

application by June 1, 2010. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292-7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2011-001

1. *Applicant:* Stevem D. Emslie, Department of Biology and Marine Biology, University of North Carolina, Wilmington, NC 28403.

Activity for Which Permit Is Requested

Take and Import into the U.S.A. The applicant plans to salvage sediments from abandoned and active penguin colonies by excavation of small pits, no larger than 1x1 meter, in each area. In addition, the applicant will collect 10 each organic remains (bones, tissue, feathers, eggshell fragments, otoliths, squid beaks, and other prey remains) from sediments in abandoned colonies of Adelie, Chinstrap, Gentoo, Emperor, and Macaroni penguins, Southern Giant Petrel, Antarctic Petrel, Cape Petrel, Snow Petrel, Blue Petrel, Antarctic Fulmar, White-chinned petrel, Sooty shearwater, Wilson's Storm-petrel, Black-bellied storm-petrel, Blue-eyed shag, Greater sheathbill, South Polar Skua, Brown Skua, Kelp gull, and Antarctic Tern.

The applicant also plans to capture 100 each of adult or juvenile Adelie, Chinstrap and Gentoo penguins to collect some breast feathers and blood samples for analysis of carbon and nitrogen isotope values to examine diets, and for mercury (Hg). All captured birds will be released.

Location

ASPAs 102-Rookery Islands, Holme Bay, ASPA 103-Ardery and Odbert Islands, ASPA

104-Sabrina Island, Balleny Island, ASPA 105-Beaufort Island, ASPA 106-Cape Hallett, Victoria Land, ASPA 107-Dion Islands, ASPA 108-Green Island, Berthelot Islands, ASPA 109-Moa Island, South Orkneys, ASPA 110-Lynch Island, South Orkneys, ASPA 111-Southern Powell Island and adjacent islands, South Orkneys, ASPA 112-Coppermine Peninsula, Robert Island, ASPA 113-Litchfield Island, Arthur Harbor, Palmer Archipelago, ASPA 114-North Coronation Island, ASPA 115-Lagotellerie Island, Marguerite Bay, ASPA 116-New College Valley, Caughley Beach, Cape Bird ASPA 117-Avian Island, northwest Marguerite Bay, ASPA 121-Cape Royds, Ross Island, ASPA 124-Cape Crozier, Ross Island, ASPA 125-Fildes Peninsula, King George Island, South Shetland Islands, ASPA 126-Byers Peninsula, Livingston Island, ASPA 127-Haswell Island, ASPA 128-Western shore of Admiralty Bay, King George Island, ASPA 129-Rothera Point, Adelaide Island, ASPA 132-Potter Peninsula, King George Island, ASPA 133-Harmony Point, Nelson Island, ASPA 134-Cierva Point, Danco Coast, ASPA 135-Bailey Peninsula, Budd Coast, ASPA 136-Clark Peninsula, Budd Coast, ASPA 139-Biscoe Point, Anvers Island, Palmer Archipelago, ASPA 143-Marine Plain, Mule Peninsula, Vestfold Hills, ASPA 149-Cape Shirreff, Livingston Island, and ASPA 150-Ardley Island, King George Island.

Dates

October 1, 2010 to September 30, 2012.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2010-10068 Filed 4-29-10; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 150-00017; NRC-2010-0164; EA-08-184]

In the Matter of CAN USA, Inc., Harvey, Louisiana; General License Pursuant to 10 CFR 150.20; Confirmatory Order (Effective Immediately)

I

CAN USA, Inc. (CAN USA or Licensee) is the holder of State of Louisiana Materials License LA-10258-01, which authorizes possession and use of sealed sources for industrial radiography. Louisiana is an Agreement State under Section 274b of the Atomic Energy Act of 1954, as amended. Therefore, pursuant to 10 CFR 150.20(a)(1), CAN USA is granted a general license by the U.S. Nuclear Regulatory Commission (NRC or Commission) to conduct the same activities authorized by its Louisiana license in offshore Federal waters. CAN USA has performed licensed activities in offshore Federal waters under its

general NRC license at various times during calendar years 2001 to 2010.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on March 9, 2010.

The Appendix to this Order contains Sensitive Unclassified Non-Safeguards Information (SUNSI). When separated from the Appendix, this Order is decontrolled.

II

On June 12, 2008, the NRC conducted a routine inspection of CAN USA's radiographic operations onboard a Chevron USA platform located in offshore Federal waters. The NRC's Office of Investigations (OI) initiated an investigation on August 13, 2008.

