

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 29, 1998

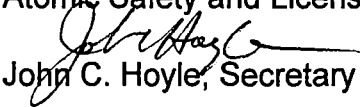
DOCKET NUMBER 30-34318-EA
PROD. & UTIL. FAC.

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USNRC

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OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

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

FROM: 
John C. Hoyle, Secretary

SUBJECT: REQUEST FOR HEARING SUBMITTED BY
SPECIAL TESTING LABORATORIES, INC.

Attached is a request for a hearing dated December 23, 1998, submitted by Richard Speciale on behalf of Special Testing Laboratories, Inc. (Docket No. 30-34318). The request is in response to an "Order Suspending License (Effective Immediately)" issued by the NRC Staff on December 23, 1998. A copy of the order is attached. Mr. Speciale, who is the President of Special Testing Laboratories, has also requested that the immediate effectiveness of the order be set aside.

The request for hearing is being referred to you for appropriate action in accordance with 10 C.F.R. §2.772(j).

Attachments: As stated

cc: Commission Legal Assistants
OGC
CAA
OPA
EDO
NMSS
OE
Richard Speciale, President
Special Testing Laboratories, Inc.

SECY-ENHJ-008

DS03

19850

STL**SPECIAL TESTING LABORATORIES, INC.**

P.O. Box 200 Bethel, CT 06801 Phone (203) 743-7281 Fax (203) 791-2451

85 Willow Street, New Haven, CT 06511 Phone (203) 772-0710

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December 23, 1998

OFFICE OF GENERAL COUNSEL
RULEMAKING AND
ADJUDICATION STAFF

United States Nuclear Regulatory Commission
Region One
475 Allendale Road
King of Prussia, PA 19406-1415

Attn: John Kinnerman

RE: Docket No. 030-34318
License No. 06-30361-01

Dear Mr. Kinnerman:

The order suspending the aforementioned License Number will severely impact Special Testing Laboratories ability to provide service to its Clients that it is under contract to provide. This, in turn, will cause Clients to cancel services; not only those which require the use of Nuclear Gauges but all services. This will impact Special Testing Laboratories ability to employ over forty employees.

For this reason and others I shall list below by virtue of this letter a demand for an immediate hearing is made. Further, we move that the presiding officer set aside the immediate effectiveness of this order.

The order in itself is not factual, nor does it contain all information revealed by the Licensee to the Inspector and the Investigator which would present matters differently. Further, the order is based inadequately on suspicion, allegation and error.

The statement of the Licensee regarding the number of gauges in use on a certain day and total number of gauges is cited wrongly.

The statement of the Licensee regarding training is not in context.

The Licensee provided information as it became available and did not represent something as complete when it was not; all material provided was accurate.

The Licensee had requested a Waiver at the time of application and called over twenty times to ascertain why the new license was

SPECIAL TESTING LABORATORIES, INC.

United States Nuclear Regulatory Commission

December 23, 1998

taking so long. At this time, it is requested that relevant data be provided by the NRC to the presiding Officer confirming these events.

I swear the foregoing to be true, complete and accurate to the best of my knowledge and belief.

Very truly yours,

SPECIAL TESTING LABORATORIES, INC.



Richard Speciale

STL

SPECIAL TESTING LABORATORIES, INC.

P.O. Box 200 Bethel, CT 06801 Phone (203) 743-7281 Fax (203) 791-5750
85 Willow Street, New Haven, CT 06511 Phone (203) 772-0710 USNRC

'98 DEC 24 A10:13

December 23, 1998

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

United States Nuclear Regulatory Commission
Region One
475 Allendale Road
King of Prussia, PA 19406-1415

Attn: John Kinnerman

RE: Docket No. 030-34318
License No. 06-30361-01

Dear Mr. Kinnerman:

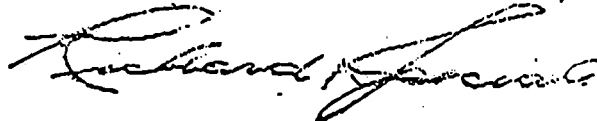
The order suspending the aforementioned License Number has the potential of terminating the corporate existence of Special Testing Laboratories, Inc.

