



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

August 27, 1996

OFFICE OF THE
GENERAL COUNSEL

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

FROM: Jack R. Goldberg
Deputy Assistant General Counsel
for Enforcement

SUBJECT: SECTION 2.206 PETITION OF SHERWOOD BAUMAN REGARDING ACTION
TO BE TAKEN AGAINST SHIELDALLOY AND FOOTE MINERAL

Attached is a copy of a Petition filed pursuant to 10 C.F.R. § 2.206 by Mr. Sherwood Bauman requesting action with regard to Nuclear Regulatory Commission (NRC or Commission) licensee Shieldalloy and former NRC licensee Foote Mineral (now Cypress Foote).

The Petition requests that Foote Mineral's license be reinstated, and that Shieldalloy and Cypress Foote be made co-responsible licensees with regard to the proper remediation and decommissioning of the Shieldalloy site. It also requests that any and all parties found to be involved in any wrongdoing as alleged in the complaint be terminated from employment, and that where appropriate criminal charges be pursued. The Petition goes on to ask that the environmental impact statement (EIS) now being performed for the Shieldalloy site be terminated, and that Shieldalloy and Cypress Foote be jointly ordered to submit a decommissioning plan for licensed materials that includes only a plan to remediate licensed materials (to include grading and evaluation of all various assorted options, including disposal at a licensed disposal facility). Finally, the Petition requests that the Ohio EPA and Department of Health evaluate all unlicensed slag found at the Shieldalloy site.

As bases for these requests, Petitioner provides additional information within the Petition itself. In Section One of his Petition, alleging collusion among agencies and responsible parties to remediate offsite slag, Petitioner claims that the NRC failed to properly police its licensee Foote Mineral (FM) (now known as Cypress Foote) for a period of twelve years, and that the NRC then allowed FM to retire its license without investigating the licensee's claims that no licensable materials remained onsite. He then asserts that the NRC illegally allowed FM to return slag to a site owned by Shieldalloy, in the process conspiring with Ohio state agencies.

In Section Two of the Petition, Petitioner alleges that Shieldalloy's decommissioning plan would wrongfully mix licensed and unlicensed waste. In support of this claim, Petitioner states his belief that the material at the Shieldalloy site is made up of 150,000 tons of licensed material and 350,000 tons of nonlicensed material. He believes that Shieldalloy's decommissioning

Contact: Michael Rafky
415-1974

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plan illegally combined both licensed and unlicensed materials, thus greatly reducing the real risk factors from exposure to licensed material and wrongfully enhancing the company's own preferred plan for insitu disposal which would require the NRC to waive enforcement rules and regulations. Petitioner also again alleges an NRC-Ohio conspiracy to allow insitu disposal to proceed.

Finally, Petitioner recently sent a undated letter to the President raising the same issues as in his 2.206 petition detailed above, with two exceptions. In your letter of acknowledgement to Petitioner, you should state that his letter was referred to the NRC and that the substantive issues raised in that letter will be addressed in your forthcoming Director's Decision. All allegations of NRC wrongdoing will be referred to the NRC Office of the Inspector General (OIG).

The two issues raised only in the letter to the President are that the NRC should be removed as lead agency supervising the Shieldalloy EIS, and that the Environmental Protection Agency (EPA) be instructed to reinstate the scoring of the Shieldalloy site for Superfund inclusion. Petitioner should be informed that the NRC has a responsibility under the National Environmental Policy Act and the NRC's implementing regulations to prepare an EIS in connection with the NRC's approval of Shieldalloy's decommissioning plan for its Cambridge, Ohio site. With regard to EPA scoring of the Shieldalloy site for Superfund inclusion, Petitioner should be informed that EPA's policy is to not designate NRC licensee sites as Superfund sites.

I have attached drafts of a letter of acknowledgement to Petitioner and a Notice of Receipt of the Petition for publication in the *Federal Register*. Please inform Michael Rafky of my staff of the technical contact who will be involved in preparing a response to the Petition. Also, please ensure that I am provided copies of all correspondence related to the Petition and that I am asked to concur on all staff correspondence. With regard to allegations of NRC wrongdoing contained in the Petition and subsequent letter, including Petitioner's request that any parties guilty of wrongdoing be terminated from employment and, if appropriate, criminally prosecuted, these should be referred to the OIG for whatever action that Office deems appropriate.

Attachments: 1. Copy of Petition
2. Draft Letter to Petitioners
3. Draft *Federal Register* Notice
4. Copy of Petitioner's Letter to President

cc w/atts: M. Malsch, OGC
S. Burns, OGC
W. Olmstead, OGC
L. Chandler, OGC
H. Bell, IG
A. B. Beach, RIII

To: Ohio Department of Health
Columbus, Ohio

Nuclear Regulatory Commission
Washington, DC

From: Sherwood (forest) Bauman
Save Wills Creek
6354 Cowgill Lane
Cumberland, Ohio 43732

Reas: Filing of a Verified Complaint (Ohio Department of Health) an filing of a Formal Complaint with the Nuclear Regulatory Commission.

Dear Ohio Department of Health and Nuclear Regulatory Commission:

I Sherwood Bauman, chairperson of the Save the Wills Creek Water Resources Committee do hereby swear that the following to the best of my beliefs is true.

FORMAL COMPLAINT/VERIFIED COMPLAINT OF SHERWOOD BAUMAN

SECTION ONE: COLUSION BETWEEN AGENCIES AND THE PARTIES RESPONSIBLE TO REMEDIATE OFF SITE SLAG.

The Nuclear Regulatory Agency failed to properly police their licensee Foote Mineral (Cypress Foote) for a period of some twelve years. At the end of this dismal failure, said agency further failed the public of the affected community by retiring said party's license with the Nuclear Regulatory Commission without investigating the licensee's claims that no materials of licensable concern were remaining onsite.

Then in the fall of 1993, rumors began circulating that licensed materials had left the facility for a period of some forty years as road and construction fill. These rumors became fact when testing by NRC staff showed that slag materials above NRC release criteria had in fact left the facility as alleged.

This took a bad situation and made it worse as the party responsible was no longer in possession of a valid NRC license to be in possession of said materials. Without reinstating the now defunct license, the NRC technically had no jurisdictional or legal power over said party.

The matter grew further clouded when staff of the NRC allowed Foote Mineral to return slag above NRC release criteria to the site of a different licensee who though licensed for their own slag, was not and is not licensed to be in possession of slag belonging to someone else.

If the NRC made the decision that the off site slag was indeed licensed materials, then the NRC approved return of slag to the Shieldalloy site would have been against the law. It would additionally mean that the Shieldalloy company's license terms had changed which would have made the administrative approval without public involvement illegal as well. (note complaint already on file regarding this issue) This created then a very real and serious problem for not only the NRC, but all parties and agencies involved in this situation. They had to find some way to resolve this problem that would A) keep them from having to

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reinstate a defunct license, B) Make the return of offsite slag to the site legal (especially since there happens to be quite a bit of it), and C) avoid yet another public embarrassment for the federal agency.

The solution though long in coming was simple. Claim that the materials were NEVER licensed materials, and thus not within the jurisdictional control of the NRC. Nice neat package if they could sell all parties on this plan. (Problem is, I am not buying as I know a rat when I smell one) So, open up talks with Ohio EPA, Ohio Department of Health, State Attorney General's office and the responsible parties. If Ohio Department of Health agrees to jurisdictional control, and everyone else goes along with the plan a nice neat package is delivered with the following benefits:

- A) NRC does not have to reinstate a defunct license.
- B) The return of off site slag to the Shieldalloy site becomes legal.
- C) All contaminated off site area's become much less so since they no longer contained licensed materials above NRC's established release criteria, thus making insitu disposal in and around people's home a much greater likelihood.
- D) Clears the way for any slag excavated off site to be returned to the site for insitu disposal, as it eliminates the problem of Shieldalloy being in possession of licensed materials not belonging to them.
- E) Shieldalloy's license can be extended on an administrative level thus avoiding public scrutiny.

