



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

April 27, 2004

EA-03-128

Mr. Richard E. Booth III, President
All Tech Corporation
P.O. Box 4728
2925 Garrett Way
Pocatello, ID 83205

**SUBJECT: NOTICE OF VIOLATION & PROPOSED IMPOSITION OF CIVIL PENALTY -\$6,000
(NRC OFFICE OF INVESTIGATIONS REPORT 4-2003-012)**

Dear Mr. Booth:

This refers to the predecisional enforcement conference conducted on September 15, 2003, in Pocatello, Idaho, to discuss apparent violations of NRC requirements. A conference attendance list is included as Enclosure 2. The apparent violations included: (1) a willful failure to provide complete and accurate information to an NRC inspector during an inspection on February 11, 2002; and (2) a failure to conduct a physical inventory of NRC-licensed gauges every 6 months. The apparent failure to provide complete and accurate information to the NRC concerned the location of certain gauges (Troxler Electronic Laboratories, Inc., Model 2401) containing NRC-licensed material owned by All Tech Corporation (All Tech) at the time of the inspection. The apparent violations were discussed during a telephonic exit briefing with you on August 4, 2003, and were described in a letter dated August 21, 2003.

At the predecisional enforcement conference, All Tech personnel denied having deliberately provided incomplete or inaccurate information to the NRC's inspector, alleged that there were errors in the transcript of an interview of an All Tech employee by the NRC's Office of Investigations (OI), and informed the NRC that the gauges in question had been picked up by Qal-Tek Associates (Qal-Tek) just prior to the NRC's inspection on February 11, 2002, and thus were not in All Tech's possession on the day of the inspection. All Tech stated that a Qal-Tek employee had agreed to take the gauges to determine whether they could be repaired and, after determining that Qal-Tek could not repair them, returned them. All Tech also stated that there were no records of this transfer, and no invoices because Qal-Tek returned the gauges without charge. With regard to inventorying gauges, All Tech personnel produced a gauge inventory record at the conference and asserted that inventories had been performed during the period in question.

At the conference, All Tech personnel also described several corrective actions aimed at improving All Tech's control of its inventory of gauges and associated record-keeping. These included: 1) requiring that the gauges, and not just their cases, be inventoried; 2) requiring that two people be involved in all audits; 3) requiring that all gauge service personnel sign gauges

out on a log before removing gauges from All Tech's facility; and 4) requiring that the log be maintained as a permanent record.

The NRC has decided not to pursue a violation of inventory requirements based on the gauge inventory record that you produced at the conference. Nonetheless, it is apparent that your method of conducting gauge inventories was not adequate at the time of NRC's February 2002 inspection, because you inventoried only the cases and did not verify that the gauges were actually in the cases. This method of conducting gauge inventories may have contributed to the loss or theft of two gauges that were found in the Portneuf river in October 2002.

Following the conference, the NRC followed up on each of All Tech's assertions regarding whether All Tech was in possession of Troxler Electronics, Inc., Model 2401 gauges at the time of NRC's February 2002 inspection. First, we reviewed the original audio tape of the interview of your General Manager conducted by OI and compared it to the original transcript. While there were some errors in the transcript relating to the identity of the person speaking, the identity of the person speaking was clearly evident from listening to the tape and considering the context of the statements made during the interview. These errors were minor in their nature. Our conclusion is that the transcript provided an overall accurate accounting of the salient points.

We also interviewed current Qal-Tek personnel and a former Qal-Tek employee who was alleged by your General Manager to have picked up the gauges from All Tech before the NRC's inspection in February 2002. None of these individuals corroborated the information All Tech provided at the conference. In fact, all were adamant that Qal-Tek had neither picked up nor evaluated the gauges in question, and that Qal-Tek would not have taken gauges from All Tech without the use of an invoice to document the transaction. The former Qal-Tek technician who was alleged to have picked up the gauges recalled calibrating some gauges at All Tech's facility, and recalled that All Tech had inquired whether he could calibrate Troxler Model 2401 gauges. However, the technician stated that calibrations were not performed on the Troxler Model 2401 gauges because Qal-Tek did not have the necessary software or equipment, and stated that he did not transport the gauges from All Tech's facility.

Based on the information developed during the NRC's inspection and investigation, and our evaluation of the information that you provided at the conference, the NRC has determined that a violation of NRC requirements occurred. This violation is cited in the enclosed Notice of Violation (Notice), and involves the deliberate failure to provide information to the NRC that was complete and accurate in all material respects during a February 2002 inspection and during the September 2003 conference. Specifically, during the inspection, your General Manager and the NRC inspector discussed four cases (boxes) for Troxler Model 2401 gauges. The inspector lifted one of the cases, which appeared to the inspector to be empty, but the General Manager did not inform the inspector that All Tech had purchased four Troxler Model 2401 gauges the previous year. The General Manager's entire conduct, including statements of commission and omission, created the impression that All Tech did not own Troxler Model 2401 gauges, and was material because it prevented the NRC from determining during the inspection whether radioactive material which All Tech owned was properly stored and secured. In addition, your General Manager stated at the predecisional enforcement conference that the four Troxler Model 2401 gauges were in the possession of Qal-Tek at the time of the inspection, when they

were not. This statement was material because it had the potential to affect an NRC enforcement decision.

