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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE CHIEF OF STAFF
RULEMAKING AND
ADJUDICATIONS STAFF

BEFORE THE COMMISSION

In the Matter of)	Docket No. 030-34318
)	EA No. 98-521
SPECIAL TESTING LABORATORIES, INC.)	
)	Order Suspending License
)	(Effective Immediately))
Bethel, Connecticut)	

NRC STAFF'S RESPONSE TO REQUEST FOR
IMMEDIATE HEARING AND MOTION TO SET ASIDE
IMMEDIATE EFFECTIVENESS OF ORDER SUSPENDING LICENSE

INTRODUCTION

On December 23, 1998, the staff of the Nuclear Regulatory Commission (Staff) issued an Order Suspending License (Effective Immediately) (Order) to Special Testing Laboratories, Inc. (Licensee or STL). On December 23, 1998, the Licensee requested an immediate hearing¹ and moved to set aside the immediate effectiveness of the Order. Letter to Mr. John Kinnerman [sic], Region I, from Richard Speciale [President and Radiation Safety Officer], Special Testing

¹ To the extent that the request for immediate hearing refers to the expeditious resolution of the issue of the immediate effectiveness of the Order as required by 10 C.F.R. § 2.202(c), the Staff has no objection. If the Licensee is requesting an immediate hearing on the merits of the Order suspending the license, the Staff objects as the NRC investigation into the Licensee's actions is ongoing. See Order at 3.

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Laboratories, Inc., dated December 23, 1998. (Licensee's Request).² As discussed below, the Licensee's Request should be denied.

BACKGROUND

The Licensee is the holder of Byproduct Nuclear Material License No. 06-30361-01, which authorizes the possession and use of Troxler Electronics Laboratories, Campbell Pacific Nuclear, Humbolt Scientific, Seamen Nuclear or Soiltest nuclear gauges. Order at 1. Copy of the license is attached hereto as Exhibit 1. As detailed in the Order issued to the Licensee, several willful violations were identified as a result of NRC inspections and an investigation conducted by the Nuclear Regulatory Commission's Office of Investigations (OI). *See* Order at 1-3. Consequently, in light of the deliberate violations of NRC requirements, on December 23, 1998, the Staff issued the Order. *See id.* at 3-6. The order provides that: A) all NRC-licensed activities are suspended; B) all NRC-licensed material must be placed in locked storage; C) no NRC-licensed material may be received while the Order is in effect; D) all records related to licensed activities must be kept in their original form and not removed or altered in any way; E) all Licensee employees must be informed of the Order within 2 days of the date of the Order; F) within 7 days, the NRC must be provided with a list of all clients for whom the Licensee has performed activities which involve use of the gauges within the past 12 months; and G) a copy of the Order shall be posted within 24 hours of receipt. Order at 5-6.

² By separate letter, Mr. Speciale also offered to voluntarily give up his position as Radiation Safety Officer in favor of his son, Richard C. Speciale, president of STL, whom he alleged is qualified to act as RSO. Letter to, John Kinnerman [sic], Region 1, from Richard Speciale, dated December 23, 1998.

On December 23, 1998, the Licensee requested an immediate hearing and moved to set aside the immediate effectiveness of the Order. Licensee's Request at 1. The Licensee contends that the Order is inadequately based on suspicion, allegation and error. *Id.* As demonstrated below, the Licensee's Request does not comply with 10 C.F.R. § 2.202(c)(2)(i) and, the Order, including the basis for immediate effectiveness, is based on adequate evidence.

DISCUSSION

A. Legal Standards for Issuing and Challenging An Immediately Effective Order

Section 2.202 of the Commission's regulations provides that the Commission, upon a finding that the public health, safety, or interest so requires or upon a finding that the violation or the conduct causing the violation is willful, may make an order immediately effective. 10 C.F.R. § 2.202(a)(5). Furthermore, with respect to willful conduct, the Commission has determined that since it must rely "on the integrity of individuals involved in licensed activities to ensure compliance with NRC regulations", immediately effective orders may be issued where there are willful violations in conjunction with a conclusion that the public health, safety and interest also indicate the need for immediately effective action. *Revisions to Procedures to Issue Orders: Challenges to Orders that are Made Immediately Effective*, 57 Fed. Reg. 20194, 20195 (May 12, 1992).

Challenges to the immediate effectiveness of an order may be made pursuant to Section 2.202(c)(2)(i) of the Commission's regulations. Section 2.202(c)(2)(i) provides that a person to whom the Commission has issued an immediately effective order may move the presiding officer designated in the proceeding to set aside the immediate effectiveness of the order on the ground

that the order, including the need for immediate effectiveness, is not based on adequate evidence, but rather on mere suspicion, unfounded allegations, or error. *Id.* Adequate evidence, as defined by the Commission, is found when "facts and circumstances within the NRC staff's knowledge, or concerning which it has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe that the charges specified in the order are true and that the order is necessary to protect the public health, safety, or interest." *Revisions to Procedures To Issue Orders: Challenges to Orders That Are Made Immediately Effective*, 57 Fed. Reg. at 20196. See also *Advanced Medical Systems, Inc.*, CLI-94-6, 39 NRC 285, 301-02 (1994). "Adequate evidence" is similar to the "probable cause" required for arrest, search warrant or preliminary hearing. *Id.* See also *Aharon Ben-Haim, Ph.D.* (Upper Montclair, New Jersey), LBP-97-15, 46 NRC 60, 63 (1997); *Eastern Testing and Inspection, Inc.*, LBP-96-9, 43 NRC 211, 215-16 (1996). The motion to set aside the immediate effectiveness of an order must state with particularity the reason why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on by the person challenging the immediate effectiveness of an order. 10 C.F.R. § 2.202(c)(2)(i). The Staff's response must present adequate evidence supporting both the order and the decision to make the order immediately effective. *Id.* The burden is on the movant to go forward to demonstrate that the Staff's order is not based on adequate evidence, but the Staff has the ultimate burden of persuasion to show that the standard has been met. *Ben-Haim*, LBP-97-15, 46 NRC at 63; *Eastern Testing*, LBP-96-9, 43 NRC at 216. Moreover, the Order may be based on "preliminary investigation and other emerging information which is reasonably reliable." *Advanced Medical Systems*, CLI-94-6, 39 NRC at 301.

