

1 BEFORE THE UNITED STATES NUCLEAR REGULATORY COMMISSION
2 PREDECISIONAL ENFORCEMENT CONFERENCE
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5 IN THE MATTER OF:) REPORTER'S TRANSCRIPT
6 ALL TECH CORPORATION)
7 RE: LICENSURE)
8 _____)

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14 CONFERENCE WITH RICHARD E. BOOTH, III AND BILLY BERRY
 Monday, September 15, 2003, 3:00 p.m.
 Pocatello, Idaho

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24 Katherine McCoy
 CSR No. 678

1 PREDECISIONAL ENFORCEMENT CONFERENCE
2 WITH BILLY BERRY AND RICHARD E. BOOTH, III
3 BE IT REMEMBERED that the predecisional
4 Enforcement Conference with BILLY BERRY and RICHARD E.
5 BOOTH, III, was taken by the representatives of the United
6 States Nuclear Regulatory Commission at the Bannock County
7 Sheriff Office, 5800 South 5th Avenue, Pocatello, Idaho,
8 before Katherine McCoy, Court Reporter and Notary Public in
9 and for the State of Idaho, on the 15th day of September
10 2003, commencing at the hour of 3:00 p.m., in the
11 above-entitled matter.

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13 A P P E A R A N C E S
14

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19 Nuclear Regulatory Commission, Region IV
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 Nuclear Regulatory Commission, Region IV
21
 MICHAEL FULLER, SENIOR HEALTH PHYSICIST
22 Nuclear Materials Inspection Branch
23 FOR ALL TECH CORPORATION
 RICHARD E. BOOTH, III, President
24 BILLY BERRY
25

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None.	

1 from the Region IV office. And to my left is Michael
2 Vasquez Region IV enforcement officer. If you would
3 introduce yourselves, Mr. Booth?

4 MR. BOOTH: I'm Richard Booth, president of
5 Booth & Associates, Incorporated, the parent company of All
6 Tech. I also serve as president of All Tech Corporation.

7 MR. BERRY: I'm Billy Berry. I'm the general
8 manager of All Tech Corporation and service as its RSO.

9 MR. COLLINS: Thank you.

10 The Nuclear Regulatory Commission has not made a
11 final decision in these matters. The purpose of this
12 enforcement conference is to give you the opportunity to
13 provide any information which is relevant to the NRC
14 arriving at its conclusion, to give you an opportunity to
15 give your perspective on the apparent violations that we
16 have written to you about.

17 And certainly it's NRC's objective that when we
18 make a final enforcement determination to arrive at one that
19 is well-founded by the circumstances and facts of the
20 situations.

21 So consequently, today no decision will be
22 reached or discussed in the conference, but we will take the
23 information you provide us here today away and back to that
24 final deliberation.

25 So I encourage you to be candid in providing to

1 us your perspective on the apparent violations, what you
2 think their significance is, and any facts or circumstances
3 surrounding the apparent violations, also any corrective
4 action that you have taken or planned or any other
5 information that you believe bears on the NRC's enforcement
6 decision, I would like you to please provide that today.

7 This conference is being transcribed. We have
8 identified ourselves so I think the court reporter knows who
9 is speaking, but please speak clearly so Kathy can get it
10 accurately transcribed.

11 We do not normally release copies of the
12 transcript outside the NRC, but we'll consider requests for
13 the transcript made under the Freedom of Information Act
14 after we have completed our enforcement action in this case.

15 Copies of the agenda have been made available.
16 Following my remarks Mr. Vasquez will discuss NRC's
17 enforcement policies to help you understand that. And then
18 Mr. Fuller will summarize the apparent violations which are
19 at issue here today.

20 And then we'll give you, Mr. Booth, and you,
21 Mr. Berry, an opportunity to respond, to give us your
22 perspective. I think we will undoubtedly have some
23 questions for you along the way. And at any rate when
24 you're done presenting your statements, we will, I think,
25 we'll have more questions for you.

1 There is a ten minute recess provided for in the
2 agenda. Before we conclude the conference we will take a
3 break and NRC will caucus among ourselves to make sure we
4 obtained all the information we think is relevant to help us
5 make our enforcement decision.

6 After the recess if there are any additional
7 questions, we will raise them at that time.

8 Do you have any questions for me right now,
9 Mr. Booth or Mr. Berry?

10 MR. BOOTH: I don't.

11 MR. BERRY: My only is -- I never received a
12 copy of the agenda.

13 MR. COLLINS: Okay. It's very -- we can give
14 you one now.

15 MR. VASQUEZ: That's it there between the two --

16 MR. BERRY: Right.

17 MR. BOOTH: This was downloaded off the
18 Internet?

19 MR. BERRY: Okay.

20 MR. COLLINS: So it's very straightforward.

21 Mr. Vasquez?

22 MR. VASQUEZ: I'm going to take just a couple of
23 minutes to briefly review the NRC's enforcement process and
24 how this conference fits into that process. A lot of those
25 things I'll be talking about are the same things we covered

1 at the exit briefing.

2 Like Mr. Collins was saying, the purpose of
3 today's conference is really for you to provide your
4 perspective on the apparent violations. And we encourage
5 you to be candid and honest in providing that perspective.
6 We have documented the NRC's prospective in the inspection
7 report and the letter we have sent to each of you.

8 And this conference is your opportunity to
9 provide us with any information that you feel bears on the
10 NRC's enforcement decisions.

11 Now the NRC has three types of sanctions. These
12 are notices of violations. And those are the written
13 citations that carry no additional penalties. Notices of
14 violations can be issued to licensees as well as to
15 individuals who engage in deliberate misconduct.

16 Secondly, we have notices of violations with
17 monetary civil penalties or fines. And the civil penalty is
18 based on the type of licensee and the significance of the
19 violation.

20 For example, for gauge licensees like
21 yourselves, the base civil penalty for a severity level
22 three violation would be \$3000. Civil penalties are not
23 normally issued to individuals who have engaged in
24 deliberate misconduct.

25 The third type of enforcement sanction is

1 orders. An order can suspend or revoke a license or require
2 other specific remedies for violations. Orders can be
3 issued to licensees and to individuals. In the case of
4 individuals who have engaged in deliberate misconduct -- may
5 prohibit individuals from involvement in NRC licensed
6 activities.

7 Now, our process for deciding which, if any,
8 sanction should be employed is first going to be to
9 determine whether a violation has occurred. We'll be making
10 that determination after the conference. It won't occur
11 today.

12 Basically, our own internal process is once we
13 get a copy of the transcript, it will be distributed to
14 other people, primarily our headquarters offices who will be
15 involved in the decision-making. And then we'll caucus and
16 decide on, first of all, whether there is a violation.

17 And if there is a violation, then we're going to
18 have to determine the significance of the violation. And to
19 determine significance of the violations, we classify
20 violations using severity levels. Severity levels one
21 through four, with severity level one being the most
22 significant and four being the least significant.

23 We take four factors into consideration in
24 determining the severity levels. These are: One, whether
25 there were any actual safety consequences to the violations.

1 Two, whether the violations created the potential for safety
2 consequences to occur. Third, whether the violations
3 impacted the regulatory process by preventing the NRC from
4 carrying out its responsibilities; and four, whether there
5 was willfulness associated with the violation.

6 Willfulness is important in more than one
7 respect. It can affect the significance determination. It
8 can affect the severity level. And it can affect whether
9 the violation results in a civil penalty against the
10 company.

11 Why does the NRC attach so much importance to
12 willfulness, it's because we're not there to inspect 99
13 percent of the time. And we must be able to rely on
14 licensees and licensee's employees to conduct their
15 activities in compliance with our radiation safety
16 requirements.

17 The term "willfulness" as used in our
18 enforcement policy consists of violations committed
19 deliberately and violations that result from a reckless
20 disregard for the regulatory requirements.

21 In taking actions against a licensee, an
22 organization, a company, it does not matter whether the
23 violation was deliberate or the result of a reckless
24 disregard.

25 Where the distinction becomes important is in

1 deciding whether or not to take an action against an
2 individual. Normally, we will take action against an
3 individual only when we are convinced that the individual
4 knew the requirement and deliberately committed a violation.

5 Now, getting back to our process, once we've
6 determined that a violation occurred and have determined its
7 significance, then we have to determine the appropriate
8 sanction. Each violation classified at severity level one,
9 two or three is a candidate for monetary civil penalties.
10 Violations classified at severity level four are not.

11 Now in our civil -- people have asked us, how do
12 you determine civil penalties? It's described in our
13 enforcement policy. As a matter of fact there is a diagram
14 in our enforcement policy, which I'll take just a minute to
15 share with you.

16 If the NRC decides that there was a severity
17 level three, willful violation that occurred, the answer to
18 this first block would be, because of the way it's worded,
19 the answer would be no. And we would come down here and we
20 would consider whether the licensee is deserving of
21 identification credit. In other words, did the licensee
22 identify the violation.

23 Regardless of the answer in this case, yes or
24 no, we always consider the next block is corrective action.
25 The licensee's corrective actions, comprehensive and prompt.

1 And depending on the outcome of these answers will determine
2 in our normal process whether there is no civil penalty
3 issue, a base civil penalty, or twice the base.

4 For example, if we decide there is a willful
5 severity level three violation, and if the licensee is
6 deserving of identification credit, we would come up this
7 way (indicating) on the map, evaluate whether the licensee
8 has identified a corrective action credit. If yes, we come
9 up this way (indicating) and our normal process would give
10 us a "no civil penalty."

11 On the other side of the coin, if the licensee
12 is not deserving of identification credit, we would come
13 down, evaluate corrective action credit. Let's say the
14 licensee is not deserving of corrective action credit, we
15 would come down and this would normally result in twice the
16 base civil penalty. That's our normal process.

