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AD.II IDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
Pa'ina Hawaii, LLC)	Docket No. 030-36974-ML
)	
Materials License Application)	ASLBP No. 06-843-01
)	

APPLICANT PA'INA HAWAII, LLC'S PETITION FOR REVIEW
OF THE AUGUST 27, 2009 INITIAL DECISION OF
THE ATOMIC SAFETY AND LICENSING BOARD

EXHIBIT A

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OCTOBER 6, 2009

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LICENSEE PA'INA HAWAII, LLC'S PETITION FOR
REVIEW OF THE AUGUST 27, 2009
INITIAL DECISION OF THE ATOMIC SAFETY AND LICENSING BOARD

A. Brief Background of This Case.

This case involves Applicant/Licensee PA'INA HAWAII, LLC's ("Licensee") efforts to obtain a Materials License in order to construct a self-contained Category III underwater irradiator in a long-established industrial/commercial district located near Honolulu International Airport. PA'INA HAWAII, LLC's application was filed on June 23, 2005. The Materials License was granted on August 17, 2007. (ML #53-29296-01)

On August 27, 2009, following four years of protracted proceedings, the Atomic Safety and Licensing Board ("Board") issued its "Initial Decision" in this case. The Initial Decision disposed of numerous and wide-ranging contentions raised by the one and only formal opponent to

the proposed irradiator, Intervenor CONCERNED CITIZENS OF HONOLULU ("Concerned Citizens").¹

B. Concise Summary Of Issues To Be Reviewed.

The Board's August 27th "Initial Decision" left only three (3) contentions lingering in this case:

First, the Board required the Staff to take a "harder look" at the issue of possible transportation accidents. (Initial Decision, slip op. at 51-52)

Second, the Board ordered the Staff to consider the "technological alternative" of electron-beam irradiators over against Category III irradiators. (Id., at 101)

Third, the Board ordered the Staff to consider "alternative" geographical sites for Pa'ina's irradiator, other than Pa'ina's properly-zoned and selected site near the airport. (Id., at 105)

Licensee Pa'ina strongly believes that the Board should have denied/dismissed the three lingering contentions of Intervenor, and that the Board prejudicially erred in not dismissing those contentions. It is for this reason that Licensee files the instant "Petition for Review" pursuant to 10 C.F.R. Sec. 2.1212.

¹The Board's Initial Decision on August 27, 2009, taken in conjunction with prior orders and decision of the Board and this Commission, have resulted in the cumulative denial/dismissal of upwards of 50 alleged special circumstances, environmental contentions, safety contentions, and sub-contentions which have been alleged by Intervenor.

C. Standards Of Review On A Petition For Review.

10 C.F.R. Sec. 2.341(b)(4) sets forth the five grounds for Commission review of an Initial Decision:

(4) The petition for review may be granted in the discretion of the Commission, giving due weight to the existence of a substantial question with respect to the following considerations:

- (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial and important question of law, policy or discretion has been raised;
- (iv) The conduct of the proceeding involved a prejudicial procedural error; or
- (v) Any other consideration which the Commission may deem to be in the public interest.

Licensee Pa'ina believes that the Board's August 27th Initial Decision seriously erred by ordering the Staff to further study the final three issues, based upon the foregoing five grounds.

D. The Board's Directive That The Staff Consider "Alternative Sites" For The Irradiator Constitutes Serious Error, Because Intervenor's Experts Utterly Failed To Identify Any Specific, Geologically Viable, Properly-Zoned, And Transportation-Appropriate Alternate Sites For Pa'ina's Irradiator.

