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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 :
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 Leonardi, Petitioner

4 Jim Albertini, Petitioner

5 Isaac Harp, Petitioner

6 Lieutenant Colonel Kent Herring, U.S. Army

7 Brett Klukan, NRC Staff

8 Kimberly Sexton, NRC Staff

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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 a 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 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's 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: Aloha, 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 Colonel.

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'll grant permission to exceed the
9 four minutes. But given the number of questions, we
10 want addressed today and the ground that we have to
11 cover, it is important that we adhere to that
12 four-minute rule. And the Board's law clerk, Ms.
13 Katie Tucker, is going to assist us in that effort.

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

22 Finally, at the end of proceedings, 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'll
14 hear from you now. You may give us your opening
15 statement.

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

18 The issue is, do the people of these
19 islands have grounds to question those who say they
20 protect us, but brought us depleting uranium, those
21 of us who have a long history of misleading us about
22 the hazards from their germs, chemicals, radiation,
23 those who here illegally. And we are saying, yes,
24 we have 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's 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's 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, since 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 fewer 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
15 live-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 lease 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 the 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'm also going to throw in here that I
24 have 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 Pohakuloa and about three miles from one
4 of the identified DU ranges because I attended the
5 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 a 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? I'm trying to get it
24 so you can see it, but... so, this is the Hawaiian
25 island, and this is our island, Hawaii, and this is

1 Pohakuloa right smack in the middle of the island.

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

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

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

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

20 Here is -- on the document viewer is --
21 shows you what the wind does. This is dust carried
22 by the wind. From here, if you look up the hill
23 about 10 or 15 miles is Pohakuloa, but it's the same
24 kind of vegetation and area. And this is what the
25 wind does in those areas.

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

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

11 And let me look at my notes.

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

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

21 Let me see if I covered everything. And I
22 think I covered everything on the maps.

23 >>JUDGE HAWKENS: Thank you very much.
24 That was a very informative showing, and you may
25 have also answered the questions on behalf of the

1 other three Petitioners from the big island as to
2 question one.

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

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

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

21 After I filed, the December 17 Order
22 asking me to clarify contentions in the late
23 submission, again, I thought it might be accepted.
24 And Amil Julian sent a January 11th e-mail which I
25 forwarded to everybody, saying my October 9

1 extension request wasn't addressed before the late
2 filing, and, quote, "It would have been difficult to
3 reject any intervention, petition supporting
4 documents that would filed October 30."

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

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

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

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

23 The fourth thing is effective any order on
24 my interest. If there is an order for air
25 monitoring following Pang's and Reimer's

1 recommendations, we could get information about the
2 aerosols so appropriate action could be taken.

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

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

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

23 Seven: Will my participation broaden the
24 issues or delay the proceeding? Well, I'm trying to
25 stick to only issues that are supported by facts,

1 and have made an effort to do information, provide
2 expert opinions and original documents, sticking to
3 relevant facts.

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

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

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

13 >>JUDGE HAWKENS: Take your time.

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

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

23 Regarding the air monitoring and
24 characterization report: Statements in the
25 application are inaccurate. And I will refer back

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

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

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

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

25 Item six talks about survey --

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

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

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

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

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

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

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

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

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

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

1 I talked about --

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

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

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

9 >>MS. HARDEN: Yes.

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

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

22 I have talked about how they got rid of
23 what they thought was scrap in those days. And the
24 spotting rounds might have been considered scrap
25 since they just wanted to leave them in the impact

1 area, as I've said.

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

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

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

1 the same as in my October 30 submission.

2 And that's all I have.

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

4 If you have a closing statement, we'd would be happy
5 to hear it now.

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

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

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

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

18 >>MS. HARDEN: Thank you.

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

1 are reminded to please endeavor to keep the opening
2 statement within five minutes.

3 Ms. Leonardi?

4 >>MS. LEONARDI: Okay. good morning,
5 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 my 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, deplete 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 planet 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
12 birthing as well as her wrath throughout the
13 Oculpelio.

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

20 I have said this to my sister who lives
21 here on -- in Hilo, and she said, Sis, people do get
22 sick and here on the big island from volcano
23 eruptions. And she said, however, at least, we can
24 manage that, because it is visible and that we can
25 see it. And we know about Treti Pele through our

1 ancestors as well as from our Oculpelio phn) and our
2 immediate family members.

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

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

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

1 FTCA. Under this line of argument, they said
2 officials at the Nevada test site had no duty to
3 warn the public of the dangers of the atomic test."

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

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

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

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

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

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

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

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

1 Let me cut to the chase. Recently, 6700
2 tons of sand from Kuwait, contaminated depleted
3 uranium, at Camp Doha, a U.S. Army base there, has
4 been shipped to Boise, Idaho, for burial. Poor
5 Boise. But what is good for Kuwait should be good
6 for Hawaii.

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

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

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

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

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

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

25 Environmental impact law recognizes the

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

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

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

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

23 The resolution calls for eight action
24 points, but number one is, quote, "Order a complete
25 halt to B2 bombing missions and to all live-fire

1 exercises and other activities at the Pohakuloa
2 training area that create dust until there is an
3 assessment and cleanup of the depleted uranium
4 already present." End quote.

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

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

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

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

1 simply 40 acres and then an additional 900 acres
2 spot checked. After the assessment, cleanup needs
3 to be completed.

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

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

17 Mahalo.

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

20 We will now hear from Mr. Harp.

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

24 Before I begin my opening statement, I
25 would like to ask the Board's consideration in order

1 to present a few documents and graphics after I have
2 complet my responses to your questions. It would be
3 easier for me and quicker for all if you would allow
4 for this consideration.

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

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

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

24 In the 1960s, biological and chemical
25 warfare experiments on and around Oahu were given

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

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

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

20 Secret experiments included agent orange
21 in Hilo in 1996; Agent Orange, M-3140, TORDON ester,
22 2 and 4-D ester, 2, 4 and 5-T ester on Mauna Loa
23 near Hilo, December 1966 and January 1967. Again on
24 Kauai, Agent Orange in 1967, Agents Orange, Blue,
25 White, Diquat, Paraquat, PCP, Picloram, HCA, 2, 4

1 and 5-T Ester and Endothal in the Kauai Branch
2 Station near Kapaa in 1967 and '68.

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

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

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

1 are ingested. Statistics appear to reflect a
2 different conclusion.

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

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

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

25 Thank you and Mahalo.

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

2 We will now hear from the Army.

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

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

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

24 I would like to stress that since the
25 discovery of depleted uranium on Schofield Barracks

1 in August 2005, the Army has been open, transparent
2 and we believe accountable in the steps we have
3 taken and that those steps have taken momentum to
4 deal with this issue.

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

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

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

1 Standing provisions have not been met, and
2 even if Petitioners had met -- even if a Petitioner
3 had met a standing requirement, none provided the
4 types of facts, expert opinion and other
5 requirements from the CFR to satisfy the contention
6 admissibility requirements.

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

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

20 Thank you.

21 >>JUDGE HAWKENS: Thank you, sir.

22 We will hear from the NRC staff, please.

23 >>MS. SEXTON: Good afternoon, Your
24 Honors, Petitioners, counsel and representatives of
25 the United States Army, and members of the public.

1 My name is Kimberly Sexton, and as you were
2 introduced to earlier, this is Brett Klukan. And
3 together as members of the Office of the General
4 Counsel, we represent the staff of the U.S. Nuclear
5 Regulatory Commission today.

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

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

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

25 I plan on keeping my remarks brief, as we

1 believe our position is fully laid out in our
2 December 6, 2009 response to Request for Hearing and
3 Petitioners to Intervene. As we stated in that
4 filing, the NRC believes that the Request for
5 Hearing and Petition to Intervene filed by
6 Ms. Harden, Ms. Leonardi, Mr. Albertini and Mr. Harp
7 should be denied because they have neither
8 established standing nor meet the contention
9 admissibility requirements of 10 CFR Section 2.309.

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

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

24 Second, although the Petitioners bring up
25 many concerns regarding the depleted uranium on

1 Pohakuloa and Schofield Barracks, they've either
2 failed to comply with the contention pleading
3 requirements or failed to raise material issue
4 within the scope of the proceeding.

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

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

23 Instead, the staff is limited in its
24 review to what is set forth in 10 CFR Section 40.32,
25 to look at whether: One, the Army's application is

1 for a purpose authorized by the Atomic Energy Act.
2 Two: The Army is qualified to possess the depleted
3 uranium in a manner that protects health and
4 minimizes danger to life and property. Three: The
5 Army's facilities and procedures are adequate to
6 protect health and minimize danger to life and
7 property. And four: The issuance of a possession
8 only license will not be amenable to the common
9 defense and security or to the health and safety of
10 the public.

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

16 Thank you, Your Honors.

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

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

22 >>MS. LEONARDI: I'm here. This
23 is Luwella Leonardi.

24 >>JUDGE HAWKENS: We are ready. If you
25 will start by addressing the questions addressed to

1 all of the Petitioners about the address of your
2 actual residence and the distance of it from
3 Schofield.

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

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

14 And could you hold off on your time,
15 please?

16 >>JUDGE HAWKENS: We do understand your
17 quarters are cramped. We will try to accommodate
18 you.

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

1 concern.

2 I just wanted to --

3 >>JUDGE HAWKENS: Ms. Leonardi, before you
4 do that, could you just tell us your residential
5 address and the number of miles from Schofield?

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

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

13 >>JUDGE HAWKENS: Yes, we can.

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

23 Schofield, sir -- as I said, I have to
24 follow some protocol, sir. This is the tip of
25 Aikauhi. This is Aikauhi of Waianae. And as I said

1 in my introduction, when Treti Pele erupts, we can
2 see her -- we know that she is erupting before cell
3 phones, before any technical -- before 1825, we
4 could tell that she was erupting. The reason being
5 is we would see her cinders up along our shorelines
6 and we can look at the sun during the day. It will
7 be orange.

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

13 >>JUDGE HAWKENS: Thank you. Can you tell
14 us --

15 >>MS. LEONARDI: This is --

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

21 >>MS. LEONARDI: A little over two miles,
22 sir.

23 >>JUDGE HAWKENS: Two miles?

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

1 >>JUDGE HAWKENS: I appreciate that.
2 That's very responsive. That's what I needed. In
3 fact, I think that answers the first question in
4 full. And if you would like, you can move on to the
5 second question about the dust plumes.

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

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

1 I also want to point out the area that I'm
2 living in and what's on my north, south, east and
3 west. Makua is on the north side -- the west side
4 of the coastline. And Barbers Point, that was just
5 recently decommissioned is on the other side of
6 Mokuleia, and Haleiwa is on the -- sorry, I'm having
7 a hard time -- here is the north. And then, we also
8 Hauula Lake.

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

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

14 >>MS. LEONARDI: Yes.

15 >>JUDGE HAWKENS: What's your factual
16 basis for thinking that they contain radioactivity?

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

21 This is Table Number 6, childhood cancers
22 by age and sex and weight in Hawaii from 1985 to
23 2000. At the top of the graph is age group, sex,
24 all the totals and leukemia, lymphoma, brain, CMS,
25 systematic nerve, retona, ptosis, renal, bone, soft

1 tissue, germ and carcinoma. I could read it, the
2 contents if you want me to.

3 >>JUDGE HAWKENS: No, that's not
4 necessary. We do see the graphs and the figure. We
5 understand the health issues that are a matter of
6 concern to you. But what we are looking for is a
7 connection between the DU and Schofield and your
8 concern about the health issues?

9 >>MS. LEONARDI: I would like to refer
10 back to -- in my introduction, I mentioned Allen
11 versus the United States before the Federal Judge of
12 Bruce Jenkins in trying to answer your question,
13 sir.

14 I have a family meeting. In my home, I
15 have about three people that suffer greatly from
16 injuries of plumes from Schofield from live firing.

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

22 What happened here is the military that
23 assisted our community and allowed our populist to
24 go to Schofield and drive home through Kolikole
25 Pass. Again, this is on Friday 28, 2000, on Friday.

1 The Army opened the Kolikole Pass at about
2 3:00 p.m., yesterday, allowing drivers to reach
3 Farrington Highway without passing the standoff
4 site. Traffic was moving slowly but it was moving
5 said Ron Jay, Army deputy, public affairs officer.

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

16 There are many people in all these
17 valleys, not including Milliani, Waianae and Makai.
18 And they are all affected by the plume of Schofield
19 live-fire.

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

22 >>JUDGE HAWKENS: No, I understand you're
23 trying to. Let me be a little more specific then.
24 You had indicated the winds come from the north, the
25 south, the east and the west --

1

2 >>MS. LEONARDI: -- yes, sir.

3 >>JUDGE HAWKENS: -- which sounds like the
4 plumes arise with reasonable frequency where you
5 live.

6 >>MS. LEONARDI: Yes, sir.

7 >>JUDGE HAWKENS: You have data which
8 indicate there are health issues. But for me, you
9 still have not shown an adequate factual foundation
10 to demonstrate, one, that the plume -- the dust
11 plume that may be causing the health issue, if
12 indeed it is causing a health issue, comes from
13 Schofield, or, if the plume necessarily causes the
14 health issue because it contains DU.

15 Do you understand my concern?

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

19 Sir, right behind my home, I have a
20 19-acre surface waste management for contaminated
21 soil as well as -- as well as good soil. It is
22 directly behind my home, sir. Okay. That soil is
23 trucked in. That soil is --

24 >>JUDGE HAWKENS: We're going to the third
25 question now, Ms. Leonardi? I just want to make

1 sure I'm -- because you do allege in the third
2 question that we ask, we ask you to explain your
3 claim that the Army transports contaminated soils to
4 your community.

5 >>MS. LEONARDI: Okay, sorry, I thought
6 you were alluding to that. I was trying to explain
7 the windswept plumage which comes from Schofield.
8 Yes, it does come into our valley.

9 This is -- you know, I know you're all on
10 the continent, however, this is an island and it is
11 U-shaped. That's why I brought my map to show you
12 the U shape, and it's a valley, and there are
13 several valleys before mine.

14 And every valley fills up, because it is
15 an apex. And every valley fills up with whatever
16 happens, whether it is happening in Big Island or
17 whatever live firing is happening over in Waianae.
18 It fills up. The wind direction fills up into our
19 communities, whether it's coming from Makua or
20 Schofield or lakeslakes Hauula Lake.

21 So, did I answer your question, sir?

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

24 >>MS. LEONARDI: To that particular
25 question?

1 >>JUDGE HAWKENS: -- to that particular
2 question.

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

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

6 >>MS. LEONARDI: All I can say is I can
7 try my best.

8 >>JUDGE HAWKENS: And I do appreciate
9 that, Ms. Leonardi.

10 Why don't we move to the next question
11 about your claim that the Army has transported DU in
12 contaminated soil and deposited it adjacent to your
13 home.

14 >>MS. LEONARDI: Okay. Sir, I've been
15 watching this surface fill for almost ten years. I
16 have watched the truckers drive up -- drive into
17 their -- this 19 acres and land fill for ten years.

18 I have made many complaints. EPA is aware
19 of it. I called EPA. I have called the State,
20 Health. I have had the state officials come down.
21 I have had -- I have gone down several trips down to
22 the city, DPP. I have made many complaints about
23 this -- over a ten-year period. I have attended a
24 lot of your military meetings in our community.

25 Sir, I was well aware of depleted uranium

1 in Hawaii. Because of President Clinton's time when
2 he was president, that information was given to us
3 during his time period.

4 I don't remember if Schofield was there.
5 I was trying to relocate that citation. I don't
6 remember, I have to say, if Schofield was on the
7 list. But I do know Barbers Point and Bellows Air
8 Force Field was on the list. Okay. So, I knew
9 about this during his period of presidency.

10 I also attended your military meetings in
11 2001 and brought the issue up of depleted uranium.
12 I have a long-standing background. And I need to
13 begin with my grandfather on my mother's side,
14 Louisa Lane, Orlanda Alt. He was down under in
15 1950.

16 He called home and he asked that my
17 grandmother name whoever is pregnant, name the
18 next -- name the children -- my brother's name is
19 Marshal. My cousin's name is Quadulent. In 1950,
20 sir, this is when the atomic bomb was being tested.

21 My father, World War II, his land -- and I
22 will give you the address, sir, 1845 Mountain Lily
23 Road -- came home from work and his land was martial
24 law.

25 Now, the story goes is that he was -- the

1 military pointed a gun to my father. So my father
2 had to leave his property. He went to get his
3 brother John Puhalo (phn). His brother came home,
4 and during the time that our -- 1845 Mountain Lily
5 Road was martial lawed, my uncle lived there.

6 And the reason being is because the
7 military brought in their debris as well as filled
8 in all our cow patches; and secondly, we had our
9 grandma and our grandpa buried on the property, and
10 the military truckers were rolling their trucks over
11 our grandparents' graves.

12 So when that concluded, sir, my uncle was
13 given \$10,000 in bese lumps argument -- case.
14 Having said that, I want to come to my experience.
15 I am from -- from Particlo Hawaii.(phn) I am not the
16 first wave. I am the second wave.

17 Sir, in 1978, I went to Island of
18 Kahoolawe. Actually, we call it Ko Hema Lamalama.
19 I walked from Kealaikahiki to Moaulani across the
20 island up to Puu Moiwi and over to Hakioawa, and I
21 returned in a day's time.

22 As I walked across this island, sir, the
23 military personnel had warned us about not stepping
24 on the ordinance. Sir, it was impossible to walk
25 across this island and not step on ordinance. Keep

1 in mind, I was a young mother and, in fact, I was
2 nursing, I was a nursing mother. But because this
3 issue was so important to us, to stop the bombing on
4 the island of Kahoolawe, Ko Hema, Lamalama, I
5 participated in this access public law, 95-341 which
6 is your law, sir.

