

SECY-02

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	1
II. PROCEDURAL BACKGROUND.....	2
III. PA‘INA’S LATEST APPEAL FAILS TO COMPLY WITH 10 C.F.R. § 2.311 .....	4
A. Pa‘ina’s Appeal Is Untimely.....	4
B. Pa‘ina’s Appeal Fails To Comply With 10 C.F.R. § 2.311(c).....	5
IV. THE BOARD PROPERLY ADMITTED CONCERNED CITIZENS’ CONTENTIONS.....	6
A. The Board Properly Admitted Concerned Citizens’ Environmental Contentions...	6
1. The Board Properly Admitted Concerned Citizens’ Contention Regarding The Staff’s Failure To Justify Its Decision To Invoke A Categorical Exclusion For Pa‘ina’s Proposed Irradiator .....	7
2. The Board Properly Admitted Concerned Citizens’ Contention That Special Circumstances Require NEPA Analysis Of Pa‘ina’s Proposed Irradiator.....	12
B. The Board Properly Admitted Concerned Citizens’ Contention Regarding The Failure To Address Risks Of Aviation Accidents.....	13
V. CONCLUSION.....	15

## TABLE OF AUTHORITIES

Page

### JUDICIAL DECISIONS

<u>Alaska Center for the Env't v. U.S. Forest Service,</u> 189 F.3d 851 (9th Cir. 1999) .....	11
<u>Lands Council v. Powell,</u> 395 F.3d 1019 (9th Cir. 2005) .....	10
<u>Steamboaters v. FERC,</u> 759 F.2d 1382 (9th Cir.1985) .....	11

### ADMINISTRATIVE DECISIONS

<u>Exelon Generation Co., LLC</u> (Early Site Permit for the Clinton ESP Site), CLI-04-31, 60 NRC 461 (2004).....	1, 4
<u>Pacific Gas and Electric Co.</u> (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-03-12, 58 NRC 185, 191 (2003).....	13
<u>Pa'ina Hawaii, LLC</u> (Materials License Application), CLI-06-13, 63 NRC ____ (2006).....	1, 3, 5, 6
<u>Pa'ina Hawaii, LLC</u> (Materials License Application), LBP-06-04, 63 NRC 99 (2006).....	2, 8, 9, 10, 11, 12, 13
<u>Pa'ina Hawaii, LLC</u> (Materials License Application), LBP-06-12, 63 NRC 403 (2006).....	2, 4, 10, 13, 14
<u>Public Service Co. of New Hampshire</u> (Seabrook Station, Units 1 & 2), ALAB-896, 28 NRC 27 (1988).....	5

### CODE OF FEDERAL REGULATIONS

10 C.F.R. § 2.309(f) .....	8, 12
10 C.F.R. § 2.311 .....	4, 6
10 C.F.R. § 2.311(a).....	4, 5, 6

**CODE OF FEDERAL REGULATIONS (cont.)**

10 C.F.R. § 2.311(c).....	1, 3, 4, 5, 6
10 C.F.R. § 2.341(a).....	6
10 C.F.R. § 2.341(f)(2) .....	6
10 C.F.R. § 2.1210(a).....	5
10 C.F.R. § 30.33(a)(2).....	1, 10, 14
10 C.F.R. § 36.13(a).....	14
10 C.F.R. § 36.53(b)(9).....	11
10 C.F.R. § 51.22(b) .....	8, 9
10 C.F.R. § 51.22(c)(14)(vii).....	6, 8
40 C.F.R. § 1500.1(a).....	1

**FEDERAL REGISTER**

58 Fed. Reg. 7,715 (Feb. 9, 1993) .....	9, 10, 12
-----------------------------------------	-----------

## I. INTRODUCTION

Applicant Pa‘ina Hawaii, LLC’s latest appeal of the Atomic Safety and Licensing Board’s orders admitting intervenor Concerned Citizens of Honolulu’s two environmental contentions and Safety Contention #7 violates the Commission’s well-settled rule against “piecemeal interference in ongoing License Board proceedings.” Exelon Generation Co., LLC (Early Site Permit for the Clinton ESP Site), CLI-04-31, 60 NRC 461, 466 (2004) (quoting Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-7, 55 NRC 205, 213 (2002)). The Commission should summarily reject Pa‘ina’s appeal, which is both untimely and fails to comply with 10 C.F.R. § 2.311(c)’s requirements for interlocutory review of the Board’s grant of Concerned Citizens’ hearing request. See infra Part III. To the extent Pa‘ina continues to have concerns about the Board’s actions, it must, as the Commission previously instructed, wait until “later in this proceeding, [after] the Board has issued its Initial Decision.” Pa‘ina Hawaii, LLC (Materials License Application), CLI-06-13, 63 NRC \_\_\_\_ (2006), slip op. at 2.

Should the Commission reach the merits, it should uphold the Board’s well-reasoned decisions to admit the disputed contentions. As discussed in Part IV, infra, Concerned Citizens’ environmental contentions raise important issues regarding the Nuclear Regulatory Commission (“NRC”) Staff’s failure to comply with the National Environmental Policy Act (“NEPA”), “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). The Board also properly admitted Safety Contention #7, which claims that Pa‘ina’s failure to address risks of aviation accidents violates 10 C.F.R. § 30.33(a)(2)’s mandate that Pa‘ina ensure its proposed irradiator is “adequate to protect health and minimize danger to life or property.”

## II. PROCEDURAL BACKGROUND

On October 3, 2005, Concerned Citizens timely filed a request for hearing on Pa'ina's application for a license for possession and use of byproduct material in connection with the construction and operation of a commercial pool-type industrial irradiator using a cobalt-60 source at the Honolulu International Airport.

On January 24, 2006, the Board granted Concerned Citizens' request for hearing, finding Concerned Citizens has standing and its two environmental contentions – both related to failures to comply with NEPA – are admissible. Pa'ina Hawaii, LLC (Materials License Application), LBP-06-04, 63 NRC 99 (2006).<sup>1</sup> The Board deferred consideration of Concerned Citizens' contentions related to safety concerns to allow for additional disclosures and briefing.

On March 24, 2006, the Board issued an order admitting three additional contentions, all related to safety. Pa'ina Hawaii, LLC (Materials License Application), LBP-06-12, 63 NRC 403 (2006). Specifically, the Board admitted Concerned Citizens' contentions that Pa'ina's application lacked required outlines of emergency procedures for prolonged loss of electricity (Safety Contention #4) and for natural disasters including tsunamis and hurricanes (Safety Contention #6), and failed to assess the likelihood and consequences of aviation accidents at the proposed irradiator site (Safety Contention #7). The March 24, 2006 order brought the total number of Concerned Citizens' admitted contentions to five.

---

<sup>1</sup> Concerned Citizens' Environmental Contention #1 challenged the Staff's failure to explain its decision to invoke a categorical exclusion from NEPA for Pa'ina's proposed irradiator and to consider whether any extraordinary circumstances precluded application of the categorical exclusion. Id., slip op. at 10-12, 16. Environmental Contention #2 claimed the irradiator's proposed location adjacent to an international airport on the ocean's edge would expose it to threats of hurricanes, tsunamis, and airplane crashes, creating special circumstances that preclude application of the categorical exclusion and mandate preparation of at least an environmental assessment ("EA"). Id., slip op. at 16-17.

