

October 29, 2008

**U.S. NUCLEAR REGULATORY COMMISSION
SAFETY EVALUATION OF
TRANSFER OF CONTROL OF
SPECIAL NUCLEAR MATERIALS LICENSE NUMBER NO. SNM-42
FROM BWX TECHNOLOGIES, INC.
TO BABCOCK & WILCOX NUCLEAR OPERATIONS GROUP, INC.
TRANSFER OF
LYNCHBURG FUEL MANUFACTURING FACILITIES, THE
LYNCHBURG TECHNOLOGY CENTER, THE WASTE TREATMENT FACILITY, AND THE
URANIUM STORAGE FACILITIES AND EXEMPTION FROM 10 CFR 70.25(e) and (f)**

I. INTRODUCTION

By letters dated November 14, 2007, December 10, 2007, January 7 (2 letters), January 11, February 15, and February 29, 2008, May 23, 2008, June 27, 2008, E-mails dated December 12 (3 E-mails) and December 13, 2007 (2 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), of the transfer of its Special Nuclear Materials License No. SNM-42 to Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG the proposed transferee). License No. SNM-42, issued pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Part 70, covers the following BWXT facilities, all of which are located in Lynchburg, VA: (1) the Nuclear Products Division Manufacturing Facilities; (2) the Lynchburg Technology Center (LTC); (3) the Waste Treatment Facility; and (4) the Uranium Storage Facilities. Although covered by the license, the LTC is owned by BWX Technologies Services, Inc., not BWXT. This safety evaluation report (SER) evaluates the proposed transfer of the Part 70 license to B&W NOG, and related BWXT exemption requests.

In accordance with 10 CFR Part 2, Subpart M, a notice of receipt of the license transfer Application was placed on the NRC Web site at <http://www.nrc.gov>. NRC also published a notice of consideration of approval in the *Federal Register* (73 FR 45089, August 01, 2008), offering an opportunity to request a hearing and provide comments with respect to this proposed license transfer. Requests for a hearing were due to the NRC on August 21, 2008 and comments were due August 31, 2008. The staff did not receive any hearing requests or comments regarding the proposed license transfer.

In its January 7 and February 15 letters to the NRC, BWXT requested, on behalf of B&W NOG, exemptions from 10 CFR 70.25(e) (cost estimate requirements in decommissioning funding plans) and 10 CFR 70.25(f) (required methods of providing financial assurance for decommissioning). The need for the exemptions arises from the fact that, as part of its licensed operations, BWXT performs work that is governed by a contract between the U.S. Department

of Energy (DOE)-Naval Reactor (NR) Programs and BWXT. This contract work is done at the BWXT Lynchburg site and facilities. The work involves NR-related activities there for which DOE has a contractual obligation to pay for decommissioning costs incurred by BWXT as the result of engaging in this contract work. Granting the requested exemptions would delay the transferee's obligation to provide to NRC a decommissioning cost estimate pertaining to NR-related activities, and excuse the transferee from having to use one of the methods of providing financial assurance for decommissioning (specified in 10 CFR 70.25(f)) with respect to NR-related activities.

As discussed below in Section IV.C, the staff finds that granting the requested exemptions will not endanger life or property or the common defense and security, and is in the public interest, and that the requirements of 10 CFR 70.17 for granting an exemption are thus met.

II. BACKGROUND

BWXT holds a Special Nuclear Materials License No. SNM-42 for its facilities in Lynchburg, Virginia, issued pursuant to 10 CFR Part 70 of the NRC's regulations that authorizes BWXT to receive and possess 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 Lynchburg, Virginia. The license provides, among other things, that the facilities are subject to all NRC rules, regulations, and orders, now or hereafter in effect.

In BWXT's request for approval of the license transfer, BWXT described its proposed organizational restructuring. In the transaction, BWXT proposes that it will transfer the ownership and operation of its BWXT facilities of its nuclear businesses and operations, in the United States, to B&W NOG, the proposed holder of Special Nuclear Materials License No. SNM-42 or the transferee, on receiving written consent from NRC. BWXT does not own the LTC. Therefore, BWX Technologies Services, Inc. would retain ownership of the LTC, but the operation of the LTC would be transferred to B&W NOG through the license transfer.

