U.S. NUCLEAR REGULATORY COMMISSION

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

MOLYCORP, INC.'S REPONSE TO REQUEST FOR HEARING BY CANTON TOWNSHIP, PENNSYLVANIA ON LICENSEE'S AMENDMENT REQUEST FOR DECOMMISSIONING OF ITS CANTON TOWNSHIP FACILITY

Molycorp, Inc. ("Molycorp") submits the following Response to Request for Hearing (the "Request") filed by Canton Township, Pennsylvania ("Canton") regarding Molycorp's request for a license amendment to authorize decommissioning of its former processing facility in Washington, Pennsylvania.[1] Canton's Request should be denied because Canton has failed to demonstrate that it has standing to seek a hearing. Specifically, Canton has failed to establish: (1) an injury in fact within the scope of this proceeding, (2) that fairly can be traced to the challenged action, and (3) that is redressable through this proceeding.

Although Canton lists ten "areas of concern" in its Request, none of these provide Canton with standing to seek a hearing. Eight of the ten areas pertain to issues that either were before the NRC when it approved the initial licensing and continued operation of the facility, or are not within the scope of this proceeding. Furthermore, two areas of concern relate to issues that Molycorp already has resolved. Finally, Canton has failed to show a

[1] Because Canton's Request incorporated by reference Canton's prior filings before the NRC, Molycorp's response incorporates by reference its prior filings regarding Canton's lack of standing to request a hearing. See, in particular, Molycorp's Response to the Amendment to Request for Hearing by Canton Township, filed November 30, 1999.

plausible chain of causation between the proposed amendment and the alleged injuries in fact with respect to any of its proposed areas of concern. Because Canton has failed to allege with particularity any radiation injury to specific citizens or property that would result from the proposed license amendment, it lacks standing and its Request should be denied.

In addition, Canton contends that this proceeding should be joined with the separate proceeding currently before the Commission regarding the temporary storage of material from York at the Canton facility. The Commission always has treated these matters separately and should continue to do so. Separate proceedings also are appropriate because the City of Washington, Pennsylvania has filed a request for hearing only in connection with the York issue; it properly should only be permitted to participate, if at all, in the hearing regarding the York material.

I. Canton Lacks Standing.

A. The Judicial Standard

1. A request for hearing must demonstrate that the petitioner satisfies the judicial standards for standing. § 2.12.05(h); see also In re Hydro Resources, Inc., (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 1998 NRC LEXIS 21 at *13-14 (May 13, 1998). To establish standing, a requestor must show (a) an injury in fact, (b) that the injury can fairly be traced to the challenged action, and (c) that the injury is likely to be redressed. See Hydro at *15.

2. The alleged injury in fact must be unique to the proposed license amendment and distinct from any harm that would have been caused by the initial licensing or continued operation of the facility at issue. The Board may not revisit the initial licensing of the facility when considering a proposed license amendment, and therefore, any concerns of the requestor related to issues that the Commission would have addressed during its initial licensing of the facility cannot support that request for hearing. See In re International Uranium, (Receipt of Material from Tonawanda, NY), LBP-98-21, 1998 NRC LEXIS 67 at *19 (Sept. 1, 1998) and In re Energy Fuels Nuclear, Inc., (Source Materials License No. SUA-1358), LBP-94-33, 1994 NRC LEXIS 63 at *5-8.

3. A requestor must show that the proposed action will cause an injury in fact to an interest that is within the "zone of interests" protected by the statutes governing the proceedings. Hydro at *17. Moreover, a governmental unit, like a city or county, must demonstrate, like any other intervenor, that its citizens or natural resources will likely suffer an injury in fact; cities and counties are not automatically deemed to have standing. See International Uranium at *19.

