



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION I
475 ALLENDALE RD, SUITE 102
KING OF PRUSSIA, PA 19406-1415

March 22, 2023

EA-22-128

Lewis Copeland, Jr., President
Southern Earth Sciences, Inc.
6352 Piccadilly Square Dr.
Mobile, AL 36609

**SUBJECT: NOTICE OF VIOLATION – SOUTHERN EARTH SCIENCES, INC. -
NRC INSPECTION REPORT NO. 150-00009/2022003**

Dear Lewis Copeland:

This letter refers to the inspection of Southern Earth Sciences, Inc. (SES) conducted by the U.S. Nuclear Regulatory Commission (NRC) from October 31, 2022, through November 28, 2022, with in-office review through January 10, 2023. The purpose of the inspection was to examine the activities conducted within the jurisdiction of the NRC as they related to NRC-licensed byproduct material. Within this area, the inspection consisted of a selected examination of procedures and representative records and interviews with personnel.

Based on the results of the inspection, the NRC identified two apparent violations (AVs) of NRC requirements. NRC staff discussed the AVs with you during a telephonic exit meeting on January 20, 2023. The AVs were described in the NRC inspection report sent to you with a letter dated February 16, 2023 (ML23024A097).¹ The AVs involved SES's failure to initially file for reciprocity prior to performing licensed activities in NRC jurisdiction and numerous subsequent failures to file amended reciprocity forms prior to performing licensed activities on dates other than those already submitted and approved by the NRC. Specifically, on January 6, 2022, SES staff performed licensed activities at Tyndall Air Force Base (a location of exclusive federal jurisdiction) without having filed an initial application for reciprocity with the NRC for calendar year 2022. The NRC staff identified 14 other instances of SES staff performing licensed activities at Tyndall Air Force Base on days that were not submitted for approval by the NRC. The NRC staff also identified that SES staff in Louisiana performed licensed activities on March 25, 2022, at the Naval Air Station Joint Reserve Base New Orleans (a location of exclusive federal jurisdiction) without either (1) filing an initial application for reciprocity using the license with the State of Louisiana; or (2) filing an amended Form 241 or equivalent using an already-approved reciprocity license with the NRC through SES's State of Florida license.

In the February 16, 2023, letter transmitting the inspection report, we informed you that the AVs were being considered for escalated enforcement action. In the letter, we also informed you that

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.

we had sufficient information regarding the AVs and your corrective actions to make an enforcement decision without the need for a pre-decisional enforcement conference. In an electronic mail message on March 3, 2023, Logan Fowler of your organization indicated that SES did not believe that a pre-decisional enforcement conference or further written response was needed.

Based on the information developed during the inspection, the NRC determined that violations of NRC requirements occurred. The violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in the subject inspection report. As described above, the violations involved the failure to file for reciprocity or receive a specific license from the NRC prior to performing work in NRC jurisdiction. The NRC considers the failure to file for reciprocity a significant regulatory concern because the NRC was not informed of the activities occurring in NRC jurisdiction and therefore, was not provided an opportunity to conduct inspections of licensed activities. The NRC staff also considered that the violations are related because both involved failures to file for reciprocity. Therefore, the violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III (SL III) problem. The NRC 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 \$8750 is considered for a SL III violation. Because SES has not been the subject of escalated enforcement actions within the last two 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 Enforcement Policy. The NRC has concluded that credit is warranted for SES's corrective actions taken to address the violations. Specifically, SES applied for an NRC license on November 4, 2022, which was finalized and issued by the NRC on December 22, 2022. Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, after consultation with the Director, Office of Enforcement, I have been authorized 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 SL III problem constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding: (1) the reason for the violations; (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 Inspection Report No. 150-00009/2022003. 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 "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 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/>.

Lewis Copeland, Jr.

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If you have any questions concerning this matter, please contact Christopher Cahill of my staff at 610-337-5108 or Christopher.Cahill@nrc.gov.

