



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

April 27, 2004

IA-03-026

Mr. Billy H. Berry
[HOME ADDRESS DELETED
UNDER 10 CFR 2.390(a)]

**SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT 4-2003-012)**

Dear Mr. Berry:

This refers to the predecisional enforcement conference conducted in Pocatello, Idaho on September 15, 2003 to discuss the results of an NRC investigation of your activities as the General Manager and Radiation Safety Officer (RSO) for All Tech Corporation (All Tech), a licensee of the NRC. The investigation determined that you deliberately provided incomplete and inaccurate information to an NRC inspector during a February 2002 inspection at All Tech's facility in Pocatello, Idaho, regarding All Tech's possession of gauges containing NRC-licensed material. On August 4, 2003, we informed you by telephone of the results of the investigation, informed you that the NRC was considering enforcement action against you, and gave you the opportunity to meet with us in a predecisional enforcement conference before the NRC made a final enforcement decision. On August 21, 2003, we sent you a letter describing the results of the investigation and our preliminary determination that you had violated the NRC's rule on deliberate misconduct, which prohibits licensee employees from deliberately providing NRC incomplete or inaccurate information of a material nature.

At the predecisional enforcement conference, you denied having deliberately provided incomplete or inaccurate information to the NRC's inspector, alleged that there were errors in the transcript of your interview 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) prior to the NRC's inspection in February 2002 and thus were not in All Tech's possession on the day of the inspection. You stated that an employee of Qal-Tek had agreed to take the gauges, determine whether they could be repaired, and return them if they could not be repaired. You also stated that there were no records of this transfer, and no invoices because Qal-Tek determined that the gauges could not be repaired and returned them to All Tech without charge. Enclosure 2 is a list of predecisional enforcement conference attendees.

Following the conference, the NRC followed up on each of your 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 your interview 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 whom you stated picked up the gauges from All Tech before the NRC's inspection in February 2002. None of these individuals corroborated the information you 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 investigation, as well as our evaluation of information provided by you and your employer at the predecisional enforcement conference, the NRC has determined that a deliberate violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation and involves deliberately providing the NRC with information that you knew was incomplete and inaccurate. Specifically, during the inspection, you discussed four cases (boxes) for Troxler Model 2401 gauges with the NRC inspector. The inspector lifted one of the cases, which appeared to the inspector to be empty, but you did not inform the inspector that All Tech had purchased four Troxler Model 2401 gauges the previous year. Your 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, you stated at the predecisional enforcement conference that the four Troxler Model 2401 gauges were in the possession of Qal-Tek Associates 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. Your deliberate failure to provide NRC with information that was complete and accurate in all material respects placed your employer in violation of 10 CFR 30.9 and placed you in violation of 10 CFR 30.10, "Deliberate Misconduct." Enclosure 3 is a copy of the letter and enforcement action issued to All Tech regarding this matter.

The NRC must be able to rely on information provided by its licensees and their employees. In this case, your actions prevented the NRC from carrying out its responsibility to ensure that All Tech was storing and securing its gauges in accordance with NRC requirements. Given the deliberate nature of your actions, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III. You should be aware that additional deliberate violations on your part could result in more significant enforcement action or possible criminal prosecution.

Mr. Billy H. Berry

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You are required to respond to this letter and should follow the instructions specified in the enclosed Notice of Violation when preparing your response. Please include in your response to the Notice a statement as to why the NRC should have confidence that you 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 Section 2.390 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, enforcement actions are made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. A copy of this letter and your response with your address removed will be made available to the Public. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Contact Gary Sanborn of my staff at 817-860-8222 if you have any questions.

Sincerely,

/RA/

Bruce S. Mallett
Regional Administrator

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

Enclosures:

1. Notice of Violation, IA-03-026
2. Predecisional Enforcement Conference attendance list
3. Letter, NOV & Proposed Civil Penalty, EA-03-128

cc w/Enclosures 1 & 2:

State of Idaho Radiation Control Program Director

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

EXPRESS MAIL

Enclosure 1

NOTICE OF VIOLATION

Mr. Billy H. Berry

IA-03-026

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 violation is listed below:

10 CFR 30.10(a) states, in part, that any employee of a licensee may not: (1) Engage in deliberate misconduct that causes a licensee to be in violation of any regulation or limitation of any license issued by the Commission; or (2) Deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

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, Mr. Billy H. Berry, All Tech Corporation's General Manager and Radiation Safety Officer, provided information to the NRC, concerning four Troxler Electronic Laboratories, Inc. Model 2401 gauges containing licensed material, that was not complete and accurate in all material respects. 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 Mr. Berry did not inform the inspector that All Tech had purchased four Troxler Model 2401 gauges the previous year. Mr. Berry'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, Mr. Berry stated at the predecisional enforcement conference that the four Troxler Model 2401 gauges were in the possession of Qal-Tek Associates 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).

Pursuant to the provisions of 10 CFR 2.201, Mr. Billy H. Berry is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, and marked "Open by Addressee Only." The reply shall be submitted within 30 days of the date of the letter transmitting this Notice of Violation (Notice). The reply should be clearly marked as a "Reply to a Notice of Violation; IA-03-026" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. 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 such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

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), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, 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. 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).

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

Billy H. Berry - IA-03-026

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via e-mail:

Sanborn - GFS	R4ALLEGE
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Whitten - JEW1	Campbell - VHC
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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2/29/04	3/1/04	3/2/04	3/26/04	4/22/04
OGC	DRA	RA		
LONGO	GWYNN	MALLETT		
NLO by email	B Mallet for	/RA/		
3/2/04	3/28/04	3/28/04		

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