

May 19, 1997

MEMORANDUM TO: David Meyer, Chief
Rules Review and Directives Branch
Division of Freedom of Information
and Publications Services
Office of Administration

FROM: John W.N. Hickey, Chief [ORIGINAL SIGNED BY:]
Low-Level Waste and Decommissioning
Projects Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

SUBJECT: 2.802 PETITION FOR RULEMAKING

On January 22, 1997, Sherwood Bauman of the Save Wills Creek Water Resources Committee petitioned NRC to take certain actions with respect to the development of an environmental impact statement for an NRC licensee, Shieldalloy Metallurgical Corporation. Mr. Bauman submitted his request as a 10 CFR 2.206 petition. Our response of February 19, 1997 (Attachment 1) indicated that three of his requests would be considered as 2.802 petitions for rulemaking.

In accordance with the NRC Management Directive, we are forwarding Mr. Bauman's letter (Attachment 2) to you for further action.

Docket No. 040-08948
License No. SMB-1507

Attachments: As stated

Contact: James Kennedy, NMSS
415-6668

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

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

February 19, 1997

Mr. Sherwood Bauman, Chairperson
Save the Wills Creek
Water Resources Committee
6354 Cowgill Lane
Cumberland, OH 43732

Dear Mr. Bauman:

I am responding to your letter dated January 22, 1997, in which you formally petitioned the U.S. Nuclear Regulatory Commission to take certain actions with respect to the development of the environmental impact statement (EIS) for the Shieldalloy Metallurgical Corporation (SMC) facility in Cambridge, Ohio, and to initiate several rulemakings. The purpose of this letter is to describe how NRC will address each of your requests.

You requested that:

- 1) Pursuant to 10 CFR 2.206, NRC broaden the scope of the EIS to include, investigate, score, and evaluate against all other options, the option of assured storage, as well as other related hybrid options identified in your letter.
- 2) NRC initiate a rulemaking to preclude Shieldalloy, Cyprus Foote, and any others from entering in covenants not to sue with any other State or Federal agencies which could interfere with NRC's authority to enforce Federal laws or regulations in Chapter 10 of the Code of Federal Regulations (CFR).
- 3) NRC initiate a rulemaking which would require that above-ground assured storage be considered and scored as a viable option to be considered at all NRC licensed sites which seek on site or in situ disposal.
- 4) NRC initiate a rulemaking that would permit licensees' in situ disposal plans to be approved only when, and if, the responsible parties sign an admission of guilt and wrongdoing so that the stakeholder community has the ability to recoup lost property values and community tax bases.

With respect to your first request, we will consider this alternative and its variations as a late comment on the EIS, rather than process the request as a 2.206 petition. Petition requests under 2.206 are to "modify, suspend, or revoke a license, or for other such action as may be proper," and a request such as yours to broaden the scope of an ongoing EIS is not covered by 10 CFR 2.206.

Attachment 1

97022 PWR 27

S. Bauman

Your second, third, and fourth requests will be considered as petitions for rulemaking pursuant to 10 CFR 2.802. You will be kept informed of NRC actions with respect to these rulemaking petitions.

Sincerely,

Carl J. Paperiello

Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards

Docket: 040-08948
License No.: SMB-1507

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Save Wills Creek Subsidiary of EarthlinkTM

Sherwood Bauman
Director
3354 Cowgill Lane
Cincinnati, Ohio 45232

Telephone 1 (614) 636-2529

To: Hugh C. Thompson, Jr.
Nuclear Regulatory Commission
Jim Kennedy, Chip Cameron, Shirley Jackson
Robert Nelson, Mike Weber
11555 Rockville Pike
Rockville, Maryland 20855

Reas: Formal petition for action and rule making as allowed under section 2.206 of the 10 CFR codes to broaden the scope of the DEIS for the Shieldalloy facility in Cambridge, Ohio (hereinafter referred to simply as site.) to include as yet uninvestigated and very workable options which could present the best alternative for our community at a price within affordable reality.

