

DMSSA

- New Jersey Agreement Application. (Torre Taylor/Dennis Sollenberger)

Staff provided its final recommendations to the Commission in SECY-09-0114 on August 18, 2009. The Commission approved the Agreement in SRM dated September 2, 2009 with no comments. The Chairman signed the Agreement on September 8, 2009, and Governor of New Jersey signed the Agreement on September 23, 2009. The Agreement will be effective on September 30, 2009.

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Shieldalloy Metallurgical Corporation (SMC), a source material licensee in the State of New Jersey (NJ) has filed two legal actions. First, SMC filed a civil case in the United States District Court in New Jersey against the 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. SMC seeks to require New Jersey to uphold the provisions of a 1997 settlement agreement that resolved NJ's and the United States' claims against Shieldalloy in Bankruptcy Court. SMC alleges that NJ agreed to Shieldalloy's plan to cap and dispose of radioactive slag onsite since the parties used this disposal method to calculate SMC's financial assurance for clean-up at their Newfield site. SMC's lawsuit appears aimed at stopping NJ, once it becomes an Agreement State, from requiring costly offsite disposal of SMC's existing contamination. NRC is not a party to the lawsuit.

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On September 14, 2009, SMC filed an Appeal with the New Jersey Judiciary Superior Court, Appellate Division. SMC is appealing the validity of NJ's radiation protection regulations claiming that the regulations were not adopted in accordance with the requirements of the State Administrative Procedures Act. As part of its review of the NJ Agreement application, staff reviewed NJ's radiation protection regulations and found the regulations to be compatible with NRC's regulations.

At this time, there have been no legal proceedings filed by SMC against the NRC.

(Note: 510 NRC licensees based in NJ).

Staff is working towards an effective date of no later than September 30, 2009. The NARM waiver expires on August 7, 2009. The final SECY paper for the Agreement will discuss the steps staff is taking to address the NARM waiver expiration and the interim time period.

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The schedule for processing the final steps of the Agreement is tight and staff has shortened the steps where possible. Staff is working to provide the Commission with final recommendations regarding the New Jersey Agreement application as soon as possible after the comment period ends, but no later than August 24, 2009. It is critical for staff to have Commission direction on this SECY paper no later than September 16, 2009, in order to meet the effective date of the Agreement by September 30, 2009, and finalize the last steps of processing the Agreement. If the Agreement cannot be in place by September 30, 2009, there will be a significant impact on licensees in New Jersey, particularly increased costs due to fees. Additionally, New Jersey has State procedural requirements for notification of the upcoming Agreement before the regulations can take effect. Therefore, it is critical to meet the effective date of September 30, 2009.

The public comment period closed on June 26, 2009. Six comments were received. Two

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~~licensees commented on the proposed Agreement. One commented on the fees that New Jersey will charge. The other licensee, Shieldalloy Metallurgical Corporation (SMC), is opposed to the Agreement. SMC commented extensively on the compatibility of the license termination rule, providing several examples where New Jersey regulations are more restrictive than NRC's regulations. SMC also commented on areas related to implementation of the program under IMPEP review. Additionally, they stated that if New Jersey's Agreement did become effective, the regulatory authority over SMC should remain with NRC, and provided several reasons. These comments will be addressed in a comment resolution document and provided as an enclosure to the final SECY paper providing staff recommendations to the Commission.~~

~~The compatibility level for NRC's License Termination Rule is Category C, so a State can have more restrictive requirements for this regulation. Other States have similar more restrictive standards for license termination, including lower dose standards from NRC's 25 mem-~~

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