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JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 093
TRENTON, NJ 08625-0093

STUART RABNER
Attorney General

ROBERT J. GILSON
Director

June 7, 2007

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USNRC

August 23, 2007 (2:45pm)

Alan S. Rosenthal, Chair
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop -- T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: IMO Shieldalloy Metallurgical Corp.
(Licensing Amendment Request for
Decommissioning of the Newfield,
New Jersey Facility)
Docket No. 40-7102-MLA; ASLBP No. 07-852-MLA-BD01

Dear Judge Rosenthal:

The Nuclear Regulatory Commission (NRC) in its Memorandum and Order in this matter docketed May 30, 2007 requested that the parties comment to the Atomic Safety and Licensing Board (Board) on the Board's determination to defer ruling on all but one of the New Jersey Department of Environmental Protection's (New Jersey) contentions for hearing on the decommissioning plan (LBP-07-05, 65 NRC at ____). This letter responds to the Commission's May 30 request.



New Jersey considers the Board's deferral of ruling to be appropriate under the particular circumstances of this case. The Board relied upon its experience in U.S. Army (Jefferson Proving Ground Site), LBP-06-06, 63 NRC 167 (2006) and LBP-06-27, 64 NRC ___ (slip op. (2006)), in making the determination. The Board stated

...it seems patent to us that the same analysis applies in full measure to the case of New Jersey's challenges to the decommissioning plan that is in issue here. There is no aspect of that plan that is set in stone and it is scarcely inconceivable that, whether as the result of the Staff's review or independent of it, the DP might undergo significant revision that would have a decided impact upon the New Jersey contentions now on the table. LBP-07-05, 65 NRC at ___, slip op. at 25-26.

This matter involves the potential issuance of the first Long Term Control License by the NRC. New Jersey submitted 17 contentions which assert that the DP is seriously flawed, technically and environmentally, and should be rejected by the NRC. The NRC Staff submission to the Board took the position that eight of New Jersey's contentions are admissible in whole or part, and contested nine of New Jersey's contentions. The Board found that New Jersey's Contention 5 is admissible in its entirety. No party contested the Board's ruling on Contention 5. Contention 5 asserts that the DP's dose modeling is not accurate because it ignores the

groundwater exposure pathway and other reasonable exposure scenarios.

While the Board's ruling on Contention 5 was not, of course, a ruling on the merits of the contention, that ruling, along with the NRC Staff response on New Jersey's contentions, plus the contentions themselves, all demonstrate that the DP is significantly flawed. Indeed, on March 19, 2007 NRC Staff sent to Shieldalloy an extensive 14 part and 13 page Request for Additional Information, Shieldalloy Metallurgical Corporation, Docket No. 04007102 (RAI), (ADAMS ML070780139) concerning the Environmental Report in the DP. That RAI seeks information on alternatives considered; costs and benefits; radon release rates and radionuclide content; dose analysis calculations and assumptions; justification for excluding groundwater as a potential exposure pathway; and other technical and environmental issues. The NRC Staff, given its expertise, may find other relevant issues which Shieldalloy will have to address. An in depth technical and environmental review may certainly result in revisions to the DP which would obviate existing contentions and raise new contentions. It is not desirable to hold a hearing under these circumstances.

For these reasons, in this particular case the Board's conclusion that the "DP might undergo significant revision..." which would in turn impact the issues on which a hearing is

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required, is appropriate. Indeed, New Jersey believes that NRC Staff has sufficient technical and environmental bases to simply reject the DP now, without further review. That would eliminate the need for a hearing on New Jersey's contentions altogether.

Respectfully submitted,

~~STUART RABNER~~
ATTORNEY GENERAL OF NEW JERSEY

By: 

Andrew D. Reese
Kenneth W. Elwell
Deputy Attorneys General

kwe/DD

c: All parties on enclosed service list

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY & LICENSING BOARD

In the Matter of)
)
SHIELDALLOY METALLURGICAL CORP.) Docket No. 40-7102-MLA
) ASLBP No. 07-852-01-MLA-BD01
(Licensing Amendment Request)
for Decommissioning the)
Newfield, New Jersey Facility))

CERTIFICATION OF SERVICE

I hereby certify that copies of Letter Response in the above captioned proceeding have been served on the following persons by deposit in the United States Mail and by electronic mail to those marked with an asterisk (*) and by UPS Next Day Air to those not marked with an asterisk on this 7th day of June, 2007:

Alan S. Rosenthal, Chair*
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop -- T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-Mail: rsnthl@comcast.net

William Reed*
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop -- T-3 F23
U.S. Nuclear Regulatory Commission
Washington, 20555-0001
E-Mail: whrcville@earthlink.net

Richard E. Wardwell*
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop -- T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-Mail: rew@nrc.gov

SheVerne R. Cloyd*
Atomic Safety & Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop -- T-3F23
Washington, DC 20555-0001
E-mail: src2@nrc.gov.

Joseph J. McGovern, Esquire*
Parker McCay, P.A.
Three Greentree Centre
7001 Lincoln Drive West
P.O. Box 974
Marlton, NJ 08053
E-mail: jmcgovern@parkermccay.com

Office of Commission Appellate Adjudication*
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
Washington, DC 20555
E-mail: ocaamail@nrc.gov

Terry Ragone*
Newfield Residents Environmental Group
White Dove Lane
P.O. Box 605
Newfield, NJ 08344
E-mail: foxragone@aol.com

Gary D. Wodlinger, Esquire*
110 North 6th Street
Box 729
Vineland, NJ 08365
E-mail: gwodlinger@lipmanlaw.org

Fred H. Madden, State Senator*
David R. Mayer, Assemblyman*
Paul Moriarty, Assemblyman*
New Jersey Senate and General Assembly
Holly Oak Office Park
129 Johnson Road, Suite 1
Turnersville, NJ 08012
E-mail: senmadden@njleg.org
asmayer@njleg.org
asmmoriarity@njleg.org

David R. Smith, Radiation Safety Officer
Shieldalloy Metallurgical Corporation
12 West Boulevard
P.O. Box 768
Newfield, NJ 08344-0768

Loretta Williams
310 Oakwood Drive
P.O. Box 311
Newfield, NJ 08344

Jay E. Silberg, Esquire*
Matias Travieso-Diaz, Esquire*
R. Budd Haemer, Esquire*
Pillsbury Winthrop Shaw Pittman, LLP
2300 N St. NW
Washington, DC 20037
E-mail: jay.silberg@pillsburylaw.com
matias.travieso-diaz@pillsbury.law
robert.haemer@pillsburylaw.com

Borough of Newfield, New Jersey
c/o John C. Eastlack, Jr., Esquire*
Solicitor for the Borough of Newfield
Holston, MacDonald, Uzdevinis, Eastlack,
Ziegler & Lodge
66 Euclid Street
Woodbury, NJ 08096
E-mail: jeastlack@holstonlaw.com

Bradley W. Jones, Esquire*
Margaret J. Bupp, Esquire*
Michael J. Clark, Esquire *
Tison A. Campbell, Esquire*
U.S. Nuclear Regulatory Commission
Office of the General Counsel
11555 Rockville Pike
Mail Stop: 015 D21
Rockville, MD 20852-2738
E-mail: bwj@nrc.gov
mjb@nrc.gov
mjcl@nrc.gov
tac2@nrc.gov



DIANNE DAVIS

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