

RAS 12902



Parker McCay P.A.
Three Greentree Centre
7001 Lincoln Drive West
P.O. Box 974
Marlton, NJ 08053-0974
P: 856-596-8900
F: 856-596-9631
www.parkermccay.com

January 11, 2007

File No. 09408-0043

First Class Mail

Office of the Secretary
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications

DOCKETED
USNRC

January 11, 2007 (10:45am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket No. 40-7102-MLA

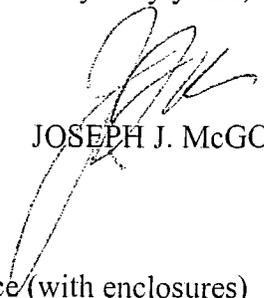
**Re: ShieldAlloy Metallurgical Corporation
Newfield, Gloucester County, New Jersey
Amendment Request for Decommissioning**

Dear Sirs:

This firm serves as special counsel to the Gloucester County Board of Chosen Freeholders. We enclose on behalf of the Board a Request for Hearing and Petition to Intervene in the referenced action in accordance with 10 CFR Part 2 and the November 17, 2006 Federal Register notice (Volume 71, Number 222). Also enclosed is a Proof of Service demonstrating compliance with the filing and service requirements of 10 CFR 2.302.

We look forward to your speedy action on this request. Feel free to contact me in the meantime with any questions or concerns.

Very truly yours,


JOSEPH J. McGOVERN

JJM/jjm

Enclosures

cc: All parties listed on Proof of Service (with enclosures)

BEFORE THE UNITED STATES NUCLEAR REGULATORY COMMISSION

**Law Offices
PARKER McCAY, P.A.
BY: JOSEPH J. McGOVERN, ESQUIRE
Three Greentree Centre
7001 Lincoln Drive West
P.O. Box 974
Marlton, NJ 08053-3292
(856) 985-4034
Attorney for Gloucester County Board of Chosen Freeholders**

IN RE MATTER OF SHIELDALLOY)
METALLURGICAL CORPORATON)
DECOMMISSIONING PLAN, NEWFIELD)
TOWNSHIP, GLOUCESTER COUNTY,)
NEW JERSEY

REQUEST FOR HEARING AND PETITION TO INTERVENE

STATEMENT OF FACTS

The Gloucester County Board of Chosen Freeholders files this Request for Hearing and Petition to Intervene pursuant to 10 C.F.R. § 2.309 before the Nuclear Regulatory Commission ("NRC"). This petition seeks to challenge various aspects of the decommissioning plan ("DP") (Report Number 94005/G-28247 Rev. 1) set forth by Shieldalloy Metallurgical Corporation ("SMC") for their facility located in the Township of Newfield, Gloucester County, New Jersey.

SMC conducted smelting and alloy production at their Newfield facility, from 1940 through 2001. The facility processed pyrochlore, a concentrated ore containing columbium (niobium), to produce ferrocolumbium, an additive/conditioner used in the production of specialty steel and super alloy additives. Pyrochlore contains uranium and thorium and is regulated by the NRC as a radioactive source material. The slag from this processing was stored in an area at the rear of SMC's 67 acre facility. The baghouse dust collected during the processing was merely dumped on top of this existing mountain of slag. The DP set forth by SMC would allow the on site storage of

approximately 18,000 cubic meters of hazardous radioactive slag material and 15,000 cubic meters of radioactive baghouse dust. Once consolidated, the DP calls for this dangerous material to be reshaped into a 30-foot-high mound, graded, secured with an engineered cap, then fenced and monitored for at least 1,000 years by SMC officials, an independent third party and the NRC.

This DP is ineffective and would lead to detrimental consequences to the health and safety of the citizens of Newfield and the surrounding areas as well as facilitating a profound negative economic impact to the Township of Newfield and the surrounding communities. Radioactive slag can take anywhere from 500,000 to 14 billion years to break down. However, the DP proposed by SMC calls for the monitoring of this carcinogenic material for only 1,000 years. Not only does the presence of this material profoundly increase the risk of disease to the citizens in the surrounding communities, it would also lead to dramatic negative economic consequences. Property values will be drastically reduced and residents would relocate to geographic areas free from this hazardous material. Further, existing local business would lose a great deal of revenue and potential new businesses would likely choose to operate in safer communities.

