Pa'ina's proposed facility. See Resnikoff Declaration ¶ 3. In his testimony, Mr. Easton states he considered only the potential for truck accidents during approximately five miles of highway travel to Pa'ina's proposed irradiator, presumably from Honolulu Harbor. Easton Testimony at A.7. Mr. Easton ignores that, as stated in Pa'ina's license application, the proposed irradiator's Cobalt-60 sources would be supplied by either Nordion, which is located in Canada, or Reviss,

whose Cobalt-60 comes from Russia. 6/20/05 Pa'ina Application for Material License at 3 (ML052060372); Resnikoff Declaration ¶ 3. Thus, the sources for the proposed irradiator would travel many thousands of miles, orders of magnitude greater than the five miles of transit on which Mr. Easton based his analysis. Resnikoff Declaration ¶ 3.

Moreover, Mr. Easton's analysis ignored that the sources would travel between the suppliers and the proposed irradiator by several modes of transportation, not merely by truck. Id. To get to and from Hawai'i, the sources would likely travel by ship and, possibly, by air. Id. In addition, to get between the suppliers and the nearest port or airport, the sources might travel by train. Id. Mr. Easton failed to analyze the potential for accidents involving these other transportation modes, as well as the accident rates in the foreign countries and high seas where the sources would spend most of their time in transit. Id.

Mr. Easton's conclusion that the impact from an accident that breached a Co-60 shipping package would be insignificant relies on his assumption there would be "proper recovery" of any dispersed radioactive material. Easton Testimony at A.7. He fails, however, to provide any "scientific or other sources" to justify the reasonableness of this assumption. 40 C.F.R. § 1502.24. In the case of the Houston accident in 1988, the radiation source was not recovered for several hours, resulting in excessive exposures to numerous individuals. Resnikoff Declaration ¶ 7. This incident highlights that, despite best efforts, local communities often are neither trained nor equipped to handle radiation-related accidents, threatening significant harm from radiation exposures that Mr. Easton and the Staff improperly ignore. Id.

V. MR. EASTON'S DISCUSSION OF NUREG-0170 DOES NOT SATISFY THE STAFF'S DUTY TO TAKE A "HARD LOOK" AT POTENTIAL IMPACTS FROM TRANSPORTATION ACCIDENTS

Through Mr. Easton's testimony, the Staff once again improperly seeks to use NUREG-0170, which Mr. Easton describes as "the Commission's generic environmental impact statement [{"GEIS "}] on radioactive material," to buttress its conclusion that transportation accidents would not result in significant environmental impacts. Easton Testimony at A.8. In admitting Amended Environmental Contention 3, the Board noted that "[n]either the draft nor the final EA cite this GEIS, much less summarize in the final EA the issues and reasoning of the generic study as is required when incorporating such environmental documents." 12/21/07 Board Order at 18-19. There is no reason for the Board to question its earlier decision, which is well-grounded in NEPA's requirements.

As the Board correctly concluded in its earlier order, the mere existence of an EIS discussing potential impacts from transportation of radioactive materials would not excuse the Staff's failure to address such impacts in the EA. While NEPA allows agencies to "tier" environmental analyses, to comply with the tiering regulations, the EA would have had to "summarize the issues discussed in the broader statement and incorporate statements from the broader statement by reference," concentrating on the transportation-related issues specific to Pa'ina's proposed irradiator. 40 C.F.R. § 1502.20; see also id. § 1508.28. The EA did not do this. It made no mention of NUREG-0170 (not even in the references), failed to disclose the calculations and data underlying its conclusion that "[t]ransportation impacts from normal operations would be small," and included no discussion at all of transportation impacts from abnormal operations (i.e., accidents). Final EA at 8 (emphasis added).