17 This "D" with a circle on it is meant to
18 represent discretion, meaning notwithstanding our normal
19 process, the NRC has the ability to either escalate or
20 mitigate a civil penalty based on the circumstances.

21 And the enforcement policy describes some of the
22 consideration we would have for escalating or mitigating a
23 civil penalty.

24 So a couple of things that are going to be real
25 important for us today is, how the violation was identified

1 and the promptness and completeness of corrective actions.

2 We will make a decision based on the information
3 we obtained during our inspection, investigation, and
4 today's conference. When we're ready to issue a decision,
5 we will notify you by telephone and by letter. This process
6 can take several weeks.

7 For several penalties and orders, we issue news
8 announcements within a day or so of the action being issued
9 and received. Licensees and individuals may challenge any
10 action that we take. And the process for challenging that
11 will be described in our correspondence. Okay?

12 That's just meant to provide an overview of our
13 enforcement process. Do you have any questions right now
14 about that? Just a briefly overview.

15 MR. BERRY: I don't believe I do.

16 MR. VASQUEZ: Okay.

17 MR. BOOTH: I do, but it's pertaining to another
18 case, the [REDACTED] case. I'd rather we get through this and then
19 I'll address that off line with you.

20 MR. VASQUEZ: Okay.

21 MR. COLLINS: We should try to keep this
22 conference focused on the issues, and then we can discuss
23 that separately.

24 MR. VASQUEZ: I'm done.

25 MR. COLLINS: Mr. Fuller?

1 MR. FULLER: Good afternoon, my name is Mike
2 Fuller. I'm a senior health physicist at NRC's Region IV
3 offices in Arlington, Texas.

4 The apparent violations that are the subject of
5 this conference were described in NRC's inspection report
6 that we issued to you on August 21st, 2003.

7 This case we have two apparent violations that
8 involved the licensee, All Tech Corporation, and one
9 apparent violation involves an individual, Mr. Billy Berry.

10 We have prepared a handout that briefly
11 describes the applicable requirements and how we believe the
12 requirements were violated.

13 Let me go ahead and give those to you now
14 (indicating). I'm sorry, you do have these; right?

15 MR. VASQUEZ: Uh-huh.

16 MR. FULLER: In accordance with our normal
17 practice, this information, as well as any written material
18 you provide us today -- let me point out something that is a
19 mistake.

20 On page two in the second paragraph, where it
21 talks about contrary to the requirement, it says, All Tech
22 Corporation failed to conduct a physical inventory every six
23 months to account for all sources and/or devices received
24 and possessed under the license.

25 That should read between June 2001 and October

1 of 2002. It's a misprint. That actually was also a
2 misprint in the letter that we sent to you in August.
3 Obviously, we haven't gotten to October 2003 yet. Hopefully
4 that was clear.

5 In accordance with our normal practice this
6 information as well as any written material you provide us
7 today will be placed in NRC's public document room. If you
8 believe any of the information you plan to provide us should
9 be withheld from the public document room, you need to
10 provide us with your basis for withholding and should do so
11 in writing.

12 In brief, these apparent violations involve the
13 failure to provide complete and accurate information to an
14 NRC inspector during an inspection on February 11, 2002.
15 And the failure to conduct a physical inventory every six
16 months to account for all sources and/or devices received
17 and possessed under the license between June 2001 and
18 October 2002.

19 In addition, the investigation conducted by
20 NRC's office of investigations concluded that these apparent
21 violations were willful in nature. So if there aren't any
22 other questions at this time or --

23 MR. COLLINS: Just a couple of things just to
24 try to summarize everything you heard here, you know. We
25 need -- if there are facts that we have that need to be

1 corrected, please bring that to our attention. Your
2 perspective on the significance, I mean, it does make a
3 difference in our enforcement if it's a level four or a
4 level three. So I'd like to hear your perspective on that.

5 Any corrective actions that you have will be
6 important to us, and should take -- and when we come to make
7 our final conclusion, and we talked about willful and
8 deliberate, that's important to the NRC because we invest a
9 lot of trust in our licensees.

10 MR. BOOTH: And vice versa.

11 MR. COLLINS: Right, and radiation safety
12 officers. So your perspective on that are also going to be
13 important. With that, I'll turn to over to you, I guess.

14 Do you want to go first, Mr. Richard Booth?

15 MR. BOOTH: I'd like to let Billy go first and
16 then I'll jump in.

17 MR. COLLINS: Okay.

18 MR. BERRY: I'm Billy Berry, the RSO and general
19 manager of All Tech Corporation.

20 First and foremost, no matter what happens here
21 today, I'm the one that has to take full responsibility for
22 whatever happened. And I believe that wholeheartedly.

23 I never have intended to deceive Mr. Fuller or
24 Mrs. Cook or anyone else. I believe that a lot of this is a
25 misunderstanding or miscommunication, probably on my part.

1 I can't say that for sure how it happened or what happened.
2 But I also know that when I was interviewed in March of this
3 year [REDACTED] And I
4 probably at about the midpoint of this interview with Mr.
5 Gonsoulin got very upset and very agitated primarily because
6 I felt like this gentleman was trying to make me say
7 something that I did not want to say and I did not have any
8 recollection of.

9 And this transcribed copy, if Mr. Gonsoulin or
10 Mr. Fuller want to say that this is what happened and this
11 transcription is correct, then the inventory that they say
12 is missing according to this, there is actually a point in
13 here where the inventory was there. Then it wasn't there.

14 My gauges weren't there according to Mr. Fuller,
15 but he also makes the statement in there that two of my
16 gauges were there. And there are probably about thirty-five
17 to forty different places in there where I can find fault
18 with the transcribed document. There are statements
19 accredited me in there that were made by other people. And
20 there is a statement made by Mr. Fuller in there that was
21 credited to Mr. Gonsoulin.

22 So this document is not very accurate at all. I
23 really have a problem with the transcribed document.

24 Now I want to recall to you the events as I
25 remember them. And feel free ask a question at any time.

1 In February of 2001 or 2002 -- 2002, Mr. Fuller
2 and Ms. Cook showed up at my office to do an inspection.

3 MR. FULLER: 2001, February of 2001.

4 MR. BOOTH: According to our information it's
5 2002.

6 MR. BERRY: See. And this is some of what's
7 happening here today. There is dates and --

8 MR. FULLER: I'm sorry. You're right.

9 MR. BERRY: -- things that are getting confused.

10 MR. COLLINS: Before you -- just one quick
11 question.

12 MR. BERRY: Yes, sir.

13 MR. COLLINS: [REDACTED]

14 [REDACTED]
15 MR. BERRY: [REDACTED]

16 MR. COLLINS: [REDACTED]

17 MR. BERRY: [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 MR. COLLINS: Okay. Thank you. I'm sorry.

21 Continue.

22 MR. FULLER: Just for point of clarification,
23 you're absolutely right. It was March 2000. I'm sorry,
24 February of 2002 when I did the inspection, but interview
25 with Mr. Gonsoulin and myself is, I think, April.

1 MR. BERRY: April, correct.

2 And I guess where March comes in is, Mr. Fuller
3 called me in March to schedule this meeting. He wanted to
4 clarify some information on our licensing issue with
5 [REDACTED] is what I was told at that
6 time.

7 And I guess that's also the reason why I think I
8 was really taken back by this interview because when this
9 interview started it had nothing to do with the licensing
10 issue. Someone had used our license. It had to do with
11 another fact.

12 But going back to February, they did come in to
13 do their inspection. Mr. Fuller come in and Jackie came in
14 to my office. They sat down. There was some minor
15 chatchit. What it was about, I really don't remember.

16 Mr. Fuller says he wanted to check where I
17 stored my gauges and they wanted my paperwork for my -- show
18 leak tests, and those types of things. I handed Mr. Fuller
19 my file.

20 He and Mr. Fuller -- or Ms. Cook, excuse me. I
21 misspoke.

22 Me and Mr. Fuller went out into the lab and
23 checked the gauges. I had already told them when they first
24 come in that my gauges had been taken out for calibration
25 and service.

1 I believe I -- even probably before I got back
2 into my office, but he said he wanted to check, you know, my
3 storage area anyway. We discussed about the storage area
4 because at that time we did not have a roof on top of the
5 storage area.

6 Inside the storage was all the wooden boxes and
7 all my plastic cases. There was also, as I remember, a
8 gauge from Qal-Tek. We went through that. He said
9 something about the cases, the wooden cases, asked me about
10 the wooden cases in particular.

11 I talked to him. What my exact statements were
12 or what exactly I said, I still to this day cannot tell you.
13 We talked about refinishing the cases.

14 In the transcribed copy it says that I told him
15 they were empty. I still do not believe I told him they
16 were empty. They may have been. They may not have been. I
17 think they were, but I don't remember actually saying they
18 were empty.

19 MR. BOOTH: Can I interrupt just a moment?

20 My understanding, Billy, is that the gauges were
21 picked up by Qal-Tek to take to their facility to see if
22 they could be made usable. And they left the cases there,
23 is my understanding, and they carried them in a van; is that
24 correct?

25 MR. BERRY: That's correct.

1 MR. FULLER: Was that Qal-Tek?

2 MR. BERRY: Yes.

3 MR. BOOTH: And we have documentation that
4 indicates the other gauges were picked up at that time as
5 well and were calibrated and were brought back; is that not
6 correct?

7 MR. BERRY: That's correct.

8 MR. BOOTH: But we do not have documentation
9 that shows these old gauges, the four old gauges that are in
10 question, were picked up at that time or were brought back.
11 That's my understanding. There is no documentation that
12 shows that; is that correct?

13 MR. BERRY: That's correct.

14 MR. BOOTH: Okay.

15 MR. BERRY: There were no repairs made.

16 MR. BOOTH: There were no repairs made, no
17 charges made for just looking at them.

18 MR. VASQUEZ: Let me be sure I understand.
19 You're saying from the documentation standpoint, there is no
20 indication that those four old Troxler gauges were gone; is
21 that what you're saying?

22 MR. BERRY: Correct.

23 MR. VASQUEZ: They should have all four been
24 there from the documentation.

25 MR. BOOTH: No. They were sent out for

1 evaluation to see if they could be repaired. These are old
2 gauges. And our purchase that is brought up in previous
3 correspondence, these were thrown in with a purchase that we
4 made of a Campbell gauge for a small amount of money. And
5 Mr. Berry had sent them to Salt Lake City at some point to
6 see what they could do about repairing them and upgrading
7 them, whether they would be usable.

8 And then my understanding is that at another
9 time, and this was two or three days before Mr. Fuller and
10 Ms. Cooper had come in, that the gauges were picked up,
11 along with usable gauges. They were sent in for
12 calibration. These were picked up as well for evaluation,
13 if they could be repaired or not.

14 There is documentation that shows that those
15 other gauges were calibrated. We have invoices that show
16 during that time frame that they were picked up and
17 calibrated, but they did not charge us anything for looking
18 at those old gauges. They were carried in a van without the
19 cases.

20 MR. VASQUEZ: Okay. So you're saying then
21 Qal-Tek, when they took some of your other gauges --

22 MR. BOOTH: Took those as well.

23 MR. VASQUEZ: -- took those four older ones --

24 MR. BOOTH: Correct.

25 MR. VASQUEZ: -- out of wooden boxes.

1 MR. BERRY: The technician, well, they took all
2 the gauges, all of their boxes.

3 MR. VASQUEZ: All four?

4 MR. BERRY: Not just those four, but the ones
5 that were in the Campbell and the two Troxler boxes also.

6 MR. BOOTH: So they were transporting all gauges
7 without the cases?

8 MR. BERRY: Uh-huh.

9 MR. VASQUEZ: And you're saying that this is
10 where they were at the time of the inspection, that Qal-Tek
11 had them?

12 MR. BERRY: Correct.

13 MR. COLLINS: Who picked them up from Qal-Tek?

14 MR. BERRY: A gentleman by the name of Brian.
15 Brian was not sure whether they could work on the 2401's or
16 not. He said he would take them. And if they couldn't work
17 on them, he would bring them back and there wouldn't be
18 any --

19 MR. COLLINS: What is Brian's last name?

20 MR. BERRY: I don't remember. I want to say
21 Palma (phonetic).

22 MR. FULLER: Can I ask a question?

23 MR. BERRY: Sure.

24 MR. FULLER: Did anybody -- did Brian or anybody
25 else from Qal-Tek indicate why they wanted to take gauges

1 without putting them in their transportation containers --
2 transportation cases?

3 MR. BERRY: When I asked them on that, the
4 answer was they didn't have to. That's a DOT rule, not an
5 NRC rule so I didn't really know that I had the expertise to
6 question them on that.

7 MR. COLLINS: But I guess for the gauges
8 associated with the four wooden boxes which would be the
9 2401's?

10 MR. BERRY: Yes, sir.

11 MR. COLLINS: Then they would have had to have
12 gone, I guess, at some point the boxes were stacked; right?
13 They would have had to have gone into each box and pull the
14 gauges out?

15 MR. BERRY: Yes, sir.

16 MR. COLLINS: Then stack the boxes back up
17 again?

18 MR. BERRY: Yes, sir.

19 MR. COLLINS: I believe that's how they were at
20 the time Mr. Fuller and Ms. Cook were there.

21 MR. BERRY: Yes, sir.

22 MR. COLLINS: And you had a chain you were
23 keeping around it?

24 MR. BERRY: Correct.

25 MR. COLLINS: Okay.

1 MR. BERRY: But that I believe that day the
2 chain was off, but I'm not 100 percent sure.

3 MR. BOOTH: The chain, Billy, when did you
4 initiate the procedure of putting the chain and lock around
5 the gauges, around the boxes?

6 MR. BERRY: I believe.

7 MR. BOOTH: Before or after the theft?

8 MR. BERRY: It was before.

9 MR. BOOTH: Okay.

10 MR. COLLINS: At the time.

11 MR. BERRY: It may have been after we got them
12 back from Qal-Tek and/or not nuclear testing, took two of
13 them.

14 MR. COLLINS: You said something I missed.

15 MR. BERRY: Qal-Tek, if I'm remembering
16 everything correctly and I'm not sure, but I think Qal-Tek
17 took them first. I had a gentleman that was going down to
18 Salt Lake City to take a class from Nuclear Testing
19 Services. He took two of the gauges down. And I
20 transferred those into plastic boxes before he took them. I
21 believe that happened in April of that same year.

22 MR. BOOTH: This is after Qal-Tek that looked at
23 them?

24 MR. BERRY: That was after, correct.

25 MR. BOOTH: I don't think that is the issue

1 right now. I think the issue is, were the gauges in the
2 boxes or were they not in the boxes, and who looked in the
3 boxes while you and Mr. Fuller were there? My understanding
4 is neither one of you looked at them.

5 MR. BERRY: No, sir.

6 MR. BOOTH: No, sir, you did or --

7 MR. BERRY: No, sir, I don't believe either one
8 of us did.

9 MR. COLLINS: At the time of the February 2002
10 inspection, were those -- had you put those gauges, I guess
11 there were five of them obtained in June 2001, were they
12 being inventoried in your inventory too at the time?

13 MR. BERRY: Yes, sir.

14 MR. COLLINS: Do you have record of those
15 inventories? It would be useful.

16 MR. BERRY: (Examining documents.)

17 These are all my inventories up to --

18 MR. COLLINS: I guess the oldest inventory I see
19 here is October 2000.

20 MR. BERRY: There should be another one there.

21 MR. COLLINS: It was before that? This is
22 August of 2003.

23 MR. BERRY: Oh, okay, when you say older, I was
24 thinking the other direction. I'm sorry.

25 MR. FULLER: This was dated October '02.

1 MR. BERRY: May I?

2 MR. FULLER: But then up here, there is other
3 dates. I don't know what that means, why the dates are
4 different.

5 MR. BERRY: This is the way. This is inventory
6 that was just done last month. I make a copy of it. The
7 next time I inventory, the new date goes in and there is a
8 new signature on this (indicating).

9 This is what I keep because it's the most
10 current one is keeping a record of my inventory. The way --
11 the last date on this one because it can't go any further, I
12 don't have more room so I start a new one.

13 MR. FULLER: So this sheet that you created in
14 August of 2000 --

15 MR. BERRY: Uh-huh.

16 MR. FULLER: -- got thrown away?

17 MR. BERRY: Yeah.

18 MR. FULLER: You did a sheet just like this.

19 MR. BERRY: When I update with the new inventory
20 the next time, I will fill in the date here (indicating) and
21 this is the one that goes in the file.

22 MR. COLLINS: Are these copies we can have?

23 MR. BERRY: Yes, sir.

24 MR. COLLINS: We have one. We have this one, I
25 believe (indicating). This is showing, the one signed

1 October 14 is showing what dates of inventory, if you could
2 just for the record?

3 MR. BERRY: This is the October 14 inventory.

4 MR. COLLINS: So it's not showing --

5 MR. BERRY: When I do an inventory like on the
6 18th here (indicating), I would have taken the copy from
7 here (indicating), it looks just like this without any
8 signatures, done my inventory. And this is the one that
9 would go in my file with a blank copy, with no signature on
10 it, for the next inventory.

11 MR. COLLINS: Okay. Just to make sure I
12 understand. Was an inventory done between June 2001 and
13 October 2002?

14 MR. BERRY: Yes, sir.

15 MR. COLLINS: And that is reflected on this?

16 MR. BERRY: On this August of '01 and 2 of '02.

17 MR. COLLINS: For those inventories, did you
18 actually -- do you actually look at the gauge or did you
19 rely on the boxes?

20 MR. BERRY: I rely on the boxes. I have almost
21 always and --

22 MR. COLLINS: So for the October 14, you also
23 relied on the boxes?

24 MR. BERRY: No.

25 MR. BOOTH: Mr. Collins, we have -- can I

1 interrupt for just a moment? We have initiated a memorandum
2 that will require someone to physically look at those gauges
3 and record their serial numbers. And it's an ongoing
4 process and it's done at random without anyone knowing when
5 it's going to be done during each calendar month.

6 And our lessons -- and I know I'm jumping ahead
7 on some of this, but lessons learned in this situation is
8 that we had gauges stolen and didn't know they were stolen
9 until they were found. And how long, you know, they could
10 have been out there without us knowing, or in the river, is
11 something that's very concerning to me.

12 MR. COLLINS: And that's what I was trying to,
13 the point I was trying to get to. I had understood maybe
14 incorrectly that the two gauges were not identified as
15 missing until October 15.

16 MR. BOOTH: Correct.

17 MR. BERRY: That's correct.

18 MR. COLLINS: And I had looked at this inventory
19 which seemed to reflect that the gauges were present.

20 MR. BERRY: Okay. I understood. On this date
21 is the date that I -- because Mr. Booth called me, and
22 that's the reason for that date, the 10/14. Were they
23 there? I go in and open the closet and look, all my boxes
24 were there.

25 MR. COLLINS: So it was just a box inventory?

1 MR. BERRY: Well, I have all those locked
2 together, especially those four. And I'm the one who has
3 the key in my office. So I did not expect -- when we found
4 the ones that were stolen, they had taken a screwdriver or
5 something and jimmed the latches and then put them back
6 together.

7 I mean, they weren't totally back in, but if
8 you'd have pulled on the chain with your hand you would have
9 realized, which I didn't, you would have realized that they
10 weren't attached to the box. Only the lock and it was
11 hanging there.

12 MR. BOOTH: I have a question. Is it a normal
13 procedure when the NRC is doing an audit, such as the one
14 that Mr. Fuller and Ms. Cooper conducted, for them not to
15 physically see gauges; is that normal?

16 MR. COLLINS: I'm going to answer that no, but
17 we had a special purpose for that inspection. And so we
18 didn't go through all of our normal inspection procedures.

19 Normally, I would expect inspectors to
20 physically verify.

21 MR. BOOTH: I think this is lessons learned from
22 both sides here if we could prevent something of this
23 magnitude from getting totally out of hand again had
24 everyone physically looked and touched and looked at serial
25 numbers and things.

1 MR. VASQUEZ: Excuse me. Billy, when did you
2 start putting chains and locking all four of those wooden
3 boxes together?

4 MR. BERRY: It was sometime after we were
5 getting them checked out. And I think the last time I put
6 those chains on would have been April of 2002. Because at
7 that point in time I had made some changes in our storage
8 unit and stacked them differently to try to give us some
9 more room to access and move around. And I know for sure
10 that was when I put the chains on. Whether it was the first
11 time, I'm not 100 percent sure.

12 MR. VASQUEZ: Why did you chain just those four
13 wooden boxes and not the others?

14 MR. BERRY: Well, they all ended up getting
15 chained? Why did I chain those? They were out of service.
16 They were not to be used by our technicians. I wanted those
17 -- somebody to accidentally not grab one, even though they
18 had been told.

19 MR. VASQUEZ: Okay. I'm thinking back to the
20 time of the inspection, around the February 2002 time frame.
21 Okay.

22 MR. COLLINS: To make sure I understand then
23 your -- we have a copy of the one dated -- signed by you
24 October 14, but that is indicating inventory of the gauges
25 on August 2001, February 2002, and August 2002.

1 MR. BERRY: Yes, sir.

2 MR. COLLINS: So to complete the six month
3 inventory requirement, that is what this information is
4 telling me.

5 MR. BERRY: Okay.

6 MR. COLLINS: I'm asking you --

7 MR. BERRY: Yes, sir.

8 MR. COLLINS: -- to make sure I understand --

9 MR. BERRY: Yes, sir.

10 MR. COLLINS: -- the information that you're
11 providing how we should interpret it.

12 MR. BERRY: (Witness nods head.)

13 MR. COLLINS: Okay.

14 MR. VASQUEZ: During the February 2002
15 inspection were those old four Troxler gauges there in your
16 facility or did Qal-Tek have them all?

17 MR. BERRY: I believe Qal-Tek had them all.

18 MR. VASQUEZ: I understand that the document --
19 that you got no documentation on exactly when Qal-Tek took
20 them and returned them.

21 MR. BERRY: They took them February the 11th,
22 that morning, is what I remember. It's what I have in my
23 notes.

24 MR. VASQUEZ: The same -- before the inspection
25 actually started?

1 MR. FULLER: That's consistent with what he told
2 me. I recall when I showed up there, Mr. Berry met me at
3 the door and said, they just left with my gauges so sorry
4 you came all this way. That's when I said, that's okay,
5 there are still things we can inspect even though your
6 gauges aren't here.

7 MR. BERRY: Right. And that's, you know, I had
8 scheduled that day for them to come in and do the
9 calibration of those gauges. He gets down there, something
10 about a chip or something to that effect, was not right. So
11 he was going to have to take them back to Idaho Falls to do
12 the calibrations.

13 I says, well, if you've got to do that, can you
14 guys check out my 2401's to see if you can repair them? And
15 this gentleman was not sure. He says, I'll take them. If
16 they can be repaired, we'll let you know how much and
17 whatever. And he brings everything back. He says, we can't
18 work on those at all.

19 And to continue on, later that year we had a
20 gauge stolen. We thought we had a gauge missing first, and
21 then we realized we had gauges stolen. There were some that
22 were found in the river, [REDACTED] we
23 found out they had used our license to purchase a gauge.

24 I had been contacted by Idaho State Police, by
25 the DEQ, everybody because of the gauges in the river. And

1 when April the 9th, they're coming in. I was under the
2 impression they were coming to ask me some questions about
3 my stolen -- use of my license to use those gauges. And
4 then we sit here and the more they talk, Mr. Gonsoulin
5 talked, I began to think the gentleman was trying to accuse
6 me of stealing my own gauges and throwing them in the river.

7 And I may be a lot of things, but if I want to
8 get rid of these, I'm not going to throw them in no river.
9 I mean, that's just total stupidity to leave them out in the
10 open somewhere. And just the more and more this interview
11 went, the madder and madder I got. I don't know what else I
12 can say. I mean, right now.

13 MR. COLLINS: I would like to ask you. You
14 talked about the transcript not being accurate.

15 MR. BERRY: Yes, sir.

16 MR. COLLINS: At the most, maybe all if you
17 want, but at the most, significant points, would you
18 highlight for me where you believe --

19 MR. BOOTH: Is that like being a little
20 pregnant?

21 MR. COLLINS: Well --

22 MR. BERRY: Well, first and foremost.

23 MR. COLLINS: No, I don't think so.

24 MR. BERRY: The first part of the tape is
25 missing.

1 MR. BOOTH: There is at least a half hour of the
2 tape missing.

3 MR. COLLINS: Okay.

4 MR. BERRY: Because when we started the
5 proceeding before -- when they first got there they asked me
6 if they could record it. One of the first things on that
7 tape should have been that he had my permission to tape it.

8 Also there was discussion about my license being
9 stolen in [REDACTED] that's not anywhere in this document. And
10 there was also where I provided them documentation where
11 another, someone had provided them or had provided
12 [REDACTED] with a copy of [REDACTED] testing license, and
13 that's nowhere in here (indicating).

14 In here it says that they wanted me to raise my
15 right hand and I was sworn. Well, I'm either totally
16 ignorant or stupid or something because I was never sworn
17 that I remember.

18 There is places where dialogue don't match.
19 They ask a question. There is an answer, and the answer
20 don't match the question.

21 On page -- let's see. Page 18 down at the
22 bottom of the page the question is supposed to be by
23 detective or Agent Gonsoulin, "Mr. Fuller recalled, I
24 interviewed Ms. Jackie Cook. Do you recall Ms. Jackie Cook
25 being interviewed by me?"

1 That's a question supposedly from me, I believe,
2 and there is no answer.

3 MR. BOOTH: There are probably ten areas in
4 there that are inaudible at least.

5 MR. COLLINS: I appreciate your comments on the
6 accuracy of this transcript, but in essence, can I go over
7 some of these things with you?

8 MR. BERRY: Yes, sir.

9 MR. COLLINS: At the end seemed to be fairly
10 straightforward, and if we have it wrong here, we would like
11 to use this opportunity --

12 MR. BERRY: Okay.

13 MR. COLLINS: -- to set the record straight.

14 This is toward the end of the interview, but
15 this seems to reflect that -- and you're on page 29,
16 beginning on line 14, and I'm going to be honest with you
17 and I'm going to admit to you that I probably misrepresented
18 and lied that day and I'm going to tell you that straight
19 up.

20 Is that accurate?

21 MR. BERRY: No, sir, because I really believe I
22 said the word "possibly."

23 MR. COLLINS: So you believe you said "I
24 possibly misrepresented" is what you're trying to say?

25 MR. BERRY: Uh-huh, because starting on page 24,

1 Mr. Gonsoulin shifts to almost like a supposition and I
2 think that's probably where I got -- well, let's just
3 suppose or it could -- maybe this could have happened this
4 way. And that's really and truly what I believed at that
5 point that's where we were going with this.

6 MR. COLLINS: Where are you referring in the
7 transcript? I'm not following you.

8 MR. BERRY: Okay. Page 21, line 15, now I'm --
9 I honestly felt like, you know, reading this, I don't
10 believe I said the things I said in there honestly --

11 MR. COLLINS: On page 15?

12 MR. BERRY: -- but it's quite possible that I
13 did.

14 MR. COLLINS: Page 21.

15 MR. BERRY: Yes, sir.

16 MR. COLLINS: You're referring to what on page
17 21, I'm not sure.

18 MR. BERRY: He uses the word "maybe." I think
19 maybe that you had those gauges.

20 MR. COLLINS: Yes. And I'm reading from the
21 transcript, And those boxes, and they were not in your
22 inventory and instead of being caught with them, you said
23 the boxes were empty. And this reflects that your response
24 was, okay, fair enough.

25 MR. BERRY: Uh-huh.

1 THE COURT: Now in view of what you presented to
2 us here today, I think I'm going to have to ask you, why
3 didn't you respond to Agent Gonsoulin with, they were in my
4 inventory and I inventoried them on August 2001 and
5 February 2002?

6 MR. BERRY: Because --

7 MR. COLLINS: Here's my inventory.

8 MR. BERRY: Because at one time my records were
9 scattered between the state police and my attorney and
10 everyone.

11 MR. COLLINS: Uh-huh, but you did not recall
12 then having inventoried those gauges?

13 MR. BERRY: I need to tell him that exactly what
14 date and when they were, I couldn't do it.

15 MR. COLLINS: Okay.

16 MR. BERRY: I understand, you know, what he's
17 saying there and what he's saying there, there is numerous
18 times when I say "okay" in there. That's acknowledgement
19 that I hear what he is saying. And if a person, you know,
20 he makes a supposition and he tells me this is what he
21 believes. I mean, and I don't have any reason to say, it's
22 not a fair assumption.

23 MR. COLLINS: Right. I appreciate you come to
24 talk to us about this. I got the impression from reading
25 the transcript that later on it was no longer a presumption.

1 Can we go over some of the other areas?

2 MR. BERRY: Yes, sir.

3 MR. COLLINS: And make sure I understand what
4 you said here or correct this if you believe it's wrong.

5 MR. BERRY: Okay.

6 MR. COLLINS: And I, on page 29, again, dropping
7 on down to Mr. -- Agent Gonsoulin asked you, based on your
8 recollection, what you recall lying about. And you said,
9 responded, that the boxes were empty. And then Agent
10 Gonsoulin said, so you told Mr. Fuller that they were empty
11 with the knowledge that they may not have been empty? And
12 this reflects you said, yes, sir. Help me with that.

13 MR. BERRY: Yes, sir, because it's like I told
14 them that day, I did not remember what gauges were where at
15 that time. And I kept insisting on that. And they kept
16 insisting that wasn't an adequate answer, not in those -- so
17 many words, but that's the way it was presented to me. And
18 he used the word "may have" in there.

19 MR. BOOTH: Did he ask if you were lying? Did
20 he use the word "lying" on page 29, Billy? This area right
21 here (indicating).

22 MR. BERRY: I'm looking right at it. I've got
23 it highlighted here. I mean, honestly --

24 MR. BOOTH: My question, I guess is, several
25 times in here he used the words in here "lie" and "lying,"

1 do you admit lying, did you lie, and conversations that I
2 had with you, you deny ever having said that you lied or
3 that he used the word "lie." I'm just curious about that
4 myself.

5 MR. COLLINS: Yes, and I just want to make sure
6 we understand. This question, I have to be honest with you,
7 Mr. Berry, seems fairly -- or you were asked, what is your
8 recollection?

9 And in response to your statement, as you put
10 it, I possibly misrepresented and lied that day. And your
11 response was, the question then was, well, based on your
12 recollection what do you recall lying about, and you
13 responded that the boxes were empty.

14 MR. BERRY: Uh-huh.

15 MR. BOOTH: Is this about a year after
16 Mr. Fuller's visit? This is not a week after. It's not
17 three days after. This is a full year after his visit, is
18 that correct, approximately?

19 MR. BERRY: Yeah, it's fourteen months.

20 MR. BOOTH: Fourteen months after the
21 conversation with Mr. Fuller.

22 MR. BERRY: Yeah.

23 MR. BOOTH: And fourteen months after gauges
24 were picked up by Ad Tech.

25 MR. BERRY: Can we take a break, please?

1 MR. COLLINS: Yes, let's go off the record.

2 (Off the record.)

3 MR. COLLINS: Okay. We're back on the record.

4 Let's see. I guess on the subject of
5 refinishing the boxes, which came up while we were off the
6 record, I understood, and just to tell you what I understood
7 you to say on this transcript, Mr. Berry, and you can tell
8 me if I have an accurate understanding. That you don't
9 recall talking about purchasing the boxes for the purpose of
10 refurbishing. You seem to say clearly on the transcript
11 that you did not get the boxes empty.

12 MR. BERRY: That's correct.

13 MR. COLLINS: Is that correct?

14 MR. BERRY: Yes, sir.

15 MR. COLLINS: Which would seem to be consistent
16 with what you told us here today, that you obtained the four
17 2401's in the wooden boxes?

18 MR. BERRY: Yes, sir.

19 MR. COLLINS: But what's different that we heard
20 today than what you said in your transcript was at the time
21 of the February inspection, the boxes were empty.

22 MR. BERRY: I believe they were.

23 MR. COLLINS: But you did not say that in the
24 April interview with Agent Gonsoulin so I just want to make
25 sure we understand.

1 MR. BOOTH: I think this, as Mr. Berry says at
2 the beginning, this is where it seems to be a
3 miscommunication. Mr. Fuller was hearing that the boxes
4 were purchased empty and he believed that they were bought
5 and it even refers somewhere in here, that I picked them up
6 or something like that, for the purpose of refinishing.

7 And we need to make that very clear. We didn't
8 pick them up for the purpose of refinishing. They were part
9 of the deal of purchases that were made for all those
10 gauges.

11 MR. COLLINS: I think I understand what you're
12 saying. I think I agree with you, but what I need to do is
13 take it to the next level and make sure I understand the
14 apparent statement by Mr. Berry back on page 29, that based
15 on recollection what you recall lying about, Mr. Berry, that
16 those boxes were empty.

17 Agent Gonsoulin, so you told Mr. Fuller that
18 they were empty with the knowledge that they may not have
19 been empty. And the answer is yes. So we took it from
20 that --

21 MR. BERRY: Yes.

22 MR. COLLINS: -- that was an admission.

23 MR. BERRY: I can see, I guess when I see it in
24 black and white, you know, I probably would have answered
25 that question totally different reading the question.

1 MR. COLLINS: Let me ask you. So today you
2 would say the boxes were empty?

3 MR. BERRY: I believe they were.

4 MR. COLLINS: So you did say the boxes were
5 empty, but the reason they were empty was because Qal-Tek
6 had taken them that morning for an assessment on their
7 potential to be repaired?

8 MR. BERRY: I don't know whether I ever said
9 they were empty or not.

10 MR. COLLINS: Okay.

11 MR. BERRY: I really don't. And that's now,
12 could I have, maybe, but I don't think so. And I think
13 where we might have got our wires crossed is, I told him
14 flat out when they come in, they had come and taken our
15 gauges.

16 MR. COLLINS: By that you were --

17 MR. BERRY: And we also had the discussion we
18 weren't using those boxes, the wooden boxes, referring to
19 those. And if I said they were empty that day, he was
20 there, I really don't know. I don't think I did.

21 MR. COLLINS: But you do believe they were
22 empty.

23 MR. BERRY: But I do believe they were empty, so
24 it's possible I made that statement.

25 MR. COLLINS: When you said "they" took the

1 gauges, you're referring to Qal-Tek?

2 MR. BERRY: Correct, sir.

3 MR. COLLINS: And they took, I want to make sure
4 I have an understanding. How many gauges did they --

5 MR. BERRY: They would have taken (counting) --

6 MR. BOOTH: Seven.

7 MR. BERRY: Seven, correct.

8 MR. COLLINS: There is one gauge on your
9 inventory they did not take.

10 MR. BERRY: The one gauge they did not take
11 would have been one that was being leased from them at that
12 time.

13 MR. COLLINS: Which you subsequently purchased,
14 later purchased?

15 MR. BERRY: Yes, sir.

16 MR. COLLINS: Okay.

17 MR. BERRY: Um.

18 MR. COLLINS: We'll take away from this meeting
19 and we'll go back and check the transcript against the tape
20 because we want to make sure we have --

21 MR. BOOTH: I think it's being done by someone
22 in Rockville, Maryland for you.

23 MR. COLLINS: We'll check it.

24 MR. VASQUEZ: Why do you say that? I'm curious.

25 MR. BOOTH: Because of the inconsistencies we

1 found in it and having seen tapes that were altered before
2 and transcripts that were altered before, this one had all
3 the earmarks of it. And the time lag between when the
4 incident took place and the actual phone call to us that
5 there was an investigation, and the fact that Mr. Fuller and
6 Mr. Gonsoulin came to my office and they never mentioned
7 anything about this particular incident to me, I found it
8 very disturbing that there was something that was being
9 hidden that they did not want management to know what was
10 really going on. And I questioned, you know, the
11 methodology that was used. It was very suspicious.

12 MR. VASQUEZ: My question really went to whether
13 you had contact with the office of investigation.

14 MR. BOOTH: I did. They called me in May and
15 wanted to know.

16 MR. VASQUEZ: Okay.

17 MR. BOOTH: And I'd rather not disclose what
18 they wanted to know.

19 MR. VASQUEZ: That's fine. Okay.

20 MR. BOOTH: And I didn't initiate the call in
21 May.

22 MR. COLLINS: I notice you have, Mr. Berry, a
23 list of pages and line numbers on the transcript. I've
24 tried to bring up in the questioning here the key points
25 that I thought were most relevant to the action and what we

1 thought you were saying on the transcript. Are there others
2 you want to bring to our attention here during this
3 conference?

4 MR. BERRY: Well, there is lots of things, I
5 mean, a lot of the stuff, I mean, it's very evident where a
6 question don't match an answer is something you see a lot
7 of. The missing lines, where it says "inaudible" or
8 whatever.

9 But, you know, after that interview, I've done
10 some real searching, you know, going through trying to
11 remember things, trying to see, researching my notes. And
12 the only notes I have on our February 11, 2002 meeting was
13 on lack of a written audit and a dosimetry report. And
14 that's the extent of my notes from that day pretty much,
15 what I needed to take care of.

16 And to try to remember anything else, I really
17 can't say. And I've even gone back and checked, you know,
18 other things. And I'll be honest with you, there are a lot
19 of things that I've told you today that wasn't in this. And
20 a lot of it is not recollection because I've actually gone
21 back and researched and found out, or more like refreshed my
22 memory on what happened.

23 And one of the things that I come up with in
24 going through this and think that this gets back to, you
25 know, what caused this, how can we prevent it in the future,

1 that type of thing, and all our gauges will be stored in the
2 closet with the cases open or not in their cases at all.
3 All gauges will be counted by physical touch of the gauge,
4 not the case.

5 All cases will be stored on the premises, but
6 not necessarily in their closet. All audits, inspections by
7 NRC, ATC will require not only safety personnel but myself
8 or the RSO be present. And we're also, one thing I added to
9 that, is we're going to do audits from now on with two
10 people.

11 I put the root cause back to miscommunication.
12 And that's really the way I see things. And Mr. Fuller has
13 been a wonderful gentleman to work with. And in no way
14 shape or form do I want to imply he hasn't done his job or
15 -- hasn't done his job. That's not my intent here.

16 I think we did not communicate well at all. And
17 that's probably my fault because it's a problem I have even
18 now. And it's very frustrating to have gone through
19 college, gotten degrees, graduated with honors, and [REDACTED]
20 [REDACTED]
21 [REDACTED] and there is times I can't remember what
22 happened five minutes ago.

23 And it's very, very frustrating to me. It's
24 been a lot of my frustration today. And I'm glad to answer
25 any questions any of you may have. And I appreciate it, but

1 I do take this very, very seriously.

2 MR. BOOTH: One of the corrective actions that
3 we have put in writing for implementation is that no service
4 person will take any gauge away from that facility without
5 signing out the log in and out. Period.

