

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

40-8778

DAVID COMFORT and RACHEL COMFORT,
his wife,
713 Weirich Ave.
Washington, PA 15301

CIVIL DIVISION

97-4278

Plaintiffs,

PLAINTIFFS' COMPLAINT IN
CIVIL ACTION/ARBITRATION

vs

Filed on behalf of
Plaintiffs

COLDWELL BANKER REAL ESTATE, INC.
3244 Washington Road
McMurray, PA 15317

Counsel of Record for
this Party:

and

BARBARA WHIPKEY
3244 Washington Road
McMurray, PA 15317,

Mark C. Stopperich, Esq.
PA I.D. NO.: 59650

and

KATHY S. INTERVAL,
102 Coachside Drive
Canonsburg, PA 15317

382 W. Chestnut Street
Washington, PA 15301

(724) 225-3355

Defendants.

[Handwritten signature]

2300 pd

ARRESTS AND HEARINGS CONDUCTED BY
July 3, 2000 at 9:15 am
LOCAL COURT CLERK CENTER
30 WEST CHESTNUT STREET
BASEMENT LEVEL
WASHINGTON, PA 15301

NMISSO/RBlic

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

CIVIL DIVISION

DAVID COMFORT and RACHEL COMFORT,
his wife,

Plaintiffs,

vs

No. 99-4278

COLDWELL BANKER REAL ESTATE, INC.,
and BARBARA WHIPKEY and KATHY S.
INTERVAL,

Defendants.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in this complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, CONTACT:

Lawyer Referral Service
523 Washington Trust Building
Washington, PA 15301
(412) 225-6710

IF YOU CANNOT AFFORD A LAWYER, CONTACT:

Southwestern Pennsylvania Legal Aid Society
10 West Cherry
Washington, PA 15301
(412) 225-6170

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

CIVIL DIVISION

DAVID COMFORT and RACHEL COMFORT,
his wife,

Plaintiffs,

vs

No. 99-4278

COLDWELL BANKER REAL ESTATE, INC.,
and BARBARA WHIPKEY and KATHY S.
INTERVAL,

Defendants.

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Please enter my appearance in the above captioned case for
the Plaintiffs.

Date: 3/10/00

MORASCYZK, STOPPERICH & ASSOCIATES

BY: Mark C. Stopperich
Mark C. Stopperich, Esquire
Counsel for Plaintiffs

COMPLAINT IN CIVIL ACTION/ARBITRATION

AND NOW, come the Plaintiffs, David Comfort and Rachel
Comfort, his wife, by and through their attorney, Mark C.
Stopperich, Esquire, and file the following Complaint in Civil
Action/Arbitration and in support thereof avers as follows:

1. The Plaintiff, David Comfort, is an adult individual
who resides at 713 Weirich Avenue, Washington, Washington County,
Pennsylvania 15301.

2. The Plaintiff, Rachel Comfort, is an adult individual
who resides at 713 Weirich Avenue, Washington, Washington County,
Pennsylvania 15301.

3. The Defendant, Coldwell Banker Real Estate, Inc., is a

corporation, organized and existing in the Commonwealth of Pennsylvania engaged in the business of buying and selling real estate with an office located at 3244 Washington Road, McMurray, Washington County, Pennsylvania 15317.

4. The Defendant, Barbara Whipkey, is a real estate agent, licensed in the Commonwealth of Pennsylvania, employed by the Defendant, Coldwell Banker Real Estate, Inc., with an office address of 3244 Washington Road, McMurray, Washington County, Pennsylvania 15317.

5. The Defendant, Kathy S. Interval, is an adult individual who resides at 102 Coachside Drive, Canonsburg, Washington County, Pennsylvania 15317.

6. That on October 19, 1998, the Defendant, Kathy S. Interval, executed an Agreement of Sale and Purchase accepting the offer of the Plaintiffs, David Comfort and Rachel Comfort, his wife, to purchase property located at 713 Weirich Avenue, Washington, Washington County, Pennsylvania 15301. The Plaintiffs executed said Agreement of Sale also on October 19, 1998. A copy of the said agreement of sale and purchase is attached hereto, made a part hereof and labeled Exhibit "A".

7. That on October 19, 1998, the Plaintiffs executed a Buyer Agency/Dual Agency Addendum to Agreement of Sale and Purchase. A copy of said Addendum is attached hereto, made a part hereof and labeled Exhibit "B".

8. That on October 8, 1998, the Defendant, Kathy S. Interval, executed a Seller Disclosure Statement, a copy of which is attached hereto, made a part hereof and labeled Exhibit "C".

