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October 5, 2009 (11:35am)

OFFICE OF SECRETARY
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October 5, 2009

Alan S. Rosenthal, Chair
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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Administrative Judge
Dr. William H. Reed
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U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Dr. Richard E. Wardwell
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

In the Matter of
Shieldalloy Metallurgical Corp. (Licensing Amendment Request for
Decommissioning of the Newfield, New Jersey Facility)
Docket No. 40-7102-MLA

Gentlemen:

On page 1 of its Fifteenth Status Report to the Board dated October 1, 2009, counsel for the NRC Staff in the above captioned proceeding states: "On September 23, 2009, the NRC and the State of New Jersey finalized an agreement pursuant to Section 274 of the Atomic Energy Act of 1954. Under the agreement New Jersey assumed certain portions of the NRC's regulatory authority effective September 30, 2009. New Jersey's regulatory authority now includes authority over source materials, which are regulated under 10 C.F.R. Part 40. This authority extends to Shieldalloy's Newfield facility, for which Shieldalloy holds a Part 40 license." (Footnotes omitted).

In order to fully apprise the Board of the status of Shieldalloy's license for its Newfield, New Jersey facility, we are writing to advise that Shieldalloy has initiated

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an action in the U.S. District Court for the District of New Jersey seeking to enjoin the application of New Jersey's regulations to the Newfield facility. Shieldalloy Metallurgical Corp. v. New Jersey, Civil Action No. 09-04375, filed on August 25, 2009 (Irenas, J.). In its complaint, copy of which is attached, Shieldalloy seeks, among other relief, a judgment (a) declaring that Shieldalloy is entitled to decommission the Newfield site by capping slag and baghouse dust on-site in accordance with its decommissioning plan; (b) enjoining New Jersey and the New Jersey Department of Environmental Protection (NJDEP) from ordering or otherwise requiring Shieldalloy to remove slag or baghouse dust from the Newfield site and dispose of it off-site; and (c) directing New Jersey and the NJDEP to permit Shieldalloy to decommission the Newfield Site by capping the slag and baghouse dust in accordance with Shieldalloy's current decommissioning plan (a copy of which was transmitted to this Board on August 31, 2009).

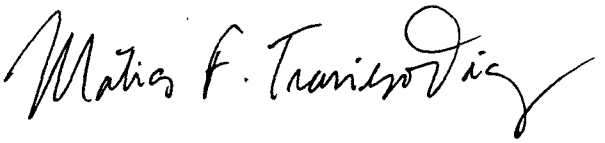
In addition, on September 14, 2009 Shieldalloy filed suit against the State of New Jersey in the Appellate Division of the New Jersey Superior Court, challenging the validity of the regulations issued by the NJDEP that are intended to be applied to certain NRC licensees located in New Jersey, including Shieldalloy's Newfield facility, upon New Jersey becoming an Agreement State. In re N.J.A.C. 7:28, Dkt. No. A-278-09 (N.J. Sup. Ct., App. Div.). In its suit, Shieldalloy asserts that the state adopted the NJDEP regulations in a manner inconsistent with the State Administrative Procedures Act, and failed to conduct mandatory regulatory and economic impact studies. The filing also declares that requirements in the state's regulations are arbitrary and capricious, that the state went beyond its authority in enacting them, and that the regulations are inconsistent with the state's "Brownfields Act." A copy of this action is enclosed.

Shieldalloy is currently reviewing the materials offered by the NRC Staff in support of the NRC's decision to enter into an Agreement State agreement with New Jersey. Our preliminary assessment is that the decision was based on a flawed evaluation of New Jersey's radiation control program and on the inadequate consideration of the comments submitted by Shieldalloy on June 11, 2009 describing why New Jersey's radiation control program for NRC- licensed facilities is New Jersey is not compatible with the NRC's regulatory program. Shieldalloy is evaluating possible future courses of action in light of the NRC's decision.

Finally, we note that transfer of jurisdiction over the Newfield site from the NRC to the NJDEP would deprive the NRC Staff of the opportunity to apply its considerable expertise and knowledge of this site – acquired through years of interaction with the licensee – at a point when a very detailed decommissioning plan has been prepared and submitted, after thousands of man-hours of effort and in consultation with the Staff, by Shieldalloy. Such a transfer of jurisdiction would

necessarily entail additional, probably protracted, delays in the ultimate resolution of issues involving the decommissioning of the Newfield site, a situation about which this Board has expressed legitimate concerns. See Memorandum (Bringing Matter of Concern to Commission's Attention), LBP-08-08, 67 NRC 409, 419-20 (2008).

Sincerely,



Matias F. Travieso-Diaz
Counsel for SMC

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing letter and enclosures thereto were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid; where indicated by an asterisk, they were also served by electronic mail, this 5th day of October, 2009.

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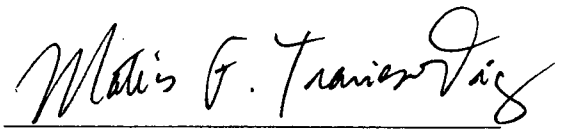

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Attorneys for Plaintiff

SHIELDALLOY METALLURGICAL CORPORATION, a Delaware corporation, Plaintiff, vs. STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, and MARK N. MAURIELLO, IN HIS CAPACITY AS ACTING COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY, Defendants.	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CIVIL ACTION No. _____ **COMPLAINT**

Shieldalloy Metallurgical Corporation ("Shieldalloy" or "Plaintiff"), by way of Complaint against the State of New Jersey, Department of Environmental Protection ("NJDEP," or "the Department") and Mark N. Mauriello, in his capacity as Acting Commissioner of the NJDEP ("Commissioner Mauriello" or "the Commissioner") (collectively, "the Defendants"), says:

PARTIES

1. Plaintiff Shieldalloy is a Delaware corporation having its principal place of business located at 35 South West Boulevard, Newfield, New Jersey.

2. Defendant NJDEP is the executive agency to which enforcement of the environmental laws of New Jersey has been delegated, and which may seek to compel Plaintiff's compliance with said laws.

3. Defendant Mark N. Mauriello is the Acting Commissioner of NJDEP and may authorize the Department to compel Plaintiff's compliance with the environmental laws of New Jersey.

JURISDICTION AND VENUE

4. This Complaint seeks declaratory judgment and other relief against the Defendants pursuant to federal and/or state common law causes of action and the federal Declaratory Judgment Act, 28 U.S.C. §2201.

5. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 because the federal common law claims address important federal interests related to the federal Atomic Energy Act of 1974, as amended, 42 U.S.C. § 2011 et seq. ("Atomic Energy Act") and the disposition of federally regulated radioactive material.

6. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §1334(b) because this proceeding is related to the voluntary petitions for relief under Title 11 of the Unites States Bankruptcy Code that Plaintiff filed with the United States Bankruptcy Court for the Southern District of New York in 1993 (Chapter 11 Case") and, in particular, to a settlement agreement therein dated December 27, 1996 ("Settlement Agreement"). The issues presented by this case affect the implementation and enforcement of the Settlement Agreement, including the financial assurances established therein.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b).

STATEMENT OF FACTS

Background

8. Shieldalloy owns a former metal alloy and specialty metal manufacturing facility located in Newfield, New Jersey (the "Newfield Site"). It conducted manufacturing operations at this facility from approximately the 1950s through 2006.

9. As part of its manufacturing operations, Shieldalloy processed pyrochlore, a naturally occurring ore containing greater than 0.05% of natural uranium and thorium. Use and possession of materials, such as pyrochlore, that contain uranium and thorium requires a "Source Material" license issued by the United States Nuclear Regulatory Commission ("NRC"). Accordingly, in 1963, Shieldalloy sought and obtained a license from the Atomic Energy Commission ("AEC"), predecessor to the NRC, (License SMB-743) ("the License") to ship, receive, possess, use and store Source Material at the Newfield Site. The License has been modified and/or renewed continuously since 1963, including by the NRC commencing in 1977.

10. Shieldalloy's processing of pyrochlore produced various by-products, including "slag" and baghouse dust. The slag and baghouse dust also contain uranium and/or thorium in amounts requiring an NRC Source Material license. The slag and baghouse dust remain stored at the Newfield Site pursuant to the License.

Decommissioning Plan for the Newfield Facility

11. NRC regulations require licensees, such as Shieldalloy, to develop and fund a decommissioning plan for licensed facilities where Source Material is stored.

12. In November 1992, Shieldalloy informed the NRC that its decommissioning plan for the Newfield Site would provide for safe and permanent on-site capping of slag and baghouse dust on an approximately 12-acre portion of the 68-acre Newfield Site.

13. The permanent, licensed storage of slag and baghouse dust is permitted by NRC regulations and guidelines because it is a safe, reliable and cost-effective way to decommission source material.

14. In connection with the NRC's review of Shieldalloy's then-pending request to renew its License, Shieldalloy filed a Conceptual Decommissioning Plan for the Newfield Site in April 1993, which proposed the capping of slag and baghouse dust on-site.

15. Since approximately 2000, Shieldalloy has been working to obtain approval of the final decommissioning plan for the Newfield Site, and has filed three further revisions to the plan – in 2002, 2005 and 2006 – in response to requests by the NRC for additional information.

16. In 2001, Shieldalloy formally notified the NRC of its cessation of metal alloy manufacturing operations using Source Material at the Newfield Site, thus requiring decommissioning of the facility to commence.

Bankruptcy Settlement

17. In or about September 1993, both Shieldalloy and its parent corporation, Metallurg, Inc. ("Metallurg"), filed with the United States Bankruptcy Court for the Southern District of New York voluntary petitions for relief under Title 11 of the Unites States Bankruptcy Code (the "Chapter 11 Cases"). The bankruptcy

filings were precipitated, among other reasons, by the significant environmental liabilities associated with Shieldalloy's operations.

18. On behalf of the NJDEP, the State of New Jersey filed proofs of claim in the Chapter 11 Cases alleging the liability of Shieldalloy and Metallurg to New Jersey under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. ("CERCLA"), for hazardous substances present at the Newfield Site.

19. The United States of America, on behalf of the United States Environmental Protection Agency ("USEPA"), the United States Department of Interior ("USDOI") and the NRC, also filed proofs of claim alleging, inter alia, the liability of Shieldalloy and Metallurg to the United States under CERCLA, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq. ("RCRA"), and the Atomic Energy Act.

20. In or about December 1996, Shieldalloy, Metallurg, the State of New Jersey and the United States entered into the Settlement Agreement to settle the claims filed by the State of New Jersey and the United States, a copy of which is annexed hereto as Exhibit A.

21. The Settlement Agreement addresses the environmental liabilities of Shieldalloy to the NJDEP, USEPA and NRC, specifically identifying a variety of environmental remediation projects to be performed at the Newfield Site, including "NRC Slag Pile Remediation." See Settlement Agreement, ¶14.

22. "NRC Slag Pile Remediation," as identified in the Settlement Agreement, is the plan of Shieldalloy to decommission the Newfield Site by permanently capping the slag and baghouse dust on-site.

23. Shieldalloy's 1993 Conceptual Decommissioning Plan is the basis on which claims for "NRC Slag Pile Remediation" were resolved and settled by all parties in the bankruptcy proceeding.

24. At the time of the bankruptcy proceeding, the parties estimated the cost to complete the decommissioning plan to cap the slag and baghouse dust at the Newfield Site to be $5 million. This amount is set forth in the Settlement Agreement agreed to by the NJDEP and the United States. See Settlement Agreement, ¶14.

25. Pursuant to the Settlement Agreement, Shieldalloy posted financial assurances in the amount of $5 million to assure the performance of its decommissioning plan. This amount included $750,000 previously posted to the NRC and an additional $4,250,000 in financial assurance posted for the benefit of the NJDEP and the United States. See Settlement Agreement, ¶¶16.A, 16.C, and 26.

26. In accordance with the Settlement Agreement and applicable regulatory requirements, Shieldalloy continued to develop its decommissioning plan following approval of its Chapter 11 plan of reorganization.

27. Shieldalloy has spent approximately $5 million to date in furtherance of the plan to cap the slag and baghouse dust on-site and to further develop the elements of the Conceptual Decommissioning Plan provided to the NRC in 1993, as part of its proposed final decommissioning plan. These costs include approximately $2.1 million paid to the NRC in oversight costs to pay for the agency's review of and comment upon the decommissioning plan.

28. Shieldalloy currently estimates the cost to implement its decommissioning plan to be approximately $7 million in capital costs plus $4.5 million, in net present value, to monitor and maintain the cap over the slag and baghouse dust for one thousand (1,000) years.

NJDEP and the Decommissioning Plan

29. The State of New Jersey and the NJDEP were notified on or before December 1992 of Shieldalloy's plan to decommission the Newfield Site by permanently capping the slag and baghouse dust.

30. The Department formally was presented with the Conceptual Decommissioning Plan on or before November 30, 1993, along with a request from the NRC to participate as a cooperating agency in the NRC's environmental review of Shieldalloy's plan.

