

January 31, 2013

Mr. Dealis W. Gwyn, Licensing Manager  
Shaw AREVA MOX Services  
P.O. Box 7097  
Aiken, SC 29804-7097

SUBJECT: ORDER APPROVING INDIRECT TRANSFER OF CONSTRUCTION  
AUTHORIZATION CAMOX-001

Dear Mr. Gwyn:

The U.S. Nuclear Regulatory Commission (NRC) has completed its review of your letter dated August 30, 2012 (Agencywide Documents Access and Management System [ADAMS] Accession Number ML12243A498), as supplemented by a purchase transaction agreement dated July 30, 2012 (ML12269A340) and letters dated October 1, 2012 (ML12276A108) December 20, 2012 (ML12356A178), and January 16, 2013 (ML13017A376) requesting approval of the indirect transfer of Construction Authorization CAMOX-001.

The enclosed Order approves the proposed indirect transfer pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2234) and Section 70.36 of Title 10 of the *Code of Federal Regulations* (10 CFR). The enclosed Safety Evaluation Report documents the staff's review of the proposed indirect transfer of ownership.

The Order has been forwarded to the Office of the Federal Register for publication. If you have any questions, please contact me at (301) 492-3229.

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," a copy of this letter and its enclosures will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

*/RA/*

David Tiktinsky, Senior Project Manager  
Conversion, Deconversion and MOX Branch  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 70-3098

Enclosures:

1. Safety Evaluation Report
2. Order Approving Indirect Transfer of Construction Authorization

cc: See next page

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DOCKET NUMBER: 70-3098

CONSTRUCTION  
AUTHORIZATION  
NUMBER: CAMOX-001

CONSTRUCTION  
AUTHORIZATION  
HOLDER: Shaw AREVA MOX Services, LLC (MOX Services)  
Mixed Oxide Fuel Fabrication Facility  
Aiken, SC

SUBJECT: SAFETY EVALUATION REPORT FOR MOX SERVICES  
REQUEST FOR NRC CONSENT TO INDIRECT TRANSFER OF  
CONSTRUCTION AUTHORIZATION

### PROPOSED CHANGES

By letter dated August 30, 2012 (Agencywide Documents Access and Management System [ADAMS] Accession Number ML12243A498), as supplemented by letters dated October 1, 2012 (ML12276A108), December 20, 2012 (ML12356A178), and January 16, 2013 (ML13017A376), and a purchase transaction agreement dated July 30, 2012 (“the Purchase Agreement”) (ML12269A340) (collectively, “the Transfer Application”), Shaw AREVA MOX Services, LLC (“MOX Services”) requested that the United States Nuclear Regulatory Commission (“NRC”) consent to the indirect transfer of Construction Authorization (“CA”) CAMOX-001 that would be effected by the indirect transfer of control of Shaw Environmental & Infrastructure, Inc.’s (“Shaw E&I”) 30% interest, and Shaw Project Services Group, LLC’s (“SPSG”) 40% interest in MOX Services. The transfer will occur as a result of the purchase of Shaw E&I and SPSPG’s ultimate parent company, The Shaw Group Inc. (“Shaw”), by Chicago Bridge and Iron Company NV (“CB&I”), pursuant to the Purchase Agreement.

### BACKGROUND

The CA was originally issued to Duke, Cogema, Stone and Webster on March 25, 2005 and is due to expire on March 25, 2015. The CA was modified in 2006 to change the name of the CA holder to MOX Services (ML063110298). Under the CA, MOX Services is now constructing a Mixed Oxide Fuel Fabrication Facility (“MFFF”) at the U.S. Department of Energy’s (“DOE”) Savannah River Site in Aiken, South Carolina. MOX Services has separately filed a license application for an NRC license to operate the MFFF; that application is currently under review by the NRC.

