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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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In the Matter of :  
 : Docket No. 40-9083  
U.S. Army Installation :  
Command :  
 :  
 : ATOMIC SAFETY  
ASLB10-895-01-ML-BD01 : AND LICENSING  
 : BOARD  
(Schofield Barracks, Oahu, :  
Hawaii, and Pohakuloa :  
January 13, 2010 : "INTERIM DRAFT COPY"  
Training Area, Island of :  
Hawaii, Hawaii) :  
 :

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Two White Flint North  
Panel Hearing Room  
  
1545 Rockville Pike  
Rockville, Maryland

BEFORE: ADMINISTRATIVE JUDGES:  
  
E. ROY HAWKENS, Chairman  
  
DR. ANTHONY J. BARATTA  
  
DR. MICHAEL F. KENNEDY

## 1 APPEARANCES:

2 Cory Harden, Petitioner

3 Luwella Leonard, Petitioner

4 Jim Albertini, Petitioner

5 Isaac Harp, Petitioner

6 Lieutenant Colonel Kent Herring, Army

7 Greg Komp, Army

8 Brett Klukan, NRC Staff

9 Kimberly Sexton, NRC Staff

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Kimberly Sexton, Esquire		

1 P-R-O-C-E-E-D-I-N-G-S

2 >>JUDGE HAWKENS: Good morning to the  
3 petitioners who are participating by video  
4 conference in Hawaii.

5 >>PETITIONERS: Good morning.

6 >>JUDGE HAWKENS: Good morning or good  
7 afternoon to everybody here assembled in the  
8 Rockville hearing room.

9 We are holding oral argument in Docket  
10 Number 40-9083 in the matter of U.S. Army  
11 Installation Command, Schoefield Barracks and  
12 Pohakuloa Training Area. The Petitioners challenge  
13 the Army's application for license to possess  
14 depleted uranium at two Army bases in Hawaii.

15 My name is Roy Hawken. My colleagues of  
16 the licensing board are Judge Tony Baratta and Judge  
17 Mike Kennedy. The licensing board is sitting at the  
18 panel's hearing room in Rockville, Maryland. The  
19 Army and the NRC staff are with us here in  
20 Rockville. The four Petitioners, who are Hawaii  
21 residents, are participating by videoconference from  
22 the University of Hawaii, Hilo campus.

23 And on behalf of the Board, I would like  
24 to thank the officials and the employees of the  
25 University of Hawaii who have graciously made their

1 hearing facility, their videoconference facility  
2 available, and also provided us with individuals to  
3 assist us in operating that equipment.

4           It is our hope that the equipment will  
5 work. We tested it successfully yesterday and this  
6 morning. If we do run into a technical glitch, this  
7 Board will call a brief recess, the Petitioners at  
8 Hilo will then dial in by telephone, and we will  
9 reconvene and they will participate in the argument  
10 by teleconference.

11           It is to be regretted we could not get a  
12 bigger room at the University of Hawaii so that the  
13 public could sit in and actually observe the  
14 Petitioners. However, because we were unable to do  
15 that, we are, nevertheless, able to accommodate  
16 public accessibility in the -- in the transparency  
17 of the proceeding by webstreaming it. And it is  
18 being webstreamed live, and the webcast will be  
19 available to the public for 90 days after today. It  
20 is in the archives. And if you simply access the  
21 NRC website, you can then in turn access the  
22 webcast.

23           For purposes of public accessibility, the  
24 proceeding is also being transcribed, and that  
25 transcription will be a permanent part of the

1 Licensing Board docket.

2           We have three categories of participants  
3 today: The Petitioners, four Petitioners from  
4 Hawaii, who are challenging the Army's application;  
5 the Army, who is filing the application for  
6 possession license to possess depleted uranium; and  
7 the NRC staff, who serve the regulatory function of  
8 reviewing the application to make sure it meets the  
9 safety, health, environmental and security  
10 requirements.

11           At this point for the record, I would like  
12 the participants to please introduce themselves.  
13 And we will start with the Petitioners and then we  
14 will go to the Army, and then the NRC staff.

15           Would the Petitioners please introduce  
16 themselves for the record?

17           >>MS. HARDEN: Hello, I'm Corey Harden.

18           >>MS. LEONARDI: Aloha, my name is Luwella  
19 Leonardi.

20           >>MR. ALBERTINI: Aloha, I'm Jim  
21 Albertini.

22           >>MR. HARP: Hello, Your Honor, my name is  
23 Isaac Harp.

24           >>JUDGE HAWKENS: Thank you very much.

25           >>LTC. HERRING: Good morning, Your Honor.

1 My name is Lieutenant Colonel Kent Herring, and with  
2 me at the Army table is Mr. Greg Komp, senior health  
3 physicist.

4 >>JUDGE HAWKENS: Thank you.

5 >>MR. KLUKAN: This is Brett Klukan for  
6 the NRC staff, Your Honor. And I have also with me  
7 Kimberly Sexton.

8 >>JUDGE HAWKENS: All right, thank you.

9 Before launching into the argument, let me  
10 briefly explain the procedures we will use today.  
11 All the participants have submitted pleadings to  
12 this Board on the issues we are going to be  
13 addressing today. The Board has read those  
14 pleadings, is familiar with the arguments.

15 At bottom, the Petitioners argue they have  
16 established standing and have proffered an  
17 admissible contention, and the Army and the NRC  
18 staff disagree.

19 On December 17th, this Board issued an  
20 order in which we directed questions in topical  
21 areas to each participant, and they will be  
22 addressing those questions today. And on  
23 January 7th, we issued an order establishing the  
24 procedures we would use today.

25 First, each participant may make an

1 opening statement not to exceed five minutes.

2 Second, each participant will then address the  
3 questions directed to them by the Board in our  
4 December 17th order.

5           We have asked that each participant make  
6 their answers last no more than four minutes. If  
7 the Board feels that an answer needs further  
8 clarification, we will grant permission to exceed  
9 the four minutes. But given the number of  
10 questions, we want addressed today and the ground  
11 that we have to cover, it is important that we  
12 adhere to that four-minute rule. And the Board's  
13 law clerk, Ms. Katie Tucker, is going to assist us  
14 in that effort.

15           When three minutes has elapsed for a  
16 particular question, she will raise an amber sign,  
17 which indicates you have one minute left. Please  
18 pay attention to it, because when that one minute  
19 lapses, she will then raise the red sign. That will  
20 mean we will either give you permission to continue  
21 addressing that topic or ask you to move on.

22           Finally, at end of the proceeding, each  
23 participant will have the opportunity to present a  
24 closing statement, which should not exceed five  
25 minutes.

1           We will have one exception to this  
2 procedure. One of the Petitioners, Ms. Harden, has  
3 indicated that due to a health issue, she would not  
4 or possibly may not be able to stay the entire  
5 argument. And for that reason, she is requesting at  
6 the outset to make her opening statement,  
7 immediately answer the questions directed to her in  
8 the board's December 17 order and then, provide her  
9 closing statement. And the Board is happy to  
10 accommodate Ms. Harden and to grant her request, so  
11 she will at the outset be making her presentation in  
12 full.

13           So, Ms. Harden, if you are prepared, we  
14 will hear from you now. You may give us your  
15 opening statement.

16           >>MS. HARDEN: Thank you for holding this  
17 proceeding and giving the public some access.

18           The issue is, do the people of these  
19 islands have question those who say they protect us,  
20 but brought us depleting uranium, those of who have  
21 a long history of misleading us about the hazard  
22 from their germs, chemicals, radiation, those who  
23 here illegally. And we are saying, yes, we have  
24 grounds.

25           For today, please note that we Petitioners

1 are hampered by many things. One, by the tiny room  
2 this little room to move or handle documents. With  
3 video it is hard to present our maps, and so forth.  
4 We can't afford lawyers. Our expert witnesses are  
5 not allowed to speak today, but I notice that folks  
6 on those sides have people assisting them.

7 I may be missing over 250 pages of  
8 documents included in the application, according to  
9 Freedom of Information Act staff. I thought I had a  
10 complete copy since it came from NRC. But after  
11 looking at some comments from NRC attorneys, I  
12 realize some items might be missing. By then,  
13 today's proceeding was coming up, so NRC staff would  
14 not tell me what was missing.

15 Also, I asked for a well-ventilated room  
16 as a disability accommodation, so I wouldn't get  
17 dizzy, but this was not done.

18 Actions I request the Board to take: One,  
19 require the Army to do a thorough search for  
20 forgotten radioactive hazards since they say they  
21 lost track of those spotting logs. Search should  
22 cover classified and unclassified records from all  
23 forces, U.S. and foreign, that have used Army  
24 controlled land in Hawaii since the military started  
25 using radioactive materials.

1           Two, require studies and monitoring that  
2 follow recommendations of Dr. Marshall Blann, a  
3 consultant for Los Alamos National Laboratory,  
4 Dr. Lorrin Pang, a former Army doctor and consultant  
5 to the World Health Organization, and Dr. Mike  
6 Reimer, who has a Ph.D in geology and experience  
7 with radiation. These experts have helped us  
8 identify many shortcomings and studies and  
9 monitoring done so far.

10           For example, there is evidence for over  
11 2,000 spotting rounds at Pohakuloa, but only four  
12 fragments were found. Fewer than 1,000 of the  
13 51,000 acres of the Pohakuloa impact area were  
14 adequately searched. So live fire and dummy bombs  
15 may be falling on undiscovered depleted uranium,  
16 which may pulverize and ignite it generating  
17 aerosols which can travel for miles into the air. If  
18 inhaled, they are not easily excreted, because they  
19 are not very soluble. They can remain in the body  
20 for years radiating tissues -- radiating tissue at  
21 close range.

22           Third request: Put the Archive Search  
23 Report on the NRC website so it can't be misquoted  
24 or altered. Note that an Army quote from this  
25 report does not match my copy of the report. The

1 Army quote indicates two spotting rounds. My copy  
2 indicates more.

3 The ASR cites a study on Davy Crockett DU  
4 spotting rounds at Schofield. The study is dated  
5 1996. The Army has led us to believe the original  
6 find was in 2005, nine years later.

7 The ASR describes a 1961 decision to leave  
8 expended spotting rounds in the impact area and not  
9 consider the impact area a radiation area.

10 It also describes how scrap from range  
11 clearance, not DU, not from Pohakuloa was dumped  
12 into Pohakuloa impact area. So were the 2,000  
13 missing spotting rounds also considered scrap and  
14 dumped in the impact area subject to bombs and live  
15 fire?

16 Fourth request: Have the Army put  
17 adequate resources into the radiation protection  
18 program. The application commits to nothing. It  
19 says the Army will only do environmental monitoring  
20 if they can get funding, if they agree with NRC how  
21 to do it, if other monitoring is already being done  
22 and if it's feasible.

23 Fifth request: Put an official statement  
24 on the NRC website giving a sound scientific basis  
25 for the decision for no human health risk assessment

1 for Pohakuloa. Dr. Reimer questioned the reasons  
2 given for this decision.

3 Six: Since the Army has a state lease for  
4 part of Pohakuloa, have them show that the Army, not  
5 the state, should get the license, and that  
6 conditions in the license don't conflict with the  
7 lease. Note that the identified DU areas may be on  
8 leased land.

9 Thank you for your attention to these  
10 requests.

11 >>JUDGE HAWKENS: Thank you, Ms. Harden.

12 If you'd like to now launch into answering  
13 the questions and let's start with the questions  
14 that was addressed to all the Petitioners, which was  
15 providing information about your address and the  
16 distance from boundary of the Army installation.

17 >>MS. HARDEN: Yes, I will do that. I  
18 have some maps. It will take me a little time to  
19 juggle the document viewer. I hope you will allow  
20 for that.

21 My address is 184033 Kamahele Place in  
22 Mountain View, Hawaii.

23 I also want to throw in here that I have  
24 health problems, chronic fatigue, fibromyalgia,  
25 chemical sensitivity, and allergies, cause unknown,

1 but I lived on the island for quite a while.

2 I also had temporary residence about one  
3 mile from and Pohakuloa and about three miles from  
4 one of the identified DU ranges because I attended  
5 the Kilohana Girl Scout camp, which is close to  
6 Pohakuloa. I went about 10 days each during two or  
7 three summers between about 1957 to '62. And at one  
8 point, we hiked about a half mile towards the  
9 installation. Now, the Davy Crockett was fielded  
10 between 1961 and '68, so I may have been there at  
11 that time.

12 I have also travelled inside Pohakuloa. I  
13 have gone there -- inside there to attend events. I  
14 have travelled on the Saddle Road, which runs  
15 through it several times a year except between '64  
16 and 87, when I lived off island.

17 I have moved around the island, I lived  
18 about 30 miles from Pohakuloa for 15 years as a  
19 child in Hilo, and also that far away for about 23  
20 years as an adult in Hilo and Mountain View. I have  
21 some maps to show you which will take a bit of  
22 juggling. I need to like point to them.

23 So can you see them?

24 I'm trying to get it so you can see it,  
25 but...

1           So, this is the Hawaiian island, and this  
2 is our island, Hawaii, and this is Pohakuloa right  
3 smack in the middle of the island.

4           This is Mountain View where I live,  
5 Kurtistown where Mr. Albertini lives, Hilo where I  
6 lived for a while, and this is Waianae, where  
7 Mr. Harp lives, and Luwella is on a different  
8 island.

9           Here is another map which is too big for  
10 our document viewer. This is to show you distances  
11 from Pohakuloa to Mountain View. Where my finger is  
12 is about 20 miles. So, it is about 30 miles from  
13 Pohakuloa to Mountain View where I live.

14           This is a topographical map. It is a  
15 topographical map which somebody asked for. Here is  
16 the Pohakuloa Training Area. Here is a 14,000-foot  
17 mountain. Here is another mountain about as high,  
18 and here is another smaller mountain.

19           So basically, it is in a high area.  
20 Things run down to the coast from here. And since  
21 it is a mountainous area, it gets real windy.

22           Here is -- on the document viewer is --  
23 shows you what the wind does. This is dust carried  
24 by the wind. From here, if you look up the hill  
25 about 10 or 15 miles is Pohakuloa, but it is the

1 same kind of vegetation and area. And this is what  
2 the wind does in those areas.

3 I'm looking to see if you can see that.  
4 Do they see the same thing? Okay. So this is the  
5 Pohakuloa Training Area. This black and white line  
6 is the Saddle Road, which runs right through us,  
7 which many of us drive on from time to time. They  
8 have moved the road here, but only in the past  
9 couple of years.

10 This is Kilohana Girl Scout camp,  
11 basically right next door to Pohakuloa, where I went  
12 as a child.

13 And let me look at my notes.

14 Okay. And the DU ranges are, as you  
15 probably know already, they are kind of up here in  
16 the impact area. The pink is the impact area, and  
17 then, of course, the entire installation is bigger.

18 So, the Davy Crockett areas are  
19 approximately here. As you can see, the Saddle Road  
20 goes very close. I think it is within a half mile  
21 of the ranges. And some roads have been there for  
22 40 years or longer and so has the DU.

23 Let me see if I covered everything. And I  
24 think I covered everything on the maps.

25 >>JUDGE HAWKENS: Thank you very much.

1 That was a very informative showing, and you may  
2 have also answered the questions on behalf of the  
3 other three Petitioners from the big island as to  
4 question one.

5           If you now go to the question -- next  
6 question, Ms. Harden, which goes to whether your  
7 October 30 submission was filed out of time.

8           >>MS. HARDEN: It was filed late. I  
9 apologize for the lateness. I thought it might be  
10 accepted. The lateness was partly my health  
11 problems. I just can't do things fast. But when I  
12 spoke with Amil Julian, they encouraged me to file  
13 as soon as I could. So I was telling him I was  
14 going to be late. He sent an e-mail after the  
15 October 27th deadline saying to send stuff and said  
16 we can work on your e-mails when they arrive. And I  
17 took that to mean it might be accepted.

18           I noticed that NRC was giving leeway about  
19 the format of filings. I noticed that Mr. Klukan  
20 and Mr. Julian were very helpful, although they were  
21 not my attorneys. And, so, I was hoping the leeway  
22 would extend the deadlines.

23           After I filed, the December 17 Order  
24 asking me to clarify contentions in the late  
25 submission. Again, I thought it might be accepted.

1 And Amil Julian sent a January 11th e-mail which I  
2 forwarded to everybody, saying my October 9  
3 extension request was not addressed before the late  
4 filing, and, quote, "It would have been difficult to  
5 reject any intervention, petition supporting  
6 documents that would follow October 30."

7           There is three requirements for new  
8 contentions having to do with information not  
9 previously available. I can't show that. It was --  
10 information was available.

11           However, there is eight factors regarding  
12 late filings. One is good cause. I have talked  
13 about that. Two is a right to be a party. I have  
14 talked about that. Three is nature of my interest.  
15 One, of course, is my health. I don't need more  
16 health problems.

17           Also, I have two grown children who live  
18 in Hilo. I have got many friends and acquaintances  
19 and fellow residents on the island. Their health  
20 can be impacted by any DU aerosols.

21           I own property. Property values could  
22 drop if it is confirmed that DU aerosols are coming  
23 off of Pohakuloa or if they find more of the 2,000  
24 spotting rounds.

25           The fourth thing is effective any order on

1 my interest. If there is an order for air  
2 monitoring following Pang's and Rymer's  
3 recommendations, we could get information about the  
4 aerosols so appropriate action could be taken.

5           If there is an order for an adequate  
6 characterization report, we would get reliable  
7 information about the delivered risk. If there is  
8 an order for a records search, that would allow the  
9 DU to be dealt with following legal requirements.  
10 If there is an order regarding the lease, that would  
11 ensure that conditions in the lease could be  
12 followed.

13           Five: Other means where my interest would  
14 be protected; I'm not aware of any plans to pursue  
15 these possible avenues. One is environmental  
16 assessment or impact statement. Second is legal  
17 action later in the license process. Or three,  
18 legal action regarding the lease.

19           Six: Will my interests be represented by  
20 other parties? Probably not. The Hawaii State  
21 Department of Health does not share our concerns,  
22 though we have tried to communicate with them. And  
23 I have not found -- no one has found a lawyer who  
24 will take this case.

25           Seven: Will my participation broaden the

1 issues or delay the proceeding? Well, I'm trying to  
2 stick to only issues that are supported by facts,  
3 and have made an effort to do information, provide  
4 expert opinions and original documents, sticking to  
5 relevant facts.

6 Will this -- my participation assist in  
7 developing a sound record? I think I just addressed  
8 that. And that's all.

9 >>JUDGE HAWKENS: Thank you. Would you  
10 like now to address the next question which is  
11 clarifying the contentions contained in your  
12 October 30th submission?

13 >>MS. HARDEN: One second, I need some  
14 water to fortify myself. Sorry.

15 >>JUDGE HAWKENS: Take your time.

16 >>MS. HARDEN: October 30 contentions:  
17 regarding the forgotten hazards, I think I have  
18 talked about that. I say Jaber (phn) lost track of  
19 if records were classified, so let's check the other  
20 records.

21 Regarding the lease, I have talked about  
22 that. I have maps showing the lease area if you  
23 would like to see them, showing the DU might be on  
24 the lease area.

25 Regarding the air monitoring and

1 characterization report: Statements in the  
2 application are inaccurate. And I will refer back  
3 to these reports. The application, item ten says,  
4 potential for inadvertant exposure is limited,  
5 public and Army personnel won't be directly exposed.  
6 DU stays where it is deposited with limited  
7 migration. But as I said, October 9, there is  
8 evidence for 2,000 spotting rounds. As I said  
9 October 30, the characterization report was  
10 questioned by Reimer and Blann.

11 I have talked about the bombs and live  
12 fire falling on spotting rounds, October 30. As I  
13 said, October 30, Army air testing is not capable of  
14 detecting any aerosols that might be generated.

15 Another error; in item ten they talk about  
16 different pathways by which you could have exposed  
17 and say the dose depends primarily on average  
18 concentration. But as I said October 30, Dr. Reimer  
19 says Army guidelines are not appropriate. They are  
20 for soluble urainum, but DU and DU oxides have low  
21 solubility.

22 Another point; some statements refer to  
23 studies, but those studies were not adequately done  
24 for Pohakuloa. I went into great detail on that  
25 October 30.

1           Item six talks about survey --  
2 radiological surveys to fully characterize the  
3 contamination. Item ten of the application says we  
4 are going to identify areas containing DU. I'm  
5 paraphrasing to save time here. They say that they  
6 will have appropriate radiological monitoring  
7 requirements and do scoping characterization  
8 surveys.

9           Item ten: They are going do appropriate  
10 radiological investigations. And I question those  
11 in detail October 30.

12           Also, the Army does not follow application  
13 guidelines, which say the licensee should possess  
14 survey instruments sufficiently sensitive to measure  
15 the type and energy of radiation used. Guidelines  
16 page 8, 41, again, great detail in my October 30.

17           Also, they don't follow license guidelines  
18 for provision of adequate financial and other  
19 resources to the radiation protection program. As I  
20 said in detail October 30, Dr. Blann, Pang and  
21 Reimer imply ongoing monitoring is necessary; but as  
22 I said earlier, the Army is not committed to putting  
23 resources into the Radiation Protection Program,  
24 although the guidelines say so on Page 31. The  
25 application Item 10 talks about how they are not

1 really committing to anything.

2 That's all I have, unless you want to go  
3 into October 9th.

4 >>JUDGE HAWKENS: Yes, I would like into  
5 go the final question, which is the October 9th  
6 submission, which you initially characterized it as  
7 a request for extension but thereafter ask that it  
8 be considered a petition to intervene.

9 Assuming it is considered to be a petition  
10 to intervene, can you explain what contentions is  
11 contained in that submission, please?

12 >>MS. HARDEN: Yes. The contentions, one  
13 is that the archive search report be put on Adams.  
14 I would like to see the Adams under control of a  
15 third party so we can check quotes and make sure a  
16 correct version is being used.

17 I didn't see these discrepancies until  
18 after I filed October 9 and 30, because I could not  
19 get the ASR.

20 The link on the Army website did not work.  
21 I put that in one of my submissions. I sent an  
22 e-mail to the webmaster saying, gee, I can't get  
23 this, return is undeliverable. And I have that  
24 document if you would like to see it. And I finally  
25 got a paper copy ten months after asking the Army

1 and contacting somebody in Washington.

2 I talked about --

3 >>JUDGE HAWKENS: Ms. Harden, when did you  
4 get a copy? Do you remember the date about?

5 >>MS. HARDEN: It was late October. But  
6 it was too late to include things in my submissions.  
7 I'm recalling getting it in late October.

8 >>JUDGE BARATTA: This is Judge Baratta.  
9 Was that October 2009, last year?

10 >>MS. HARDEN: Yes.

11 Okay. So the discrepancies, I've talked  
12 about the 1996 report when the original find was  
13 supposedly 2005. I have talked about the misquote,  
14 the Army was actually writing to a Congress person  
15 and they were -- the Army was trying to say, hey  
16 there is only about 700 rounds, there is to the  
17 really, 2,000. Whereas my copy -- the Army added a  
18 sentence to a passage in the Archive Search Report  
19 to indicate fewer spotting rounds.

20 Also, the report contains information that  
21 might affect an agency decision on issuing the  
22 license.

23 I have talked about how they got rid of  
24 what they thought was scrap in those days. And the  
25 spotting rounds might have been considered scrap

1 since they just wanted to leave them in the impact  
2 area, as I've said.

3 Another factor is when they were searching  
4 for the DU rounds, they looked for the highly  
5 visible back plate assemblies, but the Davy  
6 Crockett, according to the ASR, could be fired from  
7 a truck. This was rarely done. However, this would  
8 leave the back assemblies on the truck, not on the  
9 ground. And Hawaii got 14 trucks for the Davy  
10 Crockett that's in the Archive Search Report.

11 Last point, the Army cites the ASR  
12 repeatedly as a reference. They cite it in their  
13 application, in the November 5 Answer to  
14 Petitioners' filings, the Pohakuloa Environmental  
15 Radiation Monitoring Plans, the Pohakuloa  
16 Characterization Report, the Scoping Study, two  
17 presentations to Oahu County Council and a letter to  
18 the Congress person which was a misquote.

19 On the human health risk assessment: I  
20 thought there was no official statement that it  
21 won't be done and why. But I was in error. There  
22 is a statement in the Pohakuloa Environmental  
23 Radiation Monitoring Plan. However, we are still  
24 missing an adequate explanation of why it will not  
25 be done. The decision for no assessment drew

1 concerns from Dr. Reimer. Those concerns are many  
2 the same as in my October 30 submission.

3 And that's all I have.

4 >>JUDGE HAWKENS: Thank you, Ms. Harden.  
5 If you have a closing statement, we'd would be happy  
6 to hear it now.

7 >>MS. HARDEN: I would prefer to do it  
8 when the other folks do, if that's all right.

9 >>JUDGE HAWKENS: That's fine. We were  
10 concerned whether you would be comfortable staying  
11 the entire time. But if you're willing to do that,  
12 we are happy to accommodate that.

13 >>MS. HARDEN: I'll try to hang in.

14 >>JUDGE HAWKENS: If you find that you  
15 cannot hang in there, please feel free to let us  
16 know, and we will interrupt whatever part of he  
17 argument we're in and allow you to make your open  
18 closing statement at that time.

19 >>MS. HARDEN: Thank you.

20 >>JUDGE HAWKENS: Let's now return to the  
21 procedure I outlined earlier, which is we will hear  
22 an opening statement from each individual. We will  
23 start with the Petitioners, then go to the Army,  
24 then go to the NRC staff. From the Petitioners, we  
25 will hear from them in the following order:

1 Ms. Leonardi, Mr. Albertini and Mr. Harp. And you  
2 are reminded to please endeavor to keep the opening  
3 statement within five minutes.

4 Ms. Leonardi?

5 >>MS. LEONARDI: Good morning, everyone.

6 >>JUDGE HAWKENS: Good morning. You may  
7 proceed.

8 >>MS. LEONARDI: I am my father's  
9 daughter. My father's name is Denocka Aho Natiel  
10 (phonetic), and mother's name is Louisa Nahee  
11 (phonetic). I'm from the island of Oahu.

12 I want to say to all of you that I have to  
13 follow traditional protocol just as much as the NRC  
14 and the rest of the audience have to follow the  
15 rules of the NRC. Okay.