On April 3, 2006, Pa'ina filed an appeal from LBP-06-04 and LBP-06-12, alleging the Board erred in admitting Concerned Citizens' two environmental contentions and Safety Contention #7. Because Pa'ina's appeal challenged only three of the five contentions admitted for hearing and, thus, did not claim Concerned Citizens' petition should have been wholly denied, the Commission dismissed it as "facially deficient" under 10 C.F.R. § 2.311(c). Pa'ina Hawaii, LLC, CLI-06-13, slip op. at 2. In issuing its decision, the Commission noted that "Pa'ina may, if it wishes, renew its challenge to the admission of the three contentions later in this proceeding, once the Board has issued its Initial Decision." Id. (emphasis added).

After the Board admitted Concerned Citizens' two environmental contentions, the parties entered into negotiations to resolve these contentions by agreement. Concerned Citizens and the Staff ultimately filed a joint motion to dismiss the environmental contentions pursuant to a joint stipulation that requires preparation of an EA for Pa'ina's proposed irradiator, with opportunities for public review and comment. Over Pa'ina's objection, during a telephonic hearing on April 26, 2006, the Board orally approved the joint stipulation and dismissed the two environmental contentions. The next day, the Board issued a written order confirming its oral ruling. Pa'ina's appeal from the April 27, 2006 order is currently pending before the Commission.

During the course of the proceedings before the Board, Pa'ina belatedly submitted outlines of proposed emergency procedures to address situations involving prolonged loss of electricity and natural disasters. On June 22, 2006, the Board granted Pa'ina's motion to dismiss as moot Concerned Citizens' Safety Contentions #4 and #6. 6/22/06 Board Order, available on ADAMS at ML061730375.

On July 3, 2006, Pa'ina filed its second appeal from LBP-06-04 and LBP-06-12, more than three months after the Board rendered the last of these decisions. As in the April 3, 2006

appeal the Board summarily dismissed, Pa'ina again challenges admission of only three of the five admitted contentions.

### III. PA'INA'S LATEST APPEAL FAILS TO COMPLY WITH 10 C.F.R. § 2.311

The Commission's hearing regulations disfavor interlocutory review, due to a "general unwillingness to engage in 'piecemeal interference in ongoing Licensing Board proceedings.'" Exelon Generation Co., 60 NRC at 466 (quoting Duke Cogema Stone & Webster, 55 NRC at 213). Pa'ina's repeated appeals of the Board's orders regarding Concerned Citizens' contentions seek just such piecemeal interference. The Commission should reject out of hand Pa'ina's latest appeal – its third related to the Board's grant of Concerned Citizens' hearing request and its second directly challenging the Board's admission of Environmental Contentions #1 and #2 and Safety Contention #7 – as untimely or, in the alternative, as facially deficient under 10 C.F.R. § 2.311(c).

#### A. Pa'ina's Appeal Is Untimely.

On March 24, 2006, when the Board admitted Concerned Citizens' safety contentions, it put Pa'ina on notice that:

Pursuant to 10 C.F.R. § 2.311, an appeal of this Memorandum and Order and our earlier January 24, 2006 Memorandum and Order, LBP-06-04, ruling on the Petitioner's standing and environmental contentions, may be filed within ten (10) days of service of this Memorandum and Order by filing a notice of appeal and an accompanying supporting brief.

Pa'ina Hawaii, LLC, LBP-06-12, slip op. at 29 (emphasis added). The Board's statement highlighted the strict deadlines imposed by 10 C.F.R. § 2.311(a), which authorizes interlocutory appeal of the grant of Concerned Citizens' hearing request only "within ten (10) days after the service of the [Board's] order." Here, the Board issued its last order on Concerned Citizens'



hearing request on March 24, 2006, more than three months before Pa'ina filed this latest of its many interlocutory appeals. The appeal is, therefore, untimely.

The Commission should squarely reject Pa'ina's bald assertion the Board's June 22, 2006 order dismissing as moot two of Concerned Citizens' safety contentions somehow "trigger[ed] this appeal." 7/3/06 Pa'ina Brief at 1 n.1. The plain language of 10 C.F.R. § 2.311(a) clearly identifies the trigger for the ten-day deadline to file an interlocutory appeal as a Board order "on a request for hearing or a petition to intervene," not any order the Board may issue later in the proceedings disposing of some of the previously admitted contentions.

The Commission's May 15, 2006 order dismissing Pa'ina's first appeal from LBP-06-04 and LBP-06-12 confirms the impropriety of Pa'ina's latest gambit. The Commission instructed that "Pa'ina may, if it wishes, renew its challenge to the admission of [Environmental Contentions #1 and #2 and Safety Contention #7] later in this proceeding, once the Board has issued its Initial Decision." Pa'ina Hawaii, LLC, CLI-06-13, slip op. at 2 (emphasis added). Thus, while Pa'ina may, if it chooses, appeal the Board's decisions following the hearing on the merits of Concerned Citizens' admitted contentions, Pa'ina may not bring yet another interlocutory appeal. See 10 C.F.R. § 2.1210(a) (Board "render[s] an initial decision after completion of an informal hearing").

B. Pa'ina's Appeal Fails To Comply With 10 C.F.R. § 2.311(c).

Like its first appeal from LBP-06-04 and LBP-06-12, Pa'ina's latest interlocutory appeal asks only whether some of Concerned Citizens' contentions should have been admitted and, thus, does not raise "the question as to whether the request/petition should have been wholly denied," as the hearing regulations require. 10 C.F.R. § 2.311(c) (emphasis added); see also Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-896, 28 NRC 27,

30 (1988) (“It will not suffice to claim merely that, although properly granting intervention, the Licensing Board should have rejected certain of the contentions advanced by the petitioner.”). Specifically, Pa‘ina challenges neither the Board’s determination that Concerned Citizens has standing nor the Board’s admission of Safety Contentions #4 and #6.<sup>2</sup> Since Pa‘ina’s latest appeal fails to challenge “the admissibility of all admitted contentions,” it is “facially deficient,” and the Commission should summarily reject it, without reaching the merits. Pa‘ina Hawaii, LLC, CLI-06-13, slip op. at 1-2 (emphasis in original).<sup>3</sup>

#### IV. THE BOARD PROPERLY ADMITTED CONCERNED CITIZENS’ CONTENTIONS

Should the Commission determine it can reach the merits of Pa‘ina’s interlocutory appeal, it should uphold the Board’s well-reasoned decisions to admit Concerned Citizens’ environmental contentions and Safety Contention #7.

