



UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

May 22, 2003

MEMORANDUM TO: Ellis W. Merschhoff, Regional Administrator
Region IV

FROM: E. L. Williamson, Director *ELW*
Office of Investigations Field Office, Region IV

SUBJECT: ALL TECH CORPORATION: DELIBERATE FAILURE TO
PROVIDE ACCURATE AND COMPLETE INFORMATION
ON THE POSSESSION OF RADIOACTIVE MATERIALS
(CASE NO. 4-2003-012)

Attached, for whatever action you deem appropriate, is the Office of Investigations (OI) Report of Investigation concerning the above matter. Please ensure that any internal office distribution of this report is controlled and limited only to those with a need to know and that they are aware of the sensitivity of its contents.

Attachment:
Report w/exhibits

cc w/attachment:
F. Congel, OE
L. Chandler, OGC
K. Smith, Regional Counsel, RIV

cc w/report:
W. Kane, DEDR
M. Virgilio, NMSS
A. Thadani, RES
G. Sanborn, ACES:RIV



**United States
Nuclear Regulatory Commission**

Report of Investigation

ALL TECH CORPORATION:

**DELIBERATE FAILURE TO PROVIDE ACCURATE
AND COMPLETE INFORMATION ON THE
POSSESSION OF RADIOACTIVE MATERIALS**

Office of Investigations

Reported by OI: **RIV**

Title: ALL TECH CORPORATION:

DELIBERATE FAILURE TO PROVIDE ACCURATE AND COMPLETE
INFORMATION ON THE POSSESSION OF RADIOACTIVE MATERIALS

Licensee:

ALL TECH CORPORATION
2925 Garrett Way
Pocatello, Idaho 83205

Docket No.: 30-35321

Reported by:

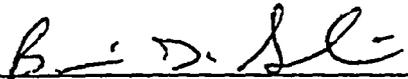
Case No.: 4-2003-012

Report Date: May 22, 2003

Control Office: OI:RIV

Status: CLOSED

Reviewed and Approved by:



Brian D. Gonsoulin, Special Agent
Office of Investigations
Field Office, Region IV



E. L. Williamson, Director
Office of Investigations
Field Office, Region IV

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REPORT. UNAUTHORIZED DISCLOSURE MAY RESULT IN ADVERSE
ADMINISTRATIVE ACTION AND/OR CRIMINAL PROSECUTION.

SYNOPSIS

This investigation was initiated on March 18, 2003, by the Nuclear Regulatory Commission (NRC), Office of Investigations, Region IV (RIV), to determine if the General Manager and Radiation Safety Officer at All Tech Corporation (ATC), an NRC licensee, Pocatello, Idaho, deliberately failed to provide accurate and complete information to a RIV inspector regarding possession of radioactive materials.

Based on evidence developed during the investigation, the allegation that the General Manager and Radiation Safety Officer, ATC, deliberately failed to provide accurate and complete information to a RIV inspector regarding possession of radioactive materials was substantiated.

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LIST OF INTERVIEWEES

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DETAILS OF INVESTIGATION

Allegation

Deliberate Failure to Provide Accurate and Complete Information on the Possession of Radioactive Materials

Applicable Regulations

10 CFR 30.9: Completeness and Accuracy of Information (2002 Edition)

10 CFR 30.10: Deliberate Misconduct (2002 Edition)

18 USC 1001: Statements of Entries Generally (2003 Edition)

Purpose of Investigation

This investigation was initiated on March 18, 2003, by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), to determine if Billy BERRY, General Manager and Radiation Safety Officer (RSO), All Tech Corporation (ATC), an NRC licensee, Pocatello, Idaho, deliberately failed to provide accurate and complete information to a RIV inspector regarding possession of radioactive materials (Exhibit 1).

Background

On or about February 11, 2002, during a routine inspection of ATC, Michael FULLER, Senior Health Physicist, Nuclear Materials Inspection Branch (NMIB), Division of Nuclear Materials Safety (DNMS), RIV, and Jacqueline D. COOK, Senior Licensing Reviewer, NMIB, DMNS:RIV, were informed by Billy H. BERRY, General Manager and RSO, ATC, that four wooden portable gauge transport containers that were stored at the licensee's facility were empty and that he [BERRY] had acquired the empty containers for the purpose of refinishing them. FULLER verified that at least one of the containers was empty.

In October 2002, Brian D. Gonsoulin, Special Agent, OI:RIV, during the conduct of OI Case No. 4-2002-049F, interviewed BERRY, who stated that the wooden portable transport containers contained inoperable portable nuclear gauges and that two of the gauges had evidently been stolen from their boxes. According to BERRY, he did not realize the gauges were missing because he had only inventoried the containers, not the gauges, when he performed a physical

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inventory in August 2002. BERRY said he discovered the two gauges were stolen after they were reported found in the Portneuf River, near Pocatello, Idaho, in October 2002. BERRY had stated to OI:RIV that he had verified the gauges were in storage at the ATC facility when he conducted a physical inventory of the gauges in March 2002. A discrepancy was identified between statements made by BERRY to FULLER in February 2002 and the statements made by BERRY to OI:RIV in October 2002.

On March 17, 2003, the RIV Allegation Review Board discussed the concerns identified by FULLER and requested that OI:RIV, with assistance from NMIB, conduct an investigation to determine if the information provided to NMIB and OI:RIV by BERRY was inaccurate and incomplete.

Interview of Alleger (FULLER) (Exhibit 2)

On March 21, 2003, FULLER was interviewed at NRC:RIV by OI:RIV and related the following information in substance.

FULLER stated that on February 11, 2002, he and COOK arrived at ATC's facility to conduct an unannounced inspection and to address an allegation made about ATC that density gauges were being transported without proper containers. According to FULLER, he and COOK were met by BERRY who initially stated there were no density gauges at ATC at that time and that the density gauges normally held in ATC's inventory were being serviced at Qal-Tek, Inc. (Qal-Tek), an NRC licensee, Pocatello, Idaho. FULLER said BERRY stated that because of the time of year and the fact that the ground was covered with snow, there was not much compaction testing required, therefore he [BERRY] said it was good time of the year to have ATC's density gauges tested and calibrated. FULLER told BERRY that in light of September 11, 2001, he wanted to inspect the facility for security purposes. FULLER said he requested to inspect the area where ATC normally held their density gauges. FULLER stated that as he, BERRY, and COOK entered the storage area at ATC, BERRY stopped them and stated he had two density gauges in his storage area that were being leased from Qal-Tek. FULLER said BERRY stated that while he did not have any of ATC's density gauges on site, he held the two aforementioned density gauges in case there was a need for them.

FULLER stated that when they reached the storage area that contained the two density gauges, BERRY unlocked the storage room, and he [FULLER] entered to inspect the area. FULLER stated he saw the two density gauges on the floor from Qal-Tek, which were in yellow Troxler transport cases, and looked over the serial numbers to verify that the density gauges in the containers matched the serial numbers on the containers themselves. FULLER verified the serial numbers matched. FULLER stated that while he was in the locked area inspecting the density

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gauges, he noticed at least four wooden transport boxes stacked up, which appeared to be older model Troxler transport boxes sitting on the floor. FULLER stated that before he could ask BERRY about the wooden boxes, he [BERRY] volunteered information about the boxes stating those wooden boxes contained no density gauges, that he [BERRY] had "come across" the boxes and was planning to refinish them. FULLER stated he lifted up one of the boxes and it felt as though it was empty. FULLER stated he did not pick up any of the other wooden boxes. FULLER added he did not notice if the wooden boxes were chained together. FULLER said he noticed no other wooden boxes outside of the locked storage area within the ATC facility.

According to FULLER, the density gauges he recalled seeing on ATC's inventory were the two BERRY claimed were at Qal-Tek being serviced and one of the Qal-Tek density gauges BERRY reportedly leased from Qal-Tek. FULLER stated he felt it did not make sense that BERRY carried a leased density gauge in ATC's inventory, but said he did not pursue the issue at that time. FULLER stated he also copied the serial numbers from the two density gauges on site, to include the two reportedly leased from Qal-Tek, and ran all four serial numbers to ensure none of them were reported stolen, and according to FULLER, none of them were.

FULLER stated he later discovered, as a result of a subsequent inspection in September 2002 and OIRIV investigations [OI Case Nos. 4-2002-045 and 4-2002-049F], that ATC reported the theft and subsequent recovery of two Troxler density gauges discovered in the Portneuf River, near Pocatello, Idaho, in October 2002. FULLER stated that through his inquiries regarding the density gauges, he discovered that during the September 2002 inspection of ATC, BERRY reported that ATC had received six density gauges from someone out of state [NFI] and that the density gauges were stored in the wooden crates previously described by FULLER. FULLER stated that, to his knowledge, not all of the density gauges purchased by ATC were operable. According to FULLER, the density gauges in question were purchased by ATC prior to his [FULLER's] February 2002 inspection of ATC and were not on ATC's inventory list. FULLER stated when he learned of that, he recalled BERRY telling him the wooden boxes were empty, when in fact, according to BERRY's statement during his September 2002 inspection, the density gauges were kept in the wooden boxes, and he [BERRY] did an inventory of them every 6 months by verifying the wooden boxes were still there, chained together. FULLER said according to BERRY's statement, he last conducted a physical inventory of the density gauges in March 2002, and all of them were accounted for at that time. FULLER reiterated BERRY told him during the February 2002 inspection that the wooden boxes in the ATC inventory room were empty and that he [BERRY] had obtained them empty.

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Testimony/Evidence

Interview of Jacqueline D. COOK (Exhibit 3)

On March 24, 2003, COOK was interviewed at NRC:RIV by OI:RIV and related the following information in substance.

COOK stated that on February 11, 2002, she accompanied FULLER on an inspection of the ATC facility. COOK stated the inspection was, in part, to follow-up on an allegation NRC:RIV received regarding ATC not transporting density gauges in proper containers. COOK stated when she and FULLER asked to inspect ATC's storage facility, BERRY stated he had no ATC density gauges on site, stating he had sent them off to be serviced at another location [NFI]. COOK stated FULLER requested to see the storage area to ascertain how the density gauges were normally stored. COOK stated BERRY then said he had two density gauges in ATC's storage area, adding he had leased them while ATC's density gauges were being serviced. COOK stated that when they reached the storage area and entered, she observed the two density gauges BERRY had referred to. COOK said she also noticed at least four wooden boxes within the storage area. COOK stated FULLER inquired about the wooden boxes and was told by BERRY that he [BERRY] had planned on refinishing them and that they were empty. COOK stated FULLER picked up one or two of the wooden boxes and verified that at least the ones he picked up were empty. COOK stated she clearly remembered hearing BERRY say the wooden boxes were empty, but could not recall if he [BERRY] mentioned where he got the wooden boxes. COOK further stated that was the first inspection she had been on trying to receive her certification and that she was there to assist FULLER.

AGENT'S NOTE: COOK could not recall with certainty where BERRY said he sent ATC's density gauges to be serviced, nor where BERRY said he leased the density gauges from that were present at the ATC facility.

Interview of Billy H. BERRY (Exhibit 4)

On April 9, 2003, BERRY was interviewed in Pocatello, Idaho, by OI:RIV and FULLER, and related the following information in substance.

BERRY stated he began his employment with ATC in 1999 and had been in the construction and quality control/assurance field for 24 years. BERRY stated that in June 2001, ATC purchased a total of five density gauges from Desert Southwest Consultants in Nevada, and the individual he dealt with was Jay MACIA [NFI]. According to BERRY, MACIA sold him one Campbell density gauge and four Troxler density gauges. BERRY said the Troxler gauges were inoperable,

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but ATC was interested in the Campbell density gauge. According to BERRY, MACIA wanted to get out of the gauge business, so he [MACIA] advised him [BERRY] that for an additional \$300 or \$400 added to the price of the Campbell density gauge, ATC could buy all five gauges so MACIA could get them out of his inventory. BERRY said he discussed MACIA's proposal with Richard BOOTH, III, President, Booth and Associates, Inc. (owner of ATC), and they decided to buy the density gauges from MACIA. BERRY said the four inoperable Troxler density gauges were purchased with the intent of possibly being able to repair two or more of them. BERRY said the density gauges were placed in ATC's density gauge storage facility in June 2001, in their wooden transport boxes, subsequent to their purchase from MACIA. According to BERRY, he kept all of the aforementioned density gauges on his inventory from the time of their receipt in June 2001.

BERRY stated that in October 2002, he heard local reports of two density gauges that were recovered in the Portneuf River near Pocatello, Idaho. BERRY said subsequent to hearing the reports on the density gauges, he looked at the wooden transport boxes, which he kept locked together, and they appeared to be intact. Therefore, he did not open any of them to ensure the density gauges were still in the boxes. BERRY stated that on Tuesday, October 15, 2002, after a conversation with BOOTH, it was decided that a physical inventory should be done on ATC's density gauges. According to BERRY, Donald W. BROWN, Manager, Quality Assurance, Booth and Associates, Inc., made arrangements with him [BERRY] to do a physical inventory of ATC's density gauges. BERRY stated he had not conducted a physical inventory of the density gauges since approximately April 2002, adding he only looked at the wooden boxes to ensure they were still intact.

AGENT'S NOTE: The recovery of the density gauges mentioned above occurred on October 13, 2002.

BERRY said that on October 15, 2002, BROWN arrived at the ATC facility to conduct a physical audit with him of ATC's density gauges. BERRY said he and BROWN opened the wooden boxes which housed the Troxler density gauges, and at that point discovered two of the gauges were missing. BERRY stated he had no idea how long the density gauges had been missing since he last physically saw them in April 2002. BERRY stated that upon the discovery of the two missing density gauges, he and BROWN initiated contact with the Pocatello Police Department (PPD) and provided them serial numbers of the missing density gauges. BERRY said within 1 or 2 days, he was contacted by the PPD and notified that the density gauges recovered from the Portneuf River belonged to ATC. BERRY said the density gauges were released to him approximately 6 weeks later.

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BERRY recalled an inspection conducted on ATC by FULLER in February 2002 and remembered FULLER inquiring about density gauges owned by ATC. BERRY said he vaguely recalled FULLER asking him about the wooden boxes that stored the Troxler density gauges and remembered telling FULLER the boxes were empty. BERRY said, initially, that at that time, some of the boxes were empty because some of the density gauges were in Salt Lake City, Utah, at a company called Nuclear Testing Services (NTS), being tested to ascertain if they were repairable. BERRY said he did not know how many of the density gauges were being tested at the time of FULLER's inspection. When asked if he recalled telling FULLER that he [BERRY] purchased the wooden boxes empty for the purpose of refinishing them, BERRY stated he did not recall saying that. BERRY admitted that the gauges were owned by ATC in February 2002, when FULLER conducted his inspection, but they were not on his inventory. BERRY initially stated he could not explain why the density gauges were not on his inventory, adding, "...I am not really sure how that happened, if I made a mistake or whatever" (Exhibit 4, page 16). BERRY claimed he did not have clear recollection of the entire conversation with FULLER, saying, "I didn't report the conversation, and I didn't make a transcript of the conversation, and I really didn't feel like I had to" (Exhibit 4, page 20).

BERRY claimed he had no records available which showed the transfer of the density gauges between ATC and NTS and the dates the alleged work was conducted, claiming the records were in police custody because of the recovery of the density gauges from the Portneuf River. BERRY then stated, "As far as the gauges, to be honest with you, they probably could have been here (for FULLER's inspection), and I think they probably were, but I don't know a hundred percent" (Exhibit 4, page 23). BERRY then stated he was not sure if all the gauges were present for FULLER's inspection, but said, "...I am going to be honest with you and I am going to admit to you that I probably misrepresented and lied that day. And I am going to tell you that straight up" (Exhibit 4, page 29). BERRY said he lied about the wooden boxes being empty because the density gauges within the boxes were not carried on his inventory at the time, and he [BERRY] knew that. BERRY added he was still not sure how many density gauges were being serviced by NTS at the time of FULLER's inspection, but said at least some of the gauges were present during his inspection. BERRY said he simply told FULLER all the boxes were empty to avoid him looking in them and discovering the density gauges.

BERRY said he had not informed BOOTH or anyone else associated with ATC about FULLER's inspection in February 2002 and never told anyone about his misrepresentation to the NRC during that inspection regarding his incorrect inventory concerning the density gauges.

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Interview of Donald W. BROWN (Exhibit 5)

On April 9, 2003, BROWN was interviewed in Pocatello, Idaho, by OIRIV and FULLER, and related the following information in substance.

BROWN stated he had been employed by Booth and Associates, Inc., for 5 years and conducted audits for BOOTH. BROWN said ATC was owned by Booth and Associates, Inc., and he [BROWN] said BOOTH required him to maintain accurate accounting of his [BOOTH's] assets. BROWN stated he was made aware by BOOTH that BERRY wanted to purchase five moisture density gauges from Desert Southwest Consultants, Henderson, Nevada. BROWN said he was not aware of specific circumstances surrounding the purchase of the density gauges, but said BERRY learned about the density gauges from a friend of his named Bret MCGOWEN [NFI]. BROWN said BOOTH told him [BROWN] of the arrangement, and BERRY subsequently purchased the density gauges from Desert Southwest Consultants. BROWN said he had no contact with the density gauges until he was asked by BOOTH to conduct an audit on ATC in October 2002. BROWN said he began preliminary audit proceedings on ATC by reviewing documentation relative to ATC's inventory as it was maintained by BERRY. BROWN stated the document review began shortly before October 9, 2002, but he was unsure of the actual date. BROWN said he planned to conduct a physical audit of ATC's inventory subsequent to his document review (Exhibit 6).

According to BROWN, he scheduled a physical audit of ATC for October 14, 2002, but was unable to make that appointment because he was involved in an automobile accident that day. BROWN said he was able to conduct the audit on October 15, 2002. BROWN said he had heard local reports of two density gauges being recovered on October 13, 2002, in the Portneuf River, and said he was unaware if the recovered density gauges were the property of ATC. BROWN said that on the morning of October 15, 2002, he and BERRY conducted a physical audit of the density gauges in ATC's inventory. According to BROWN, BERRY had four wooden boxes stacked two high in ATC's inventory room which contained four of the density gauges purchased from Desert Southwest Consultants. BROWN said when he and BERRY opened the two bottom density gauge boxes, they were empty. According to BROWN, BERRY claimed he had no idea the density gauges were missing until he [BERRY] opened the boxes. BROWN stated BERRY told him he [BERRY] conducted inventory on the density gauges by assuring the boxes were intact and chained together, not by opening the boxes and looking inside. BROWN said BERRY told him he [BERRY] had no idea how long the density gauges could have been missing. BROWN said subsequent to the discovery of the missing density gauges, he contacted the PPD, notified them of the missing density gauges, and provided them with serial numbers. BROWN said BERRY was later contacted by the PPD and informed the density gauges recovered in the Portneuf River were ATC's:

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AGENT'S NOTE: BROWN could not recall when ATC received the density gauges from Desert Southwest Consultants, but he provided OI:RIV with a copy of the Internal Audit Report he presented to BOOTH on ATC which indicated ATC received the density gauges from Desert Southwest Consultants on June 28, 2001.

Interview of Richard E. BOOTH, III (Exhibit 7)

On April 9, 2003, BOOTH was interviewed in Pocatello, Idaho, by OI:RIV and FULLER, and related the following information in substance.

BOOTH stated his company, Booth and Associates, Inc., owned ATC, and he [BOOTH] allowed BERRY to run ATC as the General Manager and RSO. BOOTH said BERRY was responsible for keeping records for ATC, following NRC regulations, and added he [BERRY] was responsible for the work generated by ATC. BOOTH said that in the summer of 2001 (he could not recall a specific date), he was approached by BERRY and told that he [BERRY] had a friend named Brett MCGOWEN [NFI] from the Las Vegas, Nevada, area that knew of several density gauges that MACIA was trying to sell. BOOTH said BERRY told him not all of the density gauges were in operating condition, but that MACIA was willing to sell four or five density gauges for the price of one to get rid of them from his inventory. BOOTH said BERRY told him that was a good deal, so he [BOOTH] authorized BERRY to buy the density gauges from MACIA. BOOTH stated that other than providing the funds for the density gauges, he had no contact with them, adding BERRY handled all of the details surrounding the purchase of the density gauges. BOOTH stated he authorized three payments to MACIA for the density gauges which totaled \$3,900 (Exhibit 8).

BOOTH stated that in October 2002, he asked BROWN to conduct an audit of ATC to verify all of ATC's equipment was intact. BOOTH said he requested the audit because of problems

* ATC was having with former employees [REDACTED] BOOTH stated he had suspected the three aforementioned former ATC employees of stealing non-radioactive materials from ATC and using that equipment on non-ATC job sites. BOOTH stated that as a result of BROWN's audit, it was discovered that two of the density gauges ATC purchased from MACIA were missing from ATC's inventory. BOOTH said he asked BERRY why the missing density gauges were not discovered prior to the audit and he [BOOTH] said BERRY told him he [BERRY] did not open the density gauge boxes to see if the density gauges were inside, he [BERRY] only verified that the density gauge boxes were chained together and appeared to be intact. BOOTH said the density gauges missing from ATC's inventory were found in the Portneuf River, on October 13, 2002. BOOTH stated he had no evidence of anyone stealing the two density gauges from ATC, but verified the density gauges were purchased in the summer of 2001 by BERRY for possible utilization by ATC.

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Review of Documentation

Booth and Associates, Inc., Internal Audit Report, dated October 15, 2002 (Exhibit 6)

This document, generated by BROWN, gave an accounting of the density gauges possessed by ATC, including the five density gauges purchased from Desert Southwest Consultants. Included within the report was a Bill of Lading from Desert Southwest Consultants to ATC dated June 28, 2001.

Agent's Analysis

This investigation confirmed that ATC's RSO [BERRY] failed to provide accurate and complete information to FULLER during an unannounced NRC inspection on February 11, 2002. BERRY admitted he "misrepresented and lied" to FULLER during the aforementioned inspection because he [BERRY] had five density gauges in his possession that were not on ATC's inventory list. BERRY said he lied to FULLER to keep him [FULLER] from looking in wooden boxes which housed the density gauges (Exhibit 4).

Additionally, BROWN provided OI:RIV documentation that showed ATC took possession of the density gauges from Desert Southwest Consultants on June 28, 2001. During BERRY's interview, he admitted he had stored the density gauges in ATC's facility since taking possession of them from Desert Southwest Consultants.

Based on the fact that BERRY had the density gauges in the ATC facility during FULLER's inspection on February 11, 2002, and lied to FULLER about their existence, his actions were deemed to be deliberate.

Conclusions

Based on evidence developed during the investigation, the allegation that BERRY deliberately failed to provide accurate and complete information regarding possession of radioactive materials was substantiated.

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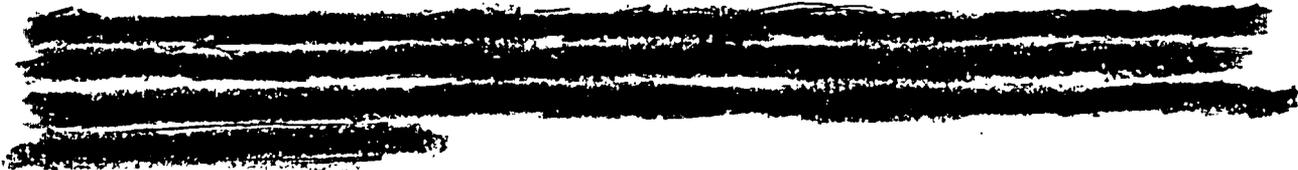
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SUPPLEMENTAL INFORMATION



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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Record, dated March 18, 2003 (1 page).
2	Interview Report with FULLER, dated March 21, 2003 (2 pages).
3	Interview Report with COOK, dated March 24, 2003 (1 page).
4	Transcript of Interview with BERRY, dated April 9, 2003 (38 pages).
5	Interview Report with BROWN, dated April 9, 2003 (2 pages).
6	Booth and Associates, Inc. Internal Audit Report, dated October 15, 2002 (31 pages).
7	Interview Report with BOOTH, dated April 9, 2003 (2 pages).
8	Copies of Three Checks from ATC to MACIA, dated August 4, 2001, dated September 24, 2001, and October 5, 2001 (1 page).

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