UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PA 19406-1415

March 23, 2010

Docket No. 03020563 License No. 52-21368-01

Max R. Laracuente-Bernat
President
Western Soil, Inc.
P. O. Box 345
Mayaguez, PR 00681-0345

SUBJECT: NRC INSPECTION REPORT NO. 03020563/2010001, WESTERN SOIL, INC., MAYAGUEZ, PUERTO RICO AND NOTICE OF VIOLATION

Dear Mr. Laracuente-Bernat:

On March 5, 2010, Sattar Lodhi of this office conducted a safety inspection at your facility in Mayaguez, Puerto Rico, of activities authorized by the above listed NRC license. The inspection was an examination of your licensed activities as they relate to radiation safety and to compliance with the Commission's regulations and the license conditions. The inspection consisted of observations by the inspector, interviews with personnel, and a selective examination of representative records. Additional information provided in your correspondence dated March 8, 10, 11, and 16, 2010 was also examined as part of the inspection. The findings of the inspection were discussed with Madeline Acevedo and Rafael Laracuente of your organization at the conclusion of the inspection and with Ms. Acevedo via telephone on March 16, 2010.

Based on the results of this inspection and in accordance with the NRC Enforcement Policy, the NRC has determined that five Severity Level IV violations of NRC requirements occurred. The violations involved: 1) failure to include the required information in shipping papers; 2) failure to affix legible labels on shipping containers; 3) failure to conduct inventory of sealed sources every six months; 4) failure to test sealed sources for leakage at the required intervals; and 5) failure to provide the required operating and emergency procedures to personnel working at temporary job sites, and to maintain records of daily use of portable gauges.

The violations are cited in the enclosed Notice of Violation (Notice), because the violations were identified by the NRC.

In your license renewal application dated April 30, 2004, you committed to conduct your licensed activities in accordance with the procedures included in NUREG 1556, Vol 1, Rev. 1 “Consolidated Guidance About Materials Licenses.” During the inspection on March 5, the inspector assisted Ms. Acevedo of your staff to obtain a copy of the above document from the NRC website and explained to her the procedures contained in the NUREG, including the topics that should be reviewed during annual audits (Appendix F) and Operating & emergency procedures (Appendix H). Mr. Laracuente and Ms. Acevedo stated that steps will be taken to correct the identified violations and that Western Soil, Inc. was committed to radiation safety and to compliance with NRC regulations and licensed conditions. In your facsimilés dated March 8 and 10, 2010, you stated that you have: (1) implemented procedures to ensure that the all

required documents related to your NRC license are be available at your facility during inspections, and have designated an individual to be available at the facility to facilitate future inspections in your absence; (2) corrected the information in shipping papers; (3) prepared Nuclear Gauge Log Sheet to maintain records of use of your gauges; and (4) replaced the labels on the packages. You also stated that your policy is to replace worn out labels on package during maintenance of portable gauges that is scheduled every six months. Please note that regulations require that the labels on packages containing radioactive material be legible at all times.

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 or from the NRC document system (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, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Current NRC regulations are included on the NRC's website at www.nrc.gov; select **Nuclear Materials; Medical, Academic, and Industrial Uses of Nuclear Material;** then **Regulations, Guidance, and Communications Page.** The current Enforcement Policy is included on the NRC's website at www.nrc.gov; select **About NRC; How We Regulate; Enforcement;** then **Enforcement Policy.** You may also obtain these documents by contacting the Government Printing Office (GPO) toll-free at 1-866-512-1800. The GPO is open from 7:00 a.m. to 6:30 p.m. EST, Monday through Friday (except Federal holidays).

Please contact Sattar Lodhi at (610) 337-5364 if you have any questions regarding this matter.

