

RAS=15144



State of New Jersey

JON S. CORZINE
Governor

DOCKETED
USNRC

May 15 2008 (2:50pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
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TRENTON, NJ 08625-0093

ANNE MILGRAM
Attorney General

ROBERT J. GILSON
Director

May 15, 2008

Re: In re Shieldalloy Metallurgical Corp.
Docket No. Docket No. 40-7102

Enclosed please find the New Jersey Department of Environmental Protection's Reply to the NRC Staff and Shieldalloy Submissions Regarding the Chronology of Events.

Thank you for your attention in this matter.

Sincerely yours,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: Andrew Reese
Andrew D. Reese
Deputy Attorney General

c.: Service list



TEMPLATE=SECY-035

DS03

May 15, 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
)
)
(Licensing Amendment Request for)
Decommissioning the Newfield,)
New Jersey Facility))

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION'S REPLY TO THE NRC STAFF AND SHIELDALLOY SUBMISSIONS
REGARDING THE CHRONOLOGY OF DECOMMISSIONING EVENTS

The State of New Jersey respectfully submits this response to the NRC Staff and Sheildalloy statements to the Atomic Safety and Licensing Board concerning the chronology of decommissioning events.

Shieldalloy ceased processing pyrochlore at its Newfield facility in 1998. Yet, after the submission of three revisions of a decommissioning plan, Shieldalloy has still not submitted an acceptable plan. As noted in the NRC Staff statement, Shieldalloy's most recent decommissioning plan proposal resulted in 14 environmental RAIs and 73 Safety RAIs being issued to Shieldalloy. To date, Shieldalloy has not even adequately characterized its site or the concentration or leachability of

the slag/baghouse dust/debris pile, requiring additional testing that is now estimated to be completed by September 2008. (ADAMS ML073321281). Recall that on July 5, 2007 (letter to David Smith from Keith McConnell), the NRC staff gave SMC an additional 90 days to respond to the RAIs specifically because environmental sampling and laboratory work could not be completed within the 30 days that is usually allowed. When SMC requested an extension during a conference call because it had to collect and analyze samples, the State protested that the staff already allowed for time to take and analyze samples. Because the site and source material characterization determines the modeling, ALARA analysis, and manner of disposal, Shieldalloy should have adequately characterized its site and source material prior to submitting its first decommissioning plan in November 2002. The NRC Staff has gone well beyond the call of duty by allowing Shieldalloy this much time to complete a decommissioning plan.

In its statement to the Atomic Safety and Licensing Board, Shieldalloy attempts to blame the State of New Jersey for Shieldalloy's 10-year delay in proposing an adequate decommissioning plan by arguing that the State should have agreed to take responsibility for Shieldalloy's permanent on-site disposal of its radioactive waste just as the State of Ohio did at their Cambridge facility. Shieldalloy neglects to mention that Ohio became an Agreement State during the Cambridge

decommissioning, and thus assumed authority over the whole process. It is the licensee's responsibility to decommission a site. Furthermore, the State's decision on the issue of whether to take responsibility for the site is, of course, unrelated to Shieldalloy's failure after so many years to even adequately characterize the site and slag/baghouse dust/debris pile, and is unrelated to Shieldalloy's submission of a decommissioning plan which is still grossly technically and environmentally flawed on its third try. Shieldalloy's decommissioning plan presents flawed modeling and ALARA analysis that prevents the NRC from being able to adequately assess the plan.

Shieldalloy fails to mention that when it requested that the State agree to take responsibility for the on-site disposal, the State responded by requesting additional information. Yet, Shieldalloy refused to provide the requested information. Shieldalloy also fails to mention that neither the U.S. Department of Energy, the lead federal agency for oversight of legacy sites, nor any local governmental entity has agreed to take responsibility for the on-site disposal. Finally, Shieldalloy fails to acknowledge that if it had proposed off-site disposal initially, decommissioning would have been completed years ago. There is an active railroad line which goes right by the site. Shieldalloy utilized this railroad line to ship thousands of tons of ferrovanadium slag off-site. The

ferrovanadium slag was stored in an area adjacent to the ferrocolumbium slag and baghouse dust now at issue. Based upon data submitted so far, most of licensed contaminated material is consolidated in above-ground locations making it easily accessible for transport off site.