31. The NRC's November 30, 1993 letter to the NJDEP included a copy of a Federal Register notice issued by the NRC of its intent to review Shieldalloy's decommissioning plan in order, among other reasons, to resolve the company's decommissioning liability so that Shieldalloy's Chapter 11 reorganization could be completed. See also 58 Fed. Reg. 62387 (Nov. 26, 1993). The notice provided:

> In September 1993, Shieldalloy and its parent company, Metallurg Inc., filed for protection from creditors under Chapter 11 of the Bankruptcy Code. Decommissioning the Newfield facility, and another licensed site in Cambridge, Ohio, represent two of Shieldalloy's largest and unquantified liabilities, which must be resolved as part of the company's restructuring activities under Chapter 11. To complete restructuring in a timely manner, Shieldalloy has requested NRC to determine whether onsite stabilization and disposal of radioactive waste is acceptable for decommissioning the Newfield facility.

58 Fed. Reg. 62388.

32. In response to the NRC's letter, the Department declined to participate as a cooperating agency, but offered to work informally with the NRC to address any questions raised by Shieldalloy's decommissioning plan.

33. Between approximately 1994 and 1997, the NJDEP participated as a party-creditor in the Chapter 11 Cases and in the negotiation and settlement of the environmental liabilities addressed during the proceeding.

34. During the bankruptcy proceeding, the Conceptual Decommissioning Plan formed the basis of discussion, negotiation and resolution of the plan to decommission the Newfield Site.

35. Prior to and following approval of Shieldalloy's Chapter 11 plan of reorganization, the NJDEP has participated in and provided input to the discussions between the NRC and Shieldalloy on the preparation of the final decommissioning plan for the Newfield Site.

36. By its conduct prior to, during and after the bankruptcy proceedings, and by virtue of the Settlement Agreement, the NJDEP reviewed, accepted and agreed to Shieldalloy's plan to decommission the Newfield Site by permanently capping the slag and baghouse dust on-site.

NJDEP Requests Delegation Authority

37. By letter dated October 16, 2008, New Jersey applied to the NRC for delegation of the NRC's authority pursuant to the Atomic Energy Act to regulate certain NRC-licensed radioactive materials in New Jersey, including the slag and baghouse dust stored by Shieldalloy at the Newfield Site.

38. In order to prepare to accept this authority from the NRC, on September 15, 2008, the NJDEP adopted regulations to implement its proposed

regulation of, among other radioactive material, Source Material. See 40 N.J.R. 5196(b) (the "Agreement State Rules").

39. According to the Department, the Agreement State Rules currently are effective, but will not become "operative" until the NRC approves the NJDEP's request for delegation of regulatory authority. The NRC currently is evaluating New Jersey's request, having accepted public comment on the proposal. See, e.g., 74 Fed. Reg. 25823 (May 27, 2009)

40. Upon information and belief, many of the NJDEP's Agreement State Rules are aimed specifically and uniquely at the Shieldalloy Newfield Site. The Department acknowledged in its rulemaking that certain requirements affect only "one facility in the State." 40 N.J.R. 5196, 5199 (Sept. 15, 2008)

41. Upon information and belief, the NJDEP's regulations would prevent the Newfield Site from being decommissioned in accordance with Shieldalloy's decommissioning plan and the permissible NRC decommissioning standards promulgated at 10 C.F.R. Part 20.

42. In December 2008 and again in May 2009, representatives of the NJDEP met with and advised Shieldalloy that, if the NRC delegates to New Jersey its authority to regulate Source Material, the Commissioner will authorize the Department to order, and the Department will order Shieldalloy to remove all slag and baghouse dust from the Newfield Site and dispose of the materials offsite.

43. By letter dated December 23, 2008, NJDEP Assistant Commissioner Nancy Wittenberg confirmed that the Department will require Shieldalloy to remove the slag and baghouse dust from the Newfield Site and transport them off-site for disposal.

44. Upon information and belief, there is only one facility in the United States, located in Utah, that is capable of accepting the slag and baghouse dust for disposal, and the NJDEP is aware of this fact.

45. Shieldalloy estimates the total cost of removal, transportation and disposal of the slag and baghouse dust at the Utah facility, and further remediation of the Newfield Site to meet unrestricted release criteria, to exceed $56 million. Shieldalloy does not have funds or assets sufficient to pay for decommissioning of the Newfield Site in this manner.

46. The Defendants' actions and requirements for decommissioning will affect the use and administration of the financial assurances required and established by the Settlement Agreement.

FIRST COUNT
(Promissory Estoppel)

47. Shieldalloy repeats the allegations in paragraphs 1 through 46 as if set forth herein.

48. The NJDEP's conduct prior to, during and subsequent to the Chapter 11 Cases with respect to Shieldalloy's decommissioning plan, and the Department's entry into the Settlement Agreement, constitute a promise to Shieldalloy to allow the Company to permanently cap the slag and baghouse dust on-site.

49. The NJDEP knew or should have known that Shieldalloy would rely on the Department's acceptance of and agreement to this method for addressing the disposal of slag and baghouse dust in completing Shieldalloy's reorganization plan in the Chapter 11 Cases and thereafter.

50. Shieldalloy reasonably relied upon the NJDEP's acceptance of and agreement to the decommissioning plan.

51. In reliance, Shieldalloy has expended approximately $5 million to prepare the final decommissioning plan with the supervision of the NRC and the knowledge and input of the NJDEP.

52. If the NRC delegates its authority to New Jersey, and the Defendants require the removal and off-site disposal of the slag and baghouse dust, Shieldalloy will be damaged and injustice would result.

WHEREFORE, Shieldalloy demands judgment against the Defendants:

(a) Estopping the Defendants from requiring Shieldalloy to remove the slag and baghouse dust and dispose of them off-site; and

(b) Such other relief as the Court deems just and proper.

SECOND COUNT
(Equitable Estoppel)

53. Shieldalloy repeats the allegations in paragraphs 1 through 52 as if set forth herein.

54. Upon information and belief, by its conduct prior to, during and subsequent to the Chapter 11 Cases and by entering into the Settlement Agreement, the NJDEP affirmatively concealed or misrepresented its intention with respect to the plan for decommissioning of the Newfield Site.

55. Shieldalloy reasonably relied upon the NJDEP's acceptance of and agreement to Shieldalloy's decommissioning plan evidenced by the Department's

conduct prior to, during and subsequent to the Chapter 11 Cases and its entry into the Settlement Agreement.

56. Following completion of the bankruptcy plan of reorganization, Shieldalloy has expended approximately $5 million to prepare the final decommissioning plan.

57. If the NRC delegates its authority to New Jersey, and the Defendants require the removal and off-site disposal of the slag and baghouse dust, Shieldalloy will be damaged.

58. NJDEP misrepresentations during the Chapter 11 Cases and in the Settlement Agreement, and its failure to honor its agreements as evidenced by the December 23, 2008 letter from Assistant Commissioner Wittenberg, constitute affirmative misconduct by the Department.

WHEREFORE, Shieldalloy demands judgment against the Defendants:

(a) Estopping the Defendants from requiring Shieldalloy to remove the Slag and baghouse dust and dispose of them off-site; and

(b) Such other relief as the Court deems just and proper.

THIRD COUNT
(Breach of Contract)

59. Shieldalloy repeats the allegations in paragraphs 1 through 58 as if set forth herein.

60. The Settlement Agreement, and other conduct and promises of the NJDEP prior to, during and subsequent to the Chapter 11 Cases, constitute a valid and binding contractual agreement between Shieldalloy and the NJDEP.

61. Pursuant to this agreement, Shieldalloy is entitled to decommission the Newfield Site by permanently capping slag and baghouse dust on-site, and the Defendants are obligated to accept this decommissioning method proposed by Shieldalloy.

62. The Department has failed to comply with and is in breach of its obligations under the agreement(s), causing damage and irreparable injury to Shieldalloy.

63. If the NRC delegates its authority to the NJDEP, and the Defendants require the removal and off-site disposal of the slag and baghouse dust, Shieldalloy will be further damaged.

WHEREFORE, Shieldalloy demands judgment against the Defendants for:

(a) An order requiring specific performance of the NJDEP's agreement to the on-site capping of slag and baghouse dust as set forth in Shieldalloy's decommissioning plan;

(b) Damages, costs and expenses incurred by Shieldalloy in connection with the Defendants' conduct and the Department's breach of the

Settlement Agreement and its other promises, including without limitation attorney's fees and costs of suit; and

(c) Such other relief as the Court deems just and proper.

FOURTH COUNT
(Breach of Duty of Good Faith and Fair Dealing)

64. Shieldalloy repeats the allegations in paragraphs 1 through 63 as if set forth herein.

65. The Defendants are obligated to act with good faith in the performance and enforcement of the Settlement Agreement and in its other promises to and agreements with Shieldalloy.

66. The NJDEP's objection to the decommissioning method proposed in Shieldalloy's decommissioning plan breached the Department's obligation of good faith and fair dealing.

67. As a direct and proximate result of the NJDEP's breaches, the Department has caused and is continuing to cause damages and irreparable injury to Shieldalloy.

68. If the NRC delegates its authority to the NJDEP, and the Defendants require the removal and off-site disposal of the slag and baghouse dust, Shieldalloy will be further damaged.

WHEREFORE, Shieldalloy demands judgment against the Defendants for:

(a) An order requiring specific performance of the NJDEP's agreement to the on-site capping of slag and baghouse dust as set forth in Shieldalloy's decommissioning plan;

(b) Damages, costs and expenses incurred by Shieldalloy in connection with the Defendants' conduct and the Department's breach of the Settlement Agreement and its other promises, including without limitation attorney's fees and costs of suit; and

(c) Such other relief as the Court deems just and proper.

FIFTH COUNT
(Public Nuisance)

69. Shieldalloy repeats the allegations in paragraphs 1 through 68 as if set forth herein.

70. Removal of the slag and baghouse dust from the Newfield Site and disposal off-site would require a massive construction effort. This would involve, among other things, use of heavy equipment and an industrial crusher for many months to crush tens of thousands of tons of slag into fine particles in order to load the slag material in railroad cars for the transport of the radioactive materials, and to meet the size and shape requirements of the Utah facility.

71. The crushing of the slag from the Newfield Site is extremely noisy and would generate radioactive dust and other pollutant emissions, exposing the public near the Newfield Site, as well as Shieldalloy employees and contractors, to airborne radioactive dust, air pollution and other impacts. Radioactive dust also would

potentially be deposited on nearby lands and waters creating additional risks. The crushing of slag into fine particles, as a consequence of the NJDEP's requirement to move the material, gives rise to the risk of deposition and health threats caused by the ingestion of airborne radioactive dust.

72. The crushed slag and baghouse dust must be transported over thousands of miles of rail across the United States to reach the Utah facility.

73. After the slag has been crushed and transported across the country along with the baghouse dust, the material is to be disposed of and capped in Utah in a manner substantially similar to the capping method that Shieldalloy proposes to use on-site at the Newfield Facility.

74. The construction work and transportation associated with the removal activity would create unnecessary safety concerns, and unnecessary risk of accidents, discharges and fugitive emissions from the transportation vessels, affecting the public exposed near the Newfield Site and across the transportation routes.

75. These substantial interferences are unreasonable in view of the federal policy of the NRC that would allow the safe, reliable and cost-effective capping of the slag and baghouse dust on the Newfield Site, the need for uniformity in the handling of licensed radioactive materials across the nation, and the lack of any public health or environmental benefit from the removal and off-site disposal of the slag and baghouse dust.

76. Shieldalloy would suffer particular injury and damages as a result of these unreasonable interferences: its on-site employees and contractors would be directly exposed to emissions and impacts of construction and transportation, the company's site maintenance and other operations would be unreasonably disturbed,

road and rail transportation near the Newfield Site would be disrupted affecting its employees and site operations, it would be denied its right to the use and enjoyment of its property, and it would suffer other damages.

77. Shieldalloy also would be forced to bear the estimated $56 million cost of activity that, upon information and belief, would cause and constitute a public nuisance.

WHEREFORE, Shieldalloy demands judgment against the Defendants for:

(a) An injunction prohibiting the Defendants from ordering or otherwise requiring Shieldalloy to remove slag or baghouse dust from the Newfield Site and dispose of it off-site;

(b) Damages, costs and expenses incurred by Shieldalloy, including without limitation attorney's fees and costs of suit; and

(c) Such other relief as the Court deems just and proper.

SIXTH COUNT
(Declaratory Judgment)

78. Shieldalloy repeats the allegations in paragraphs 1 through 77 as if set forth herein.

79. Plaintiff brings this count under the provisions of the federal Declaratory Judgment Act, 28 U.S.C. § 2201, and the federal and state common law for a declaration of rights and legal relations of the parties with respect to the matters set forth herein.

80. Shieldalloy has reasonably relied upon the representations, promises and agreements of the NJDEP, as evidenced by the Defendants' conduct and the Department's entry into the Settlement Agreement, that decommissioning of the Newfield Site by Shieldalloy would consist of capping the slag and baghouse dust on-site.

81. The Defendants are now objecting to Shieldalloy's decommissioning plan, and requiring the removal and off-site disposal of the slag and baghouse dust by Shieldalloy.

