NUCLEAR FUEL SERVICES, INC.
a subsidiary of The Babcock & Wilcox Company

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21G-10-0077
GOV-01-55-04
ACF-10-0109

April 28, 2010

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

Reference: 1) Docket No. 70-143; SNM-124
2) Docket No. 71-0249; Quality Assurance Program Approval 0249

Subject: Notification of "No Change in Control" due to Plans to Spin-Off The Babcock & Wilcox Company from McDermott International, Inc.

Dear Sir:

Nuclear Fuel Services, Inc. (NFS) hereby submits notification of the planned spin-off of the Babcock & Wilcox group of companies from McDermott International, Inc. No changes to License SNM-124 or the Quality Assurance Program Approval 0249 are required as a result of this update to the corporate structure because the documents either include only NFS or the lineage between NFS and B&W Nuclear Operations Group, Inc. (B&W NOG) remains unchanged.

B&W NOG has reviewed the following Nuclear Regulatory Commission (NRC) documents and concluded that the planned spin-off does not constitute a transfer or change of control of NFS' License, SNM-124:

- 10 CFR 70, with focus on § 70.36 and § 70.40
- NUREG-1556, with focus on Appendices C and D
- NRC Regulatory Issue Summary 2008-19
- NRC Information Notice 89-25, Rev. 1

On February 22, 2010, a closed meeting was held between B&W NOG and the NRC to discuss the spin-off, as well as additional documents that NRC requires to be submitted for review in order to make an informed decision in regards to this notification. Several follow up telephone calls were held to confirm which documents were required for review.

Attachment 1 provides a detailed explanation of the planned spin-off. **Attachment 2** contains Appendix D from Chapter 1 of SNM-124 which describes the NFS Affiliates and the lineage between NFS and B&W NOG. **Attachment 3** contains organizational

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charts that show the December 31, 2009, interim, and final corporate structures of B&W and McDermott.

If you or your staff have any questions, require additional information, or wish to discuss this further, please contact me, or Mr. Rik Droke, Senior Regulatory Advisor, at (423) 743-1741. Please reference our unique document identification number (21G-10-0077) in any correspondence concerning this letter.

Sincerely,

NUCLEAR FUEL SERVICES, INC.

Mark P. Elliott
Director, Safety and Security

JKW/pdj
Attachments

Copy:
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Mr. Galen Smith
Senior Resident Inspector
U.S. Nuclear Regulatory Commission

List of Attachments

Attachment 1 – Detailed Explanation of Planned Spin-off

Attachment 2 – SNM-124, Chapter 1, Appendix D

Attachment 3 – B&W/McDermott Organizational Charts

ATTACHMENT 1

Detailed Explanation of Planned Spin-off

(1 page)

DETAILED EXPLANATION OF PLANNED SPIN-OFF

Babcock & Wilcox Nuclear Operations Group, Inc. ("B&W NOG") was incorporated in Delaware in November 2007. B&W NOG is a wholly-owned subsidiary of BWX Technologies, Inc. ("BWXT"), which is a wholly-owned subsidiary of Babcock & Wilcox Investment Company ("BWICO"), formerly The Babcock & Wilcox Company. BWICO is an indirect, wholly-owned subsidiary of McDermott International, Inc., a New York Stock Exchange-listed public company ("McDermott"). (See **Attachment 3** for the December 31, 2009, interim, and post-spin corporate structure.)

McDermott has announced the planned spin-off of the Babcock & Wilcox group of companies through a pro rata stock distribution to holders of McDermott common stock. To accomplish the spin-off, a new subsidiary of McDermott has been created, so that all B&W-related entities, including B&W NOG, can be aggregated under that new subsidiary. The new subsidiary has been named The Babcock & Wilcox Company ("B&W"). The entity formerly named "The Babcock & Wilcox Company" has been renamed "Babcock & Wilcox Investment Company." The attached structure charts explain the process more clearly.

As a result of the spin-off, each McDermott stockholder will receive one share of B&W common stock for every [TBD] shares of McDermott common stock held as of the record date. Following the spin-off, B&W common stock is expected to trade on the New York Stock Exchange.

B&W NOG does not view the spin-off as a transfer of control, as defined in NUREG-1556, Volume 15, "Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses." We base this conclusion on analysis of the Definition of Control provided in Section 5 of NUREG-1556, and on Appendices C ("Legal Definition of Transfer of Control") and D ("Examples of Change of Control").