In its statement to the Atomic Safety and Licensing Board, Shieldalloy suggests that the 1997 bankruptcy settlement agreement contemplated decommissioning based on the on-site disposal of its waste. The bankruptcy agreement plainly does not authorize any method of decommissioning. In fact, Commissioner Merrifield addressed this very issue in his letter to Shieldalloy dated February 22, 2007. (Enclosed). Commissioner Merrifield quoted various terms of the agreement which demonstrate that it was not an approval of any particular method of decommissioning. The bankruptcy settlement states that it does not constitute a release from any state or federal liability to clean up or remediate any condition at Newfield. The bankruptcy settlement also provides that Shieldalloy's environmental obligations passed through the bankruptcy. The only claims settled in the bankruptcy are penalty claims.

Shieldalloy has been delinquent in adequately characterizing its site and in submitting an adequate decommissioning plan. Since the NRC Staff has been unable to successfully require the company to submit an adequate plan, the State of New Jersey

respectfully requests that the Atomic Safety and Licensing Board establish a deadline for Shieldalloy to submit a complete decommissioning plan. If Shieldalloy misses the deadline or submits an incomplete plan, Shieldalloy should be required to submit a plan for off-site disposal with a deadline to submit the off-site disposal plan.

Respectfully submitted,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

Dated: 5/15/08

By: Andrew Reese
ANDREW D. REESE
KENNETH W. ELWELL
Deputy Attorneys General

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
SHIELDALLOY METALLURGICAL CORP.)
)
(Licensing Amendment Request for)
Decommissioning of the)
Newfield, New Jersey Facility))

Docket No. 40-7102-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S REPLY TO THE NRC STAFF AND SHIELDALLOY SUBMISSIONS REGARDING THE CHRONOLOGY OF DECOMMISSIONING EVENTS have been served upon the following persons by deposit of paper copies in the U.S. mail, first class, and where indicated by an asterisk be electronic mail, this 15th day of May 2008.

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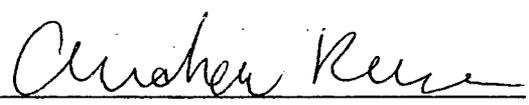
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Andrew D. Reese
Deputy Attorney General

Date: 5/15/08



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

February 22, 2007

DOCKETED
USNRC

February 22, 2007 (3:55pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Eric E. Jackson, President
Shieldalloy Metallurgical Corporation
435 Devon Park Drive
Bldg. 400
Wayne, PA 19087

SERVED February 22, 2007

Dear Mr. Jackson:

Thank you very much for taking the time to present information to me regarding your facility in Newfield, New Jersey, and the tour of the facility. I found the tour very informative. I understood you to say during your presentation that you believed the "Settlement Agreement of Environmental Claims and Issues By and Between Debtors and the United States of America and the State of New Jersey," was a binding document in which the NRC had agreed both that the slag pile could be left onsite, and that the cost to the company of decommissioning would not exceed 5 million dollars. This statement has been widely repeated in the press as well.

Since returning to my office, I have reviewed the settlement agreement, which is Appendix K of your decommissioning plan. I do not agree with your characterization of the content of the settlement agreement. I would particularly commend to you the following paragraphs.

A. "Shieldalloy and the United States have agreed that for purposes of determining financial assurance only, the dollar amounts assigned to each of the Environmental Projects are as follows: . . . NRC Slag Pile Remediation 5.0." Page 19, Paragraph 14.

B. "It is agreed and understood that the Predetermined Costs as identified in paragraph 14 of this Settlement Agreement in no way constitute a cap or limitation on Shieldalloy's continuing obligations to comply with state and federal environmental laws or with the NJ ACO." Page 34, Paragraph 40.

C. "Nothing in this Settlement Agreement shall release Shieldalloy or a subsequent owner or operator of the Newfield or Cambridge sites from complying with applicable state and federal environmental laws." Page 35, Paragraph 43.

D. "Nothing in this Settlement Agreement shall be construed to affect the NRC's regulatory authority over the Newfield site or the Cambridge site, including, but not limited to, the NRC's authority relating to the decommissioning of the Sites, and the NRC's authority to require Shieldalloy to post separate financial assurance, above and beyond the amounts set forth in this Settlement Agreement." Page 37-38, Paragraph 50.

The NRC currently has before it your proposed decommissioning plan. The NRC will, in accordance with its regulatory responsibilities, review the plan and determine whether or not it is acceptable.

E. Jackson

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Finally, as I stated during my visit, I would encourage further dialogue between your staff and the other interested parties to determine if there are other options, in addition to onsite decommissioning, that may be able to resolve the final cleanup and reuse of this site in a cost effective way.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Merrifield", written over a horizontal line.

Jeffrey S. Merrifield

cc: Parties to the Proceeding
Congressman Frank A. LoBiondo
Congressman Robert E. Andrews
Senator Robert Menendez
Senator Frank R. Lautenberg