

	Producers	Importers	Purchasers
Estimated number of respondents	940	980	880
Estimated total annual burden (hours)	34,200	36,450	19,350

No recordkeeping burden is known to result from the proposed collection of information.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202-205-1810.

Issued: May 2, 1996.

By order of the Commission.

Donna R. Koehnke

Secretary.

[FR Doc. 96-11519 Filed 5-8-96; 8:45 am]

BILLING CODE 7020-02-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (96-048)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that ARCO Chemical Company, of Newtown Square, Pennsylvania, has applied for an exclusive license to practice the inventions described and claimed in NASA Case No. ARC-12,069-1, "Environmentally-Friendly Deicing Fluid"; NASA Case No. ARC-12,069-2, "Environmentally-Friendly Deicing Fluid", and NASA Case No. ARC-12,069-3, Anti-Icing or Deicing Fluid"; which are all assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Ken Warsh, Patent Counsel, Ames Research Center.

DATES: Responses to this notice must be received by July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Warsh, Patent Counsel, Ames Research Center, Mail Code 202A-3, Moffett Field, CA 94035; telephone (415) 604-1592.

Dated: April 30, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96-11541 Filed 5-8-96; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-1201; License No. SNM-1168; EAs 95-236 and 95-215]

B&W Fuel Company d/b/a Framatome Cogema Fuels; Order Imposing Civil Monetary Penalty

I

B&W Fuel Company (Licensee) is the holder of Special Nuclear Material License No. SNM-1168 issued by the Nuclear Regulatory Commission (NRC or Commission) in September 1969. The license authorizes the Licensee to possess and use special nuclear material in accordance with the conditions specified therein. The license was last renewed on September 24, 1990, and is due to expire on September 30, 2000.

II

Inspections of the Licensee's activities were conducted during the period of June 12 through October 6, 1995. The results of these inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated January 30, 1996. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated February 23, 1996. In its response, the Licensee admitted Violations B, and C, and questioned the regulatory basis for Violation A. In addition, the Licensee requested the NRC to reconsider both the severity level of the violations and the proposed civil penalty based on the stated minimal safety significance of the violations and the Licensee's corrective action.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$12,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

The Licensee may request a hearing within 30 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 must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street, N.W., Suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) whether the Licensee was in violation of the Commission's requirements as set forth in Violation A of the Notice referenced in Section II above; and

(b) whether on the basis of Violation A, and the additional violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 29th day of April 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusion

On January 30, 1996, the NRC issued to B&W Fuel Company, aka Framatome Cogema Fuels, (Licensee or B&W Fuel) a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) for three violations identified during NRC inspections conducted during the period of June 12 through October 6, 1995. In its response dated February 23, 1996, the Licensee admitted Violations B and C, and questioned the regulatory basis for Violation A. In addition, the licensee requested the NRC to reconsider both the severity level of the violations and the proposed civil penalty based on the stated minimal safety significance of the violations and the Licensee's corrective action. The NRC's evaluation and conclusion regarding the Licensee's request are as follows:

Restatement of Violation A

10 CFR 71.12(c)(2) requires, in part, that the licensee comply with the terms and conditions of the Certificate of Compliance and the applicable requirements of Subparts A, G, and H of 10 CFR Part 71.¹

Effective April 25, 1983, to September 11, 1992, Condition 5(a)(3) of Certificate of Compliance No. 6294 specifies that the packaging is constructed in accordance with Babcock & Wilcox Company Drawing Nos. MS-135E and MS-82B.

Effective September 11, 1992, through August 4, 1995, Condition 5(a)(3) of Certificate of Compliance No. 9251 specifies that the packaging is constructed in accordance with B&W Fuel Company Drawing Nos. 1215598B and 1215599E.

Contrary to the above:

1. From August 1983 through July 10, 1995, the licensee made multiple shipments using UNC-2901 and/or BW-2901 shipping packages which were not constructed by B&W Fuel in accordance with, and did not conform to, Certificate of Compliance Nos. 6294 and 9251. Specifically, the dimensions of the inner cavity exceeded the dimensions on drawings Nos. MS-135E, MS-82B, 1215598B, and 1215599E.

