UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS

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Dale E. Klein, Chairman
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In the Matter of	)	
	)	
SHIELDALLOY METALLURGICAL CORP.	)	
	)	Docket No. 40-7102-MLA
(License Amendment Request for Decommissioning of the Newfield, New Jersey Facility)	)	

CLI-07-20

MEMORANDUM AND ORDER

Loretta Williams appeals[1] the Atomic Safety and Licensing Board's denial[2] of her petition to intervene in this proceeding to amend Shieldalloy Metallurgical Corporation's (Shieldalloy's) source material license. The proposed license amendment would authorize the decommissioning of Shieldalloy's Newfield, New Jersey, smelting and alloy production facility where pyrochlore, regulated as a source material, was processed until 1998.[3] The NRC Staff filed a response opposing Ms. Williams' appeal.[4] Shieldalloy also filed in opposition to her

[1]Letter from Loretta Williams to Annette Vie[tt]i-Cook, Office of the Secretary (April 5, 2007) (Appeal).

[2]*Shieldalloy Metallurgical Corp.* (Licens[e] Amendment Request for Decommissioning of the Newfield, New Jersey Facility), LBP-07-05, 65 NRC ___, slip op. (Mar. 28, 2007).

[3]*See* 71 Fed. Reg. 66,986 (Nov. 17, 2006); LBP-07-05, slip op. at 2-3.

[4]NRC Staff's Response to Appeal of Loretta Williams (April 16, 2007) (Staff Response).

appeal.[5] We find that Ms. Williams' appeal does not conform to our requirements for a valid appeal and deny her appeal on that basis.

I. PRELIMINARY MATTER

Our regulations, in § 2.309(i), require the presiding officer – here the Licensing Board – "within forty-five (45) days after the filing of answers and replies . . . [to] issue a decision on each request for hearing/petition to intervene, absent an extension from the Commission."[6] The Board, while admitting one of the contentions filed by the New Jersey State Department of Environmental Protection (New Jersey), deferred consideration of the balance of New Jersey's contentions "to await the Staff's completion of its safety and environmental review."[7]

In general, we do not endorse deferring the consideration of proposed contentions because, in our view, prompt consideration of contentions promotes the efficient and complete development of the record while conserving resources. Prompt identification of all of the contentions also allows the parties to concentrate on matters truly at issue in a proceeding. Prompt identification maintains the proceeding's primary focus on adequacy of the application at issue (rather than shifting the focus and the burden, as the Board has done here, to the Staff's analysis of the application), and may induce – or enhance the prospects for – early settlement.

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[5]Shieldalloy's Response to Appeal of Loretta Williams (April 13, 2007) (Shieldalloy Response).

[6]10 C.F.R. § 2.309(i). We added paragraph (i) when we amended Part 2 in 2004. At that time, we agreed that "the presiding officer [should be required] to issue a decision on standing and admissibility of contentions within forty-five (45) days of the completion of the parties' filings" and stated our belief "that this is an appropriate and reasonable time period for a presiding officer to issue a decision on standing and admissibility of contentions. . . . Additional time beyond the 45 days may be provided if circumstances warrant." *Final Rule, Changes to Adjudicatory Process* , 69 Fed. Reg. 2182, 2204 (January 14, 2004). In short, normal practice is to rule on all of the proposed contentions within the mandated 45-day period.

[7]LBP-07-05, 65 NRC at ___, slip op. at 27.

Additionally, our regulations contemplate that many hearing activities, such as document disclosure, motion practice, and the submission of late-filed contentions based on new information, will take place concurrently with the Staff review.[8]

But deferral may be appropriate in some very limited and exceptional circumstances. In this instance – a complex decommissioning case – the Board expressed its view that "there is at least a considerable measure of current uncertainty as to whether, at the end of the day, the decommissioning of the Licensee's site will take the form that is contemplated by the [decommissioning plan] now in hand."[9]