82. There exists between Shieldalloy and the Defendants a substantial, bona fide, actual and justiciable controversy regarding the decommissioning of the Newfield Site.

83. Considerations of justice, practicality and wise judicial administration favor declaratory relief to establish the rights among the parties and the appropriate and efficient decommissioning of the Newfield Site.

84. Shieldalloy is entitled to a judicial declaration of its rights and liabilities with respect to the decommissioning of the Newfield site. Declaratory relief will serve a useful purpose, and there is no adequate remedy available to Shieldalloy, other than as requested herein, by which this controversy may be resolved.

WHEREFORE, Shieldalloy respectfully requests that the Court adjudge and declare the following:

(a) Based upon the Settlement Agreement, and other agreements, representations and promises by the NJDEP, Shieldalloy is entitled to decommission the Newfield Site by capping slag and baghouse dust, the method identified in its decommissioning plan;

(b) The Defendants are enjoined from ordering or otherwise requiring Shieldalloy to remove slag or baghouse dust from the Newfield Site and dispose of it off-site;

(c) Shieldalloy is entitled to an award of any damages, costs and expenses incurred by Shieldalloy in connection with the Defendants' improper conduct and the Department's breach of the Settlement Agreement and its other promises, including without limitation attorney's fees and costs of suit; and

(d) Granting such other and further relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Shieldalloy respectfully requests a judgment in its favor against the Defendants:

(a) Declaring that Shieldalloy is entitled to decommission the Newfield Site by capping slag and baghouse dust on-site in accordance with its decommissioning plan;

(b) Enjoining the Defendants from ordering or otherwise requiring Shieldalloy to remove slag or baghouse dust from the Newfield Site and dispose of it off-site;

(c) Directing the Defendants to permit Shieldalloy to decommission the Newfield Site by capping the slag and baghouse dust in accordance with Shieldalloy's decommissioning plan;

(d) Awarding damages, costs and expenses incurred by Shieldalloy in connection with the Defendants' conduct and the Department's breach of the Settlement Agreement and its other promises and agreements, including without limitation attorney's fees and costs of suit; and

(e) Granting such other and further relief as the Court deems just and proper.

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Attorneys for Plaintiff Shieldalloy
Metallurgical Corporation

By: Dennis J. Krumholz

Dennis J. Krumholz
A Member of the Firm

Dated: August 25, 2009

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

The undersigned hereby certifies that, with respect to the matter in controversy herein, neither Plaintiff nor Plaintiff's attorney is aware of any other action pending in any court, nor of any pending arbitration nor administrative proceeding, to which this matter is subject, except the following:

> *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning of the Newfield, New Jersey Facility), CLI-09-01, __ NRC __ (2009).

Dennis J. Krumholz

Dennis J. Krumholz

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Attorneys for Plaintiff Shieldalloy Metallurgical Corporation

Dated: August 25, 2009

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
METALLURG, INC. and SHIELDALLOY METALLURGICAL CORPORATION,	:	Nos. 93 B 44468 (JLG) 93 B 44469 (JLG)
Debtors.	:	(Jointly Administered)

SETTLEMENT AGREEMENT OF ENVIRONMENTAL CLAIMS AND ISSUES BY AND BETWEEN THE DEBTORS AND THE UNITED STATES OF AMERICA AND THE STATE OF NEW JERSEY

WHEREAS Metallurg, Inc., ("Metallurg"), a New York corporation, and Shieldalloy Metallurgical Corporation ("Shieldalloy"), a New York corporation (collectively, the "Debtors"), filed with the United States Bankruptcy Court for the Southern District of New York (the "Court") voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") on September 2, 1993 (the "Petition Date") (collectively, the "Chapter 11 Cases").

WHEREAS the State of New Jersey ("New Jersey"), on behalf of the New Jersey Department of Environmental Protection ("NJDEP"), filed Proofs of Claims numbered 91, 96, 357 and 358, respectively (the "New Jersey Proofs of Claim"), in the Chapter 11 Cases on or about August 12, 1994, alleging, *inter alia*, liability of the Debtors to New Jersey under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

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("Spill Act"), and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

WHEREAS New Jersey alleged in the New Jersey Proofs of Claim, inter alia, that the Debtors were jointly and severally liable for response costs incurred and to be incurred by New Jersey in the course of responding to releases and threatened releases of hazardous substances into the environment.

WHEREAS the United States of America (the "United States"), on behalf of the United States Environmental Protection Agency ("EPA"), the United States Department of the Interior ("DOI"), and the United States Nuclear Regulatory Commission ("NRC"), filed proofs of claim in the Chapter 11 Cases on or about August 14, 1994 (the "Federal Proofs of Claim"), alleging, inter alia, liability of the Debtors to the United States under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. ("CERCLA"), the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq. ("RCRA") and the Atomic Energy Act of 1974, as amended, 42 U.S.C. § 2011 et seq. (the "Atomic Energy Act").

WHEREAS the United States alleged in the Federal Proofs of Claim, inter alia, that the Debtors were jointly and severally liable for response costs incurred and to be incurred by the United States in the course of responding to releases and

threatened releases of hazardous substances into the environment from certain Sites.

WHEREAS on or about February 18, 1994, the United States of America, through its Department of Treasury, Internal Revenue Service (the "IRS"), filed a Proof of Claim against Metallurg on account of due and owing, but unpaid, federal withholding, Federal Insurance Contribution Act ("FICA") and income tax liabilities, together with prepetition interest and penalties accruing thereon, in the total amount of $9,742,894.69 (the "IRS Prepetition Claim").

WHEREAS Metallurg is entitled to an income tax refund from the United States for the 1989 tax year in the total amount of $723,714 (the "Tax Refund Amount").

WHEREAS the Tax Refund Amount consist of two components: (1) $594,249 owed to Metallurg for the 1989 Tax Year, and (2) $129,465 owed to Frankel Metal Co., a non-debtor subsidiary of Metallurg, for the tax period ending July 31, 1989 which amount shall be paid to Metallurg.

WHEREAS after a review of the IRS Prepetition Claim, the IRS has determined that Metallurg is indebted to the United States on account of prepetition federal tax liabilities in the total amount of $105,847.00 (the "Tax Amount Due").

WHEREAS unless the automatic stay imposed by Section 362(a)(7) of the Bankruptcy Code is modified to permit the

Government to offset the Tax Refund Amount against the Tax Amount Due, the United States may not effectuate such a setoff.

WHEREAS the United States and Metallurg have agreed that, subject to the Court's approval, the United States will offset the Tax Refund Amount against the Tax Amount Due.

WHEREAS as a result of such setoff, the Debtors' prepetition federal tax liabilities shall be satisfied in full, and the principal amount of the Tax Refund Amount shall be reduced to $618,367 (the "Net Tax Refund Amount").

WHEREAS Metallurg owns all of the outstanding stock of Shieldalloy.

WHEREAS Shieldalloy owns and operates a metal alloy and specialty metals manufacturing facility located in Newfield, New Jersey (the "Newfield site").

WHEREAS on October 5, 1988, Debtors and the NJDEP entered into an Administrative Consent Order which, as amended in August 1989 and September 1992, requires the cleanup and/or remediation of hazardous substances and pollutants known or subsequently discovered at the Newfield site.

WHEREAS Shieldalloy owns and operates a metal alloy and specialty metals manufacturing facility in Cambridge, Ohio (the "Cambridge site").

WHEREAS in the absence of this Settlement Agreement, the Debtors would have objected to the New Jersey Proofs of Claim.

WHEREAS the Debtors and New Jersey desire to resolve the New Jersey Proofs of Claim including certain alleged environmental liabilities of the Debtors and the amount of financial assurances to be posted by the Debtors in connection with the Newfield site.

WHEREAS in the absence of this Settlement Agreement, the Debtors would have objected to the Federal Proofs of Claim.

WHEREAS the Debtors and the United States desire to resolve the Federal Proofs of Claim, including certain alleged environmental liabilities of the Debtors and the amount of financial assurances to be posted by the Debtors in connection with the Newfield and Cambridge sites.

WHEREAS in exchange for Shieldalloy's agreement to post certain financial assurance for the cleanup and remediation of the Newfield site, and the other terms set forth below in this Settlement Agreement, the United States will withdraw the Federal Proofs of Claim to the extent that they assert claims for environmental response costs and natural resource damages assessment to be incurred by the United States in the future at the Newfield site.

WHEREAS in exchange for Shieldalloy's agreement to post certain financial assurance for the cleanup and remediation of the Cambridge site pursuant to the entry of a final Consent Order in the action entitled State of Ohio v. Shieldalloy Metallurgical Co., Guernsey County Court of Common Pleas, Case No. 95-CV-242,

and the other terms set forth in that final Consent Order and below in this Settlement Agreement, the United States will withdraw the Federal Proofs of Claim to the extent that they assert claims for environmental response and natural resource damages assessment costs to be incurred by the United States in the future at the Cambridge site.

WHEREAS in consideration of, and in exchange for, the promises and covenants herein, and intending to be legally bound hereby, the Debtors and New Jersey through their authorized representatives hereby agree to the terms and provisions of this Settlement Agreement.

WHEREAS in consideration of, and in exchange for, the promises and covenants herein, and intending to be legally bound hereby, the Debtors and the United States through their authorized representatives hereby agree to the terms and provisions of this Settlement Agreement.

WHEREAS settlement of the matters governed by this Settlement Agreement is in the public interest and an appropriate means of resolving these matters.

NOW THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

DEFINITIONS

In this Settlement Agreement, the following terms shall have the following meanings:

a. "Administrative Expense Claim" has the meaning as defined in the Second Amended Plan of Reorganization.

b. "Allowed General Unsecured Claim" shall have the meaning as defined in the Second Amended Plan of Reorganization.

c. "Allowed Claim" shall have the meaning as defined in the Second Amended Plan of Reorganization.

d. "Atomic Energy Act" shall mean the Atomic Energy Act of 1974, 42 U.S.C. § 2011 et seq., as now in effect or hereinafter amended.

e. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as now in effect or hereinafter amended.

f. "Claims" has the meaning as defined in the Second Amended Plan of Reorganization.

g. "Disclosure Statement" shall mean the disclosure statement filed by the Debtors with the Bankruptcy Court on May 15, 1996, as may be amended from time to time.

h. "DOI" shall mean the United States Department of the Interior and any legal successor thereto.

i. "Effective Date" shall have the meaning as defined in the Third Amended Plan of Reorganization.

j. "Environmental Projects" shall mean those projects to be performed pursuant to the NJ ACO; provided, however, that nothing in this Settlement Agreement shall affect any additional obligations of the Debtors under the NJ ACO.

k. "EPA" shall mean the United States Environmental Protection Agency and any legal successor thereto.

l. "Federal Proofs of Claim" shall mean all of the proofs of claim filed by the United States on behalf of the EPA, DOI and NRC in the Chapter 11 Cases.

m. "Final Order" shall mean any order of the Court as to which the time to appeal, petition for certiorari, or move for reargument or a rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, reargue or rehear shall have been waived, in writing in form and substance satisfactory to the Debtors. Additionally, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order of the Court shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired.

n. "LOC Trust Account" shall mean that certain Mellon Bank, N.A. account no. 102-71K maintained by Shieldalloy for the

benefit of the NJDEP pursuant to the Administrative Consent Order dated October 5, 1988 as amended in August 1989 and September 1992, which includes (1) the cash proceeds derived from the letter of credit no. 693 issued by National Westminster Bank PLC for the benefit of NJDEP, (2) the letter of credit in the amount of $8.0 million issued by Deutsche Bank for the benefit of NJDEP, or the cash proceeds (3) the letter of credit in the amount of $200,000 issued by Midlantic Bank for the benefit of the NJDEP or the cash proceeds, and (4) all accrued earnings in respect thereof.

o. "NJ ACO" shall mean the Administrative Consent Order dated October 5, 1988, as amended in August 1989 and September 1992, entered into by the Debtors and the NJDEP.

p. "NPL" shall mean the National Priorities List, 40 C.F.R., Part 300, Appendix B.

q. "New Jersey" shall mean the State of New Jersey and "NJDEP" shall mean the New Jersey Department of Environmental Protection.

r. "Plan of Reorganization" or "Plan" shall mean any Plan of Reorganization that has been confirmed or becomes effective in the Chapter 11 Cases, as it may be amended from time to time.

s . "Preconfirmation" refers to the period of time preceding confirmation of the Plan.

t. "Postconfirmation" refers to the period of time on or after confirmation of the Plan.

u. "Prepetition" refers to the time period prior to September 2, 1993.

v. "Postpetition refers to the time period from and after September 2, 1993.

w. "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as now in effect or hereinafter amended.

x. "Refund Amount" shall mean the excess, if any, when the Revised Predetermined Cost is subtracted from the Posted Financial Assurance Fund.

y. "Second Amended Plan of Reorganization" refers to the certain joint plan of reorganization dated May 24, 1996 as filed by the Debtors with the Bankruptcy Court for the Southern District of New York, as may be amended from time to time.

z. "Settlement Agreement" shall mean this Settlement Agreement.

aa. "Sites" shall mean the Cambridge and Newfield facilities described above.

bb. "United States" shall mean the United States of America.

cc. Environmental terms not otherwise defined shall have the same meaning provided by the governing environmental law at issue.

dd. Bankruptcy terms not otherwise defined shall have the same meaning provided by the Bankruptcy Code or in the Second Amended Plan of Reorganization, as may be further amended.

