

40-8948



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 17, 1996

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

Dear Mr. Bauman:

On July 25, 1996, the U.S. Nuclear Regulatory Commission published a notice in the Federal Register soliciting public comments on the draft environmental impact statement (EIS) for decommissioning of the Shieldalloy Metallurgical Corporation (SMC) facility in Cambridge, Ohio. The notice provided for a 90-day comment period, and stated that comments should be provided in written form and must have been received within 90 days from the date of the notice to be certain of consideration. It also provided detailed instructions on where to send the comments, by the close of the comment period (October 31, 1996), and stated that comments received after that date would be considered to the extent practical. In a November 7, 1996, notice in the Federal Register, we extended the comment period to November 30, 1996.

Your comments were received by Michael Weber of our staff on December 13, 1996, and were contained on a diskette. We will consider your comments to the extent practical, consistent with our notice in the Federal Register, and only after the copyright restriction is waived, as we discuss below. In the meantime, we have begun processing and analyzing the other comments received before that date, and are taking steps to complete the final EIS.

In the comments that we received on December 13, 1996, you also stated that they were copyright, and you identified various constraints on the use of the comments. Enclosed is a copy of a Copyright Release, which, when executed, will allow NRC to reproduce your comments and make them publicly available and to otherwise use them in accordance with Federal laws and agency procedures. In order for us to consider any of your comments, you must sign the enclosed and return it to us by Tuesday, December 31, 1996. Failure to do so will prevent us from considering any of your comments in developing the final EIS.

On December 16, 1996, we received your cost analyses for the Save Wills Creek remediation alternative. We had requested this information in our November 15, 1996, letter. In the note attached to the analyses, you stated that the information is proprietary and you stipulated a number of limitations on its use. NRC regulations in 10 CFR 2.790 define the types of information that need to be submitted for review to determine if

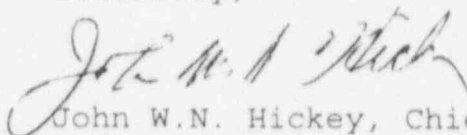
9701080001 961217
PDR ADOCK 04008948
C PDR

NRC FILE CENTER COPY

documents are proprietary. An affidavit must be executed by the owner of the information under 10 CFR 2.790. Please either a) submit this information by December 31, 1996, so that we can make the needed determination, b) state that you wish to withdraw the information or c) state that NRC may treat it as a public document and review, copy, distribute as necessary to fulfill Federal laws and agency procedures. We will not consider this information in developing the final EIS without a resolution of its status.

Please fax the above information and a signed letter waiving copyright privileges, as well as a 2.790 affidavit, to James Kennedy (301)-415-5398, as well as hard copies of both, mailed to James Kennedy, Mail Stop T-7-F-27, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Sincerely,



John W.N. Hickey, Chief
Low-Level Waste and Decommissioning
Projects Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

Docket No.: 040-8948
License No.: SMB-1507

cc: Cambridge Distribution
List

documents are proprietary. An affidavit must be executed by the owner of the information under 10 CFR 2.790. Please either a) submit this information by December 31, 1996, so that we can make the needed determination, b) state that you wish to withdraw the information or c) state that NRC may treat it as a public document and review, copy, distribute as necessary to fulfill Federal laws and agency procedures. We will not consider this information in developing the final EIS without a resolution of its status.

Please fax the above information and a signed letter waiving copyright privileges, as well as a 2.790 affidavit, to James Kennedy (301)-415-5398, as well as hard copies of both, mailed to James Kennedy, Mail Stop T-7-F-27, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Sincerely,

[ORIGINAL SIGNED BY:]

John W.N. Hickey, Chief
Low-Level Waste and Decommissioning
Projects Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

Docket No.: 040-8948
License No.: SMB-1507

cc: Cambridge Distribution
List

TICKET NO.: N/A

DISTRIBUTION:

Central File LLDP r/f JGreeves MFederline
JAustin DWM t/f FXCameron RFonner MThaggard
LBell TCJohnson PUBLIC

DOCUMENT NAME: s:\dwm\lldp\bauman2.let

OFC	LLDP	LLDP	OGC	LLDP	N
NAME	JKennedy	RNelson	MPSiemien	JHickey	
DATE	12/17/96	1/17/96	12/17/96	12/17/96	

OFFICIAL RECORD COPY

ACNW: YES ☒ NO
IG : YES ☐ NO ☒
YES ☐ NO ☒

☒ Delete file after distribution: Yes ☐ No ☒ LSS :