##### A. The Board Properly Admitted Concerned Citizens’ Environmental Contentions.

As a threshold matter, Pa‘ina misapprehends the nature of Concerned Citizens’ two environmental contentions when it alleges they “challenge the siting of Pa‘ina’s irradiator.” Pa‘ina Brief at 10. Properly understood, Concerned Citizens’ environmental contentions challenged the Staff’s application of the categorical exclusion in 10 C.F.R. § 51.22(c)(14)(vii) to

---

<sup>2</sup> That the Board subsequently dismissed Safety Contentions #4 and #6 as moot due to Pa‘ina’s belated submittal of emergency procedure outlines has no bearing on the question whether, at the time it admitted those contentions, the Board acted properly. The propriety of the Board’s initial decision to admit Safety Contentions #4 and #6 is the only question relevant to an interlocutory appeal brought pursuant to 10 C.F.R. § 2.311(c).

<sup>3</sup> The Staff fails to cite any authority to support its suggestion the Commission might entertain Pa‘ina’s appeal pursuant to 10 C.F.R. § 2.341(f)(2). See 7/14/06 Staff Response at 6. Even had Pa‘ina invoked this provision in seeking interlocutory review of the Board’s decisions (and it did not), the Commission’s hearing regulations expressly provide that, except as authorized pursuant to 10 C.F.R. § 2.311, “[n]o other appeals from rulings on requests for hearings are allowed.” 10 C.F.R. § 2.311(a); see also id. § 2.341(a) (§ 2.341 does not apply to “requests for review or appeals of actions under § 2.311”).

avoid environmental review of Pa'ina's proposed irradiator.<sup>4</sup> Specifically, Environmental Contention #1 challenged the Staff's failure to consider whether any special circumstances existed that necessitated environmental review pursuant to NEPA of Pa'ina's license application and to explain its decision to apply the categorical exclusion. 10/3/05 Hearing Request at 19-20, available on ADAMS at ML052970026.<sup>5</sup> Environmental Contention #2 affirmatively asserted that special circumstances are present that preclude the application of the categorical exclusion to Pa'ina's proposed irradiator and require an environmental impact statement ("EIS") or, at a minimum, an EA. 10/3/05 Hearing Request at 20. While this second environmental contention identified Pa'ina's proposed site for its irradiator as creating special circumstances necessitating NEPA review, the challenge was to the Staff's failure to prepare a NEPA document. Concerned Citizens did not claim the proposed site for Pa'ina's proposed irradiator was per se illegal, but rather that, before rendering a decision on Pa'ina's application, the NRC was obliged to consider the potential threats to the human environment.

1. The Board Properly Admitted Concerned Citizens' Contention Regarding The Staff's Failure To Justify Its Decision To Invoke A Categorical Exclusion For Pa'ina's Proposed Irradiator.

The Board explained its decision to admit Concerned Citizens' first environmental contention as follows:

The Petitioner's first proffered environmental contention is squarely within the scope of this proceeding. The Staff's legal obligations under the Commission's regulations and NEPA and its satisfaction of those obligations is at issue. In a nutshell, the Petitioner's contention alleges that controlling precedent from the

---

<sup>4</sup> Since the Board's entry of the joint stipulation requiring preparation of an EA disposed of both environmental contentions, there is no longer a live dispute regarding the Staff's NEPA obligations. Pa'ina's appeal of the Board's decision to admit these contentions is, therefore, arguably moot.

<sup>5</sup> Please note that Pa'ina inaccurately refers to this contention as Concerned Citizens' "second environmental contention." Pa'ina Brief at 21.

Ninth Circuit Court of Appeals requires an explanation by the Staff as to why a categorical exclusion is appropriate here and perforce why special circumstances are not present. This allegation provides a specific issue of law to be controverted and the legal basis for its contention. Hence, the Petitioner's first NEPA contention satisfies all necessary pleading requirements of 10 C.F.R. § 2.309(f) and is admitted.

Pa'ina Hawaii, LLC, LBP-06-04, slip op. at 16 (footnote omitted).

The Board properly rejected Pa'ina's claim that the first environmental contention challenges the regulation establishing a categorical exclusion for irradiators. Nothing in 10 C.F.R. § 51.22(b) either precludes the Staff from explaining its categorical exclusion decision or suggests there can never be special circumstances that render invocation of a categorical exclusion improper. On the contrary, the regulation provides that, "upon its own initiative," the Staff may determine that an action included in the list of categorical exclusions nonetheless requires an EA or EIS due to "special circumstances." Section 51.22(b) clearly contemplates the Staff will make a case-by-case determination whether a particular project merits application of a categorical exclusion.

The history of the NRC's NEPA regulations supports the Board's decision. As the Board explained:

The regulatory history of the categorical exclusion of irradiators in 10 C.F.R. § 51.22(c)(14)(vii) is important for what it does not say. It merely provides a brief description of an irradiator and states that "personnel exposures during use of these devices are less than 5% of the limits in 10 C.F.R. Part 20." Such history certainly does not support the view that the risks associated with the myriad possible locations for siting an irradiator were considered by the Commission in adopting the categorical exclusion.

Pa'ina Hawaii, LLC, LBP-06-04, slip op. at 13 (quoting 49 Fed. Reg. 9,352, 9,377 (Mar. 12, 1984)). The Board continued:

Conversely and more importantly, however, the regulatory history of the special circumstances exception to the categorical exclusions in 10 C.F.R. § 51.22(b) indicates that the location of an irradiator may be a circumstance in which the exclusion might not apply. In addressing "special circumstances," the

Commission made clear that it intended the term to be flexible, stating that “[a] major purpose of proposed § 51.22(b) is to preserve this necessary flexibility. In addition, it is impossible to identify in advance the precise situations which might move the Commission in the future to determine special circumstances exist. Therefore, the term ‘special circumstances’ has not been further defined.” Thus, the regulatory history does not even hint that the Commission considered the possible locations for proposed facilities in adopting the categorical exclusion for irradiators, while the history of the special circumstances exception indicates that the consequences of siting an irradiator on the ocean’s edge at the Honolulu Airport, subject to the risks of aircraft crashes, tsunamis, and hurricanes, are precisely the kind of circumstances for which the categorical exclusion might not be appropriate.

Id. (quoting 49 Fed. Reg. at 9,366).

Rather than address the Board’s analysis and confront the lack of any evidence the NRC considered circumstances related to siting when it adopted the categorical exclusion for irradiators, Pa‘ina focuses exclusively on the NRC’s discussion of floods, tidal waves, and airplane crashes in connection with its promulgation of 10 C.F.R. Part 36. Pa‘ina’s reliance on this regulatory history is misplaced. The NRC finalized the Part 36 regulations in 1993, nearly a decade after promulgating the categorical exclusion at issue herein. See 58 Fed. Reg. 7,715 (Feb. 9, 1993). The history of the Part 36 regulations lends no support to Pa‘ina’s claim that, at the time the NRC promulgated the irradiator exclusion in 1984, it determined, as a matter of law, that circumstances related to siting could never require an EA or EIS. As the Board correctly concluded, there is no evidence “that the risks associated with the myriad possible locations for siting an irradiator were considered by the Commission in adopting the categorical exclusion.” Pa‘ina Hawaii, LLC, LBP-06-04, slip op. at 13.

