



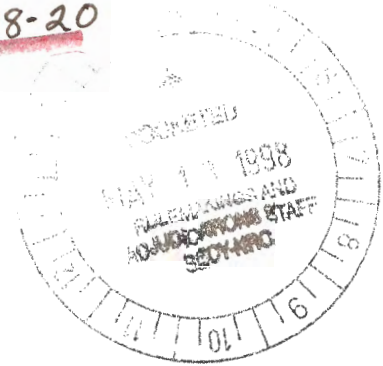
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

May 15, 1998

DOCKET NUMBER
BYPRODUCTS IA-98-20



MEMORANDUM TO: B. Paul Cotter, Jr.
 Chief Administrative Judge
 Atomic Safety and Licensing Board Panel

FROM: *J. Hoyle*
 John C. Hoyle, Secretary

SUBJECT: REQUESTS FOR HEARING SUBMITTED BY JOHN BOSCHUK, JR.
 AND LOURDES T. BOSCHUK

Attached are requests for a hearing dated April 27, 1998, submitted by John Boschuk, Jr. (IA 98-19) and Lourdes T. Boschuk (IA 98-20). The requests are in response to "Orders Prohibiting Involvement in NRC-Licensed Activities" issued by the NRC Staff on April 10, 1998. The Orders were published in the Federal Register at 63 FR 19522 and 63 FR 19525 (April 20, 1998) (Copies Attached).

The requests for hearings are being referred to you for appropriate action in accordance with 10 C.F.R. Sec. 2.772(j). Also attached is the Answer of Licensee, J&L Testing Company, Inc., to Order Revoking License.

Attachments: as stated

cc: Commission Legal Assistants
 OGC
 CAA
 OPA
 EDO
 NMSS
 OE
 Harley N. Trice II, Esq.

19100

REED SMITH SHAW & McCLAY LLP

Writer's Direct Numbers:
Phone 412-288-3282
Fax 412-288-3063
hntrice@rsmm.com

435 Sixth Avenue
Pittsburgh, Pennsylvania 15219-1886
Phone: 412-288-3131
Fax: 412-288-3063

April 30, 1998

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Chief, Rulemaking and
Adjudications Staff

Re: J&L Testing Company, Inc.
Docket No. 30-33725;
Mr. John Boschuk, Jr.
No. 1A 98-019, and
Mrs. Lourdes T. Boschuk
No. 1A 98-020

Gentlemen:

Enclosed for filing are an original and two copies of our Notice of Appearance, and Answers of J&L Testing Company, Inc., Mr. John Boschuk, Jr., and Mrs. Lourdes T. Boschuk in the above-captioned matters.

Very truly yours,

REED SMITH SHAW & McCLAY LLP

By:


Harley N. Trice II

HNTII/amp
Enclosure

cc: Service List

DOCKETED
USNRC

'98 MAY -4 P3:47

UNITED STATES
NUCLEAR REGULATORY COMMISSION

OFFICE OF PUBLIC AFFAIRS
REGISTRATION AND
ADJUDICATION DIVISION

In the matter of:)
)
JOHN BOSCHUK, JR.) 1A 98-019
CANONSBURG, PENNSYLVANIA)

ANSWER OF JOHN BOSCHUK, JR. TO
ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

Pursuant to 10 CFR § 2.202 and in reliance on certain representations made by NRC regional counsel as summarized in a letter dated April 15, 1998, Attachment A hereto, Mr. John Boschuk, Jr. (hereinafter "Mr. Boschuk") responds to the Order Prohibiting Involvement in NRC-Licensed Activities dated April 10, 1998 ("Order") as follows:

- I. Mr. Boschuk admits the allegations of fact contained in Paragraph I of the Order.
- II. Mr. Boschuk denies the allegations of fact in Section II of the Order that he engaged in a pattern and practice of willfully violating NRC requirements, for the reasons set forth below:

A. Mr. Boschuk admits the unauthorized transfer of a Troxler gauge on or about September 2, 1994 to SE Technologies, Inc., a licensed Troxler gauge user, but denies that the transfer was a deliberate violation of the NRC's order and regulations. Instead, the transfer was made erroneously. Further, the NRC letter dated August 18 bears a revised date of October 5, 1994. It indicates JLE was authorized to possess the licensed material until November 4, 1994 to enable application for a new license.

B(1) Mr. Boschuk admits that the letter of 10-11-94 from JLE contained an inaccurate statement regarding gauge usage but denies it was either deliberately inaccurate or careless because it was based on his review of records which were incomplete or unavailable, and upon

his recollection. In this same letter, JLE stated the Troxler gauges would not be removed from storage until a valid license was received from the NRC. The gauges remained in storage from the date of this letter until after a license was issued by the NRC to JLT on February 7, 1995. Finally, Mr. Boschuk admits JLT used a Troxler gauge on the four occasions referenced in the order.

B(2) Mr. Boschuk denies the steel cabinet originally used for storage of Troxler gauges did not have a lock. A photograph of the original cabinet was submitted with JLT's letter to the NRC dated 12-30-97 with a label referring to the key lock on the door handles.

B(3) Mr. Boschuk admits that he reviewed a letter dated September 11, 1995 signed by his wife that admitted a

gauge user was at a job site in Watertown, New York during the NRC inspection, when in fact the gauge was at a different site in Pennsylvania (S.E. Technologies). This was an inadvertent error by JLT due to record keeping problems, not a deliberately inaccurate statement by Mr. Boschuk.

Mr. Boschuk admits a gauge was transferred by JLT to Cashin Associates on or about September 6, 1995 and was returned on or about September 18 or 19, 1995, but denies the statement was made with careless disregard of the facts because he had no actual knowledge of this transfer on or before September 11, 1995, and JLT's usage records were incomplete or otherwise inadequate.

B(4) Mr. Boschuk admits the JLT letter of September 18, 1995 prepared by

him contained inaccurate statements, but denies they were deliberately or carelessly inaccurate. For example, Mr. Boschuk's failure to verify the contents of the three yellow boxes was at most a negligent act. The Troxler gauge transferred to Cashin was returned either September 18 or 19, rather than September 19 or 20, and Mr. Boschuk had no knowledge of the transfer of this gauge to Cashin on or before September 18, 1995.

C. Mr. Boschuk denies that he destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC announced safety inspection of JLT in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. By way of

further response, the records referenced were provided to NRC inspectors during the announced inspection, and Mr. Boschuk and/or licensee offered to make copies for the NRC inspectors, which offer was declined. The subsequent loss or theft of records voluntarily produced during an announced inspection, copies of which were also offered to the inspectors, cannot constitute an effort to conceal facts regarding improper gauge transfer. Further, Mr. Boschuk assumes the witness referenced here is Lou Boschuk, son of Mrs. Boschuk. Lou Boschuk's credibility is highly dubious in view of his actions as discussed at the December 18 pre-decisional enforcement conference, including his threats to kill his mother and her family made in the presence of a third party (see Affidavit of

Dorothy Tigbao dated 1/7/98
previously submitted to the NRC on
or about February 23, 1998.
Further, Mr. Boschuk objects to
NRC's reliance on a handwritten
note allegedly created by an
unnamed employee of JLT immediately
after the September 15, 1995
enforcement conference, since
neither the note nor its contents
were ever provided to him prior to
issuance of this Order. Reliance
on evidence never provided to a
party violates due process and
fundamental fairness. Finally,
rather than concealing improper
gauge usage, Mr. Boschuk points out
that licensee voluntarily provided
written documentation of all such
usage in letters to the NRC dated
September 11 and 27, October 13 and
16, and December 1, 1995.

III. Mr. Boschuk denies the conclusions that he deliberately violated NRC requirements and otherwise committed willful violations of such requirements for the reasons stated above.

IV. Mr. Boschuk responds to the numbered paragraphs of Section IV of the Order as follows:

1. Mr. Boschuk objects to the prohibition in Section IV(1) of the Order from engaging in NRC-Licensed activities for a period of five years from the date of the Order, as those activities are defined in this section of the Order, on the ground that such period is unreasonably long in view of the above facts indicating any violations were neither deliberate or careless, and in view of the 2½ year license suspension which occurred on September 27, 1995. Mr. Boschuk has demonstrated his

willingness and ability to comply with NRC requirements by complying with the suspension order for more than 2 1/2 years.

2. Mr. Boschuk objects to the requirement in Section IV(2) of the Order that he provide a copy of the Order to any prospective employer or business partner who engages in NRC-Licensed activities, whether or not his employment involves licensed activities, for a period of five years for the following reasons:

- a. This requirement is unnecessary to prevent Mr. Boschuk from engaging in NRC-Licensed activities since a prohibition of engagement in such activities for an appropriate time period would be sufficient to accomplish such a result.

b. This requirement is otherwise unreasonable, arbitrary, capricious and an abuse of discretion because it:

(i) is vague;

(ii) is applicable to employment not involving NRC-Licensed activities;

(iii) imposes an unreasonable burden on Mr. Boschuk to ascertain licensee status from NRC prospective employers and business partners which may be national corporations and/or may be NRC Licensees for activities totally unrelated to those involved in this matter (e.g. nuclear power plant operation);

(iv) will adversely affect or preclude Mr. Boschuk's ability to obtain work from prospective customers and clients who are or may be NRC licensees, even where such work will not involve NRC-Licensed activities; and

(v) is punitive.

