

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
BWX TECHNOLOGIES,)
)
LYNCHBURG, VA)

Docket No. 70-27
License No. SNM-42
EA 03-087

**ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)**

I

BWX Technologies, Inc., (“BWXT” or the “licensee”) is the holder of Special Nuclear Material License No. SNM-42 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 C.F.R.) Part 70. BWXT is authorized by its license to receive, possess, and transfer special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 C.F.R. Part 70. The BWXT license, originally issued on August 22, 1956, was last renewed on October 2, 1995, and is due to expire on September 30, 2005.

Enclosure

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, D.C., utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees and eventually Orders to selected licensees, including BWXT, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the nature of the current threat. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements. As part of this review, the Commission issued an Order to BWXT on August 21, 2002, to implement interim compensatory measures (ICMs) to enhance physical security of licensed operations at this facility.

As a result of information provided by the intelligence community concerning the nature of the threat and the Commission's assessment of this information, the Commission has determined that a revision is needed to the Design Basis Threat (DBT) specified in 10 C.F.R. § 73.1. Therefore, the Commission is imposing a revised DBT, as set forth in Attachment 1¹ of this Order. The DBT, which supercedes the DBT specified in 10 C.F.R. § 73.1, provides the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. The

¹ Attachment 1 contains classified information and will not be released to the public.

requirements of this Order will remain in effect until the Commission determines otherwise. To address the DBT set forth in Attachment 1 of this Order, BWXT is required to revise its physical security plan, safeguards contingency plan, and guard training and qualification plan that are required by 10 CFR §70.22.

In order to provide assurance that BWXT is implementing prudent measures to protect against the DBT, Materials License SNM-42 shall be modified to require that the physical security plans, including pertinent requirements of the Order issued on August 21, 2002, safeguards contingency plan, and the guard training and qualification plan, required by 10 C.F.R. § 70.22 be revised to provide protection against this DBT. Upon completion of NRC review and approval of the revised physical security plan, including pertinent requirements of the Order issued on August 21, 2002, safeguards contingency plan, and the guard training and qualification plan, and their full implementation, the Commission will consider requests to relax or rescind, either in whole or in part, the requirements of the Order issued on August 21, 2002, imposing ICMs. In addition, pursuant to 10 C.F.R. §§ 2.202, 70.32, and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. §§ 2.202, 70.32, and 70.81, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT MATERIAL LICENSE SNM-42 IS MODIFIED AS FOLLOWS:

- A.
 - 1. BWXT shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise its physical protection plan, safeguards contingency plan, and guard training and qualification plan prepared pursuant to 10 C.F.R. § 70.22 to provide protection against the DBT set forth in Attachment 1 to this Order. BWXT shall submit the revised physical security plan, revised safeguards contingency plan, and revised guard training and qualification plan including an implementation schedule, to the Commission for review and approval no later than April 29, 2004.
 - 2. The revised physical security plan, revised safeguards contingency plan, and revised guard training and qualification plan must be fully implemented by the licensee by October 29, 2004.
- B.
 - 1. BWXT shall, within **twenty (20) days** of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements of this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause BWXT to be in violation of the provisions of any Commission regulation or its facility license. The notification shall provide BWXT's justification for seeking relief from, or variation of, any specific requirement.

2. If BWXT considers that implementation of any of the requirements of this Order would adversely impact safe operation of its facility, BWXT must notify the Commission, within **twenty (20) days** of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives of this Order, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, BWXT must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.
- C. BWXT shall report to the Commission, in writing, when it has fully implemented the approved revisions to its physical security plan, safeguards contingency plan, and guard training and qualification plan to protect against the DBT described in Attachment 1 to this Order.
 - D. Notwithstanding the provisions of any Commission regulation, license or order to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise, except that BWXT may make changes to their revised physical security plan, safeguards contingency plan, and guard training and qualification plan if authorized by 10 C.F.R. §§ 73.32 (e) or (g).

BWXT's responses to Conditions A.1, B.1, B.2, and C above, shall be submitted in accordance with 10 C.F.R. § 70.5. In addition, BWXT's submittals that contain classified information shall be properly marked and handled in accordance with 10 C.F.R. § 95.39.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by BWXT of good cause.

IV

In accordance with 10 C.F.R. § 2.202, BWXT must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within **twenty (20) days** of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which BWXT or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region II and to BWXT if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing

be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. § 2.714(d).

If a hearing is requested by BWXT or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 C.F.R. § 2.202(c)(2)(i), BWXT may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final **twenty (20) days** from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR

A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

Dated this 29 day of April 2003

Attachment: Revised DBT