



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BLVD.
KING OF PRUSSIA, PA 19406-2713**

October 8, 2020

EA-20-101

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

**SUBJECT: WESTERN SOIL, INC, NRC INSPECTION REPORT NO.
03020563/2018001 AND APPARENT VIOLATION**

Dear Mr. Laracuente-Bernat:

During the period between February 18, 2018, to September 14, 2020, NRC conducted an inspection of Western Soil, Inc. The inspection included numerous electronic mail exchanges and telephone conversations with you. We also visited your authorized storage location but were unable to gain access because the facility was locked. You reported to NRC on January 28, 2020, that because of a down-turn in the Puerto Rican economy, you stopped using your licensed gauges, secured them, and moved to Florida. We did receive photographs from your representative that showed your gauges stored in a secure condition. The enclosed report (Enclosure 1) presents the results of this inspection. The NRC discussed the results of the inspection with you during a telephone exit meeting held on September 14, 2020.

Western Soil has not paid its annual NRC fees since 2015 and as a result, NRC issued an Order dated July 8, 2019 ("Order Revoking License within 20 Days Based on Nonpayment of License Fees"). That Order (which the NRC confirmed you received on January 28, 2020) notified you that your NRC License No. 52-21368-01 is revoked, effective 20 days from the date of the Order, unless within the 20-day period, Western Soil, Inc., pays all debts due to NRC; after revocation, your activities are limited to decommissioning and safe, secure storage or transfer of material; and Western Soil, Inc., is required, within 60 days of the date of revocation, to dispose of or transfer to another authorized recipient or recipients all NRC-licensed material.

This inspection was conducted to verify the security of your portable gauges and to evaluate your compliance with the requirements of the NRC Order. As of September 14, 2020, Western Soil, Inc., has not paid required fees and has not transferred its gauges to an authorized recipient as required by the NRC Order.

Based on the results of the inspection, an apparent violation was identified for the failure to dispose of or transfer the nuclear density gauges possessed under its NRC license, and complete decommissioning. This apparent violation is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is available on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

Because Western Soil, Inc., has not taken corrective action for the violation, the enforcement action would include a proposed civil penalty of approximately \$8500. As noted in Section 2.3.4 of the Policy, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit for each day the violation continues. The NRC may exercise this discretion when a licensee was aware of a violation of at least moderate significance and had a clear opportunity to prevent, identify and correct the violation but failed to do so. Since the NRC has not made a final determination, a Notice of Violation is not being issued at this time. Please be advised that the number and characterization of the apparent violation described herein may change as a result of further NRC review.

The NRC's primary interest in this matter is to ensure that Western Soil, Inc., meets its obligation to ensure the proper transfer or disposal of the licensed material. Accordingly, the NRC will not propose a civil penalty if, within **30** days of the date of this letter, Western Soil, Inc., completes the proper transfer or disposal of its gauges. After completing this action, Western Soil, Inc., must send a copy of the certification from the authorized recipient that the material has been received to the Regional Administrator, NRC Region I, 2100 Renaissance Blvd, Suite 100, King of Prussia, PA 19406.

Before the NRC makes its enforcement decision, we are providing you an opportunity to (1) request a Pre-Decisional Enforcement conference (PEC); (2) request Alternative Dispute Resolution (ADR); or (3) respond to the apparent violation addressed in this report within 30 days of the date of this letter. You may also choose to accept the apparent violation as characterized in this letter and its enclosure, in which case, the NRC will proceed with its enforcement action and propose the appropriate civil penalty if Western Soil, Inc., does not dispose of the licensed material as described above.

If you choose to request a PEC, the meeting should be held in our office in King of Prussia, PA, within **30** days of the date of this letter. The conference will provide an opportunity for Western Soil, Inc., to provide its perspective on these matters and any other information that Western Soil, Inc., believes the NRC should take into consideration in making an enforcement decision. The decision to hold a pre-decisional enforcement conference does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision.

The topics discussed during the PEC may include 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. In presenting its corrective actions, Western Soil, Inc., should be aware that the promptness and comprehensiveness of its actions will be considered in assessing any civil penalty for the apparent violation. The guidance in the enclosed excerpt from NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," (Enclosure 2) may be helpful.

The PEC would be open for public observation, and the NRC would issue a press release to announce the conference time and date.

In lieu of a PEC, Western Soil, Inc., you may also request ADR with the NRC in an attempt to resolve the issue. ADR is a general term encompassing various techniques for resolving conflict using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a

mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within **10** days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. An ADR session should be held within **45** days of the date of this letter.

If you choose to provide a written response, it should be sent to the NRC within 30 days of the date of this letter. It should be clearly marked as a "Response to Apparent Violation in NRC inspection Report No. 03020563/2018001; EA-20-101," and should include: (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; and (4) the date when full compliance will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. Additionally, your response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, 2100 Renaissance Boulevard, King of Prussia, PA 19406.

