

RA 513055

February 5, 2007

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

DOCKETED
USNRC

February 5, 2007 (9:05am)

In the Matter of)
)
SHIELDALLOY METALLURGICAL)
CORPORATION)
(License Amendment Request for)
Decommissioning the Newfield Facility))
)

Docket No. 40-7102-MLA
ASLBP No. 07-852-01-MLA-BD01

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**SHIELDALLOY'S ANSWER TO HEARING REQUEST OF
TERRY RAGONE**

By letter to the NRC dated January 15, 2007, Ms. Terry Ragone ("Petitioner") filed a "Request for a Public Hearing on Shieldalloy's Decommissioning Plan" ("Petition") in the above captioned proceeding. Petitioner states that she is filing her petition "on behalf of the residents of Newfield, New Jersey and contiguous regional neighbors." Petition at 1. A copy of the Petition was served electronically on Shieldalloy Metallurgical Corporation ("Shieldalloy" or the "Licensee"). Pursuant to 10 C.F.R. § 2.309(h)(1), Shieldalloy files this Answer in opposition to the Petition.

The Petition fails to propose any contentions that meet the admissibility requirements of 10 C.F.R. § 2.309(f).¹ Accordingly, Petitioner's request for hearing should be denied and her Petition dismissed. 10 C.F.R. § 2.309(a).

¹ As further discussed below, while Shieldalloy does not contest Petitioner's individual standing, there is no basis for her claim to represent the residents of Newfield, New Jersey and contiguous regional neighbors.

TEMPLATE 2 SELV-037

SELY-02

I. PROCEDURAL BACKGROUND

The Petition seeks a hearing on the Decommissioning Plan (“DP”) for Source Material License No. SMB-743 issued to Shieldalloy for its Newfield Facility in Newfield, New Jersey. Shieldalloy submitted the DP to the NRC on October 24, 2005.² Shieldalloy submitted a supplement to the DP on June 30, 2006 (available in the NRC ADAMS document system under Accession No. ML061980092). The DP was accepted for review by the NRC Staff on November 9, 2006. The NRC then provided an opportunity for “any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.” *Notice of Consideration of Amendment Request for Decommissioning for Shieldalloy Metallurgical Corporation, Newfield, NJ and Opportunity to Request a Hearing*, 71 Fed. Reg. 66,986 (Nov. 17, 2006) (“Notice”).

II. STANDING

Although Petitioner’s claim to standing is only minimally supported, see Petition at 1, Shieldalloy does not challenge Petitioner’s standing to seek to participate in this proceeding *in her personal capacity*. However, the Petition is purportedly filed on behalf of “the residents of Newfield, New Jersey and contiguous regional neighbors.” Such a representational claim is at best empty rhetoric and should be disregarded.

Petitioner has provided no basis for her claim to speak for the residents of her community or the surrounding ones, nor any documentary evidence that anyone has asked to be represented by her. Parties seeking to intervene in a proceeding as representatives of others need to support

² The DP filed by Shieldalloy in October 2005 was the culmination of a process that developed over the last thirteen years. Shieldalloy submitted a conceptual decommissioning plan on April 7, 1993. The initial version of the DP was submitted on August 30, 2002.

their standing claims by filing affidavits from their constituents. "In order to establish the factual predicates for these various standing elements, when legal representation is present, it generally is necessary for the individual to set forth any factual claims in a sworn affidavit." *Shieldalloy*, LBP-99-12, 49 NRC at 158; *see also Moab*, LBP-97-9, 45 NRC at 427 n.4. The Petition provides no affidavits granting Petitioner the right to represent anyone but herself. Since she provides no factual evidence to support her claim to represent the residents of Newfield and contiguous areas, Petitioner's claims to standing on their behalf must be rejected. *See, e.g., Consumers Power Co.* (Midland Plant, Units 1 & 2), LBP-78-27, 8 NRC 275, 277, 280 (1978) (denying an intervention request by an individual on behalf of an association for failing to provide any information to demonstrate that she was authorized to represent the association).

III. NRC STANDARDS GOVERNING THE ADMISSIBILITY OF CONTENTIONS

The Commission's rules on the admissibility of contentions in NRC licensing proceedings are discussed in detail in Licensee's "Shieldalloy's Answer to Hearing Request of Loretta Williams" dated January 30, 2007 at 2-10. That discussion is incorporated by reference herein.

