

agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 354, Data Report on Spouse'.

3. *The form number if applicable:* NRC Form 354.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* NRC employees, contractors, licensees, and applicants who marry after completing NRC's Personnel Security forms, or marry after having been granted an NRC access authorization or employment clearance.

6. *An estimate of the number of annual responses:* 60.

7. *The estimated number of annual respondents:* 60.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 12 hours (.20 hour per response).

9. *An indication of whether Section 3507(d), Pub. L. 104-13 applies:* N/A.

10. *Abstract:* Completion of the NRC Form 354 is a mandatory requirement for NRC employees, contractors, licensees, and applicants who marry after submission of the Personnel Security Forms, or after receiving an access authorization or employment clearance to permit the NRC to assure there is no increased risk to the common defense and security.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 22, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date: John A. Asalone, Office of Information and Regulatory Affairs (3150-0026), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to [John\\_A.\\_Asalone@omb.eop.gov](mailto:John_A._Asalone@omb.eop.gov) or submitted by telephone at (202) 395-4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated in Rockville, Maryland, this 14th day of July, 2005.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of Information Services.*

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**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 71-0122; Approval No. 0122; EA-01-164]**

### **In the Matter of J. L. Shepherd & Associates; San Fernando, CA; Confirmatory Order Rescinding Order (Effective Immediately)**

#### **I**

J. L. Shepherd & Associates (JLS&A) was the holder of Quality Assurance (QA) Program Approval for Radioactive Material Packages No. 0122 (Approval No. 0122), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 71, Subpart H. The approval was originally issued January 17, 1980, pursuant to the QA requirements of 10 CFR 71.101. QA activities included: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR Part 71. In addition to an NRC-approved QA program satisfying the provisions of 10 CFR Part 71, Subpart H, JLS&A was required to comply with the requirements in 10 CFR Part 71, Subpart C, which grants a general license authorizing licensed material for which a Certificate of Compliance (CoC) had been issued by the NRC to be transported or delivered to a carrier for transport. Based on JLS&A failure to comply with these requirements, QA Program Approval No. 0122 was withdrawn, by the immediately effective NRC Order, dated July 3, 2001 (July 2001 Order) (66 FR 36603, July 12, 2001).

#### **II**

The NRC issued the July 2001 Order because the NRC lacked confidence that JLS&A was implementing its NRC-approved QA Program (71-0122, Revision No. 5) in full conformance with the terms and conditions of an NRC CoC and with 10 CFR Part 71, Subpart H.

On several occasions subsequent to imposition of the July 2001 Order,

JLS&A has requested, based on its proposed Near-Term Corrective Action Plan (NTCAP), interim relief from the July 2001 Order to allow shipments in U.S. Department of Transportation (DOT) specification packaging designated as 20WC. On August 17, 2001, in response to the July 2001 Order, JLS&A requested interim relief pursuant to its proposed NTCAP to allow 68 shipments to 16 customers, subject to JLS&A's commitment to take certain actions regarding implementation of its 10 CFR Part 71 QA Program. On September 19, 2001, the NRC issued a Confirmatory Order Relaxing the July 3, 2001, Order (September 2001 Order) based on JLS&A commitment to hold all shipments until NRC completed an inspection which confirmed JLS&A's satisfactory completion of the actions identified in its August request. Subsequent to certifications under oath and affirmation from both the Independent Auditor and J. L. Shepherd, the President of JLS&A, that the conditions for issuance of an Order had been met, the NRC conducted an inspection at the JLS&A facility on November 13-15, 2001. As a result of the inspection findings, the inspection team authorized JLS&A to commence the shipments in accordance with the September 2001 Order.

By letter dated December 7, 2001, JLS&A requested that provisions of the July 2001 Order be relaxed based on a showing of good cause. Specifically, JLS&A requested interim relief to ship an irradiator to Surry Nuclear Power Station and return the replaced unit to JLS&A's facility in California. JLS&A proposed to use the NTCAP specified in the September 2001 Order to authorize these two shipments in DOT specification packaging designated as 20WC. The NRC Staff reviewed JLS&A's relief request to determine whether the requested relief would be consistent with assurances that public health and safety are maintained. As a result, the NRC issued a Confirmatory Order Relaxing Order dated December 13, 2002 (December 2002 Order), which relaxed the July 2001 Order to grant interim relief to allow two shipments to one customer in 20WC packages in accordance with JLS&A's NTCAP, provided certain commitments were met.