7 And I used to think of myself as being
8 smart, as having to access Kahoolawe in such a way.
9 But when I look back now, I think it was a stupid
10 thing that I have done. Nobody, nobody told us or
11 warned us about the safety and the unsafeness of
12 walking across that island and stepping every step
13 on ordinance, sir.

14 So, these are my concerns. My grandfather
15 on my mother's side, martial law, which I feel is
16 what's happening in Waianae because of the many
17 bases that surrounds my home, 85-1363 Halapoe Place.
18 I feel that -- this is -- we also are in extreme
19 poverty there, and I feel that the military presence
20 is also a cause of that.

21 And I also mentioned in one of my
22 testimonies that we do not have access to medical,
23 and that's why I am seeing that many people are not
24 only sick, but they are dying. And I spend a great
25 deal of time attending funerals on my off time.

1 >>JUDGE HAWKENS: Thank you, Ms. Leonardi.
2 The four minutes has lapsed and we should be moving
3 on.

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

5 >>JUDGE HAWKENS: That's all right. I
6 have two quick questions that I hope you can provide
7 quick answers to.

8 >>MS. LEONARDI: Yes, sir.

9 >>JUDGE HAWKENS: When was the last
10 alleged shipment from Schofield to the Waianae
11 Coast?

12 >>MS. LEONARDI: Very quickly, sir; in the
13 whole month of December 2009, the Military has been
14 trucking 50 trucks a day several times during the
15 day, during the work week for a whole month,
16 trucking in dirt into Waianae.

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

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

21 >>JUDGE HAWKENS: You may not know the
22 answer to this, but I will nevertheless ask. Where
23 did they dump it? Is it on federal property?
24 Surely, they are not dumping it on private property.

25 >>MS. LEONARDI: Some of it went onto

1 private property, sir, and some of it went onto
2 federal -- I cannot say to you all Makua, sir. So
3 some of it went onto Makua.

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

7 >>MS. LEONARDI: Sir...

8 >>JUDGE HAWKENS: Did you hear me? Should
9 I repeat it?

10 >>MS. LEONARDI: Sir, we have had 50 plus
11 truckers a day for the whole month of 2009. I am
12 sure you can call up and check the permit to either
13 dispute me whether these truckers came from
14 Schofield or not.

15 >>JUDGE HAWKENS: One final question --

16 >>MS. LEONARDI: -- the burden should not
17 be on me to check out this permits because, sir, I
18 have done that for the past ten years, and I am -- I
19 don't have the information for you right now. But
20 I'm sure that if you want to be factual, that this
21 information can be held accountable.

22 >>JUDGE HAWKENS: One final question,
23 Ms. Leonardi, with your indulgence: What is the
24 factual foundation for your claim that the contents
25 of the trucks contain DU?

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

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

8 >>MS. LEONARDI: Yes, sir.

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

11 >>MS. LEONARDI: Actually, I can give a
12 copy to Joseph here.

13 >>JUDGE HAWKENS: That will be fine, thank
14 you.

15 >>MS. LEONARDI: Thank you.

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

18 We will now hear from Mr. Albertini.

19 >>MS. LEONARDI: Thank you.

20 >>JUDGE HAWKENS: Thank you.

21 >>MR. ALBERTINI: Judge, I brought a
22 topographic map which may help a little bit. First
23 I'll hold it up this way, north to south. And I'm
24 going to lay it on the table. I hope people can see
25 this.

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

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

9 I have lived there 30 years, Kurtistown.
10 And my home is the same physical address as the
11 nonprofit organization which I head, which is the
12 Center for Non-violent Education & Action. It's a
13 501(c)3 non-profit, all volunteer organization.

14 We grow organic fruits and vegetables to
15 share with people in need and market some to support
16 the work of education and peace, justice and
17 protecting the environment. And I'm here both as an
18 individual and representing the organization which
19 is very much concerned about the military
20 contamination in Hawaii and around the world.

21 I want to emphasize that the normal trade
22 wind conditions in Hawaii are from the northeast to
23 the southwest. But at nights, the winds come down
24 off the mountain. And on cool nights, I can
25 actually hear the shelling and bombing at Pohakuloa.

1 And if the wind carries the sound down the mountain,
2 I'm also concerned whether it is carrying the poison
3 dusts of depleted uranium.

4 And on an island where the wind shift all
5 around, we are all downwinders, and I think this can
6 be said of the entire planet today, that we are all
7 downwinders. So I hope that addresses the issue of
8 where I live.

9 >>JUDGE HAWKENS: That's precisely what we
10 are looking for, Mr. Albertini, and you actually
11 started to answer the next question as well, I
12 believe, by describing yourself as a downwinder.

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

16 First, I would like to concur with the
17 submission sent to you October 30th by Corey Harden
18 that quoted Dr. Lorinn Pang, M.D., and Dr. Mike
19 Reimer and Dr. Marshall Blann, both Ph.Ds, who --
20 they criticized the Army's air monitoring and
21 characterization studies both addressing what's at
22 PTA and how much of a hazard it is.

23 Now, how does the Army specifically fail
24 to acknowledge the hazard of inhaling DU, poison
25 dust? Over the years, the Army made numerous

1 unreliable safety claims, and I just want to cite a
2 couple for you: August 27, 2007, Hawaii
3 Tribune-Herald news article, headlined, quote, "DU
4 found at PTA, material doesn't pose a health
5 danger," end quote.

6 This is the very date that the Army
7 claimed they discovered the DU, and they are making
8 these health claims that there is no danger.

9 Two, August 30, 2007: Army news
10 Army.Mil/News. Quote "DU found at PTA poses no
11 threat to the population of Hawaii, civilian or
12 military," end quote. Colonel Matthew Margotta, who
13 I understand is there with you or somewhere in this
14 hearing today, he is the Commander, U.S. Army
15 Garrison.

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

22 Number 3: April 24, 2008, Honolulu
23 Advertiser, quote, "DU poses no health risk, Army
24 says."

25 Number 4, August 4, 2008: Honolulu Star

1 Bulletin, quote, "DU no risk to public, Army
2 contends," end quote.

3 Now those are just a few. I could go on
4 and on. But me make this analogy here: Army
5 Garrison Commander Colonel Margotta is saying that
6 "the DU found at PTA poses no threat to the
7 population of Hawaii, civilian or military," end
8 quote.

9 As noted, he said those words three days
10 after the initial announcement about DU being
11 confirmed present up there, observed.

12 Now, what was his insurance based on of no
13 hazard, no threat to the population? No studies
14 were done at that point. No data produced. No peer
15 reviews, nothing. Zip. Zilch.

16 The analogy I want to make is this with
17 cigarettes: If this pen was a cigarette, this
18 cigarette poses no threat to the people. But if
19 this cigarette is smoked and burned, then there is a
20 health issue. And the pieces found at Pohakuloa,
21 they basically don't pose much of a hazard. It is
22 the pieces that haven't been found.

23 Now, at a minimum, they say 293 pounds or
24 714 rounds were used, possibly over 2,500 rounds,
25 over a half a ton of DU. They only found a few

1 small pieces. I don't even know if it amounted to a
2 pound. So, where is the other 999 pounds? That's
3 the DU that we're concerned about.

4 And given the fact that there has been 45
5 years of bombing and fires, explosions all around,
6 that DU, one would reasonably believe has been
7 pulverized and aerosolized and carried the winds.

8 And I checked with the National Weather
9 Service this morning. Right now, today at
10 Pohakuloa, the winds are 30 to 40 miles an hour,
11 with gusts exceeding those figures. Going through
12 the Saddles, the mountains of Mauna Loa and Mauna
13 Kea. So...

14 >>JUDGE HAWKENS: Your four minutes have
15 been expired for that question. You will have to
16 wrap it up. And then, we will move the next one,
17 please.

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

21 The burden is on the Army to rule out that
22 DU is not being scattered in the wind. And here is
23 the quote from Dr. Caldicott, who is an M.D, founder
24 of Physicians Social Responsibility at the
25 International Physicians for Prevention of Nuclear

1 War. The PSR is 23,000 M.D.s, and the international
2 group was awarded the 1985 Nobel Peace prize.

3 Caldicott say this:

4 "DU aerosolized particles that are
5 inhaled, translocate to the thoracic lymph nodes and
6 are also deposited in the bones, kidney and excreted
7 in the semen where almost certainly the uranium can
8 cause birth defects. It also causes bone cancer,
9 leukemia, lung cancer, lymphoma and kidney cancer,"
10 end quote.

11 And I will just end with this on this
12 question; I personally know three people within 18
13 miles of my home with lymphoma. Two are dead. One
14 is in the final stages. And two are close friends
15 who have contributed to our organization. And the
16 National Cancer Institute says Hawaii has the
17 highest cancer of all the islands in the Hawaiian
18 chain.

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

21 Now, if I can proceed to the second
22 question.

23 >>JUDGE HAWKENS: Right, please do.

24 >>MR. ALBERTINI: "Provide the details of
25 the May 29th monitor spike of 75 counts per minute

1 at Mauna Kea Park."

2 Here is the background. On May 29th, our
3 organization sponsored a protest at the opening
4 ceremony of the first section of the realigned
5 Saddle Road from the Mauna Kea Access Road to the
6 Mauna Kea State Park, a distance of about 6 miles.
7 Our protest concerned several issues, one being the
8 facilitating of more military live firing by
9 rerouting the road in a northerly direction through
10 a mamane forest, which is a critical habitat for the
11 endangered Palila bird.

12 On May 29 of 2007, Guenter Monkowshi of
13 our organization was conducting radiation monitoring
14 with his gammascout monitor. He was with us there
15 at Mauna Kea park. The meter was new and set on
16 alpha/beta/gamma. The same monitor had been used
17 the prior month in South Kona for 20,000 minutes of
18 monitoring and saw no spikes above 40 counts per
19 minute, according to Dr. Lorrin Pang, who analyzed
20 the data from those 20,000 minutes.

21 On May 29, 2007, Guenter's meter had been
22 running for about an hour with normal background
23 around 15 CPM readings. At about 11:00 a.m. that
24 day, as I recall the time, the winds began to pick
25 up, coming directly from the south toward the park,

1 where about two to three dozen of us were peacefully
2 protesting. I would guess the wind speeds that day
3 were 20 to 30 miles per hour or even more at times
4 with gusts. There were dust devils as Cory Harden
5 has shown in that picture, clearly visible with
6 suspended dirt in the air. And Guenter's monitor
7 spiked at 75 counts per minutes. I was standing
8 next to Guenter and actually saw the reading, 75 CPM
9 on the monitor.

10 Over the next two to three hours at
11 various points along the Saddle Road, west of Mauna
12 Kea Park, between there and the Hilohana Girl Scout
13 Camp, a distance of about 8 miles, three other
14 spikes in the 40 to 60 range occurred with the winds
15 coming off the ranges there. That's four spikes in
16 a few hundred minutes and should be a smoking gun
17 signal that requires more investigation.

18 These readings emphasize the importance, I
19 think, of looking at spikes and not mere averaging
20 in terms of monitoring. The State of Hawaii Health
21 Department radiation chief, Russell Takata has gone
22 to take measurements at various spots in the Kona
23 side. He told me that he had kept his meter on for
24 only five minutes. That's not likely to catch a
25 spike. Longer periods of air monitoring are

1 required.

2 So, in essence, my conclusion is that we
3 were at the wrong place at the wrong time, meaning
4 we were in the path of a radiation plume. Three
5 months later, the Army confirmed DU was present on
6 the ranges located one-and-a-half miles from the
7 park where we were standing in direct line with the
8 direction of winds coming to us on May 27, 2009.

9 Some form of radiation caused our monitors
10 to spike, not once but four times in a relatively
11 short period. We were at PTA. The winds were
12 coming off the impact range where the DU was later
13 confirmed. If it looks like a duck, walks like a
14 duck and quacks like a duck, then it is likely a
15 duck.

16 President Obama recently talked about the
17 failure to connect the dots. Whatever went into our
18 monitor on the 29th of 2007 likely went into our
19 lungs. The burden is on the Army to rule out DU
20 oxide. The burden should be on the Army to prove no
21 harm.

22 The Army says no harm has been shown, but
23 that's because they haven't looked and don't want to
24 look. Same from Vietnam with Agent Orange, same
25 with the Gulf War Syndrome.

1 I hope that addresses the question.

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

6 >>JUDGE HAWKENS: I'll interrupt you when
7 the time expires and give you time to wrap up --

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

9 >>JUDGE HAWKENS: I do have a question,
10 Mr. Albertini. Do you know the type of radiation
11 monitor that you were using on that day, on May
12 29th?

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

19 >>JUDGE HAWKENS: Now, the 75 -- despite
20 the 75, what did that indicate in terms of
21 radiation?

22 >>MR. ALBERTINI: Well, that's what's not
23 known. We don't know the specifics. We know it was
24 radiation that spiked the radiation monitor. But
25 again, the burden should be on the Army to prove

1 that it was not DU oxide.

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

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

9 >>MR. ALBERTINI: Yes. Concerning visits
10 to Mauna Kea Park. Mauna Kea State Park is
11 presently across the street from Pohakuloa Training
12 Area. Prior to May 27th, the day of the high spike
13 radiation readings, Saddle Road traveled through the
14 PTA base for about 12 to 14 miles and still does now
15 west of the main gate area.

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

23 For 30 years while driving across the
24 island, Saddle highway, I, my family and friends
25 would always stop at Mauna Kea Park to picnic, use

1 the restrooms. In years past, I spent even several
2 nights at the cabins at the park camping, including
3 nights when it was difficult to get any sleep
4 because of live firing taking place on PTA.

5 Over the years, I have participated in
6 numerous Kanaka Maoli Hawaiian cultural and
7 religious ceremonies that always started at Mauna
8 Kea Park and the nearby Hawaiian Ahu at the Saddle
9 Road Mauna Kea Access Road junction. I have also
10 gone to the summits of Mauna Kea for numerous
11 ceremonies, and I have hiked the mountains of Mauna
12 Loa, Mauna Kea, Hualalai extensively. I have spent
13 quite a bit of that time -- quite a bit of time over
14 the 30 years in that area.

15 I have also attended military briefs at
16 PTA and was transported to the firing range to
17 observe howitzers. I organized group briefings on
18 the base where we were given briefings and then
19 toured various sites. But I want to emphasize the
20 point that we don't have to go to Mauna Kea Park or
21 to PTA; that PTA comes to us.

22 And I have a little demonstration here to
23 show you. That here is some dust, and I'm going to
24 place it right in the center of the island, right
25 here. And if the winds come from the west, which

1 they do in the afternoon, right over Hilo, lower
2 Kona where I live. If they are coming from the
3 northeast, they are going toward Kona side or the
4 Kauhi side and the winds swirl all around this
5 island. And when it rains, when it rains, and the
6 waters come down here, you can see how amazingly,
7 water runs downhill amazingly. So we don't have to
8 go to Pohakuloa. Pohakuloa comes to us. Amazing
9 isn't it, scientific experiment.

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

12 >>MR. ALBERTINI: I have plenty to add. I
13 don't know how much you are willing to listen to.

14 >>JUDGE HAWKENS: You have 30 seconds.

15 >>MR. ALBERTINI: How many seconds?

16 >>JUDGE HAWKENS: Thirty seconds.

17 >>MR. ALBERTINI: Thirty seconds. There
18 have been reports of animal tumors at PTA. A hunter
19 friend, Luna Hauaino, phone number, (XXX)XXX-XXXX,
20 who has hunted extensively in the Pohakuloa area and
21 the downstream winds says that he's personally
22 observed numerous abdominal and throat tumors in
23 pigs, goats and sheeps hunted in the area. This
24 need to be investigated. It's not only the human
25 impact, it's the impact of all of the life on the

1 island and the planet that we are dealing with. So
2 we speak to the animals, too.

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

4 We will now hear from Mr. Harp please.

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

9 NRC, you're on board with that?

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

11 >>JUDGE HAWKENS: Petitioners, do you have
12 any objection to taking a 15-minute break after
13 Mr. Harp's presentation?

14 >>PETITIONERS: No objections from Hawaii.

15 >>JUDGE HAWKENS: Thank you.

16 You may proceed when you're ready,
17 Mr. Harp.

18 >>MR. HARP: Okay, I will respond to the
19 question regarding my physical address. My physical
20 address is located at 64-217 Waiemi Place, Kamuela,
21 Hawaii, 96743, and I don't give anyone permission to
22 send me any Anthrax. Thank you very much.

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

1 >>JUDGE HAWKENS: Yes.

2 >>MR. HARP: The location of the building
3 within the Pohakuloa training area where I used to
4 attend cultural advisory committee meetings up until
5 the time I found out that the depleted uranium was
6 in the area. And we go up there every two months or
7 so and also go on field trips into the Pohakuloa
8 training area. So I believe I may have potentially
9 been exposed to depleted uranium at that time.

10 And on the map -- my house is located on
11 there as well as my two younger brothers and my
12 older sister. And I have a -- can I have that map
13 back real quick? This is our home from that
14 building in Pohakuloa. My residence is 19 miles
15 away. My brother is 20, my other brother, 29 and my
16 sister is 31 miles away.

17 >>JUDGE HAWKENS: Thank you. Will you
18 proceed to the next question?

19 >>MR. HARP: I'll go on. In my petition,
20 I indicate that the granting of this license would
21 pose a health threat to the land and residents of
22 Hawaii. And you asked me to please clarify the
23 nature of this threat as it applies to me and
24 specifically, the factual foundation for your
25 aassertion of the potential for harm.

1 And my response is that -- let me get a
2 document here that I would like to put on the
3 scanner in a moment.

4 In a paper written by Leonard A. Dietz in
5 1996 and updated in 1999 entitled Airborne Transport
6 of Uranium Particles, Dietz, a technician at the
7 Knolls Atomic Power Laboratory in Schenectady, New
8 York, wrote and I quote, "A total of 16 air filters
9 at three different locations covering 25 weeks of
10 exposure from May to October, 1979 were analyzed.
11 All contained traces of DU. Three of these air
12 filters were exposed for four weeks each, at a site
13 26 miles northwest of the National Lead Industries
14 plant. This is by no means the maximum fallout
15 distance for DU aerosol particles." End quote.

