

U. S. NUCLEAR REGULATORY COMMISSION

LICENSEE: MOLYCORP, INC.
License No. SMB-1393
Docket Nos. 040-08794 and 040-08778

DOCKETED
USNRC

'99 NOV 16 P12:25

OFFICE OF SEC
RULEMAKING
ADJUDICATIONS STAFF

**AMENDMENT TO REQUEST FOR HEARING
BY CANTON TOWNSHIP, PENNSYLVANIA**

Petitioner/Requestor CANTON TOWNSHIP, by its Solicitor, JOHN T. OLSHOCK, and its special counsel, SAMUEL P. KAMIN, SAMUEL R. GREGO and the law firm of GOLDBERG, KAMIN & GARVIN, hereby files the following Amendment to Request for Hearing, and in support thereof states as follows:

Procedural Background

1. Apparently by letter dated February 8, 1996, Licensee Molycorp, Inc. ("Molycorp") initially requested that its license for its Canton Township facility (License No. SMB-1393) be amended to allow temporary storage of waste from the decommissioning operations at Molycorp's York, Pennsylvania facility at Canton Township. In April 1999, Molycorp submitted a Request to amend its license regarding the schedule for submission of a revised Site Decommissioning Plan and Environmental Report for its Canton Township site (Docket No. 040-08778). It is believed that this Amendment relates to proposed permanent storage sites for radioactive material which has accumulated at the Canton Township site and the proposed temporary storage of York material. Canton Township can only aver as to the content of such Request to amend the Site Decommissioning Plan because Canton Township has not yet been able to review the actual proposed License Amendment.

2. Upon public notice, the U.S. Nuclear Regulatory Commission ("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 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."

3. A formal Notice of Receipt of an Amendment Request for temporary storage of decommissioning waste from the Molycorp York facility was issued by the NRC on May 28, 1999. This Notice of an Amendment Request was listed under Docket Nos. 040-08794 and 040-08778 and was published in the Federal Register on June 9, 1999.

4. Requestor Canton Township (and Requestor City of Washington) filed its Request for Hearing with the NRC in both Docket Nos. 040-08794 and 040-08778 on June 28, 1999, within thirty (30) days of the publication of the Notice of Amendment Request filed by Molycorp. (The 30-day deadline is set forth at 10 CFR Section 2.1205(d).) A copy of Canton Township's Request for Hearing is attached hereto as Exhibit "B" and made a part hereof.

5. Molycorp subsequently filed Responses to the Requests for Hearing of Canton Township and the City of Washington. Although Molycorp's Responses were filed untimely, Administrative Judge Peter Bloch, in an Order dated August 25, 1999 (a copy of which is attached hereto as Exhibit "C"), addressed some of the issues raised in Molycorp's Responses and ordered Requestors Canton Township and the City of Washington to amend their respective Requests for Hearing.

Settlement Discussions

6. Judge Bloch's August 25 Order required the Requestors to file Amended Requests for Hearing by September 17, 1999 unless a petition for suspension of trial was filed by the parties while settlement negotiations continued. Upon joint request by the parties, Judge Bloch subsequently extended the Requestors' filing deadline until November 1, 1999. (See Order dated September 15, 1999 attached hereto as Exhibit "D.") Molycorp thereafter consented to an additional extension of time to November 15, 1999, which agreement was memorialized in a letter dated

October 28, 1999 to current Administrative Judge Charles Bechhoefer, a copy of which letter is attached hereto as Exhibit "E."

7. Throughout the intervening time period since August 25, 1999, the Requestors have requested a number of documents from Molycorp (including the very License Amendment(s) at issue in this matter) in order to obtain the proper background and details necessary to file appropriate Amended Requests for Hearing. See letter of October 11, 1999 to Molycorp's counsel formally memorializing Canton Township's request for these necessary documents, a copy of which October 11 letter is attached hereto as Exhibit "F." Unfortunately, although Molycorp has offered to allow counsel for Canton Township to review copies of the extensive documents involved at the Molycorp plant, to date Molycorp has not forwarded copies of any of the requested documents to Canton Township to enable Requestors, its counsel, experts and consultants to fully and properly analyze the documents so as to properly prepare Amended Requests for Hearing.

8. Moreover due to this lack of full and complete documents and information, the parties have been unable to hold meaningful settlement discussions. (Representatives of Canton Township and Molycorp met formally for the first time on November 9, 1999. The parties agreed at that time that after Molycorp forwards a copy of all the requested documents to Canton Township, the parties, including the City of Washington, could schedule additional settlement meetings.)

