



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

September 16, 2016

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: NRC ROUTINE INSPECTION REPORT NO. 03036189/2016001(DNMS) –
ROZELL TESTING LABORATORIES, LLC

Dear Mr. Hodge:

On May 19, 2016, an inspector from the U.S. Nuclear Regulatory Commission (NRC) conducted a routine inspection at your office in Branson, Missouri, with continued in-office review through August 18, 2016. The purpose of the inspection was to review activities performed under your NRC license to ensure that activities were being performed in accordance with NRC requirements. The purpose of the in-office review was to review information that was not immediately available at the time of the onsite inspection and to assess the adequacy of the security measures for your materials. Mr. Luis Nieves of my staff conducted a final exit meeting by telephone with you on August 18, 2016, to discuss the inspection findings. The enclosed inspection report presents the results of the inspection.

During this inspection, the NRC staff examined activities conducted under your license related to public health and safety. Additionally, the staff examined your compliance with the Commission's rules and regulations as well as the conditions of your license. Within these areas, the inspection consisted of selected examination of procedures and representative records, observations of activities, and interviews with personnel.

Based on the results of this inspection, one apparent violation of NRC requirements was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The apparent violation concerned the licensee's apparent failure to provide two independent barriers to prevent removal of a portable gauge from its storage location, as required by Title 10 of the *Code of Federal Regulations* (CFR) Part 30.34(i).

Because the NRC has not made a final determination in this matter, the NRC is not issuing a Notice of Violation for this inspection finding at this time. The circumstances surrounding this apparent violation, the significance of the issue, and the need for lasting and effective corrective actions were discussed with you at the inspection exit meeting on August 18, 2016.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond in writing to the apparent violation addressed in this inspection report within 30 days of the date of this letter; (2) request a Predecisional Enforcement Conference (PEC); or (3) dispose of, or transfer, the gauge to another authorized recipient and terminate your license. **Please contact Aaron T. McCraw at 630-829-9650 or Aaron.McCraw@nrc.gov within 10 days of the date of this letter to notify the NRC of your choice of these options.**

If you choose to provide a written response, it should be clearly marked as "Response to the Apparent Violation in Inspection Report No. 03036189/2016001 (DNMS); EA-16-164," and should include, for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance was or will be achieved. In presenting your corrective actions, you should be aware that the promptness and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violation. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be useful in preparing your response. You can find the information notice on the NRC's website at: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/info-notices/1996/in96028.html>. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a PEC.

If you choose to request a PEC, it will afford you the opportunity to provide your perspective on the apparent violation and any other information that you believe the NRC should take into consideration before making an enforcement decision. The topics discussed during the conference may include the following: information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned to be taken. If a PEC is held, the NRC will issue a press release to arrange the time and date of the conference.

If you choose to dispose of, or transfer, your gauge to another authorized recipient and terminate your license, the NRC would be willing to forego any civil penalty that it may otherwise propose. If you do intend to pursue disposal or transfer or a license termination as a corrective action, please provide a written response, clearly marked as "Response to the Apparent Violation in Inspection Report No. 03036189/2015001(DNMS); EA-16-164," within 30 days of the date of this letter. Your response should include a confirmation of disposal or transfer or a description of your plan to dispose of or transfer the material, including details of how, when, and to whom the gauges will be transferred. If you require any further assistance seeking options for disposal of the material, please contact Russ Meyer of the Conference of Radiation Control Program Directors at 512-761-3822, or visit <http://crcpd.org/StateServices/UnwantedRadMat.aspx>. If the requested information is not received within 30 days, the NRC will proceed with its enforcement decision. Should you request an NRC license in the future, any monetary civil penalty associated with this violation may be reinstated.

E. Hodge

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The agency's final determination of whether or not a civil penalty is warranted in accordance with Section 2.3.4 of the Enforcement Policy will depend upon the adequacy and effectiveness of the corrective actions you provide to us in writing or in person. In addition, please be advised that the number and characterization of the apparent violation described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and 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>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made publicly available without redaction.

Please feel free to contact Mr. Nieves of my staff if you have any questions regarding this inspection. Mr. Nieves can be reached at 630-829-9571.

Sincerely,

/RA/

John B. Giessner, Director
Division of Nuclear Materials Safety

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

Enclosure:
IR 03036189/2016001 (DNMS)

cc w/encl: State of Missouri

E. Hodge

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The agency's final determination of whether or not a civil penalty is warranted in accordance with Section 2.3.4 of the Enforcement Policy will depend upon the adequacy and effectiveness of the corrective actions you provide to us in writing or in person. In addition, please be advised that the number and characterization of the apparent violation described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

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Please feel free to contact Mr. Nieves of my staff if you have any questions regarding this inspection. Mr. Nieves can be reached at 630-829-9571.

Sincerely,

/RA/

John B. Giessner, Director
Division of Nuclear Materials Safety

Docket No. 03036189
License No. 24-32438-01

Enclosure:
IR 03036189/2016001(DNMS)

cc w/encl: State of Missouri

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DATE	9/13/2016		9/14/2016		9/14/2016		9/14/2016	
OFFICE	HQ-NMSS	E	RIII-DNMS	E	RIII		RIII	
NAME	RSun ¹ (via-e-mail)		JGiessner					
DATE	9/14/2016		9/16/2016					

¹ - These individuals concurred on the enclosed report; review and concurrence received via e-mail

OFFICIAL RECORD COPY

Letter to Eric Hodge from John Giessner dated September 16, 2016

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

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**U.S. Nuclear Regulatory Commission
Region III**

Docket No. 030-36189

License No. 24-32438-01

Report No. 03036189/2016001(DNMS)

