

Clark, Michael

From: Travieso-Diaz, Matias F. [matias.travieso-diaz@pillsburylaw.com]
Sent: Thursday, June 11, 2009 1:58 PM
To: Clark, Michael
Subject: FW: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report
Attachments: 20090611 SMC H Frakes to USNRC - Agreement State.pdf; Attachment 1 SMC Hoy Frakes to NJDEP Comment on Agreement State Regs.PDF; Attachment 2 40NJR5195 radiation_reg__091508.pdf; Attachment 4 NJDEP Letter 12-23-08 regarding Dec meeting.pdf

Mike: I am resending this message because it was rejected by your server as being too large. I eliminated Attachment 3 to the letter, which is a copy of a Third Circuit OGC brief which you probably have in any case. Let me know if you need the brief and I will try to send you at least the relevant pages.
Regards,

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8142 | Fax: 202.663.8007 | Cell: 703.472.6463
2300 "N" Street, NW | Washington, DC 20037-1122

Email: matias.travieso-diaz@pillsburylaw.com
Bio: www.pillsburylaw.com/matias.travieso-diaz

From: Travieso-Diaz, Matias F.
Sent: Thursday, June 11, 2009 1:51 PM
To: Clark, Michael
Cc: Silberg, Jay E.; White, David
Subject: RE: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report

Mike: I am enclosing for your information a courtesy copy of the comments that SMC submitted today on the Staff's assessment of New Jersey's regulatory program and the State's application to become an Agreement State.

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8142 | Fax: 202.663.8007 | Cell: 703.472.6463
2300 "N" Street, NW | Washington, DC 20037-1122

Email: matias.travieso-diaz@pillsburylaw.com
Bio: www.pillsburylaw.com/matias.travieso-diaz

066

From: Clark, Michael [mailto:Michael.Clark@nrc.gov]
Sent: Monday, June 08, 2009 12:43 PM
To: Travieso-Diaz, Matias F.
Subject: Re: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report

Matias,

I am confident the staff will give full consideration to the point you raise as it considers comments on the proposed agreement. Because I have not discussed with the staff the specific issue you raise, and because I may be unable to do so in short order, I would ask that you not represent any staff position on that issue. I believe the better course for the staff would be to make its position clear when it addresses comments received on the proposed agreement.

Thanks,

Sent from NRC blackberry
Mike Clark
202-253-1998

Pillsbury

From: Travieso-Diaz, Matias F.
To: Clark, Michael
Cc: Silberg, Jay E. ; White, David
Sent: Mon Jun 08 11:35:11 2009
Subject: RE: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report

Michael: Shieldalloy intends to submit comments on the Federal Register notice which will reference at least one ground for NRC retaining jurisdiction of particular sites when entering into an agreement with a State. Such a retention is **explicitly contemplated by Compatibility Criterion 25, which directs that "appropriate arrangements will be made by NRC and the State to ensure that there will be no interference with or interruption of licensed activities or the processing of license applications by reason of the transfer."** Please let me know if you are still of the view that no basis exists for carving out an exception for the long going SMC proceeding. If so, I will not cite the NRC Staff concurrence in my e-mail to the ASLB.
Thank you and best regards,

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8142 | Fax: 202.663.8007 | Cell: 703.472.6463
2300 "N" Street, NW | Washington, DC 20037-1122

Email: matias.travieso-diaz@pillsburylaw.com
Bio: www.pillsburylaw.com/matias.travieso-diaz

oll

From: Clark, Michael [mailto:Michael.Clark@nrc.gov]
Sent: Monday, June 08, 2009 11:23 AM
To: Travieso-Diaz, Matias F.
Subject: Re: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report

Matias,

I'm on travel today, so I apologize for any delay in responding.

Unfortunately, I cannot state that the staff agrees with your clarification. While it is true that New Jersey would not assume jurisdiction over the Newfield site if the proposed agreement is revised to exclude Part 40 licensees generally, the staff is unaware of any basis for excluding a specific licensee from an agreement reached under the AEA. I do not know if this is an issue you will be pursuing through either comments on New Jersey's proposed agreement or litigation. But the Staff's position at present is that there would be no basis for excluding the Newfield site specifically from New Jersey's agreement.

In the event the NRC receives comments making the case that the Commission can and should withhold transferring jurisdiction over the Newfield site specifically, that would seem an appropriate point for informing the Board that there may be additional uncertainty regarding whether New Jersey will assume jurisdiction over the site.

Sent from NRC blackberry
Mike Clark
202-253-1998

P. Clark

From: Travieso-Diaz, Matias F.
To: Clark, Michael
Cc: Silberg, Jay E.
Sent: Mon Jun 08 08:08:19 2009
Subject: RE: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report
Michael: I propose to send the following message to the Board. Please let me know if you agree. Thanks,

A reader of the Staff's Thirteenth Status Report may be left with the impression that, should New Jersey's application to become an Agreement State be approved, jurisdiction over SMC's Newfield site will automatically be transferred to the State and the NRC Staff's review of the proposed Decommissioning Plant for the site will terminate. In fact the final Agreement, if approved, may not

transfer jurisdiction over the Newfield site to the State but retain it with the Commission, in which case the Staff's review and this proceeding will continue.

I am authorized to represent that the Staff agrees with this clarification.

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8142 | Fax: 202.663.8007 | Cell: 703.472.6463
2300 "N" Street, NW | Washington, DC 20037-1122

Email: matias.travieso-diaz@pillsburylaw.com
Bio: www.pillsburylaw.com/matias.travieso-diaz

From: Michael Clark [mailto:Michael.Clark@nrc.gov]
Sent: Friday, June 05, 2009 5:50 PM
To: Travieso-Diaz, Matias F.
Subject: RE: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report

Matias,

It doesn't seem like there is any disagreement between us. I understand that at least one of the sections of text you quote below suggests that, if New Jersey becomes an agreement state, it will have jurisdiction over the Newfield site. (I do not believe the second example, which merely refers to the "status of New Jersey's request," suggests the same result.) My point is simply that, if New Jersey becomes an agreement state under the terms of the *proposed* agreement, it will in fact have jurisdiction over the Newfield site. It is, of course, possible that the final agreement may not reflect the proposal, and that, under the final agreement, New Jersey will not assume jurisdiction over the Newfield site. (I would have no objection to you representing that as the Staff's position.) But, given the repeated references to the "proposed agreement" or "proposal" in the status report, I think there's little risk that the Board will assume that New Jersey will inevitably assume jurisdiction over the Newfield site.

Although I do not intend to amend the status report, I would consider filing a supplemental status report if the Staff receives comments stating that the NRC should not permit New Jersey to assume jurisdiction over the Newfield site.

Sincerely,

Michael J. Clark
Office of the General Counsel
United States Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852-2738
Phone: (301) 415-2011
Facsimile: (301) 415-3725

Pillsbury

From: Travieso-Diaz, Matias F. [mailto:matias.travieso-diaz@pillsburylaw.com]
Sent: Friday, June 05, 2009 4:52 PM
To: Michael Clark
Cc: Silberg, Jay E.
Subject: RE: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report

Michael: Please look again at the report, which states on p. 2 that "[t]he Staff will provide Shieldalloy comments on its Source Term Document, and the Staff expects Shieldalloy to submit Rev. 1b of its DP by approximately August 2009, unless New Jersey becomes an Agreement State in the interim" and on p. 3 that "[w]hether the Staff's technical review reaches the stages specified below will depend on the status of New Jersey's request to become an Agreement State." Those statements are not qualified in any way and should at least be accompanied by a clarification along the lines "and assumes jurisdiction over the Shieldalloy Newfield site". I would prefer not to have to file something with the Board that gives the impression that Shieldalloy and the Staff disagree on this point, so I invite you to send in a clarification along the lines I suggest. By the way, I do not expect that Shieldalloy will submit the Source Term Document for staff review before filing Rev. 1b of the DP, since such a review could adversely affect the scheduled submittal date. Best regards,

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8142 | Fax: 202.663.8007 | Cell: 703.472.6463
2300 "N" Street, NW | Washington, DC 20037-1122

Email: matias.travieso-diaz@pillsburylaw.com
Bio: www.pillsburylaw.com/matias.travieso-diaz

DEC

From: Michael Clark [mailto:Michael.Clark@nrc.gov]
Sent: Friday, June 05, 2009 4:33 PM
To: Travieso-Diaz, Matias F.
Subject: RE: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report

Matias,

The statements in the status report assume that, if New Jersey becomes an agreement state, it will do so under the terms of the proposed agreement. You are correct that a final agreement, if reached, may not reflect the proposed agreement. This could happen for a number of reasons; for example, New Jersey could reconsider its request to assume jurisdiction over Part 40 licensees generally. I think it's fairly clear that the statements in the status report reflect only what will occur if New Jersey becomes an agreement state under the terms of its proposal. If you think differently, I would have no objection to you raising this point in an e-mail to the Board.

Michael J. Clark
Office of the General Counsel
United States Nuclear Regulatory Commission
11555 Rockville Pike

Rockville, Maryland 20852-2738

Phone: (301) 415-2011

Facsimile: (301) 415-3725

From: Travieso-Diaz, Matias F. [mailto:matias.travieso-diaz@pillsburylaw.com]

Sent: Friday, June 05, 2009 3:33 PM

To: Michael Clark

Subject: RE: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report

Importance: High

Michael: Your Thirteenth Status Report to the Board assumes that, should New Jersey become an Agreement State, it will assume jurisdiction over the Newfield site. That is not necessarily the case; the Commission may direct that jurisdiction over Newfield be retained by the NRC. I request that you amend the report to make that clarification.

Matias F. Travieso-Diaz | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8142 | Fax: 202.663.8007 | Cell: 703.472.6463

2300 "N" Street, NW | Washington, DC 20037-1122

Email: matias.travieso-diaz@pillsburylaw.com

Bio: www.pillsburylaw.com/matias.travieso-diaz

From: Michael Clark [mailto:Michael.Clark@nrc.gov]

Sent: Friday, June 05, 2009 3:25 PM

To: rsnthl@verizon.net; Alan Rosenthal; Richard Wardwell; whrcville@embarqmail.com; Hearing Docket; OCAAMAIL Resource; Johanna Thibault; SherVerne Cloyd; reeseand@dol.lps.state.nj.us; kenneth.elwell@dol.lps.state.nj.us; Silberg, Jay E.; Travieso-Diaz, Matias F.; Haemer, Robert B.; Brett Klukan

Subject: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report

Attached please find the NRC Staff's Thirteenth Status Report. This document is also being served today via U.S. Mail and NRC internal mail. Please contact me if you have questions or need additional information.

Michael J. Clark

Office of the General Counsel

United States Nuclear Regulatory Commission

11555 Rockville Pike

Rockville, Maryland 20852-2738

Phone: (301) 415-2011

Facsimile: (301) 415-3725

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