B. The Licensee's Request to Set Aside the Immediate Effectiveness of the Order Does Not Comply with the Requirements of 10 C.F.R. § 2.202

On December 23, 1998, the Licensee, by its President and Radiation Safety Officer, Richard Speciale, submitted a demand for immediate hearing and motion to set aside the immediate effectiveness of the Order. Licensee's Request at 1. The Licensee does allege that the Order is "based inadequately on suspicion, allegation and error", as required by 10 C.F.R. § 2.202(c)(2)(i), but does not "state with particularity the reasons why the order is not based on adequate evidence." 10 C.F.R. § 2.202(c)(2)(i). Nor is the demand accompanied by affidavits or other evidence relied on. *Id.* In fact, Licensee's Request contains no factual allegations or evidence to support its assertion that the Order is based on suspicion, allegation and error. Licensee's Request states that the Order is not factual, but gives no supporting evidence for that statement. It states that the Order omits information given to the NRC Inspector and Investigator by the Licensee which would present matters differently, but it, again, contains no factual or evidentiary information, such as a delineation of the alleged omitted information, to support this statement. Licensee's Request alleges that the statement of the Licensee regarding the number of gauges in use and the total number, is cited wrongly, but provides no information to contradict the statements in the Order. It states that the information regarding training is taken out of context, but does not contradict the information as presented or provide the context. It further makes the broad statement that information was provided as it became available and all information provided was accurate. Finally, the Licensee's Request cites a waiver request it had made, but does not discuss its relevance to the Order in question. The Licensee's Request does not meet

the requirements of 10 C.F.R. § 2.202(c)(2)(i) in that it does not state with particularity the reasons why the Order is not based on adequate evidence nor is it accompanied by affidavits or other evidence, as required by the regulation. It is also completely inadequate to meet the Licensee's burden to go forward to demonstrate that the Staff's order is not based on adequate evidence. Therefore, the Licensee's motion to set aside the immediate effectiveness of the Order should be denied.

C. The Staff's Order and the Bases for Its Immediate Effectiveness are Based on Adequate Evidence

The Order and the bases for the immediately effective action are based on adequate evidence and not on mere suspicion, unfounded allegations, or error. The Licensee, in its Request, makes several statements regarding omission of information and errors, but provides no particulars and completely fails to support the allegations with affidavits or other evidence. The allegations in the Order are based on a review of documents maintained by the Licensee and the NRC, and interviews with Mr. Speciale, and several employees of the Licensee and the NRC. The within response to the Licensee's Request is supported by affidavits and evidence, pursuant to 10 C.F.R. § 2.202(c)(2)(i), which demonstrate that the conclusion by the Staff that the matters asserted in the Order occurred is based on adequate evidence.

The Order refers to several violations or occurrences which were discovered as a result of NRC inspections and investigation by the NRC Office of Investigations (OI). These violations were determined to be willful. See Order at 1-4. In addition, the investigation uncovered evidence that Mr. Speciale and his employees had been using nuclear gauges during the time when

his previous license, under the name Testwell Craig Laboratories of Connecticut, Inc. (License No. 06-19720-01) had been suspended for non-payment of fees, and prior to the issuance of the license to Special Testing, in violation of 10 C.F.R. § 30.3. *See* Order at 1, 3-4. The bases for the Staff's conclusion that these violations occurred as stated in the Order are discussed in more detail in the attached affidavit of Mark A. Mullen in Support of the NRC Staff's Response to Request for Immediate Hearing and Motion to Set Aside Immediate Effectiveness of Order Suspending License and affidavit of Eric H. Reber in Support of the NRC Staff's Response to Request for Immediate Hearing and Motion to Set Aside Immediate Effectiveness of Order Suspending License, attached hereto as Exhibits 2 and 3, respectively.³ The OI investigation included interviews of several individuals, including field technicians employed by STL and NRC employees, several interviews with Mr. Speciale, as well as a review of documents supplied by STL and NRC documents. Mullen affidavit at ¶ 4, 9; Reber affidavit. In many instances, statements of individuals are corroborated by documentary evidence or statements of other individuals, thus lending support to the statements. For example, the Order alleges that the portable gauges containing license material were routinely used by Licensee employees who had not received the required training. *See* Order at 2, 3. This violation is based upon the statements of several of STL's employees who stated that they had operated the nuclear gauges without assistance or regular supervision before they were certified to operate the gauges. Mullen

³ Please note that Exhibit 2 is unsigned. A signed original affidavit will be forwarded to the Board as soon as it is received from Region I. Exhibit 3 is a facsimile. The original affidavit will be forwarded to the Board upon receipt from Region I.

affidavit at ¶ 5; Reber Affidavit at ¶ 8-9. These statements were corroborated by admissions made by Mr. Speciale that he had used several untrained employees in the field with out certification. Mullen Affidavit at ¶ 9; Reber Affidavit at ¶ 7. The reason given for not providing training was cost. Reber Affidavit at ¶ 7. The statements were further corroborated by training certificates indicating that nine employees had received training and certification on October 29, 1998, after the NRC inspection in October. Mullen Affidavit at ¶ 9; Reber Affidavit at ¶ 6.

