

February 11, 2008

MEMORANDUM TO: Peter Habighorst, Chief
Fuel Manufacturing Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

FROM: Amy M. Snyder, Project Manager **/RA/**
Fuel Manufacturing Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

SUBJECT: MEETING WITH BWX TECHNOLOGIES, INC.
ON DECEMBER 17, 2007

On December 17, 2007, at the request of BWX Technologies, Inc. (BWXT, the licensee), the staff met to discuss its reorganization plans as described in the meeting notice (ML0073480417). At this meeting, the licensee summarized its plans for reorganization, explained the bases for its proposed reorganization, and identified the impacts it believed would result if the license were not updated to reflect the proposed change by January 1, 2008. The staff identified the information it would need in order to proceed with the licensing action. The staff maintained that the earliest the licensing action could be completed is the end of January 2008, provided that BWXT provided the needed information by the end of December 2007, and that the information provided was of high quality.

Enclosure: Meeting Minutes

cc w/encl.:

Leslie Foldesi, Director
Division of Radiological Health
Department of Health
James Madison Bldg.
109 Governor Street, Room 730
Richmond, VA 23219

Ms. Ellie Irons
Virginia Dept. of Environmental Quality
629 E. Main Street, Room 631
Richmond, VA 23219

CONTACT: A. Snyder, FCSS/NMSS
301-492-3225

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DISTRIBUTION:

FMB r/f Attendees

ML080090688

OFC	FMB	FMB	FMB	FFLD
NAME	ASnyder	VCheney	PHabighorst	MTschlitz
DATE	01/10/08	01/22/08	01/25/08	02/11/08

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MEETING MINUTES

Meeting Between the Nuclear Regulatory Commission and BWX Technologies, Inc. Regarding BWXT's Proposed Reorganization

December 17, 2007
1:00pm – 3:00 pm

PURPOSE:

The meeting was held at the request of U.S. Nuclear Regulatory Commission (NRC) management in order to discuss BWX Technologies, Inc.'s (BWXT's) November 14, 2007, request for reorganization.

OBJECTIVES:

- For BWXT to identify any impacts, with rationale, related to any delays in its requested licensing schedule.
- For the staff to identify what it needed from BWXT to proceed with the licensing action.

BACKGROUND:

- June 20, 2007, BWXT Letter requesting name change.
- November 14, 2007, BWXT letter withdrawing its June 20, 2007, name change request, with request for a new name change.
- November 30, 2007, BWXT verbally informs staff that the licensing action must be completed by December 13, 2007, for financial reasons. The staff states that requested schedule is unrealistic.
- December 7, 2007, the NRC issued an acknowledgement letter with a Request for Additional Information (RAI) to determine whether the staff could start its technical review. In this letter, the staff stated that BWXT's request was not a simple name change, but rather a transfer of control.
- December 10, 2007, the NRC received BWXT's response to the RAIs.
- December 13, 2007, BWXT also informs staff that it cannot get another letter of credit for the new corporation at the same time the current letter of credit for the license is in effect. The staff is to evaluate whether a "bridge" transfer period for the letter of credit would be acceptable to the NRC. BWXT informs staff, verbally and via email that the licensing action must be completed by December 19, 2007.
- December 14, 2007: The staff issued a meeting notice for a December 17, 2007 meeting with BWXT to discuss BWXT's proposed reorganization.

Enclosure

ITEMS DISCUSSED:

- A Purpose-Outcomes-Process (POP) handout (Attachment 1) for the BXWT Proposed Name Change was distributed. After introductions were made (see Attachment 2 for a list of attendees), it was reviewed.
- Management Statements:

NRC Summary: The NRC stated that what BWXT is proposing is not a simple name change, but rather a transfer of control of the license. Licensees are expected to know the regulations and clearly make requests based on the regulations. Licensees cannot expect the staff to process a licensing action within a matter of weeks, due to the nature of the regulatory licensing process. Furthermore, when the application requests are of poor quality and lack required information, such as the one in question, the staff cannot begin its technical review nor can it provide the public an opportunity for hearing until a complete application is received.

The position of the NRC is as follows: the regulations (10 CFR 70.25) clearly require financial assurance, among other things, to be in place before the NRC can transfer control, directly or indirectly, of the license to another party. The NRC is not willing to accept risk to the government for any period of time that would result in a gap of financial assurance. Furthermore, the NRC will follow the licensing process. The staff has developed a list of open items that needs to be addressed in order to proceed with the licensing action and will review it with BWXT at this meeting.