3. Mr. Boschuk objects to the requirement in Section IV(3) of the Order regarding notice to the NRC following the prohibition in Section IV(1) above, since Mr. Boschuk objects to the time period of the prohibition in Section IV(1).

V. Mr. Boschuk hereby requests a hearing with respect to the requirements set forth in Sections IV(1)-(3) of the Order. We understand that the

Order will not be final pending the
outcome of the requested hearing.

Respectfully submitted,

/s/ Harley N. Trice II
Harley N. Trice II

REED SMITH SHAW & McCLAY LLP
435 Sixth Avenue
Pittsburgh, PA 15219
412-288-3282

Counsel for Mr. John Boschuk, Jr.

Dated: April 27, 1998

REED SMITH SHAW & MCCLEAY LLP

Writers Direct Numbers
Phone 412-288-3282
Fax 412-288-3063
hnlrnce@rsm.com

415 N. 13th St.
Pittsburgh, Pennsylvania 15219-1886
Phone: 412-288-3131
FAX: 412-288-3063

April 15, 1998

**CERTIFIED MAIL # P 365 775 490
RETURN RECEIPT REQUESTED**

J. Bradley Fewell, Esq.
Regional Counsel
U.S. Nuclear Regulatory Commission
Region 1
475 Allendale Road
King of Prussia, PA 19406

Re: J&L Testing Company, Inc.

Dear Mr. Fewell:

J&L Testing Company, Inc. is in receipt of the Order Revoking License at Docket No. 30-33725, and Ms. Lourdes T. Boschuk and Mr. John Boschuk, Jr. are in receipt of orders prohibiting involvement in NRC-licensed activities at Nos. 1A 98-019 & 020 (these three orders are hereinafter collectively referred to as the "Orders").

This letter is to confirm our conversation of yesterday in which you stated:

- No civil penalties will be assessed by the NRC for the violations referred to in the Orders; and
- The effective date of each of the Orders is twenty (20) days after April 10, 1998, unless an extension of time for a hearing request has been made or granted.

REED SMITH SHAW & McCLAY

J. Bradley Fewell Esq.

-2-

April 15, 1998

We will assume the foregoing is accurate unless you advise us otherwise prior to April 25, 1998.

Thank you for your cooperation.

Very truly yours,

REED SMITH SHAW & McCLAY LLP

By

Harley N. Trice II

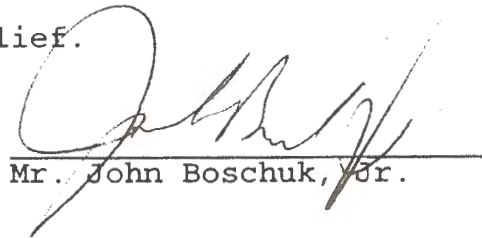
HNTII/amp

cc: J&L Testing Company, Inc.

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF Allegheny :

Before me, the undersigned authority,
personally appeared Mr. John Boschuk, Jr. who deposes
and voluntarily states that he is president of J&L
Engineering Company, Inc., that he has read the
foregoing Answer to Order Prohibiting Involvement in
NRC-Licensed Activities, and that the facts contained
in said Answer are true and correct to the best of his
knowledge, information and belief.


Mr. John Boschuk, Jr.

Sworn to and subscribed
before me this 27th day
of April, 1998.


Notary Public

My Commission Expires:

Notarial Seal
Audrey M. Ploof, Notary Public
Collier Twp., Allegheny County
My Commission Expires Feb. 7 2000
Member Pennsylvania Association of Notaries

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USNRC

'98 MAY -4 P3:47

CERTIFICATE OF SERVICE

OFFICE OF THE
REGULATORY
ADJUDICATIONS STAFF

The undersigned hereby certifies that on this date he served a true and correct copy of the foregoing Answer on the following persons by first class mail, postage prepaid, addressed to:

Secretary
U.S. Nuclear Regulatory Commission
Attn: Chief Rulemaking and
Adjudications Staff
Washington, D.C. 20555

Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Deputy Assistant-General Counsel for
Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Regional Administrator
NRC Region 1
475 Allendale Road
King of Prussia, PA 19406-1415

/s/ Harley N. Trice II
Harley N. Trice II

April 30, 1998

DOCKETED
USNRC

'98 MAY -4 P3:46

UNITED STATES
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE
GENERAL
ADJUDICATOR

In the matter of:)
)
LOURDES T. BOSCHUK) 1A 98-020
CANONSBURG, PENNSYLVANIA)

ANSWER OF LOURDES T. BOSCHUK TO
ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

Pursuant to 10 CFR § 2.202 and in reliance on certain representations made by NRC regional counsel as summarized in a letter dated April 15, 1998, Attachment A hereto, Mrs. Lourdes T. Boschuk (hereinafter "Mrs. Boschuk") responds to the Order Prohibiting Involvement in NRC-Licensed Activities dated April 10, 1998 ("Order") as follows:

- I. Mrs. Boschuk admits the allegations of fact in Section I of the Order.
- II. Mrs. Boschuk denies that she engaged in a pattern and practice of willfully violating NRC requirements and denies that she otherwise violated NRC requirements for the reasons set forth below:

A(1): Mrs. Boschuk admits that the letter dated November 21, 1994 of J&L Testing Company, Inc. ("JLT") contained a materially inaccurate statement concerning usage of Troxler gauges, but denies the remaining allegations including that such statement was made "with careless disregard of the facts." She believed said statement was true when made, based on information provided by employees.

A(2): Mrs. Boschuk admits the two statements referenced were inaccurate, but denies they were made with careless disregard for the facts. She relied on information provided by employees, and believed said statements were true when made.

A(3): Mrs. Boschuk admits that she made an inaccurate statement during the NRC enforcement conference on September 15, 1995 regarding the status of JLT's operable Troxler gauge, but denies that

such statement was made with careless disregard for the facts. She did not know her statement was inaccurate when made. Immediately upon learning of her mistake Mrs. Boschuk sent the JLT-RSO to retrieve the operable gauge; and advised the NRC on at least two subsequent occasions that said gauge had been transferred to Cashin. Said gauge was returned on September 18 or 19, 1995, rather than September 19 or 20.

A(4): Mrs. Boschuk admits that the referenced statements in her September 18, 1995 letter were inaccurate, but denies that such inaccurate statements were made deliberately, or with careless disregard for the facts. Mrs. Boschuk relied upon her husband to prepare an accurate response to the NRC, since her written and spoken English skills are limited; and she did not carefully read the letter before signing it. Her

husband stated at the December 18, 1997 pre-decisional enforcement conference that he observed three yellow boxes and assumed they each contained a Troxler gauge. Mrs. Boschuk subsequently voluntarily advised the NRC of her mistake, and did not conceal it. Mrs. Boschuk believes the gauge was returned on December 18 or 19, rather than December 19 or 20.

B: Mrs. Boschuk denies that she destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC announced safety inspection of JLT in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. By way of further response, the records referenced were provided to NRC inspectors during the announced inspection; and Mr. Boschuk and/or licensee offered to make copies for

the NRC inspectors, which offer was declined. The subsequent loss or theft of records voluntarily produced during an announced inspection, copies of which were also offered to the inspectors, cannot constitute an effort to conceal facts regarding improper gauge transfer. Further, Mrs. Boschuk assumes the witness referenced here is Lou Boschuck, son of Mrs. Boschuck. Lou Boschuck's credibility is highly dubious in view of his threats to kill his mother and her family made in the presence of a third party (see Affidavit of Dorothy Tigbao previously submitted to the NRC on or about February 23, 1998). Further, Mrs. Boschuk objects to NRC's reliance on a handwritten note allegedly created by an un-named employee of JLT immediately after the September 15, 1995 enforcement conference, since neither the note nor its contents were ever provided to her

prior to issuance of this Order. Reliance on evidence never provided to a party violates due process and fundamental fairness. Finally, rather than concealing improper gauge usage, Mrs. Boschuk voluntarily provided written documentation of all such usage in letters to the NRC dated September 11 and 27, October 13 and 16, and December 1, 1995.

III. Mrs. Boschuk denies the conclusions that she deliberately violated NRC requirements and otherwise committed willful violations of such requirements for the reasons stated above.

IV. Mrs. Boschuk responds to the numbered paragraphs of Section IV of the Order as follows:

1. Mrs. Boschuk objects to the prohibition in Section IV(1) of the Order from engaging in NRC-Licensed activities for a period of five years from the date of

the Order, as those activities are defined in this section of the Order, on the ground that such period is unreasonably long in view of the above facts indicating any violations were neither deliberate or careless; and in view of the 2½ year license suspension which occurred on September 27, 1995. Mrs. Boschuk has demonstrated her ability and willingness to comply with NRC requirements by complying with the suspension order for more than 2½ years.