As argued before the Board by Licensee Pa'ina,² one challenging an EA must allege and provide "specific evidentiary facts" showing that its alternative sites are reasonable and viable. City of Angoon v. Hodel, 803 F.2d 1016 (9th Cir. 1986), citing Vermont Yankee Nuclear Power Corp. v. N.R.D.C., Inc., 435 U.S. 519 (1978) (opponents must 'structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions.');

see also Seacoast Anti-Pollution League v. NRC, 598 F. 2d 1221 (1st Cir. 1979)

Since the very beginning of this case, Intervenor's experts have failed to identify any specific, alternate parcel of land on Oahu for the irradiator. The City and County of Honolulu has about 602 square miles, or 385,280 acres.³ One would have reasonably expected Intervenor's bevy of experts to identify at least one specific, alternate, and suitable location for comparison, given the size of Oahu. However, the entire Record contains but one (1) such statement by Intervenor's expert M. Resnikoff:

² See March 4, 2009 Licensee Pa'ina Hawaii, LLC's Response To Intervenor Concerned Citizens Of Honolulu's Supplemental Statement Of Position (filed February 2, 2009), at 22; see also 15-17). Unfortunately, in violation of 10 C.F.R. Sec. 2.341(b)(4)(iv) and fundamental notions of Due Process, the Board admitted that it did not specifically address Licensee Pa'ina's arguments. (Initial Decision, page 8, footnote 37) Thus, this argument by Pa'ina was simply never addressed by the Board.

³ August 26, 2008 Staff Initial Written Statement, Earthquake Event Summary Report, Honolulu Planning Department, Seismic Hazards, # 8 Earthquakes (p. 30 of 102) With 640 acres per square mile, Oahu therefore contains approximately 385,280 acres.

"If the proposed [irradiator] facility were located over 10 miles from the center of the runways, the conditional probability would decline by a factor of 1,000, placing the yearly probability within the limits the NRC generally deems acceptable for nuclear facilities. The NRC should consider in its environmental review alternate locations, which would substantially reduce risks to the public associated with aviation accidents." M. Resnikoff Report, Feb. 7, 2007, at pp. 20-21 (attached to Intervenor's Initial Written Statement, filed August 26, 2008)

Expert Resnikoff's recommended "10 miles from the center of the runways" at Honolulu International Airport would eliminate approximately one half of the Island of Oahu from consideration for Pa'ina's irradiator. There would still remain over 190,000 acres from which the Intervenor's experts should have specifically identified a suitable alternate site for comparison. Conspicuously, Intervenor's experts identified no specific alternate sites for the irradiator.

What is more, Intervenor's experts provided no "specific evidentiary facts" describing how any alternate location was geologically sound, properly zoned, commercially available and near to appropriate transportation infrastructure.

Clearly, Intervenor failed to carry its burden of stating and supporting any valid contention. Given this obvious void in the record, the Board seriously erred by directing the Staff to perform the Sisyphean task of

sifting through and speculating about 190,000 acres of land in the middle of the Pacific Ocean (4,500 miles from Washington, D.C.) to discover possible alternate sites for Pa'ina's irradiator.⁴

E. The Board's Directive That The Staff Consider The Alternative Technology Of "E-Beam Irradiation" Constitutes Serious Error, Because The NRC Staff Properly Exercised Its Discretion To Review The Deficiencies Of That Technology For Hawaii, And To Thereafter Reject Out-Of Hand The Technology As Unfeasible.

The "high quality" evidence⁵ before the Board showed that e-beam irradiation technology in Hawaii was a financial loser (or, at best, a tremendous financial risk), a voracious energy hog, and an otherwise unreliable technology, all of which considerations led the technology to be properly dismissed out-of-hand by the NRC Staff.

Actually, it was the Board which ignored the "highest quality" evidence regarding the financial feasibility of e-beam irradiation in Hawaii. Thus, nowhere in its Initial Decision (pp. 1-112) does the Board mention, or even

⁴ The Commission has previously strongly discouraged the "inappropriate use of . . . NRC resources to allow petitioners to trigger . . . gratuitous analyses based merely on generalized poorly-supported scenarios of harm . . ." Pa'ina Hawaii, llc, CLI-08-03 (March 17, 2008) at page 21.

