UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
U.S. ARMY INSTALLATION COMMAND	)	Docket No. 40-9083
	)	
(Source Materials License No. SUC-1593, Amendment 2, Davy Crockett Depleted Uranium at Various United States Army Installations)	)	

US ARMY INSTALLATION COMMAND'S ANSWER TO REQUESTS FOR HEARING BY MS. CORY HARDEN, MR. JIM ALBERTINI, MS. HAWANE RIOS, AND MS. RUTH ALOUA ("PETITIONERS")

Pursuant to 10 C.F.R. § 2.309(i)(1), the U.S. Army Installation Command (Army) hereby responds to the Requests for Hearing and Petitions for Leave to Intervene submitted by four pro se petitioners – Ms. Cory Harden, Mr. James Albertini, Ms. Hawane Priscilla Marie Kalikokaumakaikealaulaomana Rios, and Ms. Ruth-Rebeccalynne Tyana Lokelani Aloua (hereinafter referred to as Petitioners). Petitioners request a hearing regarding the Nuclear Regulatory Commission's (NRC) issuance of an amendment to the Army's Source Material License No. SUC-1593, Amendment 2, Davy Crockett Depleted Uranium at Various United States Army Installations, 82 Fed. Reg. 10,031 (Feb. 9, 2017) [hereinafter Amendment 2]. For the reasons set forth below, the request for hearing should be denied, as Petitioners have neither met the requirements for standing nor for contention, pursuant to 10 C.F.R. § 2.309(d) and (f), respectively.

I. BACKGROUND

The Army's request for an amendment of the Source Material License, originally granted by the NRC on 23 October 2013 pursuant to 10 C.F.R. Part 40, stems from past use of the M101 "spotting rounds" containing depleted uranium (DU). See 78 FR 70077. These rounds were used in the 1960s for training purposes on firing ranges at Schofield Barracks (Schofield) on the island of Oahu and at Pohakuloa Training Area (PTA) on the island of Hawaii.[1] The rounds were used with the Davy Crocket Weapon System, a then-classified tactical nuclear weapons system produced from 1960-1968. The DU enabled the rounds to imitate the trajectory of non-nuclear practice projectiles and detonated on impact, permitting the operator to target the weapon accurately prior to firing practice projectiles.

After 1968, the Army no longer used the Davy Crockett Weapon System and lost institutional memory of the presence of DU from the spotting rounds at its installations for decades thereafter. In 2005, the Army discovered tail assemblies from the M101 spotting rounds and other DU fragments at Schofield while clearing range areas of munitions. See U.S. Army Installation Management Command, Environmental Radiation Monitoring Plan for [DU] from the M101 Spotting Round for Schofield Barracks at 4 [hereinafter Schofield Radiation Monitoring Plan]. The discovery triggered an Army-wide records search to identify other potential sites where M101 spotting

[1] DU is uranium with a percentage of uranium-235 lower than the 0.7 percent (by mass) contained in natural uranium. Commercial use of DU includes counterweights, military armor, armor-piercing munitions, and sporting rounds. See Background Information on [DU], http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/uw-streams/bg-info.du.html.
Besides Pohakuloa Training Area, the Army used DU rounds at 17 other ranges within the United States. These ranges are also addressed in the Source Material License No. SUC-1593, Amendment 2. See Amendment 2, supra.

rounds may have been used. See U.S. Army Installation Management Command, Physical Security Plan for [DU] from the M101 Spotting Round at 1. An Archive Search Report was subsequently completed, revealing that M101 spotting rounds were used at both the Schofield Barracks and Pohakuloa Training Area ranges. See U.S. Army Installation Management Command, Physical Security Plan for [DU] from the M101 Spotting Round at 1; Schofield Radiation Monitoring Plan at 3-4; accord U.S. Army Installation Management Command, Environmental Radiation Monitoring Plan for [DU] from the M101 Spotting Round for Pohakuloa Training Area at 3-4 [hereinafter Pohakuloa Radiation Monitoring Plan]. According to the report, 714 of the M101 spotting rounds were shipped to Oahu, Hawaii in 1962 for use at either Schofield or PTA.[2] See Archive Search Report at 4.

Consequently, on November 6, 2008, the Army submitted a license application to the NRC, requesting authority to possess and manage DU at Schofield and PTA. See Application for Materials License at 4 (Nov. 6, 2008) [hereinafter License Application]; Notice of License Application Request of U.S. Army Installation Command for Schofield Barracks, Oahu, HI and Pohakuloa Training Area, Island of Hawaii, HI; see also Notice of Opportunity for Hearing, 74 Fed. Reg. 40,855 (Aug. 13, 2009). In the application, the Army sought to perform functions

> limited to radiological surveys as necessary to fully characterize the nature and extent of contamination and, when appropriate, to obtain information necessary to support development of a decommission plan. [DU] may also be subjected to disposal by transfer to a properly permitted/licensed disposal facility.

License Application at 4.

[2] Army records do not reveal how the 714 rounds were allocated between Schofield and PTA.

The Army also noted that the "M101 spotting round fragments are located … well within the [military] installation boundary and are located in an impact area where access is strictly controlled." Id. at 3. The remote location also contains unexploded ordnance, requiring special training for entry, "limit[ing] the potential for inadvertent exposure and ensur[ing] members of the general public, [as well as] … Army civilians and soldiers, are not directly exposed to the material." Id. The Army conservatively estimated that 1,232 pounds of DU were present in the surface soil at both Schofield and PTA – resulting in estimated exposure significantly lower than the decommissioning screening value for uranium and less than the general public dose limits. Id. at 9-10.[3]

On August 3, 2009, the NRC notified the Army that the license application was adequate and that NRC would commence its determination of the safety, health, and security findings require by the Atomic Energy Act of 1954 and the NRC's implementing regulations for approving the license request. See 74 Fed. Reg. at 40,855. On August 13, 2009, NRC placed the notice of the proposed action in the Federal Register. Id. The NRC then held a series of public hearings regarding the Army's request for a DU possession-only license in Hawaii on the following dates: August 25, 2009, in Wahiawa, Hawaii, August 26, 2009 in Kailua-Kona, Hawaii, and August 27, 2009, in Hilo, Hawaii.

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[3] "A total of 714 Cartridges, 20mm Spotting M101 were confirmed to have been shipped to Hawaii. No evidence has been found that addition [sic] rounds were requisitioned or shipped to Hawaii." U.S. Army Corp of Engineers, St. Louis District, Final Archive Search Report On the Use of Cartridge, 20MM Spotting M101 for Davy Crockett Light Weapon M28, Schofield Barracks and Associated Training Areas Islands of Oahu and Hawaii (May 2007) at 4.

