

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole, Special Assistant

In the Matter of

MOLYCORP, INC.
Washington, Pennsylvania

Site Decommissioning Plan

Docket No. 40-8778-MLA-2

ASLBP No. 00-775-03-MLA

September 28, 2000

MEMORANDUM AND ORDER
(Telephone Conference Call, 9/19/00)

1. Background. On Tuesday afternoon, September 19, 2000, the Presiding Officer convened a transcribed telephone call (Tr. 1-43) to ascertain the status of this proceeding and to establish schedules for future filings and other activities. Participating, in addition to the Presiding Officer, Judge Charles Bechhoefer, were Judge Richard F. Cole, Special Assistant; Randolph T. Struk, Esq., for the Licensee, Molycorp, Inc.; Samuel P. Kamin, Esq. and David A. Wolf, Esq., for the Petitioner, Canton Township, Pennsylvania (Canton); Chad Smith, the Superintendent of Canton; and John T. Hull, Esq., for the NRC Staff (Staff). Lee S. Dewey, Esq., counsel to the Atomic Safety and Licensing Board Panel (ASLBP), was also present.

This proceeding involves a site decommissioning plan (SDP) for the Licensee's former processing facility located in Washington, Pennsylvania. By Memorandum and Order dated April 11, 2000, LBP-00-10, 51 NRC 163, the Presiding Officer had, inter alia, granted Canton's request for a hearing in the related Temporary Storage proceeding but (at the suggestion of the NRC Staff) deferred action on Canton's then-pending request for a hearing in this

Decommissioning Proceeding.¹ At that time, the Licensee had submitted Part 1 of its SDP, with Part 2 scheduled for submission at a later date. Each Part of the SDP deals with different segments of the site, with Part 1 calling for unrestricted decommissioning (see 10 C.F.R. § 20.1402) of its portion of the site and Part 2 calling for restricted decommissioning (see 10 C.F.R. § 20.1403) of the remainder of the site.

The Presiding Officer at the outset of the telephone conference called upon the Staff to delineate the procedural status of the proceeding. The Staff observed that only Part 1 of the Decommissioning Plan had been submitted at the time of publication (November 16, 1999) of the Notice of Opportunity for Hearing in this proceeding. Part 2 was submitted on June 30, 2000. Judge Bechhoefer noted that, as set forth in LBP-00-10, he had interpreted the Notice as providing an opportunity for a hearing with respect to the decommissioning plan as a whole (not limited to the already submitted Part 1) and, because the submitted areas of concern related to information in both parts of the plan, he had deferred ruling on the pending hearing request from Canton, in terms both of Canton's standing and its areas of concern. (The Staff had urged the Presiding Officer to take that course of action.)

On August 2, 2000, Molycorp advised the Presiding Officer (by e-mail) that, on July 14, 2000, it had submitted Part 2 of the decommissioning plan. By letter dated August 15, 2000, the Staff confirmed that it had received Part 2 on July 14 but that its technical review had not yet commenced. The Staff also advised that it had completed its Safety Evaluation Report (SER) and Environmental Assessment (EA) for Part 1 and had transmitted copies of these documents to the parties and petitioner. In addition, it recommended that the Presiding Officer

¹By Memorandum and Order dated September 26, 2000, LBP-00-24, 52 NRC ___, the Presiding Officer approved a stipulation of the parties to the Temporary Storage proceeding and terminated the proceeding.

proceed to determine whether there is sufficient information to rule on Canton's standing to contest Part 1 of the plan.

On August 31, 2000, Canton, the petitioner with respect to both Part 1 and Part 2 of the decommissioning plan, filed a "Motion to Compel and Request for Scheduling." In that motion, Canton requested several documents relating to Parts 1 and 2 of the decommissioning plan (including the Part 2 plan that had recently been submitted to NRC). Canton also requested that it be accorded further time (90 to 120 days) to review the newly filed information and thereafter submit a response. It additionally requested that, following its response, the Presiding Officer reschedule this matter for a hearing.