Please contact Chris Cahill, Chief, Commercial, Industrial, R&D, and Academic Branch, NRC Region I, at 610-337-5108 within **10** days of the date of this letter to notify the NRC of whether Western Soil, Inc., will disposition the gauges or to notify the NRC whether you are interested in attending a PEC or ADR or providing a written response. If you do not contact the NRC within the time specified, and an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response if you choose to provide one will be made available electronically for public inspection in the NRC Public Document Room and from the NRC Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-material-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.

Sincerely,

Blake D. Welling, Acting Director
Division of Nuclear Materials Safety

Enclosures:

1. NRC Inspection Report No. 03020563/2018001
2. NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action"

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

cc w/Encls: Roy Greaves, Director, Environment, Health, and Safety
Commonwealth of Puerto Rico

WESTERN SOIL, INC. – NRC INSPECTION REPORT NO. 03020563/2019001 DATED OCTOBER 8, 2020

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U.S. NUCLEAR REGULATORY COMMISSION
REGION I

INSPECTION REPORT

Inspection No. 03020563/2018001
EA No. EA-20-101
Docket No. 03020563
License No. 52-21368-01
Licensee: Western Soil, Inc.
Address: P.O. Box 345
Mayaguez, Puerto Rico 00681-0345

Alternate Mailing Address
Ciel Luxury Apartments
4929 Skyway Drive
Apartment 1405
Jacksonville, FL 32246-0033

Authorized Storage Location
258 Res Candelaria
Mayaguez, PR 00682-2717

Inspection Dates: February 18, 2018, to September 14, 2020

Inspector: Randolph C. Ragland, Jr. 10/8/2020
Randolph C. Ragland, Jr., Sr. Health Physicist date
Commercial, Industrial, R&D and
Academic Branch
Division of Nuclear Materials Safety

Approved By: Christopher G. Cahill 10/08/20
Christopher G. Cahill, Chief date
Commercial, Industrial, R&D and
Academic Branch
Division of Nuclear Materials Safety

EXECUTIVE SUMMARY

Western Soil, Inc.
NRC Inspection Report No. 03020563/2018001

On July 8, 2019, NRC issued an Order to Western Soil, Inc., “Order Revoking License Within 20 days Based On Nonpayment of License Fees” (ML19184A099). We confirmed that you received that Order on January 28, 2020. That Order notified Western Soil, Inc. that NRC License No. 52-21368-01 is revoked, effective 20 days from the date of the Order (i.e., February 17, , 2020), unless within the 20-day period, the licensee pays all debts due to NRC; after revocation, licensed activities are limited to decommissioning and safe, secure storage or transfer of material; and, within 60 days of the date of revocation, Western Soil, Inc., must dispose of or transfer to another authorized recipient or recipients all NRC-licensed material.

Western Soil, Inc., failed to pay applicable fees within the 20-day period, and failed to dispose or transfer all of the licensed materials to another authorized recipient or recipients.

In an attempt to facilitate the transfer of the gauges, NRC provided Western Soil, Inc. with guidance on how to register their gauges with the Conference of Radiation Control Program Directors (CRCPD) Source Collection and Threat Reduction (SCTR) program, to obtain assistance in disposing the sources; provided a list of portable gauge suppliers who may have interest in receiving the gauges; and provided guidance on how to use NRC’s Agencywide Documents Access and Management System (ADAMS) to locate other portable gauge licensees who may have an interest in receiving the gauges.

The President of Western Soil, Inc. stated that due to a down-turn in the Puerto Rican economy and external events that have caused economic pressures in Puerto Rico including two hurricanes, an earthquake, and the COVID-19 pandemic, Western Soil, Inc., lacks the funds necessary to transfer the gauges.

Apparent Violation

NRC Order LFB-19-1186, dated July 8, 2019, (confirmed receipt by the licensee on January 28, 2020) revoked Western Soil, Inc.’s NRC License No. 52-21368-01 due to non-payment of fees. Section III. A of the Order revoked Western Soil’s license, effective 20 days from the date of the Order, unless, within this 20-day period, the Licensee pays all debts due to the NRC. Section III. F of the Order required Western Soil, Inc. to dispose of or transfer to another authorized recipient all NRC licensed materials possessed under the license within 60 days of the date of revocation.

Contrary to the above, as of September 14, 2020, Western Soil, Inc. did not pay all debts due to the NRC within 20 days of the date of the Order and did not dispose of or transfer the NRC licensed materials possessed under the license to another licensed entity within 60 days from the date the license revocation became effective.

REPORT DETAILS

1. Organization and Scope of the Program

1.1 Inspection Scope

The inspector reviewed the organization and scope of activities performed under NRC License No. 52-21368-01. Information was gathered through telephone interviews and electronic mail exchanges with the President of Western Soil, Inc., two visits to the locked building where the licensed gauges are reportedly stored, and receipt of photographs of the stored gauges.

1.2 Observations and Findings

Western Soil, Inc., is a portable gauge licensee and currently possesses eight portable gauges, each with a maximum of 10 mCi Cs-137 and 50 mCi of Am-241. The licensee reports that these gauges are stored at their authorized storage facility located at 258 Res Candelaria, Mayaguez, PR.

