



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

May 15, 2019

EA-18-123

Ms. Tiffany Davis
Chief Operating Officer
Solis Tek, Incorporated
853 Sandhill Avenue
Carson, CA 90746

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$43,500 (NRC INVESTIGATION REPORT NO. 1-2017-017 – SOLIS TEK, INCORPORATED)

Dear Ms. Davis:

This letter refers to the investigation initiated by the U.S. Nuclear Regulatory Commission's (NRC's) Office of Investigations (OI) on June 20, 2017, and the inspection conducted by NRC staff from July 9, 2018, to August 22, 2018, regarding the distribution of bulbs containing radioactive material (krypton-85) without the required licensing authorization. After this investigation was completed, Solis Tek, Inc., and Generation Alpha, Inc. merged, and Solis Tek, Inc., is now a subsidiary of Generation Alpha, Inc.

The results of the investigation and inspection, and details regarding the apparent violations were described in the letter the NRC issued to you on January 9, 2019, which also included the inspection report and a summary of the investigation findings. In the letter, you were informed that the NRC was considering escalated enforcement against Solis Tek for four apparent violations, and you were offered a choice to either request a predecisional enforcement conference (PEC) with the NRC or to request Alternative Dispute Resolution (ADR) mediation. You requested a PEC.

On February 20, 2019, a closed PEC was conducted with Solis Tek to discuss the apparent violations, their significance, their root causes, the potential willfulness of the violations, and your corrective actions. The PEC was closed to public observation because we discussed the findings of an OI report that has not been publicly disclosed. Based on the information developed during the investigation, records inspection, and PEC, including the information that you provided during and after the conference, the NRC has determined that four violations of NRC requirements have occurred. These violations are cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding them are described in detail in Enclosures 1 through 3 of the NRC's January 9, 2019, letter to you.

The violations involved: (1) willful failure to obtain an NRC license authorizing distribution of licensed material to unlicensed persons prior to beginning distribution, (2) non-willful failure to obtain an NRC license authorizing distribution of licensed material to unlicensed persons prior to

beginning distribution, (3) non-willful failure to receive authorization to import radioactive material into the United States by a general or specific license under the regulations in Title 10 Code of Federal Regulations (10 CFR) Part 110, prior to importing such material, and (4) non-willful failure to submit a timely annual report for 2017 on or before January 31, 2018, containing complete and accurate information.

The NRC considers these violations to be significant because they impacted the NRC's ability to perform its regulatory oversight function to ensure that the byproduct material was possessed, stored, imported, and used adequately to protect public health and safety, and the environment.

In addition, the NRC considers your actions regarding the violation for failure to obtain a license to be willful. Specifically, on a number of occasions, staff from the New Jersey Bureau of Environmental Protection and from the NRC provided Solis Tek with information regarding the existence of regulatory requirements and identified the need for Solis Tek to meet these requirements. However, despite Solis Tek's awareness of these requirements, Solis Tek failed to pursue necessary action to ensure compliance. Willful violations are of significant concern to the NRC because the NRC's regulatory programs rely upon the integrity of entities, applicants, and licensees to comply with NRC regulations and requirements.

Each of the four violations identified in the Notice have been categorized in accordance with the NRC Enforcement Policy as a Severity Level III violation. The NRC Enforcement Policy may be found on the NRC website at www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

Solis Tek has not previously been the subject of escalated enforcement action. However, because Violation 1, as identified in the enclosed Notice, was determined to be willful, the NRC considered whether credit was warranted for *Identification* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. Based on the fact that the violation was not identified by Solis Tek, the NRC has determined that *Identification* credit is not warranted for Violation 1.

For all four violations identified in the Notice, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process described in Section 2.3.4 of the Enforcement Policy. Solis Tek's corrective actions included submitting an application and receiving NRC license approval for the required exempt-distribution and possession licenses, creating the role of Compliance Manager, and submitting the required annual reports to NRC. NRC determined that these short term corrective actions to restore compliance are adequate, and will be verified at the next inspection. The licensee also discussed some long term corrective actions, including, having or developing procedures and training, implementing receipt and quality control checks, closing the East Coast facility, upper management presence and oversight at distribution facilities, and improving the inventory tracking system for better data collection in the annual reports. However, these long term corrective actions were insufficiently described and documented to provide NRC adequate confidence of their effectiveness in ensuring a violation would not occur in the future. Such long term corrective actions should be comprehensive and documented to (1) address the willfulness aspects of Violation 1, (2) ensure that the licensee will comply with all applicable requirements (e.g., licensee only distributes what is authorized on the license, and measures are taken to ensure that a license amendment is obtained before distributing products not authorized on the license or from a location not identified on the license), and (3) ensure that future annual reports will be submitted on time, and with the required content. Therefore, the NRC has determined that *Corrective Action* credit in accordance with the NRC Enforcement Policy is not warranted.