Moreover, even if the Part 36 regulations were relevant, the mere fact they do not impose a blanket prohibition on siting an irradiator in an area subject to tsunamis and hurricanes or near an airport does not resolve the question whether Pa‘ina’s particular proposal requires NEPA

review.<sup>6</sup> Many activities that are lawful (such as highway construction, commercial fishing, timber harvesting, and power plant construction, to name only a few) nonetheless pose potential harm to the human environment, triggering the need for environmental review before a federal agency can consider them for approval. Such review is necessary to “permit informed decision making” through analysis of the environmental impacts associated with a proposed action and “any choices or alternatives that might be pursued with less environmental harm.” Lands Council v. Powell, 395 F.3d 1019, 1027 (9<sup>th</sup> Cir. 2005).<sup>7</sup>

The NRC’s clarification that it “may review facility siting, on a case by case basis, if a unique threat is involved” debunks Pa’ina’s claim that, in promulgating the Part 36 regulations, the NRC anticipated all siting situations. 58 Fed. Reg. at 7,725. If Pa’ina were correct that siting issues could never require further analysis, the NRC’s statement would be meaningless. Cf. Pa’ina Hawaii, LLC, LBP-06-12, slip op. at 23 (“the lack of a regulatory prohibition against siting an irradiator at an airport does not affirmatively establish that any airport location satisfies the general requirement of 10 C.F.R. § 30.33(a)(2) that an irradiator facility be ‘adequate to protect health and minimize danger to life or property’”) (emphasis added).<sup>8</sup> The NRC’s

---

<sup>6</sup> For example, the NRC’s analysis assumed sources would be protected from flooding, tsunamis and airplane crashes by “6-foot thick reinforced-concrete walls.” 58 Fed. Reg. at 7,726 (emphasis added); see also id. (relying on “integrity of the shielding walls” to protect irradiator from flooding and tidal waves). In contrast, Pa’ina proposes to place sources in a pool with a concrete liner only 6-inches thick. 6/23/05 Pa’ina’s Application at 34, available on ADAMS at ML052060372; see also Pa’ina Hawaii, LLC, LBP-06-04, slip op. at 15 (“the proposed Pa’ina Hawaii irradiator lacks the safety structures (i.e., six foot thick reinforced-concrete shielding walls encapsulated in steel) of the irradiators referenced by the Commission”); Pa’ina Hawaii, LLC, LBP-06-12, slip op. at 23 (same).

<sup>7</sup> There is not, as Pa’ina claims, any conflict between the Part 36 regulations for irradiators and the Part 51 regulations governing when the Staff must conduct NEPA review of otherwise lawful project proposals. See Pa’ina Brief at 18.

<sup>8</sup> Pa’ina makes far too much of the Board’s example of siting an irradiator in Kilauea Volcano. The Board was merely illustrating its point that siting decisions can present unique risks not contemplated at the time the NRC promulgated the categorical exclusion.

insistence in 10 C.F.R. § 36.53(b)(9) that irradiator licensees “have and follow emergency or abnormal event procedures for ... [n]atural phenomena” further reflects the agency’s understanding that events such as tsunamis and hurricanes can damage irradiators in ways that might pose public health and safety threats, triggering the duty to prepare an EA or EIS. The Staff was obliged to consider whether such special circumstances existed before invoking a categorical exclusion for Pa‘ina’s irradiator.

The Board correctly noted that “[t]he thrust of the Petitioner’s contention ... is that the agency improperly invoked the categorical exclusion by not addressing what it asserts are special circumstances making such an exclusion inapplicable here – a point the Applicant and the Staff completely ignore.” Pa‘ina Hawaii, LLC, LBP-06-04, slip op. at 11-12. The Board’s conclusion “the agency must affirmatively provide a reasoned explanation of the applicability of the categorical exclusion in the circumstances presented” is abundantly supported by controlling case law. Id. at 12; see, e.g., Steamboaters v. FERC, 759 F.2d 1382, 1393 (9th Cir.1985) (agency must “supply a convincing statement of reasons why potential effects are insignificant”); Alaska Center for the Environment v. U.S. Forest Service, 189 F.3d 851, 859 (9<sup>th</sup> Cir. 1999) (Staff cannot “simply restate[] the exclusion”). Thus, the Board properly admitted Concerned Citizens’ first environmental contention, which raised the important issue whether the Staff violated NEPA when, without explanation, it concluded there was no need to prepare an EA or EIS for Pa‘ina’s proposed irradiator.

2. The Board Properly Admitted Concerned Citizens' Contention That Special Circumstances Require NEPA Analysis Of Pa'ina's Proposed Irradiator.

In admitting Concerned Citizens' second environmental contention, the Board held:

By asserting that the irradiator's location at ocean's edge and the threats associated with its location constitute special circumstances, the Petitioner has identified a specific omission in the Staff's analysis it plans to challenge and the basis for its allegations. By describing the hurricanes, tsunamis, and airplane crashes that could affect the site, the Petitioner has alleged the facts it intends [to] rely on to demonstrate that special circumstances are present requiring an EA or EIS. ... With respect to the portion of the Petitioner's second environmental contention alleging special circumstances stemming from the threats of tsunamis, hurricanes, and aviation accidents, the Petitioner again has proffered a contention meeting the necessary pleading requirements of 10 C.F.R. § 2.309(f) and it is admitted.

Pa'ina Hawaii, LLC, LBP-06-04, slip op. at 17-18.

Pa'ina's objection to this contention's admission boils down to a claim that the mere inclusion of "irradiators" on the NRC's list of categorical exclusions means there can never be special circumstances triggering mandatory NEPA review of a proposed irradiator. See Pa'ina Brief at 24. As discussed in the preceding section, Pa'ina's arguments reflect a fundamental misinterpretation of the NRC's regulations. Just because the regulations do not categorically prohibit the siting of irradiators in locations subject to tsunamis, hurricanes, and aviation accidents does not mean there are no circumstances under which such threats would be significant enough to require review of an irradiator's potential environmental impacts pursuant to NEPA. On the contrary, in promulgating its regulations for irradiators, the NRC expressly stated it "may review facility siting, on a case by case basis, if a unique threat is involved." 58 Fed. Reg. at 7,725.

The Board properly admitted Concerned Citizens' second environmental contention to resolve the parties' dispute over whether "the consequences of siting an irradiator on the ocean's edge at the Honolulu Airport, subject to the risks of aircraft crashes, tsunamis, and hurricanes,"



presents circumstances triggering NEPA's mandate to prepare an EA or EIS. Pa'ina Hawaii, LLC, LBP-06-04, slip op. at 13.

B. The Board Properly Admitted Concerned Citizens' Contention Regarding The Failure To Address Risks Of Aviation Accidents.