16 Aloha. This is a serious matter before  
17 us, depleted uranium. Radiation exposure in any  
18 quantity or size is harmful to Hawaii's population  
19 and their environment. I am arguing that the United  
20 States of America Nuclear Regulatory Commission,  
21 specifically the Atomic Safety and Licensing Board,  
22 not grant the U.S. Army installation command a  
23 license to possess and manage residue quantities of  
24 DU at any Army reserve on Oahu and other places in  
25 the Pacific.

1           The continued use of DU for the purpose of  
2 training exercises brings harm to military personnel  
3 and their families and the people of Hawaii. I have  
4 read and heard many defining thoughts about the  
5 unsafe as well as safety issues of DU.

6           It is without consciousness that I say to  
7 everyone here that it is downright dangerous to the  
8 health and safety for all the living creatures on  
9 the plant earth, regardless of where one lives. In  
10 Hawaii when Treti Pele, our earth mother, spews her  
11 energy, we, the Oculpelio(phonetic)feel her birthing  
12 as well as her wrath throughout the Aekpoco.(phn)

13           God's Apelli (phn) can be seen in the sun  
14 on our shores, as well as the plumage that fans  
15 across the entire from the Oculpelio from onset of  
16 her eruption. Unlike the air quality of radioactive  
17 DU, during military live firing, a volcano eruption  
18 does not cause people to get sick and die.

19           I have said this to my sister who lives  
20 here on Hilo, and she said, Sis, people do get sick  
21 and here on the big island from volcano eruption.  
22 And she said, however, at least, we can manage that,  
23 because it is visible and we can see it. And we  
24 know about Treti Pele through our ancestors as well  
25 as from our Ocuppelio (phn)and our immediate family

1 members.

2           Inducing DU into our bodies means that we  
3 are contaminating ourselves with radioactive  
4 materials that have far-reaching consequences beyond  
5 our means to understand and solve. To possess a  
6 license means to destroy a segment of a population  
7 that has done no harm to the United States of  
8 America.

9           The people of Hawaii have only given the  
10 people of earth, Aloha, and for the NRC to carve out  
11 that valued energy would mean the end to Hilo. DU  
12 or what I call a black space over time, is  
13 dissenting for humanity and all God's living  
14 creatures here on earth.

15           I would like to cite the Downwinders case,  
16 Allen v. The United States before the federal Judge  
17 Bruce Jenkins, Salt Lake City in August 1979.  
18 Quote, "By the time the case came to trial in  
19 September 1982, Ronald Reagan sat in the White House  
20 and Henry Gill, attorney for the Department of  
21 Energy took the lead in presenting the government's  
22 defense. Not surprisingly, Gill and his team based  
23 their defense on the plea that the AC had acted  
24 within the scope of its legal discretion under the  
25 FTCA. Under this line of argument, they said

1 officials at the Nevada test site had no duty to  
2 warn the public of the dangers of the atomic test."

3 This is -- end quote. Open quote again,  
4 "This is a time-honored rule of law, imposes a duty  
5 on everyone to avoid acts in their nature dangerous  
6 to the lives of others.

7 I'm going to stop here. That's it.

8 >>JUDGE HAWKENS: Thank you, Ms. Leonardi.

9 We will now hear from Mr. Albertini,  
10 please.

11 >>MR. ALBERTINI: Aloha Cocol (phn).  
12 That is a warm greeting from us to all of you in  
13 Rockville, Maryland, which I'm sure is a little  
14 cooler than where we sit here.

15 >>JUDGE HAWKENS: It is much cooler,  
16 Mr. Albertini.

17 >>MR. ALBERTINI: Before us is the issue  
18 of the U.S. Army's request for a license to possess  
19 depleted uranium, DU, not only at sites in Hawaii  
20 but at numerous sites around the United States.

21 Now, let me offer a translation in simple  
22 lay terms: A license to possess rubbish and leave  
23 it in place is a rubbish dump. A license to possess  
24 depleted uranium is a nuclear waste dump.

25 Let me cut to the chase. Recently, 6700

1 tons of sand from Kuwait, contaminated depleted  
2 uranium, at Camp Doha, a U.S. Army base there, has  
3 been shipped to Boise, Idaho, for burial. Poor  
4 Boise. But what is good for Kuwait should be good  
5 for Hawaii.

6           Instead of seeking a license for the  
7 depleted uranium to remain in place at Schofield and  
8 Pohakuloa, the military needs to learn a lesson that  
9 all of our mothers teach us from small kid time, and  
10 that is, clean up your mess. The Army needs to  
11 clean up in Hawaii as it did in Camp Doha in Kuwait  
12 and in such a way as to not contaminant other  
13 communities, if that is even feasiabile. But perhaps  
14 you have some room in Rockville, Maryland.

15           On Hawaii Island, our organization  
16 published a map documenting 57 known present and  
17 former military sites. I have a copy of that map  
18 here. That can be put on the screen.

19           These sites total over 400 square miles,  
20 250,000 acres that may contain live arms and other  
21 military toxins and should be considered military  
22 hazard areas. Most of these sites remain unfenced  
23 and with have no signage about unexploded ordinance  
24 and other hazards.

25           Instead of cleaning up, the military is

1 expanding its mess that now involves radiation  
2 contamination at Pohakuloa and possibly other sites  
3 in Hawaii, especially Waipio Valley. For more  
4 information on this mess, I have several other  
5 references I can provide.

6           In September of 2009, the West Hawaii  
7 Today daily newspaper on this island conducted a  
8 poll. Approximately 1,000 people responded to the  
9 question, do you believe the Army about deleted  
10 uranium at Pohakuloa? Fourteen percent, 135 votes,  
11 said they believed the Army and are not concerned  
12 about their health; 48 percent, 445 votes, said they  
13 want independent testing for DU; and 36 percent, 339  
14 votes, said they do not believe a word the Army  
15 says.

16           The NRC's job is to protect the health and  
17 safety of the people and not to put a burden on the  
18 people to prove that we have been harmed by military  
19 depleted uranium. This basic human right and legal  
20 principle is recognized in environmental law, that  
21 the proponent, in this case the U.S. Army, is  
22 required to study the possible impacts before  
23 actually impacting the public by training.

24           Environmental impact law recognizes the  
25 premise that the cart, the impact, comes after, not

1 before the horse, the study. The Army has it not  
2 only backwards but upside down. It's impacted us,  
3 and now it doesn't even want to do good science to  
4 see what the impact might be.

5           Now, I'm a taxpayer, and I have overall  
6 financial responsibility for the organization that I  
7 head. I want the organic food that we grow and the  
8 air, the land, the water in Hawaii and around the  
9 world to be healthy, not contaminated with chemicals  
10 from military radiation.

11           As a taxpayer, my taxes unfortunately,  
12 help pay for this mess, and my taxes will have to  
13 clean it up. That constitutes legal standing as far  
14 as I'm concerned.

15           On July 2, 2008, the Hawaii County Council  
16 passed Resolution 639-08. That should be in your  
17 records. It passed by a vote of eight to one. And  
18 the resolution urges the U.S. military to address  
19 the hazards of depleted uranium. The only nay vote  
20 of that eight to one vote was by a retired Army  
21 colonel on the council.

22           The resolution calls for eight action  
23 points, but number one is, quote, "Order a complete  
24 halt to B2 bombing missions and to all live fire  
25 exercises and other activities at the Pohakuloa

1 Training Area that create dust until there is an  
2 assessment and cleanup of the depleted uranium  
3 already present." End quote.

4 The other seven actions call for  
5 monitoring, funding, reports, meetings, search of  
6 records, et cetera.

7 By the way, according to the Army Stryker  
8 EIS, between 7 million and 14.8 million live rounds  
9 are fired at PTA annually, everything from small  
10 arms to heavy artillery, rockets, missiles and  
11 bunker busting bombs.

12 My final paragraph: My presence is -- my  
13 preference is for no military license to possess DU  
14 here or anywhere. International law says DU weapons  
15 are weapons of mass destruction and illegal. I want  
16 PTA shut down, decommissioned, cleaned up and  
17 returned to its rightful owners, the independent  
18 nation of Hawaii.

19 A first step toward that end, were any  
20 license to possess DU, is a halt to all live fire  
21 and other activities that create dust at PTA. There  
22 needs to be a thorough, independent assessment  
23 through testing and monitoring of the entire  
24 133,000-acre PTA base for DU contamination, not  
25 simply 40 acres and then an additional 900 acres

1 spot checked. After the assessment, cleanup needs  
2 to be completed.

3           Given the military's history here in  
4 Hawaii, the Army testing nerve gas when it said it  
5 was going to do weather testing, and I could go on  
6 and on, and given the use of DU for ballast and  
7 perhaps in penetrator weapons -- and I have a list  
8 of such weapons -- there is reason to believe there  
9 is far more DU contamination at PTA than Davy  
10 Crockett.

11           This is more reason to believe we need  
12 independent, comprehensive good scientific data,  
13 which to date is terribly missing. If the military  
14 has nothing to hide, prove it by transparency which  
15 at present is terribly lacking.

16           Mahalo.

17           >>JUDGE HAWKENS: Mahlo. Thank you,  
18 Mr. Albertini.

19           We will now hear from Mr. Harp.

20           >>MR. HARP: Aloha, Your Honors Hawkens,  
21 Baratta and Kennedy. Thank you for the opportunity  
22 to address you today.

23           Before I begin my opening statement, I  
24 would like to ask the Board's consideration in order  
25 to present a few documents and graphics after I have

1    complet my responses to your questions.  It would be  
2    easier for me and quicker for all if you would allow  
3    for this consideration.

4            I only have about four documents that I  
5    would like to present after responding to your  
6    questions.  I will now present my opening statement.  
7    Please start the timer.

8            Before I actually get into that, I wanted  
9    to thank your staff person, Katie Tucker, for her  
10   gracious assistance, as well as all the NRC staff  
11   for their patience with us.  We are really  
12   inexperienced in this process, and in fact, so  
13   inexperienced that when I first got involved, I  
14   didn't even know what the word "contention" meant.  
15   But anyway, let me start my opening statement.

16           United States military has targeted Hawaii  
17   for toxic dumping, live fire training and secret  
18   chemical and biological welfare experiments for  
19   decades.  From a list as far back as 1925, the  
20   United States dumped large amounts of munitions,  
21   including bulk containers of chemical warfare  
22   agents, into the coastal waters of Hawaii.

23           In the 1960s, biological and chemical  
24   warfare experiments on and around Oahu were given  
25   code names such as Autumn Gold, Errand Boy, Flower

1 Drum, British Gaddy, Ethnol, Big Tom and Folded  
2 Arrow. On the island of Hawaii, not far from where  
3 we are today, actually, biological and chemical  
4 warfare experiments including Blue Tangle, Yellow  
5 Leaf, Phase A, Yellow Leaf, Phase B, Pine Ridge, Red  
6 Oak, Phase One, Green Mist, and Tall Timber.

7 Chemical and biologics secretly unleashed  
8 on Hawaii include ester of benzilic acid, bensilis,  
9 Groabe, (phn)aerosolized zinc catenic sulfide, PR,  
10 for which there is no further information available,  
11 serratia russions, (phn)e. coli, and as  
12 Mr. Albertini mentioned, several nerve agents.

13 The Department of Veteran Affairs also  
14 shared with us that other secret chemical  
15 experiments were carried out by the Department of  
16 Defense in Hilo and Kauai, and that the USDA and the  
17 University of Hawaii were contracted to conduct  
18 field tests.

19 Secret experiments included agent orange  
20 in Hilo in 1996; agent orange, M-3140, TORDON ester,  
21 2 and 4-D ester, 2, 4 and 5-T ester on Mauna Loa  
22 near Hilo, December 1966 and January 1967. Again on  
23 Kauai, agent orange in 1967, agents orange, blue,  
24 white, diquat, paraquat, PCP, Picloram, HCA, 2, 4  
25 and 5-T ester and Endothal in the Kauai Branch

1 Station near Kapaa in 1967 and '68.

2 No one knows how many may have become ill,  
3 disabled or died from these experiments, because  
4 only the military and the Department knew about  
5 them. In the 1960's, the Atomic Energy Commission  
6 licensed the production import and use of depleted  
7 uranium spotting rounds that were unleashed on  
8 Hawaii.

9 It is clear from the Army's application  
10 that they had concerns about exposure to depleted  
11 uranium dust. It is also clear that they were  
12 concerned with the use of spotting rounds  
13 themselves. In an application dated 1 May 1966,  
14 Lieutenant Charles Crawl wrote, and I quote, "We  
15 request that your direct reply include in addition  
16 to the license, if it is feasible to issue such a  
17 license, guidance on control required for proposed  
18 end use of the item." End quote.

19 We are here today because like Lieutenant  
20 Crawl, we have concerns for the dangers of depleted  
21 uranium and an Army request for a license that  
22 basically boils down to permission for disposal in  
23 place. Agencies such as the NRC appear to take the  
24 position that deleted uranium is safe if matters are  
25 ingested. Statistics appear to reflect a different

1 conclusion.

2           In the private health sector, many  
3 professionals' conclusions also conflict with that  
4 of the NRC. Many of these professionals are of the  
5 opinion that depleted uranium is, in fact, highly  
6 dangerous to human health, especially if inhaled as  
7 microscopic particles that become lodged in lungs or  
8 sinus cavities. Until the effect of depleted  
9 uranium are fully understood, it is the  
10 responsibility of everyone, including the NRC, to  
11 apply the precautionary approach in decision-making.

12           A special use was once promoted as safe,  
13 although the manufacturer knew of its carcinogenic  
14 potential in the 1930's. It seems that history  
15 repeats itself here.

16           Military training activities at these  
17 sites will continue scattering depleted uranium,  
18 poison gas across our islands, increasing our  
19 potential for inhalation and decreasing the  
20 possibility of ever being able to achieve a thorough  
21 cleanup, creating a never ending threat to the  
22 health and well-being of Hawaii's future  
23 generations.

24           Thank you and Mahalo.

25           >>JUDGE HAWKENS: Thank you, Mr. Harp.

1           We will now hear from the Army.

2           >>LTC. HERRING: Good afternoon, Your  
3 Honors, NRC staff, and good morning to Petitioners  
4 in Hawaii. Again, my name is Lieutenant Colonel  
5 Kent Herring and I represent the Army Installation  
6 Management Command. I might use a shorthand, IMCOM,  
7 during this proceeding.

8           I would like to say on behalf of the  
9 executive leadership side of the Army that Colonel  
10 Matthew Margotta, who is the IMCOM commander for  
11 installations in Hawaii is also participating in  
12 this hearing with members of his staff that have  
13 worked on this issue by observing the proceedings  
14 via this webcast today. And he extends his  
15 greetings to all present.

16           Also sitting with me today is Mr. Greg  
17 Komp, the senior health physicist from headquarters,  
18 Department of the Army, who was primarily  
19 responsible for assembling, creating the Army's  
20 license in this case. We look forward to the  
21 opportunity to answer your questions and concerns  
22 today.

23           I would like to stress that since the  
24 discovery of depleted uranium on Schofield Barracks  
25 in August 2005, the Army has been open, transparent

1 and we believe accountable in the steps we have  
2 taken and that those steps have taken momentum to  
3 deal with this issue.

4 Rightfully, Petitioners and others want to  
5 make sure the Army is responding properly to the  
6 discovery of DU. That is why we have applied for  
7 this license, coordinating with the Hawaii State  
8 Department of Health, Agency For Toxic Substances  
9 and Disease Registry and the Army Center for Health  
10 Promotion and Preventive Medicine and other  
11 organizations every step of the way.

12 The purpose of today's hearing, of course,  
13 is to answer your questions. As stated in your  
14 December 17th order, to assist in determining  
15 whether Petitioners have satisfied the code of  
16 Federal regulations and judicial rules for standing  
17 and contention admissibility and to clarify any  
18 questions you have of the Army.

19 The Army's position with regard to the  
20 Petitioners' standing was provided in our brief, and  
21 I won't cover that ground again in detail, other  
22 than to say in short that the Army's position is  
23 that the Petitioners did not satisfy the Commission  
24 rules based on their pleadings.

25 Standing provisions have not been met, and

1 even if Petitioners had met -- even if a Petitioner  
2 had been met a standing requirement, none provided  
3 the types of facts, expert opinion and other  
4 requirements from the CFR to satisfy the contention  
5 admissibility requirements.

6           The Army recognizes that Petitioners are  
7 pro se, and did not object to any requests for  
8 extension to -- extension for time to file requests  
9 or information, or to request to be exempted from  
10 the normal E filing rules. However, the Army  
11 believes that even under a generous view of the  
12 pleadings that neither of these rules for standing  
13 or admissible, contentions have been satisfied.

14           Rules and references to those rules, which  
15 were clearly stated in the August 13, 2009 Federal  
16 Registry notice, same rules for which this  
17 Commission has stated are strict by design.

18           Thank you.

19           >>JUDGE HAWKENS: Thank you, sir.

20           We will hear from the NRC staff, please.

21           >>MS. SEXTON: Good afternoon, Your  
22 Honors, Petitioners, counsel and representatives of  
23 the United States Army, and members of the public.  
24 My name is Kimberly Sexton, and as you were  
25 introduced to earlier, this is Brett Klukan. And

1 together as members of the Office of the General  
2 Counsel, we represent the staff of the U.S. Nuclear  
3 Regulatory Commission today.

4 As the division of topics for today's oral  
5 argument, I will be handling questions dealing with  
6 the standing; Mr. Klukan will be handling questions  
7 regarding contention admissibility; and we tried to  
8 divide up the rest of the questions between the two  
9 of us.

10 Before I begin with the statement, I would  
11 like to take a moment to introduce our technical  
12 staff that we have with us today, all of whom work  
13 in the Office of Federal And State Materials And  
14 Environmental Management Programs.

15 First we have Rebecca Tadesse. She is the  
16 branch chief in the Materials Decommissioning  
17 Branch. We also have John Hayes -- stand up for us.  
18 He is the senior project manager for reading the  
19 staff's review of the Army's license application.  
20 And finally, we also have Keith McConnell. He is  
21 the Deputy Director of Decommissioning and Uranium  
22 Recovery Licensing Directorate.

23 I plan on keeping my remarks brief, as we  
24 believe our position is fully laid out in our  
25 December 6, 2009 Response to Request for Hearing and

1 Petitioners to Intervene. As we stated in that  
2 filing, the NRC believes that the Request for  
3 Hearing and Petition to Intervene filed by  
4 Ms. Harden, Ms. Leonardi, Mr. Albertini and Mr. Harp  
5 should be denied because they have neither  
6 established standing nor meet the contention  
7 admissibility requirements of 10 CFR Section 2.309.

8           First on standing, although two of the  
9 Petitioners appear to live within about 30 miles of  
10 one of the two sites, they have neither been able to  
11 meet the traditional standing requirements  
12 demonstrating a concrete and particularized injury  
13 that is fairly traceable to the challenged action  
14 and likely to be addressed by favorable decision or  
15 the proximity plus standing requirement. That is,  
16 they have not demonstrated an obvious potential for  
17 radiological harm at a particular distance precluded  
18 by the Petitioner.

19           It is the Petitioner's burden to show a  
20 specific and plausible mean of how the challenged  
21 action may harm him or her.

22           Second, although the Petitioners bring up  
23 many concerns regarding the depleted uranium on  
24 Pohakuloa and Schofield Barracks, they've either  
25 failed to comply with the contention pleading

1 requirements or failed to raise material issue  
2 within the scope of the proceeding.

3           Contentions must be rejected where rather  
4 than raising an issue that is concrete or litigable,  
5 it reflects nothing more than a generalization  
6 regarding the Petitioner's view of what the  
7 applicable policies ought to be. As the Commission  
8 has repeatedly stated, mere notice pleading does not  
9 suffice.

10           The staff would like to take a moment to  
11 acknowledge the strong emotions attached to the long  
12 and often contentious relationship between the  
13 residents of the Hawaii Island and the United States  
14 government. However, the scope of the staff's  
15 review of the Army's license application does not  
16 extend to the legitimacy of Hawaii statehood or  
17 questions regarding the military's right to use of  
18 land at Pohakuloa and Schofield or concerns related  
19 to any other type of material than DU with respect  
20 to M101 spotting rounds.

21           Instead, the staff is limited in its  
22 review to what is set forth in 10 CFR Section 40.32,  
23 to look at whether: One, the Army's application is  
24 for a purpose authorized by the Atomic Energy Act;  
25 two, the Army is qualified to possess the depleted

1 uranium in a manner that protects health and  
2 minimizes danger to life and property; three, the  
3 Army's facilities and procedures are adequate to  
4 protect health and minimize danger to life and  
5 property; and four, the issuance of a possession  
6 only license will not be amenable to the common  
7 defense and security or to the health and safety of  
8 the public.

9           Finally, we would like to make clear to  
10 all involved that at this point in time, the staff  
11 has made no determinations on the sufficiency of the  
12 Army's application to possess depleted uranium at  
13 Pohakuloa and Schofield.

14           Thank you, Your Honors.

15           >>JUDGE HAWKENS: Thank you, Ms. Sexton.

16           We will now move to the procedures  
17 announced in our January Order, and we will start  
18 with the Petitioners addressing the questions in our  
19 December 17th order, starting with Ms. Leonardi.

20           >>MS. LEONARDI: I'm here. This  
21 is Luwella Leonardi.

22           >>JUDGE HAWKENS: We are ready. If you  
23 will start by addressing the questions addressed to  
24 all of the Petitioners about the address of your  
25 actual residence and the distance of it from

1 Schofield.

2 >>MS. LEONARDI: Okay. As I said earlier,  
3 when I introduced myself, I'm held to a political  
4 traditional protocol, too, here just as much as  
5 everyone here is held to a -- and I want to  
6 partnership with the NRC, establish a participating  
7 partnership with the NRC rules.

8 So, I have a dual role here, sir. So in  
9 answer to your question -- sorry. This room is  
10 pretty small, and I have the right documents in  
11 front of me.

12 Could you hold off on our time, please?

13 >>JUDGE HAWKENS: We do understand your  
14 quarters are cramped. We will try to accommodate  
15 you.

16 >>MS. LEONARDI: Thank you. Sorry. I  
17 stepped out to get that. I'm looking for -- here it  
18 is. So that I could direct my -- you asked me -- my  
19 petition asserts that dust plumes emanating from the  
20 Army installation are responsible for the health  
21 issues in your -- in my community. And then, I was  
22 supposed to specify the factual foundation for this  
23 concern.

24 I just wanted to --

25 >>JUDGE HAWKENS: Ms. Leonard, before you

1 do that, could you just tell us your residential  
2 address and the number of miles from Schofield?

3 >>MS. LEONARDI: All right. I do have a  
4 map. My residential address is 1845 -- I'm sorry --  
5 I have 85-1363 Halapoe Place, Waianae, Hawaii,  
6 96792. I have a map here attached that shows my  
7 residence.

8 I'm right here, sir. There we go. Can  
9 you see this?

10 >>JUDGE HAWKENS: Yes, we can.

11 >>MS. LEONARDI: This is where I live at  
12 85-1363 Halapoe Place in the valley of Waianae. And  
13 this particular location is midway of the valley.  
14 If you take a U, sir, and you divide it into three  
15 parts, the top part is Makua, I'm in -- I'm next,  
16 and then, there is Makai. Makua is the mountains.  
17 I'm in mid-valley, mid-area of the valley and Makai  
18 is the ocean. If you draw a U and turn it upside  
19 down, you'll see that that's my immediate address.

20 Schofield, sir -- as I said, I have to  
21 follow some protocol, sir. This is the tip of  
22 Aikauhi. This is Aikauhi of Waianae. And as I said  
23 in my introduction, when Treti Pele erupts, we can  
24 see her -- we know that she is erupting before.  
25 Cell phones, before any technical -- before 1825, we

1 could tell that she was erupting. The reason being  
2 is we would see her cinders up along our shorelines  
3 and we can look at the sun during the day. It will  
4 be orange.

5 So this is Schofield in this area here,  
6 sir. This is Waianae Valley. It's like a U shape.  
7 This is the ocean. This is Makua. This is is the  
8 mountain. This is Makua Reserve. This is  
9 Schofield.

10 >>JUDGE HAWKENS: Thank you. Can you tell  
11 us --

12 >>MS. LEONARDI: This is --

13 >>JUDGE HAWKENS: Ms. Leonardi, can you  
14 give us an approximate distance from your residence  
15 to the closest Schofield boundary, just  
16 approximately? Is it more than 20 miles, more than  
17 15 miles, more than ten miles?

18 >>MS. LEONARDI: A little over 2 miles,  
19 sir.

20 >>JUDGE HAWKENS: Two miles?

21 >>MS. LEONARDI: Approximately. I'm  
22 trying to answer your questions, sir.

23 >>JUDGE HAWKENS: I appreciate that. That  
24 is very responsive. That's what I needed. In fact,  
25 I think that answers the first question in full.

1 And if you would like, you can move on to the second  
2 question about the dust plumes.

3 >>MS. LEONARDI: Okay. In my next second  
4 question, sir, about the dust plumes, in my opening  
5 statement, I said Waianae, everything -- sir, we  
6 live in a island. If something is happening on the  
7 big island or in Hawaii Kai or Waianae or anywhere  
8 in the island, we are at the effectiveness only  
9 because we are an island and we have wind tunnels.  
10 So the wind -- the wind comes to our community from  
11 all directions, north, south, east and west.

12 So, when we are talking about plumes, sir,  
13 as I said earlier, when Treti Pele fans her plume,  
14 her plume, we almost immediately from the onset of  
15 the eruption have visiblensess of her. So here in  
16 the valley here, when the I'm talking about plume,  
17 the -- over in Hualalai where Schofield is located,  
18 whatever goes on in Schofield whether it be sugar  
19 cane burning or live firing, our whole valley is  
20 affected by that, all our valleys up along the  
21 coastline.

22 I also want to point out the area that I'm  
23 living in and what's on my north, south, east and  
24 west. Mokuleia is on the north side -- the west  
25 side of the coastline. And Barbers Point (phn) that

1 was just recently decommissioned is on the other  
2 side of Mokuleia, and Haleiwa is on the -- sorry,  
3 I'm having a hard time -- here is the north. And  
4 then, we also Halulu Lake.(phn)

5 So, sir, I am surrounded almost -- if you  
6 look at the area, I am surrounded by military bases.

7 >>JUDGE HAWKENS: Ms. Leonardi, I would  
8 like to ask you a question. Let's assume for the  
9 present that the dust plumes do come from Schofield.