The NRC must be able to rely on licensees and their employees to conduct their activities in accordance with NRC requirements, and to provide complete and accurate information to the NRC during its inspections. In this case, the actions of your employee prevented the NRC from carrying out its responsibility to ensure that All Tech was storing and securing radioactive material in accordance with NRC requirements. Therefore, this violation is categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III violation.

In accordance with the Enforcement Policy, a civil penalty with a base value of \$3,000 is considered for a Severity Level III violation. Because the violation was committed willfully, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The NRC determined that credit for *Identification* is not warranted because the violation was identified by the NRC through its inspection and investigation. The NRC determined that credit for *Corrective Action* is not warranted because no corrective action for the deliberate inaccurate statements were proposed or taken. This results in the assessment of a civil penalty at two times the base value or \$6,000.

Therefore, to emphasize the importance of providing complete and accurate information to the NRC, and the significance we attach to impeding the conduct of an NRC inspection, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$6,000. In addition, issuance of this Notice constitutes escalated enforcement action, which may subject All Tech to increased inspection effort.

All Tech is required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. Please include in your response a description of corrective actions to assure that your employees will provide complete and accurate information to the NRC in the future. 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," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from

All Tech Corporation

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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 www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Bruce S. Mallett
Regional Administrator

Docket No.: 030-35321
License No.: 11-27657-01

Enclosures:

- 1) NOV & Proposed Imposition of Civil Penalty
- 2) Predecisional Enforcement Conference Attendance List
- 3) NUREG/BR-0254 Payment Methods (Licensee only)

cc w/Enclosures 1-2:
State of Idaho Radiation Control Program Director

Enclosure 1

**NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY**

All Tech Corporation
Pocatello, Idaho

Docket No. 030-35321
License No. 11-27657-01
EA-03-128

During an NRC investigation conducted from March 18, 2003 to May 22, 2003, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, 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:

10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, or information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects.

Contrary to the above, on February 11, 2002, during an inspection of All Tech Corporation's facility in Pocatello, Idaho, and during a September 15, 2003, predecisional enforcement conference, All Tech Corporation's General Manager and Radiation Safety Officer provided information to the NRC that was not complete and accurate in all material respects concerning four Troxler Electronic Laboratories, Inc. Model 2401 gauges containing licensed material. Specifically, during the inspection, the General Manager and the NRC inspector discussed four cases (boxes) for Troxler Model 2401 gauges. The inspector lifted one of the cases, which appeared to the inspector to be empty, but the General Manager did not inform the inspector that All Tech had purchased four Troxler Model 2401 gauges the previous year. The General Manager's entire conduct, including statements of commission and omission, created the impression that All Tech did not own Troxler Model 2401 gauges, and was material because it prevented the NRC from determining during the inspection whether radioactive material which All Tech owned was properly stored and secured. In addition, the General Manager stated at the predecisional enforcement conference that the four Troxler Model 2401 gauges were in the possession of Qal-Tek at the time of the inspection, when in fact they were not. This statement was material because it had the potential to affect an NRC enforcement decision.

This is a Severity Level III violation (Supplement VII).
Civil Penalty - \$6,000

Pursuant to the provisions of 10 CFR 2.201, All Tech Corporation (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, 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-03-128" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why,

(3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above or the cumulative amount of the civil penalties if more than one civil penalty is proposed, 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. Should the Licensee fail to answer within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty, an order imposing the civil penalty will be issued. 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" 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 factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply 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 due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, 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 response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Frank Congel, 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011.

Because your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. 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 withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (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).

In accordance with 10 CFR 19.11, you are required to post this Notice within two working days.

Dated this 27th day of April 2004

Enclosure 2

Predecisional Enforcement Conference

September 15, 2003
Pocatello, Idaho

Attendance List

All Tech Corporation

Richard E. Booth III, President
Billy H. Berry, General Manager

Nuclear Regulatory Commission

Elmo E. Collins, Director, Division of Nuclear Material Safety, NRC Region IV

Michael Fuller, Senior Health Physicist, Nuclear Materials Inspection Branch, DNMS, NRC
Region IV

Michael Vasquez, Enforcement Specialist, Allegation Coordination & Enforcement Staff, NRC
Region IV

All Tech Corporation - EA-03-128

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| Gardin - KEG | Shaffer - MRS |
| Cain - CLC | Spitzberg - DBS |
| McLean - MLM1 | OEMAIL |
| Bhalla - NXB | Burgess - MLB5 |
| Longo - GML | Armenta - JXA |

ADAMS: Yes No Initials: GFS
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| SANBORN | SHAFFER | COLLINS | M VASQUEZ | CONGEL |
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| 2/29/04 | 3/1/04 | 3/3/04 | 3/26/04 | 4/22/04 |
| OGC | DRA | RA | | |
| LONGO | GWYNN | MALLETT | | |
| NLO -by email | /BMallett for/ | / RA / | | |
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