The other violations are also corroborated by several separate statements, contradictory statements made by Mr. Speciale, and, in most cases, documents. The Order alleges that some Licensee employees were using the gauges without being provided with the necessary dosimetry. Order at 2-3. This violation is based on statements made by the employees (Mullen Affidavit at ¶ 5; Reber Affidavit at ¶ 9-10), and statements made by Mr. Speciale (Mullen Affidavit at ¶ 9; Reber Affidavit at ¶ 11).

The Order alleges that the Licensee made false statements to the NRC. Order at 3. This violation is based on the contradictory statements given to the NRC inspector and the OI investigator by Mr. Speciale regarding the number of portable gauges possessed by STL and the number of authorized users. Mullen Affidavit at ¶ 9; Reber Affidavit at ¶ 5, 6. The actual number of gauges and authorized users was verified during the November inspection through documents supplied by the Licensee and an additional statement by Mr. Speciale. Reber Affidavit at ¶ 8.

The Order alleges that the Licensee failed to perform leak tests on the gauges on the schedule required by the regulations. This allegation is based on examination of leak test records in the possession of the Licensee. Reber Affidavit at ¶ 13.

Finally, the Order alleges that the gauges containing licensed material were possessed and used without obtaining a license. Order at 3-4. This is based on information supplied by the NRC and statements made by Mr. Speciale, that after the license issued to his prior company, Testwell Craig, had been suspended for failure to pay fees and before his new company, STL, had been issued a license, he had continued to use the gauges. Mullen Affidavit at ¶ 6-9. See Order Suspending License issued to Testwell Craig Laboratories of Connecticut, Inc. attached hereto as Exhibit 4.

The violations cited in the Order are based on statements from individuals, statements from Mr. Speciale, the Licensee's president and RSO, and on the review of documents. The facts and circumstances discussed above and in the attached affidavits are reasonable trustworthy, and thus warrant a reasonable cautious person to believe that the matters specified in the Order are true. Thus, the Order is based on adequate evidence and not on mere suspicion, unfounded allegations, or error.

D. The Protection of Public Health, Safety and Interest Required that the Order be Immediately Effective.

As demonstrated above, the Staff had adequate evidence to conclude that the assertions in the Order are true and that the violations cited were willful. In addition, due to the significance

of the violations, the protection of the public health, safety and interest also required the Order to be immediately effective.

The license issued to STL authorizes it to perform density measurements using portable gauges utilizing up to 100 millicuries of cesium-137 and 500 millicuries of americium-241 in sealed sources. Misuse of the gauges can result in unnecessary radiation exposure to members of the public and employees of the Licensee. Affidavit of Nader Mamish in Support of NRC Staff's Response to Request for Immediate Hearing and Motion to Set Aside Immediate Effectiveness of Order Suspending License at ¶ 4, attached hereto as Exhibit 5.⁴ Use of the gauges by individuals without the required training and without the required dosimetry has potentially serious adverse consequences for public health and safety, because such use could directly cause unnecessary radiation exposure to the public and to the Licensee's employees. Mamish Affidavit at ¶ 8.

Thus, due to the willfulness of the violations, the apparent unwillingness or inability of the Licensee to comply with regulations and license requirements, the risks of unnecessary radiation exposure to workers or members of the public due to misuse of the gauges, the Staff concluded that it did not have reasonable assurance that the Licensee could conduct its operations in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, would be protected. Therefore, the Staff concluded that the

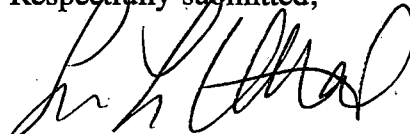
⁴ Please note that the affidavit is a facsimile. Staff counsel will forward the original affidavit to the Board immediately upon receipt.

public health, safety and interest require that the Order be immediately effective. Mamish Affidavit at ¶ 9. Therefore, the immediate effectiveness of the Order should be sustained.

CONCLUSION

Based on the foregoing reasons set forth above, the Licensee's Request to set aside the immediate effectiveness of the Order should be denied and the immediate effectiveness of the Order should be sustained.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Susan L. Uttal', written over the typed name.

Susan L. Uttal
Counsel for NRC staff

Dated at Rockville, Maryland
this 28th day of December 1998

MATERIALS LICENSE

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 (Public Law 93-438), and Title 10, Code of Federal Regulations, Chapter I, Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, and 70, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, acquire, possess, and transfer byproduct, source, and special nuclear material designated below; to use such material for the purpose(s) and at the place(s) designated below; to deliver or transfer such material to persons authorized to receive it in accordance with the regulations of the applicable Part(s). This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954, as amended, and is subject to all applicable rules, regulations, and orders of the Nuclear Regulatory Commission now or hereafter in effect and to any conditions specified below.

OFFICIAL RECORD COPY

Licensee		3. License Number	06-30361-01
1. Special Testing Laboratories, Inc.		4. Expiration Date	August 31, 2007
2. P. O. Box 200 Bethel, Connecticut 06801-0200		5. Docket or Reference No.	030-34318/06-19720-01
6. Byproduct, Source, and/or Special Nuclear Material	7. Chemical and/or Physical Form	8. Maximum Amount that Licensee May Possess at Any One Time Under This License	
A. Cesium 137 B. Americium 241	A. Sealed sources B. Sealed neutron sources	A. 100 millicuries B. 500 millicuries	
9. Authorized use			
A. and B. For possession and use in Troxler Electronic Laboratories, Inc., Campbell Pacific Nuclear Corp., Humboldt Scientific, Inc., Seaman Nuclear Corporation, or Soiltest, Incorporated devices which have been evaluated and approved for licensing purposes under a license issued by the U.S. Nuclear Regulatory Commission or any Agreement State.			

