



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
2100 RENAISSANCE BOULEVARD, SUITE 100
KING OF PRUSSIA, PA 19406-2713**

January 14, 2021

EA-20-101

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

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED CIVIL PENALTY \$8,500 –
WESTERN SOIL, INC., NRC INSPECTION REPORT NO. 03020563/2018001**

Dear Mr. Laracuenta-Bernat:

This letter refers to inspections conducted of Western Soil, Inc. (Western Soil) between February 18, 2018, and September 14, 2020. The inspections evaluated the status of Western Soil's operations and your compliance with the Order issued by the U.S. Nuclear Regulatory Commission (NRC) on July 8, 2019 (ML19184A099)¹, revoking Western Soil's NRC license for non-payment of fees. That Order (which the NRC confirmed you received on January 28, 2020) notified you that Western Soil's NRC License No. 52-21368-01 was revoked, effective 20 days from the date of the Order, unless within the 20-day period, Western Soil paid all debts due to NRC. Because you did not pay the debts, Western Soil's license was revoked, and authorized activities were limited to decommissioning and safe, secure storage or transfer of material. Further, you were required, within 60 days of the date of revocation, to dispose of or transfer to another authorized recipient all NRC-licensed material. However, based on the results of the inspections, the NRC identified that Western Soil did not dispose of or transfer its NRC-licensed material and complete decommissioning, in apparent violation (AV) of the Order. The NRC discussed the AV with you during a telephonic exit meeting on September 14, 2020. The AV was also described in the NRC inspection report sent to you with a letter dated October 8, 2020 (ML20288A351).

In the October 8, 2020, letter transmitting the inspection report, we informed you that the AV was being considered for escalated enforcement action, including a civil penalty. In the letter, we provided you the opportunity to address the apparent violations identified in the report by either attending a pre-decisional enforcement conference (PEC), engaging the NRC in Alternative Dispute Resolution (ADR) mediation, or providing a written response before we made our final enforcement decision. We also informed you that the NRC would not propose a civil penalty if, within 30 days of the date of the letter, Western Soil completed the proper transfer or disposal of its gauges.

¹ Designation in parentheses refers to an Agency-wide Documents Access and Management System (ADAMS) accession number. Documents referenced in this letter are publicly available using the accession number in ADAMS.

In your written response to the NRC dated November 6, 2020, you acknowledged that you received the NRC's October 8, 2020 letter, and reaffirmed that Western Soil ceased operations and "suspended" all employees in 2015 and that all equipment has been "warehoused" since that time while you searched for prospective buyers. You stated that no buyers have been identified and that Western Soil does not have the financial resources to properly dispose of the gauges. You requested that the NRC dispose of the gauges without requiring payment from Western Soil. However, as the holder of an NRC license, Western Soil is responsible for complying with all applicable rules, regulations, and orders of the NRC and has the sole responsibility for the safe use, storage, and disposal of the material it was authorized to possess.

The NRC has determined that Western Soil has not met its obligation to dispose of or transfer its licensed material according to the terms of the NRC Order. Therefore, the NRC has determined that the violation of NRC requirements occurred and is proceeding with enforcement action. The violation is cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice). In assessing the significance of this violation, the NRC considered that the requirements of the Order are intended to reduce potential risk to the public and environment that may result from delayed decommissioning of inactive or insolvent facilities and sites. Western Soil has not disposed of or transferred its licensed material despite ceasing operations five years ago and despite having its license revoked over a year ago. Based on the information provided in your November 6, 2020 letter, the NRC concludes that Western Soil has failed to meet its responsibilities. As described in the subject NRC inspection report, the gauges remain secured within the locked storage facility authorized by Western Soil's NRC license, but no Western Soil employees are present at the location. Therefore, the NRC concludes that Western Soil has effectively abandoned its licensed material. Therefore, the NRC has assessed this violation at Severity Level (SL) III, in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site 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 \$8,500 is considered for a SL III violation involving abandoned sources or devices containing the amount and type of licensed material within your gauges. Because your facility has not been the subject of any escalated enforcement actions within the last two inspections, 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 Enforcement Policy. The NRC staff determined that credit for corrective action is not warranted because Western Soil has failed to take any action to address the violation. Therefore, to emphasize the importance of compliance with NRC requirements and of prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice and Proposed Imposition of Civil Penalty in the base amount of \$8,500. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC recognizes that many licensees have been impacted economically by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19). Consequently, as described in the enclosed Notice, the NRC is extending by 30 days the period of time by which the civil penalty must be paid (i.e., extending the deadline from 30 days to 60 days from the date of this Notice), and the NRC would consider a request for additional time, if appropriate. Please refer to the enclosed Notice for further instructions.