In the Transfer Application, MOX Services proposes to make changes in its ownership structure, whereby Shaw would become a wholly-owned subsidiary of CB&I based on the Purchase Agreement. MOX Services would continue to hold the CA, and no physical changes to the MFFF are being proposed.

Enclosure

The December 20, 2012 letter stated that a proxy agreement will be established pursuant to the policies duly authorized under the National Industrial Security Program. The agreement will give control of Shaw's interest in MOX Services to SPSG, as a proxy for CB&I, Shaw, and Shaw E&I, to insulate SPSG and MOX Services from any potential foreign ownership, control or influence ("FOCI") in order to maintain the Facility Security Clearance held by MOX Services.

The January 16, 2013 letter informed the staff that, as part of the corporate reorganization, SPSG would be converted from a Delaware corporation to a Delaware Limited Liability Corporation LLC. The conversion would occur by operation of Delaware law and would not require dissolution of the corporation.

Approval of the indirect transfer of the CA was requested pursuant to Section 184 of the Atomic Energy Act of 1954, as amended ("AEA") (42 U.S.C. § 2234) and Section 70.36 of Title 10 of the *Code of Federal Regulations* (10 CFR). A notice of consideration of approval was published in the *Federal Register* on October 25, 2012 (77 FR 65208) (corrected in the *Federal Register* on January 30, 2013 (78 FR 6356)), including a notice of opportunity to request a hearing, or to submit written comments. No comments or requests for a hearing were received in response to this notice.

## REGULATORY REQUIREMENTS

Pursuant to AEA Section 184 and 10 CFR 70.36, no license granted under 10 CFR part 70, and no right there-under to possess or utilize special nuclear material (SNM), shall be transferred, assigned, or in any manner disposed of, directly or indirectly, through transfer of control of any license to any person unless the Commission, after securing full information, finds that the transfer is in accordance with the AEA, and gives its consent in writing. The CA does not authorize MOX Services to use SNM at the MFFF; it only authorizes construction of the MFFF. Thus, a CA is analogous to a construction permit, and it has served as the mechanism under which the NRC has overseen the MFFF construction activities. The term "license," is defined in the regulations at 10 CFR 2.4 to include construction permits. Furthermore, the Administrative Procedure Act's definition of "license," in 5 U.S.C. § 551(8), includes any agency approval or other form of permission. The Staff finds that the CA is analogous to a license and, therefore, the 10 CFR 70.36 requirements are applicable here.

## DISCUSSION

Pursuant to AEA Section 184 and 10 CFR 70.36, MOX Services requested consent to the indirect transfer of control of CA No. CAMOX-001 for the MFFF now being constructed at the DOE Savannah River Site in Aiken, South Carolina. The indirect transfer would result from a proposed transaction whereby Shaw, a Louisiana corporation that is publicly traded on the New York Stock Exchange ("NYSE") and widely held in the United States, would be acquired by CB&I. CB&I is a public limited liability company with its registered corporate seat in Amsterdam, The Netherlands, whose stock is publicly traded on the NYSE and widely held in the United States.

MOX Services is currently owned as follows: (1) 30% by Shaw E&I, a Louisiana corporation that is a wholly owned direct subsidiary of Shaw; (2) 40% by SPSG, a Delaware LLC that is a wholly owned direct subsidiary of Shaw E&I; and (3) 30% by AREVA NC, Inc., a Delaware corporation that is a wholly owned subsidiary of AREVA NC SA Inc., a French company which is a wholly owned subsidiary of AREVA SA, a French company that is majority owned by the

government of France. Pursuant to a Transaction Agreement dated July 30, 2012, Crystal Acquisition Subsidiary, Inc, a wholly owned subsidiary of CB&I organized under the laws of the State of Louisiana, will acquire all outstanding shares of Shaw through a cash and stock transaction and will merge with and into Shaw. When the transaction is complete, the resulting corporation will retain the legal name The Shaw Group, Inc. (Shaw II) (which will be marketed under the brand name CB&I Shaw) and CB&I will become the ultimate parent holding company of Shaw II. Operational headquarters will remain unaffected.