10 >>MS. LEONARDI: Yes.

11 >>JUDGE HAWKENS: What is your factual  
12 basis for thinking that they contain radioactivity?

13 >>MS. LEONARDI: Can you see that, sir?  
14 I'm putting some information, dated information --  
15 this is cancer in children here in Hawaii. As you  
16 can see, it is rising. It is lymphoma.

17 This is Table Number 6, childhood cancers  
18 by age and sex and weight and from 1985 to 2000. At  
19 the top of the graph is age group, sex, all the  
20 totals and leukemia, lymphoma, brain, CMS,  
21 systematic nerve, retoia, ptosis, renal, bone, soft  
22 tissue, germ and carcinoma. I could read it the  
23 contents if you want me to.

24 >>JUDGE HAWKENS: No, that's not  
25 necessary. We do see the graphs and the figure. We

1 understand the health issues that are a matter of  
2 concern to you. But what we are looking for is a  
3 connection between the DU and Schofield and your  
4 concern about the health issues?

5 >>MS. LEONARDI: I would like to refer  
6 back to in my introduction. I mentioned Allen  
7 versus the United States before the federal judge of  
8 Bruce Jenkins in trying to answer your question,  
9 sir.

10 I had a family meeting. In my home, I  
11 have about three people that suffer greatly from  
12 injuries of plumes from Schofield from live firing.

13 To try to be more specific, and try to  
14 relate that to Schofield, I want to bring to your  
15 attention, sir, January 28, 2000, on Friday. This  
16 is when we had a standoff on our roads where our  
17 roads leading into Waianae Coast was closed down.

18 What happened here is the military that  
19 assisted our community and allowed our populist to  
20 go to Schofield and drive home through Kolikole  
21 Pass. Again, this is on Friday 28, 2000, on Friday.  
22 The Army opened the Kolikole Pass at about  
23 3:00 p.m., yesterday, allowing drivers to reach  
24 Farrington Highway without passing the standoff  
25 site. Traffic was moving slowly but it was moving

1 said Ron James, Army deputy, public affairs officer.

2 My son-in-law was one of those persons  
3 that drove over the Kolikole Pass at that time, sir.  
4 What Ron James, Army deputy, public affairs officer  
5 was concerned about that day was that there was live  
6 firing going on. And the plummage was in the air.  
7 And, so, we were wondering at that time whether my  
8 daughter was going to -- what time my daughter was  
9 going to come home. When I -- she also too drove  
10 over to Kolikole Pass. And my son-in-law came home  
11 around 8 o' clock.

12 There are many people in all these  
13 valleys, not including Myaeli, (phn) Waianae and  
14 Kakua. And they are all affected by the plume of  
15 Schofield live fire.

16 I'm not sure at this point in time if I'm  
17 answering your question, sir, but --

18 >>JUDGE HAWKENS: No, I understand you're  
19 trying to. Let me be a little more specific then.  
20 You had indicated the winds come from the north, the  
21 south, the east and the west, which sounds like the  
22 plumes arise with reasonable frequency where you  
23 live.

24 >>MS. LEONARDI: Yes, sir.

25 >>JUDGE HAWKENS: You have data which

1 indicate there are health issues, but for me, you  
2 still have not shown an adequate factual foundation  
3 to demonstrate, one, that the plume -- the dust  
4 plume that may be causing the health issue, if  
5 indeed it is causing a health issue, comes from  
6 Schofield, or if the plume necessarily causes the  
7 health issue because it contains DU.

8 Do you understand my concern?

9 >>MS. LEONARDI: Okay. Let me divide that  
10 into three parts. What you're saying is the  
11 immediate plume, yes, affects on our health. Yes.

12 Sir, right behind my home, I have a  
13 19-acre surface waste management for contaminated  
14 soil as well as good soil. It is directly behind my  
15 home, sir. Okay. That soil is trucked in. That  
16 soil is --

17 >>JUDGE HAWKENS: We're going to the third  
18 question now, Ms. Leonardi? I just want to make  
19 sure I'm -- because you do allege in the third  
20 question that we ask, we ask you to explain your  
21 claim that the Army transports contaminated soil to  
22 your community.

23 >>MS. LEONARDI: Okay, sorry, I thought  
24 you were alluding to that. I was trying to explain  
25 the windswept plumage which comes from Schofield.

1 Yes, it does come into our valley.

2 This is -- you know, I know you're all on  
3 the continent, however, this is an island and it is  
4 U-shaped. That's why I brought my map to show you  
5 the U shape, and it's a valley, and there are  
6 several valleys before mine.

7 And every valley fills up, because it is  
8 an apex. And every valley fills up with whatever  
9 happens, whether it is happening in big island or  
10 whatever live firing is happening over in Waianae.  
11 It fills up. The wind direction fills up into our  
12 communities, whether it's coming from Makua or  
13 Schofield or Halulu Lake.

14 So, did I answer your question, sir?

15 >>JUDGE HAWKENS: I think you did, unless  
16 you have anything more to add --

17 >>MS. LEONARDI: To that particular  
18 question?

19 >>JUDGE HAWKENS: -- to that particular  
20 question.

21 >>MS. LEONARDI: I'm not sure if I have  
22 fully answered your question, sir.

23 >>JUDGE HAWKENS: Well, it may be --

24 >>MS. LEONARDI: All I can say is I can  
25 try my best.

1 >>JUDGE HAWKENS: And I do appreciate  
2 that, Ms. Leonardi.

3 Why don't we move to the next question  
4 about your claim that the Army has transported DU in  
5 contaminated soil and deposited it adjacent to your  
6 home.

7 >>MS. LEONARDI: Okay. Sir, I've been  
8 watching this surface fill for almost ten years. I  
9 have watched the truckers drive up -- drive into  
10 this 19 acres and land fill for ten years.

11 I have made many complaints. EPA is aware  
12 of it. I called EPA. I have called the state  
13 health. I have had the state officials come down.  
14 I have had -- I have gone down several trips down to  
15 the city, DPP. I have made many complaints about  
16 this -- over a ten-year period. I have attended a  
17 lot of your military meetings in our community.

18 Sir, I was well aware of deleted uranium  
19 in Hawaii because of President Clinton's time when  
20 he was president. That information was given to us  
21 during his time period.

22 I don't remember if Schofield was there.  
23 I was trying to relocate that citation. I don't  
24 remember, I have to say, if Schofield was on the  
25 list. But I do know Barbers Point and Bellows Air

1 Force Field was on the list. Okay. So, I knew  
2 about this during his period of presidency.

3 I also attended your military meetings in  
4 2001 and brought the issue up of depleted uranium.  
5 I have a long-standing background. And I need to  
6 begin with my grandfather on my mother's side,  
7 Louisa Lane, Orlanda Alt. He was down under in  
8 1950.

9 He called home and he asked that my  
10 grandmother name -- whoever is pregnant name the  
11 next -- name the children -- my brother's name is  
12 Marshal. My cousin's name is Quadulent. In 1950,  
13 sir, this is when the atomic bomb was being tested.

14 My father, World War II, his land -- and I  
15 will give you the address, sir, 1845 Mountain Lily  
16 Road -- came home from work and his land was martial  
17 law.

18 Now, the story goes is that he was -- the  
19 military pointed a gun to my father. So my father  
20 had to leave his property. He went to get his  
21 brother John Puhalo (phn). His brother came home,  
22 and during the time that our -- 1845 Mountain Lily  
23 Road was martial lawed, my uncle lived there.

24 And the reason being is because the  
25 military brought in their debris as well as filled

1 in all our cow patches; and secondly, we had our  
2 grandma and our grandpa buried on the property, and  
3 the military truckers were rolling their trucks over  
4 our grandparents' graves.

5 So when that concluded, sir, my uncle was  
6 given \$10,000 in bouse lumps argument -- case.

7 Having said that, I want to come to my experience.

8 I am from -- from Particlo Hawaii.(phn) I am not the  
9 first wave. I am the second wave.

10 Sir, in 1978, I went to Island of  
11 Kahoolawe, actually, we call it Ko Hema Lamalama. I  
12 walked from Kealaikahiki to Moaulani across the  
13 island up to Puu Moiwi and over to Hakioawa, and I  
14 returned in a day's time.

15 As I walked across this island, sir, the  
16 military personnel had warned us about not stepping  
17 on the ordinance. Sir, it was impossible to walk  
18 across this island and not step on ordinance. Keep  
19 in mind, I was a young mother and, in fact, I was  
20 nursing, I was a nursing mother. But because this  
21 issue was so important to us, to stop the bombing on  
22 the island of Kahoolawe, Ko Hema, Lamalama, I  
23 participated in this access public law, 95-341 which  
24 is your law, sir.

25 And I used to think of myself as being

1 smart, as having to access Kahoolawe in such a way.  
2 But when I look back now, I think it was a stupid  
3 thing that I have done. Nobody, nobody told us or  
4 warned us about the safety and the unsafetiness of  
5 walking across that island and stepping every step  
6 on ordinance, sir.

7           So, these are my concerns. My grandfather  
8 on my mother's side, martial law, which I feel is  
9 what's happening in Waianae because of the many  
10 bases that surrounds my home, 85-1363 Halapoe Place.  
11 I feel that -- this is -- we also are in extreme  
12 poverty there, and I feel that the military presence  
13 is also a cause of that.

14           And I also mentioned in one of my  
15 testimonies that we do not have access to medical,  
16 and that's why I am saying that many people are not  
17 only sick, but they are dying. And I spend a great  
18 deal of time attending funerals on my off time.

19           >>JUDGE HAWKENS: Thank you, Ms. Leonardi.  
20 The four minutes has lapsed and we should be moving  
21 on.

22           >>MS. LEONARDI: I apologize for that.

23           >>JUDGE HAWKENS: That's all right. I  
24 have two quick questions that I hope you can provide  
25 quick answers to: When was the last alleged

1 shipment from Schofield to the Waianae Coast?

2 >>MS. LEONARDI: Very quickly, sir, in the  
3 whole month of December 2009, the military has been  
4 trucking 50 trucks a day several times during the  
5 day, during the work week for a whole month,  
6 trucking in dirt into Waianae.

7 >>JUDGE HAWKENS: Where do they dump it?

8 >>MS. LEONARDI: Sir, some of it came home  
9 to our -- to the 19-acre and some of it -- and most  
10 of it, 98 percent of it went to Makua.

11 >>JUDGE HAWKENS: You may not know the  
12 answer to this, but I will nevertheless ask, where  
13 did they dump it? Is it on federal property?  
14 Surely, they are not dumping it on private property.

15 >>MS. LEONARDI: Some of it went onto  
16 private property, sir, and some of it went onto  
17 federal -- I cannot say to you all Makua, sir. So  
18 some of it went onto Makua --

19 >>JUDGE HAWKENS: And what evidence,  
20 Ms. Leonardi, do you have that these trucks, the  
21 content of these trucks originated at Schofield?

22 >>MS. LEONARDI: Sir --

23 >>JUDGE HAWKENS: Did you hear me? Should  
24 I repeat it?

25 >>MS. LEONARDI: Sir, we have had 50 plus

1 truckers a day for the whole month of 2009. I am  
2 sure you can call up and check the permit to either  
3 dispute me whether these truckers came from  
4 Schofield or not.

5 >>JUDGE HAWKENS: One final question --

6 >>MS. LEONARDI: -- the burden should not  
7 be on me to check out the permits because, sir, I  
8 have done that for the past ten years, and I am -- I  
9 don't have the information for you right now. But  
10 I'm sure that if you want to be factual that this  
11 information can be held accountable.

12 >>JUDGE HAWKENS: One final question,  
13 Ms. Leonardi, with your indulgence. What is the  
14 factual foundation for your claim that the contents  
15 of the trucks contain DU?

16 >>MS. LEONARDI: Again, I will refer to  
17 that case that I brought in for my introduction,  
18 sir. That is not my burden at all. Allen versus  
19 the United States before the federal judge of Bruce  
20 Jenkins, Salt Lake City in August 1979.

21 >>JUDGE HAWKENS: Do you have the citation  
22 for that case, Ms. Leonardi?

23 >>MS. LEONARDI: Yes, sir.

24 >>JUDGE HAWKENS: Can you tell it to us?  
25 I would like to copy it down so I can read it.

1 >>MS. LEONARDI: Actually, I can give a  
2 copy to Joseph here.

3 >>JUDGE HAWKENS: That will be fine, thank  
4 you.

5 >>MS. LEONARDI: Thank you.

6 >>JUDGE HAWKENS: All right, Ms. Leonardi,  
7 we thank you for your presentation.

8 We will now hear from Mr. Albertini.

9 >>MS. LEONARDI: Thank you.

10 >>JUDGE HAWKENS: Thank you.

11 >>MR. ALBERTINI: Judge, I brought a  
12 topographic map which may help a little bit. First  
13 I'll hold it up this way, north to south. And I'm  
14 going to lay it on the table. I hope people can see  
15 this.

16 My address is 17-339 Helenihi Place,  
17 that's H-E-L-E-N-I-H-I Place, Ola'a Kurtistown,  
18 Hawaii, 96760. My phone number, (808) 966-7622.

19 It doesn't show up. A point we are at  
20 Kurtistown. We have Mauna Kea, Mauna Loa, Kilauea,  
21 Kohala, and Hualailai Montains, with Pohakuloa right  
22 in the heart of the island. And I'm here at  
23 Kurtistown. So it's about 25 miles.

24 I have lived there 30 years, Kurtistown.  
25 And my home is the same physical address as the

1 nonprofit organization which I head, which is the  
2 Center for Non-violent Education & Action. It's a  
3 501(c)3 non-profit, all volunteer organization.

4           We grow organic fruits and vegetables to  
5 share with people in need and market some to support  
6 the work of education and peace, justice and  
7 protecting the environment. And I'm here both as an  
8 individual and representing the organization, which  
9 is very much concerned about the military  
10 contamination in Hawaii and around the world.

11           I want to emphasize that the normal trade  
12 wind conditions in Hawaii are from the northeast to  
13 the southwest. But at nights, the winds come down  
14 off the mountain. And on cool nights, I can  
15 actually hear the shelling and bombing at Pohakuloa.  
16 And if the wind carries the sound down the mountain,  
17 I'm also concerned whether it is carrying the poison  
18 dusts of depleted uranium.

19           On an island where the wind shift all  
20 around, we are all down winders, and I think this  
21 can be said of the entire planet today, that we are  
22 all down winders. So I hope that addresses the  
23 issue of where I live.

24           >>JUDGE HAWKENS: That's precisely what we  
25 are looking for, Mr. Albertini, and you actually

1 started to answer the next question as well, I  
2 believe, by describing yourself as a down winder --

3 >>MR. ALBERTINI: Yes and let me go to  
4 that first question to respond further about how the  
5 Army downplays the inhalation hazard of DU oxide.

6 First, I would like to concur with the  
7 submission sent to you October 30th by Corey Harden  
8 that quoted Dr. Loren Pang, M.D., and Dr. Mike  
9 Reimer and Dr. Marshall Blann, both Ph.Ds, who --  
10 they criticized the Army's air monitoring and  
11 characterization studies both addressing what's at  
12 PTA and how much of a hazard it is.

13 Now, how does the Army specifically fail  
14 to acknowledge the hazard of inhaling DU, poison  
15 dust? Over the years, the Army made numerous  
16 unreliable safety claims, and I just want to cite a  
17 couple for you: August 27, 2007, Hawaii  
18 Tribune-Herald news article, headlined, quote, "DU  
19 found at PTA, material doesn't pose a health  
20 danger," end quote.

21 This is the very date that the Army  
22 claimed they discovered the DU, and they are making  
23 these health claims that there is no danger.

24 Two, August 30, 2007: Army news  
25 Army.Mil/News. Quote "DU found at PTA poses no

1 threat to the population of Hawaii, civilian or  
2 military," end quote. Colonel Matthew Margotta, who  
3 I understand is there with you or somewhere in this  
4 hearing today, is the Commander, U.S. Army Garrison.

5           And in the same article, here is another  
6 quote, "Today DU is not used in military training,  
7 but in the '50's and '60's, it was used anytime you  
8 need a heavyweight," end quote, by Greg Komp, senior  
9 health physicist, Office of the Director of Army  
10 Safety, who is sitting there in the Rockville room.

11           Number 3: April 24, 2008, Honolulu  
12 Advertiser, quote, "DU poses no health risk, Army  
13 says.

14           Number 4, August 4, 2008, Honolulu Star  
15 Bulletin, quote, "DU no risk to public, Army  
16 contends," end quote.

17           Those are just a few. I could go on and  
18 on. But me make this analogy here: Army Garrison  
19 Commander Colonel Margotta is saying that "the DU  
20 found at PTA poses no threat to the population of  
21 Hawaii, civilian or military," end quote.

22           As noted, he said those words three days  
23 after the initial announcement about DU being  
24 confirmed present up there, observed.

25           Now, what was his insurance based on of no

1 hazard, no threat to the population? No studies  
2 were done at that point. No data produced. No peer  
3 reviews, nothing. Zip. Zilch.

4           The analogy I want to make is this with  
5 cigarettes: If this pen was a cigarette, this  
6 cigarette poses no threat to the people. But if  
7 this cigarette is smoked and burned, then there is a  
8 health issue. And the pieces found at Pohakuloa,  
9 they basically don't pose much of a hazard. It is  
10 the pieces that haven't been found.

11           Now, at a minimum, they were say 293  
12 pounds or 714 rounds were used, possibly over 2,500  
13 rounds, over half ton of DU. They only found a few  
14 small pieces. I don't even know if it amounted to a  
15 pound. So, where is the other 999 pounds? That is  
16 the DU that we're concerned about.

17           And given the fact that there has been 45  
18 years of bombing and fires, explosions all around,  
19 that DU, one would reasonably believe has been  
20 pulverized and aerosolized and carried the winds.

21           And I checked with the National Weather  
22 Service this morning. Right now, today at  
23 Pohakuloa, the winds are 30 to 40 miles an hour,  
24 with gusts exceeding those figures. Going through  
25 the Saddles, the mountains of Mauna Loa and Mauna

1 Kea. So...

2 >>JUDGE HAWKENS: Your four minutes have  
3 been expired for that question. You will have to  
4 wrap it up. And then, we will move the next one,  
5 please.

6 >>MR. ALBERTINI: All right. I had  
7 material to quote from Dr. Pang and also from --  
8 Helen Caldicott, just one paragraph, then.

9 The burden is on the Army to rule out that  
10 DU is not being scattered in the wind. And here is  
11 the quote from Dr. Caldicott, who is an M.D, founder  
12 of Physicians Social Responsibility at the  
13 International Physicians for Prevention of Nuclear  
14 War. The PSR is 23,000 M.D.s, and the international  
15 group was awarded the 1985 Nobel Peace prize.  
16 Caldicott say this:

17 "DU aerosolized particles that are  
18 inhaled, translocate to the thoracic lymph nodes and  
19 are also deposited in the bones, kidney and excreted  
20 in the semen where almost certainly uranium can cause  
21 birth defects. It also causes bone cancer,  
22 leukemia, lymphoma and kidney cancer," end quote.

23 And I will just end with this on this  
24 question; I personally know three people within 18  
25 miles of my home with lymphoma. Two are dead, one

1 is in the final stages. And two are close friends  
2 who have contributed to our organization. And the  
3 National Cancer Institute says Hawaii has the  
4 highest cancer of all the islands in the Hawaiian  
5 chain.

6 So the burden again is on the Army to rule  
7 out that what's blowing in the wind is not DU.

8 Now, if I can proceed to the second  
9 question.

10 >>JUDGE HAWKENS: Right, please do.

11 >>MR. ALBERTINI: Provide the details of  
12 the May 29th monitor spike of 75 counts per minute  
13 at Mauna Kea Park.

14 Here is the background. On May 29th, our  
15 organization sponsored a protest at the opening  
16 ceremony of the first section of the realigned  
17 Saddle Road from the Mauna Kea Access Road to the  
18 Mauna Kea State Park, a distance of about 6 miles.  
19 Our protest concerned several issues, one being the  
20 facilitating of more military live firing by  
21 rerouting the road in a northerly direction through  
22 a mamane forest, which is a critical habitat for the  
23 endangered Palila bird.

24 On May 29 of 2007, Guenter Monkowshi of  
25 our organization was conducting radiation monitoring

1 with his gammascout monitor. He was with us there  
2 at Mauna Kea park. The meter was new and set on  
3 alpha/beta/gamma. The same monitor had been used  
4 the prior month in South Kona for 20,000 minutes of  
5 monitoring and saw no spikes above 40 counts per  
6 minute, according to Dr. Lorrin Pang, who analyzed  
7 the data from those 20,000 minutes.

8           On May 29, 2007, Guenter's meter had been  
9 running for about an hour with normal background  
10 around 15 CPM readings. At about 11:00 a.m. that  
11 day, as I recall the time, the winds began to pick  
12 up, coming directly from the south toward the park,  
13 where about two to three dozen of us were peacefully  
14 protesting. I would guess the wind speeds that day  
15 were 20 to 30 miles per hour or even more at times  
16 with gusts. There were dust devils as Cory Harden  
17 has shown in that picture, clearly visible with  
18 suspended dirt in the air. And Guenter's monitor  
19 spiked at 75 counts per minutes. I was standing  
20 next to Guenter and actually saw the reading, 75 CPM  
21 on the monitor.

22           Over the next two to three hours at  
23 various points along the Saddle Road, west of Mauna  
24 Kea Park, between there and the Hilohana Girl Scout  
25 Camp, a distance of about 8 miles, three other

1 spikes in the 40 to 60 range occurred with the winds  
2 coming off the ranges there. That's four spikes in  
3 a few hundred minutes and should be a smoking gun  
4 signal that requires more investigation.

5           These readings emphasize the importance, I  
6 think, of looking at spikes and not mere averaging  
7 in terms of monitoring. The State of Hawaii Health  
8 Department radiation chief, Russell Takata has gone  
9 to take measurements at various spots in the Kona  
10 side. He told me that he had kept his meter on for  
11 only five minutes. That's not likely to catch a  
12 spike. Longer periods of air monitoring are  
13 required.

14           So, in essence, my conclusion is that we  
15 were at the wrong place at the wrong time, meaning  
16 we were in the path of a radiation plume. Three  
17 months later, the Army confirmed DU was present on  
18 the ranges located one-and-a-half miles from the  
19 park where we were standing in direct line with the  
20 direction of winds coming to us on May 27, 2009.

21           Some form of radiation caused our monitors  
22 to spike, not once but four times in a relatively  
23 short period. We were at PTA. The winds were  
24 coming off the impact range where the DU was later  
25 confirmed. If it looks like a duck, walks like a

1 duck and quacks like a duck, then it is likely a  
2 duck.

3           President Obama recently talked about the  
4 failure to connect the dots. Whatever went into our  
5 monitor on the 29th of 2007, likely went into our  
6 lungs. The burden is on the Army to rule out DU  
7 oxide. The burden should be on the Army to prove no  
8 harm.

9           The Army says no harm has been shown, but  
10 that's because they haven't looked and don't want to  
11 look. Same from Vietnam with Agent Orange, same  
12 with the Gulf War syndrome.

13           I hope that addresses the question.

14           Let me make a point. We can't see the  
15 three-minute sign from where we are here. So I have  
16 no idea the -- how it's going here. So you said at  
17 the beginning --

18           >>JUDGE HAWKENS: I will interrupt you  
19 when the time expires and give you time to wrap  
20 up --

21           >>MR. ALBERTINI: So am I up? All right.

22           >>JUDGE HAWKENS: I do have a question,  
23 Mr. Albertini. Do you know the type of radiation  
24 monitor that you were using on that day, on May  
25 29th?

1 >>MR. ALBERTINI: As I mentioned, it was a  
2 gammascout, new gammascout, recently -- brand new  
3 calibrated. And it had run 20,000 minutes in South  
4 Kona with no spikes, ran for an hour before the  
5 spikes picked up. And a normal reading were like 15  
6 counts per minute at PTA, the background.

7 >>JUDGE HAWKENS: Now, the 75 -- despite  
8 the 75, what did that indicate in terms of  
9 radiation?

10 >>MR. ALBERTINI: Well, that's what's not  
11 known. We don't know the specifics. We know it was  
12 radiation that spiked the radiation monitor. But  
13 again, the burden should be on the Army to prove  
14 that it was not DU oxide.

15 The further point on this, I mean, the  
16 Army needs to face its burden. They don't even know  
17 how many Davy Crockett rounds were fired there.  
18 Their records are terrible, so we have to do the  
19 detailed monitoring.

20 >>JUDGE HAWKENS: All right. Will you  
21 move to the third question, please?

22 >>MR. ALBERTINI: Yes. Concerning visits  
23 to Mauna Kea Park. Mauna Kea State Park is  
24 presently across the street from Pohakuloa Training  
25 Area. Prior to May 27th, the day of the high spike

1 radiation readings, Saddle Road traveled through the  
2 PTA base for about 12 to 14 miles and still does now  
3 west of the main gate area.

4 But prior to the 27th, the road came  
5 within one half mile of the eastern most range. I  
6 believe it's range 11 or 10 at PTA, where the DU has  
7 been confirmed. On that section of the road which  
8 was used by the public, including myself, for  
9 decades, there were signs posted, quote, "live  
10 artillery overhead" or live firing overhead.

11 For 30 years while driving across the  
12 island, Saddle highway, I, my family and friends  
13 would always stop at Mauna Kea Park to picnic, use  
14 the restrooms. In years past, I spent even several  
15 nights at the cabin at the park camping, including  
16 nights when it was difficult to get any sleep  
17 because of live firing taking place on PTA.

18 Over the years, I have participated in  
19 numerous Kanaka Maoli Hawaiian cultural and  
20 religious ceremonies that always started at Mauna  
21 Kea Park and the nearby Hawaiian Ahu at the Saddle  
22 Road Mauna Kea Access Road junction. I have also  
23 gone to the summits of Mauna Kea for numerous  
24 ceremonies, and I have hiked the mountains of Mauna  
25 Loa, Mauna Kea, Hualalai extensively. I have spent

1 quite a bit of that time -- quite a bit of time over  
2 the 30 years in that area.

3 I have also attended military briefs at  
4 PTA and was transported to the firing range to  
5 observing howitzers. I organized group briefings on  
6 the base where we were given briefings and then  
7 toured various sites. But I want to emphasize the  
8 point that we don't have to go to Mauna Kea Park or  
9 to PTA; that PTA comes to us.

