

May 8, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S SUMMARY OF ACTIONS RELEVANT TO DECOMMISSIONING
SHIELDALLOY'S NEWFIELD FACILITY

During the telephone conference held on April 28, 2008, the Board directed the Licensee and the NRC Staff to submit memoranda summarizing Licensee and Staff interactions relevant to decommissioning the Newfield, New Jersey facility. The Board stated that it seeks a "complete picture" of interactions from 1998 to the present. In response to the Board's order, the Staff hereby submits a chronological summary of significant actions relevant to decommissioning the facility.

BACKGROUND

Shieldalloy Metallurgical Corporation ("Licensee" or "SMC") holds NRC license SMB-743. Between 1955 and 1998, the Licensee manufactured a variety of products, including specialty steel and super alloy additives, at its facility in Newfield, New Jersey. One of the raw materials the Licensee used in its manufacturing processes, pyrochlore, is a concentrated niobium ore containing greater than 0.05 percent natural uranium and natural thorium. Pyrochlore is therefore defined as source material under 10 C.F.R. § 40.4. As a result of processing pyrochlore, the Licensee's facility generated slag and baghouse dust (dust that was formerly collected in a "baghouse" at the Licensee's facility). The Licensee estimates that, at present, there is approximately 20,000 m³ of ferrocolumbium slag and 20,000 m³ of baghouse

dust at the Newfield site.¹ This material contains natural uranium, thorium, and the progeny of their isotopes.

In April 1993, the Licensee submitted a Conceptual Decommissioning Plan (DP) for its Newfield site.² The Conceptual DP was based on the assumption that releasing the site for unrestricted use in accordance with NRC requirements could not reasonably be achieved.³ The Licensee stated that it intended to apply for an exemption from the unrestricted release requirement of 10 C.F.R. § 40.42 and that in-situ stabilization of all radioactive materials at the Newfield site was its current concept for achieving decommissioning objectives.⁴

In 1995, however, the Licensee submitted a Revised Conceptual DP.⁵ The revised DP took into account the potential for commercial sale of the slag and baghouse dust at the Newfield site. The Licensee concluded that there was a strong potential this material could be sold profitably for use as additives in various industrial processes and that, as a result, "release of the Newfield site for unrestricted use now appears achievable[,] as is reflected in the enclosed Conceptual Decommissioning Plan."⁶

In September 1995, the Licensee filed an application to renew License SMB-743.⁷ In its renewal application, the Licensee stated that it intended to continue using its Newfield facility to

¹ "Decommissioning Plan for Newfield Facility, Volume I" (ADAMS ML053190220) (October 21, 2005) at 27.

² "Conceptual Decommissioning Plan for Shieldalloy Metallurgical Corporation (SMC), Newfield, New Jersey" (ADAMS ML071070263) (April 7, 1993).

³ *Id.* at 5–6.

⁴ *Id.*

⁵ "Re: Conceptual Decommissioning Plan for the Newfield Facility" (ADAMS ML070510206) (December 12, 1995).

⁶ *Id.* at 1.

⁷ "Application for Renewal of Source Material License No. SMB-743" (ADAMS ML070580558) (September 15, 1995).

produce specialty alloys, slag fluidizers, and other products.⁸ The Licensee also requested authority to continue adding radioactive materials to temporary stockpiles of slag and baghouse dust at the site, until final disposition of the stockpiles could be approved by the NRC.⁹

The Staff prepared an environmental assessment in connection with the Licensee's 1995 renewal application¹⁰ and issued a finding of no significant impact in September 1997.¹¹ In October 1997, the Staff renewed License SMB-743 for a five-year period, with an expiration date of October 20, 2002.¹²

License Condition 14 of the renewed license related to the Licensee's attempts to find a market for slag or baghouse dust at its Newfield site. This condition required the Licensee to "submit to NRC a list of identified customers who have expressed an interest in performing trial runs for the slag and a schedule for obtaining an executed contract for the sale of the slag."¹³

License Condition 15 of the renewed license, on the other hand, specifically addressed decommissioning of the Newfield site. This condition stated that, by October 20, 1999, the Licensee had to "either (1) provide an alternate decommissioning funding plan in accordance with 40.36(d) to cover the entire cost of decommissioning the site, including all slag and baghouse dust, in accordance with NRC requirements; or (2) immediately cease operations

⁸ *Id.* at Attachment 4, p. 1.

⁹ *Id.*

¹⁰ "Environmental Assessment for Renewal of Source Material License SMB-743" (ADAMS ML070580267) (September 30, 1997).