---

While Pa'ina alleges uncertainty regarding the nature of Safety Contention #7, the Board had no difficulty understanding it. As the Board stated in admitting the contention, "[i]n addition to insisting that the probability and consequences of [aircraft] crashes must be addressed, the contention also claims that measures to mitigate the consequences of a crash must be considered." Pa'ina Hawaii, LLC, LBP-06-12, slip op. at 22. At its core, the contention challenges the adequacy of the design of Pa'ina's proposed irradiator "to protect health and minimize danger to life or property," the general condition precedent to any application's acceptance. Id. at 23 (quoting 10 C.F.R. § 30.33(a)(2)). It does not, as Pa'ina asserts, address the lack of "a written outline of procedures to be kept on site in case of a plane crash." Pa'ina Brief at 27; see also Staff Response at 4 n.6 (noting that Safety Contention #7 does not "concern the procedures to be followed in the event of an airline crash [at] the facility").<sup>9</sup>

Pa'ina's argument that NRC regulations do not categorically prohibit irradiators at airports misses the point of Safety Contention #7. The question is not whether it is possible to design an irradiator that could safely withstand an aviation accident, but whether the particular design Pa'ina proposes – where the source would be protected by a concrete liner only 6-inches

---

<sup>9</sup> The Commission should disregard Pa'ina's arguments about mootness, which are based on its misinterpretation of Safety Contention #7. See Pa'ina Brief at 27-28. Moreover, since Pa'ina has never brought a motion before the Board seeking dismissal of Safety Contention #7 as moot, it may not pursue such claims in this appeal. See Pacific Gas and Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-03-12, 58 NRC 185, 191 (2003) ("An appeal may not be based on new arguments not raised before the Board").

thick – would be safe in a location adjacent to active runways, where it might get hit by an airplane.

As the Board observed in admitting Safety Contention #7:

[T]he absence of siting prohibitions in 10 C.F.R. Part 36, or the fact that irradiator regulations do not categorically prohibit locating an irradiator at an airport, does not turn the Petitioner's contention, which is focused upon the likelihood and consequences of an aircraft crash involving the Applicant's proposed facility, into an impermissible attack on the Commission's regulations. Indeed, as the Petitioner states in its reply to the Applicant's argument, the comments relied upon by the Applicant are from the Statement of Considerations to the Part 36 rulemaking discussing panoramic irradiators in which "[t]he radioactive sources . . . would be relatively protected from damage because they are generally contained within 6-foot thick reinforced-concrete walls and are encapsulated in steel." As the Petitioner also points out, the sources in the Pa'ina Hawaii irradiator "would be in a pool with a liner consisting of 6 inches of concrete, with 1/4-inch steel on the inside and outside."

Pa'ina Hawaii, LLC, LBP-06-12, slip op. at 23 (citations omitted).

The Board continued:

More importantly, however, the lack of a regulatory prohibition against siting an irradiator at an airport does not affirmatively establish that any airport location satisfies the general requirement of 10 C.F.R. § 30.33(a)(2) that an irradiator facility be "adequate to protect health and minimize danger to life or property." Because the Applicant's facility must meet the general requirement of 10 C.F.R. § 30.33(a)(2) to be licensed, the contention is not inadmissible, as argued by the Staff, for failing to cite a regulatory provision specifically requiring an analysis of the probabilities and consequences of an aircraft crash.

Id. (footnotes omitted).

"The requirements of 10 C.F.R. § 30.33(a)(2) specifically are made applicable to irradiators by 10 C.F.R. § 36.13(a)." Id. at 23 n.72. Thus, unless and until Pa'ina proves the particular design it proposes for its irradiator would adequately protect public health and safety in the event of an aviation accident, it has not complied with Part 36. The Board properly admitted Safety Contention #7 to resolve this issue of vital importance to the people of O'ahu

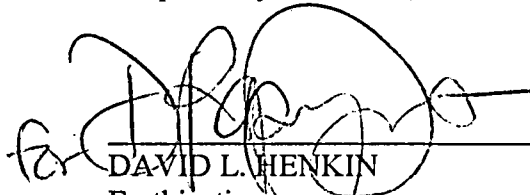
and to all who depend on the safe functioning of Honolulu International Airport. See State of Hawaii, Airport Activity Statistics by Calendar Year, available at <http://www.state.hi.us/dot/airports/publications/cysmallone.pdf> (last viewed July 18, 2006) (over 20 million passengers and thousands of military aircraft use Honolulu International Airport annually).<sup>10</sup>

## V. CONCLUSION

Concerned Citizens respectfully submits the Commission should summarily reject Pa'ina's interlocutory appeal, which is untimely and improperly seeks piecemeal review of the Board's decisions. In the alternative, the Commission should uphold the Board's orders admitting Concerned Citizens' environmental contentions and Safety Contention #7.

Dated at Honolulu, Hawai'i, July 19, 2006.

Respectfully submitted,



DAVID L. HENKIN  
Earthjustice  
223 South King Street, Suite 400  
Honolulu, Hawai'i 96813  
Tel. No.: (808) 599-2436  
Fax No. (808) 521-6841  
Email: [dhenkin@earthjustice.org](mailto:dhenkin@earthjustice.org)  
Counsel for Petitioner Concerned Citizens  
of Honolulu

---

<sup>10</sup> For the Commission's convenience, excerpts from this document are attached hereto as Exhibit 1. The Commission should bear in mind that, since the U.S. Air Force depends on the runways at Honolulu International Airport for all military flights to and from adjacent Hickam Air Force Base, ensuring the safety of Pa'ina's proposed irradiator implicates national security concerns. See <http://www.globalsecurity.org/military/facility/hickam.htm> (last viewed July 18, 2006) (attached hereto as Exhibit 2).

The State of Hawaii  
Airport Activity Statistics by Calendar Year

An Annual Statistical Publication

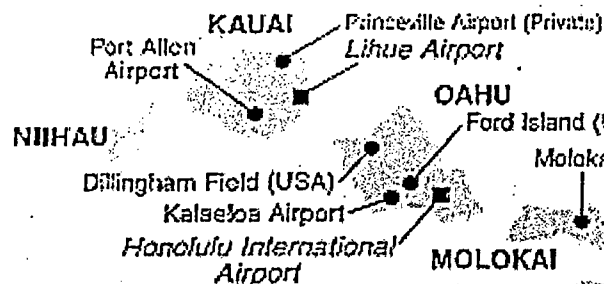
of the

State of Hawaii  
Department of Transportation  
Airports Division  
Airports Planning Office  
Honolulu International Airport  
400 Rodgers Boulevard, Suite 700  
Honolulu, Hawaii 96819