The Board noted in its opinion on the original license that he Army's License Application conservatively assumed that ten percent of the 29,318 rounds that the Army could not definitely account for at the time were all fired on a single range at either Schofield or PTA. As a result, an estimated total of 560 kilograms (or about 1,232 pounds) of DU would have been distributed on the soils of the RCA. See In the Matter of U.S. Army Installation Command, 71 N.R.C. at 222; see also License Application at 4, 9. This estimate assumed the rounds completely corroded and thoroughly mixed with the surface soil of the RCAs. Intact, partially corroded rounds and fragment are not available for dispersal and do not contribute to public doses.

In addition, the NRC and Army had a public meeting on August 24, 2009, to discuss the Army's proposed radiation monitoring program overview for both the Schofield and PTA sites.[4]

Four petitioners, to include present petitioners Ms. Harden and Mr. Albertini, filed hearing requests with the NRC. On February 24, 2010, the NRC administrative judges issued an order denying Petitioners' requests. See In the Matter of U.S. Army Installation Command, (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), 71 N.R.C. 216 (2010). The Board found that three of the petitioners from the Island of Hawaii – Ms. Harden, Mr. Albertini, and Mr. Harp – failed to establish standing. See id. at 227. The Board also found that Ms. Leonardi, a resident of the Island of Oahu, failed to establish standing and failed to proffer an admissible contention. See id.

On March 21, 2016, the NRC approved Amendment 1 to the license. This amendment adds 15 additional military installations as authorized places of possession and management. See Source Material License No. SUC-1593, Amendment 1, Davy Crockett Depleted Uranium at Various United States Army Installations, 81 FR 17,209 (Mar 28, 2016). [hereinafter Amendment 1]. License Condition (LC) 18 required Environmental Radiation Monitoring Plans (ERMPs) for all installations, including Pohakuloa Training Area. It also stated that each installation must implement its ERMP within six months of NRC approval. LC 19 further stated:

> Within 6 months of the effective date of this license amendment, the licensee shall provide to the NRC for verification, documentation, including site-specific dose modeling parameters, showing that the approved dose

[4] All public hearing transcripts and the notice of the radiation monitoring overview meeting may be accessed on the NRC's Agency wide Documents Access and Management System (ADAMS) at http://www.nrc.gov/reading-rm/adams/web-based.html.

> modeling methodology was applied and that the calculated site-specific all-pathway dose for each Radiation Control Area at each installation listed in License Condition 10 does not exceed 1.0E-2 mSv/yr (1.0 mrem/yr) TEDE [total effective dose equivalent].

Id. at 4.

On September 15, 2016, in accordance with the NRC's requirements, the Army submitted site-specific ERMPs and site-specific dose modeling methodology approved by License Amendment 1. See 82 Fed. Reg. at 10,031. The NRC deemed all site-specific ERMPs to be in compliance with LCs 18 and 19. The NRC also determined that the programmatic ERMP, dated September 15, 2016, was identical to the approved programmatic ERMP except for the removal of Residual Radiation Environmental Analysis (RESRAD) environmental default parameters and was incorporated into the license by reference. Id. As such, the NRC stated in the Federal Register, dated February 7, 2017, that it would be issuing an amendment to Source Materials License No. SUC-1593 to the Army, with a filing date of April 10, 2017 for any Requests for Hearing or Petitions for Leave to Intervene. Id.

With regard to PTA, there are four radiation control areas (RCAs). The ERMP included dose assessment calculations for each RCA. Site Specific Environmental radiation Monitoring Plan Pohakuloa Training Area, Hawaii, Annex 17, for Materials License SUC-1593, Docket No. 040-09083, 4-2 (Sep. 2016) [hereinafter PTA ERMP]. The calculations were for a hypothetical residential farmer receptor located on each RCA, and for a residential farmer receptor at the nearest normally occupied area. Id. at 4-4. The calculated site-specific all-pathway doses for each RCA at PTA do not exceed 1.0E-2 mSv/yr (1.0 mrem/yr) total effective dose equivalent (TEDE). See PTA ERMP at 4-4; Safety Evaluation Report for the U.S. Army's Possession License for Depleted Uranium from Davy Crockett M101 Spotting Rounds – Amendment to Address License

Conditions Nos. 18 and 19, U.S. Nuclear Regulatory Commission (Jan. 2017), at 23. (ADAMS ML16039A230) [hereinafter 2017 SER]. Therefore, the conservatively estimated surface soil concentration of DU from 2,932 spotting rounds located within a limited impact area on a single range (1) is significantly lower that the decommissioning screening standards for uranium, and accordingly (2) will result in de minimis exposure.

Ms. Harden, Mr. Albertini, Ms. Rios, and Ms. Aloua filed their requests with NRC on 4 April 2017, 6 April 2017, 10 April 2017, and 10 April 2017 respectively.

II. ANALYSIS

A. Petitioners Fail to Establish Standing

In order to participate in a proceeding, a party must have standing. 10 C.F.R § 2.309(a). There are two frameworks under which standing can be established: (1) traditional standing principles; and (2) proximity-plus standing principles.

1. Traditional Standing

In accordance with the Commission's Rules of Practice, "[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing." 10 C.F.R. § 2.309(a). The regulations further provide that the Licensing Board "will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of [10 C.F.R. § 2.309(d)] and has proposed at least one admissible contention that meets the requirements of [10 C.F.R. § 2.309(f)]." Id.

Requirements for standing are found at 10 C.F.R. § 2.309(d). A request for a hearing must state: the name, address and telephone number of the requestor; the

nature of the requestor's right to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other interest in the proceeding; and the possible effect of any decision or order that may be issued in the proceeding on the requestor's interest. The Board requires these elements to be pled with specificity. See In the Matter of Northeast Nuclear Energy Co. and Consolidated Edison Company of New York, Inc. (Millstone Nuclear power Station, Units No. 1, 2, and 3), CLI-00-18, 52 N.R.C. 129 (2000). In materials license cases, the Commission has held that proximity alone is not sufficient to establish standing. See Consumers Energy Co., 65 N.R.C. 423, 426 (2007). In cases involving source materials licensing, "a petitioner must independently establish the requisite elements of standing, i.e., injury in fact, causation, and redressability." In the Matter of Crow Butte Resources, Inc., (In Situ Leach Facility), 68 N.R.C. 691, 704 (2008).