2. Mrs. Boschuk objects to the requirement in Section IV(2) of the Order that she provide a copy of the Order to any prospective employer or business partner who engages in NRC-Licensed activities, whether or not her employment involves licensed activities, for a period of five years for the following reasons:
 - a. This requirement is unnecessary to prevent Mrs. Boschuk from engaging in NRC-Licensed activities since a

prohibition of engagement in such activities for an appropriate time period would be sufficient to accomplish such a result.

b. This requirement is otherwise unreasonable, arbitrary, capricious and an abuse of discretion because it:

(i) is vague;

(ii) is applicable to employment not involving NRC-Licensed activities;

(iii) imposes an unreasonable burden on Mrs. Boschuk to ascertain NRC licensee status from prospective employers and business partners which may be national corporations and/or may be NRC Licensees for

activities totally
unrelated to those
involved in this matter
(e.g. nuclear power
plant operation);

(iv) will adversely affect
or preclude Mrs.
Boschuk's ability to
obtain work from
prospective customers
and clients who are or
may be NRC licensees,
even where such work
will not involve NRC-
Licensed activities;
and

(v) is punitive

3. Mrs. Boschuk objects to the requirement
in Section IV(3) of the Order regarding
notice to the NRC following the
prohibition in Section IV(1) above,
since Mrs. Boschuk objects to the time

period of the prohibition in Section
IV(1).

V. Mrs. Boschuk hereby requests a hearing with respect to the requirements set forth in Sections IV(1)-(3) of the Order. We understand that the Order will not be final pending the outcome of the requested hearing.

Respectfully submitted,

/s/ Harley N. Trice II
Harley N. Trice II

REED SMITH SHAW & McCLAY LLP
435 Sixth Avenue
Pittsburgh, PA 15219
(412) 288-3282

Counsel for
Mrs Lourdes T. Boschuk

Dated: April 27, 1998

REED SMITH SHAW & MCCLAY LLP

Writers Direct Numbers
Phone 412-288-3282
Fax 412-288-3063
hnrtrice@rsm.com

400 State Avenue
Pittsburgh, Pennsylvania 15219-1886
Phone: 412-288-3131
Fax: 412-288-3063

April 15, 1998

CERTIFIED MAIL # P 365 775 490
RETURN RECEIPT REQUESTED

J. Bradley Fewell, Esq.
Regional Counsel
U.S. Nuclear Regulatory Commission
Region 1
475 Allendale Road
King of Prussia, PA 19406

Re: J&L Testing Company, Inc.

Dear Mr. Fewell:

J&L Testing Company, Inc. is in receipt of the Order Revoking License at Docket No. 30-33725, and Ms. Lourdes T. Boschuk and Mr. John Boschuk, Jr. are in receipt of orders prohibiting involvement in NRC-licensed activities at Nos. 1A 98-019 & 020 (these three orders are hereinafter collectively referred to as the "Orders").

This letter is to confirm our conversation of yesterday in which you stated:

- No civil penalties will be assessed by the NRC for the violations referred to in the Orders; and
- The effective date of each of the Orders is twenty (20) days after April 10, 1998, unless an extension of time for a hearing request has been made or granted.

REED SMITH SHAW & McCLAY LLP

J. Bradley Fewell, Esq.

-2-

April 15, 1998

We will assume the foregoing is accurate unless you advise us otherwise prior to April 25, 1998.

Thank you for your cooperation.

Very truly yours,

REED SMITH SHAW & McCLAY LLP

By:

Harley N. Trice II

HNTII/amp

cc: J&L Testing Company, Inc.

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USNRC

'98 MAY -4 P3:46

CERTIFICATE OF SERVICE

OFFICE OF THE
PUBLIC UTILITIES
ADJUDICATOR GENERAL
STAFF

The undersigned hereby certifies that on this date he served a true and correct copy of the foregoing Answer on the following persons by first class mail, postage prepaid, addressed to:

Secretary
U.S. Nuclear Regulatory Commission
Attn: Chief Rulemaking and
Adjudications Staff
Washington, D.C. 20555

Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Deputy Assistant-General Counsel for
Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Regional Administrator
NRC Region 1
475 Allendale Road
King of Prussia, PA 19406-1415

/s/ Harley N. Trice II
Harley N. Trice II

April 30, 1998

DOCKETED
USNRC

'98 MAY -4 P3:48

UNITED STATES
NUCLEAR REGULATORY COMMISSION

| | | |
|---------------------------|---|-------------------------|
| In the matter of: |) | Docket No. 30-33725 |
| J&L TESTING COMPANY, INC. |) | License No. 37-28442-02 |
| CANONSBURG, PA |) | EA No. 96-110 |

* * * * *

| | | |
|--------------------------|---|-----------|
| In the matter of: |) | |
| JOHN BOSCHUK, JR. |) | 1A 98-019 |
| CANONSBURG, PENNSYLVANIA |) | |

* * * * *

| | | |
|--------------------------|---|-----------|
| In the matter of: |) | |
| LOURDES T. BOSCHUK |) | 1A 98-020 |
| CANONSBURG, PENNSYLVANIA |) | |

ENTRY OF APPEARANCE

Kindly enter my appearance on behalf of J&L Testing Company, Inc., Mr. John Boschuk, Jr. and Mrs. Lourdes T. Boschuk in the above-captioned matters. I am authorized to accept service of process on behalf of each.

/s/ Harley N. Trice II
Harley N. Trice II

REED SMITH SHAW & McCLAY LLP
435 Sixth Avenue
Pittsburgh, PA 15219
(412) 288-3282

Dated: April 30, 1998

DOCKETED
USNRC

'98 MAY -4 P3:48

CERTIFICATE OF SERVICE

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

The undersigned hereby certifies that on this date he served a true and correct copy of the foregoing Entry of Appearance on the following persons by first class mail, postage prepaid, addressed to:

Secretary
U.S. Nuclear Regulatory Commission
Attn: Chief Rulemaking and
Adjudications Staff
Washington, D.C. 20555

Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Deputy Assistant-General Counsel for
Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Regional Administrator
NRC Region 1
475 Allendale Road
King of Prussia, PA 19406-1415

/s/ Harley N. Trice II
Harley N. Trice II

April 30, 1998

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Disclosure of the Quality of Care in Health Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, the Advisory Council on Employee Welfare and Pension Benefit Plans has established a new Working Group to study what kind of information on the quality of care in health plans should be transmitted to fiduciaries and participants and how the information should be transmitted. The Working Group will hold an open public meeting on Monday, May 4, 1998 in Room N-4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to begin organizing the course of study for the year and, it is hoped, even to begin taking testimony on the topic. Recently named as chairman and vice chair, respectively, of the Working Group were Judith Mazo, senior vice president/director of research for the Segal Company, and Neil Grossman, William M. Mercer Co., of the Washington, DC area.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before May 1, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219-8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 1, at the address indicated in this notice.

Organizations or individual may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the

record of the meeting if received on or before May 1.

Signed at Washington, D.C. this 13th day of April, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98-10284 Filed 4-17-98; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following five meetings:

Name: Special Emphasis Panel in Materials Research (1203).

Dates and Times: May 5-7; May 12-14; May 19-21; May 26-28; and June 2-3, 1998. 8:30 a.m.-5 p.m. each day.

Place: Rooms: 330, 375, 380 and 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Division of Materials Research, Room 1065.37, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1832.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support. The format is in the form of reverse site visits.

Agenda: To review and evaluate proposals submitted for consideration for support of Materials Research Science and Engineering Centers.

Research of Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b), (4) and (6) of the Government in the Sunshine Act.

Dated: April 14, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-10280 Filed 4-17-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 63, No. 72/Wednesday, April 15, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, April 21, 1998.

CHANGE IN MEETING: A majority of the Board Members determined by recorded

vote that the business of the Board required changing the time of the meeting to 1:00 p.m., Tuesday, April 21, 1998.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314-6065.

Dated: April 16, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98-10581 Filed 4-16-98; 3:48 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[IA 98-019]

In the Matter of John Boschuk, Jr., Canonsburg, Pennsylvania; Order Prohibiting Involvement in NRC-Licensed Activities

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37-28442-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources. The license, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995. Lourdes T. Boschuk is the President and owner of JLT. John Boschuk, Jr. has acted as an agent for and consultant to JLT in the conduct of its licensed activities. Mr. Boschuk, the husband of Lourdes Boschuk, is also the President and owner of J&L Engineering Company (JLE) located on the same premises. JLE held NRC Materials License No. 37-28442-01, which authorized use and possession of the same sealed sources, until the license was revoked by the NRC on July 30, 1993, for non-payment of fees. Concurrently with this Order, the NRC is issuing an Order Revoking License to JLT (EA 96-110).

II

Based on an NRC inspection and an investigation by the NRC's Office of Investigations, the NRC has determined that John Boschuk, Jr., while serving as President and owner of JLE and as an agent for and consultant to JLT, engaged in a pattern and practice of willfully violating NRC requirements. Among such violations are the following:

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A. Unauthorized Transfer of Byproduct Material

The August 30, 1993, Order Revoking License required JLE, among other things, to cease use of byproduct material, dispose of the byproduct material, and to notify the NRC of the disposition within 30 days. Nonetheless, JLE continued to possess the material. Consequently, the NRC staff again transmitted a copy of the Order Revoking License to JLE on August 9, 1994, and a letter to Mr. Boschuk on August 18, 1994. The August 18, 1994, letter reminded Mr. Boschuk that continued possession of the material without a valid license is a violation of 10 CFR 30.3, and that he must immediately place the material in secure storage until a valid license is acquired and that any other use is not authorized. During a telephone call on August 12, 1994, Mr. Boschuk had informed the NRC staff that he intended to promptly file an application for a new license.

Nonetheless, as President of and owner JLE, and as an agent for JLT, Mr. Boschuk transferred a Troxler gauge on or about September 2, 1994, to SE Technologies, Inc., of Bridgeville, Pennsylvania, in violation of the Order Revoking License dated July 30, 1993, and 10 CFR 30.3. As stated by the Chief Engineer of SE Technologies, Inc., Mr. Boschuk had arranged for the rental, and as stated by a Project Engineer of SE Technologies, Inc., Mr. Boschuk had personally transferred the gauge to SE Technologies, Inc. Accordingly, Mr. Boschuk deliberately violated the Order Revoking License and 10 CFR 30.3, in violation of 10 CFR 30.10(a).

B. Materially Inaccurate Statements Made to NRC

(1) A letter to the NRC dated October 11, 1994, signed by Mr. Boschuk as President of JLE, stated that the three Troxler gauges had not been used for over two years and had not left the storage area of JLE's office. In fact, Mr. Boschuk had deliberately transferred one of the gauges in violation of the Order Revoking License and 10 CFR 30.3 on September 2, 1994, as explained above. This statement was deliberately inaccurate in violation of 10 CFR 30.9(a) and 30.10(a)(2).

In addition, JLT admittedly used the Troxler density gauges on four occasions after revocation of the JLE license and before the NRC issued a license to JLT on February 7, 1995. Specifically, JLT used the gauge(s) for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson

Construction in June 1994, and PA Soil & Rock Company in July 1994. Lourdes Boschuk also stated at a December 18, 1997, predecisional enforcement conference that she did not get the keys from JLE for the gauges until February 1995. The statement by Mr. Boschuk in his October 11, 1994, letter to the NRC, that the gauges had not been used for over two years and had not left storage, was materially inaccurate in violation of 10 CFR 30.9(a) and was made by Mr. Boschuk with at least careless disregard for the facts with respect to such usage.

(2) Figure 1 of the November 21, 1994, JLT application, revised January 6, 1995, depicted a locked steel cabinet on the JLT premises as the storage site for the three Troxler gauges. However, the cabinet did not have a lock. Mr. Boschuk prepared Figure 1. This materially inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard for the facts by Mr. Boschuk.

(3) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk and reviewed and edited by Mr. Boschuk, stated that the Troxler gauge which was missing at the time of the NRC inspection on August 1, 1995 was in Watertown, New York; was returned the next day to JLT. In fact, according to the Chief Engineer of SE Technologies, Inc., Mr. Boschuk personally transferred the gauge to SE Technologies, Inc. in July 1995, and requested return of the gauge on August 14 or 15, 1995. In fact the gauge was not returned to JLT until August 17, 1995. This was a deliberately inaccurate statement by Mr. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a).

In addition, the letter represented that since the August 1995 NRC inspection, all three Troxler gauges had been kept in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the NRC inspection report were resolved. This inaccurate statement in violation of 10 CFR 30.9(a) was made by Mr. Boschuk with careless disregard for the facts. In fact, one of the gauges was transferred on September 6, 1995, to Cashin Associates, P.C., and was not returned to JLT until September 19 or 20, 1995.

(4) A letter dated September 18, 1995, signed by Lourdes Boschuk for JLT and prepared by Mr. Boschuk as an agent for and consultant to JLT, and sent to the NRC in response to the NRC's September 15, 1995, letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, made several materially

inaccurate statements. The letter stated that all JLT's gauges had been in locked storage since the August 1995 NRC inspection. This was a deliberately inaccurate statement by Mr. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Mr. Boschuk learned from Lourdes Boschuk no later than the weekend ending September 17, 1995, that a gauge had been recently transferred to Cashin Associates, P.C. As explained above, Mr. Boschuk also knew that the gauge had been transferred to SE Technologies, Inc., between July 18 and August 17, 1995, although the NRC inspection ended on August 3, 1995.

In addition, the letter stated that all three JLT Troxler gauges are currently locked in the designated storage cabinet on JLT's premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and made with at least careless disregard as to its truth or falsity by Mr. Boschuk. Mr. Boschuk stated at a December 18, 1997, predecisional enforcement conference that although he checked the storage cabinet before preparing the letter, and saw three yellow cases which he assumed contained the gauges, he did not look inside the cases to verify the gauges were there. In fact, the gauge which had been transferred to Cashin Associates, P.C. was not returned to JLT until September 19 or 20, 1995.

C. Destruction of Records Relating to Gauge Usage

According to a witness, John Boschuk, Jr. and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to a handwritten note, created by a JLT employee immediately after the September 15, 1995 enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were "thrown away during sanitization of records?" Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer

find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of the 10 CFR 30.3 and 30.9(a). The participation of Mr. Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

III

Based on the above, the NRC concludes that John Boschuk, Jr., President and owner of JLE and an agent of and a consultant to JLT, deliberately violated NRC regulations and otherwise committed willful violations of NRC requirements. These violations raise a serious doubt as to whether Mr. Boschuk can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. The NRC must rely upon the integrity of persons involved in licensed activities, especially owners and officials of NRC licensees. Deliberate misconduct of the type demonstrated by Mr. Boschuk cannot be tolerated. Notwithstanding the revocation of the JLE and JLT licenses, given Mr. Boschuk's repeated failures to adhere to regulatory requirements, the NRC no longer has the necessary assurance that Mr. Boschuk's activities, if performed under an NRC license, would be performed safely and in accordance with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Boschuk were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Boschuk be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee. Additionally, Mr. Boschuk is required to notify the NRC of his first employment or involvement in NRC-licensed activities following the prohibition period.

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, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered that:*

1. For a period of five years from the date of this Order, Mr. Boschuk is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. For a period of five years from the date of this Order, Mr. Boschuk shall provide a copy of this Order to any prospective employer or business partner who engages in NRC-licensed activities (as described in Section IV.1 above) prior to his acceptance of any employment (whether involved in licensed activities or not) by, or acquisition of partnership or ownership interest in, a licensee (as described in Section IV.1 above). The purpose of this requirement is to ensure that the licensee is aware of Mr. Boschuk's prohibition from engaging in NRC-licensed activities.

3. The first time Mr. Boschuk is employed in NRC-licensed activities, or acquires an interest in a licensee (as described in Section IV.1 above), following the five year prohibition, he shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, prior to acquiring such an interest or engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, Mr. Boschuk must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. 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. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Boschuk or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking 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 Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Boschuk, if the answer or hearing request is by a person other than Mr. Boschuk. If a person other than Mr. Boschuk requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Boschuk or 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 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.

Dated at Rockville, Maryland this 10th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98-10331 Filed 4-17-98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[IA 98-020]

Lourdes T. Boschuk, Canonsburg, Pennsylvania; Order Prohibiting Involvement in NRC-Licensed Activities

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37-28442-02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources. The license, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995. Lourdes T. Boschuk is the President and owner of JLT. Concurrently with this Order, the NRC is issuing an Order Revoking License to JLT (EA 96-110).

II

Based on an NRC inspection and an investigation by the NRC's Office of Investigations, the NRC has determined that Ms. Boschuk, while President and owner of JLT,¹ engaged in a pattern and practice of willfully violating NRC requirements and otherwise violated NRC requirements. Among such violations are the following:

A. Materially Inaccurate Statements Made to NRC

(1) A letter accompanying JLT's Application for Material License for Troxler Nuclear Density Gauges, dated November 21, 1994, and signed by Lourdes Boschuk as President of JLT, represented to the NRC that since the revocation of J&L Engineering's License to operate the same Troxler gauges on August 30, 1993, the gauges had not been removed from storage or used in any way. In fact, JLT admittedly used a gauge on at least four occasions and invoiced customers for that use after revocation of the JLE license and before the NRC issued a license to JLT. JLT used the gauge for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson Construction in June 1994, and PA Soil & Rock Company in

July 1994. The materially inaccurate statement in the JLT application was in violation of 10 CFR 30.9(a) and made with careless disregard for the facts by Ms. Boschuk.

