

December 2, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PA'INA HAWAII, LLC	)	Docket No. 30-36974
	)	
Material License Application	)	ASLBP No. 06-843-01
	)	

NRC STAFF RESPONSE TO BOARD ORDER OF DECEMBER 1, 2005

INTRODUCTION

On December 1, 2005, the Board issued an Order in the above-captioned proceeding questioning aspects of the Staff's November 29, 2005 filing<sup>1</sup>. The Staff's response follows.

DISCUSSION

First, the Board requests an explicit confirmation that the most recent version of the proposed Protective Order was reviewed by NSIR's Information Security Section. Although the Staff did not explicitly so state in the Staff Response, as with all previous filings related to the proposed Protective Order, counsel for the Staff worked in close consultation with appropriate Staff experts in crafting both the Staff Response outlining the Staff's position regarding federal fingerprint checks and the updated proposed Protective Order. The Staff, including those with safeguards expertise, reviewed both documents before they were filed by counsel for the Staff. Before filing any pleading on behalf of the NRC Staff regarding a technical, security or other non-legal matter, counsel for the Staff consults with cognizant Staff clients. To the extent that this was unclear to the Board, the Staff apologizes.

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<sup>1</sup> "NRC Staff Response to Board Order of November 22, 2005" (Nov. 29, 2005) ("Staff Response").

Second, the Board inquires whether footnote 5 of the proposed Protective Order should be deleted or replaced with a reference to paragraph 5.a of the Protective Order. The Staff requests that footnote 5 remain in the proposed Protective Order as it currently reads. Paragraph 5.a relates only to storage of SGI-M material while not in use. On the other hand, the purpose of footnote 5 is to establish a responsible individual for ensuring that the protective measures outlined in the entirety of the proposed Protective Order are properly understood and implemented. Since requests for access by additional individuals or questions regarding implementation would presumably be made through counsel, counsel was identified as a logical responsible person.

#### CONCLUSION

As stated above, NSIR was consulted in connection with the Staff Response of November 29, 2005. No changes should be made to the proposed Protective Order.

Respectfully submitted,

***/RA/***

Margaret J. Bupp  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 2<sup>nd</sup> day of December, 2005

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO BOARD ORDER OF DECEMBER 1, 2005" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (\*), and by electronic mail as indicated by a double asterisk (\*\*) on this 2<sup>nd</sup> day of December, 2005.

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