

February 12, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

February 12, 2007 (11:14am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

**SHIELDALLOY'S ANSWER TO HEARING REQUEST OF
THREE NEW JERSEY LEGISLATORS**

By letter dated January 12, 2007 ("Petition"), three members of the New Jersey Legislature – Senator Fred H. Madden and Assemblymen David R. Mayer and Paul Moriarty – ("Petitioners") requested a hearing in the above captioned proceeding. A copy was not served on Shieldalloy Metallurgical Corporation ("Shieldalloy" or the "Licensee") by Petitioners, but was forwarded to Shieldalloy by the Secretary of the NRC on January 24, 2007. Pursuant to 10 C.F.R. § 2.309(h)(1), Shieldalloy submits this Answer in opposition to the Petition.

The Petition fails to demonstrate that Petitioners have standing to participate in this proceeding. It also fails to proffer any admissible contentions for potential adjudication. Accordingly, Petitioners' request for hearing should be denied and their Petition should be dismissed. 10 C.F.R. § 2.309(a).

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. 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 [to] 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

Petitioners provide no demonstration that they have standing to participate in this proceeding other than a claim that “as representatives of the residents of Newfield and surrounding areas [they] have a sincere concern regarding the large quantities of radioactive contaminated waste remaining at the ShieldAlloy site in Newfield, Gloucester County, New Jersey.” Petition at 1. However, it is well established that a legislator lacks standing to participate in an NRC licensing proceeding on behalf of his constituents. *Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility)*, LBP-89-23, 30 NRC 140, 145 (1989). Petitioners have provided no evidence that they have standing as individuals, therefore there are no grounds for their taking part in this proceeding and their Petition should be denied. *Id.*

III. STANDARDS FOR 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

Contrary to the requirements in 10 C.F.R. § 2.309(a) and the clear directives in the Notice (“In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised,” 71 Fed. Reg. at 66,987), the Petition does not set forth any contentions that Petitioners seek to have adjudicated. Instead, the Petition advances a number of broad, vague and totally unsupported allegations, as follows:

- That “the 57,000 cubic meters of radioactively contaminated materials at the SMC site must be disposed in an environmentally responsible manner, not left in place for over 1,000 years.” Petition at 1. This allegation is only a conclusory statement that does not raise any specific challenge to the DP and therefore does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(i). The allegation is also unaccompanied by an explanatory basis (as required by 10 C.F.R. § 2.309(f)(1)(ii)), is lacking any documentary evidence, expert opinions, or factual support (contrary to 10 C.F.R. § 2.309(f)(1)(v)), and does not include “sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact,” including “references to specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute.” 10 C.F.R. § 2.309(f)(1)(vi).
- That “there are many environmental, monetary and health concerns we have with ShieldAlloy’s decommissioning plan.” Petition at 1. This allegation is totally wanting in specificity; it is not accompanied by an explanatory basis; it lacks documentary evidence, expert opinions, or factual support; and it does not include

“sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.” Thus, the allegation fails to comply with the requirements of 10 C.F.R. §§ 2.309(f)(1)(i), (ii), (v) and (vi).

- That Petitioners “have raised concerns regarding the 1,000 year time frame in terms of cost to maintain the site because there is no certainty as to what a dollar will be worth in 1,000 years.” Petition at 1. Arguably, this allegation challenges the estimated costs of maintaining the site for 1,000 years; however, no basis is offered to explain the reasons for the challenge. No documentary evidence, expert opinions, or factual materials are offered in support, and the allegation does not include “sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact” because the economic analyses set forth in Section 15.1 of the DP are neither cited nor contested. Thus, the allegation fails to comply with the requirements of 10 C.F.R. §§ 2.309(f)(1) (ii), (v) and (vi).
- That Petitioners “have also questioned the testing standards for safety regarding levels of exposure as current guidelines are written for adults, but do not take into consideration children.” Petition at 1. In addition to being non-specific, without basis, unsupported by documentary evidence, expert opinion or factual materials, and failing to show a genuine dispute with Licensee, this allegation appears to challenge the levels of exposure deemed acceptable by the NRC in 10 C.F.R. § 20.1301 and is therefore an impermissible challenge to the NRC regulations. 10 C.F.R. § 2.335(a).
- That “[t]he NRC’s own regulations note that signs, caps and fences should not be relied on for more than 100 years, yet ShieldAlloy is seeking to bury the waste for 1,000 years.” Petition at 1. This allegation is unspecific (citing to no NRC regulation

