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UNITED STATES NUCLEAR REGULATORY COMMISSION '00 FEB 14 P 4:09

BEFORE THE PRESIDING OFFICER

In the Matter of MOLYCORP, INC. : Docket No. 40-8778-MLA-2
(Washington, Pennsylvania : ASLBP No. 00-775-03-MLA
Site Decommissioning Plan)

REPLY OF PETITIONER CANTON TOWNSHIP
TO NRC STAFF'S RESPONSE

Petitioner/Requestor CANTON TOWNSHIP, by its counsel, hereby files the following Reply to the NRC Staff's Response to Canton Township's latest Request for Hearing. As the NRC Staff has not been involved in these proceedings extensively to date, Canton Township is compelled to file this instant Reply to correct for the record certain factual assertions contained in NRC Staff's Response ("Response"):

1. In its Response, the NRC Staff states that NRC adjudicatory proceedings are consolidated when three factors are present: "(1) the proceedings raise similar issues; (2) the parties to the proceedings are the same; and (3) the length or expense of litigation would be reduced." Response, p. 3. Contrary to the NRC Staff's conclusions, all three factors are present in the current matter.

2. The U.S. Nuclear Regulatory Commission has already treated these two proceedings as one. Upon public notice, the NRC held a public meeting in Canton Township on April 15, 1999, the specific purposes of which were to "(i) discuss with the public its review of a License Amendment Request by Molycorp, Inc. to construct and operate an interim (5-10 year) storage facility at its ferro-alloy production plant in Washington, Pa; and (ii) discuss the status of the decommissioning of the Washington, Pa. site." See public notice printed in the Federal Register on April 6, 1999, a copy of which is attached hereto and made a part hereof as Exhibit "A".

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3. Logically and legally, Molycorp's instant Amendment Request concerning the schedule for the submission of its Site Decommissioning Plan relates to the temporary York material proposal. The solitary issue of the adequacy and safety of the proposed transfer of the York waste to Canton Township cannot be addressed in a vacuum. As Molycorp has proposed to store its York waste "temporarily" for ten years, the logical follow-up issue arises as to what happens at the end of the "temporary" ten-year period. The larger long-term issues under the Site Decommissioning Plan are therefore logically and inexplicably implicated. In the absence of a specific proposal for the re-removal of the York waste ten years hence to other locations off site, the York waste presents a *permanent* issue which must be addressed through Molycorp's Site Decommissioning Plan.

4. Canton Township is also concerned that if Molycorp is permitted to maintain a technical separation between the proposed "temporary" storage of the York material and the permanent decommissioning activities, Molycorp will be permitted to apply different standards for the treatment of the exact same York material. For example, the NRC may approve the temporary storage of the York material under lessened, short-term standards based on Molycorp's assertions that such storage will indeed be for the temporary ten-year period. However, ten years hence, the York material may continue to be subject to such lessened short-term standards, and such lessened standards may continue to be applicable *ad infinitum* unless the York material is re-removed from the Canton Township site or made subject to the more extensive standards under the Decommissioning Plan. If the York material will ultimately be subject to the Site Decommissioning Plan standards, there is no reason to not apply those standards at the current time. This analysis forms the letter and the spirit of Canton Township's request for consolidation. Canton Township believes that in the absence of consolidation, Molycorp may apply "bait and switch" tactics and seek to apply inconsistent standards to the waste material currently at the site and the material proposed to be transferred to the site from York, Pennsylvania.¹

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Although the NRC Staff Response cites Molycorp's plans to keep the York material separate and apart from the material already on site, Canton Township is not convinced, nor are there any guarantees in the future, that these two sources of radioactive waste will indeed be kept separate. See page 9 of Canton Township's Amendment to (earlier) Request for Hearing, Amendment dated November 11, 1999.