BWXT: Attorney's Summary:

BWXT stated that the NRC staff knew about the proposed change in question in October 2007. BWXT stated that it was only asking for assistance from the staff after it changed its strategy in September 2007, and it does not expect any risk on behalf of the government. BWXT is prepared to meet all the requirements by the end of December 2007 and appreciates the staff's efforts so far in this matter. At this point, BWXT is not certain that its proposal is not a simple name change because BWXT will be the owner of the new corporation, Babcock & Wilcox, Nuclear Operations Group, Inc. (B&W NOG).

BWXT stated that it was very important that this licensing action be completed by the end of December 2007 for contractual and financial reasons.

OPEN ITEMS:

The staff distributed and reviewed, with BWXT, a list of items that are required from BWXT in order to proceed with the licensing request (see Attachment 3, BWXT Transfer of Control Open Items).

Attachment 3 items were discussed as follows:

1. 5-year *Pro Forma* Table: BWXT stated that it was not able to provide 5th year financial information because of the way that it manages its financial information. The NRC financial analyst stated that he believed that only four years of information would suffice in this case.
2. Financial Balance Sheets: BWXT asked the staff to clarify how many years of information would be sufficient to show financial standing. The NRC stated that BWXT's financial information, representing approximately a year before the transfer, would be sufficient for this purpose.
3. Letter of Credit and the Standby Trust Agreement: The NRC stated that these documents need to be revised to reflect the new corporate entity before the transfer control of the license could occur.
4. BWXT's claim of privilege for portions of its November 14, 2007, application: The NRC stated that upon initial review of its request against 10 CFR 2.390 requirements, it believes that only partial redaction of the information would be allowed. For a transfer of control, the NRC must notice in the Federal Register, that it has received a complete application and provide the public a 20 day opportunity for hearing. The proposed action cannot be noticed in the Federal Register until all 10 CFR 2.390 issues are resolved.
5. Department of Energy Contractual Agreement for financial assurance: the NRC stated that it would accept a "bridge letter" for this item due to that fact that another government agency is involved. The NRC also stated that the new licensee would have to apply for an exemption to use this financial instrument because the use of such a contractual agreement is not recognized by regulation.
6. Existing Certificate of Compliances (COCs): The NRC identified that BWXT currently holds two COCs (COC 5085, Docket 71-5086 and COC 6357, Docket 71-6357). The NRC stated that additional licensing requests, through the NRC's Office of Nuclear Material Safety and Safeguards' Division of Spent Fuel Storage and Transportation, are required.
7. Status of Export License: the staff asked BWXT the status of its Amendment/Renewal of Export License No - XSNM03060/Amendment No. 2. On September 18, 2007, BWXT submitted an application, to the NRC, requesting that this export license be amended and transferred to BWXT. The NRC

informed BWXT that if it is BWXT's intention that B&W NOG be the licensee of the export license, then BWXT needs to contact the NRC's Office of International Programs to request the change. BWXT stated this export licensing action is on hold until the transfer of control is completed.

8. Last three items on Attachment 3: The staff reviewed these items with BWXT to ensure that it knew that these items will be required for the transfer of control and that it is willing to commit to them.

ACTION ITEMS:

1. Provided BWXT provides the needed information identified in Attachment 3 and it is of high quality, the NRC will be prepared to:
 - Complete its financial review by mid January 2008 and the licensing action as soon as possible thereafter (after 20 day opportunity for hearing was provided).
 - Notice the transfer of control licensing action review and provide the public with a 20 day opportunity for hearing.
2. BWXT is to supplement its November 14, 2007, application request and submit the following to the NRC:
 - a request for transfer of control of special nuclear materials License No. SNM-42 from BWXT to B&W NOG;
 - a *Pro Forma* Table (with four years of data), with an associated affidavit to the NRC. BWXT must provide the originals with signature to NRC;
 - a Financial Balance Sheet (most recent year) with an associated affidavit to the NRC (BWXT must provide the originals with signature to the NRC);
 - a Letter of Credit in the new corporation's name (B&W NOG) based on its selected method of certification of financial assurance for decommissioning per 10 CFR 70.25(f);
 - a Standby Trust Agreement in the new corporation's name (B&W NOG) based on its selected method of certification of financial assurance for decommissioning per 10 CFR 70.25(f);
 - a new or revised financial contractual agreement with the Department of Energy (DOE) regarding decommissioning financial assurance for NR fuel. (The NRC will accept a bridge letter that specifies the date that the signed contract will be completed. Also, B&W NOG is to request an exemption from 10 CFR 70.25(f) to use such a financial instrument);
 - a brief discussion of the status of the COCs and Export license amendment;
 - the legal contact information for incorporation in the Federal Register notice, providing an opportunity for a hearing, and
 - as applicable, 10 CFR 2.390 requests with rationale.
3. The staff is to discuss the 10 CFR 2.390 open issues with the Office of General Council. Then, the NRC and BWXT will arrange to discuss 10 CFR 2.390 open

items regarding Chapter 10 of its November 14, 2007, application to try to resolve them as soon as possible.

CONCLUSION:

NRC: The staff is working hard to address this licensing action; however, it cannot proceed without the needed information from BWXT. The staff continues to consider this action a priority. However, the staff maintains that the earliest that the licensing action could be completed is by the end of January 2008, provided that BWXT provides the needed information to the staff by the end of December 2007, and it is of high quality.

BWXT: BWXT is committed to provide the needed information to the NRC by the end of December 2007 and appreciates the NRC staff efforts in this matter. BWXT acknowledged that with nature and the amount of information that it must submit to NRC, it is not possible for NRC to complete the licensing action by the end of December 2007.

Attachments:

1. Purpose-Outcomes-Process Handout
2. List of Attendees
3. BWXT Transfer of Control Open Items

PURPOSE-OUTCOMES-PROCESS HANDOUT

Purpose-Outcomes-Process for BWX Technologies, Inc. Proposed Name Change

Date and Time of Meeting: December 17, 2007,
1:00 p.m. to 3:00 p.m.

Location: EBB 3-B-18

Purpose: U.S. Nuclear Regulatory Commission (NRC) and BWX Technologies Inc. (BWXT), staff to discuss reorganization of BWXT transfer of control of BWXT Nuclear Operations Division assets to Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG, Inc.).

Outcome: Identification of information that the NRC requires from BWXT in order to proceed with licensing.

Process:

1. Management concerns/discussion.
2. Identify status of Name Change licensing request to include open items
3. Identify licensee's concerns and plans with rationale as communicated to Project Manager (required to complete action by December 19, 2007)
4. Ways to precede - pros and cons.
5. 10 CFR 2.390 Determination- status and issues.
6. Questions/Answers.
7. Public Comment (if public is in attendance).
8. Summary of Action Items.

LIST OF ATTENDEES

BWXT Technologies, Inc. – Proposed Name Change

Date: 12/17/07
1 pm to 3 pm

Attendees at Meeting at NRC

Barry Cole, BWXT
Leah Morrell, BWXT
Thomas Fredrichs, NRC/NRO
Lydia Chang, NRC/FSME
Dominick Orlando, NRC/FSME
Amir Kouhestani, NRC/FSME
Mary Adams, NRC/NMSS
John Hull, NRC/OGC
Mike Lamastra, NRC/NMSS
Amy Snyder, NRC/NMSS
Robert Pierson, NRC/NMSS

Attendees at Meeting via Teleconference

Beth Collins, BWXT
Carl Yates, BWXT
Nick Dimott, BWXT
Shan Peters, BWXT
Geoffrey Wertz, NRC, Region II
Al Gooden, NRC, Region II
Stephen Subosits, NRC, Region II

OPEN ITEMS - BWXT TRANSFER OF CONTROL OPEN ITEMS

Statement from licensee requesting a license transfer of control.

Satisfactory Documentary evidence of financial guarantee, meeting the requirements of 10 CFR 70.25(f) - Letter of Credit

5-year *Pro Forma* Table - affidavit for the supporting document to withhold from public disclosure.

Financial Balance Sheets (1-3 past years) - affidavit for the supporting document to withhold from public disclosure.

Standby Trust Agreement

Letter from DOE stating that they are financially responsible for cleanup of NR fuel.

Name and contact information of licensee legal contact for Federal Register Notice - Opportunity for Hearing

Chapter 10 - Decommissioning Funding - partial redaction of financial information- 10 CFR 2.390 determination additional information

Request for Exemption to use DOE Contractual agreement for recognized financial assurance instrument.

Request to amend COC 5086, Docket No. 71-5086, and approval of associated quality assurance programs.

Request to amend COC 6357, Docket No. 71-6357, and approval of associated quality assurance programs.

Status of Export license.

Statement that the new licensee will abide by all commitments and representations previously made by BWXT with respect to the license to include, but not limited to, maintaining decommissioning records, implementing decontamination activities, and eventual decommissioning of the sites.

Statement that the new licensee will abide by all commitments made in the Application regarding reporting relationships and authority over safety and security issues and compliance with NRC requirements shall be adhered to and may not be modified, without prior consent from the Director, Office of Nuclear Material Safety and Safeguards of designee.

Understanding that within at least one business day before closing of the transfer, BWXT shall inform the Director of the Office of Nuclear Material Safety and Safeguards, in writing, of the date of closing of the transfer of special nuclear material License No. SNM-42.