

April 24, 2008

Mr. Barry Cole  
Licensing Officer  
BWXT Technologies, Inc.  
Nuclear Products Division  
P.O. Box 785  
Lynchburg, Virginia 24505-0785

SUBJECT: BWXT TECHNOLOGIES, INC. - REQUEST FOR ADDITIONAL INFORMATION  
(TAC L32657)

Dear Mr. Cole:

The U.S. Nuclear Regulatory Commission (NRC) staff conducted a technical review of BWXT Technologies, Inc.'s (BWXT's) application package for the transfer of control of Special Nuclear Materials License No. SNM-42 from BWXT to Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG), and an exemption from paragraphs 70.25(e) and (f). The NRC staff concluded that additional information is needed to complete its technical review. Enclosed is the staff's request for additional information (RAI). Please provide, to the NRC, BWXT's responses to the RAI within 30 calendar days from the date of this letter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room and through the Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible through the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

B. Cole

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Please direct any questions you may have to me at (301) 492-3225, via e-mail to [ams3@nrc.gov](mailto:ams3@nrc.gov), or in writing, to the address above, to my attention, noting my mail stop (M.S. EBB2-C40 M.) These actions (transfer of control and exemption requests) have been assigned the Technical Assignment Control (TAC) No. L32657. Please reference this TAC number in any future correspondence associated with these actions.

Sincerely,

**/RA/**

Amy Snyder, Senior Project Manager  
Fuel Manufacturing Licensing Directorate  
Fuel Manufacturing Branch  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

Docket No.: 70-27  
License No.: SNM-42

Enclosure: Request for Additional Information  
With 3 Attachments

Docket No.: 70-27  
License No.: SNM-4

B. Cole

2

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Enclosure: Request for Additional Information  
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Docket No.: 70-27  
License No.: SNM-4

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<b>OFC</b>	FMB	FMB	FSME	NRO	SFST
<b>NAME</b>	ASnyder	VCheney	LChang	TFredrichs	DPstrak
<b>DATE</b>	4/15/2008	4/17/2008	4/ 18 /2008	4/ 18/2008	4/18/2008
<b>OFC</b>	SFST	OGC	FMB	FFLD	
<b>NAME</b>	RNelson	JHull NLO With revisions	PHabighorst	MTschiltz	
<b>DATE</b>	4/18 /2008	4/22/2008	4/24/2008	4/24/2008	

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## REQUEST FOR ADDITIONAL INFORMATION

### BWX TECHNOLOGIES, INC. SNM-42 LICENSE TRANSFER OF CONTROL AND EXEMPTION REQUESTS

Please provide the following information:

1. In accordance with NUREG-1757, Vol. 3, Appendix A.10.4, the U.S. Nuclear Regulatory Commission (NRC) staff asked BWX Technologies, Inc. (BWXT) to provide a draft Letter of Credit (LoC) in the new corporation's name (B&W NOG). BWXT provided a draft LoC to the NRC in a letter dated February 15, 2008. The NRC staff reviewed this draft and found technical deficiencies. Update the LoC to reflect that B&W NOG will hold a Part 70 license. Note that there are two such references in the LoC that should be updated. In addition, there is a typo pertaining to one of these references in which the LoC states "IU CFR Parts." Correct this to state "10 CFR Part" and only refer to Part 70. Also, update the expiration date, if it is to change. Currently, it is listed as January 23, 2009. (See Attachment 1 - Mark-up of the Unexecuted Copy of the Letter of Credit.)

Basis: A LoC guarantees that decommissioning costs will be paid. The LoC must be acceptable to the Commission and meet the requirements of Paragraph 70.25(f)(2).

2. The NRC staff previously asked BWXT to provide a draft Standby Trust Agreement in the new corporation's name (B&W NOG) and referred BWXT to the current NRC guidance on Standby Trust Agreements, found in NUREG-1757, Vol. 3, Appendix A.17.4 (Standby Trust Agreement). BWXT provided a draft Standby Trust Agreement, to the NRC, in a letter dated February 15, 2008. The NRC staff reviewed this draft and found technical deficiencies. The NRC staff's concerns with the draft Standby Trust Agreement pertain to Sections 5, 6, and 12, of the draft Standby Trust Agreement, the Specimen Certificate of Events, the lack of the Specimen Certificate of Resolution, and Schedule A. The staff determined that word changes to the Standby Trust Agreement are necessary to satisfy the NRC's financial assurance requirements. These changes are found in Attachment 2. Please revise the Standby Trust Agreement as shown in the mark-up. (See Attachment 2 - Mark-up of Unexecuted Copy of the Standby Trust Agreement.) In addition, a Specimen Certificate of Resolution, as illustrated in NUREG-1757, Appendix A.17.7, needs to be added.