The Draft EA likewise was silent regarding NUREG-0170, which means that, during the public comment period, the public, including Concerned Citizens, was unaware of its existence and alleged relevance to evaluating Pa'ina's proposal. See Draft EA at 8. Consequently, no one was in a position to comment on whether NUREG-0170, which was prepared over three decades ago, adequately analyzes issues related to transporting Co-60 to and from Hawai'i. Because NEPA recognizes the vital role the public plays in ensuring agencies do not sweep important considerations under the rug, if the Staff had intended to rely on NUREG-0170, it was required to state, in the Draft EA, "where the earlier document [was] available." 40 C.F.R. § 1502.20. Likewise, the NRC's guidance for preparing EAs provides that "[t]he new environmental document must identify the document from which it is tiered and both documents must be available for public review." NUREG-1748, § 1.6.2. The Staff failed to comply with any of these requirements.

Even if the Staff could cure its failure to give the public the opportunity to review NUREG-0170 during the comment period on the Draft EA by presenting Mr. Easton's testimony at hearing (and, as discussed in Part III, supra, it cannot), the testimony still would not satisfy NEPA's requirements for tiering. A fundamental requirement of tiering is that "the same issues" are involved in both the "broad environmental impact statement" and the "subsequent ... environmental assessment." In this case, however, NUREG-0170 expressly notes it "does not specifically consider facets unique to the urban environment" and that "[a] separate study specific to such considerations is being conducted and will result in a separate environmental statement specific to such an urban environment." Staff Exh. 72: NUREG-0170 at iv (emphasis added). Since the proposed site for Pa'ina's irradiator is located in a highly urbanized environment, as is the entire transportation route from Honolulu Harbor, any reliance by Mr.

Easton or the Staff on NUREG-0170's analysis of non-urban environments would be misplaced. Resnikoff Declaration ¶ 8. Moreover, NUREG-0170's analysis is now more than three decades old. Mr. Easton and the Staff fail to address whether, in light of all the circumstances that have changed in the intervening years, NUREG-0170 has any continuing validity in general, much less to the urbanized environment where Pa'ina's proposed site is located. Id.

VI. THE AMENDMENT TO ENVIRONMENTAL CONTENTION 3 SATISFIES THE REQUIREMENTS FOR ADMISSION

A. The Amendment Satisfies 10 C.F.R. § 2.309(f)(1).

In the foregoing discussion, Concerned Citizens has provided specific statements of the factual and legal issues to be raised, a brief explanation of the basis for its 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 issue raised by the amended portion of Environmental Contention 3 – whether the Staff carried its burden under NEPA to take a “hard look” at potential environmental impacts associated with transportation accidents involving the shipment of Cobalt-60 sources to and from Pa'ina's proposed irradiator – is 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 Duke Power Co., CLI-83-19, 17 NRC at 1049 (“the adequacy of the NRC's environmental review ... is an appropriate issue for litigation in a licensing proceeding”). By pointing out the deficiencies of the Staff's analysis of transportation accidents, Concerned Citizens has established its contention presents genuine disputes on material issues in accordance with 10 C.F.R. § 2.309(f)(1)(vi).

B. The Amendment Satisfies 10 C.F.R. § 2.309(f)(2).

Concerned Citizens' amendment to Environmental Contention 3 challenges the adequacy under NEPA of the analysis of potential environmental impacts from accidents while transporting Cobalt-60 sources to and from Pa'ina's proposed irradiator that the Staff presented for the first time in its response to Concerned Citizens' Supplemental Statement of Position. Prior to the Staff's service of its response on March 5, 2009, it had never before set forth an analysis of such impacts, arguing instead it "was not required to analyze transportation impacts" in its EA. 8/26/08 Staff's Initial Statement of Position at 57. As Staff witness Earl Easton conceded in his testimony, he had no "role in the NRC Staff's environmental review of the license application submitted by Pa'ina Hawaii, LLC" and "only [became] familiar with this case in approximately the last month" prior to the Staff's submittal of his testimony on March 5, 2009. Easton Testimony at Q.2, A.2. Thus, the information upon which the proffered amendment to Environmental Contention 3 is 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 its May 1, 2006 order, the Board instructed Concerned Citizens to file amended contentions not otherwise encompassed by the Board's schedule "within 30 days of the ... document underlying the late-filed contention." 5/1/06 Board Order at 2. Since the Staff served its Response to Intervenor's Supplemental Statement of Position on March 5, 2009, the last day of the thirty-period fell on Saturday, April 4, 2009, and, consequently, Concerned Citizens' time to file this amended contention was extended until Monday, April 6, 2009, "the next day which is neither a Saturday, Sunday, nor holiday." 10 C.F.R. § 2.306 (2007); see also 72 Fed. Reg. 49,139, 49,139 (Aug. 28, 2007) (amendments to, inter alia, 10 C.F.R. § 2.306 "apply only to new

proceedings noticed on or after” October 15, 2007). Accordingly, the amended contention is “timely.” 10 C.F.R. § 2.309(f)(2)(iii).

