

NUCLEAR REGULATORY COMMISSION
[Docket No. 030-34866; NRC-2018-0083]
In the Matter of Qal-Tek Associates, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Order imposing civil monetary penalty; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order imposing civil monetary penalty of \$22,400 to Qal-Tek Associates, LLC. After consideration of the licensee's request for mitigation of the proposed civil penalty amount, the NRC staff determined that the violations occurred and that adequate basis did not exist for mitigation of the civil penalty amount of \$22,400.

DATES: This Order was effective March 29, 2018.

ADDRESSES: Please refer to Docket ID **NRC-2018-0083** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2018-0083**. Address questions about NRC dockets to Jennifer Borges; telephone: 301-287-9127; e-mail: Jennifer.Borges@nrc.gov. For

technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: G. Michael Vasquez, Region IV, telephone: 817-200-1182; e-mail Michael.Vasquez@nrc.gov and John Kramer, Region IV, telephone: 817-200-1121; e-mail John.Kramer@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Arlington, Texas, this 26th day of April, 2018.

For the Nuclear Regulatory Commission.

/RA/

Kriss M. Kennedy,
Regional Administrator,
Region IV.

Attachment: Order

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of Qal-Tek Associates, LLC, Idaho Falls, ID

Docket No. 030-34866
License No. 11-27610-01

EA-17-101

ORDER IMPOSING CIVIL MONETARY PENALTY
(EFFECTIVE UPON ISSUANCE)

I

Qal-Tek Associates, LLC (Qal-Tek or the Licensee) is the holder of Materials License No. 11-27610-01 issued on December 28, 1998, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to part 30 of title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes the use and possession of nuclear materials in accordance with conditions specified therein. The facility is located on the Licensee's site in Idaho Falls, Idaho.

II

The NRC conducted an inspection of the Licensee's activities on April 24-25, 2017. The results of this inspection indicated that the Licensee had not conducted its activities in compliance with the NRC's requirements associated with packaging radioactive material to ensure that radiation levels do not exceed regulatory limits. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated December 12, 2017. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated January 11, 2018. In its response, the Licensee did not dispute the violations or their severity, but requested mitigation of the proposed civil penalty amount.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined as set forth in the Appendix to this Order that the violations occurred as stated and that adequate basis does not exist for mitigation of the civil penalty amount. Therefore, a civil penalty in the amount of \$22,400 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$22,400 within 30 days of the issuance date of this Order, in accordance with NUREG/BR-0254 "Payment Methods" (<http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0254/>). In addition, at the time payment is made, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555.

V

In accordance with 10 CFR 2.202, the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 30 days of the issuance date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene

(hereinafter “petition”), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC’s public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF). Additional guidance on

PDF submissions is available on the NRC public Web site at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document.

The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at 866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR

2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff.

Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "Cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires

submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the Federal Register and served on the parties to the hearing.

If a person (other than Qal-Tek) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Qal-Tek or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness,

is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing or alternative dispute resolution (ADR), or written approval of an extension of time in which to request a hearing or ADR, the provisions specified in Section IV above shall be final 30 days from the issuance date of this Order without further order or proceedings. If an extension of time for requesting a hearing or ADR has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing or ADR request has not been received. If ADR is requested, the provisions specified in Section IV shall be final upon termination of an ADR process that did not result in issuance of an order.

For the Nuclear Regulatory Commission.

/RA/

Kriss M. Kennedy
Regional Administrator
NRC Region IV

Dated this 29th day of March 2018

APPENDIX
EVALUATION AND CONCLUSION

On December 12, 2017, the U.S. Nuclear Regulatory Commission (NRC) issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) for violations identified during an NRC inspection. Qal-Tek Associates, LLC (Qal-Tek or Licensee) responded to the Notice on January 11, 2018. The Licensee did not dispute the violations or severity, however, the Licensee requested mitigation of the proposed civil penalty amount. The NRC's evaluation and conclusion regarding the Licensee's request is as follows:

Summary of the Licensee's Request for Mitigation of Civil Penalty Amount

The Licensee stated that the problem was identified by the Licensee because of their self-monitoring effort of proper package receiving operations. The Licensee stated that it implemented timely actions to identify the root cause of the problem and develop corrective actions. Also, the Licensee stated that it discontinued transporting similar types of packages until corrective actions were implemented.

NRC Evaluation of Licensee's Request for Mitigation of Civil Penalty Amount

The NRC Enforcement Policy, Section 2.3.4.b.2(b), states, in part, that when a problem requiring corrective action is identified through an event (i.e., the problem is self-revealing), the decision as to whether to give the Licensee credit for actions related to identification normally should consider the ease of discovery, whether the event

occurred as a result of a Licensee's self-monitoring effort (i.e., whether the Licensee was "looking for the problem"), the degree of Licensee initiative in identifying the problem, and whether prior opportunities existed to identify the problem. Any of these considerations may be overriding if particularly noteworthy or particularly egregious.

In this case, the Licensee discovered the problem because the Licensee was following the requirements for package receipt per 10 CFR 20.1906, "Procedures for receiving and opening packages." Specifically, this regulation requires Licensees to monitor the external surfaces of packages for radioactive contamination and radiation levels as soon as practical after receipt of the package. But for its adherence to these requirements, there is no indication that the Licensee would have otherwise discovered the problem.

In addition, the NRC determined that identification credit should be withheld due to two prior opportunities that existed for the Licensee to identify the problem prior to the event. The first opportunity involved the preparation of the package from Idaho Falls, Idaho, to New York City. A Qal-Tek radiation safety officer, who was under schedule pressure, deviated from using the typical containment system that possessed a positive fastening device because of package weight considerations. This change resulted in the radiation safety officer using a containment system that did not have a positive fastening device. This change should have caused a review to determine if shipping requirements were satisfied, but did not. When the package arrived in New York City another Qal-Tek radiation safety officer had an opportunity to identify that the package containment system did not utilize a positive fastening device, failed to do so, and used the same package for the return shipment back to Idaho Falls resulting in the event. Further, the

lack of a fastening device on the containment system was apparent and should have been identified by anyone handling the containment system.

As documented in the NRC Inspection Report 030-34866/2017-001, dated October 11, 2017 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession ML17236A425), the NRC concluded that both radiation safety officers lacked a questioning attitude. Specifically, both individuals recognized that the containment system did not have a positive fastening device and neither raised the concern to their management. Rather, both individuals used a wooden board as an incorrect method to secure the lid of the containment system.

Conclusion

Based on its evaluation, the NRC has concluded that these violations occurred as stated and that the Licensee did not provide an adequate basis for mitigation of the proposed civil penalty. Therefore, the NRC will impose a civil penalty in the amount of \$22,400.