



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

2010-0039

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RESPONSE TYPE FINAL PARTIAL

REQUESTER

Maria Webb

DATE

APR - 2 2010

PART I. -- INFORMATION RELEASED

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES **I, J** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852-2738.
- APPENDICES **I, J** Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

PART I.A -- FEES

AMOUNT *

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- You will be billed by NRC for the amount listed. None. Minimum fee threshold not met.
- You will receive a refund for the amount listed. Fees waived.

* See comments for details

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

The incoming request is in ADAMS at ML093140450.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Donna L. Sealing
Donna L. Sealing

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PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES

J

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
 - Low 2 Internal matters of a relatively trivial nature.
 - High 2 Disclosure would risk circumvention of a legal requirement.
- Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
 - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
 - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
 - 41 U.S.C., Section 253b, subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
 - The information is considered to be confidential business (proprietary) information.
 - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
 - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
 - Disclosure will harm an identifiable private or governmental interest.
- Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
 - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
 - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
 - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
 - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
 - (C) Disclosure would constitute an unwarranted invasion of personal privacy.
 - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
 - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
 - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Charles L. Miller	Director, Office of Federal and State Materials and Environmental Management Programs	Appendix J, Items: 1-2, 12, 14, 16, 18-31	✓		
John F. Cordes	Acting Assistant General counsel for Hearings, Enforcement and Administration	Appendix J, Items: 3-9, 11-13, 15, 17, 19, 20, 28, 31		✓	
Brooke D. Poole	Director, Office of Commission Appellate Adjudication	Appendix J, Item: 10		✓	

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

APPENDIX I
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	11/17/06	On-Site Visit Briefing Book for commissioner Jazcko; Shieldalloy Metallurgical Corporation, Newfield, New Jersey. (12 pages)
2.	09/08/09	E-mail from J. Olmstead, USNRC to B. Jones, USNRC; Subject: FW: SRM-SECY-09-0114 (Agreement New Jersey); attachment already publicly available. (1 page)
3.	06/11/09	E-mail from M.D. Travieso-Diaz, Pillsbury Winthrop Shaw Pittman LLP to M. Clark, USNRC; Subject: FW: Shieldalloy Metallurgical Corp., Docket No. 40/7102-MLA, NRC Staff's Thirteenth Status Report. (7 pages)
4.	08/26/09	E-mail from M.D. Travieso-Diaz, Pillsbury Winthrop Shaw Pittman LLP to M. Clark, USNRC; Subject: NJ Complaint. Pdf; Exh. A to NJ Complaint.pdf. (1 page)
5.	10/13/09	E-mail from M.D. Travieso-Diaz, Pillsbury Winthrop Shaw Pittman LLP to A. Reese, DOL LPS, State of New Jersey, et al; Subject: RE: Consultation pursuant to 10 CFR 2.32(b). (2 pages)
6.	10/27/09	E-mail from M. Clark, USNRC to B. Jones, USNRC, et al; Subject: FW: Shieldalloy Metallurgical Corp., Docket No. 40/7102-MLA, NRC Staff's Response to Shieldalloys Motion. (1 page)
7.	11/10/09	E-mail from L. Vincent, USNRC to M. Clark, USNRC, et al; Subject: FW: 2009/10/26- Copy of the State of New Jersey's Response to Shieldalloys Motion for a Stay. 10/26/2009. (1 page)
8.	10/24/08	E-mail from J. Olmstead, USNRC to T. Taylor, USNRC; Subject: RE: Receipt of New Jersey Agreement Application. (1 page)
9.	12/10/08	E-mail from J. Hayes, USNRC to J. Goodman, Dep, State of NJ; Subject: RE: Question. (1 page)
10.	12/10/08	E-mail from J. Olmstead, USNRC to D. Sollenberger, USNRC; Subject: RE; Comments on New Jersey Final Regulations. (2 pages)
11.	02/19/09	E-mail from J. Hayes, USNRC to J. Goodman, Dep, State of NJ; Subject: FW: SMC. (1 page)
12.	04/23/09	E-mail from J. Olmstead, USNRC to B. Jones, USNRC; Subject: FW: 20080717 SMC-NJDEP Letter. (2 pages)

13. 05/06/09 E-mail from J. Hayes, USNRC to D.R. Smith (Windsor, CT-US) and D. White; Subject: Shieldalloy Status Call Agenda. (2 pages)
14. 06/08/09 E-mail from J. Hayes, USNRC to M. Clark, USNRC; Subject: FW: SMC. (1 page)
15. 06/09/09 E-mail from J. Hayes, USNRC to J. Goodman, Dep, State of NJ; Subject: RE: SMC. (1 page)
16. 06/30/09 E-mail from J. Olmstead, USNRC to T. Taylor, USNRC; Subject: RE: NJ Agreement Public Comments. (1 page)
17. 10/21/09 E-mail from J. Hayes, USNRC to M. Clark, USNRC; Subject: Status of Shieldalloy's Request for a Stay. (1 page)
18. 10/29/09 Letter to Andrew Reese, Deputy Attorney General, NJ from Christopher J. Massey, EnergySolutions regarding Confirmation of Proposal for Site Cleanup and Off-Site Disposal at the Shieldalloy Metallurgical Corporation Site in Newfield, New Jersey. (7 pages)