NRC also determined that due to the apparent, common cause of the four violations, it was appropriate to characterize the four violations as a single Severity Level III problem.

While the NRC recognizes that normal application of the civil penalty assessment process in accordance with Section 2.3.4 of the Enforcement Policy would have resulted in a civil penalty of twice the base civil penalty, we considered exercising discretion in accordance with Section 2.3.4 of the Enforcement Policy to increase the civil penalty due to the financial gain involved. The deliberate failure to obtain the appropriate NRC license resulted in the avoidance of the fees associated with initial application and corresponding annual fees. In addition, a decision to cease distribution until the appropriate license could be obtained would have resulted in lost income from the sales of product during that timeframe. Therefore, due to the economic gain accrued as a result of the violation, and to emphasize the significance of deliberate violations and the importance of compliance with regulatory requirements, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$43,500 (three times the base civil penalty amount of \$14500) is being issued. In addition, issuance of this Notice constitutes escalated enforcement action, which may subject Solis Tek to increased inspection effort.

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) with the NRC in an attempt to resolve this issue. Alternative dispute resolution 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 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 in Enclosure 3 and at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution 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 Institute on Conflict Resolution at 877-733-9415, and (2) Hipólito J. González at 301-415-5637 within 10 days of the date of this letter. You may also contact the Institute on Conflict Resolution for additional information about ADR. Your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day 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 should follow the instructions specified in the enclosed Notice when preparing your response. Although short term corrective actions appear to have been adequate, the long term corrective actions were insufficient. Please ensure your written response adequately address those long term corrective actions. 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.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," 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 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 or proprietary information so that it can be

made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions>.

Should you have any questions regarding this letter or the enclosed Notice or report, please contact Hipólito J. González, Branch Chief, Division of Material Safety, Security, State, and Tribal Programs, Office of Nuclear Materials Safety and Safeguards at (301) 415-5637.

Sincerely,

/RA/

George A. Wilson, Director
Office of Enforcement

Docket: 030-39036

License: 29-35415-01E

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc: State of New Jersey
State of California

SUBJECT: LETTER TO SOLIS TEK REGARDING NRC INVESTIGATION REPORT 1-2017-017
 DATED: 05/15/19

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NAME	MBurgess	JPeralta	KGamin	GWilson	
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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Solis Tek, Incorporated
Carson, California

Docket No. 030-39036
License No. 29-35415-01E
EA-18-123

Based on the 2017 and 2018 Nuclear Regulatory Commission (NRC) investigation and inspection of the Solis Tek, Inc. importation and distribution of bulbs containing radioactive material (krypton-85), four violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a total civil penalty of \$43,500 pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and Title 10 of the *Code of Federal Regulations* (CFR) 2.205. The particular violations and associated civil penalty are set forth below:

Violation 1

Title 10 of the Code of Federal Regulations (10 CFR) section 30.3(a), "Activities requiring license" states, in part, that "no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter."

10 CFR § 30.15(a)(8)(iv), states, in part, that there is an exemption to the requirement for a license in 10 CFR § 30.3(a) for persons who receive, possess, use, transfer, own or acquire electron tubes containing not more than specified quantities of byproduct material. However, the exemption in 10 CFR § 30.15(a) excludes "persons ... who initially transfer for sale or distribution" such electron tubes.

10 CFR § 30.15(b) states, in part, that any person who desires to initially transfer for sale or distribution the products exempted in 10 CFR § 30.15(a) should apply for a specific license pursuant to 10 CFR § 32.14, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to 10 CFR § 30.15(a).

Contrary to the above, Solis Tek willfully distributed material to unlicensed persons without an NRC license to distribute. Specifically, from February 24, 2017 through June 12, 2017, Solis Tek willfully transferred for sale or distribution from its New Jersey (NJ) location, approximately 1785 Kr-85 bulbs containing byproduct material to unlicensed persons without obtaining a specific license pursuant to 10 CFR § 32.14 authorizing such transfers.

Violation 2

10 CFR § 30.3(a), "Activities requiring license" provides, in part, that "no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter."

10 CFR § 30.15(a)(8)(iv), provides an exemption to the requirement for a license in 10 CFR § 30.3(a) for persons who receive, possess, use, transfer, own or acquire electron tubes containing not more than specified quantities of byproduct material. However, the exemption in 10 CFR § 30.15(a) excludes “persons ... who initially transfer for sale or distribution” such electron tubes.

10 CFR § 30.15(b) provides, in part, that any person who desires to initially transfer for sale or distribution the products exempted in 10 CFR § 30.15(a) should apply for a specific license pursuant to 10 CFR § 32.14, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to 10 CFR § 30.15(a).