During its acceptance review, the staff determined that BWXT's November 14, 2007 request was not a simple name change, but rather a transfer of control. The staff determination is based on the following factors: the parent, BWX Technologies, Inc. now has direct control of the licensed activities conducted by its division – the Nuclear Operations Division. After the proposed reorganization, BWX Technologies, Inc. would have indirect control of the NRC license, through the creation of a limited-liability corporation or subsidiary corporation, B&W NOG. B&W NOG would then have direct control over licensed activities. Prior to the reorganization, the subsidiary corporation did not exist and did not hold the NRC license. Furthermore, after the proposed reorganization, the parent would then have limited-liability from the financial shortfalls of the licensee, which was previously not the case.

NRC's concern regarding licensee reorganizations, that create new corporations as subsidiaries, lies in the fact that the parent company can potentially isolate its financial liabilities in the subsidiary. If the subsidiary runs short of cash for operations or decommissioning, the parent could attempt to avoid obligation to provide money to cover those debts. The parent's limited liability makes it difficult for the NRC to force the non-licensee parent to take any action to mitigate the effects of a cash shortage incurred by its subsidiary. The staff also notes that there are instances with reorganizations where the new company that possesses the license and has insufficient assets to properly operate or decommission the site and the parent company is insulated from liability.

NUREG-1556, "Consolidated Guidance about Changes of Control and about Bankruptcy Involving Byproduct, Source or Special Nuclear Materials Licenses," Vol. 15, Final Report, outlines the information needed to evaluate a transfer of control. For the financial part, it is usual for the licensee to provide a five-year pro-forma financial sheet, to show that it will have the financial ability to safely carry out its obligations. The licensee, applicant, or transferee (in this case) must also provide adequate financial assurance for decommissioning.

The staff has determined that B&W NOG must meet the financial qualification requirements pursuant to 10 CFR 70.25 (e) and (f) because it is an entity in itself. B&W NOG, contingent to the license transfer, is subject to a full financial qualification review by NRC. B&W NOG was required to provide to the staff the following information:

1. Information that demonstrates B&W NOG possesses, or has reasonable assurance of obtaining the necessary funds to cover estimated operating costs for facility operations and indicate the source(s) of funds to cover these costs.
2. Information that shows: a) the legal and financial relationship B&W NOG has, or proposes to have, with its stockholders or owners; b) its financial ability to meet any contractual obligations to any entity to which they have incurred or propose to incur; and c) any other information considered necessary by the NRC to enable it to determine the applicant's financial qualification.

III. REGULATORY REQUIREMENTS

Pursuant to Section 184 of the Atomic Energy Act (the Act), and 10 CFR 70.36, no license granted under the regulations in Part 70 shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license, to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing. Control over licensed activities is construed as the authority to decide when and how that license (licensed material and/or activities) will be used. Part 70 license applicants are subject to financial assurance and recordkeeping requirements for decommissioning pursuant to 10 CFR 70.25.

In materials licensing, pursuant to Section 57c, 69, and 81 of the Act, NRC must make a finding that issuance of the license for special nuclear material, source material, or byproduct material would not be inimical to the common defense and security, and would not constitute an unreasonable risk to the health and safety of the public. The Commission makes the same finding when consenting to a transfer of control over materials licenses. Pursuant to the Act and 10 CFR 70.36, the Commission, in reviewing the requested materials license transfer, will secure full information about the transaction and determine whether the transfer is in accordance with the Act before giving its written consent; and in doing so, it must determine that the proposed transferee is qualified to be the holder of the license and that the transfer is consistent with applicable provisions of the law and the regulations and orders issued by the Commission.

IV. DISCUSSION

The staff reviews a materials license transfer request to determine whether the applicant has provided an adequate basis to support NRC's consent to the transfer, in accordance with the standards described above. In doing so, the staff evaluates the sufficiency of various

categories of information, to the extent applicable to the request. This information includes a complete description of the transaction, as well as any name or contact information changes; any changes in personnel or duties that relate to the licensed program; any changes in the organization that relate to the licensed program; the status of any surveillance program; confirmation that all records concerning the safe and effective decommissioning of the facility will be transferred to the transferee or to NRC; and confirmation that the transferee will abide by all constraints, conditions, requirements, and commitments of the transferor. The staff has reviewed BWXT's application with respect to these criteria.