(2) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk as President of JLT, stated that the Troxler gauge that was missing at the time of the NRC inspection on August 1, 1995, was in Watertown, New York; and was returned the next day. In fact, the gauge was transferred to SE Technologies, Inc., located in Bridgeville, Pennsylvania, in July 1995 and was not returned to JLT until August 17, 1995. This statement was in violation of 10 CFR 30.9(a) and was made with careless disregard for the facts by Ms. Boschuk. In addition, the letter represented that since the NRC inspection on August 1, 1995, all three Troxler gauges were located in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the NRC's Inspection Report were resolved. In fact, one of the gauges had been transferred on September 6, 1995, to Cashin Associates, P.C. in New York State, and was not returned to JLT until September 19 or 20, 1995. This was an inaccurate statement in violation of 10 CFR 30.9(a) and was made by Ms. Boschuk with careless disregard for the facts.

(3) During an enforcement conference with the NRC on September 15, 1995, Lourdes Boschuk, as President of JLT, stated that JLT's operable Troxler gauge was in storage and had not been used. In fact, one of the gauges was transferred by JLT on September 6, 1995, to Cashin Associates, P.C. for use at the Brookhaven Landfill in New York State, and was not returned to JLT until September 19 or 20, 1995. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made by Ms. Boschuk with careless disregard for the facts.

(4) A letter to the NRC dated September 18, 1995, signed by Lourdes Boschuk as President of JLT, and sent to the NRC in response to the September 15, 1995, NRC letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, made several materially inaccurate statements. The letter stated that all JLT's gauges have been in the storage cabinet on the JLT premises since the visit of the NRC inspector. This was a deliberately inaccurate statement by Ms. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Ms. Boschuk knew no later than September 15, 1995, during a telephone

call with the Director of JLT, immediately after the September 15, 1995 enforcement conference, that one of JLT's Troxler gauges had been transferred on September 6, 1995 to Cashin Associates, P.C. in New York State.

In addition, the letter stated that all three JLT Troxler gauges are currently locked in the designated storage cabinet on the JLT premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard as to its truth or falsity by Ms. Boschuk. In fact, Lourdes Boschuk sent the JLT RSO to retrieve the gauge which had been transferred to Cashin Associates, P.C., but the RSO did not return to JLT with the gauge until late in the evening of September 19 or early in the morning of September 20, 1995.

B. Destruction of Records Relating to Gauge Usage

According to a witness, Lourdes Boschuk and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to a handwritten note, created by a JLT employee immediately after the September 15, 1995 enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were "thrown away during sanitization of records?" Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of the 10 CFR 30.3 and 30.9(a). The participation of Lourdes Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

¹ Lourdes Boschuk is the wife of John Boschuk, Jr., President and Owner of J&L Engineering, Inc. (JLE). JLT and JLE are located at the same address and share the same telephone and facsimile numbers.

III

Based on the above, the NRC concludes that Lourdes Boschuk, President and owner of JLT, deliberately violated NRC requirements, and otherwise committed willful violations of NRC requirements. These violations raise a serious doubt as to whether Ms. Boschuk can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. The NRC must rely upon the integrity of persons involved in licensed activities, especially owners and officials of NRC licensees. Deliberate misconduct of the type demonstrated by Ms. Boschuk cannot be tolerated. Notwithstanding the revocation of the JLT license, given Ms. Boschuk's repeated failures to adhere to regulatory requirements, the NRC no longer has the necessary assurance that Ms. Boschuk's participation in licensed activities would be performed safely and in accordance with requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Ms. Boschuk were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Ms. Boschuk be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and if she is currently involved with another licensee in NRC-licensed activities, she must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee. Additionally, Ms. Boschuk is required to notify the NRC of her first employment or involvement in NRC-licensed activities following the prohibition period.

IV

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, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered that:

1. For a period of five years from the date of this Order, Ms. Boschuk is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction

pursuant to the authority granted by 10 CFR 150.20.

2. For a period of five years from the date of this Order, Ms. Boschuk shall provide a copy of this Order to any prospective employer or business partner who engages in NRC-licensed activities (as described in Section IV.1 above) prior to her acceptance of any employment (whether involved in licensed activities or not) by, or partnership or ownership interest in, a licensee (as described in Section IV.1 above). The purpose of this requirement is to ensure that the licensee is aware of Ms. Boschuk's prohibition from engaging in NRC-licensed activities.

3. The first time Ms. Boschuk is employed in NRC-licensed activities, or acquires a partnership or ownership interest in a licensee (as described in Section IV.1 above), following the five year prohibition in Section IV.1, above, she shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, prior to acquiring such an interest or prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, Ms. Boschuk must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. 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. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Boschuk or other person adversely affected relies and the reasons as to why the Order should not

have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemaking 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 Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, to Ms. Boschuk if the answer or hearing request is by a person other than Ms. Boschuk. If a person other than Ms. Boschuk requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Boschuk or 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 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.

Dated at Rockville, Maryland, this 10th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98-10330 Filed 4-17-98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440; License No. NPF-58; EA 97-430]

Centerior Service Company, Perry Nuclear Power Plant, Unit 1; Order Imposing Civil Monetary Penalty

I

Centerior Service Company (Licensee) is the holder of Operating License No. NPF-58, issued by the Nuclear Regulatory Commission (NRC or Commission) on November 13, 1986. The license authorizes the Licensee to operate the Perry Nuclear Power Plant,

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refers to the consequences of a design basis accident, and not to increased radiation dose to plant staff from in-plant recovery actions. NRC agrees that the change in operator actions did not involve a potential increase in consequences of a design basis accident. The violation is revised as follows:

10 CFR 50.59 permits the licensee, in part, to make changes to the facility and procedures as described in the safety analysis report without prior Commission approval provided the changes do not involve an unreviewed safety question. Records of these changes must include a written safety evaluation which provides the bases for the determination that the changes do not involve an unreviewed safety question.

10 CFR 50.59 (a)(2)(I) states, in part that a proposed change shall be deemed to involve an unreviewed safety question if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased.

Undated Safety Analysis Report (USAR) 9.2.2.3 "Emergency Closed Cooling — Safety evaluation" states that the emergency closed cooling system surge tanks are designed to maintain a seven day supply of water with normal system leakage without the need to provide makeup water.

Contrary to the above, Safety Evaluation No. 96-128 prepared by the licensee on October 10, 1996, and approved on October 21, 1996, evaluated a change in the design basis for the emergency closed cooling system surge tanks. The licensee changed the sizing basis of the surge tanks from a seven day supply as stated in USAR Section 9.2.2.3 to a 30-minute supply, and the licensee's analysis failed to identify that the change was an unreviewed safety question. Specifically, the safety evaluation did not adequately assess the increased probability of a malfunction of equipment important to safety associated with an increased potential for error as operators replenished the tanks on a 30-minute post accident instead of the previously evaluated period of seven days.

Summary of Licensee's Request for Remission of the Civil Penalty

The licensee requested full remission of the \$50,000 civil penalty.

NRC Evaluation of Licensee's Request for Remission of the Civil Penalty

The licensee did not provide a separate justification (i.e., a discussion of the civil penalty adjustment factors) to justify remission of the civil penalty. Rather, the licensee's reasons for denying the violation apparently are the licensee's justification for requesting remission of the civil penalty.

NRC Conclusion

The licensee interpreted the NRC position concerning the violation to be that the increases in both the consequences and probability of an accident were the direct result of the increased presence in the plant of operators who are fully trained and qualified for the activities under consideration.

The NRC did not intend to suggest that the increased presence of personnel in the plant would cause an increase in the consequences and probability of an accident. Rather, the NRC was concerned with the increased potential of failing to refill the ECC surge tanks within an extremely limited time constraint, which was much shorter than originally described to and accepted by the NRC. In summary, the NRC's concern was that during the performance of the additional operator actions to refill the ECC surge tanks, the potential for errors was increased and could lead to the loss of the safety related ECC system. Loss of the ECC system could result in losing other safety related systems relied upon to mitigate the consequences of an accident. Therefore, the manual operator action proposed to compensate for the reduced ECC surge tank water supply constituted a USQ.

The NRC has concluded that this violation occurred as modified above, and that an adequate basis for withdrawing the violation, reducing the severity level of the violation, or remitting the civil penalty was not provided by the licensee. Consequently, the proposed civil penalty in the amount of \$50,000 should be imposed.

[FR Doc. 98-10329 Filed 4-17-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30-33725; License No. 37-28442-02; EAs 96-110]

J&L Testing Company, Inc., Canonsburg, Pennsylvania; Order Revoking License

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37-28442-02 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of Troxler portable nuclear density gauges containing cesium-137 and americium-241 in sealed sources. The License, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995.

