



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION II
245 PEACHTREE CENTER AVENUE NE, SUITE 1200
ATLANTA, GEORGIA 30303-1257

September 20, 2011

EA-08-204

Mr. R. P. Cochrane
Vice-President and General Manager
Babcock and Wilcox
Nuclear Operations Group, Inc.
P. O. Box 785
Lynchburg, VA 24505-0785

**SUBJECT: CLOSURE OF LICENSING BOARD ORDER LBP-10-18
INSPECTION REPORT NO.70-27/2011-006**

Dear Mr. Cochrane:

On February 23, 2010, the NRC issued Babcock and Wilcox Nuclear Operations Group (B&W NOG) a Severity Level III Notice of Violation (Notice) and Proposed Imposition of Civil Penalty in the amount of \$32,500. The Notice was issued because of a violation related to an April 28, 2008 incident at the B&W NOG Lynchburg fuel fabrication facility involving the failure to have properly neutralized a spill of hydrofluoric acid (HF).

B&W NOG provided its reply to the Notice by letter dated March 31, 2010, and concluded that a Severity Level III Violation of regulatory requirements did not occur, for reasons as discussed therein.

After careful consideration of the basis for B&W NOG's denial, the NRC concluded that the violation occurred as stated in the Notice. The results of the NRC's conclusions were documented in its Order Imposing Civil Monetary Penalty, dated June 15, 2010. The Order provided you an opportunity to request a hearing before the Atomic Safety and Licensing Board (Board). This Order is located on the NRC's Agency-Wide Document Access and Management System (ADAMS) at ML102980423.

On July 27, 2010, you requested a hearing in accordance with the June 15, 2010 Order and 10 CFR 2.205. On August 11, 2010, the Board granted your request for hearing and on August 17, 2010, granted a joint motion by you and the NRC to hold the proceeding in abeyance pending the outcome of proposed settlement negotiations.

During a meeting on August 31, 2010, the NRC and your staff successfully negotiated a settlement, and on September 20, 2010, submitted to the Board a joint motion to approve the proposed settlement agreement and terminate the proceeding.

On October 12, 2010, the Board issued an Order approving the settlement agreement and dismissing the proceeding. This Order is located in ADAMS at ML1028504810. Issuance of the Order satisfied Commitment 1 of the settlement agreement and Board Order which stated that the "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."

Commitment 2 of the settlement agreement and Board Order stated that the "The Staff agrees to recategorize the February 23, 2010 NOV from a Severity Level III violation to a violation with no assigned severity level." On December 1, 2010, the NRC Office of Enforcement public webpage for significant enforcement actions was updated to reflect recategorization of the violation from Severity Level III to no assigned severity level. Completion of this action satisfied Commitment 2.

Commitment 3 of the settlement agreement and Board Order stated that the "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." The June 15, 2010 NRC Order imposing a civil penalty in the amount of \$32,500 was withdrawn by letter dated October 28, 2010 (ML102850481). Completion of this action satisfied Commitment 3.

Commitment 4 of the settlement agreement and Board Order stated that "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." Commitment 4 was considered complete following receipt of B&W NOG's settlement payment of \$32,500 by the NRC Office of Chief Financial Officer on November 3, 2010.

Commitment 5 of the settlement agreement and Board Order stated that the "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." With regard to Commitment 5, on March 17, 2011, the Senior Resident Inspector (SRI) for your site observed your quarterly emergency response drill scenario involving two workers who had been exposed to liquid hydrofluoric acid (HF) at the B&W NOG-Lynchburg facility. The SRI noted in NRC Inspection Report No. 70-27/2011-002 that the overall response by your staff and medical staff at Lynchburg General Hospital to the drill scenario victims was satisfactory. The NRC considers Commitment 5 complete.

Commitment 6 of the settlement agreement and Board Order issued stated that 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. With regard to Commitment 6, on June 8, 2011, D. L. Spangler, of your staff made a presentation to attendees of the 2011 Fuel Cycle Information Exchange (FCIX) regarding the licensee's lessons learned from the HF Chemical Exposure Event of April 28, 2008. The NRC noted in Inspection Report No. 70-27/2011-003 that NRC Region II staff observed the presentation at the FCIX meeting and confirmed that it provided an appropriate level of detail on the background of the event and provided relevant lessons learned from the event. The NRC considers Commitment 6 complete.

Based on the above, the NRC has concluded that B&W NOG has satisfactorily completed all commitments in the settlement agreement and Licensing Board Order LBP-10-18. This completes the NRC's review of this matter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/readingrm/adams.html>.

Should you have any questions concerning this letter, please contact me at (404) 997-4560.

Sincerely,

/RA/

Steven J. Vias, Chief
Fuel Facility Inspection Branch 1
Division of Fuel Facility Inspection

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

cc:
Barry L. Cole
Manager,
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Leslie P. Foldesi, Director
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cc:
 Barry L. Cole
 Manager,
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 Nuclear Operations Group, Inc
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 Lynchburg, VA 24505-0785

Leslie P. Foldesi, Director
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PUBLICLY AVAILABLE NON-PUBLICLY AVAILABLE SENSITIVE NON-SENSITIVE
 ADAMS: Yes ACCESSION NUMBER: ML11264A055 SUNSI REVIEW COMPLETE FORM 665 ATTACHED

OFFICE	RII: DFFI	RII: DFFI	RII: EICS	NMSS/FCSS			
SIGNATURE	via email	/RA/	via email	via email			
NAME	SSubosits	JPelchat	SSparks	RJohnson			
DATE	9/16/2011	9/19/2011	9/20/2011	9/20/2011	9/ /2011	9/ /2011	9/ /2011
E-MAIL COPY?	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO	YES NO

Letter to Mr. R. P. Cochrane from Steven J. Vias dated September 20, 2011

SUBJECT: CLOSURE OF LICENSING BOARD ORDER LBP-10-18
INSPECTION REPORT NO.70-27/2011-006

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