



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

May 18, 2021

EA-21-028

Mr. Gerald M. Gaston, P.E.
Radiation Safety Officer
French Onion, LLC
P.O. Box 861
Bozeman, MT 59771

SUBJECT: FRENCH ONION, LLC - NOTICE OF VIOLATION, NRC INSPECTION REPORT
030-31337/2021-001

Dear Mr. Gaston:

This letter refers to the announced remote routine inspection conducted on February 5-26, 2021, regarding your facility in Bozeman, Montana, with in-office reviews through March 23, 2021. The purpose of the inspection was to examine activities conducted under your license as they relate to public health and safety and to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC) rules and regulations and with the conditions of your license. A final inspection exit call was conducted with you on March 24, 2021, at which the details regarding an apparent violation were provided. The details of this violation are also described in NRC Inspection Report 030-31337/2021-001, dated April 16, 2021, NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML21105A875.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation by either attending a predecisional enforcement conference, requesting alternative dispute resolution, or providing a written response before we made our final enforcement decision. In a letter dated April 19, 2021, ADAMS Accession No. ML21119A107, you provided a written response to the apparent violation.

Based on the information developed during the inspection and the information that you provided in your response to the inspection report dated April 16, 2021, 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 of Title 10 of the *Code of Federal Regulations* (10 CFR) 30.41(b) involved the transfer of NRC-licensed byproduct material to an unlicensed entity from 2009 until 2021. Your misunderstanding of the regulatory requirements contributed to the violation in this case.

The NRC considers the violation above to be significant because the transfer of licensed radioactive material to an unlicensed entity provides greater opportunities for misuse or mishandling of the radioactive material, potentially resulting in greater levels of exposures to members of the public. Therefore, the violation has been categorized in accordance with the

NRC Enforcement Policy at Severity Level III. The Enforcement Policy can be found on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$7,500 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last 2 years, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. The NRC has determined that *Corrective Action* credit is warranted for your prompt and comprehensive corrective actions that included: (1) submitting a change of control application to the NRC on February 26, 2021, ADAMS Accession No. ML21060B508, requesting to transfer the license for the material to Gaston Engineering & Surveying, P.C. (GES), (2) agreeing to not use the gauges until the change of control application was approved by the NRC, and (3) terminating the lease agreement between French Onion, LLC and GES.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort.

As a result of the license amendment issued on April 19, 2021, ADAMS Accession Nos. ML21109A218 and ML21109A221, transferring control of the portable gauges to GES, French Onion, LLC is no longer an NRC licensee and accordingly does not have the ability to use or possess the portable gauges. Conversely, GES is now an NRC licensee and retains the ability to use and possess the portable gauges. Should GES desire to transfer control and possession of its licensed material back to French Onion, LLC, or any other unlicensed entity, GES shall ensure that the requirements of 10 CFR 30.41 are met prior to the transfer. Should any questions arise with regards to future transfers of control or ownership of NRC-licensed material, please do not hesitate to contact our office for clarification before making these changes.

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 your letter dated April 19, 2021, and the NRC's Inspection Report dated April 16, 2021. 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 "Agency Rules of Practice and Procedure," 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 or in the NRC's ADAMS, accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. The NRC also includes significant enforcement actions on its website at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

G. Gaston

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If you have any questions concerning this matter, please contact Dr. Lizette Roldan-Otero of my staff at 817-200-1455.

Sincerely,

Scott A. Morris
Regional Administrator

Docket No. 030-31337
License No. 25-27006-01

Enclosure:
Notice of Violation

cc w/Enclosure:
Carter S. Anderson, Administrator
Division Administrator QAD
Montana Department of Public Health
& Human Services
P.O. Box 202953
Helena, MT 59620-2953

FRENCH ONION LLC - NOTICE OF VIOLATION, NRC INSPECTION REPORT 030-31337/2021-001 – DATED MAY 18, 2021

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Cover Letter & Encl: ADAMS ACCESSION NUMBER: ML21138A902

SUNSI Review: ADAMS: Non-Publicly Available Non-Sensitive Keyword: RGN4
 By: PAJ Yes No Publicly Available Sensitive

OFFICE	ES:ACES	TL:ACES	C:MIB	RC	OE	NMSS	D:DNMS	RA
NAME	PJayroe	DDodson	LRoldan-Otero	DCylkowski	LSreenivas	RSun	MMuessle	SMorris
SIGNATURE	/RA/	/RA/	/RA/	/RA/	/RA/	/RA/	/RA/	/RA/
Date	4/23/21	5/5/21	5/5/21	5/6/21	5/12/21	5/11/21	5/14/21	05/18/21

OFFICIAL RECORD COPY

NOTICE OF VIOLATION

French Onion, LLC
Bozeman, Montana

Docket No. 030-31337
License No. 25-27006-01
EA-21-028

During an in-office NRC review conducted from February 5, 2021, to March 23, 2021, one violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 30.41(a) requires, in part, that no licensee shall transfer byproduct material except as authorized pursuant to 10 CFR 30.41.

10 CFR 30.41(b)(5) requires, in part, that, except as otherwise provided in its license and subject to the provisions of 10 CFR 30.41(c) and (d), any licensee may transfer byproduct material to any person authorized to receive such byproduct material under terms of a specific license or a general license or their equivalents issued by the Commission, or an Agreement State.

Contrary to the above, from January 1, 2009, through February 26, 2021, the licensee transferred byproduct material to a person not authorized to receive such byproduct material under terms of a specific license or a general license or their equivalents issued by the NRC, or an Agreement State. Specifically, the licensee transferred two portable nuclear gauges, which required a specific NRC or Agreement State license, to Gaston Engineering & Surveying, P.C., an unlicensed entity.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.12.c.12).

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 your letter dated April 19, 2021, and NRC Inspection Report 030-31337/2021-001. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation (Notice). In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-21-028," and send it to U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011-4511, and email it to R4Enforcement@nrc.gov.

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 Public Document Room or in the NRC's ADAMS, accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction.

Enclosure

If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

Dated this 18th day of May 2021