

**From:** [Kalman, Kenneth](#)  
**To:** [Castellon, Krupskaya](#)  
**Cc:** [Przygodzki, Roman](#); [Michalak, Paul](#)  
**Subject:** FW: Guidance for revising Trust Agreement  
**Date:** Thursday, May 19, 2011 3:43:27 PM

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KC,

Please enter into adams public/nonsensitive/normal release

Title: NRC Staff May 19, 2011 response to questions about Shieldalloy Trust

Docket 40-7102

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**From:** Kalman, Kenneth  
**Sent:** Thursday, May 19, 2011 3:41 PM  
**To:** 'Bradway, Pam J.'  
**Cc:** Przygodzki, Roman; Michalak, Paul; Kline, Kenneth; Chang, Lydia; White, David  
**Subject:** RE: Guidance for revising Trust Agreement

Pam,

Roman and I reviewed your 5/17/11 email and provide this response:

In regard to your question about withdrawing from the Fund;

Section 5 of the standard language allows for NRC and/or the licensee to withdraw funds from the Trust for decommissioning expenses. SMC's proposed revision would be too restrictive to NRC, in that we would only be able to direct funds for decommissioning in the case of SMC's bankruptcy or inability to decommission the site. As noted in our 5/11/11 email to you,

- Shieldalloy appears to have modified one of the paragraphs: **"In the event of the Grantor's default or inability to direct decommissioning activities, the Trustee shall make payments from the Fund as NRC shall direct..."** (red text denotes Shieldalloy's edit). The red text could adversely limit NRC's ability to direct payments out of the Trust. It is recommended that the language be consistent with the guidance.

In regard your question about the which model you should be using for the Trust Document;

You should refer to the guidance citation we provided earlier: NUREG-1757 Volume 3, Appendix A.4. The recommended language for a "Trust Fund" and "Standby Trust Fund" are almost completely identical. Only a few changes would need to be made to the current SMC draft (e.g. a few changes to the WHERAS clauses, replacing references to "standby trust fund" to "trust fund")

Let us know if you have any additional questions or need to discuss this matter with us for clarification. Otherwise, we will anticipate you revising your documents accordingly, including revision of the Schedules, corrections to the oversight that the Certificate of

Resolution indicates New York instead of Delaware (SMC was reincorporated as a DE corporation in 1997), and reference RBS Citizens, N.A. in all documents.

Once all these changes are completed, please submit these documents for NRC review.

Thank you,

Ken

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**From:** Bradway, Pam J. [mailto:pbradway@shieldalloy.com]  
**Sent:** Tuesday, May 17, 2011 10:37 AM  
**To:** Kalman, Kenneth  
**Cc:** Przygodzki, Roman; Michalak, Paul; Kline, Kenneth; Chang, Lydia; White, David  
**Subject:** RE: Guidance for revising Trust Agreement

Ken -

My apologies for not getting back to you sooner; I have reviewed your comments below and will make changes as you have suggested. However, there is one area that I would like some clarification on in regards to Section 5. I kept some of the wording from the original Trust document only because it seemed to make sense. I am assuming (perhaps incorrectly?) that payments from the Fund (for eventual decommissioning activities) will be made as SMC incurs expenses to do so (naturally, based upon an approved Plan); however, the wording in the "guidance" document seems to indicate that the NRC will be directing payments for decommissioning activities. The original wording implies that SMC will direct the Trustee to release funds for payment of decommissioning activities *but*, in the event of SMC's default or inability to do so, the NRC will then take over. Once decommissioning begins, who will be responsible for paying those expenses from the Fund - - SMC or NRC?

In regards to your other comment regarding the Trust Document, it was my intent to only replace the existing Trust Agreement ("1990 Trust") with an updated version that was more indicative of the current situation. My intent is to use an updated document for the existing funding only. In that case, is there a different model agreement we should be using?

In regards to your comments regarding the Schedules: I will change Schedule B as indicated, assuming that the current value of the Trust is the property being transferred. Schedule C is still blank; I don't know what the annual Trustee fee is yet but I will fill that in when I get it. I will make corrections for the last two comments; it was my oversight that the Certificate of Resolution indicates New York instead of Delaware (SMC was reincorporated as a DE corporation in 1997). I will also make sure to reference RBS Citizens, N.A. in all documents.

I'll make changes pending your additional comments and/or clarifications.

Regards,  
Pam

Pamela J. Bradway - C.P.A., P.H.R.