C. The Amendment Satisfies 10 C.F.R. § 2.309(c).

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.” 6/22/06 Board Order at 13. “Rather, the first factor, ‘good cause,’ is the most important factor.” Id.

In this case, the Staff’s Response to Intervenor’s Supplemental Statement of Position presented an entirely new analysis relating to transportation accidents, and Concerned Citizens “could not have possibly challenged facts or analyses that were not presented” at the time it filed its original hearing request. 1/25/07 Board Order at 3-4 (Rejecting Motion to Dismiss). Since the Staff’s latest submittal “provides entirely new information,” Concerned Citizens could not have challenged the adequacy of its analysis prior to the time the Staff provided it to the parties on March 5, 2009, and, thus, had good cause for not filing its amended contention earlier. Id. at 4. “Newly available material information has long been held to provide good cause to file a new contention.” 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)).

The Board has previously held Concerned Citizens has standing to participate in this proceeding. LBP-06-04, 63 NRC at 103-07. 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 transportation accidents involving Pa’ina’s proposed facility, which the EA 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 the Staff’s compliance with NEPA, the factors set forth in section 2.309(c)(iv) and (v) weigh in favor of admitting the proffered amendment to Environmental Contention 3.

The Staff is itself the author of the deficient Final EA as well as the newly proffered analysis of transportation accidents, and there are no other intervenors in this case. Thus, there are no other existing parties who will or can represent Concerned Citizens’ interests. See 10 C.F.R. § 2.309(c)(vi).

Admitting the proffered contention would not broaden the issues in this licensing proceeding since, with or without the contention, the Board would be obliged to consider whether the Staff has complied with NEPA. See id. § 2.309(c)(vii). While allowing Concerned Citizens to present evidence and argument regarding the analysis of transportation accidents may increase the time necessary to complete the licensing proceeding, that factor alone does not militate against admitting the contention. The primary effect of admitting the contention would be to ensure the Board has a fully developed and sound record on which to base its ultimate

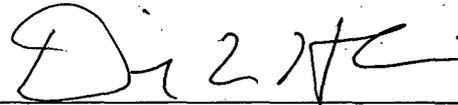
decision, with Concerned Citizens' experts providing information that otherwise would be missing from the proceeding. See id. § 2.309(c)(viii).

VII. CONCLUSION

For the foregoing reasons, Concerned Citizens respectfully asks the Board to admit the amendment to Environmental Contention 3.

Dated at Honolulu, Hawai'i, April 6, 2009.

Respectfully submitted,



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Attorneys for Intervenor
Concerned Citizens of Honolulu

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 MARVIN RESNIKOFF, Ph.D. RE:
INTERVENOR CONCERNED CITIZENS OF HONOLULU'S AMENDMENT
TO ENVIRONMENTAL CONTENTION 3 RE: TRANSPORTATION ACCIDENTS**

Under penalty of perjury, I, Dr. Marvin Resnikoff, hereby declare that:

1. I am a physicist with a Ph.D. in high-energy theoretical physics from the University of Michigan and also the Senior Associate of Radioactive Waste Management Associates, a private technical consulting firm based in New York City. I have previously filed various declarations and testimony in this proceeding in support of Concerned Citizens of Honolulu's contentions, most recently my February 2, 2009 Supplemental Written Testimony, which attached a copy of my resume as Exhibit 35. My credentials to discuss technical issues related to Pa'ina Hawaii, LLC's proposed irradiator were stated in my prior declarations and testimony and will not be repeated here. I have worked on nuclear transportation issues since 1975, including serving on the advisory body for a study of the risks of transporting radionuclides in urban environments that Sandia National Laboratories prepared for the Nuclear Regulatory Commission ("NRC") in 1980, and am presently a consultant to the State of Nevada regarding transportation to the proposed Yucca Mountain repository.