JURISDICTION

1. The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b), and 33 U.S.C. § 1319.

PARTIES BOUND; SUCCESSION AND ASSIGNMENT

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of New Jersey, the United States, the Debtors and, to the extent provided herein, the Debtors' legal successors and assigns, and any trustee, examiner or receiver appointed in the Chapter 11 Cases. Nothing contained in this Settlement Agreement, including without limitation this paragraph 2, shall be used as evidence that any entity other than the Debtors is a "successor" or "assign" of any of the Debtors.

INTERNAL REVENUE SERVICE PREPETITION CLAIM

3. Subject to the approval of this Court, Metallurg and the United States agree that the automatic stay imposed by Section 362(a)(7) of the Bankruptcy Code shall be modified for the limited purpose and to the limited extent of permitting the United States to offset the Tax Refund Amount against the Tax Amount Due (the "Setoff").

4. As a result of the Setoff, Metallurg's prepetition federal tax liabilities shall be satisfied in full.

5. Within a reasonable time after the entry of this Settlement Agreement, the United States shall refund the Net Tax Refund Amount plus accrued interest, if any, to Metallurg (the "Total Net Tax Refund").

6. The United States hereby withdraws the IRS Prepetition Claim.

ALLOWANCE OF CLAIMS

7. With respect to the treatment of the Federal Proofs of Claim and the New Jersey Proofs of Claim, under the Debtors' Plan of Reorganization the Debtors and the United States and New Jersey agree as follows:

A. Allowance of Federal Claims

a. The United States shall have an Allowed General Unsecured Claim against Shieldalloy in the amount of $178,192.92 for prepetition response costs incurred by EPA at the Newfield site;

b. The United States shall have an Allowed General Unsecured Claim against Shieldalloy in the amount of $41,562.35 for prepetition response costs incurred by EPA at the Cambridge site;

c. The United States shall have an Allowed Administrative Claim against Shieldalloy relating to the Newfield site (i) in the amount of $191,177.23 for EPA's postpetition response costs, and (ii) in the amount of $4,967.00, for DOI's postpetition natural resource damages assessment costs;

d. The United States shall have an Allowed Administrative Claim against Shieldalloy relating to the Cambridge site (i) in an amount of $108,046.73 for EPA's postpetition response costs, and (ii) in the amount of $4,714.67 for DOI's postpetition natural resource damages assessment costs;

e. The NRC shall have an Allowed General Unsecured Claim against Shieldalloy in the amount of $41,613.63 for prepetition licensing fees owed by Shieldalloy in connection with the Newfield and Cambridge sites.

f. The NRC's postpetition licensing fees owed by Shieldalloy in connection with the Newfield and Cambridge sites shall be paid in the ordinary course of business.

g. Within six months after substantial consummation of the Plan of Reorganization, or such other time as the parties may agree, Shieldalloy shall commence the enhancement, restoration and creation of certain wetlands in and around the Newfield site as set forth in the attached July 24, 1996 workplan (Exhibit 1). Shieldalloy shall obtain approval from DOI for the enhancement project to be performed. Completion of the enhancement, restoration and creation of such wetlands shall be in full and complete satisfaction of DOI's prepetition claim for natural resource damages at the Newfield site. New Jersey and DOI agree to utilize their best efforts to coordinate their approvals of the implementation and completion of enhancement project to be performed under this paragraph. Such

enhancement shall not be considered complete absent DOI's certification that the enhancement is complete.

h. Within six months after the earlier of the Effective Date or the entry of a Consent Order for Permanent Injunction to be filed in Ohio State Court, Shieldalloy shall purchase and commence enhancement of certain acreage adjacent to or near the Cambridge site in accordance with the final Consent Order in the action entitled State of Ohio v. Shieldalloy Metallurgical Co., Guernsey County Court of Common Pleas, Case No. 95-CV-242. Shieldalloy shall obtain approval from DOI for the property purchased and the enhancement project to be performed thereon. Completion of the enhancement of such acreage shall be in full and complete satisfaction of DOI's prepetition claim for natural resource damages at the Cambridge site. Such enhancement shall not be considered complete absent DOI's certification that the enhancement is complete.

B. Allowance of New Jersey Claims

i. New Jersey shall have an Allowed General Unsecured Claim against Shieldalloy in the amount of $638,508.20 for prepetition response costs incurred by NJDEP;

j. New Jersey shall have an Allowed General Unsecured Claim against Shieldalloy in the amount of $1,196,982.84 for prepetition New Spill Fund Authorization;

k. New Jersey shall have an Allowed Administrative Claim against Shieldalloy in an amount of not less

than $262,912.12, but not more than $270,242.69, subject to Shieldalloy's receipt and approval of NJDEP Office of Natural Resources cost documentation for the period from September 9, 1993 to April 12, 1996, for NJDEP's postpetition response costs at the Newfield site;

1. Within six months after substantial consummation of the Plan of Reorganization or such other time as the parties may agree, Shieldalloy shall commence the enhancement, restoration and creation of certain wetlands in and around the Newfield site as set forth in the attached July 24, 1996 workplan (Exhibit 1). That wetlands project shall not be considered complete until the NJDEP Office of Natural Resource Damage has certified the completion of the project. In compensation for the claim for natural resource damages for interim lost use of groundwater, New Jersey shall have an allowed general unsecured claim against Shieldalloy in the amount of $1,311,000 Shieldalloy estimates that the total recovery on account of this claim under Class 4F of the Plan will result in a cash distribution to New Jersey on the Effective Date in the amount of $275,000. The completion of these actions shall constitute full satisfaction of New Jersey's pre-petition claims for damages to wetlands, and for interim lost use of groundwater.

ALLOWED CLAIMS FOR PENALTIES

A. Allowance of Federal Penalty Claims

8. The United States shall have an Allowed General Unsecured Claim against Shieldalloy in the amount of $497,000 (the "Civil Penalty Claim") in full resolution and satisfaction of the civil penalty amounts claimed by the United States in United States of America v. Shieldalloy Corporation, Civil Action 86-4016, District of New Jersey. The Civil Penalty Claim shall be entitled to the treatment under the Plan described below in paragraph 10 of this Settlement Agreement.

B. Allowance of New Jersey Penalty Claims

9. New Jersey on behalf of NJDEP shall have an Allowed General Unsecured Claim against Shieldalloy in the amount of $100,000 in full resolution and satisfaction of penalty amounts claimed by New Jersey under the Solid Waste Management Act, N.J.S.A. 13:E-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. ("WPCA"), and in the amount of $38,000 in full resolution and satisfaction of penalty amounts claimed under the WPCA. The Penalty Claim shall be entitled to the treatment under the Plan described below in paragraph 10 of this Settlement Agreement.

TREATMENT OF ALLOWED CLAIMS

10. All Allowed General Unsecured Claims under or pursuant to the terms of this Settlement Agreement shall be classified as "Shieldalloy Environmental Claims" under the Plan,

and in the event the Plan is confirmed by the Bankruptcy Court and the Plan is consummated, the holders of Claims in that Class shall on the Effective Date, or as soon thereafter practicable, receive a cash payment on a pro rata basis equal to the sum of:

i) 50% of the total value of New Common Stock (as stated in the Disclosure Statement) that would have been distributed under the Plan to the holder of such Allowed General Unsecured Claim had it been, as of the Effective Date, the holder of an Allowed Claim in "Class 4C-SMC Unsecured Claims" as defined in the Second Amended Plan of Reorganization; and

ii) 66 2/3% of the principal amount of New Secured Notes that would have been distributed to the holder of such claim on a pro rata basis had it been, as of the Effective Date, the holder of an Allowed Claim in "Class 4C-SMC Unsecured Claims" as defined in the Second Amended Plan of Reorganization; and

iii) the pro rata amount of cash that would have been distributed to the holder of such Allowed General Unsecured Claim had it been, as of the Effective Date, the holder of an Allowed Claim in "Class 4C-SMC Unsecured Claims" as defined in the Second Amended Plan of Reorganization.

In consideration of the cash payout on account of the Allowed General Unsecured Claims as described above in this paragraph, the United States hereby waives any right to receive any Common Stock, any New Secured Notes, or any payment on

account of accrued interest in respect of the New Secured Notes, or any other payments made to holders of Allowed Claims under the Plan whether paid upon consummation of the Plan or anytime thereafter. Further, except as provided for in this Agreement, the United States waives any right to receive any distribution under the Plan on account of the Federal Proofs of Claim filed against Metallurg.

In consideration of the cash payout on account of the Allowed General Unsecured Claims as described above in this paragraph, New Jersey hereby waives any right to receive any Common Stock, any New Secured Notes, or any payment on account of accrued interest in respect of the New Secured Notes, or any other payments made to holders of Allowed Claims whether paid upon consummation of the Plan or anytime thereafter. Further, except as provided for in this Agreement, New Jersey waives any right to receive any distribution under the Plan on account of the New Jersey Proofs of Claim filed against Metallurg.

11. In no event shall the general unsecured claims allowed or to be allowed pursuant to this Settlement Agreement be subordinated to any other allowed general unsecured claims pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including without limitation, Sections 105, 510 and 726(a)(4) of the Bankruptcy Code.

12. The New Jersey Proofs of Claim shall hereby be deemed amended to include all matters addressed in this Settlement Agreement but not already included in the respective Proofs of Claim.

13. The Federal Proofs of Claim shall hereby be deemed amended to include all matters addressed in this Settlement Agreement but not already included in the respective Proofs of Claim.

REQUIRED FINANCIAL ASSURANCE WITH RESPECT TO PERFORMANCE OF THE WORK AT THE NEWFIELD SITE

14. For purposes of determining financial assurance only, Shieldalloy and New Jersey and the United States have identified the Environmental Projects to be performed at the Newfield site. 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 (the "Predetermined Costs") are as follows:

The Environmental Projects	Dollar Estimate (in millions)
Phase II Lagoon Closure	
Remediation of Chromium Hydroxide Sludge (including removal, filter press, shipment and disposal)	$3.3
Removal of Liners, Sampling of Soils, Any Treatment or Removal of Contaminated Soil and Final Grading and Seeding of Area	2.3
Soil Remediation	
Capital Costs	1.8
Operation and Maintenance Costs	.5

Sediment Remediation	
Sediment Capital Costs	1.2
Operation and Maintenance Costs	.4
Groundwater Remediation	9.4
Future Oversight Costs	.7
NRC Slag Pile Remediation	5.0
Wetlands Restoration	.514
Building Decontamination	.3
Stormwater Control	.2

15. The total cost, for financial assurance purposes only, of completing the Environmental Projects (the "Total Predetermined Cost") is $25,614,000.

16. Shieldalloy agrees to provide, create or make available the following fund as financial assurance for the benefit of the United States and New Jersey with respect to the Environmental Projects required to be performed at the Newfield site:

A. At or prior to the Effective Date, Shieldalloy shall establish a cash reserve, letter of credit, or a combination thereof, in the amount of $4.25 million dollars for the benefit of the United States and New Jersey.

B. Within five business days of Metallurg's receipt of the Total Net Tax Refund Amount as provided in paragraph 5 above or the Effective Date of the Plan, whichever is later, Shieldalloy shall (i) deposit cash into a trust account for the benefit of the United States and New Jersey in an amount equal to the Total Net Tax Refund Amount, or (ii) purchase a letter of credit for the benefit of the United States and New

Jersey in an amount equal to the Total Net Tax Refund Amount. The Total Net Tax Refund Amount shall be above and beyond the $4.25 million that Shieldalloy shall provide pursuant to paragraph 16A above.

C. The existing letter of credit previously posted for the benefit of the NRC in connection with the Newfield site in the amount of $750,000 shall be drawn down by the NRC and the proceeds shall be deposited into a separate trust account for the benefit of NRC; provided, however, that at Shieldalloy's option it may obtain a new letter of credit for the benefit of the NRC in the amount of $750,000 in return for the proceeds of the prior letter of credit (the "NRC Financial Assurance Fund").

D. The financial assurance posted by Shieldalloy pursuant to paragraphs 16A-16C above, including any accrued earnings thereon, shall constitute the "Joint Financial Assurance Fund."