5. The NRC Staff has noted that the City of Washington, Pennsylvania has not yet chosen to be a party in the decommissioning proceeding. The record reflects that but for its initial Request for Hearing, the City of Washington has followed the lead of Canton Township in all matters relating to these proceedings. As municipal elections were held in November 1999, typical personnel turnover may have limited Washington's ability to formally join in Canton Township's latest Request for Hearing; nevertheless, the City of Washington remains committed to continuing to pursue these matters on behalf of its citizens. If necessary and appropriate, an affidavit or supplemental filing indicating Washington's joinder in Canton Township's latest Request for Hearing can be filed.

6. The NRC Staff appears to argue that, due to its decision to now participate as a party in the Molycorp decommissioning process but not the temporary York storage proceeding, the cost of litigating these two matters somehow increases. As Canton Township has noted in its earlier pleadings and hereinabove, the inter-relatedness of the facts and issues of these two proceedings will by necessity have to be resolved together. Under these circumstances, it will be more expeditious and efficient to hear all the facts and issues at one time in one consolidated proceeding, rather than hearing most, if not all, of the same facts and issues in two separate proceedings. The technical appearance of the NRC Staff in one of these proceedings to date does not change this analysis or warrant a different conclusion.

7. In view of the foregoing, all three factors cited by the NRC Staff in its Response as favoring consolidation of the two proceedings are present here.

8. In the Response, the NRC Staff states that an entity may obtain a hearing on its own behalf but not on behalf of other persons whom it has not been authorized to represent. See Response, p. 12. It is undisputed that the Molycorp site in question is located within the corporal limits of Canton Township with residential neighborhoods nearby. No question has ever been raised

that Canton Township is not acting in the public interest and on behalf of its own citizens. There cannot be any serious question that Canton Township, through its Board of Supervisors elected by the public, is not representing the interests of the public and thereby standing in the shoes of the citizens who live near this radioactive site.²

9. Finally, the NRC Staff states in the Response that the possible resolution of certain issues relating to the 16" municipal water line which runs under the Molycorp site and serves Canton Township and the greater City of Washington metropolitan area may favor holding Molycorp's decommissioning proceeding in abeyance. Although the issues related to this municipal water line are very important, Canton Township's concerns are not solely limited to those relating to the water line and therefore, Canton Township does not believe that the pendency of any resolution concerning the water line has any effect on whether these proceedings should be consolidated and/or go forward at this time.³

10. Under the circumstances presented in these proceedings, Canton Township reiterates that it has established its need for and a right to a hearing under 10 CFR, §2.1205(h) relating to Molycorp's Site Decommissioning Plan and that in view of the inter-relatedness of the issues and concerns set forth in the Site Decommissioning Plan proceeding and the proceeding concerning the temporary storage of York material, the two proceedings should be consolidated.

2

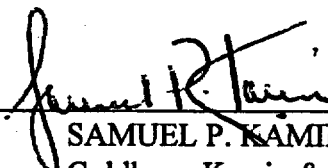
Although Canton Township does not believe they are warranted, if the tribunal requires, affidavits of residents of Canton Township who live near the site can readily be provided.

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No further discussions concerning the water line have occurred between Molycorp and Canton Township since November 1999.

WHEREFORE, Petitioner/Requestor Canton Township, Pennsylvania hereby respectfully requests a hearing before the U.S. Nuclear Regulatory Commission on these proceedings.

Respectfully submitted,



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Goldberg, Kamin & Garvin
1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Special Counsel for Canton Township

Dated: February 8, 2000.

Client Identifier: CANTON
Date of Request: 06/10/99
The Current Database is FR
Your Terms and Connectors Query:

MOLYCORP /20 WASHINGTON

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works

64 FR 16764-01
1999 WL 183220 (F.R.)
(Cite as: 64 FR 16764)

NOTICES

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-8778]

License Amendment by Molycorp, Inc; Meeting

Tuesday, April 6, 1999

*16764 AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Public Meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will hold this public meeting to: (1) discuss with the public its review of a license amendment request by Molycorp, Inc., to construct and operate an interim (5-10 year) storage facility at its ferro-alloy production plant in Washington, PA; and (2) discuss the status of decommissioning of the Washington, PA, site.