II

J & L Engineering, Inc. (JLE), a corporation located at the same address and using the same telephone and facsimile numbers as the Licensee, held License No. 37-28442-01 for the same portable nuclear gauges for which the Licensee is now licensed. John Boschuk, Jr., President and owner of JLE, has acted as an agent of and consultant to JLT. JLE's license was revoked on

August 30, 1993, for non-payment of fees. JLE was ordered, among other things, to cease use of byproduct material, dispose of the byproduct material, and notify the NRC of the disposition within 30 days of that Order. Notwithstanding that Order, JLE continued to possess the byproduct material and on October 5, 1994, a Notice of Violation (Notice) was issued to JLE for possession of licensed material without a valid NRC license. By letter dated October 11, 1994, Mr. Boschuk responded to the Notice, stating, among other things, that the " * * * equipment [3-Troxler Nuclear Density gauges] has not been used for over 2 years and has not left the storage area in our office."

On November 21, 1994, JLT submitted an application for a license. The November 21, 1994, cover letter for the application, signed by Lourdes Boschuk, President and owner of JLT and wife of John Boschuk, Jr., stated the following:

* * * Submitted herein is our application to restore our expired license to store and operate three (3) Troxler Nuclear Density Gages (sic). We understand our license was revoked on August 30, 1993. Since that date, these units were not removed from storage nor used in anyway (sic).

Relying on the application and the statement that the gauges had not been removed from storage since the JLE license was revoked, the NRC issued the new License No. 37-28442-02 to JLT on February 7, 1995.

On August 1 and 3, 1995, the NRC conducted a routine, announced safety inspection of activities authorized by the License at JLT's facility in Canonsburg, Pennsylvania. During the inspection, an NRC inspector determined, based on a review of Licensee's documents, that one of the gauges, which JLE and the Licensee separately had stated in writing to the NRC were in storage and had not been used since revocation of the JLE license, had been transferred on September 2, 1994, to SE Technologies, Inc., in Bridgeville, Pennsylvania (which used the gauge at a temporary jobsite at the S. Hill Village Sears project), when neither JLE nor JLT possessed a valid NRC license. As stated by the Chief Engineer of SE Technologies, Inc., Mr. Boschuk had arranged for the rental, and as stated by a Project Engineer of SE Technologies, Inc., Mr. Boschuk had personally transferred the gauge to SE Technologies, Inc. JLT stated at a December 18, 1997, enforcement conference that uses of the gauge(s) prior to February 7, 1995, and after revocation of the JLE license were invoiced by JLT. The transfer of the gauge to SE Technologies, Inc. was a

deliberate violation of 10 CFR 30.3, which prohibits, among other things, transfer of byproduct material without a valid license from the NRC and a deliberate violation of the order revoking JLE's license in violation of 10 CFR 30.10(a). As a consequence, the statement by Ms. Boschuk in her November 21, 1994, letter to the NRC, that the gauges had not been used and had not left storage at JLT since August 30, 1993, was inaccurate in violation of 10 CFR 30.9(a), and the statement by Mr. Boschuk in his October 11, 1994, letter to the NRC, that the gauges had not been used for over two years and had not left storage, was deliberately inaccurate in violation of 10 CFR 30.9(a) and 30.10(a).

During the NRC's August 1995 inspection, three additional violations of NRC requirements were identified. These violations involved the failure to perform leak tests of the gauges at the required 6-month intervals, as required by Condition 12 of the license; the failure to have an approved Radiation Safety Officer (RSO) (the RSO listed by the license terminated employment on May 26, 1995), as required by License Condition 11A; and the failure to perform physical inventories of the gauges at the required 6-month intervals, as required by Condition 14 of the license. By letter dated September 11, 1995, JLT admitted that the cited violations had occurred.

A predecisional enforcement conference was held with the Licensee on September 15, 1995, to discuss the five violations identified during the August 1995 inspection. At the conference, JLT's President admitted all five violations, but offered no explanation for why the material had been used notwithstanding the revocation of the JLE license and JLT's lack of a license.

Based upon the above, the NRC concluded that JLT's submission of materially inaccurate information in its license application, and JLE's submission of materially inaccurate information in response to a Notice of Violation, were, if not deliberate, in careless disregard of Commission requirements. These violations, combined with the additional violations identified during the inspection, caused the NRC to conclude that the Licensee was unwilling or unable to comply with NRC requirements and that the requisite reasonable assurance that the Licensee's operations could be conducted under License No. 37-28442-02 in compliance with the Commission's requirements was lacking, such that the health and safety of the public, including the Licensee's employees, would not be

protected if the Licensee were permitted to conduct licensed activities at that time. Therefore, in the interest of public health and safety, the License was suspended, effective immediately, on September 27, 1995, pending completion of an investigation by the NRC Office of Investigations.

III

Subsequently, the NRC Office of Investigations completed its investigation of JLT. The NRC staff has determined that, in addition to the violations cited above, JLT committed a number of other violations of NRC regulatory requirements, as set forth below.

A. *Materially Inaccurate Statements Made to NRC*

(1) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk and reviewed and edited by John Boschuk, Jr., stated that the Troxler gauge that was missing at the time of the August 1995 NRC inspection was in Watertown, New York, and was returned to JLT the next day. This was a deliberately inaccurate statement in violation of 10 CFR 30.9(a) and 30.10(a). In fact, according to the Chief Engineer of SE Technologies, Inc., Mr. Boschuk personally transferred the gauge to SE Technologies, Inc. in July 1995, and requested return of the gauge on August 14 or 15, 1995. In fact, the gauge was not returned to JLT until August 17, 1995. In addition, the September 11, 1995, letter represented that since the August 1995 NRC inspection, all three Troxler gauges had been in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the NRC's Inspection Report were resolved. This inaccurate statement in violation of 10 CFR 30.9(a) was made with careless disregard for the facts. In fact, one of the gauges had been transferred to Cashin Associates, P.C., Hauppauge, New York, on September 6, 1995, and was not returned to JLT until September 19 or 20, 1995.

(2) During an enforcement conference with the NRC on September 15, 1995, Lourdes Boschuk, President of JLT, stated that JLT's operable Troxler gauge was in storage and was not used "at all". In fact, that gauge was transferred by JLT on September 6, 1995, to Cashin Associates, P.C. for use at the Brookhaven Landfill in New York State, and was not returned to JLT until September 19 or 20, 1995. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made with careless disregard for the facts.

(3) In a letter to the NRC dated ~~September 19, 1995~~ prepared by John Boschuk, Jr. and signed by Lourdes Boschuk, and sent to the NRC in response to the NRC's September 15, 1995, letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, JLT made several inaccurate statements. The letter stated that all of JLT's gauges have been in the storage cabinet on the JLT premises since the visit of the NRC inspector. This was a deliberate, materially inaccurate statement in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Ms. Boschuk knew no later than September 15, 1995, during a telephone call to the Director of JLT immediately after the September 15, 1995, enforcement conference, that one of JLT's Troxler gauges had been transferred on September 6, 1995, to Cashin Associates, P.C. in New York State. In fact, Mr. Boschuk learned from Ms. Boschuk no later than the weekend ending September 17, 1995, that the gauge had been transferred to Cashin Associates, P.C. As explained above, he also knew that the gauge had been transferred to SE Technologies, Inc. between July 18, and August 17, 1995, although the NRC inspection ended on August 3, 1995.

In addition, the letter stated that all three JLT Troxler gauges were currently locked in the designated storage cabinet on the JLT premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard as to its truth or falsity by both Mr. and Ms. Boschuk. In fact, Lourdes Boschuk sent JLT's Radiation Safety Officer (RSO) to retrieve the gauge which had been transferred to Cashin Associates, P.C., but the RSO did not return to JLT with the gauge until late in the evening of September 19 or early in the morning of September 20, 1995. Mr. Boschuk stated at the December 18, 1997, predecisional enforcement conference that although he checked the storage cabinet before preparing the letter, and saw three yellow cases which he assumed contained the gauges, he did not look inside the cases to verify the gauges were there.

(4) Figure 1 of the November 21, 1994, JLT application, revised January 6, 1995, depicted a locked steel cabinet on the JLT premises as the storage site for the three Troxler gauges. However, the cabinet did not have a lock. John Boschuk, Jr. prepared Figure 1. This materially inaccurate statement was in violation of 10 CFR 30.9(a) and was

made with at least careless disregard for the facts by Mr. Boschuk.

B. Unauthorized Use of Byproduct Material and Related Materially Inaccurate Statements

JLT admittedly used the Troxler density gauge(s) on four occasions after revocation of the JLE license and before the NRC issued a license to JLT on February 7, 1995. JLT stated at the December 18, 1997, enforcement conference that JLT employees used the gauges on those occasions and that JLT invoiced its customers for the usage. Specifically, JLT admitted to using the gauge(s) for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson Construction in June 1994, and PA Soil & Rock Company in July 1994. These violations of 10 CFR 30.3 were committed with at least careless disregard by JLT.

As a consequence, the statement by Ms. Boschuk in her November 21, 1994, letter to the NRC, that the gauges had not been used and had not left storage at JLT since August 30, 1993, and the statement by Mr. Boschuk in his October 11, 1994, letter to the NRC, that the gauges had not been used for over two years and had not left storage, were materially inaccurate in violation of 10 CFR 30.9(a) and made with at least careless disregard.