Thus, for the sake of the Corporation and its forty plus employees, I will voluntarily give up my position of Radiation Safety Officer.

Richard C. Speciale, President and my son, is qualified to assume the position of RSO. He will direct the operations in accordance with the regulation and intent of the NRC.

Very truly yours,

SPECIAL TESTING LABORATORIES, INC.



Richard Speciale



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 23, 1998

EA 98-521

Mr. Richard Speciale, President
Special Testing Laboratories, Inc.
Post Office Box 200
Bethel, Connecticut 06801-0200

SUBJECT: ORDER SUSPENDING LICENSE (EFFECTIVE IMMEDIATELY)

Dear Mr. Speciale:

The enclosed Order Suspending License (Order) is being issued because of violations of the Commission's regulations. The Order requires that: (1) you suspend all activities under your license, other than storage of licensed materials; (2) all NRC-licensed material in your possession shall be placed in locked storage at 21 Henry Street, Bethel, Connecticut and shall not be used; (3) you shall not receive any NRC-licensed material while this order is in effect; (4) all records related to licensed activities shall be maintained in their original form and shall not be removed or altered in any way; (5) within 2 days of the date of the Order, all employees shall be informed of this Order; (6) within 7 days of the date of the Order, the NRC shall be provided a list of all clients for whom you have performed licensed activities in the past 12 months; and (7) within 24 hours, a copy of this Order shall be posted at the facility, pursuant to 10 CFR 19.11(a)(4).

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject you to civil sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature in cursive script, reading "Malcolm R. Knapp", is written over a horizontal line.

Dr. Malcolm R. Knapp
Deputy Executive Director for
Regulatory Effectiveness

Docket No. 030-34318
License No. 06-30361-01

Enclosure: As Stated

**cc w/encl:
State of Connecticut**

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 030-34318
Special Testing Laboratories, Inc.)	License No. 06-30361-01
P.O. Box 200)	EA 98-521
Bethel, Connecticut 06801-0200)	

ORDER SUSPENDING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Special Testing Laboratories, Inc. (Special Testing or Licensee) is the holder of Byproduct Nuclear Material License No. 06-30361-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Troxler Electronics Laboratories, Campbell Pacific Nuclear, Humbolt Scientific, Seamen Nuclear, or Soiltest nuclear gauges. Mr. Richard Speciale (Mr. Speciale) is the President and Radiation Safety Officer of Special Testing Laboratories. The license was issued on August 6, 1997, and is due to expire on August 31, 2007.

License No. 06-19720-01 authorizing possession and use of portable nuclear density gauges was previously issued to Testwell Craig Laboratories of Connecticut, Inc. (Testwell Craig), but was suspended on July 1, 1996, due to non-payment of fees. Mr. Speciale was also the President of Testwell Craig.

II

On October 14, 15, and 16, 1998, and November 9-10, 1998, an NRC Region I inspector, accompanied by an investigator from the NRC Office of Investigations, conducted an inspection at the Licensee's facility in Bethel, Connecticut. During the inspection, the NRC determined

that: (1) portable gauges containing NRC-licensed material were routinely used by some Licensee employees who had not received the required training; (2) some Licensee employees were using the gauges without being provided the required personnel dosimeters; and (3) leak tests of the gauges were not being performed at the required frequency.

During the October inspection, Mr. Speciale was interviewed by the inspector and investigator. In that interview, Mr. Speciale, when questioned concerning the scope of the Licensee's program, informed the NRC that the Licensee possessed four Troxler portable gauges that were used by three or four authorized users, including himself. He also stated that he did not believe any of his field technicians were operating gauges without training.