In August of 1992, Molycorp informed NRC of its intent to terminate the Source Material license for its York, PA, facility. The amendment request to construct the storage facility was submitted to NRC in a letter from the licensee dated February 8, 1996. A subsequent request for storage of Molycorp York soils at the Molycorp, Washington, site was proposed as part of a decommissioning plan for the York site. The radioactive soils were generated in operations conducted at the York rare earth metal recovery facility from 1965 to 1992. These soils have a volume of approximately 3,000 cubic yards and before approval of the amendment request can be granted, the licensee must demonstrate that containment will be provided for the radioactive soils (contaminated with thorium-228 and uranium-238) proposed to be transported from York to Washington, PA. The NRC review is assessing the environmental and safety impacts of this request.



DATES: April 15, 1999, at 6 pm.

ADDRESSES: North Trinity Elementary School, 225 Midland Drive, Washington, Pennsylvania.

STATUS: Public and Open.

The NRC staff has arranged this public meeting to discuss the NRC's review conducted to assess the potential significance of environmental impacts associated with the amendment request. The results of the review will be considered along with other factors in determining whether construction of the interim storage facility will be granted. In addition, the status of decommissioning of the Washington, PA, site will be discussed.

AGENDA FOR MOLYCORP MEETING: This public meeting will begin at 6:00 p.m. and adjourn at 9:00 p.m.

Topic Lead

1. Introduction and discussion of meeting participation procedures--John Olshock, Solicitor, Canton Township Supervisors
2. Introduction of NRC staff and discussion of NRC decision making process-- Robert Nelson, Chief, NRC Special Projects Section
3. Presentation of NRC review--Roy Person, Sr. Materials Engineer, NRC
4. Questions/answers and comments--Meeting participants
5. Summary of action items--Robert Nelson
6. Adjourn meeting--Canton Township Supervisors

For further information regarding this meeting, contact Roy Person of the NRC, at (301) 415-6701. For further details with respect to this action, the draft environmental assessment for this licensing action and the Decommissioning Plan for the York site are available for inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of March 1999.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

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

[FR Doc. 99-8435 Filed 4-5-99; 8:45 am]

BILLING CODE 7590-01-P

64 FR 16764-01, 1999 WL 183220 (F.R.)

END OF DOCUMENT

CERTIFICATE OF SERVICE

I hereby certify that the original and/or a copy of the foregoing Reply of Canton Township to the NRC Staff's Response has been served on the following in the following manner, which service complies with the Rules and Regulations of the U.S. Nuclear Regulatory Commission:

VIA FIRST-CLASS MAIL:

Administrative Judge Charles Bechhoefer
Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dr. Richard F. Cole
Special Assistant
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
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Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and
Adjudications Staff

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

John T. Hull, Esquire
Counsel to NRC Staff
Mail Stop 0-15 D21
Washington, D.C. 20555
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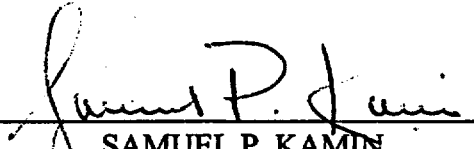
Molycorp, Inc.
300 Caldwell Avenue
Washington, PA 15301
Attention: John Daniels, Licensee

Randolph T. Struk, Esquire
Thorp, Reed & Armstrong, L.L.P.
One Riverfront Center
Pittsburgh, PA 15222

Jeffrey A. Watson, Esquire
Smider & Watson, P.C.
138 N. Franklin Street
Washington, PA 15301
Counsel for City of Washington

Counsel for Licensee Molycorp, Inc.

Dated: February 9, 2000


SAMUEL P. KAMIN
Special Counsel for Canton Township