A. TRANSFER OF MATERIALS LICENSE

BWXT stated in its application that B&W NOG will abide by all commitments and representations previously made by BWXT with respect to Special Nuclear Materials License No. SNM-42. These include, but are not limited to, maintaining decommissioning records, implementing decontamination activities, and eventually decommissioning the facilities and site. The staff suggests that this be imposed as a condition of the Order and license.

The staff has determined that the application contains a complete description of the transaction, including the new name of the owner. There were no changes in personnel or duties that relate to the licensed programs and no changes to the organization, facilities, equipment, or procedures that relate to the licensed programs. There will be no changes to staffing or qualifications of staff required by the license. There are no changes in the use, possession, location, or storage of the licensed materials associated with the license. BWXT stated in its application that B&W NOG will not be owned, controlled or dominated by an alien, a foreign corporation, or a foreign government. Accordingly, the staff finds that B&W NOG will not be controlled or influenced by foreign ownership. The staff has concluded that it need not make any findings with respect to technical qualifications since there is no proposed change in the technical operating authority or change in the current operator's qualifications to operate the facilities.

Surveillance items and records associated with the license will continue to be maintained without regard to the change in ownership. All records concerning safe and effective decommissioning/closure of the facilities, public dose and waste disposal by release to sewers, incineration, radioactive material spills, and on-site burials will be transferred to B&W NOG.

The staff finds reasonable assurance that the transfer of the subject license will have no effect on the licensee's decommissioning records, that the transaction will not involve the physical relocation of any records, and that all records concerning the safe and effective decommissioning of the facilities will remain with the licensee. On the closing date, the status of the licensed facilities, including, but not limited to the status of decontamination and decommissioning activities, will be identical to their status prior to the closing date.

B. FINANCIAL EVALUATIONS

In accordance with 10 CFR 70.25(f), BWXT provided in its December 2007 application the projected income statement for B&W NOG for the three year period from 2007 to 2010. The staff evaluated the reasonableness of the revenue and expense figures provided in the three year projection. The staff found that the projected revenue and expenses are within reasonable expectations given past performance. BWXT explained that it was only able to provide financial data projected through 2010 because of the way its accounting system is structured. The staff

determined that it was sufficient to compare the last year balance sheet with the previous 3-year balance sheets that were provided by BWXT.

The staff has determined that it was sufficient to compare the most recent year's revenue with a 3-year pro-forma revenues projection. The staff finds that no further financial qualifications analysis or review is necessary to determine whether the transferee has financial assurance to safely operate the facilities under Special Nuclear Materials License No. SNM-42.

C. DECOMMISSIONING

NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of the public health and safety. The requirements of 10 CFR 70.25 require that B&W NOG provide information indicating how reasonable assurance will be provided that funds will be available for decommissioning.

With regard to its request to be exempted from the requirements of 10 CFR 70.25(e), BWXT did not provide a detailed cost estimate for the decommissioning of the NR materials, equipment, and work areas. BWXT stated that for at least the past 15 years, the NRC has granted BWXT's request for an exemption from 70.25(e) and (f) for BWXT's DOE NR contracts. The staff confirmed that as part of license amendment 40, NRC granted an exemption from the requirements of 10 CFR 70.25(e) relating to the provisions of a decommissioning cost estimate for the NR programs at BWXT. In the Safety Evaluation Report for the exemption, the staff concluded that the statements made by DOE regarding DOE's contractual obligation to pay the expenses eventually incurred by BWXT in decommissioning the BWXT facilities used in NR work are consistent with the intent of NRC's regulation in that: (1) they provide the NRC with assurance that NR adequately understands the potential costs of decommissioning NR-related work at BWXT; (2) NR plans to continue to use BWXT for the production of naval nuclear fuel; and (3) NR is willing to pay whatever decommissioning costs eventually accrue, even if they vary from the rough order of magnitude decommissioning cost estimate. In addition, as part of the recent 20 year license renewal, approved by NRC on March 29, 2007, and a subsequent amendment to the renewed license (Amendment 1 – Update of Decommissioning Cost Estimate and Financial Assurance), approved by NRC on April 25, 2007, the staff found that based on the documents submitted by BWXT, and in view of the exemptions granted in Amendment 40 to the license, that the financial assurance mechanisms are acceptable.