16 At the time the filters were exposed, the
17 National Lead Industries plants was fabricating DU
18 penetrators and airplane counterweights.

19 In Preventive Psychiatry E Newsletter
20 Number 169, Arthur Bernklau, executive director of
21 Veterans for Constitutional Law in New York stated,
22 and I quote, "This malady from uranium munitions
23 that thousands of our military have suffered and
24 died from, has finally been identified as the cause
25 of this sickness, eliminating the guessing.

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

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

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

19 In addition, Hawaii volcanic geology
20 include subterranean fractures and lava too.

21 I would like to put the cover of this
22 paper onto a document viewer that I'm referring to
23 here. A scientific paper entitled "Leaking of
24 Depleted Uranium in Soil as Determined By Common
25 Experiment "show that leaking of depleted uranium

1 can occur. The paper is very technical so I will
2 not bore with you the details. I have included a
3 footnote here and you can see the document on the
4 viewer if you would like to review that paper at a
5 later time.

6 And I also have a couple of other
7 documents that I would like the put on the viewer.
8 Where are my other documents around here? Some of
9 our documents got mixed up and lost in here. We
10 don't need that one right now. Speaking of geology,
11 the make-up of the land here, this document shows --
12 I don't know if you can see it -- but it shows the
13 soils here. You can see that the rocks here, the
14 uranium and Thorium, I'm not sure what the correct
15 pronunciation is, but, inure lava here, are
16 typically, uranium, 0.2 is usually the concentration
17 here in Hawaii. And it states this is 10 to 20
18 percent of the value seen in continental rocks.
19 our background level, I would assume would be much
20 lower than those on the continent. And in fact, the
21 sea water has 3 parts per million globally. So our
22 soil is much less uranium content than that. And it
23 shows our soil and coil and rocks and how porious
24 this type of soil that we have -- how poor the soil
25 we have in Hawaii is.

1 >>JUDGE HAWKENS: Your time for this
2 question has lapsed. You want to wrap it up, go the
3 next question please.

4 >>MR. HARP: Actually, no.

5 >>JUDGE HAWKENS: Let me rephrase, that
6 Mr. Harp.

7 >>MR. HARP: I'm just trying to get the
8 documents on there so you can understand what I'm
9 trying to tell you here. But in April, 1985, the
10 Hawaii Department of Health informed the Army that
11 high levels of drinking water supply of 25,000
12 people of Schofield Barrack and 55,000 in way and
13 obtained drinking water in 3-miles of the.
14 Depleting uranium in Schofield is taken quite a
15 large population and citing the Safe Drinking Water
16 Act, the Environmental Protection Act ordered the
17 Army to begin shutting down Pohakuloa to complete
18 the process by 2006.

19 In a paper written by Leonard A. Dietz in
20 1996 and updated in 1999 titled Airborne Transport
21 of Uranium Particles, Dietz, a technician at the
22 Knolls Atomic Power Laboratory in Schenectady, New
23 York, wrote and I quote, "a total of 16 air filters
24 at three different locations covering 25 weeks of
25 exposure from May to October, 1979 were analyzed;

1 all contained traces of DU. Three of these air
2 filters were exposed for four weeks each, at a site
3 26 miles northwest of the National Lead Industries
4 plant. This is by no means the maximum fallout
5 distance for DU aerosol particles." End quote.

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7 National Lead Industries plants was fabricating DU
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10 169, Arthur Bernklau, executive director of Veterans
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12 quote, "this malady from uranium munitions that
13 thousands of our military have suffered and died
14 from, has finally been identified as the cause of
15 this sickness, eliminating the guessing.

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

20 Vehicle maneuvers, our own bombing,
21 artillery, helicopter wash and other military
22 activities at Pohakuloa clouds of dust that we now
23 know is laced with poisonous depleted uranium. For
24 over four decades, microscopic particles of depleted
25 uranium have been spreading on the winds across

1 these islands, lacing the entire population of this
2 island at risk including me.

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

9 In addition, Hawaii volcanic geology
10 include subterranean fractures and lava too.

11 I would like to put the cover of this
12 paper onto a document viewer that I'm referring to
13 here. A scientific paper entitled Leaking of
14 Depleted Uranium in soil as determined by Columbus
15 experiments clearly shows that leaking of depleted
16 uranium in the soil can occur.

17 The paper is very technical, so I will not
18 bore with you the details. I have included a
19 footnote here. And you can see the document on the
20 viewer if you would like to review that paper at a
21 later time.

22 And I also have a couple of other
23 documents that I would like to put on the viewer
24 around here. Some of our documents got mixed up and
25 lost in here.

1 Speaking on geology, the makeup of the
2 land here, this document shows -- I don't know if
3 you can see it, but it shows the soils here. You
4 can see that the rocks here, the uranium and
5 Thorium, I'm not sure what the correct pronunciation
6 is, but in our lava here are typically uranium 0.2
7 is usually the concentration here in Hawaii.

8 And it states that this is 10 to 20
9 percent of the value seen in continental rocks. So
10 our background levels, I would assume would be much
11 lower than those on the continent. And, in fact,
12 the sea water has three parts per million globally.
13 So our soil is much less uranium content than that.

14 And it shows our soil and the corral in
15 the rock and how poor is this type of soil we have
16 in Hawaii is.

17 >>JUDGE HAWKENS: Thank you, Mr. Harp.
18 Your time for this question has lapsed. You want to
19 wrap it up go the next question, please.

20 >>MR. HARP: Actually, no.

21 >>JUDGE HAWKENS: Let me rephrase that,
22 Mr. Harp.

23 >>MR. HARP: I'm just trying to get these
24 documents on there so you can understand what I'm
25 trying to tell you here. But in April 1985, the

1 Hawaii Department of Health informed the Army that
2 high levels of trichloroethylene had been detected
3 in wells in drinking water supply of 25,000 people
4 at Schofield Barracks. An additional 55,000 people
5 in Wahiawai and Mililani obtained drinking water
6 from public wells within 3 miles of the base.

7 The depleting uranium at Schofield is
8 taken quite a large population. And citing the Safe
9 Drinking Water Act, the Environmental Protection
10 Agency ordered the Army to begin shutting down their
11 cesspools at Pohakuloa and to complete the process
12 by 2006. The Order was to prevent the Army from
13 endangering drinking water sources.

14 So there is depleted uranium at Pohakuloa
15 and it is leaking through the ground. We are also
16 being placed in danger of having our groundwater
17 contaminated.

18 So I will skip on to the next question,
19 since I guess I'm out of time. And what was the
20 next question?

21 Does reading your question count toward my
22 time?

23 >>JUDGE HAWKENS: No. We will not -- we
24 will wait until you read the question and then we
25 will start the stopwatch.

1 >>MR. HARP: Okay, thank you very much.
2 The question is, "In your petition, you state the
3 Army may have used depleted uranium munitions in
4 areas other than those discussed in the licensing
5 application. Please provide a factual foundation
6 for this assertion, including any information that
7 would dispute the Army's findings."

8 Okay. Let me begin my response. The Army
9 denied ever using depleted uranium in Hawaii in the
10 first place. Depleted uranium was discovered at
11 Schofield but not immediately disclosed to the
12 public.

13 Mr. Klye Sikehero (phn) of the American
14 Friends Service Committee Hawaii was the first in
15 notifying the public of this threat. Thanks to Mr.
16 Klye Sikehero for submitting a Freedom of
17 Information Act request. Had it not been for him,
18 we might have never known about the depleted
19 uranium.

20 At that point, the Army had no option but
21 to confess to using depleted uranium in Hawaii. I
22 stated that the Army may have used depleted uranium
23 munitions in other areas based on the Army's bad
24 recordkeeping, and on the possibility that they
25 wanted to keep a secret like so many other secrets

1 the military has kept about their activities in
2 Hawaii.

3 The Army looked for spotting rounds in a
4 relatively small area, found only a few. Perhaps
5 they were looking in areas that the -- perhaps they
6 were located in areas where the Army had not
7 searched or perhaps they were used elsewhere. We
8 don't know, and apparently, neither do they.

9 In addition, as HN war aircrafts are
10 located in Hawaii, it seems highly likely they will
11 use or have used depleted uranium munitions, which
12 is what they are equipped to use.

13 I do hope the Army is planning to follow
14 through on their investigations of depleted uranium
15 use in Makua and Awahu. I understand the
16 vegetation was too thick and they could not conduct
17 a thorough investigation of that area.

18 License SUB 459 under which the Army was
19 allowed to fabricate, distribute and export depleted
20 uranium spotting rounds for military purposes
21 expired on October 31, 1964. I have not seen or
22 heard of any extension to that license through the
23 many emails communication with NRC staff, which
24 included Mr. Kent Herring, Chief of the
25 Environmental Litigation Branch for the Army.

1 If any depleted uranium was possessed or
2 released into the environment after the licensing
3 expiration date, in my opinion, that was an unlawful
4 act and subject to Nuclear Regulatory Commission
5 enforcement policies. In fact, the depleted uranium
6 now contaminating Hawaii may also fall under this
7 distinction.

8 For this particular issue, perhaps 10 CFR
9 40.42 contains appropriate regulation, but I will
10 leave this to the expertise of this Board and the
11 NRC staff.

12 Mahalo. I will move on to my next
13 question.

14 >>JUDGE HAWKENS: Thank you.

15 >>MR. HARP: The question is: "Your
16 petition invokes Executive Order 12898 and demands
17 consideration of environmental justice in regard to
18 the sites being considered in the subject license
19 application. Please explain in greater detail your
20 specific claim in regard to this specific executive
21 order."

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

25 "Agency responsibilities: To the greatest

1 extent practicable and permitted by law, and
2 consistent with the principles set forth in report
3 on the National Performance Review, each Federal
4 agency should make achieving environmental justice
5 part of its mission by identifying and addressing as
6 appropriate this proportionately high and adverse
7 human health environmental effects of its programs,
8 policies and activities on minority populations and
9 low-income populations." End quote.

10 I would also like to read from Section
11 1-103: Development of agency strategy. I quote,
12 "A, except as provided in Section 6-605 of this
13 order, each Federal agency shall develop an
14 agency-wide environmental justice strategy as set
15 forth in subsections B through E of this section
16 that identifies and addresses the disproportionately
17 high and adverse human health or environmental
18 effects of its programs, policies and activities on
19 minority populations and low-income populations.
20 The environmental justice strategy shall list
21 programs, policies, planning and public
22 participation processes, enforcement, and other
23 rulemakings related to human health or environment
24 that should be revised to, at a minimum, promote
25 enforcement of all health and environmental statutes

1 in areas with minority populations and low-income
2 populations. Ensure greater public participation.
3 Improve research and data collection relating to the
4 health of and environment of minority populations
5 and low-income populations." And four: "Identify
6 differential patterns of consumption of natural
7 resources among minority populations and low-income
8 populations.

9 In addition, environmental justice
10 strategies shall include, where appropriate, a
11 timetable for undertaking identified revisions and
12 consideration of economic and social implications of
13 the revisions." End quote.

14 Native Hawaii Familes conducted a study on
15 native Hawaiians, which is titled, Income and
16 Poverty Among Native Hawaiians. The study found
17 that native Hawaii families in Hawaii have the
18 lowest mean family income of all major ethnic groups
19 in Hawaii. Native Hawaii families tend to be larger
20 than average, meaning that their comparatively low
21 income must support a higher number of individuals.

22 Per capita income calculations confirm
23 that native Hawaiians are socioeconomically
24 disadvantaged. The cost of living in Hawaii is
25 among the highest in the nation. When adjusted for

1 differences in the cost of living, the median and
2 per capita income of the national native Hawaiian
3 population is substantially lower than comparable
4 national figures.

5 Poverty rates consistently show the
6 highest socioeconomical needs among native Hawaiians
7 in Hawaii.

8 Here is some U.S. Census Bureau quick
9 facts, people facts. 0.2 percent of the population
10 in the United States are native Hawaiian. So, as
11 you can see, native Hawaiians are somewhat of an
12 endangered species, one fifth of one percent of the
13 population.

14 Geography facts, land, air and square
15 miles. Hawaii, 6,422 square miles. The USA,
16 3,537,438 square miles. And you can also see Hawaii
17 is but a speck of land compared to the land base of
18 the Continental U.S.

19 We cannot afford to allow the military to
20 continue contaminating what little land we have for
21 our future generations. According, this language
22 was from the Geneva Convention, by the person, the
23 minister assigned to sign the Geneva Convention on
24 behalf of the United States, and I quote:

25 "The government of the United States fully

1 support objectives of this Convention. I'm
2 instructed by my government to sign making and
3 following reservation to Article 68. The United
4 States reserves the right to impose a death penalty
5 in accordance to the provisions of Article 68,
6 paragraph 2 without regard to whether the offenses
7 referred to therein are punishable by death under
8 the law of the occupied territory at the time the
9 occupation begin." End quote.

10 This is the type of disregard for
11 international law that the descendants of Hawaii
12 nationals of the Hawaiian kingdom have endured for
13 the last 117 years. So it is time for the United
14 States, to clean up their messes, repair the
15 damages, and deoccupy our country.

16 Thank you.

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

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

22 Whereupon a 20-minute break was
23 taken)

24 >>JUDGE HAWKENS: To the Petitioners in
25 Hawaii, we are getting ready to reconvene. At this

1 point, you will just be listening to the
2 presentations by the Army, and NRC staff. So make
3 yourself comfortable.

4 Ms. Harden, let me ask her a question and
5 make sure she is sufficiently comfortable to remain
6 or whether she would like to make a closing
7 statement now?

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

9 >>JUDGE HAWKENS: Yes.

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

13 >>JUDGE HAWKENS: We will stand by.
14 Please alert us when he returns.

15 >>MS. HARDEN: Okay.

16 >>JUDGE HAWKENS: Can you hear me?

17 >>MS. HARDEN: Yes.

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

21 >>MS. HARDEN: I'm doing okay, thank you.
22 If I need to make a closing statement earlier, I
23 will let you know.

24 >>JUDGE HAWKENS: Thank you. All right.

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

1 >>JUDGE HAWKENS: Are the Petitioners in
2 Hawaii ready to reconvene or should we wait a few
3 more moments?

4 >>MR. DEUCHER: If you can wait for just
5 one moment, we are waiting for one Petitioner to
6 rejoin us.

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

9 >>MR. DEUCHER: We still are missing that
10 last Petitioner. Did you want to go ahead and
11 proceed and we will bring her in when she becomes
12 available?

13 >>JUDGE HAWKENS: We will give her one
14 more minute and then we will proceed.

15 >>MR. DEUCHER: Okay, thank you.

16 >>JUDGE HAWKENS: Joe, I have 36 minutes
17 after the hour now, and I think we will go ahead and
18 proceed. When Ms. Leonardi returns, she can join
19 us.

20 >>MR. DEUCHER: Okay. Great, Your Honor.
21 We are ready in the room, so please proceed.

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

24 We have now heard opening statements from
25 everybody. We have heard from each of the

1 Petitioners answering the questions in the Board's
2 December 17th Order .

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

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

8 >>JUDGE HAWKENS: All right. You may
9 proceed, Colonel.

10 >>LTC. HERRING: Your Honor, would you
11 prefer that I read the question first or go right
12 into the answer?

13 >>JUDGE HAWKENS: Why don't you read each
14 question first.

15 >>LTC. HERRING: All right, sir. Question
16 one for the Army is: "Please clarify the quantity
17 of depleted uranium that is involved and the degree
18 to which the Army has been able to identify the
19 locations on the sites where this depleted uranium
20 is located. Regarding the two issues of quantity
21 and location, please address the Army's confidence
22 in both the quantity of material and the possible
23 locations, and the factual basis for such
24 confidence."

25 First, I would like to address the

1 quantity and our confidence, and then go on to
2 location, if that's all right.

3 First, the Army believes the quantity of
4 depleted uranium involved is in all likelihood not
5 more than the 714 rounds for which we have
6 discovered records. This belief is not based only
7 on the discovery records, but the number of records
8 we have discovered during this search and the
9 consistency of the records we found for other
10 installations and shipments as well to installation
11 and depos.

12 In terms of weight, 714 rounds would
13 equate to approximately 299 pounds of depleted
14 uranium located between the two sites, since each
15 spotting round contains 6.7 ounces of depleted
16 uranium.

17 Our confidence in this assessment comes
18 not only from the exhaustive archive search
19 conducted and the records produced, but also by
20 calculating the range of possible spotting round use
21 based on training manuals and the weapons available
22 at the time.

23 In addition, the Army has recently
24 institutionally remembered, if you will, the fact
25 that the 25th Infantry Division, which would have

1 used this weapon system in Hawaii, actually deployed
2 to Vietnam starting December 1965 and stayed
3 deployed until well into 1970.

4 The Davy Crockett weapons system was
5 removed from the field Army in 1968. So the number
6 of years at most this weapon system was fired in
7 Hawaii, we believe, was not six but three, based on
8 the units that would have used it being deployed to
9 Vietnam.

10 >>JUDGE HAWKENS: What were the years it
11 was used in Hawaii?

12 >>LTC. HERRING: Your Honor, the first
13 weapon system arrived in the spring of 1962, and we
14 know the division started to deploy in
15 December 1965. So the conservative estimate, '62
16 through '65.

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

20 >>LTC. HERRING: Your Honor, it is in the
21 ASR.

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

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

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

3 >>LTC. HERRING: That the 25th Infantry
4 Division was in Hawaii, the unit that would have
5 fired this weapon system. And they did not return
6 from Vietnam until 1970. So they were gone from '66
7 through 1970.

