



Nuclear Operations Division

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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:

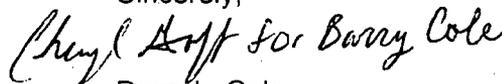
Beth Colling, Managing Attorney  
BWX Technologies, Inc., MC-57  
2016 Mt. Athos Rd.  
Lynchburg, VA 24504-5447  
(434) 522-5641

NMSS01

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 1**

**Information in Response to NRC Regulations and the NRC  
Request For Additional Information (RAI) in Letter Dated  
April 24, 2008 (redacted copy included)**

**Information Provided Pursuant to NRC Request For Additional Information in Letter dated April 24, 2008 (TAC L32657)**

Set forth below is information in response to NRC regulations and the NRC Request For Additional Information (RAI) in a letter dated April 24, 2008 (TAC L32657), to support the transfer of License SNM-42 and Certificates of Compliance from BWX Technologies, Inc. (BWXT) to Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG).

**RAI #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).**

BWXT is in the process of revising the Letter of Credit (LoC) to include the decommissioning costs related to our Research and Test Reactor facility (RTRT). This action will also result in a change to Chapter 10 of the license SNM-42. Per a May 22, 2008 telephone conversation with Ms. Amy Snyder, NRC Senior Project Manager, a revised LoC and revised Chapter 10 will be submitted under separate letter.

**RAI #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.**

BWXT is in the process of revising the Standby Trust Agreement (STA) with consideration given to the NRC's requests. A teleconference is being scheduled to resolve questions regarding the STA. Per a May 21, 2008 telephone conversation with Ms. Amy Snyder, NRC Senior Project Manager, a revised STA will be submitted under separate letter.

**RAI #3: In NRC letter dated February 1, 2008, to BWXT, the staff asked BWXT to provide a copy of the contractual agreement with the US. 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 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 the either the LoC or a cost estimate, then BWXT must provide a cost estimate and an acceptable financial assurance insurance 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, B&W 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.**

BWXT recognizes that a contractual agreement is not a recognized financial instrument under the NRC's regulations (paragraph 70.25 (f)). Therefore, BWXT confirms that it is requesting an exemption to both 10 CFR 70.25 (e) and 10 CFR 70.25 (f) for its Department of Energy Naval Reactor (DOE NR) contracts. If the NRC grants these exemptions, BWXT can meet the intent of the requirement for proof that financial assurance is in place for its DOE NR contracts. In support thereof, BWXT offers the following background and information:

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. As the NRC is aware, BWXT entered into a Letter Agreement with the DOE dated February 17, 1993 (and fully executed on February 22, 1993) whereby the DOE agreed to assume full financial assurance responsibility for the decommissioning and decontamination costs associated with the work performed for the DOE NR contracts. The 1993 Letter Agreement is currently on file with the NRC as Appendix 10-2 in SNM-42 License Application Chapter 10 as approved by letter dated April 25, 2007 (Reference 2). Also, the 1993 Letter Agreement is included as Appendix 10-2 in SNM-42 License Application Chapter 10 submitted to the NRC in a letter dated November 14, 2007 (Reference 3).

This 1993 Letter Agreement, signed by the then-Contracting Officer for BWXT's DOE NR contracts (C.K. Gaddis), was the result of numerous discussions and communications between DOE NR and BWXT. Due to the lengthy nature of the discussions and the time involved in reaching an Agreement, the term of the 1993 Letter Agreement is indefinite and continues in full force and effect until BWXT undergoes decommissioning and decontamination or until the Letter Agreement is terminated by agreement of both parties. Neither of those scenarios has occurred.

The same language in this Letter Agreement has been a part of every BWXT-DOE NR contract executed since 1990 (identified most recently in BWXT's contract as the Memorandum of Understanding Concerning Decommissioning of the BWX Technologies, Inc. Nuclear Operations Division and also found in Chapter 10 of BWXT's

[REDACTED]

License Application) and was grandfathered into all DOE NR contracts previously performed at BWXT by the 1993 Letter Agreement.

