

## II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Record of Mine Closure addressed in 30 CFR 75.1204 and 75.1204-1; the inclusion of standards requiring MSHA notification and inspection prior to mining when opening a new mine or reopening an inactive or abandoned mine addressed in 30 CFR 75.373 and 75.1721; and, the inclusion of standards requiring underground and surface mine operators to prepare and maintain accurate and up-to-date mine maps addressed in 30 CFR 75.1200, 75.1200-1, 75.1201, 75.1202, 75.1202-1, 75.1203, 75.372, 77.1200, 77.1201 and 77.1202. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice, or viewed on the Internet by accessing the MSHA home page (<http://www.msha.gov>) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

## III. Current Actions

Mine operators are required to conduct surveying such that mine maps are maintained accurate and up-to-date, the maps must be revised every 6 months and certified accurate by a registered engineer or surveyor and to submit copies of the certified underground maps to MSHA annually and an up-to-date and revised mine closure map whenever an operator permanently closes or abandons a coal mine, or temporarily closes a coal mine

for a period of more than 90 days, he or she shall promptly notify the Secretary of such closure.

In addition, mine operators must notify MSHA so that an inspection can be conducted whenever a new mine is opened or a previously abandoned or inactive mine is reopened. The information required to be gathered and recorded on mine maps is essential to the safe operation of the mine and essential to the effectiveness of mandatory inspections and mandated mine plan approval by MSHA. Such information cannot be replaced by any other source and anything less than continuously updated and accurate information would place miner's safety at risk.

The information collected through the submittal of mine closure maps is used by operators of adjacent coal mines when approaching abandoned underground mines. The abandoned mine could be flooded with water or contain explosive amounts of methane or harmful gases. If the operator were to mine into such an area, unaware of the hazards, miners could be killed or seriously injured. In addition, it is in the public interest to maintain permanent records of the locations, extent of workings and potential hazards associated with abandoned mines. The public safety can be adversely affected by future land usage where such hazards are not known or inaccurately assessed. MSHA collects the closure maps and provides those documents to the Office of Surface Mining, Reclamation & Enforcement for inclusion in a repository of abandoned mine maps. Therefore, MSHA is continuing the certification and application of 30 CFR 75.1204 to assure the required information remains available for the protection of miner's and public safety. In addition, MSHA has added the burden hours and cost estimates for standards which address the preparation and maintenance of certified mine maps for surface and underground coal mines and the notification of MSHA prior to the opening of new coal mines or the reopening of inactive or abandoned mines.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Preparation and Maintenance of Accurate and Up-to-date Certified Mine Maps for Surface and Underground Coal Mines; Submittal of Underground Mine Closure Maps; and Notification of MSHA Prior to Opening New Mines or the Reopening of Inactive or Abandoned Mines.

*OMB Number:* 1219-0073.

*Recordkeeping:* Annual or on occasion.

*Affected Public:* Business or other for-profit.

*Number of Responses:* 1,586.

*Number of Respondents:* 1,586.

*Total Burden Hours:* 15,936.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintaining):* \$18,292,611.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 18th day of October, 2005.

**David L. Meyer,**

*Director of Administration and Management.*

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## MERIT SYSTEMS PROTECTION BOARD

[MSPB Docket No. DA-1221-05-0320-W-1]

### Opportunity To File Amicus Briefs in William A. Wilcox v. International Boundary and Water Commission

**AGENCY:** Merit Systems Protection Board.

**ACTION:** The Merit Systems Protection Board is providing interested parties with an opportunity to submit amicus briefs on whether the Board has jurisdiction to review an individual right of action (IRA) appeal from an employee, former employee, or applicant for employment of the International Boundary and Water Commission.

### SUMMARY:

#### Background

The appellant in *Wilcox v. International Boundary and Water Commission*, MSPB Docket No. DA-1221-05-0320-W-1, filed an IRA appeal alleging that the agency retaliated against him for protected disclosures he made while employed as Legal Advisor/General Counsel, GG-15, with the agency. The administrative judge dismissed the appeal for lack of jurisdiction. She found that the U.S. Section of the agency is a subdivision of an international organization and that its hiring authority derives from a 1944 Treaty, not from the provisions of U.S.C. Title 5. She found that the right to bring an IRA appeal derives from 5 U.S.C. 1221(a). She thus concluded that the appellant was not an employee entitled

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