4. As noted in a recent decision by the Atomic Safety and Licensing Board, the requestor must show a plausible causal link between the asserted harm and the proposed license amendment. In re Commonwealth Edison Company, (Zion Nuclear Power Station, Units 1 and 2), LBP-98-27, 1998 NRC LEXIS 80 (Nov. 5, 1998). In that case, the licensee already had permanently closed but not decommissioned its nuclear power station. The licensee sought to amend its license to reflect its closed status. The

Board found that because the reactors were permanently shutdown and defueled, there was no obvious potential for offsite harm. Accordingly, the requestor was required to allege some specific injury in fact that plausibly could be linked to the challenged license amendment. The requestor failed to do so, and the request for a hearing was denied. Id. at *10-11.

5. Similarly, the Board denied standing to the petitioners in another case who sought a hearing to challenge a decommissioning plan. In re Babcock & Wilcox, (Apollo, Pennsylvania Fuel Fabrication Facility – Decommissioning Plan), LBP-93-4, 1993 NRC LEXIS 6 (Feb. 5, 1993). The petitioners alleged, in part, that they had standing to litigate purported onsite and offsite radiological contamination because they lived and work in the vicinity of the facility. The Board found that the petitioners had failed to show a "particular and concrete" injury in fact to them that fairly could be traced to the decommissioning activities. Id. at *22-24.

B. The Inadequacies of Canton's Request

6. Canton lacks standing because it has failed to satisfy the elements of standing; Canton has not shown that the proposed Site Decommissioning Plan (the "SDP"), including Molycorp's proposed safety measures, will cause radiation injury to specific citizens. To show offsite radiological harm, petitioners generally quantify the distance in miles from the facility in question that specific individuals reside, work or engage in other activities on a regular basis. See In re Atlas Corporation, (Moab, Utah Facility), LBP-97-9, 1008 NRC LEXIS 11 (May 16, 1997). Rather than making this

specific showing, Canton has alleged ten general areas of concern. As set forth below, however, these general allegations are insufficient to give Canton standing.

1. Canton lacks standing because its alleged injuries are not specifically related to the proposed amendment.

7. To have standing, Canton must allege an injury in fact that is unique to the portion of the Site Decommissionin Plan ("SDP") that the Commission currently is considering, as defined in its November 16, 1999 Notice published in the Federal Register. See Nuclear Regulatory Commission, "Notice of Consideration of Request for Molycorp, Washington, Pennsylvania and Opportunity for a Hearing," 64 Fed. Reg. 62,227 (Nov. 16, 1999). Canton has failed to satisfy this requirement with regard to eight of its alleged ten areas of concern in that these areas do not relate to harms that are distinct to the proposed license amendment. Rather, eight of Canton's concerns relate to issues that either arose previously or that are not within the scope of this proceeding. These areas of concern are somewhat repetitive and can be summarized as follows:

- The effects on Canton and residential neighborhoods [see Request, p. 2 (a), (c) and (e)];
- The financial consequences to Canton of the approval of the SDP and any subsequent defaults by Molycorp [see Request, p. 2 (b)];
- Harm to the ecosystem [see Request, p. 3 (d) and (j)];
- Dispersion of radioactive material [see Request, p. 3 (g)] ; and
- Harm from the potential mix of radioactive material with other hazardous waste material [see Request, p. 3 (h)].

a. Canton cites issues that arose before Molycorp filed its SDP.

8. Canton claims it has had a long standing concern about the potential effect of Molycorp's plant on nearby neighborhoods, the possibility of default by Molycorp and the possibility of harm to the ecosystem. These issues can not properly be raised in this proceeding because they arose before Molycorp filed its SDP. See In re International Uranium, (Receipt of Material from Tonawanda, NY), LBP-98-21, 1998 NRC LEXIS 67 at *19 (Sept. 1, 1998) and In re Energy Fuels Nuclear, Inc., (Source Materials License No. SUA-1358), LBP-94-33, 1994 NRC LEXIS 63 at *5-8.

9. In its prior filings, which Canton has incorporated by reference, Canton indicates that these issues arise out a "historical lack of communication" between Molycorp and Canton and that "[t]he 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." See Exhibit B of Request, ¶ 10.

10. Although Canton may claim that it is not pleased with prior decisions made by the NRC and with the very fact that Molycorp has stored low-grade radioactive material in Canton Township for decades, the Board's decisions clearly hold that Canton can not use this proceeding as a forum to raise old grievances that it purportedly harbors against Molycorp.

11. Statements in Canton's recent filings illustrate that the issues listed above are not new concerns directly related to the proposed amendment. For instance, regarding the dispersion of radioactive material, Canton has alleged 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." Id. at p. 8 (emphasis added). Reclamation of the contaminated soil was not an issue that the Commission required Molycorp to address in its SDP; rather, Molycorp and the Commission addressed the reclamation issue at the time it arose. Accordingly, this issue may not properly be raised as a basis for seeking a hearing in this matter. See In re International Uranium, (Receipt of Material from Tonawanda, NY), LBP-98-21, 1998 NRC LEXIS 67 at *19 (Sept. 1, 1998) and In re Energy Fuels Nuclear, Inc., (Source Materials License No. SUA-1358), LBP-94-33, 1994 NRC LEXIS 63 at *5-8.

12. In the same filing, Canton describes the alleged harm from the potential mix of Molycorp's material with other waste material. Canton states that the Molycorp plant is located in a "historically heavy industrialized section of Canton Township." See Exhibit B of Request, p. 9. Canton claims that coal tar and other toxins produced by other industries before the 1970s have been deposited in the same area as Molycorp's plant and that the mix of these other toxins with Molycorp's thorium creates a "potentially volatile mix." Id. (emphasis added). Setting aside for the moment the speculative nature of this allegation, Molycorp notes that these other wastes have been present since before the 1970s and also were present when the Commission renewed Molycorp's license. Accordingly, the Atomic Energy Commission could have addressed

this issue when Molycorp was granted its initial Source Materials License on December 19, 1963.[2] As a result, this issue does not constitute an injury in fact that arises out of the proposed amendment and, therefore, does not provide an appropriate basis for standing on the part of Canton. See In re International Uranium, (Receipt of Material from Tonawanda, NY), LBP-98-21, 1998 NRC LEXIS 67 at *19 (Sept. 1, 1998) and see also, In re Energy Fuels Nuclear, Inc., (Source Materials License No. SUA-1358), LBP-94-33, 1994 NRC LEXIS 63 at *5-8.

b. Canton cites issues that will not be before the Commission until April 2000.

13. Another of these eight areas of concern is outside the scope of the Federal Register notice, published on November 16, 1999, pursuant to which Canton filed its Request. See Notice of Consideration of Amendment Request for Molycorp, Washington, Pennsylvania and Opportunity for a Hearing, 64 Fed. Reg. 62,227 (Nov. 16, 1999).

14. The November 16 Notice pertains to that portion of the SDP which Molycorp filed on June 30, 1999 and which addresses that part of Molycorp's Washington facility that is to be released for unrestricted use. Molycorp is not required to submit the

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[2] Moreover, the coal tar remediation is being treated separately and is the subject of a CERCLA cost recovery action filed by Molycorp. Coal tar remediation is not a proper subject for this proceeding because the Commission's regulations clearly indicate that a decommissioning plan submitted for review by the Commission is intended to address only radiation risks and the procedures intended to eliminate those risks through the decommissioning process but not other hazards. See 10 C.F.R. §40.42.

portion of its SDP which pertains to the permanent encapsulated storage cell until April 2000.[3] Accordingly, Canton's alleged areas of concern that relate to issues involving the permanent storage site are outside the scope of this proceeding.

15. Accordingly, this issue may not properly be raised as the basis for Canton to be granted a hearing regarding this matter. See In re International Uranium, (Receipt of Material from Tonawanda, NY), LBP-98-21, 1998 NRC LEXIS 67 at *19 (Sept. 1, 1998) and In re Energy Fuels Nuclear, Inc., (Source Materials License No. SUA-1358), LBP-94-33, 1994 NRC LEXIS 63 at *5-8.

2. Canton lacks standing because the proposed license amendment is not a plausible cause of Canton's alleged injuries in fact.

16. To have standing, Canton must show a plausible causal link between the harm it alleges and the proposed license amendment. However, as noted above, Canton has failed to demonstrate, beyond mere conclusory and unsupported allegations, specifically who will be harmed by the activities encompassed by the proposed license amendment, and specifically how this harm will be realized.

[3] The portion of the SDP which is at issue in this proceeding provides the remediation procedure for the unrestricted area and sets a standard of 10 mrem. Molycorp already has a radiation safety plan in place; therefore, the issue of occupational safety during the remediation has been addressed. Once the remediation is complete, no unreasonable risk will exist to members of the public using that portion of the site. See Supplemental Affidavit of George Dawes, attached hereto as Exhibit A. ("Dawes Supp. Aff."), ¶¶ 5-7.

17. For example, Canton has asserted without support or explanation that harm will result from the alleged inappropriate and inadequate design features of the permanent storage facilities proposed in the SDP [see Request, p. 3(e)], as well as from the potential mix of radioactive material with other hazardous waste material [see Request, p. 3(h) (emphasis added)]. However, Canton has failed to make any showing whatsoever as to how these alleged concerns will cause the claimed injuries.

18. Regarding the design features of the permanent storage facilities proposed in the SDP, Canton has not provided any details regarding which aspects of the design features are inappropriate and inadequate or how the design will cause radiation injury to specific citizens. Canton has stated only that the proposed locations are in "inappropriate locations." See Exhibit B of Request at p. 11.

19. Canton's focus on the state of the design features also is premature. Molycorp has given Canton only conceptual information regarding its design for the permanent storage facility. Molycorp has not provided Canton with a final design because it has not yet completed that final design. The Commission is aware that Molycorp still is drafting the final design and has informed Molycorp that the conceptual information is sufficient for now. See Dawes Supp. Aff., ¶ 9.

20. Second, regarding the mixing of thorium with other industrial wastes, Canton has not provided any information regarding the extent of the industrial waste in the area or whether any mixing of these wastes actually has occurred. Indeed,

Canton's Request refers only to the "potential" mix of radioactive material with other hazardous waste material. Canton also has not described the nature and extent of the harm that will occur as a result of the potential mix of radioactive material with this other unidentified contamination. See Babcock & Wilcox at *34-35 (denying standing where petitioners had alleged that unspecified mixed wastes were present at the licensed facility at issue).

21. Because these two alleged areas of concern would not plausibly be caused by the proposed license amendment, these issues do not serve as any appropriate basis to establish the necessary standing to request a hearing. See In re Commonwealth Edison Company, (Zion Nuclear Power Station, Units 1 and 2), LBP-98-27, 1998 NRC LEXIS 80 (Nov. 5, 1998). Canton's failures to make any plausible showing of harm with respect to any of the other "areas of concern" also mandates that these other concerns may not appropriately serve as a basis for standing on the part of Canton.

3. Canton lacks standing because it lists areas of concern that Molycorp already has addressed.

22. A basic requirement of standing is that the petitioner must have an injury in fact. In its Request, Canton has listed the following two "areas of concern" that Molycorp already has resolved and, accordingly, no "injury" could possibly result to any citizen of Canton:

- The existence of a 16-inch municipal water line that currently traverses the Molycorp site [see Request, pp. 3-4 (i)]; and

- The proposed location of the storage sites within a 100-year flood plain. [see Request, p. 3 (f)].

23. First, Canton cites as an area of concern the existence of a 16-inch municipal water line that traverses the Molycorp facility. See Request at p. 3. Molycorp's own analysis, which is contained within its Washington Site Characterization Report, indicates that the proximity of this water line to the stabilized soil-capped piles would cause no detrimental health or environmental impacts. See Dawes Aff., ¶ 5. Canton has been given a copy of this report.

24. Moreover, Molycorp has been informed that the local water company, which owns the water line, conducted its own testing which failed to reveal any radiological contamination in the water line. See Dean Aff., ¶ 6. Nevertheless, as a gesture of goodwill and to foster community relations, Molycorp informed Canton on November 9, 1999 that it has reached an agreement in principle with the water company to abandon the water line, such that the line will not be used at all. Molycorp anticipates that the line will be abandoned by the second quarter of the year 2000. See Dean Aff., ¶¶ 4-5. Since Canton is aware that the water line will soon be abandoned, Canton can not in good faith cite the "quality and adequacy of this water line" as an area of concern.

25. In addition, Canton has no property interest in the water line, which is owned by the local water company. Accordingly, Canton does not have standing to allege injury to that property.

26. Perhaps most importantly, since the SDP will entail permanently removing and encapsulating the radioactive material that is currently in the slag pile, this material will no longer lie over the water line. Accordingly, Canton's concern that the water line "lies under the existing radioactive waste burial mound" will be addressed once the SDP is completed.

27. Second, Canton cites as an area of concern its belief that the storage sites are proposed to be located within a flood plain. See Request at p. 3. Molycorp has withdrawn its plan (Option 2 of the original SDP) that placed the storage sites within the flood plain and has so advised the NRC. Because Molycorp has withdrawn that proposal, the flood plain no longer can be considered a valid area of concern.

28. Accordingly, these two areas of concern can not be the basis for granting Canton's request for a hearing.

III. The Two Proceedings Should Not Be Joined.

29. Canton improperly requests that this proceeding be joined with the separate proceeding currently pending before the NRC regarding the amendment of Molycorp's Washington license to permit the temporary storage of material from its York plant. See Request at p. 4.

30. This proceeding is limited to consideration of Molycorp's SDP. The Commission has held that "[o]nly those concerns which fall within the scope of the proposed action set forth in the Federal Register notice of opportunity for hearing may be

admitted for hearing." In re International Uranium, (Receipt of Material from Tonawanda, NY), LBP-98-21, 1998 NRC LEXIS 67 at *12 (Sept. 1, 1998). Here, the NRC's Notice specifically states that the proposed license amendment pertains to the "decommissioning of its former processing facility in Washington, Pennsylvania." Nuclear Regulatory Commission, "Notice of Consideration of Request for Molycorp, Washington, Pennsylvania and Opportunity for a Hearing," 64 Fed. Reg. 62,227 (Nov. 16, 1999). Nowhere in this Notice does the NRC refer to the Molycorp Washington Decommissioning Plan, which is subject to a separate NRC proceeding.

31. The Commission itself has elected to keep the two proceedings separate and even asked Molycorp to prioritize the two proceedings because of its inability to adjudicate both simultaneously. See Dawes Supp. Aff., ¶ 10. These proceedings properly have been treated separately because there is little factual overlap between the temporary storage of the York material at issue and the decommissioning issue. Indeed, Molycorp's plans do not envision any overlap between the area of land designated for the temporary storage and the permanent storage site.[4]

32. Moreover, the City of Washington, Pennsylvania has not requested a hearing regarding the decommissioning plan; it filed a request for hearing only with regard to the York material. Since the City of Washington properly would not be permitted to

[4] While Molycorp's original plans included an Option 2 that envisioned overlap between the two areas; Molycorp has since withdrawn its Option 2 plan and has so advised the NRC.

participate in any hearing regarding the decommissioning plan, these two proceedings should be kept separate.

33. In any event, Canton's request for consolidation is premature. The presiding officer has not yet determined whether Canton even has standing to request a hearing regarding the York material. Accordingly, unless and until the presiding officer determines that Canton has standing to request a hearing and such a hearing is until, Canton's petition to consolidate is premature and should be denied.

WHEREFORE, Canton is not entitled to a hearing under Subpart L of 10 C.F.R. Part 2 and, accordingly, its Request for Hearing should be denied.

Respectfully submitted,

Dated: December 23, 1999

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