9. To comply with the letter and the spirit of Judge Bloch's August 25 Order, the Requestors must review and analyze in depth the relevant documents which have been requested from Molycorp prior to the conclusion of constructive settlement discussions with Molycorp concerning the issues raised by the instant License Amendment Requests and Requests for Hearing. Only after such constructive settlement negotiations are completed can the parties legitimately address and narrow the outstanding issues as directed by Judge Bloch and Judge Bechhoefer.

History of Molycorp and Current Procedural Posture
as Independent Bases for Request for Hearing

10. There has historically been a lack of open communication from Molycorp in regards to its activities at its Canton Township site. As early as the 1970's, Molycorp was found to have been storing/dumping radioactive wastes that had accumulated at its site on its Canton Township property without any approval from any federal or state regulatory agency. By the time the NRC (then the Atomic Energy Commission) was notified of this situation, significant amounts of radioactive waste had already been stored at the site. The problem that persists today at the Molycorp site has continued from the 1970's and the decommissioning proposals currently at issue address these very problems which should never have been permitted to occur in the first place.

11. This lack of communication unfortunately persists to the current time. Molycorp has failed to date to share the details of its proposals concerning the treatment, handling and storage of its radioactive waste with Canton Township during the intervening years. In this very proceeding, representatives of Canton Township have not received copies of the specific License Amendment Request and other documents crucial to proper analyses of the issues in this proceeding. As a result, Canton Township finds itself once again in the position of being required to make formal filings without the benefit of the proper background documentation.

12. As noted above, Canton Township and Molycorp have met once for preliminary settlement discussions and it was confirmed at the November 9 meeting that the documents to which Canton Township has long been entitled and has requested would finally be copied and produced to Canton Township. Therefore to date, proper document review has not yet occurred.

13. If Canton Township's Request for Hearing is granted at this time, proper negotiation with Molycorp and the attendant proper document review will by necessity result. For this reason, Requestor Canton Township respectfully requests that its Request for Hearing be granted in order to continue the beneficial process of requiring the parties to negotiate with each other on the extremely important issues raised in this proceeding and to further require the continuing proper

document exchange which is necessary to the reasonable long-term relationship between Molycorp and Canton Township, of which Molycorp remains a corporate resident.

14. In the alternative, if these factors do not establish independent bases for the granting of Canton Township's Request for Hearing, Canton Township respectfully requests an extension of time to prepare a proper Amendment to Request for Hearing after the exchange of all relevant documentation, appropriate complete review by representatives, counsel, experts and consultants of Canton Township and the conclusion of meaningful settlement discussions between Molycorp and the Requestors.

Timeliness/Scope of Current Proceedings

15. As set forth at 10 CFR Section 2.1205(h), in addition to determining whether a requestor's areas of concern are "germane," the presiding NRC officer must also determine whether a request for hearing is timely filed. Canton Township filed its initial Request for Hearing within thirty (30) days of the publication in the Federal Register of Notice of Molycorp's Amendment Request concerning the temporary storage of its York waste material at the Canton Township site. The Request for Hearing was filed under the NRC docket numbers of both (1) the temporary storage of York material and (2) the permanent Site Decommissioning Plan. (Judge Bloch's August 25 Order does not dispute Requestors' timely filing.) As NRC Docket No. 040-08778 deals solely with Molycorp's Site Decommissioning Plan for its Canton Township facility, the docket number proceeding for the proposed transfer and temporary storage of its York waste at its Canton Township facility has already been joined with the docket number proceeding for the long-term Site Decommissioning Plan.

16. In its Response to Canton Township's Request for Hearing, Molycorp argues that most of the concerns raised by Canton Township "pertain and relate to activities which were the subject of past license amendments for which the time to request a hearing has long since expired." However, the sole 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 only 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 thereby immediately implicated.

17. There are common questions of law and fact concerning the proposed temporary storage of the York material and concerning Molycorp's proposed Site Decommissioning Plan. One of the major reasons (if not the sole reason) for Molycorp's Amendment Request concerning the schedule for the submission of its Site Decommissioning Plan relates to the temporary York material proposal. The April 15, 1999 public hearing in Canton Township specifically covered both proceedings and the Requestors have filed their initial Requests for Hearing under both docket numbers. Further, administrative adjudicatory economy warrants addressing Requestors' concerns about the temporary York material proposal in the broader context of the proposed Site Decommissioning Plan. The details of Molycorp's Site Decommissioning Plan are still in the process of being evaluated by the NRC and are still open at least partly due to issues concerning the proposed storage of the York material. (Canton Township will be able to review the actual details of the Molycorp Site Decommissioning Plan once copies of such relevant documents are produced to Canton Township.) All factors present in these proceedings support the clear conclusion that the Requestors have timely raised their concerns in both proceedings and the Requestors' concerns and evidence relating to same should not be limited solely to issues relating to the York material.

