

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 70-27 EA
)	
BABCOCK & WILCOX NUCLEAR)	ASLBP No. 10-902-EA- BD01
OPERATIONS GROUP, INC.)	
)	September 20, 2010
(Lynchburg, VA Facility))	
)	

JOINT MOTION TO APPROVE SETTLEMENT
AGREEMENT AND TERMINATE PROCEEDING

Pursuant to 10 C.F.R. § 2.203, Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG) and the U.S. Nuclear Regulatory Commission (NRC) Staff respectfully submit this Joint Motion requesting the Atomic Safety and Licensing Board (Board) to approve the attached Settlement Agreement, dated September 20, 2010, and terminate the proceeding.

On June 15, 2010, the NRC Staff issued an Order Imposing Civil Monetary Penalty of \$32,500 (Order). 75 Fed. Reg. 35,846 (June 23, 2010). As allowed by the Order, B&W NOG requested a 90-day extension of time in which to request a hearing. The NRC Staff extended the deadline for response to July 29, 2010.

On July 27, 2010, B&W NOG requested a hearing in accordance with the June 15, 2010 Order, 10 C.F.R. § 2.205, and the Staff's extension of time. On August 11, 2010, the Board granted the hearing request.

Since B&W NOG's request for a hearing, the parties have engaged in settlement negotiations and agree that it is in the public interest to terminate this proceeding without further litigation. Stated in general terms, the NRC enforcement program's purpose is to deter noncompliance with regulatory requirements and to encourage prompt, comprehensive corrective actions. The Settlement Agreement acknowledges, among other things, the steps

B&W NOG has taken and will take to comply with the purpose of the Order, and to assure future compliance with all regulatory requirements.

The parties have reached the conclusion that the settlement proposed will achieve the goals of the NRC's enforcement program, based upon the agreements reached between B&W NOG and the NRC Staff, without the likely litigation risks and resource costs to both parties from proceeding to litigate the Staff's order. In light of the foregoing, no further adjudication is required in the public interest, and, accordingly, the Board should approve the Settlement Agreement and dismiss the proceeding.

Respectfully submitted,

/Signed electronically by/

Molly L. Barkman
Counsel for the NRC Staff

/Executed in accord with 10 C.F.R. § 2.304/

Lawrence J. Chandler
Donald J. Silverman
Morgan, Lewis & Bockius LLP
Counsel for Babcock & Wilcox Nuclear Operations
Group, Inc.

Dated at Rockville, MD and Washington, DC
this 20th day of September, 2010

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NUCLEAR REGULATORY COMMISSION

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SETTLEMENT AGREEMENT

Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG) located in Lynchburg, Virginia, is the holder of U.S. Nuclear Regulatory Commission (NRC) Materials License No. SNM-42, which expires on March 29, 2027. The license authorizes B&W NOG to manufacture nuclear components for the government and commercial entities in accordance with the conditions specified therein.

On February 23, 2010, the NRC Staff issued a Notice of Violation and Proposed Imposition of Civil Penalty of \$32,500 (NOV) to B&W NOG. The NOV was issued following NRC Staff inspections conducted at B&W NOG's Lynchburg, Virginia facility from March 23 through June 21, 2008, as a result of an event on April 28, 2008, in which a process operator took inappropriate actions to neutralize a spill of hydrofluoric acid (HF) by adding sodium hydroxide (NaOH), a strong base, which reacted violently with the acid on the floor. The operator sustained an ocular exposure from the flash of HF that required medical attention but did not result in long lasting health effects, due to the prompt mitigation actions taken by the operator and the onsite emergency response personnel. Notwithstanding B&W NOG's timely and effective response, the NRC Staff considered the injury to the operator to be significant. The NOV stated that B&W NOG had failed to develop and implement a formalized procedure with adequate instructions to neutralize a spill involving HF.

On March 31, 2010, B&W NOG filed a response to the NOV denying the severity level of the violation and protesting the civil penalty in its entirety. On June 15, 2010, the NRC Staff issued an Order Imposing Civil Monetary Penalty of \$32,500, maintaining that B&W NOG had failed to develop and implement a formalized procedure to neutralize a spill involving HF. See 75 Fed. Reg. 35,846 (June 23, 2010). In the letter transmitting the Order, the NRC Staff acknowledged B&W NOG's "prompt and effective corrective actions." ADAMS Accession No. ML101580256.

On July 2, 2010, B&W NOG submitted a request for a 90-day extension to the Director of the NRC Office of Enforcement (OE). On July 8, 2010, the Director of OE granted a 16-day extension. On July 27, 2010, B&W NOG requested a hearing in accordance with the June 15, 2010 Order, 10 C.F.R. § 2.205, and the Director's extension of time. On August 11, 2010, the Atomic Safety and Licensing Board (Board) granted the hearing request.

The NRC Staff and B&W NOG have engaged in negotiations and have determined that it is in the public interest to terminate this proceeding without further litigation.

