

**SAFETY EVALUATION REPORT
PROPOSED CHANGE OF CONTROL FOR BYPRODUCT MATERIALS LICENSE
NUMBER 21-32603-01, Thumb Testing, LLC**

DATE: September 3, 2015

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LICENSE NO.: 21-32603-01

LICENSEE: Thumb Testing, LLC
415 West Nepessing Street, Lapeer, MI 48446

TECHNICAL REVIEWER: Sara A. Forster, M.S., Health Physicist
Materials Licensing Branch
Division of Nuclear Materials Safety, Region III Office

SUMMARY AND CONCLUSIONS

Thumb Testing, LLC is authorized by NRC License 21-32603-01 for the possession and use of byproduct material for purposes of storage and use of portable nuclear gauges for measuring physical properties of materials in areas of exclusive Federal jurisdiction. The U.S. Nuclear Regulatory Commission (NRC) staff reviewed a request for consent to a direct license transfer submitted by Thumb Testing, LLC (Thumb Testing) that will result from a merger between Thumb Testing and Davis Land Surveying & Engineering, PC (DLSE). Two individuals – Ray Davis, P.S., and Corwin Mabery, P.E. – wholly own both companies. Upon completion of the transaction, Thumb Testing will be dissolved and DLSE will assume control over all licensed activities. The direct transfer of control is described in Agency Documents Access and Management System (ADAMS) accession number ML151661A519.

The request for consent was reviewed by NRC staff for a direct change in control in accordance with Title 10 of the *Code of Federal Regulations* (CFR) Part 30 license using the guidance provided in NUREG 1556, Volume 15, "Consolidated Guidance About Materials Licenses - Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," dated November 2000. The NRC staff finds that the information submitted by Thumb Testing sufficiently describes and documents the transaction and commitments made by Thumb Testing and DLSE.

As required by 10 CFR 30.34 and Section 184 of the Atomic Energy Act of 1954, as amended (the Act), NRC staff has reviewed the application and finds that the proposed change in control is in accordance with the Act. The staff finds that, after the change of control, Thumb Testing will remain qualified to use byproduct material for the purpose requested, and will continue to have the equipment, facilities, and procedures needed to protect public health and safety, and to promote the security of licensed material.

SAFETY AND SECURITY REVIEW

According to data obtained from the NRC's Web Based Licensing System (WBL), Thumb Testing has been an NRC licensee since October 31, 2005. The NRC has conducted main office inspections of Thumb Testing on July 19, 2006 and September 1, 2011.

One Severity Level IV violation of 10 CFR 30.34(i) was identified during the 2006 inspection. However, the licensee completed sufficient corrective actions for that violation on July 24, 2006. No violations were identified during the 2011 inspection. In the letter dated June 12, 2015 (ML151661A519), Thumb Testing and DLSE provided commitments stating that Thumb Testing (License No. 21-32603-01):

- A. will not change the personnel – other than the Radiation Safety Officer – involved in licensed activities;
- B. will not change the locations, facilities, and equipment authorized in the NRC license;
- C. will not change the radiation safety program authorized in the NRC license; and
- D. will keep regulatory required surveillance records and decommissioning records.

Thumb Testing and DLSE are co-located and co-owned by the same two individuals, differing in name only. Therefore, for security purposes, DLSE is considered a known entity following the guidance provided by the NRC's Office of Federal and State Materials and Environmental Management Programs (FSME) 'Checklist to provide a basis for confidence that radioactive materials will be used as specified on the license', September 3, 2008 revision. The purpose of this checklist is for the NRC to obtain reasonable assurance from new license applicants or NRC licensees transferring control of licensed activities that the licensed material will be used for its intended purpose and not for malevolent use.

Thumb Testing is not required to have decommissioning financial assurance based on the types and amount of material authorized in License No. 21-32603-01.

REGULATORY FRAMEWORK

Thumb Testing's License No. 21-32603-01 was issued under 10 CFR Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material. The Commission is required by 10 CFR 30.34 to determine whether the change of control is in accordance with the provisions of the Act and to give its consent in writing.

10 CFR 30.34(b) states: "No license issued or granted pursuant to the regulations in this part and parts 31 through 36, and 39 nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing."

As noted above, the staff evaluation is based on guidance in NUREG-1556, Volume 15. As discussed in NUREG-1556, Volume 15, NRC is generally using the term "change of control" rather than the statutory term "transfer" to describe the variety of events that could require prior notification and written consent of the NRC. The central issue is whether the authority over the license has changed. Thumb Testing's request for consent describes a direct change of control resulting from a planned merger between Thumb Testing and DLSE. Following the completion of the merger, Thumb Testing will be dissolved and DLSE will assume control over all activities previously conducted by Thumb Testing. Accordingly, the transfer requires NRC consent.

DESCRIPTION OF TRANSACTION

The transaction is described in ADAMS accession number ML151661A519. After completion of the merger, the licensee name will be changed to DLSE but Thumb Testing staff – also associated with DLSE – will remain in control of all licensed activities under Materials License No. 21-32603-01. The NRC staff finds that the request for consent adequately provides a complete and clear description of the transaction, and is consistent with the guidance provided in Appendix F of NUREG-1556, Volume 15.

TRANSFeree'S COMMITMENT TO ABIDE BY THE TRANSFEROR'S COMMITMENTS

The NRC staff finds that the information submitted by Thumb Testing sufficiently describes and documents the commitments made by DLSE and Thumb Testing, and is consistent with the guidance in NUREG-1556, Volume 15.

ENVIRONMENTAL REVIEW

An environmental assessment for this action is not required since 10 CFR 51.22(c)(21) categorically excludes actions that are limited to NRC approval of a direct transfer of control.

CONCLUSION

The staff has reviewed the request for consent submitted by both parties with regard to a direct change of control of byproduct materials license No. 21-32603-01 and approves the application pursuant to 10 CFR 30.34(b).

The submitted information sufficiently describes the transaction; documents the understanding of the license and commitments; demonstrates that personnel have the experience and training to properly implement and maintain the license and that they will maintain the existing records; And, in the future, will abide by all existing commitments to the license, consistent with the guidance in NUREG-1556, Volume 15.

Therefore, the staff concludes that the proposed change in control would not alter the previous findings, made under 10 CFR Part 30, that licensed operations will not be harmful to the common defense and security, or to the health and safety of the public.