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June 2, 2004

Office of Enforcement,
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Attn: Mr. Frank Congel, Director

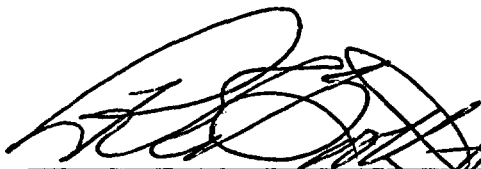
**Subject: Answer to a Notice of Violation & Proposed Imposition of Civil Penalty
\$6000. (NRC Office of Investigations Report 4-2002-0120)**

In accordance with 10 CFR 2.205 All Tech Corp denies the violations listed in the Notice in whole and request remission or mitigation of the penalty.

During the Predecisional Enforcement Conference several issues were found to be very disconcerting when All Tech Corp President Richard Booth asked questions of the NRC representatives. It appeared to be a cover-up or an attempt to not let the truth be known.

- a) The enforcement conference was held at the Bannock County Sheriffs Office with three members of the NRC present and a court reporter. When I asked since there was a question about if Mr. Berry was telling the truth or not, **why not just put him under oath.** The response by Mr. Elmo Collins Director was, "we can't do that" without further explanation.
- b) Mr. Fuller the Senior Health Physicist who reported that the records showing the gauges in question were not there in the file, was asked by Mr. Booth of All Tech, "what did you see in the file"? His reply was, **"I did not look in the file."** I started to ask an additional question an Mr. Vasquez, Enforcement Specialist quickly changed the subject
- c) An audit by Certified Nuclear Auditor Don Brown (of which a copy was sent to the NRC) indicated there was documentation showing the acquisition of the gauges in question and the records were in fact in order

- d) I brought up the transcript which was the result of the investigation by Bryan Gonselin, Investigator, not indicating Mr. Berry was sworn in and being full of discrepancies, and pointed out that we had several professional people look at the transcript and they each came to the same conclusions. That the transcript appeared to have been written from an altered tape and that Mr. Berry without a doubt was badgered.
- e) In a later telephone conversation with Mr. Vasquez I was complaining about the badgering by Mr. Gonselin and I was told "that's the way we get confessions".
- f) In additional phone conversations with NRC representatives I offered to pay for a lie detector test of the Qual- Tech employee who picked up the gauges for evaluation and was told, " he no longer works there, so he would not lie." I said what would you expect him to say, or anyone of them to say. Look at the facts:
- 1) Qual-Tech sold gauges to someone using our license number to steal our work, then two weeks later did it again with the **same company** with **another** companies license number. (This can be verified by state police report)
 - 2) The Qual-Tech driver hauled our gauges without them being in cases, which to my understanding is a violation.
- g) See Attachment of letter from Billy Berry, General Manager All Tech Corp.
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 date 6/2/04
R.E.Booth III, President All Tech Corp.

Regional Administrator, Region IV
611 Ryan Plaza Drive, Suite 400
Arlington, TX 76011

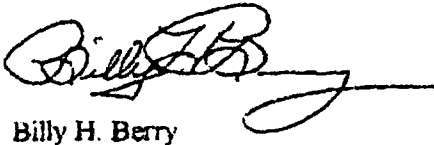
RE: Reply to Notice of Violation: IA-03-026

In response to this notice of violation the responder requests that the bracketed information be redacted from the public file due to the personal nature of the information provided. I personally do not believe a violation has occurred and have repeatedly claimed this fact to be so. I also believe that the health Physicist who visited my facility either has misrepresented the facts or there has been a gross misunderstanding of the conversation with him on the date in question. In response to his statements to myself on the date in question I have repeatedly insisted on the fact that I do not remember the details of the conversation. By your own decision the gauges and the inventory of the gauges had been done. In the original information provided by Mr. Fuller he said he only saw the boxes. In a later statement he said he picked up one of the boxes, and then at a later date he added that I bought them at a garage sale. I cannot prove or defend my statements because this agency has failed to provide myself and my employer with free access to the reports and investigation information that would probably clear this up. This agency has also scheduled appointments with us to discuss possible information about the stolen gauges and we have had legal representation present and then when we were with legal counsel the questions were few and not necessary. Then you schedule an interview about the actions of other parties on the illegal possession of Nuclear densometers by this other party with me and I have no legal counsel with me because I had reported this incident, and you have questions about the stolen gauges and never once asked a question regarding the other incident, the reason you scheduled the interview.

The following is a time line of events as I remember them. 1) February 2002 --- Mr. Fuller visited our facility in Pocatello, ID with a licensing person from NRC. The licensing person reviewed our files and Mr. Fuller looked at our storage area. 2) Fall of 2002 there were 2 Nuclear Densometers found in the Portneuf River in Bannock County, ID. 3) All Tech Corp. Reported the loss of 2 Nuclear Densometers from our inventory. 4) Interview with our legal counsel and NRC. 5) Mr. Fuller called and asked to talk to me about Structural Testing and Inspection and their use of All Tech's license to obtain nuclear material, and he was coming with someone else to also investigate some other things while in the area and if this person could come with him. When Mr. Fuller arrived he was accompanied by an Investigator from NRC. The Investigator with NRC conducted the interview with little or no input from Mr. Fuller. 6) NRC scheduled a Predecisional enforcement conference. 7) Notice of violation issued in April 2004. 8) This response is to be filed.

From the beginning until now 26 months have elapsed. From the time of the initial visit and the first time it was discussed with myself 9 to 10 months had elapsed. I told the investigator from NRC that I did not remember the details of the conversation and all that had transpired on the initial visit and he would not accept that as an answer. The constant

duress placed on me by the investigator, caused me to eventually agree that it could have been possible but I was unsure and I am still unsure. [I am a Diabetic and have Congestive Heart Failure complicated by Left ventricular cardiomyopathy and Arteriosclerosis. I have had TIA's on occasion over the past few years and have had the memory functions of my brain affected. I have explained this to your investigator and he has ignored and or thought this to be of little or no consequence.] I can think of no reason to have purposely given bad information in the initial inspection, as you have already determined the gauges in question were inventoried and on our inventory sheets. The inspection done on this day was different from most I have been involved in, in the past, with two people, and one looking at the paperwork, while the other looked at our storage closet; it was also one of the shortest I remember. My concern is about the fact that when the gauges were stolen the NRC seemed to have no record of the inspection in February showing the gauge serial numbers in our possession and because of this, we are investigated and then chosen as the reason for the lack of the information being recorded with the NRC. I do not believe that I have committed this violation and do not think I have been treated fairly or even legally by the NRC. I also lack the physical or financial means to contest this without the ability to access all the records on the above-mentioned cases to be able to prove my case. I would have more rights and would have been treated better by the criminal courts for a capital crime than the way I have been treated here. I do contest this notice of violation on the grounds that I believe this agency needs to investigate and stay within the parameters set by the law of this land regarding due process and equal protection under the law for all citizens and especially Title V as established by the laws of the United States



Billy H. Berry