THE PARTIES AGREE TO THE FOLLOWING IN SETTLEMENT:

1. B&W NOG agrees not to challenge the existence of a violation of NRC requirements resulting from the chemical exposure event, which occurred at the B&W Lynchburg facility on April 28, 2008, and to seek dismissal of its Request for Hearing filed on July 27, 2010.
2. The Staff agrees to recategorize the February 23, 2010 NOV from a Severity Level III violation to a violation with no assigned severity level.
3. The Staff agrees to withdraw the Order Imposing Civil Penalty dated June 15, 2010, published in the *Federal Register* on June 23, 2010, 75 Fed. Reg. 35,846, within 21 days of the Board Order approving the settlement agreement on the terms set forth in the agreement.

4. B&W NOG agrees to pay \$32,500, in lieu of the withdrawn civil penalty, as a settlement payment, within 30 days after the Board Order approving the settlement agreement on the terms set forth in the agreement, in accordance with NUREG/BR-0254.

5. B&W NOG agrees to perform one quarterly emergency drill with the Lynchburg General Hospital responding to a hydrofluoric acid-exposed worker, within 12 months of the date of the Board Order approving the settlement agreement on the terms set forth in the agreement.

6. B&W NOG agrees to give a presentation at the 2011 Fuel Cycle Information Exchange addressing lessons learned from the chemical exposure event, which occurred on April 28, 2008.

IN WITNESS THEREOF, B&W NOG and the NRC Staff have caused this Settlement Agreement to be executed by their duly authorized representatives on this 20th day of September, 2010.

Respectfully Submitted,

/Signed electronically by/

Molly L. Barkman
Counsel for the NRC Staff

/Executed in accord with 10 C.F.R. § 2.304(d)/

Lawrence J. Chandler
Donald J. Silverman
Morgan, Lewis & Bockius LLP
Counsel for Babcock & Wilcox Nuclear Operations
Group, Inc.

Dated at Rockville, MD and Washington, DC
this 20th day of September, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges

Alan S. Rosenthal, Chairman
E. Roy Hawkens
Dr. Nicholas Tsoulfanidis

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BABCOCK & WILCOX NUCLEAR)	ASLBP No. 10-902-EA- BD01
OPERATIONS GROUP, INC.)	
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_____)	

ORDER

(Accepting Proposed Settlement and Dismissing Proceeding)

1. On February 23, 2010, the NRC Staff issued a Notice of Violation and Proposed Imposition of Civil Penalty of \$32,500 (NOV) to Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG).
2. On June 15, 2010, the NRC Staff issued an Order imposing a Civil Monetary Penalty of \$32,500 to B&W NOG. See 75 Fed. Reg. 35,846 (June 23, 2010).
3. On July 27, 2010, B&W NOG requested a hearing in accordance with the June 15, 2010 Order, 10 C.F.R. § 2.205, and the NRC Staff's July 8, 2010 extension of time.
4. On July 29, 2010, this Atomic Safety and Licensing Board (Board) was designated to preside in this matter; by Memorandum and Order dated August 11, 2010, the Board granted B&W NOG's request for hearing.
5. The NOV issued on February 23, 2010, to B&W NOG is modified and the Order Imposing Civil Monetary Penalty issued to B&W NOG on June 15, 2010, is withdrawn by this Order approving and incorporating the Settlement Agreement.

6. The Settlement Agreement, attached hereto, is hereby incorporated into this Order.

7. Upon review of the Settlement Agreement, the Board is satisfied that its terms reflect a fair and reasonable settlement of all these matters, in keeping with the objectives of the NRC's Enforcement Policy, and that no further adjudication of any matter is required in the public interest. Accordingly, all matters required to be adjudicated as part of this proceeding have been resolved and the proceeding, ASLBP-10-902-EA-BD01, is, therefore, dismissed.
IT IS SO ORDERED.

Alan S. Rosenthal, Chairman
ADMINISTRATIVE JUDGE

E. Roy Hawken
ADMINISTRATIVE JUDGE

Dr. Nicholas Tsoulfanidis
ADMINISTRATIVE JUDGE

Dated in Rockville, MD
this __ day of September, 2010

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT AND TERMINATE PROCEEDING, SETTLEMENT AGREEMENT, AND PROPOSED ORDER" in the above-captioned proceeding have been served on the following via the Electronic Information Exchange ("EIE") this 20th day of September 2010.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop T3 F23
Washington, DC 20555-0001

Administrative Judge
Alan S. Rosenthal, Chair
Alan.Rosenthal@nrc.gov

Administrative Judge
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erh@nrc.gov

Administrative Judge
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Hearing Docket
Hearingdocket@nrc.gov

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Office of Commission Appellate
Adjudication
Mail Stop: O16C1
Washington, DC 20555-0001

Respectfully submitted,

/Signed electronically by/

Dated at Rockville, MD
this 20th day of September, 2010

Molly L. Barkman
Counsel for the NRC Staff