6 Also disciplinary action in that corrective
7 action, disciplinary action will be taken against anyone who
8 fails to fill out the log. Any tech that takes a gauge
9 without signing the log out and indicating the serial number
10 and bringing it back and signing it in. The actual log will
11 be audited at random sometime during the calendar month.

12 The log will be treated as a permanent document.
13 It is not to leave the facility. Any time a safety officer
14 or a NRC, Nuclear Regulatory Commission officer or auditor
15 takes those documents, it will be -- they will sign out for
16 it and they will bring it back in and it will be signed off
17 by the document control person. No one is to leave there
18 with any documents, attorneys, no one will give attorneys or
19 state police anything without keeping copies of whatever
20 they give them.

21 Here we're talking about basically lessons
22 learned the hard way. And we feel like that we could have
23 probably caught the people that took the gauges within a
24 matter of days had some of these steps been in place, some
25 of these procedures been in place.

1 And I think that in doing this, we can prevent
2 it at some point down the road. I can see without putting
3 procedures of this nature in place, it could happen in
4. Texas. You'd never know who is planning on being your
5 competitor. [REDACTED]

6 [REDACTED].

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] I

15 don't know, but the root cause is, as we see it, we did not
16 have the controls that we should have had where those gauges
17 were physically being monitored coming and going.

18 And I would, as a concerned citizen, I would ask
19 that the Nuclear Regulatory Commission make it a practice
20 when they come to do an audit to physically look at them.
21 It can happen again. It could happen at some other company
22 other than us that is not implementing this type of
23 procedure.

24 With the danger that is involved in getting that
25 type of device into the wrong hands, I think it should be

1 everyone's responsibility, not only the licensee, but the
2 NRC, that we're all vigilant in seeing this doesn't happen.

3 I have a concern that I'm going to express now
4 about what happened with [REDACTED]

5 MR. COLLINS: Before you go to that, may I just
6 ask you to make sure --

7 MR. BOOTH: Yes, sir.

8 MR. COLLINS: For the theft of the gauges, that
9 was investigated by law enforcement authorities?

10 MR. BOOTH: My -- as far as we can tell, it was
11 a cursory-type investigation. The state police asked for
12 support from the Nuclear Regulatory -- excuse me -- the
13 Environmental Protection Agency, and they basically blew
14 them off.

15 MR. BERRY: We also reported it to the local
16 police. They passed it off to Bannock County. Bannock
17 County passed it off to the state police. It was almost,
18 what, a month before anyone from the state police contacted
19 us on this.

20 MR. BOOTH: [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]. And they had contacted the
25 Nuclear Regulatory -- excuse me -- the Environmental

1 Protection Agency. And they did not really -- be concerned
2 about it.

3 This is a programmatic problem as far as I'm
4 concerned. Probably the only reason they didn't get
5 concerned about it is there was no loss of life and in their
6 opinion there was no immediate threat to anyone's health and
7 well-being.

8 The question is, how many do you have to drop in
9 the river before they become concerned? How many people do
10 you have to expose before someone becomes concerned?

11 And the other question I have that I was going
12 to ask is, what kind of regulations do you need to impose to
13 stop a company that sells nuclear devices from letting
14 anyone walk in, using someone else's license, and walk out
15 with a gauge? I mean, there needs to be some kind of
16 policies and procedures in place to prevent this from
17 happening.

18 They could go in there and get ten gauges and
19 then you have a pretty potent nuclear device to cause some
20 serious injury. Had there been at least one phone call when
21  got those gauges, just one phone call, we could have
22 caught them then. And they turned around and did it again a
23 week later, and not one phone call that time.

24 That's all the comment, as a citizen of Idaho, I
25 am concerned that no one has really took the seriousness of

1 gauges, nuclear devices being dropped in a river the way it
2 should be.

3 And I can assure you that as a licensee, we will
4 take every precaution we possibly can. This was a wake-up
5 call for us. This has been a wake-up call for Mr. Berry.
6 I've had him in my office grilling him over this document
7 several times.

8 And I read three-fourths of the way through it
9 and I wonder why a man is being badgered to the extent that
10 he is in here when he repeatedly tells the man something.
11 Then finally at the end he is saying things that is contrary
12 to most of it.

13 Is it because he finally broke him down or is it
14 he finally wore him out to the fact that his health just
15 gave way on him? I don't know. And we're asking these
16 questions. We're asking experts to come in and look at it
17 and tell us what they think.

18 If we have done something wrong, something that
19 we should not have, we'll be men and take our medicine. If
20 we can do a better job with your help, that's what we're
21 here for. We're not here to fight you to try to defend
22 something that's not honest and fair. And that's all that
23 we're asking you do is look at our situation and be honest
24 and fair about it.

25 I will say it again, I am deeply concerned and I

1 have expressed my concerns to Mr. Vasquez. He's had his ear
2 warmed up a few times by me about the actions of Qal-Tek,
3 about selling gauges to just anyone coming in off the
4 street.

5 MR. COLLINS: May I ask a question?

6 MR. BOOTH: Yes, sir.

7 MR. COLLINS: Mr. Berry, did you feel badgered
8 during the Gonsoulin and Fuller interview?

9 MR. BERRY: Yes, sir.

10 MR. COLLINS: Okay. You did at the end, and I
11 guess they badgered you. So when you said, you gave this
12 freely and voluntarily, you didn't really feel that when you
13 said that?

14 MR. BERRY: No, sir. That's not a voluntary
15 statement.

16 MR. COLLINS: Can you elaborate on that, please?

17 MR. BERRY: That was an interview by someone.
18 If I had volunteered a statement, I would have come to you
19 and said, this is what I want to tell you. That's a
20 voluntary statement.

21 MR. COLLINS: I see your point.

22 MR. VASQUEZ: I need to talk a little bit about
23 some of the things that bother me about the transcript and
24 the way it reads. And I think from my perspective, you've
25 got to understand, I've got to react to the information that

1 I get.

2 MR. BERRY: Yes, sir.

3 MR. VASQUEZ: The information I have, okay. And
4 the way I read the transcript quite frankly was, you know,
5 at first you can't recall a lot of things. You know, there
6 is some denials in there.

7 MR. BERRY: Uh-huh.

8 MR. VASQUEZ: But then after Mr. Fuller goes
9 through and describes his recollection of the situation, and
10 the way I read the transcript was, well, then you admitted,
11 yes, you misrepresented, lied. But even more than that,
12 there was a pursuit of why, and you had gone on to say,
13 well, we had been going through a very tough, busy year and
14 I had gotten all my -- and I had not gotten all my paperwork
15 up to date.

16 And the transcript says, Mr. Fuller asked, so
17 you knew that you were not carrying them on your inventory,
18 in other words; and your response, correct, on my inventory.

19 MR. BOOTH: Can I interrupt just a moment here?
20 If this is the case, why would not you have written a
21 nonconformance at that point in time?

22 MR. VASQUEZ: Why --

23 MR. BOOTH: Why would Mr. Fuller not have
24 written a nonconformance at that time?

25 MR. FULLER: Wait a minute, in February 2002.

1 MR. BOOTH: Yes.

2 MR. FULLER: Because he told me they were empty
3 and I believed him. There is no requirement to carry empty
4 cases in an inventory.

5 MR. COLLINS: If we had drawn a conclusion in
6 February of 2002 that the inventory was inaccurate, we would
7 have, but we hadn't.

8 MR. BOOTH: So fourteen months later you draw a
9 conclusion; is that correct?

10 MR. VASQUEZ: Fourteen months later we do an
11 interview to pursue --

12 MR. COLLINS: To clarify.

13 MR. VASQUEZ: -- to try to find out the
14 circumstances and the situation. We still have not reached
15 a conclusion.

16 MR. BERRY: Okay.

17 MR. VASQUEZ: But the only, look, I know some of
18 this is a little bit repetitive but, you know, I wanted to
19 get it out on the table because this is the time to do that.

20 MR. BERRY: Fair enough.

21 MR. VASQUEZ: And the way I was reading this,
22 was that not only did we pursue or that Gonsoulin and Fuller
23 pursue whether you had provided Mike with incomplete or
24 inaccurate information, but they also pursued the reasons
25 for it.

1 And from the transcripts, later on page 30, 31,
2 it really looks like -- and on 20 you admitted, on 30 and 31
3 you're saying the reason for it is because you had not put
4 them on your inventory. And even in here on page 30, Agent
5 Gonsoulin is saying, so you told Mr. Fuller that the boxes
6 were empty to avoid him looking in there, Mr. Berry
7 responds, correct.

8 And I guess that's the one thing that bothers
9 me. There may be problems --

10 MR. BERRY: Also on top of page 30, whoever is
11 making the statement of whoever transcribed this has got the
12 names wrong on some of those.

13 MR. VASQUEZ: Okay. What do you mean?

14 MR. BERRY: Special Agent Gonsoulin, as I
15 remember it, did not make the first statement. That was
16 Mr. Fuller.

17 MR. COLLINS: Okay.

18 MR. VASQUEZ: You mean line one and two?

19 MR. BERRY: Yes, sir.

20 MR. VASQUEZ: Okay. Well --

21 MR. BERRY: That's where some of the areas where
22 I believe there is also some missing items.

23 MR. COLLINS: Okay. Do you happen to recall,
24 Mr. Berry, about the statement here, "I had not gotten all
25 my paperwork up to date." Would that -- should I take that

1 as a --

2 MR. BERRY: Did I make that statement that way?

3 MR. COLLINS: Yes.

4 MR. BERRY: No, I may not -- I may have -- I
5 think I said that.

6 MR. BOOTH: You either did or didn't.

7 MR. BERRY: But I don't think I said "I did
8 not." One's a declarative statement. Another one I would
9 think I would be giving a possible reason why.

