



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001

December 10, 2004

EA-03-128

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

SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$6,000

Dear Mr. Booth:

This refers to your letter dated June 2, 2004, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated April 27, 2004. Our letter and Notice described a violation involving your General Manager's deliberate failure to provide an NRC inspector with complete and accurate information. This issue was discussed with you and your General Manager during a predecisional enforcement conference in Pocatello, Idaho on September 15, 2003. 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, a civil penalty of \$6,000 was proposed in our April 27 letter.

In your June 2 response you denied the violation and requested remission or mitigation of the civil penalty. We recognize the time delay from your June 2 response to present. However, your June 2 letter raised some serious issues and we gave them careful, independent evaluations. The appendix to the Order provides our evaluation of your assertions. After consideration of your response, we have concluded that the violation did occur as stated in our April 27 Notice of Violation. Accordingly, we serve the enclosed Order on All Tech Corporation imposing a civil monetary penalty in the amount of \$6,000. Within 30 days you should either: (1) pay the civil penalty in accordance with Section IV of the Order, (2) request a hearing in accordance with Section V of the Order, or (3) within 10 days, request alternative dispute resolution (ADR) as discussed below in this letter.

Your June 2 response also alleged impropriety on the part of NRC staff, in that you stated there "appeared to be a cover-up or an attempt to not let the truth be known." NRC managers independent of the April 27 enforcement action reviewed your June 2 response. These NRC

managers found that many of your statements were inaccurate and without merit, and that no staff impropriety occurred. Since several of your inaccurate assertions dealt with what was and was not stated during the September 15, 2003, predecisional enforcement conference, we are enclosing a copy of the transcript for your benefit.

Given that your General Manager deliberately provided inaccurate information to an NRC inspector, we have obvious concerns about All Tech's communications with the NRC. Therefore, in your response to the attached Order, we also request that you describe steps you will take to ensure that All Tech's communications with the NRC are always complete and accurate.

If you disagree with this enforcement sanction, you may request alternative dispute resolution (ADR) with the NRC. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. One form of ADR is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. Mediation is a confidential and voluntary process. The parties to the ADR process (the NRC and the licensee) select a mutually agreeable third party neutral and share equally the cost of the neutral's services. Generally, at this stage in our enforcement process, the NRC would negotiate resolution of two potential issues: 1) the appropriate enforcement action; and 2) the appropriate corrective actions for the violation. Additional information concerning ADR can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact ICR at 607-255-1124 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. You may also contact Nick Hilton, Office of Enforcement, at (301) 415-3055 for additional information. If you do not contact ICR within 10 days of the date of this letter, you must respond within the required 30 days described in the Order.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (if you choose to provide one) 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, your response should not include any personal privacy,

R. Booth

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

Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

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

Enclosures:

- 1) Order Imposing Civil Monetary Penalty
- 2) Transcript of the September 15, 2003 Predecisional Enforcement Conference (Licensee only)
- 3) NUREG/BR-0254 Payment Methods (Licensee only)

cc (w/enclosure 1 only):
State of Idaho Radiation Control Program Director

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
All Tech Corporation)	Docket No. 030-35321
Pocatello, Idaho)	License No. 11-27657-01
)	EA-03-128

ORDER IMPOSING CIVIL MONETARY PENALTY

I

All Tech Corporation (Licensee) is the holder of Byproduct Material License No. 11-27657-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on March 6, 2000. The license authorizes the Licensee to use and possess portable gauging devices in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was initiated on March 18, 2003. The investigation concluded that the Licensee had not conducted its activities in full compliance with NRC requirements. The results of the investigation were discussed with the Licensee during a predecisional enforcement conference on September 15, 2003. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 27, 2004. The Notice stated the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated June 2, 2004. In its response, the Licensee denied the violation in whole and requested remission or mitigation of the civil penalty.

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 that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice 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 \$6,000 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making the payment, 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, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

- (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and
- (b) whether, on the basis of such violation, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Frank Congel, Director
Office of Enforcement

Dated this 10th day of December 2004

APPENDIX

EVALUATIONS AND CONCLUSION

On April 27, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC investigation. All Tech Corporation (Licensee) responded to the Notice on June 2, 2004. The licensee denied the violation in whole and requested remission or mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's request are described below.

Restatement of Violation

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.

Summary of Licensee's Response to the Violation

The Licensee stated it appeared there was a cover-up or an attempt to not let the truth be known. The issues that the Licensee raised are as follows.