The key consideration in evaluating whether a change in structure constitutes a transfer of control appears to be the introduction of a new party, the "transferee" of that control. For example, in Section 5 of NUREG-1556, the assessment of a change of ownership hinges on "whether the authority over the license has transferred from one person to another." In Appendix C of Section 5, the Commission found no change of control when "[t]he parent corporation's indirect control of the license was eliminated (as opposed to transferred to another entity)." The spin-off of B&W does not involve any transferee, and the elimination of the parent corporation's indirect control is precisely what will occur at the spin-off.

The identity of the shareholders is key to the analysis. In the *Safety Light Corporation* case, cited in the same Section 5, "control is to be found in the person or persons who, because of ownership [or authority explicitly delegated by the owners] possess the power to determine corporate policy and thus the direction of the activities under the license." In B&W's case, the public shareholders who indirectly own B&W NOG through their ownership of McDermott stock prior to the spin-off will, immediately after the spin-off, continue to indirectly own B&W NOG through their ownership of B&W stock. Consequently, the ultimate ownership of B&W NOG will generally be unchanged immediately following the spin-off. As with McDermott, we expect the shareholders of B&W will consist of a diverse group of public shareholders, including individuals, institutions, and other investors, none of whom acting individually or as a group will "control" B&W, in the sense that none will possess the power to determine B&W's corporate policy and thus the direction or activity under the license on their own.

Based on the NRC's guidance and examples, we concluded that the spin-off of B&W to the shareholders of its parent does not constitute a transfer or change of control of NFS' license.

ATTACHMENT 2

SNM-124, Chapter 1, Appendix D

Nuclear Fuel Services, Inc. Affiliates

(3 pages)

SPECIAL NUCLEAR MATERIAL LICENSE
SNM-124, Chapter 1
Appendix D
Revision 3
August 8, 2008

NUCLEAR FUEL SERVICES, INC.

AFFILIATES

SPECIAL NUCLEAR MATERIAL LICENSE
SNM-124, Chapter 1
Appendix D
Revision 3
August 8, 2008

NUCLEAR FUEL SERVICES, INC.
AFFILIATES

1. **The Babcock & Wilcox Company** is a corporation that owns 100% of the stock of BWX Technologies, Inc.

2. **BWX Technologies, Inc.**, is a corporation that owns 100% of the stock of Babcock & Wilcox Nuclear Operations Group, Inc.

3. **Babcock & Wilcox Nuclear Operations Group, Inc.**, is a corporation that owns 100% of the stock of NOG-Erwin Holdings, Inc.

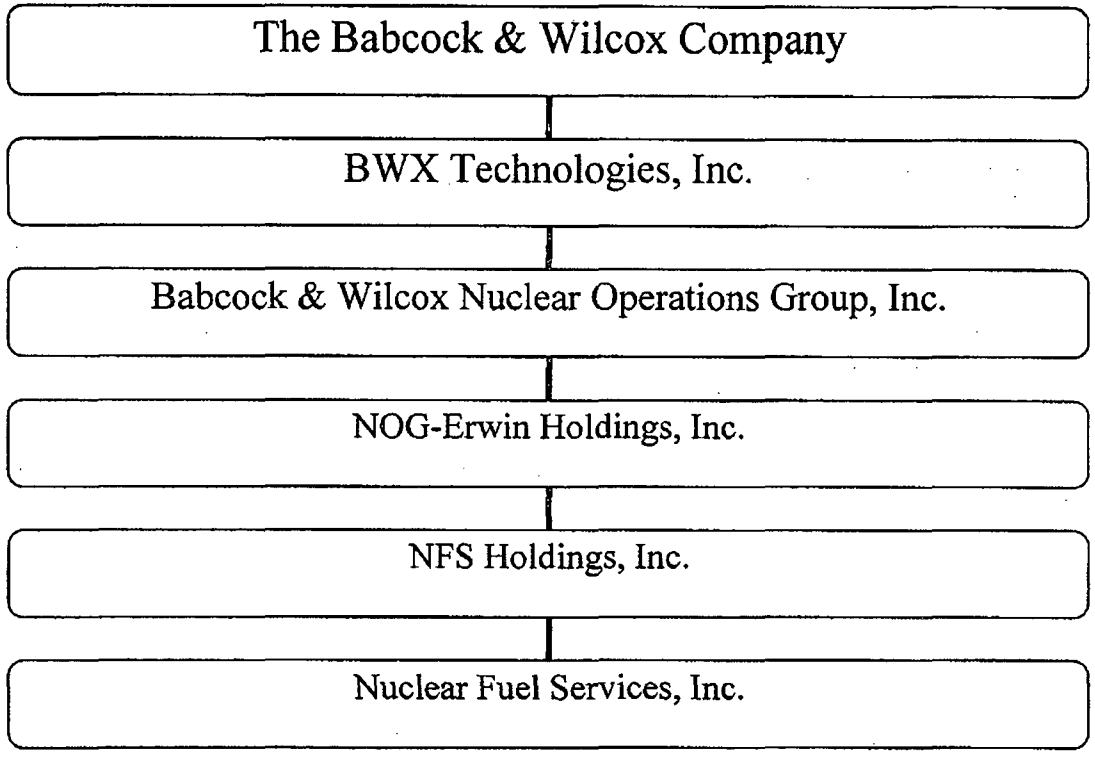
4. **NOG-Erwin Holdings, Inc.**, is a corporation which owns 100% of the stock of NFS Holdings, Inc.