COPYRIGHT NOTICE

The publication entitled "Save Wills Creek's Comments on the DEIS," consisting of approximately 127 pages of comments on the draft environmental impact statement for the decommissioning of the Shieldalloy Metallurgical Corporation, Cambridge, Ohio, facility, contains a statement on the first page stating that the document has an unregistered copyright. Save Wills Creek, holder of the copyright, hereby grants the U.S. Nuclear Regulatory Commission (NRC) the authority to make the number of copies of this copyrighted material which are necessary for its internal use, to fulfill its legal responsibilities as regards public disclosure, and to otherwise review, analyze, process, and distribute the comments in accordance with standard agency procedures. I understand that the limitations and constraints imposed on the use of these comments spelled out in the November 30, 1996, Save Wills Creek comments, do not apply insofar as they conflict with Federal law and NRC procedures. This authorization is granted with the understanding that any copies of the publication made by the NRC will continue to bear the following copyright notice, which will be reproduced along with any portion of the publication:

The above-referenced comments contain material copyrighted by Save Wills Creek. Material reproduced by permission of Save Wills Creek.

Sherwood Bauman, Chairperson
Save Wills Creek

Date: _____

mandatory for a party to exhaust its administrative remedies before seeking judicial review.

(b) A petition for review under this paragraph must be no longer than ten pages, and must contain the following:

- (i) A concise summary of the decision or action of which review is sought;
- (ii) A statement (including record citations) where the matters of fact or law raised in the petition for review have previously raised before the presiding officer and, if they were not why they could not have been raised;
- (iii) A concise statement why in the petitioner's view the decision or action is erroneous; and
- (iv) A concise statement why Commission review should be exercised.

(c) Any other party to the proceeding may, within ten (10) days after service of a petition for review, file an answer supporting or opposing Commission review. This answer must be no longer than ten (10) pages and should concisely address the matters in paragraph (b) of this section to the extent appropriate. The petitioning party shall have no right to reply, except as permitted by the Commission.

(d) The petition for review may be granted in the discretion of the Commission, giving due weight to the existence of a substantial question with respect to the following considerations:

- (i) A finding of material fact is clear, erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial and important question of law, policy or discretion has been raised;
- (iv) The conduct of the proceeding involved a prejudicial procedural error;
- (v) Any other consideration which the Commission may deem to be in the public interest.

(5) A petition for review will not be granted to the extent that it relies on matters that could have been but were not raised before the presiding officer. A matter raised sua sponte by a presiding officer has been raised before the

presiding officer for the purpose of this section.

(6) A petition for review will not be granted as to issues raised before the presiding officer on a pending motion for reconsideration.

(c) If within thirty (30) days after the filing of a petition for review the Commission does not grant the petition, in whole or in part, the petition shall be deemed denied, unless the Commission in its discretion extends the time for its consideration of the petition and any answers thereto.

(d) If a petition for review is granted, the Commission will issue an order specifying the issues to be reviewed and designating the parties to the review proceeding and direct that appropriate briefs be filed, oral argument be held, or both.

(e) Petitions for reconsideration of Commission decisions granting or denying review in whole or in part will not be entertained. A petition for reconsideration of a Commission decision after review may be filed within ten (10) days, but is not necessary for exhaustion of administrative remedies. However, if a petition for reconsideration is filed, the Commission decision is not final until the petition is decided.

(f) Neither the filing nor the granting of a petition for review will stay the effect of the decision or action of the presiding officer, unless otherwise ordered by the Commission.

(g) Certified questions and referred rulings. A question certified to the Commission under § 2.713(i) or a ruling referred under § 2.730(f) must meet one of the alternative standards in this subsection to merit Commission review. A certified question or referred ruling will be reviewed if it either—

- (1) Threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; or
- (2) Affects the basic structure of the proceeding in a pervasive or unusual manner.

[56 FR 29409, June 27, 1991]

§ 2.788 Stays of decisions of presiding officers pending review.

(a) Within ten (10) days after service of a decision or action of a presiding officer any party to the proceeding may file an application for a stay of the effectiveness of the decision or action pending filing of and a decision on a petition for review. This application may be filed with the Commission or the presiding officer, but not both at the same time.

(b) An application for a stay must be no longer than ten (10) pages, exclusive of affidavits, and must contain the following:

(1) A concise summary of the decision or action which is requested to be stayed;

(2) A concise statement of the grounds for stay, with reference to the factors specified in paragraph (e) of this section; and

(3) To the extent that an application for a stay relies on facts subject to dispute, appropriate references to the record or affidavits by knowledgeable persons.

(c) Service of an application for a stay on the other parties shall be by the same method, e.g., telecopier message, mail, as the method for filing the application with the Commission or the presiding officer.