⁵ Throughout its Initial Decision, the Board repeatedly criticized the Staff for failing to utilize "high quality" evidence. (See Pages 88, 89, 90, and 91). Thereafter, and contrary to its own criticism, the Board proceeded to accept at face value the highly-conclusory and unexamined statements of competitor Eric Weinert, who claimed (without supporting his claims with any financial statements whatsoever) that Hawaii Pride's e-beam irradiator had "consistently" operated at a "profit." (Id., at 83) Unfortunately, the Board failed to address and totally ignored the financial questions which Paina had posed to Eric Weinert (in anticipation of an oral hearing which the Board never held). Judge Baratta rightly dissented from the Board's criticism of the Staff's handling of the e-beam technology issue, and would have approved the Staff's out-of-hand dismissal of that technology. (See Initial Decision, pp. 111-112)

acknowledge, the SEC Form 10-Q filed by Titan Corporation in May 2005, which was filed just one month before Licensee Pa'ina applied for its Materials License herein.⁶

Titan Corporation was the manufacturer of Hawaii Pride's e-beam irradiator, Titan was a major guarantor of Hawaii Pride's 1999 loan to purchase the e-beam technology, and later Titan became a reluctant lender to Hawaii Pride. As lender, Titan's own money was at risk. Also, Titan is a publicly-traded corporation with fiduciary responsibilities. Consequently, Titan's filings to the SEC would presumably be based upon its "intimate knowledge" of Hawaii Pride's finances and its revenues.

Contrary to Mr. Weinert's conclusory and factually-unsupported claims that Hawaii Pride had "consistently" made a "profit," the 10-Q filing by Titan Corporation (filed under oath) reflected that by early 2003, Hawaii Pride was unable to pay its first mortgage; that it was forced to obtain a second mortgage from Titan in order to make its first mortgage payments; and by 2005 Hawaii Pride had already borrowed \$600,000 against that second mortgage just in order to make its first mortgage payments. Titan

⁶ See "Licensee Pa'ina Hawaii, LLC's Proposed Questions For Subpart L Hearing," filed under seal with the ASLB on October 6, 2008. For the Commission's convenience, a true copy of the Proposed Questions is attached hereto as Exhibit A.

went so far as to use the term "default" twice in its 10-Q filing. (See Exhibit A)

Titan Corporation's May 2005 10-Q filing flatly contradicts Mr. Weinert's testimony that Hawaii Pride had earned "consistent profits."⁷ Titan's 10-Q filing strongly supports the Staff's rejection of e-beam technology as an alternative, because that technology was financially unfeasible for use in Hawaii. Pa'ina's stated "purposes and needs" for its irradiator would obviously be rendered impossible if it were to become financially insolvent.

The Staff properly exercised its discretion when it rejected the e-beam technology as unfeasible. The Hawaii Pride model, which was the only model which Intervenor presented to the Board but which was hemorrhaging red ink, fully justified the Staff's rejection.⁸

Consequently, the Board seriously erred in concluding that Mr. Weinert's testimony was to be conclusively "relied" upon. (Initial Decision at 85) The Board also seriously erred in concluding that e-beam technology in Hawaii "is an economically feasible alternative." (Id., at

⁷ Intervenor Rebuttal to Staff, Written Rebuttal Testimony and Declaration of Eric D. Weinert at A.2-A.3 (Sep. 16, 2008), at A-8.

⁸ Review of the reasonableness of an agency's consideration of environmental factors is "limited . . . by the time at which the decision was made." City and County of San Francisco v. United States, 615 F.2d 498, 502 (9th Cir. 1980) (citations omitted).

94)⁹ Finally, the Board seriously erred in directing the Staff to "study, develop and describe" the e-beam alternative. (Id., at 100)¹⁰

F. The Board Seriously Erred In Directing That The Staff Reconsider Situs And Technological Alternatives Because Pa'ina's Is A Private Irradiation Project, And Substantial Weight Is To Be Afforded To The Applicant's Siting And Design Choices.