The NRC's primary interest in this matter remains ensuring that Western Soil meets its obligation to transfer or dispose of the licensed material in its possession. Accordingly, the NRC will not impose the \$8,500 civil penalty if, within 60 days of the date of this letter, Western Soil properly disposes of or transfers all sealed radioactive sources possessed under the NRC license and sends the following information documenting that the material has been transferred or disposed of to the Regional Administrator, NRC Region I, 2100 Renaissance Blvd, King of Prussia, PA 19406: (i) a completed NRC Form 314 (enclosed); and (ii) a copy of the certification from the authorized recipient that the material has been received.

If Western Soil completes the actions described above, the NRC will forgo imposition of any civil penalty and will terminate the NRC license. However, if Western Soil does not complete the above actions, the NRC will issue an Order to impose the \$8,500 civil penalty and will consider the imposition of additional daily civil penalties that would continue to be assessed until Western Soil addresses the violation by disposing of or transferring its material.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request alternative dispute resolution (ADR) mediation with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts 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 ADR program can be found 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. If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at (877) 733-9415; and (2) Christopher Cahill, Chief, Commercial, Industrial, R&D, and Academic Branch at 610-337-5108 **within 10 days** of the date of this letter. You may also contact both ICR and Mr. Cahill for additional information. Your submitted signed agreement to mediate using the NRC ADR program will stay the time period for payment of the civil penalties and the required written response, as identified in the enclosed notice, until the ADR process is completed.

You are required to respond to this letter and to follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements. 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.

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

The NRC also includes significant enforcement actions on its Web site at <https://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>. If you have any questions concerning this matter, please contact Christopher Cahill of my staff at 610-337-5108.

Sincerely,

David C. Lew
Regional Administrator

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254, "Payment Methods"
3. NRC Form 314, "Certificate of Disposition of Materials"

Docket No. 03020563

License No. 52-21368-01

cc w/Enclosures:

Roy Greaves, Director, Environment, Health, and Safety
Commonwealth of Puerto Rico

SUBJECT: WESTERN SOIL, INC. - NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF A CIVIL PENALTY DATED: DATED January 14, 2021

DISTRIBUTION w/encl:

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M Burgess, NMSS	
Enforcement Coordinators	
RII, RIII, RIV (M Kowal; J Cameron; J Groom)	
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C Cahill, DNMS, RI	
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B Klukan, ORA, RI	
C Crisden, ORA, RI	
D Garvin, ORA, RI	
S Villar, RI	
Region I OE Files (with concurrences)	

ML21007A320

DOCUMENT NAME: [https://usnrc-my.sharepoint.com/personal/mmm3_nrc_gov/Documents/MMM3/Shared Enforcement/Final Actions/Western Soil Decom NOV-III-CP EA-20-101.docx](https://usnrc-my.sharepoint.com/personal/mmm3_nrc_gov/Documents/MMM3/Shared%20Enforcement/Final%20Actions/Western%20Soil%20Decom%20NOV-III-CP%20EA-20-101.docx)

