

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
DOCKETED 04/11/00
ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Charles Bechhoefer, Presiding Officer
Dr. Richard F. Cole, Special Assistant

SERVED 04/11/00

In the matter of:

MOLYCORP, INC.
Washington, Pennsylvania

Temporary Storage of
Decommissioning Wastes

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

ASLBP No. 99-769-08-MLA

In the matter of:

MOLYCORP, INC.
Washington, Pennsylvania

Site Decommissioning Plan

Docket No. 40-8778-MLA-2

ASLBP No. 00-775-03-MLA

April 11, 2000

MEMORANDUM AND ORDER
(Granting Requests for Hearing in Storage Proceeding and
Deferring Action in Decommissioning Proceeding)

A. Introduction. Pending before me are two requests for hearings filed by Canton Township, Pennsylvania [Canton] in two separate proceedings. The first request, dated June 28, 1999, involves the temporary storage (5-10 years) of decommissioning wastes emanating from the Molycorp, Inc. [Molycorp or Licensee] facility in York, Pennsylvania, at the Molycorp facility in Washington, Pennsylvania [hereinafter, Storage Proceeding]. The second request, dated December 13, 1999, involves a site decommissioning

plan for Molycorp's former processing facility located in Washington, Pennsylvania [Decommissioning Proceeding]. Also before me is a single request for hearing in the Storage Proceeding, dated June 28, 1999, filed by the City of Washington, Pennsylvania [Washington].

All three requests seek, pursuant to 10 C.F.R. § 2.1205, informal hearings on proposed amendments to Molycorp's Source Materials License No. SMB-1393. They allege generally that Molycorp fails to comply with applicable NRC regulations, thus allegedly endangering the interests and health and safety of the citizens and environment within their borders. Canton's request in the Decommissioning Proceeding also seeks to have the two proceedings consolidated.

By Memorandum and Order dated August 26, 1999, Administrative Judge Peter B. Bloch, the then-Presiding Officer in the Storage Proceeding,¹ invited the requestors (Canton and Washington) to file supplemental hearing requests defining with more particularity their areas of

¹Judge Bloch was designated Presiding Officer, and Judge Richard F. Cole his Special Assistant, in the Storage Proceeding on July 15, 1999. 64 Fed. Reg. 39176 (July 21, 1999). Following Judge Bloch's retirement from Government service, Judge Charles Bechhoefer on October 7, 1999 was named Presiding Officer in the Storage Proceeding, with Judge Cole continuing as Special Assistant. 64 Fed. Reg. 55785 (Oct. 14, 1999). On January 13, 2000, Judge Bechhoefer was also named Presiding Officer in the Decommissioning Proceeding, and Judge Richard F. Cole his Special Assistant. 65 Fed. Reg. 3258 (Jan. 20, 2000).

concern and how they are related to the amendment under review. The Presiding Officer also encouraged the requesters and Licensee to seek to settle their differences.

Following advice to the Presiding Officer that settlement had not been reached, Canton submitted an amended hearing request in the Storage Proceeding on November 12, 1999 [Canton Amended Request]. Washington submitted its amended request on November 15, 1999 [Washington Amended Request].

Molycorp has filed responses to each hearing request, dated July 30, 1999 (separate responses to Canton and Washington in Storage Proceeding) and December 23, 1999 (response in Decommissioning Proceeding). Molycorp submitted timely responses to the amended requests of both Canton and Washington on November 30, 1999 [Molycorp Response].

Molycorp opposes all of the hearing requests. It also opposes consolidation of the two proceedings as sought by Canton. Canton filed a reply, dated August 17, 1999, to Molycorp's response in the Storage Proceeding, and a reply, dated February 18, 2000, to Molycorp's response in the Decommissioning Proceeding. At the same time, Canton filed a supplement to its hearing request in the Decommissioning Proceeding. As authorized by 10 C.F.R. § 2.1213, the NRC Staff has not sought to participate in the Storage Proceeding, but has responded to Canton's hearing request in

the Decommissioning Proceeding and has indicated its desire to participate in that proceeding.² The Staff opposes consolidation of the two proceedings--in part because of the difference in potential parties caused, to some extent, by its own election not to participate in the Storage Proceeding.³ The Staff also seeks deferral of the Decommissioning Proceeding pending completion of its safety and environmental reviews of the decommissioning plan.