In determining whether a petitioner has demonstrated a sufficient interest to intervene under section 2.309(d)(1), the Commission long has applied contemporaneous judicial concepts of standing. See, e.g., Ga. Inst. of Tech. (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 N.R.C. 111, 115 (1995). Those concepts require a petitioner to allege "(1) an actual or threatened, concrete, and particularized injury, that (2) is fairly traceable to the challenged action, (3) falls among the general interests protected by the [AEA] (or other applicable statute, such as the National Environmental Policy Act), and (4) is likely to be redressed by a favorable decision." Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001). The requirement that an injury or threat of injury be concrete and particularized means that the injury must not be "conjectural" or "hypothetical."

Sequoyah Fuels, CLI-94-12, 40 N.R.C. at 72. Further, a determination that an injury is fairly traceable to the challenged action does not depend "on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible." Id. at 75. Finally, a petitioner may not establish standing by alleging injury on behalf of another entity; rather, the petitioner must be the object of the actual or threatened injury. See Fla. Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 N.R.C. 325, 329 (1989).

2. Proximity Plus Standing

The proximity presumption for cases not involving nuclear power plants evaluates "[w]hether and at what distance a petitioner can be presumed to be affected [and] must be judged on a case-by-case basis, taking into account the nature of the proposed action and the significance of the radioactive source." Ga. Inst. of Tech., CLI-95-12, 42 N.R.C. at 116-17; see also PPL Bell Bend, LLC (Bell Bend Nuclear Power Plant), CLI-10-07, 71 N.R.C. 133, 139 (2010). In cases where the record fails to support the existence of (1) a significant source of radioactivity (2) producing an obvious potential for offsite consequences (3) at a particular distance frequented by a petitioner, "it becomes the petitioner's burden to show a specific and plausible means of how the challenged action may harm him or her." USEC, Inc. (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311-12 (2005). In other words, when a petitioner cannot establish proximity-plus standing, he or she must resort to establishing standing under traditional standing principles. See Exelon Generation Co., LLC and PSEG Nuclear, LLC (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 N.R.C. 577, 581 (2005) (internal citation omitted).

3. Application of Standing Principles to Petitioners

In this case, Petitioners have failed to establish standing because they have satisfied neither the requirements of 10 C.F.R. § 2.309 nor the requirements of proximity plus standing.

a. Ms. Harden Fails to Establish Standing

Petitioner Harden asserts that she has resided on the island of Hawaii for the past 45 years. While her home is approximately 30 miles away from PTA, she attended Girl Scout camp near the Pohakuloa boundary for approximately 20-30 days from 1957 to 1962.[5] She estimated that the camp was located "about three miles" from a suspected Davy Crockett range. She has also spent time on the PTA grounds or approximately 100 feet from the boundary "several times" in the past 10 years. Ms. Harden has health issues and is "concerned" about potential health effects of DU on herself and other island residents. Ms. Harden cites two sources stating that DU can be harmful if inhaled or swallowed. Neither source discusses PTA or suggests that such harm could occur from the DU at PTA.

(i) Proximity-Plus Standing

To establish proximity-plus standing, Ms. Harden is required to show that (1) the licensing action involves a significant source of radioactivity, (2) the radioactivity produces an obvious potential for offsite consequences, and (3) she is sufficiently close to the site to be presumptively affected by an offsite consequence. The Board

[5] The M101 DU rounds were not present at PTA for most of this time. Schofield received their first weapon systems in the spring of 1962.

considered the existence of proximity standing for Ms. Harden in 2010, in the first proceeding for this license. Ms. Harden lives the same distance from the RCAs at PTA today and presents no new evidence to establish standing in this proceeding. This Board has held that "our case law is clear that a petitioner must make a fresh standing demonstration in each proceeding in which intervention is sought because a petitioner's circumstances may change from one proceeding to the next." Bell Bend Nuclear Power Plant, CLI-10-07, 71 N.R.C. at 138.

With regard to the first criterion, Ms. Harden fails to establish that the DU at PTA is a "significant source of radioactivity." She provides no information that questions the Army's analysis that the DU radiation from 714 spotting rounds on any of four PTA RCAs is below the decommissioning screening standards for uranium. PTA ERMP, at 4-1 to 4-12. Even if Ms. Harden were to be standing next to a PTA RCA, or standing in it, she would not be exposed to a harmful dose of radiation. Because the regulatory exposure limits are determined by concentration, "one can reasonably conclude that the potential doses due to the presence of [DU] from the M101 spotting round … are expected to be much less than general public exposure limits specified in 10 C.F.R. 20.1301 and are likely to be some small fraction of the [dose limit] prescribed by 10 C.F.R. 20.1402 [which establishes radiological criteria for unrestricted use]." Army License application at 10; 71 N.R.C at 231. The Board's conclusion in 2010 remains valid today: "Ms. Harden fails to satisfy the first criterion for establishing proximity-plus standing, because she fails to demonstrate that the DU at Pohakuloa constitutes a significant amount of radioactivity, and she offers nothing to impugn the Army's conservative analysis in its License Application indicating that DU from 2,932 spotting

rounds located within a limited impact area on a single range (1) is significantly lower that the decommissioning screening standards for uranium, and accordingly (2) will result in *de minimis* exposure." 71 N.R.C. at 231-232.

Ms. Harden likewise fails to satisfy the second criterion for establishing proximity-plus standing, because she fails to show that the onsite radioactivity produces an obvious potential for offsite consequences at any particular distance. Ms. Harden offers no evidence on this issue.

To the contrary, the Army's ERMP for PTA provides further support for the conclusion that onsite radioactivity does not present an obvious potential for offsite consequences. For example, the document states that "the combination of limited precipitation and great depth to the aquifer make it unlikely that DU will impact groundwater." Pohakuloa ERMP at 2-1. The January, 2017 Safety Evaluation Report (SER) states that it is highly unlikely that any significant airborne transport of DU has occurred via aerosolization of the DU rounds from HE ordnance strikes in RCAs. See 2017 SER, at 23.

In the 2010 decision, the Board looked at the Army's ERMP submitted as part of the original license application:

> The Army's Environmental Radiation Monitoring Plan for Pohakuloa provides further support for the conclusion that onsite radioactivity does not present an obvious potential for offsite consequences. For example, the document states that "the combination of limited precipitation and great depth to the aquifer make it unlikely that DU will impact groundwater." "Although soil may be considered a source media at [Pohakuloa], the absence of release mechanisms results in incomplete pathways" for DU migration. Indeed, the document concludes that the "surface water/sediment and groundwater pathways" were all "incomplete" and, hence, would not support DU migration from Pohakuloa. Finally, "DU has

> not been detected in air monitoring programs" conducted by the Army around the impact area at Pohakuloa.