Based on the inspection and the evidence developed during the associated investigation, apparent violations of NRC requirements were identified. First, it appeared that a radiographer conducted radiographic operations without a second qualified individual present. Second, it appeared that the radiographer failed to supervise and maintain direct observation of a radiographer's assistant during the assistant's use of a radiographic exposure device, and that the assistant used the device while not under the personal supervision of the radiographer. Third, it appeared that both individuals failed to control and maintain constant surveillance of licensed material that was in a controlled or unrestricted area and not in storage. The NRC also identified an apparent violation of NRC security requirements that is described in the Appendix to this Order (Appendix). (The Appendix includes security-related information; therefore, it is not publicly available.) In addition, the NRC was concerned that willfulness may have been associated with three of those apparent violations. The NRC described the results of the inspection and investigation in a letter to CAN USA dated January 27, 2010. In response to the NRC's January 27, 2010, letter, CAN USA requested ADR to resolve these issues.

On March 9, 2010, the NRC and CAN USA met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. Alternative dispute resolution is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant

to the agreement reached during the ADR process.

III

In response to the NRC's offer, CAN USA requested use of the NRC ADR process to resolve issues associated with the apparent violations identified by the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of that preliminary agreement are described below, except for those portions of the agreement that include security-related information and, therefore, are not publicly available. The security-related elements of the agreement, as well as those portions of this Confirmatory Order that address those security-related elements, are described in an Appendix to this Confirmatory Order. The following description of the preliminary ADR agreement, and the required actions described in Section V of this Confirmatory Order include references to the Appendix to allow for public release of this Confirmatory Order.

Pursuant to the NRC Office of Enforcement's ADR program, the following are the terms and conditions agreed upon in principle by CAN USA and the NRC relating to NRC Inspection Report 150-00017/2008-001 issued by the NRC to CAN USA on January 27, 2010.

Whereas, the NRC's inspection and investigation conducted between June 12, 2008, and January 27, 2010, identified apparent violations of NRC requirements;

Whereas, the apparent violations involved were:

(1) The failure to have present during radiographic operations a radiographer and at least one other qualified radiographer or an individual who has at a minimum met the requirements of 10 CFR 34.43(c);

(2) The failure to have a radiographer supervise and maintain direct observation of a radiographer's assistant during the assistant's use of a radiographic exposure device;

(3) The failure to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage; and

(4) The failure to comply with NRC security-related requirements, as described in the Appendix to this Order.

Whereas, the NRC is concerned that willfulness may be associated with three of the apparent violations above;

Whereas, CAN USA agrees that apparent violations 1-4 did occur, but denies any willfulness was involved;

Whereas, the NRC acknowledges the corrective actions CAN USA has already

implemented associated with the apparent violations, which include:

(1) Providing additional training to radiographers, assistant radiographers and trainees;

(2) Implementing a checklist to be reviewed by each radiography crew prior to departing for a temporary job site. The checklist includes:

a. Surveillance and security of exposure devices,

b. A security-related provision that is described in the Appendix to this Order

c. A security-related provision that is described in the Appendix to this Order.

(3) A security-related corrective action that is described in the Appendix to this Order;

(4) Conducting monthly audits of offshore radiographic operations as customer transport allowed; and

(5) Providing more "real-time" notifications of changes in work schedules originally submitted in NRC-241 forms. These notifications consisted of detailed changes or clarified information via fax or e-mail.

Whereas, the NRC is interested in obtaining comprehensive corrective actions by CAN USA that would prevent recurrence of the apparent violations noted above;

Whereas, these terms and conditions shall not be binding on either party until memorialized in a Confirmatory Order issued by the NRC to CAN USA relating to this matter;

Therefore, the parties agree to the following terms and conditions:

(1) Within 140 days of the date of the Confirmatory Order, CAN USA will develop, implement and provide training on new and/or revised operating procedures. This training shall be provided to new employees prior to working with licensed material for the first time, and to existing employees. Refresher training will be provided annually (at intervals not to exceed 12 months) thereafter for all employees involved in licensed activities. Records of training materials and course attendees shall be maintained for 5 years. The procedures shall address:

- Use of Radiography Checklist. Use procedures for the "Radiography Checklist" prior to departure from the licensee's land-based facilities. Additionally, the radiography crew will complete the checklist after arrival on the offshore facility. A radiography crew member will send documentation of the jobsite review by FAX or other available method to the RSO or another designated CAN USA individual at CAN USA's corporate offices no later than 8 hours after the completion of the checklist.