Molycorp opposes Canton's requests in each proceeding, both for lack of standing and an adequate area of concern. The NRC Staff has expressed no view on these matters in the Storage Proceeding (in which it is not participating). The Staff favors deferral of my ruling on the hearing request in the Decommissioning Proceeding pending the completion of its Safety Evaluation Report (SER) and Environmental Assessment (EA) but concludes that, if I were to rule on Canton's hearing request in the Decommissioning Proceeding, on the present record Canton has failed satisfactorily to demonstrate its standing and has not stated areas of concern germane to the challenged action.

²The Staff, in response to a telephone request, has advised the Presiding Officer and his Special Assistant as to the physical location within NRC of Molycorp's license amendment application in the Storage proceeding.

³I could, of course, direct the Staff to participate in the Storage Proceeding, thus remedying in part the differing parties in the two proceedings. See 10 C.F.R. § 2.1213.

For reasons hereinafter set forth, I am granting Canton's hearing request in the Storage Proceeding, as well as that of Washington. (I am consolidating those two parties.) I am deferring further action in the Decommissioning Proceeding pending Molycorp's submission of the remainder of its decommissioning plan and Canton's amendment of its petition (as appropriate) to reflect such filing. I am also denying at this time Canton's request to consolidate the two proceedings. I plan to hold a prehearing conference, either by telephone or near the Washington, Pennsylvania site, to consider and define more precisely issues to be litigated in the two proceedings and schedules for further filings, and further to consider the propriety of consolidation.

B. Requirements for a Hearing. In informal proceedings subject to 10 C.F.R. Part 2, Subpart L (such as both of the proceedings with which I am here dealing), a person or entity requesting a hearing must demonstrate the timeliness of its request (satisfied here by all hearing requests in both proceedings⁴), that it has standing (in each proceeding in which it seeks to participate) and that it has areas of concern "germane" to the subject matter of

⁴Molycorp's responses to the two initial hearing requests in the Temporary Storage proceeding were not timely filed but were nonetheless accepted by the then-Presidenting Officer. Memorandum and Order (Petitions for a Hearing), dated August 25, 1999 (unpublished).

the particular proceeding. 10 C.F.R. § 2.1205. I turn to these matters seriatim.

1. Standing. The Commission follows the same standing rules in both formal and informal proceedings, including proceedings involving site decommissioning. To be granted a hearing, or leave to intervene, a petitioner must set forth its standing in accord with contemporaneous judicial concepts of standing. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 332 (1983); Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), LBP-99-46, 50 NRC 386, 390 (1999), appeal pending, and authorities there cited. To establish its standing, a nonapplicant (such as both Canton and Washington) must demonstrate "[its] interest . . . in the proceeding" and "how [its] interests may be affected by the results of the proceeding, including the reasons why [it] should be permitted a hearing." 10 C.F.R. §§ 2.1205(e)(1) and (2).

More explicitly, a petitioner must show (1) that it may suffer an "injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (2) that there is a causal connection between the alleged injury and each of the actions complained of [the proposed license amendments authorizing either temporary storage of waste materials at the site or restricted decommissioning of the site]; and (3) that the

injury will be redressed by a favorable decision. Further, the complaint "arguably" must fall within the "zone of interests" of the governing law, here the Atomic Energy Act and the National Environmental Policy Act (NEPA). Bennett v. Spear, 520 U.S. 154, 167-68, 175 (1997).

2. Canton's and Washington's Alleged Injuries.

Although Canton and Washington each have the burden of establishing their standing in the proceeding(s) in which they seek to participate, their statements in support of their standing are to be construed in their favor. See Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta Georgia), CLI-95-12, 42 NRC 111, 115 (1995); Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), LBP-99-46, 50 NRC at 391; Atlas Corporation (Moab, Utah Facility), LBP-97-9, 45 NRC 414, 424 (1997). According to Canton, the site proposed for the temporary storage of waste, as well as the site that is to be decommissioned, lie within the municipal boundaries of Canton Township.⁵ According to Washington, the territorial limits of the City of Washington are adjacent to the territorial limits of Canton Township, where the site

⁵Canton Request for Hearing (Storage Proceeding), dated June 28, 1999; Canton Request for Hearing (Decommissioning Proceeding), dated December 13, 1999 (incorporating by reference the substance of the earlier request).

proposed for the temporary storage of waste is located.⁶ Perforce, therefore, they have an interest in the sites on which both temporary storage and decommissioning are to occur, and they have standing in the respective proceedings in which they seek to participate to the extent they identify injuries to which they may be subject as a result of the particular proceeding.

Canton states that it would be injured by the temporary storage proposal in that the proposal fails to take into account the close proximity of the temporary storage site to a 16" municipal water line serving portions of Canton Township and a significant portion of the Tylerdale section of the City of Washington and fails to provide adequate protection to that water line; and that the proposed temporary storage area will have an adverse and detrimental effect on the nearby residential community, as well as the local economy, by negatively impacting property values.⁷ Canton adds that, given the lack of any plan to remove the transferred material after the proposed 5-10 year storage period, longer-term storage must accordingly be considered.⁸ Canton further asserts (albeit in the context of an area of

⁶Request for Hearing of City of Washington, dated June 28, 1999.

⁷Canton June 28, 1999 Request, ¶¶ 4, 5, 6, 7; Canton Amended Request at 10.

⁸Canton Amended Request, ¶ 17.

concern but nonetheless relevant to its claimed injury for standing purposes) that the proposed temporary storage site is located in a flood plain in violation of pertinent regulations of the Pennsylvania Department of Environmental Protection [PaDEP], that PaDEP has stated that the substructures underlying such site consisting of sandstone and other permeable matter are inappropriate for a radioactive waste site, and that the location of such site within 250 feet of a residential neighborhood may result in cancer and other related diseases affecting residents.⁹

For its part, Washington also avers that the water pipeline under the Molycorp facility could be affected by the proposed temporary storage of wastes.¹⁰ Further, in its November 15, 1999 Amended Request, it incorporates by reference all of the averments and statements set forth by Canton in its Amended Request, "as it relates to the CITY OF WASHINGTON and the residents of the CITY OF WASHINGTON."¹¹

In the Decommissioning Proceeding, Canton reiterates all of its claims of standing (particularly injury in fact) made in the Storage Proceeding, incorporating by reference those same earlier claims.

⁹Canton Amended Request at 8.

¹⁰Washington June 28, 1999 Hearing Request, ¶ 5A.

¹¹Washington Amended Request, ¶ 6 (Caps in original).

3. Molycorp's Response. Molycorp opposes the standing of Canton (and Washington through its incorporation by reference of Canton's allegations) in the Storage Proceeding for failing, in its opinion, to set forth any injury that might occur as the result of the proposed temporary storage amendment--specifically, for failing to allege in detail that it satisfies the following elements of standing: "(a) an injury in fact within the scope of this proceeding, (b) that can fairly be traced to the challenged action, and (c) that is redressable through this proceeding."¹² It characterizes Canton's claims as "only conclusory, unsupported and largely inaccurate allegations, which pertain almost exclusively to issues other than the subject of this proceeding."¹³

In particular, Molycorp claims that the scope of the Storage Proceeding includes only the temporary storage proposal and does not incorporate any aspects of decommissioning (which is the subject of the Decommissioning Proceeding), and that Canton's assertions relate in large part to decommissioning (citing explicitly portions of Canton's areas of concern).¹⁴ And it criticizes Canton's

¹²Molycorp Response at 1.

¹³Id.

¹⁴Molycorp avers, inter alia, that "[u]sing its petition for a hearing regarding the York material as a bootstrap, Canton lists areas of concern that pertain solely
(continued...)

response for failing to provide the additional details that Judge Bloch believed were necessary. It also characterizes Canton's complaints of lack of documentation as both contrary to the terms of 10 C.F.R. Part 2, Subpart L, and inaccurate in fact.¹⁵

4. Ruling on Standing. In seeking further delineation of areas of concern in the Storage Proceeding, Judge Bloch, in his Memorandum and Order (Petitions for a Hearing), dated August 26, 1999 (unpublished), stated that "[b]ased on [their] 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." I agree. I also believe that Canton (and Washington through incorporation of Canton's assertions) have identified several concerns that demonstrate potential injuries.

¹⁴(...continued)
to the decommissioning issue. . . . Canton wishes to merge the two entirely separate proceedings because it failed to file a timely petition for a hearing regarding the proposed decommissioning project." Molycorp Response, ¶ 2 (emphasis supplied). Given publication in the Federal Register of the Notice of Opportunity for Hearing for the Decommissioning Proceeding on November 16, 1999 (some two weeks earlier), with the time for requesting a hearing not yet expired, these comments are puzzling. Indeed, Canton has in fact filed a timely request for hearing in the Decommissioning Proceeding. However, as noted in the text, I agree that the two proceedings should be kept separate, at least for the present.

¹⁵Molycorp Response at 8-12.

First, and most significant, is the potential effect of the temporary storage of waste materials on an underground water line. The lack of detail advanced by Molycorp is undercut by the current regulatory requirement that the concerns need only be "germane" to the subject matter of the proceeding, with further detail (if any) not required until following the submission of the Hearing File pursuant to 10 C.F.R. § 2.1231. Molycorp's denial of any such effect-- indeed, its statement that the water pipeline will soon be abandoned--are all factual questions to be resolved within the confines of the Storage Proceeding. Abandonment might well moot the pipe line issue that has been advanced in this area of concern, but that should be determined as a factual question. As for now, given the dispute with respect to factual matters, I must accept the assertions of the petitioner for standing, and I do so here.

Beyond that, Canton's assertion of unknown effects caused by controlled mixing of the thorium in the waste to be transferred to the Washington, PA site with coal tar and other toxic substances already existing at the site also states an appropriate area of concern and, hence, an example how Canton may be injured by the proposal. Molycorp asserts that this area of concern lacks sufficient detail because it is not supported by affidavits or other forms of evidence, citing Shieldalloy Metallurgical Corporation (Cambridge,

Ohio Facility), CLI-99-12, 49 NRC 347, 354 (1999).¹⁶ That case's comments on details, however, focus on the question of redressability of the injury in question and whether the injury itself falls within the scope of matters at issue in the proceeding.

Neither Molycorp's comments nor Shieldalloy appear to focus on the "germane" criterion. Moreover, at issue in Shieldalloy was essentially an economic question rather than the health and safety issues involved here. Given Canton's expressed concern over the lack of studies of the interaction between thorium present in the material to be imported and coal tar and other toxic substances on site, Canton has set forth this area of concern in sufficient detail for me to ascertain that it constitutes an adequate showing of injury-in-fact emanating from the proposal. Further, as described later in this opinion, it is clearly "germane" to the subject matter of the Storage Proceeding.

In short, I find that both Canton and Washington have established their standing (at least through the two areas of concern that I have thus far referenced) to participate in the Storage Proceeding.

¹⁶In that Memorandum and Order, the Commission stated that, although some evidence supporting harm must be proffered, "[t]he Commission's Subpart L procedures governing this proceeding do not now contain, nor have they ever contained, [an affidavit] requirement." 49 NRC at 354 n.4.

As for the Decommissioning Proceeding, Canton clearly would have standing by virtue of its geographical proximity to the site, as long as it had areas of concern germane to the proceeding. The areas of concern that it has advanced, however, essentially reiterate those previously advanced in support of its Storage Proceeding application, modified to some degree to reference permanent rather than temporary storage. Moreover, those areas of concern appear to arise not from the portion of the Decommissioning Plan previously submitted but rather from the portion scheduled to be submitted in the near future. In short, Molycorp's application for site decommissioning is not yet complete. Further, there is no information before me indicating that a further opportunity for hearing will be provided upon Molycorp's submission of the remaining portions of the decommissioning plan. Indeed, the Staff's deferral recommendation suggests the contrary. Thus, there is good reason for me not to rule at this time on Canton's standing and its areas of concern in the Decommissioning Proceeding. Accordingly, I accept the Staff's recommendation that I defer my rulings on these matters, at least until submission by Molycorp of the remainder of its decommissioning plan and an opportunity for Canton to elaborate, as necessary, upon both its standing and its areas of concern for the Decommissioning Proceeding.

5. Areas of Concern. Canton seeks to merge the areas of concern applicable to both the Storage Proceeding and the Decommissioning Proceeding. It relies in part on the joint treatment by the Staff of the two proceedings by its holding of the same public meeting on April 15, 1999 for both proposals. See Canton Amended Request at 1-2 (¶ 2); Exhibit A (Federal Register notice of meeting). It also relies on the identity of docket numbers of the two proceedings. Further, it cites a number of questions of fact and law assertedly common, in its view, to both proceedings. Finally, it asserts that the logical follow-up to the temporary storage inquiry is "what happens at the end of the "temporary" ten-year period" and that "[t]he larger long-term issues under the Site Decommissioning Plan are thereby immediately implicated." Amended Request at 5-6 (¶¶ 16-17).

On the other hand, as Molycorp points out, the Notice of Opportunity for Hearing in the Storage Proceeding clearly limited the scope of matters under consideration to the temporary-storage proposal. Molycorp also cites Judge Bloch's Memorandum and Order of August 25, 1999, to the same effect. Finally, Molycorp relies on the initial designation of a Presiding Officer for this proceeding, dated July 15, 1999, as clearly being limited to the temporary storage proposal.

The Commission's separate notices of opportunity for hearing in the two proceedings are dispositive of this question. Indeed, they represent different amendments to the same license, each authorizing its own discrete activities and each giving rise to an opportunity for public hearing. The common docket numbers stem from the Commission's practice of assigning docket numbers to a particular facility or site and not to a particular proceeding. That some factual or legal questions may overlap the two proceedings is fortuitous, not legally controlling. Moreover, given my action in deferring my decision on standing and areas of concern in the Decommissioning Proceeding, the two proceedings will not proceed in parallel. Nor should they, given the Commission's oft-expressed desire to complete proceedings expeditiously. See, e.g., Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 24 (1998).

For these reasons, I am declining to merge the areas of concern for the two proceedings. For the same reason, I am denying consolidation at this time of the two proceedings. At a later date, after my ruling on standing and areas of concern in the Decommissioning Proceeding, consolidation may be warranted depending on existing facts and circumstances.

With respect only to the Storage Proceeding, Canton has submitted eight areas of concern. I have alluded to two of

them in my discussion of injury-in-fact, but I treat all of them here.

- (a). The geology and topography of the proposed storage sites.

Canton claims that the proposed temporary storage site is located in a flood plain in violation of pertinent PaDEP regulations and that the substructures underlying the site are inappropriate for a radioactive waste site. Canton states that PaDEP expressed these conclusions in an April 15, 1999 public meeting called primarily to consider decommissioning.¹⁷

Molycorp claims that these matters are not relevant to the Storage Proceeding in that they have already been decided earlier, during initial site licensing. I disagree. The waste that is to be temporarily stored (including, as it does, thorium) appears to be of a different composition than the waste currently on-site. The substructures underlying the site may or may not be appropriate for the proposed waste storage. Thus, this area of concern is germane and hence admissible.¹⁸

¹⁷Canton Amended Request at 8.

¹⁸I note, however, that a document currently of public record, not referenced by any party or petitioner, sets forth the PaDEP position, commenting on the Environmental Assessment for the temporary storage proposal, that "we agree with the licensee's proposed action." Letter dated February 13, 1998 from Roy V. Woods, Radiation Health Physicist, Radiation Protection, PaDEP, to Roy Persons, NRC. Resolution of this area of concern will clearly require
(continued...)

- (b). Evidence of Dispersion and/or Migration of Radioactive Material Outside the Current Storage Sites.

Canton asserts that Molycorp, as recently as 1996, has been required to reclaim contaminated soil outside the existing storage pile and/or outside of its property, and that such contaminated soil is stored in the 194 roll-off containers currently on site. It cites a 1985 report of Oak Ridge Associated Universities to the effect that radioactive waste was found within the public right-of-way at locations where such material was not initially placed or stored. It adds that, although Molycorp has released testing results of water samples from nearby Chartiers Creek, Molycorp has never released results of analyses of the Chartiers Creek stream beds. Canton states that it currently is taking tests of the stream beds and will present the results at the full hearing.

Molycorp criticizes Canton for failing to provide evidence in support of this area of concern and, specifically, for failing to provide reports of the ongoing scientific research. Molycorp specifically includes this area as one that arose out of the initial licensing of the facility.¹⁹ Molycorp adds that its Site Characterization Report, which it provided to Canton in 1997, addresses

¹⁸(...continued)
consideration of the PaDEP letter.

¹⁹Molycorp Response, ¶ 17.

"stream bottom sediment samples" taken from Chartiers Creek, indicating no significant site-related impact to the sediment.²⁰

In my view, Canton has not adequately supported this area of concern. In particular, it cites a 1985 Oak Ridge study in support of an event that allegedly did not occur until 1986. It also does not explain why prior reviews of this question were deficient. Moreover, it only asserts that Canton "is currently in the process of taking such soil tests for the Chartiers Creek stream beds," without providing any further description of the studies that are assertedly under way. If those studies should provide evidence in support of this area of concern, Canton can seek to introduce the results of such studies as a basis for a late-filed area of concern. Absent such new information, this area of concern lacks adequate support and is accordingly rejected.

- (c). Unknown Effects Caused by Uncontrolled Mixing of the Thorium Produced and Stored at Molycorp with Coal Tar and other Toxic Substances Already Existing at the Site.

This area of concern is one that I reviewed in conjunction with my discussion of potential injury for standing purposes. The impact needed for standing purposes may well be less than for demonstration of an adequate area of concern. Cf. Houston Lighting and Power Co. (South Texas

²⁰Molycorp Response, ¶¶ 13, 33.

Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 445-48 (1979), aff'd on other grounds, ALAB-549, 9 NRC 644 (1979). Molycorp has denominated this description (along with those of other areas of concern) as brief and lacking in detail but does not set forth any assertion, much less proof, that the area is not "germane." Clearly it is germane, and I accept it on that basis. Following its receipt of the Hearing File, Canton will be required to specify in more detail the scope of its areas of concern.

- (d). Proximity of Water Line and Chartiers Creek Watershed to Proposed Storage Site.

This area of concern was also reviewed in conjunction with my discussion of standing. Clearly it is germane to the proposed amendment. If, as Molycorp claims, the water line does not underlie or come close to the temporary storage site and, in any event, is to be abandoned, those are factual matters that may lead to at least a portion of this area of concern becoming moot. Those matters may be resolved through litigation. I accept this area as germane to the proceeding.

- (e). Inappropriate and/or Inadequate Design Features of Proposed Permanent Storage Sites.

By its terms, this area of concern relates, if at all, to the Decommissioning Proceeding, not to the Storage Proceeding. I have, of course, deferred ruling on areas of concern for the Decommissioning Proceeding, pending submission by Molycorp of the remainder of the site

decommissioning plan. For now, I hold this area of concern not to be germane to the Storage Proceeding and reject it in that context.

(f). Close Proximity to Residents.

This area of concern objects to the location of a waste storage site within 250 feet of residential neighborhoods. It is clear, however, that this general question has already been resolved, prior to the initial licensing of the waste storage site. In addition, in no way does Canton specify how, if at all, the proposed temporary storage will produce effects different from those already considered. As such, this area is not germane to the Storage Proceeding and is accordingly rejected.

(g). Safety of Employees of Molycorp and Neighboring Industries

This area of concern questions the safety of all workers in Canton Township on the basis of a belief that there has been a high incidence of cancer and other related diseases to the employees of Molycorp and neighboring industries. Canton states that complete studies of such issues have not been completed but "will be developed pursuant to full hearing procedures."²¹

As set forth earlier, under Commission rules an area of concern must be "germane" to the subject matter of the particular proceeding under review. 10 C.F.R. § 2.1205(h). This area of concern does not focus on the temporary storage proposal--indeed, it does not even reference it. Moreover, it has no basis whatsoever. Prior to acceptance of an area of concern, there must at least be a reference to some authority giving rise to the concern. "Information and belief" is patently inadequate. This area of concern has not been shown to be germane to the Storage Proceeding and hence is rejected.

Should Canton complete the studies to which it has generally alluded prior to the conclusion of the presentations by parties of their written presentations under 10 C.F.R. § 2.1233, it can, of course, proffer the results as a basis for a late-filed area of concern, subject

²¹Canton Amended Request at 11.

to evaluation under late-filed procedures comparable to those set forth at 10 C.F.R. § 2.1205(1)(1).

(h). Threats to Wildlife and Ecosystem.

Similar to the previous area of concern, Canton states that it is "developing evidence" of physical defects occurring in wildlife populating the undeveloped portions of the Molycorp site, which defects cannot be attributable to natural causes, and of damage to the ecosystem of the site and neighboring areas. Molycorp deems this area to have been adequately explored prior to initial site licensing.²² Until Canton provides more detailed references to the studies on which it is relying, showing such studies adequately to support an area or areas of concern, the basis or foundation is inadequate. This area of concern is thus rejected. Should Canton wish to offer a late-filed area of concern (subject to the late-filed criteria referenced earlier) following completion of the studies in question or development of other adequate sources, it is, of course, free to do so.

6. Conclusion. I have found both that Canton Township and the City of Washington have standing to become parties to the Storage Proceeding and that three of their jointly-proffered areas of concern are admissible. Accordingly, both Canton and Washington have fulfilled all of the

²²Molycorp Response, ¶ 17.

requirements for a hearing, and their respective requests for a hearing are being granted. Canton and Washington thus become formal parties to the Storage Proceeding. A Notice of Hearing with respect only to the Storage Proceeding will be issued in the near future. I am also at this time denying Canton's request that the Storage Proceeding and the Decommissioning Proceeding be consolidated. Further, I am adopting the filing schedules set forth below (which may be modified for good cause shown).

C. Filing Schedules.

1. Pursuant to 10 C.F.R. § 2.1231(a), the NRC Staff should file (mail) the Hearing File to the Presiding Officer, his Special Assistant and the parties by Friday, May 19, 2000.

2. Canton and Washington shall file (mail) a further specification of issues, derived solely from the admitted areas of concern, by Friday, June 23, 2000.

3. A prehearing conference, either by telephone or near the site in question, for the primary purpose of further specifying issues for consideration and developing further schedules, is tentatively scheduled for the third or fourth week of July, 2000, with the time and place to be announced at a later date.

D. Service/Filing Requirements. The preferred method for serving documents in this proceeding is by same-day electronic transmission (i.e., by e-mail), with a paper copy

mailed the same day to each party or entity served (e.g., the NRC Office of the Secretary). (Because the Hearing File likely includes many documents not created electronically, this preference does not extend to the filing of hearing-file documents.) Electronic copies may be in their native wordprocessing format (e.g., Wordperfect or Word). Service by e-mail will be considered timely if sent no later than 5:00 p.m. ET of the date due under NRC's rules.

Notwithstanding such electronic service, parties under current rules must continue to file signed hard copies of any pleadings with the Rulemaking and Adjudications Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Room 0-16-H-15, Rockville, Maryland 20852. The fax number for the Secretary is (301) 415-1101 and the e-mail address is hearingdocket@nrc.gov. Courtesy e-mail copies should be provided at the time of filing with the Secretary to the Presiding Officer at cxb2@nrc.gov and his Special Assistant at rfcl@nrc.gov.

As an aid to the Presiding Officer, parties are requested to place the date for each pleading (i.e., the date it is filed and served) on the first page of the document (not the cover letter transmitting the document.)

E. Order.

Based on the foregoing, it is, this 11th day of April 2000, ORDERED:

1. The requests for a hearing of Canton Township and the City of Washington, Pennsylvania, in the Storage Proceeding are hereby granted. Canton and Washington, which thus become parties to the Storage Proceeding, are hereby consolidated as a party.

2, The Hearing File is to be distributed on May 26, 2000.

3. The following areas of concern are found germane: (a)--geology and topography; (c)--effects of uncontrolled mixing; (d)--proximity of water line and Chartiers Creek.

4. The following areas of concern are not germane: (b)--dispersion and/or migration offsite; (e)--design features of permanent storage site; (f)--proximity to residents; (g)--employee safety; and (h)--threats to wildlife and ecosystem.

5. Specific issues for litigation (based on areas of concern I have found germane) are to be filed by Friday, May 26, 2000.

6. Canton's request to consolidate these two proceedings is denied.

7. Proceedings in the Decommissioning Proceeding are hereby deferred. Canton may file an amendment to its

request for a hearing within 30 days of the submission by Molycorp of the remainder of its site decommissioning plan.

8. This Memorandum and Order is subject to appeal to the Commission in accordance with the terms of 10 C.F.R. § 2.1205(o). Any appeal must be filed within ten (10) days of service of this Memorandum and Order. The appeal may be supported or opposed by any party by filing a counter-statement within fifteen (15) days of the service of the appeal brief.

/RA/

Charles Bechhoefer
ADMINISTRATIVE JUDGE
Presiding Officer

Rockville, Maryland
April 11, 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
MOLYCORP, INC.) Docket No. 40-8794/8778-MLA
Washington, Pennsylvania)
)
Temporary Storage of)
Decommissioning Wastes)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING REQUESTS FOR HEARING IN STORAGE PROCEEDING AND DEFERRING ACTION IN DECOMMISSIONING PROCEEDING) (LBP-00-10) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bechhoefer, Presiding Officer
Atomic Safety and Licensing Board Panel
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Washington, DC 20555

Administrative Judge
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Docket No. 40-8794/8778-MLA
LB MEMORANDUM AND ORDER
(GRANTING REQUESTS FOR HEARING
IN STORAGE PROCEEDING AND
DEFERRING ACTION IN
DECOMMISSIONING PROCEEDING)
(LBP-00-10)

[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of April 2000

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
MOLYCORP, INC.) Docket No. 40-8778-MLA-2
Washington, Pennsylvania)
)
Site Decommissioning Plan)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING REQUESTS FOR HEARING IN STORAGE PROCEEDING AND DEFERRING ACTION IN DECOMMISSIONING PROCEEDING) (LBP-00-10) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 11th day of April 2000