2. I have reviewed the NRC Staff's Response to Intervenor's Supplemental Statement of Position (filed March 5, 2009), including the attached testimony of Earl Easton. In this most recent submittal, the Staff addresses for the first time the potential environmental

impacts associated with accidents involving Cobalt-60 shipments from and to Pa'ina's proposed irradiator. As detailed below, in my opinion, the Staff has failed to analyze adequately or accurately the potential environmental impacts associated with such transportation accidents.

3. As a threshold matter, the geographic scope of the Staff's analysis is far too narrow. In his testimony (at A.7), Mr. Easton states he considered only the potential for truck accidents during approximately five miles of highway travel to and from Pa'ina's proposed irradiator, presumably between the irradiator site and Honolulu Harbor. Mr. Easton ignores that, as stated in Pa'ina's license application, the proposed irradiator's Cobalt-60 sources would be supplied by either Nordion, which is located in Canada, or Reviss, whose Cobalt-60 comes from Russia. Thus, the sources for the proposed irradiator would travel many thousands of miles, orders of magnitude greater than the five miles of transit on which the Staff based its analysis.

4. Moreover, Mr. Easton's analysis ignores that the sources would travel between the suppliers and the proposed irradiator by several modes of transportation, not merely by truck. To get to and from Hawai'i, the sources would likely travel by ship and, possibly, by air. In addition, to get between the suppliers and the nearest port or airport, the sources might travel by train. The Staff failed to analyze the potential for accidents involving these other transportation modes, as well as the accident rates in the foreign countries and high seas where the sources would spend most of their time in transit.

5. Mr. Easton's claim (at A.6) that, "during the past 30 years, there has never been a reported case of a release of radioactive material from a Type B package during either routine transportation or for shipments involved in an accident" is factually incorrect. Based on my research, I am aware of at least two transportation accidents involving Type B packages that have resulted in releases of radioactive material since 1979. One accident, involving a shipment

of spent fuel in 1984, is noted in the 2006 report by the Committee on Transportation of Radioactive Waste of the National Research Council, entitled "Going the Distance?: The Safe Transport of Spent Nuclear Fuel and High-Level Radioactive Waste in the United States."

Excerpts from a true and correct copy of that report are attached hereto as Exhibit "A."

6. The second transportation accident resulting in a release of radioactive material of which I am aware took place outside Houston, Texas, on January 25, 1988, when an improperly secured Type B container fell out the back of a camper-covered pickup truck as it rounded a corner. A station wagon following the pickup ran over the shielding container, releasing the 17-curie iridium-192 radiographic source. Radiation doses at contact were over 100 rems per hour, or the equivalent of three chest X-rays each second. By the time the thimble-sized radiation source was finally located with a Geiger counter several hours later, many persons had been exposed. A true and correct copy of the NRC's Information Notice No. 88-33 (May 27, 1988), which discusses this accident, is attached hereto as Exhibit "B."

7. The fact the radiation source involved in the Texas accident was not found for several hours highlights another reality about transportation accidents the Staff's analysis ignores: local communities are neither trained nor equipped to handle radiation-related accidents, threatening significant harm from radiation exposures.

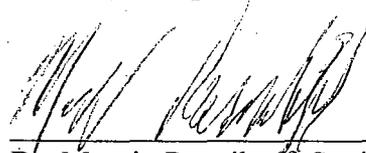
8. In his testimony (at A.8), Mr. Easton states the Staff generally relies on NUREG-0170, the generic environmental impact statement on transportation of radioactive material "to bound the environmental impacts of radioactive material shipments to and from individual facilities." Mr. Easton fails to mention, however, that NUREG-0170 expressly notes (at page iv) that it "does not specifically consider facets unique to the urban environment" and that "[a] separate study specific to such considerations is being conducted and will result in a separate

environmental statement specific to such an urban environment.” Since the proposed site for Pa’ina’s irradiator is located in a highly urbanized environment, as is the entire transportation route from Honolulu Harbor, any reliance by the Staff on NUREG-0170 – even if its more than three-decades-old otherwise had continuing validity – would be improper.