17. Shieldalloy previously established three letters of credit for the benefit of the State of New Jersey to secure the cleanup of the Newfield site:

1. Letter of Credit No. 693 issued by National Westminster Bank PLC (which has been drawn down upon and the proceeds reside in Mellon Bank Trust Account No. 102-71K);
2. Letter of Credit No. 839-51177 issued by Deutsche Bank; and

3. Letter of Credit No. 701175 issued by Midlantic Bank in the amount of $200,000.

Neither these letters of credit nor the proceeds derived from these letters of credit or the accrued earnings thereof are assets of the Debtors' estates. These letters of credit and the proceeds and accrued earnings derived from the letters of credit shall not be subject to the continuing jurisdiction of the Court pursuant to this Settlement Agreement but are referred to herein only to describe the parties' agreement with respect to the Joint Financial Assurance Fund. Nothing in this paragraph shall affect the dispute resolution procedures set forth in paragraphs 28-36, including the Bankruptcy Court's jurisdiction, pursuant to paragraph 34, to adjudicate any dispute between EPA and the Debtors as to whether a refund is to be made from the LOC Trust Account. These letters of credit and the proceeds and accrued earnings derived therefrom are referred to herein as the LOC Trust Account.

18. At any time after the Effective Date, Shieldalloy may request written confirmation from the United States and New Jersey that any of the Environmental Projects identified in paragraph 14 of this Settlement Agreement has been completed, and demand the appropriate Refund Amount in accordance with paragraph 19 below. Such request by Shieldalloy shall be accompanied by documentation supporting its claim that the Environmental Project has been completed. Within sixty (60) days of Shieldalloy's

request and demand, EPA and New Jersey and DOI (as to wetlands remediation only) shall each either (i) confirm, in writing, completion of the project and approve the Refund Amount, or (ii) otherwise notify Shieldalloy in writing of their respective positions with respect to the completion of such project and the Refund Amount. If the position of the United States or New Jersey, in their discretion, is that such project has not been completed, then that party shall specify in its response the reasons why it believes the project has not been completed and set forth the remaining Work to be done. EPA and New Jersey and DOI (as to wetlands remediation only) agree to employ their best efforts to coordinate their respective reviews of Shieldalloy's request and demand and expedite their respective responses. If the position of the United States is that an Environmental Project has not been completed, then the dispute resolution procedures set forth in paragraphs 28-36 below shall apply.

19. In the event that the United States and New Jersey both confirm in writing that an Environmental Project described in paragraph 14 above has been completed, the Predetermined Cost for that project (together with the Predetermined Costs for all other completed projects) shall be deducted from the Total Predetermined Cost so as to arrive at a revised Total Predetermined Cost (the "Revised Predetermined Cost") for the remaining Environmental Projects. If the Revised Predetermined Cost is less than the sum of the Joint Financial Assurance Fund

and the LOC Trust Account (the sum of the Joint Financial Assurance Fund and the LOC Trust Account shall hereinafter be referred to as the "Posted Financial Assurance Fund"), then the United States and New Jersey shall cause the excess amount, the "Refund Amount," to be refunded to Shieldalloy in a timely manner such that the Posted Financial Assurance Fund equals the Revised Predetermined Cost. To the extent such refund requires that letters of credit constituting part of the Posted Financial Assurance Fund be reduced, the United States and New Jersey hereby agree to the replacement or reduction of the posted letters of credit in accordance with paragraphs 20-22 with letters of credit in a form and from an institution reasonably acceptable to New Jersey and the United States and in compliance with applicable regulations.

Thus, for example, if the Total Predetermined Cost is $25.614 million, the Posted Financial Assurance Fund is $22.614 million, and the United States and New Jersey certify that Shieldalloy completed the Phase II Lagoon Closure project (which has been assigned a dollar value of $5.6 million for financial assurance purposes only), then the Total Predetermined Cost would be reduced by $5.6 million to arrive at a Revised Predetermined Cost of $20.014 million ($25,614,000 - $5,600,000 = $20,014,000). Because the Posted Financial Assurance Fund would then exceed the Revised Predetermined Cost by $2.6 million ($22,614,000 - $20,014,000 = $2,600,000), the United States and New Jersey would

be required to either (i) allow $2.6 million to be refunded to Shieldalloy in a timely manner, or (ii) allow the letters of credit which constitute part of the Posted Financial Assurance Fund, other than the letter of credit listed in paragraph 16C, to be reduced or replaced in a total amount of $2.6 million such that the Posted Financial Assurance Fund equaled the Revised Predetermined Cost.

20. Except as provided in paragraph 21 below, refunds of the Refund Amount pursuant to paragraph 19 above upon the completion of any of the Environmental Projects shall be made first from the proceeds of the LOC Trust Account. In the event that the LOC Trust Account does not have sufficient funds to refund the Refund Amount, the United States and New Jersey shall cause the remainder of the refund to be made from the Joint Financial Assurance Fund first from those items set forth in paragraph 16A and 16B (as elected by Shieldalloy) and then, subject to paragraph 22 below, from the NRC Financial Assurance Fund listed in paragraph 16C.

21. Refunds of the refund amount pursuant to paragraph 19 above upon the completion of the NRC Slag Piles Remediation Project shall be made first from the Joint Financial Assurance Fund in the order that the accounts are listed in paragraph 16, provided, however, that no refund shall be made out of the NRC Financial Assurance Fund posted pursuant to paragraph 16C unless the NRC, New Jersey, and the United States certify in writing

that the NRC Slag Piles Environmental Project has been completed. In the event that the Joint Financial Assurance Fund does not have sufficient funds to refund the Refund Amount upon completion of the NRC Slag Piles Remediation Project, New Jersey shall cause the remainder of the refund to be made from the LOC Trust Account; provided all the Environmental Projects listed in paragraph 14 above are completed, or, if they have not been completed, New Jersey in its discretion agrees to the refund from the LOC Trust Account.

22. Notwithstanding any provision in this Settlement Agreement, absent the express written consent of the NRC, the NRC Financial Assurance Fund posted for the benefit of the NRC in connection with paragraph 16C above may only be reduced or replaced in the event that (i) the NRC, New Jersey, and the United States certify in writing that the NRC Slag Piles Environmental Project has been completed, and (ii) the other conditions set forth in paragraphs 19 and 20 above have been satisfied.

23. To the extent that New Jersey incurs oversight costs recoverable under New Jersey or federal law, or EPA incurs oversight costs not inconsistent with the National Contingency Plan in respect of any Environmental Project, the Debtors shall reimburse the EPA and New Jersey for such costs. To the extent that DOI incurs oversight, assessment, or restoration planning costs, the Debtors shall reimburse DOI for such costs. On each

occasion that the Debtors reimburse (i) New Jersey or EPA for oversight costs incurred in respect of any Work, or (ii) DOI for oversight, assessment, or restoration planning costs, the dollar value assigned to future oversight costs for financial assurance purposes only in paragraph 14 shall be reduced dollar for dollar for the amounts reimbursed (up to a total collective maximum of $700,000) so as to arrive at a Revised Predetermined Cost. In the event that the Revised Predetermined Cost is less than the Posted Financial Assurance Fund, then the United States and New Jersey shall cause the excess amount (the "Refund Amount") to be refunded in accordance with paragraphs 19 through 21 above.

24. At any time Shieldalloy may replace any cash deposits in the LOC Trust Account with a letter of credit in the equivalent dollar amount for the benefit of New Jersey. At any time Shieldalloy may replace any cash deposits in any of the accounts comprising the Joint Financial Assurance Fund -- with the exception of the letter of credit described in paragraph 16C -- with a letter of credit in the equivalent dollar amount for the benefit of New Jersey and the United States. Any letter of credit provided pursuant to this paragraph for the benefit of New Jersey or the United States shall be in a form and from an institution reasonably acceptable to New Jersey and/or the United States, and shall comply with applicable regulations. Debtors shall not be permitted to draw down on, replace, reduce, or

withdraw monies from the Posted Financial Assurance Fund except as specifically authorized in this Settlement Agreement.

25. Shieldalloy shall forego its right of reimbursement for what was known as the Phase I Lagoon Closure, which has already been completed.

26. In the event that a decommissioning plan relating to the Newfield site is approved by the NRC and the NRC requires Shieldalloy to provide additional or separate financial assurance for the NRC Slag Piles Remediation Project which is identified in paragraph 14 of this Settlement Agreement, then for purposes of calculating the Refund Amount as described in paragraph 19 above, the Posted Financial Assurance Fund will be increased by the additional financial assurance actually purchased or acquired by Shieldalloy pursuant to any decommissioning plan up to a maximum of an additional $4.25 million. In addition, the U.S and New Jersey agree that any additional financial assurance required by the NRC may, at Shieldalloy's option, reduce the Joint Financial Assurance Fund required pursuant to Section 16A and 16B (up to an aggregate of $4.25 million), and the U.S. and New Jersey agree to release or refund an amount equal to such financial assurance provided for the benefit of the NRC, to the extent funds are available, at the time such additional financial assurance is provided to the NRC.

27. Nothing in this Settlement Agreement is intended to preclude any decision by the NJDEP or EPA or DOI (as to

wetlands remediation only) to reduce or change the form of financial assurance for the Newfield site under applicable New Jersey or federal financial assurance regulations or guidelines, subject to the agreement of NJDEP and EPA.

27A. Notwithstanding the foregoing, if, on a semiannual basis, the Total Predetermined Cost is less than the Posted Financial Assurance Fund by reason of the accrual of earnings on such fund or otherwise, a Refund shall be made to Shieldalloy as set forth in paragraphs 20, 21, and 22 of this Agreement. Earnings on the Joint Financial Assurance Fund and the LOC Trust Account that are refundable shall begin to accrue as of the date of substantial consummation of the Plan. Until that date, accrued earnings shall remain a part of the Joint Financial Assurance Fund and the LOC Trust Account.

DISPUTE RESOLUTION

28. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures provided in paragraphs 28-36 herein shall be the exclusive mechanism to resolve disputes arising between the Debtors and the EPA under or with respect to this Settlement Agreement. However, the procedures set forth in paragraphs 28-36 shall not apply to actions by EPA to enforce obligations of the Debtors that have not been disputed in accordance with paragraphs 28-36.

29. Any dispute which arises between the Debtors and the EPA under or with respect to this Settlement Agreement shall

in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute.

30. In the event that the parties cannot resolve a dispute by informal negotiations under paragraph 29, then the position advanced by the EPA shall be considered binding unless, within fifteen (15) days after the conclusion of the informal negotiation period, the Debtors invoke the formal dispute resolution procedures by serving EPA with a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Debtors.

31. Within fifteen (15) days after receipt of the Debtors Statement of Position, EPA will serve on the Debtors its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting EPA's position and all supporting documentation relied upon by EPA. Within ten (10) days after receipt of EPA's Statement of Position, the Debtors may submit a Reply.

32. EPA shall maintain an administrative record of the dispute which shall contain all Statements of Position, any

Reply, and the supporting documentation submitted by both parties. Where appropriate, EPA may allow submission of supplemental Statements of Position by the parties to the dispute.

33. The Director of the Emergency and Remedial Response Division, EPA Region 2, will issue a final administrative decision (the "Final Decision") resolving the dispute based on the administrative record described in paragraph 32. The Final Decision shall be binding upon the Debtors, subject only to the Debtors' right to seek judicial review pursuant to paragraph 34 below.

34. The Final Decision shall be reviewable by the United States Bankruptcy Court for the Southern District of New York, provided, however, that the Debtors must file a motion requesting judicial review of the decision with the Bankruptcy Court and serve it on all parties within fifteen (15) days of receipt of the Final Decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Settlement Agreement. In proceedings on any dispute governed by this paragraph, the Debtors shall have the burden of demonstrating that the Final Decision is arbitrary, capricious or otherwise not in accordance with law. Judicial

review of the Final Decision shall be based on the administrative record.

35. This Settlement Agreement shall not add to or subtract from the right of the Debtors to dispute the validity of the provisions of the RODs issued in connection with the Sites.

36. The invocation of the formal dispute resolution procedures under paragraphs 28-34 of this Settlement Agreement shall not extend, postpone or affect in any way any obligation of the Debtors under this Settlement Agreement that is not directly in dispute, unless EPA or the Bankruptcy Court provides otherwise.

36A. Any dispute between Debtors and New Jersey concerning issues regarding the LOC Trust Fund, whether any Environmental Project is complete, and whether a refund is to be made from the Joint Financial Assurance Fund or the LOC Trust Fund, shall be resolved as provided in the NJ ACO. The dispute resolution procedures set forth in paragraphs 28-34 of this Settlement Agreement and any resolution of a dispute thereunder shall not be binding on New Jersey. Nothing in this paragraph shall affect the dispute resolution procedures set forth in paragraphs 28-36, including the Bankruptcy Court's jurisdiction, pursuant to paragraph 34, to adjudicate any dispute between EPA and the Debtors as to whether a refund is to be made from the LOC Trust Account.

PROVISIONS IN THE EVENT OF A DEFAULT

37. The Joint Financial Assurance Fund shall be subject to draw down and/or withdrawal by New Jersey or the United States to be used for the purpose of remediating and restoring the Newfield site in the event that New Jersey or the United States certifies in writing that Shieldalloy has failed to perform its obligations under the NJ ACO, an NRC-approved decommissioning plan for the Newfield site, and/or any other judicial or administrative order then in effect with respect to the remediation or restoration of the Newfield site, provided, however, that the proceeds of the account listed in Paragraph 16C above shall not be subject to draw down or withdrawal without the express written consent of the NRC.

