

**NUCLEAR REGULATORY COMMISSION**

Docket Nos.: 70-27, 70-143, and 70-3085

[NRC-2010-0199]

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING AND PROVIDE WRITTEN  
COMMENTS ON ORDER APPROVING INDIRECT LICENSE TRANSFERS**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of receipt of license transfer application and opportunity to request a hearing.

**DATES:** A request for a hearing must be filed by **July 1, 2010**. Comments must be received by **July 10, 2010**. Comments received after 30 days will be considered if practicable to do so, but only the comments received on or before the due date can be assured consideration.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include Docket ID **NRC-2010-0199** in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC website and on the Federal rulemaking website Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

**Federal Rulemaking Website:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID **NRC-2010-0199**. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RADB at (301) 492-3446.

You can access publicly available documents related to this notice using the following methods:

**NRC's Public Document Room (PDR):** The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

**NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov)

**Federal Rulemaking Website:** Public comments related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID: **NRC- NRC-2010-0199**.

**FOR FURTHER INFORMATION CONTACT:** Merritt N. Baker, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, 6003 Executive Boulevard,

Mail Stop EBB-2C40, Rockville, MD 20850, Telephone: (301) 492-3128, Fax: (301) 492-5539,  
E-mail: [Merritt.Baker@nrc.gov](mailto:Merritt.Baker@nrc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

As set forth below in an Order issued on June 4, 2010, the U.S. Nuclear Regulatory Commission (NRC) has approved a request submitted by its licensee, Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG), pertaining to a proposed corporate restructuring involving several companies related to B&W NOG. The NRC treated the request as one seeking approval of an indirect license transfer.

B&W NOG is a major fuel cycle facility located in Lynchburg, Virginia, which is licensed to possess and use special nuclear material (SNM) under 10 CFR Part 70; and the NRC is thus providing this notice in accordance with 10 CFR 2.1301(b).

Pursuant to 10 CFR 70.36, no license, or any right thereunder, shall be transferred, assigned, or in any manner disposed of—either voluntarily or involuntarily, directly or indirectly—through the transfer of control of the license, to any person, unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and gives its consent in writing.

### **II. Opportunity to Request a Hearing**

The NRC hereby provides notice that this is a proceeding regarding the issuance of the Order set forth below. In addition to authorizing the indirect transfer of control over License No. SNM-42 held by B&W NOG, the Order authorizes the indirect transfer of control over NRC License SNM-124 held by Nuclear Fuel Services for its operations at Erwin, Tennessee; and authorizes the indirect transfer of control over NRC License SNM-2001 held by BWX Technologies, which pertains to the remediation of the former Shallow Land Disposal Area near

Parks Township, Pennsylvania. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions that the person seeks to have litigated in the hearing.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission,"

which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time **July 1, 2010**. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited

excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Non-timely requests and/or petitions and contentions will not be entertained, absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i) - (viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date. Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order by the Commission, an Atomic Safety and Licensing Board, or a presiding officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c) - (e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;
2. The nature of the requester's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding;
3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding in the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth, with particularity, the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;
5. Provide a concise statement of the alleged facts or expert opinions that support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and
6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the Application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the Application fails to contain information on a relevant matter as required by law, the ID of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the Application, or other supporting documents filed by the licensee or otherwise available to the

petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated as the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten (10) days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

### **III. Written Comments**

In accordance with 10 CFR 2.1305(a), as an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding this action. These comments must be submitted by **July 10, 2010**, in accordance with 10 CFR 2.1305(b). The Commission will address the comments received in accordance with 10 CFR 2.1305(c). Comments should be submitted as described in the ADDRESSEES Caption.

### **IV. Further Information**

Documents related to this action, including the Application for the proposed license transfer and supporting documentation, are available electronically through the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the publicly available documents related to this notice are:

<u>Document</u>	<u>ADAMS Accession Number</u>
April 1, 2010: Request to Amend License	ML100990164
May 27, 2010: Response to RAI Request III	ML101480006
June 10, 2010: Safety Evaluation Report	ML101540125

If you do not have access to ADAMS, or if there are problems accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

The Order set forth below provides additional details.

NUCLEAR REGULATORY COMMISSION

In the Matter of: )  
 )  
Babcock & Wilcox )  
Nuclear Operations Group, Inc. ) Docket No.: 70-27  
 )  
 ) License No. SNM-42  
 )

**ORDER APPROVING INDIRECT TRANSFER OF CONTROL OF LICENSE**

I.