9. I take issue with Mr. Easton’s conclusion that an accident resulting in a release of Cobalt-60 and a significant environmental impact is “not a reasonably foreseeable event.” In support of this claim, Mr. Easton cites a study of Type B packages for spent fuel that concluded there would be a significant radiological hazard in only 0.6% of severe accidents. Even if applicable, this study would show, at most, that the probability of a significant radiological hazard from a transportation accident is low, which is not the same thing as saying it is not reasonably foreseeable. Proper analysis of potential impacts should include consideration of accidents resulting in significant impacts, even if their probability of occurrence is low.

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 New York, New York on this 2nd day of April, 2009.



Dr. Marvin Resnikoff, Senior Associate
Radioactive Waste Management
526 West 26th Street, Room 517
New York, NY 10001
Phone (212) 620-0526
Fax (212) 620-0518

GOING THE DISTANCE?

THE SAFE TRANSPORT OF SPENT NUCLEAR FUEL
AND HIGH-LEVEL RADIOACTIVE WASTE IN THE
UNITED STATES

EXHIBIT A

Committee on Transportation of Radioactive Waste

Nuclear and Radiation Studies Board
Transportation Research Board

NATIONAL RESEARCH COUNCIL
OF THE NATIONAL ACADEMIES

THE NATIONAL ACADEMIES PRESS
Washington, D.C.
www.nap.edu

under USNRC or DOT regulations. This is illustrated elsewhere in this chapter for the planned transportation program to a federal repository at Yucca Mountain.

Information on accidents and incidents involving spent fuel shipments in the United States has been reported since the late 1940s. Data for 1949-1971 are provided in AEC reports. In 1971, DOT established the Hazardous Materials Incident Reporting System (HMIS).¹³ This computerized database contains information on incidents involving the interstate transportation of hazardous (including radioactive) materials by air, highway, rail, and water. DOT regulations (49 CFR 171.15) require that all accidents and incidents involving radioactive materials transport that meet one or more of the following criteria be reported to it for inclusion in this database:

- Deaths or injuries requiring hospitalization
- Property damage in excess of \$50,000
- Evacuations of the public that last for one or more hours
- Closure of major transportation arteries or facilities
- Changes to flight patterns or routing of aircraft
- Fire, breakage, spillage, or suspected contamination involving radioactive materials
- Unintentional release from a package or any discharge during transportation

USNRC regulations (10 CFR 20.2201-2206; 10 CFR 73.71) also require that thefts, exposures, and releases of radioactive materials be reported.

In 1981, the Transportation Technology Center at Sandia National Laboratories established the Radioactive Material Incident Report (RMIR) database (Weiner and Tenn, 1999). This database contains information about radioactive materials transportation incidents that have occurred in the United States since 1971. It incorporates information from the HMIS in addition to information from the USNRC and other organizations such as state radiological authorities and the media.

The RMIR records *accidents* involving vehicles carrying radioactive materials that involve fatalities or injuries or that involve sufficient damage that the vehicle cannot move under its own power. It also records *incidents* that involve actual or suspected releases or surface contamination that exceeds regulatory limits. This database was discontinued in 1998 due to funding cutbacks. DOT's HMIS is now the primary source of data on hazardous material transportation incidents in the United States.

¹³Information about this database can be found on the DOT Web site at <http://hazmat.dot.gov/abhmis.htm>.

TABLE 3.3 Summary of Spent Fuel Shipping Accidents and Incidents, 1949-1996

Time Period	Accidents or Incidents Reported	Radioactive Material Contamination ^a	Surface Contamination ^b	No Description	Vehicular Deaths ^c
1949-1970	14	6	None reported ^d	2	1
1971-1996	58	2 ^e	49	0	1

^aAny detectable loss, dispersal, or escape of radioactive material from the package's containment system.

^bDetectable non-fixed contamination on external surfaces.

^cDeaths caused by vehicular accidents, not the release of radiation.