IV. PETITIONER HAS NOT SUBMITTED AN ADMISSIBLE CONTENTION

The Petition appears to raise two contentions, which are however in the nature of general concerns rather than challenges to the DP. Petitioner's claims in those two contentions lack specificity, provide no supporting basis, are offered without factual support, are not backed by expert testimony, and reference no supporting documentation. They also do not raise a genuine dispute with the Licensee on any material issue of fact or law relating to the DP.

A. Contention 1 is Clearly Inadmissible

Contention 1 states as follows:

At the recent NRC Scoping Meeting 12/06, a representative from the NJ State DEP spoke about the unusual precedent of establishing a low level radioactive waste site in a densely populated area. This measure would call for a variance of the NRC's present guideline's [sic] concerning a manufacturer's monitoring of their own pollution. We respectfully request more time to pursue this line of reasoning, get all the facts, which we do not have at present, in order to have an informed opinion whether the proposed alternative is viable. The 60 days provided the NRC has not been enough to amass pertinent information or "expert opinions" in support of our contentions. Additional time prior to a public hearing may facilitate this.

Petition at 1, emphasis in original.

It is practically impossible to tell from its text what Contention 1 alleges. It appears to echo a comment from a third party to the effect that establishing a low level radioactive waste site in a densely populated area is an "unusual precedent." The contention does not, however, specify – apart from the allegation of perhaps being "unusual" – what deficiencies in the DP warrant its disapproval by the NRC. Such a vague, non-specific challenge to a requested licensing action does not give rise to a litigable issue.³ 10 C.F.R. §§ 2.309(f)(1)(i); *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003); *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000).

Nor does Contention 1 provide a basis for its challenge to the DP. It states that "[t]his measure would call for a variance of the NRC's present guideline's concerning a manufacturer's monitoring of their own pollution." Petition at 1. However, the alleged "guideline" is not specified, and the reasons for objecting to any "variance" from the guideline are not stated. 10 C.F.R. §§ 2.309(f)(1)(ii) is not satisfied.

³ Because Contention 1 is so poorly articulated, it is unclear whether it challenges the NRC's authority to approve the DP. If so, the contention is barred as a challenge to the agency's regulations. 10 C.F.R. § 2.335(a).

Equally absent are any documentary evidence, expert opinions, or factual support for the contention. Indeed, Petitioner admits that she would need “more time to pursue this line of reasoning, get all the facts, which we do not have at present.” The contention must therefore fail for lack of supporting evidence. 10 C.F.R. §§ 2.309(f)(1)(v).⁴

Finally, Contention 1 does not include “sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact,” which showing must include “references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner’s belief.” 10 C.F.R. § 2.309(f)(1)(vi). The Contention makes no reference to the DP nor asserts there exist any deficiencies in it. Therefore, it fails also to satisfy the requirements of this regulation.

B. Contention 2 is Inadmissible

The second and last⁵ contention raised by Petitioner reads:

The contention that the dump site will inevitably cause economic hardship is almost undisputable. Already the small Borough is unable to sustain a viable tax base having lost revenue from SMC’s 70 + acres. As the Borough will begin to seek more services and outside support from larger contiguous townships and

⁴ Petitioner claims that “[t]he 60 days provided the NRC has not been enough to amass pertinent information or ‘expert opinions’ in support of our contentions. Additional time prior to a public hearing may facilitate this.” Petition at 1. However, Commission precedent makes it clear that a contention will be barred if the petitioner has only generalized suspicions and hopes to substantiate them later, or simply seeks more time and more information in order to identify a genuine material dispute for litigation. *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 424 (2003).

⁵ The Petition also states: “In terms of a ‘material issue of law’ the Borough of Newfield passed a Resolution (#31-94) in 1994 in which it stated that ‘The Borough Council opposes the siting of a radioactive waste storage facility and an increase by further outside accumulation of radioactive waste materials at SMC plant in the Borough of Newfield.’ Although, to our knowledge, no outside waste was brought to the site, additional accumulation of in-house waste was permitted by the NRC to mount. It is the Newfield residents intent to have more information on local and State laws in this regard.” Petition at 2, emphasis in original. Whatever this statement is intended to convey, it does not raise any claims against the proposed DP and therefore requires no discussion.

cities, the very uniqueness of its present “town meeting” style of small governance is threatened. This very American tradition is rapidly becoming an endangered species. To local residents, many of them several generations, this independent Borough government is an important aspect of how they constitute their sense of community. In this regard a certain socio-political fabric of the small community will be impacted.