10 And I have a little demonstration here to  
11 show you. That here is some dust, and I'm going to  
12 place it right in the center of the island, right  
13 here. And if the winds come from the west, which  
14 they do in the afternoon, right over Hilo, lower  
15 Kona where I live, if they are coming from the  
16 northeast, they are going toward Kona side or the  
17 Kauhi side and the winds swirl all around this  
18 island. And when it rains, when it rains, and the  
19 waters come down here, you can see how amazingly,  
20 water runs downhill amazingly. So we don't have to  
21 go to Pohakuloa, Pohakuloa comes to us. Amazing  
22 isn't it, scientific experiment.

23 >>JUDGE HAWKENS: Thank you,  
24 Mr. Albertini. Do you have anything else on that?

25 >>MR. ALBERTINI: I have plenty to add. I

1 don't know how much you are willing to listen to.

2 >>JUDGE HAWKENS: You have 30 seconds.

3 >>MR. ALBERTINI: How many seconds?

4 >>JUDGE HAWKENS: Thirty seconds.

5 >>MR. ALBERTINI: Thirty seconds. There  
6 have been reports of animal tumors at PTA. A hunter  
7 friend, Luna Hauaino, phone number, (XXX)XXX-XXXX,  
8 who has hunted extensively in the Pohakuloa area and  
9 the downstream winds says that he's personally  
10 observed numerous abdominal and throat tumors in  
11 pigs, goats and sheeps hunted in the area. This  
12 need to be investigated. It's not only the human  
13 impact, it is the impact of all of the life on the  
14 island and the planet that we are dealing with. So  
15 we speak to the animals, too.

16 >>JUDGE HAWKENS: Thank you, very much.

17 We will now hear from Mr. Harp please.

18 Mr. Harp, as you are getting ready and situated to  
19 make your presentation, I just want to announce that  
20 after Mr. Harp is done, if nobody objects, we will  
21 take a 15-minute break after which the Army will...

22 NRC, you're on board with that?

23 >>MR. KLUKAN: No objections, Your Honor.

24 >>JUDGE HAWKENS: Petitioners, do you have  
25 any objection to taking a 15-minute break after

1 Mr. Harp's presentation?

2 >>PETITIONERS: No objections from Hawaii.

3 >>JUDGE HAWKENS: Thank you.

4 You may proceed when you're ready,

5 Mr. Harp.

6 >>MR. HARP: Okay, I will respond to the  
7 question regarding my physical address. My physical  
8 address is located at 64-217 Waiemi Place, Kamuela,  
9 Hawaii, 96743, and I don't give anyone permission to  
10 send me any anthrax. Thank you very much.

11 And I have a document on the viewer -- can  
12 you see that? I'm not sure if you can see that  
13 little red dot in the center.

14 >>JUDGE HAWKENS: Yes.

15 >>MR. HARP: The location of the building  
16 within the Pohakuloa Training Area where I used to  
17 attend cultural advisory committee meetings up until  
18 the time I found out that the depleted uranium was in  
19 the area. And we go up there every two months or so  
20 and also go on field trips into the Pohakuloa  
21 Training Area. So I believe I may have potentially  
22 been exposed to depleted uranium at that time.

23 And on the map -- my house is located on  
24 there as well as my two younger brothers and my  
25 older sister. And I have a -- can I have that map

1 back real quick? This is our home from that  
2 building in Pohakuloa. My residence is 19 miles  
3 away. My brother is 20, my other brother, 29 and my  
4 sister is 31 miles away.

5 >>JUDGE HAWKENS: Thank you. Will you  
6 proceed to the next question?

7 >>MR. HARP: I will go on. In my  
8 petition, I indicate that the granting of this  
9 license would pose a health threat to the land and  
10 residents of Hawaii. And you asked me to please  
11 clarify the nature of this threat as it applies to  
12 me and specifically, the factual foundation for your  
13 aassertion of the potential for harm.

14 And my response is that -- let me get a  
15 document here that I would like to put on the  
16 scanner in a moment.

17 In a paper written by Leonard A. Dietz in  
18 1996 and updated in 1999 entitled Airborne Transport  
19 of Uranium Particles, Dietz, a technician at the  
20 Knolls Atomic Power Laboratory in Schenectady, New  
21 York, wrote and I quote, "A total of 16 air filters  
22 at three different locations covering 25 weeks of  
23 exposure from May to October, 1979 were analyzed;  
24 all contained traces of DU. Three of these air  
25 filters were exposed for four weeks each, at a site

1 26 miles northwest of the National Lead Industries  
2 plant. This is by no means the maximum fallout  
3 distance for DU aerosol particles." end quote.

4 At the time the filters were exposed, the  
5 National Lead Industries plants was fabricating DU  
6 penetrators and airplane counterweights.

7 In Preventive Psychiatry E Newsletter  
8 Number 169, Arthur Bernklau, executive director of  
9 Veterans for Constitutional Law in New York stated,  
10 and I quote, "This malady from uranium munitions  
11 that thousands of our military have suffered and  
12 died from, has finally been identified as the cause  
13 of this sickness, eliminating the guessing.

14 Out of 580,000 soldiers who served in the  
15 first Gulf War, of them 11,000 are now dead. By the  
16 year 2000, there were 325,000 on permanent medical  
17 disability." End quote.

18 Vehicle maneuvers, our own bombing,  
19 artillery, helicopter and other military activities  
20 at Pohakuloa create clouds of dust that we now know  
21 is laced with poisonous depleted uranium. For over  
22 four decades, microscopic particles of depleted  
23 uranium have been spreading on the way across these  
24 islands, placing the entire population of this  
25 island at risk including me.

1           Depleted uranium contamination leaking  
2 into ground water supply is another threat of injury  
3 to me, members of my family and community. Depleted  
4 uranium can and does migrate through soil, much less  
5 forest and Hawaii soil and can end up in groundwater  
6 supplies.

7           In addition, Hawaii volcanic geology  
8 include subterranean fractures and lava too.

9           I would like to put the cover of this  
10 paper onto a document viewer that I'm referring to  
11 here. A scientific paper entitled Leaking of  
12 Depleted Uranium in soil as determined by common  
13 experiment show that leaking of depleted uranium can  
14 occur. The paper is very technical so I will not  
15 bore with you the details. I have included a  
16 footnote here and you can see the document on the  
17 viewer if you would like to review that paper at a  
18 later time.

19           And I also have a couple of other  
20 documents that I would like the put on the viewer.  
21 Where are my other documents around here. Some of  
22 our documents got mixed up and lost in here. We  
23 don't need that one right now. Speaking of geology,  
24 the make up of the land here, this document shows --  
25 I don't know if you can see it -- but it shows the

1 soils here. You can see that the rocks here the  
2 uranium and Thorium, I'm not sure what the correct  
3 pronunciation is, but, inure lava here, are  
4 typically, uranium, 0.2 is usually the concentration  
5 here in Hawaii. And it states this is 10 to 20  
6 percent of the value seen in continental rocks.  
7 our background level, I would assume would be much  
8 lower than those on the continent. And in fact, the  
9 sea water has 3 parts per million globally. So our  
10 soil is much less uranium content than that. And it  
11 shows our soil and coil and rocks and how porious  
12 this type of soil that we have -- how poor the soil  
13 we have in Hawaii is.

14 >>JUDGE HAWKENS: Your time for this  
15 question has lapsed. You want to wrap it up, go the  
16 next question please.

17 >>MR. HARP: Actually, no.

18 >>JUDGE HAWKENS: Let me rephrase, that  
19 Mr. Harp.

20 >>MR. HARP: I'm just trying to get the  
21 documents on there so you can understand what I'm  
22 trying to tell you here. But in April, 1985, the  
23 Hawaii Department of Health informed the Army that  
24 high levels of drinking water supply of 25,000  
25 people of Schofield Barrack and 55,000 in way and

1 obtained drinking water in 3-miles of the.  
2 Depleting uranium in Schofield is taken quite a  
3 large population and citing the Safe Drinking Water  
4 Act, the Environmental Protection Act ordered the  
5 Army to begin shutting down Pohakuloa to complete  
6 the process by 2006.

7  
8 In a paper written by Leonard A. Dietz in 1996 and  
9 updated in 1999 titled Airborne Transport of Uranium  
10 Particles, Dietz, a technician at the Knolls Atomic  
11 Power Laboratory in Schenectady, New York, wrote and  
12 I quote, "a total of 16 air filters at three  
13 different locations covering 25 weeks of exposure  
14 from May to October, 1979 were analyzed; all  
15 contained traces of DU. Three of these air filters  
16 were exposed for four weeks each, at a site 26 miles  
17 northwest of the National Lead Industries plant.  
18 This is by no means the maximum fallout distance for  
19 DU aerosol particles." End quote.

20 At the time the filters were exposed, the  
21 National Lead Industries plants was fabricating DU  
22 penetrators and airplane counterweights.

23 In Preventive Psychiatry Newsletter Number  
24 169, Arthur Bernklau, executive director of Veterans  
25 for Constitutional Law in New York stated, and I

1 quote, "this malady from uranium munitions that  
2 thousands of our military have suffered and died  
3 from, has finally been identified as the cause of  
4 this sickness, eliminating the guessing.

5 Out of 580,000 soldiers who served in the  
6 first Gulf War, of them, 11,000 are now dead. By  
7 the year 2000, there were 325,000 on permanent  
8 medical disability." End quote.

9 Vehicle maneuvers, our own bombing,  
10 artillery, helicopter wash and other military  
11 activities at Pohakuloa clouds of dust that we now  
12 know is laced with poisonous depleted uranium. For  
13 over four decades, microscopic particles of depleted  
14 uranium have been spreading on the winds across  
15 these islands, lacing the entire population of this  
16 island at risk including me.

17 Depleted uranium contamination leaking  
18 into groundwater supply is another threat of injury  
19 to me, members of my family and community. Depleted  
20 uranium can and does migrate through soils, much  
21 less forest than Hawaii soil, and can end up in  
22 groundwater supplies.

23 In addition, Hawaii volcanic geology  
24 include subterranean fractures and lava too.

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1 paper onto a document viewer that I'm referring to  
2 here. A scientific paper entitled Leaking of  
3 Depleted Uranium in soil as determined by Columbus  
4 experiments clearly shows that leaking of depleted  
5 uranium in the soil can occur.

6           The paper is very technical, so I will not  
7 bore with you the details. I have included a  
8 footnote here. And you can see the document on the  
9 viewer if you would like to review that paper at a  
10 later time.

11           And I also have a couple of other  
12 documents that I would like to put on the viewer  
13 around here. Some of our documents got mixed up and  
14 lost in here.

15           Speaking on geology, the makeup of the  
16 land here, this document shows -- I don't know if  
17 you can see it, but it shows the soils here. You  
18 can see that the rocks here, the uranium and I guess  
19 thorium, I'm not sure what the correct pronunciation  
20 is, but in our lava here are typically uranium; 0.2  
21 is usually the concentration here in Hawaii.

22           And it states that this is 10 to 20  
23 percent of the value seen in continental rocks. So  
24 our background level, I would assume would be much  
25 lower than those on the continent. And, in fact,

1 the sea water has three parts per million globally.

2 So our soil is much less uranium content than that.

3 And it shows our soil and the corral in  
4 the rock and how poor the soil we have in Hawaii is.

5 >>JUDGE HAWKENS: Thank you, Mr. Harp.

6 Your time for this question has lapsed. You want to  
7 wrap it up go the next question, please.

8 >>MR. HARP: Actually, no.

9 >>JUDGE HAWKENS: Let me rephrase that,  
10 Mr. Harp.

11 >>MR. HARP: I'm just trying to get these  
12 documents on there so you can understand what I'm  
13 trying to tell you here. But in April 1985, the  
14 Hawaii Department of Health informed the Army that  
15 high levels of trichloroethylene had been detected  
16 in wells in drinking water supply of 25,000 people  
17 at Schofield Barracks. An additional 55,000 people  
18 in Wahiawai and Mililani obtained drinking water in  
19 public wells within 3 miles of the base.

20 The depleting uranium at Schofield is  
21 taken quite a large population. And citing the Safe  
22 Drinking Water Act, the Environmental Protection  
23 Agency ordered the Army to begin shutting down their  
24 cesspools at Pohakuloa to complete the process by  
25 2006. The order was to prevent the Army from

1    enendangering drinking water sources.

2                    So there is depleted uranium at Pohakuloa  
3    and it is leaking through the ground. We are also  
4    being placed in danger of having our groundwater  
5    contaminated.

6                    So I will skip on to the next question,  
7    since I guess I'm out of time. What was the next  
8    question?

9                    Does reading your question count toward my  
10   time?

11                   >>JUDGE HAWKENS: No. We will not -- we  
12   will wait until you read the question and then we  
13   will start the stopwatch.

14                   >>MR. HARP: Okay, thank you very much.  
15   The question is, "In your petition, you state the  
16   Army may have used depleted uranium munitions in  
17   areas other than those discussed in the licensing  
18   application. Please provide a factual foundation  
19   for this assertion, including any information that  
20   would dispute the Army's findings."

21                    Okay. Let me begin my response. The Army  
22   denied ever using depleted uranium in Hawaii, in the  
23   first place. Depleted uranium was discovered at  
24   Schofield but not immediately disclosed to the  
25   public.

1           Mr. Klye Sikehero (phn) of the American  
2 Friends Service Committee of Hawaii was the first in  
3 notifying the public of this threat. Thanks to Mr.  
4 Sikehero for submitting a Freedom of Information Act  
5 request. Had it not been for him, we might have  
6 never known about the depleted uranium.

7           At that point, the Army had no option but  
8 to confess to using the depleted uranium in Hawaii.  
9 I stated that the Army may have used depleted  
10 uranium munitions in other areas based on the Army's  
11 bad recordkeeping, and on the possibility that they  
12 wanted to keep a secret like so many other secrets  
13 the military has kept about their activities in  
14 Hawaii.

15           The Army looked for spotting rounds in a  
16 relatively small area, found only a few. Perhaps  
17 they were looking in areas that the -- perhaps they  
18 were located in areas where the Army had not  
19 searched or perhaps they were used elsewhere. We  
20 don't know, and apparently, neither do they.

21           In addition, as HN war aircrafts are  
22 located in Hawaii. It seems highly likely they will  
23 use or have used depleted uranium munitions, which  
24 is what they are equipped to do.

25           I do hope the Army is planning to follow

1 through on their investigations of depleted uranium  
2 use in Makua and Oahu. I understand the vegetation  
3 was too thick and they could not conduct a thorough  
4 investigation of that area.

5 License SUB 459 under which the Army was  
6 allowed to fabricate, distribute and export depleted  
7 uranium spotting rounds for military purposes  
8 expired on October 31, 1964. I have not seen or  
9 heard of any extension to that license through the  
10 many emails communication with NRC staff, which  
11 included Mr. Kent Herring, Chief of the  
12 environmental litigation branch for the Army.

13 If any depleted uranium was possessed or  
14 released into the environment after the licensing  
15 expiration date, in my opinion, that was an unlawful  
16 act and subject to Nuclear Regulatory Commission  
17 enforcement policies. In fact, the depleted uranium  
18 now contaminating Hawaii may also fall under this  
19 distinction.

20 For this particular issue, perhaps 10 CFR  
21 40.42 contains appropriate regulation, but I will  
22 leave this to the expertise of this broad and the  
23 NRC staff.

24 Mahalo. I will move on to my next  
25 question.

1 >>JUDGE HAWKENS: Thank you.

2 >>MR. HARP: The question is: "Your  
3 petition invokes Executive Order 12898 and demands  
4 consideration of environmental justice in regard to  
5 the sites being considered in the subject license  
6 application. Please explain in greater detail your  
7 specific claim in regard to this specific executive  
8 order."

9 And my response: According to Executive  
10 Order 12898 of February 11, 1994, Subsection 1-101  
11 implementation, I quote:

12 "Agency responsibilities: To the greatest  
13 extent practicable and permitted by law, and  
14 consistent with the principles set forth in report  
15 on the National Performance Review, each Federal  
16 agency should make achieving environmental justice  
17 part of its mission by identifying and addressing as  
18 appropriate this proportionately high and adverse  
19 human health environmental effects of its programs,  
20 policies and activities on minority populations and  
21 low-income populations." End quote.

22 I would also like to read from Section  
23 1-103: Development of a NRC strategy. I quote, "A,  
24 except as provided in Section 6-605 of this order,  
25 each Federal agency shall develop an agency-wide

1 environmental justice strategy as set forth in  
2 subsections B through E of this section that  
3 identifies and addresses the disproportionately high  
4 and adverse human health or environmental effects of  
5 its programs, policies and activities on minority  
6 populations and low-income populations. The  
7 environmental justice strategy shall list programs,  
8 policies, planning and public participation  
9 processes, enforcement, and/or other rulemakings  
10 related to human health or environment that should  
11 be revised to, at a minimum:

12 "Promote enforcement of all health and  
13 environmental statutes in areas with minority  
14 populations and low-income populations; ensure  
15 greater public participation; improve research and  
16 data collection relating to the health of and  
17 environment of minority populations and low-income  
18 populations. And; four, identify differential  
19 patterns of consumption of natural resources among  
20 minority populations and low-income populations.

21 In addition, the environmental justice  
22 strategies shall include, where appropriate, a  
23 timetable for undertaking identified revisions and  
24 consideration of economic and social implications of  
25 the revisions." End quote.

1           Native Hawaii Familes conducted a study on  
2 native Hawaiians, which is titled, Income and  
3 Poverty Among Native Hawaiians. The study found  
4 that native Hawaii families in Hawaii have the  
5 lowest mean family income of all major ethnic groups  
6 in Hawaii. Native Hawaii families tend to be larger  
7 than average, meaning that their comparatively low  
8 income must support a high number of individuals.

9           Per capita income calculations confirm  
10 that native Hawaiians are socioeconomically  
11 disadvantaged. The cost of living in Hawaii is  
12 among the highest in the nation. When adjusted for  
13 differences in the cost of living, the median and  
14 per capita income of the national native Hawaiian  
15 population is substantially lower than comparable  
16 national figures.

17           Poverty rates consistently show the  
18 highest socioeconomic needs among native Hawaiians  
19 in Hawaii.

20           Here is some U.S. Census Bureau quick  
21 facts, people facts; 0.2 percent of the population  
22 in the United States are native Hawaiian. So, as  
23 you can see, native Hawaiians are somewhat of an  
24 endangered species, one fifth of one percent of the  
25 population.

1           Geography facts, land, air and square  
2 miles. Hawaii, 6,422 square miles. The USA,  
3 3,537,438 square miles. And you can also see Hawaii  
4 is but a speck of land compared to the land base of  
5 the Continental U.S.

6           We cannot afford to allow the military to  
7 continue contaminating what little land we have for  
8 our future generations. Although this land was from  
9 the Geneva Convention, by the person, the minister  
10 assigned to sign the Geneva Convention on behalf of  
11 the United States, and I quote:

12           "The government of the United States fully  
13 support objectives of this Convention. I'm  
14 instructed by my government to sign making and  
15 following reservation to Article 68. The United  
16 States reserves the right to impose a death penalty  
17 in accordance to the provisions of Article 68,  
18 paragraph 2 without regard to whether the offenses  
19 refer to therein are punishable by death under the  
20 law of the occupied territory at the time the  
21 occupation begin." End quote.

22           This is the type of disregard for  
23 international law that the descendants of Hawaii  
24 nationals of the Hawaiian kingdom have endured for  
25 the last 117 years. So it is time for the United

1 States, to clean up their messes, repair the  
2 damages, and deoccupy our country.

3 Thank you.

4 >>JUDGE HAWKENS: Thank you, Mr. Harp.

5 At this time, I think it will be well if  
6 we take a break. My watch says 11 minutes after the  
7 hour. Let's make it a 19-minute break, and we will  
8 reconvene at 30 minutes after the hour.

9 Whereupon a 20-minute break  
10 taken)

11 >>JUDGE HAWKENS: To the Petitioners in  
12 Hawaii, we are getting ready to reconvene. At this  
13 point, you will just be listening to the  
14 presentations by the Army, and NRC staff. So make  
15 yourself comfortable.

16 Ms. Harden, let me ask her a question and  
17 make sure she is sufficiently comfortable to remain  
18 or whether she would like to make a closing  
19 statement now?

20 >>MS. HARDEN: Can you hear us?

21 >>JUDGE HAWKENS: Yes.

22 >>MS. HARDEN: Okay. Our official person  
23 who runs everything is not here just yet, so why  
24 don't we hang on.

25 >>JUDGE HAWKENS: We will stand by.

1 Please alert us when he returns.

2 >>MS. HARDEN: Okay.

3 >>JUDGE HAWKENS: Can you hear me?

4 >>MS. HARDEN: Yes.

5 >>JUDGE HAWKENS: I just want to make sure  
6 that you are sufficiently comfortable to remain as  
7 opposed to making a closing statement now?

8 >>MS. HARDEN: I'm doing okay. Thank you.  
9 If I need to make a closing statement earlier, I  
10 will let you know.

11 >>JUDGE HAWKENS: Thank you, all right.

12 >>SPEAKER: Yes, we are back in the room.

13 >>JUDGE HAWKENS: Are the Petitioners in  
14 Hawaii ready to reconvene or should we wait a few  
15 more moments?

16 >>SPEAKER: If you can wait for just one  
17 moment, we are waiting for one Petitioner to rejoin  
18 us.

19 >>JUDGE HAWKENS: We will continue to  
20 stand by. Let us know when you're ready to go.

21 >>SPEAKER: Sure, thank you. Rockville,  
22 we still are missing that last Petitioner. Did you  
23 want to go ahead and proceed and we will bring her  
24 in when she becomes available?

25 >>JUDGE HAWKENS: We will give her one

1 more minute and then we will proceed.

2 >>SPEAKER: Okay, thank you.

3 >>JUDGE HAWKENS: Joe, I have 36 minutes  
4 after the hour now, and I think we will go ahead and  
5 proceed. When Ms. Leonardi returns, she can join  
6 us.

7 >>SPEAKER: Okay. Great, Your Honor. We  
8 are ready in the room, so please proceed.

9 >>JUDGE HAWKENS: Thank you. Let's go  
10 back on the record, please.

11 We have now heard opening statements from  
12 everybody. We have heard from each of the  
13 Petitioners answering the questions in the Board's  
14 December 17th Order.

15 Now we are going to hear from the Army and  
16 the NRC staff. Please recall that each answer  
17 should be limited to no more than four minutes, and  
18 you need not take all of the four minutes.

19 >>LTC. HERRING: Yes, Your Honor.

20 >>JUDGE HAWKENS: All right. You may  
21 proceed, Colonel.

22 >>LTC. HERRING: Your Honor, would you  
23 prefer that I read the question first or go right  
24 into the answer?

25 >>JUDGE HAWKENS: Why don't you read each

1 questions first.

2 >>LTC. HERRING: All right, sir. Question  
3 one for the Army is: "Please clarify the quantity  
4 of depleted uranium that is involved and the degree  
5 to which the Army has been able to identify the  
6 locations on the sites where this depleted uranium  
7 is located. Regarding the two issues of quantity  
8 and location, please address the Army's confidence  
9 in both the quantity of material and the possible  
10 locations, and the factual basis for such  
11 confidence."

12 First, I would like to address the  
13 quantity and our confidence, and then go on to  
14 location, if that's all right.

15 First, the Army believes the quantity of  
16 depleted uranium involved is in all likelihood not  
17 more than the 714 rounds for which we have  
18 discovered records. This belief is not based only  
19 on the discovery records, but the number of records  
20 we have discovered during this search and the  
21 consistency of the records we found for other  
22 installations and shipments as well to installation  
23 and depos.

24 In terms of weight, 714 rounds would  
25 equate to approximately 299 pounds of depleted

1 uranium located between the two sites, since each  
2 spotting round contains 6.7 ounces of depleted  
3 uranium.

4 Our confidence in this assessment comes  
5 not only from the exhaustive archive search  
6 conducted and the records produced, but also by  
7 calculating the range of possible spotting round use  
8 based on training manuals and the weapons available  
9 at the time.

10 In addition, the Army has recently  
11 institutionally remembered, if you will, the fact  
12 that the 25th infantry division, which would have  
13 used this weapon system in Hawaii, actually deployed  
14 to Vietnam starting December 1965 and stayed  
15 deployed until well into 1970.

16 The Davy Crockett weapons system was  
17 removed from the field Army in 1968. So the number  
18 of years at most this weapon system was fired in  
19 Hawaii, we believe, was not six but three, based on  
20 the units that would have used it being deployed to  
21 Vietnam.

22 >>JUDGE HAWKENS: What were the years it  
23 was used in Hawaii?

24 >>LTC. HERRING: Your Honor, the first  
25 weapon system arrived in the spring of 1962, and we

1 know the division started to deploy in  
2 December 1965. So the conservative estimate, '62  
3 through '65.

4 >>JUDGE HAWKENS: So, it's your belief,  
5 based on -- is this evidence in the record that all  
6 of the Davy Crockett systems left Hawaii after 1965?

7 >>LTC. HERRING: Your Honor, it is in the  
8 ASR.

9 >>JUDGE HAWKENS: It's in the ASR?

10 >>LTC. HERRING: Yes, sir. I believe it's  
11 July 1968 that the weapons system was no longer in  
12 Hawaii.

13 >>JUDGE HAWKENS: But I thought you said  
14 it was between '62 and '65 they were in Hawaii?

15 >>LTC. HERRING: That the 25th infantry  
16 division was in Hawaii, the unit that would have  
17 fired this weapon system. And they did not return  
18 from Vietnam until 1970. So they were gone from '66  
19 through 1970.

20 >>JUDGE HAWKENS: Now, is there record  
21 evidence showing that no other unit would have  
22 fired? I understand there were around 15 of these  
23 weapon systems, and there is someplace in the record  
24 that says if these 15 weapon systems are going to be  
25 used for training and qualification purposes, there

1 would be far more than 714 rounds fired?

2 >>LTC. HERRING: Yes, Your Honor.

3 >>JUDGE HAWKENS: But if I understand you  
4 correctly, you are saying that the troops that would  
5 have fired the Davy Crockett systems were not there,  
6 and therefore, did not fire them beyond 1965?

7 >>LTC. HERRING: That's correct, Your  
8 Honor.

9 >>JUDGE HAWKENS: That's clear from the  
10 ASR?