Dear Hugh Thompson and other Staff:

As is my right under the auspices of the 10 CFR rules and regulations (oft quoted but rarely followed by the NRC) sub section 2.206, as well as any and all other sections of said Code of Regulations or other federal laws dealing with rule making or the broadening of the scope of an DEIS, which may be applicable since the NRC has not seen fit to provide us with a full and up to date set of said regulations, we herein as is more fully spelled out below request that the scope of the current DEIS for the site be broadened to include the option and its various hybrids as are more fully spelled out in options one through nine of said request. The broadening of the DEIS would be the inclusion of Above Ground Assured Storage Technology in all of its various formats and possibility as we have spelled out in our request to broaden said DEIS. Additionally, said petition for Administrative Action is to be further intended as a petition for rule making that would require the scoring of Above Ground Assured Storage Technology Implementation against all other options at any and all sites being considered for instu disposal and deed restricted access verse's NRC's normal safeguards of ALARA and 15 M/REM a year for unrestricted use and release of the property. Further, said petition for administrative action and rule making would also petition the NRC as is more fully outlined below to implement rules which would preclude states or NRC licensee's (agreement or otherwise) from granting NRC licensee's or former licensee's Covenants Not to Sue (or other instruments that bring about the same effects), and that further we petition the NRC for rule making which would see that any licensee instu disposal plans approved be approved only when and if the responsible parties (all responsible parties) sign an admission of guilt and wrong doing so that the stakeholder community has the ability to recoup lost property values and community tax bases sacrificed by such flawed decommissioning strategies.

BASIS FOR REQUEST

Sherwood Bauman, as well as the organizations he represents and any and all additional co-signatories do herein state that our petition for administrative action and petition for rule making should be granted for the following reasons.

1. Whereas Shieldalloy in 1987 did in fact and deed take possession of 600,000 tons of LLRW after the previous owner Cyprus Foote did have its license retired under false pretenses. (Said previous licensee stated that it was their belief that there were no longer materials of licensable control at the facility)
2. Whereas the state of Ohio and the NRC did approve a decommissioning plan which failed and was halted in 1989.
3. Whereas the staff of the NRC did in fact and deed dismally fail the community of Guernsey County Ohio by failing to police the license at the site for a period of some 12 years.
4. Whereas the company Shieldalloy company (licensee) did in 1993 seek protection from creditors by running into the Federal Bankruptcy courts while at the same time submitting a closure plan for the facility.
5. Whereas the NRC determined that closure of the facility constituted a major federal action which would implement the need for and EIS as called for in NEPA to evaluate *ALL* risks (both environmentally, an social economic (which would include health risks and financial costs to affected host community)) to our community as well as the preferred plan of the licensee and any and all other viable means of remediation at the site.
6. Whereas the NRC has a duty to the stakeholders of a community to include any and all viable options within and EIS.

OUTLINE AND SPECIFICS OF FORMAL PETITION

A) FORMAL REQUEST FOR RULE MAKING TO PRECLUDE SHIELDALLOY, CYPRUS FOOTE AND ANY AND ALL OTHER LICENSEE'S FROM ENTERING INTO CONVENANTS NOT TO SUE WITH ANY AND ALL OTHER STATE OR FEDERAL AGENCIES WHICH COULD INTERFERE WITH THE NRC'S RIGHTS AND ABILITIES TO ENFORCE FEDERAL LAWS AND OR THE REGULATIONS AS DEFINED IN 10 CFR.

Said petitioner therefore respectfully requests and petitions the NRC for a new federal regulatory code within 10 CFR which would preclude and forbid licensees or cooperating agencies from signing such agreements as Covenants not to sue, and further requests that said rule making if implemented be inclusive of and enforced in regards to the proposed remediation at and the retirement of the license for the Shieldalloy site situated on State Route 209 in Guernsey County, state of Ohio.