No party filed for reconsideration of the deferral of the contentions, despite the Board's invitation to the parties for such a motion[10] – so we will not disturb the Board's view for now. Our acquiescence in the Board's approach is conditional, however. We note that the Board has already directed the NRC Staff to file a status report on June 8, 2007.[11] To augment the record, we direct Shieldalloy to advise the Board, also on June 8, 2007, of the status of its decommissioning plan, and any relevant developments such as fundamental shifts in Shieldalloy's approach to decommissioning the site. We ask the parties and the NRC Staff to

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[8]In addition, the Staff has several decisions to make regarding an adjudicatory proceeding under subpart L that are informed by the identification of the issues. In a subpart L proceeding, the Staff elects whether or not to be a party to some or all contentions. *See* 10 C.F.R. § 2.1202(b)(2). Moreover, our regulations allow the Staff, in this type of proceeding, to issue the license amendment despite the pendency of a hearing. *See* 10 C.F.R. § 2.1202(a). Prior to such issuance the Staff is required to notify the parties and include in that notice the Staff's position on the issues in controversy, whether or not it is a party.

[9]LBP-07-05, 65 NRC at __, slip op. at 26-27.

[10]*See id.* at ___, slip op. at 29.

[11]Unpublished Memorandum and Order (Directing the Filing of Status Reports) (May 8, 2007).

weigh in on the Board's approach by June 8, 2007,[12] in a filing before the Board; the parties and the NRC Staff should also advise the Board as soon as practicable whenever changing circumstances indicate that the proposed contentions should be taken up to have their admissibility assessed.

II. BACKGROUND

In her petition to intervene,[13] Ms. Williams stated that she lives within blocks of the facility. She alleged problems with Shieldalloy's decommissioning plan including: environmental, health and safety, and security risks; unaccounted-for costs; inadequate financial assurance; economic and financial burdens on surrounding communities due to lost tax revenue and devalued propoerty; inadequate analysis of solubility testing results; inconsistent application of dose criteria; and failure to properly consider alternative off-site disposal options. Ms. Williams did not attach any documentation to support her allegations.

The Licensing Board found that "[t]he proximity of Ms. Williams' residence to the Licensee's facility satisfies the standing requirement."[14] Ms. Williams did not, however, satisfy the NRC's contention pleading requirements[15] – particularly, in the Board's view, 10 C.F.R. § 2.309(f)(1)(i), (v) – because she did not "provide a 'specific statement of the issue of law or fact to be raised or controverted,' [and] a concise statement of the alleged facts or expert

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[12]In this connection, *see also U.S. Army* (Jefferson Proving Ground Site), LBP-06-27, 64 NRC 438 (2006), where the Board decided the admissibility of proposed contentions after the Staff issued the materials license amendment.

[13]Letter from Loretta Williams to Annette Vie[tt]i-Cook, Office of the Secretary (Jan. 3, 2007) (Petition).

[14]LBP-07-05, slip op. at 13.

[15]Ms. Wiliams appeared *pro se*, but, as the Board noted, LBP-07-05, slip op. at 14, *pro se* litigants are not exempt from our contention pleading requirements. *See USEC Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 456-57 (2006); *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 15 (2001).

opinion supporting the contention and specific sources and documents on which [she] intends to rely to support [her] position on the issue."[16] Consequently, the Board denied her petition.[17]

III. ANALYSIS

Our regulations allow unsuccessful petitioners to appeal the denial of their intervention petitions.[18] But appellants must make some argument that an appeal is justified. Ms. Williams appears to intend her letter to be an appeal, since she calls it an "appeal" in the caption to her letter.[19] However, her letter points to no error of law or abuse of discretion on the part of the Board – in fact, she does not address the Board's decision at all. Pointing out errors in the Board's decision is a basic requirement for an appeal.[20] Ms. Williams' letter simply reformulates

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[16]LBP-07-05, slip op. at 14.

[17]*Id*.

[18]10 C.F.R. § 2.311(b) provides:

> An order denying a petition to intervene and/or request for hearing is appealable by the requestor/petitioner on the question as to whether the request and/or petition should have been granted.

[19]The caption reads (Appeal at 1 (emphasis added)):

> Loretta Williams files this *appeal* to the Board's denial for a hearing in accordance with 10 CFR S2.315 © [sic], respectfully submitting additional information to support her original hearing request.