8 >>JUDGE HAWKENS: Now, is there record
9 evidence showing that no other unit would have
10 fired? I understand there were around 15 of these
11 weapon systems, and there is someplace in the record
12 that says if these 15 weapon systems are going to be
13 used for training and qualification purposes, there
14 would be far more than 714 rounds fired?

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

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

20 >>LTC. HERRING: That's correct, Your
21 Honor.

22 >>JUDGE HAWKENS: That's clear from the
23 ASR?

24 >>LTC. HERRING: That point is not clear
25 from the ASR. At the time the ASR was documented,

1 that institutional fact was not recalled by the
2 folks who put this together.

3 >>JUDGE HAWKENS: Is that anywhere in the
4 record?

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

10 The record is clear that they were in
11 Vietnam from all of 1966 through 1970. And that
12 fact assists us in confirming the 714-round estimate
13 as being a fair estimate.

14 Using the maximum number of firing rounds
15 and not accounting for the fact that the 25th
16 Infantry Division was preparing to deploy to Vietnam
17 in part of 1965, the most by the training manuals,
18 and that would be the conservative estimate, would
19 have been 1,260 rounds. And that presumes that
20 everything was fired, every opportunity to fire was
21 taken.

22 This also assumes that if a crew needed
23 the full five rounds to hit the target, it should be
24 noted as the ASR notes, that if a crew hit the
25 target on one round, that was the only round fired.

1 So not in all cases we know five rounds were fired.

2 In addition as the ASR states, the first
3 weapon did not arrive until the spring of 1962. And
4 we know that from the ASR, the entire compliment of
5 weapons systems did not arrive until the fourth
6 quarter of 1962. And we also know even though there
7 were 15 weapon systems, there were only 14 crews.

8 So, we believe that 14 weapon systems were
9 fired, because that was the number of crews
10 authorized. I am not sure why the extra weapon
11 system was just in case of a problem with another
12 weapon system, but that's based on the 14 crews
13 available to fire 14 weapons.

14 And your Honor, on the confidence of the
15 location, analysis of the information gathered
16 during this search, archive search, identified
17 ranges that met the characteristics needed to fire
18 the Davy Crockett. This was done by overlaying Davy
19 Crockett surface danger zone templates that are
20 noted in ASR on ranges that existed in the 1960s.

21 The existing range regulations would not
22 have allowed the Davy Crockett to be fired on ranges
23 that did not meet certain criteria. So the Army has
24 a high degree of confidence that we have identified
25 the possible ranges.

1 Beyond that, scoping surveys were done on
2 each of these ranges, these consistent aerial
3 surveys looking for firing pistons, aerial --
4 correction, aerial gamma surveys and ground walk
5 over surveys using radiation detection equipment at
6 both Schofield Barracks and PTA, range degree and
7 the presence of spotting rounds, confirm that some
8 but not all possible ranges were used for the Davy
9 Crockett. No evidence of use was found on other
10 ranges other than the ones previously noted.

11 Hundred of hours were expended in the
12 search, and although we can't be 100 percent certain
13 of where the Davy Crockett was fired 40 years ago,
14 the perponderance of the evidence and our best
15 belief, based on this methodical search is that we
16 have located the firing points and the impact areas
17 used for this system.

18 >>JUDGE HAWKENS: Colonel Herring, I'm
19 concerned about, I don't think we can give very much
20 weight -- we don't disbelieve your representations,
21 but in the absence of record evidence corroborating
22 this division went to Vietnam in '65, there is
23 nothing in the written record, in the pleadings or
24 the material accompanying the pleadings for us to
25 base that.

1 >>LTC. HERRING: Yes, Your Honor. If the
2 panel would allow, I could provide factual
3 confirmation of that, and this is by the same group
4 that completed the ASR went out and found
5 recently -- I won't say found the records were
6 there -- but acknowledged that this factual event
7 had occurred.

8 >>JUDGE HAWKENS: I will leave that up to
9 you, but I will tell you we do have regulations
10 which impose significant restrictions on submitting
11 new factual material. But if it is
12 material significant information that has a highly
13 probative value for this proceeding, we do have
14 procedures where you can endeavor to submit that
15 information, and the Petitioners can respond if they
16 want to oppose having it submitted.

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

18 >>JUDGE HAWKENS: I'm informed we have a
19 technical problem. We need to reboot. So, for the
20 benefit of the individuals in Hawaii, we will take a
21 five-minute recess, and then we will reconvene.

22 Thank you.

23 (Whereupon, a short recess was
24 taken)

25 >>JUDGE HAWKENS: Let's go back on the

1 record, Lorraine.

2 I apologize for the interruption. We
3 tested this without a problem yesterday and the day
4 before. I'm told because that it is as they
5 approach the noon hour in Hawaii, the computer
6 systems are being used at a much greater volume and
7 impacting on their ability to send the signal to us.
8 The signal goes out again, I understand that the
9 Petitioners were able to hear us but had a frozen
10 picture, is that correct?

11 >>MR. DEUCHER: That is correct, Your
12 Honor.

13 >>JUDGE HAWKENS: So, since we are going
14 to be dealing in a period of heavy volume for at
15 least another hour and-a-half, if you have that
16 difficulty again, since the alternative is to go to
17 tell conference, if you're hearing us, there is no
18 need go to the teleconference, just continue to
19 listen, let us know here, let Mack or Andy know and
20 you can try and correct the problem as we proceed.
21 If you run into a problem with the audio, however,
22 do let us know.

23 >>MR. DEUCHER: Will do, Your Honor, thank
24 you.

25 >>JUDGE HAWKENS: All right. Colonel

1 Herring, you were finishing up on question one.

2 >>LTC. HERRING: Yes, sir, yes, Your
3 Honor. I'd just like to note the final statement on
4 question one, that even in spite of the discounts,
5 the deployment, the Army's best estimate based on
6 the records at this time are 714 rounds, although we
7 do acknowledge there could be other rounds that were
8 shipped.

9 Your Honor, if there are no questions --

10 >>JUDGE KENNEDY: This is Judge Kennedy.
11 I have a question for the Army. Could you put the
12 quantities, the 714 rounds and the kilograms of
13 depleted uranium in perspective of what you
14 submitted in your license application and the
15 analysis that supports the license application?

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

17 Your Honor, to put it in perspective, our
18 license application was tendered Army-wide and it
19 accounted for more than what we believe were shipped
20 to Hawaii. So that's why there is a disparity and
21 we have -- of course, as you know, the license will
22 be base by base application to the NRC. And, so,
23 that's why this one base or this one installation,
24 the two installations in Hawaii, this amount of DU
25 which we said is 299 pounds approximately, would

1 differ from our license application.

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

4 >>LTC. HERRING: Well, the license
5 application Your Honor would be higher because,
6 again, that was not limited to just Hawaii. It
7 would be higher.

8 >>JUDGE HAWKENS: Is your monitoring
9 program, though, based on the amount represented in
10 your license application which you say is 5,560
11 kilograms? Or is it based on 714 rounds which I
12 believe you said is --

13 >>LTC. HERRING: Yes, Your Honor, it's
14 based on the latter, the 714 rounds for Hawaii.

15 >>JUDGE BARATTA: There seems to be a
16 disconnect there, then, because if you look at the
17 license application, and I don't have a page number
18 on it, but it's the one which has a figure with the
19 M28 Davy Crockett weapons system, Item 10. It says,
20 as derived from the 1968 Davy Crockett weapons
21 system range layout -- I'm paraphrasing a little
22 bit -- the impact area would be 200,000 square
23 meters. And then it talks about distribution of 560
24 kilograms, which if my recollection is 2.2-pounds
25 per kilogram which we are talking about probably

1 1,000, 1,500, somewhere between a 1,000, 1500
2 pounds distributed over that. And it goes on to
3 estimate what the concentration would be. And I
4 think eventually, it derives a dose. That's what
5 was very confusing to me because we were talking --
6 it looked like there was a -- what I would say would
7 be a conservative estimate of the material on a
8 range based upon that number. I don't know where
9 the 560 kilograms came from other than it looked
10 like there was a ten percent number of the total DU
11 in the application itself, okay.

12 And -- but then, I get a little confused a
13 little later on where it talks about the total
14 number of rounds in the same discussion there.

15 That was one problem I was having with
16 understanding the relationship with the 716 and the
17 2,000 or so and what was in the license application
18 itself.

19 >>LTC. HERRING: Your Honor, the estimates
20 contained in the application were based on a
21 worst -- an extremely conservative case and that was
22 9,700 rounds at Fort Benning. So we used the, I
23 guess the highest example we could find to -- when
24 we used to submit this license for installation.

25 >>JUDGE BARATTA: So in essence, what you

1 did was a bounding estimate for what the dose would
2 be associated with, the worst credible situation?

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

4 >>JUDGE BARATTA: The other question I
5 have and maybe it's just because time has taken over
6 as you've done additional work, but it was
7 apparently a response that Congresswoman Herona, I
8 believe in which the Army responded and said that
9 the shipping quantity averages only half rounds
10 fired per year and you're able to establish that
11 from one of the depos that there were stock sent
12 there. But it also goes on, it's highly probable
13 that additional stocks and cartridge, 20-millimeter
14 101 were ordered from one of the ordinance depos --
15 from one of the other ordinance depos that kind of
16 confused me because in the beginning of that
17 sentence, it does talk about the 714 rounds coming
18 from the Lake City Ordinance Plant.

19 So, that suggests that the number is
20 greater than 714 and that 714 may not be the best
21 estimate for what's there. Could you -- is there
22 any way to reconcile that?

23 I also undertand the records were not --
24 from some discussion that the records are not
25 available from the other ordinance depos because

1 they just didn't archive them.

2 >>LTC. HERRING: What we do have, Your
3 Honor, we do have records for shipments from the
4 manufacturing facility to depos, and we know we've
5 been able to track almost 100 percent of those back
6 to the manufacturing facility for eventual
7 authorization.

8 We additionally have records that show
9 shipments to - initial shipments to installations.
10 So that what we're not sure about is that I've
11 acknowledged that there are possibly other
12 shipments, some shipments from one or two of the
13 depos onto Hawaii. So that's the way the gap and
14 possible additional shipments could be created.

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

18 >>LTC. HERRING: Your Honor, 714 would not
19 be a conservative number. If you want to look at
20 the range based on what's in the ASR, I can start
21 with the range. If we have 14 weapons -- the 14
22 crews with six firings per year over six years,
23 which is what's in the ASR, then that's where the
24 2,520 rounds comes from. So if we say six years,
25 then, that's the top of the range.

1 And then the records that we found
2 indicate 714 shipped. That's what we have records
3 for. And then based on the completeness and the
4 records we're finding for other ASRs for other
5 ranges, lead us to believe that 714 rounds is a good
6 central estimate and could fit in with what we know
7 about the Davy Crockett firing, because we know what
8 the number of rounds made.

9 We know the number that were shipped and
10 we know the number that were destroyed. And we know
11 the number that were shipped to general
12 installations. As I recall, it's approximately,
13 maybe 65 in total and we don't know shipping records
14 for out of 75,000.

15 >>JUDGE HAWKENS: Although you don't know,
16 you don't have records of shipments made from
17 ordinance deposes?

18 >>LTC. HERRING: That's correct, Your
19 Honor.

20 >>JUDGE HAWKENS: That's a big wild card.

21 >>LTC. HERRING: We haven't found -- we
22 are looking -- the Army is still looking because we
23 want to be as complete as we can. But at this
24 point, we have to acknowledge that there could be
25 some other shipments.

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

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

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

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

23 >>LTC. HERRING: Yes, Your Honor, that's
24 accurate. We used the worst case because at the
25 time, this is the first ASR produced. When we

1 became aware of this issue, we started first with
2 Hawaii. And we were still looking for other
3 installation records to substantiate other
4 shipments. So in producing this application, we
5 used the most conservative estimate that we knew of
6 and that was Fort Benning submit to the NRC.

7 And at the time of our license submission,
8 at that point, we had not identified all the rest of
9 the installations. We know now where the Davy
10 Crockett was shipped.

11 >>JUDGE HAWKENS: If I read your material
12 correctly, your records indicate at a minimum, 714
13 were shipped to Hawaii, but what you're doing is
14 assuming that 714 rounds were actually -- spotting
15 rounds were fired at PTA and at Schofield. Is that
16 correct?

17 >>LTC. HERRING: Yes, Your Honor, that's
18 right, 714 for both sites. We don't have any
19 records of any shipments going back from Hawaii back
20 to the depo --

21 >>JUDGE HAWKENS: Is that an attempt at
22 being conservative?

23 >>LTC. HERRING: Yes, sir, yes, Your
24 Honor, it is. Since we don't have a record of any
25 shipments back from Hawaii, and 714 rounds could

1 have easily been fired by the crews, then, that was
2 another -- we didn't want to assume that any rounds
3 were shipped back.

4 >>JUDGE BARATTA: Could you clarify your
5 question? I didn't quite understand it. Were you
6 saying that they were assuming there were 714 rounds
7 shipped to each of Schofield and PTA, or 714 rounds
8 total?

9 >>JUDGE HAWKENS: And I'll have them
10 confirm my understanding. As I read your radiation
11 monitoring programs for Schofield and for PTA, it
12 said we have shipping records that confirm a minimum
13 of 714 spotting rounds shipped to Awahua. We don't
14 have a firm fix on the actual numbers that might
15 have come in. So to be conservative, we will assume
16 that we used for creating this radiation monitoring
17 program for determining the effects on the
18 environment on health, safety and security, we will
19 assume 714 spotting rounds were fired at each
20 facility which in itself assumes that 1428 spotting
21 rounds were used in total in Hawaii.

22 LTC Herring: That's for the health
23 estimate, yes, Your Honor, and the monitoring plan,
24 that's right, 714. So that was the conservative way
25 we approached that issue.

1 >>JUDGE BARATTA: Then, that's different
2 than what's in the application itself because there,
3 you assumed ten percent of the total quantity for
4 obtaining an estimate of the dose. So your site
5 specific monitoring plan assumes the lesser quantity
6 than that, does not assume the 9,000?

7 >>LTC. HERRING: Yes, Your Honor, there
8 was a gap in time between the submission of those
9 two documents and as we've gone through time, we've
10 learned more. That's the difference between the
11 original application.

12 >>JUDGE HAWKENS: Will you be updating the
13 site specific radiation monitoring plan, then, to
14 reflect the information in the license application?

15 >>LTC. HERRING: No, Your Honor, it would
16 be the other way around. The ERM is the most
17 current document.

18 Your Honor, if there are no further
19 questions, Question 2 --

20 >>JUDGE HAWKENS: Actually I do want to
21 follow-up because I'm confused as to which document
22 you would be updating, whether the license
23 application to reflect 714 rounds at each
24 installation as a bounding figure or whether it will
25 be the Site Specific Environmental Radiation

1 Monitoring Plans that will be revised to indicate
2 ten percent of the overall rounds that haven't been
3 accounted for?

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

16 So, we submitted the site specific and the
17 values for PTA and Schofield and at least at this
18 time, we'll submit other site specific ERMs as we
19 continue to do more research or find how much is at
20 each Army installation. But at this time, I don't
21 have the intention to go back and update the license
22 application itself as the license application was a
23 generic place holder at the starting point, if you
24 will in our licensing process.

25 So the specific information will be filed

1 as we go along for other installations. But for
2 this installation, these two installations, you do
3 have on the ERM, the most up-to-date data.

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

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

16 >>JUDGE BARATTA: What I'm trying to get
17 at here, is there really a material dispute here,
18 because if you're basing your license application on
19 9,000 rounds and 500 some odd kilograms, then the
20 point that was brought up by the Intervenors that
21 well, it's probably more like 2100 rounds or
22 whatever that translates into kilograms, there
23 really is no dispute there because you are basing it
24 on a much larger number. But I'm having trouble
25 understanding what number you're basing it on

1 because you've got the site specific environmental
2 report -- if I can use that term from another
3 licensing area -- and yet, you've got a license
4 application that uses a far worse case in terms of
5 the quantity but more conservative and would easily
6 bound I think with the uncertainty that the
7 Intervenor's have cited and therefore, there is no
8 material dispute.

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

14 >>LTC. HERRING: In our coordination with
15 the NRC, that is what we were asked to provide as we
16 went along and got more specific information for
17 each site to update the data for site specific ERMs,
18 so that's what we done.

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

22 >>JUDGE HAWKENS: And I have one final
23 question. When I say there's 714 rounds per site, a
24 conservative scoping value, I think initially you
25 said no. But then when I said since 714 was used at

1 each site and 714 was the amount set for total use,
2 I'll ask the question again; is 714 at each site a
3 conservative bounding number to use or is it a
4 realistic number?

5 >>LTC. HERRING: I would characterize it
6 overly conservative.

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

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

16 This will come up later in another
17 question, Your Honor, but it's an area that high
18 explosives, we have marked off to be that we do not
19 fire any high explosive munitions into that border
20 area.

21 And then on Schofield, currently, we are
22 not firing any high explosives into that area. So
23 there is no -- did not indicate any buffer area. It
24 was only training. I know that is a question that
25 I will give more detail later.

1 >>JUDGE HAWKENS: All right.

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

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

19 By your question, I take it because these
20 sites are on a range, the DU is on a range, we don't
21 have soldiers walking out in that area because it is
22 on a live range, there is other munitions and other
23 hazards there. But we do have soldiers that fire
24 into the range. So they are not on top of the DU,
25 if you will. There are several -- they are off the

1 area where we know the DU is but firing into the
2 range, the impact area.

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

10 For Schofield Barracks ranges consists of
11 firing points where weapons are fired and the impact
12 areas where the round impacts. The DU is located
13 within portions of the impact area. Soldiers fire
14 only from firing points outside that DU area.