One nice neatly packaged idea that eliminates lots of problems. Only problem is the legality of it. Even a cursory glance raises eyebrows and makes one wonder what kinds of laws have been violated. This goes well beyond simple back room politics. It is made even worse in that the Ohio EPA and Department of Health are refusing to release various records claiming Attorney/Client privilege. (see recent court decision that Voinovich and his cronies lost in regards to his personal army of in house attorneys) Test results show that both on and off site slag have identical matching test results. So, this begs the question...how can one sample be licensed while the other is unlicensed. Perhaps part two of this Complaint will shed more light on this part of the equation.

SECTION TWO: SHIELDALLOY'S DECOMMISSIONING PLAN WRONGFULLY MIXED LICENSED AND UNLICENSED WASTE:

When the Shieldalloy company applied to the NRC to retire their license, they submitted a decommissioning plan and preferred option to said agency. In said plan, they state that some 500,000 tons of **LICENSED MATERIALS ON SITE** (emphasis added) needed to be remediated for their license to be terminated. The NRC only has jurisdictional control over **LICENSED MATERIALS** (emphasis added).

Our organization has learned that a public announcement and official position will soon be released regarding the off site slag and which agency has control of it. Said announcement will claim that all slag which left the facility was never licensed radioactive materials and thus not within the regulatory oversight of the NRC. Instead, all jurisdiction for the off site slag will become that of the Ohio Department of Health. Now this raises a very interesting dilemma that the NRC seems unwilling to admit.

We know that over the years the plant was in operation, that both licensed and unlicensed materials were processed at the Shieldalloy site. The fact that various owners may have mixed licensed materials with unlicensed materials does not change the fact that the NRC only has jurisdictional control over the materials that fall under the classification of licensed materials. So, in declaring the off site slag materials non licensed materials, the NRC has now drawn a distinct line of demarcation between licensed slag and unlicensed slag materials. This being so, it now seems to reason that the same line MUST be drawn in regards to the 500,000 tons of materials found at the Shieldalloy site.

Our organizations best estimates indicate that the Shieldalloy site contains 150,000 tons of licensed materials, and some 350,000 tons of non licensed materials. In Shieldalloy's decommissioning plan submitted to the NRC, they wrongfully and illegally have combined both licensed and unlicensed materials. If the NRC does its job properly, they would order said plan redone. All options (and primarily the insitu disposal option) numbers change dramatically if only licensed slag is factored into the equations. By combining the two separate and distinct waste streams, the company has greatly reduced the real risk factors from exposure to licensed materials thus wrongfully enhancing their own preferred plan for insitu disposal which would require the NRC waving enforcement rules and regulations.

Proper regulatory review and oversight would require that the NRC evaluate and maintain investigative control of the licensed materials, while the Ohio EPA and Department of Health evaluate the 350,000 tons of non licensed materials in their RI/FS. Once the Ohio Department of Health had done so, said information as a part of the RI/FS would be incorporated into the EIS as required under federal law. However, said law does not allow the NRC to evaluate waste streams which fall outside of its jurisdictional control. Not only is this not being done, but the NRC has told me that they do not want to make said distinction as it would then be impossible for the NRC to approve insitu disposal for said licensed wastes. A computer modeling of **ONLY LICENSED WASTES ON SITE** (emphasis added) would raise the exposure levels to members of the general public from licensed materials to well above 600 m/rem per year. (these are our organizations estimates and would have to be verified through proper lab analysis.)