Corporate Controller

Shieldalloy Metallurgical Corp

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Newfield, NJ 08344

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**From:** Kalman, Kenneth [mailto:Kenneth.Kalman@nrc.gov]  
**Sent:** Wednesday, May 11, 2011 4:46 PM  
**To:** Bradway, Pam J.  
**Cc:** Przygodzki, Roman; Michalak, Paul; Kline, Kenneth; Chang, Lydia  
**Subject:** RE: Guidance for revising Trust Agreement

Pam,

We reviewed the documents you sent us and have the following comments. Please revise accordingly.

Thank you,

Ken

Trust Document:

- Shieldalloy appears to have used the NUREG model for a *Standby* Trust Agreement. As this account is already funded, this might be revised to be a Trust Agreement. Are the revised trust documents intended for the existing funding, for a letter of credit (or other instrument) that might be procured in the future, or both?
- Section 5: Shieldalloy appears to have modified one of the paragraphs: **"In the event of the Grantor's default or inability to direct decommissioning activities,** the Trustee shall make payments from the Fund as NRC shall direct..." (red text denotes Shieldalloy's edit). The red text could adversely limit NRC's ability to direct payments out of the Trust. It is recommended that the language be consistent with the guidance.

Trust Agreement Schedules:

- Schedule B generally lists the property/funding of the Trust. The version that Shieldalloy provided states that no property is part of the Trust, however, it is our understanding that the Trust is already funded. Schedule B should list the amount of funding. It would also be helpful if Schedule B listed the account information too, in the event that the staff needs to call the bank regarding the account)
- Schedule C generally states the annual fee charged by the Trustee. However, this information is not provided in the draft. Could this information be populated into Schedule C?
- The Certificate of Resolution states that Shieldalloy is a New York corporation. However, the first paragraph and Section 18 of the draft Standby Trust Agreement

state that Shieldalloy is a Delaware corporation. Shieldalloy should clarify the state of incorporation and revise the documents to make them consistent.

- The Letter of Acknowledgement lists the bank as “Citizens Bank,” but lists “RBS Citizens, N.A.” is listed on the Standby Trust Agreement. The Letter of Acknowledgement should be consistent with the Trust Document. Also, per NUREG-1757, the Letter of Acknowledgement should state whether the bank is a national or State banking association.

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**From:** Bradway, Pam J. [mailto:pbradway@shieldalloy.com]  
**Sent:** Monday, May 09, 2011 11:15 AM  
**To:** Kalman, Kenneth  
**Cc:** Przygodzki, Roman; Michalak, Paul  
**Subject:** RE: Guidance for revising Trust Agreement

Ken -

All historical references to elements that are unrelated to the current situation have been eliminated and the Trust document has been updated to reflect current guidelines. Please review and advise.

Regards,  
Pam

Pamela J. Bradway - C.P.A., P.H.R.

Corporate Controller

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**From:** Bradway, Pam J.  
**Sent:** Monday, May 02, 2011 2:17 PM  
**To:** Kalman, Kenneth  
**Cc:** Przygodzki, Roman; Michalak, Paul  
**Subject:** RE: Guidance for revising Trust Agreement

Ken -

I have asked SMC's legal counsel to provide me with a Draft trust document (prepared in accordance with NRC guidelines) to replace the 1990 Standby Trust; I'll forward a copy to you within

the next few days.

Regards,  
Pam

Pamela J. Bradway - C.P.A., P.H.R.

Corporate Controller

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**From:** Kalman, Kenneth [mailto:Kenneth.Kalman@nrc.gov]  
**Sent:** Thursday, April 28, 2011 10:39 AM  
**To:** Bradway, Pam J.  
**Cc:** Przygodzki, Roman; Michalak, Paul  
**Subject:** Guidance for revising Trust Agreement

Pam,

Here is the link to the NRC public website for NUREG-1757 Volume 3:

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1757/v3/>

Appendix A.4 provides guidance and sample language for Trust Funds.

Roman Przygodzki, performed an initial review of your existing Trust Agreement, and it looks like Sections 5, 6b, 8a, 13, and 15 of the existing Trust Agreement may be inconsistent with the recommended language contained in NUREG-1757, Vol. 3, Appendix A.4. It also appears that Section 5a uses a term "Depositor," but it does not appear that this term was defined in the document.

If you have any questions, please contact Roman by email or phone 301-415-5143.

Thank you,

Ken Kalman