15 In terms of what munitions are impacting
16 the DU areas at Schofield, only live small arms
17 ammunition are being fired into these areas. And by
18 this, I mean 50 caliber machine gun ammunition and
19 smaller. None have explosive charges. Training
20 rounds as opposed to live rounds are also being
21 fired into the DU area.

22 These consist of up to 40-millimeter
23 rounds. For example, certain grenade rounds, they
24 contain just enough explosive to create a puff of
25 smoke so that the location of the impact can be

1 determined. But again, these are not high explosive
2 rounds as were the DOD policy.

3 Artillery up to 105 millimeter artillery
4 and mortar rounds may be fired into this area which
5 is within the DU area. However, only non-explosive
6 full range training rounds are fired into that area.

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

19 Both high explosive and training versions
20 were fired at PTA along with artillery up to 155
21 millimeter and mortar rounds up to 120 millimeter.
22 But the range safety limits have been adjusted and
23 buffers have been established in the impact area so
24 that no high explosive rounds are being or will be
25 fired into the DU area. Aerial bombing --

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

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

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

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

21 Battle area in terms of perspective
22 activities, battle area complexes, short term, "BAX"
23 are being built at both Schofield and PTA with
24 completion scheduled sometime in 2012.

25 The BAX areas are designed so that

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

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

12 Continue, your Honor?

13 >>JUDGE HAWKENS: Yes.

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

19 The air monitoring program is based on
20 wrong protocol and the Army is not getting enough
21 samples from natural uranium because the sample size
22 is too small. With regard to groundwater surface
23 water monitoring, the potential for transported
24 depleted uranium from the live-fire live training
25 ranges was a value evaluated for both PTA and

1 Schofield. These are addressed in the license
2 application. So only the monitoring activities and
3 not the full pathways analysis is provided today.

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

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

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

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

24 (Whereupon a short recess was taken)

25 >>JUDGE HAWKENS: It's my understanding

1 that we are proceeding by video conference but we
2 are working parallel on teleconference so if the
3 former runs into a technical problem, you all will
4 automatically go to teleconference, is that right,
5 Joe?

6 >>MR. DEUCHER: That is correct.

7 >>JUDGE HAWKENS: Thank you. Colonel,
8 please proceed. Sorry for the interruption.

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

20 Seventy-two hour air samples are collected
21 on teflon filters during heavy weapons firing,
22 artillery, mortars, bombs, rockets, live-fire at
23 PTA. When no such activity is occurring, 72 hour
24 samples are collected in accordance with the EPA's
25 published once every 6 day schedule. Filters are

1 sent to laboratories for gamma metric and ICP MS
2 analysis for total uranium.

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

19 The current monitoring analysis is
20 therefore based on total airborne uranium exposure
21 and the sample size is adequate for that analysis.
22 Consequently, Ms. Harden's assertion that the Army's
23 air monitoring program is based on wrong protocols
24 and the Army is not getting enough sample to
25 distinguish the depleted uranium from the natural

1 uranium because the sample sizes is too small, is
2 not accurate. The sampling and analysis protocol
3 used in the Army's ongoing uranium monitoring
4 program are appropriate for the task at hand in
5 determining whether the activities are creating a
6 public health hazard.

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

16 Obtaining larger sample sizes as suggested
17 by Petitioners would not alter the fact that
18 concentrations of 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
9 used to determine the location of spotting rounds.
10 The 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 hazards to ground-based
24 personnel.

25 The areas of increased activity are

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

4 The helicopter platform 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.

15 There were some key differences between
16 the Schofield Barracks and PTA area relevant to the
17 conducted survey.

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

25 Secondly, the nature of DU is different.

1 At Schofield, it was oxidized and fragments ranged
2 from small particles to pieces the size of the
3 thumb.

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

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

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

25 Minimal detectable activity was determined

1 to be .02 millicuries or 3 spun arounds within the
2 field of view of the aerial system. The assumption
3 is that the system is flown at 3 to 6 knots or one
4 to two miles of meters per second and at a height of
5 10 to 12 feet above the ground surface. To account
6 for variations in survey speed and height, this data
7 was collected along with gamma counts. The aerial
8 gamma surveys identified a few areas of increased
9 activity but further investigation indicated these
10 increases was due to variations in natural
11 background. Finally -

12 >>JUDGE HAWKENS: Go ahead and conclude,
13 please.

14 >>LTC. HERRING: Finally, ground walkover
15 surveys were performed with fiddler detectors at
16 areas identified during the gamma. The aerial gamma
17 surveys over certain areas determined to have the
18 most likelihood of DU.

19 Only two metal DU fragments and one
20 essentially inconnect spotting round was located.
21 Soil samples were also collected during the survey.
22 None of the samples indicated the presence of DU.

23 >>JUDGE HAWKENS: Thank you.

24 >>LTC. HERRING: With regard to Question
25 6: "In regard to the assertions by Petitioners that

1 contaminated soil is being removed from the
2 installations, please clarify what, if any
3 activities are underway or may be implemented in the
4 future to remove either depleted uranium or soil
5 containing depleted uranium?"

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

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

23 The source of this crushed rock is the
24 Schofield Barracks Forest which is located
25 approximately one mile from the DU area and is not

1 known to be used for firing weapons, to include any
2 DU rounds, so it is not on the range.

3 This project started in early 2000 -- in
4 early November, 2009 and is scheduled to be
5 completed in April, 2010. During initial surveys of
6 the proposed BAX area, training area mentioned
7 earlier, some DU fragments along with small
8 quantities of DU contaminated soil surrounding those
9 fragments were placed in 55 gallon drums. The drums
10 are currently being stored in a secure facility on
11 Schofield Barracks pending proper disposal.

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

21 The Army is not conducting further testing
22 at Schofield or PTA but we continually re-access the
23 need for such action. As an example our request for
24 funding to complete currently, unfunded portion of
25 the battle area complex from Schofield Barracks have

1 been submitted to the Army headquarters. Should
2 this construction be funded, DU removal is planned
3 to occur prior to construction. Currently there are
4 no plans to remove DU soil other than small
5 quantities for testing which may accompany the
6 removal of DU fragment. Any DU or DU contaminated
7 soil that may be removed will be packaged and stored
8 properly.

9 >>JUDGE HAWKENS: Thank you.

10 >>LTC. HERRING: Your Honor, in Question
11 7: "Please address when the Archives Search Report
12 was made publicly available both in print and on a
13 website."

14 The Archive Search Report was posted on
15 the public website on October 1st 2009. The report
16 was not officially distributed in print due to its
17 size but made available to all on our website
18 containing many other documents related to DU in
19 Hawaii.

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

22 >>JUDGE HAWKENS: I have a question. The
23 record says the Army discovered DU at Schofield in
24 2005. I think the Petitioners are saying at best,
25 knowing that you had used DU for six years during

1 the 60's, for the Army to say we discovered it in
2 2005, at best that's negligence at what exists on
3 your range and at worst, it's deliberate withholding
4 of information. What is the Army's response to
5 that?

6 >>LTC. HERRING: Certainly, there is no
7 purposeful withholding. The fact just as we
8 mentioned with the unit being deployed to Vietnam,
9 at some point, it was institutionally lost sight of
10 not only by the Army but I believe also the
11 Licensing Authority as well. But there was no
12 intent or no -- no intent or no purposeful actions
13 on the part of the Army. When this was found and
14 Your Honor, you might see in the information that a
15 range safety or worker spotted the round and
16 identified it. And once that occurred, the Army had
17 although argued about how long it has taken, has
18 taken steps to deal with this issue.

19 Your Honor, although I'm not positive on
20 this, could be the fact that once the material was
21 fired, if you look at the document history, once
22 it's created and transferred, there is a record of
23 shipment because it is still an ammunition round.
24 It could be as simple as once that round is placed
25 in the weapon and fired, and now it's out of the

1 range, that the tracking mechanism for that DU no
2 longer existed because it was an expended munition.

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

4 >>LTC. HERRING: Question 8: "The
5 verified number of depleted uranium spotting rounds
6 shipped from Owahu was 714 rounds in April of 1962,
7 yet the worst case scenario based on training and
8 qualification criteria is 2,526 rounds. Please
9 reconcile these figures and address the possibility
10 that additional rounds may have been shipped."

11 Your Honors, as stated previously, it is
12 possible that other rounds were shipped from other
13 depos. The Army located the ammunition records
14 which were used to track ammunition lots from the
15 records --

16 >>JUDGE HAWKENS: I think you may have
17 addressed this fully at the outset of your argument.
18 Unless you have something to add, we will accept
19 that.

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

21 And then, finally, Your Honor on Question
22 9, the last question for the Army from your order:
23 "Please address whether the Army intended to use
24 depleted uranium munitions in the future at relevant
25 military installations."

1 >>LTC. HERRING: No, Your Honor, we do
2 not.

3 >>JUDGE HAWKENS: Thank you. We will hear
4 from the NRC staff now.

5 >>MS. SEXTON: Good evening, Your Honor.
6 Question Number One: "The Army's application states
7 that the Army has not determined that the Atomic
8 Energy Act requires a possession-only license in the
9 instant situation. But that it is nevertheless,
10 submitting an application to promote cooperation
11 between our agencies and to the extent required by
12 the Act. Please address whether the Army is
13 required to have a license in this situation."

14 The very short answer is yes. The Section
15 2 of the AEA grants the NRC the authority to
16 regulate the use of possession of source material.
17 Section 62 of the AEA states generally that no
18 person unless authorized by general specific license
19 issued by the NRC may possess source material.
20 Under the AEA, the U.S. Army Installation Command as
21 an establishment means the Executive Branch of U.S.
22 Government constitutes a person under Section 62 of
23 the Act. From there, under 10 CFR, Part 40 of the
24 NRC's regulation, we require specific license for
25 possession of source material in excess of 15 pounds

1 at any one time, and 150 pounds in one calendar year
2 if uranium meets the requirement for source material
3 as defined in 10 CFR Section 44.02 as it pertains by
4 weight 0.5 percent or more uranium.

5 The Army's license application currently
6 request permission to possess 8,000 kilograms of
7 depleted uranium which meet the NRC requirement.

8 >>JUDGE HAWKENS: Sounds like the NRC has
9 a strong view on the answer to that question. Go
10 ahead.

11 >>MS. SEXTON: Question Number 2: "Please
12 explain the consequence that the Army is not granted
13 a depleted uranium possession-only license for the
14 two sites in this proceeding."

15 The answer is, were NRC not to grant the
16 Army license because the Army is out of compliance
17 with the Atomic Energy Act and NRC regulation, it
18 would be within the discretion of Staff to issue an
19 enforcement action against the Army. However, I
20 said that would be up to the discretion of the staff
21 to evaluate were the situation to progress in that
22 manner.

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

24 >>MR. KLUKEN: Question Number 3: "Please
25 discuss the nature of license conditions that may be

1 placed on the Army as a possession-only license
2 holder including whether such conditions could
3 include the location and frequency of radiological
4 monitoring, the ability to remove depleted uranium,
5 or soil that might contain depleted uranium from the
6 site and the permissibility of conducting live-fire
7 exercises in areas where the depleted uranium may be
8 present."

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

18 >>JUDGE HAWKENS: We're just wondering
19 about the authority. We understand.

20 >>MS. SEXTON: Question Number 4: "The
21 staff states that Ms. Harden never specifies any
22 injury-in-fact apart from the possibility that very
23 different conditions may eventually be written into
24 the Army DU license, depending on the number of
25 spotting rounds found to be used. Because the dose

1 associated with a quantity of radioactive material
2 depends on the amount present, please address how it
3 is possible to characterize with specificity an
4 injury-in-fact if as alleged by Ms. Harden, the
5 amount of radioactive material is unknown."

6 The staff believes that it was possible
7 for Ms. Harden to demonstrate standing even with her
8 allegation of the different number of spotting
9 rounds, but that she failed to do so. As Ms. Harden
10 makes clear in her pleading, she believes there may
11 be as many as 2050 rounds at Pohakuloa. Ms. Harden
12 could have used this number to specify what her
13 injury could be. Instead, Ms. Harden failed to
14 allege any harm that might stem from there being
15 more spotting rounds in Hawaii, let along the NRC
16 granting the Army's license request.

17 Further, it would have been possible for
18 Ms. Harden to attempt to meet NRC's proximity
19 assumption for standing based on the 2050 spotting
20 rounds she speculates are present on Pohakuloa. To
21 do so as Intervenor, the burden falls on Ms. Harden
22 to demonstrate the proposed action involves a
23 significant source of radioactivity producing an
24 obvious potential for off-site consequences.

25 Ms. Harden never states what she believes

1 the off-site consequences to be for even the 714
2 rounds or 2050 rounds or any other number of rounds.
3 Even then, Ms. Harden could have well attempted to
4 establish a proximity presumption by showing a
5 specific and plausible means of how the challenge
6 action may harm her, something that she did not do.
7 For those deficiencies and others, Ms. Harden fails
8 to demonstrate standing.

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

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

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

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

21 >>JUDGE BARATTA: There is a statement
22 where she requested the time extension that it says
23 that the ASR seems to provide a basis for assumption
24 of later reports, characterization of human health,
25 risk assessment about when, where and how the DU

1 spotting rounds were used which suggest she is
2 implying that there was a health risk.

3 I guess I don't understand your earlier
4 statement that she failed to cite the injury-in-fact
5 that would result in a possible injury-in-fact that
6 might occur.

7 >>MS. SEXTON: Were you quoting from her
8 October 30th filing?

9 >>JUDGE BARATTA: No. This ws the one she
10 requested the delay.

11 >>MS. SEXTON: Okay. December 1st filing.
12 which statement were you looking at?

13 >>JUDGE BARATTA: The very end.

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

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

21 >>MR. KLUKAN: Your Honor, can we take a
22 short recess while you look for that reference?

23 >>JUDGE HAWKENS: Sure. We will take a
24 five minute recess and then we will return and
25 complete the argument. Thank you.

1 (Whereupon, five minute recess)

2 >>JUDGE HAWKENS: We're back on record.

3 Please proceed.

4 >>MS. SEXTON: Your Honor, we attempted to
5 find --

6 >>JUDGE BARATTA: Its's September, 22. I
7 apologize. I got the one filed on the 9th. It's
8 from Corey Harden to docket hearing extension of the
9 date, due date and it's on page 2 of that at the
10 very, very end.

11 So, the actual -- I guess the actual
12 e-mail itself was September 18th to John Hayes.
13 And then, he responded and she forwarded the whole
14 package to the office on the 22nd.

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

18 >>JUDGE BARATTA: Right, that she was
19 concerned about the health effects. She seemed to
20 highlight that and so I guess, what's troubling me
21 is your discussion in your reply or your answer to
22 the Petition I should say seems to indicate that
23 you're well aware that she was concerned about
24 health effects and therefore, had in fact cited.
25 Since you make statements relative to that numerous

1 places. So, I just didn't agree with your
2 discussion that she failed to identify health impact
3 because you seemed to be aware of the health
4 effect..

5 >>MS. SEXTON: Your Honor, the mere
6 stating that someone is concerned about health
7 effects is not enough to demonstrate traditional
8 standing or proximity for standing.

9 >>JUDGE BARATTA: Well, I found rather
10 interesting, it seemed like you switched your
11 standing in the middle of your Answer because in the
12 beginning, you talk about potential radiological
13 harm and then, later on, seemed to get specific that
14 she has not demonstrated actual harm had occurred.
15 I was a little confused by that to.

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

17 >>JUDGE BARATTA: Just an observation.

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

20 >>MS. SEXTON: Okay.

21 >>JUDGE HAWKENS: Let's assume there is a
22 significant amount of radioactivity. Assuming the
23 monitors that the Army -- radiation monitors that
24 the Army proposes to use, and authorized by the NRC
25 don't reveal that any radiation limits, regulatory

1 limits are exceeded.

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

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

5 >>JUDGE HAWKENS: Why not?

6 >>MS. SEXTON: Your Honor, at least in
7 terms of proximity standing, it's just an obvious
8 potential for off-site harm and that does not speak
9 to regulatory limits in any way.

10 >>JUDGE HAWKENS: Is it conceivable there
11 is an obvious potential for oxide harm if all
12 regulatory limits are met?

13 >>MR. KLUKAN: I think Your Honor in
14 creating for example, the presumption proximity for
15 nuclear reactors, the Commission assumes --

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

19 It may be that you're saying the
20 Petitioner conceivably could come up with a
21 plausible chain.

22 >>MR. KLUKAN: With all due respect, Your
23 Honor, two different things. I think in materials
24 cases, while there is no proximity presumption as
25 put in either resources, someone could assert an

1 obvious potential for radiological harm consequence.
2 We have asserted the Petitioners have not done that
3 yet.

4 Where there is no following -- where there
5 is no obvious potential, the Petitioners have not
6 shown any logical potential for off site harm, we
7 then go back to the position on standing elements of
8 injury-in-fact, whatnot, nexus. And we argue they
9 have not done that either. So if you look at
10 Petitioner two standing arguments, none of the
11 petitioners have shown there has been an obvious
12 potential cause for outside harm under resources or
13 that have not shown under the traditional what you
14 were getting at, Your Honor, the plausible chain,
15 the traditional standing element. They have not
16 done that either.

17 I don't think that were we to license
18 something, Your Honor, factors into whether
19 facilities has an off-site potential for
20 radiological harm. I think it is the nature of what
21 the facility is.

22 >>JUDGE HAWKENS: In this case, it is more
23 than an off-site potential. It has to be a
24 significant impact or a plausible chain which shows
25 potential injury or actual injury. Please proceed.

1 >>MS. SEXTON: Question Number 5: The
2 Staff states that Ms. Leonardi's assertion that she
3 has seen trucks from Schofield Barracks unload debri
4 containing radioactive soil directly in the back of
5 her home is beyond the scope of this proceeding.
6 Please address what the regulations say with respect
7 to the disposal of material held under a
8 possession-only license."