71 NRC at 232-233 (footnotes omitted).

These conclusions are supported by a memorandum submitted by Ms. Harden in 2009. Mr. Peter Strauss, an energy and environment consultant conducted an independent review of DU at PTA. The Board summarized Mr. Strauss's conclusions:

> He pointed out that DU is "primarily dangerous to people when it gets inside the body … through ingestion or inhalation." But he went on to point out that there is not an obvious potential in the instant case for the offsite ingestion or inhalation of DU. Specifically, Mr. Strauss indicates that there is no obvious potential for offsite ingestion of DU through the drinking of DU-contaminated water, because the "geochemistry of the site makes it unlikely that DU is leaching from the surface to the groundwater." Nor does Mr. Strauss believe that there is an obvious potential for offsite inhalation of DU, because "[i]t is unlikely … that small particles of DU would be inhaled unless the person was in the immediate vicinity. Wind-carried particles would not likely carry very far because of the weight of DU."

71 NRC at 232 (citations omitted).

Ms. Harden fails to establish either that the Army's proposed licensing action involves a significant source of radioactivity or that the radioactivity produces an obvious potential for offsite consequences. Having failed to make either of these showings, Ms. Harden fails to establish that her home, which is 30 miles from Pohakuloa, is sufficiently close to the site to be presumptively affected by an offsite consequence. See Bell Bend Nuclear Power Plant, CLI-10-07, 71 NRC at 133, 138-139 (a petitioner must show "a pattern of regular, significant contacts within the vicinity of the site" to satisfy standing requirements).

She therefore fails to establish proximity-plus standing.

(ii) NRC Requirements and Traditional Standing

Ms. Harden meets some of the elements of 10 C.F.R. § 2.309(d)(1). She states her name, address, and telephone number; and she sets out her connection to PTA in

terms of where she lives and the time she has spent on or near PTA. Ms. Harden sets out the nature and extent of her property, financial, or other interest in the proceeding only to the extent that she says she has health issues and is concerned about the effects of depleted uranium on her. She does not, however, state what her health issues are or how they are related to exposure to depleted uranium radiation. She therefore does not meet the requirements of 10 CFR 2.309(d)(1)(iii). Ms. Harden also does not state how any decision or order that may be issued in this proceeding would affect her health issues or concerns. She does not establish any connection between the actions she requests and her health interests. She therefore does not meet the requirements of 10 CFR 2.309(d)(1)(iv). In addition, the petitioner must propose at least one admissible contention. As discussed below in Part II.b.1., Ms. Harden has not made a valid contention.

To establish standing under the traditional criteria, Ms. Harden must show: (1) a concrete and particularized injury, actual or threatened, that (2) is fairly traceable to the Army's licensing action, (3) falls among the general interests protected by the AEA or other applicable statute, and (4) is likely to be redressed by a favorable decision. See supra Part II.A.1.a.

In this case, Ms. Harden fails to show that she will suffer a concrete and particularized injury that is fairly traceable by a plausible chain of causation to the Army's licensing action currently under review. Although Ms. Harden cites general observations that DU could enter the bloodstream through ingestion or inhalation, she offers no plausible explanation of how this could happen at PTA. Ms. Harden's assertions about her occasional presence near PTA do not suggest anything at all that

could lead to her ingestion or inhalation of DU. There is nothing that suggests that Ms. Harden's alleged injuries are fairly traceable to the any element of the Army's licensing action. In fact, because LC 17 requires notice to the NRC of unusual sample results, the approval of the ERMP might *reduce* the possibility that Ms. Harden would be injured. It is arguable that Ms. Harden's interests fall under the general purview of the Atomic Energy Act. But Ms. Harden fails to show that the EMRP for PTA, which was the subject of the NRC decision, would influence her health concerns or issues. Ms. Harden does not show how her concerns would be likely to be redressed by a favorable decision.

As such, Ms. Harden fails to satisfy her burden of demonstrating standing, because her assertion of injury is not fairly traceable to the Army's licensing action. She also does not meet the requirements of 10 C.F.R. § 2.309(d)(1).

b. Mr. Albertini Fails to Establish Standing

Petitioner Albertini has resided in Kurtistown on the island of Hawaii for the past 36 years and estimates that he lives approximately 30 miles from PTA. Mr. Albertini says that at night, the normal wind pattern comes down off the mountain from Pohakuloa and "possibly" brings DU. He has been on PTA for public meetings. He has also spent "countless hours" outside of PTA's main gate protesting military activities and occupation on Hawaiian lands. He also uses the restroom and park facility at Mauna Kea Park, approximately 1.5 miles from a former Davy Crockett firing range. Mr. Albertini is concerned about the health effects of inhaled DU on himself and others, although he does not offer evidence of such inhalation or injury or illness from it.

Mr. Albertini contends that "on numerous occasions, citizen radiation monitors detected CPM radiation readings at Mauna Kea Park and along Saddle Rd in the 60s, 70s and 80s CPM range." Mr. Albertini does not provide any evidence of these readings in his petition other than a photograph of when a reading of 62 cpm was taken. *See* Albertini at 7. Mr. Albertini also states that continued use of high explosives at PTA can suspend DU dust particles in the air.

(i) **Proximity Standing**

First, for purposes of establishing proximity-plus standing, Mr. Albertini is similarly situated in material respects to Ms. Harden and, accordingly, fails to establish proximity-plus standing for the same reasons that Ms. Harden fails to establish such standing. See supra Part II.B.2.a. Mr. Albertini lives about the same distance from PTA, and like Ms. Harden, does not provide evidence that the Army's proposed licensing action involves a significant source of radioactivity or that the radioactivity produces an obvious potential for offsite consequences.

Mr. Albertini's petition suggests that wind-carried DU dust could be created by high explosives at PTA and be carried to his home. This contradicts the Army's position in its previous studies on the aerosolization on DU at the RCAs. See Safety Evaluation Report for the U.S. Army's Possession License for Depleted Uranium from Davy Crockett M101 Spotting Rounds – Amendment to Remaining Sites, U.S. Nuclear Regulatory Commission (Mar. 2016), at 30-32. (ADAMS ML16039A230). [hereinafter 2016 SER].

Mr. Albertini mentions that he has spent time at PTA or nearby places. But the occasional visits do not by themselves establish standing. See Bell Bend Nuclear

Power Plant, supra. In any event, Mr. Albertini presents no evidence that DU from the PTA RCAs has reached him at or near PTA, or at his home. He presents no evidence that any radioactivity produces any potential for offsite consequences. The picture Mr. Albertini provides as evidence of radiation from the installation is inapplicable because the instrument is inappropriate to detect radiation from aerosolized DU and the readings are misinterpreted.

It was incumbent on Mr. Albertini to make a plausible showing that DU from Pohakuloa was being, or plausibly could be, carried offsite by the wind or by some other transport mechanism. He failed to make that showing.

