



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001
December 29, 1998

DOCKET NUMBER 40-8948-MLA
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USNRC

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OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

MEMORANDUM TO: B. Paul Cotter, Jr.
Chief Administrative Judge
Atomic Safety and Licensing board Panel

FROM: *John C. Hoyle*
John C. Hoyle, Secretary

SUBJECT: REQUEST FOR HEARING SUBMITTED BY MICHAEL
BRUCE GARDNER ON BEHALF OF CITIZENS OF
GUERNSEY COUNTY, OHIO

Attached is a request for hearing submitted by Attorney Michael Bruce Gardner on behalf of citizens of Guernsey County, Ohio. The request is dated December 21, 1998 and was filed in response to a notice published in the Federal Register. The notice indicates that the Nuclear Regulatory Commission is considering the issuance of a license amendment to Shieldalloy Metallurgical Corporation's Cambridge, Ohio site (40-8948) to allow Shieldalloy to receive and place slag/soil from a temporary onsite staging area to an area abutting the "West Slag Pile." The amendment request is part of the decommissioning planning for the Cambridge, Ohio site. The notice was published in the Federal Register at 63 Fed. Reg. 64976 (November 24, 1998) (copy attached).

The request for hearing is being referred to you for appropriate action in accordance with 10 C.F.R. §2.1261.

Attachments: As stated

cc: Commission Legal Assistants
OGC
CAA
OPA
EDO
NMSS
Michael Bruce Gardner, Esquire
James P. Valenti
Shieldalloy Metallurgical Corporation

19852

MICHAEL BRUCE GARDNER

DOCKETED

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Attorney at Law

USNRC 22132 Westchester Road
Cleveland, Ohio
44122

'98 DEC 22 P 3:58

December 21, 1998

DELIVERED via AIRBORNE EXPRESS

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Secretary, U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Attention: Rulemakings and Adjudications Staff

RE: Docket No. 40 - 08948
License No. SMB-1507

SUBJECT: Opportunity and Request for Hearing

Dear Sir or Madam:

The undersigned represents persons whose interests may be affected by the NRC's Consideration Of Amendment Request for Shieldalloy Metallurgical Corporation's Cambridge, Ohio Site. Pursuant to 10 CFR 2.1205(a), I request an informal adjudication hearing in this Materials Licensing Proceeding on my clients behalf.

The interests of the requester(s), my clients, in the proceeding are as follows:

- 1) My clients are citizens of Guernsey County, Ohio and are thus interested in
 - a) the full and faithful execution of the laws and regulations of the State of Ohio and the United States as it pertains to:
 - i) The Licensee's Amendment Request
 - ii) NRC's Consideration thereof; and
 - iii) The real party in interest, Chemetall Foote Corporation, *aka* Cyprus Foote Mineral Company;
 - b) The public health, safety and welfare of the community surrounding the Cambridge Site;
My clients have these interests in common with others similarly situated;
- 2) Some of my clients have unwittingly and innocently participated in the off-site disbursement and distribution of the radioactive slag from operations at the Cambridge Site unaccounted for in the license amendment request;
 - a) These clients have personal knowledge of additional off-site radioactive slag from operations at the Cambridge Site unaccounted for in the license amendment request;
 - b) These clients have this interest in common with others similarly situated;
- 3) My clients possess off-site radioactive slag from operations at the Cambridge Site unaccounted for in the license amendment request;
 - a) My clients have this interest in common with others similarly situated.

My clients' above-described interests may be adversely affected by granting the license amendment. My clients have the following specific areas of concern about the licensing activity that is the subject matter of the proceeding, which will result in:

- 1) The violation of Ohio Law including but not limited to

December 21, 1998

- a) Ohio Revised Code § 3734.027. Prohibitions As To Low-level Radioactive;
- b) Ohio Revised Code §3748.10. Treatment, Recycling, Storing Or Disposing Of Waste Except At A Licensed Facility Prohibited;
- c) Ohio Department of Health Administrative Order Issued July 18, 1997 concerning storing of off-site slag in temporary on-site staging area.
- 2) The violation of federal law, including but not limited to:
 - a) 10 CFR PART 61--Licensing Requirements For Land Disposal Of Radioactive Waste disposal of radioactive wastes containing source material received from other persons;
- 3) Increased costs for proper disposal of off-site radioactive slag unaccounted for in the license amendment;
 - a) Increased liability for my clients who have unwittingly and innocently participated in the off-site disbursement and distribution of the radioactive slag from operations at the Cambridge Site unaccounted for in the license amendment request.
- 4) Increased public health and safety risk from needless material handling regardless of NRC's assurance that granting the amendment will not prejudice further consideration of any final disposal alternatives;

My clients should be permitted a hearing

- 1) To raise objections to these violations of federal and state law;
- 2) To try to prevent violations of federal and state law, and
- 3) To seek available administrative remedies in the proceeding.

In accordance with Sec. 2.1205(h), the specified areas of concern are germane to the subject matter of the proceeding. This petition/request for hearing is made in accordance with Sec. 2.1205(d), and is timely filed within thirty days of publication of the Notice and Opportunity for Hearing in the Federal Register, November 24, 1998 (Volume 63, Number 226). Further, my clients have standing to request this hearing as persons adversely affected by the licensing activity that is the subject matter of the proceeding, as follows:

- 1) My clients rights under the Act to be made a party to the proceeding upon granting the request for a hearing, are set forth in Sec. 2.1205(i);
- 2) My clients, and others similarly situated, have substantial property, financial, legal, equitable, civic, social and economic interests in the proceeding;
- 3) My clients, and others similarly situated, may possibly benefit from any order that may be entered in the proceeding upon the requestors' interest, and;
- 4) The people of Guernsey and surrounding counties in Ohio may possibly benefit from any order that may be entered in the proceeding upon the requestors' interest.