COUNT I

BREACH OF CONTRACT

KATHY S. INTERVAL

9. Plaintiffs incorporate by reference paragraphs 1 through 8 as if set forth fully herein.

10. On October 19, 1998, the Defendant, Kathy S. Interval, executed an Agreement of Sale accepting the offer of the Plaintiffs to purchase the subject property (Exhibit "A").

11. Prior to the Plaintiffs' execution of the Agreement, Defendant, Kathy S. Interval, presented Plaintiffs with a Seller Disclosure Statement (Exhibit "B"). Plaintiffs relied upon the representations set forth in the Disclosure Statement and entering into the Agreement and the Statement was incorporated into the Agreement.

12. Plaintiffs performed all conditions, covenants and promises on Plaintiffs' part to be performed in accordance with the terms and conditions of the Agreement.

13. Plaintiffs closed escrow and took possession of the real property on November 25, 1998.

14. Plaintiffs are informed and believe and on that basis allege that Defendant, Kathy S. Interval, breached the agreement by failing to disclose material and important information regarding the condition of the real property which was within the Defendant's knowledge as follows:

- a. Defective sewer line as evidenced by several sewer line back-ups;
- b. Defective foundation as evidenced by significant

property damage that has occurred due to rain water and other water flowing into the basement.

- c. The presence of radioactive waste at the Molycorp Plant which is located approximately one-tenth (1/10) of a mile from the subject property.

15. The Defendant, Kathy S. Interval, indicated on the Seller Disclose Statement (Exhibit "C") that she was not aware of any leaks, back-ups or other problems relating to any of the plumbing, water and sewage-related items when the described problems existed at the time she signed the Seller Disclosure Statement.

16. Further, the Defendant, Kathy S. Interval, failed to disclose to the Plaintiffs that she was aware of past or present drainage or flooding problems affecting the subject property or adjacent properties when in fact she knew or should have known that drainage and flooding problems existed at the time she executed the subject Disclosure Statement.

17. Further, the Defendant, Kathy S. Interval, failed to disclose that she was aware of water leakage and accumulation of dampness within the basement.

18. The Defendant, Kathy S. Interval's failure to disclose the true nature of the problems and/or defects constitutes a breach of the agreement entered by the parties.

19. Plaintiffs relied on Defendant, Kathy S. Interval's representations as set forth in the Disclosure Statement and that reliance is reasonable.

20. Plaintiffs would not have entered into the agreement

had Plaintiffs known the true facts. The true facts are that the subject property's sewage system is defective, the subject property's foundation is defective and there are potential environmental hazards in the area of the subject property all of which were not disclosed by the Defendant, Kathy S. Interval.

21. As a result of the Defendant, Kathy S. Interval's breach of the agreement, Plaintiffs have been damaged in that Plaintiffs will be required to expend \$8,000 to correct the defects and problems as described.

WHEREFORE, Plaintiffs request judgement in their favor and against all Defendants jointly and severally in an amount not in excess of \$25,000.00 with costs and interest to be assessed against Defendants and arbitration is requested.

COUNT II

MISREPRESENTATION/NEGLIGENT CONCEALMENT

KATHY S. INTERVAL

22. The Plaintiffs incorporate by reference all of the allegations contained in paragraphs 1 through 21 as if set forth fully herein.

23. The Defendant, Kathy S. Interval, deliberately concealed the true facts regarding the real property from the Plaintiffs or failed to make any reasonable investigation to determine the true facts as to the condition of the real property to determine whether they were true or false.

24. The concealment of the true facts from Plaintiffs was done with the intent or were done negligently to induce

Plaintiffs to enter into the agreement.

25. When the Defendant, Kathy S. Interval, made the false representations regarding the condition of the property and failed to disclose material facts, Plaintiffs did not know or have any reason to know that such statements were false.

26. Plaintiffs relied on the representations made by the Defendant, Kathy S. Interval, when they entered into the agreement.

27. The Plaintiffs reliance on representations made by the Defendant, Kathy S. Interval, was justified in that the Defendant, Kathy S. Interval, had owned the real property for a number of years and could ascertain the true condition of the property by reasonably competent and diligent investigation and inspection.

28. As a proximate result of the fraud and deceit alleged, Plaintiffs were induced to purchase the real property.

29. Plaintiffs have been damaged in the amount set forth in the request for relief. Plaintiffs' damages include out-of-pocket costs and expenses and loss of use of the real property.

WHEREFORE, Plaintiffs request judgement in their favor and against all Defendants jointly and severally in an amount not in excess of \$25,000.00 with costs and interest and arbitration is requested.

COUNT III

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

KATHY S. INTERVAL

30. The Plaintiffs incorporate by reference all of the allegations contained in paragraphs 1 through 29 as if set forth fully herein.

31. The Plaintiffs, David Comfort and Rachel Comfort, his wife, are persons as defined at 73 P.S. §201-2(2).

32. The Plaintiffs purchased the subject property primarily for personal purposes.

33. The misrepresentations, omissions and concealment of fact by the Defendant, Kathy S. Interval, constitute unfair methods of competition and unfair or deceptive acts or practices within the meaning of §201-2(4)(v), (vi), (vii), (xiv), (xvii). Plaintiffs suffered an ascertainable loss of money as a result of the Defendant, Kathy S. Interval's use or employment of these unfair methods of competition and unfair deceptive acts or practices.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against the Defendants jointly and severally in an amount three (3) times the actual damages sustained plus attorney fees with interest and costs and arbitration is requested.

COUNT VI

MISREPRESENTATION/NEGLIGENT CONCEALMENT

BARBARA WHIPKEY

34. The Plaintiffs incorporate by reference all of the

allegations contained in paragraphs 1 through 33 as if set forth fully herein.

35. At all times, the Defendant, Barbara Whipkey, was acting in her capacity as an agent, representative and employee of the Defendant, Coldwell Banker Real Estate, Inc., and therefore all the acts of negligence, fraud and breach of contract and violations of the unfair trade practices and consumer protection law are imputed to the Defendant, Coldwell Banker Real Estate, Inc.

36. The Defendant, Barbara Whipkey, as the agent of the Defendant, Kathy S. Interval and the Plaintiffs, David Comfort and Rachel Comfort, his wife, had a duty to disclose all known material facts which affect the value of the subject property and which were material to the Plaintiffs decision to purchase the subject property.

37. The Defendant, Barbara Whipkey, deliberately concealed the fact that within one tenth (1/10) of a mile from the subject property is located the Molycorp, Inc. property at which is stored radioactive waste which may pose a threat to the health, safety and welfare of residents in the area including the Plaintiffs, David Comfort and Rachel Comfort, his wife and their children.

38. The concealment of this fact from the Plaintiffs was done with the intent to induce Plaintiffs to enter into the agreement.

39. When the Defendant, Barbara Whipkey, made the false statements, representations and failed to disclose material facts

about the condition of the property, Plaintiffs did not know or have any reason to know that such statements were false.

40. The Plaintiff relied on the representations made by the Defendant, Barbara Whipkey, when they entered into the agreement.

41. The Plaintiffs reliance on statements made by the Defendant, Barbara Whipkey, was justified in that the Defendant, Barbara Whipkey had access to information known to her and the Defendant, Kathy S. Interval or could ascertain it by reasonably competent and diligent investigation.

42. As a proximate result of the fraud, deceit and concealment alleged, the Plaintiffs were induced to purchase the real property. Plaintiffs have been damaged in the amount set forth in the request for relief.

43. Plaintiffs damages include out-of-pocket costs and expenses.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against the Defendants jointly and severally in an amount not in excess of \$25,000.00 with costs and interest and arbitration is requested.

COUNT V

NEGLIGENCE

BARBARA WHIPKEY

44. The Plaintiffs incorporate by reference all of the allegations contained in paragraphs 1 through 43 as if set forth fully herein.

43. Pursuant to the agency agreement entered between the Defendant, Barbara Whipkey and the Plaintiffs, the Defendant,

Barbara Whipkey represented the Plaintiffs in regard to the sale of the subject property.

44. As the agent for the Plaintiffs, the Defendant, Barbara Whipkey, had a duty to represent Plaintiffs consistent with the standards of the profession of real estate agents and brokers. The Defendant, Barbara Whipkey, had a duty to Plaintiffs to inform them that the Plaintiffs should have the subject property inspected by professionals to determine the condition of the subject property. Further, the Defendant, Barbara Whipkey, had a duty to Plaintiffs to advise them that the Plaintiffs should inspect the property as part of a "walk through".

45. The Defendant, Barbara Whipkey, breached the duty of care that she owed to Plaintiffs in that she advised the Plaintiffs to waive the right to have the property inspected citing the cost of the home inspection and assured the Plaintiffs that the subject property was free from defects.

46. As a direct and proximate result of the negligence of the Defendant, Barbara Whipkey, the Plaintiffs suffered damages, specifically, a home inspection would have revealed the following defects:

- a. Defective sewer line; and
- b. Defective foundation.