Accordingly, we file this petition as the DP set forth by SMC is wholly inadequate and would lead to profoundly detrimental health, safety and economic consequences for the residents in and around Newfield as well as surrounding businesses.

JURISDICTION AND VENUE

This petition is being submitted pursuant to 10 C.F.R. 2.309 et. seq. which provides the process for requesting a hearing before the NRC and/or a petition for leave to intervene in a hearing before the NRC. The Gloucester County Board of Chosen Freeholders possesses the appropriate standing to submit this petition as N.J.S.A. § 40:20-1 provides "[t]he property, finances and affairs of every county shall be managed, controlled and governed by a board elected therein, to be known as "the board of chosen freeholders of the county of [Gloucester]", and the executive and legislative powers of the county shall be vested in that board of chosen freeholders, except where by law any

specific powers or duties are imposed or vested in a Constitutional officer". One department operating under the county and managed, controlled and governed by the County and the Board of Chosen Freeholders is the Department of Health and Senior Services. The primary purpose of this department is the prevention of disease and infirmity along with the promotion and preservation of health and wellness in Gloucester County. Their mission is accomplished through: 1) preventing illness and injury; 2) promoting good health practices; 3) keeping the environment clean, healthy and safe; and 4) playing a key role in homeland security, by helping to prevent and prepare for terrorist attacks. (See mission statement for the Department of Health and Senior Services, Gloucester County 2006 Official Directory, pg. 51.). Accordingly, as the Gloucester County Board of Chosen Freeholders is charged with controlling, managing and governing the affairs of the County and the Department of Health and Senior Services (whose mission is to provide for the health and wellness of Gloucester County) is under County control, the Gloucester County Board of Chosen Freeholders has sufficient standing to submit this petition regarding SMC's DP.

CHALLENGES TO DECOMMISSIONING PLAN

Contention 1

PERMITTING SMC TO FACILITATE THEIR DP PLAN WOULD HAVE PROFOUNDLY NEGATIVE ECONOMIC IMPLICATIONS FOR THE RESIDENTS AND BUSINESSES OF NEWFIELD, THE SURROUNDING AREAS AND THE COUNTY OF GLOUCESTER.

10 C.F.R. § 2.309(f)(i) Provide a specific statement of the issue of law or fact to be raised or controverted.

SMC's DP would have profoundly detrimental economic consequences to the residents of Newfield and the surrounding communities as well as surrounding businesses and the County of Gloucester as a whole.

10 C.F.R. § 2.309 (f)(ii) Provide a brief explanation of the basis for the contention.

Allowing SMC to commence with their DP would cause the surrounding property values to decrease substantially as it is extremely dangerous and undesirable to reside near a facility storing hazardous radioactive material. Further, local businesses would lose revenue and many would likely relocate as a result of the economic degradation to the area and the fact that residents would relocate to areas not containing hazardous radioactive material. Potential business would refrain from operating in the area due to adverse economic conditions and the efflux of residents as a result of SMC's dangerous and detrimental DP.

10 C.F.R. § 2.309(f)(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding.

Pursuant to statements made by Gregory Suber, Senior Project Manager in the Environmental Section of the NRC at the Public Information Session held on December 12, 2006, socioeconomics are considered when NRC contemplates environmental impact and accordingly are within the scope of these proceedings. (Dec. 12, 2006 Public Information Session, pg. 25, ln 24.).

10 C.F.R. § 2.309 (f)(iv) Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceedings.

This contention is material to the findings the NRC must make as preventing SMC from implementing their DP would result in sustained property values and the economic well-being of the Township of Newfield and the County of Gloucester.

