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June 1, 1999

John W.N. Hickey, Chief
United States Nuclear Regulatory
Commission
Low Level Waste and Decommissioning
Projects Branch
Division of Waste Management
Office of Nuclear Material Safety and
Safeguards
Washington, D.C. 20555

DECOMMISSIONING PLAN
WASHINGTON LICENSE SMB-1393

Dear Mr. Hickey:

We are writing to express the views of Molycorp, Inc. regarding your February 16, 1999, letter to Barbara Dankmyer. Specifically, we are presenting our position related to the applicability of the grandfathering provision to the August 14, 1995, decommissioning plan (DP) for the Washington, PA, site.

Molycorp views the grandfathering issue as being comprised of two distinct parts. The first part pertains to the proposed unrestricted use criteria and the second pertains to the disposition of soil in an onsite impoundment. Molycorp's agreement to submit an Environmental Report, and a revised DP by April 16, 2000, applies to the onsite impoundment only. We view these actions as having no relationship to the issue as to whether or not the grandfathering provision applies to the proposed unrestricted use criterion.

Molycorp agrees that the grandfathering provision does not apply to the material proposed for placement in an onsite impoundment at the Washington site. However, we believe that the grandfathering provision *does* apply to the unrestricted use criterion proposed in the DP because the proposed criterion is in accordance with the SDMP Action Plan. The justification for our position is outlined in the enclosed summary. We believe that the proposed criterion is

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clearly consistent with the ALARA provision of the Action Plan and the Commissions' policy direction to the NRC staff on this issue.

We have also reviewed NRC's February 16, 1999, letter in regards to the Commission's rules related to denial of an application. It is Molycorp's opinion that the letter does not constitute a final statement of the staff's position on the grandfathering provision. This opinion is based on the fact that Molycorp has not been provided an opportunity for a hearing on this issue as would be required by 10 CFR 2.103(b) if the Commission had intended the letter to be a final action.

Accordingly, Molycorp believes that grandfathering under Part 20, Subpart E, is still open with respect to the unrestricted use criteria in the SDMP Action Plan. Molycorp believes that the 30 pCi/g proposal for the unrestricted use criterion is acceptable for NRC consideration under the Action Plan and the grandfathering provision. We request that NRC provide a written response as to the applicability of the grandfathering provision to the unrestricted use criterion proposed in the DP before June 14, 1999.

To facilitate a timely NRC review, we will submit a revision to the DP in two parts. The first part (which will be submitted by June 30, 1999) will make the minor changes required to be in verbatim compliance with the SDMP Action Plan criterion for the unrestricted use of thorium contaminated soil (i.e., 10 pCi/g total thorium). The second part (which will be submitted by April 16, 2000) will provide for the disposition of the material exceeding the Action Plan unrestricted use criterion under the new regulations (10 CFR 20 Subpart E). The proposed disposition in Part 2 will be in an impoundment on the Washington site.

Molycorp believes that there is sufficient time for NRC to review and approve the first part of the DP before the August 20, 1999, deadline. If this is not the case, please inform us in a timely manner so that Molycorp can submit a request for a schedular exemption from the August deadline.

In conclusion we believe that it is in the best interest of the staff and Molycorp to close promptly on the unrestricted use criteria for the Washington site by approval of the revised DP to be submitted shortly.

Should you have any questions please call me at 724-222-5605, extension 526.

