



**7/2/10  
10-077**

Mr. Roy P. Zimmerman, Director  
Office of Enforcement  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Re: Request for Extension of Time to Request Hearing on "Order Imposing Civil Monetary Penalty," EA-08-204**

Dear Mr. Zimmerman:

On June 23, 2010, the U.S. Nuclear Regulatory Commission (NRC) published in the *Federal Register* a Notice entitled "In the Matter of Babcock & Wilcox Nuclear Operations Group, Inc., Lynchburg, VA; Order Imposing Civil Monetary Penalty," 75 Fed. Reg. 35,846 (June 23, 2010) (Order). In that Notice, the NRC, through its Office of Enforcement (OE), determined that a violation of NRC requirements had occurred, and that a civil penalty in the amount of \$32,500 should be imposed upon Babcock & Wilcox Nuclear Operations Group, Inc. (B&W) as a result of an incident at B&W's Lynchburg, Virginia fuel fabrication facility involving a chemical exposure to an employee.

The NRC's Notice also stated that B&W may request a hearing on the Order within twenty (20) days of its publication in the *Federal Register*. The time period for such a request will expire, absent a time extension, on July 13, 2010. The NRC has stated that B&W may request from the Director of OE an extension of time to file a request for hearing upon a showing of good cause. 75 Fed. Reg. at 35,846.

For the reasons discussed below, B&W respectfully requests a ninety (90) day extension of time to file a request for hearing until October 11, 2010. We appreciate the Director's careful but expeditious consideration of our request.

There is good cause for the Director to grant the extension for the following reasons:

1. B&W has carefully reviewed the relevant Notice of Violation dated February 23, 2010 and respectfully disagrees with the alleged violation. The NRC initially issued a Notice of Violation on October 20, 2008, arising out of the same event, citing B&W for failure to comply with the NRC's 10 CFR § 70.61 performance requirements. After B&W filed its November 14, 2008 Reply to that Notice of Violation, the NRC retracted the Violation and concurred with B&W that the chemical exposure did not involve a "hazardous chemical produced from licensed material." See NRC Letter, Luis A. Reyes to R. P. Cochrane (February 23, 2010), EA-08-204. In that same letter, however, the NRC issued a new and revised Notice of Violation and Proposed Imposition of Civil Penalty, in which it cited B&W for alleged failure to comply with certain chemical safety provisions contained in its license. B&W replied to that new citation by letter dated March 31, 2010. The relevant Order followed.

B&W has concluded that the February 23, 2010 Notice of Violation is in error and that the Order should not have been issued. In the absence of a resolution and settlement through discussions with OE, B&W intends to request a hearing on the Order, in which it intends to take the position (as specified by the language of the Order) that: (1) B&W was not "in violation of the Commission's requirements as set forth in the Notice [of Violation];" and (2) the Order should not be sustained. 75 Fed. Reg. at 35,847. B&W believes that the Notice of Violation and Order are not consistent with the requirements of 10 CFR Part 70, and that while the NRC has modified the form of the initially-issued Notice of Violation, the substantive legal principles governing this matter are essentially the same.

2. B&W also believes that, assuming for purposes of argument, a violation did occur, the designated Severity Level and imposition of a civil penalty are inappropriate under the circumstances. In particular, B&W respectfully disagrees with the designation of the alleged violation as a Severity Level III violation and the imposition of a civil penalty. Again, in the absence of a resolution and settlement through discussions with OE, B&W intends to request a hearing to challenge those aspects of the Order as well.
3. In both cases above, B&W believes it has a strong factual and legal basis to prevail and to persuade an NRC Presiding Officer that the enforcement action is in error.
4. Granting the requested extension of time holds the promise of resolving this matter with the expenditure of a minimum amount of resources by both the NRC Staff and B&W. If the matter can be resolved to the parties' satisfaction, it will avoid a potentially burdensome and costly full, adjudicatory hearing under 10 CFR Part 2, Subpart G. In such a proceeding, among other things, formal discovery is authorized, and the Presiding Officer must approve any subsequent settlement (see 10 CFR § 2.203). There is insufficient time between now and July 13 to reach any such settlement. But especially in light of achievement of the NRC's regulatory objectives, discussed in paragraph 6 below, the burdens each party will bear are, in our view, readily avoidable.
5. Granting the requested extension of time also provides the opportunity to resolve this matter more expeditiously than through a formal hearing. If the time extension is granted, B&W proposes to meet with the Staff to provide the detailed bases for its position, to exchange views, and to allow the parties to determine if there is a mutually satisfactory basis for settlement. B&W believes there is.
6. Furthermore, the NRC Staff's regulatory objectives can be, and indeed have been, met without this enforcement action and the burden of a hearing. As the Staff has recognized, B&W undertook an effective root cause analysis and has taken "prompt and comprehensive" immediate and long-term corrective action for the issues raised by the NRC. See Letter, Luis A. Reyes to R.P. Cochrane (February 23, 2010) at 2-3.
7. In addition, B&W NOG-L is shut down for a maintenance outage the week of July 4<sup>th</sup>. During this period and in preparation for the outage we have had limited time to develop our positions related to the Order. We respectfully request this extension to allow adequate time for our technical staff to address the Order.

8. Finally, time is required not only for B&W to present its position to the Staff, but also for the Staff to evaluate that position and for further discussion and resolution if possible. Ninety (90) days appears to be a reasonable amount of time to complete those actions. In the absence of the requested time extension, B&W will be forced to submit its request for hearing no later than July 13, 2010.

Accordingly, for the reasons stated above, B&W respectfully requests that the Director of OE grant a ninety (90) day extension of time until October 11, 2010 for B&W to request a hearing on the Staff's Order.

Please do not hesitate to contact me at (434) 522-6366 if you have any questions or need further information.

Sincerely,



Roger Cochrane  
Vice-President & General Manager  
B&W Nuclear Operations Group Inc., Lynchburg

cc: NRC, John Wray, Office of Enforcement  
NRC, Catherine L. Scott, Assistant General Counsel for Materials Litigation and Enforcement  
NRC, Region II  
NRC, M. Baker  
NRC, Resident Inspector  
Morgan Lewis, Donald J. Silverman  
Morgan Lewis, Lawrence J. Chandler  
B&W, Nora Whitten  
B&W, David Ward