(d) Within ten (10) days after service of an application for a stay under this section, any party may file an answer supporting or opposing the granting of a stay. This answer must be no longer than ten (10) pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section to the extent appropriate. No further replies to answers will be entertained. Filing of and service of an answer on the other parties must be by the same method, e.g., telecopier message, mail, as the method for filing the application for the stay.

(e) In determining whether to grant or deny an application for a stay, the Commission or presiding officer will consider:

- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;

(3) Whether the granting of a stay would harm other parties; and

(4) Where the public interest lies.

(f) In extraordinary cases, where prompt application is made under this section, the Commission or presiding officer may grant a temporary stay to preserve the status quo without waiting for filing of any answer. The application may be made orally provided the application is promptly confirmed by telecopier message. Any party applying under this paragraph shall make all reasonable efforts to inform the other parties of the application, orally if made orally.

[56 FR 29410, June 27, 1991]

AVAILABILITY OF OFFICIAL RECORDS

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), and (e) of this section, final NRC records and documents,* including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rule making proceeding subject to this part shall not, in the absence of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying in the NRC Public Document Room, except for matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and (ii) are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii)

*Such records and documents do not include handwritten notes and drafts.

establishes particular criteria for withholding or refers to particular types or matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b)(1) A person who proposes that a document or a part be withheld in whole or part from public disclosure on the ground that it contains trade secrets or privileged or confidential commercial or financial information shall submit an application for withholding accompanied by an affidavit which:

(i) Identifies the document or part sought to be withheld and the position of the person making the affidavit, and

(ii) Contains a full statement of the reasons on the basis of which it is claimed that the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant may designate with appropriate markings information submitted in the affidavit as a trade secret or confidential or privileged commercial or financial information within the meaning of §9.17(a)(4) of this chapter and such information shall be subject to disclosure only in accordance with the provisions of §9.19 of this chapter.

(2) A person who submits commercial or financial information believed to be privileged or confidential or a trade secret shall be on notice that it is the policy of the Commission to achieve an effective balance between legitimate concerns for protection of competitive positions and the right of the public to be fully apprised as to the basis for and effects of licensing or rule making actions, and that it is within the discre-

tion of the Commission to withhold such information from public disclosure.

(3) The Commission shall determine whether information sought to be withheld from public disclosure pursuant to this paragraph: (i) is a trade secret or confidential or privileged commercial or financial information; and (ii) if so, should be withheld from public disclosure.

(4) In making the determination required by paragraph (b)(3)(i) of this section, the Commission will consider:

(i) Whether the information has been held in confidence by its owner;

(ii) Whether the information is of a type customarily held in confidence by its owner and whether there is a rational basis therefor;

(iii) Whether the information was transmitted to and received by the Commission in confidence;

(iv) Whether the information is available in public sources;

(v) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

(5) If the Commission determines, pursuant to paragraph (b)(4) of this section, that the record or document contains trade secrets or privileged or confidential commercial or financial information, the Commission will then determine (i) whether the right of the public to be fully apprised as to the bases for and effects of the proposed action outweighs the demonstrated concern for protection of a competitive position and (ii) whether the information should be withheld from public disclosure pursuant to this paragraph. If the record or document for which withholding is sought is deemed by the Commission to be irrelevant or unnecessary to the performance of its functions, it shall be returned to the applicant.

(6) Withholding from public inspection shall not affect the right, if any,

of persons properly and directly concerned to inspect the document. The Commission may require information claimed to be a trade secret or privileged or confidential commercial or financial information to be subject to inspection: (i) Under a protective agreement, by contractor personnel or government officials other than NRC officials; (ii) by the presiding officer in a proceeding; and (iii) under protective order, by parties to a proceeding, pending a decision of the Commission on the matter of whether the information should be made publicly available or when a decision has been made that the information should be withheld from public disclosure. In camera sessions of hearings may be held when the information sought to be withheld is produced or offered in evidence. If the Commission subsequently determines that the information should be disclosed, the information and the transcript of such in camera session will be made publicly available.

(c) If a request for withholding pursuant to paragraph (b) of this section is denied, the Commission will notify an applicant for withholding of the denial with a statement of reasons. The notice of denial will specify a time, not less than thirty (30) days after the date of the notice, when the document will be placed in the Public Document Room. If, within the time specified in the notice, the applicant requests withdrawal of the document, the document will not be placed in the Public Document Room and will be returned to the applicant. Provided, That information submitted in a rule making proceeding which subsequently forms the basis for the final rule will not be withheld from public disclosure by the Commission and will not be returned to the applicant after denial of any application for withholding submitted in connection with that information. If a request for withholding pursuant to paragraph (b) of this section is granted, the Commission will notify the applicant of its determination to withhold the information from public disclosure.