Another significant argument that was raised by Licensee Pa'ina¹¹ but totally ignored by the Board is the fact that this self-contained Category III irradiator is a privately-initiated project. This Commission has consistently ruled that such private developments--where funds and other resources are not limitless, as with many governmental projects--are to be afforded great deference in their siting and design choices under NEPA. This Commission has declared:

"The intervenors entirely ignore the nature of the ISL project--it is a project proposed by a private applicant, not the NRC. Where the Federal government acts, not as a proprietor, but to approve--a project being

⁹ So transparently false and misleading is Mr. Weinert's testimony that, especially in light of Titan Corporation's 10-Q filing of May 2005, Hawaii Pride (and its successor) should voluntarily produce for the Staff its certified financial statements from Year 2000 forward.

¹⁰ The Board placed an unusually benign and favorable twist on Expert Weinert's choice of "non-nuclear" technology for his Hawaii Pride. (Id., at 79) Actually, Weinert was adamantly in favor of Co-60 technology for his proposed irradiator on the Big Island of Hawaii. So adamant was he to build a Co-60 irradiator that he dragged the entire Big Island population through a costly, bitter referendum vote in 1998 before he reluctantly gave up on his planned Co-60 irradiator in favor of the non-nuclear technology. If Intervenor's own expert Weinert was so strongly in favor of Co-60 technology, it is difficult to understand how the Staff abused its discretion in rejecting e-beam technology from consideration as a reasonable alternative.

¹¹ See March 4, 2009 Licensee Pa'ina Hawaii, LLC's Response To Intervenor Concerned Citizens Of Honolulu's Supplemental Statement Of Position (filed February 2, 2009), at 12-14, 27).

Federal agency is necessarily more limited.' [Citation omitted] The NRC is not in the business of crafting broad energy policy involving other agencies and non-license entities. Nor does the initiative to build a nuclear facility . . . belong to the NRC.

When reviewing a discrete license application filed by a private applicant, a federal agency may appropriately "accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.'" In the Matter of Hydro Resources, CLI-01-04 (Jan. 31, 2001).

Here, Pa'ina was the private applicant. However, and directly contrary to the Commission's "rule of deference" for privately-initiated projects, the Board seriously erred by rejecting the Staff's reliance upon Kohn's testimony and opinions. (Id., at 91-92) The Board seriously erred by concluding that Kohn's testimony was nothing more than "advocacy piece of a salesman." (Id., at 84)¹² Based upon these errors, the Board then seriously erred by ordering the Staff to reconsider the admittedly inefficient, unreliable, expensive and financially high-risk e-beam alternative. (Id., at 100)¹³

G. The Board Seriously Erred In Directing That The Staff Fully Study Possible Transportation Accidents.

¹² It is unclear why the Board's attempted to denigrate Kohn's testimony as being that of a "salesman." Kohn is not in any way connected with selling irradiator technology. Kohn carefully chose Co-60 technology over other technologies for technical and financial reasons. After all, it is his monies which will be on the line. By contrast, it was Weinert who approached Kohn in 2002 and attempted to solicit Kohn's monies for an investment into the economically "grim" e-beam technology, yet Weinert's testimony is never referred to as that of a "salesman" by the Board's majority.

¹³ Where alternatives exist for a privately-initiated development in the 9th Circuit, "The preparation of [a NEPA document] necessarily calls for judgment, and that judgment is the agency's." City of Angoon v. Hodel, 803 F.2d 1016, 1021 (9th Cir. 1986)

The Board also ordered the Staff to analyze "environmental consequences of transportation accidents", i.e., delivering Co-60 to and from Hawaii and to Pa'ina's site near the airport. (Initial Decision at 52) This mandate was also a serious error for several reasons.

