

October 3, 2000

MEMORANDUM TO: Leroy S. Person
Facilities Decommissioning Section
Decommissioning Branch, NMSS/DWM

FROM: Robert A. Nelson, Chief **/RA/**
Facilities Decommissioning Section
Decommissioning Branch, NMSS/DWM

SUBJECT: REVIEW OF PARENT COMPANY GUARANTEE SUBMITTED BY
UNION OIL COMPANY ON BEHALF OF MOLYCORP, INC.

By letter dated November 24, 1999, Union Oil Company of California (Union Oil) submitted a parent company guarantee for decommissioning costs of its Molycorp. Inc. (Molycorp), subsidiary located in York, PA. By letter dated March 30, 2000, Union Oil submitted a parent company guarantee for decommissioning costs of its Molycorp subsidiary located in Washington, PA. Molycorp holds license number SMB-1408 for its York, PA, facility, and License Number SMB-1393, for its Washington, PA, facility. Subsequently, the Licensee submitted Revision 2 of its Decommissioning Plan dated July 14, 2000, which increased the estimated decommissioning cost for the Washington, PA, facility, from \$4,500,000 to \$26,394,453.

Our comments, based on the information available from the Licensee at the time of the review, are attached in the form of a request for additional information. Note that we have not reviewed the decommissioning cost estimate for the facility.

Docket Nos.: 04008794 (York, PA)
and 04008778 (Washington, PA)
License Nos.: SMB-1408 (York, PA)
and SMB-1393 (Washington, PA)

Attachment: Request for Additional Information

Contact: T. Fredrichs, NMSS/DWM
(301) 415-5971

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**REQUEST FOR ADDITIONAL INFORMATION
MOLYCORP, INC.
LOCATED IN WASHINGTON AND YORK, PENNSYLVANIA**

PARENT COMPANY GUARANTEE

INTRODUCTION

Union Oil Company of California (Union Oil) submitted a decommissioning funding plan (DFP), using two parent company guarantees (PCG) on behalf of its subsidiary, Molycorp, Inc. (Molycorp). By letter dated November 24, 1999, Union Oil submitted a PCG for its Molycorp subsidiary located in York, PA. By letter dated March 30, 2000, Union Oil submitted a PCG for decommissioning costs of its Molycorp subsidiary located in Washington, PA. Molycorp is the Licensee. The submissions provide for decommissioning costs of \$4,500,000 for License SMB-1393 (Washington, PA), issued under 10 CFR Part 40 and \$3,414,000 for License SMB-1408 (York, PA), issued under 10 CFR Part 40. For each license, the submission includes a chief financial officer (CFO) letter, a financial test demonstration, and an auditor's special report.

Subsequently, in Revision 2 of its Decommissioning Plan, dated July 14, 2000, the Licensee revised its decommissioning cost estimate for the Washington, PA, facility, from \$4,500,000 to \$26,394,453. The Licensee proposed providing a letter of credit to provide financial assurance to cover the difference between the \$4,500,000 PCG parent company guarantee, and the revised decommissioning cost estimate for the Washington, PA, facility.

This review does not address the adequacy of the Licensee's provision of \$4,500,000 for License SMB-1393, the \$3,414,000 amount for License SMB-1408, nor the revised estimate of \$26,394,453 for the Washington, PA, site. However, the staff determined that the Licensee should modify its financial assurance documents as detailed in the following comments.

SPECIFIC COMMENTS

**(1) Revise the Proposed Combination of Financial Assurance Methods
(10 CFR Part 40)**

10 CFR 40.36(e)(2) states, "A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section." Consequently, the Licensee's proposal to combine a PCG with a letter of credit to provide financial assurance for the Washington, PA, facility, does not meet regulatory requirements. The Licensee must revise either its proposed financial assurance methods for the Washington, PA, site, or request an exemption from the prohibition on combining a PCG with other methods of financial assurance.

ATTACHMENT

(2) Demonstrate the Guarantor's Ability to Pass the Financial Test for All Relevant Costs (10 CFR Part 30, Appendix A)

Appendix A to 10 CFR Part 30 requires parent company guarantors to pass the financial test for "the current decommissioning cost estimates for the total of all facilities or parts thereof" (emphasis added). The Licensee's submission contains two financial test demonstrations, one for the Licensee's Washington Facility (License SMB-1393) and a separate one for the Licensee's York Facility (License SMB-1408). In each of these demonstrations, the financial test covers decommissioning costs for only one facility.

As the costs covered by the test increase, a firm must possess greater tangible net worth and assets to pass the test. By dividing the guaranteed costs into two or more portions and performing the test on each portion separately, the test calculations could allow a firm to double count the same limited financial strength to pass separate financial tests (e.g., once for costs associated with one facility, and once for costs associated with a second facility). Double counting assets could present an inaccurate assessment of a firm's ability to cover all its decommissioning costs. To ensure that the guarantor has sufficient financial strength to pass the financial test for the costs of all decommissioning activities at all facilities for which the company is providing a guarantee, the Licensee should revise its financial test demonstration. The decommissioning costs included in the revised test should include both the Washington and York Facilities, as well as any other costs being guaranteed by the company to provide financial assurance for other NRC or Agreement State licenses it may hold.