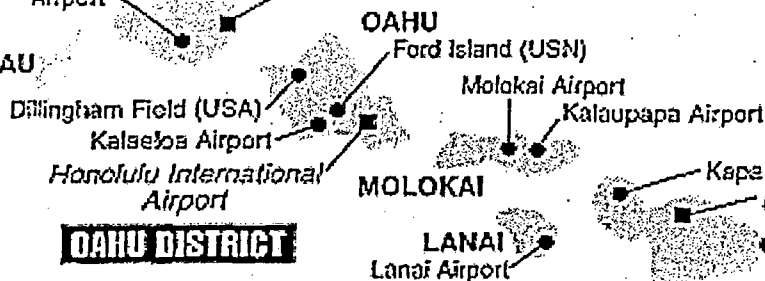
EXHIBIT 1

# AIRPORT ACTIVITY STATISTICS

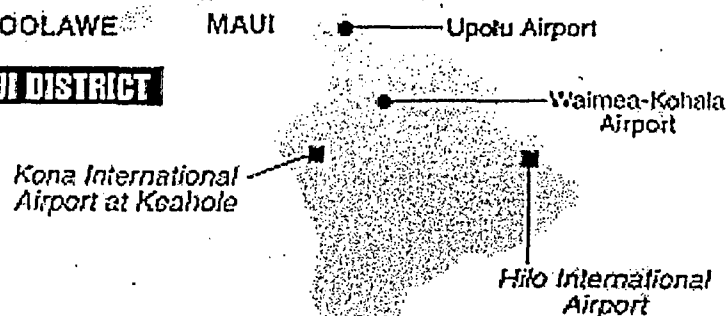
## KAUAI DISTRICT



## OAHU DISTRICT

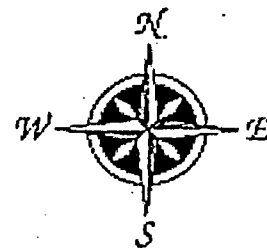


## MAUI DISTRICT



## HAWAII DISTRICT

HAWAII



## STATE OF HAWAII

Department of Transportation

## AIRPORTS DIVISION

<u>TERMINOLOGY</u>	<u>DEFINITION</u>
Enplaned	Passengers, cargo, and mail boarding an aircraft.
Deplaned	Passengers, cargo, and mail disembarking an aircraft.
Revenue	Passengers, cargo, and mail whose transportation has been paid for.
Nonrevenue	Passengers, cargo, and mail whose transportation has not been paid for.
International Transit: True transit	Passengers who clear U.S. Immigration and Customs at Honolulu International Airport (HNL) and then proceed to another city.
Bonded transit	Passengers who are held in a sterile lounge area and reboard an aircraft without being processed by either U.S. Immigration or Customs.
Domestic Transit: U.S. to Foreign	Passengers who arrive at HNL from the Mainland or the Neighbor Islands and reboard an aircraft destined for a foreign country (without leaving HNL).
Neighbor Island (N.I.) to Mainland	Passengers who arrive at HNL from a Neighbor Island airport and reboard an aircraft destined for the Mainland (without leaving HNL).
Aircraft Operations:	Total aircraft movements, landings and takeoffs combined. Reported by the United States Federal Aviation Administration's (FAA's) air traffic control towers.
Air Carrier Operations	The landings and takeoffs of large commercial aircraft having more than 60 seats.
Air Taxi Operations	The landings and takeoffs of small commercial aircraft having 60 seats or less.
General Aviation Operations	All types of civil aviation including private jets, corporate jets, and helicopters. General aviation excludes commercial and military aircraft operations.
Military Operations	All military landings and takeoffs, including military helicopters.

Revised 11/28/89, 4/14/93, 5/3/2001.

Final

CALENDAR YEAR 2005  
Air Traffic Statistics

AIRPORT		PASSENGERS	% change	CARGO	% change	MAIL	% change	AIRCRAFT OPERATIONS	% change
		2005 vs. 2004		(U.S. tons) 2005 vs. 2004		(U.S. tons) 2005 vs. 2004		(takeoffs + landings) 2005 vs. 2004	
1	Honolulu International	20,179,634	4.2	399,537	2.8	103,817	16.4	330,506	3.1
2	Kahului	5,896,989	7.1	32,802	-12.2	11,300	5.4	168,449	4.9
3	Kona International	2,959,727	11.8	24,477	-4.3	6,290	22.6	154,967	12.4
4	Lihue	2,561,324	1.5	13,751	-4.0	3,219	59.3	107,497	2.9
5	Hilo International	1,300,736	6.3	24,560	-3.4	3,714	29.2	108,462	0.5
6	Upolu	0	0	0	0	0	0	14	0.0
7	Waimea-Kohala	4,798	-13.9	0	-100.0	1,426	61.5	2,012	-29.7
8	Hana	7,602	10.3	8	-88.6	0	0	5,566	-9.1
9	Molokai	196,847	2.5	1,130	-7.6	85	25.0	39,364	7.1
10	Kalaupapa	12,836	19.3	210	-9.5	27	26.0	4,846	14.6
11	Lanai	99,122	0.5	943	10.2	402	38.6	7,734	-3.6
12	Kapalua	110,673	7.9	881	8.5	0	0	9,250	27.8
13	Kalaeloa	-	-	-	-	-	-	164,948	17.2
14	Dillingham Field (USA)	-	-	-	-	-	-	57,272	-16.5
15	Port Allen	-	-	-	-	-	-	1,176	-52.8
Total Statewide (all airports)		33,330,288	5.2	498,299	0.7	130,280	17.2	1,162,063	4.8

Including transits.

CY = Calendar Year (Jan. - Dec.)

6-30-99 Ford Island (USN) closed.

7-1-99 Kalaeloa owned by the State of Hawaii.

Source: State of Hawaii  
Department of Transportation  
Airports Division, AIR-PS  
Honolulu International Airport  
400 Rodgers Boulevard, Suite 700  
Honolulu, Hawaii 96819-1880

Statewide  
Cargo + Mail  
(U.S. tons)

2005	2004	% change
628,579	605,765	3.8%

Honolulu  
Cargo + Mail  
(U.S. tons)