The NRC inspector and investigator returned to the facility on November 9-10, 1998, to complete the investigation, at which time the NRC was provided records indicating that nine individuals had received manufacturer's training on October 29, 1998, which was subsequent to the NRC's October 1998 visit. Mr. Speciale was questioned as to why nine individuals had received such training when he had previously stated that gauges were used by three or four users. Although Mr. Speciale initially maintained that only three individuals were using four gauges, he subsequently stated, and available records showed, that Speciale Testing possessed 13 gauges, and these gauges were used by as many as 14 individuals. Also, during the November inspection, seven gauge users stated that they used portable gauges without formal training for periods ranging from several weeks to four years prior to October 29, 1998. In addition, the NRC learned, based on discussions with Mr. Speciale, that there were periods when gauge users were not provided personnel dosimeters. Further, five gauge users stated that they operated portable gauges without wearing "film badges" for periods ranging from one to several months prior to October 1998. When questioned as to why individuals were using

gauges without training or personnel dosimeters, Mr. Speciale indicated that the required training and dosimeters were not previously provided due to financial considerations, even though he continued to direct the individuals to use the gauges.

Based on this November review by the NRC, Mr. Speciale, during the October 1998 communications with the NRC regarding the review of gauges being used, the number of users, and the training of those users, provided information to the NRC that he knew at the time was not complete and accurate in all material respects.

Furthermore, during a subsequent interview with the OI investigator on November 19, 1998, Mr. Speciale also admitted that he "never stopped using nuclear gauges" after the Testwell Craig license was suspended for non-payment of fees and before the Special Testing license was issued. He stated that he failed to do so because Testwell Craig had "job commitments to finish."

III

The NRC investigation is continuing. However, in light of the facts set forth in Section II, the NRC finds that the Licensee has deliberately violated NRC requirements by: (1) directing untrained individuals to use gauges, contrary to License Condition II.A; (2) not providing these individuals with the necessary dosimetry while they were using the gauges, contrary to License Condition 19; (3) making false statements to the NRC, contrary to 10 CFR 30.9. Furthermore, the facts show that Mr. Speciale used gauges between July 1, 1996 and August 6, 1997, even

though Testwell Craig's license had been suspended for nonpayment of fees and Special Testing's license had not yet been issued, contrary to 10 CFR 30.3 and the Order Suspending License issued to Testwell Craig.

Deliberately violating 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. Directing untrained individuals to conduct NRC-licensed activities and not providing dosimetry is also of significant regulatory concern because misuse of gauges (which contain NRC-licensed material) could result in unnecessary radiation exposures to workers or members of the public. Given the above, it appears that the Licensee is either unwilling or unable to comply with the Commission's requirements.

Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 06-30361-01 in compliance with the Commission's requirements, and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety and interest require that License No. 06-30361-01 be suspended, with the exception of certain requirements enumerated in Section IV below, pending completion of the NRC investigation and further Order by the NRC. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

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:

- A. Except as provided below, the authority to perform NRC-licensed activities under License No. 06-30361-01 is hereby suspended pending completion of the NRC investigation and further Order by the NRC.
- B. All NRC licensed material in the Licensee's possession shall be placed in locked storage at 21 Henry Street, Bethel, Connecticut and shall not be used.
- C. The Licensee shall not receive any NRC licensed material while this order is in effect.
- D. All records related to licensed activities shall be maintained in their original form and shall not be removed or altered in any way.
- E. Within 2 days of the date of the Order, all Licensee employees shall be informed of this Order.
- F. Within 7 days of the date of the Order, the NRC shall be provided a list of all clients for whom the Licensee has performed activities that involve use of the gauges within the past 12 months.

- G. Within 24 hours of receipt of this Order, a copy of this Order shall be posted at the facility, pursuant to 10 CFR 19.11(a)(4).

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. 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 set forth the matters of fact and law on which the Licensee 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, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 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 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 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 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.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Dr. Malcolm R. Knapp
Deputy Executive Director for
Regulatory Effectiveness

Dated at Rockville, Maryland
this 23rd day of December 1998