This indirect transfer of Shaw E&I's and SPSG's ownership interests in MOX Services does not involve any changes in the management or operations of MOX Services and does not change any of its existing obligations as the holder of the CA. Thus, there are no changes to the information provided in support of the CA as a result of this transaction, other than changes that reflect CB&I becoming the ultimate parent holding company for Shaw E&I and SPSG.

According to the Transfer Application, CB&I's worldwide administrative headquarters are in The Woodlands, Texas. Its registered corporate seat is in Amsterdam, The Netherlands. Although CB&I is incorporated in the Netherlands, it is publicly traded on the NYSE. Publicly available information in filings with the U.S. Securities and Exchange Commission and information available to CB&I reflect that a majority of CB&I's shares are held by U.S. individuals and institutions residing and operating in the U.S. and that no single investor holds more than 5% of CB&I stock. All members of CB&I's Board of Directors and all of its executive officers are U.S. citizens, except for one officer who is a U.S. permanent resident with Norwegian citizenship. One member of the Board also holds dual U.S. and Canadian citizenship. DOE is the owner of the MFFF and the NRC accepts their Foreign Ownership, Control and Influence (FOCI) determinations based on a memorandum of understanding between the NRC and DOE dated October 9, 1996. Pursuant to the DOE's FOCI analysis, DOE has determined that, in order for MOX Services to maintain its DOE Facility Security Clearance, a proxy agreement will be established pursuant to the policies duly authorized under the National Industrial Security Program. The proxy agreement will give control of Shaw's interest in MOX Services to SPSG, in the form of a proxy for CB&I, Shaw, and Shaw E&I, in order to insulate SPSG and MOX Services from any potential foreign ownership, control or influence. The NRC accepts DOE's FOCI determination.

The NRC staff reviewed the proposed corporate restructuring. In its review, the NRC staff determined that the Transfer Application contains a complete description of the transaction, including the name and details of the proposed ultimate parent corporation. There were no changes in personnel or duties that relate to the construction programs in the Transfer Application. Therefore the proposed changes do not impact the technical qualifications of the applicant.

The Transfer Application did not propose any changes that would revise previous financial qualifications commitments that were made by the DOE for this facility in previous construction authorization submittals. The DOE has agreed to indemnify MOX Services in accordance with the provisions of the Price-Anderson Act set forth in §170(d) of the AEA of 1954, as amended, 42 U.S.C. 2210(d). Therefore financial qualifications were not evaluated as part of this indirect transfer of ownership.

Based on the NRC staff review, the following requirements should be included in the associated Order concerning the proposed indirect transfer request:

- To ensure that NRC is notified, in a timely manner, of the transfer's completion, the CA holder shall inform the Director of the Office of Nuclear Material Safety and Safeguards( NMSS), in writing, of the date of closing of the indirect transfer of CAMOX-001 at least one (1) business day before the closing; and
- If the indirect transfer of license and all the above conforming conditions have not been completed within 60 days from the date of issuance of the Order, the Order shall become null and void; however, on written application and for good cause shown, such date may be extended by an Order.

#### ENVIRONMENTAL CONSIDERATIONS

The subject application is for approval of the indirect transfer of a construction authorization issued by the NRC. Accordingly, this meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

#### CONCLUSION

In view of the foregoing, the NRC staff finds that the proposed indirect transfer of construction authorization CAMOX-001 for the MFFF to the extent held by Shaw E&I and SPSS and the corporate restructuring between Shaw and CB&I, will not affect the qualifications of the holders of the CA for the MFFF as discussed herein, and that the Commission has full information to find that the transfer is in accordance with the AEA.

PRINCIPAL CONTRIBUTOR:  
David Tiktinsky, NMSS/FCSS/CDMOB

Date: January 30, 2013