1. The Board, in the context of safety issues, had already dismissed two near-identical safety contentions in early 2006. Pa'ina Hawaii, LLC, LBP-06-12 (March 24, 2006).¹⁴ If the transportation of Co-60 to and from Hawaii was not a relevant safety issue connected to Pa'ina's materials license application in 2006, then logically there could be no relevant environmental impacts attributable to, or the responsibility of, Pa'ina in 2009.

2. Notably, Pa'ina has no control over the manner of delivery, because the Co-60 will be delivered by a separate, specialized licensee under Part 71. Consequently, the Staff need not analyze possible transportation accidents in this proceeding for several sound reasons: because that separate, Part 71 licensee is not known right now and is not a party to this case;

¹⁴ In rejecting Intervenor's Safety Contention No. 8, the Board wrote: "Indeed, the transportation of licensed material such as the Co-60 sources used in an irradiator is governed by the Commission's regulations in 10 C.F.R. Part 71 and involves separate entities and licenses. Thus, the Applicant and the Staff are correct that the eighth safety contention is beyond the scope of the proceeding in contravention of 10 C.F.R. Sec. 2.309(f)(1)(iii) and is inadmissible." Pa'ina Hawaii, LLC, LBP-06-12 (March 24, 2006). In the same decision, the Board also rejected Intervenor's similar Safety Contention No. 10 as "beyond the scope of the proceeding." Id.

because that separate licensee's absence from this case makes impossible any responses to Intervenor's claims; because nobody knows what route the Part 71 licensee will use to deliver the Co-60; and in light of these many unknowns, the separate licensee can offer no mitigation measures. Department of Transportation v. Public Citizen, 541 U.S. 752, 757 (2004).

3. Although not clear, the Board's reliance upon its own May 11, 2009 decision in U.S. Dept. of Energy (High Level Waste), LBP-090-06 (May 11, 2009), at 38, appears to be inapposite. There, the question was whether building new "related offsite construction projects--such as connecting roads and railroad spurs" might impact the environment and therefore be grist for discussion in the subject EA/EIS. In the instant case, however, there has never been any mention of new construction of roads, railways, airports or any other offsite projects.

4. Alternatively, the Board should have ordered the GEIS on the transportation of radioactive material in urban areas to be incorporated into the EA, and no comment period would be necessary because (1) the GEIS when developed was available for public comment, and has been ever since, and (2) the documents and files in this proceeding have been available for over four years.

For any or all of the above reasons, the Board seriously erred in requiring the Staff to reconsider the effects of possible transportation accidents. (Id, at 51-52).

H. **The Three Remaining, Lingering Issues Are "Moot" And Should Be Dismissed Because Intervenor Has Proved Beyond Doubt That Pa'ina's Irradiator Is "Categorically Excluded" From NEPA.**

This Commission has recognized that developments in NRC proceedings can lead to issues becoming "moot." See, e.g., Private Fuel Storage, LLC, CLI-05-22 (Oct. 19, 2005)

By virtue of the Board's earlier orders, the Board's recent Initial Decision, and the Commission's prior decisions in this case, upwards of 50 special circumstances, environmental contentions, safety contentions and sub-contentions have been dismissed. Consequently, Intervenor has effectively (albeit unwittingly) proved and reinforced the wisdom and appropriateness of "categorical exclusion" status for Pa'ina's irradiator. See 10 C.F.R. Sec. 51.22(c)(14)(vii)

Practically and legally speaking, Intervenor's fifty-plus contentions constituted a disguised challenge to 10 C.F.R. Sec. 51.22(c)(14)(vii). Such challenges to the NRC regulations are not permissible. Thus, there was no sound reason for this four-year detour.

Assuming arguendo that Pa'ina's irradiator has been proved to be "categorically excluded," a logical syllogism demonstrates why the remaining three issues are moot:

Major premise: Pursuant to 10 C.F.R. Sec. 51.22(c)(14)(vii), Category III irradiators are "categorically excluded" from NEPA requirements.

Minor premise: Pa'ina proposes the construction and operation of a Category III irradiator.