On September 3, 2000, Molycorp responded to Canton's August 31, 2000 motion, pointing out that there is no right to discovery in a Subpart L proceeding such as this one and seeking either summary dismissal of the motion or, alternatively, additional time to respond. On September 14, 2000, Canton filed a reply to Molycorp's September 3 response to Canton's August 31 motion. Further, on September 6, 2000, the City of Washington, Pennsylvania, an intervenor in the Temporary Storage proceeding that had not previously sought to participate in the decommissioning proceeding, filed a "Joinder to Motion to Compel and Request for Scheduling."²

Because of the apparent confusion by the parties and petitioner of the procedural status of the decommissioning proceeding, the Presiding Officer convened the aforesaid telephone conference on September 19, 2000.

2. Status of Decommissioning Proceeding. During the conference call, the Presiding Officer agreed to accept the Staff's position that there were two separate proceedings governing the SDP, notwithstanding the apparent scope of the November, 1999 Notice of

²Counsel for the City of Washington, Pennsylvania, was invited to participate in the call but was not able to do so.

Opportunity for Hearing: Part 1, noticed in November, 1999, and Part 2, not yet noticed (Tr. 7). For a petitioner such as Canton to participate with respect to both parts of the decommissioning plan, therefore, it would have to file two separate hearing requests. The Presiding Officer accordingly agreed to rule on Canton's hearing request as limited to Part 1 of the decommissioning plan.

At the request of Canton, the Staff agreed to notify Canton directly of the issuance of a Notice of Opportunity for Hearing for Part 2, so that Canton would not be required to search the Federal Register for such notice (Tr. 7). Canton was given 30 days from its receipt of the Staff communication, or the period of time permitted for response to the Federal Register notice (whichever is later), to submit its request for a hearing concerning Part 2 of the decommissioning plan (Tr. 21).

3. Discovery. In response to Canton's request to be provided with certain documents relevant to Parts 1 or 2 of the decommissioning plan, the Presiding Officer explained that there is no right of discovery in Subpart L proceedings but that, once a request for a hearing is granted, relevant documents will be provided to all parties by the Staff, in a Hearing File furnished in accord with 10 C.F.R. § 2.1231 (Tr. 14-15). The Presiding Officer also noted that copies of the subject-matter of the hearing are made publicly available (at the NRC Public Document Room, and possibly elsewhere) no later than the time of publication of the Notice of Opportunity for Hearing, to enable petitioners to address the requirements for obtaining a hearing (Tr. 16). Counsel for Molycorp pointed out that copies of both Part 1 and Part 2 of the decommissioning plan had been made available at Molycorp's office, and that copies of Part 1 had previously been provided to Canton. He noted that many (although not all) documents

have been made available on the Internet. He offered to provide Canton a copy of Part 2 (Tr. 17, 25-26).³

4. Grant of Request for Hearing. Based on the Staff's expressed intent to treat Parts 1 and 2 of the decommissioning plan as separate proceedings, the Presiding Officer granted the request for a hearing of Canton in the Part-1 proceeding (Tr. 19-20). He noted that the same standing analysis as set forth in LBP-00-10 with respect to the Temporary Storage proceeding would also apply to the Part-1 decommissioning proceeding, and that several of the areas of concern--in particular, location and adequacy of the municipal water line and the effect of the plan on transport of radioactive materials through groundwater--were germane not only to the temporary storage proceeding but also to the Part-1 decommissioning proceeding. The Presiding Officer will issue a Notice of Hearing for the Part-1 proceeding in the near future.