Therefore, the DOE's obligations regarding financial assurance for BWXT's decommissioning and decontamination activities have been supported by two different contractual mechanisms: 1) by operation of the 1993 Letter Agreement and 2) by the inclusion of a Memorandum of Understanding in all DOE NR contracts. While BWXT understands that these contractual documents do not meet the specific language of paragraph 70.25, both of these documents provide BWXT with a legally-enforceable means of ensuring that the financial assurances for the DOE NR contracts are met. Consequently, this should provide the NRC with assurance that these costs will be addressed by the DOE, and the NRC can exempt BWXT from providing the decommissioning cost estimate and a specified financial assurance document as dictated by paragraph 70.25.

Moreover, to answer the NRC's concern that the 1993 Letter Agreement may not apply to the new entity (B&W NOG), BWXT previously provided the NRC with an amendment to the 1993 Letter Agreement, dated December 18, 2007, signed by BWXT's current DOE NR Contracting Officer, H.K. Cardinali, sent as Enclosure 3 in the January 7, 2008 letter (Reference 4). Like the 1993 Letter Agreement, this amendment to the Letter Agreement is legally enforceable and indicates that the DOE supports the restructuring of BWXT to become B&W NOG and that it will continue to stand by its decommissioning and decontamination obligations as set forth in the 1993 Letter Agreement once the restructuring is complete.

As an additional note, all of the DOE Contracts currently 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 this site (reference previously mentioned "Memorandum of Understanding"). BWXT believes this supports the justification for providing an exemption to paragraph 70.25 (e) and (f) and provides additional assurances to the NRC that there will be no gap in coverage with regard to the DOE Financial Assurances.

However, in an effort to provide additional confirmation to the NRC that the 1993 Letter Agreement will continue to apply to the new entity (B&W NOG), DOE NR has agreed to provide a renewed Letter Agreement signed by Mr. Cardinali. Attached as **Enclosure 2** is a draft of the proposed renewed Letter Agreement. Enclosure 2 contains proprietary information and should be withheld from public disclosure under 10 CFR 2.390. An affidavit from Mr. Roger Cochrane is included in **Enclosure 5**. A redacted copy is also included for public disclosure. Upon approval by the NRC that that this 2008 Letter Agreement is acceptable, BWXT will immediately provide the NRC with an executed copy. If changes are requested by the NRC, BWXT will need to go back to DOE NR for these revisions. BWXT intends to provide a fully sufficient copy to the NRC prior to the restructuring or the transfer of the SNM license.

Finally, the NRC raised questions about the RTRT contracts (Battelle Energy Alliance, LLC and UT Battelle, LLC), please see BWXT's response to RAI#1. Also, there are no decommissioning costs that are not yet addressed in the either the LoC or a cost estimate.

**RAI #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).

Provided in Enclosure 3 is a revised unexecuted copy of Certification of Financial Assurance for B&W NOG. Revisions were made as requested. As with Letter of Credit and the Standby Trust Agreement, a fully executed copy will be provided upon the NRC's confirmation of the acceptability of this document. This document is properly identified as Official Use Only – Department of Energy because the maximum quantities have 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 been included.

**RAI #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

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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.

Per subsequent discussions with the NRC and DOE, the use of "Official Use Only" and "Proprietary Information - Withhold Under 2.390" has been clarified. The copy of the 1993 Letter Agreement provided in the November 14, 2007 (Reference 3) submittal (submitted as Appendix 10-2 of the SNM-42 License Application Chapter 10) was properly identified as "Proprietary Information - Withhold Under 2.390" and subsequently was agreed to be withheld from public disclosure by the NRC by letter dated March 31, 2008 (Reference 6). This document was improperly marked as "Official Use Only - Department of Energy" when it was submitted in the February 15, 2008 letter (Reference 5). It should have been and still remains "Proprietary Information - Withhold Under 2.390". Roger Cochrane's affidavit submitted with the November 14, 2007 letter still applies to the document since it is one and the same. A redacted copy for public disclosure has been provided in **Enclosure 4**.

**RAI #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.

BWXT referenced the April 25, 2007 letter to demonstrate that the basis used by the NRC to grant BWXT's exemption has remained the same. However, BWXT has amended its requests to include the proposed licensee. Please see BWXT's response to RAI#3.

**RAI #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

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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.