¹¹ "U.S. Nuclear Regulatory Commission Finding of No Significant Impact for the Renewal of Source Material, Shieldalloy Metallurgical Corporation, Newfield, New Jersey, License SMB-743" (ADAMS ML070580263) (September 16, 1997).

¹² "Renewal of License SMB-743" (ADAMS ML070580426) (October 20, 1997).

¹³ *Id.* at 2; *see also* "Shieldalloy Metallurgical Corp., License SMB-743, Amendment No. 1" (ADAMS ML071350228) (July 20, 1999).

involving source material, submit a decommissioning plan in accordance with 40.42(g) by April 20, 2000, and commence decommissioning upon approval of the NRC.”¹⁴

ACTIVITIES RELEVANT TO DECOMMISSIONING SINCE 1998

At the outset, the Staff would note that the decommissioning plan which is the subject of the Staff’s technical review and the present adjudicatory proceeding does not encompass all of the Licensee’s decommissioning activities at its Newfield site. Rather, the Licensee has already decommissioned certain parts of its site. The decommissioning plan submitted by the Licensee in 2005, which is primarily concerned with the slag and baghouse dust accumulated at the Newfield site, provides a summary of those prior activities.¹⁵ The Staff’s memorandum will focus on the particular decommissioning activities that are the subject of the DP presently on review.

In 1998, after encountering difficulties obtaining an adequate supply of pyrochlore,¹⁶ the Licensee ceased processing this ore. The Licensee thereafter sought to find a market for the slag and baghouse dust at its Newfield site, notifying the NRC of its efforts.¹⁷ Those efforts continued into 1999.¹⁸ However, the Licensee was not successful in arranging for the sale of significant quantities of slag or baghouse dust.

In May 2000, the Licensee requested that it be allowed to postpone the initiation of its decommissioning process for one year in order to “explore business opportunities involving

¹⁴ *Id.*

¹⁵ "Decommissioning Plan for Newfield Facility, Volume I" (ADAMS ML053190220) (October 21, 2005) at 7–10.

¹⁶ See "Shieldalloy License Renewal Review" (ADAMS ML070190652) (September 12, 1997) (referring to Licensee’s difficulty obtaining pyrochlore and questioning whether economic benefit of processing material is sufficient to cover decommissioning costs).

¹⁷ *E.g.*, "Source Material License No. SMB-743 Potential CANAL Lite Customers" (ADAMS ML071150271) (April 20, 1998).

¹⁸ *E.g.*, "Letter from C. Paperiello, NMSS, to D. Smith, Shieldalloy, Subject: Transfer of Baghouse Dust Under 10 CFR 40.13(A) and 40.51(b)(3)" (ADAMS ML060320583) (February 9, 1999).

source material before planning for and proceeding with the decommissioning.”¹⁹ The Licensee requested a deferral of both the notification and plan submission requirements in 10 C.F.R. § 40.42.²⁰

In July 2000, the Staff granted the request by amending License SMB-743 to permit the Licensee to postpone the initiation of decommissioning for one year from the date of the amendment.²¹ The Staff granted the Licensee’s request only after first finding, in accordance with 10 C.F.R. § 40.42(f), that postponing the initiation of decommissioning would not be detrimental to public health and safety and would otherwise be in the public interest.²² In addition to granting the Licensee’s request, the Staff added License Condition 18, which provided that if the Licensee did not resume principal activities at the site by July 1, 2001, it had to (1) notify the NRC in writing, within 60 days; (2) provide a decommissioning plan, within twelve months; and (3) commence decommissioning upon approval of that plan by the NRC.²³ At the same time, the Staff deleted License Condition 15, which required the Licensee to either submit a decommissioning funding plan or cease operations involving source material and submit a decommissioning plan, because the Licensee had met this requirement by submitting a funding plan in October 1999.²⁴

¹⁹ "Request to Postpone Initiation of the Decommissioning Process (License No. SMB-743)" (ADAMS ML0003712762) (May 2, 2000).

²⁰ *Id.* at 1.

²¹ "Shieldalloy Metallurgical Corporation Amendment 6 (TAC L31348) Amendment to License SMB-743" (ADAMS ML003750499) (July 5, 2000).

²² *Id.* at 1, 6–7.

²³ *Id.* at 1, 5.

²⁴ "Decommissioning Funding Plan for Source Material License No. SMB-743" (ML993160138) (October 19, 1999).

In August 2001, the Licensee notified the NRC of its intent to terminate License SMB-743.²⁵ Then, in August 2002, the Licensee submitted a DP for its Newfield facility.²⁶ The Licensee identified this DP as "Rev. 0."