2005	2004	% change
503,354	477,861	5.3%

Total operations for the 5 major airports

2005	2004	% change
869,881	831,376	4.6%

Statewide international passenger arrivals

2005	2004	% change
2,259,386	2,207,944	2.3%

Honolulu's international passenger arrivals

2005	2004	% change
2,123,469	2,096,380	1.3%

HONOLULU INTERNATIONAL AIRPORT  
AIRCRAFT OPERATIONS BY TYPE

CALENDAR YEAR	AIR CARRIER	% change from the previous year's total	AIR TAXI	% change from the previous year's total	GENERAL AVIATION	% change from the previous year's total	MILITARY	% change from the previous year's total	TOTAL	% change from the previous year's total
1960	85,597		—		44,326		124,827		#VALUE!	
1965	95,385		—		93,689		99,214		#VALUE!	
1970	122,202		—		111,225		67,202		#VALUE!	
1975	108,446		48,260		111,813		51,257		319,776	
1976	108,404	0.0%	60,614	25.6%	113,952	1.9%	37,595	-26.7%	320,565	0.2%
1977	114,174	5.3%	68,234	12.6%	114,484	0.5%	33,034	-12.1%	329,926	2.9%
1978	121,056	6.0%	85,552	25.4%	137,593	20.2%	34,905	5.7%	379,106	14.9%
1979	133,653	10.4%	85,177	-0.4%	162,055	17.8%	31,854	-8.7%	412,739	8.9%
1980	121,528	-9.1%	76,273	-10.5%	145,215	-10.4%	32,392	1.7%	375,408	-9.0%
1981	125,321	3.1%	73,057	-4.2%	110,416	-24.0%	30,565	-5.6%	339,359	-9.6%
1982	128,558	2.6%	70,574	-3.4%	80,737	-26.9%	28,859	-5.6%	308,728	-9.0%
1983	139,875	8.8%	75,297	6.7%	88,657	9.8%	29,209	1.2%	333,038	7.9%
1984	154,121	10.2%	75,445	0.2%	82,961	-6.4%	31,291	7.1%	343,818	3.2%
1985	167,154	8.5%	79,329	5.1%	81,103	-2.2%	29,925	-4.4%	357,511	4.0%
1986	191,890	14.8%	69,918	-11.9%	78,985	-2.6%	27,256	-8.9%	368,049	2.9%
1987	216,044	12.6%	62,172	-11.1%	83,558	5.8%	23,501	-13.8%	385,275	4.7%
1988	185,282	-14.2%	60,628	-2.5%	91,971	10.1%	40,038	70.4%	377,919	-1.9%
1989	194,347	4.9%	64,348	6.1%	100,287	9.0%	44,653	11.5%	403,635	6.8%
1990	194,357	0.0%	57,506	-10.6%	122,349	22.0%	32,836	-26.5%	407,048	0.8%
1991	196,037	0.9%	65,390	13.7%	113,799	-7.0%	28,340	-13.7%	403,566	-0.9%
1992	202,559	3.3%	58,782	-10.1%	113,623	-0.2%	28,664	1.1%	403,628	0.0%
1993	185,959	-8.2%	53,742	-8.6%	96,504	-15.1%	22,300	-22.2%	358,505	-11.2%
1994	193,615	4.1%	56,067	4.3%	87,986	-8.8%	21,901	-1.8%	359,569	0.3%
1995	198,248	2.4%	71,703	27.9%	80,522	-8.5%	23,453	7.1%	373,926	4.0%
1996	203,671	2.7%	62,516	-12.8%	82,541	2.5%	23,540	0.4%	372,268	-0.4%
1997	185,557	-8.9%	61,894	-1.0%	87,584	6.1%	23,749	0.9%	358,784	-3.6%
1998	182,795	-1.5%	39,179	-36.7%	90,135	2.9%	21,937	-7.6%	334,046	-6.9%
1999	197,839	8.2%	36,985	-5.6%	91,743	1.8%	20,042	-8.6%	346,609	3.8%
2000	206,870	4.6%	31,539	-14.7%	91,484	-0.3%	15,878	-20.8%	345,771	-0.2%
2001	186,000	-10.1%	37,676	19.5%	86,283	-5.7%	17,047	7.4%	327,006	-5.4%

Air taxi operations were combined with general aviation operations until they were separated in July 1971.

Sept. 11, 2001 - Terrorist attacks on the United States (U.S.) led to the closing of all U.S. airports.

AIR-PS





Education

Jobs

Salary Center

Travel

Autos

Gifts

Home :: Military :: Facilities :: Air Force Bases ::

## MILITARY

### Hickam AFB

#### Units

- Pacific Air Forces
- 15th Air Base Wing
- 154th Wing (ANG)

#### Official Homepage

- Hickam AFB

Hickam AFB consists of 2,850 acres of land and facilities valued at more than \$444 million. Sharing its runways with adjacent Honolulu International Airport (HIA), Hickam and the HIA constitute a single airport complex operated under a joint-use agreement.

In 1934, the Army Air Corps saw the need for another airfield in Hawaii and assigned the Quartermaster Corps the job of constructing a modern airdrome from tangled brush and sugar cane fields adjacent to Pearl Harbor on the island of Oahu. The site selected consisted of 2,200 acres of ancient coral reef, covered by a thin layer of soil, located between Oahu's Waianae and Koolau mountain ranges, with the Pearl Harbor channel and naval reservation marking its western and northern boundaries, John Rodgers Airport to the east, and Fort Kamehameha on the south. The new airfield was dedicated on May 31, 1935 and named in honor of Lt. Col. Horace Meek Hickam, a distinguished aviation pioneer who was killed in an aircraft accident on Nov. 5, 1934, at Fort Crockett in Galveston, Texas.

While construction was still in progress, the first contingent of twelve men and four aircraft under the command of 1st Lt. Robert Warren moved from Luke Field on Ford Island to Hickam on Sept. 1, 1937. Hickam Field, as it was then known, was completed and officially activated on Sept. 15, 1938. It was the principal army airfield in Hawaii and the only one large enough to accommodate the B-17 bomber. In connection with defense plans for the Pacific, aircraft were brought to Hawaii throughout 1941 to prepare for potential hostilities.

The first mass flight of bombers (21 B-17Ds) from Hamilton Field, California, arrived at Hickam on May 14, 1941. By December 1941, the Hawaiian Air Force had been an integrated command for slightly more than one year and consisted of 754 officers and 6,706 enlisted men, with 233 aircraft assigned at its three primary bases (Hickam, Wheeler, and Bellows).

When the Japanese attacked Oahu's military installations on Dec. 7, 1941, Hickam suffered extensive property damage, aircraft losses, and personnel casualties totaling 139 killed and 303 wounded. The bombing and strafing of Hickam Field was an important objective, because the success of the Japanese attack on the Pacific Fleet at Pearl Harbor was dependent on eliminating air opposition and precluding US planes from following their aircraft back to their carriers and bombing the task force. During the war years, the base played a major role in pilot training and aircraft assembly work, in addition to seeing as a supply center for both air and ground troops. Hickam served as the hub of the Pacific aerial network, supporting transient aircraft ferrying troops and supplies to, and evacuating wounded from, the forward areas, not only during World War II but also during the Korean conflict and the Vietnam War.

After World War II, the Air Force in Hawaii was primarily comprised of the Air Transport Command and its successor, the Military Air Transport Service, until 1 July 1957 when Headquarters Far East Air Forces completed its move from Japan to Hawaii and was redesignated the Pacific Air Forces. The 15th Air Base Wing, host unit at Hickam AFB, supported the Apollo astronauts in the 1960s and 1970s; Operation Homecoming (return of prisoners of war from Vietnam) in 1973; Operation Babylift/New Life (movement of nearly 94,000 orphans, refugees, and evacuees from Southeast Asia) in 1975; and NASA's space shuttle flights during the 1980s, continuing into the 1990s. Throughout those times, and continuing today, Hickam has served as "America's Bridge Across the Pacific."

In October 1980, the Secretary of the Interior designated Hickam AFB as a National Historic Landmark, recognizing it as one of the nation's most significant historic resources associated with World War II in the Pacific. A bronze plaque reflecting Hickam's "national significance in commemorating the history of the United States of America" took its place among other memorials surrounding the base flagpole. Dominating the area is a large bronze tablet engraved with the names of those who died as a result of the 7 December 1941 attack. Other reminders of the attack can be seen at Hickam today, including the tattered American flag that flew over the base that morning. It is encased and on display in the lobby of the Pacific Air Forces Headquarters building, where bullet-scarred walls have been carefully preserved as a constant reminder to never again be caught unprepared.

