

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

In the Matter of

BABCOCK & WILCOX NUCLEAR  
OPERATIONS GROUP, INC.

(Lynchburg, VA Facility)

Docket No. 70-27 EA

ASLBP No. 10-902-01-EA-BD01

September 22, 2010

MEMORANDUM AND ORDER

(Requesting Clarification of Scope of Proposed Settlement Agreement)

This Licensing Board has before it the September 20, 2010 joint motion of Babcock & Wilcox Nuclear Operations Group, Inc. (licensee) and the NRC Staff. It seeks the Board's approval of an appended agreement in settlement of this enforcement proceeding, to be followed by a termination of the proceeding.

Upon its review of the terms of the submitted settlement agreement for the purpose of determining whether its acceptance would accord with the public interest, see 10 C.F.R. § 2.203, the Board concludes that, prior to making that determination, there must be a clarification regarding the scope of the agreement.

It appears from its several issuances in connection with its determination of a "Severity Level III violation" that the Staff had found that the licensee had failed "to develop and implement a formalized procedure to neutralize a spill involving hydrofluoric acid." More specifically, according to the Staff's earlier issuances, "the licensee failed to properly label a storage tank containing liquid hydrogen fluoride (HF) and failed to ensure that a Process

Operator was adequately trained.” The event leading to potentially serious ocular damage to the operator was attributed to these shortcomings.<sup>1</sup>

Given the Staff determination that the event in question was occasioned by insufficient operator training with respect to the mitigation of HF spillages and the improper labeling of a storage tank containing that hazardous chemical, it was reasonable to expect to find in the settlement agreement some reference to measures that would be undertaken by the licensee to rectify these shortcomings. This is particularly so in light of the licensee’s apparent admission that there had been a tank mislabeling.<sup>2</sup>

Yet, our examination of the terms of the settlement agreement has uncovered no such remedial measures. Indeed, all that is provided by way of remedial measures is licensee’s undertaking to perform one quarterly emergency drill with a local hospital in response to a hydrofluoric acid-exposed worker. That hardly addresses the asserted causes of the event that produced such an exposure in the matter at hand. Nor do we find those causes adequately addressed in the licensee’s general commitment to give a presentation at next year’s Fuel Cycle Information Exchange that is to focus on the lessons learned from this event.

In the circumstances, we are calling upon the parties to file a memorandum no later than Friday, October 1, 2010, in which they shall provide clarification with respect to the extent, if any, that the settlement agreement calls upon the licensee to take specific measures designed to avoid a repetition of the untoward incident that was at the basis of this enforcement action. In the event of an acknowledgement that the settlement agreement imposes no such obligation

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<sup>1</sup> See, e.g., Letter from Luis A. Reyes Regional Administrator, U.S. Nuclear Regulatory Commission to R.P. Cochrane, General Manager Babcock and Wilcox (Notice of Violation and Proposed Imposition of Civil Penalty - \$32,500 (NRC Inspection Report No. 70-27/2008-002)) (Feb. 23, 2010) at 2 (ADAMS Accession No. ML100540701); Office of Enforcement Notification of Significant Enforcement Action (Oct. 15, 2008) at 1 (ADAMS Accession No. ML082890451); see also Notice of Violation and Proposed Imposition of Civil Penalty - \$32,500 (NRC Inspection Report No. 70-27/2008-002 (Oct. 20, 2008).

<sup>2</sup> See Licensee’s Answer to Notice of Violation, (EA-08-204) (Mar. 31, 2010) Enclosure 1 at 2.

upon the licensee, the Board will expect an explanation of the reasons for such an omission. Should the Board find those reasons wanting, it might well choose to explore the matter further with the parties before acting on the pending motion. At first blush at least, unless with good cause the Staff has now abandoned its finding that this very serious event was caused by licensee shortcomings, there would appear to be every reason why, in the public interest, any settlement of the enforcement action should include remedial measures in the area of operator training and hazardous material tank labeling.<sup>3</sup>

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>4</sup>

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Alan S. Rosenthal, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
September 22, 2010

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<sup>3</sup> Although not requiring the parties to address it, the Board finds rather curious the provision of the settlement agreement that “reclassify[s] the February 23, 2010 NOV from a Severity Level III violation to a violation with no assigned severity level.” Settlement Agreement (Sept. 20, 2010) at 2 (Attachment to Joint Motion to Approve Settlement Agreement and Terminate Proceeding (Sept. 20, 2010)). Specifically, there would seem to remain some question as to how the Staff might treat this license violation were it to become relevant in the consideration of possible enforcement action against the same licensee in connection with a future alleged license violation.

<sup>4</sup> Copies of this Memorandum and Order were sent this date by the agency’s e-filing system to counsel for: (1) Licensee Babcock & Wilcox Nuclear Operations Group, Inc.; and (2) the NRC Staff.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BABCOCK & WILCOX NUCLEAR ) DOCKET NO. 70-27-EA  
OPERATIONS GROUP, INC. )  
(Lynchburg, VA Facility) )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (REQUESTING CLARIFICATION OF SCOPE OF PROPOSED SETTLEMENT AGREEMENT), dated September 22, 2010, have been served upon the following persons by Electronic Information Exchange.

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BABCOCK & WILCOX NUCLEAR OPERATIONS GROUP, INC. – 70-27-EA  
MEMORANDUM AND ORDER (REQUESTING CLARIFICATION OF SCOPE OF PROPOSED  
SETTLEMENT AGREEMENT)

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[Original signed by Christine M. Pierpoint]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 22<sup>nd</sup> day of September 2010