CONDITIONS

10. Licensed material may be stored at the licensee's facilities located at 21 Henry Street, Bethel, Connecticut and may be used only at temporary job sites of the licensee anywhere in the United States where the U.S. Nuclear Regulatory Commission maintains jurisdiction for regulating the use of licensed material.
11. A. Licensed material shall only be used by, or under the supervision and in the physical presence of, Richard A. Speciale or individuals who have successfully completed the manufacturer's training program for gauge users, have been instructed in the licensee's routine and emergency operating procedures and who have been designated in writing by the Radiation Safety Officer.
- B. The Radiation Safety Officer for this license is Richard A. Speciale.
12. A. Sealed sources and detector cells containing licensed material shall be tested for leakage and/or contamination at intervals not to exceed six months or at such other intervals as are specified by the certificate of registration referred to in 10 CFR 32.210, not to exceed three years.
- B. Notwithstanding Paragraph A of this Condition, sealed sources designed to emit alpha particles shall be tested for leakage and/or contamination at intervals not to exceed three months.

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Exhibit 1

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License Number

06-30361-01

Docket or Reference Number

030-34318/06-19720-01

- C. In the absence of a certificate from a transferor indicating that a leak test has been made within six months prior to the transfer, a sealed source or detector cell received from another person shall not be put into use until tested.
- D. Each sealed source fabricated by the licensee shall be inspected and tested for construction defects, leakage, and contamination prior to any use or transfer as a sealed source.
- E. Sealed sources and detector cells need not be leak tested if:
- (i) they contain only hydrogen-3; or
 - (ii) they contain only a radioactive gas; or
 - (iii) the half-life of the isotope is 30 days or less; or
 - (iv) they contain not more than 100 microcuries of beta and/or gamma emitting material or not more than 10 microcuries of alpha emitting material; or
 - (v) they are not designed to emit alpha particles, are in storage, and are not being used. However, when they are removed from storage for use or transfer to another person, and have not been tested within the required leak test interval, they shall be tested before use or transfer. No sealed source or detector cell shall be stored for a period of more than 10 years without being tested for leakage and/or contamination.
- F. The test shall be capable of detecting the presence of 0.005 microcurie of radioactive material on the test sample. If the test reveals the presence of 0.005 microcurie or more of removable contamination, a report shall be filed with the U.S. Nuclear Regulatory Commission and the source or detector cell shall be removed immediately from service and decontaminated, repaired, or disposed of in accordance with Commission regulations. The report shall be filed within five days of the date the leak test result is known with the U.S. Nuclear Regulatory Commission, Region I, ATTN: Director, Division of Nuclear Materials Safety, 475 Allendale Road, King of Prussia, Pennsylvania 19406. The report shall specify the source or detector cell involved, the test results, and corrective action taken.
- G. The licensee is authorized to collect leak test samples for analysis by Troxler Electronic Laboratories, Inc. Alternatively, tests for leakage and/or contamination may be performed by persons specifically licensed by the Commission or an Agreement State to perform such services.
13. Sealed sources or detector cells containing licensed material shall not be opened or sources removed from source holders by the licensee.
14. The licensee shall conduct a physical inventory every six months to account for all sealed sources and devices containing licensed material received and possessed under the license.

MATERIALS LICENSE
SUPPLEMENTARY SHEET

License Number

06-30361-01

Docket or Reference Number

030-34318/06-19720-01

15. The licensee shall not acquire licensed material in a sealed source or device unless the source or device has been registered with the U.S. Nuclear Regulatory Commission pursuant to 10 CFR 32.210 or equivalent regulations of an Agreement State.
16. Each portable nuclear gauge shall have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The gauge or its container must be locked when in transport, storage or when not under the direct surveillance of an authorized user.
17. Any cleaning, maintenance, or repair of the gauge(s) that requires removal of the source rod shall be performed only by the manufacturer or by other persons specifically licensed by the Commission or an Agreement State to perform such services.
18. The licensee is authorized to transport licensed material in accordance with the provisions of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material."
19. Except as specifically provided otherwise in this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed below. The Nuclear Regulatory Commission's regulations shall govern unless the statements, representations, and procedures in the licensee's application and correspondence are more restrictive than the regulations.
- A. Application dated December 20, 1996
B. Letter dated April 22, 1997
C. Facsimile dated May 1, 1997

Date AUG - 6 1997

For the U.S. Nuclear Regulatory Commission

ORIGINAL SIGNED BY:

By STEVEN R. COURTEMANCHEDivision of Nuclear Materials Safety
Region I

King of Prussia, Pennsylvania 19406

BEFORE THE COMMISSION

**AFFIDAVIT OF MARK A. MULLEN IN SUPPORT OF NRC STAFF'S RESPONSE
TO REQUEST FOR HEARING AND MOTION TO SET ASIDE
IMMEDIATE EFFECTIVENESS OF ORDER SUSPENDING LICENSE**

3. I am familiar with the facts and circumstances underlying the Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) issued on December 22, 1998, to STL's Director/President, Richard Speciale. Speciale is also the Radiation Safety Officer (RSO) for STL. Specifically, I am familiar with the violations of 10 CFR 30.10 (Deliberate misconduct), 10 CFR 30.9 (Making false statements), and 10 CFR 30.3 (Activities requiring a license) cited in the Order, which refers to OI's investigation of STL, (pages 1-3 of that order).

Exhibit 2

4. OI's investigation of STL is titled, "Utilizing Untrained Nuclear Gauge Operators."

The investigation includes a review of pertinent documents maintained by STL and the NRC, as well as interviews with Speciale and employees of STL and the NRC.

5. OI obtained copies of some of STL's field technician's (FTs) portable gauge certifications. During interviews of the FTs, it was learned that some of the FTs had operated portable nuclear gauges without assistance or regular supervision, prior to their certification. Additionally, some of the FTs stated that they were not issued any form of dosimetry during some of their employment periods with STL.

6. After a review of STL's materials license, it was learned that STL was previously known as Testwell Craig Laboratories of Connecticut (TCLCT). Speciale was also the President/Director of TCLCT. TCLCT's Materials License No. 06-19720-01 was suspended by the NRC for non-payment of fees, from July/August 1996 until STL was issued a Materials License No. 06-30361-01 in August 1997.

7. The Order issued to Speciale states that he provided information to the NRC that was not "complete and accurate" in regards to the number of field technicians employed by STL and the number of portable gauges owned by STL, and that TCLCT operated portable nuclear gauges during a suspension period for non payment of fees. During a reinterview of Speciale, he acknowledged having more portable nuclear gauges and FTs than previously disclosed to OI. Additionally, Speciale, as well as some of the FTs, admitted operating portable nuclear gauges during the TCLCT suspension period and before STL was granted a Materials License by the NRC.

8. A subpoena was served on Speciale on November 19, 1998 at STL. On December 14,

1998, STL provided additional documentation to OI in response to the subpoena which documented that TCLCT/STL operated portable nuclear gauges during the suspension period described above. However, STL did not comply fully with the subpoena. Speciale stated some of the records were "unretrievable" because the records were stored in archives.

9. Speciale was interviewed on three separate occasions during the OI investigation.

During his first interview, Speciale stated that STL had 20 employees, four portable gauges, and three or four FTs. When interviewed on November 9 and 10, 1998, Speciale stated that STL had 38 employees, 13 portable gauges, and 13 or 14 FTs. Speciale admitted sending several FTs to become certified on October 29, 1998, as a result of the NRC visit to his office on October 14, 15, and 16, 1998. Speciale then admitted that he had used several untrained FTs in the field without certification and without dosimetry. During his last interview on November 19, 1998, Speciale admitted that TCLCT operated portable nuclear gauges during the suspension period.

10. The matters stated above are true and correct to the best of my knowledge, information and belief.

Mark A. Mullen

Subscribed and sworn to before
me this ____ day of _____ 1998

Notary Public

My commission expires:

STATEMENT OF PROFESSIONAL QUALIFICATIONS

Mark A. Mullen

Education

B. S. Criminal Justice Administration, Mansfield State University, 1984

Experience

- * U. S. Supreme Court, Washington, DC - 1984 to 1987
Police Officer
- * U. S. Secret Service, Washington, DC - 1987 to 1989
Uniformed Division Officer
- * U. S. Naval Criminal Investigative Service, Washington, DC - 1989 to 1998
Special Agent
- * U. S. Nuclear Regulatory Commission, King of Prussia, PA - July 1998 to present
Special Agent

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
) EA 98-521
Special Testing Laboratories, Inc.)

**AFFIDAVIT OF ERIC H. REBER IN SUPPORT OF NRC STAFF'S RESPONSE
TO REQUEST FOR IMMEDIATE HEARING AND MOTION TO SET ASIDE
THE IMMEDIATE EFFECTIVENESS OF ORDER SUSPENDING LICENSE**

I, Eric H. Reber, first being duly sworn, depose and state:

1. My name is Eric H. Reber. I am employed by the U.S. Nuclear Regulatory Commission (NRC) as a Health Physicist in Nuclear Materials Safety Branch 2, Region I. A statement of my professional qualification is attached hereto.

2. In performing my duties as a Health Physicist, I am assigned to do inspections of NRC-licensed facilities. I was assigned to perform a special inspection at Special Testing Laboratories, Inc. (STL) The purpose of the inspection was to determine if two individuals had used portable gauges without required training as required by License No. 06-30361-01.

Mark Mullen of the Office of Investigation accompanied me on the inspection. Mr. Mullen and myself were at the STL Bethel, Connecticut office on October 14, 15, and 16, 1998, and November 9 - 10, 1998.

3. The purpose of this affidavit is to describe the safety inspection of STL that resulted in the issuance of the Order Suspending License (Effective Immediately) dated December 23, 1998.

4. Special Testing Laboratories, Inc. is authorized by License No. 06-30361-01 to possess and use Troxler Electronics Laboratories, Campbell Pacific Nuclear, Humbolt

Exhibit 3

Scientific, Seamen Nuclear, or Soiltest nuclear gauges.

5. During the October 1998 portion of the inspection, Mr. Speciale was interviewed by Mr. Mullen and myself. In that interview, Mr. Speciale, when questioned concerning the scope of his licensed program, stated that the company possessed four Troxler portable gauges that are used by three or four authorized users, including himself. The authorized users are employed as field technicians. He also stated that he did not believe any of his field technicians were operating gauges without training. When questioned further about field technicians using the gauges without training, he stated that one individual may have used a gauge while under the supervision of an authorized user approximately three times in January 1997. He further stated that there were no other individuals besides this person that used the gauges without the required training.