5. **NFS Holdings, Inc.**, is a corporation which owns 100% of the stock of Nuclear Fuel Services, Inc.

6. **Nuclear Fuel Services, Inc. (NFS)**, is a manufacturer and processor of specialty nuclear fuels which is also engaged in decontamination, decommissioning, and remediation services for the chemical and nuclear industry. These services are performed both at NFS' Erwin, Tennessee, location and at other facilities.

NOTE: This listing does not include certain affiliate companies that are not relevant to licensed activities.

Figure D-1
NFS Corporate Structure



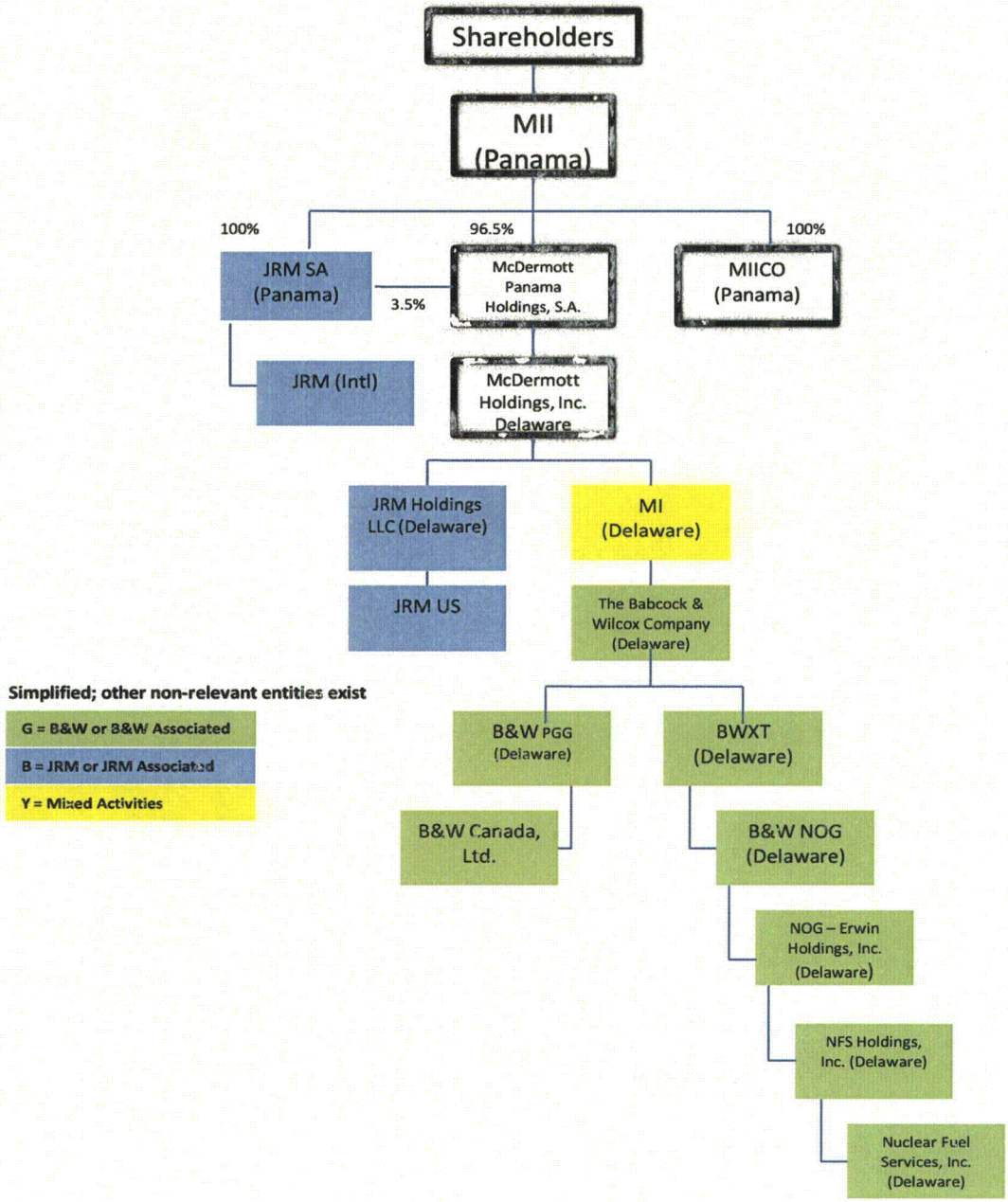
NOTE: This chart is a simplified organization chart and does not include certain affiliate companies that are not relevant to licensed activities.