Note that an alternative format for the financial test is illustrated in Draft Regulatory Guide DG-3014 (Proposed Revision to Regulatory Guide 3.66), "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72." The formats shown on pages 100 and 101 of Draft Regulatory Guide DG-3014 provide a method to issue a PCG that applies to just one licensed facility. However, in order to assure that the firm has sufficient financial strength to meet all its decommissioning obligations, the alternative format of the financial test includes the costs of all PCGs provided to the NRC, other Federal Agencies, the United States Environmental Protection Agency, and Agreement States.

(3) Submit a Parent Company Guarantee Agreement (*Regulatory Guide 3.66*, pages 4-41 through 4-44)

The submission does not include documentation of the parent guarantee agreement (PGA).¹ Without the PGA, which establishes the terms and conditions of the guarantee, the financial assurance mechanism has not been established. The Licensee should submit an executed PGA covering Licenses SMB-1393 and SMB-1408. The Licensee may, at its option, submit individual PCG agreements for each license. However, the financial test included with the individual PCG agreements must be based on the cost for decommissioning all the facilities for which the parent company will provide a PCG. The wording of the parent guarantee should be similar to that found in Section 4.7.6 of Regulatory Guide 3.66, pages 4-41 through 4-44.

¹ The Licensee's previous submission, dated March 27, 1998, for License SMB-1393 incorporated a guarantee agreement (which contained several deficiencies) into the CFO letter. However, the CFO letter in the current submission does not include a guarantee agreement.

(4) Submit the Letter from the Licensee's Chief Executive Officer (*Regulatory Guide 3.66, page 4-35*)

The submission does not contain the letter from the Licensee's chief executive officer (CEO) as recommended by Section 4.7.1 of NRC's Regulatory Guide 3.66 "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72" (June 1990), page 4-35. In this letter, the Licensee should certify that it is an ongoing concern, identify the amount of its tangible net worth, specify whether the firm is required to file a Form 10-K with the U.S. Securities and Exchange Commission, and list the date on which the Licensee's fiscal year ends. To ensure that NRC has all of the information called for by Regulatory Guide 3.66, the licensee should submit a letter from its CEO providing the recommended information and attesting to its accuracy.

(5) Update the Financial Test for License SMB-1408 Based on Financial Data for the Guarantor's Latest Completed Fiscal Year (10 CFR Part 30, Appendix A)

Reg Guide 10 CFR Part 30, Appendix A, requires parent guarantors to pass the financial test based on data for the latest completed fiscal year; it also requires the parent company to pass and resubmit the test within 90 days after the close of each succeeding fiscal year. The financial test submitted for the York, PA Facility (Lic. No. SMB-1408), is based on financial data for the fiscal year ending on December 31, 1998, which was the guarantor's latest completed fiscal year when the test was submitted to NRC on November 24, 1999.² To ensure that the guarantor is able to pass the financial test at the present time, as required under 10 CFR Part 30, Appendix A, the Licensee should submit an updated demonstration based on financial data for fiscal year 1999.

(6) Submit Guarantor's Annual Financial Statements and Auditor's Opinion (*Regulatory Guide 3.66, page 3-21*)

The submission does not include the parent company guarantor's audited financial statements or the independent auditor's opinion on the financial statements. Regulatory Guide 3.66, page 3-21, calls for the licensee to submit the guarantor's annual financial statements, audited by an independent certified accountant, to substantiate the guarantor's financial position. If the annual financial statements have not received a "clean" opinion from the independent auditor, then the data derived from those statements in the CFO's letter may not fairly represent the financial condition of the guarantor. The Licensee should submit the guarantor's annual financial statements, along with the independent auditor's opinion on those statements.

(7) Submit Revised Independent Certified Public Accountant's Special Reports (10 CFR Part 30, Appendix A, and *Regulatory Guide 3.66, page 4-39*)

The submission includes two special reports from the guarantor's independent certified public accountant that are intended to compare the data used by the guarantor in the submitted financial test demonstrations with the amounts in the guarantor's annual financial statements.

² The financial test demonstration submitted for license SMB-1393 (Washington, PA) is based on financial data for the fiscal year ending on December 31, 1999.

Each of these reports states that the accountant has audited the guarantor's financial statements and that:

"In connection with our audit, no matters came to our attention that caused us to believe that the Company failed to comply with the [financial assurance] provisions . . . insofar as they relate to accounting matters. However, our audit was not directed primarily toward obtaining knowledge of such non-compliance."

This language does not state that the guarantor's accountant has compared the data used in the financial test demonstrations with the amounts in the guarantor's annual financial statements. To ensure that the numbers used to demonstrate the guarantor's ability to pass the financial test reflect the actual, reported financial results of the guarantor, as required under 10 CFR Part 30, Appendix A, the licensee should submit revised independent public accountant's special reports. As called for on page 4-39 of Regulatory Guide 3.66, these reports should confirm that the accountant has compared the data used in the financial test demonstration with the amounts in the guarantor's annual financial statements and has determined that the data used in the financial test do not need to be adjusted.

Other Comments

In addition to the issues raised above, the following typographical errors should be corrected:

- (a) The submitted CFO letter for License SMB-1393 incorrectly references the license number as "5M B-1393" (emphasis added). The Licensee should revise the CFO letter to correctly reference License SMB-1393.
- (b) The submitted CFO letter for License SMB-1393 states that the letter "is in support of the use of this firm's use of the financial test to demonstrate financial assurance, as specified in 10 CFR Part 30" (emphasis added). However, License SMB-1393 was issued under 10 CFR Part 40. The Licensee should revise the CFO letter to correctly reference 10 CFR Part 40.