11 >>LTC. HERRING: That point is not clear  
12 from the ASR. At the time the ASR was documented,  
13 that institutional fact was not recalled by the  
14 folks who put this together.

15 >>JUDGE HAWKENS: Is that anywhere in the  
16 record?

17 >>LTC. HERRING: No, Your Honor, it's not.  
18 I did want to bring it to your attention today, as  
19 the Board has asked for our estimate, and that is  
20 the only unit in Hawaii that would have used that  
21 weapon system.

22 The record is clear that they were in  
23 Vietnam from all of 1966 through 1970. And that  
24 fact assists us in confirming the 714-round estimate  
25 as being a fair estimate.

1           Using the maximum number of firing rounds  
2 and not accounting for the fact that the 25th  
3 Infantry Division was preparing to deploy to Vietnam  
4 in part of 1965, the most by the training manuals,  
5 and that would be the conservative estimate, would  
6 have been 1,260 rounds. And that presumes that  
7 everything was fired, every opportunity to fire was  
8 taken.

9           This also assumes that if a crew needed  
10 the full five rounds to hit the target, it should be  
11 noted as the ASR notes, that if a crew hit the  
12 target on one round, that was the only round fired.  
13 So not in all cases we know five rounds were fired.

14           In addition, as the ASR states, the first  
15 weapon did not arrive until the spring of 1962. And  
16 we know that from the ASR, the entire compliment of  
17 weapons systems did not arrive until the fourth  
18 quarter of 1962. And we also know even though there  
19 were 15 weapon systems, there were only 14 crews.

20           So, we believe that 14 weapon systems  
21 were fired, because that was the number of crews  
22 authorized. I am not sure why the extra weapon  
23 system was just in case of a problem with another  
24 weapon system, but that's based on the 14 crews  
25 available to fire 14 weapons.

1           And, Your Honor, on the confidence of the  
2 location, analysis of the information gathered  
3 during this search, archive search, identified  
4 ranges that met the characteristics needed to fire  
5 the Davy Crockett. This was done by overlaying Davy  
6 Crockett surface danger zone templates that are  
7 noted in ASR on ranges that existed in the 1960s.

8           The existing range regulations would not  
9 have allowed the Davy Crockett to be fired on ranges  
10 that did not meet certain criteria. So the Army has  
11 a high degree of confidence that we have identified  
12 the possible ranges.

13           Beyond that, scoping surveys were done on  
14 each of these ranges, these consistent aerial  
15 surveys looking for firing pistons -- correction,  
16 aerial gamma surveys and ground walk over surveys  
17 using radiation detection equipment at both  
18 Schofield Barracks and PTA, range degree and the  
19 presence of spotting rounds, confirm that some but  
20 not all possible ranges were used for the Davy  
21 Crockett. No evidence of use was found on other  
22 ranges other than the ones previously noted.

23           Hundred of hours were expended in the  
24 search, and although we cannot be 100 percent  
25 certain of where the Davy Crockett was fired 40

1 years ago, the perponderance of the evidence and our  
2 best belief, based on this methodical search is that  
3 we have located the firing points and the impact  
4 areas used for this system.

5 >>JUDGE HAWKENS: Colonel Herring, I'm  
6 concerned about, I don't think we can give very much  
7 weight -- we don't disbelieve your representations,  
8 but in the absence of record evidence corroborating  
9 this division went to Vietnam in '65, there is  
10 nothing in the written record, in the pleadings or  
11 the material accompanying the pleadings for us to  
12 base that.

13 >>LTC. HERRING: Yes, Your Honor. If the  
14 panel would allow, I could provide factual  
15 confirmation of that, and this is by the same group  
16 that completed the ASR went out and found recently,  
17 I won't say found the records were there, but  
18 acknowledged that this factual event had occurred.

19 >>JUDGE HAWKENS: I will leave that up to  
20 you, but I will tell you we do have regulations  
21 which impose significant restrictions on submitting  
22 new factual material. But if it is material --  
23 significant information that has a highly probative  
24 value for this proceeding. We do have procedures  
25 where you can endeavor to submit that information

1 and the Petitioners can respond if they want to  
2 oppose having it submitted.

3 >>LTC. HERRING: Yes, Your Honor.

4 >>JUDGE HAWKENS: I'm informed we have a  
5 technical problem. We need to reboot. So, for the  
6 benefit of the individuals in Hawaii, we will take a  
7 five-minute recess, and then we will reconvene.  
8 Thank you.

9 (Whereupon, a short recess was  
10 taken)

11 >>JUDGE HAWKENS: Let's go back on the  
12 record, Lorraine.

13 I apologize for the interruption. We  
14 tested this without a problem yesterday and the day  
15 before. I'm told because that it is as they  
16 approach the noon hour in Hawaii, the computer  
17 systems are being used at a much greater volume and  
18 impacting on their ability to send the signal to us.  
19 The signal goes out again, I understand that the  
20 Petitioners were able to hear us but had a frozen  
21 picture, is that correct?

22 >>SPEAKER: That is correct, Your Honor.

23 >>JUDGE HAWKENS: So, since we are going  
24 to be dealing in a period of heavy volume for at  
25 least another hour and-a-half, if you have that

1 difficulty again, since the alternative is to go to  
2 tell conference, if you're hearing us, there is no  
3 need go to the teleconference. Just continue to  
4 listen, let us know here, let Mac or Andy know and  
5 you can try and correct the problem as we proceed.  
6 If you run into a problem with the audio however, do  
7 let us know.

8 >>SPEAKER: Will do, Your Honor, thank  
9 you.

10 >>JUDGE HAWKENS: All right. Colonel  
11 Herring, you were finishing up on question one.

12 >>LTC. HERRING: Yes, Your Honor, the  
13 final statement on question one, that even in sight  
14 of the discounts, the deployment the Army's best  
15 estimate based on the records at this time are 714  
16 rounds, although we do acknowledge there could be  
17 other rounds that were shipped.

18 Your Honor, if there is no questions --

19 >>JUDGE KENNEDY: This is Judge Kennedy.  
20 I have a question for the Army. Could you put the  
21 quantities, the 714 rounds and the kilograms of  
22 depleted uranium in perspective of what you  
23 submitted in your license application and the  
24 analysis that supports the license application?

25 >>LTC. HERRING: Your Honor, one moment.

1           Your Honor, to put it in perspective, our  
2 license application was tendered Army wide and it  
3 accounted for more than what we believe were shipped  
4 to Hawaii. So that's why there is a disparity and  
5 we have of course, as you know, the license will be  
6 base by base application to NRC. And, so, that's  
7 why this one base or this one installation, the two  
8 installations in Hawaii, this amount of DU which we  
9 said was 299 pounds approximately, would differ from  
10 our license application.

11           >>JUDGE KENNEDY: This is Judge Kennedy  
12 again. In which direction would it differ?

13           >>LTC. HERRING: Well, the license  
14 application would be higher because, again, that  
15 was not limited to just Hawaii. It would be higher.

16           >>JUDGE HAWKENS: Is your monitoring  
17 program, though, based on the amount represented in  
18 your license application which you say is  
19 5560-kilograms, or is it based on 714 rounds which I  
20 believe you said is --

21           >>LTC. HERRING: Yes, Your Honor, it is  
22 based on the latter for Hawaii.

23           >>JUDGE BARATTA: There seems to be a  
24 disconnect there, then because if you look at  
25 licensing application -- and I don't have a page

1 number on it, but it's the one which has a figure  
2 with the M28 Davy Crockett weapons system, Item 10.  
3 It says, as derived from the 1968 Davy Crockett  
4 weapon system range layout -- I'm paraphrasing a  
5 little bit -- the impact area would be 220,000  
6 square meters and talks distribution of  
7 560-kilograms, which if my recollection is  
8 2.2-pounds per kilogram which we are talking about  
9 probably, 1,000, between 15,00-pound is distributed  
10 over that. And it goes on to estimate what the  
11 concentration would be. And I think eventually, it  
12 derives a dose. And that's what was very confusing  
13 to me because we were talking --it looked like it  
14 would -- say would be a conservative estimate of the  
15 material on a range based upon that number. I don't  
16 know where the 560 kilograms came from other than it  
17 looked like there was a ten percent number that  
18 total DU in the application itself, okay.

19           And -- but then, I get a little confused a  
20 little later on where it talks about this five  
21 milligram because it talks about the total number of  
22 rounds in the same discussion there.

23           That was one problem I was having with  
24 understanding the relationship with the 716 and the  
25 2,000 or so and what was in the license application

1     itself.

2                   >>LTC. HERRING:   Your Honor, the estimates  
3     were based on an extremely conservative case and  
4     that was 9,700 rounds at Fort Benning.   So we used  
5     the, I guess the highest example we could find to  
6     when we used to submit this license for  
7     installation.

8                   >>JUDGE BARATTA:   So in essence, what's  
9     you -- so what you did was a bounding estimate for  
10    what the dose would be associated with, the worst  
11    credible situation?

12                   >>LTC. HERRING:   Yes, Your Honor.

13                   >>JUDGE BARATTA:   The other question I  
14    have and maybe just because time has taken over as  
15    you have done additional work, but in -- it was  
16    apparently a response that Congresswoman Herona I  
17    believe in which the Army responded and said that  
18    the shipping quantity averages only half rounds  
19    fired per year and you're able to establish that  
20    from one of the depositions that were stock sent  
21    there. But it also goes on as highly probable that  
22    additional stocks 20-millimeter were ordered from  
23    one of the ordinance depo -- from one of the other  
24    ordinance depots that kind of confused me because in  
25    the beginning of that sentence, it does talk about

1 the 714 round coming from the Lake City ordinance  
2 plant.

3           So, that suggests that the number is  
4 greater than 714 and that 714 may not be the best  
5 estimate for what's there. Could you -- is there  
6 any way to reconcile that?

7           I also undertand the records were not --  
8 from some discussion that the records are not  
9 available from the other ordinance depo because they  
10 didn't, they just didn't archive them.

11           >>LTC. HERRING: What we do have, we do  
12 have records for shipping from the manufacturing  
13 facility to depo, and we know we've been able to  
14 track almost 100 percent of those back to the  
15 manufacturing facility for eventual authorization.

16           We additionally have records that show a  
17 shipment, initial shipments to two installations, so  
18 that what -- we're not sure about is acknowledge  
19 that already possible other shipments, some  
20 shipments from one or two of the depots onto Hawaii.  
21 So that's the way the gap and possible additional  
22 shipment could be created.

23           >>JUDGE HAWKENS: But explain again, why  
24 you're ruling out that possibility and using 714 as  
25 a conservative number?

1 >>LTC. HERRING: Your Honor, 714 is not a  
2 conservative number. If you want to look at the  
3 range based in the ASR, I can start with the range.  
4 If we have the 14 weapons -- the 14 crews with six  
5 firings per year over six years, which is what's in  
6 the ASR, then that's where the 2,520 rounds comes  
7 from. So if we say six years, then, that's the top  
8 of the range.

9 And then the records that we found  
10 indicate 714 shipped. That's what we have records  
11 for. And then based on the completeness and the  
12 records we're finding for other ASRs for other  
13 ranges, lead us to believe that 714 rounds is a good  
14 central estimate and could fit in with what we know  
15 about the Davy Crockett firing, because we know what  
16 the number of rounds made.

17 We know the number that were shipped and  
18 we know the number that were destroyed. And we know  
19 the number that were shipped to general  
20 installations. As I recall, approximately, maybe 65  
21 in total and we don't know shipping records for out  
22 of 75,000.

23 >>JUDGE HAWKENS: Although you don't know,  
24 you don't have records of shipments made from  
25 ordinance depots?

1 >>LTC. HERRING: That's correct, Your  
2 Honor.

3 >>JUDGE HAWKENS: That is a big wild card.

4 >>LTC. HERRING: We haven't found -- we  
5 are looking -- the Army is still looking because we  
6 want to be as complete as we can. But at this, we  
7 have to acknowledge that there could be some other  
8 shipments.

9 >>JUDGE BARATTA: If you were to --  
10 hypothetical now, if you were to use the 9,000 that  
11 somehow you got from Fort Benning and ten sites,  
12 that would be 90,000 rounds, if every site had that  
13 number. But the number that was actually produced  
14 was 20 some odd thousand, right?

15 >>LTC. HERRING: Yes, Your Honor.

16 >>JUDGE BARATTA: So what we're looking at  
17 is okay, 714 is probably a number you can  
18 substantiate as a minimum number of rounds that  
19 would have been shipped and possibly fired.  
20 Assuming you had 14 units as you mentioned, Davy  
21 Crockett weapon systems there, in accounting for  
22 what's in the training manual, an estimate of  
23 something on the order of around 2000, 2100 rounds  
24 would be kind of an upper limit given the fact you  
25 only had 14 weapon systems there.

1           But the fact of the matter is you're  
2 actually using the 9,000 as a basis for your health  
3 impacts and such. Is that a fair statement of the  
4 way that the license application is structured?

5           >>LTC. HERRING: Yes, Your Honor, that's  
6 accurate. We used the worst case because at the  
7 time, this is the first ASR produced. When we  
8 became aware of this issue, we started first with  
9 Hawaii. And we were still looking for other  
10 installation records to substantiate other  
11 shipments. So in producing this application, we  
12 used the most conservative estimate that we knew of  
13 and that was Fort Benning submit to the NRC.

14           And at the time of our license submission,  
15 at that point, we had not identified all the rest of  
16 the installations. We know now where the Davy  
17 Crockett was shipped.

18           >>JUDGE HAWKENS: If I read your material  
19 correctly, your records indicate at a minimum, 714  
20 were shipped to Hawaii, but what you're doing is  
21 assuming that 714 rounds were actually -- spotting  
22 rounds were fired at PTA and at Schofield. Is that  
23 correct?

24           >>LTC. HERRING: Yes, Your Honor, that's  
25 right 714 for both sites. We don't have any records

1 going back from Hawaii to the depo.

2 >>JUDGE HAWKENS: Is that an attempt at  
3 being conservative?

4 >>LTC. HERRING: Yes, sir, yes Your Honor,  
5 it is. Since we don't have a record of any  
6 shipments back from Hawaii, and 714 rounds could  
7 have easily been fired by the crews, then, that was  
8 another -- we didn't want to assume that any rounds  
9 were shipped back.

10 >>JUDGE BARATTA: Could you clarify your  
11 question? I didn't quite understand it. Were you  
12 saying that they were assuming there were 714 rounds  
13 shipped to each of Schofield and PTA, or 714 rounds  
14 total?

15 >>JUDGE HAWKENS: And I'll have them  
16 confirm my understanding as I read your radiation  
17 monitoring program for Schofield and for PTA. It  
18 said we have shipping records that confirm a minimum  
19 of 714 spotting rounds shipped to Awahua. We don't  
20 have a firm fix on the actual numbers that might  
21 have come in. So but to be conservative, we will  
22 assume that we used for creating this radiation  
23 monitoring program for determining the effects on  
24 the environment on health, safety and security, we  
25 will assume 714 spotting rounds were fired at each

1 facility which in itself assumes that 1428 spotting  
2 rounds were used in total in Hawaii.

3 LTC Herring: That's for the health  
4 estimate, yes, Your Honor and the monitoring plan,  
5 that's right, 714. So that was the conservative way  
6 we approached that issue.

7 >>JUDGE BARATTA: Then, that's different  
8 than what is in the application itself because  
9 there, you assumed ten percent of the total quantity  
10 for obtaining an estimate of the dose. So your site  
11 specific monitoring plan assumes the lesser quantity  
12 than that, does not assume the 9,000?

13 >>LTC. HERRING: Yes, Your Honor, there  
14 was a gap in time between the original application.

15 >>JUDGE HAWKENS: Will you be updating the  
16 site specific monitoring plan, then, to reflect the  
17 information in the license application?

18 >>LTC. HERRING: No, Your Honor, it would  
19 be the other way around. The ER is the most current  
20 document.

21 Your Honor, if there are no further  
22 questions Question 2 --

23 >>JUDGE HAWKENS: Actually I do want to  
24 follow-up because I'm confused as to which document  
25 you would be updating, whether the license

1 application to reflect 714 rounds at each  
2 installation as a bounding figure or whether it will  
3 be the site specific environmental radiation  
4 monitoring plans that will be revised to indicate  
5 ten percent of the overall rounds that haven't been  
6 accounted for.

7 >>LTC. HERRING: One moment, Your Honor,  
8 if I may. Your Honor, in coordination with the NRC  
9 staff, when this issue came to the Army's attention,  
10 the way that we jointly decided to proceed forward  
11 was to apply -- submit a license and it would be  
12 based again on that worst case. But then as we went  
13 forward and developed more facts because at the  
14 time, we still did not know all the installations  
15 where this material was located, the plan was to  
16 submit site specific ERMs that would be the  
17 reference, not the place holder application license,  
18 if you will.

19 So, we submitted the site specific and the  
20 values for PTA and Schofield and at least at this  
21 time, we'll submit other site specific ERMs as we  
22 continue to do more research or find how much is at  
23 each Army installation. But at this time, I don't  
24 have the intention to go back and update the license  
25 application itself as the license application was a

1 generic place holder at the starting point, if you  
2 will in our licensing process.

3           So the specific information will be filed  
4 as we go along for other installations. But for  
5 this installation, these two installations, you do  
6 have on the ERM, the most up-to-date data.

7           >>JUDGE BARATTA: Now that you brought it  
8 up, how would a change by a factor of 2 or 3 in the  
9 quantity affect the environmental monitoring plan  
10 and radiation monitoring plan?

11           >>LTC. HERRING: The amount in and of  
12 itself, we don't believe it would change, Your  
13 Honor. It would be whether we were able to detect  
14 any change. So based on our studies and  
15 characterization, if we find an increase, that would  
16 be the trigger. If we discovered that DU had  
17 started, we got readings on DU being released, that  
18 would change.

19           >>JUDGE BARATTA: What I'm trying to get  
20 at here, is there really a material dispute here,  
21 because if you're basing your license application on  
22 9,000 rounds and 500 some odd kilograms, then the  
23 point that was brought up by the Intervenors that  
24 well, it's probably more like 2100 rounds or  
25 whatever that translates into kilograms, there is

1 really no dispute there because you are basing it on  
2 a much larger number. But I'm having trouble  
3 understanding what number you're basing it on  
4 because you've got the site specific environmental  
5 report -- if I can use that term, from another  
6 licensing area -- and yet, you've got a license  
7 application that uses a far worse case in terms of  
8 the quantity but more conservative and would easily  
9 bound I think with the uncertainty that the  
10 Intervenors have cited and therefore, there is no  
11 material dispute.

12           If there is no impact on the monitoring  
13 plan or your environmental monitoring and radiation  
14 monitoring plan, then, why bother, why do a site  
15 specific one? It just seems if you got a  
16 conservative number --

17           >>LTC. HERRING: In our conservative  
18 numbers with NRC, that is what we were asked to  
19 provide as we went along and got more specific  
20 information as to each site to update the data for  
21 site specific ERM so that's what we done.

22           >>JUDGE BARATTA: Maybe this question is  
23 best asked of the staff, so when we get to you,  
24 we'll ask that.

25           >>JUDGE HAWKENS: And I have one final

1 question. When I say there's 714 rounds per site, a  
2 conservative scoping value, I think initially you  
3 said no. But then, when I said since 714 was used  
4 at each site and 714 was the amount set for total  
5 use, I'll ask the question again; is 714 at each  
6 site a conservative bounding number to use or is it  
7 a realistic number?

8 >>LTC. HERRING: I would characterize it  
9 overly conservative.

10 >>JUDGE HAWKENS: Why don't you move on to  
11 the next question, please.

12 >>LTC. HERRING: Any questions on the maps  
13 that we've previously provided, show the areas  
14 within the installation where depleted uranium exist  
15 based on our surveys and within the boundaries of  
16 the installation. And what we have done is try to  
17 show on the PTA map, there is one addition there of  
18 the buffer, of the yellow slash lines.

19 This will come up later in another  
20 question, Your Honor, but it is an area that high  
21 explosives, we have marked off to be that we do not  
22 fire any high explosive emissions into that border  
23 area.

24 And then on Schofield currently, we are  
25 not firing any high explosives into that area. So

1 there is no -- did not indicate any buffer area. It  
2 was only training but that is a question that I will  
3 give more detail later.

4 >>JUDGE HAWKENS: All right.

5 >>LTC. HERRING: Next question, "Please  
6 clarify the nature and current perspective  
7 activities on these two installations with regard to  
8 live-fire exercises and the location of such  
9 exercises in relation to depleted uranium areas.  
10 Please address whether the Army has a policy of  
11 maintaining specific buffer between live-fire  
12 exercises and depleted uranium areas."

13 The Department of Defense directive  
14 provides restrictions for firing high explosive  
15 emissions into depleted uranium areas. And that of  
16 course applies to the Department of the Army. There  
17 is no policy, however, of maintaining a specific  
18 buffer distance between live-fire exercises and  
19 depleted uranium. What I would like do Your Honor  
20 is make sure we are using the same definition of  
21 live-fire exercise.

22 By your question, I take it because these  
23 sites are on a range, the DU is on a range, we don't  
24 have soldiers walking out in that area because it is  
25 on a live range, there is other munitions and other

1 hazards there. But we do have soldiers that fire  
2 into the range. So they are not on top of the DU,  
3 if you will. There are several -- they are off the  
4 area where we know the DU is but firing into the  
5 range, the impact area.

6 I just want to make sure if there is  
7 another question that talks live-fire, I wasn't sure  
8 if the Board had the understanding that live-fire  
9 meant maneuvering in the same area as the DU because  
10 we don't have that -- that is not occurring at  
11 either of these locations or any of the locations  
12 that we know of a DU.

13 For Schofield Barracks ranges consists of  
14 firing points where weapons are fired and the impact  
15 areas where the round impacts. The DU is located  
16 within portions of the impact areas. Soldiers fire  
17 only from firing points outside that DU area. In  
18 terms of what munitions are impacting the DU areas  
19 at Schofield, only live small arms ammunition are  
20 being fired into these areas. And by this, I mean  
21 50 caliber machine gun ammunition and smaller. None  
22 have explosive charges. Training rounds as opposed  
23 to live rounds are also being fired into the DU  
24 area. These consist of up to 40-millimeter rounds.  
25 For example, certain grenade rounds, it contain just

1 enough explosive to create a puff of smoke so that  
2 the location of the impact can be determined. But  
3 again, these are not high explosive rounds as were  
4 the DOD policy.

5           Artillery up to 105 millimeter and mortar  
6 rounds may be fired into this area which is within  
7 the DU area. However, only nonexplosive full range  
8 training rounds are fired into that area.

9           For Pohakuloa, like Schofield, weapons  
10 qualification firing from various ranges surround  
11 the impact area does take place with rounds landing  
12 in DU areas. Soldiers will fire from the points  
13 outside the DU areas. The rounds landing in the DU  
14 area are primary, small caliber rounds, 50 caliber  
15 machine gun rounds and smaller that are not  
16 explosive. Weapons qualification training also  
17 includes again, up to the 40-millimeter rounds  
18 landing in the DU areas. But again, these are not  
19 high explosive and create a puff of smoke visible to  
20 the fire.

21           Both high explosive and training versions  
22 are fired at PTA along with artillery up to  
23 155-millimeter and mortar rounds up to 120  
24 millimeter. But the range safety limits have been  
25 adjusted and buffers have been established in the

1 impact area so that no high explosive rounds will be  
2 fired into the DU area. Aerial bombing --

3 >>JUDGE HAWKENS: Are there ever any  
4 errors made during the training process so that an  
5 explosive round may go into the DU area?

6 >>LTC. HERRING: Your Honor, without  
7 speculation, I don't know. I wouldn't believe so  
8 but again, I could get that answer back from the  
9 range personnel in Hawaii. It would depend on the  
10 layout of the range if there is any munitions  
11 that -- the way they are structured, there is a  
12 range for each type of weapons system. And I don't  
13 know how the ranges are laid out or if that is even  
14 a possibility. But I do know that they as the map  
15 indicated added the buffer area in an attempt to  
16 prevent that.

17 >>JUDGE HAWKENS: And you were about to  
18 talk about aerial bombing, I believe.

19 >>LTC. HERRING: Yes, Your Honor. Aerial  
20 bombing also takes place at PTA using both inert and  
21 high explosive bombs. But again, these rounds are  
22 not permitted in the DU buffer area.

23 Battle area in terms of perspective  
24 activities, battle area complexes, short term, "BAX"  
25 are being built at both Schofield and PTA with

1 completion scheduled sometime in 2012.

2           The BAX areas are designed so that  
3 vehicles and personnel can live-fire and maneuver at  
4 the same time. The majority of the BAX areas at  
5 both installations are outside the area with DU.

6           At Schofield, funding has been requested  
7 to construct part of the BAX in a portion of the  
8 current DU area. The Army plans to remove any DU  
9 from this prior to construction if funded. The  
10 PTA -- only a few targets will be in the DU area so  
11 no issue with personnel. Radiation surveys will be  
12 done during place of the targets to locate and  
13 remove any DU if found.

14           Continue. Your Honor?

15           >>JUDGE HAWKENS: Yes.

16           >>LTC. HERRING: Question four: "In  
17 regard to current site monitoring activities, please  
18 clarify what, if any monitoring is being performed  
19 for either airborne or groundwater radioactive  
20 contamination."

21           The air monitor program is based on wrong  
22 protocol and the Army is not getting enough samples  
23 from natural uranium because the sample size is too  
24 small. With regard to groundwater surface water  
25 monitoring, the potential for transported depleted

1 uranium from the live-fire training ranges was a  
2 value evaluated for both PTA and Schofield. These  
3 are addressed in the license application. So only  
4 the monitoring activities and not the full pathways  
5 analysis is provided today.

6 Groundwater is not considered a feasible  
7 pathway because of the depth of the groundwater for  
8 both Schofield and PTA. No ground water monitoring  
9 activities are currently occurring.

10 Surface run out is considered pathway at  
11 Schofield but not at PTA. Five sampling points for  
12 water and or sediment if there is no water flow have  
13 been selected to provide in-flow location and  
14 several out-flow locations.

15 With regard to monitoring for airborne  
16 contamination, the Army collected filter samples in  
17 a particular study done in 2007 and analyzed them  
18 for total uranium. The Army also established three  
19 monitoring stations.

