

May 23, 2008  
08-077

Attn: Document Control Desk  
Director, Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

- References:
- (1) License No. SNM-42, Docket 70-27
  - (2) Letter dated April 25, 2007, Janosko (NRC) to Morrell (BWXT), BWX Technologies, Inc., Amendment 1 – Update of Decommissioning Cost Estimate and Financial Assurance (TAC L32597)
  - (3) Letter dated November 14, 2007, Morrell (BWXT) to Director, NMSS (NRC), Notification of Company Name Change and Request to Revise Chapters 1 through 7, 10, and 11 of License Application SNM-42
  - (4) Letter dated January 7, 2008, Cole (BWXT) to Director, NMSS (NRC), Request for Transfer of Control for License SNM-42 and Request for Exemption from 10CFR25 (f) (TAC L32657)
  - (5) Letter dated February 15, 2008, Cole (BWXT) to Director, NMSS (NRC), BWX Technologies, Inc. Reply to NRC's Request for Additional Information by Letter Dated February 1, 2008 and Request for Exemption from 10 CFR §70.25 (e) for DOE Contract Materials
  - (6) Letter dated March 31, 2008, Amy Snyder (NRC) to Barry Cole (BWXT), Final Public Disclosure Determination Regarding the Request for Nuclear Regulatory Commission Consent to the Transfer of Control of BWX Technologies, Inc. to Babcock & Wilcox Nuclear Operations Group, Inc. (TAC L32657)
  - (7) Letter dated April 24, 2008, Snyder (NRC) to Cole (BWXT), BWX Technologies, Inc. – Request for Additional Information (TAC L32657)

Subject: BWX Technologies, Inc. Reply to NRC's Request for Additional Information by Letter Dated April 24, 2008 and Request for Exemption from 10 CFR §70.25 (e) and (f) for its DOE Contract Materials.

Gentlemen:

At this time, BWX Technologies, Inc. (BWXT) is providing its response to the NRC's request for additional information that was submitted in the NRC's April 24, 2008 letter (Reference 7). The response is provided in the Enclosures. BWXT is also confirming that it is requesting an exemption from 10 CFR §70.25 (e) in regards to providing a cost estimate for decommissioning for DOE Contract materials, and is requesting an exemption from 10 CFR §70.25 (f) for its DOE Contract materials. Additional explanation is provided in the Enclosures.

For legal contact information for the Federal Register Notice, please contact:

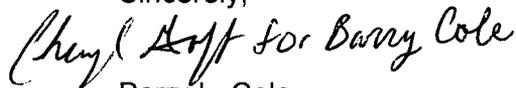
Beth Colling, Managing Attorney  
BWX Technologies, Inc., MC-57  
2016 Mt. Athos Rd.  
Lynchburg, VA 24504-5447  
(434) 522-5641

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Should additional information be needed to support NRC's review of this matter, please contact me at (434) 522-5665. Thank you very much for your consideration.

Enclosures 1 and 2 contain proprietary information and should be withheld from public disclosure under 10 CFR 2.390. However, BWXT has provided redacted copies of these documents for public disclosure purposes. An affidavit from Mr. Roger Cochrane is included as Enclosure 5. Enclosure 3 is Official Use Only – Department of Energy because it contains data that has the potential to damage governmental, commercial, or private interests if disseminated to persons who do not need the information to perform their jobs or other DOE-authorized activities, and therefore should be withheld from public disclosure. DOE G 471.3-1 was used for guidance. A redacted copy for public disclosure has also been included.