Per subsequent discussions with the NRC, it has been determined that BWXT is the primary holder of 6 CoCs and secondary holder (registered user) of 16 CoCs. An application addressing the transfer of these CoCs is being prepared and will be submitted under separate letter to the Spent Fuel Storage and Transportation Division (SFST) of the Office of Nuclear Material Safety and Safeguards (NMSS) and copied to NRC Project Manager for the BWXT Part 70 license (Amy Snyder) no later than May 30, 2008. The application will include the items as requested by the NRC.

**REDACTED COPY  
OF  
ENCLOSURE 1**

See ML081750242

Letter from A. Snyder, U.S. Nuclear Regulatory Commission, to B. Cole, BWX Technologies, Inc., 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), dated July 28, 2008

This letter denies BWX Technologies, Inc.'s claim that the information contained in Enclosure 1 is proprietary under 10 CFR 2.390.

~~Proprietary Information - Withheld Under 10 CFR 2.600~~

**Information Provided Pursuant to NRC Request For Additional Information in Letter dated April 24, 2008 (TAC L32657)**

Set forth below is information in response to NRC regulations and the NRC Request For Additional Information (RAI) in a letter dated April 24, 2008 (TAC L32657), to support the transfer of License SNM-42 and Certificates of Compliance from BWX Technologies, Inc. (BWXT) to Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG).

**RAI #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).

BWXT is in the process of revising the Letter of Credit (LoC) to include the decommissioning costs related to our Research and Test Reactor facility (RTRT). This action will also result in a change to Chapter 10 of the license SNM-42. Per a May 22, 2008 telephone conversation with Ms. Amy Snyder, NRC Senior Project Manager, a revised LoC and revised Chapter 10 will be submitted under separate letter.

**RAI #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.

~~Proprietary Information - Withhold Under 10 CFR 2.309~~

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

BWXT is in the process of revising the Standby Trust Agreement (STA) with consideration given to the NRC's requests. A teleconference is being scheduled to resolve questions regarding the STA. Per a May 21, 2008 telephone conversation with Ms. Amy Snyder, NRC Senior Project Manager, a revised STA will be submitted under separate letter.

**RAI #3: In NRC letter dated February 1, 2008, to BWXT, the staff asked BWXT to provide a copy of the contractual agreement with the US. 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 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, B&W 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

~~Proprietary Information - Withheld Under 10 CFR 2.550~~

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.**

BWXT recognizes that a contractual agreement is not a recognized financial instrument under the NRC's regulations (paragraph 70.25 (f)). Therefore, BWXT confirms that it is requesting an exemption to both 10 CFR 70.25 (e) and 10 CFR 70.25 (f) for its Department of Energy ~~Contract~~ (DOE ~~Contract~~) contracts. If the NRC grants these exemptions, BWXT can meet the intent of the requirement for proof that financial assurance is in place for its DOE ~~Contract~~ contracts. In support thereof, BWXT offers the following background and information:

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 ~~Contract~~ contracts. As the NRC is aware, BWXT entered into a Letter Agreement with the DOE dated February 17, 1993 (and fully executed on February 22, 1993) whereby the DOE agreed to assume full financial assurance responsibility for the decommissioning and decontamination costs associated with the work performed for the DOE ~~Contract~~ contracts. The 1993 Letter Agreement is currently on file with the NRC as Appendix 10-2 in SNM-42 License Application Chapter 10 as approved by letter dated April 25, 2007 (Reference 2). Also, the 1993 Letter Agreement is included as Appendix 10-2 in SNM-42 License Application Chapter 10 submitted to the NRC in a letter dated November 14, 2007 (Reference 3).

This 1993 Letter Agreement, signed by the then-Contracting Officer for BWXT's DOE ~~Contract~~ contracts (C.K. Gaddis), was the result of numerous discussions and communications between DOE ~~Contract~~ and BWXT. Due to the lengthy nature of the discussions and the time involved in reaching an Agreement, the term of the 1993 Letter Agreement is indefinite and continues in full force and effect until BWXT undergoes decommissioning and decontamination or until the Letter Agreement is terminated by agreement of both parties. Neither of those scenarios has occurred.

