

by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601, attorney for the licensee.

For further details with respect to this action, see the application for

amendment dated April 27, 2005, as supplemented June 3, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 7th day of June 2005.

For The Nuclear Regulatory Commission.

**John P. Boska,**

*Sr. Project Manager, Section 1, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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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, California; 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).

## II

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-01-164). 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

In a consent form signed on May 31, 2005, JLS&A agreed to all of the commitments described in Section IV below. The Licensee further agreed that this Order would be effective upon the issuance of this Order and that JLS&A

waived its right to a hearing on this Order.

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 Materials Safety and Safeguards, may in writing, relax or rescind this Order upon a demonstration by the Licensee of good cause.

## V

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. A request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 1st day of June, 2005.

For the Nuclear Regulatory Commission.

**Michael R. Johnson,**

*Director, Office of Enforcement.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 030-14680]

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Merck & Co., Inc. in Rahway, NJ

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Availability.

### FOR FURTHER INFORMATION CONTACT:

Betsy Ullrich, Commercial & R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337-5040, fax (610) 337-5269; or by e-mail: [exu@nrc.gov](mailto:exu@nrc.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to