In short, Mr. Albertini fails to show either that the Army's licensing action involves a significant source of radioactivity, that the radioactivity produces an obvious potential for offsite consequences, or that his home – which is 30 miles from Pohakuloa – is sufficiently close to the site to be presumptively affected by an offsite consequence. He thus does not satisfy proximity- plus standing principles.

(ii) **NRC Requirements and Traditional standing**

Mr. Albertini meets some of the elements of 10 C.F.R. § 2.309(d)(1). He states his name, address, and telephone number;[6] and he sets out his connection to PTA in terms of where he lives and the time he has spent on or near PTA. Mr. Albertini sets out the nature and extent of his property, financial, or other interest in the proceeding only to the extent that he says he is concerned about the effects of depleted uranium dust on himself or others. He does not, however, state what his health issues are or how they are related to exposure to depleted uranium radiation. He therefore does

[6] Mr. Albertini's address and phone number do not appear on the first page of his petition, but can be found later in his submission.

not meet the requirements of 10 CFR 2.309(d)(1)(iii). Mr. Albertini also does not state how any decision or order that may be issued in this proceeding would affect his health issues or concerns. He does not establish any connection between the actions he requests and his health interests, and his comments are outside the scope of the license amendment that is before the Board. He therefore does not meet the requirements of 10 CFR 2.309(d)(1)(iv). In addition, a petitioner must propose at least one admissible contention. As discussed below in section Part II.B.2.b, Mr. Albertini did not do so.

With regard to the traditional standing criteria, Mr. Albertini does not show that he has suffered or will suffer a concrete and particularized injury that is fairly traceable by a plausible chain of causation to the Army's licensing action currently under review. Like Ms. Harden, he offers no plausible chain of causation by which the DU could exit the firing range and migrate from PTA. Moreover, Mr. Albertini does not show that the ERMP for PTA, which was the subject of the NRC decision, would contribute to those health concerns or issues.

As such, Mr. Albertini's claim of injury is too speculative to establish a basis for standing, and it is not fairly traceable to the Army's licensing action. As such, he also does not meet the requirements of 10 C.F.R. § 2.309(d)(1).

c. Ms. Rios Fails to Establish Standing

Ms. Rios states that she resides on an organic farm in Waikiʻi Ranch located approximately five miles away from the Pohakuloa Training Area. She has lived there for two years. She is concerned about the possible effects of depleted uranium on her health: "I have faced an increase in a number of respiratory, liver, and digestive

health problems during the two year period we have lived in Waiki'i and I am concerned that these problems are linked to DU exposure." Ms. Rios states that she adopts the contentions of the other three petitioners.

(i) **Proximity-Plus Standing**

To establish proximity-plus standing, Ms. Rios is required to show that (1) the licensing action involves a significant source of radioactivity, (2) the radioactivity produces an obvious potential for offsite consequences, and (3) she is sufficiently close to the site to be presumptively affected by an offsite consequence.

First, for purposes of establishing proximity-plus standing, Ms. Rios is similarly situated in material respects to Ms. Harden and, accordingly, fails to establish proximity-plus standing for the same reasons that Ms. Harden fails to establish such standing. See supra Part II.A.3.a. This is true even though Ms. Rios lives closer to PTA than Ms. Harden. There is still no significant source of radioactivity and there is no obvious potential for offsite consequences. Ms. Rios provides no information at all on either of these issues. Ms. Rios does not challenge the Army's calculations that show that radiation from DU at PTA is significantly lower than the decommissioning screening standards for uranium, and will accordingly result in *de minimis* exposure. Therefore, Ms. Rios does not meet the requirements for proximity-plus standing.

(ii) NRC Requirements and Traditional Standing

Ms. Rios meets some of the elements of 10 C.F.R. § 2.309(d)(1). She states her name but does not include her address and telephone number. She therefore does not meet the requirements of 10 C.F.R. § 2.309(d)(1)(i). Ms. Rios sets out her connection to PTA in terms of where she lives and the time she has spent on or near

PTA. Ms. Rios sets out the nature and extent of her property, financial, or other interest in the proceeding only to the extent that she says she has respiratory, liver, and digestive health problems and is "concerned that these problems are linked to DU exposure." She does not, however, state what her health issues are with any specificity or how they are related to any exposure to depleted uranium radiation. She therefore does not meet the requirements of 10 CFR 2.309(d)(1)(iii). Ms. Rios also does not state how any decision or order that may be issued in this proceeding would affect her health issues or concerns. She does not establish any connection between the actions she requests and her health interests. She therefore does not meet the requirements of 10 CFR 2.309(d)(1)(iv). In addition, a petitioner must propose at least one admissible contention. As discussed below in Part II.B.2.c., Ms. Rios has not made a valid contention.

With regard to the traditional standing criteria, Ms. Rios fails to show that she will suffer a concrete and particularized injury that is fairly traceable by a plausible chain of causation to the Army's licensing action currently under review. Like Ms. Harden and Mr. Albertini, she offers no plausible chain of causation by which the DU could exit the firing range and migrate from PTA. Moreover, Ms. Rios fails to show that the ERMP for PTA, which was the subject of the NRC decision, would contribute to those health concerns or issues.

As such, Ms. Rios's claim of injury is too speculative to establish a basis for standing, and it is not fairly traceable to the Army's licensing action in any event. She also does not meet the requirements of 10 CFR 2.309(d)(1).

d. **Ms. Aloua Fails to Establish Standing**

Ms. Aloua resides on an organic farm in Waikiʻi Ranch located approximately 5 miles away from the Pohakuloa Training Area. She indicates that military training activities at the ranges, including plane flyovers, have caused her issues, including sleep and stress problems. She also alleges that it causes her animals to act erratically. She is concerned about "the health issues and effects of depleted uranium (DU) on myself, our farm crops and animals, soldiers at PTA, and our born and unborn children." She mentions that she eats the food grown on the farm and that some of the food and produce is sold to the public. There is no allegation, however, that the vegetables or farm animals are contaminated by DU, although she states "I must be sure that the conditions the animals are raised and food is grown is uncontaminated." Her summary of contentions is identical to that of Ms. Rios.

(i) Proximity-Plus Standing

To establish proximity-plus standing, Ms. Aloua is required to show that (1) the licensing action involves a significant source of radioactivity, (2) the radioactivity produces an obvious potential for offsite consequences, and (3) she is sufficiently close to the site to be presumptively affected by an offsite consequence.

Ms. Aloua provides no information in addition to that presented by Ms. Rios to support a claim of proximity standing. She therefore does not have such standing.