10 C.F.R. § 2.309 (f)(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue.

Pursuant to an expert report to be prepared by Allen Black, Special Appraiser for the firm Todd & Black, Inc., the facilitation of SMC's DP would have severe and detrimental economic consequences to the residents and businesses of the Township of Newfield and the surrounding areas. Further, as stated by Sue Mavilla, a Newfield resident, she moved to Newfield 30 years ago from Northern New Jersey to escape the refineries present there. (Dec. 12, 2006 Public Information Session, pg. 54, ln 5.). It is reasonable that many current residents and local businesses would relocate to escape the dangers presented by the hazardous radioactive materials stored by SMC at the Newfield plant. Additionally, potential residents and businesses may choose not to reside and operate in Newfield and the surrounding communities. Accordingly, permitting SMC to facilitate their DP would have profoundly negative economic consequences for the residents and businesses of the Township of Newfield, the surrounding areas and the County of Gloucester.

10 C.F.R. § 2.309(f)(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

NRC's primary mission is to protect public health and safety and the environment from the effects of radiation from nuclear reactors, materials, and waste facilities. (See NRC website "Radiation Protection"). By approving SMC revised DP, the NRC must feel it is sufficient to provide for the safety and well-being of the residents of the Township of Newfield and the County of Gloucester at large.

Contention 2

APPROVING SMC'S DECOMMISSIONING PLAN WOULD HAVE A DETRIMENTAL EFFECT ON THE HEALTH AND SAFETY OF THE RESIDENTS OF NEWFIELD, THE SURROUNDING AREAS AND THE COUNTY OF GLOUCESTER.

10 C.F.R. § 2.309(f)(i) Provide a specific statement of the issue of law or fact to be raised or controverted.

Allowing SMC to commence with the implementation of their DP would lead to serious health and safety consequences for the residents of the Township of Newfield, the surrounding areas and the County of Gloucester, namely the increased risk of cancer, tumors and other health concerns.

10 C.F.R. § 2.309 (f)(ii) Provide a brief explanation of the basis for the contention.

The hazardous radioactive waste SMC proposes to store at their Newfield site is extremely dangerous and causes severe and life threatening illnesses.

10 C.F.R. § 2.309(f)(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding.

NRC's primary mission is to protect public health and safety and the environment from the effects of radiation from nuclear reactors, materials, and waste facilities (See NRC website "Radiation Protection") and accordingly this issue is within the scope of these proceedings.

10 C.F.R. § 2.309 (f)(iv) Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceedings.

This contention is material to the findings the NRC must make in support of the actions involved in these proceedings because the failure of the NRC to deny SMC's DP would lead to the permanent disposal of 33,000 cubic meters of hazardous radioactive waste in the Township of Newfield thereby leading to the increased incidents of cancer, tumors and other health problems in the Township of Newfield and the surrounding communities.

10 C.F.R. § 2.309 (f)(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue.

As discussed in the Public Information Session held on December 12, 2006, there is an extraordinarily high rate of cancer and tumors in the area surrounding SMC's facility in the Township of Newfield. Steve Schultz, Senator Lautenberg's South Jersey Director, and Senator Menendez both acknowledged public concerns about possible cancer clusters in the area attributable to SMC. (Dec. 12, 2006 Public Information Session, pg. 72, ln 7-9; pg. 76, ln 17-19.). Stina Capano indicated that "[t]here isn't a household that you talk to that hasn't had somebody that has died of or has had cancer. (Dec. 12, 2006 Public Information Session, pg. 102, ln 18 to pg. 103, ln 1.). Dawn Pennino discussed that several members of her family, all of which resided on Rena Street which is located very close to the SMC facility, became sick with cancer or developed some type of tumor. Dawn's grandmother died from a brain tumor, her brother was diagnosed with a sudotumor, and her and her son both developed brain tumors. (Dec. 12, 2006 Public Information Session, pg. 119, ln 19 to pg. 121 ln 22.). The families' treating doctors indicated that none of these tumors were genetically related and the cause of the tumors must be environmental. (Dec. 12, 2006 Public Information Session, pg. 121, ln 11-15.). Additionally, Doug Quene stated that . . . "when you go up and down Rena Street, you're not talking just one family that's been affected with cancer. I mean you can take about six or seven families right down the street that all have had cancer in their homes." (Dec. 12, 2006 Public Information Session, pg. 139, ln 21 to pg. 140, ln 1.)