18. As the long-term issues raised by the Site Decommissioning Plan are now raised, the adequacy (or inadequacy) of Molycorp's past storage history and procedures are also now implicated. If errors and inadequacies are revealed to have occurred in the past, which have led to Molycorp's current problems, those inadequacies must be addressed in the future. To the extent that the Site Decommissioning Plan does not address such past errors and inadequacies, it must be analyzed, evaluated and scrutinized.

19. In summary, Molycorp should not be permitted to limit this proceeding to the sole narrow issue of the transfer of its York waste to Canton Township. Once the York waste is

located in Canton Township, 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. As the NRC docket numbers for both the temporary York waste material and the Site Decommissioning Plan have already been joined, the obvious connection between these two issues has already been recognized by the NRC and was so recognized by Canton Township when it filed its initial Request for Hearing. Any further attempts by Molycorp to bifurcate these inexplicably joined issues should be soundly rejected.

Specified Areas of Concern
Germane to the Subject Matter

20. The presiding NRC officer must determine whether the concerns of the Requestors set forth in their respective Requests for Hearing and their respective Amendments to Requests for Hearing adequately set forth "specified areas of concern germane to the subject matter." Canton Township hereby submits that its specified areas of concern are indeed germane to the subject matter of these proceedings, which areas of concern include, but are not limited to:

- the geology and topography of the proposed storage sites
- evidence of dispersion and/or migration of radioactive material outside the current storage sites to other sites (possibly on and off property owned by Molycorp)
- the unknown effects caused by the uncontrolled mixing of the thorium contained in the radioactive waste produced and stored at Molycorp with coal tar and other toxic substances already existing at the site
- the potential contamination of the water supply in the area due to the proximity of (i) a major water line which traverses the Molycorp property directly under contaminated areas and potential future storage sites; and (ii) the nearby Chartiers Creek watershed
- inappropriate and inadequate design features of the proposed permanent storage facilities
- too close proximity to residential neighborhoods

- health and safety of workers employed in the Township
- harm to wildlife and the ecosystem of the area

21. Most of these areas of concern are still in the process of being investigated and studied; complete analyses of all of these issues must await full document production from Molycorp and a more complete development of the record, which will only occur through the full hearing process. Therefore, the following summaries may be supplemented by subsequent Amended Requests for Hearing or pursuant to the complete hearing procedures warranted in this case.

Geology and Topography

(a) It is believed and therefore averred that the proposed site for the temporary storage of the York waste material is located in a flood plain in violation of pertinent regulations of the Pennsylvania Department of Environmental Protection ("Pa.DEF"). Pa.DEF has also reported its conclusion at the April 15 public meeting that the substructures underlying the proposed temporary site for the York waste material, consisting of, *inter alia*, sandstone and other permeable matter, are inappropriate for a radioactive waste site.

(b) Pa.DEF has reported its conclusion at the April 15 public meeting that the substructures of the proposed permanent storage sites are also inappropriate for radioactive waste storage.

Evidence of Dispersion and/or Migration of Radioactive Material

(a) It is believed and therefore averred that Molycorp, as recently as 1996, has been required to reclaim contaminated soil outside of the existing storage pile and/or outside of its property. Such contaminated soil is currently stored in the 194 roll-off containers currently on the Molycorp property.

(b) The report issued in 1985 by the Oak Ridge Associated Universities reports that radioactive waste was found within the public right-of-way at locations where such material was not initially placed or stored.

(c) Although Molycorp has released testing results of water samples taken from nearby Chartiers Creek, it has never released any results of analyses of the Chartiers Creek *stream beds*. Canton Township is currently in the process of taking such soil tests from the Chartiers Creek stream beds, which results will be presented at the full hearing in these proceedings.

Unknown Interactions Between Thorium and Coal Tar and Other Toxic Substances at Site

(a) The Molycorp plant is located in a historically heavy industrialized section of Canton Township. As in most older industrial sections, air and particularly water pollution was a problem in this area before the 1970's and toxic waste was often dumped by industries located here in nearby lands and in the groundwater systems. Further, extensive amounts of coal tar and other toxins were formerly produced by industries neighboring Molycorp's plant, which material was deposited throughout the area. Experts retained by Canton Township have identified this potentially volatile mix of hazardous waste and radioactive waste as issues of grave potential danger. Scientific studies have not yet been completed quantifying the extent of these dangers. Nevertheless, these extremely serious issues are distinctly raised in the current proceedings and a full hearing is warranted to explore the full extent of these dangers.