Contrary to the above, Solis Tek distributed material to unlicensed persons without obtaining a specific license pursuant to 10 CFR § 32.14 authorizing such transfers. Specifically, from January 2014 through February 5, 2018, Solis Tek initially transferred for sale or distribution from the Keegan Avenue, Carson, CA location, approximately 80,000 Kr-85 bulbs containing byproduct material to unlicensed persons without obtaining a specific license pursuant to 10 CFR § 32.14 authorizing such transfers. In addition, from November 2014 through February 23, 2017, Solis Tek initially transferred for sale or distribution from the NJ location, approximately 11,913 Kr-85 bulbs containing byproduct material to unlicensed persons without obtaining a specific license pursuant to 10 CFR § 32.14 authorizing such transfers.

Violation 3

10 CFR § 110.5 states, in part, that no person may export any nuclear equipment or material listed in 10 CFR § 110.8 and 10 CFR § 110.9, or import any nuclear equipment or material listed in 10 CFR § 110.9a, unless authorized by a general or specific license issued under 10 CFR Part 110.

10 CFR § 110.9a provides, in part, a list of nuclear equipment and material under NRC import licensing authority, and includes byproduct material under § 110.9a(d) (i.e. krypton-85).

10 CFR § 110.20(a) states, in part, that a person may use an NRC general license as authority to export or import nuclear equipment or material, if the nuclear equipment or material to be exported or imported is covered by the NRC general licenses described in 10 CFR § 110.21 through 10 CFR § 110.27. If an export or import is not covered by the NRC general licenses described in 10 CFR § 110.21 through 10 CFR § 110.27, a person must file an application with the Commission for a specific license in accordance with 10 CFR § 110.31 through 10 CFR § 110.32.

10 CFR § 110.27(a) states, in part, that except as provided in 10 CFR § 110.27(b) and 10 CFR § 110.27(c), a general license is issued to any person to import byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material under the relevant NRC or Agreement State regulations.

Contrary to the above, Solis Tek imported byproduct material into the United States without being authorized by a general or specific license issued under the regulations in 10 CFR Part 110. Specifically, on November 21, 2014, Solis Tek imported approximately 1804 bulbs, and on January 28, 2015 imported approximately 5028 bulbs, containing Kr-85, manufactured in China, to its NJ location without having a possession license issued by the NRC or an Agreement State for that location, or without first obtaining a specific import license from the NRC. In addition, on approximately 38 occasions from January 8, 2014, to October 6, 2017, the

licensee imported a total of approximately 82,885 bulbs containing Kr-85, manufactured in China, to its Keegan Avenue, Carson, CA location without having a possession license issued by the NRC or an Agreement State for that location, or without first obtaining a specific import license from the NRC.

Violation 4

10 CFR § 32.16(a) and (c)(1) require, in part, that each person licensed shall maintain records of all transfers of byproduct material and shall file a report, covering the preceding calendar year, on or before January 31 of each year.

10 CFR § 32.16(a) and (b) require, in part that the report: (a)(1) must include the license number; (a)(2) must indicate that products are transferred for use under 10 CFR § 30.15, giving the specific paragraph designation; and (b)(2) must include for each radionuclide in each type of product and each model number, if applicable, the total quantity of the radionuclide.

Contrary to the above, Solis Tek failed to submit annual reports for 2017 on or before January 31 of the following year. In addition, the licensee's report, which was filed on June 15, 2018, failed to include the following required information: (1) that the products were transferred for use under 10 CFR § 30.15 giving the specific paragraph designation; and (2) the radionuclide in each type of product and each model number; and the total quantity of the radionuclide.

This is a Severity Level III problem (Section 6.3.c.11)
Civil Penalty - \$43,500 (EA-18-123)

The NRC has concluded that adequate corrective actions have not yet been implemented.

Pursuant to the provisions of 10 CFR 2.201, Solis Tek, Incorporated is hereby required to submit, within 30 days of the date of this Notice, a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S., Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville, MD 20852-2738, and the Document Control Desk, Washington, DC 20555-0001. This reply should be clearly marked as a "Reply to a Notice of Violation (EA-18-123)" and should include for each violation: (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 previous docketed correspondence, if the correspondence adequately addresses the information required. If an adequate response 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 your license should not be modified, suspended, or revoked or why the NRC should not take other proper action. Consideration may be given to extending the response time for good cause shown.

You may pay the civil penalty proposed above, in accordance with NUREG/BR-0254 (Enclosure 2) 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. Should you fail to answer within 30 days of the date of this Notice, the NRC may issue an order imposing the civil penalty. Should you 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-18-123)" and may: (1) deny the violations 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.

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 Solis Tek, Incorporated, 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, Statement as to payment of civil penalties, and Answer to a Notice of Violation, should be labeled with the case number EA-18-123 and addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S., Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville, MD 20852-2738, and the Document Control Desk, 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 Agencywide 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, or proprietary 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 2 working days of receipt.

Dated this 15th day of May, 2019