

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SHIELDALLOY METALLURGICAL CORPORATION)		
Petitioner,)		
)	
v.)		
)	No. 09-1268
UNITED STATES NUCLEAR REGULATORY)		
COMMISSION and the)		
)	
UNITED STATES OF AMERICA)		
Respondents.)		
_____)		

PETITIONER’S NON-BINDING STATEMENT OF ISSUES

Pursuant to the Court’s Order of November 10, 2009, Petitioner Shieldalloy Metallurgical Corporation (“Shieldalloy”) submits the following Non-Binding Statement of Issues to be raised in the proceeding for review by this Court of a final order of the United States Nuclear Regulatory Commission (“NRC”).

Shieldalloy is the holder of NRC Source Materials License No. SMB-743 for its facility in Newfield, New Jersey (“the Newfield Facility”). Effective September 30, 2009 the NRC, acting pursuant to section 274 of the Atomic Energy Act of 1954, 42 U.S.C. § 2021, entered into an agreement with the State of New Jersey (the “Agreement”), by virtue of which the NRC transferred to the State of New Jersey the NRC’s regulatory authority over the possession and use of certain

nuclear materials held under licenses granted by the NRC. 74 Fed. Reg. 51882.

The portion of the Agreement that transferred regulatory authority over these licenses (Article I of the Agreement) is the order that is the subject of Shieldalloy's Petition for Review (the "Order"). Shieldalloy's NRC license for the Newfield Facility is one of the licenses for which regulatory authority was transferred to New Jersey by the Order.

Before the NRC can approve an Agreement State application, the applying State must have a program for the control of radiation hazards that is compatible with the Commission's program for the regulation of the materials over which the State seeks to assume authority. 42 U.S.C. § 2021(d)(2). The State program must also be adequate to protect public health and safety with respect to the categories of materials for which Agreement State status is sought. The following issues arise from these statutory requirements.

1. Whether the NRC erred in approving New Jersey's application to become an Agreement State despite the failure of New Jersey's program for the control the control of radiation hazards ("the New Jersey Program" or "the Program") to implement the provisions of the NRC's regulations at 10 C.F.R. § 20.1402, which require

compliance with the “as low as reasonable achievable” (“ALARA”) principle.

2. Whether the NRC erred in approving New Jersey’s application to become an Agreement State despite the failure of the New Jersey Program to implement the requirements of NRC’s regulations at 10 C.F.R. § 20.1403 that provide for the termination of radioactive materials licenses under restricted release criteria.
3. Whether the NRC erred in approving New Jersey’s application to become an Agreement State despite the failure of the New Jersey Program to implement the requirements of NRC’s regulations at 10 C.F.R. § 20.1401(d) that limit radiation dose calculations for the termination of radioactive materials licenses to 1,000 years.
4. Whether the NRC erred in approving New Jersey’s application to become an Agreement State despite the failure of the New Jersey Program to provide for the granting of exemptions to the Program’s requirements in the area of licensed facility decommissioning where such exemptions will not jeopardize health and safety, whereas the granting of such exemptions is required by NRC’s compatibility criteria.

5. Whether the NRC erred in approving New Jersey's application to become an Agreement State despite the failure of the New Jersey Program to incorporate practices for assuring the fair and impartial administration of regulatory law, and in particular the inclusion in the Program of regulations directed specifically at and uniquely at Shieldalloy's Newfield Facility.
6. Whether the NRC erred in approving New Jersey's application to become an Agreement State despite the fact that the New Jersey Program disrupts ongoing NRC licensed activities, in particular the evaluation of Shieldalloy's proposed decommissioning plan for the Newfield Facility, long under consideration by the NRC.
7. Whether, in light of these errors in its approval of New Jersey's application to become an Agreement State, the NRC's Order was

arbitrary and capricious and contrary to applicable law.

Respectfully submitted,

/S/Matias F. Travieso-Diaz

Jay E. Silberg
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Dated: December 9, 2009

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petitioner's Non-Binding Statement of Issues was filed with the Clerk of the Court using the CM/ECF System this 9th day of December, 2009.

In addition, the following participants in the case who are registered CM/ECF System will be served through the CM/ECF System:

John Cordes, Jr., Solicitor
Grace H. Kim, Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission

In addition, a copy of the foregoing Petitioner's Non-Binding Statement of Issues was served by first class mail on the following participant in the case who is not known to be a registered CM/ECF System user:

Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

In addition, courtesy copies of the foregoing Petitioner's Non-Binding Statement of Issues were served by first class mail on the following non-parties:

Anne Milgram, Esq.
Attorney General of New Jersey
Andrew W. Reese, Esq.
Deputy Attorney General
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/S/ Matias F. Travieso-Diaz

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