2. From August 1983 through May 22, 1995, the licensee made multiple shipments using UNC-2901 and/or BW-2901 shipping

packages which were not constructed by B&W Fuel in accordance with, and did not conform to, Certificate of Compliance Nos. 6294 and 9251. Specifically, the hole locations in the closure lids were outside the specifications of drawings Nos. MS-135E, MS-82B, 1215598B, and 1215599E.

The Licensee's Challenge of the Basis of Violation A

The Licensee maintained that its Quality Assurance Plan (QAP) for shipping containers allows and requires B&W Fuel to disposition all deviations concerning container design. The Licensee stated that "A full reading of 71.12(c)(2) (emphasis added for clarity) is as follows: 'The general license applies only to a licensee who: (2) Complies with the terms and conditions of the license, certificate, or other approval, as applicable and the applicable requirements of Subparts A, G, and H of this part; and.'"

The Licensee added that the NRC's approval of the B&W Fuel's QAP submitted under Subpart H indicates that B&W Fuel is authorized and is expected to act as specified in the "B&W Fuel Company Radioactive Material Shipping Container Quality Assurance Plan" which, the Licensee believes, constitutes the "other approval as applicable" discussed in 10 CFR 71.12(c)(2). The Licensee noted that B&W Fuel acted entirely in accordance with its approved QAP which allows and requires B&W Fuel to disposition all deviations to the container design basis. Therefore, the Licensee stated, the Notice does not appear to recognize that there is another document, submitted and approved by the NRC under Subpart H, which guided B&W Fuel's actions in dispositioning BW-2901 shipping container defects. B&W Fuel added that it has "acted in good faith with the understanding that the differences in interpretation of Part 71 between the NRC and the licensees would be addressed and resolved in an industry forum."

In addition, the Licensee argued that when "the current Part 71 was invoked, most fissile material container users adopted quality programs which mirror 10 CFR 50 requirements." The Licensee stated that 10 CFR 71.131 clearly anticipates that deviations to the COC [Certificate of Compliance] may be found during use, and it does not require that the licensee cease to use the packaging. It does require, under subpart H, that the safety significance be determined prior to further use and that the conditions be reported to the NRC. The Licensee stated that "NRC's approval of our Quality Plan caused FCF [Framatome Cogema Fuels, formerly B&W Fuel] to handle shipping containers in the same manner that we handle design deviations under our Part 50 Program."

NRC Evaluation

10 CFR 71.12(a) states that "a general license is hereby issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC." As a condition of satisfying 10 CFR 71.12(a), 10 CFR 71.12(c)(2)

provides that the general license applies only to a licensee who "complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of Subparts A, G, and H of this part."

The "other approval" cited in both 10 CFR 71.12(a) and 10 CFR 71.12(c)(2) does not refer to Quality Assurance Program approval; rather, the words "other approval" refer to forms of package approvals other than Certificates of Compliance. Examples of "other approval" would be letter amendments, amendments to facility licenses, and specific licenses for transportation. Furthermore, the regulations pertaining to quality control, set forth in Subpart H of Part 71, do not permit Licensees to use packages which do not comply with the conditions of the Certificate of Compliance. Section 71.105 specifically provides that Licensees must implement quality control which "assures conformance to the approved design of each individual package used for the shipment of radioactive material." The regulations in Subpart H of Part 71 do not sanction the use of containers which do not comply with the regulatory requirements. Therefore, B&W Fuel, aka Framatome Cogema Fuels, has incorrectly interpreted the meaning of "other approval" as used in 10 CFR 71.12.

With regard to the Licensee's argument regarding 10 CFR Part 50 requirements, the NRC notes that such argument is irrelevant because the requirements in 10 CFR Part 50 differ from those in 10 CFR Part 71. The Licensee's handling of shipping containers in the same manner that it handles design deviations under Part 50 is not authorized under 10 CFR 71.

The NRC concludes that Violation A occurred as stated.

Summary of Licensee's Request for Mitigation and Reconsideration of Severity Level

The Licensee offered several arguments in support of its request for mitigation of the proposed penalty. Below is a summary listing of the Licensee's arguments that are related to its request for mitigation, some of which have been consolidated. The NRC's evaluation follows each argument.