Again in attempting to allow insitu disposal to become a reality, the NRC, Ohio EPA, Department of Health, parties to the decommissioning and the Ohio Attorney General's office in collusion with each other are trying to circumvent the rules, regulations and laws that have been put in place to protect human health and the environment. In fact, when the above license issue was brought to the attention of the NRC in a phone conversation with Jim Kennedy, I was told that I brought up an interesting point but that it did not matter, the NRC was going to have the current EIS available for public comment by Sept 16 as they had a time line that had to be met....end of discussion. I tried to point out that a division of the waste streams would invalidate all the data found within said document, and was told that if that happened they would circumvent it by having the company submit a revised decommissioning plan after the EIS had been approved and insitu disposal officially sanctioned.

The bottom line in all of this, is that a NRC licensee (Shieldalloy and Foote Mineral) at two different times have submitted fraudulent data, and both times the NRC refuse's to take appropriate action.

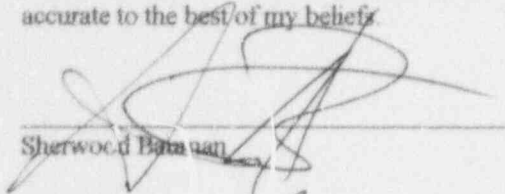
1. To tilt their decommissioning plan in favor of insitu disposal, the Shieldalloy company fraudulently and with malice and forethought used unlicensed materials to mitigate the health and safety effects which the general public would be exposed to from **LICENSED MATERIALS**.
2. Foote Mineral fraudulently claimed that no licensable materials were at the Shieldalloy site when they filed the papers to have their license officially retired.

It is therefore requested that 1) Foote Mineral's license be reinstated, and that Shieldalloy and Cypress Foote be made co responsible licensee's responsible for the proper remediation and decommissioning of the Shieldalloy site. 2) That any and all parties found to be involved in any wrong doing as alleged in this complaint be terminated from employment, and where appropriate criminal charges pursued. That the current EIS be terminated, and Shieldalloy and Cypress Foote be jointly ordered to submit a decommissioning plan for the licensed materials that includes within it only a plan to remediate licensed

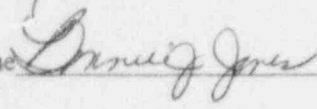
materials. (In this fashion, all of the various assorted options including disposal at a licensed disposal facility will be fairly graded and evaluated.)

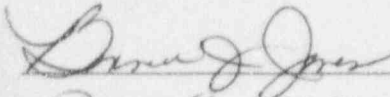
It is further asked, that the Ohio EPA and Department of Health broaden the current RI/FS to include the evaluation of *all* unlicensed slag found at the Shieldalloy site.

I Sherwood Bauman to hereby swear before a Notary Public that the foregoing statements are true and accurate to the best of my belief.



Sherwood Bauman

Sworn to before me  a Notary Public on this the 22nd day of July, 1996.



June 16, 1999

Ref. GT96596

Cyr, OGC - See note fm SECY

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

cys: Taylor
Milhoan
LOGGING DATE: Aug 21 96
Thompson
Blaha
Paperiello, NMSS
Lieberman, OE
OIG

PAPER NUMBER: CRC-96-0909

ACTION OFFICE: EDO

AUTHOR: SHERWOOD BAUMAN

AFFILIATION: OHIO

ADDRESSEE: PRES BILL CLINTON

LETTER DATE: Aug 2 96 FILE CODE:

SUBJECT: REQ THE NRC BE REMOVED AS LEAD AGENCY IN RE TO THE
EIS WHICH IS BEING CONDUCTED FOR THE SHIELDALLOY
SITE

ACTION: Appropriate

DISTRIBUTION: CHAIRMAN

SPECIAL HANDLING: 2.203 PETITION

CONSTITUENT:

NOTES: SEE CRC 96-0826 AND ATTACHED NOTE FROM DORIS
MOSSBURG (WHITE HOUSE REFERRAL DATED 8/16/96
FROM SUE SMITH)

DATE DUE:

SIGNATURE:
AFFILIATION:

DATE SIGNED:

OGC-96- 003517