The same language in this Letter Agreement has been a part of every BWXT-DOE ~~Contract~~ contract executed since 1990 (identified most recently in BWXT's contract as the Memorandum of Understanding Concerning Decommissioning of the BWX Technologies, Inc. Nuclear Operations Division and also found in Chapter 10 of BWXT's

~~Proprietary Information - Withhold Under 10 CFR 2.390~~

License Application) and was grandfathered into all DOE [REDACTED] contracts previously performed at BWXT by the 1993 Letter Agreement.

Therefore, the DOE's obligations regarding financial assurance for BWXT's decommissioning and decontamination activities have been supported by two different contractual mechanisms: 1) by operation of the 1993 Letter Agreement and 2) by the inclusion of a Memorandum of Understanding in all DOE [REDACTED] contracts. While BWXT understands that these contractual documents do not meet the specific language of paragraph 70.25, both of these documents provide BWXT with a legally-enforceable means of ensuring that the financial assurances for the DOE [REDACTED] contracts are met. Consequently, this should provide the NRC with assurance that these costs will be addressed by the DOE, and the NRC can exempt BWXT from providing the decommissioning cost estimate and a specified financial assurance document as dictated by paragraph 70.25.

Moreover, to answer the NRC's concern that the 1993 Letter Agreement may not apply to the new entity (B&W NOG), BWXT previously provided the NRC with an amendment to the 1993 Letter Agreement, dated December 18, 2007, signed by BWXT's current DOE NR Contracting Officer, H.K. Cardinali, sent as Enclosure 3 in the January 7, 2008 letter (Reference 4). Like the 1993 Letter Agreement, this amendment to the Letter Agreement is legally enforceable and indicates that the DOE supports the restructuring of BWXT to become B&W NOG and that it will continue to stand by its decommissioning and decontamination obligations as set forth in the 1993 Letter Agreement once the restructuring is complete.

As an additional note, all of the DOE Contracts currently 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 this site (reference previously mentioned "Memorandum of Understanding"). BWXT believes this supports the justification for providing an exemption to paragraph 70.25 (e) and (f) and provides additional assurances to the NRC that there will be no gap in coverage with regard to the DOE Financial Assurances.

However, in an effort to provide additional confirmation to the NRC that the 1993 Letter Agreement will continue to apply to the new entity (B&W NOG), DOE [REDACTED] has agreed to provide a renewed Letter Agreement signed by Mr. Cardinali. Attached as **Enclosure 2** is a draft of the proposed renewed Letter Agreement. Enclosure 2 contains proprietary information and should be withheld from public disclosure under 10 CFR 2.390. An affidavit from Mr. Roger Cochrane is included in **Enclosure 5**. A redacted copy is also included for public disclosure. Upon approval by the NRC that that this 2008 Letter Agreement is acceptable, BWXT will immediately provide the NRC with an executed copy. If changes are requested by the NRC, BWXT will need to go back to DOE NR for these revisions. BWXT intends to provide a fully sufficient copy to the NRC prior to the restructuring or the transfer of the SNM license.

Finally, the NRC raised questions about the RTRT contracts (Battelle Energy Alliance, LLC and UT Battelle, LLC), please see BWXT's response to RAI#1. Also, there are no decommissioning costs that are not yet addressed in the either the LoC or a cost estimate.

~~Proprietary Information - Withhold Under 10 CFR 2.390~~

**RAI #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).

Provided in Enclosure 3 is a revised unexecuted copy of Certification of Financial Assurance for B&W NOG. Revisions were made as requested. As with Letter of Credit and the Standby Trust Agreement, a fully executed copy will be provided upon the NRC's confirmation of the acceptability of this document. This document is properly identified as Official Use Only – Department of Energy because the maximum quantities have 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 been included.

**RAI #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

~~Proprietary Information - Withhold Under 10 CFR 2.390~~

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.

Per subsequent discussions with the NRC and DOE, the use of "Official Use Only" and "Proprietary Information - Withhold Under 2.390" has been clarified. The copy of the 1993 Letter Agreement provided in the November 14, 2007 (Reference 3) submittal (submitted as Appendix 10-2 of the SNM-42 License Application Chapter 10) was properly identified as "Proprietary Information - Withhold Under 2.390" and subsequently was agreed to be withheld from public disclosure by the NRC by letter dated March 31, 2008 (Reference 6). This document was improperly marked as "Official Use Only - Department of Energy" when it was submitted in the February 15, 2008 letter (Reference 5). It should have been and still remains "Proprietary Information - Withhold Under 2.390". Roger Cochrane's affidavit submitted with the November 14, 2007 letter still applies to the document since it is one and the same. A redacted copy for public disclosure has been provided in **Enclosure 4**.