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Sincerely,



John C. Daniels
Project Manager

enclosure

xc: J.J. Dean, Unocal
J.F. Ashburn, Unocal
LeRoy S. Person, NRC
David N. Fauver, Radiological Services

ENCLOSURE

Justification for Molycorp Position that the Grandfathering Provision Applies to the Unrestricted Use Criteria Proposed in the August 14, 1995, Decommissioning Plan for the Washington, PA, Site

- Molycorp asserts that the Decommissioning Plan, as it pertains to the unrestricted use criteria for the site, was submitted in accordance with the ALARA provision of the SDMP Action Plan. The Action Plan makes the following two statements:
 - "These cleanup criteria will be applied on a site-specific basis with emphasis on residual contamination levels that are ALARA"
 - "The criteria in this section will be considered in establishing site-specific ALARA levels for each of the SDMP sites in license amendments or orders"
- The Commissions' position related to the ALARA provision of the SDMP Action Plan is further clarified in SECY-93-179, "Updated Report in Site Decommissioning Plan," June 24, 1993. Section 4.6.2 "ALARA" states:
 - "Based on discussions with the Commission in approving the Action Plan, the ALARA concept for SDMP sites is envisioned to include levels both above and below the decommissioning guidance levels, up to levels that could result in exposures of 100 mrem/yr."
 - "For residual contamination at SDMP sites, the ALARA analysis could be used to justify residual contamination levels above the guidance levels."
- As recently as February 9, 1999, the NRC staff has affirmed its position of considering 100 mrem/yr as an upper limit for an ALARA analysis for the unrestricted use of material containing residual radioactivity. In a letter from Carl J. Paperiello, Director, NMSS, to David R. Smith, Shieldalloy Metallurgical Corporation, the following statement is made:
 - "The staff has determined ... that the total effective dose equivalent to an individual member of the public is not expected to exceed 100 mrem/yr as specified in 10 CFR 20.1301, under routine conditions. Based on this determination, the staff has no objection to you transferring this material [to an exempt person]."

- Page 2-8 of the August 14, 1995, Decommissioning Plan for the Washington site states:

"The residual soil on the site will have concentrations less than 30 pCi/g, which is a modified Option 2 cleanup level of SECY 81-576. The reduction from 50 pCi/g as originally stated on this [1981 BTP] option (giving 170 mrem/yr under a defined scenario) is in keeping with the reduction in exposure to less than 100 mrem/yr under the SECY scenario."

- It is evident that the August 14, 1995, decommissioning plan proposal to apply an unrestricted use level of 30 pCi/g is in accordance with Commission's guidance related to ALARA in the SDMP Action Plan. Since the plan was submitted in accordance with the SDMP Action Plan, before August 20, 1998, it qualifies for grandfathering under 10 CFR 20.1401(b)(3).
- The grandfathering provision is viewed as applying to the unrestricted use criteria only. Molycorp has committed to address the material exceeding the unrestricted use criteria in a decommissioning plan to be submitted by April 16, 2000, in accordance with 10 CFR 20 Subpart E.

History and Overview

Molycorp - Washington, PA

- **1963-1973** **Operating License**
- **1973-Present** **Possession Only License**
- **1992-1993** **Site Characterization Plan**
- **1994** **Site Characterization**
- **Jan. 1995** **Site Characterization Report**
- **July 1995** **D&D Plan**
- **Jan. 1995-July 1995** **Site Funding Plan**
- **Feb. 1996** **Environmental Report Plan**
- **Feb. 1997** **Environmental Assessment**
- **Sept. 1997** **License Renewal / Amendment**
- **April 1997** **Environmental Report**
- **Pending** **Environmental Impact Statement**
- **Pending** **Environmental Justice Report**
- **Feb. 16,1999** **Decommissioning Plan Request for Revision**

History and Overview

Molycorp - York, PA

- **1981** **Operating License**
- **1965-1992** **Lanthanide Production**
- **1993** **Possession License**
- **1993** **Site Characterization Plan**
- **1994** **Site Characterization**
- **1995** **Site Characterization Report**
- **1995** **Decommissioning Plan**
- **1995** **Site Funding Plan #1**
- **1996-1997** **Building & Equipment D&D**
- **Pending** **Environmental Assessment**
- **1997** **License Renewal**
- **1998** **Site Funding Plan #2**
- **April 1999** **Public Meeting on EA**
- **May 1999** **Response to Comments**