

presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 20, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 29th day of September, 1995.

For the Nuclear Regulatory Commission.
Robert M. Pulsifer,
*Project Manager, Project Directorate III-2,
Division of Reactor Projects—III/IV, Office of
Nuclear Reactor Regulation.*
[FR Doc. 95-24767 Filed 10-4-95; 8:45 am]
BILLING CODE 7590-01-P

[Docket No. 30-33725; License No. 37-28442-02 EA 95-183]

**J&L Testing Company, Inc.,
Canonsburg, PA; Order Suspending
License (Effective Immediately)**

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 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.

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 three gauges for which the Licensee is now licensed. John Boschuk, the president of JLE, is the co-owner, along with Lourdes T. Boschuk, of JLT. JLE's license was revoked on August 30, 1993, for non-payment of fees and JLE was ordered, in part, to cease use of byproduct material, dispose of the byproduct material, and notify the NRC of the disposition within 30 days of that order. On October 5, 1994, a Notice of Violation (Notice) was issued to JLE for possession of licensed material without a valid NRC license, as its NRC license had been revoked. On October 11, 1994, John 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 T. Boschuk, President of JLT, stated the following:

* * * submitted herein is our application to restore our expired license to store and operate three (3) Troxler Nuclear Density Gauges (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 concerning use of the gauges after the time the JLE license was revoked, the NRC issued a new license (License No. 37-28442-02) to JLT on February 7, 1995.

On August 1 and 3, 1995, the NRC conducted a routine safety inspection of activities authorized by License No. 37-28442-02 at the Licensee's facility in Canonsburg, Pennsylvania. During the inspection, an NRC inspector determined, based on a review of utilization logs, that one of the gauges, which JLE and the Licensee separately had stated in writing to the NRC were in storage, had been used on September 1 and 2, 1994 (at a temporary jobsite at the S. Hill Village Sears project), by either JLE or JLT (when neither possessed an NRC license). The use of this gauge without a valid NRC license was in violation of 10 CFR 30.3, which prohibits use of byproduct material without a valid license from the NRC. In addition to this violation, the statements by Ms. Boschuk, in her November 21, 1994 letter to the NRC, and by Mr. Boschuk, in his October 11, 1994 letter to the NRC, were not accurate and, therefore, constituted a violation of 10 CFR 30.9.

During the August 1995 inspection three additional violations of NRC requirements were identified. These violations involved the failure to perform leak tests of the devices (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 on the license terminated employment on May 26, 1995) as required by License Condition 11A, and the failure to perform inventories of the gauges at the required 6-month intervals as required by Condition 14 of the license. By letter dated September 11, 1995, the Licensee's president stated that the facts of these violations were correct.

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 explanations for why the material had been used notwithstanding the revocation of JLE's license or for the inaccurate statements made to the NRC.

In addition, based on a September 22, 1995, letter from the State of New York to JLT, it appears that JLT had not requested or obtained reciprocity for use of radioactive materials as required by regulations of the State of New York. JLT also appears to have provided false statements to the New York State Department of Labor concerning use of radioactive material in New York State.

III

Although the NRC has initiated an investigation into these violations, based on the above and on information developed to date, the NRC concludes that the Licensee violated NRC requirements by: (1) providing inaccurate information to the Commission, a violation of 10 CFR 30.9; (2) using and possessing licensed material without a valid NRC license, a violation of 10 CFR 30.3; (3) not performing leak tests of the gauges at the required 6-month intervals, a violation of License Condition 12; (4) not having an approved Radiation Safety Officer (RSO), a violation of License Condition 11A; and (5) not performing inventories of the gauges at the required 6-month intervals, a violation of License Condition 14.

The Atomic Energy Act of 1954, as amended (Act), limits possession and use of byproduct material to those who possess a valid NRC license. In this case, the Licensee's use of the gauge without a license is a significant regulatory concern, particularly in view of the inaccurate information submitted to the Commission in response to the Notice (JLE's October 11, 1994 letter) and in support of an NRC license application (JLT's November 21, 1994 letter). Such inaccurate information was material and influenced the NRC's decision to grant the Licensee an NRC license. The NRC's concern is further heightened given the potential safety significance of the other violations - failure to have an approved RSO, failure to perform required leak tests of the gauges, and failure to perform periodic inventories of the gauges.

While the investigation is ongoing, the NRC has concluded based upon the information developed to date that the Licensee, through its co-owners, who

knew that JLE's license had been revoked, knew that the NRC had requested a formal response to a Notice of Violation, and knew it was submitting information to influence the NRC to grant it a new license, provided inaccurate information in response to a Notice of Violation and in obtaining a license from the Commission. In light of the above and regulatory significance of the submittals, the staff concludes that the submittal of this false information, if not deliberate, was in careless disregard of Commission requirements. Further, based on the correspondence and co-ownership of JLE and the JLT, the NRC concludes that Mr. and Ms. Boschuk, co-owners of the JLT, are responsible for compliance with NRC requirements.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. The Licensee, through its representatives, has demonstrated an unwillingness or inability to comply with NRC requirements. The Licensee's misrepresentations to the NRC, as well as its actions in violating other NRC requirements, have raised serious doubt as to whether it can be relied upon in the future to provide complete and accurate information to the NRC or to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 37-26442-02 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected if the Licensee is permitted to conduct licensed activities at this time. Therefore, the public health, safety, and interest require that License No. 37-26442-02 be suspended, with the exception of certain requirements enumerated in Section IV below pending the completion of the investigation. Furthermore, pursuant to 10 CFR 2.202, I find that in light of the willfulness of the Licensee's conduct, the public health, safety, and interest require that this Order be immediately effective.

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 and 10 CFR Part 30, It is hereby ordered, effective immediately, that License No. 37-28442-02 is suspended as follows:

Pending further investigation and Order by the NRC:

A. All NRC-licensed material in the Licensee's possession shall be placed in locked storage.

B. The Licensee shall suspend all activities under its license to use or transfer licensed material. The Licensee shall provide prior notice to the NRC, Region I before transferring the sources. All other requirements of the license remain in effect.

C. The Licensee shall not receive any NRC-licensed material while this Order is in effect.

D. All records related to licensed activities must be maintained in their original form and must not be removed or altered in any way.

The Regional Administrator, Region I, 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, 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, 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, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and 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.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the same time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

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 Part IV of this Order shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 27th day of September 1995.

For the Nuclear Regulatory Commission.
Hugh L. Thompson, Jr.,
Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36295; File No. SR-CBOE-95-51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Listing and Trading of Options on the CBOE Automotive Index

September 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.