**RAI #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.

BWXT referenced the April 25, 2007 letter to demonstrate that the basis used by the NRC to grant BWXT's exemption has remained the same. However, BWXT has amended its requests to include the proposed licensee. Please see BWXT's response to RAI#3.

**RAI #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

~~Proprietary Information - Withheld Under 10 CFR 9.200~~

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.

Per subsequent discussions with the NRC, it has been determined that BWXT is the primary holder of 6 CoCs and secondary holder (registered user) of 16 CoCs. An application addressing the transfer of these CoCs is being prepared and will be submitted under separate letter to the Spent Fuel Storage and Transportation Division (SFST) of the Office of Nuclear Material Safety and Safeguards (NMSS) and copied to NRC Project Manager for the BWXT Part 70 license (Amy Snyder) no later than May 30, 2008. The application will include the items as requested by the NRC.

## **ENCLOSURE 2**

**Draft of 2008 Letter Agreement Between Babcock & Wilcox / BWXT  
and the U.S. Department of Energy (redacted copy also included)**



Nuclear Operations Division

2016 Mt. Almos Road • Lynchburg, VA 24504-5447 • Phone: 434 522.6000 • Web site: www.bwxt.com

## Draft Letter of Agreement

May , 2008

Mr. H. A. Cardinali  
US Department of Energy  
Naval Reactors Laboratory Field Office  
P.O. Box 109  
West Mifflin, PA 15122-0109

Subject: Reservations of Rights Regarding Financial Responsibility for Cleanup of Low Level  
Radioactive Disposal Sites and Decommissioning Financial Assurance

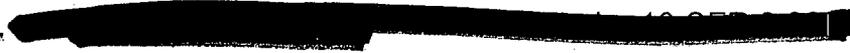
Dear Mr. Cardinali:

As you know, BWX Technologies, Inc. (BWXT), and its parent company, The Babcock & Wilcox Companies, have undergone a rebranding of its name. In connection therewith, BWXT has created a wholly-owned subsidiary, Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG), to which it plans to transfer the assets of BWXT's Nuclear Operations Division.

Due to this restructuring, we are obligated to notify the Nuclear Regulatory Commission (NRC) and provide decommissioning financial assurance for the Lynchburg site. Pursuant to a previous Letter Agreement dated February 17, 1993, BWXT is requesting that the DOE provide renewed assurance for B&W NOG that this longstanding agreement will continue once the restructuring is complete and evidence that intent by returning a signed copy of this Letter Agreement to document our mutual understandings. This renewed Letter Agreement will take effect upon the closing date of the restructuring transaction.

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

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 radioactive waste disposal sites, which claims have not been perfected as of the date on which B&W NOG executes a release of claims.



DOE agrees, subject to the availability of appropriated funds, decommissioning costs allocable to contracts which contain the clause Decommissioning Expenses shall be reimbursed to B&W NOG by the DOE. DOE further agrees, subject to the availability of appropriated funds, decommissioning costs allocable to contracts which 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 Naval Reactors Program contracts and/or subcontracts.

B&W NOG's special method for allocation of decommissioning costs remains unchanged and is hereby approved by DOE as follows: B&W NOG 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 NR contracts at the time decommissioning expenses are incurred, and DOE and B&W NOG have not otherwise executed an agreement or entered into a mutually acceptable alternative arrangement through which decommissioning expenses will be reimbursed to B&W NOG, DOE agrees the most recent active NR contract awarded to B&W NOG which contains the above described "Decommissioning Expenses" clause, regardless of its status as to closeout, will receive the full allocation of "period" expenses associated with decommissioning.

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

IN WITNESS HEREOF, the parties hereby execute this Letter Agreement, effective \_\_\_\_\_

The Babcock & Wilcox Nuclear Operations Group

U.S. Department of Energy

\_\_\_\_\_  
BY

\_\_\_\_\_  
BY

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

(wdn0810)



See ML081750242

Letter from A. Snyder, U.S. Nuclear Regulatory Commission, to B. Cole, BWX Technologies, Inc., 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), dated July 28, 2008

This letter denies BWX Technologies, Inc.'s claim that the information contained in Enclosure 2 is proprietary under 10 CFR 2.390.