**APPENDIX J
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	02/20/07	On-Site Visit Briefing Book for Commissioner Merrifield; Shieldalloy Metallurgical Corporation, Newfield, New Jersey. (17 pages) / EX 6
2.	09/04/08	On-Site Visit Briefing book for Commissioner Lyons; Shieldalloy Metallurgical Corporation, Newfield, New Jersey. (15 pages) / EX 6
3.	10/05/09	E-mail from J. Olmstead, USNRC to M. Clark, USNRC; Subject: RE: Shieldalloy Metallurgical Corp. –NRC Staff's Fifteenth Status Report. (2 pages) / EX 5
4.	10/05/09	E-mail from B. Jones, USNRC to J. Olmstead, USNRC; Subject: RE: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA – NRC Staff's Fifteenth Status Report. (2 pages) / EX 5
5.	10/09/09	E-mail from C. Marco, USNRC to M. Clark, USNRC; Subject: Re: Consultation pursuant to 10 CFR 2.323(b). (2 pages) / EX 5
6.	10/13/09	E-mail from C. Marco, USNRC to B. Jones, USNRC; Subject: FW: Shieldalloy Metallurgical Corp.; Docket No. 40-7102-MLA. (2 pages) / EX 5
7.	10/14/09	E-mail from M. Clark, USNRC to C. Marco, USNRC, et al; Subject: FW: Consultation pursuant to 10 CFR 2.323(b). (2 pages) / EX 5
8.	10/22/09	E-mail from M. Clark, USNRC to B. Jones, USNRC, et al; Subject: FW: Shieldalloy Metallurgical Corp.; Docket No. 40-7102-MLA. (10 pages total, 2 pages released) / EX 5
9.	10/23/09	E-mail from M. Clark, USNRC to B. Jones, USNRC, et al; Subject: FW: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Response to Shieldalloy's Motion for a Stay. (1 page) / EX 5
10.	10/30/09	E-mail from J. Olmstead, USNRC to E. Krause, USNRC; Subject: RE: Questions Regarding New Jersey Agreement. (1 page) / EX 5
11.	Undated	Table – NRC Regulation – 10 CFR Part vs. New Jersey Regulation – 7:28. (1 page) / EX 5
12.	08/22/08	E-mail from J. Hayes, USNRC to A. Fetter, USNRC, et al; Subject: FW: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Eighth Status Report. (3 pages) / EX 5
13.	09/23/08	E-mail from M. Clark, USNRC to J. Hayes, USNRC; Subject: NJ Agreement Q A 09152002 draft. (4 pages total, 1 page released) / EX 5

14. 09/25/08 E-mail from J. Hayes, USNRC to J. Hull, USNRC, et al; Subject: FW: SMC. (1 page) / **EX 5**
15. 09/25/08 E-mail from J. Hayes, USNRC to M. Clark, USNRC; Subject: RE: SMC. (2 pages) / **EX 5**
16. 11/24/08 E-mail from J. Hayes, USNRC to R. Tadesse, USNRC, et al; Subject: NJDEP Statement on 11192008. (2 pages) / **EX 6**
17. 12/10/08 E-mail from J. Hayes, USNRC to M. Clark, USNRC; Subject: Question. (1 page) / **EX 5**
18. 01/14/09 E-mail from J. Hayes, USNRC to Shieldalloy NPEmails, et al; Subject: 12232008 – RE 12102008 meeting with SMC on NJ Becoming Agreement State. (5 pages) / **EX 6**
19. 01/21/09 E-mail from M. Clark, USNRC to J. Hayes and R. tadesse, USNRC; Subject: RE: SMC. (2 pages) / **EX 5**
20. 01/21/09 E-mail from M. Clark, USNRC to R. Tadesse and Shidlalloy NOEmails; Subject: Commission Referral June 2009. (2 pages) / **EX 5**
21. 05/05/09 E-mail from J. Hayes, USNRC to Shidlalloy NPEmails, et al; Subject Emailing: Tentative 05072009 Agenda. (2 pages) / **EX 6**
22. 05/06/09 E-mail from J. Hayes, USNRC to A. Fetter, USNRC; Subject: SECY-09-0065. (1 page) **EX 6**
23. 06/08/09 E-mail from J. Hayes, USNRC to M. Clark, USNRC; Subject: SMC/ (2 pages) / **EX 5**
24. 06/12/09 E-mail from J. Hayes, USNRC to Shieldalloy NPEmails, et al; Subject: FW: Sheildalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report. (1 page) / **EX 6**
25. 06/12/09 E-mail from J. Hayes, USNRC to M. Clark, et al; Subject: FW: Sheildalloy Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Thirteenth Status Report. (1 page) / **EX 6**
26. 08/17/09 E-mail from J. Olmstead, USNRC to T. Taylor, USNRC; Subject: RE: Meeting Today. (1 page) **EX 5**
27. 08/29/09 E-mail from J. Hayes, USNRC to D. Gillen, USNRC, et al; Subject: RE: Shieldalloy Mettallurgical Corporation Decommissioning Plan Rev 1b. Submittal. (2 pages) / **EX 6**
28. 09/23/09 E-mail from J. Olmstead, USNRC to T. Taylor and J. Hayes; Subject: RE: Transfer of Shidlalloy Files upon NJ Becoming an Agreement State. (2 pages) / **EX 5**
29. 09/24/09 E-mail from J. Hayes, USNRC to Shieldalloy NPEmails, et al; Subject: NJ Governor Sign Agreement State Pact (1 page) / **EX 6**

30. 10/01/09 E-mail from J. Hayes, USNRC to FSME_DWMEP Distribution, et al;
Subject: Cessation of Shieldalloy Project. (1 page) / **EX 6**
31. 10/05/09 E-mail from M. Clark, USNRC to J. Hayes, et al; Subject: RE: Sheildalloy
Metallurgical Corp., Docket No. 40-7102-MLA, NRC Staff's Fifteenth
Status Report. (2 pages) / **EX 5**