^dIt is unclear whether surface contamination was routinely tested for or reported during this period.

^eOne incident (in 1984) involved an empty package; the other (in 1976) involved a pinhole leak of coolant or moderator on the outside jacket of the package, not the release of spent fuel.

SOURCE: Data compiled by DOE Office of Civilian Radioactive Waste Management.

A summary of available data on transportation accidents and incidents is provided in Table 3.3. These data were compiled by DOE's Office of Civilian Radioactive Waste Management. According to DOE, the AEC reported radioactive material contamination incidents between 1949 and 1970. This contamination involved the package and/or the conveyance and in some cases the surrounding environment. Two additional radioactive material contamination incidents were reported between 1971 and 1996. One involved an empty package, and the other involved a pinhole leak of coolant or moderator. These older incidents apparently involved packages that were designed to transport spent fuel in water for cooling and shielding, and the leaks presumably involved the release of small amounts of this water through holes in pipes, valves, and seals. At present, only spent fuel cooled for more than five years is transported in the United States, and all spent fuel is transported in a dry state. However, some package designs still utilize water jackets for shielding neutrons, but these are physically separated from and are not in contact with the interior of the package.

Most of the reported incidents did not involve package leaks, but rather the detection of non-fixed surface contamination¹⁴ on the transport pack-

¹⁴Non-fixed contamination adheres to the outer surfaces of the package and can be detected by wiping. The limits for such contamination, which are established by international standards and U.S. regulations (49 CFR 173.443 and 10 CFR 71.87 (i) by reference to 49 CFR 173.443), are as low as reasonably achievable and not to exceed 4 becquerels per square

UNITED STATES

NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, D.C. 20555

May 27, 1988

Information Notice No. 88-33: RECENT PROBLEMS INVOLVING THE MODEL
SPEC 2-T RADIOGRAPHIC EXPOSURE DEVICE

Addressees:

All Agreement States and NRC licensees authorized to manufacture, distribute or operate radiographic exposure devices and source changers.

Purpose:

This notice is provided to alert licensees of the occurrence of a recent transportation accident which occurred in Houston, Texas involving a Model SPEC 2-T radiographic exposure device (NRC Certification of Compliance (COC) No. 9056). It is suggested that licensees review this information for applicability to their operations involving transportation of radiography devices. However, suggestions contained in this notice do not constitute new NRC requirements; therefore, no specific action or written response is required.

Description of Circumstances:

In this accident, the device fell off the rear of a truck onto the roadway, where it subsequently was struck by another vehicle. The device became jammed beneath the vehicle and was dragged for a considerable distance along the roadway. At some point in the accident, the source and the device became separated. The source was found lying in the roadway. This accident is currently under review by the State of Texas (an Agreement State), the U.S. Department of Transportation (DOT), and this Agency. At this point, it is unclear as to whether the source became separated as a result of the stress of scraping along the roadway, or as a result of its initial impact with the roadway.

Although the review is not completed, several issues and facts have surfaced which should be brought to the attention of licensees. These are described below.

Discussion:

1. Some Model SPEC 2-T devices may have been fabricated without the internal polyurethane material which is foamed in place between the outer shell and the internal depleted uranium shield. The NRC is attempting to obtain additional information on this matter and will provide further information to licensees/users, as appropriate.

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Page 2 of 2

2. Some Model SPEC 2-T devices, which have been distributed to users, may not conform to the drawing referenced in NRC COC No. 9056, issued March 12, 1986. The NRC is attempting to determine if this variance is significant.
3. All users are reminded that operation and transportation of radiography devices must be in accordance with applicable NRC, Agreement State, and U.S. DOT regulations. Licensees are cautioned that the safety of such devices in transportation depends, in part, on the proper securing of plugs and lock mechanisms before the device is transported. Licensees should assure that the procedures specified in the COC are followed in preparing the device for transportation. Users of NRC-certified radiography devices must register with the NRC in accordance with the requirements of 10 CFR 71.12 and 49 CFR 173.471.