10 MR. VASQUEZ: Possible reason why -- what?

11 MR. BERRY: Why it may not have been done.

12 MR. VASQUEZ: But was your --

13 MR. BERRY: It's just like I said prior to
14 there, we were -- I really truly believe at that point we
15 were talking from a supposition standpoint.

16 MR. BOOTH: Can I make a suggestion?

17 MR. VASQUEZ: Uh-huh.

18 MR. BOOTH: That we take the transcription, put
19 it in the trash, bring someone in here and legally swear him
20 in and ask him the questions.

21 MR. COLLINS: Well, we may -- we'll do that if
22 we need to, but we can take this opportunity to explore, you
23 know. I doubt that -- we'll go back and listen to the tape.
24 And I'm not sure what we'll do if we hear this on the tape.

25 MR. BERRY: Uh-huh.

1 MR. COLLINS: Because -- but we will, and we'll
2 have a good idea of where we're at. But I think it's
3 important for us to go through these points. These are
4 relevant points why we are sitting here today.

5 MR. BOOTH: That's why I say they're relevant
6 points, why not put him under oath and ask him?

7 MR. COLLINS: We've already done that. This is
8 what we have now. And you're telling us in some cases it's
9 not accurate. And that's what we went through point by
10 point on which are the keys ones so we know which ones are
11 inaccurate. And so that's why we're asking this.

12 So today you would tell us that you did have
13 your inventory paperwork up to date.

14 MR. BERRY: But I'm also looking retroactively
15 and having gone back and --

16 MR. COLLINS: Sure, but I just want to --

17 MR. BERRY: Yes, sir.

18 MR. COLLINS: -- try -- we can't go back in time
19 and ask you this question. We can only ask you today.

20 MR. BERRY: And I wasn't prepared for this
21 interview that day, in all fairness and honesty, because I
22 thought we were going to talk about something else.

23 MR. COLLINS: Okay. Okay.

24 MR. VASQUEZ: It's all the same, I mean, the
25 line of questioning. And -- okay.

1 Now what you're saying is, essentially you're
2 casting doubt on the transcript as written. You're
3 essentially saying, look, I've gotten -- I had my inventory
4 records. I may not have had them there with me. The
5 lawyers may have had them. They may have been with the
6 state police and others investigating the theft.

7 MR. BERRY: Uh-huh, but I still do not believe
8 you have heard what I've said. That day, on page 24 is when
9 I first get an idea of the reason for Mr. Fuller's and Mr.
10 Gonsoulin's visit.

11 MR. COLLINS: What is it you don't think we've
12 heard.

13 MR. BERRY: That I was told that Mr. Fuller was
14 coming to talk to me. And I may not be quoting exactly, but
15 he would come to talk to me about the [REDACTED] incident and
16 when [REDACTED] used our license to purchase those
17 gauges.

18 And when Mr. Fuller and Mr. -- and he also told
19 me he was going to be bringing Mr. Gonsoulin with him
20 because they -- he was going to be -- because they were
21 going to be doing some interviews at the same time.

22 Then when they get there, I'm interviewed by Mr.
23 Gonsoulin about something totally different. Like you say,
24 when you get into the transcript about page 24 is when I
25 start realizing that I think they're wanting to accuse me of

1 putting those gauges in the river.

2 MR. BOOTH: Hold on just a minute, Billy.

3 MR. BERRY: Prior to that when Mr. Gonsoulin had
4 investigated and talked to me about the stolen gauges, I
5 asked for an attorney to be present with me. And if I'd
6 known, I probably would have had an attorney there that day
7 because of all the different things that had gone on with
8 these stolen gauges. And it appeared that nobody was
9 investigating it. And it appeared to me that there was a
10 whole bunch of different things going on.

11 And at that -- when it gets to that point in the
12 interview, I get very agitated. And I'll be honest with
13 you, I may not have even been listening, I was so mad.
14 Because I felt like I'd been -- and this has been -- I'm
15 sorry.

16 MR. COLLINS: Well, let me just make sure the
17 purposes of this conference are clear to you.

18 MR. BERRY: Yes, sir.

19 MR. COLLINS: We're not here talking about the
20 stolen gauges and who threw them in the river. This is
21 solely for the accuracy of information provided during an
22 NRC inspection. And which we thought was corroborated by
23 your testimony that day so that's why we are here talking to
24 you.

25 MR. BERRY: Yes, sir.

1 MR. COLLINS: I appreciate the perspective that
2 you're giving us. This is why we're here.

3 MR. BERRY: [REDACTED]
4 [REDACTED]

5 MR. VASQUEZ: [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 MR. BERRY: [REDACTED]

9 MR. VASQUEZ: - [REDACTED]
10 [REDACTED]

11 MR. BERRY: [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 MR. VASQUEZ: [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 MR. BERRY: [REDACTED]

20 MR. VASQUEZ: Can we take a short break?

21 MR. COLLINS: I'm close to where I need to be.
22 How about you, Michael?

23 MR. VASQUEZ: Okay.

24 MR. COLLINS: Ready for our caucus?

25 MR. FULLER: Sure.

1 MR. COLLINS: Go off the record, please.

2 (Off the record.)

3 MR. COLLINS: Back on the record.

4 We had one area that we wanted to have a
5 follow-up question with you on to make sure we understood.
6 And after that, then any closing comments you have or final
7 comments or points you want to make for both of you, and
8 then I'll close out the conference.

9 MR. VASQUEZ: Okay. This is a question that
10 I've been thinking about. You know when Mike Fuller or
11 Jackie Cook were there in February 2002 doing the
12 inspection, they looked at -- excuse me -- leak test records
13 to get an idea of the gauges that you had and if they were
14 current on leak tests. Okay?

15 But the thing that was noticeable is there was
16 no leak test records provided for those four 2401 gauges.
17 Okay?

18 And the other thing is that if you do ship a
19 gauge, you're supposed to have a leak within the last six
20 months prior to offering it for shipment.

21 MR. COLLINS: For transport.

22 MR. VASQUEZ: For transport.

23 One, did you have leak tests for those 2401's?

24 MR. BERRY: No, they were not in use. They were
25 out of service.

1 MR. VASQUEZ: Okay. Did you -- were you aware
2 there is the requirement to leak test them before you
3 transport them?

4 MR. BERRY: Before I transport them?

5 MR. VASQUEZ: Yeah, within six months.

6 MR. BERRY: Well --

7 MR. VASQUEZ: I guess.

8 MR. BOOTH: I could see the reason for that.
9 You wouldn't want the person who's transporting them to be
10 exposed.

11 MR. VASQUEZ: Exactly.

12 MR. FULLER: It's good to clarify. There is no
13 requirement to leak test those if they're in storage only.
14 It's only when you take them out of storage and either
15 transport or offer to transport that you have to have a
16 current leak test.

17 MR. BERRY: And I guess, you know, I'm certainly
18 thinking when my first response to that when you asked the
19 question was, well, how am I going to get them leak tested
20 if I don't transport them? But at the same time I can -- I
21 wasn't thinking about it that way. I can leak test them
22 right there and send it in.

23 MR. VASQUEZ: Uh-huh.

24 MR. BERRY: And actually, it wasn't done because
25 that wasn't a planned thing at that time.

1 MR. VASQUEZ: Were they leak tested before they
2 were shipped to All Tech?

3 MR. BERRY: I don't have a copy of that report
4 if they were. They were supposed to be.

5 MR. VASQUEZ: That was in June of 2001.

6 MR. BOOTH: We have an audit that was performed
7 by Mr. Brown that Mr. Fuller met. And he's got quite a
8 number of exhibits in here.

9 MR. COLLINS: We have a copy of that audit.

10 MR. VASQUEZ: What's the date?

11 MR. COLLINS: I think we do have a copy of the
12 Brown audit.

13 MR. BOOTH: October 15.

14 MR. VASQUEZ: Yeah, we do.

15 MR. BOOTH: Do you have copies of the exhibits?

16 MR. VASQUEZ: Yes.

17 MR. BOOTH: Okay. I don't remember seeing a
18 copy of a leak test in any of the exhibits. And I saw a
19 bill of lading.

20 MR. VASQUEZ: Okay. I guess for clarification
21 then, it was part of the other reason, part of the other
22 thing that was bothering us about there are leak tests for
23 all these others, for all these other gauges that ya'll had,
24 but not for the 2401's.

25 MR. BERRY: Right.

1 MR. VASQUEZ: For us was kind of suspicious
2 also.

3 MR. FULLER: And also just a point of
4 clarification. I don't normally ask for records of
5 inventory. And the reason I don't ask for those is because
6 there is no regulatory requirement for a record of an
7 inventory.

8 There is only a regulatory requirement to
9 perform an inventory. Now the we get to that sometimes is
10 through a number of things. You can ask folks about it or
11 you can review other records like utilization logs.

12 MR. VASQUEZ: Or leak tests.

13 MR. FULLER: Or leak tests. So when I looked at
14 Mr. Berry's records, I looked at leak test records and
15 wasn't necessarily looking for an inventory record because
16 there is no requirement for an inventory record.

17 And so I saw no indication of these other four
18 gauges. And so there is, you know, sort of to get back to
19 what you were talking about, why did -- you know, why did we
20 come back to this so many months later, or why didn't we
21 pursue it at that time is because there was nothing to point
22 me to gauges that at that point in time I didn't know
23 existed.

24 MR. VASQUEZ: Did you want to say something,
25 Mr. Berry?

1 MR. BERRY: I'm just confused about something.

2 MR. VASQUEZ: Okay.

3 MR. BERRY: Maybe it's that I don't remember.

4 And you just made a statement. And it just popped a big old
5 lightbulb in my head. You said you didn't look for them.

6 MR. FULLER: I didn't ask for any inventory.

7 MR. BERRY: I know, but I guess the thought come
8 to my mind just then is, Ms. Cook was the one that went
9 through the records. And I don't remember you going through
10 the records, other than her showing you some things about
11 the lack of a written audit and a dosimetry report.