6. During the November 1998 portion of the inspection, training certificates were reviewed that indicated that nine individuals had received manufacturer's training on October 29, 1998. Mr. Speciale stated, and available records (training certificates, sealed source certificates, and leak test records) showed, that STL possessed 13 gauges, and these gauges were used by as many as 14 field technicians. This information was substantially different from that which was provided in October.

7. During the November 1998 portion of the inspection, Mr. Special stated, contrary to what he told us in October 1998, that gauges were operated by individuals who had not received the required training. When questioned about why gauge users were not sent to training, Mr. Speciale stated that he was concerned about the cost of training and stated that the company has been under financial stress.

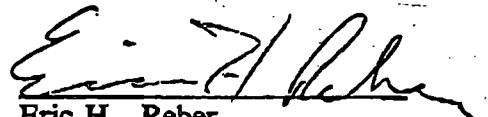
8. During the November 1998 portion of the inspection, a field technician employed by Special Testing Laboratories, Inc. was interviewed. He stated that he had been using portable gauges an average of once a week for four years prior to the inspection while working under the direction of Mr. Speciale and did not receive manufacturer's training until October 1998. A training certificate that was reviewed indicated that he received manufacturer's training on October 29, 1998.
9. During the November 1998 portion of the inspection, another field technician employed by Special Testing Laboratories, Inc. was interviewed. He stated that he had been using portable gauges an average of two times per week since March 1998 while working under the direction of Mr. Speciale and did not know that manufacturer's training was required to operate portable gauges. A training certificate that was reviewed indicated that he received manufacturer's training on October 29, 1998. He also stated that he was not issued [prior to October 1998] a TLD [personnel dosimeter] and that it was never explained to him that one was required.
10. During the November 1998 inspection, another field technician was interviewed. He stated that he is an occasional "nuke" user. He stated that there were times when he operated a gauge while working under the direction of Mr. Speciale and he didn't have a film badge [personnel dosimeter].
11. During the November 1998 inspection, Mr. Speciale was interviewed as to whether or not individuals were required personnel dosimetry. He stated that every one [gauge users] was in violation at some point because of not having a badge. He stated that Troxler would not provide them dosimetry because STL did not pay them. Mr. Speciale stated that not everyone that was supposed to have a film badge had one in 1998. He stated that he knows

he did a lot of things wrong.

12. During the November 1998 inspection, Mr. Special was interviewed regarding the performance of required leak tests. He stated that there were times when Troxler would not analyze STL's leak tests because STL was not able to pay for them.

13. During the November 1998 inspection, records of leak tests for seven of the gauges possessed by STL were reviewed. Records of leak tests were not available for the gauges for periods of time ranging from 2 years 8 months to 3 years 10 months. Mr. Speciale stated, and gauge users confirmed, that leak test samples were taken of all gauges during October 1998, however, records of the analysis of these samples was not available during the November 1998 inspection.

14. The above statements are true and correct to the best of my knowledge, information and belief.


Eric H. Reber

Subscribed and sworn to before
me this 28th day of Dec., 1998


Notary Public

NOTARIAL SEAL
ROSELYN H. LEVIN, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 11, 2000

My commission expires: _____

STATEMENT OF PROFESSIONAL QUALIFICATIONS**Eric H. Reber****Education**

- B.S. Physics, Elizabethtown College, 1986
- M.Sc. Hygiene (Health Physics), University of Pittsburgh, 1988

Experience

- Commonwealth Edison Company, Chicago, IL - 1988 to 1989

Health Physicist

- U.S. Nuclear Regulatory Commission - 1989 to present

Health Physicist

III

Based on the above, I have concluded that the Licensee has willfully violated NRC requirements. In addition, prior notice of the violation and an opportunity to achieve compliance was provided. Therefore, pursuant to 10 CFR 2.202, I find that the violation requires that this Order be immediately effective. In view of the foregoing and pursuant to Sections 81, 161b, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 170.41, 171.23, and 10 CFR Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. License No. 06-19720-01 is suspended with respect to receipt and use of licensed nuclear materials; the license remains in effect with respect to the possession, transfer, and storage of licensed nuclear material remaining in the Licensee's possession, as contamination or in other forms, until the Commission notifies the Licensee in writing that the License is terminated;
- B. Until notified by the Commission in writing that the License is terminated, the Licensee shall:
 - 1. restrict activity involving licensed nuclear material to decommissioning and safe, secure storage or transfer of material; and
 - 2. continue to control entry into restricted areas until the Licensee has determined and NRC has confirmed that such areas are suitable for release for unrestricted use;

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- C. The Licensee shall dispose of any licensed nuclear material, acquired or possessed under the authority of License No. 06-19720-01, and shall take all actions required by 10 CFR 30.36;
- D. Within 30 days from the date of this Order, if the Licensee manufactures, distributes, or provides services to other licensees, the Licensee must notify, in writing, each customer or client that authorization to provide any of these services has been suspended. Furthermore, the Licensee must notify its customers and clients that they may need to amend their licenses to be in compliance with NRC requirements if their license specifically states reliance on the service of the Licensee. The Licensee must provide the Regional Administrator for NRC Region I at 475 Allendale Road, King of Prussia, PA 19406-1415 evidence of the notification and a list of customers or clients notified;
- E. The License shall be terminated upon satisfaction of the requirements of 10 CFR 30.36.

The Deputy Chief Financial Officer/Controller may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause. A request for relaxation of the above conditions shall be submitted to the Deputy Chief Financial Officer/Controller, with a copy to the Regional Administrator, in writing and under oath or affirmation.

IV

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 30 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 Controller, and include a statement of good cause for the extension.