## BRAC 2005

**Secretary of Defense Recommendation:** Realign Grand Forks Air Force Base (AFB), ND. This would distribute the 319th Air Refueling Wing's KC-135R aircraft to the 154th Wing (ANG), Hickam AFB, HI (four aircraft) and several other installations. The Wing would also host an active duty associate unit.

In another recommendation, DoD would establish a Combat Air Force Logistics Support Center at Langley Air Force Base by realigning Regional Supply Squadrons positions from Hickam Air Force Base and Sembach, Germany (non-BRAC programmatic) as well as base-level Logistics Readiness Squadron (LRS) positions from Luke Air Force Base.

In another recommendation, DoD would realign Hickam AFB, HI, by relocating the installation management functions to Naval Station Pearl Harbor, HI, establishing Joint Base Pearl Harbor-Hickam, HI.

**Secretary of Defense Justification:** The Air Force used military judgment in moving force structure from Grand Forks to Hickam (87), concluding that Hickam's strategic location argued for a more robust global mobility capability in the western Pacific. Increasing tanker force structure at Hickam would robust the unit an establishe an active duty/Air Force Reserve association to maximize Reserve participation.

Combined with a recommendation to create a Mobility Air Forces LSC, this second recommendation would be a transformational opportunity consistent with eLog21 initiatives that would standardize Air Force materiel management command and control. This recommendation would realign RSS manpower (from three MAJCOM locations) and base-level LRS manpower (from three installations) into two LSCs in support of Combat Air Forces and Mobility Air Forces. Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 269 jobs (151 direct jobs and 118 indirect jobs) over the 2006-2011 period in the Honolulu, HI, Metropolitan Statistical economic area (less than 0.1 percent).

All installations employed military, civilian, and contractor personnel to perform common functions in support of installation facilities and personnel. All installations executed these functions using similar or near similar processes. Because these installations shared a common boundary with minimal distance between the major facilities or are in near proximity, there was significant opportunity to reduce duplication of efforts with resulting reduction of overall manpower and facilities requirements capable of generating savings, which would be realized by paring unnecessary management personnel and achieving greater efficiencies through economies of scale. Intangible savings would be expected to result from opportunities to consolidate and optimize existing and future service contract requirements. Additional opportunities for savings would also be expected to result from establishment of a single space management authority capable of generating greater overall utilization of facilities and infrastructure. Further savings would be expected to result from opportunities to reduce and correctly size both owned and contracted commercial fleets of base support vehicles and equipment consistent with the size of the combined facilities and supported populations. Regional efficiencies achieved as a result of Service regionalization of installation management would provide additional opportunities for overall savings as the designated installations are consolidated under regional management structures. The quantitative military value score validated by military judgment was the primary basis for determining which installation was designated as the receiving location. Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 511 jobs (277 direct jobs and 234 indirect jobs) over the 2006-2011 period in the Honolulu, HI Metropolitan Statistical Area (less than 0.1 percent).

**Community Concerns:** There were no formal expressions from the community.

**Commission Findings:** The Commission found operational efficiencies gained by the second recommendation. The Commission noted a risk to material management support to the Air Force during the transition period, but the Commission also recognized that the Air Force has, in-place, a detailed implementation plans to mitigate this risk.

**Commission Recommendations:** The Commission found the Secretary's recommendation consistent with the final selection criteria and the Force Structure Plan. Therefore, the Commission approves the recommendation of the Secretary.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on July 19, 2006, a true and correct copy of the foregoing document was duly served on the following via e-mail and first-class United States mail, postage prepaid:

Fred Paul Benco  
Suite 3409, Century Square  
1188 Bishop Street  
Honolulu, Hawai'i 96813  
E-Mail: fpbenco@yahoo.com  
Attorney for Pa'ina Hawaii, LLC

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attn: Rulemakings & Adjudications Staff  
E-Mail: HEARINGDOCKET@nrc.gov

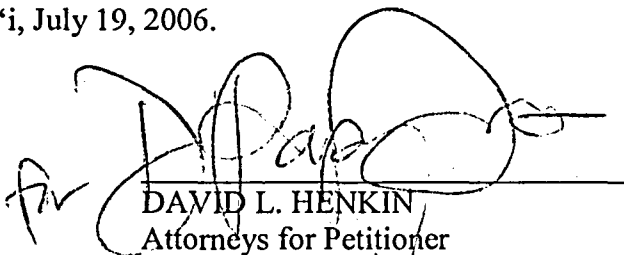
Margaret J. Bupp  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop – O-15 D21  
Washington, DC 20555-0001  
E-mail: mjb5@nrc.gov

Administrative Judge  
Paul B. Abramson  
Atomic Safety & Licensing Board Panel  
Mail Stop – T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: pba@nrc.gov

Administrative Judge  
Thomas S. Moore, Chair  
Atomic Safety & Licensing Board Panel  
Mail Stop – T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-Mail: tsm2@nrc.gov

Administrative Judge  
Anthony J. Baratta  
Atomic Safety & Licensing Board Panel  
Mail Stop – T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-Mail: ajb5@nrc.gov

Dated at Honolulu, Hawai'i, July 19, 2006.

  
DAVID L. HENKIN  
Attorneys for Petitioner  
Concerned Citizens of Honolulu



**EARTHJUSTICE**

*Because the earth needs a good lawyer*

BOZEMAN, MONTANA    DENVER, COLORADO    HONOLULU, HAWAII  
INTERNATIONAL    JUNEAU, ALASKA    OAKLAND, CALIFORNIA  
SEATTLE, WASHINGTON    TALLAHASSEE, FLORIDA    WASHINGTON, D.C.

**TRANSMITTAL LETTER**

TO: Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attention: Rulemakings and Adjudications Staff

VIA FIRST CLASS MAIL

FROM: David L. Henkin *D.L.H./ev*

DATE: July 19, 2006

RE: Docket No. 030-36974-ML  
ASLBP No. 06-843-01-ML  
Pa'ina Hawaii, LLC, Irradiator in Honolulu, HI

ENCLOSURES	DATE	DESCRIPTION
Original and two copies:	7/19/06	INTERVENOR CONCERNED CITIZENS OF HONOLULU'S OPPOSITION TO APPLICANT PA'INA HAWAII, LLC'S SECOND APPEAL FROM LBP-06-04 AND LBP-06-12; CERTIFICATE OF SERVICE

<input type="checkbox"/> For Your Information.	<input checked="" type="checkbox"/> For Filing.
<input checked="" type="checkbox"/> For Your Files.	<input type="checkbox"/> For Recordation.
<input type="checkbox"/> Per Our Conversation.	<input type="checkbox"/> For Signature & Return.
<input type="checkbox"/> Per Your Request.	<input type="checkbox"/> For Necessary Action.
<input type="checkbox"/> For Review and Comments.	<input type="checkbox"/> For Signature & Forwarding.
<input type="checkbox"/> See Remarks Below.	

**REMARKS:**