(d) The following information shall be deemed to be commercial or financial information within the meaning of §9.17(a)(4) of this chapter and shall be subject to disclosure only in accord-

ance with the provisions of § 9.19 of this chapter.

(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data.

(2) Information submitted in confidence to the Commission by a foreign source.

(e) The presiding officer, if any, or the Commission may, with reference to the NRC records and documents made available pursuant to this section, issue orders consistent with the provisions of this section and § 2.740(c).

[41 FR 11810, Mar. 23, 1976, as amended at 42 FR 12877, Mar. 7, 1977; 52 FR 49355, Dec. 31, 1987; 53 FR 17688, May 18, 1988]

Subpart H—Rulemaking

§ 2.800 Scope of rulemaking.

This subpart governs the issuance, amendment and repeal of regulations in which participation by interested persons is prescribed under section 553 of title 5 of the U.S. Code.

[35 FR 11459, July 17, 1970]

§ 2.801 Initiation of rulemaking.

Rulemaking may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person.

§ 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend or rescind any regulation. The petition should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Branch.

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing the Director, Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Rules Review and Directives Branch. A prospective petitioner

may also telephone the Rules Review and Directives Branch on (301) 415-7158 or toll free on (800) 368-5642.

(1) In any consultation prior to the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to—

(i) Describing the procedure and process for filing and responding to a petition for rulemaking;

(ii) Clarifying an existing NRC regulation and the basis for the regulation; and

(iii) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

(2) In any consultation prior to the filing of a petition for rulemaking, in providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking.

(c) Each petition filed under this section shall:

(1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended;

(2) State clearly and concisely the petitioner's grounds for and interest in the action requested;

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.

(d) The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking.

(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is

Nuclear Regulatory Commission

complete, the Director, Division of Freedom of Information and Publications Services, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will deposit a copy of the docketed petition in the Commission's Public Document Room. Public comment may be requested by publication of a notice of the docketing of the petition in the *FEDERAL REGISTER*, or, in appropriate cases, may be invited for the first time upon publication in the *FEDERAL REGISTER* of a proposed rule developed in response to the petition. Publication will be limited by the requirements of section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

(f) If it is determined by the Executive Director for Operations that the petition does not include the information required by paragraph (c) of this section and is incomplete, the petitioner will be notified of that determination and the respects in which the petition is deficient and will be accorded an opportunity to submit additional data. Ordinarily this determination will be made within 30 days from the date of receipt of the petition by the Office of the Secretary of the Commission. If the petitioner does not submit additional data to correct the deficiency within 90 days from the date of notification to the petitioner that the petition is incomplete, the petition may be returned to the petitioner without prejudice to the right of the petitioner to file a new petition.

(g) The Director, Division of Freedom of Information and Publications Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying for a fee in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC.

[44 FR 61322, Oct. 25, 1979, as amended at 46 FR 35487, July 9, 1981; 52 FR 31609, Aug. 21, 1987; 53 FR 52993, Dec. 30, 1988; 54 FR 53315, Dec. 28, 1989; 56 FR 10360, Mar. 12, 1991; 59 FR 14885, Aug. 31, 1994; 59 FR 60552, Nov. 25, 1994]

§ 2.803 Determination of petition.

No hearing will be held on a petition unless the Commission determines that sufficient reasons exist to publish a notice of proposed rulemaking. In any other case, it will publish the petition and will notify the petitioner with a simple statement of grounds of denial.

§ 2.804 Notice of proposed rulemaking.

(a) Except as provided by paragraph (d) of this section, when the Commission proposes to adopt, amend, or repeal a regulation, it will cause to be published in the *FEDERAL REGISTER* a notice of proposed rulemaking, listing all persons subject to the regulation and either are personally or otherwise have actual notice of the proposed rulemaking.

(b) The notice will include:

(1) Either the terms or substance of the proposed rule, or a specification of the subjects and issues involved;

(2) The manner and time for which interested members of the public may comment, and a statement of the copies of comments may be examined in the Public Document Room;

(3) The authority under which the regulation is proposed;

(4) The time, place, and nature of the public hearing, if any;

(5) If a hearing is to be held, designation of the presiding officer and special directions for the conduct of the hearing; and

(6) Such explanatory statements as the Commission may consider appropriate.

(c) The publication or service of the notice will be made not less than fifteen (15) days prior to the time fixed for the hearing, if any, unless the Commission finds for good cause stated in the notice otherwise.

(d) The notice and comment provisions contained in paragraphs (a) and (c) of this section will not be required to be applied—

(1) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice;

(2) When the Commission finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.