The answer shall be in writing and under oath or affirmation, and shall specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why this 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 Branch, Washington, DC 20555. Copies shall also be sent to the Deputy Chief Financial Officer/Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Assistant General Counsel for Hearings and Enforcement at the same address; the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 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 the Licensee or a person whose interest is adversely affected requests a hearing, 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 time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The motion must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.

V

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, this Order shall be final 30 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 III shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

VI

In lieu of filing an answer to the Order, the Licensee may pay the total amount specified below, within 30 days of the date of this Order. This Order is withdrawn if, within 30 days of the date of this Order, the Licensee pays the total amount specified below:

Amounts Due

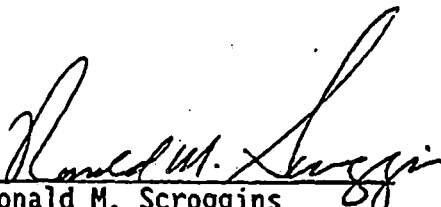
Calculated Through: June 16, 1996

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Amount Billed</u>	<u>Amount Paid</u>	<u>Late Charges Due</u>	<u>Amount Due</u>
1. 9/20/94	MM1656-94	\$1,500.00	0	\$436.72	\$1,936.72
2. 7/22/95	AM0951-95	\$1,700.00	\$708.41	446.93	<u>1,155.34</u>
				Total Amount:	\$3,092.06

The total amount listed above is a delinquent debt to the United States. Failure to pay the total amount within 30 days of the date of this Order may, pursuant to 10 CFR Part 15, result in referral of the delinquent debt to a collection agency, referral to the U.S. General Accounting Office or the U.S. Department of Justice for collection, or other action deemed appropriate.

Pursuant to 10 CFR 15.29, the Commission may not consider an application for a license from the Licensee unless all previous delinquent debts of the Licensee to the NRC, including the delinquent debt(s) identified in this Order, have been paid in full. In addition, failure to meet the requirements of this Order may subject the Licensee and its agents to civil penalties and criminal sanctions.

FOR THE NUCLEAR REGULATORY COMMISSION


Ronald M. Scroggins
Deputy Chief Financial
Officer/Controller

Dated at Rockville, Maryland
this 1st day of July, 1996

DEC-28-1998 10:41

P. 02/04

UNITED STATES
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

SPECIAL TESTING LABORATORIES, INC.)
Bethel, Connecticut)

) Docket No: 030-34318-EA
) License No: 08-30361-01
) EA 98-521

AFFIDAVIT OF NADER MAMISH IN SUPPORT OF THE NRC STAFF'S
RESPONSE TO REQUEST FOR IMMEDIATE HEARING AND MOTION TO
SET ASIDE IMMEDIATE EFFECTIVENESS OF ORDER SUSPENDING LICENSE

COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF SUFFOLK)

ss:

I, Nader Mamish, first being duly sworn, depose and state:

1. I am employed by the United States Nuclear Regulatory Commission (NRC or Commission) as a Senior Enforcement Specialist at the NRC's Office of Enforcement (OE). A statement of my professional qualifications is attached hereto as Attachment 1.

2. As Senior Enforcement Specialist, I am responsible, *inter alia*, for the implementation of the Commission's enforcement program. In performing my duties at OE, I participated in the deliberations concerning the Order Suspending License (Effective Immediately) (Order), issued on December 23, 1998, to Special Testing Laboratories, Inc. (the Licensee); and have first-hand knowledge of the reasons for the decision that public health, safety, and interest require that the Order be immediately effective.

3. The purpose of my affidavit is to provide evidence supporting this decision.

4. License No. 06-30361-01 authorizes the Licensee to possess and use up to 100 millicuries of cesium-137 and 500 millicuries of americium-241 in sealed sources for performing density measurements using portable nuclear density gauges. Misuse of these gauges can result in unnecessary radiation exposure to members of the public.

Exhibit 5

DEC-28-1998 10:42

P. 03/04

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5. I have read and am familiar with License No. 06-30361-01, the facts, regulations, and violations as outlined in the Order, including the statements of Licensee employees dated October 15, and November 9, 10, and 19, 1998, the July 1, 1996 Order Suspending License issued to Testwell Craig Laboratories of Connecticut, Inc. (Testwell Craig) for non-payment of fees, and the affidavit of Eric Reber.

6. Based on the facts and violations set forth in the Order, it was necessary to make the Order immediately effective to protect public health and safety. Specifically, the Licensee's deliberate violations in directing untrained individuals to use gauges, contrary to its license conditions, in not providing these individuals with the necessary dosimetry while they were using the gauges, contrary to its license conditions, in making false statements to the NRC, contrary to regulations, and in continuing to use gauges after Testwell Craig's license had been suspended for nonpayment of fees and before Special Testing's license had been issued, contrary to regulations, provide a reasonable basis for the NRC staff to conclude that the Licensee is either unable or unwilling, or both unable and unwilling, to comply with the Commission's regulations and the license requirements so that there is no unreasonable risk to public health and safety. Therefore, the public health, safety and interest require that this Order be made immediately effective.

7. The willful violation of NRC requirements is significant because the NRC must be able to rely on the integrity of Licensee employees to comply with NRC requirements. Moreover, providing false information to the NRC is of significant regulatory concern because the Commission must be able to rely on its licensees to provide complete and accurate information.

8. Use of nuclear density gauges by individuals who have neither been provided with the required training nor with the required dosimetry have potential serious adverse consequences for public health and safety because they could directly cause, or they have caused, unnecessary radiation exposures to the public and Licensee employees.


DEC-28-1998 10:43

P.04/04

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9. In light of the above, public health, safety, and interest require that Licensee's license be suspended pending further order by the NRC, that licensed material be placed in locked, safe storage, and that all other provisions of the Order remain immediately effective.

