

February 13, 2007

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

February 13, 2007 (11:03am)

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 REQUEST FOR HEARING BY
CUMBERLAND COUNTY**

By letter dated January 16, 2007, the County of Cumberland, New Jersey ("Petitioner") filed a "Request for Hearing By Cumberland County" ("Petition") in the above captioned proceeding. A copy was served by mail on Shieldalloy Metallurgical Corporation ("Shieldalloy" or the "Licensee"). Pursuant to 10 C.F.R. § 2.309(h)(1), Shieldalloy submits this Answer in opposition to the Petition.

The Petition fails to proffer *any* contentions for potential adjudication in this proceeding. Accordingly, Petitioner's request for hearing should be denied and its Petition should be dismissed. 10 C.F.R. § 2.309(a).¹

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.

¹ Should a hearing be held, however, because another intervenor has submitted an admissible contention, Petitioner – being a governmental entity – might participate in the hearing, if it so chooses, as an "interested state" pursuant to 10 C.F.R. § 2.315(c).

Shieldalloy submitted the DP to the NRC on October 24, 2005 (available in the NRC ADAMS document system under Accession No. ML053190212.) Shieldalloy submitted a supplement to the DP on June 30, 2006 (available in ADAMS 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

Licensee does not contest that Petitioner has standing to seek to participate in this proceeding.

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 Petitioner seeks to have adjudicated. There are only two factual assertions in the Petition:

- That “proposals to decommission the site and allow it to sit unremediated for hundreds, if not thousands of years is the inappropriate manner in which the site should be handled because of concerns to the health, safety and welfare of the general public in the area surrounding the site and in the area impacted by the site.” Petition at 1; and
- That “the slag materials that are the subject of the regulatory control of the Nuclear Regulatory Commission should be removed from the site in an environmentally sound manner and taken to an approved landfill for disposal thus eliminating and alleviating the prospective and potential health impacts on the public.” *Id.*

Both of these broad statements fail to allege any specific deficiency in the DP. Neither statement is accompanied by an explanatory basis. No factual or documentary evidence or expert testimony is offered in their support. Neither statement raises a genuine dispute with the Licensee on any material issue of fact or law relating to the DP. Therefore, these statements fail to meet the requirements of 10 C.F.R. §§ 2.309(f)(1) (i), (ii), (v) and (vi).²

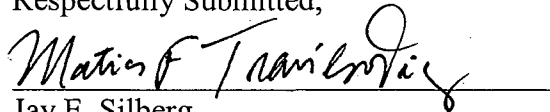
In short, the claims asserted in the Petition fail to satisfy the requirements in 10 C.F.R. § 2.309(f)(1) for the assertion of admissible contentions. Since no admissible contentions are proffered in the Petition, it must be dismissed and its request for a hearing must be denied.

² Petitioner seems to recognize that its “request for hearing” does not comply with the requirements for granting hearing requests, for the Petition states that “Cumberland County will rely on the expertise of the New Jersey Department of Environmental Protection with respect to these issues and the purpose of this correspondence is to make sure that the process does not continue to ignore the needs of the citizens of Cumberland County and the State of New Jersey.” Petition at 2. Petitioner thus appears to be looking to others to discharge the hearing responsibilities and is content with merely stating its concerns for the record.

V. CONCLUSION

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

Respectfully Submitted,

A handwritten signature in black ink, reading "Matias F. Travieso-Diaz", is written over a horizontal line.

Jay E. Silberg

Matias F. Travieso-Diaz

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Dated: February 13, 2007

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
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SHIELDALLOY METALLURGICAL)	Docket No. 40-7102-MLA
CORPORATION)	ASLBP No. 07-852-01-MLA-BD01
(License Amendment Request for)	
Decommissioning the Newfield Facility))	
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Shieldalloy's Answer to Request for Hearing by Cumberland County" dated February 13, 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 13th day of February, 2007.

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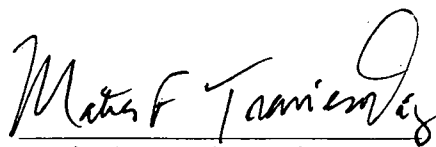
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