In November 2002, in response to the Licensee's DP submittal, the Staff amended License SMB-743 to permit decommissioning activities only.²⁷ This amendment also deleted License Condition 18, which required the Licensee to notify the NRC if it did not resume principal activities at its site and to submit a DP in accordance with NRC regulations.

In February 2003, the Staff notified the Licensee that it was unable to accept Rev. 0 for technical review.²⁸ The Staff explained that it was rejecting Rev. 0 because the DP did not provide sufficient information in areas such as institutional controls, financial assurance and dose modeling.²⁹ With respect to institutional controls, the Staff noted that the Licensee had not demonstrated the capability or willingness of any local or state government entity to fulfill this role in perpetuity.³⁰ The Staff recommended that the Licensee consider a phased approach for decommissioning and encouraged the Licensee to propose a timetable for submitting such an approach.³¹

²⁵ "Letter Re: Intent to Terminate Source Material License No. SMB-743" (ADAMS ML012570371) (August 27, 2001).

²⁶ "Shieldalloy Metallurgical Corporation, Decommissioning Plan for the Newfield Facility, Rev. 0" (ADAMS ML022800283, ML022800312, ML022800324, ML022800327, ML022800331, ML022800342) (August 30, 2002).

²⁷ "Shieldalloy Metallurgical Corporation, Issuance of License Amend. 08" (ADAMS ML023110336) (November 6, 2002).

²⁸ "Shieldalloy Metallurgical Corporation, Rejection of Decommissioning Plan for the Newfield Facility and Denial of the Exemption Request to Postpone Initiation of Decommissioning Process" (ADAMS ML030660342) (February 28, 2003). In the same letter, the Staff rejected the Licensee's request that the Staff defer taking action on the DP until the Staff issued new guidance on criteria for restricted release.

²⁹ *Id.* at 5–9.

³⁰ *Id.* at 7.

³¹ *Id.* at 1–2.

In April 2003, the Staff held a public meeting with the Licensee and representatives from the State of New Jersey to discuss decommissioning at the Newfield site.³² Then, in May 2003, the Licensee submitted a phased approach for decommissioning, which included a twelve-part schedule.³³

Also in May 2003, the Staff issued SECY-03-0069, "Results of the License Termination Rule Analysis."³⁴ Among other issues, SECY-03-0069 addressed the criteria for restricted release under the License Termination Rule (LTR) and institutional controls under the LTR. The Staff's analysis showed that institutional control requirements necessary for the viability of the LTR's restricted release provisions in 10 C.F.R. § 20.1403 had been difficult for licensees to implement, particularly at sites contaminated with long-lived radionuclides such as uranium and thorium. The Staff recommended that the Commission consider providing options under the LTR that would involve the NRC in the long-term oversight of certain decommissioning sites, such as through use of a possession-only license for long-term control.

In August and September 2003, the Licensee submitted revisions to its phased approach for decommissioning.³⁵ The Staff provided the Licensee with comments on its phased approach in November 2003.³⁶

Also in November 2003, the Commission issued SRM-SECY-03-0069.³⁷ In the SRM, the Commission approved certain Staff recommendations for restricted release and institutional

³² "Summary for the NRC, Shieldalloy Metallurgical Corporation (SMC) and the State of New Jersey Meeting on April 16, 2003" (ADAMS ML031260631) (May 6, 2003).

³³ "Phased Approach for Termination of License No. SMB-743, Shieldalloy Metallurgical Corporation" (ADAMS ML031470616) (May 16, 2003).

³⁴ "Results of the License Termination Rule Analysis" (ADAMS ML030800158) (May 2, 2003).

³⁵ "Shieldalloy Metallurgical Corp. Revision to 08/26/03 Letter Re: Preferred Approach to Decommissioning Newfield Facility" (ADAMS ML032660236) (September 11, 2003).

³⁶ "NRC Staff Comments on October 6, 2003, Submittals Regarding Items 9 & 11 of the Action Plan for the Shieldalloy Metallurgical Corporation Site in Newfield, NJ" (ADAMS ML033280547) (November 24, 2003).

controls under the LTR. The Commission directed the Staff to gather comments on the recommended actions from the public, Agreement States, licensees and other interested stakeholders and share the results with the Commission before issuing final guidance.