X SUNSI Review/ MMM		X Non-Sensitive □ Sensitive			X Publicly Available □ Non-Publicly Available	
OFFICE	RI/OR A	RI/DNMS	RI/OR A	RI/OR A	OE	NMSS
	M McLaughlin via email	C Cahill via email	B Klukan via email	R McKinley via email	J Peralta via email	M Burgess via email
DATE	11/16/20	11/30/20	12/11/20	12/11/20	01/07/2021	1/7/21
OFFICE	OGC				RI/DNMS	RA
NAME	L Baer via email				B Welling via email	D Lew/
DATE	12/21/20				1/8/21	1/14/21

ENCLOSURE 1

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Western Soil, Inc.
Mayaguez, Puerto Rico

Docket No.: 03020563
License No.: 52-21368-01
EA-20-101

During an NRC inspection conducted between February 18, 2018, and September 14, 2020, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

NRC Order LFB-19-1186, dated July 8, 2019, 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 paid 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 (i.e., September 26, 2019).

Contrary to the above, as of September 26, 2019, Western Soil, Inc. did not pay all debts due to the NRC within 20 days of the date of the Order and has not disposed of or transferred the NRC licensed materials possessed under the license to another licensed entity within 60 days from the date the license revocation became effective.

This is a Severity Level III violation (Enforcement Policy Section 6.3)
Civil Penalty - \$8,500 (EA-20-101)

Pursuant to the provisions of 10 CFR 2.201, Western Soil, Inc. (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 2100 Renaissance Blvd. King of Prussia, PA 19406, and a copy to the Document Control Desk, Washington, DC 20555-0001, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-20-101)" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (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. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a Demand for Information requiring you to explain why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

The NRC's primary interest in this matter remains ensuring that Western Soil, Inc. meets its obligation to transfer or dispose of the licensed material in its possession. Accordingly, the NRC will not impose the \$8,500 civil penalty if, within 60 days of the date of this letter, the Licensee properly disposes of or transfers all sealed radioactive sources possessed under the NRC license and, as with the response to the Notice of Violation, sends the following information to the NRC documenting that the material has been transferred or disposed of as described below: (i) a completed NRC Form 314; and (ii) a copy of the certification from the authorized recipient that the material has been received.

If Western Soil, Inc. completes the actions described above, the NRC will forgo imposition of any civil penalty and will terminate the NRC license. However, if the Licensee does not complete the above actions, the NRC will issue an Order to impose the \$8,500 civil penalty and will consider the imposition of additional daily civil penalties that would continue to be assessed until the Licensee addresses the violation by transferring or disposing all licensed material in its possession.

The Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Within 30 days of the date of this Notice, the Licensee must either confirm to the NRC in writing that it will pay the civil penalty or provide its written answer protesting the civil penalty. However, in the event the Licensee elects to pay the civil penalty, in recognition of the economic impact to licensees by the public health emergency caused by the Coronavirus Disease 2019 (COVID-19), the NRC is extending the period of time by which the civil penalty must be paid from 30 days to 60 days from the date of this Notice. Should the Licensee fail to pay the civil penalty within 60 days of the date of this Notice, the NRC will issue an order imposing the civil penalty.

Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation (EA-20-101)" and may: (1) deny the violation listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty. Separately, the Licensee may request an additional extension of time to pay the civil penalty as a result of impacts to the licensee from COVID-19. Such an extension request must be in writing and should explain the basis for the request and should specify the amount of additional time being requested. This extension request must be submitted to the NRC no later than 50 days from the date of this Notice (i.e., at least 10 days before the initial 60-day deadline to pay the civil penalty).

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205, should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Extension of time to pay the civil penalty request, Statement as to payment of civil penalty, or Answer to a Notice of Violation, should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 2100 Renaissance Blvd. Suite 100, King of Prussia, PA 19406, and the Document Control Center, Washington, DC 20555-0001.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agency-wide Documents Access and Management System (ADAMS), accessible from the NRC Web site 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. If personal privacy or proprietary information is necessary to provide an acceptable response, then 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 that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (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). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

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

Dated this 14th day of January, 2021.