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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SECRETARY
ADJUDICATIONS

Before Administrative Judges:
Peter B. Bloch, Presiding Officer
Richard F. Cole, Special Assistant

SERVED AUG 26 1999

In the matter of MOLYCORP, INC. Washington, Pennsylvania	Docket Nos. 40-8794-MLA 40-8778-MLA Re: Site Decommissioning Plan ASLBP No. 99-769-08-MLA

MEMORANDUM AND ORDER
(Petitions for a Hearing)

Requests for a hearing have been filed by the City of Washington, Pennsylvania (June 28, 1999) and Canton Township, Pennsylvania (June 28, 1999) (Petitioners). Petitioners are concerned about possible health and environmental effects that may result from the transfer of certain nuclear by-products and/or waste to Molycorp, Inc.'s proposed storage site.

Molycorp, Inc. filed responses to these requests on July 30, 1999.[1] It asserts that the petitioners have not specifically asserted any potential for injury due to radiation from licensed materials. With respect to Canton Township, Molycorp also alleges that it has not specified injuries from the proposed temporary storage of York decommissioning waste but that it is complaining about activities that are already licensed and are no longer subject to a request for a hearing.

According to the Notice of Opportunity for a Hearing, published May 28, 1999 in Rockville, Maryland:

> . . . The NRC [United States Nuclear Regulatory Commission] will require the licensee to demonstrate that the temporary storage facility provides: 1) adequate containment for

[1]The Staff of the Nuclear Regulatory Commission has not sought to participate as a party. 10 C.F.R. § 2.1213.

EXHIBIT "C"

the waste; 2) sufficient monitoring of effluents during the transfer and storage activities and, 3) an adequate radiation protection plan to help maintain doses as low as reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulation. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

One of the petitioners is the township in which the project is located and the other states that it is adjacent to the project. Based on this close geographical proximity to the site, I conclude that these governments are likely to be entitled to standing on behalf of their citizens providing that they have a concern that shows how the citizens may be injured. *See, e.g., Babcock and Wilcox Co.*, LBP-94-4, 39 NRC at 51-52 (standing and injury-in-fact can be inferred in some cases by proximity to the site, but a greater demonstration of injury may be required where the activity has no obvious offsite implications); *Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 99 (1985), *aff'd on other grounds,* ALAB-816, 22 NRC 461 (1985) (risk of injury from proposed spent fuel pool expansion was not demonstrated where petitioner resided 43 miles from the facility); *cf. Sequoyah Fuels Corp., supra,* LBP-94-5, 39 NRC at 67-91 (residence adjacent to contaminated fuel fabrication facility might not be sufficient to confer standing if the proposed action has no potential to affect the requester's interests); *Babcock and Wilcox, supra,* LBP-93-4, 37 NRC at 83-84 and n.28 (petitioners' residences within one-eighth of a mile to approximately two miles from a fuel fabrication facility were insufficient to confer standing in a decommissioning proceeding, absent "some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests"); *see also, Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 44-45 (1990) (person who regularly commutes past the

entrance to a nuclear facility once or twice a week possessed the requisite interest for standing).[2]

On the other hand, petitioners have not demonstrated sufficient knowledge of the amendment that was submitted in a letter of February 8, 1996. To allege an injury in fact ensuing from the proposed amendment, the petitioners need to show that this specific amendment, including the safety precautions included in the proposed amendment, poses a risk to citizens of the petitioning governments. While general areas of concern may fulfill the requirements of 10 C.F.R. § 2.1205(h) merely by being "germane," concerns should be related to the amendment being challenged. Accordingly, petitioners may amend their petitions in light of the proposed amendment on or before September 17, 1999.

Canton Township filed a reply and motion to strike on August 17, 1999 (Canton Reply). In this filing, Canton correctly asserts that an answer to a request for hearing must be filed within ten (10) days of service. 10 C.F.R. § 2.1205(g). Since the request for hearing was filed on June 28, 1999 and Molycorp's response was filed on July 30, 1999, the response is undeniably late. However, I have decided to accept the late response so that I may act intelligently on the requests for a hearing. This leniency will not be repeated. Molycorp must file all its documents in this proceeding in a timely fashion. Failure to do so again will result in the exclusion of the late filing from the record.

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[2]In adopting Subpart L, the Commission considered whether proximity to a materials license facility is sufficient to establish standing. Noting that it had already rejected the 50-mile rule for materials licensing, the Commission further rejected a suggested presumption that persons who reside and work outside a five-mile radius of a materials site would not have standing. The Commission stated, "[t]he standing of a petitioner in each case should be determined based upon the circumstances of that case as they relate to the factors set forth in [10 C.F.R. § 2.1205(g)]." Statement of Consideration, "Informal Hearing Procedures for Materials Licensing Adjudications," 54 Fed. Reg. 8269 (Feb. 28, 1989); *see also, Id.*, Proposed Rule, 52 Fed. Reg. 20089, 20090 (May 29, 1987).

Because of the untimeliness of the Molycorp, Inc., response, I have decided that it is appropriate to consider the reply filed by Canton Township. In that reply, Canton complains that Molycorp has not provided any details of safeguards concerning possible decontamination of the water supplied by a water line on its site and that it also failed to provide information about safeguards for other water sources near the site. Canton Reply at 2. What Canton has not done is to review the request for the amendment to designate concerns with respect to the content of the amendment application. Based on NRC practice, it is quite likely that the amendment contains at least some safeguards that are relevant to Canton's concerns.

At this time, I suggest that the petitioners and Molycorp enter into active negotiations with the purpose of exchanging information fully so that this matter may be resolved informally to the satisfaction of all the parties. Negotiations could address the possible need for additional information and for safeguards to protect the interest of citizens. If the parties enter active negotiations, they may jointly petition for suspension of the trial of this case during the negotiations. 10 C.F.R. § 2.1241. Unless the parties petition for a suspension, the petitioners must file by September 17, 1999, as required above.

IT IS SO ORDERED.

Peter B. Bloch, Administrative Judge
Presiding Officer

Rockville, Maryland