COVENANT NOT TO SUE AND RESERVATION OF RIGHTS; BANKRUPTCY DISCHARGE

38. Except for those claims specifically settled pursuant to paragraphs 7, 8 and 9 of this Settlement Agreement, Shieldalloy's environmental liabilities at the Newfield site, including its liability to the United States and New Jersey, shall be excepted from discharge and shall pass through Shieldalloy's Chapter 11 case unaffected. The Plan of Confirmation or the Order confirming the Plan shall contain a provision identical to this paragraph 38. The parties agree that the post-confirmation date response costs claims of the United States and New Jersey against Shieldalloy are not being settled under this Settlement Agreement.

39. Except for those claims specifically settled pursuant to this Settlement Agreement, Shieldalloy's environmental liabilities at the Cambridge site, to the United States, shall be excepted from discharge and shall pass through Shieldalloy's Chapter 11 case unaffected. The Plan of Reorganization or the Order confirming the Plan shall contain a provision identical to this paragraph 39.

40. 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.

41. Except as specifically provided in paragraphs 7(g) and 7(l) of this Settlement Agreement, the United States and New Jersey reserves all rights they may have against the Debtors under existing law or the law as it may be amended, to compel the Debtors to cleanup and/or remediate any hazardous substances and pollutants known or subsequently discovered at the Newfield site, and/or recover the United States' or New Jersey's response costs, oversight costs and natural resource damages, if any, associated therewith; provided, however, that nothing contained in this Settlement Agreement shall broaden or limit the discharge granted to Metallurg pursuant to section 1141(d) of the Bankruptcy Code.

42. Except as specifically provided in paragraph 7(h) of this Settlement Agreement, the United States reserves all

rights they may have against the Debtors under existing law or the law as it may be amended, to compel the Debtors to cleanup and/or remediate any hazardous substances known or subsequently discovered at the Cambridge site, and/or recover the United States' response costs, oversight costs, or natural resource damages assessment costs, if any, associated therewith; provided, however, that nothing contained in this Settlement Agreement shall broaden or limit the discharge granted to Metallurg pursuant to section 1141(d) of the Bankruptcy Code.

43. Except as otherwise provided for herein, the terms of this Settlement Agreement do not constitute a release of Shieldalloy or any prior or subsequent owner or operator of the Newfield or Cambridge sites from any other liability under any state or federal environmental law, decree, or order, for the assessment, cleanup, remediation, correction, restoration or other response to any condition at the Newfield or Cambridge sites that exists now, will exist in the future, or was created before Shieldalloy took ownership of the Newfield or Cambridge sites. 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.

44. Shieldalloy agrees that all response or natural resource damages assessment costs claims incurred or to be incurred postconfirmation by the United States in connection with

the Newfield and Cambridge sites shall be entitled to administrative priority in a subsequent Chapter 7 or 11 bankruptcy case of Shieldalloy.

45. Shieldalloy agrees that all response costs claims incurred or to be incurred postconfirmation by New Jersey in connection with the Newfield site shall be entitled to administrative priority in a subsequent Chapter 7 or 11 bankruptcy case of Shieldalloy.

46. The Joint Financial Assurance Fund shall be held in trust for the benefit of the United States and New Jersey, and the LOC Trust Account shall be held in trust for the benefit of the NJDEP and both accounts shall be excepted from the Debtors' bankruptcy estate or in any subsequent bankruptcy case, except to the extent the Debtors are entitled to any refunds therefrom pursuant to paragraphs 18 and 19 above. In the event of a subsequent bankruptcy, any dispute as to whether a refund is due is to be determined between EPA and the Debtors pursuant to the dispute resolution provisions herein, and between New Jersey and the Debtors pursuant to the NJ ACO. In the event the Debtors file a subsequent bankruptcy case, the Joint Financial Assurance Fund shall be subject to draw down and/or withdrawal by New Jersey or the United States and the LOC Trust Account shall be subject to draw down and/or withdrawal by New Jersey to be used for the purpose of remediating and restoring the Newfield site, provided, however, that the proceeds of the account listed in

Paragraph 16C above shall not be subject to draw down or withdrawal without the express written consent of the NRC. It is agreed and understood that the Joint Financial Assurance Fund and the LOC Trust Account are held in trust exclusively for the purpose of remediation and restoration of the Newfield site.

47. In the event that this Settlement Agreement is approved by the Bankruptcy Court and the Plan of Reorganization is confirmed and consummated, the United States and New Jersey will not object to Metallurg being granted a discharge pursuant to section 1141(d) of the Bankruptcy Code. Nothing in this Settlement Agreement shall broaden or limit the scope of that discharge.

48. Nothing in this Settlement Agreement shall constitute a limitation on Shieldalloy's obligation to comply with the complete terms of the NJ ACO or any other existing or future state or federal administrative or court order or decree relating to the Newfield site.

49. The Debtors' and the United States' entry into this Settlement Agreement is conditioned on the entry of a final Consent Order in the action entitled State of Ohio v. Shieldalloy Metallurgical Co., Guernsey County Court of Common Pleas, Case No. 95-CV-242.

50. 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.

51. Debtors agree not to assert any claims or causes of action against the New Jersey Spill Compensation Fund, or against the United States, or its contractors or employees, with respect to Prepetition and Postpetition Claims, including but not limited to:

i) any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; and

ii) any claims arising out of the response or natural resource damages assessment actions at the Sites for which the United States' Prepetition and Postpetition claims were incurred.

52. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

53. In any subsequent administrative or judicial proceeding initiated by New Jersey, the United States or any agency of the United States, for injunctive relief, recovery of response or natural resource damages assessment costs, or other

appropriate relief relating to the Sites, Debtors shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this paragraph: (i) affects the settlement of the Prepetition and Postpetition Claims specifically settled pursuant to paragraph 7 of this Settlement Agreement; and (ii) affects Metallurg's right to raise the discharge granted to it pursuant to section 1141(d) of the Bankruptcy Code as a defense in any subsequent proceeding before an agency or court of competent jurisdiction.

PAYMENTS MADE PURSUANT TO THIS AGREEMENT

54. Payments to be made under this Settlement Agreement on account of EPA's and DOI's response and natural resource damages assessment cost claims pursuant to paragraph 7 and the Civil Penalty Claim pursuant to paragraph 8 shall be made by check made payable to the "United States of America" and sent to:

Chief, Environmental Protection Unit
United States Attorney's Office
Southern District of New York
100 Church Street, 19th floor
New York, New York 10007

At the time of any payment of EPA's response cost claims relating to the Newfield site pursuant to paragraph 7, Shieldalloy shall send notice that such payment has been made to:

U.S. EPA Region II
Emergency and Remedial Response Division
New Jersey Remediation Branch
Southern New Jersey Remediation Section
Attn: Shieldalloy Superfund Site Remedial Project Manager

U.S. EPA Region II
Office of Regional Counsel
New Jersey Superfund Branch
New Jersey Superfund Section
Attn: Shieldalloy Superfund Site Attorney

At the time of any payment of EPA's response cost claims relating to the Cambridge site pursuant to paragraph 7, Shieldalloy shall send notice that such payment has been made to:

U.S. EPA Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3507
Attn: Shieldalloy Superfund Site Attorney

At the time of any payment of DOI's claims pursuant to paragraph 7, Shieldalloy shall send notice that such payment has been made to:

Ms. Teresa Tancre
Fish and Wildlife Service
Division of Finance
4401 N. Fairfax Drive, Suite 380
Arlington, VA 22203

55. Payments of the NRC's licensing fees claims pursuant to paragraph 7 shall be made by check payable to the "Nuclear Regulatory Commission" and sent to :

Ms. Diane B. Dandois

U.S. Nuclear Regulatory Commission
Office of the Controller
2 White Flint North
11545 Rockville Pike
Rockville, MD 20852

56. Payments to be made under this Settlement Agreement on account of EPA's oversight costs pursuant to paragraph 23, shall be made by check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the docket number for this action, and the United States Attorney's Office Case Number and shall be sent to:

EPA - Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA

At the time of such payment, Shieldalloy shall send notice that such payment has been made to:

U.S. EPA Region II
Emergency and Remedial Response Division
New Jersey Remediation Branch
Southern New Jersey Remediation Section
Attn: Shieldalloy Superfund Site Remedial Project Manager

U.S. EPA Region II
Office of Regional Counsel
New Jersey Superfund Branch
New Jersey Superfund Section
Attn: Shieldalloy Superfund Site Attorney

57. Payments to be made under this Settlement Agreement on account of DOI's oversight, assessment, or restoration planning costs pursuant to paragraph 23, shall be made by check made payable to "Department of the Interior." Each

check shall reference the name and address of the party making payment, the Site name and location, fund account number 14X5198, the docket number for this action, and shall be sent to:

Fish and Wildlife Service
Division of Finance
4401 North Fairfax Drive
Room 380
Arlington, VA 22203

58. Payments to be made under this Settlement Agreement on account of New Jersey's

a. Prepetition response cost claims pursuant to paragraph 7i,

b. Prepetition Spill Fund Authorization claim pursuant to paragraph 7j,

c. Administrative claim pursuant to paragraph 7k for costs postpetition in the amount of $245,825.88, and

d. Penalty assessments pursuant to paragraph 9,

shall be made by separate checks each made payable to the "Treasurer, State of New Jersey" and sent to:

NJDEP, Bureau of Revenue
CN 417
Trenton, NY 08625-0417

Payments to be made under this Settlement Agreement on account of New Jersey's

a. Administrative claim pursuant to paragraph 7k, in the amount of not less than $17,086.24 but not

more than $24,416.81 as set forth in paragraph 7k, and

b. Natural resource damage claim for ground water pursuant to paragraph 71,

shall be made by separate check payable to the "Treasurer, State of New Jersey" and sent to:

Martin McHugh, Chief
NJDEP, Office of Natural Resource Damages
CN 404
Trenton, NJ 08625-0417

RETENTION OF RECORDS

59. Until 10 years after the effective date of this Settlement Agreement, Debtors shall preserve and retain all records and documents now in their possession, custody or control, or which come into their possession, custody or control, that relate in any manner to response actions taken at the Sites or to the liability of any person for response actions conducted and to be conducted at the Sites, regardless of any corporate retention policy to the contrary. This shall not supersede the document retention requirements in the NJ ACO, and such requirements shall remain in effect.

60. After the conclusion of the document retention period in the preceding paragraph, Debtors shall notify the United States and the State of New Jersey at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State of New Jersey, Debtors

shall deliver any such records or documents to the United States or the State of New Jersey. Debtors may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Debtors assert such a privilege, they shall provide the United States and New Jersey with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject matter of the document, record or information; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States and the State of New Jersey in redacted form to mask only the privileged information. Debtors shall retain all records and documents that they claim to be privileged until the United States and the State of New Jersey have had a reasonable opportunity to dispute the privilege claim.

61. By signing this Settlement Agreement, Shieldalloy and Metallurg each certifies individually that, to the best of its knowledge and belief, it has fully complied in all material respects with any and all requests from the United States and New Jersey for information regarding the Sites.

NOTICES AND SUBMISSIONS

62. Whenever, under the terms of this Settlement Agreement, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below via U.S. certified mail, return receipt requested, unless those individuals or their successors give notice of a change of address to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Settlement Agreement, written notice as specified herein shall constitute complete satisfaction of any written notice requirement in the Settlement Agreement with respect to the United States, EPA, DOI, New Jersey, NJDEP, and the Debtors, respectively.

a. <u>As to the State of New Jersey</u>:

Donna Gaffigan, Case Manager
NJDEP, Bureau of Federal Case Management
CN 028
Trenton, NJ 08625-0028

Martin McHugh, Chief
NJDEP, Office of Natural Resource Damages
CN 404
Trenton, NJ 08625-0417

Kenneth W. Elwell, Deputy Attorney General
25 Market Street
Justice Complex
CN 093
Trenton, NJ 08625-0093

b. As to the United States of America:
The United States EPA
Office of Regional Counsel
290 Broadway
New York, New York 10007
Attn: Shieldalloy Site Attorney

The United States EPA
Office of Regional Counsel
Emergency and Remedial Response
Division
290 Broadway
New York, New York 10007
Attn: Remedial Project Manager

United States Department of the Interior
Division of Conservation and Wildlife
1849 "C" Street, NW
Washington, D.C. 20240
Attn: Shieldalloy Attorney

United States Attorney's Office
Southern District of New York
100 Church Street
New York, New York 10007
Attn: Chief, Environmental Protection Unit

c. As to the Debtors:

Shieldalloy Metallurgical Corporation
P.O. Box 768
12 West Boulevard
Newfield, NJ 08344
Attn: Environmental Manager

Weil, Gotshal & Manges LLP
1615 L Street, N.W. Suite 700

Washington, DC 20036
Attn: David Berz, Esq.

LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

63. The United States agrees that notice of this Settlement Agreement shall be expeditiously published in the Federal Register in accordance with CERCLA section 122(i), 42 U.S.C. § 922(i), and that public comments, if any, will be taken and considered during the required 45 day notice and comment period. The United States reserves the right to withdraw or withhold its consent to the Settlement Agreement if the public comments disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, improper or inadequate.