Nuclear Operations Division

2016 Mt. Airies Road • Lynchburg, VA 24504-5447 • Phone: 434.522.6000 • Web site: www.bwxl.com

## Draft Letter of Agreement

May , 2008

Mr. H. A. Cardinali  
US Department of EnergyP.O. Box 109  
West Mifflin, PA 15122-0109

Subject: Reservations of Rights Regarding Financial Responsibility for Cleanup of Low Level  
Radioactive Disposal Sites and Decommissioning Financial Assurance

Dear Mr. Cardinali:

As you know, BWX Technologies, Inc. (BWXT), and its parent company, The Babcock & Wilcox Companies, have undergone a rebranding of its name. In connection therewith, BWXT has created a wholly-owned subsidiary, Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG), to which it plans to transfer the assets of BWXT's Nuclear Operations Division.

Due to this restructuring, we are obligated to notify the Nuclear Regulatory Commission (NRC) and provide decommissioning financial assurance for the Lynchburg site. Pursuant to a previous Letter Agreement dated February 17, 1993, BWXT is requesting that the DOE provide renewed assurance for B&W NOG that this longstanding agreement will continue once the restructuring is complete and evidence that intent by returning a signed copy of this Letter Agreement to document our mutual understandings. This renewed Letter Agreement will take effect upon the closing date of the restructuring transaction.

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

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 radioactive waste disposal sites, which claims have not been perfected as of the date on which B&W NOG executes a release of claims.

DOE agrees, subject to the availability of appropriated funds, decommissioning costs allocable to contracts which contain the clause Decommissioning Expenses shall be reimbursed to B&W NOG by the DOE. DOE further agrees, subject to the availability of appropriated funds, decommissioning costs allocable to contracts which 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.

B&W NOG's special method for allocation of decommissioning costs remains unchanged and is hereby approved by DOE as follows: B&W NOG 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 NOG have not otherwise executed an agreement or entered into a mutually acceptable alternative arrangement through which decommissioning expenses will be reimbursed to B&W NOG, DOE agrees the most recent active [REDACTED] contract awarded to B&W NOG which contains the above described "Decommissioning Expenses" clause, regardless of its status as to closeout, will receive the full allocation of "period" expenses associated with decommissioning.

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

IN WITNESS HEREOF, the parties hereby execute this Letter Agreement, effective \_\_\_\_\_

The Babcock & Wilcox Nuclear Operations Group

U.S. Department of Energy

\_\_\_\_\_  
BY

\_\_\_\_\_  
BY

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

(wdn0810)

## **ENCLOSURE 3**

**Revised Unexecuted Copy of Certification of Financial Assurance (redacted copy also included)**

**CERTIFICATION OF FINANCIAL ASSURANCE**

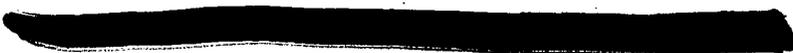
Principal: Babcock & Wilcox Nuclear Operations Group, Inc.  
P.O. Box 785  
Lynchburg, Virginia 24505

License Number: SNM-42  
Babcock & Wilcox Nuclear Operations Group, Inc.  
1570 Mt. Athos Road  
Lynchburg, Virginia 24504

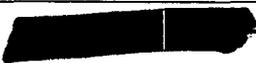
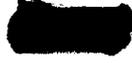
Issued to: Nuclear Regulatory Commission

I certify that, effective upon transfer of License SNM-42, Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG) is licensed to possess the following types of Byproduct, Source, and/or Special Nuclear Material licensed under 10 CFR Part 70 in the following amounts:

	Material Type	Chemical and/or physical form	Maximum quantity possessed at any one time
A.	Uranium enriched in U-235	A. Any enrichment or form except UF <sub>6</sub>	A. [REDACTED]
B.	Uranium enriched in U-235	B. Any enrichment in UF <sub>6</sub>	B. [REDACTED]
C.	U-233	C. Any	C. [REDACTED]
D.	Plutonium	D. Unencapsulated & unirradiated	D. [REDACTED]
E.	Plutonium	E. Encapsulated foils in nuclear accident dosimeters	E. [REDACTED]
F.	Source Material	F. Any except metal powder	F. [REDACTED]
G.	Am-241	G. Am-Be sealed neutron sources	G. [REDACTED]
H.	NP-237	H. Double encapsulated foils	H. [REDACTED]
I.	Any byproduct material	I. Irradiated structural materials	I. [REDACTED]
J.	Byproduct material with At. Nos. 1-83	J. Any	J. [REDACTED]
K.	Fission products & transuranium elements	K. Irradiated fuel	K. [REDACTED]
L.	Fission products & transuranium elements	L. Irradiated fuel	L. [REDACTED]





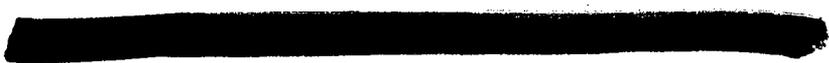
	Material Type	Chemical and/or physical form	Maximum quantity possessed at any one time
M.	Fission products & transuranium elements	M. Irradiated fuel	M. 
N.	Fission products & transuranium elements	N. Any	N. 
O.	In-114m	O. Sealed sources	O. 
P.	Yb-169	P. Sealed sources	P. 
Q.	Cf-252	Q. Sealed sources	Q. 
R.	H-3	R. Sealed sources	R. 
S.	H-3	S. Oxide	S. 
T.	H-3	T. Ni Plated Sc tritide foil	T. 
U.	U-232	U. Any	U. 
V.	Po-210	V. Oxide	V. 
W.	Pu-239 in greater than Class C waste from Parks Township	W. Sealed Sources	W. 
X.	Transuranium elements in greater than Class C waste from Parks Township	X. Any	X.1  X.2  X.3 

I also certify that financial assurance in the amount of \$24,531,906.00, as approved by the U.S. Nuclear Regulatory Commission by letter dated April 25, 2007, to Leah Morrell (BWXT) from Gary Janosko (NRC), BWX Technologies, Inc., Amendment 1 – Update of Decommissioning Cost Estimate and Financial Assurance (TAC L32597), has been obtained for the purpose of decommissioning as prescribed by 10 CFR 70. I certify further that the U.S. Department of Energy (DOE) has agreed, subject to the availability of funds, to reimburse B&W NOG for decommissioning costs allocable to Naval Reactors program contracts and/or subcontracts.

Signature \_\_\_\_\_  
Nicholas J. Dimoff, Controller, Babcock & Wilcox Nuclear Operations Group, Inc.

Corporate Seal

Date \_\_\_\_\_



See ML081750242

Letter from A. Snyder, U.S. Nuclear Regulatory Commission, to B. Cole, BWX Technologies, Inc., 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), dated July 28, 2008

This letter partially denies BWX Technologies, Inc.'s claim that the information contained in Enclosure 3 should be withheld from the public.

**CERTIFICATION OF FINANCIAL ASSURANCE**

Principal: Babcock & Wilcox Nuclear Operations Group, Inc.  
P.O. Box 785  
Lynchburg, Virginia 24505

License Number: SNM-42  
Babcock & Wilcox Nuclear Operations Group, Inc.  
1570 Mt. Athos Road  
Lynchburg, Virginia 24504

Issued to: Nuclear Regulatory Commission

I certify that, effective upon transfer of License SNM-42, Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG) is licensed to possess the following types of Byproduct, Source, and/or Special Nuclear Material licensed under 10 CFR Part 70 in the following amounts:

Material Type	Chemical and/or physical form	Maximum quantity possessed at any one time
A. Uranium enriched in U-235	A. Any enrichment or form except UF <sub>6</sub>	A. [REDACTED]
B. Uranium enriched in U-235	B. Any enrichment in UF <sub>6</sub>	B. [REDACTED]
C. U-233	C. Any	C. [REDACTED]
D. Plutonium	D. Unencapsulated & unirradiated	D. [REDACTED]
E. Plutonium	E. Encapsulated foils in nuclear accident dosimeters	E. [REDACTED]
F. Source Material	F. Any except metal powder	F. [REDACTED]
G. Am-241	G. Am-Be sealed neutron sources	G. [REDACTED]
H. NP-237	H. Double encapsulated foils	H. [REDACTED]
I. Any byproduct material	I. Irradiated structural materials	I. [REDACTED]
J. Byproduct material with At. Nos. 1-83	J. Any	J. [REDACTED]
K. Fission products & transuranium elements	K. Irradiated fuel	K. [REDACTED]
L. Fission products & transuranium elements	L. Irradiated fuel	L. [REDACTED]