Conclusion: Pa'ina's irradiator should be excluded from NEPA requirements.

The rejection of Intervenor's numerous and wide-ranging contentions has clearly demonstrated that the Staff's original determination was proper, i.e., that Pa'ina's irradiator is and should be "categorically excluded" from NEPA documentation.

Consequently, the Board's August 27th Order directing the Staff to study or re-study the remaining three issues is seriously erroneous, and will result in time-consuming, redundant, "gratuitous analyses." The remaining three issues should be dismissed because they are effectively "moot."¹⁵

I. Conclusion.

For the reasons stated above, Pa'ina respectfully requests that this Commission will grant this Petition for

¹⁵ Until the Board dismissed/denied most of Intervenor's numerous, remaining contentions in its August 27th Initial Decision, this "mootness" argument could not have been made by Petitioner. 10 C.F.R. Sec. 2.341((b)(5)

Review; that this Commission will reverse the Board's order that the Staff study or re-study the three remaining issues; that this Commission will deny/dismiss the three remaining issues; and that this Commission will grant to Licensee Pa'ina any and all other relief deemed necessary and proper.

DATED: Honolulu, Hawaii, October 6, 2009.

Fred Paul Benco

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

OCTOBER 6, 2008

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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LICENSEE PA'INA HAWAII, LLC'S PROPOSED
QUESTIONS FOR SUBPART L HEARING

PA'INA HAWAII, LLC'S PROPOSED QUESTIONS TO ERIC
D. WEINERT, VICE PRESIDENT OF CW HAWAII PRIDE, LLC.

LICENSEE PA'INA HAWAII, LLC'S PROPOSED
QUESTIONS FOR DR. MARVIN RESNIKOFF

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LICENSEE PA'INA HAWAII, LLC'S PROPOSED
QUESTIONS FOR SUBPART L HEARING

Now comes Licensee PA'INA HAWAII, LLC and for its Proposed Questions For the Subpart L Hearing herein, submits the following Questions for Eric D. Weinert and also the following questions for Dr. Marvin Resnikoff.

PA'INA HAWAII, LLC hereby responds only to the "rebuttal testimony" submitted by INTERVENOR CONCERNED CITIZENS OF HONOLULU on September 16, 2008. If prior evidence of any of INTERVENOR'S expert or other witnesses is allowed in as testimony (such as any of the statements contained in INTERVENOR'S August 26, 2008 filing), PA'INA HAWAII, LLC reserves its right to submit further questions addressed to all or any of that testimony.

DATED: Honolulu, Hawaii

October 6, 2008

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

**Pa'ina Hawaii, LLC's Proposed Questions to Eric D. Weinert
Vice-President of CW Hawaii Pride, LLC.**

- Question #1:** Were you provided with any "sensitive" or "Safeguards" information concerning this case and if so, did you sign the appropriate non-disclosure documents?
- Question #2:** Mr. Weinert, has Hawaii Pride or its successors-in-interest owned and operated an x-ray, electron-beam irradiator to treat Big Island-grown produce since Year 2000?
- Question #3:** Mr. Weinert, in your "Written Rebuttal Testimony and Declaration of Eric D. Weinert" signed September 3, 2008 and filed with Intervenor's Rebuttal To NRC Staff's Statement of Position on September 16, 2008, did you declare under penalty of perjury that "Hawaii Pride has consistently been making a profit treating local produce for export"?
- Question #4:** In what year did Hawaii Pride or its successors first make a profit?
- Question #5:** Has Hawaii Pride made a profit each and every year since your Answer to Question #4?
- Question #6:** Are you aware of documents that are in the public arena which describe the financial condition of Hawaii Pride since the year 2000?
- Question #7:** Have you personally taken any steps to correct any public documents about Hawaii Pride's finances since Year 2000?
- Question #8:** If your Answer to Question #7 is in the affirmative, please state what steps you have taken to correct financial information about Hawaii Pride which is in the public arena.
- Question #9:** Did Hawaii Pride borrow approximately \$8.75 million from WebBank on or about June 22, 2000?
- Question #10:** In the Year 2000, did Surebeam Corporation advance \$1.0 million to Hawaii Pride in exchange for a right to 19.9% of Hawaii Pride's equity?
- Question #11:** On or about August 2, 2002, did Surebeam Corporation enter into a Reimbursement Agreement with The Titan Corporation, whereby Surebeam "agreed to reimburse Titan" in the event that Titan had to

make any loan repayments owed by Surebeam Corporation to WebBank?