(b) It is believed and therefore averred that no studies or analyses have yet been released by Molycorp concerning potential dangers arising from the mixing of the radioactive waste already stored or otherwise found at the Molycorp Canton Township facility with radioactive waste proposed to be transferred from the Molycorp York facility. These potentially serious issues are distinctly raised in the current proceedings and a full hearing is warranted to explore the full extent of these dangers.

(c) It is believed and therefore averred that no studies or analyses have been revealed by Molycorp on the extent of organic toxic substances already existing in the area, at both the proposed storage sites and elsewhere on the Molycorp property. Such analyses should be performed prior to any transfer of additional radioactive material not already at the Canton Township site.

Proximity of Water Line and Chartiers Creek Watershed to Proposed Storage Sites

(a) As described in greater detail in Canton Township's initial Request for Hearing, it is believed and therefore averred that a 16" municipal water line which serves Canton Township and the greater City of Washington metropolitan area lies under the existing radioactive waste burial mound located on the Molycorp site. This burial mound, as well as the proposed temporary site for the York waste material, are located in the flood plain of Chartiers Creek, which creek runs within approximately 40 feet of the existing burial mound.

(b) As noted in the section entitled "Evidence of Dispersion and/or Migration of Radioactive Material" above, experts retained by Canton Township are still analyzing soil samples outside of the current storage sites, some of which are located in the creek bed and banks of Chartiers Creek and nearby. The results of these tests are not yet known but it is believed that such tests will indicate that there has been migration from the existing storage sites. Evidence on this issue should be further developed pursuant to full hearing procedures.

(c) Canton Township reiterates that the fact that a 100-year old pipeline runs directly underneath current storage sites and that Chartiers Creek is practically contiguous to such sites *ipso facto* raises safety concerns which by themselves warrant a full hearing in this proceeding.

Inappropriate and/or Inadequate Design Features of Proposed Permanent Storage Sites

(a) Although Canton Township has not yet been able to review specific documents relating to Molycorp's Site Decommissioning Plan, it is believed and therefore averred that the proposed locations of both the temporary York material and the permanent storage sites are in inappropriate locations. These locations have already been deemed inappropriate by the Pa. DEP, in part, because of the locations' inappropriate sub-structures.

Close Proximity to Residents

(a) Canton Township believes and therefore avers that it is unprecedented that the storage sites are proposed to be located within 250 ft. from residential neighborhoods. Canton Township is unaware of any other approved radioactive storage sites in this nation located this close to such populated areas.

(b) It is believed and therefore averred that residents of nearby neighborhoods located in Canton Township, closest to the existing Molycorp storage sites, appear to be suffering from an unusually high incidence of cancer and other related diseases. Specific studies and statistical analyses of such occurrences can be presented pursuant to full hearing procedures.

Safety of Employees of Molycorp and Neighboring Industries

(a) Canton Township has long been concerned with the welfare of all of the workers employed in the Township. It is believed and therefore averred that there has been a high incidence of cancer and other related diseases to the employees of Molycorp and its neighboring industries. Complete studies of such issues have not been completed but will be developed pursuant to full hearing procedures.

Threat to Wildlife and Ecosystem

(a) Canton Township is developing evidence of physical defects occurring in wildlife which populates the undeveloped portions of the Molycorp site and neighboring areas, which defects cannot be attributed to natural causes. Further investigation and analysis of this issue is warranted and the full hearing process will further develop such evidence.

(b) Canton Township is developing evidence of damage to the ecosystem at the Molycorp site and in the neighboring areas. Further investigation and analysis of this issue is warranted and the full hearing process will further develop such evidence.

Conclusion

19. Under these circumstances and for the foregoing reasons, Canton Township submits that it has established its need for and a right to a hearing under 10 CFR Section 2.1205(h).

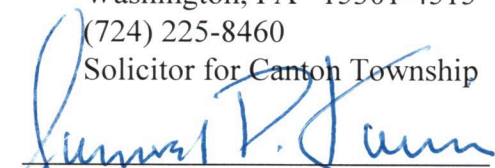
WHEREFORE, Petitioner/Requestor Canton Township, Pennsylvania hereby respectfully requests a hearing before the U.S. Nuclear Regulatory Commission on the pending Amendment Request of Licensee Molycorp, Inc.

