

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alan S. Rosenthal, Chairman  
Dr. Richard E. Wardwell  
Dr. William H. Reed

In the Matter of  
  
SHIELDALLOY METALLURGICAL CORP.  
  
(Licensing Amendment Request for  
Decommissioning of the Newfield, New Jersey  
Facility)

Docket No. 40-7102-MLA  
ASLBP No. 07-852-01-MLA-BD01  
August 2, 2011

ORDER

(Relieving NRC Staff of Obligation to File Status Reports)

This proceeding involves the decommissioning of the Shieldalloy Metallurgical Corporation's (Shieldalloy's) Newfield, New Jersey site, on which there remains radioactive material generated in the course of a now discontinued activity conducted on that site. On September 30, 2009, regulatory authority over the site was transferred by the NRC to the State of New Jersey (New Jersey).<sup>1</sup> Because the transfer was immediately challenged by Shieldalloy in a petition for review filed in the United States Court of Appeals for the District of Columbia Circuit, this Board decided to retain jurisdiction over the proceeding, and more particularly over New Jersey's opposition to Shieldalloy's submitted site decommissioning plan, to await the outcome of the judicial litigation.

On November 9, 2010, the District of Columbia Circuit issued its decision on the Shieldalloy petition for review. The 2009 transfer of regulatory jurisdiction to New Jersey

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<sup>1</sup> State of New Jersey: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the Nuclear Regulatory Commission and the State of New Jersey, 74 Fed. Reg. 51,882, 51,882-84 (Oct. 8, 2009).

was vacated and the matter remanded to this agency for further action consistent with the court's opinion.<sup>2</sup>

In the wake of this development, and after holding a telephone conference with the parties, the Board entered an unpublished order in which it directed the NRC Staff to file bi-monthly reports respecting what action was being taken by it in light of the court's ruling. The first such report was to become due on January 25, 2011.<sup>3</sup>

Before that date was reached, on January 3, 2011 the Secretary of the Commission called upon Shieldalloy and New Jersey to provide their views on the question of whether the agency should reinstate the transfer of regulatory authority over the Newfield site (after addressing the court's objections to the prior transfer) or, instead, should now retain such authority and move forward with consideration of the challenged decommissioning plan.<sup>4</sup> Given this development, the NRC Staff understandably informed the Board in its January 25 status report that it expected to take no action on the matter until after the Commission passed upon that question.<sup>5</sup>

The briefs on the posed question have now been on file for close to six months (unsurprisingly, Shieldalloy and New Jersey take diametrically opposed positions on it).<sup>6</sup> Yet, the Commission decision has not as yet surfaced. Thus, the Staff's bi-monthly status reports submitted in March, May, and just last week did no more than to repeat what had been said in the January report.

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<sup>2</sup> Shieldalloy Metallurgical Corp. v. NRC, 624 F.3rd 489, 497 (D.C. Cir. 2010).

<sup>3</sup> Licensing Board Order (Reinstating Status Report Requirement) (Nov. 23, 2010) at 1-2 (unpublished).

<sup>4</sup> Secretary Order (Jan. 3, 2011) at 1 (unpublished).

<sup>5</sup> See NRC Staff's Status Report (Jan. 25, 2011) at 4.

<sup>6</sup> See Shieldalloy's Response to the Commission's January 3, 2011 Order (Feb. 4, 2011); Letter from Paula T. Dow, Attorney General of New Jersey, and Andrew D. Reese, Deputy Attorney General, to U.S. Nuclear Regulatory Commission (Feb. 4, 2011).

We do not know, of course, when the Commission will rule on the matter. What is clear, however, is that, until that occurs, the bi-monthly reports will remain a carbon copy of what was submitted two months earlier. That being so, there is no apparent good reason to continue to insist upon their submission.

Accordingly, pending the rendition of the Commission's decision, the NRC Staff is hereby relieved of the obligation imposed by this Board's November 23, 2010 order to file bi-monthly status reports in this matter. Upon receipt of the decision, the Board will determine what course of action it should follow in light of the conclusions reached therein.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>7</sup>

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Alan S. Rosenthal, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
August 2, 2011

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<sup>7</sup> Copies of this order were sent this date by Internet e-mail to the counsel/representatives for (1) Shieldalloy Metallurgical Corp.; (2) State of New Jersey; and (3) NRC Staff.

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NUCLEAR REGULATORY COMMISSION

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(License Amendment Request for )  
Decommissioning the )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (RELIEVING NRC STAFF OF OBLIGATION TO FILE STATUS REPORTS) have been served upon the following persons by U.S. mail, first class, and NRC internal mail.

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Docket No. 40-7102-MLA  
LB ORDER (RELIEVING NRC STAFF OF OBLIGATION TO FILE STATUS REPORTS)

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 2<sup>nd</sup> day of August 2011