5. City of Washington Motion. As noted above, the City of Washington sought to join Canton's Motion to Compel and Request for Scheduling. As indicated during the telephone conference (Tr. 33-34), Washington's motion must be denied. Washington has not thus far sought to become a party to the Part-1 decommissioning proceeding, nor has it heretofore sought to participate in that proceeding as an interested municipality pursuant to 10 C.F.R. § 2.1211(b). To participate in the Part-1 decommissioning proceeding, Washington must file a late-filed petition for leave to intervene, or a request to participate under 10 C.F.R. § 2.1211(b). With respect to the Part-2 proceeding, Washington may, of course, file a request for a hearing, within the time frames set forth in the forthcoming Federal Register Notice of Opportunity for Hearing referenced above.

³By hand-delivered letter of September 21, 2000 (a copy of which was sent to the Presiding Officer), counsel for Molycorp provided Canton with Part 2 (Revision dated July 14, 2000) of the decommissioning plan.

6. Hearing File. At the request of the Staff, the hearing file for the Part-1 proceeding shall be submitted by the Staff, pursuant to 10 C.F.R. § 2.1231, 60 days from issuance of this Order granting Canton's request for a hearing on the Part-1 decommissioning plan (Tr. 36-37). Because of the division of the decommissioning proceeding into two parts, the hearing file need include only documents related to Part 1, although the Staff is free to include Part 2 documents to the extent it wishes. (To the extent a hearing may be granted with respect to Part 2, those documents would have to be made available on a schedule that would be set for that proceeding.)

7. Further Proceedings. As set forth during the conference call (Tr. 33-34), following submission by Canton of its revised areas of concern for the Part-1 proceeding, and comments by other parties on the litigability of those concerns, the Presiding Officer may wish to hold a prehearing conference in or near Washington, Pennsylvania, to determine which areas of concern are appropriate for litigation, to define litigable issues arising out of those areas of concern, and to determine schedules for later filings of the parties. If a conference is held, the Presiding Officer and Special Assistant would also appreciate a site tour. At the time of any such prehearing conference, the Presiding Officer would also plan to hear oral limited appearance statements, pursuant to 10 C.F.R. § 2.1211(a).

* * *

For the reasons stated, it is, this 28th day of September, 2000, ORDERED:

1. The request for a hearing filed by Canton Township, Pennsylvania is hereby granted with respect to Part 1 of the decommissioning plan for Molycorp's Washington, Pennsylvania site. A Notice of Hearing for that proceeding will be issued in the near future.

2. Canton may file a revised statement of areas of concern for Part 1 of the decommissioning plan, taking into account information provided through the Staff's Safety Evaluation Report and Environmental Assessment, by no later than October 27, 2000.

3. Responses to Canton's revised areas of concern may be filed by the Licensee and NRC Staff by November 13, 2000.

4. The City of Washington's motion to join Canton's scheduling motion is hereby denied.

5. With respect to Part 2 of the decommissioning plan, Canton may file a request for a hearing within 30 days of its receipt from the Staff of a copy of the Notice of Opportunity for Hearing for Part 2, or within the time specified by such Notice, whichever is later. The filing time for parties' supplements, as set forth in LBP-00-10, is hereby superseded.

6. To the extent this Memorandum and Order grants Canton's request for a hearing concerning Part 1 of the decommissioning plan, it 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
September 28, 2000

[Copies of this Memorandum and Order have been e-mailed or telefaxed this date to counsel for each party.]

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 (TELEPHONE CONFERENCE CALL, 9/19/00) (LBP-00-25) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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

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

Administrative Judge
Richard F. Cole, Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dennis C. Dambly, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Corinne Lammers, Esq.
Thorp Reed & Armstrong, LLP
One Riverfront Center
20 Stanwix Street
Pittsburgh, PA 15222-4895

Samuel R. Grego, Esq.
Goldberg, Kamin & Garvin
1806 Frick Building
437 Grant Street
Pittsburgh, PA 15219-6101

Docket No. 40-8778-MLA-2
LB MEMORANDUM AND ORDER
(TELEPHONE CONFERENCE CALL,
9/19/00) (LBP-00-25)

Jeffrey A. Watson, Esq.
Smider & Watson
138 North Franklin Street
Washington, PA 15301

[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 28th day of September 2000