Respectfully submitted,



John T. Olshock
JOHN T. OLSHOCK & ASSOCIATES
96 N. Main Street
Washington, PA 15301-4515
(724) 225-8460
Solicitor for Canton Township

Date: November 11, 1999



Samuel P. Kamin
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1806 Frick Building
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(412) 281-1119
Special Counsel for Canton Township

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

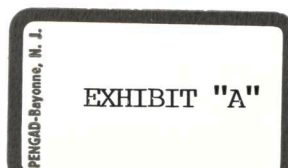
Tuesday, April 6, 1999

*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

U. S. NUCLEAR REGULATORY COMMISSION

LICENSEE: 'MOLYCORP, INC.
License No. SMB-1393
Docket Nos. 040-08794 and 040-08778

**REQUEST FOR HEARING BY CANTON TOWNSHIP, PENNSYLVANIA
ON LICENSEE'S AMENDMENT REQUEST REGARDING THE
SCHEDULE FOR SUBMISSION OF A REVISED
SITE DECOMMISSIONING PLAN AND ENVIRONMENTAL REPORT
FOR LICENSEE'S WASHINGTON, PENNSYLVANIA SITE**

Petitioner/Requestor CANTON TOWNSHIP, by its Solicitor, JOHN T. OLSHOCK, and its special counsel, SAMUEL P. KAMIN and the law firm of GOLDBERG, KAMIN & GARVIN, hereby file the following Request for Hearing, and in support thereof states as follows:

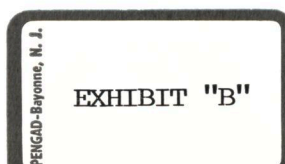
1. The site proposed by Licensee Molycorp, Inc. ("Licensee") for the storage of certain nuclear by-products and/or waste, which material is currently located at Licensee's York, Pennsylvania facility, is located within the municipal boundaries of Petitioner/Requestor. There are three separate areas proximate to each other directly related to this proposed amendment, all as shown on "Attachment A" attached to and made part of this Request for Hearing. Those areas are designated on "Attachment A" as follows:

(a) Area X is the proposed permanent storage site

(b) Area Y is the existing nuclear waste burial mound located in the flood plain along the Chartiers Creek, adjacent to Caldwell Avenue, in Canton Township. This nuclear waste burial ground containing 64,000 cubic yards of waste material, is underlaid by a 16" municipal water line which serves portions of Canton Township and a significant portion of the Tylerdale section of the City of Washington, PA.

(c) Area Z is the "temporary" storage area housing 194 roll off boxes each containing 8,000 pounds of waste material.

Canton Township and its residents have a clear interest in the details of Licensee's proposed amendment to its Site Decommissioning Plan involving such nuclear by-products and/or waste.



2. Canton Township's interests include, but are not limited to:
 - (a) Reviewing Licensee's plans insofar as they relate to the safety and protection and general welfare of residents of the Township who live next to and/or near the site;
 - (b) Reviewing Licensee's plans insofar as they relate to safeguards against contamination of nearby streams and other water sources near the site;
 - (c) Reviewing Licensee's plans insofar as they relate to the 16" main water line which serves approximately 30% of the residents of Canton Township and a significant number of residents of the Tylerdale section of the City of Washington, Pennsylvania, which line runs under or very close to Licensee's proposed storage site;
 - (d) Reviewing Licensee's plans insofar as they relate to safeguards against excessive soil erosion caused by physical changes to the site proposed by Licensee, which soil erosion may lead to contamination of nearby water sources and other problems the Township must administer;
 - (e) Reviewing Licensee's plans insofar as they relate to the steps Licensee intends to take in complying, to the best of its ability, with other land use regulations and zoning ordinances of the Township.

3. To date, Licensee has not shared the details of its proposed Amendment with Township representatives and therefore the Township, as the authorized body which represents the interests of all residents of Canton Township, must exercise all due caution to investigate and review the Licensee's plans.

4. Canton Township's interests will be deleteriously affected by the granting of Licensee's proposed Amendment if Licensee's plans do not, *inter alia*, adequately insure the safety, protection, and general welfare of residents of the Township, consider the close proximity of the main water line (which services, *inter alia*, the Tylerdale section of the City of Washington, Pennsylvania) to the existing and proposed storage sites, adequately protect against contamination of nearby streams and other water sources, adequately protect against excessive soil erosion caused by physical changes to the site and do not otherwise comply with the other applicable land use regulations and zoning ordinances of the Township.