By letters dated February 26, 2002, as supplemented March 13, 18, and 25, 2002, JLS&A requested that provisions of the July 2001 Order be relaxed based on a showing of good cause. Specifically, JLS&A requested an extension of the September 2001 Order expiration date from March 31, 2002 to June 30, 2002, to authorize JLS&A to

complete shipment of Type B quantities of radioactive material in DOT 20WC specification packaging that was authorized by the September 2001 Order. The extension of the expiration date was necessary since many of the JLS&A customers did not obtain the necessary licensing approval or building modification in time for the shipments to be completed by March 31, 2002. In addition, JLS&A requested authorization to make additional shipment to customers not approved by the September 2001 Order. JLS&A proposed to use the NTCAP specified in the September 2001 Order. JLS&A committed to: (1) Inspect the 20WC package (both shield and overpack); (2) document the inspection in a separate report; (3) perform the shipping and inspection function only by trained personnel; and (4) have the Independent Auditor verify compliance of each shipment with the foregoing commitments and certify such compliance in the routine monthly reports to the NRC.

This Order only granted additional time to complete the shipments previously authorized by the September 2001 Order to be completed by March 31, 2002. On February 26, 2002, JLS&A consented to issuance of a Confirmatory Order (February 2002 Order) granting interim relief from the July 2001 Order subject to the commitments, as described, agreed that the Confirmatory Order would be effective upon issuance, and agreed to waive its right to a hearing on this action. Implementation of these commitments, as described, provided assurance that sufficient resources were applied to the QA program, and that the program would be conducted safely and in accordance with NRC requirements.

In response to JLS&A's most recent request for interim relief, and based on a showing of good cause, the NRC issued a Confirmatory Order dated May 30, 2003, Confirmatory Order Relaxing Order (May 2003 Order) (68 FR 34010, June 6, 2003), that allowed JLS&A to make shipments through June 1, 2005, and expanded JLS&A's shipment authorization to transportation packaging as authorized by JLS&A's implementation of Revision 7 of the conditionally approved QA Program Approval No. 0122. The May 2003 Order contained an expiration date of June 1, 2005.

By letter dated April 7, 2005, JLS&A requested the NRC to rescind the July 2001 Order that withdrew JLS&A's Quality Assurance Program Approval No. 0122. Because the Staff's review of JLS&A's request could not be completed by June 1, 2005, the Staff issued a Confirmatory Order on June 1, 2005,

which extended the expiration date of the May 2003 Order to July 1, 2005 (70 FR 34165, June 13, 2005), to allow JLS&A to continue limited operations under Revision 7 of the conditionally approved QA Program Approval No. 0122, while the Staff completed its review.

### III

The Staff has completed its review and concluded that the July 2001 Order should be rescinded. JLS&A has completed all of the elements of its NTCAP and has demonstrated, on multiple occasions after relaxation of the July 2001 Order, that it can safely transport Type B radioactive shipments in both DOT Specification 20WC overpacks and NRC-approved CoC packages under their new NRC-approved QA program. In addition, the NRC Spent Fuel Project Office has inspected JLS&A in 2003 and again in 2004 and although minor program implementation deficiencies were found, these findings were of lower safety significance and none were of a severity level comparable to the original findings which precipitated the issuance of the July 2001 Order. In addition, in JLS&A's April 7, 2005 letter, JLS&A committed to the following conditions:

1. JLS&A shall continue implementing its new QA Procedures such that reviews are conducted to ensure that all activities under the scope of Part 71 are governed by procedures defining the activity, documenting the activity, and providing audit trail of the activity performed.

2. The Independent Auditor shall continue to perform quarterly audits verifying the implementation of the conditionally approved JLS&A Quality Assurance Program Plan and Implementing Procedures. Reports shall be provided quarterly by the 20th day of the month following completion of the audit. Any areas of nonconformance, not self identified by JLS&A, shall be reported to NRC.

3. JLS&A shall keep monthly statistics regarding QA Program implementation and procedure adherence. Such statistics shall include the number of nonconformances, the nature of the nonconformances, and indicate those nonconformances that are referred to the corrective action processes. Such information shall be provided to the Independent Auditor who will report any areas of concern to NRC during scheduled reports.

4. JLS&A shall immediately stop work or cause to be stopped any work which would result in a potential hazard to public health and safety.

5. Conditions 1 through 4 shall remain in effect for one year from date of rescission of the July 3 Order, or until the Independent Auditor shall issue four successive quarterly reports that show no violation of NRC regulations and effective implementation of the JLS&A Quality Assurance Program.

On June 23, 2005, JLS&A consented to issuance of this Order with the commitments, as described in Section IV below. JLS&A further agreed in its June 23, 2005, letter that this Order is to be effective upon issuance and that it waived its right to a hearing. Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to JLS&A's Quality Assurance Program Plan and Implementing Procedures, and that the plan and procedures will be conducted safely and in accordance with NRC requirements. I find JLS&A's commitments as set forth in Section IV acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that JLS&A's commitments be by this Order. Based on the above and JLS&A's consent, this Order is immediately effective upon issuance.