The President of the company reported that due to a down-turn in the Puerto Rican economy, he suspended operations, locked up the authorized storage facility, and moved to Florida.

NRC's Office of Chief Financial Officer reported that Western Soil, Inc., has not paid their annual fees since 2015, and issued an Order to Western Soil, Inc., dated July 8, 2019, to revoke their license due to non-payment of fees. However, that Order was returned as undeliverable.

In January 2020, NRC Region I staff located a new mailing address for the President of Western Soil, Inc., and on January 28, 2020, NRC transmitted the Order to Western Soil, Inc., "Order Revoking License Within 20 days Based On Nonpayment of License Fees" by both electronic mail and through the US Postal Service. Receipt of that order was confirmed through a telephone call between the President of Western Soil, Inc., and the NRC inspector. That Order notified Western Soil, Inc. that NRC License No. 52-21368-01 is revoked, effective 20 days from the date of the Order, unless within the 20-day period, the licensee pays all debts due to NRC; after revocation, licensed activities are limited to decommissioning and safe, secure storage or transfer of material; and Western Soil, Inc., is required, within 60 days of the date of revocation, to dispose of or transfer to another authorized recipient or recipients all NRC-licensed material.

Western Soil, Inc. failed to pay all debts due to the NRC within 20 days of the date of the Order and did not dispose of or transfer the NRC licensed materials possessed under the license to another licensed entity within 60 days from the date the license revocation became effective.

In an attempt to facilitate the transfer of the gauges, NRC staff provided Western Soil, Inc. with guidance on how to register their gauges with the Conference of Radiation Control Program Directors Source Collection and Threat Reduction (CRCPD) (SCTR) program, for assistance with disposing the sources; provided a list of portable gauge suppliers who may have an interest in acquiring the gauges; and provided guidance

on how to use NRC's Agencywide Documents Access and Management System to locate other portable gauge licensees who may be interested in acquiring the gauges.

The President of Western Soil, Inc. stated that due to a down-turn in the Puerto Rican economy and external events that have caused economic pressures in Puerto Rico including two hurricanes, an earthquake, and the COVID-19 pandemic, Western Soil, Inc., lacks the funds necessary to transfer the gauges.

1.3 Conclusions

Western Soil, Inc., failed to pay required license fees since 2015 and failed to transfer its gauges to a licensed entity as required by NRC Order LFB-19-1186, dated July 8, 2019.

2. Safety and Security of Licensed Gauges

2.1 Inspection Scope

The inspectors performed a review of Western Soil, Inc.'s licensed activities with the primary focus on verifying the safe and secure storage of the portable gauges. Information was gathered through telephone calls with the company president, two site visits to their locked storage facility, and receipt of photographs of the stored gauges.

2.2 Observations and Findings

On two occasions, NRC visited the locked storage facility located at 258 Res Candelaria, Mayaguez, PR; however, no licensee staff were available to facilitate access to the facility. The facility was securely locked up and there were no signs of unauthorized access.

On November 5, 2019 a representative of Western Soil, Inc. sent NRC several photographs of the portable gauges stored at Western Soil, Inc.'s authorized storage location. The photographs of the gauges sent to the NRC showed that the gauges were securely stored in accordance with 10 CFR 30.34(i) security requirements.

2.3 Conclusions

Western Soil, Inc., is storing eight portable gauges at 258 Candelaria Street (Formerly McKinley Street), Mayaguez PR 00682. Photographs provided by Western Soil, Inc. show that the gauges are properly secured in accordance with the security requirements of 10 CFR 30.34(i). These gauges will require leak testing prior to transfer to a licensed entity.

3.0 Exit Meeting

The NRC inspection results were communicated to Mr. Max R. Laracuenta-Bernat, President of Western Soil, Inc., on September 14, 2020, via a telephonic exit meeting. Mr. Laracuenta-Bernat acknowledged the inspector's findings. No proprietary information was identified.

PARTIAL LIST OF PERSONS CONTACTED

Western Soil, Inc., Staff

Max R. Laracuenta-Bernat, President

NRC Staff

*#Randolph C. Ragland, Jr.
Jonathan Pflingsten, Health Physicist
Anne DeFrancisco, Acting Branch Chief

* Present at telephone entrance meeting on
February 18, 2018

Present at telephone exit meeting
September 14, 2020

INSPECTION PROCEDURES USED

IP 87124 Fixed and Portable Gauge Programs

LIST OF ACRONYMS AND ABBREVIATIONS USED

ADAMS: Agency-wide Documents Access and Management System
ADR: Alternative Dispute Resolution
CRCPD: Conference of Radiation Control Program Directors
ICR: The Institute on Conflict Resolution at Cornell University
NRC: United States Nuclear Regulatory Commission
PEC: Pre-decisional Enforcement Conference
SCTR: Source Collection and Threat Reduction (SCTR)