9 First of all, Ms. Leonardi's allegation is
10 out of scope. The Army's license obligation for
11 possession-only license August 13, 2009 Federal
12 Registry notice receipted. That is because license
13 application would not allow the transfer of disposal
14 depleted uranium and Ms. Leonardi's assertion is
15 beyond the scope of this proceeding. The disposing
16 of license material in back of Ms. Leonardi's house,
17 this would be handled through the allegation and
18 enforcement process.

19 Further, even if it were within the scope
20 of this proceeding, Ms. Leonardi fails to provide
21 sufficient information to support her claim. Ms.
22 Leonardi mentions a five year plan that she appears
23 to indicate includes the intentional removal of
24 contaminated soil and disposal in her community
25 including the back of her house.

1 Ms. Leonardi, however, has not produced
2 this plan nor has she indicated what type of
3 contamination is contained in the soil or what
4 toxins are in the dust plumes she refers to. In
5 fact, Ms. Leonardi only once mentions any
6 radioactive material whatsoever, and that is merely
7 in reference to the military's past use of DU,
8 rather than the potential ongoing facts related to
9 standing or contention admissability.

10 Thus, without more information to provide
11 plausible chain showing the military is loading
12 soils specifically containing radioactive material
13 and the actual dumping of that same material in Ms.
14 Leonardi's community, Ms. Leonardi has failed to
15 establish standing or provide admissible contention.

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

19 >>MS. SEXTON: No, Your Honor. It's
20 beyond the scope because it is not part of the
21 license application. If they were actually doing
22 that, that would be handled through the enforcement
23 process. We are not actually requesting the ability
24 to transport and dispose of depleted uranium.

25 >>JUDGE BARATTA: However, the license

1 does clearly reference the possibility of that
2 occurring in Item 6. They say the depleted uranium
3 pursuant to this license may also be subject to
4 disposal by transfer to a properly permitted license
5 disposal facility. So I would not conclude it would
6 be outside the scope.

7 >>MR. KLUKAN: Your Honor, Part 40 does
8 provide for transportation generally speaking which
9 you don't need a particular license and to whom you
10 can transport it. What we are saying is there is
11 nothing -- they are not asking for a specific
12 license for transport beyond what the REGS already
13 provide for. Generally any one may transport to and
14 to whom.

15 >>JUDGE HAWKENS: If you truly paint that
16 claim-- I mean, given that license beyond seeking
17 authority to dispose by transfer to a properly
18 permitted license disposal facility, that is part of
19 the authority it is seeking. And if one of the
20 Petitioners had a contention, some basis in fact
21 that the Army either historically, had improperly
22 disposed of DU or had intentions to improperly
23 dispose of DU, you would claim that was outside the
24 scope of this proceeding?

25 >>MS. SEXTON: First of all, Your Honor,

1 we would just like to make sure that -- we know Ms.
2 Leonardi actually today said that she can not show
3 that there is DU in the soil that is being disposed
4 in the back of her house and in fact thinks it is
5 the burden of the Army to show that in fact it is
6 not disposing DU in the back of her house. So she
7 has no facts, number one to support that.

8 And number two, her -- the back of her
9 yard and the I guess, dump that she was referring
10 to, that is not a licensee or someone that the NRC
11 permits the Army to transport and dispose of
12 material in the back of her house, so that would be
13 outside the bounds of anything currently allowed
14 under the regulations or outside of the scope of the
15 license application that they have submitted to us.
16 That would be handled under the enforcement process
17 because they would be violating our regulations.

18 >>MR. KLUKAN: What we are saying Your
19 Honor, the license would not authorize them to
20 dispose of the depleted uranium in Ms. Leonardi's
21 backyard. That's what we mean by the statement.

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

23 >>MS. SEXTON: Were you still concerned
24 with exactly what regulations because that was part
25 of the question? Or were you more concerned with Ms.

1 Leonardi's statement?

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

4 >>MS. SEXTON: The very end part said,
5 "Please address what the regulations say with
6 respect to disposal materials." So I didn't know if
7 you wanted to know generally what the regulations
8 are about that.

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

11 >>MS. SEXTON: Okay, I think that we did
12 state they have to -- a person has to be
13 specifically licensed to receive waste under Part 20
14 and neither Ms. Leonardi to our knowledge nor the
15 community or waste dump that she is referring to, or
16 the licensee are allowed to take possession of or
17 dispose of the material she is claiming.

18 >>JUDGE HAWKENS: And if Ms. Leonardi ever
19 had any factual foundation for such a claim, her
20 remedy is to come directly to the NRC with an
21 enforcement action request. And if there were any
22 factual foundation for that, the NRC has a lawful
23 obligation to take some corrective action?

24 Ms. Sexton: Yes, Your Honor.

25 >>JUDGE HAWKENS: Okay, thank you.

1 >>MR. KLUKAN: Question 6: "The Staff
2 states that Mr. Albertini's contentions should be
3 rejected because they fail to comply with 10 CFR
4 2.309 (f) (1). Please explain the basis of this
5 statement and identify specifically the provisions
6 of Section 2.309 (f) (1) that Mr. Albertini allegedly
7 fails to satisfy."

8 I apologize Your Honors for any confusion
9 I may have caused. It is the position of the NRC
10 staff that whether his petition is treated as
11 continuous contention or separate contention, Mr.
12 Albetini nonetheless fails to satisfy all of the
13 factors of 10 CFR 2.309 (f) (1). In violation of the
14 first factor, Mr. Albertini's description of a
15 radiation reading is insufficiently specific to
16 indicate the factual issue sought to be raised. In
17 violation of the second, Mr. Albertini does not
18 explain why the Army description of contamination at
19 the PTA in the application is inadequate.

20 In violation of the third, Mr. Albertini
21 provides no information to assess whether his claims
22 are within the scope of the proceeding. In
23 violation of the 4th, he makes no showing that the
24 issues he raises are material to the finding that
25 NRC must make in support of granting of the license.

1 Violation of the fifth: He makes no factual argument
2 or expert opinion regarding the need for permanent
3 independent air monitoring of the PTA. He also
4 fails to provide any factual discussion or expert
5 support for his claim there needs to be a thorough
6 and complete search of the record. And in violation
7 of the sixth, finally, Mr. Albertini does not cite
8 to any portion of the application in dispute and as
9 such cannot be assessed whether he has a genuine
10 dispute with the applicant.

11 >>JUDGE HAWKENS: Those are certainly
12 valid arguments for the NRC staff to make if the
13 Petitioners were represented by counsel. And it may
14 be your position that you apply equally strict
15 standards to pro se petitioners. Is that the case
16 or do you apply the contention and admissibility
17 standards a little bit more relaxed when it is a pro
18 se petitioner?

19 >>MR. KLUKAN: I think the Commission has
20 directed the Staff to apply more lax standard
21 because -- but even under the most fundamental,
22 something they have provided a factual basis for
23 which they dispute with the applicant to be heard at
24 a hearing, read independently or even as together, I
25 don't think any of the elements of Mr. Albertini's

1 petition meets that general standard. What has he
2 put forward that disagrees with the Applicant that
3 he has actual support for? Granted, we applied it
4 in a very stringent way but I think even looking
5 back from that, I don't think his petition meets
6 that very general standard.

7 >>JUDGE HAWKENS: All right.

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

9 >>JUDGE BARATTA: Before you go on to that
10 one, let me go back to the question asked about
11 2.309.

12 If I break down what he said that he's
13 taking issue with the search for the contamination
14 which means he is taking issue with the source as
15 quoted; doesn't that follow? To me, he has taken
16 issue with something that is in the application,
17 namely, the supporting basis on which the source is
18 identified of 714 rounds. And then, so that's the
19 issue. And then, his basis as to why it is
20 inadequate is because less than one percent of these
21 areas have been surveyed.

22 So it seems to me, he has got an issue
23 which is specific with the application and a basis
24 for that. And the basis is facts that are in the
25 application. We heard today that so many acres, so

1 many hundreds of thousands of acres weren't
2 surveyed.

3 >>MR. KLUKAN: I would take that one step
4 with all due respect, there is only one percent. He
5 provide no information to say why there needs to be
6 more to say they did not survey enough of the area.

7 He provide no factual basis to assume
8 why -- material basis to assume why they needed to
9 do more or why they were legally required to do more
10 to gather information to put in the application or
11 that is material to a finding the NRC must make.

12 He simply says he thinks one is enough.
13 That seems to be without further factual support
14 Your Honor, simply speculation.

15 >>JUDGE HAWKENS: We may get more
16 clarification when the staff answer the next
17 question.

18 >>MS. SEXTON: Question 7: Please address
19 whether the Commission's regulations require
20 applicant to fully characterize the type, amount and
21 location of material it will hold under
22 possession-only license. Also address what
23 percentage of a site is usually surveyed to
24 determine site characteristics and what is the legal
25 and/or technical basis for the percentage?"

1 The first part of that question, the
2 requirements fully characterize; because they
3 applied for a possession-only license rather than
4 decommission to the Pohakuloa site under 10 CFR
5 Section 40.42, there is no requirement to fully
6 characterize the site. The NRC accepted the license
7 application for review because it met the .05
8 percent and 15 pound threshold by stating they
9 wanted a license for possession of 8,000 keloids of
10 depleted uranium and included their physical
11 security plan in environmental radiation monitoring
12 plan. The NRC has not yet decided if the license
13 application is adequate for the assurance of a
14 license.

15 Further, should the NRC eventually issue
16 an Army license and the Army finds they have more
17 material than they requested a license for, they
18 would have to come back to NRC to request a license
19 amendment. And the second part regarding the
20 technical basis for percentage, because this is an
21 application for possession-only license is
22 acceptable for the applicant to state how much
23 material they wish to possess. And that's all.

24 >>JUDGE BARATTA: Well, I'll get back to
25 the issue, if you don't survey, you don't know how

1 much is there. We already heard they don't know
2 how much has been shipped and clearly the only way
3 to determine what's there is to do a survey.

4 >>MR. KLUKAN: Or if I may, Your Honor to
5 do a bounding conservative analysis.

6 >>JUDGE BARATTA: We just heard a minute
7 ago that you asked them not to do that because
8 apparently they did that in the original application
9 but you told them to modify to put forth these other
10 numbers which I guess I can't tell whether they are
11 conservative or not.

12 >>MR. KLUKAN: The NRC staff has not
13 determined what number is conservative at this
14 point. In terms of how much we believe or within
15 the boundaries conservative necessary to ensure
16 health and safety. A review is not yet complete.
17 We did require site specific environmental
18 monitoring for the reasons the Army describes
19 through differences of groundwater, surface water,
20 air and whatnot and we felt that necessary to do our
21 duties under the regulations. In our review of the
22 application, we thought that information was
23 necessary and would like for each additional site
24 require site specific information of the type we
25 asked the Army to provide us.

1 >>JUDGE BARATTA: I don't dispute that.
2 Because of what has already occurred, given the
3 topography of the two sites is quite different. And
4 we heard something from one Petitioner about the
5 winds coming off the volcano there at night and such
6 because obviously because of the colder temperatures
7 up top verses the lower level.

8 But when -- just seems strange that when
9 you have this large unknown about exactly how much
10 is there and there are credible arguments the
11 petitioners have put forth, this could be three
12 times, four times as much as what is now in the
13 environmental monitoring report, that we would not
14 base it on a more conservative number than what
15 staff told them to use. That's what I find a little
16 bit baffling.

17 >>MR. KLUKAN: I think, Your Honor, there
18 has been some confusion. We did not tell the Army
19 to use any particular number. We told the Army to
20 provide us with an environmental monitoring plan
21 that was site specific. And in doing so, the Army I
22 believe came up with the number they thought
23 conservative for a site specific analysis. We did
24 not direct the Army to use any particular number and
25 I can't say whether the NRC staff believes that the

1 number used in the environmental monitoring report
2 is conservative or not based on our own analysis.

3 >>JUDGE BARATTA: Well, I'm still troubled
4 by the uncertainty in the numbers and consider that
5 one needs to be conservative, don't you agree, when
6 there is a large uncertainty and we are talking a
7 factor of four.

8 >>MR. KLUKAN: I would most definitely
9 agree and that there is unexplored ordinance and
10 other associated difficulty installations
11 characterizing the site fully. We can't sift every
12 inch of it but the staff will determine as part of
13 its analysis whether the Army has collected
14 sufficient evidence for us to complete our analysis
15 of whether we under the finding of 10 CFR 40.32
16 whether we ensure public health and safety and the
17 other findings therein.

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

22 >>JUDGE HAWKENS: Please proceed to the
23 next question.

24 >>MR. KLUKAN: "Please address whether
25 documents referenced in the license application are

1 considered to be part of the application."

2 Your Honor, generally speaking, any
3 documents referenced in a license application is to
4 be considered part of the application to the extent
5 and purpose of the reference made.

6 If an application references a particular
7 chapter of a textbook, only that chapter is thought
8 to be incorporated into the application. Or if the
9 findings, particular findings of the report are
10 incorporated, it does not necessarily mean that all
11 findings unrelated to that finding would be
12 incorporated into the application. Again, it's to
13 the extent and purpose of the reference made.

14 >>JUDGE BARATTA: That seems to conflict
15 with your statement that appears where you state the
16 specific specified reports are not part of the
17 application based on information available to the
18 staff. However, the report was not received as part
19 of the application nor is it currently in the
20 position of the NRC, all staff is in possession of
21 the second record and goes on.

22 >>MR. KLUKAN: I would respond to that
23 Your Honor, I think what we intended to mean, they
24 were not submitted as part of the application. In
25 many instances in reactor licensing and in other

1 large licenses, the applicant makes references to
2 many documents which are not submitted as part of
3 the application in which they are not in NRC staff
4 possession at the time that the license is actually
5 filed with the NRC.

6 We may collect those preferences in the
7 course of our review but does it doesn't mean we
8 have them on hand. We believe that as documented in
9 here, that if Ms. Harden believes that information
10 is missing from the application, or that needs to be
11 part of the applicant's analysis, she should make
12 that known as a contention admission.

13 >>JUDGE HAWKENS: Next question, please.

14 >>MR. KLUKAN: Question 9: "Please
15 address whether the telephone conversation that took
16 place in October 26, 2009 between the Office of the
17 Secretary of the Commission and Ms. Harden
18 constitutes good cause for the alleged late filing
19 of October 30.th 2009."

20 Your Honors, as evidenced in his e-mail to
21 me that I distributed to the Board, Mr. Julian does
22 not recount ever discussingwith Ms. Harden the
23 timeliness of her October 30 addendum. As he states
24 in his email to me, such was not his focus. It is
25 further clear from Mr. Julian's e-mail, Ms. Harden

1 was not granted an extension of time by which to
2 file her addendum by the Office of The Secretary.

3 Moreover, Ms. Harden does not recount that
4 she was granted an extension of time in her
5 pleading, her October 30th pleading by which to file
6 her addendum, 10 CFR 3.209 indicates it is the
7 obligation of the Petitioner to address the 8
8 factors for the admission of non-timely contentions.

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

10 >>MR. KLUKAN: Question 10: "It is
11 claimed that the Army's presence --

12 >>JUDGE BARATTA: Let me ask you, let's
13 take the difference between October 27 and October
14 30, how many days that?

15 >>MR. KLUKAN: Three.

16 >>JUDGE BARATTA: Were you in any way
17 prejudiced if we were to admit those items? Was
18 there any harm that would occur to you or the
19 applicants if we were to allow those items?

20 >>MR. KLUKAN: No, Your Honor, but again
21 simply going by the Commission's regulation, it is
22 her obligation to establish good cause.

23 >>JUDGE BARATTA: Well, It is also the
24 policy and I believe this has been enumerated in CLI
25 that we are to give a certain leeway to pro se

1 intervenors because how long is it going to take
2 you to actually do this license application assuming
3 it goes forward?

4 >>MR. KLUKAN: About a year, Your Honor.

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

7 >>MR. KLUKAN: Speaking from the position
8 of whether there is prejudice to the staff which the
9 applicant, speaking for the staff, I don't believe
10 there is any prejudice.

11 If that is your standard by which to grant
12 this, then, yes. But given that there doesn't seem
13 to be any reason why she could not have filed this
14 as part of her original petition other than she
15 simply didn't and admits herself she knew she was
16 late in filing this, I see no reason.

17 >>JUDGE HAWKENS: Mr. Kluken, take a look
18 if you would please at Attachment 7 to your Answer,
19 the October 30 letter from Ms. Harden to the NRC
20 staff. Let's deal with this as a part of the record
21 as opposed to that I do appreciate that you did
22 talk to Amil and try to provide a full answer to our
23 question, but I'm wondering if the answer can be
24 based on this document alone, when she is
25 referencing the discussion with Mr. Julian.

1 >>MR. KLUKAN: By this, Ms. Harden does
2 indicate she did speak with Mr. Julian but fails to
3 account in the context of that improper
4 conversation, with the Office of the Secretary.
5 However improper, it happened. From this, I can't
6 tell beyond which that she was to consider the
7 October 9th, also her petition for intervention,
8 what else they talked about or why she filed on
9 October 30 as opposed to the 27th.

10 >>JUDGE HAWKENS: As a matter of
11 regulatory authority, does Mr. Julian have
12 permission to grant oral extensions of time or
13 written extensions of time for that matter unless he
14 has been directly -- authority has been delegated.

15 >>MR. KLUKAN: I don't wish to pry into
16 the affairs of the Office of the Secretary. I don't
17 wish to pry into the conduct or the operation of the
18 Office of the Secretary. The Office Of the
19 Secretary does have that authority of course, Your
20 Honor, but again, I do not want to comment on their
21 conduct.

22 >>JUDGE HAWKENS: I'm asking as a legal
23 matter, is there regulatory authority for Mr. Julian
24 to authorize an extension?

25 >>MR. KLUKAN: If you can permit us one

1 moment, Your Honor to caucus. (Short pause) Your
2 Honor, to answer your question, we would need to
3 know whether Mr. Julian was properly delegated that
4 authority and we don't know that in this instance.

