

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 9616

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 03/24/05

SERVED 03/24/05

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

March 24, 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 submitted a request for a hearing on January 10, 2005.¹ Thereafter, on February 11 2005, this Atomic Safety and Licensing Board issued an Order in which we specifically directed the NRC Staff to state its position on whether All Tech's submission was an adequate request for a hearing in a civil penalty matter, given the language of 10 C.F.R. § 2.205(b) and 10 C.F.R. § 2.309. The NRC Staff filed a timely reply on February 28, 2005, in which it took the position that All Tech's request for a hearing was adequate. All Tech had been given until March 15, 2005, to respond, but did not do so.

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

On March 16, 2005, this Board issued an Order in which it proposed that the parties participate in a Prehearing Conference by telephone during the week of March 28, 2005, at a time and date to be set by a subsequent Order by this Board. In order to facilitate the scheduling of that conference, in that Order the parties were directed to contact the Board's law clerk, Mr. Jonathan Rund, and advise him of when, if at all, during the week of March 28, 2005, that they would not be available to participate in the prehearing telephone conference. The parties were further directed to provide Mr. Rund the telephone number at which they would be available for the conference.² In addition, All Tech was directed in that Order to have its representative file a notice of appearance in accordance with the provisions of 10 C.F.R. § 2.314(b). The parties were directed to complete these tasks as soon as possible, but in any event within seven (7) days of the date of the Order. The Commission Staff responded to this Board's Order of March 16th prior to the deadline of March 23, 2005. As of the date of this Order this Board has not received a reply to its March 16th Order from All Tech.

Accordingly, All Tech is directed to immediately comply with this Board's Order of March 16, 2005, and also to submit in writing to this Board an explanation of why it did not comply with the March 16th Order on or before the March 23^d deadline specified in that Order. All Tech is further advised that if it has not fully complied with this Board's Order dated March 16, 2005, and with this Order, by 5 PM EST on March 30, 2005, it may be subject to default, 10 C.F.R. § 2.320, and that if this Board finds that All Tech is in default, it may enter an Order imposing the Civil Penalty sought by the Commission Staff without any further notice to All Tech, and without any further proceeding.

Finally, since the prehearing conference has not yet been scheduled, this Board directs that the parties contact Mr. Jonathan Rund by e-mail at JMR3@nrc.gov ; by phone at (301) 415-6754; or by mail at The Atomic Safety and Licensing Board Panel, Mail Stop T-3 F23, U.S. Nuclear

² Because Mr. Rund will serve as this Board's judicial clerk in this proceeding, the parties are directed to include him as a e-mail addressee in all submissions to this Board in this proceeding.

Regulatory Commission, Washington DC 20555-0001, and advise him of when, if at all, during the week of March 28, 2005, and also when during the week of April 4, 2005, that they would not be available to participate in the prehearing telephone conference, and to provide Mr. Rund the telephone number at which they will be available for the conference during those weeks. The parties are to contact Mr. Rund with this information as soon as possible but, in any event this information is to be received by Mr. Rund no later than 5 PM EST on March 28, 2005. It is the desire of the Board to hold the prehearing conference during the week of March 28th but, if by the time we receive the parties schedules, that is no longer practicable, to hold the prehearing conference during the week of April 4, 2005. If and when this Board hears from both parties regarding scheduling, it will set the time and date of the Prehearing Conference with a subsequent written Order.

If either party has any objection to any aspect of this Order, or if either party has any additional matters they believe should be taken up at the Prehearing Conference, those objections and/or suggestions must be received by this Board no later than 5 PM EST on March 28, 2005.

IT IS SO ORDERED.³

FOR THE ATOMIC SAFETY AND LICENSING BOARD:

/RA/

LAWRENCE G. McDADE, CHAIRMAN
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 24, 2005

³ Copies of this order were sent this date by Internet e-mail transmission to: (1) All Tech Corporation and (2) the NRC Staff, and via Express Mail to R.E. Booth III, All Tech Corporation, Booth & Associates, Inc., P.O. Box 2046, Pocatello, ID 83206.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER DATED MARCH 24, 2005 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
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Mail Stop - T-3 F23
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Administrative Judge
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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 24th day of March 2005