Sincerely,

Raymond K. Lorson
Regional Administrator

Enclosure:
Notice of Violation

Docket No. 150-00009
License No. FL-3025-1

cc w/Encl:
S. Mitchell, Southern Earth Sciences, Inc.
L. Fowler, Southern Earth Sciences, Inc.
K. Meyn, Southern Earth Sciences, Inc.
State of Florida
State of Louisiana

SUBJECT: NOTICE OF VIOLATION – SOUTHERN EARTH SCIENCES, INC. -
 NRC INSPECTION REPORT NO. 150-00009/2022003: DATED March 22, 2023

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X SUNSI Review/MMM		X Non-Sensitive □ Sensitive			X Publicly Available □ Non-Publicly Available	
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DATE	3/06/23	3/06/23	3/07/23	3/07/23	3/14/23	3/14/23
OFFICE					RI/DRSS	RA
NAME					B Welling	R Lorson
DATE					3/14/23	3/21/23

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ENCLOSURE

NOTICE OF VIOLATION

Southern Earth Sciences, Inc.
Mobile, Alabama

Docket No.: 150-00009
License No.: FL-3025-1
EA-22-128

During an NRC inspection conducted from October 31, 2022, through November 28, 2022, with in-office review through January 10, 2023, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 30.3 requires, in part, that no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific license issued in accordance with the regulations in Chapter I.

10 CFR 150.20(a)(1) states, in part, that any person who holds a specific license from an Agreement State is granted a general license to conduct the same activity in non-Agreement States subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b) requires, in part, that any person engaging in activities in Non-Agreement States, at least 3 days before engaging in each activity for the first time in a calendar year, file a submittal containing an NRC Form 241 "Report of Proposed Activities in Non-Agreement States," a copy of its Agreement State specific license, and the appropriate fee with the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office.

Contrary to the above, on January 6, 2022, Southern Earth Sciences, Inc., which was authorized for possession and use of radioactive material under a specific license issued by the State of Florida, used a portable nuclear gauging device containing byproduct material in an area of exclusive Federal jurisdiction without a specific or general license issued by the NRC and without filing a submittal containing an NRC Form 241, a copy of its Agreement State specific license, and the appropriate fee with the appropriate U.S. Nuclear Regulatory Commission Regional Office for the Region in which the Agreement State that issued the license is located. Specifically, Southern Earth Sciences, Inc. possessed and used a portable nuclear gauge at Tyndall Air Force Base, a location of exclusive Federal jurisdiction, on January 6, 2022, prior to submitting a request for the performance of reciprocity with the NRC, or, alternatively, possessing a specific license with the NRC authorizing the same activity.

- B. 10 CFR 30.3 requires, in part, that except for persons exempt as provided in this part and Part 150 of Title 10 Chapter I of the *Code of Federal Regulations*, no person shall own, possess, or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in Title 10 Chapter I.

10 CFR 150.20(a) states, in part, that any person who holds a specific license from an Agreement State is granted a general NRC license to conduct the same activity in areas of exclusive Federal jurisdiction within Agreement States, subject to the provisions of 10 CFR 150.20(b)

10 CFR 150.20(b)(2) requires, in part, that any person engaging in activities in areas of exclusive Federal jurisdiction within Agreement States, under the general licenses

Enclosure

provided in this section shall file an amended NRC Form 241 or letter with the Regional Administrator to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241.

Contrary to the above, on fifteen occasions from February 8, 2022, through October 24, 2022, Southern Earth Sciences, Inc., which was authorized for possession and use of radioactive material under specific licenses issued by the State of Florida and State of Louisiana, performed specifically licensed activities at Tyndall Air Force Base and Naval Air Station Joint Reserve Base New Orleans, locations of exclusive Federal jurisdiction, without having filed an amended NRC Form 241 or letter with the Regional Administrator to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241 or later amended and approved NRC Form 241s.

This is a Severity Level III Problem (NRC Enforcement Policy Section 6.9).

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in Inspection Report No. 150-00009/2022003. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, (EA-22-128)," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region I, 475 Allendale Rd. Suite 102, King of Prussia, PA 19406-1415 within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

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 Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the 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 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 22nd day of March, 2023.