5 >>JUDGE HAWKENS: Now, just looking at the
6 sentence starting "Please also consider" which is
7 really the relevant sentence I believe, it does not
8 appear to have any relationship to a discussion with
9 Mr. Julian, does it?

10 >>MR. KLUKAN: No.

11 >>JUDGE HAWKENS: All right. The next
12 question, please.

13 MR. KLUKEN: Question 10: "It is claimed
14 that the Army's presence at the relevant military
15 installation is illegal and (ii) state or local laws
16 prohibit the Army from storing/possessing depleted
17 uranium in the open at these installations. Please
18 address whether the NRC Staff's review of the Army's
19 possession-only license application extends to such
20 claims and provide statutory and or regulatory
21 support for your position."

22 Your Honor, as the Commission has made
23 clear in such case as hydro resource and
24 Susquehanna, I sense some need for resolution to
25 meet the agency statutory responsibility. The

1 agency's adjudicatory process that are primarily
2 the responsibility of other federal or state or
3 local regulatory agencies. For instance, in the
4 preparation of a draft DIS, Staff is to include a
5 federal permit, which to accomplish the proposed
6 action. That is one instance in which the
7 resolution of other statutes or the products of
8 other federal agencies interweave into our own
9 process.

10 To turn to the claims actually made by the
11 Petitioners, Mr. Harp claims the Army is
12 intentionally violating federal law. However Mr.
13 Harp does not specify what federal laws he believes
14 the Army to be violating. Without knowing
15 what particular law he makes reference to, it's
16 impossible to say whether compliance or the
17 resolution of such laws is necessary to meet the
18 agency statutory responsibilities.

19 Regarding Executive Order 12898, the
20 Commission in its environmental justice policy
21 indicates it is an independent agency. The NRC is
22 not required to comply with this executive order.
23 However, it is the policy of the Commission that
24 environmental justice be addressed as part of the
25 NEPA review. However, Mr. Albertini makes no such

1 claims. Moreover, Mr. Albertini does not indicate
2 why the NRC needs to determine to find compliance
3 with the Hawaii resolution which is clear from the
4 discussion that the Army is not complying with to
5 which he makes reference for the NRC to discharge
6 its statutory obligations.

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

8 >>MR. KLUKAN: Question 11: "Please
9 address the claim that the NRC staff should direct
10 all military forces, domestic and foreign, that have
11 trained in Hawaii since 1940 to search their
12 classified and unclassified records for forgotten,
13 radioactive hazards."

14 Your Honors, as the Commission has often
15 noted, the scope of a proceeding is generally
16 determined by the notice of hearing published in the
17 Federal Register limits the scope of this proceeding
18 to the application for source material license
19 submitted by the U.S. Army installation command, at
20 Schofield Barracks and PTA sites in Oahu, Hawaii.
21 As such, this proceedings does not concern or
22 present the presence of potentially other types of
23 material at potentially other locations or
24 potentially possessed by other military persons.

25 Ms. Harden does not make clear how her

1 request fits within the limited scope of this
2 proceeding that being concerned with the depleted
3 uranium presence at the two sites in Hawaii,
4 identified from and spent 150 body rounds. And she
5 fails to establish what information she believes
6 this request would reveal that is absent from the
7 license application that would be relevant to the
8 finding the NRC must make in support of the license
9 application. In light of such, her request amounts
10 to nothing but a fishing expedition that the
11 Commission has clearly determined unfit for
12 adjudication. If Ms. Harden wishes to further this
13 request, she should file it, 10 CFR 2.26 request.

14 >>JUDGE HAWKENS: Finally, question number
15 12, could we return to our standing expert?

16 >>MS. SEXTON: Yes, Your Honor. We are
17 sort of unclear as to exactly where you are going
18 with this, if you would like me to just briefly
19 discuss the cases, or if you wanted to address
20 specific questions?

21 >>JUDGE BARATTA: The question is relevant
22 to standing. I think those four cases, the fourth
23 one summarizes what's in the previous three and I
24 believe there is some holding in each of those three
25 that relates to this case. Could you -- I just

1 wanted you to look at those cases and see if you can
2 tell me what your interpretation relative to
3 standing in each of those cases, the general
4 principle and maybe elaborate on those as to why
5 that might be applicable in this particular case.

6 >>MS. SEXTON: Well, your Honor, I think
7 that each of these cases is very applicable to the
8 situation we have at hand. For instance, in Zion,
9 the Commission noted that Petitioners bear the
10 burden to allege facts sufficient to establish
11 standing and that it is incumbent upon the
12 Petitioners to provide some plausible chain of
13 causation, some suggestion of how they might be
14 harmed by the granting of their requested action.

15 And I think we were shown that
16 specifically today how relevant that is when we have
17 Ms. Leonardi and I want to say Mr. Albertini if I
18 have my notes proper that they were trying to say
19 that it was actually the Army's burden to come
20 forward and show that there was not DU being
21 transported off site. So I think that really
22 directly addresses that concern as expressed by the
23 Petitioners.

24 In Crowe Butte, that was a different case
25 in that the Board found standing there for Dr.

1 Anders and Deborah White and Oaoca (phn)but I think
2 it is important to note that the Commission found
3 the staff's argument -- that the Board effectively
4 found standing where there is only a possible rather
5 than a plausible chain of causation. It was an
6 argument that wasn't without force.

7 And in reading the Commission's decision
8 in that case, I read it as the Commission
9 reluctantly going along with the Board considering
10 the appeal standards. They noted that there was no
11 grossness application of the facts for applicable
12 law.

13 I think that shows their tentativeness and
14 that perhaps if it was an issue of first impression,
15 they might not have necessarily agreed with the
16 Board.

17 In NFS, a case on material licensing
18 amendment, they found that proximity alone does not
19 suffice for standing absent potential for off-site
20 harm and found there was none there, and must show a
21 specific and plausible means by the Petitioners.
22 The Board also found no concrete particularized
23 injury. From there the Petitioner only made
24 conclusionary allegations about the potential
25 radiological harm to herself and others. They also

1 said pleadings must be something more than ingenious
2 academic exercises and conceivable.

3 The Plaintiff must allege that he will in
4 fact be perceptively harmed by the challenge action,
5 not that he can imagine circumstances by which he
6 could be affected by the agency's action. Thus,
7 their claims cannot be entirely speculative.

8 And coming now, the Tennessee Valley
9 Authority case of Sequoyah; there, one of the
10 Petitioners, WTP got proximity plus standing because
11 they live within 12 and 17 miles of the plant. This
12 was a reactor case, an application to amend text
13 specs and the potential for off-site consequences
14 was obvious.

15 The other Petitioner, Ms. Jennine
16 Honniker, they found no proximity presumption
17 because her contact with the zone of harm is not
18 sufficient frequency. There were change amounts in
19 the area and I think that is something we can really
20 look at here.

21 We have again, I think it was Mr.
22 Albertini who was describing the times that he went
23 to Monakua where the spike he alleged occurred. And
24 according to the Commission in that case, his
25 contacts with that site were not such that they were

1 akin to the kind of contact residency provide. And
2 it seems some of the other ways that Petitioners try
3 to demonstrate standing with driving on roads and
4 going to meetings at the site, those don't -- are
5 not akin to residency that would establish the
6 frequency of contacts necessary by the Commission.

7 Also under traditional and judicial
8 concepts of standing, found that none of her alleged
9 claims are sufficient of standing as a matter of
10 right. Her claims dealt with contaminated food,
11 fear caused by traffic jams while trying to leave a
12 University of Tennessee football game. They found
13 her claims were too remote, speculative, that they
14 were outside the AEA zone of interest and that the
15 Petitioner fails to demonstrate that her alleged
16 injuries would re re-dressed by a favorable Board
17 decision.

18 >>JUDGE HAWKENS: We are now ready to
19 start oral argument. Our Petitioners in Hawaii, we
20 do not see you on the screen. Can you hear us? I
21 hope so.

22 MR. DEUCHER: We can hear you now. Can
23 you hear us and see us?

24 >>JUDGE HAWKENS: You are coming across
25 loud and clear. And we do see you now. Let's start

1 with Mrs. Harden, please. We're on the closing
2 stage.

3 >>MS. HARDEN: I'm having difficulty with
4 our room size, we can't spread all of our papers out
5 and have them handy. I'm just going to go through
6 a few notes here. Someone mentioned about the Army
7 has coordinated with agency for Toxic Substances And
8 Disease Registry. Well, they went to where there is
9 depleted uranium and some other very hazardous stuff
10 and said everything is fine. But then, they come
11 back several months or a year or so later and said,
12 oops, I think we missed something. We are going to
13 look again.

14 These are also the people that brought you
15 the formaldehyde trailers that people were put in
16 after Katrina. There was a scathing congressional
17 report about how there was a systematic coverup of
18 the danger from that formaldehyde, the health
19 effect and a systemic thing. So this agency is not
20 a seal of approval. It's more like a warning label.
21 Let me see.

22 I'm sure you're also aware that people
23 sometimes talk and double speak. Years ago in the
24 1960's, we talked about some of the dangerous
25 chemicals and bacterial agents that were used in

1 forest reserve on our island. Our Army lied about
2 it and said they were doing weather testing and I'm
3 kind of paraphrasing what I remember here. But the
4 reporters would say, are you using these agents, are
5 you using them? And the Army would say, no. Finally
6 one reporter said, did you use them? And the Army
7 finally said, yes, told the truth. But it was all
8 in how it was phrased.

9 We've talked about numbers of spotting
10 rounds and I'm going to remind you something I think
11 in one of my submissions about the pistons. When
12 the Davy Crockett was fired, there was always a
13 piston that landed on the ground. And the Sierra
14 Club consultant looked at the number of pistons
15 which was several hundred, counted five spotting
16 rounds per piston because there was up to five
17 spotting rounds used, you know for each firing. So
18 generally, for each piston, there was up to five
19 spotting rounds.

20 That's how he came up with the 2,000
21 figure just for Pohakuloa. That's not statewide.
22 So that is one line of evidence.

23 Another line of evidence is Colonel
24 Killigan telling me that if you look at the training
25 manuals, you'd also come up with the 2000 spotting

1 round figure for Pokhakula because that's how many
2 rounds you need to qualify.

3 He also talked about gee, Davy Crockett
4 was probably only fired on certain ranges because it
5 was not allowed to go elsewhere. We've been finding
6 ammunition dumped where it was not supposed to be so
7 the Army does not always follow its own regulations
8 or its personnel don't always follow regulations.
9 We've had complete ammunition boxes found in 30 feet
10 of water several hundred yards offshore at one
11 beach.

12 We have old munitions in our bay in our
13 town here, also at a couple of beach parks. People
14 tell stories about how the boats were given
15 ammunition to go dump certain miles -- certain
16 number of miles out at sea. But maybe, Friday
17 afternoon, time to get off work so they wouldn't go
18 quite so far off. They come back in.

19 In fact, there is a reef off Awakua called
20 Ordinance Reef, there is so much ordinance up there.
21 So much for following regulations. The aerial
22 surveys, I looked really hard at the reports. I
23 cannot figure out if they are saying they flew over
24 the entire impact area or just those small suspected
25 Davy Crockett ranges. It looks like they only flew

1 over the ranges. The language is not clear.

2 If monitoring is based on how many
3 spotting rounds you think there are, it is kind of a
4 self-fulfilling prophecy.

5 Judge Barrata talked about the response to
6 Congress person, Herona. The Army misquoted the
7 Archive Search Report. Please look closely at that.
8 They added stuff to indicate fewer spotting rounds.

9 Another note I noticed, theres' a lot of
10 folks there. Their experts were paid to be there.
11 One of our experts, Dr. Pang wanted to come today.
12 He could not come. He works for the Department of
13 Health on another island and he is off on another
14 job. We could not get someone. We can't afford it.

15 Let's see, we talked about perhaps there
16 might be errors in training. The soldiers are
17 learning how to do this. They might fire
18 accidentally on top of the DU rounds. I was
19 remembering how the trade snafu situation held up.
20 That comes from the Military. They talked about
21 world health organization guidelines. Those are for
22 soluble uranium, not insoluble like they are talking
23 about.

24 We were talking about injury-in-fact.
25 Without thousands of dollars for a lawyer, frankly,

1 I'm lost. I don't have the background to understand
2 that. You talked about a plausible chain. We are
3 saying that DU oxide, you get a tiny amount in your
4 lungs, the chain of causation is all you do is
5 breathe when you go up there.

6 I thought I heard that the Army can state
7 how much material they want to possess and there is
8 no requirement to fully characterize. That does not
9 sound right to me. Let's see, reasons for filing
10 late: If you look at my late filing, I think there
11 is like a hundred pages of attachments. It was a
12 humongous amount of work. I have health problems.
13 It is an hour and a half for me to get round trip to
14 the Xerox machine and post office. And I don't have
15 a computer that works all the time.

16 So that kind of happened. And I have a
17 few summaries from some of our experts one from Dr.
18 Blann. He is the consultant in Los Alamos, National
19 Laboratory, I think it is. But regarding the aerial
20 survey where the helicopter went over, his comment
21 was gee, any DU dust probably got blown away by the
22 rotor wash. There is even testing protocols, names
23 that are misspelled. He is saying that in the
24 samples, the procedures to remove extraneous
25 substances may have also removed other substances.

1 Dr. Reimer points out that there are no
2 distinct services with yellow oxidized DU fragments.
3 In that same report, yellow on a DU fragment. I
4 guess my last thoughts, I keep thinking if it was
5 gold and not radioactivity, they would be finding a
6 lot more of it. I do want to acknowledge all of the
7 participates to make the best of a complex situation
8 and to do the right thing as they see fit. Thank
9 you.

10 >>JUDGE HAWKENS: We just lost audio, so
11 if you want to hold on for a moment, Ms. Harden.

12 (short break)

13 JOE: The Petitioner would like to know
14 where things cut out.

15 >>JUDGE HAWKENS: Lorraine, can you help
16 us out?

17 >>MS. HARDEN: I was talking about Dr.
18 Blann's comments on one of the surveys.

19 **(whereupon the last few sentences were read back by**
20 **the court reporter)**

21 >>MS. HARDEN: So I guess you heard most
22 of it. I think we are all set. My last statement
23 was to say they were looking for gold and not
24 radioactivity and I think that they would be finding
25 more of it. And I just wanted to end by thanking

1 participants for their efforts on a complex subject
2 and just trying to do the right thing here. Thank
3 you.

4 >>JUDGE HAWKENS: Thank you Ms. Harden.
5 Ms. Leonardi.

6 >>MS. LEONARDI: I want to thank you for
7 having me -- having us here. Initially this is for
8 our community and that was my first engagement with
9 NRC. And today we are here in this process which is
10 quite a thing to do. Thank you.

11 First of all, I would like to thank the
12 Mormon citizens of St. George Cedar City and other
13 sacrificial cities south of the city of Southwest
14 Utah. From Hawaii, I thank you very much. I'm
15 actually quoting from the Downwinders filing case,
16 Allen versus the United States before Federal Judge
17 Bruce Jenkins in Salt Lake City in August of 1979.
18 The Acupa Bill (phn) is upon us and we are heavy and
19 laden for it will have a direct effect on Hawaii's
20 population for the Military is included in that
21 bill.

22 The federal, state, and local and
23 governing entities incorporate this have swept away
24 our injuries in Hawaii, specifically to Waine
25 population. For I am 50 percent blood (inaudible)

1 defined by U.S. Congress living on ancestral land in
2 Waine Valley.

3 In 1964, I met my husband in Kapakuwi.
4 (phn) This is the home of agent orange at the age of
5 15. On May 13, 1968, there was a national call out
6 to serve in Vietnam.

7 On May, 26th, 1968, I gave birth to my
8 second child at Tripler Army Hospital. My husband
9 left to serve in Vietnam on May 26, 1969.
10 The problem with agent orange at that time was swept
11 away.

12 As the stakeholder for the purpose of
13 stewardship, sir, I have been attending community
14 hearings to discuss live-fire and its plume
15 disperment in Makoura, Waine since the year, 2001.
16 To date, these meetings are ongoing.

17 I have raised the issue of DUs since 2001
18 at these meetings. They were documented and can be
19 viewed. I have 19 surface private dump sites for
20 surface dumping directly in back of my home.
21 Yes, I have followed unintentionally the truckers to
22 Schofield Military Base and watched the truckers
23 that evening bring home soil to their private dump
24 in back of my home.

25 I was offered \$15,000 in the year, 2002

1 for injury, given in my -- for injury, for dust
2 plume injury. Given my father's experience during
3 World War II, I did not accept a penny of that offer
4 in a tort case. The problem again was swept away.

5 Our 25th sustainable initiative plan in
6 the state of Hawaii should this license be permitted
7 to the Army to possess DU, I will be asking for an
8 exit plan for 2050 on Hawaii's states sustainable
9 plan from the leaders of my people, Kamocawile
10 (phn), the true aloha of Hawaii. And I would like
11 to end by saying with a question: I have been
12 dealing with enforcements. As a matter of if a
13 fact, you can go to our beaches in Waine and talk to
14 any little child that's homeless and living in
15 tents, what enforcement means. They can tell you.
16 They can describe to you. They can show you. They
17 can point to you, what is enforcement. The word
18 enforcement is a word that we live with every day.
19 And we live with that distrust within that
20 enforcement.

21 So, I just want to ask the question and
22 leave you with that question, who is the enforcer
23 for misuse of mismanagement of depleted uranium in
24 Hawaii? And I thank all of you for this day
25 Mahalo.

1 >>JUDGE HAWKENS: Mahola. Thank you Ms.
2 Leonardi. Mr. Albertini?