12 And if I'm remembering incorrectly, then I'll
13 back off. But that's the way I think it happened because
14 you and I went out to the lab and she followed later.

15 MR. FULLER: I'm not sure what do you mean when
16 you say "the lab." You mean the garage?

17 MR. BERRY: Where my storage area is, yes.

18 MR. FULLER: We didn't --

19 MR. BERRY: That day, that's the way I
20 remembered it happening. And I think that's -- I mean, so
21 when you made that statement just then that you looked for
22 -- it just kind of something wasn't right.

23 MR. FULLER: Just as another point of
24 clarification. Ms. Cook was simply accompanying me for the
25 purposes of training. She has been a licensing person for

1 many, many years.

2 MR. BERRY: Correct.

3 MR. FULLER: This was a trip where she took to
4 accompany me because she wanted to observe an inspection.

5 MR. BERRY: Correct.

6 MR. FULLER: She was not there as an inspector.

7 MR. BERRY: Right.

8 MR. FULLER: And so --

9 MR. BERRY: But it was my understanding when you
10 explained to me that day she was there observing and helping
11 you. And I got the impression, to learn what you do. I
12 thought to do your job, type of job, eventually, maybe she
13 was trying to advance.

14 MR. BOOTH: She hasn't told him that yet.

15 MR. BERRY: I mean, I'm not saying Brian told me
16 that. That's what I'm telling you that I thought.

17 MR. FULLER: At that point in time we had a
18 number of people that were going through some cross
19 training.

20 MR. BERRY: Right.

21 MR. FULLER: There was sort of an overall cross
22 training.

23 MR. COLLINS: I want to make sure I understand
24 Mr. Berry' point. And then I'm not sure I caught it. So
25 let me take a stab at it and see if I got it right.

1 MR. BERRY: Okay.

2 MR. COLLINS: Mr. Fuller just said he used leak
3 test inventories or records for inventory purposes,
4 verification. And your point I think was, it was Ms. Cook
5 that looked at records, not Mr. Fuller.

6 MR. BERRY: Yes, sir.

7 MR. COLLINS: That's the point you are trying to
8 make.

9 MR. BERRY: Yes, sir.

10 MR. COLLINS: And I guess we were just -- we, or
11 the NRC come, it will be -- they used leak test inventories
12 -- correct me if I am wrong --

13 MR. FULLER: Uh-huh.

14 MR. COLLINS: -- to make the inventory
15 verification is how that inspection was conducted, which is
16 a viable method before Ms. Cook that actually asked for a
17 look, I don't see any difference in that.

18 MR. BERRY: I don't either, but I just verified
19 that because --

20 MR. COLLINS: I want to make sure I caught your
21 point.

22 MR. BERRY: Right.

23 MR. COLLINS: I wanted to make sure I caught
24 your point you were trying to make to us.

25 MR. BOOTH: I'd like to ask a question. If she

1 was looking in the files and she did not find an audit
2 report, would she not have brought that to Mr. Fuller's
3 attention?

4 MR. FULLER: Here's another point of
5 clarification. We don't look into people's files. We ask
6 folks for things and then they are provided to us. As a
7 matter of course, whether it was me or Ms. Cook, we would
8 not -- if it were me, I wouldn't do it. If it were
9 Ms. Cook, I won't allow it if she -- but we don't just go
10 into someone's records and start looking for things. We
11 specifically ask for certain things which are provided to us
12 so --

13 MR. BERRY: You're about the only one that's
14 ever done an inspection. And almost every inspection I can
15 remember, they have asked me for my records and I have
16 handed them a full stack of records and they go through
17 them. But never have they specifically asked for an item.

18 MR. FULLER: Okay. Okay. Maybe I misunderstood
19 what you were saying. When you said "go through our files,"
20 I took that to mean, going and opening someone's filing
21 cabinet and going through someone's storage.

22 MR. BOOTH: This again, it's miscommunication.

23 MR. FULLER: Sure.

24 MR. BOOTH: That's a good example. That's a
25 good example.

1 MR. FULLER: You may have actually provided me
2 with a file folder or some sort of folder or some sort of --

3 MR. BERRY: Probably did.

4 MR. FULLER: -- or something like that but --

5 MR. BERRY: Yes, sir.

6 MR. FULLER: I do recall we had to ask -- we
7 found -- we found -- I don't want to say holes. That's a
8 colloquialism.

9 We found places or instances where certain
10 records were not present. So I asked you for those and then
11 you went back. And I remembered you looking through piles
12 of paper on your desk and on the top of the filing cabinets.

13 MR. BERRY: It was the last dosimetry report.
14 And then there was one from the quarter, and the previous
15 year sometime that I could not find.

16 MR. FULLER: Right. So --

17 MR. COLLINS: Okay. Before we close, I'd just
18 like to give it to you, Mr. Booth, and you, Mr. Berry, for
19 any other points you want to make and make sure we get it on
20 the record here.

21 MR. BOOTH: I think that you've been very fair;
22 very thorough in what has been conducted here this
23 afternoon. I don't have a problem with it. I hope that we
24 have been able to give you a good picture of our
25 understanding of what we believe the true and accurate case

1 may be.

2 It's not, nor has it ever been, our intention to
3 mislead anyone, to do anything other than what is required
4 for the safety and well-being of the general public and our
5 employees.

6 We have taken corrective action. We did a root
7 cause and analysis of what we think was the reason this took
8 place. And we have put into place procedures and policies
9 that we think will prevent something of a similar nature
10 happening in the future, as far as gauges being taken and
11 possibly being away from the facility for several days or
12 weeks before someone discloses it, to determine that's
13 happened.

14 We are putting into place procedures that
15 prevent service people from taking equipment away from the
16 facility without the proper documentation. And you brought
17 up a very, very valid point, Mr. Fuller, about the wipe
18 test. And I can absolutely relate to that.

19 Let's say that you had -- I'm going to use a
20 "what if," if you had an automobile accident or an accident.
21 And that gauge that was possibly leaking, let's say he had a
22 way of securing it at that time when he picked it up. But
23 in transport it became -- it came out of that container and
24 you had someone out there responding, a HAZMAT team out
25 there responding. You could put that person in danger

1 without him really knowing he's in danger at that time. And
2 so I can respect that. And I think we will go a step
3 further with our corrective action and add that to it to be
4 sure we are in compliance and make absolutely sure that we
5 are doing everything we can to protect the public. That's
6 all I have, gentlemen.

7 MR. COLLINS: Mr. Berry, anything else you want
8 to add?

9 MR. BERRY: I want to apologize to each of you
10 for wasting your time because I feel like all along this has
11 been a misunderstanding and miscommunication. I feel like a
12 lot of my tax dollars have been wasted here today because we
13 probably didn't need to get to this point.

14 I think one of the things Mr. Booth was kind of
15 alluding to it, but I think one of the things that probably
16 should have been done right now is to have all of those leak
17 tested. Because you brought that to my attention, something
18 I've never -- in storage I don't worry about leak testing.

19 Where I don't have all the documentation from
20 the company we purchased them from on that, I can't say that
21 they had been leak tested in the last ten years. They
22 probably have because I think they were still in use.

23 MR. BOOTH: I have expressed concerns to
24 Mr. Berry or did at the beginning of the [REDACTED] investigation
25 on numerous occasions to be taking radiation readings in his

1 office because we all, sitting around this table, have heard
2 of them being used as murder weapons through the past.

3 And I do know having talked to my attorney at
4 the very beginning of it that there is one faction of that
5 group that is capable of anything. And he warned me they
6 would be capable of anything and to really be on guard.
7 And I think that probably Mr. Berry should be vigilant for a
8 while longer, too.

9 MR. COLLINS: Okay. Anything else, Mr. Berry?

10 MR. BERRY: No, sir.

11 MR. COLLINS: Thank you, Mr. Booth. Thank you,
12 Mr. Berry, for taking the time. And I appreciate the
13 information you've given us here today and I appreciate your
14 candor in the information you've given to us here today.

15 One item that I wanted to share with you at this
16 point was your comments on the transcript. If I understand
17 what you're telling me, you believe the transcript veracity
18 is in question.

19 MR. BOOTH: You bet.

20 MR. COLLINS: So we're going to take that away
21 and we'll give that another look before we make a final
22 determination.

23 MR. BOOTH: Appreciate that.

24 MR. COLLINS: So just to close the conference,
25 we will consider the information you have given us here

1 today before we make our final enforcement decision. And as
2 we indicated earlier, we'll call you by phone and follow up
3 in writing when we have made a final determination.

4 The apparent violations we've talked about are
5 subject to change as they should be as you provide us new
6 facts and information. So we'll consider the information
7 that you've given us here today.

8 Just as a standard comment from myself or
9 Mr. Fuller, Mr. Vasquez, the statements or expression of
10 opinion made by us made here today at this conference or the
11 lack thereof are not intended to represent final agency
12 position of determinations. That will be any final position
13 or determination will be formally transmitted to you.

14 And with that, this conference is closed.

15 (Off the record.)

16 (The Conference was adjourned.

17 at 5:35 p.m., September 15, 2003.)

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OFFICER'S CERTIFICATE

STATE OF IDAHO)
)
County of Bonneville)

I, Katherine McCoy, CSR, do hereby certify that said conference and interview was taken at the time and place therein named; that the testimony of said witness was reported by myself, Notary Public and Certified Court Reporter; that the conference is a true record of the testimony given by the witness, as recorded on the foregoing 74 pages.

And I further certify that I am not related to any of the parties nor do I have any financial interest in the matter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 29th day of September, 2003.

Katherine McCoy
Certified Shorthand Reporter
Notary Public for Idaho
Commission expires 3/12/2008