Sincerely,



Barry L. Cole  
Manager, Licensing & Safety Analysis  
(Licensing Officer)

Enclosures

Cc: U.S. NRC Region II  
NRC, Resident Inspector  
NRC, Amy Snyder

## List of Enclosures

- Enclosure 1 – Information in Response to NRC Regulations and the NRC Request For Additional Information (RAI) in Letter Dated April 24, 2008 (redacted copy also included)
- Enclosure 2 – Draft of 2008 Letter Agreement Between Babcock & Wilcox / BWXT and the U.S. Department of Energy (redacted copy also included)
- Enclosure 3 – Revised Unexecuted Copy of Certification of Financial Assurance (redacted copy also included)
- Enclosure 4 – Redacted copy of 1993 Letter Agreement Between Babcock & Wilcox / BWXT and the U.S. Department of Energy
- Enclosure 5 – Affidavit from Mr. Roger Cochrane

## **ENCLOSURE 4**

**Redacted Copy of 1993 Letter Agreement Between Babcock & Wilcox / BWXT  
and the U.S. Department of Energy**

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**Babcock & Wilcox**

a McDermott company

Nuclear Fuel Division

P. O. Box 785  
Lynchburg, Virginia 24505-078  
(804) 522-6000

February 17, 1993

Mr. C. K. Gaddis, Manager  
U. S. Department of EnergyP. O. Box 109  
Pittsburgh, Pennsylvania 15122-0108

SUBJECT: LETTER AGREEMENT ON:

- 1) RESERVATIONS OF RIGHTS REGARDING FINANCIAL RESPONSIBILITY FOR CLEANUP OF LOW LEVEL RADIOACTIVE DISPOSAL SITES
- 2) DECOMMISSIONING FINANCIAL ASSURANCE

Dear Mr. Gaddis:

Over a period of some months now we have been engaged in an exchange of letters and discussions directed at finding a resolution of the two subject issues. This dialogue was precipitated by an inability of the parties to reach agreement on mutually acceptable language for release of claims at time of contract closeouts.

Of special concern to B&W is the desire to achieve a common understanding of DOE's obligation to pay for NNFD's decommissioning costs. While two DOE prime contracts contain a contract clause entitled "Decommissioning Expenses," a concern has arisen regarding past contracts which have contributed to radioactive contamination of the site but which do not contain the clause.

Ever since we received your letter dated August 4, 1992, we have been increasingly concerned about our representations to the NRC regarding financial assurance for decommissioning NNFD. Our last report to NRC in June, 1992 relied upon what we believed at the time to be DOE's unequivocal agreement to accept the obligation (subject to the availability of funds) to pay the costs of the eventual decommissioning of the NNFD, and we represented that this obligation should be accepted by the NRC as decommissioning financial assurance for NNFD. NRC accepted this representation. We will be required to make another report to NRC shortly after the end of our fiscal year (March 31, 1993), and we need resolution of this matter in order to be able to continue to report to NRC that we are in compliance with decommissioning financial assurance requirements. If we cannot do that, we will have to provide an alternative form of financial assurance, the cost of which we will have to pass on to you as a current cost. This should not be in the interests of B&W or DOE. We have already agreed that the prices of our

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Mr. C. K. Gaddis, Manager  
U. S. Department of Energy  
[REDACTED]

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contracts at the time of award did not include any costs relating to our decommissioning obligations, and that the effect of the implementation of regulations pertaining to decommissioning would occur subsequent to award. Therefore, B&W proposes that the decommissioning liability/financial assurance issue and the contract release issue be resolved via this letter Agreement documenting our mutual understandings.

Reservation of Rights Regarding Financial Responsibility for Cleanup of Low-Level Radioactive Disposal Sites

DOE acknowledges B&W's desire to preserve its rights to pursue recovery after contract closeout of any costs it may incur in the future related to the cleanup of disposal sites, e.g., Maxey Flats, which may have received low-level radioactive waste from B&W as a result of its performance of contracts for DOE. Accordingly, DOE agrees that notwithstanding B&W's withdrawal of its exceptions to DOE's proposed form of release of claims, B&W shall retain the right to submit claims in the future to DOE for any costs related to the cleanup of low-level radioactive waste disposal sites, which claims have not been perfected as of the date on which B&W executes a release of claims.