Question #12: In 2003, did The Titan Corporation pay principal and interest payments to WebBank because Hawaii Pride did not have sufficient cash resources to do so?

Question #13: Did SureBeam Corporation file for bankruptcy in January 2004?

Question #14: Did you state in your Declaration of September 3, 2008 that you have "served as" Hawaii Pride's vice-president in charge of day-to-day operations since August 2000?

Question #15: At any time prior to 2005, did you inform Michael Kohn that Hawaii Pride, LLC had lost monies from operations in Year 2000?

Question #16: At any time prior to 2005, did you ever come to Honolulu in order to obtain a commitment to treat papayas from Michael Kohn?

Question #17: At any time prior to 2005, did you ever come to Honolulu and tell Michael Kohn that Hawaii Pride needed "more throughput" in order to break even?

Question #18: At any time prior to 2005, did you inform Michael Kohn that Hawaii Pride, LLC had lost monies from operations in Year 2001?

Question #19: Since Year 2000, did you ever personally approach Michael Kohn to invest in Hawaii Pride, LLC?

Question #20: Do you have any personal knowledge whether, since the Year 2000, Michael Kohn was ever approached by any other member, manager or officer of Hawaii Pride, LLC to invest monies in Hawaii Pride, LLC?

Question #21: Other than WebBank and SureBeam, prior to 2006, did any other entity or individuals loan monies to Hawaii Pride, LLC?

Question #22: What was the total amount of loans made to Hawaii Pride, LLC prior to January 1, 2006?

Question #23: Do you agree that the following Securities and Exchange filing by The Titan Corporation in its 10-Q filing on May 6, 2005 is accurate:

"In relation to SureBeam's strategic alliance with Hawaii Pride, Titan has guaranteed repayment of Hawaii Pride's bank debt up to the greater of SureBeam's equity interest in Hawaii Pride (which is

zero), or 19.9% of Hawaii Pride's \$6.8 million, 15-year loan from its lender, WebBank. As of March 31, 2005, Titan has guaranteed approximately \$1.1 million, or 19.9% of the current loan balance of \$5.3 million. In the event that Hawaii Pride defaults on the loan, Titan currently expects to be obligated to cover any defaults on the entire outstanding balance of the loan if the default is not cured within 90 days. In late October 2003, Titan was notified by Hawaii Pride that Hawaii Pride had stopped receiving financial support from SureBeam and did not have sufficient cash resources to make its monthly principal and interest payments to WebBank. Titan subsequently extended a credit facility to Hawaii Pride of up to a maximum of \$0.8 million in principal to cover shortfalls in debt service payments. This facility is secured by a second lien on the assets of Hawaii Pride, including a second mortgage on its facility. As of March 31, 2005, Titan has loaned approximately \$0.6 million to Hawaii Pride and, to Titan's knowledge, Hawaii Pride is current in its debt service to WebBank. All amounts outstanding under the Titan credit facility are required to be repaid in twenty equal quarterly installments commencing on October 1, 2005. (Emphasis added) Found at <http://sec.edgar-online.com/2005/05/08/0001047469-05-013817/Section7.asp>

- Question #24: Are any of the facts set forth in the May 6, 2005 SEC filing incorrect?
- Question #25: If so, which facts are incorrect?
- Question #26: Did you ever write to The Titan Corporation to advise them of the untrue facts?
- Question #27: If your Answer to #26 is in the affirmative, where do you currently store the written communication(s) regarding the untrue facts to The Titan Corporation?
- Question #28: Please describe how the \$6.75 million loan to WebBank was repaid, or forgiven, or otherwise resolved?