Basis: Paragraph 70.25(f)(2)(ii) states that the trustee and trust must be acceptable to the Commission.

3. In NRC letter dated February 1, 2008, to BWXT, the staff asked BWXT to provide a copy of the contractual agreement with the U.S. Department of Energy (DOE) regarding decommissioning financial assurance for naval reactor fuel. BWXT provided a copy of the 1993 Letter Agreement between Babcock & Wilcox/BWXT and the DOE and noted that this document had previously been approved by the

Enclosure

NRC. BWXT explained that this agreement will still be in force and effect once BWXT changes its name to B&W NOG. This explanation is not acceptable to the Commission because with a transfer of control and a request for exemption from 10 CFR 70.25(f), NRC will only consider financial agreements in the proposed new licensee's name.

Furthermore, upon technical review of BWXT's application, the staff noted that BWXT has a contractual agreement with Battelle Energy Alliance, LLC for decommissioning financial assurance for the Research Test Reactor and Targets (RTRT) facility activities and another contractual agreement with UT Battelle, LLC. In these contractual agreements, it states that the DOE or the Government will be responsible for the decommissioning costs associated with the RTRT facility based on the availability of appropriated funds. Regarding these decommissioning agreements, provide the following information to the NRC: (1) Explain how these agreements relate to the LoC; (2) Explain how the decommissioning costs discussed in these contractual agreements relate to the cost estimates that BWXT provided in its Decommissioning Funding Plan; and (3) If there are any decommissioning costs that are not yet addressed in either the LoC or a cost estimate, then BWXT must provide a cost estimate and an acceptable financial assurance instrument for such decommissioning costs in accordance with paragraphs 70.25(e) and (f), or request an exemption from these requirements for such decommissioning costs.

In addition, BWXT should provide a bridge letter that specifies the date that a copy of the executed contract between B&W NOG and DOE Naval Reactors (NR) will be provided to the NRC. With regard to this date, the staff suggests that BWXT discuss the time duration acceptable to the NRC regarding a licensing condition that specifies when this contract must be executed, but yet considers the fact that another Federal agency is involved in finalizing this contractual agreement. The bridge letter should have, in the form of an enclosure, a draft copy of the contractual agreement for NRC review. Once the NRC receives this letter, the staff should be able to complete its technical review regarding BWXT's request for exemption from 10 CFR 70.25(f), for the work associated with the DOE NR program and activities.

Basis: A contractual agreement is not a recognized financial instrument under the NRC's regulations (paragraph 70.25(f)). The Commission requires proof, in writing, that the proposed new licensee (B&W NOG) has an acceptable financial assurance instrument for decommissioning per 10 CFR 70.25(f). For the activities the B&W NOG wishes to use a contractual agreement as a method to demonstrate financial assurance for decommissioning conducted under Special Nuclear Material License No. SNM-42, an exemption from 10 CFR 70.25(e) must be requested and granted to B&W NOG. For each such contract, proof must be provided that the financial assurance contract exists under the new entity's name (B&W NOG) and the NRC must determine if it is acceptable per 10 CFR 70.17. An exemption must be granted to B&W NOG because an exemption does not transfer with the license without the NRC's written grant of the exemption to the new licensee.

4. As stated in NRC's letter to BWXT, dated February 1, 2008, in addition to a new LoC and a new Standby Trust, the proposed new licensee (B&W NOG) must provide a certification that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning. BWXT submitted, to the NRC, in a letter dated February 15, 2008, as Enclosure 4, an unexecuted copy of the

Certification of Financial Assurance marked OFFICIAL USE ONLY-DEPARTMENT OF ENERGY. The Certification of Financial Assurance must cover all decommissioning costs at the BWXT site, not just the decommissioning costs in excess of the costs that will be reimbursed under the DOE contracts. In addition, please clarify whether this entire document is appropriately marked as OFFICIAL USE ONLY - DEPARTMENT OF ENERGY. If you intend to request that the Certification of Financial Assurance be withheld from public disclosure, please submit your request in accordance with the requirements of 10 CFR 2.390.