10 C.F.R. § 2.309(f)(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

NRC's primary mission is to protect public health and safety and the environment from the effects of radiation from nuclear reactors, materials, and waste facilities (See NRC website "Radiation Protection"). Allowing SMC to proceed with their DP would demonstrate the NRC has failed to adequately consider the adverse health and safety consequences to the residents in the surrounding area.

Contention 3

THE INTERESTS OF ENVIRONMENTAL JUSTICE REQUIRE THE NRC TO DENY SMC'S DP AND MANDATE THE REMOVAL OF THE RADIOACTIVE MATERIAL FROM THE NEWFIELD, NEW JERSEY SITE.

10 C.F.R. § 2.309(f)(i) Provide a specific statement of the issue of law or fact to be raised or controverted.

The interests of Environmental Justice require the NRC to deny SMC's DP and mandate the removal of the 33,000 cubic meters of hazardous radioactive materials from on-site storage at SMC's Newfield, New Jersey facility to a long term storage facility created and designed to permanently store radioactive waste.

10 C.F.R. § 2.309 (f)(ii) Provide a brief explanation of the basis for the contention.

SMC has estimated the cost of storing and monitoring the radioactive materials currently on the Newfield, New Jersey site at approximately \$5,000,000. However, this amount does not take into consideration several unaccounted costs. Additionally, the DP does not provide sufficient financial assurances to the taxpayers in the event SMC declares bankruptcy and cannot continue to monitor the Newfield site for the contemplated 1,000 years. Should SMC declare bankruptcy or the costs of monitoring the Newfield site exceed \$5,000,000, the taxpayers of the State of New Jersey would be forced to incur the costs. The interests of environmental justice demands that SMC be held accountable for any and all costs associated with the DP and requires the waste to be relocated to a permanent storage facility designed to house such radioactive material.

10 C.F.R. § 2.309(f)(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding.

Pursuant to statements made at the Public Information Session held on December 12, 2006 by Scott Flanders, Deputy Division Director of the Waste Management and Environmental Protection at NRC, and Gregory Suber, Senior Project Manager in the Environmental Section of the NRC, the

interests of environmental justice and the effects of bankruptcy on the DP are considered when NRC conducts their safety review and contemplates environmental impact and accordingly this contention is within the scope of these proceedings. (Dec. 12, 2006 Public Information Session, pg. 25, ln 21 to pg. 26, ln 2.; pg, 52, lns 17 to 21.).

10 C.F.R. § 2.309 (f)(iv) Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceedings.

If the NRC approves SMC's DP, the hazardous radioactive material currently on the Newfield, New Jersey site would remain there indefinitely. The DP set forth by SMC only provides for monitoring the site for 1,000 years despite the fact the radioactive material will not break down for possibly billions of years. SMC's estimated cost of the DP is wholly insufficient in that it fails to consider many unaccounted costs and would relieve SMC of responsibility should SMC become bankrupt, thereby forcing the taxpayers to pay absorb any costs above the \$5,000,000 provided in the DP. Accordingly, this issue is germane to the findings the NRC must make to support the contentions raised in this proceeding.

10 C.F.R. § 2.309 (f)(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue.

At the Public Information Session held on December 12, 2006, Mayor Westergaard noted that the cost benefit analysis to SMC's DP fails to consider the costs of sampling surface and ground water, security monitoring, cap and fence repair and replacement, the devastating impact on property values in the region, the danger of a groundwater clean up in case of cell leaks, soil sampling, sediment analysis of the Hudson branch, storm water sampling of run off from the site pile, and groundwater modeling of the plume. (Dec. 12, 2006 Public Information Session, pg. 68, lns 9-18.).

Further, NRC attorney John Hall, at the Public Information Session held on December 12, 2006, indicated that "[NRC] can't make any conclusions at this point on would happen if [SMC] later claims bankruptcy. It's a hypothetical and I'm sorry we can't answer that right now." (Dec. 12, 2006 Public Information Session, pg. 114, ln 24 to pg. 115, ln 3).