C. Violation of License Condition

Condition 19 of the JLT License requires that, when not in use, the Troxler gauges be kept in a locked cabinet on JLT's premises, as depicted by Figure 1 of the January 6, 1995, amended application. Figure 1, prepared by Mr. Boschuk, pictures a storage closet with a lock. In violation of that requirement, JLT failed to maintain its gauges in a locked storage cabinet between February 7, 1995 and sometime before the August 1995 inspection. The failure to maintain the gauges in a locked cabinet was in violation of Condition 19 of JLT's License and of 10 CFR 30.3.

D. Destruction of Records Relating to Gauge Usage

According to a witness, Lourdes Boschuk, John Boschuk, Jr. and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to

a handwritten note, created by a JLT employee immediately after the September 15, 1995, enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were "thrown away during sanitization of records?" Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of 10 CFR 30.3 and 30.9(a). The participation of John Boschuk, Jr. and Lourdes Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

IV

Based on the above, the NRC concludes that the Licensee willfully violated NRC requirements, both deliberately and with careless disregard, and committed violations of NRC safety requirements. Among the Licensee's willful violations were repeated, materially inaccurate statements to the NRC regarding unauthorized use of byproduct material, unauthorized use of licensed material, violation of license conditions regarding the use and storage of the gauges, and the destruction or disposal of records related to unauthorized use of licensed material. As stated above, among the Licensee's violations of safety requirements were the failure to perform required leak tests, to have an approved Radiation Safety Officer, and the failure to perform required inventories of licensed material. The NRC must be able to rely on its Licensee's integrity and their compliance with NRC requirements. The Licensee's numerous willful violations and other violations demonstrate that the Licensee is either unwilling or unable to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that the Licensee is willing and able to conduct operations under License No. 37-

28442-02 in compliance with the Commission's requirements, or that the health and safety of the public will be protected if J&L Testing Company, Inc. continues to engage in licensed activity. Therefore, the public health, safety and interest require that License No. 37-28442-02 be revoked.

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 30.10, IT IS HEREBY ORDERED THAT LICENSE NO. 37-28442-02 IS REVOKED, AND ALL LICENSED MATERIAL CURRENTLY IN THE LICENSEE'S POSSESSION SHALL BE TRANSFERRED TO AN AUTHORIZED RECIPIENT WITHIN 7 DAYS OF THE EFFECTIVE DATE OF THIS ORDER. FURTHER, THE LICENSEE SHALL NOTIFY THE NRC WITHIN TWO BUSINESS DAYS AFTER SUCH TRANSFER HAS TAKEN PLACE AS TO WHOM THE TRANSFER WAS MADE. THE LICENSEE MAY TELEPHONICALLY CONTACT NRC'S REGIONAL OFFICE AT 610-337-5000 TO COMPLY WITH THE NOTIFICATION REQUIREMENT.

VI

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. 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, US Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking 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 Deputy Assistant General Counsel for

Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415, and to the Licensee, if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or 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 Order should be sustained.

In the absence of any request for a 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 Part IV of this Order shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this 10th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98-10328 Filed 4-17-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-423]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-49 issued to Northeast Nuclear Energy Company (the licensee) for operation of Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut. The proposed change to Technical Specification (TS) 3/4.4.4, Relief Valves, would ensure that the Power-Operated Relief Valves (PORVs) will be capable of automatic cycling as well as manual cycling when in the TS

3/4.4.4 action statements that allow indefinite continued operation. The proposed amendment also makes an editorial change, adds PORV surveillance requirements, and modifies the associated Bases section. The proposed changes provide added assurance that the pressurizer safety relief valves will not be damaged due to water relief during an inadvertent safety injection event.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Currently, timely operator action is required to prevent the pressurizer from filling and potentially challenging the pressurizer safety valves under water relief. The proposed TS changes provide added assurance that the safety valves will not be challenged by requiring the PORVs to be available for automatic pressure control. The changes to the Surveillance Requirements add the appropriate requirements to provide assurance that the automatic capability of the PORVs is OPERABLE. The quarterly analog channel operational test for the PORV high pressurizer pressure channels will not include valve operation. However, it does involve changing the opening logic from 2/4 to 1/3 and, thus, performing the surveillance increases the probability of the PORVs opening inadvertently. If the automatic capability of one PORV is INOPERABLE for more than 72 hours, shutdown is required. If the automatic capability of both PORVs is INOPERABLE for more than one hour, shutdown is required.

If the block valves have been closed but the automatic capability of the PORVs is OPERABLE, an EOP [emergency operating procedure] change has been made to assure that the PORV block valve would be opened within ten minutes of an Inadvertent ECCS [emergency core cooling system] actuation at power. The new analysis shows that this is sufficient to assure that the PORVs would control RCS [reactor coolant system] pressure if water relief is experienced and the safety valves would not be challenged. Thus, it is concluded that the change provides added assurance that the safety valves would not fail due to water discharge.

Evaluations and analysis have been performed to demonstrate that the PORVs and the associated piping are qualified for water relief from an Inadvertent ECCS Actuation at Power Operation for one hour from event initiation. This provides significant margin for operator action to terminate the event.

The PORV control logic has been upgraded to be safety grade and single failure proof. A 2/4 logic is used for opening and 3/4 logic is used for subsequent closure. With the upgrade of the PORV control logic, there is added assurance that the PORV will be capable of providing automatic pressure control and preventing challenges to the safety valves, particularly under water solid conditions. However, there is a small impact on the probability of inadvertent opening of both PORVs resulting from multiple channel failures. With the new safety grade PORV control logic, two failed high pressurizer pressure channels will result in inadvertent opening of both PORVs. With the current logic, a single failed high pressurizer pressure channel would result in opening a PORV. However, the 2/4 closure logic will re-close the PORV when pressurizer pressure drops below 2200 psia. With the current logic three failed high pressurizer pressure channels are required for the PORVs to inadvertently open and remain open. Thus it is concluded that there is an increase in the probability that the PORVs will inadvertently open and remain open.

However, multiple channels failing high are required for the PORVs to inadvertently open and remain open. For failure modes such as loss of power for the transmitter or a failure of the instrument tubing, the channel will fail low. Failure modes that can result in the channel failing high are highly unlikely. Further, the new logic will require energization in order to open the PORVs, further minimizing the potential for inadvertent opening. These failures, which result in the PORVs automatically opening and remaining open, do not disable the ability of the operators to close the PORVs by taking their control switch to the close position. Thus, it is concluded that the increase in risk is negligible. The consequences of inadvertent opening of both PORVs is bounded by the analysis provided in Chapter 15.6.1 Inadvertent Opening of Pressurizer Safety or Relief Valve.

In the event of an inoperable pressurizer pressure channel, the channel will be placed in the tripped condition. This will change the opening logic from 2/4 to 1/3 and the subsequent closure logic from 3/4 to 3/3.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION



In the matter of:) Docket No. 30-33725
J&L TESTING COMPANY, INC.) License No. 37-28442-02
CANONSBURG, PA) EA No. 96-110
)

ANSWER OF LICENSEE,
J&L TESTING COMPANY, INC.,
TO ORDER REVOKING LICENSE

Pursuant to 10 CFR §2.202 and in reliance on certain representations made by NRC regional counsel as summarized in the letter dated April 15, 1998, Attachment A hereto, Licensee J&L Testing Company, Inc. (hereinafter referred to as "Licensee" or "JLT") responds to Order Revoking License dated April 10, 1998 ("Order") as follows:

- I. Licensee admits the facts alleged in Section I of the Order.
- II. Licensee admits the facts alleged in Section II of the Order, except as follows:
 - a. Licensee admits revocation of JLE's license on or about August 30 for

non-payment of fees, but is unable to respond as to the contents of the Order, since it has no copy of it. By way of further response, the NOV of 10-5-94 gave JLE until November 4, 1994 to apply for a new NRC license.

b. Licensee admits the statement of Mr. Boschuk in his letter of 10-11-94, regarding gauge usage was inaccurate. However, Licensee believes this statement was based on Mr. Boschuk's information and belief, and user records which were incomplete, and was not deliberately inaccurate.

c. Licensee admits the 11-21-94 statement by Mrs. Boschuk that the gauges "were not removed from storage nor used in anyway since 8-30-93," was inaccurate. However, this statement was based on Licensee's information and belief,

and user records which were incomplete, and was not a willful misstatement.

- d. The transfer of the gauge to SE Technologies on or about September 2, 1994 was not a deliberate violation of NRC regulations or order, but was an inadvertent error.
- e. The violations identified during the NRC's August 1995 announced safety inspection were characterized as "apparent" violations, and no NOV was issued. JLT's response of 9-11-95 did not admit failure to conduct a physical inventory at six month intervals.
- f. Licensee was unrepresented by counsel at the 9-15-95 enforcement conference, and was confused. (See Transcript, pp. 19-20, 24, 55). The transcript does not show Mrs.