20 >>JUDGE HAWKENS: I regret we will have to  
21 take another recess. We may have to connect by  
22 teleconference because right now, they are not  
23 getting any signal whatsoever. So bear with me, we  
24 will try to get reconvened just as soon as possible.  
25 Thank you.

1 (Whereupon a short recess was taken)

2 >>JUDGE HAWKENS: It's my understanding  
3 that we are proceeding by video conference but we  
4 are working parallel on teleconference so if the  
5 former runs into a technical problem, you all will  
6 automatically go to teleconference, is that right,  
7 Joe?

8 JOE: That is correct.

9 >>JUDGE HAWKENS: Thank you. Colonel,  
10 please proceed. Sorry for the interruption.

11 >>LTC. HERRING: Yes, Your Honor. With  
12 regard to monitoring for airborne contamination, the  
13 Army collected filter samples from air quality  
14 particulates studies done in 2007 and analyzed them  
15 for total uranium. The Army also established three  
16 monitoring stations in February 2009 specifically  
17 for uranium monitoring. Station locations are based  
18 on the results of a 12 month air and weather  
19 monitoring in 2006 and 2007 at multiple stations  
20 around PTA and uranium analysis by ICP MS filter  
21 samples collected.

22 Seventy-two hour air samples are collected  
23 on teflon filters during heavy weapons firing,  
24 artillery, mortars, bombs, rockets, live-fire at  
25 PTA. When no such activity is occurring, 72 hour

1 samples are collected in accordance with the EPA's  
2 published recorded once every 6 day schedule.  
3 Filters are sent to laboratories for gamma metric  
4 and ICP MS analysis for total uranium.

5           Air monitoring was conducted at Schofield  
6 during controlled burning to ensure no airborne DU.  
7 The results of the ongoing monitoring in the  
8 hundreds of previous air samples from PTA all  
9 indicate very low levels of total airborne uranium.  
10 Total uranium mass collected on most individual  
11 filters has been above the instrument detection  
12 limit but below the reportable limit, the few  
13 samples that exceeded the reportable rim, indicate  
14 concentrations several orders of magnitude below  
15 U.S. and world health organization health  
16 guidelines. Since chemically, speaking uranium is  
17 uranium and health standards are based on total  
18 uranium exposure, there is no need to distinguish  
19 based on our findings between natural and less  
20 radioactive depleted uranium.

21           The current monitoring analysis is  
22 therefore based on total airborne uranium exposure  
23 and the sample size is adequate for that analysis.  
24 Consequently, Ms. Harden's assertion that the Army's  
25 air monitoring program is based on wrong protocol

1 and the Army is not getting enough samples to  
2 distinguish the depleted uranium from the natural  
3 uranium because the sample sizes is too small is not  
4 accurate. The sampling and analysis protocol used  
5 in the monitoring program are appropriate for the  
6 task at hand in determining whether Army activities  
7 are creating a public health hazard.

8           We are confident our protocols were  
9 reviewed and concurred with by the Department of  
10 Health for Hawaii, the Agency for Toxic Substances  
11 and Disease Registry, and also the Army Center for  
12 Health Promotion and Preventive Medicine. The  
13 analytical method being employed is capable of  
14 detecting and quantifying uranium at 3 to 5 orders  
15 of magnitude below the U.S. and international health  
16 guidelines for airborne uranium.

17           Obtaining larger sample size would not  
18 alter the fact that the airborne uranium at PTA are  
19 extremely low and typical of natural occurring  
20 uranium levels.

21           Your Honor, Question 5: "In regard to the  
22 site characterization, please discuss the nature and  
23 results from any aerial radiation measurements that  
24 may have been made from either fixed-wing or  
25 helicopters. If aerial radiation surveys have been

1 or will be conducted, please describe the  
2 methodology that was or will be used."

3           A helicopter-based gamma spector scopic  
4 system was used to supplement the ground surveys.  
5 In addition, this helicopter was used to locate and  
6 distinguish pistons used to launch the practice  
7 rounds. These pistons can easily be distinguished  
8 from other range degree and once identified are used  
9 to determine the location of spotting rounds. The  
10 perimeter of the impact area was flown over to  
11 visually identify these pistons. The only pistons  
12 identified were in the impact areas for ranges 10,  
13 11, Tango, T and 17.

14           Forty-five system pistons were visually  
15 identified and marked by GPS during helicopter  
16 surveys at the Pohakuloa training area. The intent  
17 of the method used for the aerial radiation survey  
18 was to identify areas of increased activity for  
19 further ground-based investigation. Due to the very  
20 rugged terrain and chance for injury of personnel  
21 both from terrain hazards in the presence of  
22 unexploded ordinance on the range, the helicopter  
23 was employed to limit the hazard to ground-based  
24 personnel.

25           If areas of increased activity are

1 identified from the air, then a follow-up ground  
2 based survey can be more focused in this area while  
3 minimizing the risk to personnel.

4           The helicopter pilot form was first tested  
5 at Schofield Barracks range on Oahu, an area where  
6 DU is present from the use of the Davy Crockett  
7 system. The area was previously surveyed using  
8 conventional ground-based methods with field  
9 instrument for the detection of low energy radiation  
10 or fiddler systems. The ground based distributions  
11 were mapped in terms C scores and count rates. The  
12 helicopter survey results when compared to the  
13 ground-based measurements provide a very good  
14 correlation with the location of the DU. There were  
15 some key differences between the Schofield Barracks  
16 and PTA area relevant to the conducted survey.

17           First, the terrain of Schofield was  
18 ideally suited for the use of an aerial system. The  
19 range was flat and free of debri. The range at PTA  
20 however, has marked difference in height and area  
21 with significant amount of range debri which  
22 prevented the use of a helicopter at low elevations  
23 in some areas.

24           Second, the nature of DU is different. At  
25 Schofield, it was oxidized and fragments ranged from

1 small particles to pieces the size of the thumb.

2           At PTA, the pieces were larger and showed  
3 minimal oxidation. Pieces at PTA range from the  
4 size of a thumb essentially to intact round. The  
5 methodology includes looking for increased activity  
6 from the helicopter, visual identification of  
7 pistons on the range which demark the direction and  
8 distance around the firing point; visual  
9 identification of yellow characteristics back play  
10 assemblies, fiberglass, wind screens and fins from  
11 the practice rounds and aluminum tail fins from the  
12 spotter rounds in the air. All those different  
13 indicia assisted in providing the visual  
14 confirmation.

15           This combined information is used to help  
16 direct field teams on the ground for confirmation of  
17 the DU. Aerial and ground walkover surveys were  
18 performed for a total of 936 acres at PTA.

19           The ability to detect the Davy Crockett  
20 spotter round using the aerial system was determined  
21 by the complex of a background spectrum and the  
22 spectrum from a thin slab of DU.

23           Minimal detectable activities was  
24 determined to be .02 millicuries or 3 spun around  
25 within the field of view of the aerial system. The

1 assumption is that the system is flown at 3 to 6  
2 knots or one to two miles of meters per second and  
3 at a height of 10 to 12 above the ground surface.  
4 To account for variations in survey speed and  
5 height, this data was collected along with gamma  
6 counts. The aerial gamma surveys identified a few  
7 areas of increased activity but further  
8 investigation indicated these increases were due to  
9 variations in natural background.

10           Finally, ground walk over surveys were  
11 performed with fiddler detectors at areas identified  
12 during the gamma. The aerial gamma surveys over  
13 a -- certain areas determined to have the most  
14 likelihood of DU.

15           Only two metal DU fragments and one  
16 essentially inconnect spotting round was located.  
17 Soil samples were also collected during the survey.  
18 None of the samples indicated the presence of DU.

19           >>JUDGE HAWKENS: Thank you.

20           >>LTC. HERRING: With regard to Question  
21 6: "In regard to the assertions by Petitioners that  
22 contaminated soil is being removed, please clarify  
23 what, if any activities are in your way or may be  
24 implemented in the future to remove either depleted  
25 uranium or soil containing depleted uranium?"

1           The short answer, Your Honor is that we  
2 are not removing DU from any installation in Hawaii.  
3 However -- and to complete that thought, to our  
4 knowledge, no soil has been removed from the  
5 Schofield Barracks impact area since Your Honor  
6 became aware of this issue in 2005. However, there  
7 are many projects ongoing at Schofield Barracks  
8 which may require soil, rock and or debris to be  
9 hauled away from the installation.

10           None of these projects are in the vicinity  
11 of the DU area. One such project which could be the  
12 source of some confusion to Petitioners involves the  
13 repair of roads and trails at Makua Military  
14 Reservation. There was a requirement for  
15 approximately 90,000 tons of crushed rock,  
16 approximately 3,500 truck loads to be delivered to  
17 MMR or Makua.

18           The source of this crushed rock is the  
19 Schofield Barracks which is located approximately  
20 one mile from the DU area and is not known to be  
21 used for firing weapons, to include any DU rounds,  
22 so it is not on the range.

23           This project started in early 2000 -- in  
24 early November, 2009 and is scheduled to be  
25 completed in April, 2010. During initial surveys of

1 the proposed BAX area, training area mentioned  
2 earlier, some DU fragments along with small  
3 quantities of DU contaminated soil surrounding those  
4 fragments were placed in 55 gallon drums. The drums  
5 are currently being stored in a secure facility on  
6 Schofield Barracks pending proper disposal.

7 Small quantities of soil have been removed  
8 from Schofield Barracks impact area for sampling.  
9 The soil samples were properly packaged and sent to  
10 laboratories on the mainland for testing. Today,  
11 only a few small fragments have been removed from  
12 the impact area PTA and these fragments were  
13 properly packaged and brought to Schofield Barracks  
14 for examination and testing and are presently stored  
15 in Schofield Barracks in a secure facility.

16 Your Honor is not conducting further  
17 testing at Schofield or PTA but we continually  
18 re-access the need for such action. As an example  
19 our request for funding to complete currently,  
20 unfunded portion of the battle area complex from  
21 Schofield Barracks have been submitted to the Army  
22 headquarters. Should this construction be funded DU  
23 removal is planned to occur prior to construction.  
24 Currently there are no plans to remove DU soil other  
25 than small quantities for testing which may

1 accompany the removal of DU fragment. Any  
2 contaminated soil that may be removed will be  
3 packaged and stored properly.

4 >>JUDGE HAWKENS: Thank you.

5 >>LTC. HERRING: Your Honor, in Question  
6 7: "Please address when the Archives Search Report  
7 was made publicly available both in print and on a  
8 website."

9 The Archive Search Report was posted on  
10 the public website on October 1st 2009. The report  
11 was not officially distributed in print due to its  
12 size but made available to all on our website  
13 containing many other documents related to DU in  
14 Hawaii.

15 In response to Ms. Harden's request, a  
16 hard copy was provided to her on October 30, 2009.

17 >>JUDGE HAWKENS: I have a question. The  
18 record says the Army discovered DU at Schofield in  
19 2005. I think the Petitioners are saying at best,  
20 knowing that you had used DU for six years during  
21 the 60's, for the Army to say we discovered it in  
22 2005, at best that's negligence at what exists on  
23 your range and worst, it's deliberate withholding  
24 information. What is the Army's response to that?

25 >>LTC. HERRING: Certainly, there is no

1 purposeful withholding. The fact just as we  
2 mentioned with the unit being deployed to Vietnam,  
3 at some point, it was -- institutionally lost sight  
4 of not only by the Army but I believe also the  
5 Licensing Authority as well. But there was no  
6 intend or ill will -- no intent or no purposeful  
7 actions on the part of the Army. When this was  
8 found and Your Honor, you might see in the  
9 information that a range safety or worker spotter  
10 the round and identified it. And once that  
11 occurred, the Army had although argue about how long  
12 it has taken, has taken steps to deal with this  
13 issue.

14           Your Honor, although I'm not positive on  
15 this, could be the fact that once the material was  
16 fired, if you look at the document history, once  
17 it's created and transferred, there is a record of  
18 shipment because it is still an ammunition round.  
19 It could as simple as once that round is placed in  
20 the weapon and fired, and now out of range, that the  
21 tracking mechanism for that DU no longer existed  
22 because it was an expended munition.

23           >>JUDGE HAWKENS: All right, thank you.

24           >>LTC. HERRING: Question 8: "The  
25 verified number of depleted uranium spotting rounds

1 shipped to Oahu was 714 rounds in April of 1962, yet  
2 the worst case scenario based on training and  
3 qualification criteria is 2,526 rounds. Please  
4 reconcile these figures and address the possibility  
5 that additional rounds may have been shipped."

6 Your Honor, as stated previously, it is  
7 possible that other rounds were shipped from other  
8 depots. The Army located the ammunition lot records  
9 which were used to track ammunition lots from the  
10 records --

11 >>JUDGE HAWKENS: I think you may have  
12 addressed this fully at the outset of your argument.  
13 Unless you have something to add, we will accept  
14 that.

15 >>LTC. HERRING: Your Honor, thank you.

16 And then, finally, Your Honor on Question  
17 9, the last question for the Army from your order:  
18 "Please address whether the Army intended to use  
19 depleted uranium munitions in the future at relevant  
20 military installations."

21 >>LTC. HERRING: No, Your Honor, we do  
22 not.

23 >>JUDGE HAWKENS: Thank you. We will hear  
24 from the NRC staff now.

25 >>MS. SEXTON: Good evening, Your Honor.

1 Question number one: "The Army's application states  
2 that the Army has not determined that the Atomic  
3 Energy Act requires a possession-only license in the  
4 instant situation. But that it is nevertheless,  
5 submitting an application to promote cooperation  
6 between our agencies and to the extent required by  
7 the Act. Please address whether the Army is  
8 required to have a license in this situation."

9           The very short answer is yes. The section  
10 2 of the AEA grants the NRC the authority to  
11 regulate the use of source material. Section 62 of  
12 the AEA states generally that no person unless  
13 authorized by the NRC may possess source material.  
14 Under the AEA the U.S. Army Installation command as  
15 an establishment means the executive branch of U.S.  
16 Government constitutes a person under Section 52 of  
17 the Act. From there, under 10 CFR, Part 40 of the  
18 NRC's regulations, we require specific license for  
19 possession of source material in excess of 15 pounds  
20 at any one time and 150 pounds in one calendar year.  
21 If it meets requirement for source material as  
22 defined in 10 CFR section 44.02 as it pertains by  
23 weight 5 percent or more uranium.

24           The Army's license application currently  
25 request permission to possess 8,000 kilograms of

1 uranium which meets the NRC requirement.

2 >>JUDGE HAWKENS: Sounds like the NRC has  
3 a strong view on the answer to that question. Go  
4 ahead.

5 >>MS. SEXTON: Question Number 2: "Please  
6 explain the consequence that the Army is not granted  
7 a depleted uranium possession by the two sites in  
8 this proceeding."

9 The answer is with NRC not to grant the  
10 Army license because the Army is out of compliance  
11 with the Atomic Energy Act, would be within the It  
12 would be within the discretion of staff to issue an  
13 enforcement action against the Army. However, I  
14 said that would be up to the discretion of the staff  
15 to evaluate were the situation to progress in that  
16 manner.

17 >>JUDGE HAWKENS: All right, thank you.

18 >>MR. KLUKEN: Question Number 3: "Please  
19 discuss the nature of license conditions that may be  
20 placed on the Army as a possession-only license  
21 holder including whether such conditions could  
22 include the location and frequency of radiological  
23 monitoring, the ability to remove depleted uranium,  
24 or soil that might contain depleted uranium from the  
25 site and the permissibility of conducting live-fire

1 exercises in areas where the depleted uranium may be  
2 present."

3           Hypothetically speaking, Your Honors, it  
4 is the position of the NRC staff that any of the  
5 potential license conditions itemized by the Board  
6 could be imposed assuming, however, the staff has  
7 due cause for the necessity of such imposition. At  
8 this time, the staff has not completed its review of  
9 the license application and as such, staff cannot  
10 speak to the particular necessity of any license  
11 conditions at this time.

12           >>JUDGE HAWKENS: We're just wondering  
13 about the authority. We understand.

14           >>MS. SEXTON: Question Number 4: "The  
15 staff states that Ms. Harden never specifies any  
16 injury-in-fact apart from the possibility that very  
17 different conditions may eventually be written into  
18 the Army DU license, depending on the number of  
19 spotting rounds found to be used. Because the dose  
20 associated with a quantity of radioactive material  
21 depends on the amount present, please address how it  
22 is possible to characterize with specificity an  
23 injury-in-fact if as alleged by Ms. Harden, the  
24 amount of radioactive material is unknown."

25           The staff believes that it was possible

1 for Ms. Harden to demonstrate standing even with her  
2 allegation of the different number of spotting  
3 rounds, but that she failed to do so. As she makes  
4 clear in her pleading, she believes there may be as  
5 many as 2050 rounds at Pohakuloa. Ms. Harden could  
6 have used any number and instead, she failed to  
7 allege any harm that might stem from there being  
8 more spotting rounds in Hawaii, let along the NRC  
9 granting the Army's license request.

10 Further, it would have been possible for  
11 her to attempt to meet NRC's proximity assumption  
12 for standing based on the 2050 spotting rounds she  
13 speculates are present on Pohakuloa. To do so as  
14 Intervenor, the burden falls on Ms. Harden to  
15 demonstrate the proposed action involves a  
16 significant source of radioactivity producing an  
17 obvious potential for off-site consequences.

18 Ms. Harden never states what she believes  
19 the off-site consequences to be for even the 714  
20 rounds or 2050 rounds or any other number of rounds.  
21 Even then, Ms. Harden could have well attempted to  
22 establish a proximity presumption by showing a  
23 specific and plausible means of how the challenge  
24 action may harm her, something that she did not do.  
25 For those deficiencies and others, Ms. Harden fails

1 to demonstrate standing.

2 >>JUDGE HAWKENS: What is the NRC's staff  
3 position on whether 2,000 rounds is a significant  
4 source of radioactivity?

5 >>MS. SEXTON: Your Honor, it is the  
6 Petitioner's burden to show that.

7 >>JUDGE HAWKENS: I understand that. I'm  
8 wondering what the NRC's position is.

9 >>MS. SEXTON: Your Honor, that would  
10 depend on a huge number of variables depending on  
11 where it's located, where she lives, what sort of  
12 activities can occur from that area to where she is.  
13 It's just not something we can answer at this time.

14 >>JUDGE BARATTA: There is a statement  
15 where she requested the time extension that it says  
16 that the ASR seems to provide a basis for assumption  
17 of later reports, characterization of human health,  
18 risk assessment about when, where and how the  
19 spotting rounds were used which suggest she is  
20 implying that there was a health risk.

21 I guess I don't understand your earlier  
22 statement that she failed to cite the injury-in-fact  
23 that would result in a possible injury-in-fact that  
24 might occur.

25 >>MS. SEXTON: Were you quoting from her

1 October 30 filing?

2 >>JUDGE BARATTA: No. This is one she  
3 requested the delay.

4 >>MS. SEXTON: Which statement were you  
5 looking at?

6 >>JUDGE BARATTA: The very end.

7 >>MS. SEXTON: The very end. I'm sorry,  
8 Your Honor, I'm still not finding the specific  
9 reference that you're talking about.

10 >>JUDGE BARATTA: Give me a minute. I  
11 will see if I can find it. I only have the second  
12 page unfortunately. Why don't you go on with other  
13 questions.

14 >>MR. KLUKEN: Your Honor, can we take a  
15 short recess while you look for hat reference?

16 >>JUDGE HAWKENS: We will take a five  
17 minute recess and then we will return and complete  
18 the argument. Thank you.

19 (Whereupon, a five minute recess was had)

20 >>JUDGE HAWKENS: We're back on record.  
21 Please proceed.

22 >>MS. SEXTON: Your Honor, we attempted to  
23 find --

24 >>JUDGE BARATTA: Its's September, 22. **I**  
25 **apologize. I got the one filed on the 9th. It's**

1 from Corey Harden to docket hearing extension of the  
2 date, due date and it's on page 2 of that at the  
3 very, very end.

4           So, the actual -- I guess the actual  
5 e-mail itself was September 18<sup>th</sup> to John Hayes.  
6 And then, he responded and she forwarded the whole  
7 package to the office on the 22<sup>nd</sup>.

8           >>MS. SEXTON: Just to refresh my  
9 recollection. You were saying that the ASR seems to  
10 provide a basis for assumption that was --

11           >>JUDGE BARATTA: Right, that she was  
12 concerned about the health effects. She seemed to  
13 highlight that and so I guess, what's troubling me  
14 is your discussion in your reply or your answer to  
15 the Petition I should say seems to indicate that  
16 you're well aware that she was concerned about  
17 health effects and therefore, had in fact cited.  
18 Since you make statements relative to that numerous  
19 places. So, I just didn't agree with your  
20 discussion that she failed to identify health impact  
21 because you seemed to be aware of the health  
22 effect..

23           >>MS. SEXTON: Your Honor, the mere  
24 stating that someone is concerned about health  
25 effects is not enough to demonstrate traditional

1 standing or proximity for standing.

2 >>JUDGE BARATTA: Well, I found rather  
3 interesting, it seemed like you switched your  
4 standing in the middle of your Answer because in the  
5 beginning, you talk about potential radiological  
6 harm and then, later on, seemed to get specific that  
7 she has not demonstrated actual harm had occurred.  
8 I was a little confused by that to.

9 >>MS. SEXTON: In my response today?

10 >>JUDGE BARATTA: Just an observation.

11 >>JUDGE HAWKENS: I have a quick question  
12 for you. Maybe you can answer this one.

13 >>MS. SEXTON: Okay.

14 >>JUDGE HAWKENS: Let's assume there is a  
15 significant amount of radioactivity. Assuming the  
16 monitors that the Army radiation monitors that the  
17 Army proposes to use, and authorized by the NRC  
18 don't reveal that any radiation limits, regulatory  
19 limits are exceeded.

20 Does that as a matter of law mean a  
21 petitioner could not establish injury-in-fact?

22 >>MS. SEXTON: No, Your Honor.

23 >>JUDGE HAWKENS: Why not?

24 >>MS. SEXTON: Your Honor, at least in  
25 terms of proximity standing, it is just an obvious

1 potential for off-site harm and that does not speak  
2 to regulatory limits in any way.

3 >>JUDGE HAWKENS: Is it conceivable there  
4 is an obvious potential for oxide harm if all  
5 regulatory limits are met?

6 >>MR. KLUKEN: I think Your Honor in  
7 creating for example, the presumption proximity for  
8 nuclear reactors, the Commission assumes --

9 >>JUDGE HAWKENS: I understand. That is a  
10 different animal. We're talking about material  
11 licenses where there is no proximity presumption.

12 It may be that you're saying the  
13 Petitioner conceivably could come up with a  
14 plausible chain.

15 >>MR. KLUKEN: With all due respect, Your  
16 Honor, two different things. I think in materials  
17 cases, while there is no proximity presumption as  
18 put in hydro resources, someone could assert an  
19 obvious potential for radiological harm consequence.  
20 We have asserted the Petitioners have not done that  
21 yet.

22 Where there is no following where there is  
23 no obvious potential, the Petitioners have not shown  
24 any logical potential for off site harm, we then go  
25 back to the position on standing elements of

1 injury-in-fact, whatnot, nexus. And we argue they  
2 have not done that either. So if you look at  
3 Petitioner two standing arguments, none of the  
4 petitioners have shown there has been an obvious  
5 potential cause for outside harm under resources or  
6 that have not shown under the traditional what you  
7 were getting at, the plausible chain, the  
8 traditional standing element. They have not done  
9 that either.

10 I don't think that were we to license  
11 something, Your Honor, factors into whether  
12 facilities has an off-site potential for  
13 radiological harm. I think it is the nature of what  
14 the facility is.

15 >>JUDGE HAWKENS: In this case, it is more  
16 than an off site potential. It has to be a  
17 significant impact or a plausible chain which shows  
18 potential injury or actual injury. Please proceed.

19 >>MS. SEXTON: Question Number 5: Staff  
20 states that Ms. Leonardi's assertion that she has  
21 seen trucks from Schofield Barracks unload debri  
22 containing radioactive soil directly in the back of  
23 her home is beyond the scope of this proceeding.  
24 Please address what the regulations say with respect  
25 to the disposal of material held under a

1 possession-only license."

2           First of all, Ms. Leonardi's allegation is  
3 out of scope. The Army's license obligation for  
4 possession-only license August 13, 2009 federal  
5 registry notice receipted. That is because license  
6 application would not allow the transfer of disposal  
7 depleted uranium and Ms. Leonardi's assertion is  
8 beyond the scope of this proceeding. The disposing  
9 of license material in back of Ms. Leonardi's house,  
10 this would be handled through the allegation and  
11 enforcement process.

12           Further, even if it were within the scope  
13 of the proceeding, Ms. Leonardi fails to provide  
14 sufficient information to support her claim. Ms.  
15 Leonardi mentions a five year plan that she appears  
16 to indicate includes the intentional removal of  
17 contaminated soil and disposal in her community  
18 including the back of her house.

19           Ms. Leonardi, however, has not produced  
20 this plan nor has she indicated what type of  
21 contamination is contained in the soil or what  
22 toxins are in the dust plumes she refers to. In  
23 fact, Ms. Leonardi only once mentions any  
24 radioactive material whatsoever, and that is merely  
25 in reference to the military's past use.

1           Thus, without more information to provide  
2 possible chain showing the military is holding soils  
3 specifically containing radioactive material and the  
4 actual dumping of material in Ms. Leonardi's  
5 community, Ms. Leonardi has failed to provide  
6 standing or provide admissible contention.

7           >>JUDGE HAWKENS: Did you say it is beyond  
8 the scope because of Ms. Leonardi's plan is  
9 backward looking instead of forward looking?

10          >>MS. SEXTON: No, Your Honor. It's  
11 because it is not part of the license application.  
12 They are not actually requesting the ability to  
13 transport uranium. That would be handled during the  
14 enforcement process, not requesting the ability to  
15 transport and dispose of depleted uranium.

16          >>JUDGE BARATTA: However, the license  
17 does clearly reference the possibility of that  
18 occurring in Item 6. They say the depleted uranium  
19 pursuant to this license may also be subject to  
20 disposal by transfer to a properly permitted license  
21 disposal facility. So I would not conclude it would  
22 be outside the scope.

23          >>MR. KLUKEN: Your Honor, Part 40 does  
24 provide for transportation generally speaking which  
25 you don't need a particular license and to whom you

1 can transport it. What we are saying is there is  
2 nothing -- they are not asking for a specific  
3 license for transport beyond what the REGS already  
4 provide for. Generally any one may transport to and  
5 to whom.