B) FORMAL REQUEST AND PETITION FOR RULE MAKING WHICH WOULD CREATE A REGULATORY REQUIREMENT TO SCORE ABOVE GROUND ASSURED STORAGE AS A VIABLE WORKABLE OPTION AGAINST ANY AND ALL ALTERNATIVE OPTIONS AT ALL NRC SITES WHICH SUBMIT PLANS FOR INSITU DISPOSAL OF LLRW AT SITES WHICH ARE LOCATED IN OR NEAR WETLANDS OR LOCATED WITHIN SITUATE 100 YEAR FLOOD PLAIN AREAS WITHIN THE UNITED STATES OF AMERICA AND ITS BORDERS.

It has come to the attention of Sherwood Bauman, Save Wills Creek, Earthlink as well as any and all other cosignatories of this document, that there is a technology known to the NRC and within the LLRW community known as Above Ground Assured Storage Technology. Further, said technology over the long term has shown the ability to offer more protections to affected stakeholder communities while at the same time being very cost competitive when compared to other disposal methods and alternatives such as disposal at licensed long term care facilities and/or in situ disposal (with many inherent health risks and unknown potential short comings.) options that are normally evaluated within the confines of a DEIS when contemplating the means by which a facility shall be remediated and a facility closed. Since the NRC seems unwilling to have waste's

shipped to licensed facilities built for receiving and safe storage of such wastes. We feel it is imperative that other options besides flawed insitu (affordable but dangerous to human health and destructive to environment and natural resources) be given full and equal site consideration during the DEIS process.

For the above reasons, we move and petition the NRC, its staff, state rules and regulations which would require Assured Storage be considered as a viable and acceptable option to the considered at "all risk" sites which rely on insitu disposal, as well as any and all sites which require the implementation of insitu under the proposed plan which governs DEIS and the Department of mine for purposes of decommissioning a site and retirement of a license.

It is further moved and petitioned that the Shieldalloy site in Cambridge Ohio be included and held to the standards which would be created in insitu remediation for the following reasons:

1. Currently, though the DEIS is under review, no final plan has been approved, nor signed off on by the commission or its staff.

2. Currently, it is expected that the staff of the NRC will have to either A) re-publish the DEIS or at a minimum B) issue a supplement to said document.

In light of this, no decision is expected on this site in the very near future. Resultingly, it would be in the best interest of our community (Guernsey County, state of Ohio) to have said Assured Storage scored for our facility and the dangerous wastes located at said site. Human health and preservation of natural resources should take precedent over company convenience.

C) SHERWOOD BAUMAN, SAVE WILLS CREEK, EARTHLINK AS WELL AS ANY AND ALL SIGNATORIES TO THIS DOCUMENT HEREIN OFFICIALLY PETITION THE NRC FOR AN ADMINISTRATIVE ACTION WHICH WOULD REQUIRE THE LICENSEE SHIELDALLOY AND THE STAFF OF THE NRC TO BROADEN THE SCOPE OF THE DEIS ON THE SHIELDALLOY SITE SITUATED ON STATE ROUTE 209, CAMBRIDGE, COUNTY OF GUERNSEY, STATE OF OHIO TO INCLUDE, INVESTIGATE, SCORE AND EVALUATE AGAINST ALL OTHER OPTIONS THE OPTION HEREIN AFTER REFERRED TO AS ASSURED STORAGE AS WELL AS THE OTHER HYBRID ALTERNATIVES INCLUDED HEREIN AND ENTITLED OPTIONS 1-9 OF THE EXPANDED DEIS REQUEST.

Sherwood Bauman has just come into possession of documents which have led him and the various assorted signatories to this petition to believe that there is another alternative that the NRC has full and complete knowledge of, and that said agency and their licensee deliberately hid and kept from public view so as to allow for the flawed preferred disposal alternative of insitu disposal to reap the highest score in the evaluation process and thus be chosen as the NRC's endorsed plan for the site.