Boschuk admitted the apparent violations identified during the inspection. (See Transcript, pp. 5-8). She did indicate JLT was either in compliance or moving toward compliance. (See Transcript, pp. 9-11 etc.). In any event, the transcript speaks for itself. Mrs. Boschuk was told by the NRC that it was not necessary for her to bring a lawyer.

g. As to use of licensed material prior to issuance of a license, Mrs. Boschuk said she would have to check her records to respond. (Transcript, cf. p. 21).

h. The NRC's conclusion that submission of materially inaccurate data by JLT and JLE was either deliberate or in careless disregard of Commission requirements is not supported by the record for the

reasons stated above. At worst, such submissions were negligent.

- i. Submission of materially inaccurate data by JLE is insufficient, as a matter of law, to support a conclusion as to JLT's willingness or ability to comply with NRC requirements.

III. Licensee admits the facts alleged in Section III of the Order, except as follows:

- a. The allegation of Subsection A(1), that the 9-11-95 written statement by Mrs. Boschuk that a Troxler gauge was in Watertown was deliberately inaccurate, is wrong because Ms. Boschuk believed at that time it was true based on information provided to her.
- b. The allegation of A(1), that the 9-11-95 written statement of Mrs. Boschuk concerning status of the

gauges was made with careless disregard of the facts, is wrong because Mrs. Boschuk believed at that time it was true based on information provided to her.

c. The allegation of Subsection A(2), that JLT's statement during the enforcement conference about the use of the operable Troxler gauge was in careless disregard of the facts, is not supported by the record because Mrs. Boschuk had no personal knowledge at the time as shown by her statements at the pre-decisional enforcement conference on December 18, 1997 and p. 14 of the revised transcript.

d. The allegation of subparagraph A(3), that Mrs. Boschuk's letter of September 18, 1995 contained several "deliberate" inaccurate statements, is not correct since, as stated at the 12-18-97

pre-decisional enforcement conference, Mrs. Boschuk relied upon her husband to draft the letter, and her husband relied upon seeing three yellow cases for his belief all three gauges were present. Licensee also denies that she advised Mr. Boschuk about the gauge transfer no later than the weekend ending September 17, 1995. Licensee believes that it's reliance on Mr. Boschuk, and Mr. Boschuk's failure to check the contents of the cases he had seen, were, at worst, negligence and not careless disregard of the facts. Further, the Troxler gauge was brought back from Cashin Associates as soon as possible after Mrs. Boschuk discovered it had been transferred, and Licensee believes it was returned either the evening of September 18 or early in the morning of September 19, rather

than September 19 and 20 as
alleged.

- e. The allegations of Subsection A(4), that the steel cabinet on the JLT premises used for storage of the three Troxler gauges did not have a lock as depicted in Figure 1 of JLT's revised application, are incorrect. The photo of the steel cabinet sent to the NRC by Licensee's letter dated December 30, 1997 clearly shows the steel cabinet has a key lock on the door handle, and such lock is labeled on the photo.

- f. The allegations of sub-paragraph B concerning unauthorized gauge use are denied in so far as they are alleged to have been in reckless disregard. Such unauthorized usage resulted from inadequate supervision of employees and inadequate internal procedures,

which Licensee subsequently took steps to correct.

- g. The allegations of sub-paragraph C concerning violations of license conditions are incorrect in that Licensee did maintain a storage cabinet with a lock for gauges as noted in Paragraph III(e). Licensee has insufficient information to respond to the allegation that the cabinet was not locked during the period from April 7th to sometime before the August 1995 inspection.
- h. The allegations of sub-paragraph D regarding destruction of records relating to gauge usage are denied. Neither Mr. nor Mrs. Boschuk destroyed, altered, sanitized or otherwise disposed of business or transactional records shortly after the August 1995 NRC announced safety inspection in order to

conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. By way of further response, the records referenced were provided to NRC inspectors during the announced inspection, and Mr. Boschuk and/or Licensee offered to make copies for the NRC inspectors, which offer was declined. The subsequent loss or theft of records voluntarily produced during an announced inspection, copies of which were also offered to the inspectors, cannot constitute an effort to conceal facts regarding improper gauge transfer. Further, Licensee assumes the witness referenced there is Lou Boschuk, son of Mrs. Boschuk. Lou Boschuk's credibility is highly dubious in view of his actions as discussed at the December 12 pre-decisional enforcement conference, including

his threats to kill his mother and her family made in the presence of a third party (See Affidavit of Dorothy Tigbao dated January 7, 1998 previously submitted to the NRC on or about February 23, 1998). Further, Licensee objects to NRC's reliance on a handwritten note allegedly written by an un-named employee of JLT immediately after the September 15, 1995 enforcement conference, since neither the note nor its contents were ever provided to Licensee prior to issuance of this Order. Reliance on evidence never provided to a Licensee violates due process and fundamental fairness. Further, rather than concealing improper gauge usage, Licensee voluntarily provided written documentation of all such usage in letters to the NRC dated September 11 and 27,

October 13 and 16, and December 1,
1995.

- IV. Licensee denies the allegations or charges that the violations of NRC requirements or safety requirements alleged in this section were either willful or committed with careless disregard for the reasons stated above. Licensee therefore denies that the NRC lacks the requisite reasonable assurance that Licensee is unwilling and unable to comply, or that the health and safety of the public will not be protected. As evidence of its willingness and ability to comply, Licensee points to its uncontested compliance with the September 27, 1995 suspension order.
- V. Licensee consents to Section V of the Order concerning (a) revocation of its License No. 37-28442-02, (b) transfer of the licensed material currently in Licensee's possession to an Authorized Recipient within seven days of the date

the Order becomes effective, and (c) giving notice to the NRC of such transfer.

VI. Licensee does not request a hearing on the Order.

Respectfully submitted,

J&L TESTING COMPANY, INC.

By: /s/ Harley N. Trice II
Harley N. Trice II

REED SMITH SHAW & McCLAY LLP
435 Sixth Avenue
Pittsburgh, PA 15219
(412) 288-3282

Dated: April 27, 1998

Counsel for J&L Testing
Company, Inc.

REED SMITH SHAW & MCCLAY LLP

Writers Direct Numbers
Phone 412-288-3282
Fax 412-288-3063
hntrice@rssl.com

425 Sixth Avenue
Pittsburgh, Pennsylvania 15219-1886
Phone: 412-288-3131
Fax: 412-288-3063

April 15, 1998

CERTIFIED MAIL # P 365 775 490
RETURN RECEIPT REQUESTED

J. Bradley Fewell, Esq.
Regional Counsel
U.S. Nuclear Regulatory Commission
Region 1
475 Allendale Road
King of Prussia, PA 19406

Re: J&L Testing Company, Inc.

Dear Mr. Fewell:

J&L Testing Company, Inc. is in receipt of the Order Revoking License at Docket No. 30-33725, and Ms. Lourdes T. Boschuk and Mr. John Boschuk, Jr. are in receipt of orders prohibiting involvement in NRC-licensed activities at Nos. 1A 98-019 & 020 (these three orders are hereinafter collectively referred to as the "Orders").

This letter is to confirm our conversation of yesterday in which you stated:

- No civil penalties will be assessed by the NRC for the violations referred to in the Orders; and
- The effective date of each of the Orders is twenty (20) days after April 10, 1998, unless an extension of time for a hearing request has been made or granted.

REED SMITH SHAW & McCLAY LLP

J. Bradley Fewell, Esq.

-2-

April 15, 1998

We will assume the foregoing is accurate unless you advise us otherwise prior to April 25, 1998.

Thank you for your cooperation.

Very truly yours,

REED SMITH SHAW & McCLAY LLP

By:

Harley N. Trice II

HNTIII/amp

cc: J&L Testing Company, Inc.

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF Allegheny : SS:

Before me, the undersigned authority,
personally appeared Mrs. Lourdes T. Boschuk who deposes
and voluntarily states that she is president of J&L
Testing Company, Inc., that she has read the foregoing
Answer of Licensee, J&L Testing Company, Inc., to Order
Revoking License, and that the facts contained in said
Answer are true and correct to the best of her
knowledge, information and belief.

Mrs. Lourdes T. Boschuk
Mrs. Lourdes T. Boschuk

Sworn to and subscribed
before me this 30th day
of April, 1998.

Debra L. Keenan
Notary Public

MY COMMISSION EXPIRES:

Notarial Seal
Debra L. Keenan, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Oct. 12, 2000
Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he served a true and correct copy of the foregoing Answer on the following persons by first class mail, postage prepaid, addressed to:

Secretary
U.S. Nuclear Regulatory Commission
Attn: Chief Rulemaking and
Adjudications Staff
Washington, D.C. 20555

Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Deputy Assistant-General Counsel for
Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Regional Administrator
NRC Region 1
475 Allendale Road
King of Prussia, PA 19406-1415

/s/ Harley N. Trice II
Harley N. Trice II

April 30, 1998