imposing such alleged time limit on signs, caps and fences), provides no basis for the claims it contains, is supported by no expert testimony, documentary evidence or other factual materials, and does not controvert the DP. Indeed, Section 16.3.2 of the DP describes the access control mechanisms that will be implemented and notes that “[a] Long Term Control Plan (LTC Plan) will be prepared and submitted with the final decommissioning report that outlines the specific details of how these conditions will be implemented and on what frequency.” The allegation does not address the discussion in the DP.

- That issuance of a Long Term license “is an undue burden on the local community. If issued residents of Newfield would be forced to live with stockpiles of radioactive waste in their backyard for 1,000 years.” Petition at 1. This allegation asserts no deficiency in the DP and identifies no specific health, safety, environmental or economic consequences to the residents of Newfield from having the waste “in their backyard” for 1,000 years. It provides no basis, is supported by no expert testimony, documentary evidence or other factual materials, and does not controvert any part of the DP.
- That “[l]eaving the slag pile in this small town will devastate its economy and jeopardize the health of the residents.” Petition at 2. This allegation is conclusory and fails to specify how the presence of the waste “will devastate” Newfield’s economy or “jeopardize the health of the residents.” Again, no basis is provided for these broad claims, the claims are not supported by expert testimony, documentary evidence or other factual materials, and no portion of the DP is challenged.

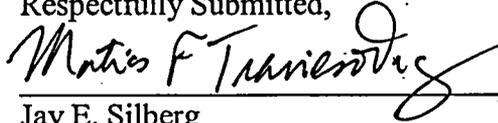
- That “Newfield will lose any future ratable for the property and local property values will be impacted as well as having a radioactive pile for a neighbor.” *Id.* This allegation arguably asserts that property values will be impacted by the implementation of the DP. However, no basis for this speculative prediction is offered and there is no support for it via expert testimony, documentary evidence or other factual materials. Moreover, the allegation ignores the socio-economic impact analysis in Sections 3.10 and 4.10 of the Environmental Report (“ER”), Appendix 19.9 to the DP; and does not controvert its finding that the socio-economic impact of implementing the DP will be minimal. ER at 4-37.
- That “[t]he residents have been kept out of the decommissioning process through the inadequate availability of public participation.” Petition at 2. This allegation is clearly overbroad (in asserting that the Newfield residents have been “kept out of the decommissioning process”), does not allege any specific deficiency in the DP, and is offered without any basis or support by expert testimony, documentary evidence or other factual materials. Most significantly, it ignores the process for obtaining public advice on the proposed DP that is described and documented in Section 16.5 of the DP. While Petitioners assert that there was “inadequate availability of public participation,” they fail to explain why public participation was inadequate in light of this well documented process.

In short, the broad claims asserted in the Petition fail to meet the requirements of 10 C.F.R. §§ 2.309(f)(1) (i), (ii), (v) and (vi) 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. CONCLUSION

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

Respectfully Submitted,



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Dated: February 12, 2007

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NUCLEAR REGULATORY COMMISSION**

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Shieldalloy's Answer to Hearing Request of Three New Jersey Legislators" dated February 12, 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 12th day of February, 2007.

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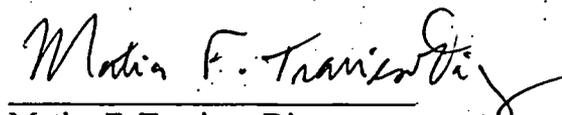
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