

NOTICE OF NONCOMPLIANCE

The Babcock & Wilcox Company

Vendor No. 99900400

Based on the results of NRC investigations conducted on May 29 and November 6-8, 1979, and review of the official transcripts of sworn testimony before the President's Commission on the Accident at Three Mile Island, it appears that certain of your activities were not conducted in full compliance with NRC requirements as indicated below:

10 CFR 21.21(a) requires that "each individual, corporation, partnership or other entity subject to the regulations in this part shall adopt appropriate procedures to (1) provide for (i) evaluating deviations or (ii) informing the licensee or purchaser of the deviation in order that the licensee or purchaser may cause the deviation to be evaluated unless the deviation has been corrected; and (2) assure that a director or responsible officer is informed if the construction or operation of a facility, or activity, or a basic component supplied for such facility or activity: (i) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order or license of the Commission relating to a substantial safety hazard, or (ii) Contains a defect..."

10 CFR 21.21(b) requires that each "director or responsible officer subject to the regulations of this part or a designated person shall notify the Commission when he obtains information reasonably indicating a failure to comply or a defect affecting (i) the construction or operation of a facility or an activity within the United States that is subject to the licensing requirements under Parts 30, 40, 50, 70 or 71 and that is within his organization's responsibility or (ii) a basic component that is within his organization's responsibility and is supplied for a facility or an activity within the United States that is subject to the licensing requirements under Parts 30, 40, 50, 70 or 71."

B&W Administrative Procedures NPG 1707-01 (Processing of Safety Concerns) and No. 1716-A1 (Reporting of Defects and Noncompliance Concerning Safety) provide the Company's process for identifying, evaluating and initiating resolution of safety concerns relating to or affecting B&W supplied components, systems, or services, and to assure compliance with 10 CFR Part 21.

- Item 1. Contrary to the above, as early as November 1977, a B&W engineer wrote a memorandum concerning reactor operation procedures for certain small break LOCA conditions on Babcock & Wilcox reactors. These concerns were about the sufficiency of guidance for operator actions to preclude interruption of high pressure safety injection, which could lead to possible uncovering of the core and fuel damage.

APR 10 1980

Sufficient instructions are necessary to insure proper operator actions in response to a LOCA when the reactor is at full power to ensure safe operations. This absence of sufficient instructions constitutes a defect as defined in 10 CFR 21.3(d). This insufficiency in operator instruction was documented in internal Babcock & Wilcox memoranda, but was not identified as a matter which should have been evaluated and considered in accordance with procedures implementing the requirements of Part 21 for handling such defects.

- Item 2. Contrary to the above, senior engineers at Babcock & Wilcox were aware as early as November 1978, that analyses had not been performed for certain small break LOCAs using an auxiliary feedwater (AFW) level control of 10 feet for the Davis-Besse Nuclear Plant as required under 10 CFR 50.46. This lack of analysis represented a potential condition or circumstance that was documented in internal Babcock & Wilcox memoranda; yet it was not identified as a technical matter that should have been evaluated and considered in accordance with procedures implementing the requirements of Part 21 for handling such a potential condition or circumstance.
- Item 3. Contrary to the above, senior engineers at Babcock & Wilcox were aware as early as November 1978, that a small break LOCA analysis with reactor coolant pumps running had not been performed for Babcock & Wilcox plants. This lack of analysis, which is required by 10 CFR 50.46, is considered a defect under 21.3(d). The lack of analysis and absence of conclusions needed from such an analysis to ensure that current Babcock & Wilcox plants will be operated in a safe manner under normal and accident conditions, by itself, represented a condition or circumstance and a defect as defined in 10 CFR 21.3(d). This lack of analysis was documented in internal Babcock & Wilcox memoranda, yet it was not identified and considered in accordance with procedures implementing the requirements of Part 21 for handling such a condition or circumstance to assure that a director or responsible officer was informed of such a defect. This item was subsequently evaluated under your Part 21 procedures during the summer of 1979.
- Item 4. TVA transmitted a letter dated April 27, 1978, to Babcock & Wilcox (received May 3, 1978) identifying a matter which represented a potential deviation or condition or circumstance concerning small break LOCAs at TVA's Bellefonte Nuclear Plant. This letter included a report by C. Michelson entitled, "Decay Heat Removal During a Very Small Break LOCA for a B&W 205-Fuel Assembly PWR." (Michelson Report).

APR 10 1980

This potential deviation or condition or circumstance was not considered in accordance with procedures implementing the requirements of Part 21 for evaluating potential deviations or conditions or circumstances.

The foregoing facts constitute a violation in that they display:
a) a failure to evaluate and report; and b) a failure to establish adequate procedures to assure proper evaluation and reporting of significant safety information by responsible officials.

Each day of noncompliance with the regulations in 10 CFR 21.21 constitutes a separate violation for which a civil penalty is imposed (December 4, 1978 - March 28, 1979, a total of 115 days). Cumulative Civil Penalty - $115 \times \$5,000 = \$575,000$.

The Atomic Energy Act of 1954, as amended, limits the total civil penalty to \$25,000 within any 30-day period, thus limiting penalties for those items cited above to \$25,000 for each 30-day period. Therefore a total penalty of \$100,000 is proposed.

This Notice of Noncompliance is sent to you pursuant to the provisions to Section 2.201 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations. You are hereby required to submit to this office, within twenty (20) days of your receipt of this notice, a written statement or explanation in reply, including for each item of noncompliance: (1) admission or denial of the alleged item of noncompliance; (2) the reasons for the item of noncompliance, if admitted; (3) the corrective steps which have been taken and the results achieved; (4) the corrective steps which will be taken to avoid further noncompliance; and (5) the date when full compliance will be achieved.