(ii) NRC Requirements and Traditional Standing

Ms. Aloua meets some of the elements of 10 C.F.R. § 2.309(d)(1). She states her name but does not include her address and telephone number. She therefore does not meet the requirements of 10 C.F.R. § 2.309(d)(1)(i). Ms. Aloua sets out her

connection to PTA in terms of where she lives. Ms. Aloua sets out the nature and extent of her property, financial, or other interest in the proceeding only to the extent that she says she is concerned about "the health issues and effects of depleted uranium (DU) on myself, our farm crops and animals, soldiers at PTA, and our born and unborn children." She does not, however, state what these health issues are with any specificity or how they are related to any exposure to depleted uranium radiation from PTA. She therefore does not meet the requirements of 10 CFR 2.309(d)(1)(iii). Ms. Aloua also does not state how any decision or order that may be issued in this proceeding would affect her health issues or concerns. She does not establish any connection between the actions she requests and her health interests. She therefore does not meet the requirements of 10 CFR 2.309(d)(1)(iv). In addition, a petitioner must propose at least one admissible contention. As discussed below in Part II.B.2.d., Ms. Aloua has not made a valid contention.

With regard to the traditional standing criteria, Ms. Aloua fails to show that she will suffer a concrete and particularized injury that is fairly traceable by a plausible chain of causation to the Army's licensing action currently under review. Like the three other petitioners, she offers no plausible chain of causation by which the DU could exit the firing range and migrate from PTA. Moreover, Ms. Aloua fails to show that the ERMP for PTA, which was the subject of the NRC decision, would contribute to those health concerns or issues.

As such, Ms. Aloua's claim of injury is too speculative to establish a basis for standing, and it is not fairly traceable to the Army's licensing action in any event. She also does not meet all of the requirements of 10 C.F.R. § 2.309(d)(1).

B. Petitioners Fail to Proffer an Admissible Contention

Assuming, arguendo, that one or more Petitioners have established standing, none have articulated a valid "contention" pursuant to 10 C.F.R. § 2.309(f) and should be denied a hearing on that basis.

1. Legal Requirements for Contention Admissibility

In addition to establishing standing, a hearing request must also include at least one admissible contention. *See* 10 C.F.R. § 2.309(a). The legal requirements for contention admissibility are well-established and require that petitioners must "set forth with particularity" the contentions sought to be raised. See 10 C.F.R. § 2.309(f)(1). For each contention, the petition must:

a. Provide a specific statement of the issue of law or fact to be raised or controverted;

b. Provide a brief explanation of the basis for the contention;

c. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

d. Demonstrate the issued raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

e. Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and

documents on which the requestor/petitioner intends to rely to support its position on the issue; and

f. Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

Failure to satisfy any of these requirements is sufficient grounds to render the contention inadmissible. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 N.R.C. 318, 325 (1999).

In addition, 10 C.F.R. § 2.309(f)(2) requires that contentions "be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant …." The requirements are inclusive and "failure of a contention to comply with any one of these requirements is grounds for dismissing the contention." In the Matter of Duke Energy Corporation (Catawba Nuclear Station, Units 1 and 2), 59 N.R.C. 296, 307 (2004) (footnotes omitted). Further, "the initial burden of showing whether the contention meets [the board's] admissibility standards" lies with the Petitioners. See In the Matter of Progress Energy Carolina, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-08, 69 N.R.C. 317, 325

(2009). In NRC practice, "[m]ere 'notice pleading' does not suffice." Exelon Generation Co., L.L.C. (Early Site Permit for Clinton ESP site), 62 .N.R.C 801, 808 (2005).

2. Application of Contention Principles to Petitioners

a. **Ms. Harden Fails to Proffer an Admissible Contention**

The Army interprets Ms. Harden's submission as alleging six contentions – five specified and one implied. None of these allegations, however, are admissible under 10 C.F.R. § 2.309(f).

(i) Contention 1: Require air monitoring.

Read liberally, Ms. Harden's first contention is that the ERMP is inadequate because it does not require air monitoring. The contention, however, is inadmissible because it fails to meet the requirements of 10 C.F.R. §§ 2.309(f)(1) (iii) and (iv).

First, because the issue of air sampling was decided in a previous stage of the licensing process, Ms. Harden's contention is outside the scope of the proceeding in accordance with 10 C.F.R. § 2.309(f)(1)(iii). Compare U.S. Army Installation Management Command Materials License, License No. SUC 1593, Docket no. 40-9083 (Oct 23, 2013) [hereinafter Original License]; with U.S. Army Installation Management Command Materials License, License No. SUC 1593, Docket no. 040-09083, Reference No. Amendment no. 1 (Mar. 21, 2015) [hereinafter Amendment 1]; see also 2016 SER, at 45-46 (removing air monitoring as a condition for the Army's license).

Second, Ms. Harden fails to provide a factual foundation for the necessity of air testing. Although she relies upon Dr. Pang and Dr. Reimer's opinions, Ms. Harden provides no evidence (1) that any airborne radiation is specifically from the PTA RCAs or (2) that the previous air sampling for DU is subject to change. Indeed, Army air

sampling found that the radiation levels were far below the minimum acceptable safety levels. The NRC's March, 2016 Safety and Evaluation Report states "[t]he Army has demonstrated through calculation and modeling, and the NRC staff verified, that it is highly unlikely that the DU in any RCA would be aerosolized sufficiently to result in greater than 1 mrem/yr dose outside of any RCA." See 2016 SER, at 49. Evaluations of HE munitions fire and range burns were presented as Attachments 3, and 7 through 10 of the Army's September 30, 2015 submittal (ADAMS ML15294A276). Although Ms. Harden desires additional air testing, she fails to establish that her contention is material to the findings the NRC must make pursuant to the requirements of 10 C.F.R. § 2.309(f)(1)(iv).

(ii) Contention 2: Suspend use of HE in RCAs until one year of air monitoring

Ms. Harden's second contention is that the Army's use of HE rounds in the RCAs be suspended until one year of air monitoring is conducted. This contention mirrors her first contention in that it requires air sampling. As such, it too is inadmissible because it fails to meet the requirements of 10 C.F.R. §§ 2.309(f)(1) (iii) and (iv).

(iii) Contention 3: Remove DU from RCA

Ms. Harden's request to have the military remove all DU from the RCA is inadmissiblet because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. § 2.309(f)(iii). The original license, as well as Amendment 1, allow the possession and management of DU in place and do not require removal. See Original License; Amendment 1.