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70 Babcock & Wilcox Nuclear Operations Group (B&W NOG or the licensee) is the holder of materials license number SNM-42, which authorizes the possession and use of special nuclear material (SNM) and irradiated fuel (spent nuclear fuel) at the B&W NOG facility and the Lynchburg Technology Center, and in packages approved pursuant to 10 CFR Part 71 at other U. S. Nuclear Regulatory Commission (NRC or the Commission) licensed facilities, and in private carriage between NRC licensed facilities within the United States.

II.

By letter dated April 1, 2010, as supplemented by information provided in letters dated May 4, 2010, May 14, 2010, and May 27, 2010, and by information presented during a May 12 meeting (collectively the Application), the licensee explained and documented a proposed corporate restructuring (referred to below as a spinoff). As relevant here, The Babcock & Wilcox Company (B&W) and its various subsidiaries – including the licensee – will be separated from the ultimate corporate parent -- McDermott International, Inc. (MII). The NRC is treating the Application as a request for approval of an indirect transfer of control over the licensee's activities.

BHI is an intermediate parent company of the licensee. BHI's subsidiaries include B&W NOG; Nuclear Fuel Services (NFS), which holds NRC license SNM-127 for its operations at

Erwin, Tennessee; and BWX Technologies, which holds NRC license SNM-2001 for remediation of the former Shallow Land Disposal Area near Parks Township, Pennsylvania. B&W NOG is the primary holder for transportation packages under dockets 71-5086, 71-6357, 71-9250, 71-9280, and 71-9281. NFS is the primary holder for transportation packages under docket 71-0249. This Order applies to each of the above-referenced licenses.

In its Application, B&W NOG requested approval of a conforming license amendment that would replace references to MII and McDermott Incorporated in chapter 1 of the license with references to Babcock & Wilcox Technologies, B&W, and Babcock & Wilcox Investment Company to reflect the corporate spinoff and related actions that do not require NRC approval. No physical changes to the NRC-licensed facilities, and no operational changes in licensed activities will occur as a result of this Order.

Approval of the conforming license amendment will immediately follow the planned corporate spinoff.

Pursuant to 10 CFR 70.36, no right to possess or utilize SNM granted by any license, issued pursuant to the regulations in 10 CFR 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 Atomic Energy Act of 1954, as amended (the Act), and shall give its consent in writing. After review of the information in the Application, and relying on the representations contained in the Application, the NRC staff has determined that B&W is qualified to hold the ownership interests previously held by BHI, and that the transfers of ownership and operating interests to B&W described in the Application, are consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the Application complies with the standards and requirements of the Act, as amended, and the Commission's rules and regulations set forth in Title 10 Chapter I. The license transfer and

issuance of the conforming license amendment will not be inimical to the common defense and security or to the health and safety of the public, or the environment, and all applicable requirements have been satisfied.

The findings set forth above are supported by NRC's Safety Evaluation Report, which is available for review ML101540125.

### III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act; 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 70.36, IT IS HEREBY ORDERED that the Application described above related to the proposed corporate restructuring is approved, subject to the following condition:

Should the proposed corporate restructuring not be completed within one year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 4, 2010, May 14, 2010, and May 27, 2010, as well as the Safety Evaluation Report supporting the decision, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible, electronically, from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room, on the Internet, at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>.

Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff, by telephone, at 1-800-397-4209, 301-415-4737, or via e-mail, to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated this 4th day of June, 2010.

FOR THE NUCLEAR REGULATORY COMMISSION:

          /RA/  
Catherine Haney, Director  
Office of Nuclear Material Safety  
and Safeguards

          /RA/  
Charles Miller, Director  
Office of Federal and State Materials and  
Environmental Management Programs

For further details with respect to this Order, see the initial application dated May 4, 2010, May 14, 2010, and May 27, 2010, as well as the Safety Evaluation Report supporting the decision, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible, electronically, from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room, on the Internet, at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>.

Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff, by telephone, at 1-800-397-4209, 301-415-4737, or via e-mail, to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated this 4th day of June, 2010.

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FOR THE NUCLEAR REGULATORY COMMISSION:

           **/RA/**  
 Catherine Haney, Director  
 Office of Nuclear Material Safety  
 and Safeguards

           **/RA/**  
 Charles Miller, Director  
 Office of Federal and State Materials and  
 Environmental Management Programs

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

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