Petition at 2, emphasis in original.

Contention 2 appears to allege that (1) existence of the non-operating Newfield plant is causing or will cause “economic hardship” to the community; and (2) that such hardship will somehow result in the loss of Newfield’s “unique” “town meeting” style of small governance. As such, the contention on its face does not raise any claims against the DP, because the alleged socio-economic impacts of the non-operating Newfield plant will exist whether or not the DP is approved. Accordingly, Contention 2 does not satisfy either 10 C.F.R. §§ 2.309(f)(1) (i) or (vi).

Nor is there any basis for the allegations in the contention. Although Petitioner claims the alleged economic hardship “inevitable” and “undisputable,” the Petition does not provide any support for the proposition that approval of the DP will result in the socio-economic impacts it alleges.⁶ 10 C.F.R. § 2.309(f)(1) (ii) is clearly not met.

Petitioner provides no factual information, documentary evidence or expert opinions in support of Contention 2. As they stand, the claims in Contention 2 represent but the lay opinions of Petitioner and as such are entitled to little or no weight and are insufficient to satisfy the requirements of 10 C.F.R. § 2.309(f)(1) (v).

⁶ The contention states that the alleged loss of the “town meeting” style of governance “is threatened” as “the Borough will begin to seek more services and outside support from larger contiguous townships and cities.” Petition at 2. No attempt is made, however, to link approval of the DP to these alleged consequences nor to demonstrate that they will indeed ensue.

Finally, there is a discussion of socio-economic impacts in the Environmental Report (“ER”), Appendix 19.9 to the DP. Section 4.10 of the ER discusses socio-economic impacts (including impacts on the tax base) of the proposed action and those of two other alternatives, “no action” (leaving the site as is) or moving the waste elsewhere. Contention 2 completely ignores this discussion in the ER and does not point to any deficiency in it or in any other aspect of the DP. An admissible contention must include “sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.” 10 C.F.R. § 2.309(f)(1)(vi). Contention 2 also fails to meet this requirement.

In short, the claims asserted in the Petition fail to satisfy the requirements in 10 C.F.R. § 2.309(f)(1) for the assertion of admissible contentions. Since no admissible contentions are proffered in the Petition, it must be dismissed and its request for a hearing must be denied.

V. SELECTION OF HEARING PROCEDURES

The Notice granted the opportunity to address the selection of hearing procedures in accordance with 10 C.F.R. § 2.309(g). 71 Fed. Reg. at 66,987. Pursuant to 10 C.F.R. § 2.309(g), a petitioner who relies on 10 C.F.R. § 2.310(d) – i.e., a petitioner seeking to have a proceeding conducted under the Subpart G procedures – has the burden of demonstrating “by reference to the contentions and bases provided and the specific procedures in Subpart G of this Part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures.”

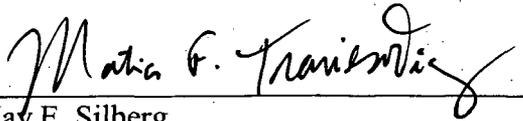
Petitioner has not addressed the selection of hearing procedures nor has met the burden of demonstrating that the procedures in Subpart G are appropriate. Moreover, neither of Petitioner’s contentions would necessitate “resolution of issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected

to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter.” See 10 C.F.R. § 2.310(d). Accordingly, if any of Petitioner’s contentions is admitted, the hearing on such a contention should be governed entirely by the procedures of either Subparts L or N (assuming all parties agree to the applicability of the latter).

VI. CONCLUSION

For the reasons stated above, the Petition should be denied.

Respectfully Submitted,



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Dated: February 5, 2007

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Shieldalloy's Answer to Hearing Petition of Terry Ragone" dated February 5, 2007, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 5th day of February, 2007.

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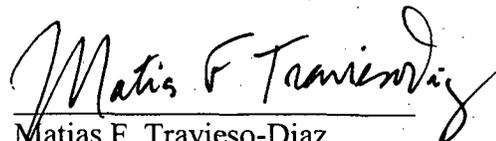
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