

III

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

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

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered that:

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

pursuant to the authority granted by 10 CFR 150.20.

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

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

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

V

In accordance with 10 CFR 2.202, Ms. Boschuk must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Boschuk or other person adversely affected relies and the reasons as to why the Order should not

have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, to Ms. Boschuk if the answer or hearing request is by a person other than Ms. Boschuk. If a person other than Ms. Boschuk requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Boschuk or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

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

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

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NUCLEAR REGULATORY COMMISSION

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

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

I

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

Unit 1, in accordance with the conditions specified therein.

II

Three inspections of the Licensee's activities were conducted from December 28, 1996, to August 27, 1997. The results of the inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated November 18, 1997. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

First Energy on behalf of Cleveland Electric Illuminating Company responded to the Notice on December 18, 1997. The NRC notes that Centerior Service Company (Centerior) holds NRC License No. NPF-58 which authorizes the operation of the Perry Nuclear Power Plant, Unit 1. Therefore, this action is directed to Centerior (Licensee). In its December 18, 1997 response, the Licensee admitted Violation A (EA 97-047) discussed in the Notice and paid the \$50,000 civil penalty. Violation B (EA 96-542) did not require a response. In that same letter, the Licensee denied Violation C, EA 97-430, and requested remission of the proposed \$50,000 civil penalty for that violation.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for remission contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as modified below and that the penalty proposed for Violation C designated in the Notice should be imposed. The NRC accepts the licensee's explanation that the change of the description of the ECCS surge tanks did not involve a potential increase of the consequence of a design basis dose to the public. The violation was accordingly modified by removing the sentence concerning potential increase of the consequences of a design basis dose to the public. However, the modification of the violation does not affect the validity of the violation or the amount of the civil penalty.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby

ordered that: The Licensee pay a civil penalty in the amount of \$50,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

V

The Licensee may request a hearing 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 Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing," and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Suite 255, Lisle, IL 60532-4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, or if written approval of an extension of time in which to request a hearing has not been granted, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, as amended in the Appendix to this Order, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 9th day of April 1998.

For the Nuclear Regulatory Commission.
James Lieberman,
Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On November 18, 1997, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during several NRC inspections at the Perry Nuclear Power Plant, Unit 1. First Energy on behalf of Cleveland Electric Illuminating Company responded to the Notice on December 18, 1997. The NRC notes that Centerior Services Company (Centerior) holds NRC License No. NPF-58 which authorizes the operation of the Perry Nuclear Power Plant, Unit 1. Therefore, this action is directed to Centerior (licensee). In the December 18, 1997 response, the licensee admitted Violation A (EA 97-047) discussed in the Notice and paid the \$50,000 civil penalty. Violation B (EA 96-542) did not require a response. In that same letter, the licensee denied Violation C, EA 97-430, and requested remission of the proposed \$50,000 civil penalty for that violation.

Restatement of Violation C (EA 97-430)

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

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

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

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

refilled the surge tanks on an increased frequency.

This is a Severity Level III violation (Supplement I).

Civil Penalty—\$50,000.

Summary of Licensee's Response to Violation C (EA 97-430)

The licensee denied this violation as written. The licensee provided three reasons to support the denial of the violation:

Summary of Licensee's Reason 1

The design of the plant, and the corresponding design bases for the emergency closed cooling (ECC) system, were not changed by the safety evaluation. The plant condition was identified as a non-conforming condition, and activities were planned to restore the system condition to the original licensing basis.

A determination of operability for the ECC system with increased leakage concluded that it was acceptable to allow system leakage of 3.0 gallons per minute (gpm) for ECC Loop A and 3.5 gpm for Loop B. In this degraded condition, the increased leakage would reduce the seven day supply of water to a 30 minute supply and introduce the need for local operator action to ensure sustained adequate net positive suction head (NPSH) to the ECC pumps. The licensee indicated that it may have been inappropriate to include the operability evaluation in the Updated Final Safety Analysis (USAR); however, it was done to preclude the need for preparing additional degraded condition operability determinations in the future.

The licensee concluded that the revision to the USAR preserved the original design considerations of a 7 day supply, and distinctly identifies leakage in excess of 0.5 gallons per hour (gph) as a degraded condition. The licensee indicated that its intention was to correct the deficiency during "refueling outage six" which began on September 12, 1997.

NRC Evaluation of Licensee's Reason 1

As originally stated in the USAR, the system was designed to maintain a seven day supply with normal system leakage. This fact was considered and reiterated in the NRC safety evaluation report. The USAR change removed the "design aspect" of the seven day supply and simply provided the mathematics for the 0.5 gph leak rate. This was a change in the design criteria. Additionally, the USAR now stated that under condition of degraded system leakage, it would be acceptable to have leakage such that there would only be a 30 minute inventory available. This also represents a change to the design basis of the facility.

Although the intention of the licensee was to repair the system, the USAR change represented a continued acceptance of a degraded condition.