1. The Licensee disagreed with the NRC's characterization of the violations. Specifically, B&W Fuel stated that it believes that, taken by themselves, none of the violations would constitute a Severity Level III violation; therefore, taken together B&W Fuel cannot tell what part of the civil penalty is applicable to each part.

NRC Evaluation

The purpose of aggregating violations as stated in Section IV.A of the Enforcement Policy (NUREG-1600) is to focus the Licensee's attention on the fundamental underlying causes and to reflect that several violations with a common cause may be more significant collectively than individually and may, therefore, warrant a more substantial enforcement action. As stated in the Enforcement Manual, NUREG/BR-0195 at Section 3.5.2, a group of Severity Level IV violations may be evaluated in the aggregate and assigned a single, increased severity

¹During the period January 1, 1978 through September 6, 1983, this requirement was contained in 10 CFR 71.12(b)(1)(ii) and required compliance with applicable requirements in 10 CFR Part 71.

level, thereby representing a Severity Level III problem, if the violations reflect the same underlying cause or programmatic deficiency, or the violations contributed to or were unavoidable consequences of the underlying problem. In this case, the violations are related, and the lack of attention and carelessness toward licensed activities were the underlying causes of the three violations. Therefore, in accordance with the Enforcement Policy, the NRC aggregated the violations into a Severity Level III problem for which a \$12,500 civil penalty was assessed.

As to the apportionment of the civil penalty, the violations individually would be characterized at Severity Level IV and, therefore, would not be subject to individual penalties. The regulatory significance of this Severity Level III problem is the collectiveness of the problem. Therefore, the penalty has not been allocated for each violation. Consequently, the civil penalty applies to the problem as a whole.

2. The Licensee argued that none of the violations "has real safety significance." B&W Fuel stated that its safety analysis of the BW-2901 package, which was performed after deviations were found and prior to further use, was more than adequate. B&W Fuel added that the NRC does not have a basis in the regulations for requiring the use of incredible assumptions, such as an optimized volume fraction, in post accident assumptions.

The Licensee contended that the NRC staff's new assumptions imposed during the review of B&W Fuel's submittal under 10 CFR 71.95 make the analysis appear inadequate and that this is not the case. The Licensee stated that it considers some of the required assumptions to be not credible and therefore beyond the requirement of 10 CFR 71.55(b)(1) and (2), and that the NRC ultimately agreed with B&W Fuel's analysis and authorized it to use the containers with the deviations present.

NRC Evaluation

Safety significance, from an enforcement prospective, involves consideration of: (1) actual safety consequence; (2) potential safety consequence; and (3) regulatory significance. Violation A is of concern because of the potential criticality consequence of B&W Fuel's use of shipping packages that were not constructed as required and for which an adequate safety evaluation had not been performed. Violation B is of concern because the violation continued for over two years which demonstrates a lack of management oversight (i.e., B&W Fuel failed to identify the violation, although the cylinders were readily visible during that time). Violation C is of concern because, in each example of the violation, the NRC relied upon inaccurate information submitted by the Licensee to make a regulatory decision.

While the actual safety consequences of the violations fortunately turned out to be minimal in this case, the regulatory concerns are significant due to B&W Fuel's lack of attention to licensed activities. Specifically, the lack of attention to regulated activities was not isolated, but spanned several areas including licensing, transportation, quality

assurance, and material control and accountability, and directly resulted in the three violations described in the Notice. Therefore, the NRC concludes that, taken collectively, the violations represent a significant regulatory concern.

The NRC disagrees with the Licensee's statements regarding the adequacy of its safety analysis. When B&W Fuel evaluated the safety significance of the larger containment vessel, the Licensee incorrectly considered the wooden boards (i.e., box) to be structural components that would confine the fissile material under accident conditions. This is not consistent with the safety basis of the package or previous B&W Fuel analyses. The NRC did not, and does not, agree with B&W Fuel's safety assessment dated July 7, 1995. Furthermore, the NRC did not authorize the Licensee to use the BW-2901 shipping packages with the deviations present unless certain conditions were met; specifically, installation of borated aluminum poison plates, or restricting shipments to large size pellets with a stainless steel separator plate. In view of the above, the NRC concludes that the Licensee's safety analysis of the BW-2901 shipping package was inadequate.