47. That to repair the alleged defects, Plaintiffs will incur out-of-pocket expenses of \$8,000.00.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against the Defendants jointly and severally in an amount not in excess of \$25,000.00 with costs and interest and arbitration is requested.

Respectfully submitted,

MORASCYZK, STOPPERICH & ASSOCIATES

BY: Mark C. Stopperich

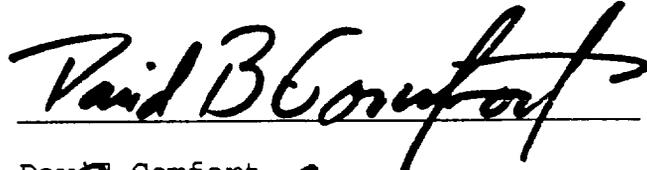
Mark C. Stopperich, Esquire

Counsel for Plaintiffs

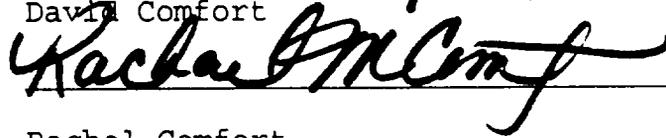
VERIFICATION

We, David Comfort and Rachel Comfort, his wife, do verify that the statements contained in this Complaint in Civil Action/Arbitration are true and correct. We understand that false statements herein made are subject to the penalties of 18 PA C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date: 12-31-99



David Comfort



Rachel Comfort

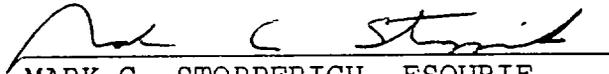
CERTIFICATE OF SERVICE

I, Mark C. Stopperich ESQUIRE, do hereby certify that a true copy of the foregoing pleading is being served upon the following individual by first-class, postage pre-paid mail, this 10th day of March, 2000.

John Lucas, Esquire
Meyer, Unkovic & Scott
1300 Oliver Building
Pittsburgh, PA 15222-2304

Kathy S. Interval
102 Coachside Drive
Canonsburg, PA 15317

MORASCYZK, STOPPERICH & EHRMAN



MARK C. STOPPERICH, ESQUIRE
Attorney for Plaintiffs

PA LICENSED BROKER

AGENT FOR SELLER	COLDWELL BANKER - B. WHIPKEY	PH 724-942-1200
ADDRESS	3244 WASHINGTON RD., MCMURRAY, PA	FAX 724-942-3993
AGENT FOR SELLER	DISCLOSED DUAL AGENCY	PH
ADDRESS		FAX
AGENT FOR BUYER	COLDWELL BANKER - B. WHIPKEY	PH 724-942-1200
ADDRESS	SAME AS ABOVE	FAX 724-942-3993