Summary of Licensee's Reason 2

The change to the description of the ECC system surge tanks in the USAR did not involve an unreviewed safety question (USQ) under 10 CFR 50.59 criteria because it did not involve a potential increase in the probability of occurrence of a malfunction of equipment important to safety.

The licensee indicated that an increase in the probability of occurrence of a malfunction of equipment important to safety was not concluded on the basis that manual actions employed were such that failure of an action would be equivalent to that of a single active failure. When compared to the original evaluated design, the failure of the operator action would result in the loss of one train of the ECC system; a loss of no greater consequence than was previously evaluated in the USAR.

The licensee also indicated that significant efforts put forth to compensate for the additional actions and reduce the potential for error formed the basis to conclude that no increase in probability of equipment malfunction was introduced. The licensee referenced Part 9900 of the NRC inspection manual guidance for 10 CFR 50.59, which states in part that the NRC has found compensating effects, such as administrative controls, acceptable in offsetting uncertainties and increases in probability of occurrence or consequences of an accident previously evaluated or reductions in margin of safety, provided the negative impact is negligible, and is clearly outweighed by the compensatory actions. The licensee stated "if these compensating factors can not be considered in determining that there is no increase in probability, no additional operator actions, for any normal or off-normal operating condition, could be permitted without also concluding an increase in the probability of a malfunction."

NRC Evaluation of Licensee's Reason 2

Under the circumstances required to manually accomplish the ECC surge tank refill, the NRC does not agree that the consequences of operator error would be limited to a single active failure. The licensee did take actions to mitigate potential operator errors; however, in this case the NRC does not consider any mitigating actions to clearly outweigh the increased probability of losing NPSH to the ECC pumps. The increases in probabilities are described below:

- The reliance on an operator to refill the emergency closed cooling surge tanks beginning at 30 minutes (with completion occurring within the next 20 minutes) into a design basis accident (DBA) introduced a common-mode failure mechanism at a critical time in the accident sequence. While the USAR did rely on operators to refill the tanks seven days after a DBA, the seven days provided a period of time during which no operator action was required. After seven days, the plant would be stabilized and a failure on the part of an operator to properly refill the ECC surge tanks would still allow some margin for recovery. At 30 minutes into a DBA, the plant is significantly less stable and an interruption in operation or loss of this system increases the potential for core damage. When operator response time to perform a task is significantly decreased, the probability of an error is also increased.

- Due to the limited time into the accident sequence when operator actions would be required to refill the ECC surge tanks, there was also concern that personnel would not be available to perform the activity. Although the actual number of operators on site during

routine activities might support the refill activity, during an accident, these operators would be diverted into addressing the more immediate action of responding to the accident and might not be available to compensate for a system that was designed to operate without operator action until the plant was stabilized. Therefore, the potential lack of available personnel early in the accident sequence to perform the ECC surge tank refill increased the probability of not filling the ECC surge tanks within the limited time frame.

- Based on the licensee's dose estimates for single entries into the ECC surge tank area of 4.4 rem, no single operator would be able to accomplish the repetitive refill activity sufficient to reduce the potential for error. It would appear that a minimum of three operators would be required within the first 2.5 hours (due to the dose) which increased the potential for errors.

- The actual and potential physical conditions of the area adjacent to the ECC system surge tanks (e.g., no emergency lighting, overfilling the surge tanks could cause slippery floor conditions) could result in the operator being unable to refill the tanks within the reduced response time.

In this case, the substitution of manual actions to replace the design intention of the tanks, including significantly reducing operator response time constitutes an unreviewed safety question (USQ). This change should have been submitted to and approved by the NRC before implementation.

Summary of Licensee's Reason 3

The change to the description of the ECC system surge tanks in the USAR did not involve a USQ under 10 CFR 50.59 criteria because it did not involve a potential increase of the consequences of a design basis accident associated with increased projected dose to the public due to operator refilling the surge tanks on an increased frequency.

The licensee performed time and motion studies of the activities needed to refill the ECC surge tanks and determined that for a single entry, the maximum dose was estimated to be 4.4 rem. This dose was bounded by the NUREG-0737 defined limit of 5 rem. The expected dose projection was within the guidelines of USAR section 12.6.1.a, for post accident dose rates in areas designated as "infrequent occupancy," and the activity could be performed at any time throughout the accident without exceeding the 5 rem whole body exposure limit.

An increase in the consequences of an accident previously evaluated in the USAR was not concluded since doses to the public were not increased above the current licensing limit and doses to onsite personnel were not in excess of the limits as specified in NUREG-0737 or the USAR.

The consequences as referenced in 10 CFR 50.59 pertain to the health and safety of the public. Therefore, the proposed operator action from the perspective of receiving the estimated dose, does not cause a change in the consequences.

NRC Evaluation of Licensee's Reason 3

The NRC determined that an increase in dose consequences, as used in 10 CFR 50.59,

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

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

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

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

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

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

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

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

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

NRC Conclusion

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

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

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

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NUCLEAR REGULATORY COMMISSION

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

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

I

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

II

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

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

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

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

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

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