	Material Type	Chemical and/or physical form	Maximum quantity possessed at any one time
M.	Fission products & transuranium elements	M. Irradiated fuel	M. [REDACTED]
N.	Fission products & transuranium elements	N. Any	N. [REDACTED]
O.	In-114m	O. Sealed sources	O. [REDACTED]
P.	Yb-169	P. Sealed sources	P. [REDACTED]
Q.	Cf-252	Q. Sealed sources	Q. [REDACTED]
R.	H-3	R. Sealed sources	R. [REDACTED]
S.	H-3	S. Oxide	S. [REDACTED]
T.	H-3	T. Ni Plated Sc tritide foil	T. [REDACTED]
U.	U-232	U. Any	U. [REDACTED]
V.	Po-210	V. Oxide	V. [REDACTED]
W.	Pu-239 in greater than Class C waste from Parks Township	W. Sealed Sources	W. [REDACTED]
X.	Transuranium elements in greater than Class C waste from Parks Township	X. Any	X.1 [REDACTED] X.2 [REDACTED] X.3 [REDACTED]

I also certify that financial assurance in the amount of \$24,531,906.00, as approved by the U.S. Nuclear Regulatory Commission by letter dated April 25, 2007, to Leah Morrell (BWXT) from Gary Janosko (NRC), BWX Technologies, Inc., Amendment 1 – Update of Decommissioning Cost Estimate and Financial Assurance (TAC L32597), has been obtained for the purpose of decommissioning as prescribed by 10 CFR 70. I certify further that the U.S. Department of Energy (DOE) has agreed, subject to the availability of funds, to reimburse B&W NOG for decommissioning costs allocable to [REDACTED] [REDACTED] contracts and/or subcontracts.

Signature \_\_\_\_\_  
Nicholas J. Dimoff, Controller, Babcock & Wilcox Nuclear Operations Group, Inc.

Corporate Seal

Date \_\_\_\_\_



## **ENCLOSURE 4**

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



**Babcock & Wilcox**

a McDermott company

Naval 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 Energy  
Pittsburgh Naval Reactors Office  
P. 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

Mr. C. K. Gaddis, Manager  
U. S. Department of Energy  
Pittsburgh Naval Reactors Office

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February 17, 1993

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 Naval Reactors Program contracts and/or subcontracts.

Pursuant to PNR's 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 NR 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 NR contract awarded to B&W which contains the above described "Decommissioning Expenses" clause, regardless of its status

Mr. C. K. Gaddis, Manager  
U. S. Department of Energy  
Pittsburgh Naval Reactors Office

-3-

February 17, 1993

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*  
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

*J. A. Conner*  
By \_\_\_\_\_  
VP & GM  
Title

*C. K. Gaddis*  
By \_\_\_\_\_  
Manager, PNR  
Title

See ML081750242

Letter from A. Snyder, U.S. Nuclear Regulatory Commission, to B. Cole, BWX Technologies, Inc., 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), dated July 28, 2008

This letter denies BWX Technologies, Inc.'s claim that the information contained in Enclosure 4 should be withheld from the public.

SNM-42, CHAPTER 10

**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

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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

Date: 11/14/07

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## SNM-42, CHAPTER 10

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

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February 17, 1993

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.

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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



SNM-42, CHAPTER 10

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



-3-

February 17, 1993

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

Sincerely,

*J. A. Conner*  
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

*J. A. Conner*  
By \_\_\_\_\_

*C. K. Gaddis*  
By \_\_\_\_\_

*VP & GM*  
Title \_\_\_\_\_

*Manager, BWR*  
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 [REDACTED] I am a resident of [REDACTED] My birth date is [REDACTED]

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 [REDACTED] 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 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

