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.

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[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 JLE's license was revoked on August 30, 1993, for non-payment of fees and JLE was ordered, in part, to cease use of byproduct material, dispose of the byproduct material, and notify the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(Notice) was issued to JLE for possession of licensed material without a valid NRC license, as its NRC license had been revoked.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 JL $ar{ extsf{T}}$  (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