5. The issue of the close proximity of the main water line which services Canton Township and the Tylerdale section of the City of Washington, Pennsylvania alone establishes the effect that any order that may be entered by the Nuclear Regulatory Commission on Licensee's proposed Amendment will have on Canton Township, the residents of Canton Township and the residents of the City of Washington. Canton Township is not aware at this time if Licensee's proposed Amendment takes into consideration in any way such water line (which runs under or close to the proposed storage site) and if any safeguards are proposed by Licensee to ensure no contamination of such water supply. For this reason, Canton Township's need for and right to a hearing on the Licensee's proposed Amendment is established.

6. Considering Canton Township's lack of knowledge concerning the Licensee's proposed plans, due in part to the Licensee's failure to date to comply with applicable Township land use regulations and zoning ordinances, the Township is limited in further expounding at this time about the possible effect of any order that may be entered by the Nuclear Regulatory Commission on Licensee's proposed Amendment. For this reason, as well as the very important interests set forth in Paragraph 2 above, Canton Township submits that its need for and right to a hearing on the Licensee's proposed Amendment is established.

7. Both the existing nuclear waste storage area and the proposed temporary storage areas have an adverse and detrimental effect on the nearby residential community as well as the local economy. Property values in the immediate vicinity of the site are negatively impacted.

8. Under these circumstances, Canton Township submits that it has established its need for and right to a hearing on Licensee's proposed Amendment under the standards set forth in 10 CFR §2.1205.

9. It is believed that the notice of the Licensee's Amendment request for the temporary storage of decommissioning waste from the Molycorp York, Pennsylvania facility at the Molycorp Washington, Pennsylvania facility was published in the Federal Register on June 9, 1999. Pursuant to 10 CFR §2.1205(d), a person, other than an applicant, may file a request for a hearing before the

Nuclear Regulatory Commission within thirty (30) days of the publication in the Federal Register of such a notice relating to an application or a licensing action. The instant Request for Hearing has been filed within thirty (30) days of June 9, 1999.

10. As set forth in the attached Certificate of Service, a copy of this Request for Hearing has been properly served on Licensee Molycorp, Inc. and its counsel and on the U.S. Nuclear Regulatory Commission as required by 10 CFR §2.1205(f).

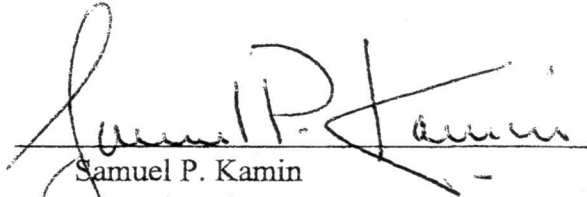
WHEREFORE, Petitioner/Requestor Canton Township, Pennsylvania hereby respectfully requests a hearing before the U.S. Nuclear Regulatory Commission on the pending Amendment request for the temporary storage of decommissioning waste from the Molycorp York, Pennsylvania facility at the Molycorp Washington, Pennsylvania facility of Licensee Molycorp, Inc.

Respectfully submitted,



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Solicitor for Canton Township

Date: June 28, 1999



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Special Counsel for Canton Township

DOCKETED
USNRC

August 25, 1999

'99 AUG 26 P1:39

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE
RULE
ADJUTANT

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)

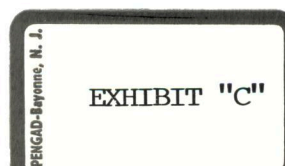
Requests for a hearing have been filed by the City of Washington, Pennsylvania (June 28, 1999) and Canton Township, Pennsylvania (June 28, 1999) (Petitioners). Petitioners are concerned about possible health and environmental effects that may result from the transfer of certain nuclear by-products and/or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

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



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.

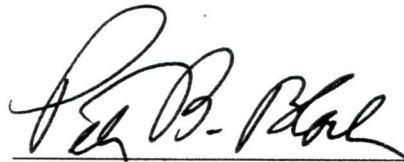
Canton Township filed a reply and motion to strike on August 17, 1999 (Canton Reply). In this filing, Canton correctly asserts that an answer to a request for hearing must be filed within ten (10) days of service. 10 C.F.R. § 2.1205(g). Since the request for hearing was filed on June 28, 1999 and Molycorp’s 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.

