

JL SHEPHERD & ASSOCIATES

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September 9, 2002

Mr. Frank J. Congel
Director, Office of Enforcement
U. S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Md. 20555-0001

J. L. Shepherd & Associates: EA-02-043

Dear Mr. Congel:

In accordance with your letter of August 13, 2002 and the attached Order Imposing Civil Monetary Penalty and NUREG/BR-0254, Rev. 1, J. L. Shepherd and Associates is sending under separate cover today in the amount of \$19,200 to the NRC to close out Enforcement Action 02-043.

JLS&A accepts the Commission's disposition of this matter. However, to keep the record straight, JLS&A registers its disagreement with the phrase "or planned" in the following statement in the "Appendix: Evaluation and Conclusion" to the August 13 Order: "In addition, comprehensive corrective actions were not taken or planned by JLS&A until the NRC issued the Order, dated July 3, 2001, that withdrew approval of the JLS&A Quality Assurance Program."

The sentence suggests that JLS&A had not taken its QA issues seriously or devoted any thought to remedying them before the July 3, 2001 Order. Such a suggestion would not be accurate. Without unduly repeating matters of record, JLS&A points out that we committed to the NRC in the spring of 2000 to retain a qualified QA consultant and perform a thorough review of our QA program; this commitment was memorialized in the CAL of April 24, 2000. Although our efforts to hire a knowledgeable consultant were hampered initially by conflicts stemming from our widespread commercial relationships, we did succeed in retaining a highly qualified consultant approved by the NRC, Donald R. Neely, who performed two major evaluations for us in the fall of 2000 in fulfillment of our CAL commitment. The first was a QA Program Plan Audit which evaluated each of the 18 elements of the JLS&A QA Program Plan (QAPP) using a MORT methodology. The second was a root-cause analysis of the functioning of the JLS&A QA Program, focusing on the occurrence of nonconforming shipments during the period 1997-99. Following delivery of these documents to JLS&A on December 4, 2000, we spoke by telephone with Messrs. Narbut and Temps of the Staff on December 18, 19 and 21, 2000, and forwarded these documents to the Staff on December 29.

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Three weeks later, on January 20, 2001, Mr. Neely completed for us a Quality Assurance Program Improvement Plan (QAPIP), a detailed document approximately 100 pages (not including timelines) in length, with literally hundreds of suggestions for modification of the QAPP and implementing procedures, based on the audit and root-cause analysis. The QAPIP contained a statement of methodology, item-by-item plans for revision of the QAPP and implementing procedures, a schedule, and methodology for closeout of open items. This document was sent to Dr. Shankman and Mr. Narbut of the NRC Staff on January 22, 2001.

Approximately two weeks later, on February 8, 2001, JLS&A representatives (Mary Shepherd, Donald Neely) held a telephone conference call with NRC Staff representatives (Messrs. Narbut, Temps, Tokar and possibly others) to discuss the QAPIP. Three suggestions for revision were offered by the NRC Staff and were accepted by JLS&A in a letter from Ms. Shepherd to Dr. Shankman (cc. Mr. Narbut) dated February 15, 2001.

At that time, our basic Quality Assurance Program Plan (QAPP) was in the process of regular periodic renewal review. We had timely submitted an initial version in late December 2000, and submitted a revised version on April 2, 2000, in response to Staff comments on the original submission. We agreed with the Staff in telephone discussions during this period to refrain from implementing the recommendations in the QAPIP until the Staff had completed its review and approval of the QAPP, in order to avoid potential wasted effort. Unfortunately, the Staff reviewer assigned to review the QAPP, Mr. Pearson, departed on an extended leave of at least two months' duration, around the beginning of April 2000. No one was assigned by the Staff to take his place. Thus our implementation of the QAPIP languished for months.

In the meantime, the Ethiopia shipment, which had left our facility in July of 2000, was returned, and the progress of our QAPP toward orderly revision and reapproval was overtaken by events. Please note that Mr. Neely's work could not have done anything to forestall the problems with that shipment, since he was not engaged until September of 2000.

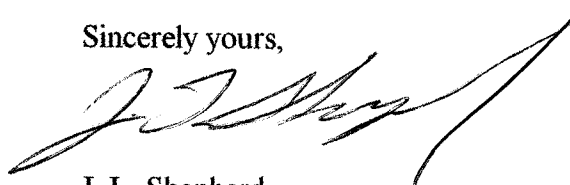
In short, it is fair to say that because of the events described above, we were not able to implement before July 3, 2001 the comprehensive corrective actions embodied in the QAPIP and the revisions to our QAPP, which we had submitted to the NRC Staff in the previous winter and spring. It is not correct to state that they had not been planned. They most assuredly were, and but for the unfortunate nature of the Staff review process, would have been timely implemented.

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To repeat, JLS&A does not demand a hearing. We wish to get on with our business and leave the difficult and painful period of the enforcement action behind us. The facts stated above are all matters of public record. We would have itemized them in detail in our earlier request for remission of the civil penalty on the basis of timely comprehensive corrective action if we had known that the NRC was focusing on the pre-July 3 time period with respect to its review of timely, comprehensive corrective action. If a review of these facts prompts the NRC to mitigate the penalty assessed against us, we would be grateful. At the least, we want to correct a potentially inaccurate and misleading statement in the Appendix which suggests the JLS&A did not care about its regulatory situation or intend to correct it. The fact is that we did a lot of good, and costly, work that would have been fully implemented in the spring of 2001 if matters beyond our control had not derailed it. This planning is currently being implemented as the structural guideline for the new Quality Assurance Manual with implementing documents that was conditionally approved by the NRC on September 13, 2001.

Having noted the above, JLS&A welcomes the end of EA-01-043, and the opportunity to resume normal business and regulatory relationships.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'J. L. Shepherd', with a long, sweeping horizontal stroke extending to the right.

J. L. Shepherd

cc: Mr. Martin J. Virgilio (NMSS)
Mr. Steven L. Baggett (NMSS)