In fact, it is further believed that the NRC did not include said option as a part and parcel of said DEIS to further their agency's internal, long range goal of creating a formula which would allow insitu disposal at all SDMP sites across the United States of America using our site and the National Case Setting Precedent for this dubious remediation method as the talisman to march under as they visited flawed cover ups on communities across this land. For these and the reasons stated above, the petitioner(s) herein respectfully move for an administrative action which would broaden the scope of the DEIS to include the Assured Storage options which are more fully defined and identified in options 1-9 below.

Option One-Above Ground Assured Storage of materials in a building outside of the wetland areas, said building to be constructed on the property now owned by the licensee, with all materials both of a radiological, hazardous and solid waste nature including all stream sediments and soils on and off of the site as well as contaminated materials which may have left the facility. This option would further require that all areas of wetlands from which soils, slags or other materials would be removed, would be restored to their pre-use conditions. (pre-use to be construed as meaning before said wastes were illegally, wrongfully or otherwise dumped and/or stored)

Option two-is a hybrid of number one above, which would see the radioactive slag herein known as the east slag pile disposed of at a licensed disposal facility. (Which according to the licensee would be the Envirocare facility in Utah.) All other aspects of option number one would be the same.

Option three-again, a hybrid of number one above, with the East Slag pile waste being treated as in number two above, and the contaminated (hazardous wastes) soil and stream sediments being shipped off site to a licensed hazardous waste disposal facility.

Option four-again a hybrid of number one above, with the off site wastes being deemed a separate issue not to be dealt with by Shieldalloy, as said off site radioactive slag is actually the responsibility of another party in the form of Cyprus Foote Mineral.

Option five-Above Ground Assured Storage of all wastes according to assured storage technology as in number one option above, but with the assured storage buildings being constructed some place other than

on the property of the licensee, as to remove the materials out of the wetlands, but to provide the additional and necessary protection of removing the material from our borders for a preferred plan area.

Option six again, a hybrid of five above with the East Slag pile waste to be removed and sent to a licensed disposal facility, not being included in the assured storage facility.

Option seven again, a hybrid of five above, except that the East Slag pile and the hazardous wastes in the form of contaminated soil and stream sediments would be shipped to a licensed disposal facility.

Option eight again, a hybrid of five above, with the East Slag pile and the hazardous wastes in the form of contaminated soil and stream sediments would be shipped to a licensed disposal facility, while at the same time making the decision that the off site wastes would not be included in the on-site remediation process for this site.

Option nine same as five above, but time making the decision that the off site wastes should not be included in the on-site remediation process for this site.

Above Ground Assured Storage as referred to in this petition for administrative action shall be interpreted to mean and above grade (above ground) storage facility (which provides for ease of inspection and repair) which has seen to it that the concrete buildings have protective cover which can easily be repaired or recoated as the need arises. Additionally, since it is possible (as outlined in the companies own option for resale of materials) that future generations may wish to retrieve said materials, said building should be compartmentalized in such as fashion as to segregate the hazardous wastes from the radioactive materials to allow for easy future retrieval of said materials later in the historical time line.

It is believed, that studies of this option and its various hybrids will show that such option provides a much higher degree of public safety, a greater protection of our environment, and over the long term period of 1,000 years is highly competitive with the current preferred plan of insty disposal of said materials. We therefore respectfully petition the NRC to expand the scope of the DEIS to include the nine options as outlined above.

Thus the petitioner closes his request, and prays that the NRC grant all of the above petitions for rule making, as well as the petition for administrative action to broaden the scope of the DEIS.

Respectfully submitted the 22nd day of January in the year of our Lord, 1997.


Sherwood Bauman

COSIGNATORIES

Save Wills Creek
Earthlink
Barbara Bonham
Linda Salisbury
Sycamore Valley Group
Jason Saaf