



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001**

June 1, 2005

EA-01-164

J. L. Shepherd, President  
J. L. Shepherd & Associates  
1010 Arroyo Avenue  
San Fernando, CA 91340-1822

**SUBJECT: CONFIRMATORY ORDER RELAXING ORDER ISSUED MAY 30, 2003**

Dear Mr. Shepherd:

The enclosed Order is being issued to extend the expiration date of the May 30, 2003, Confirmatory Order Relaxing Order, which allowed relaxation of certain provisions of the U.S. Nuclear Regulatory Commission (NRC) Order dated July 3, 2001. The expiration date has been extended from June 1, 2005, to July 1, 2005. This action does not affect the other terms and conditions of the May 30, 2003, Confirmatory Order Relaxing Order.

The staff is currently reviewing your April 7, 2005, request to rescind the Order of July 3, 2001; however, this review will not be completed before June 1, 2005.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to Mr. Michael Johnson, Director of the Office of Enforcement, who can be reached at (301) 415-2741.

J. L. Shepherd

2

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure(s) will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

**/RA/**

Michael R. Johnson, Director  
Office of Enforcement  
U.S. Nuclear Regulatory Commission

Docket No. 71-0122  
Approval No. 0122

Enclosure: As Stated

cc: Don Irwin, Hunton & Williams  
Rick Boyle, Department of Transportation  
Michael Wangler, Department of Energy  
Ed Bailey, State of California

DISTRIBUTION:

Docket  
 NRC File Center  
 PUBLIC  
 OEWEB  
 MSchwartz, OE  
 MJohnson, OE  
 PHolahan, IMNS  
 RO'Connell, IMNS  
 MBurgess, IMNS  
 PLohaus, OSTP  
 RBlanton, OSTP  
 GCaputo, OI  
 J.Kinneman, RI  
 TDecker, RII  
 JMadera, RIII  
 BSpitzberg, RIV  
 VDricks, RIV  
 MShaffer, RIV  
 LMcLean, RIV  
 LHowell, RIV  
 RTemp, SFPO  
 SBaggett, SFPO  
 MDeBose, SFPO  
 MJRoss-Lee, SFPO  
 WRuland, SFPO  
 SFPO, R/F  
 MYoung, OGC  
 LClark, OGC  
 LChandler, OGC  
 DDandois, OCFO  
 MFederline, NMSS  
 JStrosnider, NMSS  
 NMSS R/F  
 EA File  
 OE Day File

ADAMS Accession#: ML051520335

DOCUMENT NAME: E:\Filenet\ML051520335.wpd

<b>OFC</b>	SFPO	E	SFPO	E	SFPO	E	SFPO	E	OGC	
<b>NAME</b>			MDeBose		MJRoss-Lee		WRuland		LClark	
<b>DATE</b>	05/31/05		05/31/05		05/31/05		05/31/05		05/31/05	

<b>OFC</b>	NMSS	E	NMSS		OE	
<b>NAME</b>	MFederline		JStrosnider		MRJohnson	
<b>DATE</b>	05/31/05		05/31/05		06/1/05	

**C-COVER**

**E-COVER & ENCLOSURE  
 OFFICIAL RECORD COPY**

**N-NO COPY**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
J. L. Shepherd & Associates	)	Docket No. 71-0122
San Fernando, California	)	Approval No. 0122
	)	EA-01-164

ORDER MODIFYING CONFIRMATORY ORDER RELAXING 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 previously issued pursuant to the QA requirements of 10 CFR 71.101. QA activities authorized by Approval No. 0122 included: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR Part 71. Approval No. 0122 was originally issued January 17, 1980. In addition to having a QA program approved by the NRC to satisfy the provisions of 10 CFR Part 71, Subpart H, to transport or deliver for transport licensed material in a package, JLS&A was required by 10 CFR Part 71, Subpart C, to have and comply with the package's Certificate of Compliance (CoC) issued by the NRC. Based on JLS&A failure to comply with 10 CFR Part 71, Subpart H, QA Program Approval No. 0122 was withdrawn, by the immediately effective NRC Order dated July 3, 2001 (66 FR 36603, July 12, 2001).

The NRC issued the July 3, 2001, Order (July 2001 Order) because the NRC lacked confidence that JLS&A would continue to implement the QA Program approved by the NRC ( 71-0122, Revision No. 5) in accordance with 10 CFR Part 71, Subpart H, in a manner that would assure the required preparation and use of transportation packages in full conformance with the terms and conditions of an NRC CoC and with 10 CFR Part 71.

On several occasions subsequent to 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. 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 (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 implementation of Revision 7 of the conditionally approved QA Program Approval No. 0122. The May 30, 2003 Confirmatory Order Relaxing Order will expire June 1, 2005, thus withdrawing JLS&A's interim Quality Assurance Program Approval. However, by letter dated April 7, 2005, JLS&A requested the Commission to rescind the Order of July 3, 2001 that withdrew JLS&A's Quality Assurance Program Approval (Docket 71-0122, EA-01-1640). The staff's review of JLS&A's request will not be finished by June 1, 2005, thus perhaps unnecessarily withdrawing JLS&A's Quality Assurance

Program Approval. Extending the May 30, 2003, Confirmatory Order until July 1, 2005, will maintain JLS&A's Quality Assurance Program Approval until the staff's review of JLS&A's April 7, 2005, request is complete.

### III

This Order only revises the expiration date of the May 30, 2003, Confirmatory Order Relaxing Order, and does not affect the other terms and conditions of the May 30, 2003, Confirmatory Order. Based on JLS&A's assurance that it will remain in compliance with the May 30, 2003, Confirmatory Order, which the Commission granted based on a showing of good cause, 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 2.202 and 10 CFR Parts 71 and 110, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT THE MAY 30, 2003, CONFIRMATORY ORDER RELAXING ORDER IS MODIFIED AS PROVIDED:

1. That the May 30, 2003, Confirmatory Order Relaxing Order, is revised to extend the expiration date of that Order from June 1, 2005, to July 1, 2005.

The Director, Office of Enforcement, or the Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind this Order upon a demonstration by the Licensee of good cause.

Any person adversely affected by this Confirmatory Order, other than the Licensee, 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.

FOR THE NUCLEAR REGULATORY COMMISSION

**/RA**

Michael R. Johnson, Director  
Office of Enforcement

Dated this 1<sup>st</sup> day of June 2005