The foregoing is true and accurate to the best of my knowledge, information and belief.


Nader Mamish

Subscribed and sworn to before
me this 29 day of December, 1998


Notary Public

My commission expires: 8/23/02

NADER MAMISH

Senior Enforcement Specialist
Office of Enforcement
Nuclear Regulatory Commission

Education:

Master of Science in Radiological Sciences, University of Lowell, Lowell, MA, 1989.
Bachelor of Science in Health Physics, University of Lowell, Lowell, MA, 1987.

Professional Experience:

1993 to Present: Senior Enforcement Specialist, Office of Enforcement (OE). I assist the Director, OE, in evaluating and improving the effectiveness of enforcement programs and perform in-depth analysis of policy issues and regulatory programs concerning enforcement in the area of health physics. In addition, I review and revise (or prepare when necessary) proposed escalated enforcement actions to ensure technical accuracy, factual content, and conformance to Federal regulations and established enforcement policy.

1992 - 1993: Radiation Specialist, Facilities Radiological Protection Branch, Division of Nuclear Materials Safety and Safeguards. I performed well-planned, well-organized, independent inspections at nuclear power plants and fuel fabrication facilities, and routinely interfaced with licensee management to present inspection findings related to safety and non-compliance issues.

1988 -1992: Health Physics Operations Engineer/Supervisor, Florida Power & Light. I evaluated the radiological conditions of two nuclear power plants and provided appropriate recommendations to management to ensure compliance with Federal regulations. Further, I was charged with supervision and maintenance of the Whole Body Counter and the Counting Room, performance of independent verification of radionuclide calculations and radiation measurements of radioactive material shipments, and performance of external and skin dose assessments.

1987-88: Graduate Engineer, Yankee Atomic Electric company. I supervised the daily operation of the dosimetry laboratory which provided dosimetry support for four nuclear power stations and three hospitals.

Specialized Training:

- Diagnostic & Therapeutic Nuclear Medicine, Advanced Health Education Center, 1996;
- Teletherapy and Brachytherapy, Mallinckrodt Medical, Inc., 1995;
- Industrial Radiography, Amersham Corporation, 1994;
- Internal & Whole Body Dosimetry, NRC Tech. Training Center, 1993;
- Radioactive Waste Management, NRC Tech. Training Center, 1993;
- Occupational Respiratory Protection, Respirator Support Services, 1993;
- Westinghouse PWR Technology, NRC Tech. Training Center, 1993;
- General Electric BWR Technology, NRC Tech. Training Center, 1992;
- Effective Business Writing, NRC Region V Training, 1992;
- Radioactive Material Packaging and Shipping, Scientific Ecology Group, Inc., 1992;
- Radioactive Waste Packaging, Transportation, and Disposal, Chem-Nuclear Systems, Inc., 1989;
- VAX/VMS System Management, Nuclear Data Systems, 1989;
- VAX/VMS Spectroscopy Applications Programming, Nuclear Data Systems, 1989;
- Technical Staff Training, Florida Power & Light, 1988;
- Neutron Personnel Dosimetry, Oak Ridge National Laboratory, 1986.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE COMMISSION

'98 DEC 29 P4:51

In the Matter of

SPECIAL TESTING LABORATORIES, INC.
Bethel, Connecticut

) Docket No. 030-34318
) EA No. 98-521
)
) ORDER OF THE COMMISSION
ADJUDICATING STAFF
) Order Suspending License
) (Effective Immediately)
)
) ASLBP No.

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name: Susan L. Uttal

Address: U.S. Nuclear Regulatory Commission
Office of the General Counsel
Washington, D.C. 20555

Telephone Number: 301-415-1582

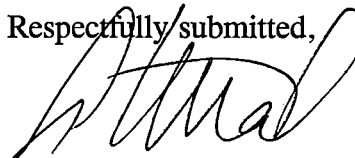
Facsimile Number: 301-415-3725

E-Mail Address: slu@nrc.gov

Admissions: New Jersey
Pennsylvania
Maryland
U.S. Supreme Court

Name of Party: NRC Staff

Respectfully submitted,



Susan L. Uttal
Counsel for NRC Staff

Dated in Rockville, Maryland
this 28th day of December 1998

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 DEC 29 P4:51

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

In the Matter of)	Docket No. 030-34318
)	EA No. 98-521
)	
SPECIAL TESTING LABORATORIES, INC.)	Order Suspending License
Bethel, Connecticut)	(Immediately Effective)
)	
)	ASLBP No.

CERTIFICATE OF SERVICE


I hereby certify that copies of "NRC STAFF'S RESPONSE TO REQUEST FOR IMMEDIATE HEARING AND MOTION TO SET ASIDE IMMEDIATE EFFECTIVENESS OF ORDER SUSPENDING LICENSE FILED BY SPECIAL TESTING LABORATORIES, INC. and NOTICE OF APPEARANCE in the above-captioned proceeding have been served on the following by facsimile transmission and by deposit into the United States mail, or through deposit in the Nuclear Regulatory Commission's internal mail system as indicated with an asterisk, on this 28th day of December 1998.

Office of the Secretary (16)**
ATTN: Rulemaking and
Adjudications Staff
Mail Stop: O-16 G15
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Office of Commission Appellate
Adjudication**
Mail Stop: O-16 G15
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Special Testing Laboratories, Inc.
Att: Richard Speciale
P.O. Box 200
Bethel, CT 06801

FAX No. 1(203)791-2451



Susan L. Uttal
Counsel for NRC Staff