- A. During the predecisional enforcement conference, when the President of All Tech Corporation (All Tech) asked why not just put the General Manager under oath, the NRC's DNMS Division Director stated, "we can't do that" without further explanation.
- B. During the conference, when the President of All Tech Corporation asked the inspector what he saw in the file, the inspector stated he did not look in the file. When the President of All Tech Corporation started to ask an additional question, the NRC's Enforcement Specialist quickly changed the subject.

- C. An internal audit by a certified auditor indicated that documentation showing the acquisition of the gauges in question and the records were in fact in order.
- D. The transcript of the General Manager's statement to OI indicated that the General Manager was not sworn in, and was full of discrepancies. All Tech Corporation stated that "several professional people" looked at the transcript and concluded that the transcript appeared to have been written from an altered tape and that the General Manager without a doubt was badgered.
- E. While complaining about the badgering by the OI investigator, All Tech's president was told by an NRC Enforcement Specialist "That's the way we get confessions."
- F. All Tech Corporation offered to pay for a lie detector test of the former Qal-Tech employee who picked up the gauges for evaluation, to which NRC replied he no longer works at Qal-Tek so he (the Qal-Tek employee) would not lie. All Tech questioned the former Qal-Tek employee's truthfulness because: (1) Qal-tek inappropriately sold gauges to a third party using All Tech's license twice, and (2) All Tech's assertion that the Qal-Tech driver hauled the gauges without them being in their cases which is a violation of NRC requirements.
- G. In its response to the Notice of Violation, All Tech referenced the General Manager's (undated) letter responding to the Notice of Violation (IA-03-026). The General Manager stated he does not believe a violation occurred, although he also stated he does not remember the details of the conversation he had with the inspector in February 2002. He claims he cannot prove or defend his statements because the NRC has failed to provide him with free access to the investigative report and information that would clear this up.

Stating that he told the NRC investigator he did not remember the details of the conversation and that the investigator would not accept that answer, the General Manager stated the constant duress placed on him by the investigator (during the OI interview) caused him to eventually agree that it could have been possible (presumably that it could have been possible that the General Manager could have misled and lied to the inspector). He can think of no reason to have purposefully given bad information since the NRC determined that the gauges were properly inventoried. The General Manager stated that he does not believe he committed the violation and believes he has not been treated fairly or even legally by the NRC. He stated he has neither the physical or financial means to contest this violation without the ability to access all the records. The General Manager concludes by stating he contests the violation on the grounds that the NRC "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."

NRC Evaluation of Licensee's Response to Violation

The NRC evaluation of the licensee's reply to the Notice of Violation found no improprieties on the part of NRC personnel or any evidence of an attempt to not let the truth be known. The NRC conducted an independent review of these allegations in detail and found that many of the licensee's statements were inaccurate and that the licensee's assertions were without merit.

The following paragraphs, labeled to correspond to the issues raised by the licensee, summarize these results of the NRC management review.

- A. A review of the predecisional enforcement conference transcript (starting on page 57) shows that All Tech's June 2, 2004, letter does not accurately describe the discussions at the conference. During the conference, NRC officials informed All Tech that OI had previously placed the General Manager under oath and had taped the interview, and a transcript of the (OI) interview had been provided to the General Manager prior to the conference. NRC officials explained that the purpose of the conference was to allow All Tech and its General Manager to explain its perspective regarding the apparent violation. Contrary to All Tech's assertion, NRC officials did not state we cannot do that (swear in the General Manager). During the conference, All Tech and the General Manager were afforded the opportunity to put forth their perspective on the record.
- B. A review of the predecisional enforcement conference transcript (starting on page 69) shows that All Tech's June 2 letter does not accurately describe the circumstances. During the conference, in response to the licensee's statements about "going through the files," the NRC inspector clarified that NRC inspectors don't go through licensee file cabinets. The NRC inspector had requested records from the General Manager, and the General Manager provided the records (as opposed to the inspector "going through the files"). The transcript (starting on page 70) shows that the enforcement specialist did not prevent All Tech from providing more information or asking more questions. In fact, the conference transcript shows that at the conclusion of that line of question and answers, the NRC representatives asked All Tech representatives if they had any other points they wanted to make to make sure they got on the record. All Tech officials did not bring up any other concerns at that time.
- C. The NRC was aware that All Tech had conducted an audit in October 2002, approximately eight months after the inspection, and that the audit showed the purchase of the five gauges. However, those records were not provided to the inspector during the inspection in February 2002, nor did the General Manager discuss the gauges with the inspector. The NRC does not agree that all records were in order because two of the gauges were not in the licensee's possession at the time of the inspection, and the records did not reflect this situation.
- D. After the conference, the NRC reviewed the transcript of the General Manager's interview with OI and compared it with the audio tape recording of the interview. Contrary to All Tech's assertions, the OI transcript clearly shows that the General Manager was sworn in (on page 3 of the OI transcript), and the oath stated by the General Manager can be clearly heard on the tape. Our April 27, 2004, letter discussed our conclusions regarding the tape and the transcript (i.e., that there were a few minor transcription errors, but that the transcript provided an overall accurate accounting of the salient points). After receiving All Tech's June 2, 2004, letter, two NRC managers reviewed the tape and compared it to the transcript. These two NRC managers were independent of the decisions made in our April 27 enforcement action. The managers arrived at the same conclusions as discussed in our April 27 letter. In addition, the NRC has concluded that the tape does not indicate that the General Manager was "badgered" and does not indicate any inappropriate conduct on the part of the two NRC employees.
- E. According to the enforcement specialist, he made no statements that badgering an individual is the way we get confessions. The NRC has concluded that the enforcement specialist did not make such a statement.