1. This Agreement, dated OCTOBER 19, 1998, is between
 2 SELLER(S): KATHY SUE INTERVAL 724-228-8018
 3
 4 Address: 713 WEIRICH AVENUE
 5 WASHINGTON, PA. Zip Code 15301 hereafter "Seller," and
 6 BUYER(S): RACHAEL M. COMFORT 724-225-6854
 7 DAVID B. COMFORT
 8 Address: 50 BEL AIR DRIVE #A
 9 WASHINGTON, PA. Zip Code 15301 hereafter "Buyer."
 10 2. PROPERTY (1-98) Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase:
 11 ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as:
 12 713 WEIRICH AVENUE
 13 in the TOWNSHIP of CANTON,
 14 County of WASHINGTON in the Commonwealth of Pennsylvania, Zip Code 15301
 15 Identification (e.g., Tax ID#; Parcel #; Lot, Block; Deed Book, Page, Recording Date) # 120-011-03-00-0019-00
 16
 17 3. TERMS (1-98) (A) Purchase Price SEVENTY-FOUR THOUSAND
 18 Dollars
 19 which shall be paid to Seller by Buyer as follows:
 20 (B) Cash or check at signing this Agreement: \$ 300.00
 21 (C) Cash or check on or before: 10/26/98 \$ 200.00
 22 (D) \$ _____
 23 (E) Cash, cashier's or certified check at time of settlement: \$ 73,500
 24 DUAL TOTAL \$ 74,000
 25 (F) Deposits to be held by Agent for Seller, unless otherwise stated here: AGENCY
 26 (G) Written approval of Seller to be on or before: 10/23/98
 27 (H) Settlement to be made on or before: 11/30/98
 28 (I) Conveyance from Seller will be by fee simple deed of special warranty unless otherwise stated here: _____
 29
 30 (J) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here: 1% OF TOTAL
 31 SALES PRICE TO BUYER; 1% OF TOTAL SALES PRICE TO SELLER
 32 (K) At time of settlement, the following shall be adjusted pro-rata on a daily basis between Buyer and Seller, reimbursing where applicable:
 33 taxes; rents; interest on mortgage assumptions; condominium fees and homeowner association fees, if any; water and/or sewer rents, if
 34 any, together with any other lienable municipal service. The charges are to be pro-rated for the period(s) covered: Seller will pay up to
 35 and including the date of settlement; Buyer will pay for all days following settlement, unless otherwise stated here: SCHOOL TAXES
 36 WILL BE PRO-RATED ON A FISCAL YEAR (JULY 1 - JUNE 30) BASIS.
 37 4. FIXTURES AND PERSONAL PROPERTY (1-98)
 38 (A) INCLUDED in this sale and purchase price are all existing items permanently installed in the Property, free of liens, including plumb-
 39 ing; heating; lighting fixtures (including chandeliers and ceiling fans); water treatment systems; pool and spa equipment; garage door
 40 openers and transmitters; television antennas; shrubbery, plantings and unpotted trees; any remaining heating and cooking fuels stored
 41 on the Property at the time of settlement; wall to wall carpeting; shades, blinds, window covering hardware; built-in air conditioners;
 42 built-in appliances; and the range/oven unless otherwise stated. Also included: ELECTRIC STOVE, MINI BLINDS,
 43 SOME WINDOW TREATMENTS, EXCEPT AS NOTED
 44 (B) EXCLUDED fixtures and items: WINDOW TREATMENTS IN BACK ROOM
 45
 46 5. SPECIAL CLAUSES (1-98)
 47 (A) Buyer and Seller acknowledge having received a statement of their respective estimated closing costs before signing this Agreement
 48 of Sale.
 49 (B) Buyer acknowledges receipt of Seller's Property Disclosure Statement before signing this Agreement, if required by law. (See
 50 Notice, Information Regarding the Seller's Property Disclosure Act.)
 51 (C) Buyer acknowledges receipt of the Deposit Money Notice (for cooperative sales when Agent for Seller is holding deposit money)
 52 before signing this Agreement.
 53 (D) The following are a part of this Agreement if checked:
 54 Limited Dual Agency Addendum (PAR Form 140) Settlement of Other Property Contingency
 55 Sale & Settlement of Other Property (PAR Form 133)
 56 Contingency Addendum (PAR Form 130) Tenant-Occupied Property Addendum (PAR Form TOP)
 57 Sale & Settlement of Other Property Contingency C-B CONSUMER GUIDE TO
 58 with Right to Continue Marketing Addendum REAL EST. SVCS
 59 (PAR Form 131) _____
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EXHIBIT "A"