Please provide a statement in the Certification of Financial Assurance to: (1) state that the certification is effective upon transfer of Special Nuclear Materials License No. SNM-42; and (2) further certify that the DOE has agreed, subject to the availability of appropriated funds, to reimburse B&W NOG for decommissioning costs allocable to the NR Program contracts and/or subcontracts. (See Attachment 3 - Mark-Up of Certification of Financial Assurance.)

Basis: Paragraph 70.25(a)(2) requires that each applicant for a specific license, authorizing possession and use of unsealed special nuclear material, in quantities exceeding  $10^5$  times the applicable quantities set forth in Appendix B to Part 30 must submit a decommissioning funding plan as described in paragraph (e) of this section. Also, 10 CFR 70.25(e) requires that the decommissioning funding plan must contain a certification, by the licensee, that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of Paragraph 10 CFR 70.25(f).

5. BWXT provided, to the NRC in its November 14, 2007, a copy of the 1993 Letter Agreement between Babcock & Wilcox/BWXT and the DOE application request; however, BWXT marked it as "Proprietary Information - Withhold Under 2.390," When BWXT submitted this document in a letter dated February 15, 2008, BWXT marked it as "OFFICIAL USE ONLY - DEPARTMENT OF ENERGY." Clarify whether the 1993 Letter Agreement between Babcock & Wilcox/BWXT and the DOE is an OFFICIAL USE ONLY- DEPARTMENT OF ENERGY document or should be withheld under 10 CFR 2.390. As related to Request for Additional Information (RAI) #4, if it is an official use only document, then provide to the NRC a publicly available version of this document.

Basis: The information is needed to determine whether the 10 CFR 2.390 requirements are applicable to the 1993 Letter of Agreement.

6. BWXT requested an exemption from 10 CFR 70.25(e), specifically, as related to the decommissioning financial assurance cost estimate, for the work associated with the DOE contract materials, based on previous NRC approval granted by letter dated April 25, 2007. The April 25, 2007, letter does not reference or discuss the new proposed licensee (B&W NOG).

Basis: For the activities the B&W NOG wishes to use a contractual agreement as a method to demonstrate financial assurance for decommissioning conducted under Special Nuclear Material License No. SNM-42, an exemption from 10 CFR 70.25(e) must be requested and granted to B&W NOG. For each such contract, proof must be provided that the financial assurance contract exists under the new entity's name (B&W NOG) and the NRC must determine if it is acceptable per 10 CFR 70.17. An exemption must be granted to B&W NOG because an exemption does not transfer with the license without the NRC's written grant of the exemption to the new licensee.

7. As stated during the December 17, 2007, meeting with BWXT, and in the NRC staff's February 1, 2008, RAI letter to BWXT, before the NRC will transfer control of a license to a new entity, the NRC must ensure that all other BWXT licenses and certificates are also in order. In this regard, in a letter dated February 15, 2008, to the NRC, BWXT provided tables identifying six Certificates of Compliances (CoCs), for which it is the primary holder and 12 CoCs for which it is the secondary holder. BWXT also included in these tables, the expiration dates of the CoCs. As stated in NRC's March 19, 2008, letter to BWXT, the staff from the Spent Fuel Storage and Transportation Division (SFST) of the Office of Nuclear Material Safety and Safeguards (NMSS) verified that BWXT is the primary holder of nine CoCs and the secondary holder of 19 CoCs. Provide, to the NRC, an application addressing the transfer of the CoCs. Address all 28 CoCs. When submitting the application, copy the NRC Project Manager for the BWXT Part 70 license (Amy Snyder). In the application request, identify that BWXT is in the process of transferring control of Special Nuclear Materials License No. SNM-42 to B&W NOG (TAC L32657), identify the CoC numbers that BWXT wants to transfer and to whom, and identify whether the associated quality assurance programs are affected and if so, how. If there are any CoCs that will remain under the control of BWXT, provide a written statement to SFST to that effect, identifying the applicable CoCs by number.

Basis: The licensing transfer of the CoCs must be accomplished in parallel with the transfer of control of Special Nuclear Materials License No. SNM-42; these licensing actions must be effective on the same date. In addition, in accordance with 10 CFR 71.39, the Commission, at any time, may require additional information in order to enable it to determine whether a license, CoC, or other approval should be granted, renewed, denied, modified, suspended or revoked. Subpart D of 10 CFR 71 contains the relevant CoC requirements.

# Attachment 1, Mark-Up of Unexecuted Copy of the Letter of Credit



## Attachment 2, Mark-Up of the Unexecuted Copy of the Standby Trust Agreement

Attachment 3, Mark-Up of the Unexecuted  
Copy of the Certification of Financial  
Assurance