### IV

Accordingly, pursuant to Sections 62, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR parts 71 and 110, *it is hereby ordered, effective immediately, that the July 3, 2001, Order is rescinded, reinstating JLS&A's quality assurance program approval and granting relief to J. L. Shepherd and Associates to allow full participation in 10 CFR part 71 transportation activities in accordance with NRC-approved quality assurance program approval, revision 7, based on the following conditions:*

1. JLS&A shall continue implementing its new QA Procedures. Reviews shall be conducted to ensure that all activities under the scope of 10 CFR part 71 are governed by procedures defining the activity, documenting the activity, and providing an audit trail of the activity performed.

2. The Independent Auditor shall continue to perform quarterly audits verifying the implementation of the conditionally approved JLS&A Quality Assurance Program Plan and Implementing Procedures. Reports shall be provided quarterly by the 20th day of the month following completion of the audit. Any areas of nonconformance

included in such reports that are not self identified by JLS&A, shall also be reported to NRC, in writing, by the 20th day of the month following completion of the audit.

3. JLS&A shall keep monthly statistics regarding QA Program implementation and procedure adherence. Such statistics shall include the number of nonconformances, the nature of the nonconformances, and those nonconformances referred to the corrective action processes. Such information shall be provided to the Independent Auditor who will report any areas of concern to NRC through scheduled reports.

4. JLS&A shall immediately stop work or cause to be stopped any work which would result in a potential hazard to public health and safety.

5. Conditions 1 through 4 shall remain in effect for one year from date of rescission of the July 3 Order, or until the Independent Auditor shall issue four successive quarterly reports that show no violation of NRC regulations and effective implementation of the JLS&A Quality Assurance Program, whichever is later.

The Director, Office of Enforcement, may in writing, relax or rescind any of the above conditions upon demonstration by JLS&A of good cause.

## V

Any person adversely affected by this Confirmatory Order, other than the Certificate Holder, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011 and to JLS&A. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101

or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 30th day of June, 2005.

For the Nuclear Regulatory Commission.

**Michael R. Johnson,**

*Director, Office of Enforcement.*

[FR Doc. 05-14358 Filed 7-20-05; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 55-61290; License No. SOP-11768; IA-05-15]**

### In the Matter of Richard M. Probasco; Confirmatory Order (Effective Immediately)

## I

Richard M. Probasco (Mr. Probasco) is employed as a Shift Manager at the Pilgrim Nuclear Power Station (Pilgrim). Mr. Probasco is the holder of Senior Reactor Operator (SRO) License Number SOP-11768 issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR Part 55. The license authorizes Mr. Probasco to direct the licensed activities of licensed operators at, and to manipulate all controls of, the Pilgrim Nuclear Power Station, facility license number DPR-35. The facility is located on an Entergy Nuclear Operations, Inc. site in Plymouth, MA.

## II

An investigation was initiated by the NRC Office of Investigations (OI) on August 27, 2004, at Pilgrim. This investigation was initiated, in part, to determine if Mr. Probasco did not take appropriate corrective actions when he became aware of the inattentiveness of a Control Room Supervisor (CRS) on June 29, 2004. Based on the evidence developed during its investigation, OI substantiated that, in careless disregard for requirements, Mr. Probasco did not immediately relieve the CRS from duty, have him for-cause fitness-for-duty tested, inform appropriate site personnel, and initiate a Condition Report (CR).

## III

In response to a March 23, 2005 letter, Mr. Probasco requested the use of Alternative Dispute Resolution (ADR) to resolve this matter with the NRC. ADR is a process in which a neutral mediator with no decision-making authority assists the NRC and Mr. Probasco in reaching an agreement on resolving any differences regarding the enforcement action. An ADR session was held between Mr. Probasco and the NRC in Philadelphia, Pennsylvania on May 17, 2005, and was mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. During that ADR session, a settlement agreement was reached. The elements of the settlement agreement consisted of the following:

1. Mr. Probasco agreed that he violated an NRC requirement by not properly documenting and informing management of his observation that a CRS was inattentive to duty in the control room on June 29, 2004.

2. The NRC maintained that Mr. Probasco's actions in violating the requirement was in careless disregard of an NRC requirement. Mr. Probasco contended that while he erred in violating the requirement, his actions were not willful, in careless disregard of an NRC requirement. The NRC and Mr. Probasco agreed to disagree on this point.

3. Mr. Probasco, subsequent to the identification of this violation, took actions to assure that he learned from this violation and provided the NRC with assurance that it would not recur. These actions included: (a) Sharing the March 23, 2005 letter from the NRC with his SRO peers at Pilgrim to emphasize the significance of the violation; (b) participating actively to share his experience with all Entergy plants via a corporate notification; and (c) contributing to the preparation of an