

RAS L-16

Docket, Hearing

**From:** Travieso-Diaz, Matias F. [matias.travieso-diaz@pillsburylaw.com]  
**Sent:** Wednesday, November 10, 2010 2:00 PM  
**To:** Clark, Michael; rsnthl@verizon.net; Rosenthal, Alan; Wardwell, Richard; whrcville@embarqmail.com; Docket, Hearing; OCAAMAIL Resource; Cloyd, SherVerne; reeseand@dol.lps.state.nj.us; kenneth.elwell@dol.lps.state.nj.us; Silberg, Jay E.; Haemer, Robert B.; Klukan, Brett; Kirstein, Josh  
**Subject:** RE: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, Status Report

**Dear Board and Parties:** We believe a clarification is warranted to the NRC Staff's characterization of the D.C. Circuit's decision issued yesterday in *Shieldalloy v. NRC*. An alternative holding by the Court was that the NRC's transfer of authority over Shieldalloy's Newfield facility to New Jersey was arbitrary and capricious because the NRC failed to consider the interruption in pending licensing actions that would result from the transfer of authority. The Court wrote (slip op. at 9-10): "[t]he formal existence of New Jersey provision for transfer seems in no way an assurance that the transfer would satisfy criterion 25's intended preclusion of 'interference with or interruption of licensed activities or the processing of license applications.' 46 Fed. Reg. at 7543. Obviously the NRC need not automatically consider every single pending licensing action individually when it considers transfer to a state. But in this case the NRC had a long history of dialogue and cooperation regarding the termination of a license, the state has been consistently hostile to those termination proceedings, and the regulated entity alerted the NRC not only to the likely interference with decommissioning but also to partial transfer as a possible solution. At the very least, the NRC should have explained how Shieldalloy's decommissioning process could proceed under the New Jersey regime free of the interference and interruption sought to be avoided by criterion 25 and why the partial transfer was not an appropriate alternative arrangement." While the language of the Court's decision is self-explanatory, the text cited above is particularly relevant to this proceeding and the Board should be aware of it.

DOCKETED

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

November 10, 2010 (2:00 p.m.)

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Email: [matias.travieso-diaz@pillsburylaw.com](mailto:matias.travieso-diaz@pillsburylaw.com)  
Bio: [www.pillsburylaw.com/matias.travieso-diaz](http://www.pillsburylaw.com/matias.travieso-diaz)

---

**From:** Clark, Michael [mailto:Michael.Clark@nrc.gov]  
**Sent:** Wednesday, November 10, 2010 12:58 PM  
**To:** rsnthl@verizon.net; Rosenthal, Alan; Wardwell, Richard; whrcville@embarqmail.com; Docket, Hearing; OCAAMAIL Resource; Cloyd, SherVerne; reeseand@dol.lps.state.nj.us; kenneth.elwell@dol.lps.state.nj.us; Silberg, Jay E.; Travieso-Diaz, Matias F.; Haemer, Robert B.; Klukan, Brett; Kirstein, Josh  
**Subject:** Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA, Status Report

Attached please find a 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

TEMPLATE = SECY 043<sup>1</sup>

DS.03

Phone: (301) 415-2011  
Facsimile: (301) 415-3725

Page  
400

Page  
401

Received: from mail1.nrc.gov (148.184.176.41) by OWMS01.nrc.gov  
(148.184.100.43) with Microsoft SMTP Server id 8.1.393.1; Wed, 10 Nov 2010  
14:00:26 -0500

X-Ironport-ID: mail1

X-SBRS: 5.3

X-MID: 26134186

X-IronPort-Anti-Spam-Filtered: true

X-IronPort-Anti-Spam-Result:

Ah0BAEx62kzM4/YRmWdsb2JhbACBb6BBFQEBAgEICwoHESK+aQKDCYI/BIRaVYg0Bg

X-IronPort-AV: E=Sophos;i="4.59,179,1288584000";

d="scan'208,217";a="26134186"

Received: from dcmf02.pillsburywinthrop.com ([204.227.246.17]) by  
mail1.nrc.gov with ESMTP; 10 Nov 2010 14:00:26 -0500

Received: from [172.16.2.11] by dcmf02.PillsburyWinthrop.com with ESMTP  
(DCPWSP SMTP Relay (Email Firewall v6.3.2)); Wed, 10 Nov 2010 14:00:19 -0500

X-Server-Uuid: 9BA6C334-D0DE-48DE-8906-DFAF2974D549

Received: from DW2XM02.PillsburyWinthrop.com ([172.16.2.60]) by  
dcxims01.PillsburyWinthrop.com with Microsoft SMTPSVC(6.0.3790.4675); Wed, 10  
Nov 2010 14:00:19 -0500

X-MimeOLE: Produced By Microsoft Exchange V6.5

Content-Class: urn:content-classes:message

Return-Receipt-To: "Travieso-Diaz, Matias F."

<matias.travieso-diaz@pillsburylaw.com>

MIME-Version: 1.0

Disposition-Notification-To: "Travieso-Diaz, Matias F."

<matias.travieso-diaz@pillsburylaw.com>

Subject: RE: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA,  
Status Report

Date: Wed, 10 Nov 2010 13:59:50 -0500

Message-ID:

<DDF5E38F7153A5459775A9273EA9F54501045CE4@DW2XM02.PillsburyWinthrop.com>

In-Reply-To:

<AC20339767ABED49A6E58D6CDB4263C50238A7E092@HQCLSTR01.nrc.gov>

X-MS-Has-Attach:

X-MS-TNEF-Correlator:

Thread-Topic: Shieldalloy Metallurgical Corp., Docket No. 40-7102-MLA,  
Status Report

thread-index: AcuBANQdinf8twJQ0W8obrMltutyQABX9kA

References:

<AC20339767ABED49A6E58D6CDB4263C50238A7E092@HQCLSTR01.nrc.gov>

From: "Travieso-Diaz, Matias F." <matias.travieso-diaz@pillsburylaw.com>

To: "Clark, Michael" <Michael.Clark@nrc.gov>, <rsnthl@verizon.net>,  
"Rosenthal, Alan" <Alan.Rosenthal@nrc.gov>, "Wardwell, Richard"

<Richard.Wardwell@nrc.gov>, <whrcville@embarqmail.com>, "Docket, Hearing"

<Hearing.Docket@nrc.gov>, OCAAMAIL Resource <OCAAMAIL.Resource@nrc.gov>, "Cloyd, SherVerne" <SherVerne.Cloyd@nrc.gov>, <reeseand@dol.lps.state.nj.us>, <kenneth.elwell@dol.lps.state.nj.us>, "Silberg, Jay E." <jay.silberg@pillsburylaw.com>, "Haemer, Robert B." <robert.haemer@pillsburylaw.com>, "Klukan, Brett" <Brett.Klukan@nrc.gov>, "Kirstein, Josh" <Josh.Kirstein@nrc.gov>

Return-Path: matias.travieso-diaz@pillsburylaw.com

X-OriginalArrivalTime: 10 Nov 2010 19:00:19.0579 (UTC)

FILETIME=[84F8FCB0:01CB8109]

X-WSS-ID: 60C4344926S233091-01-01

Content-Type: multipart/alternative;

boundary="----\_=\_NextPart\_001\_01CB8109.743C9B3F"