- Information to offshore "customer." Use of the above checklist shall include a sign-off by the onsite Team Leader (Instructor/Radiographer) attesting that she/he has briefed the offshore facility jobsite sponsor, or other responsible individual on the offshore facility regarding CAN USA's proposed licensed activities.

- A security-related topic that is described in the Appendix to this Order.
- Radiographer's supervisory responsibilities (10 CFR 34.46).
- Security of Licensed Material.
- Potential consequences for wrongdoing.

CAN USA will provide an outline of the training to the NRC for review and approval within 90 days of the date of the Confirmatory Order.

CAN USA will implement the training within 30 days of receipt of the NRC's approval of the training.

(2) CAN USA will provide the following one-time training session(s) to employees involved in licensed activities before these individuals can participate in radiographic operations, until the training program described in Item 1 is implemented.

- Radiography Checklist—The radiography checklist is to be completed prior to departure for offshore jobsites and upon arrival at offshore jobsites.

- A security-related training session that is described in the Appendix to this Order.

(3) CAN USA will develop, implement, and provide training on a procedure for additional oversight of radiography crews on offshore facilities. The RSO or another independent individual with audit and radiography experience, as designated by the RSO, must conduct the audits. Audits must be unannounced (by the Licensee) and conducted during actual industrial radiographic operations on an offshore facility. Offshore audit requirements and audit frequency will be included in the procedure.

(4) CAN USA will provide an outline of the procedure for additional oversight of radiography crews working on offshore facilities to the NRC for review and approval prior to conducting any such audit.

CAN USA will audit each individual involved in radiographic operations on offshore platforms between March 10, 2010 and September 30, 2011.

Audit records will contain, at a minimum, the following information:

- Date of audit.
- Name of person(s) who conducted the audit.
- Names of persons contacted by the auditor(s).
- Areas audited.

- Audit findings.

For the years 2010–2014, CAN USA shall send a copy of its audit results to the Director, Division of Nuclear Materials Safety, U.S. NRC, Region IV, within 30 days of the completion of each audit.

(5) CAN USA will pursue development and implementation of a written agreement with the Owner/Operator of offshore facilities prior to conducting radiographic operations on those facilities. In general, this agreement will include:

- A person may not attempt to hinder the conduct of radiographic operations and response to incidents occurring in accordance with 10 CFR part 34 and the requirements of the NRC general license granted pursuant to 10 CFR 150.20;
- A security-related provision that is described in the Appendix to this Order; and
- The employing customer or operator will facilitate direct CAN USA oversight (company audits) of radiography personnel on the operator's facilities.

Appropriate CAN USA management, the RSO, or the Team Leader (Instructor/Radiographer) on the offshore facility will provide a copy of the agreement to the jobsite sponsor.

CAN USA will provide a boilerplate agreement to the NRC for review and approval within 90 days of the date of the Confirmatory Order.

Within 30 days of receipt of the NRC's approval of the boilerplate, CAN USA will implement the use of the agreement. If an Owner/Operator does not accept the agreement, CAN USA will document the refusal to accept the agreement and the Owner/Operator's reason for the refusal.

(6) In consideration of the above actions on the part of CAN USA, the NRC agrees to limit the civil penalty amount in this enforcement action to \$7,000. Accordingly, within 60 days of the date of the Confirmatory Order, CAN USA shall pay the civil penalty of \$7,000 in accordance with NUREG/BR-0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a statement indicating when and by what method payment was made. CAN USA will provide a copy of said statement to the Regional Administrator, NRC Region IV.

(7) The NRC agrees not to pursue any further enforcement action in connection with NRC Inspection Report 150-00017/08-001, issued by the NRC to CAN USA on January 27, 2010.

(8) Apparent violations in this matter will, however, be considered as previous enforcement for the purposes

of assessing potential future enforcement action civil penalty assessments in accordance with Section VI.C. of the Enforcement Policy.

(9) The NRC will consider the resulting Confirmatory Order for any assessment of CAN USA's performance, as appropriate.