10 C.F.R. § 2.309(f)(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.

Allowing SMC to proceed with their DP, despite the fact the DP fails to address several unaccounted costs or the effect SMC's bankruptcy would have on the long term monitoring of the Newfield, New Jersey facility as they relate to costs potentially absorbed by taxpayers, would demonstrate the NRC has failed to adequately consider the effects of environmental justice or bankruptcy when reviewing SMC's DP.

Contention 4

The NRC's review of SMC's decommissioning plan under the NRC's long-term storage license program is an improper and prejudicial application of its regulatory authority in that the NRC's long-term storage license program was not meant to cover manufacturing activities like SMC, which could open the door for countless abandoned radioactive waste piles like SMC across the country. Nor was the NRC's long-term storage license regulation intended to give waste generators the right to handle or manage their waste (or abandon it, as the case may be) in a fashion different or less environmentally protective from other waste generators across the country.

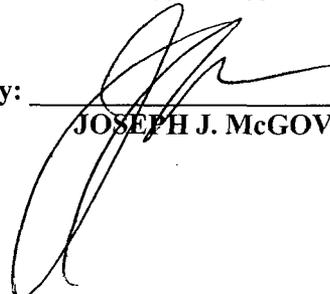
RELIEF REQUESTED

For the foregoing reasons, the Gloucester County Board of Chosen Freeholders respectfully requests that the NRC deny SMC's Decommissioning Plan and order SMC to remove the radioactive

slag and baghouse dust from the Newfield Township site.

PARKER McCAY P.A.
Attorneys for Gloucester County Board
of Chosen Freeholders

Dated: 1/11/07

By: 
JOSEPH J. McGOVERN

BEFORE THE UNITED STATES NUCLEAR REGULATORY COMMISSION

Law Offices

PARKER McCAY, P.A.

BY: JOSEPH J. McGOVERN, ESQUIRE

Three Greentree Centre

7001 Lincoln Drive West

P.O. Box 974

Marlton, NJ 08053-3292

(856) 985-4034

Attorney for Gloucester County Board of Chosen Freeholders

IN RE MATTER OF SHIELDALLOY)
METALLURGICAL CORPORATON)
DECOMMISSIONING PLAN, NEWFIELD)
TOWNSHIP, GLOUCESTER COUNTY,)
NEW JERSEY)

PROOF OF SERVICE

I, Nancy W. Minchew, of full age, hereby certify that:

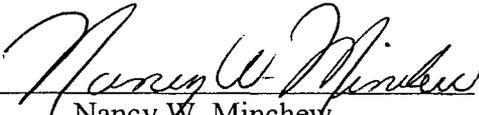
I am an employee with the Law Firm of Parker McCay, P.A., Attorneys for the above stated Petitioner Gloucester County Board of Chosen Freeholders in this matter.

On January 11, 2007, in accordance with the general requirements in Subpart C of 10 CFR part 2.304(b), (c), (d) and (e), as amended January 14, 2004 (69 FR 2182) and 10 CFR 2.304(f), I have caused to have served the within Request for Hearing and Petition to Intervene to the following individuals, said service more specifically set forth to the respective individuals, as follows:

1. The Commission
 - a) **First class mail, in the United States postal service**
Office of the Secretary
ATTN: Rulemakings and Adjudications
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
 - b) **Federal Express Mail/Priority Overnight**
Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
Sixteenth Floor, One White Flint North
11555 Rockville Pike
Rockville, MD 20852

- c) **Electronic Mail**
Office of the Secretary
U.S. Nuclear Regulatory Commission
hearingdocket@nrc.gov
 - d) **Telefax Mail**
Office of the Secretary
ATTN: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC
301-415-1101
2. Shieldalloy Metallurgical Corporation
- a) **Federal Express Mail/Priority Overnight**
Shield Alloy Metallurgical Corporation
ATTN: David R. Smith, Radiation Safety Officer
12 West Boulevard
P.O. Box 768
Newfield, NJ 08344-0768
3. NRC Staff
- a) **Federal Express Mail/Priority Overnight**
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
 - b) **Telefax Mail**
Office of the General Counsel
301-415-3725
 - c) **Electronic Mail**
Office of the General Counsel
ogcmailcenter@nrc.gov

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, then I am subject to punishment.



Nancy W. Minchew

Dated: January 11, 2007