6 >>JUDGE HAWKENS: If you truly paint that  
7 claim, given that license beyond receiving authority  
8 to dispose by transfer to a properly permitted  
9 license disposal facility, that is part of the  
10 authority it is seeking. And if one of the  
11 Petitioners had a contention, some basis in fact  
12 that the Army either historically, had improperly  
13 disposed of DU or had intentions to improperly  
14 dispose of DU, you would claim that was outside the  
15 scope of this proceeding?

16 >>MS. SEXTON: First of all, Your Honor,  
17 we would just like to make sure that -- we know Ms.  
18 Leonardi actually says that she can not show that  
19 there is DU in the soil that is being disposed in  
20 the back of her house and it is the burden of the  
21 Army to show that it is not disposing DU in the back  
22 of her house. So she has no facts, number one to  
23 support that.

24 And number two, her -- the back of her  
25 yard and the I guess, dump that she was referring

1 to, that is not a licensee or someone that the NRC  
2 permits the Army to transport and dispose of the  
3 material in the back of her house, so that would be  
4 outside the bounds of anything currently allowed  
5 under the regulation or outside of the scope of the  
6 license application that they have submitted to us.  
7 That would be handled under the enforcement process  
8 because they would be violating our regulations.

9 >>MR. KLUKEN: What we are saying Your  
10 Honor, the license does not authorize them to  
11 dispose of the depleted uranium in Ms. Leonardi's  
12 backyard. That's what we mean by the statement.

13 >>JUDGE HAWKENS: All right, thank you.

14 >>MS. SEXTON: Were you still concerned  
15 with exactly what regulations because that was part  
16 of the question? Or were you more concerned with Ms.  
17 Leonardi's statement?

18 >>JUDGE HAWKENS: Can you be a little more  
19 clear in that question. What are you asking?

20 >>MS. SEXTON: I didn't know if you wanted  
21 to know generally what the regulations are about  
22 that.

23 >>JUDGE HAWKENS: Address it in context of  
24 Ms. Leonardi's concern, please.

25 Ms. Sexton: Okay, I think that we did

1 state they have to -- a person has to be  
2 specifically licensed to receive waste under Part 20  
3 and neither Ms. Leonardi to our knowledge nor the  
4 community or waste dump that she is referring to are  
5 the licensee and allowed to take possession of or  
6 dispose of the material she is claiming.

7 >>JUDGE HAWKENS: And if Ms. Leonardi ever  
8 had any factual foundation for that such a claim,  
9 her remedy is to come directly to the NRC with an  
10 enforcement action request. And if there were any  
11 factual foundation for that, the NRC has a lawful  
12 obligation to take some corrective action?

13 Ms. Sexton: Yes, Your Honor.

14 >>JUDGE HAWKENS: Okay, thank you.

15 >>MS. SEXTON: Question 6: "The Staff  
16 states that Mr. Albertini's contentions should be  
17 rejected because they fail to comply with 10 CFR  
18 2.309 (f) (1) Please explain the basis of this  
19 statement and identify specifically the provisions  
20 of Section 2.309 (f) (1) that Mr. Albertini allegedly  
21 fails to satisfy."

22 I apologize Your Honor for any confusion I  
23 may have caused. It is the position of NRC staff  
24 that whether his petition is treated as continuous  
25 contention or separate contention, Mr. Albetini

1 nonetheless fails to satisfy all of the factors of  
2 10 CFR 2.309 (f) (1). In violation of the first  
3 factor, Mr. Albertini's description of a radiation  
4 reading is insufficient to indicate the factual  
5 issue sought to be raised. In violation of the  
6 second, Mr. Albertini does not explain why the Army  
7 description of contamination in the application of  
8 the PTA is inadequate.

9 In violation of the third, Mr. ALbertini  
10 provides no information to assess whether his claims  
11 are within the scope of the proceeding. In  
12 violation of the 4th, he makes no showing that the  
13 issues raised are material to the filing that NRC  
14 must make in support of granting of the license.  
15 Fifth: He makes no, factual argument for expert  
16 opinion regarding the need for air monitoring of the  
17 PTA. And he also fails to provide any support for  
18 his claim there needs to be a thorough and complete  
19 search of the record. And in violation of the  
20 sixth, Mr. Albertini does not cite to any portion of  
21 he application and as such cannot be assessed  
22 whether he has a genuine dispute with the applicant.

23 >>JUDGE HAWKENS: Those are certainly  
24 valid arguments of the NRC staff to make if the  
25 Petitioners were represented by counsel. And it may

1 be your position that you apply equally strict  
2 standards to pro se petitioners. Is that the case or  
3 do you apply the contention and admissibility  
4 standards a little bit more relaxed when it is a pro  
5 se petitioner?

6 >>MR. KLUKEN: I think the Commission has  
7 directed staff to apply more lax standard because --  
8 but even under the most fundamental, something they  
9 have provided a factual basis for which they dispute  
10 with the applicant to be heard at a hearing, read  
11 independently or even as together, I don't think any  
12 of the elements of Mr. Albertini's petition meets  
13 that standard. What has he put forward that  
14 disagrees with the Applicant that he has actual  
15 support for? Granted, we applied it in a very  
16 stringent way but I think even looking back from  
17 that, I don't think his petition meets that very  
18 general standard and will change.

19 >>JUDGE HAWKENS: All right.

20 >>MS. SEXTON: Question Number 7 --

21 >>JUDGE BARATTA: Before you go on to that  
22 one, let me go back to the question asked about  
23 2.309.

24 If I break down what he said that he's  
25 taking issue with the search for the contamination

1 which means he is taking issue with the source as  
2 quoted; doesn't that follow? To me, he has taken  
3 issue with something that is in the application,  
4 namely, the supporting basis on which the source is  
5 identified of 714 rounds. And then, so that's the  
6 issue. And then, his basis as to why it is  
7 inadequate is because less than one percent of these  
8 areas have been surveyed.

9           So it seems to me, he has got an issue  
10 which is specific with the application and a basis  
11 for that. And the basis is facts that are in the  
12 application. We hear today that so many acres, so  
13 many hundreds of thousands of acres weren't  
14 surveyed.

15           >>MR. KLUKEN: I would take that one step  
16 with all due respect, there is only one percent he  
17 provide no information to say why there needs to be  
18 more. To say they did not survey enough of the  
19 area.

20           He provide no factual basis to assume  
21 why -- material basis to assume why they needed to  
22 do more or why they were legally required to do more  
23 to gather information to put in the application or  
24 that is material to a finding the NRC must make.

25           He simply says he thinks one is enough.

1 That seems to be without further factual support  
2 Your Honor, simply speculation.

3 >>JUDGE HAWKENS: We may get more  
4 clarification when the staff answer the next  
5 question.

6 >>MS. SEXTON: Question 7: Please address  
7 whether the Commission's regulations require  
8 applicant to fully characterize the type, amount and  
9 location of material it will hold under  
10 possession-only license. Also address what  
11 percentage of a site is usually surveyed to  
12 determine site characteristics and what is the legal  
13 and/or technical basis for the percentage?"

14 The first part of that question because  
15 they applied for a possession-only license rather  
16 than decommission to the Pohakuloa site under 10 CFR  
17 there is no requirement to fully characterize the  
18 site. The NRC accepted the application for review  
19 because it met the .05 percent and 15 pound  
20 threshold by stating they wanted a license for  
21 possession of 8,000 keloids and include their  
22 physical security plant in environmental radiation  
23 monitoring plan. The NRC has not yet decided if the  
24 license application is adequate for the assurance of  
25 a license.

1           Further, should the NRC essentially issue  
2 an Army license and the Army finds they have more  
3 material than they requested a license for, they  
4 would have to come back to NRC to request a license  
5 amendment. And the second part regarding the  
6 technical basis for percentage, because this is an  
7 application for possession-only license is  
8 acceptable for the applicant to state how much  
9 material they wish to possess. And that's all.

10           >>JUDGE BARATTA: Well, I'll get back to  
11 the issue if you don't survey, you don't know how  
12 much is there. We already heard they don't know  
13 how much has been shipped and clearly the only way  
14 to determine what's there is to do a survey.

15           >>MR. KLUKEN: Or if I may, Your Honor to  
16 do a bounding conservative analysis.

17           >>JUDGE BARATTA: We just heard a minute  
18 ago, you asked them not to do that because  
19 apparently they did that in the original application  
20 but you told them to modify to put forth these other  
21 numbers which I guess I can't tell whether they are  
22 conservative or not.

23           >>MR. KLUKEN: The NRC staff has not  
24 determined what number is conservative at this  
25 point. In terms of how much we believe or within

1 the boundaries conservative these to ensure health  
2 and safety. A review is not yet complete. We did  
3 require site specific environmental monitoring for  
4 the reasons the Army describes through differences  
5 of groundwater, surface water, air and whatnot and  
6 we felt that necessary to do our duties under the  
7 regulations. In a review of the application, we  
8 thought that information was necessary and would  
9 like for each additional site require site specific  
10 information of the type we asked Army to provide us.

11 >>JUDGE BARATTA: I don't dispute that.  
12 Because of what has occurred, given the topography  
13 of the two sites is quite different. And we heard  
14 something from one Petitioner about the winds coming  
15 off the volcano there at night and such because  
16 obviously because of the colder temperatures up top  
17 verses the lower level.

18 But when -- just seems strange that when  
19 you have this large unknown about exactly how much  
20 is there and there are credible arguments the  
21 petitioners have put forth, this could be three  
22 times, four times as much as what is now in the  
23 environmental monitoring report, that we would not  
24 base it on a more conservative number than what  
25 staff told them to use. That's what I find a little

1 bit baffling.

2 >>MR. KLUKEN: I think, Your Honor, there  
3 has been some confusion. We did not tell the Army  
4 to use any particular number. We told the Army to  
5 provide us with an environmental monitoring plan  
6 that was site specific. And in doing so, the Army I  
7 believe came up with the number they thought  
8 conservative for a site specific analysis. We did  
9 not direct the Army to use any particular number and  
10 I can't say whether the NRC staff believes that the  
11 number used in the environmental monitoring report  
12 is conservative or not based on our own analysis.

13 >>JUDGE BARATTA: Well, I'm still troubled  
14 by the uncertainty in the numbers and consider one  
15 needs to be conservative, don't you agree, when  
16 there is a large uncertainty and we are talking a  
17 factor of four.

18 >>MR. KLUKEN: I would most definitely  
19 agree and that there is unexplored ordinance and  
20 other associated difficulty installations  
21 characterizing the site fully. We can't sift every  
22 inch of it but the staff will determine as part of  
23 its analysis whether the Army has collected  
24 sufficient evidence for us to complete our analysis  
25 of whether we under the finding of 10 CFR 40.32

1 whether we ensure public health and safety and the  
2 other findings therein.

3 >>JUDGE BARATTA: I don't know -- in the  
4 end, it may not matter because the monitoring  
5 program may not be dependent on quantity type but  
6 that is to be determined.

7 >>JUDGE HAWKENS: Please proceed to the  
8 next question.

9 >>MR. KLUKEN: "Please address whether  
10 documents referenced in the license application are  
11 considered to be part of the application.

12 Your Honor, generally speaking, any  
13 documents referenced in a license application is to  
14 be considered part of the application to the extent  
15 and purpose of the reference made.

16 If an application references a particular  
17 chapter of a textbook only that chapter is thought  
18 to be incorporated into the application. Or if the  
19 findings, particular findings of the report are  
20 incorporated, it does not necessarily mean that all  
21 findings unrelated to that finding would be  
22 incorporated into the application. Again, it's to  
23 the extent and purpose of reference made.

24 >>JUDGE BARATTA: That seems to conflict  
25 with your statement that appears where you state the

1 specific specified reports are not part of the  
2 application based on information available to the  
3 staff. However, the report was not received as part  
4 of the application nor is it currently reasonably in  
5 the position of the NRC, all staff is in possession  
6 of the second record and goes on.

7 >>MR. KLUKEN: I would respond to that  
8 Your Honor, I think what we intended to mean, they  
9 were not submitted as part of the application. In  
10 many instances in reactor licensing and in other  
11 large licenses, the applicant makes references to  
12 many documents which are not submitted as part of  
13 the application in which they are not in NRC staff  
14 possession at the time that the license is actually  
15 filed with the NRC.

16 We may collect those preferences in the  
17 course of our review but does it doesn't mean we  
18 have them on hand. We believe that as documented in  
19 here, that if Ms. Harden believe that is information  
20 is missing from the application, or that needs to be  
21 part of the applicant's analysis, they should make  
22 that known as a contention admission.

23 >>JUDGE HAWKENS: Next question, please.

24 >>MR. KLUKEN: Question 9: Please address  
25 whether the telephone conversation that took place

1 in October 26, 2009 between the Office of the  
2 Secretary of the Commission and Ms. Harden  
3 constitutes good cause for the alleged late filing  
4 of October 30.

5 Your Honors, as evidenced in his e-mail to  
6 me that I distributed to the Board, Mr. Julian does  
7 not recount ever discussing the timeliness of her  
8 October 30 addendum. As he states, such was not his  
9 focus. It is further clear from Mr. Julian's  
10 e-mail, Ms. Harden was not granted an extension of  
11 time by which to file her addendum by the Office of  
12 The Secretary.

13 Moreover, Ms. Harden does not recount that  
14 was she was granted an extension of time in her  
15 pleading, her October 3rd pleading by which to file  
16 her addendum, 10 CFR 3209 indicates the obligation  
17 of the petitioner to address the 8 factors for the  
18 admission of non-timely contentions.

19 >>JUDGE HAWKENS: All right, thank you.

20 >>MR. KLUKEN: Question: "It is claimed  
21 that the Army's presence --

22 >>JUDGE BARATTA: Let me ask you, let's  
23 take the difference between October 27 and October  
24 30, how many days that?

25 >>MR. KLUKEN: Three.

1 >>JUDGE BARATTA: Were you in any way  
2 prejudiced if we were to admit those items? Was  
3 there any harm that would occur to you or the  
4 applicants if we were to allow those items?

5 >>MR. KLUKEN: No, Your Honor, but again  
6 simply going by the Commission's regulation, it is  
7 her obligation to establish good cause.

8 >>JUDGE BARATTA: Well, It is also the  
9 policy and I believe this has been enumerated in CLI  
10 that we are to give a certain leeway to pro se  
11 intervenors because how long is it going to take  
12 you to actually do this license application assuming  
13 it goes forward?

14 >>MR. KLUKEN: About a year, Your Honor.

15 >>JUDGE BARATTA: And who a three day  
16 delay at this point impact that year?

17 >>MR. KLUKEN: Speaking from the position  
18 of whether there is prejudice to the staff which the  
19 applicant, speaking for the staff, I don't believe  
20 there is any prejudice.

21 If that is your standard by which to grant  
22 this, then, yes. But given that there does not seem  
23 to be any reason why she could not have filed this  
24 as part of her original petition other than she  
25 simply didn't and admits herself she knew she was

1 late in filing this, I see no reason.

2 >>JUDGE HAWKENS: Take a look if you would  
3 please at Attachment 7 to your Answer, the October  
4 30 letter from Ms. Harden to the NRC staff. Let's  
5 deal with this as a part of the record as opposed to  
6 that I do appreciate that you did talk to Amil and  
7 try to provide a full answer to our question, but  
8 I'm wondering if the answer can be based on this  
9 document alone. When she is referencing the  
10 discussion with Mr. Julian.

11 >>MR. KLUKEN: By this, Ms. Harden does  
12 indicate she did speak with Mr. Julian but fails to  
13 account in the context of that improper  
14 conversation, with the Office of the Secretary.  
15 However improper, it happened. From this, I can't  
16 tell beyond which that she was to consider the  
17 October 9th, also her intervention, what else they  
18 talked about or why she filed on October 30 as  
19 opposed to the 27.

20 >>JUDGE HAWKENS: As a matter of  
21 regulatory authority, does Mr. Julian have  
22 permission to grant oral extensions of time or  
23 written extensions of time for that matter unless he  
24 has been directly -- authority has been delegated.

25 >>MR. KLUKEN: I don't wish to pry into

1 the affairs of the Office of the Secretary. I don't  
2 wish to pry into the conduct or the operation of the  
3 Office of the Secretary. The Office Of the  
4 Secretary does have that authority of course, Your  
5 Honor, but again, I do not want to comment on their  
6 conduct.

7 >>JUDGE HAWKENS: I'm asking as a legal  
8 matter, is there regulatory authority for Mr. Julian  
9 to authorize an extension?

10 >>MR. KLUKEN: If you can permit us one  
11 moment, Your Honor to caucus. (Short pause) Your  
12 Honor, to answer your question, we would need to  
13 know whether Mr. Julian was properly delegated that  
14 authority and we don't know that in this instance.

15 >>JUDGE HAWKENS: Now, just looking at the  
16 sentence starting "Please also consider" which is  
17 really the relevant sentence I believe. It does not  
18 appear to have any relationship to a discussion with  
19 Mr. Julian, does it?

20 >>MR. KLUKEN: No.

21 >>JUDGE HAWKENS: All right. The next  
22 question, please.

23 MR. KLUKEN: Question ten: "It is claimed  
24 that the Army's presence at the relevant military  
25 installation is illegal and (ii) state or local laws

1 prohibit the Army from storing/possessing depleted  
2 uranium in the open at these installations. Please  
3 address whether the NRC Staff's review of the Army's  
4 possession-only license application extends to such  
5 claims and provide statutory and or regulatory  
6 support for your position."

7           Your Honor, as the Commission has made  
8 clear in such case as hydro resource and  
9 Susquehanna, I sense some need for resolution to  
10 meet the agency statutory responsibility. The  
11 agency's adjudicatory process that are primarily  
12 the responsibility of other federal or state or  
13 local regulatory agencies. For instance, in the  
14 preparation of a draft DIS, Staff is to include a  
15 federal permit, which to accomplish the proposed  
16 action. That is one instance in which the  
17 resolution of other statutes or the products of  
18 other federal agencies interweave into our own  
19 process.

20           To turn to the claims actually made by the  
21 Petitioners, Mr. Harp claims the Army is  
22 intentionally violating federal law. However Mr.  
23 Harp does not specify what federal laws he believes  
24 the Army to be violating without knowing  
25 what particular law he makes reference to, it's

1 impossible to say whether compliance or the  
2 resolution of such laws is necessary to meet the  
3 agency statutory responsibilities.

4           Regarding Executive Order 12898, the  
5 Commission in its environmental justice policy  
6 indicates it is an independent agency. The NRC is  
7 not required to comply with this executive order.  
8 However, it is the policy of the Commission that  
9 environmental justice be addressed as part of the  
10 NEPA review. Moreover, Mr. Albertini makes no such  
11 claims. Mr. ALbertini does not indicate why the NRC  
12 needs to determine to find compliance with the  
13 Hawaii resolution which is clear from the discussion  
14 that the Army is not complying with to which he  
15 makes reference for the NRC to discharge its  
16 statutory obligations.

17           >>JUDGE HAWKENS: All right, thank you.

18           >>MR. KLUKEN: Question 11: "Please  
19 address the claim that the NRC staff should direct  
20 all military forces, domestic and foreign, that have  
21 trained in Hawaii since 1940 to search their  
22 classified and unclassified records for forgotten,  
23 radioactive hazards.

24           Your Honors, as the Commission has often  
25 noted, the scope of a proceeding is generally

1 determined by the notice of hearing published in the  
2 Federal Register limits the scope of this proceeding  
3 to the application for source material license  
4 submitted by the U.S. Army installation command, at  
5 Schofield Barracks and PTA sites in Oahu, Hawaii.  
6 As such, this proceedings does not concern or  
7 present the presence of potentially other types of  
8 material at potentially other locations or  
9 potentially possessed by other military persons.

10           Ms. Harden does not make clear how her  
11 request fits within the limited scope of this  
12 proceeding that being concerned with the depleted  
13 uranium presence at the two sites in Hawaii,  
14 identified from and spent 150 body rounds. And she  
15 fails to establish what information she believes  
16 this request would reveal that is absent from the  
17 license application that would be relevant to  
18 finding the NRC must make in support of the license  
19 application. In light of such, her request amounts  
20 to nothing but a fishing expedition that the  
21 Commission has clearly determined unfit for  
22 adjudication. If Ms. Harden wishes to further this  
23 request, she should file it, 10 CFR 2.26 request.

24           >>JUDGE HAWKENS: Finally, question number  
25 12, could we return to our standing expert?

1 >>MS. SEXTON: Yes, Your Honor. We are  
2 sort of unclear as to exactly where you are going  
3 with this, if you would like me to just briefly  
4 discuss the cases, or if you need me to address  
5 specific questions?

6 >>JUDGE BARATTA: The question is relevant  
7 to standing. I think those four cases, the fourth  
8 one summarize what's in the previous three and I  
9 believe there is some holding in each of those three  
10 that relates to this case. Could you -- I just  
11 wanted you to look at those cases and see if you can  
12 tell me what your interpretation is relative to  
13 standing in each of those cases, the general  
14 principle and maybe elaborate on those as to why  
15 that might be applicable in this particular case.

16 >>MS. SEXTON: Well, your Honor, I think  
17 that each of these cases is very applicable to the  
18 situation we have at hand. For instance, in Zion,  
19 the Commission noted that Petitioners bear the  
20 burden to allege facts sufficient to establish  
21 standing and that it is incumbent upon the  
22 Petitioners to provide some plausible chain of  
23 causation, some suggestion of how they might be  
24 harmed by granting of their requested action.

25 And I think we were shown that

1 specifically today how relevant that is when we have  
2 Ms. Leonardi and I want to say Mr. Albertini if I  
3 have my notes proper that they were trying to say  
4 that it was actually the Army's burden to come  
5 forward and show that there was not DU being  
6 transported off site. So I think that really  
7 directly addresses that concern as expressed by the  
8 Petitioners.

9           In Crowe Butte, that was a different case  
10 in that the Board found standing there for Dr.  
11 Anders and Deborah White Oaoca (phn)but I think it  
12 is important to note that the Commission found the  
13 staff's argument -- that the Board effectively found  
14 standing where there is only a possible rather than  
15 a plausible chain of causation. It was an argument  
16 without force.

17           And in reading the Commission's decision  
18 in that case, I read it as the Commission  
19 reluctantly going along with the Board considering  
20 the appeal standards. They noted that there was no  
21 grossness application of the facts for applicable  
22 law.

23           I think that shows their tentativeness and  
24 perhaps if it was an issue of first impression, they  
25 might not have necessarily agreed with the Board.

1           In NFS, a case on material licensing  
2 amendment, they found that proximity alone does not  
3 suffice for standing absent potential for off site  
4 harm and found there was none there, and must show a  
5 specific and plausible means by the Petitioners.  
6 The Board also found no concrete particularized  
7 injury. From there the Petitioner only made  
8 conclusionary allegations about the potential  
9 radiological harm to herself and others. They also  
10 said pleadings must be something more than ingenious  
11 exercises and conceivable.

12           The Plaintiff must allege that he will in  
13 fact be perceptively harmed by the challenge action,  
14 not that he can imagine circumstances by which he  
15 could be affected by the agency's action. Thus,  
16 their claims cannot be entirely speculative.

17           And coming now, the Tennessee Valley  
18 Authority case of Sequoyah; there, one of the  
19 Petitioners got proximity plus standing because they  
20 live within 12 and 17 miles of the plant. This was  
21 a reactor case, an application to amend text specs  
22 and the potential for off-site consequences was  
23 obvious.

24           The other Petitioner, Ms. Jennine  
25 Honniker, they found no proximity assumption because

1 her contact with the zone of harm is not sufficient  
2 frequency and I think that is something we can  
3 really look at here.

4           We have again, I think it was Mr.  
5 Albertini who was describing the time that he went  
6 to Monakua where the spike he alleged occurred. And  
7 according to the Commission in that case, his  
8 contacts with that site were not such that they were  
9 akin to the kind of contact residency provide. And  
10 it seems some of the other ways that Petitioners try  
11 to demonstrate standing with driving on roads and  
12 going to meetings at the site. Those don't -- are  
13 not akin to residency that would establish the  
14 frequency of contacts necessary by the Commission.

15           Also under traditional judicial concept of  
16 standing, found that none of her alleged claims are  
17 sufficient of standing as a matter of right. Her  
18 claims dealt with contaminated food, fear caused by  
19 terrorist attacks and traffic jams caused by traffic  
20 while trying to leave a University of Tennessee  
21 football game. They found her claims were too  
22 remote, speculative, that they were outside the AEA  
23 zone of interest and that the Petitioner fails to  
24 demonstrate that her alleged injuries were addressed  
25 by a favorable Board decision.

1 >>JUDGE HAWKENS: We are now ready to  
2 start oral argument. Our Petitioners in Hawaii, we  
3 do not see you on the screen. Can you hear us? I  
4 hope so.

5 PETITIONERS: We can hear you now. Can  
6 you hear us and see us?

7 >>JUDGE HAWKENS: You are coming across  
8 loud and clear. And we do see you now. Let's start  
9 with Mrs. Harden, please. We're on the closing  
10 stage.

11 >>MS. HARDEN: I'm having difficulty with  
12 our room size, we can't spread all of our papers out  
13 and have them handy. I'm just going through a few  
14 notes here. Someone mentioned about the Army has  
15 coordinated with agency for Toxic Substances And  
16 Disease registry. Well, they went to where there is  
17 depleted uranium and some other very hazardous stuff  
18 and said everything is fine. But then, they come  
19 back several months or a year or so later and said,  
20 oops, I think we missed something. We are going to  
21 look again.

22 These are also the people that brought you  
23 the formaldehyde trailers that people were put in  
24 after Katrina. There was a scathing congressional  
25 report about how there was a systematic coverup of

1 the danger from that formaldehyde and a systemic  
2 thing. So this agency is not a seal of approval.  
3 It's more like a warning label. Let me see.

4 I'm sure you're also aware that people  
5 sometimes talk and double speak. Years ago in the  
6 1960's, we talked about some of the dangerous  
7 chemicals and bacteria agents that were used in  
8 forest reserve on our island. The Army lied about it  
9 and said they were doing weather testing and I'm  
10 kind of paraphrasing what I remember here. But the  
11 reporters would say, are you using these agents, are  
12 you using them and the Army would say, no. Finally  
13 one reporter said, did you use them and the Army  
14 finally said, yes, told the truth. But it was all  
15 in how it was phrased.

16 We've talked about numbers of spotting  
17 rounds and I'm going to remind you something I think  
18 in one of my submissions about the pistons. When  
19 the Davy Crockett was fired, there was always a  
20 piston that landed on the ground and the Sierra Club  
21 consultant looked at the number of pistons which was  
22 several hundred, counted five spotting rounds per  
23 piston because there was up to five spotting rounds  
24 used for each firing. So generally, for each  
25 piston, there was up to five spotting rounds.

1           That's how he came up with the 2,000  
2 figure just for Pohakuloa. That's not statewide.  
3 So that is one line of evidence

4           If you look at the training manuals, you  
5 also come up with a 2,000 figure for Pokhakuloa  
6 because that's how many rounds you need to qualify.

7           He also you talked about Davy Crockett was  
8 probably only fired on certain ranges because it was  
9 not allowed to go elsewhere. We've been finding  
10 ammunition dumped where it was not supposed to be so  
11 the Army does not always follow its own regulations  
12 or personnel does not always follow regulation.  
13 Complete ammunition boxes found in 30 feet of water  
14 several hundred yards offshore at one beach.

15           We have old munitions in our bay and in  
16 our town here, also at a couple of beach parks.  
17 People tell stories about how the boats were given  
18 ammunition to go dump certain miles -- certain  
19 number of miles out at sea. But maybe, Friday  
20 afternoon, time to get off work so they will not go  
21 quite so far off. They come back in.

22           In fact, there is a reef what we call  
23 Ordinance Reef, there is so much ordinance up there.  
24 So much for following regulation. The aerial  
25 surveys, I looked really hard at the reports. I

1 cannot figure out if they are saying they flew over  
2 the entire impact area or just those small suspected  
3 Davy Crockett ranges. Looks like they flew over the  
4 ranges. The language is not clear.

5           If monitoring is based on how many  
6 spotting rounds you think there are. It is kind of  
7 a self-fulfilling prophecy.

8           Judge Barrata talked about the response to  
9 Congress person, The Army misquoted the Archive  
10 Search Report. Please look closely at that. They  
11 added stuff to indicate fewer spotting rounds.

12           Another note I noticed, that are a lot of  
13 folks there. Their experts were paid to be there.  
14 One of our experts, Dr. Pang wanted to come today.  
15 He could not come. He works for the Department of  
16 Health on another island and he is off on another  
17 job. We could not get someone. We can't afford it.

18           Let's see, we talked about perhaps there  
19 might be errors in training. The soldiers are  
20 learning how to do this. They might fire  
21 accidentally on top of the DU rounds. I was  
22 remembering how the trade snafu held up and comes  
23 from the military. They talked about world health  
24 organization guidelines. Those are for soluble  
25 uranium, not insoluble like they are talking about.

1           We were talking about injury-in-fact.  
2 Without thousands of dollars for a lawyer, frankly,  
3 I'm lost. I don't have the background to understand  
4 that. You talked about a plausible chain. We are  
5 saying that the DU oxide, you get a tiny amount in  
6 your lungs, the chain of causation is all you do is  
7 breathe when you go up there.

8           I thought I heard that the Army can state  
9 how much material they want to possess and there is  
10 no requirement to fully characterize. That does not  
11 sound right to me. Let's see, reasons for filing  
12 late. If you look at my late filing, I think there  
13 is like a hundred pages of attachments. It was a  
14 humongous amount of work. I have health problems.  
15 It is an hour and a half for me to get round trip to  
16 the Xerox machine and post office. And I don't have  
17 a computer that works all the time.

18           So that kind of happened. And I have a  
19 few summaries from some of our experts one from Dr.  
20 Blann. He is the consultant in Los Alamos, National  
21 Laboratory, I think it is. But regarding the aerial  
22 survey where the helicopter went over, his comment  
23 was gee, the DU dust probably got blown away by the  
24 rotor wash. There is even testing protocols, names  
25 that are misspelled. He is saying that in the

1 samples, the procedures to remove extraneous  
2 substances may have also removed other substances.

3 Dr. Rymer points out that there are no  
4 distinct services with yellow oxidized DU fragments.  
5 In that same report, yellow on a DU fragment. My  
6 last thoughts, I keep thinking if it was gold, not  
7 radioactivity, they would be finding a lot more of  
8 it. I do want to acknowledge all of the  
9 participants for their best efforts and to do the  
10 right thing as they see fit. Thank you.

11 >>JUDGE HAWKENS: We just lost audio, so  
12 if you want to hold on for a moment, Ms. Harden.

13 (short break)

14 JOE: The Petitioner would like to know  
15 where things cut out.

16 >>JUDGE HAWKENS: Lorraine, can you help  
17 us out?

18 >>MS. HARDEN: I was talking about Dr.  
19 Blann's comments on one of the surveys.

20 **(whereupon the last few sentences were read back by**  
21 **the court reporter)**

22 >>MS. HARDEN: So I guess you heard most  
23 of it. I think we are all set. My last statement  
24 was to say they were looking for gold and not  
25 radioactivity and I think that they would be finding

1 more of it. And I just wanted to end by thanking  
2 participants for their efforts on a complex subject  
3 and just trying to do the right thing here. Thank  
4 you.

5 >>JUDGE HAWKENS: Thank you Ms. Harden.  
6 Ms. Leonardi.

7 >>MS. LEONARDI: I want to thank you for  
8 having me -- having us here. Initially this is for  
9 our community and that was my first engagement with  
10 NRC. And today we are here in this process which is  
11 quite a thing to do. Thank you.

12 First of all, I would like to thank the  
13 Mormon citizens OF St. George Cedar City and others  
14 south of the city of Southwest Utah. From Hawaii, I  
15 thank you very much. I'm actually quoting from the  
16 filing case, Allen versus the United States before  
17 Federal Judge Bruce Jenkins in Salt Lake City in  
18 August of 1979. The acupa bill (phn) is upon us and  
19 we are heavy and laden and will have a direct effect  
20 on Hawaii's population for the military is included  
21 in that bill.

22 The federal state and local and governing  
23 entities incorporate this have swept away our  
24 injuries in Hawaii, specifically to Waine  
25 population. For I am 50 percent defined by U.S.

1 Congress living on ancestral land in Waine Valley.

2 In 1964, I left my husband in Kapakuwi.

3 (phn) This is the home of agent orange at the age of  
4 15. On May 13, 1968, there was a national call out  
5 to serve in Vietnam.

6 On May, 26<sup>th</sup>, 1968, I gave birth to my  
7 second child at Tripler Army Hospital. My husband  
8 left to serve in Vietnam on May 26, 1969.  
9 The problem with agent orange at that time was swept  
10 away.

11 As the state holder for the purpose of  
12 stewardship, sir, I have been attending community  
13 hearings to discuss live-fire and its plume  
14 disperment finite since the year, 2001. To date,  
15 these meetings are on going.

16 I have raised the issue of DUs since 2001  
17 at this meeting. They were documented and can be  
18 viewed. I have 19 surface private dump sites for  
19 surface dumping directly in back of my home.  
20 Yes, I have followed unintentionally the truckers to  
21 Schofield military base and watched the truckers  
22 that evening bring home soil to their private dump  
23 in back of my home.

24 I was offered \$15,000 in the year, 2002  
25 for injury, given in my -- for injury for dust plume

1 injury. Given my father's experience during World  
2 War II, I did not accept a penny of that offer in a  
3 tort case. The problem again was swept away.

4 Our 25th initiative plan in the state of  
5 Hawaii should this license be permitted to the Army  
6 to possess DU, I will be asking for an exit plan  
7 for 2050 on Hawaii's states sustainable plan from  
8 the leaders of my people, Kamocawil (phn), the true  
9 aloha of Hawaii. And I would like to end by saying  
10 with a question: I have been dealing with  
11 enforcement. As a matter of if a fact, you can go  
12 to our beaches in Waine and talk to any little child  
13 that's homeless and living in a tent, what  
14 enforcement means. They can tell you. They can  
15 describe to you. They can show you. They can point  
16 to you, what is enforcement. The word enforcement  
17 is a word that we live with every day. And we live  
18 with that distrust within that enforcement.

19 So, I just want to ask the question and  
20 leave you with that question, who is the enforcer  
21 for misuse of mismanagement of depleted uranium in  
22 Hawaii. And I thank all of you for this day,  
23 Mahalo.

24 >>JUDGE HAWKENS: Mahola. Thank you Ms.  
25 Leonardi. Mr. Albertini?

1 >>MR. ALBERTINI: Aloha again. It's been  
2 a long day and I appreciate the tone of the judges  
3 throughout this session. It is a bit dismayed about  
4 the NRC attorneys. They sounded more like the  
5 Army's attorneys in this proceeding here. But I  
6 think the star witness today was Murphy, Murphy's  
7 Law, showing whatever can go wrong will go wrong.

8 >>JUDGE HAWKENS: Truer words were never  
9 spoken Mr. Albertini.

10 >>MR. ALBERTINI: Mr. Albertini: I  
11 understand a little more today what it is like to be  
12 under occupation. A little more like what it must  
13 be like in Iraq and Afghanistan. You in Rockville  
14 are 5,000 miles from us and yet, you are sitting in  
15 judgment of whether we live on this island have  
16 standing and if our contentions about military  
17 depleted uranium on our island home have any merit.  
18 The Army application for DU does not say a word  
19 about DU moving off-site. It all appears to be  
20 neatly packaged and stays in the bombing impact  
21 area. I don't believe it.

22 If you, the NRC license the Army to  
23 possess DU on site and citizens turn up DU off-site,  
24 you will have a lot of poison DU egg on your face.  
25 But we the residents of Hawaii will be breathing and

1 eating the poison dust.

2           That's why if you are going to issue a  
3 license, it better be with strict transparent  
4 monitoring and testing done with the guidance Dr.  
5 Loren Pain and Mark Rhymer to assure the confidence  
6 of our community. And although I fear other areas  
7 that create dump, must be stopped and other activity  
8 that create dust must be stopped until there is this  
9 comprehensive assessment of the entire PTA base for  
10 DU contamination. You know an important point is  
11 that the military maps of PTA have written on them  
12 in capital bold letters all of PTA should be  
13 considered a dump hazard area.

14           The same is true for the DU. All of PTA  
15 should be considered a DU hazard area and any  
16 activity that may disperse that DU should be felted  
17 fitted. Talk about Murphy's law and the points  
18 raised about accuracy.

19           The military bombing here in Hawaii, when  
20 they were supposed to bomb the Island of Conway wee,  
21 they bombed the island of Maui by mistake. bombs  
22 land in the mayor's yard. When they were supposed  
23 to bomb Cauoha, (phn) they bombed Neia phn)by  
24 mistake. When they were supposed a PTA, they  
25 missed the entire 133,000-acre base and bombed the

1 Manuka (phn) access road.

2 DU can travel off base from wind, fire  
3 explosions vehicle and rain. The NRC may not be  
4 able to prohibit wind fire and rain, but it can  
5 prohibit explosion and vehicles at PTA. On average,  
6 the bases across the U.S. covered by the Army's a  
7 license request correlate with higher cancer  
8 statistics using the number 12 in the states of  
9 their counties.

10 You, the NRC are supposed to be the  
11 regulators of the nuclear industry. Don't fail us  
12 like the Wall Street and mortgage bankers regulators  
13 failed the people of the United States.

14 Your job is to protect the public health  
15 against the military industrial nuclear complex.  
16 Put the burden where it belongs, not on the citizens  
17 to prove harm beyond the military complex to prove  
18 that it is safe. They have not done so.

19 Dr. Loren Pang if he could be here today  
20 would make this point. The Army previously assured  
21 us that soldiers exposed to inhaled DU oxide  
22 developed no illness. This has been reviewed by a  
23 group independent researcher sponsored by the VA who  
24 knows how the problems like tumors benign and  
25 malignant were ignored.

1           Pang asked for other symptoms ignores as  
2 well as their obsession to prove safety. Because of  
3 this, the Army has publicly lost credibility on the  
4 issue of DU health risk. And in conclusion, in the  
5 last 70 years, the U.S. has spent \$5.5 trillions on  
6 nuclear weapons including DU weapons. For years,  
7 debris containing radioactive soil debris containing  
8 radioactive soil DU weapons for years this was  
9 considered decontamination and dealing with nuclear  
10 contamination. The plume, the plumes sweeping off  
11 people with radioactive contamination. I think it's  
12 time to do better than that.

13           So in the event that you issue a license,  
14 here are my four conditions: Stop all live-fire and  
15 dust creating activity at PTA and support the 7  
16 other points called for by the Hawaii County Council  
17 in resolution, 639-08 and Resolution 701-08 naming  
18 Dr. Loren Payne as the official County  
19 representative on the DU issue with the Army.

20           The points in resolution 63908 all support  
21 the precautionary principle. Number two: The  
22 entire PTA base needs to be thoroughly tested and  
23 monitored independently with guidance from Dr. Payne  
24 and Dr. Rymer.

25           Three: A thorough cleanup and

1 decommissioning of the military complexes is  
2 necessary to protect public health.

3           And Four: There needs to be transparency  
4 and community input throughout the process,  
5 otherwise, there will be a vote of no confidence by  
6 the community as the West Hawaii today poll on PTA  
7 already underscores. The Pentagon dirty bomber also  
8 in paradise must be stopped. The land must be  
9 returned clean to its rightful owners, the  
10 independent nation of Hawaii. I wish you all well.  
11 Aloha.

12           >>JUDGE HAWKENS: Thank you Mr. Albertini.  
13 Aloha. Mr. Harp.

14           >>MR. HARP: Hello Your Honor, and thank  
15 you for the opportunity to present my closing  
16 argument. There is a lot of discussion on  
17 radiological harm. I think our concern is beyond  
18 radiological harm and we are primarily concerned  
19 with chemical harm when we ingest this foreign  
20 material.

21           And I thank you Mr. Albertini. I'm kind  
22 of surprised that Kimberly and Brett, the position,  
23 didn't seem to provide any leeway at all to us and  
24 we don't have any representation it's almost as if  
25 they are representing the applicant rather than

1 being on reviewer of this process. I'm kind of  
2 surprised how that went. And a lot of the previous  
3 discussions were discussed and there is a Mr. Lonnie  
4 Simpkin that sent a few e-mails early on in the  
5 process to provide an extension to Petitioners and  
6 Mr. Simpkin said that NRC was in violation of their  
7 process for not providing extension to all and just  
8 to this small group. I just want to bring this up.

9           And, there is a lot of discussion about  
10 how many rounds of -- there is a memo from the Army  
11 to the NRC dated November 4 and they state in the  
12 top paragraph on the last page about -- about, about  
13 3 times approximately, once and not currently,  
14 known. So they really have no idea how many rounds  
15 but they do have some figures on here and say that  
16 29,300 rounds were for distribution to Army out of  
17 the total of 75,000 that were created.

18           So I think a more common sense approach in  
19 calculating the distribution of how many rounds  
20 might be here to divide that 29,300 by the nine  
21 sites that they are proposing to have this license  
22 under.

23           And I'm not sure if the military is also  
24 exempt from the federal record doctrine of 1950 as  
25 they are exempt from a lot of other things but I

1 would think they should have some kind of  
2 requirement where they need to maintain records of  
3 ammunition whether spent or not.

4           And I guess this would be considered  
5 circumstantial evidence but I did some research on  
6 the cancer rates in Hawaii and found out of 18  
7 categories of cancer, the residents of this island  
8 have the highest rate for ten categories. What  
9 surprised me most was that this island per capita  
10 cancer rate was not only the highest in Hawaii, it  
11 was higher than all the contiguous 49 states. Seven  
12 out of the nine sites the Army wants to always rank  
13 first or second in highest cancer rates in those  
14 states, actually six out of nine because Hawaii is  
15 not lawfully a state.

16           Like Hawaii, the United States military  
17 also contaminated Puerto Rica and representatives  
18 out in Grason spoke to a subcommittee of the U.S.  
19 House of Representatives committee on health and  
20 environment and said that compared to normal  
21 residence of Port Rica, residents have 269 percent  
22 increased chance of cancer.

23           Seventy three percent increase cancer,  
24 heart problems, et cetera, et cetra. I don't want  
25 to burn up whatever time I have left so I will just

1 move on. I oppose the Army's application as written  
2 because it provides no additional protection for the  
3 health and safety of Hawaii residents. All they  
4 have in their application is -- what was it --  
5 specific functions to be performed under the  
6 licensing will be limited to radiological surveys.

7           That's all you want to create a dumping  
8 place, just do some radiological surveys. That's  
9 ridiculous. But the application is I guess a  
10 license to dispose in place on the surface. If the  
11 Army is granted a license, I believe at a minimum,  
12 it should include provisions to like Mr. Albertini  
13 suggested, halt all military training activities to  
14 minimize further disturbance of depleted uranium,  
15 include a mandatory decommissioning plan for each  
16 military complex. And cleanup should be to a level  
17 that provide for unrestricted use.

18           Test and treat if necessary, the  
19 groundwater supply. I provided some information  
20 earlier this that this stuff can get down into our  
21 groundwater supply. And provide for transparencies  
22 by providing a committee, a representative of which  
23 should be selected by the folks is the affected  
24 community.

25           Include provisions for private sector

1 experts that are chosen by the civilian committees  
2 to be involved in all aspects of testing,  
3 decommissioning, et cetera. And include a fair  
4 compensation for civilian and private sector  
5 participants for their time and services. Those  
6 responsible for contaminating the place, I think  
7 it's reasonable to conclude that those involved in  
8 cleanup should also be compensated.

9           Before I conclude, I wanted to take an  
10 opportunity to reiterate a couple of points that I  
11 expressed at public meetings here as well as over  
12 e-mails to the NRC staff. The United States  
13 Government and Hawaii, there was never a treaty  
14 obsession. Public law 103-150 that was signed in  
15 1993 apologizing to the native Hawaii people for the  
16 illegal overthrow of our Government.

17           And I also have another document somewhere  
18 around here from the U.S. Department of Justice and  
19 they are discussing extending the territorial fees  
20 and question the process in which Hawaii was taken  
21 by the United States. And I quote, "Only by means  
22 of treaties was it asserted that the relationship  
23 between states be governed for legislative act"  
24 which was how it was acquired "is necessarily  
25 without extra territorial force. Confining this

1 operation to territory state was enacted." So it  
2 was not lawful beyond the boundary of the United  
3 States to come out here and steal Hawaii the way  
4 they did.

5           Gentlemen, your agency might not have the  
6 authority to undo all the injury the United States  
7 has inflicted on a peaceful Hawaii over the past 117  
8 years, but in this small instance, you do have the  
9 authority to minimize further injury to the  
10 environment and people of Hawaii in the future.

11           If the Army is granted a license to  
12 possess depleted uranium without the provisions  
13 presented to you for decommissioning, this Board  
14 will be intentionally exposing Hawaii residents to  
15 further injury and suffering.

16           In conclusion the claim is clearly  
17 outstanding and the right to protect our families,  
18 communities and what we call home from the poison  
19 dust.

20           It is the Army that has no standing here.  
21 The time to end the United States military  
22 occupation of Hawaii is now. I thank you all for  
23 your time and consideration and sorry that your  
24 dinner is so late this evening. I know you are like  
25 five hours ahead of us there and I will conclude.

1 Thank you.

2 >>JUDGE HAWKENS: Aloha Mr. Harp. I'm  
3 sorry your lunch is delayed. We will now hear from  
4 the Army.

5 >>LTC. HERRING: Your Honors, based on the  
6 pleadings and responses today to your questions, the  
7 applicant closes. The Petitioners have not  
8 satisfied the rule on standing and contention  
9 admissibility. I join with the NRC staff in  
10 reaching this conclusion -- agreeing their  
11 conclusion is a better phrase. The rules for  
12 submitting pleadings and what needs to be shown was  
13 clear. It is unclear in the CFR but even beyond  
14 that, I cite those provisions in the August Federal  
15 Registry Notice about two months before they began  
16 to submit motions. Only one file came close in its  
17 format even to the information required.

18 As Ms. Harden admitted her 30 October file  
19 was late, and the contents should not be considered  
20 by this panel. She had already at that point  
21 received her 14 day delay and was well aware of the  
22 rules and importance of filing matters in a timely  
23 fashion.

24 With regard to standing issue, there were  
25 several questions related to Ms. Leonardi and her

1 claim that the dust plumage and I believe Your Honor  
2 asked her what was the factual basis. And while I  
3 don't disagree with the chart she showed, there is  
4 still no link to causation, still no showing what  
5 caused that even if we were to take a look at that.  
6 We don't know what that is and that's why the  
7 standing rules that this panel has that we follow  
8 are important.

9 In addition, she states that the Army is  
10 purposely dumping DU soil in the community but has  
11 no basis or fact for that statement. In fact, that  
12 is not occurring.

13 And with regard to just a couple of  
14 issues, Your Honor, Mr. Albertini has a key issue, a  
15 number of acre surveys. I think to clear that up,  
16 with regard to standing, there is no factual --  
17 while it is true we surveyed 936 acres of PTA, there  
18 was a basis in fact for the Army doing that.  
19 That -- or the petitioner has stated -- given no  
20 factual statement for why we didn't do enough.

21 I think that's the issue that should be  
22 key was resolving that issue is why wasn't one  
23 percent enough. There was a basis in fact for  
24 choosing that amount and based on the history and  
25 what I described in answer to that question.

1           And we spent a lot of time talking about  
2 the amount of rounds that may or may not be in  
3 Hawaii. And it occurs to me that while that  
4 certainly -- the Army -- we were trying to determine  
5 that with the most finality and definitely, as we  
6 can, the key is that the Army in its application,  
7 set up procedures, protocols to ensure safety that  
8 whatever DU is there, whether it be 714 or up to a  
9 max that we conclude based on the manual in six  
10 years 2,526. Do we have safety protocols in place  
11 to detect and ensure that no DU in any form is  
12 leaving the site?

13           That's the key I believe in the focus and  
14 don't believe today that any substantive allegation  
15 affects our application from the Petitioners.  
16 Whether our application was flawed using the wrong  
17 methodology and that is necessary when this body  
18 rules to consider the application that we have  
19 submitted and whether something is wrong with it.

20           And finally, Your Honors, the Army has  
21 kept the public informed on the website. There are  
22 approximately 24 documents have been added over time  
23 to try to keep petitioners and others in Hawaii  
24 notice of what we are trying to do. The Archive  
25 Search Report is there, range results, aerial DU

1 results. A briefing was given to Hawaii County  
2 Council to name but a few of approximately 24  
3 documents.

4 With that Your Honors, we would  
5 respectfully submit that this panel based on the  
6 pleadings and the information provided today be  
7 denied standing as they have not articulated  
8 requirements for such and that beyond that, fail to  
9 allege admissible contentions. Thank you.

10 >>JUDGE HAWKENS: Thank you.

11 >>MR. KLUKEN: Your Honors, the NRC staff  
12 would like to thank the Board for this opportunity  
13 to answer both questions and clarify the position of  
14 the staff. One thing I would like to note, the Army  
15 if license is granted will need at the appropriate  
16 time as specified in the regulation, decommissioning  
17 plan for which the notice of opportunity will  
18 establish in the Federal Register.

19 In summary, as the staff stated in its  
20 Answer, the NRC staff believes that the request for  
21 hearing filed by Ms. Harden, Ms. Leonardi, Mr.  
22 Albertini and Mr. Harp should be denied because  
23 they did not establish standing in the admissibility  
24 requirements of 10 CFR 10 2.309(f)(1). Contentions  
25 must be more than speculation. Contentions must be

1 more than fishing expeditions.

2           As the Commission recently stated in CLI  
3 1001, summer, while some latitude is to be extended  
4 to pro se litigants, they are nevertheless expected  
5 to comply with the Commission's procedural rules  
6 including contention meeting requirements.

7           The petitioners raise many past bad acts  
8 by the military, biological weapons testing,  
9 chemical weapons, Agent Orange. The Staff does not  
10 dispute these claims or in any way mean to diminish  
11 the consequences of the Army's bad actions, however,  
12 such claims simply cannot be adjudicated.

13           Such claims are outside the scope of these  
14 proceeding. With that said Your Honors, the Staff  
15 would like again, to thank the Board for this  
16 opportunity.

17           Judge Hawkens: Thank you Mr. Kluken. I  
18 would like to thank the Petitioners for their  
19 participation today. We are aware that they  
20 proceeded without the assistance of counsel, were  
21 unaccompanied by any specialist or expert, and not  
22 withstanding that, it is very clear you did a lot of  
23 homework, very conscientious in your preparation and  
24 did a very credible job of answering the questions  
25 posed by the Board and representing your position.

1 We thank you for that.

2 Department of the Army, the NRC staff  
3 likewise, grateful for your answers to our  
4 questions. Everybody's answers will provide  
5 substantial assistance to this Board as we draft our  
6 decision on standing and contention admissibility  
7 and we will make every effort to issue that decision  
8 during the month of February. I would like to make,  
9 a couple of comments, a couple of people I would  
10 like to recognize. First on behalf of the Board, I  
11 want to thank the Univeristy of Hawaii, Hilo campus,  
12 once again for making their facility available to us  
13 and Petitioners.

14 I would like to single out a Mr. David  
15 Scott, out there. I believe he is or at least was  
16 in the facility there and his title I'm told is  
17 media technician. But he was instrumental in  
18 helping us reserve the room and showing us the --  
19 assisting us in the operation of the equipment out  
20 there. Thank you very much.

21 Two individual in the graphics Department  
22 who assisted Joe in copying material, Susan and Dan  
23 Bronco. Thank you very much. And finally, I would  
24 like to thank a few people here, the Board's law  
25 clerk, Ms. Katie Tucker for her assistance and

1 legal research and I know her assistance in  
2 endeavoring to assist the Petitioners in a lot of  
3 questions they had in preparing for this argument.

4           The administrative support provided by  
5 SherVerne Cloyd and finally, the IT support,  
6 supplied by Joe Docheuer out there in Hilo, Andy  
7 Welke and Matt Cutchen. And I'd like to remind  
8 everybody that the webcast will be available in the  
9 archives and on the NRC website for a period of 90  
10 days and for any individual who would like to read a  
11 transcript of this proceeding, in about a week or  
12 so. It will be available in the Licensing Board  
13 Docket for this case. Thank you again. We are  
14 adjourned.

15           (Whereupon, the proceedings were  
16 concluded)

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