

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD PANEL '99 JAN -4 P2:56

Before Presiding Officer:
G. Paul Bollwerk, III, Administrative Judge

Special Assistant:
Thomas D. Murphy, Administrative Judge

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

SHIELDALLOY METALLURGICAL CORP.

(Cambridge, Ohio Facility)

Docket No. 40-8948-MLA

ASLBP No. 99-760-03-MLA

January 4, 1999

MEMORANDUM AND ORDER
(Initial Prehearing Order)

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In this proceeding, licensee Shieldalloy Metallurgical Corporation (SMC) has applied for an amendment to its 10 C.F.R. Part 40 source materials license, License No. SMB-1507, for its Cambridge, Ohio facility. The September 14, 1998 amendment request would modify SMC's license to (1) allow SMC to take possession of slag and associated soil that previously was gathered from offsite locations and is currently kept in containers at a temporary staging area at SMC's Cambridge facility; and (2) permit SMC to remove this offsite slag/soil from the containers and transfer it to an existing slag pile on the SMC facility. On November 18, 1998, the NRC staff issued a notice of receipt of this amendment request and of opportunity for a informal adjudicatory hearing, which was published in the

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Federal Register on November 24, 1998. See 63 Fed. Reg. 64,976 (1998). By letter dated December 21, 1998, unnamed citizens of Guernsey County, Ohio, have asked for a hearing relative to the SMC amendment application.

In accordance with the authority provided in 10 C.F.R. § 2.1209, the Presiding Officer sets forth the following directives regarding the conduct of this proceeding:

I. SCHEDULE FOR NRC STAFF FILING
REGARDING PETITIONERS' HEARING
REQUEST

On or before Monday, January 11, 1999, the staff shall inform the Presiding Officer whether it wishes to participate as a party to this adjudication. If the staff decides to participate as a party, its answer to the December 21, 1998 Guernsey County, Ohio citizens hearing request likewise shall be filed by that same date.

II. ADMINISTRATIVE MATTERS

A. Notice of Appearance

If they have not already done so, on or before Monday, January 11, 1999, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.713(b). In each notice of appearance, besides providing a business address and telephone number, if an attorney or representative has a

facsimile number and/or an Internet e-mail address, the attorney or representative should provide that information as well. Counsel who have already submitted a notice of appearance that does not provide facsimile or e-mail information should file a supplemental statement with that information on that same date.

B. Service on the Presiding Officer and Other Participants

1. Service on Presiding Officer and Special Assistant

For each pleading or other submission filed before the Presiding Officer or the Commission in this proceeding, subject to the requirement of section II.B.1.g below, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R.

§ 2.1203(c) and serving a copy on every other participant, a participant should serve conforming copies on the Presiding Officer and the Special Assistant by one of the following methods:

a. Regular Mail. To complete service on the Presiding Officer and the Special Assistant via United States Postal Service first-class mail, a participant should send conforming copies to each at the following address:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

For regular mail service, the staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first-class mail.

b. Overnight or Hand Delivery. To complete service on the Presiding Officer and the Special Assistant via overnight (e.g., express mail) or hand delivery, a participant should send conforming copies to each at the following address:

Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852

It should be noted that use of the regular mail address (see section II.B.1.a above) for an overnight/hand delivery (such as Federal Express) may delay receipt of the filing.

c. Facsimile Transmission. To complete service on the Presiding Officer and Special Assistant by facsimile transmission, a participant should (i) send one copy by rapifax to the attention of the Presiding Officer and the Special Assistant at (301) 415-5599 (verification (301) 415-7393); and (ii) that same date, send conforming copies to each by regular mail at the address given in section II.B.1.a above.

d. E-Mail. To complete service on the Presiding Officer and the Special Assistant by e-mail transmission, a participant should (i) send the filing (which should include the certificate of service) as a file attached to an e-mail message directed to the Presiding Officer and the Special Assistant (Internet addresses: gpb@nrc.gov, tdm@nrc.gov; NRC Agency Upgrade of Technology for Office Systems (AUTOS) Wide

Area Network (WAN) System addresses: GPB, TDM); and (ii) send paper conforming copies that same date to each by regular mail at the address given in section II.B.1.a above.

If a participant has a pleading it wishes to send by e-mail that includes attachments it is unable to convert to electronic form, it should do one of the following:

- i. If the attachments the participant is unable to convert to electronic form are fifteen pages or less, contemporaneous with the transmission of the pleading by e-mail the attachments should be sent by a separate facsimile transmission. The e-mail and facsimile transmissions should note that separate transmission modes are being used. The paper conforming copies of the pleading and attachments should be sent to the Presiding Officer and the Special Assistant by regular mail at the address given in section II.B.1.a above.
- ii. If the attachments the participant is unable to convert to electronic form are more than fifteen pages, the pleading should be sent by e-mail and the paper conforming copies of the pleading with the attachments should be sent to the Presiding Officer and the Special Assistant by express mail or other means that will ensure delivery on the next business day. The e-mail should note that there will be next-day service of the pleading with the attachments.

e. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail. To be timely, any pleading or other submission served on the Presiding Officer and the Special Assistant by hand delivery, facsimile transmission,

or e-mail must be received by them no later than 12:00 a.m. (midnight) Eastern Time on the date due.

f. Service on Other Participants. Whichever of the methods outlined above (e.g., facsimile or e-mail with conforming paper copies to follow by mail) is used for service on the Presiding Officer and the Special Assistant, the participant serving the pleading should make service on all other participants and the Office of the Secretary (Facsimile number: (301) 415-1101; Internet address: hearingdocket@nrc.gov; AUTOS WAN address: HEARINGDOCKET) by the same or a comparable method.

g. Service of all Filings. In accordance with the Commission's July 28, 1998 order, see CLI-98-12, 48 NRC 18, 20 (1998), absent some other directive from the Presiding Officer, all filings in this case directed to the Presiding Officer shall be served on the Presiding Officer, the Special Assistant, the Office of the Secretary, and the other participants so as to ensure receipt on the day of filing. Absent some other directive from the Presiding Officer, the participants may use any of the methods outlined above so long as the filing is timely received by the Presiding Officer, the Special Assistant, the Office of the Secretary, and the other participants.

C. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including signature page) absent preapproval of the Presiding Officer. A request for Presiding Officer preapproval to exceed this page limitation shall be sought in writing no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must (a) indicate whether the request is opposed or supported by the other participants to the proceeding; (b) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

In accordance with the agency's rules of practice, leave must be sought to file a reply to a response to a motion. See 10 C.F.R. §§ 2.730(c), 2.1237((a)). A request for Presiding Officer preapproval to file a reply shall be sought in writing no less than three business days prior to the time the reply will be filed.¹ A request to file a

¹ Although the agency's rules of practice do not provide for reply pleadings, the Presiding Officer will
(continued...)

reply must indicate (1) whether the request is opposed or supported by the other participants to the proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

D. Motions for Extension of Time

A motion for extension of time filed with the Presiding Officer in this proceeding shall be submitted in writing at least three business days before the due date for the pleading or other submission for which an extension is sought. A motion for extension of time must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; and (2) demonstrate good cause that supports permitting the extension.

E. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be served on the Presiding Officer, the Special Assistant, the Office of the Secretary, and counsel for the other participants by facsimile transmission, e-mail, or other means that will ensure receipt on the next business day after the filing of the request.

(...continued)

presume that for a reply to be timely, it would have to be filed within ten days of the date of service of the response it is intended to address.

F. Exhibits/Attachments to Filings.

If a participant files a pleading or other submission with the Presiding Officer that has additional documents appended to it as exhibits or attachments, a separate alpha or numeric designation for each appended document (e.g., Exhibit 1; Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

Exhibits and attachments to a motion and any related responsive pleadings are not subject to the page limitation set forth in section II.C.1 above.

III. ELECTRONIC HEARING DATABASE

Establishing an electronic database for this case will be a significant aid to the Presiding Officer and the participants as the proceeding goes forward. Although the agency's rules of practice do not yet incorporate provisions for filing and docketing documents electronically, the Presiding Officer nonetheless would like to have the participants' cooperation in establishing an electronic database for this proceeding.

To this end, the Presiding Officer requests that for each filing or submission that a participant makes, it provide the Presiding Officer with an electronic version of

the document. The electronic version of the document can be submitted by e-mail or on a 3.5 inch diskette. Text documents can be forwarded in their native wordprocessing format (e.g., Word, WordPerfect).² Any nontext documents/attachments (e.g., maps or older text documents for which an electronic version is not available) should be provided in any standard image format (e.g., BMP, TIFF, JPG, GIF).³

So that the Presiding Officer can begin creating this database, within ten days from the date of this memorandum and order, each of the participants should provide the Presiding Officer with an electronic version of any document (e.g., the petitioners' hearing petition/intervention request) they already have filed in this proceeding. Electronic copies of future filings should be provided to

² In submitting the electronic version of text documents, the participants should be careful to ensure that any dates in the documents are entered using characters rather than a "date code." Inserting a date code may cause the date to appear as the current date when the document is viewed, thereby creating confusion about the actual date of the document.

Also in this regard, as an aid to the Presiding Officer, the participants are asked to place the date of each pleading (i.e., the date it is filed and served) on the document's first page.

³ A participant that has questions about image format compatibility or does not have the capability of providing images of nontext documents should contact Mr. James Cutchin at the phone number given in the text below.

the Presiding Officer contemporaneously with the submission of the document.

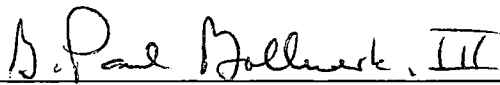
Electronic copies of filings should be sent to James M. Cutchin V by regular mail at the address given in section II.B.1.a above or by Internet e-mail to jmc3@nrc.gov (NRC AUTOS address: JMC3). Mr. Cutchin can be reached at (301) 415-7397 if the participants have any questions about formatting or submitting electronic documents.

IV. REFERENCED DOCUMENT

The Presiding Officer requests that on or before Wednesday, January 13, 1999, either applicant SMC or the staff provide the Presiding Officer (and counsel for the petitioners from Guernsey County, Ohio, if he does not have one) with an electronic version (if available) and one paper

copy of the September 14, 1998 SMC license amendment application (and any subsequent revisions thereto) referenced in the staff's November 18, 1998 notice of consideration of amendment request and of opportunity for a hearing.

It is so ORDERED.⁴



G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 4, 1999

⁴ Copies of this memorandum and order were sent by Internet e-mail transmission this date to counsel for (1) the applicant SMC, (2) the petitioners from Guernsey County, Ohio, and (3) the staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

SHIELDALLOY METALLURGICAL CORP.
Cambridge, Ohio
(Request for Materials License
Amendment)

Docket No.(s) 40-8948-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O--INIT. PREHEARING ORDER have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
G. Paul Bollwerk, III
Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas D. Murphy
Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Lawrence J. Chandler, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Michael Bruce Gardner, Esq.
22132 Westchester Road
Cleveland, OH 44122

James P. Valenti
Shieldalloy Metallurgical Corporation
West Boulevard
P.O. Box 768
Newfield, NJ 08344

Dated at Rockville, Md. this
4 day of January 1999

Adrian T. Byrdson
Office of the Secretary of the Commission