As part of its license transfer application, BWXT submitted to NRC the same decommissioning cost estimate that it submitted when it updated its decommissioning cost estimate and financial assurance (amendment 1- discussed above). The staff determined that BWXT does not need to update its decommissioning cost estimate at this time. However, as part of a financial assurance technical assistance request from the fuel cycle licensing staff to the Office of Federal and State Materials and Environmental Management Programs, the BWXT decommissioning cost estimate submittal was reviewed for conformance with the regulations and conformance to the regulatory guidance of NUREG 1757, Vol. 3, and NUREG/CR-6477. In reviewing the submitted decommissioning cost estimate, deficiencies were found that identified concerns regarding (1) the need for additional detail to support the cost estimate; (2) the recommendation to revise or justify estimates for unit costs and other key assumptions; and (3) the need to provide estimates for missing costs, providing details on how those costs are included, or justify why they are not included. Cost estimates must be adjusted at intervals not to exceed three years. Since the same decommissioning cost estimate was approved by NRC on April 25, 2007, the staff determined that the questions concerning the decommissioning cost

estimate could be addressed after the license transfer and when the (new) licensee conducts the 3-year update.

The staff reviewed the associated documentation provided in Chapter 10 of the BWXT Application and noted that it had 3 decommissioning financial assurance contractual agreements—one with DOE, one with Battelle Energy Alliance LCC, and one with UT Battelle LLC. BWXT had included the cost estimates for these activities, except for the cost estimated associated with the DOE. The NRC informed BWXT that BWXT must request an exemption to 10 CFR 70.25(e) for the NRC licensed activities that are identified in each decommissioning financial assurance contractual agreement, or alternatively use another financial assurance mechanism, as described in 10 CFR 70.25(f). BWXT then decided not to use its decommissioning financial assurance contractual agreements with Battelle Energy Alliance LCC and the UT Battelle LCC with respect to this licensing action. Instead, on June 27, 2008, BWXT provided a revised copy of its unexecuted copy of its Letter of Credit (LoC) in the amount of \$28,873,500 that included the decommissioning cost estimates for the Research Test Reactor and Targets (RTRT) activities that were once associated with Battelle Energy Alliance LCC and UT Battelle LCC contractual agreements. The staff reviewed the submittal and confirmed that the activities associated with the two contractual agreements and the RTRT activities, were included in the revised LoC.

BWXT requested that NRC grant the transferee an exemption to 10 CFR 70.25(e) and (f). BWXT informed the staff that the BWXT/DOE February 17, 1993 Decommissioning Financial Assurance Contractual Agreement was to remain in place as written. BWXT also requested that the transferee be allowed to provide an executed copy of the 2008 Letter of Attestation as part of the NRC Order approving the SNM-42 license transfer. The staff informed BWXT that NRC will only consider financial agreements in the transferee's name as related to its request for an exemption from 10 CFR 70.25(f).

With regard to 10 CFR 70.25(f), in a letter dated June 27, 2008, BWXT provided to the NRC a non-executed copy of the 2008 Letter of Attestation between B&W NOG and DOE in which BWXT stated that DOE NR has agreed to provide a renewed Letter of Agreement. The staff reviewed this draft letter of agreement, in which BWXT requests: (1) that DOE provide renewed assurance for B&W NOG that the February 17, 1993 Decommissioning Financial Assurance Contractual Agreement between DOE and B&W which obligates DOE to pay for the decommissioning costs associated with NR activities at the BWXT Lynchburg facilities and site, will continue to be in force after the license transfer occurs; and (2) that DOE evidence that intent by returning a signed copy of the Letter Agreement to document their mutual understandings. Additionally, the Letter states as follows:

“This renewed Letter Agreement will take effect upon the closing date of the restructuring transaction.” In addition, the staff notes that the Letter states that “DOE acknowledges B&W NOG’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 which may have received low-level radioactive waste from B&W NOG as a result of its performance of contracts for DOE. DOE hereby agrees that B&W NOG shall retain the right to submit claims in the future to DOE for any costs related to the cleanup of low-level waste disposal sites, which claims have not been perfected as of the date on which B&W NOG executes a release of claims.”