Sincerely,

Original signed by Craig Z. Gordon For

Marie Miller, Chief
Security and Industrial Branch
Division of Nuclear Materials Safety

Enclosure:
Notice of Violation

cc:
Commonwealth of Puerto Rico

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cc:
Commonwealth of Puerto Rico

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OFFICE	DNMS/RI	N	DNMS/RI		DNMS/RI			
NAME	SLodhi/SL		MMiller CG					
DATE	3/23/10		3/23/10					

NOTICE OF VIOLATION

Western Soil, Inc.
Mayaguez, PR

Docket No. 03020563
License No. 52-21368-01

During an NRC inspection conducted on March 5, 2010, five violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

A. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material on public highways comply with the applicable requirements of the DOT regulations in 49 CFR parts 170 through 189.

(1) 49 CFR 172.202(a) (3) requires that the shipping description of a hazardous material on shipping papers include the identification number prescribed for the material in column 2 of 49 CFR 172.101 table.

Contrary to the above, on March 5, 2010, the licensee transported a CPN Model moisture/density gauge via public highways and the accompanying shipping did not include the prescribed identification number. Additionally, all of the shipping papers that accompanied a portable gauge had wrong identification number, and the licensee's previous internal audits failed to identify this violation.

This is a Severity Level IV violation (Supplement V).

(2) 49 CFR 173.422(a) requires, in part, that the outside of each excepted package of Class 7 (radioactive) material be marked with the four digit UN identification number for the material preceded by the letters UN.

Contrary to the above, on March 5, 2010, the licensee transported radioactive material (portable nuclear gauge Model CPN) on public highways and the label on the outside of the package did not have complete identification number. Additionally, at least three packages containing radioactive material had worn out labels.

This is a Severity Level IV violation (Supplement V).

B. Condition 15 of NRC License No. 52-21368-01 requires, in part, that the licensee conduct a physical inventory every six months to account for all sources and/or devices received and possessed under the license, maintain the inventory records and the records include radionuclide, manufacturer's name and model numbers and the date of the inventory.

Contrary to the above, the licensee did not conduct a physical inventory every six months to account for all sources and/or devices in its possession. The licensee did not have any record of conducting the required inventory of the devices in its possession.

This is a Severity Level IV violation (Supplement VI).

C. Condition 13.A. of NRC License No. 52-21368-01 requires, in part, that sealed sources be tested for leakage and/or contamination at intervals not to exceed the intervals specified in the certificate of registration.

Contrary to the above, the licensee did not test sealed sources in its portable gauges at intervals specified in their certificates of registration. Specifically, a portable gauge (Model CPN) was last tested for leakage on January 15, 2008, and as of March 5, 2010, more than one year had elapsed and the licensee had not tested the gauge for leakage. The certificate of registration of the gauge specifies leak test frequency of one year.

This is a Severity Level IV violation (Supplement VI).

D. Condition 21, Item B. of NRC License No. 52-21368-01 requires, in part, that the licensee conduct its program in accordance with the procedures contained in the letter dated May 19, 2004.

Item 10 of the attachment to the letter requires that the licensee implement and maintain the operating and emergency procedures in Appendix H of NUREG-1556, Vol. 1, Rev. 1, dated November 2001, and provide copies of these procedures to all gauge users at each job site. Paragraph 3 of the procedures in Appendix H requires that the licensee maintain daily use logs of its portable gauges.

Contrary to the above, the licensee did not maintain and implement the operating and emergency procedures in Appendix H of NUREG 1556, Vol 1, Rev 1. Specifically, the licensee did not maintain use logs of its gauges as required by paragraph 3 of the operating procedures, and did not provide copies of these procedures to its authorized users.

This is a Severity Level IV violation (Supplement VI).

Pursuant to the provisions of 10 CFR 2.201, Western Soil, Inc. is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each

violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) be taken to avoid further violations, 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 will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, any response which contests an enforcement action shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) and on the NRC Web site. To the extent possible, it should, therefore, not include any personal privacy, proprietary, or safeguards information so that it can be made publically available without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

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

Dated This _23_ day of _March_ 2010