64. The Debtors shall request that this Settlement Agreement be approved by the Bankruptcy Court pursuant to the order confirming the Debtors' Plan of Reorganization.

65. If for any reason (i) the Court by Final Order should decline to approve this Settlement Agreement, (ii) the Settlement Agreement is withdrawn by the United States as provided in paragraph 63, (iii) the Settlement Agreement is not approved by a Final Order, or (iv) the Chapter 11 Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code before the effective date of a Plan of Reorganization: (a) this Settlement Agreement shall be null and void and the parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the parties shall have no liability to

one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; (c) the Federal Proofs of Claim shall not be deemed to be discharged and the Debtors may, unless the Chapter 11 Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code, file objections and/or file a motion for estimation of such claims (which the United States may oppose); (d) the New Jersey Proofs of Claim shall not be deemed to be discharged and the Debtors may, unless the Chapter 11 Cases are dismissed or converted to cases under Chapter 7 of the Bankruptcy Code, file objections and/or file a motion for estimation of such claims (which New Jersey may oppose); (e) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value, and it shall be as if they had never been executed; and (f) this Settlement Agreement, any statements made in connection with settlement discussions, and any documents prepared in connection herewith may not be used as evidence in any litigation between the parties.

66. The Debtors shall not propose any Plan of Reorganization or take any other action in the Chapter 11 Cases that is inconsistent with the terms and provisions of this Settlement Agreement. The United States and New Jersey reserve all of their rights to object to any Plan of Reorganization filed by the Debtors, except that the United States and New Jersey agree that they will not object to any provisions in the Plan of

Reorganization that are consistent with this Settlement Agreement.

INTEGRATION AND COUNTERPARTS

67. This Settlement Agreement and any other documents to be executed in connection herewith constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein, and supersedes any prior understandings or oral or written agreements concerning the subject matters of this Settlement Agreement. Except as otherwise provided herein, it is understood and agreed that this Settlement Agreement does not supersede the NJ ACO. This Settlement Agreement may not be amended except by a writing signed by the party or parties sought to be bound thereunder.

68. This Settlement Agreement may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same agreement.

RETENTION OF JURISDICTION

69. Except as provided below with respect to the NJ ACO and the LOC Trust Account, the United States Bankruptcy Court for the Southern District of New York shall retain exclusive jurisdiction of the subject matter of this Settlement Agreement and the parties hereto for the duration of the terms and provisions of this Settlement Agreement with respect to the (i) dischargeability of any claims referred to under this Agreement and (ii) any issues with respect to the Joint Financial Assurance

Fund for the purpose of enabling any of the parties to apply to the Court, in accordance with the dispute resolution procedures set forth in paragraphs 28-36 for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of the foregoing matters under this Settlement Agreement or to effectuate or enforce compliance with its terms. The New Jersey Superior Court shall retain exclusive jurisdiction over any issues that may arise with respect to the NJ ACO and the LOC Trust Account. With the exception of the dischargeability of claims referred to under this Settlement Agreement, this Settlement Agreement does not confer jurisdiction on the Bankruptcy Court for the Southern District of New York over the Debtors' obligation to remediate or otherwise address environmental violations at the Newfield site. Any dispute between the Debtors and New Jersey concerning the LOC Trust Fund, whether any Environmental Project is complete, whether a refund is to be made from the Joint Financial Assurance Fund or the LOC Trust Account, and the nature and extent of the Debtors' obligations under the NJ ACO, shall be resolved as provided in the NJ ACO. Nothing in this paragraph shall affect the dispute resolution procedures set forth in paragraphs 28-36, including the Bankruptcy Court's jurisdiction, pursuant to

paragraph 34, to adjudicate any dispute between EPA and the Debtors as to whether a refund is to be made from the LOC Trust Account.

THE UNDERSIGNED PARTY ENTERS INTO THIS SETTLEMENT AGREEMENT FOR THE STATE OF NEW JERSEY:

Peter Verniero
Attorney General of New Jersey
Attorney for New Jersey
Department of Environmental
Protection

By: _____
Kenneth W. Elwell
Deputy Attorney General

THE UNDERSIGNED PARTY ENTERS INTO THIS SETTLEMENT AGREEMENT FOR THE DEBTORS:

_____
David R. Berz
DB 4517
A Member of the Firm
Weil, Gotshal & Manges LLP
Attorneys for Debtors in
Possession
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

THE UNDERSIGNED PARTIES ON THE ATTACHED PAGES ENTER INTO THIS SETTLEMENT AGREEMENT FOR THE UNITED STATES OF AMERICA:

SO ORDERED this 26th day
of ~~February~~, 1997
March

_____
United States Bankruptcy Judge

MARY JO WHITE
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: _____
EDWARD A. SMITH (ES-2461)
JEFFREY OESTERICHER (JO-8935)
Assistant United States Attorneys
100 Church Street -- 19th Floor
New York, New York 10007
Tel. No.: (212) 385-4477

1/21/92

LOIS J. SCHIFFER
Assistant Attorney General
Environmental and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

1/28/92

HENRY S. FRIEDMAN
Senior Attorney
Environmental Enforcement Section
Environmental and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II

BY: Jeanne M. Fox

JEANNE M. FOX
Regional Administrator
Region II
U.S. Environmental Protection Agency

DATED: 12/27/96

New Jersey Judiciary

Superior Court - Appellate Division

NOTICE OF APPEAL

RECEIVED
APPELLATE DIVISION
SEP 14 2008
SUPERIOR COURT
OF NEW JERSEY

Type or clearly print all information. Attach additional sheets if necessary.

TITLE IN FULL (AS CAPTIONED BELOW): (1)

In re: N.J.A.C. 7:28

ATTORNEY / LAW FIRM / PRO SE LITIGANT (2)

NAME
Dennis J. Krumholz
Riker Danzig Scherer Hyland & Perretti, LLP

STREET ADDRESS
Headquarters Plaza, One Speedwell Avenue

CITY	STATE	ZIP	PHONE NUMBER
Morristown	NJ	07962	973.538.0800

EMAIL ADDRESS: dkrumholz@riker.com

ON APPEAL FROM

TRIAL COURT JUDGE (3)	TRIAL COURT OR STATE AGENCY (4)	TRIAL COURT OR AGENCY NUMBER (5)
	Department of Environmental Protection (DEP)	

(7) Notice is hereby given that (6) Shieldalloy Metallurgical Corporation appeals to the Appellate Division from a ☐ Judgment or ☐ Order entered on _____ in the ☐ Civil ☐ Criminal or ☐ Family Part of the Superior Court or from a ☒ State Agency decision entered on (regulations made effective on) 9/15/2008 and 8/7/2000.

(8) If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed: On August 20, 2008, the Commissioner of the NJDEP and the Commission on Radiation Protection adopted rules in furtherance of the State's request to the Nuclear Regulatory Commission ("NRC) for "Agreement State" status -- thereby to obtain jurisdiction over many NRC licensees located within New Jersey -- including standards for decommissioning facilities possessing licensed radioactive material. See N.J.A.C. 7:28 and 40 N.J.R. 5196 (September 15, 2008). These rules also would apply NJDEP's soil remediation standards for radioactive materials, see 32 N.J.R. 2866 (August 7, 2000), to facilities currently licensed by the NRC.

(9) Have all issues, as to all parties in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.) **N/A** ☐ Yes ☐ No

If not, has the order been properly certified as final pursuant to R. 4:42-2? ☐ Yes ☐ No

For criminal, quasi-criminal and juvenile actions only:

(10A) Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

(10B) This appeal is from a ☐ conviction ☐ post judgment motion ☐ post-conviction relief.

If post-conviction relief, is it the ☐ 1st ☐ 2nd ☐ other _____ (Specify)

(10C) Is defendant incarcerated? ☐ Yes ☐ No

Was bail granted or the sentence or disposition stayed? ☐ Yes ☐ No

(10D) If in custody, name the place of confinement:

Defendant was represented below by:

☐ Public Defender ☐ self ☐ private counsel _____ (specify)

(11) Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge		
Trial Court Division Manager		
Tax Court Administrator		
State Agency	Dept. of Environmental Protection	September 14, 2009
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)	Dept. of Law and Public Safety, Division of Law	September 14, 2009

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service

(12) Attached transcript request form has been served where applicable on the following:

	Name	Date of Service	Amount of Deposit
Trial Court Transcript Office			
Court Reporter (if applicable)			
Supervisor of Court Reporters			
Clerk of the Tax Court			
State Agency			

(13) Exempt from submitting the transcript request form due to the following:

☒ No verbatim record.

☐ Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).
List the date(s) of the trial or hearing:

☐ Motion for abbreviation of transcript filed with the court or agency below. Attach copy.

☐ Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief.

I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

(14) September 14, 2009 (15) Dennis J. Kimbrel

DATE SIGNATURE OF ATTORNEY OR PRO SE LITIGANT

3980026.1

New Jersey Judiciary

Superior Court - Appellate Division

CIVIL CASE INFORMATION STATEMENT

Please type or clearly print all information.

TITLE IN FULL (1)	TRIAL COURT OR AGENCY DOCKET NUMBER (2)
Radiation Protection Programs, Adopted Repeals, New Rules and Amendments: N.J.A.C. 7:28, Radiation Protection Programs, adopted August 20, 2008; Soil Remediation Standards for Radioactive Materials, Adopted New Rules: N.J.A.C. 7:28-12, adopted June 21, 2000.	DEP Docket Numbers: 04-08-04/627; 11-99-06/697

RECEIVED
APPELLATE DIVISION
SEP 14 2009
SUPERIOR COURT OF NEW JERSEY

• Attach additional sheets as necessary for any information below.

(3) APPELLANT'S ATTORNEY EMAIL ADDRESS: dkrumholz@riker.com

☐ PLAINTIFF ☐ DEFENDANT ☒ OTHER (SPECIFY) Appellant

NAME	CLIENT
Dennis J. Krumholz, Riker Danzig Scherer Hyland & Perretti LLP	Shieldalloy Metallurgical Corporation

STREET ADDRESS	CITY	STATE	ZIP	TELEPHONE NUMBER
Headquarters Plaza, One Speedwell Avenue	Morristown	NJ	07962	973.538.0800

(4) RESPONDENT'S ATTORNEY * EMAIL ADDRESS:

NAME	CLIENT
New Jersey Dept. of Law and Public Safety, Division of Law	New Jersey Dept. of Environmental Protection

STREET ADDRESS	CITY	STATE	ZIP	TELEPHONE NUMBER
25 Market Street, P.O. Box 112	Trenton	NJ	08625	609.984.3900

* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

(5) GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:

On August 20, 2008, the Commissioner of the NJDEP and the Commission on Radiation Protection adopted rules in furtherance of the State's request to the Nuclear Regulatory Commission ("NRC) for "Agreement State" status -- thereby to obtain jurisdiction over many NRC licensees located within New Jersey – including standards for decommissioning facilities possessing licensed radioactive material. See 40 N.J.R. 5196 (September 15, 2008). These rules also would apply NJDEP's soil remediation standards for radioactive materials, see 32 N.J.R. 2866 (August 7, 2000), to facilities currently licensed by the NRC.

(6) Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third party claims and applications for counsel fees? ☐ Yes ☒ No

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4, 2:5-6.) ☐ Yes ☐ No

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

(7) Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h)) ☒ Yes ☐ No

(8) GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

Shieldalloy Metallurgical Corporation ("Shieldalloy") is licensed by the NRC to possess certain radioactive material at its facility in Newfield, New Jersey, and it proposes to decommission this facility in accordance with federal standards; Shieldalloy's Decommissioning Plan is pending before the NRC. Shieldalloy is challenging the rules and standards adopted by the NJDEP Commissioner and by the Commission on Radiation Protection in furtherance of the State's request to the NRC for "Agreement State" status including standards for decommissioning facilities possessing licensed radioactive material. NJDEP has advised Shieldalloy that, upon assumption of Agreement State status, it will reject the company's proposed decommissioning methods as contrary to NJDEP's new rules and standards.

(9) TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.):

I. The Radiation Protection Programs rules, N.J.A.C. 7:28 ("Rules"), are invalid because they were not adopted in accordance with the requirements of the State Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. ("APA"), including those for federal, regulatory and fiscal impact analyses. Significant changes made upon adoption of the Rules, as contrasted with the rule proposal, require further publication and opportunity for public comment before the Rules may be adopted. Other aspects of the Rules and adoption also violate the APA.

II. The requirement of the Rules that, upon commencing the decommissioning of a facility, a licensee must address the potential impacts of radiation that theoretically may occur thousands, hundreds of thousands and even millions of years into the future is arbitrary and capricious and without basis in fact or law.

III. The Rules are ultra vires and arbitrary and capricious because they exceed the scope of the Radiation Protection Act, N.J.S.A. 26:2D et seq., which only authorizes regulation of "unnecessary radiation." One effect of the Rules is to require low level radioactive materials to be excavated and transported off-site for disposal; this practice will expose the public, agriculture and the environment to unnecessary radiation.