- F. After the conference, the NRC did not corroborate the new information that All Tech provided during the conference, i.e., (purportedly) that Qal-Tek had picked up the gauges in question just prior to the February 2002 inspection. All Tech questioned how the NRC could take Qal-Tek's word over All Tech's word and pointed to an incident where Qal-Tek had inappropriately sold two gauges to an individual. The NRC had reviewed the circumstances of that inappropriate sale (in September 2002) and found that Qal-Tek had sold two gauges to an individual who, at the time of the sale, was employed by All Tech. Qal-Tek thought the individual was purchasing the gauges for All Tech. The NRC concluded that the individual purchasing the gauges engaged in deliberate misconduct and issued an Order to the individual banning him from licensed activity for three years (IA-03-002).

In addition, All Tech asserted that the Qal-Tek driver hauled the gauges without the gauges being in their cases, which would be a violation, and questioned the former Qal-Tek driver's credibility. As for giving the former Qal-Tek driver a lie detector test, the NRC does not believe it necessary. The former Qal-Tek driver no longer works for the company and would have nothing to gain in lying to the NRC. He provided the NRC with statements that directly contradicted the General Manager's version of the events. Current Qal-Tek employees independently confirmed that the Qal-Tek driver did not transport the All Tech gauges to Qal-Tek's facility on the date in question. Further, Qal-Tek noted that Qal-Tek would not have taken the gauges without the use of an invoice to document the transaction, and no record existed.

In coming to its conclusion, the NRC considered all available information including the inspector's statements about the information provided to him during the inspection, the General Manager's sworn statement to OI, the results of the OI investigation, NRC management's review of the tape and the transcript of the General Manager's OI transcript, the circumstances surrounding Qal-Tek's sale of gauges to the former All Tech employee (September 2002), and the statements from your current and former Qal-Tek employees.

- G. Prior to reaching a decision on whether a violation occurred, the NRC followed its enforcement process. The NRC documented the bases for its concerns, provided a summary to both All Tech and its General Manager, provided the General Manager with a copy of the transcript of his OI interview, and subsequently met with both parties in a predecisional enforcement conference. Additional NRC managers, independent of the case, listened to the tape and concluded that the General Manager was not badgered and that NRC employees did not behave inappropriately. After considering all the information, the NRC concluded that a violation occurred and that the General Manager engaged in deliberate misconduct. The NRC actions were in accordance with NRC policy and procedures, and did not deny due process to the licensee or to the General Manager.

As a matter of clarification, the NRC did not determine that the gauges had been properly inventoried in February 2002. As documented in the April 27, 2004, letter, the NRC decided not to pursue a violation of inventory requirements based on the gauge inventory record that was produced at the conference, and noted that the inventories were not adequate at the time of NRC's February 2002 inspection.

NRC Conclusion

The NRC has concluded that this violation occurred as stated and neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty was provided by the licensee. Consequently, the proposed civil penalty in the amount of \$6,000 should be imposed.

All Tech Corporation, EA-03-128 - Order imposing civil penalty

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