The staff finds that if the Letter of Attestation between B&W NOG and DOE is signed, it would provide adequate assurance that (1) DOE recognizes the creation of B&W NOG and (2)

acknowledges DOE's existing decommissioning financial assurance obligations regarding the decommissioning of the SNM-42 licensed site and facilities with respect to existing contamination resulting from licensed operations relating to DOE/NR activities (NR materials, equipment, and work areas) that took place under the SNM-42 license before the license transfer; and (3) acknowledges DOE's future decommissioning financial assurance obligations created by continued work undertaken by B&W NOG at the Lynchburg, VA facilities and site that takes place after the SNM-42 license is transferred. In this regard, BWXT stated that it will provide a signed copy of the renewed Letter Agreement to the NRC upon NRC approval of the draft, and prior to the restructuring or the transfer of the SNM license. This approach is acceptable to the staff.

After reviewing the decommissioning financial assurance contractual agreement between BWXT and the DOE, the staff needed additional information to complete its safety evaluation. Specifically, the staff asked BWXT questions related to the use of different parts of the site and the impact of determining how to distinguish DOE/NR versus non-DOE/NR contamination, lack of soil remediation estimates for certain areas of the facility, BWXT's intention to ask for restricted release, BWXT's responsibility for the cost of low level waste disposal, and the viability of BWXT's contract with DOE for disposal of the irradiated fuel (spent nuclear fuel) that BWXT currently stores on site.

The staff asked about BWXT's ability to distinguish between NR and non-NR contamination and waste flows. BWXT responded that it could distinguish between the two sources because the only areas of concern, in its opinion, are Uranium Recovery in Bay 15A and its Waste Treatment Facility. BWXT stated that it distinguishes DOE/NR and non-DOE/NR contamination and waste flows in these areas by performing clean-outs between (operational) contracts. BWXT explained that the cost of clean-outs is charged to the appropriate contract. In addition, BWXT stated that the Waste Treatment Facility at BWXT is covered under the contracts with the DOE/NR program. The staff concluded that BWXT response was acceptable because BWXT showed that it was distinguishing and tracking DOE/NR and non-DOE/NR sources of contamination. This is an important aspect to be able to track because when the facilities are finally decommissioned, such documentation and data might be valuable to demonstrate the source of contamination.

The staff noted that the RTRT and Downblend Decommissioning Cost Estimate excluded an estimate for soil remediation. The staff asked BWXT the basis for leaving this out of the cost estimate for those areas. BWXT responded that both areas are built on concrete slabs and that the only underground piping in the RTRT is related to the employee change area waste drains. BWXT did note that when decommissioning the RTRT, the underground piping would not be removed since it connects to piping that services other areas of the facility. Also, BWXT explained that the RTRT does not process Special Nuclear Material-bearing solutions in those areas that could lead to spillage and possible soil contamination. The staff finds BWXT's response acceptable because it is reasonable to assume that no soil contamination is expected to result from the RTRT and Downblend operations given the description of the operations and the controls in place.

The staff also questioned why the decommissioning cost estimate for Bay 15A (Downblend) stated that for facilities not previously contaminated with DOE/NR activities prior to downblending, the estimates are based upon reaching levels acceptable for unrestricted release but that BWXT would not necessarily be asking NRC for unrestricted release. BWXT responded that the areas like the storage building utilized in the Downblending contract is an example of where BWXT would clean until BWXT reached a level for unrestricted release of the

facility, but BWXT would not ask NRC for permission to release the facility. The staffs finds that this approach is acceptable because it is up to the licensee to decide if it wants to release the facility for unrestricted use or not. If a licensee cleans up to unrestricted use, but does not want to release the facility for unrestricted use, because, for example, it plans on using the facility for another operational purpose where radiological material is used, it may do so.

BWXT stated in Chapter 10, page 10-10, Clause 8, Cleanup Expenses, of its financial decommissioning contractual agreement with DOE that the price of the contract with DOE does not include any amounts for cost that may be incurred for any investigation or remedial action with respect to disposal sites for low-level radioactive wastes disposed of by BWXT under this DOE/BWXT decommissioning financial assurance contract. The staff asked BWXT to clarify BWXT's responsibilities regarding low-level waste disposal. BWXT stated that if there is a need for an investigation or remedial action at the disposal site where BWXT has disposed of its low-level radioactive waste under the DOE/BWXT contract in question, then the amount of the costs incurred for that investigation or remedial action is not included in the contract. However, if the cost for the investigation or remediation is found to be allocable to this contract and BWXT as the contractor has made an effort to reduce the costs of said investigation, and if funds are available, then DOE will make an equitable adjustment to the price of the contract. However, DOE cannot guarantee that Congress will appropriate additional funds for this type of activity at a later date.

In reviewing the BWXT letter dated June 27, 2008, Enclosure 4, pages 10-39, LTC Cost Estimate, the staff noted that in the BWXT LTC cost estimate, BWXT stated that DOE Headquarters has defaulted on its contract with Babcock and Wilcox (B&W), but that B&W assumes that DOE will eventually honor its contractual obligations. On August 26, 2008, the staff asked BWXT to provide the basis for its assumption. On September 5, 2008, BWXT replied to the staff with its basis for its assumption. BWXT stated that the contract it has with DOE Headquarters is a legally binding contract between B&W and the DOE. BWXT assumes that DOE will eventually honor its contractual obligations because DOE is a U.S. federal agency that is authorized to enter into contracts for the permanent disposal of spent nuclear fuel and/or high level radioactive waste of domestic origin in DOE facilities, and the contract was entered into under the authority of the DOE Organization Act (Pub. L. 95-91, 42 U.S.C. 7101 et seq.) and the Nuclear Waste Policy Act of 1982 (Pub. L. 97-425, 42. U.S.C. 10101 et seq.). Furthermore, BWXT stated that because the contract states that the "DOE has the responsibility, following commencement of operation of a repository, to take title to the spent nuclear fuel or high-level radioactive waste ...," BWXT assumes that DOE will take title to the spent nuclear fuel once a repository is available. Also, BWXT stated that BWXT and B&W continue discussing with DOE issues regarding the spent nuclear fuel, including negotiations of storage cost reimbursements. Finally, the DOE has not given B&W, or BWXT any reason to believe that DOE will not honor its contractual obligations once a repository is available.

The staff finds BWXT's response acceptable for the following reasons: 1) The contract clause, requiring DOE to take title to the spent fuel, is authorized by an Act of Congress; 2) The NRC stated that " ... there is reasonable assurance that the appropriate government entity, which has the power of taxation, will provide adequate funding in the future to decommission the facility in a manner which protects public health ... " (General Requirements for Decommissioning Nuclear Facilities, Final Rule, June 27, 1988, 53 FR 24034); and 3) The Federal Register statement explained the reasoning for accepting a statement of intent from a government licensee as financial assurance for the cost of decommissioning. In BWXT's case, a government contract is the instrument, rather than a statement of intent. Staff notes that the licensee itself is not a government entity. However, the contract between BWXT and DOE

ultimately rests on Congress' responsibility to protect public health. This arrangement is equivalent to the government responsibility determined to be adequate in the Federal Register. The communications between BWXT and DOE on the subject of high-level waste disposal constitute an acceptable method of obtaining assurance that DOE will honor its contractual obligation to take title to the waste materials.

All facilities and activities that are the subject of the license transfer request are active. No decontamination and release of any facilities will occur prior to the transfer of control. BWXT will make B&W NOG aware of the extent and levels of contamination and applicable decommissioning requirements, and B&W NOG will agree to assume full liability for the decontamination of the facilities and site governed by the NRC license, in accordance with applicable NRC decommissioning requirements. In addition, BWXT, on behalf of B&W NOG, requested that B&W NOG be exempt from the requirements of 10 CFR 70.25(e) and (f) for NR materials, facilities, and work locations and has provided to NRC, a non-executed letter to be signed by B&W NOG and DOE/NR acknowledging the financial obligations and responsibilities of the contractual agreement. BWXT stated in its application that it "... intends to provide a fully sufficient copy of the DOE Renewal Agreement Letter to the NRC prior to the restructuring or the transfer of control." BWXT also stated in its application that "...all of the DOE contracts held by BWXT will be formally novated to B&W NOG after the restructuring deal is closed and the new name takes effect. Therefore, all rights, privileges and obligations under those contracts will pass to B&W NOG, including the DOE's contractual assurance to provide decontamination and decommissioning costs for the work under those contracts at the site." BWXT provided the non-executed LoC and Standby Trust to NRC for review. The NRC reviewed the drafts and noted technical deficiencies, but determined that the drafts were acceptable after BWXT corrected the deficiencies. The NRC confirmed that BWXT revised the LoC to reflect the new LoC amount. BWXT stated that LoC and Standby Trust Agreement will become operable as soon as the existing LoC and Standby Trust are terminated. Consequently, there will be no gap in coverage. The staff recommends that any NRC Order granting permission to transfer the license will be conditional upon final execution of these documents before the license transfer can become effective.