Ms. Williams' letter contains no explanation for her reference, in the caption to her letter, to 10 C.F.R. § 2.315(c), which directs the presiding officer to afford a reasonable opportunity for participation to "an interested State, local government body (county, municipality or other subdivision), and affected, Federally-recognized Indian Tribe, which has not been admitted as a party under § 2.309." Ms. Williams does not appear to fit within any of these categories.

[20]"We regularly affirm Board decisions on the admissibility of contentions where the appellant points to no error of law or abuse of discretion." *AmerGen Energy Company, LLC*, (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 121 (2006) (internal quotation marks omitted), *citing USEC Inc.* (American Centrifuge Plant), CLI-06-09, 63 NRC 433, 439 n.32 (2006). *See also Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 637 (2004). *Accord Private Fuel Storage,*

(continued...)

the same contention she presented to the Board, this time using 10 C.F.R. § 2.309(f)(1) as a template for organizing her letter, and this time with an appendix.[21]

In the caption to her letter, Ms. Williams also states that she is "submitting additional information to support her original hearing request."[22] Supporting information is to be provided at the time the contention is filed, not at a later date or on appeal.[23] Moreover, "[t]he purpose of an appeal to the Commission is to point out errors made in the Board's decision, not to attempt to cure deficient contentions by presenting arguments and evidence never provided to the Board."[24]

Her appeal (and the "supporting information" in the appendix) includes some additional tax payment details, but the information she belatedly attempts to supply does not go to the adequacy of the proposed decommissioning plan and would not have helped her even if she had included it in her original petition. In particular, based on tax assessment relief granted to Shieldalloy in 1998 and 1999 and comparisons to the tax payments received from several other local businesses, Ms. Williams asserts that a concern of Shieldalloy's size ought to be paying higher taxes. This is not relevant – there is no causal relationship between this information and the proposed decommissioning plan. Ms. Williams' own explanation makes this clear: "due to

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[20](...continued)
L.L.C. (Independent Spent Fuel Storage Installation), CLI-00-21, 52 NRC 261, 265 (2000).

[21]Ms. Williams complains, as she did in her original filing, that Shieldalloy's decommissioning plan: creates financial and economic burdens for residents, businesses, and the local government; poses environmental, health and safety, and security risks; provides inadequate financial assurance; contains unaccounted-for costs; includes inadequate analysis of solubility testing results; applies dose criteria inconsistently; and fails to properly consider alternative off-site disposal options. Ms. Williams continues to provide no support for these allegations.

[22]Appeal at 1.

[23]*See* 10 C.F.R. § 2.309(f)(1); *USEC Inc.*, CLI-06-10, 63 NRC at 455-56.

[24]*USEC Inc.*, CLI-06-10, 63 NRC at 458.

foreign competition [Shieldalloy's] business was not doing well," and the company "went from two hundred employees to currently three employees, and from paying taxes of over $200,000 a year to $67,027.83 in 2006."[25] The reduction in tax receipts from Shieldalloy is an actual change that has already occurred, not a future change that will occur only if the proposed decommissioning plan is approved.

And even if we were to construe her "appeal" to be the filing of an amended or new contention – a stretch – she does not satisfy the requirements for that:

> [C]ontentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that –
>
> (i) The information upon which the amended or new contention is based was not previously available;
>
> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
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> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.[26]

We do "not look with favor on 'amended or new contentions filed after the initial filing.'"[27] In her letter, Ms. Williams does not ask leave to submit an amended or new contention, does not assert that the information relied on for the amended or new contention was previously unavailable and is materially different from previously available information, and does not show that the amended or new contention is timely filed in response to new information.

In sum, Ms. Williams' letter does not satisfy our requirements for a valid appeal, and we deny it on that basis. We note that her letter provides no alternative basis for review, as our rules do not permit information supporting a contention to be filed at some date after the contention is filed – or on appeal – and her letter does not satisfy the requirements for the filing

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[25]Appeal at 1.

[26]10 C.F.R. § 2.309(f)(2).

[27]*Millstone Nuclear Power Station*, CLI-04-36, 60 NRC at 636.

of an amended or new contention. The Board decision denying Ms. Williams' petition to intervene is *affirmed*.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of May, 2007