69 UNVED. This sale is NOT contingent on mortgage financing. 61
70 ELECTED 71
71 (A) This sale is contingent upon Buyer obtaining mortgage financing as follows: 71
72 1. Amount of mortgage loan \$ 62,100 71
73 2. Minimum Term 30 years 71
74 3. Type of mortgage CONVENTIONAL 71
75 4. Interest rate 11 1/2 %; however, Buyer agrees to accept the interest rate as may be committed by the mortgage lender, not to 71
76 exceed a maximum interest rate of 11 1/2 %. 71
77 5. Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the mortgage loan (excluding 71
78 any mortgage insurance premiums or VA funding fee) not to exceed 3 % of the mortgage loan. 71
79 The interest rate and fees provisions required by Buyer are satisfied if a mortgage lender makes available to Buyer the right to guarantee an 71
80 interest rate at or below the Maximum Interest Rate specified herein with the percentage fees at or below the amount specified herein. Buyer 81
81 gives Seller the right, at Seller's sole option and as permitted by the lending institution and applicable laws, to contribute financially, without 81
82 promise of reimbursement, to the Buyer and/or lender to make the above terms available to Buyer. 81
83 (B) Within 10 days of the execution of this Agreement, Buyer shall make a completed, written mortgage application to a responsible mortgage lend- 81
84 ing institution through the office of Agent for Buyer, if any, otherwise through the office of Subagent for Seller, if any, or Agent for Seller, if 81
85 any. This Agent is authorized to communicate with the lender for the purposes of assisting in the mortgage loan process. 81
86 (C) 1. Upon receipt of a mortgage commitment, Buyer and/or Agent will promptly deliver a copy of the commitment to Agent for Seller, if any, 81
87 otherwise to Seller. 81
88 2. Mortgage commitment date OCTOBER 30, 1998. If a written commitment is not received by 81
89 Agent for Seller, if any, otherwise by Seller, by the above date, Buyer and Seller agree to extend the commitment date until Seller ter- 81
90 minates this Agreement in writing. 91
91 3. Seller has the option to terminate this Agreement in writing, on or after the mortgage commitment date, if the mortgage commitment: 91
92 a. Is not valid until the date of settlement, OR 91
93 b. Is conditioned upon the sale and settlement of any other property, OR 91
94 c. Contains any other condition not specified in this Agreement. 91
95 4. In the event Seller does not terminate this Agreement as provided above, Buyer has the option to terminate this Agreement in writing if 91
96 the mortgage commitment: 91
97 a. Is not obtained by or valid until the date of settlement, OR 91
98 b. Is conditioned upon the sale and settlement of any other property which do not occur by the date of settlement, OR 91
99 c. Contains any other condition not specified in this Agreement which Buyer is unable to satisfy by the date of settlement. 91
100 5. If this Agreement is terminated as specified in paragraphs 6 (C) (2), (3) or (4), all deposit monies paid on account of purchase price shall 101
101 be returned to Buyer. Buyer will be responsible for any premiums for mechanics lien insurance and/or title search, or fee for cancellation 101
102 of same, if any; AND/OR any premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or 101
103 cancellation fee, if any; AND/OR any appraisal fees and charges paid in advance to mortgage lender. 101
104 (D) If the mortgage lender requires repairs to the Property, Buyer will, upon receipt, deliver a copy of the mortgage lender's requirements to Agent 101
105 for Seller, if any, otherwise to Seller. Seller shall, within 5 days of receipt of the lender's requirements, notify Buyer whether Seller shall make 101
106 the required repairs at Seller's expense. 101
107 1. If Seller chooses to make repairs, Buyer shall accept the Property and agree to the RELEASE set forth in paragraph 26 of this Agreement. 101
108 2. If Seller chooses not to make the required repairs, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate the 101
109 Agreement of Sale OR make the required repairs at Buyer's expense and with Seller's permission, which shall not be unreasonably with- 101
110 held. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. 111
111 If Buyer terminates this Agreement, all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this 111
112 Agreement of Sale will be NULL and VOID. 111
113 (E) Seller Assist 111
114 NOT APPLICABLE 111
115 APPLICABLE. Seller shall pay: 111
116 \$ 5,000, maximum, toward Buyer's costs as permitted by the mortgage lender. 111
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FHA/VA, IF APPLICABLE

(F) It is expressly agreed that notwithstanding any other provisions of this contract, Buyer shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than \$ _____ (the dollar amount to be inserted is the sales price as stated in the Agreement). Buyer shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable.
Warning: Section 1010 of Title 18, U.S.C., Department of Housing and Urban Development provides, "Whoever for the purpose of . . . influencing in any way the action of such department . . . makes, passes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

(G) U.S. Department of Housing and Urban Development (HUD) NOTICE TO PURCHASERS:
THE IMPORTANCE OF A HOME INSPECTION

HUD does not warrant the condition of a property. (See Notices and Information on Property Condition Inspections.)
(F) Certification We the undersigned, Seller(s) and Buyer(s) party to this transaction each certify that the terms of this contract for purchase are true to the best of our knowledge and belief, and that any other agreement entered into by any of these parties in connection with this transaction is attached to this Agreement of Sale.

7. INSPECTIONS (1-98)

- (A) Seller hereby agrees to permit inspections by authorized appraisers, reputable certifiers, insurer's representatives, surveyors, municipal officials and/or Buyer as may be required by the lending institutions, if any, or insuring agencies. Seller further agrees to permit any other inspections required by or provided for in the terms of this Agreement.
- (B) Buyer reserves the right to make a pre-settlement walk-through inspection of the Property. Buyer's right to make this inspection is not waived by any other provision of this Agreement.
- (C) Seller will have heating and all utilities (including fuel(s)) on for the inspections.

149 ELECTED
150 (A) Within 15 days of the execution of this Agreement, Buyer, at Buyer's expense, may choose to have inspections completed by licensed or otherwise qualified professionals (see Property Inspection and Environmental Notices). Other provisions of this Agreement may provide for inspections and/or certifications that are not waived or altered by Buyer's election here. If Buyer is not satisfied with the condition of the Property as stated in any written report, Buyer will, within the time given for completing inspections:

154 [] Option 1
155 1. Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 26 of this Agreement, OR
156 2. Terminate the Agreement of Sale in writing by notice to Agent for Seller, if any, otherwise to Seller, within the time given for inspection, in which case all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this Agreement will be NULL and VOID.

160 [] Option 2
161 1. Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 26 of this Agreement, UNLESS the total cost to correct the conditions contained in the report(s) is more than \$ 300.00
162 2. If the total cost to correct the conditions contained in the report(s) EXCEEDS the amount specified in paragraph 8(A) (Option 2) 1, Buyer will deliver the report(s) to Agent for Seller, if any, otherwise to Seller, within the time given for inspection.
163 a. Seller will, within 10 days of receiving the report(s), inform Buyer in writing of Seller's choice to:
164 1) Make repairs before settlement so that the remaining cost to repair conditions contained in the report(s) is less than or equal to the amount specified in paragraph 8 (A) (Option 2) 1.
165 2) Credit Buyer at settlement for the difference between the estimated cost of repairing the conditions contained in the report(s) and the amount specified in paragraph 8 (A) (Option 2) 1. This option must be acceptable to the mortgage lender, if any.
166 3) Not make repairs and not credit Buyer at settlement for any defects in conditions contained in the report(s)
167 b. If Seller chooses to make repairs or credit Buyer at settlement as specified in paragraph 8 (A) (Option 2) 2, Buyer shall accept the Property and agree to the RELEASE set forth in paragraph 26 of this Agreement.
168 c. If Seller chooses not to make repairs and not to credit Buyer at settlement, or if Seller fails to choose any option within the time given, Buyer will within 5 days:
169 1) Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 26 of this Agreement, OR
170 2) Terminate the Agreement of Sale in writing by notice to Agent for Seller, if any, otherwise to Seller, in which case all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this Agreement of Sale will be NULL and VOID.

171 (E) Buyer's failure to exercise any of Buyer's options within the time limits specified in this paragraph shall constitute a WAIVER of this contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 26 of this Agreement.

172 10. WOOD DESTROYING INSECT INFESTATION CONTINGENCY (1-98)
173 [] WAIVED Buyer understands that Buyer has the option to request that the Property be inspected for wood infestation by a certified Pest Control Operator. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 26 of this Agreement.
174 [X] ELECTED
175 (A) Within 15 days of the execution of this Agreement,
176 Buyer, at Buyer's expense,
177 [] Buyer, at Seller's expense, not to exceed \$ _____,
178 shall obtain a written "Wood-Destroying Insect Infestation Inspection Report" from a certified Pest Control Operator and will deliver it and all supporting documents and drawings provided by the Pest Control Operator to Agent for Seller, if any, otherwise to Seller. The report is to be made satisfactory to and in compliance with applicable laws, mortgage and lending institutions, and/or Federal Insuring and Guaranteeing Agency requirements, if any. The inspection will include all readily visible and accessible areas of all structures on the Property except the following structures, which will not be inspected: _____
179
180 (B) If the inspection reveals evidence of active infestation(s), Seller agrees, at Seller's expense and before settlement, to treat for active infestation(s), in accordance with applicable laws.
181 (C) If the inspection reveals damage from active infestation(s) or previous infestation(s), Buyer, at Buyer's expense, has the option to obtain a written report by a professional contractor, home inspection service, or structural engineer that is limited to structural damage to the Property caused by wood-destroying organisms and a proposal to repair the damage. Buyer will deliver the structural damage report and corrective proposal to Agent for Seller, if any, otherwise to Seller, within _____ days of delivering the original inspection report.
182 (D) Within 5 days of receiving the structural damage report and corrective proposal, Seller shall advise Buyer whether Seller will repair, at Seller's expense and before settlement, any structural damage from active or previous infestation(s).
183 (E) If Seller chooses to repair structural damage revealed by the report, Buyer agrees to accept the Property as repaired and agrees to the RELEASE set forth in paragraph 26 of this Agreement.
184 (F) If Seller chooses not to repair structural damage revealed by the report, Buyer, within 5 days of receiving Seller's notice, will notify Seller in writing of Buyer's choice to:
185 1. Accept the Property with the defects revealed by the inspection, without abatement of price and agree to the RELEASE set forth in paragraph 26 of this Agreement, OR
186 2. Make the repairs before settlement, if required by the mortgage lender, if any, at Buyer's expense and with Seller's permission, which shall not be unreasonably withheld, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 26 of this Agreement. If Seller denies Buyer permission to make the repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this Agreement of Sale will be NULL and VOID. OR
187 3. Terminate this Agreement, in which case all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this Agreement of Sale will be NULL and VOID.
188 (G) Buyer's failure to exercise any of Buyer's options within the time limits specified in this paragraph shall constitute a WAIVER of this contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 26 of this Agreement.

