

petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Jocelyn A. Mitchell: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition

should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 28, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 29 day of May 1996.

For the Nuclear Regulatory Commission,  
Alexander W. Dromerick,  
*Senior Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*  
[FR Doc. 96-13793 Filed 5-30-96; 8:45 am]  
BILLING CODE 7590-01-P

[Docket No. 999-90004; License No. KS 22-B274-0;1 EA 95-276]

### **Bemis Construction, Inc.; Order Imposing Civil Monetary Penalty**

#### I

Bemis Construction, Inc., (Bemis) is the holder of Radioactive Materials License No. 22-B274-01, a specific license issued by the state of Kansas, an Agreement State on September 30, 1987. The license authorizes Bemis to possess and use sealed radioactive sources in portable nuclear density gauges at a specific location in Great Bend, Kansas and at temporary jobsites in the State of Kansas in accordance with the conditions specified in the license. Pursuant to 10 CFR 150.20 and its license, a general license is granted to Agreement State licensees to conduct the same activities in areas under NRC jurisdiction (referred to as "reciprocity"), provided that the NRC is notified and the other provisions of 10 CFR 150.20 are followed.

#### II

An inspection and investigation of Bemis's activities were conducted during August 17, 1995, through January 3, 1996. The results of the inspection and investigation, documented in a report issued on January 11, 1996, indicated that Bemis had not conducted its activities in full compliance with NRC requirements. The violations identified included use and storage of licensed material in NRC jurisdiction without having complied with the requirements for reciprocity. Bemis responded to the inspection report by letter dated January 22, 1996. In its letter, Bemis stated that the reason for the violation was an understanding that the gauge could be used in Oklahoma for short periods of time. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon Bemis by letter dated March 19, 1996. The Notice stated the nature of the violation, the provisions of the NRC requirements that Bemis had violated, and the amount of the civil penalty proposed for the violation.

Bemis responded to the Notice by letter dated April 17, 1996 (Reply to a Notice of Violation and Answer to a Notice of Violation). In its response, Bemis stated that there was an apparent mistaken belief that a reciprocity permit with the NRC was not required under certain conditions. The letter also requested mitigation of the proposed civil penalty based on assurances that Bemis is in compliance now and will not violate the cited requirements in the future.

#### III

After consideration of Bemis'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 described in the Notice, and that the penalty proposed for the violations should be imposed by order.

#### 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:

Bemis Construction, Inc., pay a civil penalty in the amount of \$2,500 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 James Lieberman, Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

Bemis 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If Bemis 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 Bemis requests a hearing as provided above, the issue to be considered at such hearing shall be: whether, on the basis of the violation admitted by Bemis, this Order should be sustained.

Dated at Rockville, Maryland this 23rd day of May 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

*Director, Office of Enforcement.*

#### Appendix—Evaluation and Conclusions

On March 19, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$2,500 was issued to Bemis Construction, Inc., (Bemis) for a violation identified during an NRC inspection and investigation. Bemis responded to the Notice in a letter dated April 17, 1996. Bemis admitted the violation but requested mitigation of the proposed civil penalty based on its contention that the violation was not intentional and on assurances that Bemis is in compliance now

and will not, in the future, violate the rules which were cited.

#### *Restatement of Violation Assessed a Civil Penalty*

10 CFR 30.3 requires in relevant part, that no person shall possess or use byproduct material except as authorized by a specific or general license issued by the NRC.

10 CFR 150.20(a) provides in part that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States shall, at least 3 days before engaging in each such activity, file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above,

A. From March 1991 through August 1992, Bemis Construction, Inc. a licensee of Kansas, used cesium-137 and americium-241 sealed sources in Oklahoma, a non-Agreement State, without a specific license issued by the NRC and without filing Form-241 with the NRC.

B. From March 1991 through July 1995, Bemis Construction, Inc. a licensee of Kansas, stored cesium-137 and americium-241 sealed sources in Oklahoma, a non-Agreement State, without a specific license issued by the NRC and without filing Form-241 with the NRC. (01013)

This is a Severity Level III violation (Supplement VI). Civil Penalty—\$2,500

#### *Summary of Bemis's Request for Mitigation*

Bemis responded to the violation in a letter from Mr. Thomas J. Berscheidt, Attorney At Law, dated April 17, 1996. Mr. Berscheidt stated that he represents Bemis and that he had reviewed the March 19, 1996, letter from the NRC and the enclosed Notice. Mr. Berscheidt's letter stated that there was no intent to avoid compliance with the regulations. There was "simply a misunderstanding and lack of information concerning these regulations." Bemis stated that it will not, now or in the future, regardless of the oversight or lack of knowledge, intentionally violate any of the rules and regulations of the NRC. Further, Bemis's response stated that it is recognized that each party is responsible for being aware of the rules and regulations, but there are times when, regardless of the effort and honest intent of any individual or corporation, all rules and regulations cannot be known or at least readily obtained and usually the awareness factor does not surface until the violation has been identified. With the assurance that Bemis is in compliance and will not violate the rules which were cited, the licensee requested mitigation of the civil penalty. The letter also noted that this was the first time that Bemis has violated NRC requirements.

#### *NRC Evaluation of Licensee's Request for Mitigation*

The Kansas license provided that material "may be used at Railroad & McKinley, Great

Bend, Kansas and at temporary job sites of the licensee anywhere in the State of Kansas where the State of Kansas, Department of Health and Environment maintains jurisdiction for regulating the use of radioactive material." This provision does not authorize operations in the State of Oklahoma, which is under NRC jurisdiction. Therefore, it is not clear why there was any misunderstanding. The fact that Bemis did not attempt to verify its understanding by merely telephoning the NRC, or make any other effort to verify its understanding, was the basis for NRC's conclusion that the violation was the result of, at least, careless disregard for the involved requirements.

Even in the absence of willfulness, the NRC considers the failure to obtain authorization to use byproduct materials in areas under its jurisdiction to be a matter of significant regulatory concern. This is because the failure to obtain NRC authorization for such activities denies the NRC the opportunity to assure that the activities are conducted in compliance with all NRC requirements. Furthermore, the failure to obtain authorization resulted in Bemis's failure to pay fees in each of the years that Bemis was in violation. We note that the civil penalty is approximately the same amount as the delinquent fees.

Bemis concludes its April 17 letter with its assurances of compliance (with the cited requirements), now and in the future, and respectfully requested that the civil penalty be reduced. The NRC's Enforcement Policy does provide for mitigation of civil penalties under certain conditions, through the consideration of the identification and corrective action factors (reference Section VI.B.2 of the enforcement policy). The NRC's March 19, 1996 letter that accompanied the Notice described the NRC's analysis of these identification and corrective action factors, and concluded that the base penalty should be assessed. The licensee's April 17 letter did not provide any additional information that would change the civil penalty assessment.

#### *NRC Conclusion*

After consideration of all of the arguments made by Bemis, the NRC concludes that the civil penalty that was proposed should not be mitigated.

[FR Doc. 96-13673 Filed 5-30-96; 8:45 am]

BILLING CODE 7590-01-P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of an Expiring Information Collection Reemployment of Annuitants, 5 CFR 837.103

AGENCY: Office of Personnel  
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice