

to file an IRA appeal. The appellant has filed a petition for review arguing that the Board has jurisdiction over his appeal. The agency has filed a response opposing the petition.

#### Question To Be Resolved

This appeal raises the question of whether the Board has appellate jurisdiction to review an IRA appeal from an employee, former employee, or applicant for employment of the International Boundary and Water Commission.

#### Issues To Be Considered in Resolving the Question Posed

Title 5 of the United States Code, section 1221(a) provides that an employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken \* \* \* as a result of a prohibited personnel practice described in section 2302(b)(8), seek corrective action from the Merit Systems Protection Board. Section 2302(a)(2)(A) defines "personnel action" as various types of employment-related actions "with respect to an employee in, or applicant for, a covered position in an agency." Section 2302(2)(C) in turn defines an "agency" to mean, *inter alia*, "an Executive agency." For purposes of title 5, "Executive agency" means an Executive department, a Government corporation, and an independent establishment. 5 U.S.C. 105. An "independent establishment" means, *inter alia*, an establishment in the executive branch "which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment." 5 U.S.C. 104.

The appellant in this case argues that the U.S. Section of the International Boundary and Water Commission is "entirely a creature of the United States," operates as a separate federal agency, is an "independent establishment" within the meaning of 5 U.S.C. 104, and is not subject to international control. In contrast, the administrative judge found that the International Boundary and Water Commission is a subdivision of an "international organization" under 22 U.S.C. 277, 288.

Finally, we note that the U.S. Court of Appeals for the Federal Circuit and the Merit Systems Protection Board have not questioned IRA jurisdiction over the International Boundary and Water Commission in previous decisions. See, e.g., *Mestan v. International Boundary and Water Commission*, 95 Fed. Appx. 1012 (Fed. Cir. 2004) (non-precedential); *White v. International Boundary and*

*Water Commission*, 59 M.S.P.R. 62 (1993).

**DATES:** All briefs in response to this notice shall be filed with the Clerk of the Board on or before November 25, 2005.

**ADDRESSES:** All briefs shall include the case name and docket number noted above (*Wilcox v. International Boundary and Water Commission*) and be entitled "Amicus Brief." Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419. Respondents are encouraged to file by facsimile transmittal at (202) 653-7130.

**FOR FURTHER INFORMATION CONTACT:** Matthew Shannon, Deputy Clerk of the Board, or Melissa Jurgens, Counsel to the Clerk, at (202) 653-7200.

Dated: October 20, 2005.

**Bentley M. Roberts, Jr.,**  
Clerk of the Board.

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## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-62 and 50-396]

### Notice of License Terminations for University of Virginia Research Reactor (UVAR) and University of Virginia Cooperatively Assembled Virginia Low Intensity Educational Reactor (CAVALIER)

The U.S. Nuclear Regulatory Commission (NRC) is noticing the termination of Facility Operating License No. R-66 for the UVAR and Facility Operating License No. R-123 for the CAVALIER.

The NRC has terminated the license of the decommissioned UVAR, in the reactor facility on the UVA campus in Charlottesville, Virginia, and has released the site for unrestricted use. The licensee requested termination of the license in a letter to NRC dated June 18, 2004. The UVAR was a 2-MW-thermal, light-water-moderated, -cooled, and -reflected reactor fueled with plate-type fuel. It was licensed and first operated in June 1960. The reactor was permanently shut down on June 30, 1998. The licensee submitted a decommissioning plan to NRC for review and approval in a letter dated February 9, 2000, updated by letter dated April 26, 2000, and supplemented by letters on December 19, 2000, and May 4 and May 11, 2001. The NRC approved the UVAR decommissioning plan by Amendment No. 26 to the

Facility Operating License No. R-66 on March 26, 2002.

The NRC has also terminated the license of the decommissioned CAVALIER, which was in the same reactor facility on the UVA campus in Charlottesville, Virginia, and has released the site for unrestricted use. The licensee requested termination of the license in an April 4, 2003 letter to NRC. The request for termination was affirmed by letter dated September 26, 2005. The CAVALIER was a 100-MW-thermal, light-water-moderated, -cooled, and -reflected reactor fueled with plate-type fuel. It was licensed and first operated in October 1974. The licensee submitted a decommissioning plan by letter February 26, 1990, and supplemented the plan on June 17, 1991. The NRC Commission issued an Order Authorizing Dismantling of Facility and Disposition of Component Parts for the CAVALIER, Facility Operating License No. R-123, on February 3, 1992.

A Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action To Decommission the University of Virginia, University of Virginia Research Reactor appeared in the **Federal Register** on December 6, 2001 (65 FR 17684). All comments received were considered by the staff during the review of the UVAR decommissioning plan for Facility Operating License No. R-66.

A Notice of Proposed Issuance of Orders Disposition of Component Parts and Terminating Facility License appeared in the **Federal Register** on April 22, 1991 (56 FR 16350). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action concerning Facility Operating License No. R-123.

The NRC completed its review of the April 2004 UVAR Final Status Survey Report submitted to NRC by letter dated June 18, 2004, and the March 2003 Evaluation of Radiological Characterization Results Relative to the Termination of NRC License No. R-123 dated, March 2003, submitted by letter dated April 4, 2003. Both reports documented the level of residual radioactivity remaining at the facility and stated that compliance with the criteria in the NRC-approved decommissioning plan for both reactors has been demonstrated.

Pursuant to 10 CFR 50.82(b)(6), the NRC staff has concluded that both reactors have been decommissioned in accordance with the approved decommissioning plans and that the terminal radiation surveys and

associated documentation demonstrate that the facilities and sites may be released in accordance with the criteria in the NRC-approved decommissioning plans. Further, on the basis of the decommissioning activities carried out by UVA, the NRC's review of the licensee's final status survey report, the results of NRC inspections conducted at the UVAR and CAVALIER, and the results of NRC confirmatory surveys, the NRC has concluded that the decommissioning process is complete and the facilities and sites may be released for unrestricted use. Therefore Facility Operating License Nos. R-66 and R-123 are terminated.

For further details concerning UVAR see the licensee's application for decommissioning dated February 9, 2000, updated by letter April 26, 2000 and supplemented by letters on December 19, 2000, May 4, and May 11, 2001; the NRC approval of the UVAR decommissioning plan by Amendment No. 26 to Facility Operating License No. R-66 on March 26, 2002; the licensee's request for license termination by letter to NRC dated June 18, 2004; the April 2004 UVAR Final Status Survey Report submitted to NRC by letter dated June 18, 2004; and NRC Inspection Report No. 50-62/2002-202, dated September 2, 2005. For further details about CAVALIER, see the licensee's February 26, 1990 application for decommissioning, supplemented on June 17, 1991; the February 3, 1992, Order Authorizing Dismantling of Facility and Disposition of Component Parts for the CAVALIER, Facility Operating License No. R-123; licensee's April 4, 2003, request for termination of the license; the March 2003 Evaluation of Radiological Characterization Results Relative to the Termination of NRC License No. R-123, submitted by letter dated April 4, 2003; and NRC Inspection Report No. 50-62/2002-202, dated September 2, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records for UVA dated after January 30, 2000, will be accessible electronically from the Agencywide Documents Access and Management System (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 have problems in accessing the documents in ADAMS should call the NRC PDR reference staff at 1-800-397-4209 or 301-415-4737 or e-mail [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 17th day of October, 2005.

For the Nuclear Regulatory Commission.

**Brian E. Thomas,**

*Section Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

### **Final Regulatory Guide: Issuance, Availability**

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 3.71, entitled "Nuclear Criticality Safety Standards for Fuels and Material Facilities," describes methods that the NRC staff finds acceptable for complying with the NRC's regulations in Title 10, Parts 70 and 76, of the *Code of Federal Regulations*. In 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," Section 70.20, "General License To Own Special Nuclear Material," states that a specific license is required to acquire, deliver, receive, possess, use, transfer, import, or export special nuclear material. According to 10 CFR 70.22, "Contents of Applications," each application for such a license must contain proposed procedures to avoid nuclear criticality accidents. In 10 CFR Part 76, "Certification of Gaseous Diffusion Plants," Section 76.87, "Technical Safety Requirements," states that the technical safety requirements should reference procedures and equipment that are applicable to criticality prevention.

The NRC initially issued Regulatory Guide 3.71 in 1998 to provide guidance concerning procedures that the staff considered acceptable for complying with these portions of the NRC's regulations. Toward that end, the original guide endorsed specific nuclear criticality safety standards developed by the American Nuclear Society's

Standards Subcommittee 8 (ANS-8), "Operations with Fissionable Materials Outside Reactors." Those national standards provide guidance, criteria, and best practices for use in preventing and mitigating criticality accidents during operations that involve handling, processing, storing, and/or transporting special nuclear material at fuel and material facilities. The original guide also took exceptions to certain portions of individual ANS-8 standards. In addition, the original guide consolidated and replaced a number of earlier NRC regulatory guides, thereby providing all of the relevant guidance in a single document.

Since that time, several ANS-8 nuclear criticality safety standards have been added, reaffirmed, revised, or withdrawn. Consequently, the NRC staff decided to update this guide to clarify which standards the agency endorses and to clearly state exceptions to individual standards. Toward that end, the staff issued this revised regulatory guide as Draft Regulatory Guide DG-3023, with a **Federal Register** notice (70 FR 25128), dated May 12, 2005, to solicit stakeholder comments. The public comment period closed on June 20, 2005, without the submission of any stakeholder comments; however, the NRC staff further revised RG 3.71 based on review of additional changes to the consensus standards in the guide.

This revision does not change any of the guidance provided in the initial issuance of Regulatory Guide 3.71; rather, it provides guidance concerning changes that have occurred since the NRC published the original guide in 1998. For completeness, this guide restates the endorsements and exceptions stated in Regulatory Guide 3.71, as applicable, while identifying endorsements of or exceptions to new or modified standards.

Since the ANSI/ANS-8 standards are constantly being issued, revised, reaffirmed, or withdrawn, the NRC staff plans to revise this guide on a regular basis. The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. Comments may be accompanied by relevant information or supporting data. Please mention the guide number in the subject line of your submission. Comments submitted in writing or in electronic form will be made available to the public in their entirety on the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may