3. The Licensee stated that it does not understand why the NRC did not give B&W Fuel credit for its corrective actions or the cost of meeting the requirements imposed by the NRC assumptions in the analysis for the BW-2901 shipping containers. The Licensee argues that it has been very proactive in this case and took action which prevented any reduction in the protection of the public's health and safety. Specifically, when NRC management indicated that it considered that B&W Fuel's action was outside the NRC's interpretation of Part 71, B&W Fuel immediately stopped using the containers and submitted a request for modification of the COC.

The Licensee claimed that, despite its belief it acted entirely in accordance with its approved QAP, B&W Fuel agreed to comply with the NRC position on 10 CFR 71.12(c)(2) and did so voluntarily on July 20, 1995. B&W Fuel stated that it has operated in accordance with NRC's wishes and is not using the provisions of its QAP, which allows the Licensee to use containers with deviations that are shown by analysis to have no safety significance. The Licensee asserted that corrective action was taken to prevent recurrence in 1990 with a re-design of the procedures which govern shipping container manufacture and use, and that these procedures were demonstrated to be effective during the procurement of new Model 51032 containers in 1993. The Licensee, therefore, disagreed with the NRC's statement in the Notice that "absent NRC action, FCF would have continued to use nonconforming packages without NRC approval and without performing an adequate safety analysis."

NRC Evaluation

NRC did not give B&W Fuel credit for corrective actions because the NRC had to take action to focus the Licensee's evaluative and corrective process to obtain comprehensive corrective action. Specifically, for Violation A: (1) as noted in

Section 2 of this Appendix, B&W Fuel's safety analysis of the BW-2901 shipping package was inadequate; and (2) the Licensee continued to use nonconforming packages after performing its analysis until the NRC staff informed B&W Fuel staff that it was not authorized to do so.

B&W Fuel was initially informed by the NRC staff via telephone on May 24, 1995, as a result of identification of the bolt hole discrepancies, that it was not authorized to use packaging that does not meet the drawings listed in the COC. In the telephone conversation, B&W Fuel was requested to submit revised pages to the safety analysis report to clarify that packages must conform to the drawings specified in the Certificate of Compliance.

By letter dated May 24, 1995, B&W Fuel submitted revised pages for the BW-2901 safety analysis report. The revised acceptance tests included the following statements: "Containers will be fabricated only in accordance with the designed drawings referenced in the Certificate of Compliance. The approved Quality Assurance Manual will be used to ensure compliance. Any changes in the drawings shall be submitted to NRC for approval." Based on this, NRC staff understood that B&W Fuel would not use packaging that deviated from the drawings referenced in the Certificate of Compliance, without prior NRC approval.

Contrary to the communications, and based on its erroneous interpretation of the use of its QAP, B&W Fuel used the BW-2901 packaging that did not conform to the drawings following identification of the inner dimensional discrepancies until July 20, 1995, when the NRC staff reiterated the regulatory requirements to the Licensee. While the NRC acknowledges that B&W Fuel ultimately agreed to stop using the BW-2901 shipping package, the Licensee, absent NRC involvement, would have continued to use the nonconforming packages. Therefore, the NRC concludes that its statement in the Notice was appropriate.

With regard to Violations B, the Licensee did not provide additional corrective actions which were not already considered after the November 21, 1995 predecisional enforcement conference. As stated in the Notice, although the initial corrective actions for Violation B were appropriate, the adequacy of the long term corrective action is yet to be demonstrated. The corrective actions for violation C were adequate.

Therefore, the NRC concludes that, in accordance with Section VI.B.2 of the Enforcement Policy, credit for the Licensee's corrective action is not warranted.

NRC Conclusion

The NRC has concluded that the violations in the Notice were correctly categorized as a Severity Level III problem, and that the Licensee did not provide an adequate basis for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of \$12,500 should be imposed.

[FR Doc. 96-11606 Filed 5-8-96; 8:45 am]

BILLING CODE 7590-01-P