

**NUCLEAR REGULATORY COMMISSION**

DOCKET NO. 70-27

NOTICE OF RECEIPT OF AN APPLICATION TO TRANSFER THE CONTROL OF SPECIAL NUCLEAR MATERIALS LICENSE NO. SNM-42; OPPORTUNITY TO REQUEST A HEARING, AND PROVIDE WRITTEN COMMENTS

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of receipt of license transfer application and opportunity to request a hearing.

**DATES:** A request for a hearing must be filed by August 21, 2008, in accordance with 10 CFR 2.309(b)(1).

**FOR FURTHER INFORMATION CONTACT:** Amy M. Snyder, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop EBB2C40M, Washington, DC 20555-0001, Telephone: (301) 492-3225; fax number: (301) 492-5539; e-mail: amy.snyder@nrc.gov .

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

By letters dated November 14 and December 10, 2007, January 7 (two letters), January 11, February 15, and February 29, 2008, and e-mails dated December 12 (three e-mails) and December 13, 2007 (two e-mails), and January 9, and January 14, 2008 (collectively the Application), BWX Technologies, Inc., Nuclear Products Division (BWXT or the licensee) requested approval, by the U.S. Nuclear Regulatory Commission (NRC or the Commission), of the transfer of Special Nuclear Materials License No. SNM-42 to Babcock & Wilcox Nuclear Operations Group, Inc.

(B&W NOG). B&W NOG is a Delaware Corporation that was created on November 20, 2007, as a wholly-owned subsidiary of Babcock & Wilcox Investment Company, Inc. The requested transfer action would result in a transfer of control of Special Nuclear Materials License No. SNM-42 from BWXT to B&W NOG.

BWXT is the holder of Special Nuclear Materials License No. SNM-42, which authorizes BWXT to receive, possess, and use special nuclear material and irradiated fuel (spent nuclear fuel) for the research, fabrication and assembly of nuclear fuel and related components at its facilities located in the Lynchburg, Virginia area. The license provides, among other things, that the facilities are subject to all rules, regulations, and orders of the NRC, now or hereafter in effect. Special Nuclear Materials License No. SNM-42 applies to the BWXT fuel manufacturing facilities, the research facility known as the Lynchburg Technology Center (LTC), the waste treatment facility, and the uranium storage facilities located in Campbell County, Virginia.

Pursuant to 10 CFR 2.1301, the Commission is noticing in the *Federal Register* the receipt of the Application for approval of the transfer of Special Nuclear Materials License No. SNM-42 because it involves a major fuel cycle facility licensed under 10 CFR Part 70. The NRC is considering the issuance of an order pursuant to 10 CFR 70.36, authorizing the transfer of control of Special Nuclear Materials License No. SNM-42 from BWXT to B&W NOG. An amendment to the existing license would follow the issuance of the order. According to the BWXT Application, a newly formed entity, namely B&W NOG, would acquire ownership of the BWXT Virginia facilities and upon approval of the license transfer would be the licensee responsible for operating and maintaining them. The Application does not propose any physical changes to the facilities or other changes.

The amendment would replace references to BWXT, Inc., in the license, with references to B&W NOG, to reflect the transfer, if approved by the Commission.

Pursuant to 10 CFR 70.36, no license, or any right there under, shall be transferred, assigned in any manner, disposed of, either voluntarily or involuntarily, directly or indirectly, through the transfer of

control of the license, to any person, unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and gives its consent in writing. The Commission will approve an application for the transfer of a license and authorize the transfer of the license through the issuance of an order, if it is determined that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

An NRC administrative review, documented in a letter to BWXT dated March 19, 2008, found the application acceptable to begin a technical review. If the NRC issues an order, as described above, the approval of the above requested actions will be documented in a conforming amendment to Special Nuclear Materials License No. SNM-42. However, before issuing an order and approving the amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC regulations. These findings will be documented in a safety evaluation report. The license transfer request falls within the 10 CFR 51.22(c)(21), categorical exclusion so no environmental review of the proposed action is required.

## **II. Opportunity to Request a Hearing**

The NRC hereby provides notice that this is a proceeding regarding the consideration of the issuance of an order authorizing the transfer of control of Special Nuclear Materials License No. SNM-42. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions that the person seeks to have litigated in the hearing.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing rule requires participants to submit and serve documents over the Internet, or in some cases to mail copies

on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of the E-Filing rule, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request: (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) the creation of an electronic docket for the proceeding [even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate]. Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Instruction for applying for a digital ID certificate is available on the NRC's public Website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, has created a docket, and downloads the EIE viewer, he or she can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF), in accordance with NRC guidance that is available on the NRC public Website at <http://www.nrc.gov/site-help/e-submittals.html>.

A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document, to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents to each participant separately. Therefore, applicants and

other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the “Contact Us” link located on the NRC Website at <http://www.nrc.gov/site-help/e-submittals.html>, or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., eastern time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing, requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, Rockville, Pike, Rockville, MD, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document to all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i) - (viii). To be timely, filings must be submitted no later than 11:59 p.m. eastern time on the due date.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded

pursuant to an order by the Commission, an Atomic Safety and Licensing Board, or a presiding officer.

Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c) - (e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;
2. The nature of the requester's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding;
3. The nature and extent of the requester's property, financial or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the proceeding in the requester's interest; and
5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth, with particularity, the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions that support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and
6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the Application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the Application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the Application, or other supporting documents filed by the licensee or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten (10) days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

### **III. Written Comments**

In accordance with 10 CFR 2.1305(a), as an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding the license transfer application. These comments must be submitted by **[INSERT DATE: 30 DAYS FROM DATE OF PUBLICATION]**, in accordance with 10 CFR 2.1305(b). The Commission will address the comments received in accordance with 10 CFR 2.1305(c). Comments should be submitted to the Secretary, U.S. Nuclear

Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this *Federal Register* notice.

Comments received after 30 days will be considered if practicable to do so, but only the comments received on or before the due date can be assured consideration.

#### **IV. Further Information**

Documents related to this action including the Application for the proposed license transfer and supporting documentation, are available electronically through the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the publicly available documents related to this notice are:

<u>Document</u>	<u>ADAMS Accession Number</u>
November 14, 2007: Initial Application	ML080920759
December 7, 2007: RAI Request I	ML073340643
December 10, 2007: RAI Response I	ML073460400
December 17, 2007: Meeting Minutes	ML080090688
January 7, 2008: Application Supplement	ML080160257
January 7, 2008: Application Supplement	ML080160149
January 11, 2008: Application Supplement	ML080230599
February 1, 2008: RAI Request II	ML080280551
February 1, 2008: Proprietary Determination I	ML080150394
February 15, 2008: RAI Response II	ML080920674
February 29, 2008: Response to Proprietary Determination	ML080640268
March 19, 2008: Application Acceptance	ML080710555
March 31, 2008: Proprietary Determination II	ML080790072
April 24, 2008: RAI Request III	ML081050308

<u>Application Supplements via E-Mails</u>	<u>ADAMS Accession Number</u>
December 12, 2007	ML081190572
December 12, 2007	ML081190669
December 12, 2007	ML081190672
December 13, 2007	ML081190671
December 13, 2007	ML081190670
January 9, 2008	ML081190624
January 14, 2008	ML081190661

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 17 day of July, 2008,

FOR THE NUCLEAR REGULATORY COMMISSION.

/RA/

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Peter Habighorst, Chief  
 Fuel Manufacturing Branch  
 Fuel Facilities Licensing Directorate  
 Division of Fuel Cycle Safety  
 and Safeguards,  
 Office of Nuclear Materials Safety  
 and Safeguards