(iv) Contention 4: Evaluate other avenues for regulation

Ms. Harden's request to evaluate other legal avenues for regulating DU possession is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. § 2.309(f)(iii). Moreover, despite Ms. Harden's assertion otherwise, this action is directly in line with the mission and purpose of the NRC. See In re Progress Energy Fla., Inc., 2013 NRC LEXIS 32, 247 (Mar. 26, 2013) ("Environmental protection is part of NRC's core mission statement."); see also NRC Mission Statement, http://www.nrc.gov/about-nrc.html.) ("The NRC regulates commercial nuclear power plants and other uses of nuclear materials, such as in nuclear medicine, through licensing, inspection and enforcement of its requirements.")

(v) Contention 5: Require additional studies and updated data with regard to the safety program

Ms. Harden's request for additional studies and updated data is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. § 2.309(f)(iii). The NRC action in question does not involve studies other than the data from the ERMP. Moreover, Ms. Harden has not demonstrated how the additional studies and data are material to the findings the NRC must make in support of the requested action as required by 10 C.F.R. § 2.309(f)(iv).

(vi) Contention 6: Issues with the sample procedures in the ERMP

The Army interprets Ms. Harden's reference to Dr. Reimer's studies as a contention that the ERMP protocols and methodology are inadequate.[7]

[7] In this section we refer to Dr. Reimer's contentions only to the extent that they are adopted by Ms. Harden.

Dr. Reimer takes issue with multiple aspects of the sampling protocols established for PTA. His concerns include the following: (1) the need for comparative samplings from PTA; (2) the need for a characterization study for the sampling area; (3) insufficient documentation to support the appropriateness of the site selection; (4) disagreements with the sampling methodology and procedures; (5) the need for water sampling; (6) the need for a surveyor's marker; (7) insufficient documents for the testing procedures; and (8) the need for the sampling job to be a full-time position.

With regard to the administrative disagreements,[8] Dr. Reimer fails to demonstrate that these issues are material to the finding that the NRC must make to support the approval of the ERMP. As such they fail to meet the requirements of 10 C.F.R. § 2.309(f)(iv).

With regard to Dr. Reimer's disagreements on the testing procedures and availability of information, no additional information is asserted besides his own opinion that the procedures are inadequate. The overarching problem with Dr. Reimer's contentions is that they ignore the purpose of the sampling protocols – to detect DU migration. The site selection and sampling methodology are not designed for a characterization of PTA - that is not what is required by the license. See 2016 ERMP, p. 1-1 ("[T]his Site-Specific ERMP has been developed to identify potential routes for DU transport and describe the monitoring approach to detect any off-installation migration of DU…."). As such, Dr. Reimer's disagreements, as referenced by Ms. Harden, fail to meet the requirements of 10 C.F.R. §§ 2.309(f)(iv) and (vi).

[8] Such as the need for a full-time position or using a survey marker.

(vii) Other contentions

To the extent that there are other implied contentions within Ms. Harden's submission, it is the Army's position that they are insufficiently stated and do not comply with the requirements of 10 CFR 2.309(f).

b. **Mr. Albertini Fails to Proffer an Admissible Contention**

Mr. Albertini asserts 13 contentions. None of these contentions, however, are admissible under 10 C.F.R. § 2.309(f).

(i) Contention 1: Require an end to live-fire exercises and removal of DU

Mr. Albertini's contention concerning cessation of live-fire exercises at PTA and removal of DU from PTA is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. § 2.309(f)(iii). The original license allows the possession and management of DU in place and does not require removal. See Original License; Amendment 1.

(ii) Contention 2: Compliance with Hawaii County Council resolution 693-08

Mr. Albertini's contention concerning compliance Hawaii County Resolution 639-08 is inadmissible because it is both outside the scope of the proceeding and not material to the findings the NRC must make and as such does not meet the requirement of 10 C.F.R. §§ 2.309(f)(iii) and (iv).

(iii) Contention 3: Additional testing for DU

Mr. Albertini's request for additional studies and updated data is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of

10 C.F.R. § 2.309(f)(iii). The NRC action in question does not involve studies other than the data required in the ERMP. Moreover, Mr. Albertini has not demonstrated how the additional studies and data are material to the findings the NRC must make in support of the requested action as required by 10 C.F.R. § 2.309(f)(iv).

(iv) Contention 4: Opinion of Mr. Albertini on the hazards of DU inhalation

Mr. Albertini's contention concerning the hazards of DU is inadmissible because it fails to raise a genuine issue of dispute and as such does not meet the requirements of 10 C.F.R. § 2.309(f)(vi). Further, Mr. Albertini presents no information that inhalation of DU dust particles occurs at PTAand therefore does not meet with the requirements of 10 C.F.R. § 2.309(f)(v).

(v) Contention 5: Require additional testing of wells

Mr. Albertini's contention that additional testing of wells is required is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. § 2.309(f)(iii). The NRC action in question does not involve studies other than the soil data from the ERMP. Moreover, Mr. Albertini has not demonstrated how the additional studies and data are material to the findings the NRC must make in support of the requested action as required by 10 C.F.R. § 2.309(f)(iv).

(vi) Contention 6: Require additional surveying/testing of PTA

Mr. Albertini's contention that additional surveying and testing of PTA is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. § 2.309(f)(iii). The NRC action in question does not involve studies other than the data in the ERMP. Moreover, Mr. Albertini has not demonstrated

how the additional studies and data are material to the findings the NRC must make in support of the requested action as required by 10 C.F.R. § 2.309(f)(iv).

(vii) Contention 7: Require additional testing of Mauna Kea Park and the nearby Girl Scout Camp

Mr. Albertini's contention that additional surveying and testing of Mauna Kea Park and the nearby Girl Scout Camp is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. § 2.309(f)(iii). The NRC action in question does not involve studies other than the data required in the ERMP. Moreover, Mr. Albertini has not demonstrated how the additional studies and data are material to the findings the NRC must make in support of the requested action as, required by 10 C.F.R. § 2.309(f)(iv).

(viii) Contention 8: Statement on radiation levels

Mr. Albertini's contentions concerning radiation levels are inadmissible because they are both outside the scope of the proceeding and fails to provide sufficient expert opinions and facts, and as such fail meet the requirements of 10 C.F.R. §§ 2.309(f)(iii) and (iv). Mr. Albertini fails to demonstrate that the radiation levels he detected are the result of airborne DU particles from PTA.

(ix) Contention 9: Issues with the sampling mechanism

Mr. Albertini's contention that the sampling mechanism is inadequate fails because he does not provide an expert opinion or facts to support his position in accordance with 10 C.F.R. § 2.309(f)(v).

(x) Contention10: Requirement for air testing

Mr. Albertini's contention that air sampling is required fails because he does not provide an expert opinion or facts to support his position in accordance with 10 C.F.R. § 2.309(f)(v).