- Question #29:** What is the total amount of debt, if any, currently owed by CW Hawaii Pride, LLC?
- Question #30:** Have you ever commissioned a study of the carbon footprint created by CW Hawaii Pride, LLC's arising out of its use of electrical power on the Big Island?
- Question #31:** If the Answer to #30 is in the affirmative, was the result of the carbon footprint study ever published?
- Question #32:** Did you ever compare the carbon footprint of your x-ray, e-beam irradiator with the carbon footprint of a Cobalt-60 underwater irradiator such as that proposed by Pa'ina Hawaii, Inc.?
- Question #33:** What e-beam, x-ray equipment is immediately available, including model numbers, cost and x-ray capability from Titan, L-3, RadSource Technologies, ScanTech Holdings and IBA?
- Question #34:** Do you know if Pa'ina Hawaii, LLC intends to treat produce and other products transported from the Big Island of Hawaii to Oahu?
- Question #35:** Do you view Pa'ina Hawaii, LLC as a potential competitor in the food irradiation business?
- Question #36:** With regards to 10 C.F.R. Part 36:
- a) Did you submit any testimony or evidence to the Nuclear Regulatory Agency prior to the NRC's adoption of Part 36?
 - b) If your answer to "a" is in the affirmative, please summarize the testimony or evidence which you submitted.
 - c) If your answer to "a" is in the negative, why not?
- Question #37:** With regards to 10 C.F.R. Part 51:
- c) Did you submit any testimony or evidence to the Nuclear Regulatory Agency prior to the NRC's adoption of Part 51?
 - d) If your answer to "a" is in the affirmative, please summarize the testimony or evidence which you submitted.
 - c) If your answer to "a" is in the negative, why not?
- Question #38:** With regards to 10 C.F.R. Part 20:
- e) Did you submit any testimony or evidence to the Nuclear Regulatory Agency prior to the NRC's adoption of Part 20?

- f) If your answer to "a" is in the affirmative, please summarize the testimony or evidence which you submitted.
- c) If your answer to "a" is in the negative, why not?

End Of Pa'ina Hawaii, LLC's Proposed Questions to Eric D. Weinert
Vice-President of CW Hawaii Pride, LLC.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
Pa'ina Hawaii, LLC) Docket No. 030-36974-ML
)
Materials License Application) ASLBP No. 06-843-01
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "LICENSEE PA'INA HAWAII, LLC'S PETITION FOR REVIEW OF THE AUGUST 27, 2009 INITIAL DECISION OF THE ATOMIC SAFETY AND LICENSING BOARD" dated October 6, 2009 in the captioned proceeding have been served as shown below by deposit in the regular United States mail, first class, postage prepaid, this 6th day of October, 2009. Additional service has also been made this same day by electronic mail as shown below:

Administrative Judge
Thomas S. Moore, Chair
Atomic Safety and Licensing Board
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U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: tsm2@nrc.gov)

Dr. Anthony J. Baratta
Administrative Judge
Atomic Safety and Licensing Board
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U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(e-mail: AJB5@nrc.gov)

Administrative Judge
Dr. Paul B. Abramson
Atomic Safety and
Licensing Board
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DATED: Honolulu, Hawaii,

October 6, 2009



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October 6, 2009

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

BEFORE THE COMMISSION

Re: Docket No. 030-36974
ASLBP No. 06-843-01-ML
"Applicant Pa'ina Hawaii, LLC's
Petition For Review Of The August
27, 2009 Initial Decision Of The
Atomic Safety and Licensing Board"

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 (6) 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. Thank you.

Very respectfully yours,



Fred Paul Benco

Encl.

cc: All parties on Certificate of
Service