IV. NJDEP relies upon the Brownfields and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq. ("Brownfields Act"), for authority to develop the cleanup standards set forth in the Rules; however, the Brownfields Act does not provide any such authority. For example, it does not authorize cleanup standards for radiation. It also limits NJDEP's authority to the development of a cleanup standard for individual hazardous substances, not for the cleanup standards in the Rules which are based upon the cumulative radiological effects of radionuclides.

V. In the alternative, if the Brownfields Act does authorize development of cleanup standards for radiation and radionuclides, the standards set forth in the Rules are ultra vires, arbitrary and capricious because they do not comply with the requirements to develop cleanup standards as prescribed by the Brownfields Act.

VI. Contrary to the Federal and State Constitution and the APA, the Rules amount to special legislation or rulemaking directed solely at Shieldalloy, and they deny the company equal protection of the law.

(10) IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? N/A ☐ Yes ☐ No
2. Did the trial judge issue written findings or an opinion? If so, on what date? N/A ☐ Yes ☐ No
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? ☐ Yes ☐ No

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: _____

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

(11) (A) Arises from substantially the same case or controversy as this appeal? ☐ Yes ☒ No
(12) (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? Unknown ☐ Yes ☐ No
(13) 2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY: ☐ Yes ☒ No
(14) IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name: Appellate Division Docket Number:

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference. State whether you think this case may benefit from a CASP conference. ☒ Yes ☐ No

(15) *Explain your answer: Appellant is amenable to participation in a settlement conference before a mediator knowledgeable about the subject matter underlying the appeal.*

(16) Shieldalloy Metallurgical Corporation
Name of Appellant or Respondent

(17) Dennis J. Krumholz
Name of Counsel of Record

(18) September 14, 2005
Date

(19) Dennis J. Krumholz
Signature of Counsel of Record

3978998.1

Effective Date: September 15, 2008.
Expiration Date: June 13, 2013.

Summary of Public Comment and Agency Response:
No comments were received.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being adopted under the authority of, or in order to implement, comply with or participate in any program established under, Federal law or a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adoption follows:

5:23-4.5 Municipal enforcing agencies—administration and enforcement

(a)-(i) (No change.)

(j) Conflict of interest:

1. No person employed by an enforcing agency as a construction or subcode official or as an inspector shall knowingly carry out any inspection or enforcement procedure with respect to any property or business in which he or she, or any close relative or household member, or his or her superior within the enforcing agency, or any close relative or household member of such superior, or any other public official or employee having any direct or indirect control over the funding or operations of the enforcing agency, or any household member of any such public official or employee, has an economic interest. For purposes of this paragraph, "close relative" shall mean and include a spouse, sibling, ancestor or descendant, or the spouse of any of them.

i.-ii. (No change.)

2. No person employed by an enforcing agency as a construction or subcode official, assistant to the construction or subcode official, trainee, inspector or plan reviewer, shall, whether directly or indirectly, be engaged in ownership of, or employment by, or contracting to provide goods or services to, any business or employment furnishing labor, materials, products or services for the construction, alteration or demolition of buildings or structures that is engaged in any such activity within any municipality in which he is so employed by an enforcing agency, or in any municipality adjacent to any municipality in which he is thus employed. For purposes of the prohibition set forth in this paragraph, it shall be immaterial whether the employment by the business, or the providing of goods and services to the business, occurred within the employing municipality or an adjacent municipality or occurred elsewhere.

3.-6. (No change.)

(k) (No change.)

5:23-5.25 Revocation of licenses and alternative sanctions

(a)-(b) (No change.)

(c) Conviction of a crime, or conviction of an offense in connection with one's performance as a licensed code enforcement official or inspector, or a determination by the Department that a licensee has engaged in conduct constituting a conflict of interest under N.J.A.C. 5:23-4.5(j)2, shall constitute grounds for revocation of a license.

(d)-(e) (No change.)

(a)

STATE PLANNING COMMISSION

State Planning Rules

Readoption: N.J.A.C. 5:85

Proposed: June 2, 2008 at 40 N.J.R. 2631(a).
Adopted: August 20, 2008 by State Planning Commission, Benjamin L. Spinelli, Esq., Secretary and Principal Executive Officer.
Filed: August 21, 2008 as R.2008 d.279, **without change**.
Authority: N.J.S.A. 52:18A-203.
Effective Date: August 21, 2008.
Expiration Date: August 21, 2013.

Summary of Public Comment and Agency Response:
No comments were received.

Federal Standards Statement

No Federal standards analysis is required because the rules readopted at N.J.A.C. 5:85 are not being readopted under the authority of, or in order to implement, comply with or participate in any program established under Federal law or a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 5:85.

ENVIRONMENTAL PROTECTION

(b)

ENVIRONMENTAL REGULATION

DIVISION OF ENVIRONMENTAL SAFETY AND HEALTH

COMMISSION ON RADIATION PROTECTION

Radiation Protection Programs

Adopted Repeals: N.J.A.C. 7:28-3.5, 3.8, 3.11, 3.13, 4.19, 5.4, 7.5, 8.3, 8.4, 9, 10.4, 10.5, 10.9 and 11

Adopted New Rules: N.J.A.C. 7:28-2.13, 4.16, 12.10, 12.15, and 50 through 64

Adopted Repeals and New Rules: N.J.A.C. 7:28-6

Adopted Amendments: N.J.A.C. 7:28-1.1, 1.4, 1.5, 3.1, 3.2, 3.6, 3.10, 4.1 through 4.18, 5.1 through 5.3, 7.1 through 7.3, 8.1, 8.2, 10.6, 10.8, 12.2 through 12.5, 12.8 through 12.12, 12 Appendix A, 13.1, 13.2, 17.1 through 17.6, 17.8, 18.1, and 48.2

Proposed: May 19, 2008 at 40 N.J.R. 2309(a).
Adopted: August 20, 2008 by Lisa P. Jackson, Commissioner, Department of Environmental Protection and August 12, 2008 by the Commission on Radiation Protection, Julie K. Timins, M.D., Chair.
Filed: August 21, 2008 as R.2008 d.281, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).
Authority: N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq. and 26:2D-1 et seq.
DEP Docket Number: 04-08-04/637.
Effective Date: September 15, 2008.
Operative Date: Operative upon publication of notice in the New Jersey Register by the Department of Environmental Protection that the U.S. Nuclear Regulatory Commission and the State of New Jersey have entered into an Agreement for the State to regulate source, certain special nuclear, and by-product material.
Expiration Date: June 21, 2010.

The Department of Environmental Protection (Department) and the Commission on Radiation Protection (Commission) are adopting new rules, repeals and amendments to the Radiation Protection Programs' rules, N.J.A.C. 7:28, which new rules, repeals and amendments are part of New Jersey's becoming an Agreement State with the U.S. Nuclear Regulatory Commission (NRC).

New Jersey has a comprehensive radiation protection program encompassing x-ray machines, naturally occurring or accelerator produced radioactive materials (NARM), radon, clean up of radioactively contaminated sites, monitoring around nuclear power plants, emergency preparedness and response to radiological incidents including transportation accidents, and requirements for non-ionizing sources of radiation. Additionally, there are requirements for licensure and certification of people – radiological technologists, nuclear medicine

and/or emerging environmental issues at the county level and recommendations on how to address such issues.

(c) The Department shall review the county-wide environmental health assessment and improvement plan to identify delegated environmental activities to be undertaken by the certified local health agency in the upcoming grant cycle, and shall use this plan as a guide in apportioning grant monies to the certified local health agencies in accordance with (e) below.

(d) The Department shall conduct a grant conference each calendar year to discuss the Department's environmental priorities, as specified in the Strategic Plan and the NEPPS performance partnership agreement as well as emerging critical priorities established by the Department, which are relevant to the provision of environmental health services by certified local health agencies. Each certified local health agency shall have a representative attend this grant conference. Notice of the grant conference shall be made by means of a public notice published in the New Jersey Register.

(e) The Department shall apportion the monies available for grants among the certified local health agencies and establish delegated activities and output numbers based upon the following factors:

1. The extent to which the Department determines that the environmental activities to be funded are aligned with the Strategic Plan and the NEPPS performance partnership agreement and further the Department's goals and priorities as set forth therein;

2. The extent to which the Department determines that each county's recommendations regarding delegated activities to be undertaken, as identified in its county-wide environmental health assessment and improvement plan, are appropriate and serve to further the Department's goals and priorities as set forth in the Strategic Plan and NEPPS Performance Partnership Agreement;

3. The certified local health agency's record of satisfying its obligations as specified in the annual CEHA grant agreements executed with the Department; and

4. The certified local health agency's funding needs to undertake delegated environmental activities.

(a)

COMMISSION ON RADIATION PROTECTION

Soil Remediation Standards for Radioactive Materials

Adopted New Rules: N.J.A.C. 7:28-12

Proposed: July 6, 1999 at 31 N.J.R. 1723(a).

Adopted: June 21, 2000 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and the Commission on Radiation Protection, Dr. Henry Powsner, Chairman.

Filed: July 6, 2000 as R.2000 d.314, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2D-1 et seq. and 58:10B-1 et seq.

DEP Docket Number: 11-99-06/697.

Effective Date: August 7, 2000.

Expiration Date: February 25, 2005

Summary of Public Comments and Department Responses:

The following companies, organizations, and/or agencies submitted written comments on the proposal.

1. CBS Corporation
2. US Environmental Protection Agency
3. US Nuclear Regulatory Agency
4. NL Industries
5. Shieldalloy Metallurgic Corporation
6. US Department of the Army—Corps of Engineers
7. New Jersey Environmental Federation representing 90,000 members
8. Heritage Minerals Inc.
9. Howmet Corporation
10. Zirconium Environmental Committee
11. Coalition Against Toxics
12. Public Service Electric & Gas
13. Oak Ridge Institute for Science and Education

A summary of the comments timely submitted and the Department's responses follows. The numbers in parenthesis after each comment corresponds to the commenter(s) listed above.

General

1. COMMENT: Five commenters expressed support for the Department's efforts to develop generically applicable standards that are easy to use and flexible, to assist persons responsible for planning and conducting site remediations. (2, 1, 6, 10, 3)

RESPONSE: The Department appreciates the commenter's support.

2. COMMENT: One commenter expressed opposition to the entire proposal in that it is in conflict with Federal standards, technically indefensible, and unduly burdensome with no corresponding benefit. (5) Two commenters could not support the proposal because it allows so much latitude for leaving untreated contaminants on site. (7, 11)

RESPONSE: The Department disagrees with the comments and addresses these points more specifically in the responses to Comment numbers 26, 37, 68 and 70.

3. COMMENT: One commenter expressed concern that no mention is made of "grandfathering" sites that are currently in the midst of decommissioning or will begin decommissioning prior to the implementation of the rules. For active sites, the State should recognize approved existing clean-up criteria that NRC licensees are working to meet. Applying new criteria in the middle of a cleanup project could have technical and legal consequences for all parties involved. The commenter would also like to see a reasonable phase-in period of at least one year established to prevent licensees who have committed a substantial investment in this process from ceasing clean-up operations due to changing clean-up criteria or significantly altering complex budgetary plans and schedules. (1)

RESPONSE: The Brownfield and Contaminated Site Remediation Act (Brownfield Act) at N.J.S.A. 58:10B-12 specifies that the Department may not require a change to a Department-approved workplan in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the Department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other plan differs by an order of magnitude. The Department believes that because of this provision in the Brownfield Act, and because the Department has been using the proposed remediation standards for over two years, a one year phase-in period is not necessary.

4. COMMENT: One commenter (6) claimed that the combination of not having generic guidelines for accelerator produced radionuclides, the premix levels specified only to USS less than five, the fact that other radionuclides could be covered based on laws requiring clean up, the specifics of building construction related to radon, etc. means that the standards listed in N.J.A.C. 7:28-12.9 will have limited use. In most cases, the alternative approach outlined in N.J.A.C. 7:28-12.10 will be used. This will not be much different than the current practice. The stated parameter inputs Tables 6 and 7 may be a better way to approach this problem, that is, standardize the risk model parameters.

RESPONSE: Most of the contaminated properties in New Jersey contain only the naturally occurring radioactive materials. However, development of standards for nuclides not addressed in the proposed new rules will not cause undue burden on the owner because, as stated in the comment, the acceptable parameters and dose criteria are established in the Technical Basis document. This was not the case in past practice. Inclusion of the alternative standard approach (N.J.A.C. 7:28-12.10) is required as per legislative directive in the Brownfield and Contaminated Site Remediation Act (BCSRA).

5. COMMENT: One commenter stated that there does not appear to be any collaborating information presented for the Department's statement that "the minimum remediation standards for soil should result in less expensive remediations by eliminating the requirement for site-specific dose assessments." It might be true for a small site with limited quantities of contamination, but for a larger complex project with significant amounts of contamination it does not seem that it would be true. It would seem necessary to conduct the site-specific dose assessments to determine the potential exposures. (6)

RESPONSE: If site-specific dose assessments were necessary, the Department's spreadsheet, RaSoRS, could be used to easily develop the proper remediation standards. Parameters, such as the lot size, may be