

September 9, 2004

Mr. Bradley M. Campbell
Commissioner
Department of Environmental Protection
State of New Jersey
Trenton, New Jersey 08625

Dear Commissioner Campbell:

On behalf of the Nuclear Regulatory Commission (NRC), I am responding to your letter of June 25, 2004, that expresses concerns with Shieldalloy Metallurgical Corporation's (SMC's) proposed use of the NRC's Long-Term Control (LTC), possession-only license for its site in New Field, New Jersey. Responses to each of your specific concerns are provided in the enclosure.

As discussed in further detail below and in the enclosure, the LTC license is the result of many years of experience and careful consideration by the Commission of policy options for decommissioning. The 1997 License Termination Rule (LTR) in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20, Subpart E, specifically included provisions for restricted termination of a license. These provisions envisioned the use of long-term institutional controls without further Federal oversight. At the direction of the Commission, the NRC staff evaluated information and experience from other NRC regulatory programs, the U.S. Environmental Protection Agency, the U.S. Department of Energy, State of Ohio, and National Research Council reports in order to gain insights into how others are addressing institutional control issues. As a result of these evaluations, NRC developed reasonable and practical options for restricted use (including the LTC license) that would ensure public health and safety at decommissioning sites. Although the original concept for a restricted license termination did not include an expectation of continued Federal oversight once the original license was terminated, the LTC license option that was developed after these evaluations provides a continuing Federal oversight role. As such, this option enhances the assurance of proper restricted utilization of the site following termination of the original license.

The NRC's LTC license option is based on both NRC and State of Ohio regulatory approaches and experience. Although the option is new to the decommissioning process under the LTR, NRC developed this option based on over 10 years of experience at over 25 decommissioned uranium mill tailings sites that are using a general license under 10 CFR Part 40, Appendix A, implementing the Uranium Mill Tailings Radiation Control Act (UMTRCA). In addition, NRC's LTC license option is very similar to the State of Ohio's possession-only license in its decommissioning regulations for restricted use sites.

The NRC staff and SMC have agreed that SMC will continue to prepare its revised decommissioning plan using the staff's interim guidance on LTC licenses. As part of this process, SMC is required to seek advice from affected parties, including the State of New Jersey, on its plans for using the LTC license and to summarize the advice in its decommissioning plan. NRC will evaluate SMC's consideration of comments from affected parties as well as seek stakeholder comments on the decommissioning plan during the initial

stages of its review process. Finally, stakeholders will have an opportunity to request a hearing on SMC's decommissioning plan and license amendment request.

The Commission appreciates your comments on use of NRC's LTC license option at the SMC site, as well as the opportunity to explain the basis for our approach to this issue. Please contact Mr. John T. Greeves at 301-415-7437 if you would like to discuss the responses in greater detail.

Sincerely,

/RA/

Nils J. Diaz

Enclosure: As stated

**Responses to Concerns Contained in the State of New Jersey's June 25, 2004 Letter
Regarding the Decommissioning of the Shieldalloy Site in Newfield, NJ**

1. Comment. Page 1, paragraph 2. The letter states that the U.S. Nuclear Regulatory Commission (NRC) is proposing to use New Jersey as a testing ground for an untried and possibly ill-conceived NRC policy.

Response. NRC's Long-Term Control (LTC) license option is based on both NRC and State of Ohio regulatory approaches and experience. It provides a new option under the License Termination Rule's (LTR's) restricted use approach to decommissioning that provides for a continuing Federal oversight role at the facility. This background is fully discussed in SECY-03-0069 (NRC ADAMS accession number ML030800158) and summarized below.

NRC developed the LTC option based on over 10 years of experience at over 25 decommissioned uranium mill tailings sites that are using a general license under the 10 CFR Part 40, Appendix A, regulatory process implementing the Uranium Mill Tailings Radiation Control Act (UMTRCA). NRC has been implementing the general license program with the U.S. Department of Energy (DOE) by reviewing site-specific surveillance plans, engineered controls, and cost estimates for long-term care. NRC also conducts inspections and observes DOE inspections of these generally licensed sites. An LTC license would be a specific license with a similar purpose and concept to the general license for the long-term control of decommissioned uranium mill tailings sites. Furthermore, NRC's oversight and inspections at an LTC site would be similar to what we currently do for the UMTRCA sites.

NRC's LTC license option is also very similar to the State of Ohio's possession-only license in its decommissioning regulations. When Ohio became an NRC Agreement State in 1999, the Commission found Ohio's possession-only license approach to be compatible with the LTR. Ohio currently plans on using the possession-only license for the Shieldalloy Metallurgical Corporation (SMC) site in Cambridge, Ohio, as an effective way to maintain controls and maintenance at the site.

Finally, the NRC staff expects to learn from the evaluations and comments regarding the SMC site as well as other sites that are currently considering options for restricted use. This practical site experience will be used in fiscal year 2005 to develop draft revisions to the Consolidated Decommissioning Guidance in NUREG-1757.

2. Comment. Page 1, paragraphs 2 and 5. The letter states that using the LTC license at SMC's site would create a low-level radioactive waste disposal facility in New Jersey. Instead, this large amount of material should be disposed of in an environmentally responsible manner, not left for an indeterminate time, possibly even for future generations.