On April 12, 2010, CAN USA consented to issuing this Confirmatory Order with the commitments as described in Section V below. The Licensee further agreed that this Confirmatory Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the Licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that the Licensee's commitments as set forth in Section V are 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 public health and safety require that the Licensee's commitments be confirmed by this Confirmatory Order. Based on the above and the Licensee's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 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 20, 30, 34, and 150, *it is hereby ordered*, effective immediately, that:

(1) Within 140 days of the date of this Confirmatory Order, CAN USA will develop, implement and provide training on new and/or revised operating procedures. This training shall be provided to new employees prior to working with licensed material for the first time, and to existing employees. Refresher training will be provided annually (at intervals not to exceed 12 months) thereafter for all employees involved in licensed activities. Records of training materials and course attendees shall be maintained for 5 years. The procedures shall address:

- Use of Radiography Checklist. Use procedures for the "Radiography Checklist" prior to departure from the licensee's land-based facilities. Additionally, the radiography crew will complete the checklist after arrival on the offshore facility. A radiography crew

member will send documentation of the jobsite review by FAX or other available method to the RSO or another designated CAN USA individual at CAN USA's corporate offices no later than 8 hours after the completion of the checklist.

- Information to offshore "customer." Use of the above checklist shall include a sign-off by the onsite Team Leader (Instructor/Radiographer) attesting that s/he has briefed the offshore facility jobsite sponsor, or other responsible individual on the offshore facility regarding CAN USA's proposed licensed activities.

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(6) In consideration of the above actions on the part of CAN USA, NRC agrees to limit the civil penalty amount in this enforcement action to \$7,000. Accordingly, within 60 days of the date of this Confirmatory Order, CAN USA shall pay the civil penalty of \$7,000 in accordance with NUREG/BR-0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a statement indicating when and by what method payment was made. CAN USA will provide a copy of said statement to the Regional Administrator, NRC Region IV.

The Regional Administrator, NRC Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its publication in the **Federal Register**. 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 directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/>

[apply-certificates.html](http://www.nrc.gov/site-help/e-submittals.html). System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by

contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted 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; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

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 Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the 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 V above shall be final 20 days from the date this Confirmatory Order was published in the **Federal Register**, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V 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 16th day of April 2010.

For the Nuclear Regulatory Commission.

Elmo E. Collins,

Regional Administrator.

[FR Doc. 2010-9956 Filed 4-29-10; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2010-0167]

Withdrawal of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of Regulatory Guide (RG) 1.165, "Identification and Characterization of Seismic Sources and Determination of Safe Shutdown Earthquake Ground Motion."

FOR FURTHER INFORMATION CONTACT:

Rebecca L. Karas, Geosciences & Geotechnical Engineering Branch 1, Division of Site & Environmental Reviews, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-7533 or e-mail Rebecca.Karas@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is withdrawing RG 1.165, "Identification and Characterization of Seismic Sources and

Determination of Safe Shutdown Earthquake Ground Motion," dated March 1997. RG 1.165 provides general procedures to satisfy the requirements of Title 10 of the Code of Federal Regulations, part 100.23, "Geologic and Seismic Siting Criteria" (10 CFR 100.23) for siting and licensing new reactors or new reactor plant sites. It has been replaced with RG 1.208, "A Performance-Based Approach to Define the Site-Specific Earthquake Ground Motion."

The withdrawal of Regulatory Guide 1.165 does not alter the licensing basis of any currently operating reactor or any of the currently issued early site permits under 10 CFR part 52, subpart A. The siting decision is final for all licenses and early site permits that were reviewed and approved prior to this withdrawal of this guide. Additionally, the withdrawal of Regulatory Guide 1.165 does not affect the approval of any currently approved design certification under 10 CFR part 52, Appendix B. The design basis for each design certification, including seismic and earthquake design, were established and approved as part of the issuance of each design certification and, in accordance with 10 CFR 52.63, may not be changed except through rulemaking amending a design certification rule.

The withdrawal of Regulatory Guide 1.165 may affect applications, design certifications or design certification amendments currently under active consideration by the NRC or any future applications for new, amended, or renewed design certifications. If the applications were prepared (or are being prepared) to comply with RG 1.165, the NRC may request the applicant to demonstrate how the proposed design compares with a design meeting the guidance in Regulatory Guide 1.208. Finally, withdrawal of Regulatory Guide 1.165 may affect the NRC's consideration of any current combined license application under 10 CFR part 52, subpart C if the application was prepared to meet the withdrawn regulatory guide. The NRC may request that the applicant demonstrate how the proposed design meeting the guidance in Regulatory Guide 1.165 compares with a design meeting the guidance in new Regulatory Guide 1.208.

Regulatory Guide 1.165 is being withdrawn and replaced with the improved guidance in RG 1.208 which incorporates new developments in ground motion estimation models; updated models for earthquake sources; methods for determining site response; and new methods for defining a site-specific, performance-based ground motion response spectrum (GMRS).