Sincerely,



Michael Bruce Gardner

cc: Via Airborne Express

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

Attention: Mr. James P. Valenti

Via U.S. Mail

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Pursuant to the Commission's regulations, 10 CFR 2.1107, the Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that

an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated May 15, 1998, as supplemented September 25 and October 13, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 18th day of November 1998.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-31336 Filed 11-23-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 40-8948]

Consideration of Amendment Request for Shieldalloy Metallurgical Corp.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for Shieldalloy Metallurgical Corporation's Cambridge, Ohio Site and an opportunity for a hearing.

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SMB-1507 to allow for the receipt and placement of off-site slag/soil from the temporary staging area onsite to an area abutting the West Slag Pile as described in the July 24, 1998, "Environmental Report for the Proposed Action to Relocate Off-site Slag/Soil at the Shieldalloy Metallurgical Corporation Plant in Cambridge, Ohio," prepared for Cyprus Foote Mineral Company by Auxier & Associates, Inc. This license was issued to the Shieldalloy Metallurgical Corporation (Shieldalloy) for possession of radioactive slag from previous alloy production processes conducted at the Cambridge plant. NRC licenses the facility under 10 CFR part 40. The

license authorizes Shieldalloy to possess source material generally contained in slag that is a byproduct of processing of ores into metal alloys. Based on production process information, some of the slag produced at the Cambridge plant contained low levels of naturally occurring radioactivity from the alloy feed materials.

Shieldalloy has been preparing to decommission the Cambridge plant and terminate its NRC license. To complete the decommissioning of the site, Shieldalloy has proposed to stabilize, cap, and grade the slag in preparation for onsite disposal. NRC is currently awaiting Shieldalloy's filing of its decommissioning plan before NRC can complete its evaluation of final disposal options for the onsite slag piles and the off-site slag/soil. Until this overall review process is completed, the proposed offsite slag/soil addition would be placed in a manner that ensures a separable and retrievable condition. The NRC issued a Draft Environmental Impact Statement in 1996 and will prepare a Final Environmental Impact Statement (FEIS) after the decommissioning plan has been submitted.

Prior to the issuance of the amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will relate to both safety and environmental aspects of this discrete amendment request. If the amendment is granted, the NRC will assure that it will not prejudice any of the alternatives to be considered regarding final disposal. When the NRC makes its final determination of the disposition of the on-site slag pile and the slag/soil from off-site areas, these findings will be documented in the FEIS.

NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One

White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, between 7:45 am and 4:15 pm Federal workdays; or

2. By mail or telegram addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of part 2 of the NRC's regulations, a request for a hearing filed by a person other than the applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Shieldalloy Metallurgical Corporation, West Boulevard P.O. Box 768, Newfield, NJ 08344, Attention: Mr. James P. Valenti, and;

2. NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For further details with respect to this action, the application for amendment is available for inspection at NRC's Public Document Room, 2120 L Street NW., Washington, DC 20003-1527.

FOR FURTHER INFORMATION CONTACT:

James E. Kennedy, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-6668. Fax: (301) 415-5398.

Dated at Rockville, MD, this 17th day of November, 1998.

For the Nuclear Regulatory Commission.
John W. N. Hickey,
Chief, Low-Level Waste and Decommissioning
Projects Branch, Division of Waste
Management, Office of Nuclear Material
Safety and Safeguards.
[FR Doc. 98-31335 Filed 11-23-98; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 23, 30, December 7, and 14, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 23

Tuesday, November 24

10:30 a.m. Affirmation Session (Public Meeting) *

a: Final rule, Part 2, Subpart J, "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository"

b: International Uranium (USA) Corporation Commission Review of Presiding Officer's Memorandum and Order (Aug. 19, 1998) Dismissing Envirocare

c: Final Rule, Part 2, Subpart M; Public Notification, Availability Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications

d: North Atlantic Energy Corporation (Seabrook Station Unit No. 1); Motion to Withdraw Applications and to terminate Proceedings

Week of November 30—Tentative

Monday, November 30

2:00 p.m. Meeting on DC Cook (Public Meeting) (Contact: John Stang, 301-415-1345)

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

Week of December 7—Tentative

Tuesday, December 8

9:00 a.m. Briefing on EDO Program (Public Meeting) (Contact: Irene Little, 303-415-7380)

* THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415-1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415-1661.

11:00 a.m. Affirmation Session (Public Meeting) (if needed)

Week of December 14—Tentative

Tuesday, December 15

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:
<http://www.nrc.gov/SECY/smj/schedule.htm>

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661). In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: November 20, 1998.

William M. Hill, Jr.,

Secretary, Tracking Officer, Office of the Secretary.

[FR Doc. 98-31530 Filed 11-20-98; 2:14 pm]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213 (10 CFR 2.206); DD-98-12]

Connecticut Yankee Atomic Power Company (Haddam Neck); Director's Decision Under 10 CFR 2.206

I. Introduction

On March 13, 1998, Mr. Jonathan M. Block submitted a petition pursuant to Title 10 of the *Code of Federal Regulations* Section 2.206 (10 CFR 2.206) on behalf of the Citizens Awareness Network (Petitioner) requesting that NRC (1) take immediate action to suspend Connecticut Yankee Atomic Power Company's (CYAPCO's) license to operate the Haddam Neck reactor and (2) investigate CYAPCO's intention to use an air cooling method as a backup cooling method for spent fuel.

In support of his request, the Petitioner offers the following five bases: (1) CYAPCO has not resolved longstanding failures to exercise adequate radiological controls, (2) the nitrogen intrusion event of August 1996 demonstrates that CYAPCO is unable to