²In 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

September 15, 1999

USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

'99 SEP 15 AM 11:41

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

OFFICE OF THE
GENERAL COUNSEL
ADJUTANT GENERAL

SERVED SEP 15 1999

In the matter of

MOLYCORP, INC.
Washington, Pennsylvania

Docket Nos. 40-8794-MLA
40-8778-MLA

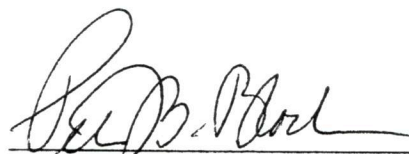
Re: Site Decommissioning Plan

ASLBP No. 99-769-08-MLA

MEMORANDUM AND ORDER
(Delay for Negotiation)

In a facsimile transmission of September 14, 1999, Randolph T. Struk (counsel to Molycorp Inc.), stated that Molycorp seeks a thirty day extension of the date on which Canton Township and the City of Washington are to file amended contentions. Mr. Struk states that the Township and City would prefer an indefinite delay in their scheduled filing in order to encourage negotiation. However, I have decided to adopt Molycorp's suggestion of a thirty day extension, until November 1, 1999. This will create an added incentive to resolve the case efficiently. Parties may request further extensions should they be appropriate and they may also request the appointment of a mediator.

IT IS SO ORDERED.



Peter B. Bloch, Administrative Judge
Presiding Officer

Rockville, Maryland

PENGAD-Beyonce, M. J.
EXHIBIT "D"

RECEIVED
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Counsel To The Firm
Stuart E. Savage

Of Counsel
Robert W. Mandell

October 28, 1999

Administrative Judge Charles Bechhoefer
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

VIA FEDERAL EXPRESS

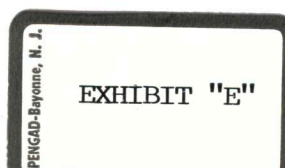
In Re: Matter of Molycorp, Inc.
Docket Numbers 40-8794-MLA and 40-8778-MLA

Dear Judge Bechhoefer:

This law firm represents Canton Township, Pennsylvania, which has requested a hearing before the Nuclear Regulatory Commission in the above referenced matter. The City of Washington has also requested a hearing in this matter.

The predecessor Administrative Judge in this matter, Peter B. Bloch, by Order dated August 25, 1999 ordered that Petitioners Canton Township and the City of Washington file amendments to their respective Requests for Hearing in this matter. By his same August 25 Order, Judge Bloch provided that the parties may jointly petition for suspension of the schedule pending active negotiation. The parties hereto have previously requested an extension of the schedule and by Order dated September 15, 1999, Judge Bloch extended the Petitioners' time to amend their Requests for Hearing until November 1, 1999. In his September 15 Order, Judge Bloch also noted that the parties may request further extension as appropriate.

Canton Township, the City of Washington and Molycorp, Inc. have authorized me to advise you that negotiations are continuing among the parties, and documents the Petitioners have requested from Molycorp are still being reviewed. The parties hereby request a further extension of time until November 15, 1999 by which the Petitioners must file amendments to their respective Requests for Hearing. As negotiations and document review are ongoing, further requests for extension of time may be forthcoming.



Administrative Judge Charles Bechhoefer
October 28, 1999

Page Two

If appropriate, this request/stipulation can be filed with your office and with the Nuclear Regulatory Commission as a formal document. However, Judge Bloch has previously honored this type of informal expression of the parties' intent. Please advise if you require a formal stipulation.

Thank you for your assistance in this regard.

Very truly yours,



SAMUEL R. GREGO

SRG:tr

cc: See attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served this date on the following by first-class mail, postage prepaid:

Dr. Richard F. Cole
Special Assistant
Atomic Safety and Licensing Board Panel
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

Molycorp, Inc.
350 N. Sherman Street
York, PA 17403
Attention: Mr. John Daniels
Licensee

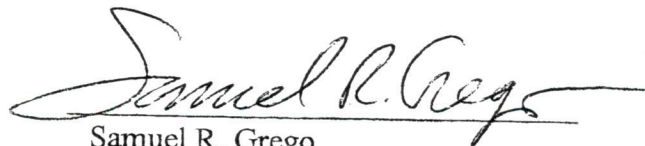
John T. Olshock, Esquire
Solicitor for Canton Township
96 N. Main Street
Washington, PA 15301

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Randolph T. Struk, Esquire
Thorp, Reed & Armstrong, L.L.P.
One Riverfront Center
Pittsburgh, PA 15222
Counsel for Licensee Molycorp, Inc.

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

Date: October 28, 1999



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Robert W. Mandell

October 11, 1999

Randolph T. Struk, Esquire
THORP, REED & ARMSTRONG, LLP
One Riverfront Center
Pittsburgh, PA 15222

In Re: Molycorp, Inc. - Canton Township

Dear Mr. Struk:

I propose that we and our respective clients' representatives meet at some time next Tuesday - Thursday (October 19-21, 1999). If agreeable to you, we are willing to meet at the Molycorp facility or at the Canton Township Municipal Building.

I was surprised to discover that the Township has not yet received certain basic information and documents relevant to these Molycorp matters. To be adequately prepared for next week's meeting and future meetings, we hereby request on behalf of Canton Township a copy of the following documents:

1. Source Materials License No. SMB-1393.
2. Site Decommissioning Plan for Molycorp's Washington facility (original and any amendments or revisions thereto).
3. Decommissioning Plan for Molycorp's York facility (original and any amendments or revisions thereto).
4. License Amendment Request and related reports.
5. Environmental Impact Studies issued pursuant to all Decommissioning Plans and the License Amendment Request.
6. All correspondence to and from the NRC relating to all Decommissioning Plans and the License Amendment Request.

EXHIBIT "F"

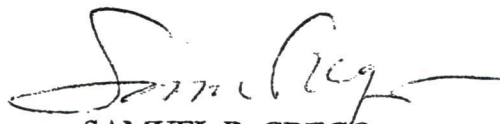
Randolph T. Struk, Esquire
October 11, 1999

Page Two.

7. The Molycorp plant map (Washington facility) referred to at the September 29 NRC meeting.

These documents should be forwarded to my attention at our office. Please advise if you anticipate any delay in forwarding such documents. I will await your suggestions as to possible meeting dates and times next week.

Sincerely yours,



SAMUEL R. GREGO

SRG:smm

cc: Chad Smith
John T. Olshock, Esquire
bcc: Samuel P. Kamin, Esq.

CERTIFICATE OF SERVICE

DOCKETED
USMRC

'99 NOV 16 P12:25

I hereby certify that the original and/or a copy of the foregoing Amendment to Request for Hearing by Canton Township, Pennsylvania has been served this date on the following in the following manner, which service complies with the rules and regulations of the U.S. Nuclear Regulatory Commission:

VIA FEDERAL EXPRESS:

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

VIA FIRST-CLASS MAIL:

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

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

Lawrence J. Chandler, Esquire
Office of General Counsel
Mail Stop 0-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Molycorp, Inc.
300 Caldwell Ave.
Washington, PA 15301
Attention: Mr. John Daniels
Licensee

Randolph T. Struk, Esquire
Thorp, Reed & Armstrong, L.L.P.
One Riverfront Center
Pittsburgh, PA 15222
Counsel for Licensee Molycorp, Inc.

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

Date: November 12, 1999



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November 12, 1999

DOCKETED
USNRC

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OFFICE OF STATE
RULEMAKING
ADJUDICATION

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

VIA FEDERAL EXPRESS

In Re: **Licensee: Molycorp, Inc.**
License No. SMB-1393
Docket Nos. 040-08794 and 040-08778

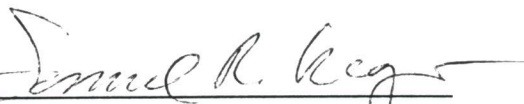
Dear Judge Bechhoefer:

Enclosed please find the original and a copy of Canton Township's Amendment to Request for Hearing for filing in the above-referenced proceedings.

If your office requires further copies or if additional Nuclear Regulatory Commission offices other than those listed in the Certificate of Service attached to the enclosed document require copies, please advise this office and additional copies will be forwarded. Thank you for your assistance in this matter.

Very truly yours,

GOLDBERG, KAMIN & GARVIN

By 
Samuel R. Grego, Special Counsel
for Requestor Canton Township

SRG:smm; Enc.

cc: Dr. Richard F. Cole (w/enc.)
Office of Commission Appellate Adjudication (w/enc.)
Lawrence J. Chandler, Esquire (w/enc.)
Executive Director for Operations (w/enc.)
Office of the Secretary, U.S. Nuclear Regulatory Commission (w/enc.)
Molycorp, Inc. (w/enc.)
Randolph T. Struk, Esquire (w/enc.)
Jeffrey A. Watson, Esquire (w/enc.)
Canton Township Board of Supervisors (w/enc.)
John T. Olshock, Esquire (w/enc.)
Pennsylvania Department of Environmental Protection (w/enc.)
Pennsylvania-American Water Company (w/enc.)