EA No./NMED No. EA-16-164

Licensee: Rozell Testing Laboratories, LLC

Facility: 2404 State Highway 248
Branson, Missouri 47750

Inspection Dates: May 19, 2016, with continued in- office review
through August 18, 2016

Exit Meeting Date: August 18, 2016

Inspector: Luis Nieves, Health Physicist

Approved By: Aaron T. McCraw, Chief
Materials Inspection Branch
Division of Nuclear Materials Safety

Enclosure

EXECUTIVE SUMMARY

Rozell Testing Laboratories, LLC NRC Inspection Report 03036189/2016001(DNMS)

On May 19, 2016, the Nuclear Regulatory Commission (NRC) conducted a routine inspection of Rozell Testing Laboratories radiation safety and security programs. As a result of this inspection, the inspector identified one apparent violation relating to the licensee's failure to have two independent barriers in place to secure a portable gauge when not under direct supervision.

The inspector observed that the licensee secured its Troxler gauge with only one barrier. The gauge was kept within a locked cabinet, within a storage room. The gauge was not secured within the locked cabinet. No employees maintained direct surveillance of the cabinet. The room was also used for storage of other equipment, and the door was open and unlocked at all times. The room was adjacent to an exit door leading to the street. The exit door was closed but not locked during business hours. The inspector noted that no offices were near that interior area of the building. The inspector concluded that the licensee could not detect the presence of unauthorized individuals getting access through the exit to the room and the locked cabinet during business hours. The licensee confirmed that the securing of the gauge with only the cabinet locked with a single lock was its routine practice.

As a result of the inspection, the inspector identified an apparent violation of Title 10 of the *Code of Federal Regulations* (CFR) Section 30.34(i), which requires that each portable gauge licensee use a minimum of two independent physical barriers to secure a gauge when not under direct surveillance. The root cause of the apparent violation was a misunderstanding of the requirement. Specifically, the licensee believed that having the gauge in a locked cabinet inside the building during business hours with the interior doors unlocked and locking the building exit doors that open to the outdoors during non-business hours at night met the requirement.

As corrective action to prevent recurrence of the apparent violation, the licensee added a second lock to the cabinet the next day to achieve compliance. The licensee plans to dispose of the gauge and terminate its license.

REPORT DETAILS

1 Program Overview and Inspection History

Rozell Testing Laboratories, LLC is authorized under NRC Materials License No. 24-32438-01 to use and store Troxler Nuclear portable moisture density gauges containing byproduct material at its facility in Branson, Missouri, and at temporary jobsites anywhere in the United States where the NRC maintains jurisdiction for regulating the use of licensed material. At the time of the inspection, the licensee possessed one gauge, which was in storage for the past year.

The NRC conducted a routine inspection of the licensee on July 23, 2011. Six Severity Level IV violations of NRC regulatory requirements were identified.

The NRC conducted an escalated enforcement follow up inspection of the licensee on May 23, 2005. No violations of NRC requirements were identified as a result of the May 2005 inspection, but during the previous inspection on January 13, 2005, a Severity Level III violation was found.

2 Security of Portable Gauge in Storage

2.1 Inspection Scope

On May 19, 2016, the inspector toured the Branson facility to evaluate the licensee's measures for materials security.

2.2 Observations and Findings

The inspector identified an apparent violation of 10 CFR 30.34(i) for a failure to 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.

Specifically, the inspector found that the gauge was kept within a locked cabinet, within a storage room. The gauge was not further secured inside the locked cabinet. No employees maintained direct surveillance of the cabinet. The room was also used for storage of other equipment, and the door was open and unlocked at all times. The room was adjacent to an exit door leading to the street. The exit door was closed but not locked during business hours. The inspector noted that no offices were near that interior area of the building. The inspector concluded that the licensee could not detect the presence of unauthorized individuals getting access through the exit door to the room and the locked cabinet during business hours. The licensee indicated that the securing of the gauge with only the cabinet locked with a single lock was its routine practice.

The root cause of the apparent violation was a misunderstanding of the requirement. Specifically, the licensee believed that having the gauge in a locked cabinet inside the building during business hours with the interior doors unlocked and locking the building exit doors that open to the outdoors during non-business hours met the requirement.

As corrective action to prevent recurrence of the apparent violation, the licensee added a second lock to the cabinet the next day to achieve compliance. The licensee plans to dispose of the gauge and terminate its license.

2.3 Conclusions

The inspector identified an apparent violation of 10 CFR 30.34(i). The licensee took corrective actions to restore compliance and prevent recurrence of the apparent violation.

3 **Other Areas Inspected**

3.1 Inspection Scope

The inspector interviewed the licensee's Radiation Safety Officer and reviewed a selection of records related to the use of licensed material.

3.2 Observations and Findings

The inspector conducted independent surveys of the licensee's facility using a Ludlum 2403 GM Survey Meter with a pancake probe and dose equivalent filter calibrated on April 20, 2016, and found no readings that would indicate residual contamination or exposures to members of the public in excess of regulatory limits. Leak test records indicated no contamination. Interviews with licensee staff demonstrated good knowledge of ALARA practices.

3.3 Conclusions

No violations of NRC regulatory requirements were identified.

4 **Exit Meeting Summary**

On May 19, 2016, the inspector presented preliminary inspection findings following the onsite inspection. The licensee did not identify any documents or processes reviewed by the inspectors as proprietary. A telephonic, final exit meeting was conducted on August 18, 2016. The licensee acknowledged the findings presented.

LIST OF PERSONNEL CONTACTED

Eric Hodge, Co-Owner and Radiation Safety Officer

Attended exit meeting on August 18, 2016.

INSPECTION PROCEDURES USED

87124: Fixed and Portable Gauge Programs