In April 2004, the Staff issued Interim Guidance for use of a long-term control (LTC) possession-only license at the Licensee's Newfield site.³⁸ The purpose of the Interim Guidance was to provide the Licensee with a discussion of key concepts underlying the LTC option, as well as specific guidance for sections of the Licensee's DP related to the LTC option. The Staff held a public meeting in June 2004 to discuss the Interim Guidance with the Licensee, releasing a summary of the meeting in July 2004.³⁹

In December 2004, the Licensee submitted an Action Plan for its Phased Approach to decommissioning.⁴⁰ This was followed by a Revised Action Plan in February 2005.⁴¹ Then, in April 2005, the Licensee transmitted to the Staff a draft of Chapter 5, "Dose Modeling Evaluations," for a Revised Decommissioning Plan.⁴² This was followed by Staff comments on Draft Chapter 5 of the Revised DP, which were transmitted to the Licensee in June 2005.⁴³

...continued

³⁷ "Results of the License Termination Rule Analysis" (ADAMS ML033210595) (November 17, 2003).

³⁸ "NRC Staff Interim Guidance for a Long-Term Control Possession Only License at Shieldalloy Newfield Site, New Jersey" (ADAMS ML041320436) (April 15, 2004).

³⁹ "Summary of Meeting Between U.S. Nuclear Regulatory Commission Staff and Shieldalloy Metallurgical Corporation to Discuss Interim Guidance for a Long Term Control Possession Only License at the Shieldalloy Site in Newfield, New Jersey" (ADAMS ML041970534) (July 16, 2004).

⁴⁰ "Shieldalloy Metallurgical Corp., Action Plan for Phased Approach" (ADAMS ML050130131) (December 17, 2004).

⁴¹ "Revised Action Plan from Shieldalloy Metallurgical Corporation" (ADAMS ML050540026) (February 10, 2005).

⁴² "Transmittal of Draft Chapter 5, "Dose Modeling Evaluations" for Revised Decommissioning Plan" (ADAMS ML051220076) (April 14, 2005).

⁴³ "U.S. Nuclear Regulatory Commission (NRC) Staff Comments on Draft Chapter 5 (Dose Modeling) of the Decommissioning Plan for the Shieldalloy Metallurgical Site in Newfield, New Jersey" (ADAMS ML051680544) (June 24, 2005).

In October 2005, the Licensee submitted Rev. 1 to its DP for the Newfield facility.⁴⁴ The Staff rejected Rev. 1 in January 2006, concluding that accepting the DP would have required multiple rounds of requests for additional information (RAIs) and finding that the DP was not consistent with the Staff's Interim Guidance on the LTC.⁴⁵ In March 2006, the Staff held a public meeting with the Licensee to discuss a path forward for resubmission of the DP. The Staff released a summary of this meeting in May 2006.⁴⁶

In June 2006, the Licensee submitted Rev. 1a of the DP.⁴⁷ The Staff accepted Rev. 1a for technical review in October 2006.⁴⁸ Also in October 2006, the Staff issued revisions to two volumes of NUREG-1757, "Consolidated Decommissioning Guidance."⁴⁹ NUREG-1757

⁴⁴ "Transmittal of Revision 1 to the Decommissioning Plan for Newfield Facility" (ADAMS ML053190215) (October 24, 2005). Rev. 1 consisted of main three volumes: "Volume I - Text, Tables and Figures" (ADAMS ML053190220) (October 21, 2005); "Volume II - Appendices 19.1 through 19.8" (ADAMS ML053340210) (October 21, 2005); and "Volume III - Appendix 19.9 Environmental Report" (ADAMS ML053330384) (October 21, 2005).

⁴⁵ "Rejection of Revision 1 of the Shieldalloy Metallurgical Corporation (SMC) Decommissioning Plan for the Newfield Facility" (ADAMS ML060180551) (January 26, 2006).

⁴⁶ "Summary of Meeting Between U.S. Nuclear Regulatory Commission (NRC) Staff and Shieldalloy Metallurgical Corporation to Discuss Revision 1 of the Decommissioning Plan for the Shieldalloy Site in Newfield, New Jersey" (ADAMS ML061070401) (May 12, 2006).

⁴⁷ "Follow-Up to the March 9, 2006 Meeting and Response to USNRC Letter of January 26, 2006" (ADAMS ML061980092) (June 30, 2006).

⁴⁸ "Acceptance for Technical Review of the Decommissioning Plan for the Newfield Facility" (ADAMS ML062580126) (October 18, 2006). The prior month, the Commission had issued SRM-SECY-06-0143, "Stakeholder Comments and Path Forward on Decommissioning Guidance to Address License Termination Rule Analysis Issues" (ADAMS ML062260515) (September 19, 2006). In the SRM, the Commission approved the Staff's recommendation that, "when a Long Term Control-Possession Only (LTC) License is used to provide the institutional control for restricting future site use, the policy is to change an operating license to an LTC license by amendment, in lieu of terminating the operating license and issuing an LTC license."

