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June 7, 2007

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USNRC

August 23, 2007 (2:45pm)

Alan S. Rosenthal, Chair
Administrative Judge
Atomic Safety and Licensing Board Panel
Mail Stop -- T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: IMO Shieldalloy Metallurgical Corp.
(Licensing Amendment Request for
Decommissioning of the Newfield,
New Jersey Facility)
Docket No. 40-7102-MLA; ASLBP No. 07-852-MLA-BD01

Dear Judge Rosenthal:

The Nuclear Regulatory Commission (NRC) in its Memorandum and Order in this matter docketed May 30, 2007 requested that the parties comment to the Atomic Safety and Licensing Board (Board) on the Board's determination to defer ruling on all but one of the New Jersey Department of Environmental Protection's (New Jersey) contentions for hearing on the decommissioning plan (LBP-07-05, 65 NRC at ____). This letter responds to the Commission's May 30 request.



New Jersey considers the Board's deferral of ruling to be appropriate under the particular circumstances of this case. The Board relied upon its experience in U.S. Army (Jefferson Proving Ground Site), LBP-06-06, 63 NRC 167 (2006) and LBP-06-27, 64 NRC ____ (slip op. (2006)), in making the determination. The Board stated

...it seems patent to us that the same analysis applies in full measure to the case of New Jersey's challenges to the decommissioning plan that is in issue here. There is no aspect of that plan that is set in stone and it is scarcely inconceivable that, whether as the result of the Staff's review or independent of it, the DP might undergo significant revision that would have a decided impact upon the New Jersey contentions now on the table. LBP-07-05, 65 NRC at ____, slip op. at 25-26.

This matter involves the potential issuance of the first Long Term Control License by the NRC. New Jersey submitted 17 contentions which assert that the DP is seriously flawed, technically and environmentally, and should be rejected by the NRC. The NRC Staff submission to the Board took the position that eight of New Jersey's contentions are admissible in whole or part, and contested nine of New Jersey's contentions. The Board found that New Jersey's Contention 5 is admissible in its entirety. No party contested the Board's ruling on Contention 5. Contention 5 asserts that the DP's dose modeling is not accurate because it ignores the

groundwater exposure pathway and other reasonable exposure scenarios.

While the Board's ruling on Contention 5 was not, of course, a ruling on the merits of the contention, that ruling, along with the NRC Staff response on New Jersey's contentions, plus the contentions themselves, all demonstrate that the DP is significantly flawed. Indeed, on March 19, 2007 NRC Staff sent to Shieldalloy an extensive 14 part and 13 page Request for Additional Information, Shieldalloy Metallurgical Corporation, Docket No. 04007102 (RAI), (ADAMS ML070780139) concerning the Environmental Report in the DP. That RAI seeks information on alternatives considered; costs and benefits; radon release rates and radionuclide content; dose analysis calculations and assumptions; justification for excluding groundwater as a potential exposure pathway; and other technical and environmental issues. The NRC Staff, given its expertise, may find other relevant issues which Shieldalloy will have to address. An in depth technical and environmental review may certainly result in revisions to the DP which would obviate existing contentions and raise new contentions. It is not desirable to hold a hearing under these circumstances.

For these reasons, in this particular case the Board's conclusion that the "DP might undergo significant revision..." which would in turn impact the issues on which a hearing is

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required, is appropriate. Indeed, New Jersey believes that NRC Staff has sufficient technical and environmental bases to simply reject the DP now, without further review. That would eliminate the need for a hearing on New Jersey's contentions altogether.

Respectfully submitted,

~~STUART RABNER~~

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

In the Matter of)
)
SHIELDALLOY METALLURGICAL CORP.) Docket No. 40-7102-MLA
) ASLBP No. 07-852-01-MLA-BD01
(Licensing Amendment Request)
for Decommissioning the)
Newfield, New Jersey Facility))

CERTIFICATION OF SERVICE

I hereby certify that copies of Letter Response in the above captioned proceeding have been served on the following persons by deposit in the United States Mail and by electronic mail to those marked with an asterisk (*) and by UPS Next Day Air to those not marked with an asterisk on this 7th day of June, 2007:

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DATED: June 7, 2007