



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE
Governor

Division of Environmental Safety and Health
P.O. Box 424
Trenton, New Jersey 08625-0424
Phone: (609) 633-7964
Fax: (609) 777-1330

MARK N. MAURIELLO
Acting Commissioner

December 11, 2009

Dennis J. Krumholz, Partner
Riker Danzig, Scherer, Hyland, Perretti, LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981

Dear Mr. Krumholz:

Assistant Commissioner Wittenberg has asked me to respond to your letter of November 18, 2009, in which you represent the interests of our licensee, Shieldalloy Metallurgical Corporation (SMC). In your letter, you request that the Department either grant SMC 1) an exemption from the requirements of N.J.A.C. 7:28-12 and 58, or 2) a stay of the requirement to prepare and submit a decommissioning plan (DP) compliant with Subchapters 12 and 58 until the litigation commenced by SMC with respect to this matter in the federal and state courts is completed.

We have reviewed the information provided in your letter and have determined that the Department cannot support your exemption request. N.J.A.C. 7:28-2.8 requires the applicant to demonstrate hardship or compelling need and the Department to determine that the exemption will not result in any exposure to radiation in excess of the limits permitted by Subchapter 6, Standards for the Protection Against Radiation. SMC has not demonstrated hardship or a compelling need for the exemption. Because the decommissioning plan relies on engineering controls and requires a long term control license (something that our regulations do not allow), we have determined that the dose limits in Subchapter 6 would not be met if all controls failed, particularly if slag or baghouse dust were used as fill for constructing a house. Your request for an exemption pursuant to N.J.A.C. 7:28-2.8 is hereby denied.

Regarding the stay request, SMC has very recently filed suit in three separate forums concerning decommissioning of the Newfield site. That is litigation which could continue for years, particularly if SMC chooses to pursue appeals. The time of the stay would not be within the Department's control. In order to protect public health, safety and the environment, the Department cannot agree to an open ended stay and considers it advisable and necessary to advance the decommissioning process. However, we understand that the decommissioning plan will need significant revisions and as such, we

hereby offer to extend the date for submitting a DP which is compliant with N.J.A.C. 7:28-12 and 58 until July 31, 2010.

If the company considers itself to be aggrieved by the Department's denial of the exemption request, you may request a hearing before the Office of Administrative Law (OAL) by filing a hearing request with the Commissioner of the Department of Environmental Protection to contest the denial. Your hearing request will be considered by the Department. It must be received by the Department within 20 days of your receipt of this letter and sent to:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
PO Box 402
Trenton New Jersey 08625-0402

Your hearing request must include the following:

1. your name, address and telephone number;
2. a statement of the legal authority and jurisdiction under which the hearing request is made;
3. a brief and clear statement of the specific facts describing the Department decision being appealed;
4. a statement of all facts alleged to be at issue and their relevance to the Department's decision, as well as any legal issues associated with the alleged facts at issue.

Please contact the Department no later than December 23, 2009, if you agree to accept the offer of an extension of time for submission of a decommissioning plan compliant with New Jersey's regulations.

Sincerely yours,



Jill Lipoti, Ph.D.
Director