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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

LBP-05-11

DOCKETED 04/27/05

SERVED 04/27/05

Before Administrative Judges:

Lawrence G. McDade, Chairman
E. Roy Hawkens
Dr. Peter S. Lam

In the Matter of

ALL TECH CORPORATION
Pocatello, Idaho

(Civil Monetary Penalty)

Docket No. 030-35321-CivP

ASLBP No. 05-836-02-CivP

April 27, 2005

MEMORANDUM AND ORDER

(Approving Settlement Agreement and Terminating Proceeding)

Before us is the joint motion of the Nuclear Regulatory Commission (NRC) Staff and All Tech Corporation (All Tech) for approval of a proffered Settlement Agreement in this civil penalty proceeding. The proceeding stems from the NRC Staff's issuance of an order imposing a civil penalty on All Tech in the amount of \$6,000 based on alleged violations of a Commission regulation (10 C.F.R. § 30.9) when, on February 11, 2002, during an NRC inspection, and again on September 15, 2003, during a pre-decisional enforcement conference, an employee of All Tech failed to provide information to the NRC which was complete and accurate in all material respects See Order Imposing Civil Monetary Penalty, 69 Fed. Reg. 76,019 (Dec. 20, 2004). Following a January 10, 2005, request for a hearing filed by All Tech, a Board was appointed on February 2, 2005, to adjudicate this matter. After the appointment of this Board, the NRC Staff and All Tech engaged in negotiations and ultimately agreed to settlement terms which would, subject to approval of this Board, terminate this proceeding without further litigation.

Under the proposed settlement, All Tech agrees to pay a civil penalty in the amount of \$1,000 and, additionally, the parties have agreed, inter alia, that:

1. All Tech violated 10 C.F.R. § 30.9(a) when its employee failed to provide information to the NRC that was complete and accurate in all respects and that All Tech was responsible for the acts of its employees under the law and the terms of its NRC license.
2. All Tech has taken appropriate corrective actions to address the violations and that the violations, in and of themselves, posed no threat to public health and safety.
3. All Tech will undertake the following additional corrective actions:
 - a. Implement a company policy that the Radiation Safety Officer (RSO) and General Manager shall not be the same individual.
 - b. Designate a new RSO and substitute RSO.
 - c. Conduct a training session on the responsibility of All Tech employees to provide complete and accurate information to the NRC.
 - d. Implement a company policy of taking disciplinary action against any employee who provides false or misleading information to the NRC. This policy will be posted on the All Tech office bulletin board for 30 days and will be provided to all new All Tech employees.
4. The NRC Staff will not take any further civil or administrative enforcement action against All Tech based on the matters outlined in the December 10, 2004, Order.
5. This Settlement is limited to the above captioned civil penalty proceeding.
6. The parties will jointly move the Atomic Safety and Licensing Board for an order approving this Settlement Agreement and terminating the above-captioned proceeding.
7. All Tech will withdraw its hearing request, and further waive its right to a hearing in connection with this matter, and waive any right to contest or otherwise appeal this Settlement Agreement once approved by the Board.

The Commission looks with favor upon settlements. See, e.g., 10 C.F.R. § 2.338; North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), CLI-99-28, 50 NRC 291, 293 (1999). In approving a proposed settlement, the Licensing Board is required to “give due consideration to the public interest.” Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994); see 10 C.F.R. § 2.203; Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 205 (1997). Here, the parties’ proposed Settlement Agreement appears to be in accord with the public interest, and there appears to be no reason why it should not be approved. Understanding that once it is approved by this Board the Settlement Agreement will have the same force and effect as an Order entered by this Board after a full hearing, and further understanding that all matters required to be adjudicated in this proceeding will be resolved with the entry of this Order, the parties have jointly moved this Board for an Order approving their Settlement Agreement and terminating this proceeding. Accordingly, the Board approves the Settlement Agreement, incorporates it into this Order as if the Settlement Agreement were set forth verbatim herein, and terminates this civil penalty proceeding.

It is so ORDERED.

THE ATOMIC SAFETY AND LICENSING BOARD¹

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

/RA/

E. Roy Hawkens
ADMINISTRATIVE JUDGE

/RA/

Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 27, 2005

¹Copies of this order were sent this date by Internet electronic mail transmission to All Tech Corporation and the NRC staff.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (APPROVING SETTLEMENT AGREEMENT AND TERMINATING PROCEEDING) (LBP-05-11) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 27th day of April 2005