

RAS 9329

DOCKETED 02/11/05

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

SERVED 02/11/05

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Lawrence G. McDade, Chairman
E. Roy Hawkens
Dr. Peter S. Lam

In the Matter of

ALL TECH CORPORATION
Pocatello, Idaho

(Civil Monetary Penalty)

Docket No. 030-35321-CivP

ASLBP No. 05-836-CivP

February 11, 2005

ORDER

This proceeding involves a proposed civil penalty of \$6,000 sought to be imposed by the Nuclear Regulatory Commission (NRC) on All Tech Corporation (All Tech) for alleged violations of provisions of NRC requirements. In response to an Order Imposing a Civil Monetary Penalty, which was dated December 10, 2004, and published at 69 Fed. Reg. 76,019 (Dec. 20, 2004), All Tech filed a timely request for a hearing on January 10, 2005.¹ Thereafter, on February 2, 2005, this Atomic Safety and Licensing Board was established to preside over this matter.²

After an order imposing a civil penalty has been issued by the Director of NRC's Office of Enforcement, if the person charged with a violation requests a hearing, the time and place of the hearing will be designated. 10 C.F.R. § 2.205(e). However, pursuant to 10 C.F.R. § 2.309, a request for a hearing must set forth with particularity the contentions (issues of law or fact) sought to be raised at the hearing along with a brief explanation of the basis for those contentions,

¹ See E-mail from Richard Booth, Booth & Associates, to Gary Sanborn, NRC (Jan. 10, 2005), ADAMS Accession No. ML050390410.

² All Tech Corporation: Establishment of Atomic Safety and Licensing Board, 70 Fed. Reg. 6739 (Feb. 8, 2005).

including an explanation of their materiality and a showing that the issues raised are within the scope of the proceeding. In its Request for Hearing, All Tech failed to identify or explain the issues of law or fact that it would seek to raise at the hearing.³

Given that the NRC's current Rules of Practice, 10 C.F.R. Part 2, are of recent origin and that we have limited experience proceeding under these new rules, we direct that within 15 days of the date of this Order the NRC Staff advise this Board in writing (with a copy to All Tech) of the Staff's position regarding the applicability of 10 C.F.R. § 2.309 to this proceeding and, accordingly, its position regarding whether All Tech's response on January 10, 2005, to the Commission's Order imposing a Civil Penalty was an adequate Request for a Hearing.

In responding to this Order, we specifically direct that the Staff state its position on whether All Tech's answer to the Notice of Violation submitted on June 2, 2004,⁴ pursuant to 10 C.F.R. § 2.205(b), is necessarily incorporated by reference into All Tech's Request for a Hearing, thereby adequately focusing the scope of the hearing and rendering the provisions of 10 C.F.R. § 2.309 unnecessary and inapplicable to Civil Penalty proceedings.⁵ Finally, we direct the Staff to articulate its position regarding whether, given the wording of the Civil Penalty Order and the state of the record, if this Board determined that All Tech's Request for a Hearing was inadequate, we should allow All Tech to supplement its submission and thereby cure any inadequacy in its Request for a Hearing, 10 C.F.R. § 2.309(c). We direct that the Staff not only state its position on these matters but also that it explain the basis for its position.

³ See E-mail from Richard Booth, Booth & Associates, to Gary Sanborn, NRC (Jan. 10, 2005), ADAMS Accession No. ML050390410.

⁴ See Answer to a Notice of Violation & Proposed Imposition of Civil Penalty \$6000 (June 2, 2004).

⁵ Alternatively, we ask whether it is the Staff's position that the final paragraph of the Order imposing a Civil Monetary Penalty which is dated December 10, 2004, adequately focuses the hearing rendering the provisions of 10 C.F.R. § 2.309 unnecessary and inapplicable to these proceedings.

Within 15 days after service of the Staff's submission to this Board, All Tech may respond and, with the benefit of knowing the Staff's position, address the questions raised in this Order.

FOR THE ATOMIC SAFETY AND LICENSING BOARD:⁶

/RA/

LAWRENCE G. McDADE, CHAIRMAN
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 11, 2005

⁶ Copies of this order were sent this date by Internet e-mail transmission to : (1) All Tech Corporation and (2) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
ALL TECH CORPORATION) Docket No. 30-35321-CivP
Pocatello, Idaho)
)
(Civil Monetary Penalty))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER RE PROPOSED CIVIL PENALTY have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Lawrence McDade, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
E. Roy Hawkens
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Janice E. Moore, Esq.
Tyson R. Smith, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

R.E. Booth III, President
All Tech Corporation
Booth & Associates, Inc.
P.O. Box 2046
Pocatello, ID 83206

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of February 2005