Response. Under an LTC license, the SMC site would not be a low-level radioactive waste disposal facility. Such facilities are licensed and regulated under 10 CFR Part 61. The SMC site was never used for the disposal of radioactive materials from other sites, and it is not planned to be used for that purpose in the future. Instead, the SMC site is planning its decommissioning process, and the restricted use option is one of the decommissioning

Enclosure

options made available by the LTR. The LTR was finalized in 1997; therefore, this option has been available for many years as an approved decommissioning approach where residual contamination can be approved to remain on site with appropriate institutional controls to protect public health and safety.

At this time, SMC is proposing to use the LTC license for decommissioning, with restrictions on future use. Before NRC approves this approach, SMC must resubmit a decommissioning plan that demonstrates compliance with all the appropriate LTR requirements, the NRC staff must review and approve the decommissioning plan, and the NRC staff must conduct an environmental review and prepare an environmental impact statement. The result of SMC's analyses and NRC's reviews will determine if SMC's decommissioning approach will provide adequate protection of public health and safety and the environment.

3. Comment. Page 1, paragraph 4. The letter states that NRC announced a "public meeting" on the LTC license and it requested that the location of the June 29, 2004, meeting be changed from Rockville, MD to Newfield, NJ, or a nearby location, so that interested and affected members of the public could participate.

Response. The June 29, 2004 meeting held in Rockville, Maryland was a routine NRC meeting with a licensee. Consistent with NRC's policy on open licensee meetings, the meeting was noticed and open to the public. The purpose of these meetings is to discuss various licensing issues with a licensee. At specified times during such a meeting, NRC invites comments from members of the public. In contrast to these licensing meetings, NRC might also conduct public meetings for the purpose of providing information to the public and/or inviting comments on specific topics. For decommissioning sites, NRC might use these public meetings as one way to seek public comment on a decommissioning plan submitted to NRC for review. These meetings typically would be conducted in the vicinity of the site to allow for participation by interested members of the community, as your comment suggests.

Prior to the June 29 meeting, NRC's project manager notified stakeholders, such as the New Jersey Department of Environmental Protection, the U.S. Environmental Protection Agency, and several members of the public, of the pending meeting. Copies of the LTC interim guidance were provided to these stakeholders. As has been done for previous NRC meetings with SMC, a bridge line was set up for stakeholders to participate telephonically in the meeting. As a result, the stakeholders who attended the meeting by telephone heard the discussion of the interim guidance, asked questions, and provided their views on the interim guidance and SMC's plans for future public involvement. During the meeting, NRC pointed out that this was a meeting for SMC to ask questions about the NRC guidance so that it can revise its decommissioning plan. NRC also emphasized that as part of this process, SMC is required by the LTR to seek stakeholder advice on its plans for using an LTC license and to document these comments and how SMC considered them in the decommissioning plan.

4. Comment. Page 1, paragraph 6. The letter expressed a general concern regarding the stabilization of the material when it is consolidated and that an environmentally robust monitoring program is needed. Furthermore, it indicated that the very general discussion of monitoring requirements contained in the interim guidance does not engender a feeling of confidence that the public health and the environment will be properly protected.

Response. Stabilization of the material and environmental monitoring are addressed in our interim LTC guidance. This interim guidance is intended to be general and not prescriptive, and it is the licensee's responsibility to develop its specific design for the engineered controls and monitoring, based on the insights from its dose assessment. This approach implements the NRC's risk-informed and performance-based approach for a decommissioning site. SMC will need to provide specific information on stabilization and monitoring in its revised decommissioning plan. NRC will review SMC's proposals for stabilization and environmental monitoring to determine if they are sufficient to protect public health and safety.

5. Comment. Page 2, paragraph 1. NRC would permit an "all controls fail" annual effective dose equivalent of 500 millirem per year, while New Jersey's is 100 millirem per year. The letter expressed the belief that the State's more stringent standard is necessary to protect public health and the environment.

Response. NRC's dose criteria in the LTR include 100 millirem per year, when assuming institutional controls are no longer in effect [10 CFR 20.1403(e)(1)]. Therefore, NRC, like New Jersey, expects licensees to meet this dose standard. However, the LTR [10 CFR 20.1403(e)(2)] also provides some flexibility for a dose criterion of up to 500 millirem per year if a number of additional requirements are met. Such a higher dose limit might be approved if the licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the 100 millirem per year value are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm. Furthermore, the licensee would need to comply with additional requirements for durable institutional controls (e.g., via an LTC license in the case of SMC), sufficient financial assurance, and 5-year reviews to provide adequate protection of public health and safety.

6. Comment. Page 2, paragraph 2. The letter raises concerns that bankruptcy, corporate takeover, or other unforeseen business changes could negatively impact safety at an LTC site, and that these concerns were not adequately addressed in the guidance.

Response. These concerns were specifically considered during the development of the interim LTC guidance. We believe that the LTC license conditions and NRC's oversight, inspections, and enforcement would ensure that the licensee maintains the personnel and management attention necessary for effective controls, maintenance, and monitoring as needed. We also discussed, in the interim guidance on page 5, a number of actions NRC could take if the licensee does not perform its duties (e.g., bankruptcy or other unforeseen business changes). We believe the LTC license option as described in the interim guidance would be an effective way for NRC to monitor a site, address unforeseen changes that could negatively impact safety, take enforcement actions if needed, or direct the trustee to provide funds to a contractor to work on behalf of the licensee. NRC staff will consider expanding the existing discussions in the interim guidance to explain how these important issues would be addressed under the LTC license.