



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

January 11, 2017

EA-16-164

Mr. Eric Hodge
Co-Owner and Radiation Safety Officer
Rozell Testing Laboratories, LLC
2404 State Highway 248, Suite 4
Branson, MO 47750

SUBJECT: NOTICE OF VIOLATION – ROZELL TESTING LABORATORIES, LLC;
NRC ROUTINE INSPECTION REPORT NO. 03036189/2016001(DNMS)

Dear Mr. Hodge:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) inspection conducted on May 19, 2016, at your Branson, Missouri facility with continued in-office review through August 18, 2016. The purpose of this inspection was to review activities performed under your NRC license to ensure those activities were being performed in accordance with NRC requirements.

During the inspection, an apparent violation of NRC requirements was identified. The circumstances surrounding this apparent violation, the significance of the issue, and the need for lasting and effective corrective action were discussed with you during a telephone exit meeting with you on August 18, 2016. Details regarding the apparent violation were provided in NRC Inspection Report No. 03036189/2016001(DNMS), dated September 16, 2016. The inspection report can be found in the NRC's Agencywide Documents Access and Management System (ADAMS) at Accession Number ML16260A114. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by: (1) providing a written response; (2) requesting a predecisional enforcement conference; or (3) disposing of, or transferring the gauge to another authorized recipient and requesting termination of your NRC license. You provided a written response to the apparent violation in a letter dated October 7, 2016. In your response, you notified the NRC of your intent to transfer the gauge to an authorized recipient. You also committed that upon completion of the gauge transfer, you would notify the NRC to pursue termination of your license.

Based on the information developed during the inspection, as well as the information you provided in your response dated October 7, 2016, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved the failure to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal, whenever the

gauge was not under the control and constant surveillance of the licensee, as required by Title 10 of the *Code of Federal Regulations* (CFR) Section 30.34(i). Specifically, the portable gauge was stored in a locked cabinet, which constituted the only physical barrier, within a storage room in an unlocked building during business hours when the gauge was not under the control and constant surveillance of you or your staff.

The root cause of the violation was a misunderstanding of the NRC regulatory requirement. You believed that the building itself provided the second barrier; however, the exit door adjacent to the storage room was not locked during business hours and allowed access to unauthorized individuals. The failure to use two independent physical barriers to properly secure portable gauges is of significance to the NRC because of the potential for unauthorized individuals to gain control of the radioactive material, which could result in its misuse or an unintended exposure to members of the public. Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, at Severity Level III.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$7,000 is considered for a Severity Level III violation.

Because your facility has been the subject of escalated enforcement action within the last two inspections¹, the NRC considered whether, in this case, credit was warranted for *Identification* and *Corrective Action*, and whether discretion was warranted in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy.

The NRC determined that credit was not warranted for *Identification* because the violation was identified by an NRC inspector. However, the NRC determined that credit was warranted for *Corrective Action*. Based on the information gathered during the inspection, your corrective action included installing a second lock on the cabinet door to satisfy the NRC requirement for securing the gauge. Additionally, on December 21, 2016, you notified the NRC that you completed the transfer of the nuclear gauge to an authorized recipient. Also, on December 23, 2016, you submitted a request to terminate your NRC license, which has been terminated on December 29, 2016.

Therefore, after consultation with the Director of the Office of Enforcement, and based on your transferring the gauge to another authorized recipient and at your request the NRC terminated your NRC license, the NRC is exercising discretion to not propose a civil penalty in accordance with Section 3.5 of the Enforcement Policy, "Violations Involving Special Circumstances."

¹ On March 4, 2005, the NRC issued a non-public Notice of Violation to Rozell Testing Laboratories, LLC, for failure to secure from unauthorized removal, limit access to, or maintain constant surveillance of a moisture density gauge containing NRC-licensed material.

E. Hodge

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The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the subject inspection report and this letter. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in ADAMS. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>.

Sincerely,

/RA/

Cynthia D. Pederson
Regional Administrator

Docket No. 030-36189
License No. 24-32438-01

Enclosure:
Notice of Violation

cc w/encl: State of Missouri

NOTICE OF VIOLATION

Rozell Testing Laboratories, LLC
Branson, Missouri

License No. 24-32438-01
Docket No. 030-36189
EA-16-164

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on May 19, 2016, with continued in-office review through August 18, 2016, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the *Code of Federal Regulations* (CFR) Section 30.34(i) states that each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, as of May 19, 2016, the licensee failed to use a minimum of two independent physical controls that form tangible barriers to secure a portable gauge from unauthorized removal, whenever the portable gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee only used one independent physical control, a locked cabinet, to secure the portable gauge from unauthorized removal during business hours when the gauge was not under the control and constant surveillance of the licensee.

This is a Severity Level III violation (Section 6.3).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 03036189/2016001(DNMS), in your letter dated October 7, 2016, and in the letter transmitting this Notice of Violation (Notice). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA-16-164" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region III, within 30 days of the date of the letter transmitting this Notice.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC's Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC's website at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Enclosure

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 11th day of January 2017.

Letter to Mr. Eric Hodge from Ms. Cynthia D. Pederson dated January 11, 2017

SUBJECT: NOTICE OF VIOLATION – ROZELL TESTING LABORATORIES, LLC.; NRC
ROUTINE INSPECTION REPORT NO. 03036189/2016001(DNMS)

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2 OE concurrence provided via e-mail from Kerstun Norman on January 6, 2017