The manufacturer of the Model SPEC 2-T is:

Source Production and Equipment Company
ATTN: R. D. Dicharry

EXHIBIT B

625 Oxley Street
Kenner, LA 70062
Telephone: 504/464/9471 (Telex 46-156)

If you have any questions regarding this matter, please contact the appropriate NRC Regional Office or this office.

Robert F. Burnett, Director
Division of Safeguards and
Transportation
Office of Nuclear Material Safety
and Safeguards

Technical Contact: C. E. MacDonald, NMSS
(301) 492-3382

Agreement State Contact: D. A. Nussbaumer, GPA
(301) 492-0326

Attachment: List of Recently Issued NRC Information Notices

Attachment
IN 88-33
May 27, 1988
Page 1 of 1

LIST OF RECENTLY ISSUED
NRC INFORMATION NOTICES

Information Notice No.	Subject	Date of Issuance	Issued to
88-32	Prompt Reporting to NRC of Significant Incidents Involving Radioactive Material	5/25/88	All NRC materials licensees.
88-31	Steam Generator Tube Rupture Analysis Deficiency	5/25/88	All holders of OLS or CPs for Westinghouse and Combustion Engineering designed nuclear power plants.
88-30	Target Rock Two-Stage SRV Setpoint Drift Update	5/25/88	All holders of OLS or CPs for nuclear power reactors.
88-29	Deficiencies in Primary Containment Low-Voltage Electrical Penetration Assemblies	5/24/88	All holders of OLS or CPs for nuclear power reactors.
88-28	Potential for Loss of Post-LOCA Recirculation Capability Due to Insulation Debris Blockage	5/19/88	All holders of OLS or CPs for nuclear power reactors.
88-27	Deficient Electrical Terminations Identified in Safety-Related Components	5/18/88	All holders of OLS or CPs for nuclear power reactors.
85-35, Supplement 1	Failure of Air Check Valves to Seat	5/17/88	All holders of OLS or CPs for nuclear power reactors.
88-26	Falsified Pre-Employment Screening Records	5/16/88	All holders of OLS or CPs for nuclear power reactors and all major fuel facility licensees.

OL = Operating License
CP = Construction Permit

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on April 6, 2009, 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

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

Molly L. Barkman
Michael J. Clark
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop – O-15 D21
Washington, DC 20555-0001
E-mail: Michael.Clark@nrc.gov
Molly.Barkman@nrc.gov

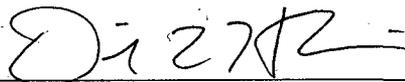
Lauren Bregman, Law Clerk
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Dated at Honolulu, Hawai'i, April 6, 2009.



DAVID L. HENKIN
Attorneys for Intervenor
Concerned Citizens of Honolulu



TRANSMITTAL LETTER

TO: Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudication Staff

VIA FIRST CLASS MAIL

FROM: David L. Henkin

DATE: April 6, 2009

RE: Pa`ina Hawai`i, LLC (Material License Application),
Docket No. 30-36974-ML, ASLBP No. 06-843-01-ML

<u>COPIES</u>	<u>DATE</u>	<u>DESCRIPTION</u>
Original and two copies	4/6/09	INTERVENOR CONCERNED CITIZENS OF HONOLULU'S AMENDMENT TO ENVIRONMENTAL CONTENTION 3 REGARDING TRANSPORATION ACCIDENTS; DECLARATION OF MARVIN RESNIKOFF, PhD.; CERTIFICATE OF SERVICE

- | | | | |
|-------------------------------------|--------------------------|-------------------------------------|-------------------------------|
| <input type="checkbox"/> | For Your Information. | <input checked="" type="checkbox"/> | For Filing. |
| <input checked="" type="checkbox"/> | For Your Files. | <input type="checkbox"/> | For Recordation. |
| <input type="checkbox"/> | Per Our Conversation. | <input type="checkbox"/> | For Signature And Return. |
| <input type="checkbox"/> | Per Your Request. | <input type="checkbox"/> | Per Necessary Action. |
| <input type="checkbox"/> | For Review And Comments. | <input type="checkbox"/> | For Signature And Forwarding. |
| <input type="checkbox"/> | See Remarks Below. | | |

REMARKS: