

RAS 2198

# Goldberg, Kamin & Garvin

DOCKETED  
USNRC

Attorneys at Law

1806 Frick Building  
437 Grant Street

Pittsburgh, PA 15219-6101

(412) 281-5227

(412) 281-1119

Fax (412) 281-1121

'00 SEP 19 P3:08

Edward I. Goldberg  
Samuel P. Kamin  
Robert J. Garvin  
David A. Wolf  
Jonathan M. Kamin

Counsel To The Firm  
Stuart E. Savage

OFFICE OF THE  
GENERAL SECRETARY  
ADMINISTRATIVE

Of Counsel  
Robert W. Mandell  
Frank J. Pistella

September 14, 2000

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

In Re: Licensee: Molycorp, Inc.  
License No: SMB-1394  
Docket Nos: 040-08794 and 040-08778  
ASLBP No: 00-775-03-MLA  
Our File No: 9016

Dear Judge Bechhoefer:

Please allow this letter to serve as a reply to Attorney Struk's letter we received on September 6, 2000 in which he objects on behalf of Molycorp Inc. to Canton Township's Motion to Compel and Request for Scheduling.

First and foremost, Mr. Struk states "that there is no right to discovery in such proceedings." While this may be a black letter statement of the law, certainly fairness dictates that if the NRC or Molycorp is making use of a document in any legal pleading or argument, that Canton Township, an affected party, must have access to and the right to review that document.

Before the Commission is the question of whether Canton Township has standing to be included in this administrative proceeding. In general Canton Township's position is uncomplicated in that anything that could directly affect the health, welfare and safety of its residents is of paramount concern when found within the geographical borders of the Township.

Second, Mr. Struk states that Molycorp has provided "the Township voluminous material even before the institution of these proceedings." While Canton Township has received some material from Molycorp concerning the decommissioning process, the fact that we have not received all the material is the critical issue. In order to evaluate fully the decommissioning, it is imperative that the Township receive and review all the material exchanged between the NRC and Molycorp. The NRC could not and would not proceed forward in this process without receiving all the documents it requested of Molycorp necessary for it to evaluate the procedure to be followed and the safety measures to be put in place. Why should Canton Township receive any less than full

Template = SECY-043

SECY-02

disclosure in order to evaluate the process planed by Molycorp. Without full disclosure and complete exchange of documents, Canton Township is and will continue to be prejudiced. Previously, we were given some of the documents. However, is it now Molycorp's position that Canton Township is not entitled to all of the documents? We can only speculate as to whether this is a purposeful action by Molycorp relative to the decommissioning process. Canton Township needs to have access to all documents. Therefore, full disclosure of the documents pertaining to the decommissioning process is warranted. Canton Township needs to raise questions regarding the health, welfare, and safety issues related to its residents as an objection to the process.

Third, Attorney Struk suggests that Molycorp now has a web site, that it has been available, and that it fully provides the material not exchanged between the parties. These allegations, in our opinion, are not factually correct. The web site itself was not available until August 28, 2000 despite daily attempts by our office to review the same. This is contrary to the August 23, 2000 date posted on the site as the first available date. In fact, our past review of the Pittsburgh Post-Gazette's and Washington Observer Reporter's electronic data base, which is available on line, came up with no announcements concerning the Molycorp web site.

Specifically, the Molycorp web site is not an official document and Molycorp is under no official order to maintain the site or to verify its contents. In fact, the contents of the web site are lacking, incomplete, and not an alternative for Molycorp in providing Canton Township with the documents it is requesting pursuant to its Motion to Compel as follow:

- a. Item number 5, a letter from Mr. Hull which was the initiator of our Motion to Compel, in that it referenced documents not produced by Molycorp or the NRC. The Safety Evaluation Report (SER) and The Environmental Assessment (EA) referenced are not found on the Molycorp web site.
- b. Item 6 and 7 reference that a part of the material received from Attorney Hall contained an **undated** letter (emphasis added) addressed to George Dawes, Sr., a scientist at Molycorp, Inc. from Larry W. Camper, Chief, Decommissioning Branch Division of Waste Management of the NRC. Set forth in Mr. Camper's letter were references to the NRC's request for additional information from Molycorp dated October 19, 1999 and March 3, 2000. Mr. Camper's letter also contained references to Molycorp's responses to the requests dated April 3, 2000 and May 16, 2000. None of these letters are found on the Molycorp web site.
- c. Item number 9 references an environmental report that was to be submitted on July 14, 2000 which is not contained on the Molycorp web site.
- d. Item number 10 states that Canton Township had not received a copy of part 2 of Molycorp's decommissioning plan nor was the same available on the web site on August 28, 2000.

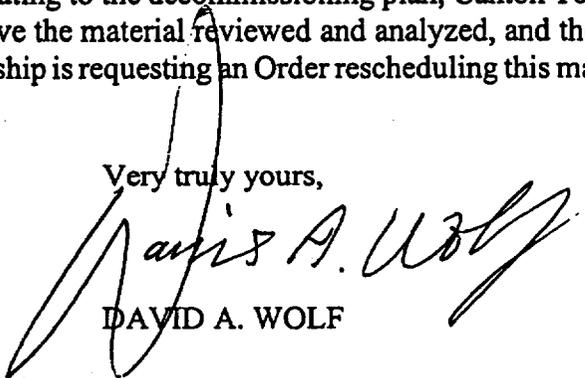
- e. All of the Site Specific Advisory Board ("SSAB") material in the addendum has not been placed on the web site, including the estimated 3,000 pages submitted on or about of July, 6, 2000. This material was to be part of the Decommissioning Process part 2, as set forth in an agreement between Molycorp and SSAB.

Mr. Struk is also incorrect in stating that the Canton Township has not provided documents to Molycorp. The SSAB submitted over 3,000 pages of information and documentation to Molycorp and the NRC.

The right to discovery is paramount in that all the documents requested have been filed with the NRC. As stated above and in Canton Township's Motion to Compel, had Mr. Hull's letter not referenced various documents as stated on page 12 of the Environmental Assessment that "significant radium activities measured in many leachates suggest that radium may be the key radioelement of concern at the Molycorp Inc. site," Canton Township would be unaware of this condition which directly affects the health, welfare and safety of its residents.

For the reasons set forth herein and in its Motion to Compel, Canton Township's position has been prejudiced by the failure of Molycorp Inc. and the NRC to fully and timely provide all the documents submitted relating to the decommissioning process ( part 1 and part 2), in order for Canton Township to fully address the issue of standing in a timely manner. Once Canton Township is fully served with the all the documents relating to the decommissioning plan, Canton Township will need an additional 90 to 120 days to have the material reviewed and analyzed, and thereafter submit a response. Thereafter, Canton Township is requesting an Order rescheduling this matter for a hearing.

Very truly yours,



DAVID A. WOLF

DAW:msb

cc: Dr. Richard F. Cole, NRC Special Assistant  
NRC Executive Director for Operations  
NRC Office of the Secretary  
NRC Office of Commission Appellate Adjudication  
John T. Hull, Esquire, NRC  
Randolph T. Struk, Esquire  
Jeffrey A. Watson, Esquire  
John Daniels, Molycorp, Inc.  
Samuel R. Stockton  
Barry Picenza  
Emil Standish  
Samuel P. Kamin, Esquire