

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 030-34318, License No. 06-30361-01, EA 98-521]

**Special Testing Laboratories, Inc., P.O. Box 200, Bethel, Connecticut 06801-0200; Confirmatory Order Modifying License and Rescinding Order of December 23, 1998 (Effective Immediately)**

**I**

Special Testing Laboratories, Inc. (Special Testing or Licensee) is the holder of Byproduct Nuclear Material License No. 06-30361-01 (License) 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 A. 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. However, by Order Suspending License dated December 23, 1998, the License was suspended by the NRC for violations of the Commission's requirements as described therein.

**II**

By Letter dated December 23, 1998, the Licensee requested an enforcement hearing and moved to set aside the immediate effectiveness of the Order Suspending License. Further, during several telephone conversations with the NRC between December 23, 1998 and January 8, 1999, the Licensee requested that the Order Suspending License be relaxed. By a letter dated December 31, 1998, Mr. Richard A. Speciale, the Licensee's Director and Radiation Safety Officer, voluntarily relinquished his position of Radiation Safety Officer to Mr. Richard C. Speciale, the Licensee's current President, and committed not to speak to or direct Licensee employees involved in NRC-licensed activities. In a letter dated January 4, 1999, Mr. Richard C. Speciale informed the NRC that he understood the License requirements, that he would comply with the License requirements, and that audits would be performed by an auditor independent of the Licensee.

Based on the Licensee's commitments and the circumstances in this case, the NRC has concluded that the Order Suspending License may be rescinded provided that a series of conditions, as described in Section IV below, are

agreed upon and implemented by the Licensee. By letter dated January 8, 1999, the NRC sent the Licensee a list of the specific conditions and formally requested the Licensee's consent to confirming the commitments through an Order. On January 11, 1999, the Licensee, by its Director, Richard A. Speciale, and its President, Richard C. Speciale, signed and returned its consent to issuance of this Order agreeing that: (1) its request for a hearing on the Order Suspending License be withdrawn; (2) the conditions, as described in Section IV below, be incorporated into the License; (3) this Order be immediately effective; (4) its right to a hearing on this Order be waived; and (5) nothing in this Order shall preclude the NRC from taking further enforcement action against the Licensee and/or Richard A. Speciale as an individual, upon completion of the ongoing NRC investigation.

**III**

Implementation of the commitments will provide assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements. I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order and that the NRC's Order Suspending License be rescinded. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

**IV**

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 2.202, *It is hereby ordered, effective immediately, that license no. 06-30361-01 is modified as follows:*

A. The NRC's Order Suspending License dated December 23, 1998, shall be rescinded.

B. Mr. Richard C. Speciale shall replace Mr. Richard A. Speciale as the Licensee's Radiation Safety Officer. As evidence of this Licensee management change, the Licensee shall provide the NRC with written documentation, as follows:

1. A delegation of authority from Mr. Richard A. Speciale to Mr. Richard C. Speciale, which states that Mr. Richard C. Speciale has the requisite and

unqualified authority to communicate with, and direct, Licensee employees regarding NRC regulations and License provisions and to enforce these requirements, including the ability to terminate any unsafe operation involving the use of NRC-licensed material or activities that violate the License or NRC requirements.

2. A directive to all current employees that they are not to look for or take direction from Mr. Richard A. Speciale regarding NRC-licensed activities, and that any and all direction is to be provided solely by Richard C. Speciale. Within 7 days of providing the directive, the Licensee shall confirm that all current employees have received the directive.

3. A signed statement as to how Mr. Richard A. Speciale will effectively be removed from control of NRC-licensed activities, including his agreement to refrain from any efforts to direct, control or influence in any way and to any extent, directly or indirectly, the conduct of licensed activities.

4. A signed statement, under oath or affirmation, from Mr. Richard C. Speciale certifying that:

a. He will direct NRC-licensed operations independent from any involvement or interference by Mr. Richard A. Speciale;

b. He understands the License conditions and all NRC requirements relating to the License, including the NRC's deliberate misconduct rule;

c. He understands that the NRC expects meticulous compliance with its requirements; and

d. He intends to comply with License conditions and all NRC requirements in every respect.

5. A signed statement describing how Mr. Richard C. Speciale will inform all gauge users of NRC and License requirements and direct them to comply with such requirements. Within 7 days of providing the signed statement, the Licensee will confirm that Richard C. Speciale has so informed and directed all employees.

C. The Licensee shall notify the NRC immediately if Mr. Richard A. Speciale attempts to influence Mr. Richard C. Speciale or any other Licensee employee in the conduct of NRC-licensed activities.

D. The Licensee shall fully cooperate with the NRC with regard to inspection or investigation of NRC-licensed activities, including the provision of complete and accurate records and responding to the NRC Office of Investigations subpoena dated November 18, 1998. In addition, all records related to licensed activities shall be maintained in their original

form and shall not be removed or altered in any way.

E. The Licensee shall retain the services of an independent individual or organization (consultant) to perform eight quarterly audits of the Licensee's radiation safety program. After conducting four audits, the Regional Administrator, NRC Region I, may consider, at the request of the Licensee, relief of the audit requirements based on Licensee performance. The consultant shall be independent of the Licensee's organization and is to be experienced in, or capable of, evaluating the effectiveness of management and the implementation of a radiation safety program for gauging operations. NRC has approved the use of Q/C Resource as a consultant; however, if the Licensee chooses to change the consultant, the Licensee shall notify the NRC seven days in advance of a change. At a minimum, each audit shall:

1. Evaluate the effectiveness of the Licensee's radiation safety program and compliance with NRC requirements;
2. Evaluate the understanding of the Licensee's Radiation Safety Officer of radiation safety and NRC requirements;
3. Evaluate the adequacy of the Licensee's corrective actions for any violations or audit findings previously identified by the NRC or consultant;
4. Make recommendations as necessary for improvements in management oversight of NRC-licensed activities;
5. Physically observe gauging operations in the field; and
6. Evaluate whether Mr. Richard A. Speciale is or has been involved in NRC-licensed activities since the effective date of this Order.

F. Within 7 days of the date of this Confirmatory Order, the Licensee shall provide a copy of this Order to the consultant, to all current, and, for the duration of these commitments, to all future Licensee employees.

G. Within 30 days of the date of this Confirmatory Order, the first audit shall be completed. The Licensee shall ensure that the consultant submits the results of the audit, including any deficiencies identified, to NRC Region I at the same time the consultant provides the results to the Licensee.

H. Within every three months thereafter, an audit shall be completed. The Licensee shall ensure that the consultant submits the results of the audit, including any deficiencies identified, to NRC Region I at the same time the consultant provides the results to the Licensee.

I. Within 30 days of the completion of each audit, the Licensee shall submit to NRC Region I its corrective actions for

any identified deficiencies in the audit reports. Alternatively, if the Licensee does not believe that corrective actions should be taken, the Licensee shall provide justification for its position to the NRC.

J. For purposes of the above conditions, the Licensee shall send all documents, and provide notifications and confirmations, required by this modification to the Director, Division of Nuclear Material Safety, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406-1415.

K. The Regional Administrator, Region I, may relax the above conditions for good cause.

#### V

Nothing in this Order will be deemed to preclude the NRC from taking further enforcement action against the Licensee and/or Richard A. Speciale as an individual, upon the completion of the ongoing NRC investigation. In addition, if the Deputy Executive Director for Regulatory Effectiveness concludes that a substantial breach of any conditions of the Confirmatory Order has occurred, the NRC may issue an Order Suspending License.

#### VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. 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. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings 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 Associate General Counsel for Hearings, Enforcement, and Administrations at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406-1415, and to the Licensee. If such a person 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 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 Confirmatory 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. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated this 22nd day of January, 1999.

For the Nuclear Regulatory Commission.

**James Lieberman,**

*Director, Office of Enforcement.*

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of February 1, 8, 15, and 22, 1999.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

#### MATTERS TO BE CONSIDERED:

*Week of February 1*

Tuesday, February 2

11:30 a.m.—Discussion of Intergovernmental issues (Closed-Ex. 9b).

Wednesday, February 3

9:30 a.m.—Affirmation Session (Public Meeting) (if needed).

1:00 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301-415-7360).

*Week of February 8—Tentative*

Monday, February 8

2:00 p.m.—Briefing on HLW Program Viability Assessment (Public Meeting).

Tuesday, February 9

9:00 a.m.—Briefing on Fire Protection Issues (Public Meeting).

12:00 m.—Affirmation Session (Public Meeting) (if needed).