Army air sampling found that the radiation levels were far below the minimum acceptable safety levels. The NRC's March, 2016 Safety and Evaluation Report states "The Army has demonstrated through calculation and modeling, and the NRC staff verified, that it is highly unlikely that the DU in any RCA would be aerosolized sufficiently to result in greater than 1 mrem/yr dose outside of any RCA." 2016 SER, at 49; see also 2017 SER, at 23 (citing the 2016 SER). The NRC therefore determined that an air sampling program would not be required. 2016 SER, at. 45-46. Although Mr. Albertini desires additional air testing, he fails to provide a foundation for its necessity pursuant to the requirements of 10 C.F.R. § 2.309(f)(1)(iv). Moreover, the requirement to conduct air sampling was removed from license, and as such, is outside the scope of this proceeding in accordance with 10 C.F.R. § 2.309(f)(iii). Compare Original License with Amendment 1; see also 2016, SER at 34 (recommending the removal of the air sampling requirement).

(xi) Contention 11: Opinion of Mr. Albertini

Mr. Albertini's contention concerning the Army's commitment to address DU at PTA comprehensively is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. § 2.309(f)(iii). Moreover, Mr. Albertini has not demonstrated that his opinion is material to the findings the NRC must make in support of the requested action as required by 10 C.F.R. § 2.309(f)(iv).

(xii) Contention 12: Question about the status of DU rounds

Mr. Albertini's contention about the location and status of the DU rounds is inadmissible because it is both outside the scope of the proceeding and not material to the findings the NRC must make and as such does not meet the requirement of 10 C.F.R. §§ 2.309(f)(iii) and (iv).

(xiii) Contention13: Opinion of Mr. Albertini

Mr. Albertini's contention about the Army's activities and alleged stonewalling of community involvement is inadmissible because it is both outside the scope of the proceeding and as such does not meet the requirement of 10 C.F.R. § 2.309(f)(iii) and (iv). Moreover, Mr. Albertini has not demonstrated his opinion is material to the findings the NRC must make in support of the requested action, as required by 10 C.F.R. § 2.309(f)(iv).

(xiv) Other contentions

To the extent that there are other implied contentions within Mr. Albertini's submission, it is the Army's position that they are insufficiently stated and do not comply with the requirements of 10 CFR 2.309(f).

c. **Ms. Rios Fails to Proffer an Admissible Contention**

Ms. Rios offers six contentions. None of these contentions, however, are admissible under 10 C.F.R. § 2.309(f).

(i) Contention 1: Statement about the seizure of the land

Ms. Rios's contention concerning the seizure of Hawaiian Kingdom lands is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. § 2.309(f)(iii). Moreover, Ms. Rios has not demonstrated how

this issue is material to the findings the NRC must make in support of the requested action as required by 10 C.F.R. § 2.309(f)(iv).

(ii) Contention 2: Request for compliance with State General Lease

Ms. Rios's contention concerning compliance with State General Lease No. S-3849 is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. § 2.309(f)(iii). Moreover, Ms. Rios has not demonstrated how this issue is material to the findings the NRC must make in support of the requested action as required by 10 C.F.R. § 2.309(f)(iv).

(iii) Contention 3: Request for additional testing

Ms. Rios asserts that comprehensive testing is required to determine the full extent of radiation contamination. But, she provides no "alleged facts or expert opinion which support" pursuant to 10 C.F.R. § 2.309(f)(1)(v). To the extent she relies upon Mr. Albertini's and Ms. Harden's documentation for support, her contention suffers the same fatal flaws.

(iv) Contention 4: Compliance with Hawaii County Resolution 639-08

Ms. Rios's contention concerning compliance with Hawaii County Resolution 639-08 is inadmissible because it is outside the scope of the proceeding and does not meet the requirement of 10 C.F.R. §§ 2.309(f)(iii). Moreover, Ms. Rios has not demonstrated how this issue is material to the findings the NRC must make in support of the requested action as required by 10 C.F.R. § 2.309(f)(iv).

(v) Contention 5: Request for Air monitoring

Ms. Rios's contention concerning the need for air monitoring at Waiki'i Ranch fails because she does not to provide an expert opinion or facts to support her position

in accordance with 10 C.F.R. § 2.309(f)(v). Even if the information from Ms. Harden's and Mr. Albertini's submissions are imputed to Ms. Rios, her contentions fail for the same reasons as discussed above.

(vi) Contention 6: Adoption of other contentions

Ms. Rios also indicates that she concurs with the submissions of Ms. Cory Harden, Mr. James Albertini, Ms. Ruth Aloua, Dr. Lorrin Pang and Dr. Michael Reimer in her motion. Ms. Rios, however, has not complied with 10 C.F.R. § 2.309(f)(3) pertaining to the co-sponsoring/adopting of contentions. Furthermore, with regard to Dr. Lorrin Pang and Dr. Michael Reimer, neither of these individuals submitted requests for hearings.

(vii) Other contentions

To the extent that there are other implied contentions within Ms. Harden's submission, it is the Army's position that they are insufficiently stated and do not comply with the requirements of 10 CFR 2.309(f).

d. **Ms. Aloua Fails to Proffer an Admissible Contention**

The contentions of Ms. Aloua are identical to those of Ms. Rios. As such, the Army's position on those contentions are identical to those for Ms. Rios.

III. Summary

1. In summary, Petitioners have failed to establish that they have standing in order for this Board to entertain a hearing on the Army's DU possession-only license request. In the event that any Petitioner is deemed to have standing, as described above, none have satisfied the Board's contention rules, which are "strict by design." Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3),

CLI-01-24. 54 N.R.C. 349, 358 (2001), reconsideration denied, CLI-02-1, 55 N.R.C. 1 (2002). Consequently, Petitioners' requests for hearing should be denied.

Executed in Accordance with 10 C.F.R. 2.304(d)

Signed electronically by:
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Dated this 1st day of
May, 2017

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
U.S. ARMY INSTALLATION COMMAND	)	Docket No. 40-9083
	)	
(Source Materials License No. SUC-1593, Amendment 2, Davy Crockett Depleted Uranium at Various United States Army Installations)	)	

Certificate of Service

I hereby certify that copies of the foregoing "US. Army Installation Command's Answer to Requests for Hearing by Ms. Cory Harden, Mr. Jim Albertini, Ms. Hāwane Rios, and Ms. Ruth Aloua ("Petitioners")" in the above-captioned proceeding have been served this 1st day of May, 2017, via the NRC's Electronic Information Exchange ("EIE"), which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the above-captioned proceeding.

Executed in Accordance with 10 C.F.R. 2.304(d)

Signed electronically by:
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Dated at Fort Belvoir, VA
This 1st day of May, 2017