D. CERTIFICATES OF COMPLIANCE

Division of Spent Fuel Storage and Transportation (DSFST) reviewed the "Quality Assurance Plan for Shipping Program," Revision 17, (ML082050517) and issued NRC "Quality Assurance Program Approval for Radioactive Material Packages No. 0088, Revision 17," on July 24, 2008, (ML082110202) to Babcock and Wilcox Nuclear Operations Group, Inc.(B&WNOG). Under this approval, B&W NOG's authorized activities include: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packaging. B&W NOG is fabricator/primary holder of Model Nos. UNC-2600, NNFD-10, 5X22, UBE-1, UBE-2, and 814A. and user/secondary holder of Model Nos. BMI-1, NLI-1/2, N-55, CNS1-13C, CNS 1-13CII, PAS-1, and CNS 1-13G.

The Certificate of Compliance (CoC) for Model No. 5X22 is pending resolution of request for additional information (RAIs), not related to the Quality Assurance Program Plan. DSFST finds that BWXT's application on behalf of the B&W NOG is acceptable and the technical RAIs should be addressed by transferee after SNM-42 is transferred.

E. STATE CONSULTATION

On August 19, 2008, the staff contacted the representative from the State of Virginia Radiological Health Branch, and the representative from the State of Virginia Department of Environmental Quality to inform them about the licensee's transfer of control application, and the proposed issuance of the license amendments. The representatives from the State of Virginia Department of Environmental Quality had no comment on the draft Environmental Assessment; but it did identify in a letter to the NRC, the State of Virginia permits that the new licensee would have to update after the transfer. The State of Virginia Radiological Health Branch had no comments.

F. CONDITIONS

The following requirements should be included in the associated Order concerning the SNM-42 transfer of control request and in the conforming amendment:

- In order to ensure that NRC is timely notified of the transfer's completion, 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 license SNM-42 prior to closing.
- If the transfer of the license has not been completed within 60 days from the date of issuance of the Order, the Order shall become null and void; however, on written application and for good cause shown, the 60-day deadline may be extended by further Order.
- Prior to completion of the transfer of the license, B&W NOG shall provide the staff satisfactory documentary evidence of an authorized method that meets the requirements of 10 CFR 70.25(f) for decommissioning funding assurance for the license, demonstrating an amount no less than that required of licensees under 10 CFR 70.25 of the Commission's regulations.

V. CONFORMING AMENDMENT

In addition, the staff has reviewed the requested conforming amendments to SNM-42 to change the indicated license holder from BWXT to B&W NOG. Based on the information furnished by BWXT, the staff concludes that the proposed conforming amendment to SNM-42 (pursuant to 10 CFR 70.34 and 70.36) accurately reflects the license transfer and meets the requirements of 10 CFR Part 70.

VI. ENVIRONMENTAL REVIEW

In accordance with 10 CFR 51.22(c)(21), approvals of direct or indirect transfers of any license issued by the NRC and any associated amendments of licenses required to reflect the approval of a direct or indirect transfer of an NRC license are actions which belong to a category of actions which the Commission has declared to be a categorical exclusion. Therefore, in accordance with 10 CFR 51.22(b), neither an EA nor an Environmental Impact Statement (EIS) is required for this action. However, the exemption from the requirements of paragraphs 70.25(e) and (f) require an EA in accordance with 10 CFR 51.21.

NRC has prepared an EA in support of granting the exemptions and amending the license.

Based on this EA, NRC has concluded that a finding of no significant impact (FONSI) is appropriate and, therefore, an EIS is not warranted.

VII. CONCLUSION

The staff has reviewed BWXT application for approval of an indirect transfer of Special Nuclear Materials License No. SNM-42, as well as the conforming amendment with license conditions related to financial assurance. The staff concludes that the transfer of the license is in accordance with the provisions of the Act and with the Commission's regulations, provided that certain conditions are met in a timely manner and hereby finds that approval of the requested transfer through a NRC Order with conditions is not inimical to the common defense and security, and does not constitute an unreasonable risk to the health and safety of the public.

The staff has also reviewed the request for amending the CoC and associated QA Programs that are currently held by BWXT to reflect the transfer of control of the license to the transferee. Division of Spent Fuel Storage and Transportation (DSFST) reviewed the "Quality Assurance Plan for Shipping Program," Revision 17, (ML082050517) and issued NRC "Quality Assurance Program Approval for Radioactive Material Packages No. 0088, Revision 17," on July 24, 2008, (ML082110202) to Babcock and Wilcox Nuclear Operations Group, Inc.(B&WNOG). Under this approval, B&W NOG's authorized activities include: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packaging.

The CoC for Model No. 5X22 is pending resolution of RAIs, not related to the QA Program Plan. The staff finds that BWXT's application on behalf of the transferee is acceptable and the technical RAIs should be addressed by transferee after SNM-42 is transferred.

The staff recommends that the Commission grant B&W NOG an exemption from the requirements of 10 CFR 70.25(e) and (f) for NR materials, facilities, and work locations for which DOE has contractual obligation to pay for the cost of decommissioning because the activities are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

For reasons stated above, the staff concludes that, subject to the above conditions, the Application provides adequate assurance of compliance with all constraints, conditions, requirements, and commitments of Special Nuclear Materials License No. SNM-42.

PRINCIPAL CONTRIBUTORS

Amy M. Snyder, NMSS/ FCSS
Merritt Baker, NMSS/FCSS
Kenneth Kline, FSME/DWMEP
Thomas Fredrichs, NRO

The staff has reviewed BWXT application for approval of an indirect transfer of Special Nuclear Materials License No. SNM-42, as well as the conforming amendment with license conditions related to financial assurance. The staff concludes that the transfer of the license is in accordance with the provisions of the Act and with the Commission's regulations, provided that certain conditions are met in a timely manner and hereby finds that approval of the requested transfer through a NRC Order with conditions is not inimical to the common defense and security, and does not constitute an unreasonable risk to the health and safety of the public.

The staff has also reviewed the request for amending the CoC and associated QA Programs that are currently held by BWXT to reflect the transfer of control of the license to the transferee. Division of Spent Fuel Storage and Transportation (DSFST) reviewed the "Quality Assurance Plan for Shipping Program," Revision 17, (ML082050517) and issued NRC "Quality Assurance Program Approval for Radioactive Material Packages No. 0088, Revision 17," on July 24, 2008, (ML082110202) to Babcock and Wilcox Nuclear Operations Group, Inc.(B&WNOG). Under this approval, B&W NOG's authorized activities include: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packaging.

The CoC for Model No. 5X22 is pending resolution of RAIs, not related to the QA Program Plan. The staff finds that BWXT's application on behalf of the transferee is acceptable and the technical RAIs should be addressed by transferee after SNM-42 is transferred.

The staff recommends that the Commission grant B&W NOG an exemption from the requirements of 10 CFR 70.25(e) and (f) for NR materials, facilities, and work locations for which DOE has contractual obligation to pay for the cost of decommissioning because the activities are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

For reasons stated above, the staff concludes that, subject to the above conditions, the Application provides adequate assurance of compliance with all constraints, conditions, requirements, and commitments of Special Nuclear Materials License No. SNM-42.

PRINCIPAL CONTRIBUTORS

Amy M. Snyder, NMSS/ FCSS
 Merritt Baker, NMSS/FCSS
 Kenneth Kline, FSME/DWMEP
 Thomas Fredrichs, NRO

DISTRIBUTION:

ASnyder, FMB SSubosits, RII AGooden, RII APessin, OGC

ML082600362

OFFICE	NMSS/FCSS	NMSS/FCSS	NMSS/FCSS	FSME	NRO
NAME	MBaker	VWilliams	PHabighorst	LChang-email	TFredrichs-email
DATE	09/23/08	09/24/08	09/ 29 /08	09/29/08	10/ 2 /08
OFFICE	FSME	NMSS/SFST	OGC	NMSS/FCSS	
NAME	KKline-email	DPstrak-email	JHull- NLO	MTschiltz-email	
DATE	09/26 /08	10/1 /08	10/ 28 /08	10/ 21 /08	

OFFICIAL RECORD COPY