Decommissioning Financial Assurance

DOE agrees that, subject to the availability of appropriated funds, decommissioning costs allocable to contracts which contain the clause Decommissioning Expenses shall be reimbursed to B&W by the DOE. DOE further agrees that, subject to the availability of appropriated funds, decommissioning costs allocable to contracts that do not contain the clause Decommissioning Expenses shall be reimbursed pursuant to the Compliance with Laws and Regulations clause contained in the contracts. The foregoing affirmations pertain to only those amounts applicable to [REDACTED] contracts and/or subcontracts.

Pursuant to [REDACTED] letter of August 4, 1992, NNFD's special method for allocation of decommissioning costs is hereby approved by DOE as follows: NNFD will treat decommissioning costs as "period costs"; that is, such costs will be allocated to contracts active in a period when such costs are incurred. Excluded from this allocation will be any contract active during the "period" which does not have any causal connection to the contaminated facilities being decommissioned.

In the event there are no active DOE [REDACTED] contracts at the time decommissioning expenses are incurred, and DOE and B&W have not otherwise executed an agreement or entered into a mutually acceptable alternative arrangement through which decommissioning expenses will be reimbursed to B&W, DOE agrees that the most recent active [REDACTED] contract awarded to B&W which contains the above described "Decommissioning Expenses" clause, regardless of its status



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Mr. C. K. Gaddis, Manager  
U. S. Department of Energy



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as to closeout, will receive the full allocation of "period" expenses associated with decommissioning.

The DOE agrees with B&W that the term of this Agreement is indefinite and that it will not terminate.

Sincerely,

J. A. Conner  
Vice President and  
General Manager

IN WITNESS HEREOF, the parties hereby execute this Letter Agreement, effective  
Feb. 22, 1993

THE BABCOCK & WILCOX COMPANY

U. S. DEPARTMENT OF ENERGY

By

By

VP & GM

Title

Manager, PWR

Title



## **ENCLOSURE 5**

**Affidavit from Mr. Roger Cochrane**

AFFADAVIT OF ROGER P. COCHRANE

STATE OF VIRGINIA     )  
  )  
COUNTY OF CAMPBELL )

I, ROGER P. COCHRANE, being duly sworn, do hereby depose and say:

1. I am a citizen of the United States of America. I am a resident of Forest, Virginia. My birth date is June 30, 1958.
2. I am presently employed by BWX Technologies, Inc. (BWXT) in Lynchburg, Virginia. I am the General Manager of the Nuclear Operations Division (NOD). I have held this position since August 1, 2006. I have personal knowledge of the facts set forth in this affidavit, and if called and sworn as a witness in a deposition or before any court, I could and would testify competently under oath to these facts.
3. BWX Technologies, Inc. Nuclear Operations Division (BWXT-NOD) requests that NRC withhold the following documents from public disclosure in accordance with the provisions of 10 CFR 2.390:

The following document(s) Enclosures 1, 2 and 3, to letter dated May 23, 2008 entitled BWX Technologies, Inc. Reply to NRC's Request for Additional Information by Letter Dated April 24, 2008 and Request for Exemption from 10 CFR §70.25 (e) and (f) for its DOE Contract Materials.

BWXT requests that NRC publish the provided redacted versions of these documents. This request is made to protect contractual information that could be of could be of great value to our competitors and may result in the loss of a

competitive advantage. The referenced documents contain information that is marked "Proprietary". The public disclosure of the information contained in the document(s) cited above is likely to cause substantial economic harm to the competitive advantage held by BWX Technologies.

4. The information contained in the documents described above has been held in confidence by BWX Technologies in that it is contractual information as specified in Title 10 Code of Federal Regulations, Part 2.390(a). The basis for requesting that this document(s) be withheld from public disclosure is explicitly marked on the top of each affected page in accordance with 10 CFR 2.390(b)(1)(i)(A). By handling this proprietary information in accordance with 10 CFR 2.390 the confidential nature of the information can be maintained and yet provide NRC with the information in a form that can be conveniently handled within the agency.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is a true and correct statement of facts.

Roger P. Cochrane  
Roger P. Cochrane

Subscribed and sworn to before me this 23<sup>rd</sup> day of May 2008.

David C. Allison  
Notary Public

My commission expires: July 31, 2009