⁴⁹ "NUREG-1757, Consolidated Decommissioning Guidance, Vol. 1 (Rev. 2), Vol. 2 (Rev. 1), and Vol. 3." (ADAMS ML063000243 (Vol. 1), ML063000252 (Vol. 2), ML032471471 (Vol. 3)) (October 31, 2006 (Revisions to Vol. 1 and Vol. 2); September 20, 2003 (Vol. 3, revisions in progress)).

contains the Staff's guidance for the use of a possession-only license to satisfy the LTR's institutional control requirements.⁵⁰

In November 2006, the Staff provided notice of the opportunity to request a hearing on the Licensee's DP.⁵¹ Seven hearing requests were received. The Board ruled on these requests in March 2007, admitting the New Jersey Department of Environmental Protection (NJDEP) as a party, denying the hearing requests of the six other petitioners, and inviting three governmental entities to participate in any hearing as permitted under 10 C.F.R. § 2.315(c).

In March 2007, the Staff transmitted 14 environmental RAIs to the Licensee.⁵² The Licensee responded to the environmental RAIs in April 2007.⁵³ Then, in July 2007, the Staff transmitted 73 safety RAIs to the Licensee.⁵⁴

Also in July 2007, the Licensee, NJDEP, and the Staff participated in groundwater sampling at the Newfield facility, taking split samples from various wells at the site. The results of this groundwater testing were made publicly available in an NRC Inspection Report dated January 11, 2008.⁵⁵

⁵⁰ See, e.g., NUREG-1757, Vol. 1 at 17-70 through 17-78 (discussing acceptance criteria pertaining to institutional controls for licensees seeking to decommission through use of a possession-only license for long-term control).

⁵¹ "Notice of Consideration of Amendment Request for Shieldalloy Metallurgical Corporation, Newfield, New Jersey and Opportunity to Request a Hearing" (ADAMS ML063100282) (November 17, 2006). The Staff is including a summary of events from November 2006 to the present for the sake of completeness, recognizing that the Board is familiar with most of the recent events.

⁵² "Request for Additional Information for Environmental Review of Proposed Decommissioning Plan of Shieldalloy Metallurgical Corporation, Newfield, New Jersey" (ADAMS ML0707801390) (March 19, 2007).

⁵³ "Re: Response to Request for Additional Information for Environmental Review of Proposed Decommissioning Plan of Shieldalloy Metallurgical Corporation, Newfield, New Jersey" (ADAMS ML071170305) (April 24, 2007).

⁵⁴ "Request for Additional Information, Shieldalloy Metallurgical Corporation Decommissioning Plan" (ADAMS ML071640287) (July 5, 2007).

⁵⁵ "Inspection No. 04007102/2006001, Shieldalloy Metallurgical Corporation, Newfield, New Jersey" (ADAMS ML080170065) (January 11, 2008).

The Licensee provided a partial response to the safety RAIs in November 2007.⁵⁶ The Licensee also informed the Staff of its intent to complete its safety RAI response by submitting Rev. 1b to the DP in 2008.⁵⁷

In reviewing the Licensee's DP, the Staff has also taken into account public comments on Rev. 1a. Notably, in March 2007, NJDEP submitted 228 comments on the DP.⁵⁸ In September 2007, the United States Environmental Protection Agency, Region 2, submitted 283 distinct comments on the DP.⁵⁹

As the above summary reflects, since the Licensee stopped processing pyrochlore in 1998, the Staff and the Licensee have had, and continue to have, extensive interactions regarding the decommissioning of the Newfield site.

Respectfully submitted,

/RA/

Michael J. Clark
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 8th day of May, 2008

⁵⁶ "Response to July 5, 2007 Request for Additional Information" (ADAMS ML073321281) (November 9, 2007).

⁵⁷ See, e.g., *id.* at 2–11 (referring to the submittal of Rev. 1b).

⁵⁸ "Comment of Donna L. Gaffigan on Behalf of New Jersey Department of Environmental Protection Re: Shieldalloy Metallurgical Corporation Decommissioning Plan, Rev. 1a" (ADAMS ML0709201581) (March 16, 2007).

⁵⁹ "U.S. EPA Comments on Shieldalloy Metallurgical Corporation's Decommissioning Plan for Newfield, NJ Site" (ADAMS ML072820048) (September 26, 2007).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S SUMMARY OF ACTIONS RELEVANT TO DECOMMISSIONING SHIELDALLOY'S NEWFIELD FACILITY" in the above captioned proceeding have been served on the following persons by deposit in the United States Mail; through deposit in the Nuclear Regulatory Commission internal mail system as indicated by an asterisk(*); and by electronic mail as indicated by a double asterisk (**) on this 8th day of May, 2008.

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