3 >>MR. ALBERTINI: Aloha again. It's been
4 a long day and I appreciate the tone of the judges
5 throughout this session. It is a bit dismayed about
6 the NRC attorneys. They sounded more like the
7 Army's attorneys in this proceeding here. But I
8 think the star witness today was Murphy, Murphy's
9 Law, showing whatever can go wrong will go wrong.

10 >>JUDGE HAWKENS: Truer words were never
11 spoken Mr. Albertini.

12 >>MR. ALBERTINI: You know, I understand a
13 little more today what it is like to be under
14 occupation. A little more like what it must be like
15 in Iraq and Afghanistan. You in Rockville are 5,000
16 miles from us and yet, you are sitting in judgment
17 of whether we live on this island have standing and
18 if our contentions about military depleted uranium
19 on our island home have any merit. The Army's
20 application for DU does not say a word about DU
21 moving off-site. It all appears to be neatly
22 packaged and stays in the bombing impact area. I
23 don't believe it.

24 If you, the NRC license the Army to
25 possess DU on-site and citizens turn up DU off-site,

1 you will have a lot of poison DU egg on your face.
2 But we the residents of Hawaii will be breathing and
3 eating the poison dust.

4 That's why if you are going to issue a
5 license, it better be with strict transparent
6 monitoring and testing done with the guidance Dr.
7 Loren Painn and Mark Rhymer to assure the confidence
8 of our community. And although I fear other areas
9 that create dump, must be stopped and other activity
10 that create dust must be stopped until there is this
11 comprehensive assessment of the entire PTA base for
12 DU contamination. You know an important point is
13 that the Military maps of PTA have written on them
14 in capital bold letters, all of PTA should be
15 considered a dump hazard area.

16 The same is true for the DU. All of PTA
17 should be considered a DU hazard area and any
18 activity that may disperse that DU should be
19 pivoted. Talk about Murphy's law and the points
20 raised about accuracy.

21 The military bombing here in Hawaii, when
22 they were supposed to bomb the Island of
23 Kolombie, (phn) they bombed the island of Maui by
24 mistake. Bombs landed in the mayor of Maui's yard.
25 When they were supposed to bomb Kauoha, (phn) they

1 bombed Neia (phn) by mistake. When they were
2 supposed to bomb a PTA, they missed the entire
3 133,000-acre base and bombed the Manukia access
4 road.

5 DU can travel off base from wind, fire
6 explosions, vehicle and rain. The NRC may not be
7 able to prohibit wind, fire and rain, but it can
8 prohibit explosions and vehicles at PTA. On
9 average, the bases across the U.S. covered by the
10 Army's license request correlate with higher cancer
11 statistics using the number 1,2 in the states of
12 their counties.

13 You, the NRC are supposed to be the
14 regulators of the nuclear industry. Don't fail us
15 like the Wall Street and mortgage bankers regulators
16 failed the people of the United States.

17 Your job is to protect the public health
18 against the Military industrial nuclear complex.
19 Put the burden where it belongs, not on the citizens
20 to prove harm but the Military complex to prove that
21 it is safe. They have not done so.

22 Dr. Loren Pang if he could be here today
23 would make this point. The Army previously assured
24 us that soldiers exposed to inhaled DU oxide
25 developed no illness. This has been reviewed by a

1 group independent researcher sponsored by the VA who
2 shows the problems like tumors benign and malignant
3 were ignored.

4 Pang asked for other symptoms ignored as
5 well as their obsession to prove safety. Because of
6 this, the Army has publicly lost credibility on the
7 issue of DU health risk.

8 And in conclusion, in the last 70 years,
9 the U.S. has spent \$5.5 trillion on nuclear weapons
10 including DU weapons. For years, monitor this
11 picture -- this was considered decontamination in
12 dealing with nuclear contamination. The plume, the
13 plumes sweeping off people with radioactive
14 contamination. I think it's time to do better than
15 that.

16 So in the event that you issue a license,
17 here are my four conditions: Stop all live-fire and
18 dust creating activities at PTA and support the 7
19 other points called for by the Hawaii County Council
20 in resolution, 639-08 and Resolution 701-08 naming
21 Dr. Loren Payne as the official County
22 representative on the DU issue with the Army.

23 The points in resolution 639-08 all
24 support the precautionary principle.

25 Number two: The entire PTA base needs to

1 be thoroughly tested and monitored independently
2 with guidance from Dr. Payne and Dr. Rymer.

3 Three: A thorough cleanup and
4 decommissioning of these military complexes is
5 necessary to protect public health.

6 And Four: There needs to be transparency
7 and community input throughout the process,
8 otherwise, there will be a vote of no confidence by
9 the community as the West Hawaii today poll on PTA
10 already underscores. The Pentagon dirty bombers in
11 paradise must be stopped. The land must be returned
12 clean to its rightful owners, the independent nation
13 of Hawaii. I wish you all well. Aloha.

14 >>JUDGE HAWKENS: Thank you Mr. Albertini.
15 Aloha. Mr. Harp.

16 >>MR. HARP: Hello Your Honor, and thank
17 you for the opportunity to present my closing
18 argument. There is a lot of discussion on
19 radiological harm. I think our concern is beyond
20 radiological harm and we are primarily concerned
21 with chemical harm when we ingest this foreign
22 material.

23 And I thank you Mr. Albertini. I'm kind
24 of surprised that Kimberly and Brett, the position,
25 didn't seem to provide any leeway at all to us and

1 we don't have legal representation it's almost as if
2 they are representing the applicant rather than
3 being a reviewer of this process. I'm kind of
4 surprised how that went.

5 And a lot of the previous communications
6 were discussed and there is a Mr. Lonnie Simpkin
7 that sent a few e-mails early on in the process to
8 provide an extension to Petitioners and Mr. Simpkin
9 said that NRC was in violation of their process for
10 not providing an extension to all and not just to
11 this small group. I just want to bring that up.

12 And, there is a lot of discussion about
13 how many rounds, how many rounds here in Hawaii.
14 There is a memo from the Army to the NRC dated
15 November 4 and they state in the top paragraph on
16 the last page "about", -- "about," "about" 3 times
17 "approximately "once and "not currently known." So
18 they really have no idea how many rounds. But they
19 do have some figures on here and they say that
20 29,300 rounds were for distribution to Army
21 organizations out of the total of 75,000 that were
22 created.

23 So I think a more common sense approach in
24 calculating the distribution of how many rounds
25 might be here will be to divide that 29,300 by the

1 nine sites that they are proposing to have this
2 license under.

3 And I'm not sure if the military is also
4 exempt from the federal record doctrine of 1950 as
5 they are exempt from a lot of other things but I
6 would think they should have some kind of
7 requirement where they need to maintain records of
8 ammunition whether spent or not.

9 And I guess this would be considered
10 circumstantial evidence but I did some research on
11 the cancer rates in Hawaii and found out that out of
12 18 categories of cancer, the residents of this
13 island have the highest rate for ten categories.
14 What surprised me most was that this island per
15 capita cancer rate was not only the highest in
16 Hawaii, it was higher than all the contiguous 49
17 states. Seven out of the nine sites the Army wants
18 to place under a license rank first or second in
19 highest cancer rates in those states, actually six
20 out of nine because Hawaii is not lawfully a state.

21 Like Hawaii, the United States military
22 also contaminated Puerto Rica and representatives
23 out in Grason spoke to a subcommittee of the U.S.
24 House of Representatives committee on health and
25 environment and said that compared to normal

1 residents of Porta Rica, residents have 269 percent
2 increased chance of cancer.

3 Seventy three percent increase congenial
4 heart problems, et cetera, et cetra. I don't want
5 to burn up whatever time I have left so I will just
6 move on. I oppose the Army's application as written
7 because it provides no additional protection for the
8 health and safety of Hawaii residents. All they
9 have in their application is -- what was it --
10 specific functions to be performed under the license
11 will be limited to radiological surveys.

12 That's all you want to create a dumping
13 place, just do some radiological surveys. That's
14 ridiculous. But the application is I guess a
15 license to dispose in place on the surface. If the
16 Army is granted a license, I believe at a minimum,
17 it should include provisions to like Mr. Albertini
18 suggested, halt all military training activities to
19 minimize further disturbance of the depleted
20 uranium, include a mandatory decommissioning plan
21 for each military complex. And cleanup should be to
22 a level that provide for unrestricted use.

23 Test and treat if necessary, the
24 groundwater supply. I provided some information
25 earlier that this stuff can get down into our

1 groundwater supply. And provide for transparencies
2 by establishing committee, a representative of which
3 should be selected by the folks in the affected
4 community.

5 Include provisions for private sector
6 experts that are chosen by the civilian committees
7 to be involved in all aspects of testing,
8 decommissioning, et cetera. And include a fair
9 compensation for civilian and private sector
10 participants for their time and services. Those
11 responsible for contaminating the place, I think
12 it's reasonable to conclude that those involved in
13 cleanup should also be compensated.

14 Before I conclude, I wanted to take an
15 opportunity to reiterate a couple of points that I
16 expressed at public meetings here as well as over
17 e-mails to the NRC staff. The United States
18 Government and Hawaii, there was never a treaty
19 obsession. Public law 103-150 that was signed in
20 1993 apologizing to the native Hawaii people for the
21 illegal overthrow of our Government.

22 And I also have another document somewhere
23 around here from the U.S. Department of Justice and
24 they are discussing extending the territorial fees
25 and they question the process in which Hawaii was

1 taken by the United States. And I quote, "Only by
2 means of treaties was it asserted that the
3 relationship between states be governed for
4 legislative act" which was how it was acquired "is
5 necessarily without extra territorial force.
6 Confining this operation to territorial state was
7 enacted." So it was not lawful beyond the boundary
8 of the United States to come out here and steal
9 Hawaii the way they did.

10 Gentlemen, your agency might not have the
11 authority to undo all the injury the United States
12 has inflicted on a peaceful and friendly Hawaii over
13 the past 117 years, but in this small instance, you
14 do have the authority to minimize further injury to
15 the environment and people of Hawaii in the future.

16 If the Army is granted a license to
17 possess depleted uranium without the provisions
18 presented to you for decommissioning, this Board
19 will be intentionally exposing Hawaii residents to
20 further injury and suffering.

21 In conclusion, the Plaintiffs clearly have
22 standing and the right to protect our families,
23 communities and what we call home from the poison
24 dust.

25 It is the Army that has no standing here.

1 The time to end the United States military
2 occupation of Hawaii is now. I thank you all for
3 your time and consideration and sorry that your
4 dinner is so late this evening. I know you are like
5 five hours ahead of us there and I will conclude.
6 Thank you.

7 >>JUDGE HAWKENS: Aloha, Mr. Harp. I'm
8 sorry your lunch is delayed. We will now hear from
9 the Army.

10 >>LTC. HERRING: Your Honors, based on the
11 pleadings and responses today to your questions, the
12 applicant closes. The Petitioners have not
13 satisfied the rule on standing and contention
14 admissibility and join with the NRC staff in
15 reaching this conclusion -- agreeing their
16 conclusion is a better phrase. The rules for
17 submitting pleadings and what needs to be shown was
18 clear. It is unclear in the CFR but even beyond
19 that, I cite those provisions in the August Federal
20 Registry Notice about two months before they began
21 to submit motions. Only one file came close in its
22 format even to the information required.

23 As Ms. Harden admitted her 30 October
24 filing was late, and its contents should not be
25 considered by this panel. She had already at that

1 point received a 14 day delay and was well aware of
2 the rules and importance of filing matters in a
3 timely fashion.

4 With regard to standing issue, there were
5 several questions related to Ms. Leonardi and her
6 claim that the dust plumage and I believe Your Honor
7 asked her what was the factual basis. And while I
8 don't disagree with the chart she showed, there is
9 still no link to causation, still no showing what
10 caused that even if we were to take a look at that.
11 We don't know what that is and that's why the
12 standing rules that this panel has that we must
13 follow are important.

14 In addition, she states that the Army is
15 purposely dumping DU soil in the community but has
16 no basis or fact for that statement. In fact, that
17 is not occurring.

18 And with regard to just a couple of
19 issues, Your Honor, Mr. Albertini has a key issue, a
20 number of acre surveys. I think to clear that up,
21 with regard to standing, there is no factual --
22 while it is true we surveyed 936 acres of PTA, there
23 was a basis in fact for the Army doing that.
24 That -- or the petitioner has stated -- given no
25 factual statement for why we didn't do enough.

1 I think that's the issue that should be
2 key was resolving that issue is why wasn't one
3 percent enough. If it had been 58, would that have
4 satisfied the Petitioner? There was a basis in fact
5 for choosing that amount and based on the history
6 and what I described in answer to that question.

7 And we spent a lot of time today talking
8 about the amount of rounds that may or may not be in
9 Hawaii. And it occurs to me that while that
10 certainly -- the Army -- we were trying to determine
11 that with the most finality and definiteness as we
12 can, the key is that the Army in its application,
13 set up procedures, protocols to ensure safety that
14 whatever DU is there, whether it be 714 or up to a
15 max that we conclude based on the manual in six
16 years 2,526; do we have safety protocols in place to
17 detect and ensure that no DU in any form is leaving
18 the site?

19 That's the key I believe in the focus and
20 I don't believe today that any substantive
21 allegation affects our application from the
22 Petitioners, whether our application was flawed
23 using the wrong methodology. I don't believe that
24 occurred. And that is necessary when this body
25 rules to consider the application that we have

1 submitted and whether something is wrong with it.

2 And finally, Your Honors, the Army has
3 kept the public informed on the website. There are
4 approximately 24 documents have been added over time
5 to try to keep petitioners and others in Hawaii
6 notice of what we are trying to do. The Archive
7 Search Report is there, range results, aerial DU
8 results. A briefing was given to Hawaii County
9 Council to name but a few of approximately 24
10 documents.

11 With that Your Honors, we would
12 respectfully submit that this panel based on the
13 pleadings and the information provided today be
14 denied standing as they have not articulated
15 requirements for such and that beyond that, fail to
16 allege admissible contentions. Thank you.

17 >>JUDGE HAWKENS: Thank you.

18 >>MR. KLUKAN: Your Honors, the NRC staff
19 would like to thank the Board for this opportunity
20 to answer both questions and clarify the position of
21 the staff. One thing I would like to note, the Army
22 if license is granted will need at the appropriate
23 time as specified in the regulation, decommissioning
24 plan for which a notice of opportunity will issue h
25 in the Federal Register.

1 In summary, as the staff stated in its
2 Answer, the NRC staff believes that the request for
3 hearing filed by Ms. Harden, Ms. Leonardi, Mr.
4 Albertini and Mr. Harp should be denied because
5 they did not establish standing in the admissibility
6 requirements of 10 CFR 10 2.309(f)(1). Contentions
7 must be more than speculation. Contentions must be
8 more than fishing expeditions.

9 As the Commission recently stated in CLI
10 1001, summer, while some latitude is to be extended
11 to pro se litigants, they are nonetheless expected
12 to comply with the Commission's procedural rules
13 including contention requirements.

14 The petitioners raise many past bad acts
15 by the military, biological weapons testing,
16 chemical weapons, Agent Orange. The Staff does not
17 dispute these claims or in any way mean to diminish
18 the consequences of the Army's bad actions, however,
19 such claims simply cannot be adjudicated before this
20 panel.

21 Such claims are outside the scope of this
22 proceeding. With that said, Your Honors, the Staff
23 would like again, to thank the Board for this
24 opportunity.

25 Judge Hawkens: Thank you Mr. Klucken. I

1 would like to thank the Petitioners for their
2 participation today. We are aware that they
3 proceeded without the assistance of counsel, were
4 unaccompanied by any specialist or expert, and I
5 think notwithstanding that, it is very clear you
6 did a lot of homework, very conscientious in your
7 preparation and did a very credible job of answering
8 the questions posed by the Board and representing
9 your position. We thank you for that.

10 Department of the Army, the NRC staff
11 likewise, we are grateful for your answers to our
12 questions. Everybody's answers will provide
13 substantial assistance to this Board as we draft our
14 decision on standing and contention admissibility
15 and we will make every effort to issue that decision
16 during the month of February. Before adjourning, I
17 would like to make a couple of comments, a couple of
18 people I would like to recognize. First, on behalf
19 of the Board, I want to thank the Univeristy of
20 Hawaii, Hilo campus, once again for making their
21 facility available to us and to the Petitioners.

22 I would like to single out a Mr. David
23 Scott, out there. I believe he is or at least was
24 in the facility there and his title I'm told is
25 media technician. But he was instrumental in

1 helping us reserve the room and showing us the --
2 assisting us in the operation of the equipment out
3 there. Thank you very much.

4 Two individual in the graphics Department
5 who assisted Joe in copying material, Susan Agowa
6 and Dan Bronco. Thank you very much. And finally,
7 I would like to thank a few people here, the Board's
8 law clerk, Ms. Katie Tucker for her assistance and
9 legal research. And I know her assistance in
10 endeavoring to assist the Petitioners in a lot of
11 questions they had in preparing for this argument.

12 The administrative support provided by
13 SherVerne Cloyd and finally, the IT support,
14 supplied by Joe Docheuer out there in Hilo, Andy
15 Welke and Matt Cutchen. I'd like to remind
16 everybody that the webcast will be available in the
17 archives and on the NRC website for a period of 90
18 days and for any individual who would like to read a
19 transcript of this proceeding, within about a week
20 or so, it will be available in the Licensing Board
21 Docket for this case. Thank you again. We are
22 adjourned.

23 (Whereupon, the proceedings were
24 concluded)

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CERTIFICATE OF REPORTER

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of U. S. ARMY Installation Command, Atomic Safety and Licensing Board, Docket No. 40-90-83, on January 13, 2010, Rockville, Maryland, was held as herein appears and that this is the Original Transcript thereof for the file at the U.S. Nuclear Regulatory Commission taken by Caption Reporters Inc., and that the transcript is a true and accurate record of the foregoing proceedings.

Lorraine Carter, RPR
Official Court Reporter