ATTACHMENT 3

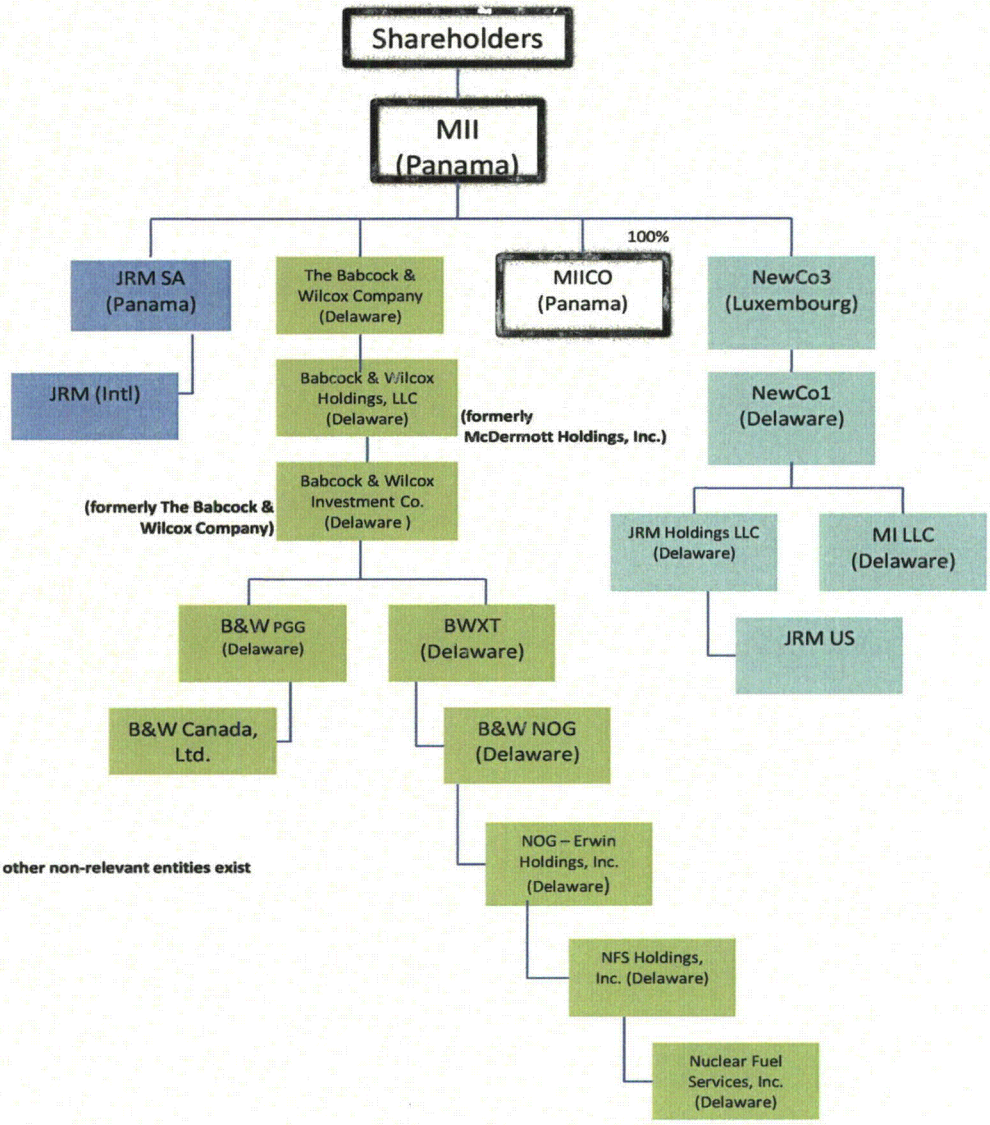
B&W/McDermott
Organizational Charts

(3 pages)

MII Structure 12/31/09

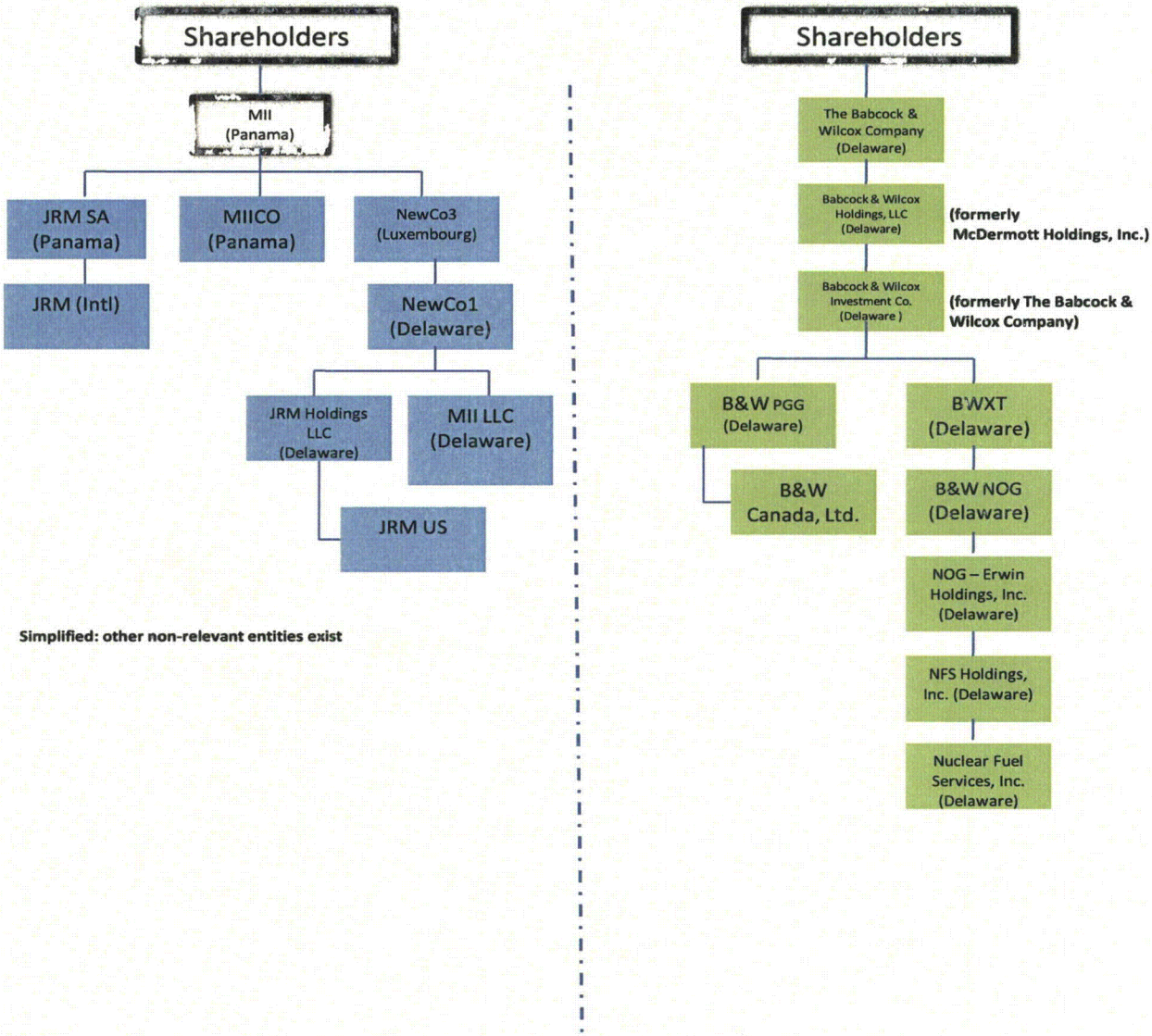


MII Structure Immediately Prior to Spin-Off



Simplified: other non-relevant entities exist

MII and B&W Structure Post Spin-Off



Simplified: other non-relevant entities exist