189 11. CERTIFICATE OF OCCUPANCY (1-98)
190 [X] NOT APPLICABLE
191 [] APPLICABLE
192 (A) Buyer and Seller acknowledge that a certificate permitting occupancy of the Property may be required by the municipality and/or governmental authority.
193 (B) If a certificate is required, Seller shall, at Seller's expense and within _____ days of the execution of this Agreement, order the certificate for delivery to Buyer on or before settlement.
194 (C) In the event repairs/improvements are required for the issuance of the certificate, Seller shall, within 5 days of Seller's receipt of the requirements, notify Buyer of the requirements and whether Seller shall make the required repairs/improvements at Seller's expense.
195 (D) If Seller chooses not to make the required repairs/improvements, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate the Agreement of Sale OR make the repairs/improvements at Buyer's expense and with Seller's permission, which shall not be unreasonably withheld. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this Agreement of Sale will be NULL and VOID.

196 12. RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT NOTICE REQUIRED FOR PROPERTIES BUILT BEFORE 1978 (1-98)
197 [] NOT APPLICABLE
198 [X] APPLICABLE
199 (A) Seller represents that: (check 1 OR 2)
200 [X] 1. Seller has no knowledge concerning the presence of lead-based paint and/or lead-based paint hazards in or about the Property.
201 [] 2. Seller has knowledge of the presence of lead-based paint and/or lead-based paint hazards in or about the Property. (Provide the basis for determining that lead-based paint and/or hazards exist, the location(s), the condition of the painted surfaces, and other available information concerning Seller's knowledge of the presence of lead-based paint and/or lead based paint hazards.) _____

247 Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in or about the Property. 24

248 Seller has provided Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in or about 24

249 the Property. (List documents) _____ 24

250 _____ 25

251 (C) Buyer's Acknowledgment 25

252 1. Buyer has received the pamphlet *Protect Your Family from Lead in Your Home* and has read the Lead Warning Statement contained in this 25

253 Agreement (See Environmental Notices). 25

254 Buyer's Initials CC, DC Date 10-19-98 25

255 2. Buyer has reviewed Seller's disclosure of known lead-based paint and/or lead-based paint hazards, as identified in paragraph 11(A) and 25

256 has received the records and reports pertaining to lead-based paint and/or lead-based paint hazards identified in paragraph 11(B). 25

257 Buyer's Initials _____ Date _____ 25

258 (D) RISK ASSESSMENT/INSPECTION. Buyer acknowledges that before Buyer is obligated to buy a residential dwelling built before 1978, 25

259 Buyer has a 10 day period (unless Buyer and Seller agree in writing to a different period of time) to conduct a risk assessment or inspection of 25

260 the Property for the presence of lead-based paint and/or lead-based paint hazards. 26

261 WAIVED. Buyer understands that Buyer has the right to conduct a risk assessment or inspection of the Property to determine the presence of 26

262 lead-based paint and/or lead-based paint hazards. BUYER WAIVES THIS RIGHT and agrees to the RELEASE set forth in paragraph 26 of 26

263 this Agreement. 26

264 ELECTED 26

265 1. Buyer, at Buyer's expense, chooses to obtain a risk assessment and/or inspection of the Property for lead-based paint and/or lead-based 26

266 paint hazards. The risk assessment and/or inspection shall be completed within _____ days of the execution of this Agreement of Sale 26

267 (insert "10" unless Buyer and Seller agree to a different period of time). 26

268 2. Within the time set forth above for obtaining the risk assessment and/or inspection of the Property for lead-based paint and/or 26

269 lead-based paint hazards, Buyer may deliver to Agent for Seller, if any, otherwise to Seller, a written list of the specific hazardous 26

270 conditions cited in the report and those corrections requested by Buyer, along with a copy of the risk assessment and/or inspection report. 27

271 3. Seller may, within _____ days of receiving the list and report(s), submit a written corrective proposal to Buyer. The corrective proposal 27

272 will include, but not be limited to, the name of the remediation company and a completion date for corrective measures. Seller will provide 27

273 certification from a risk assessor or inspector that corrective measures have been made satisfactorily on or before the completion date. 27

274 4. Upon receiving the corrective proposal, Buyer, within 5 days, will: 27

275 a. Accept the corrective proposal and the Property in writing, and agree to the RELEASE set forth in paragraph 26 of this Agreement, 27

276 OR 27

277 b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price shall be returned promptly 27

278 to Buyer and this Agreement of Sale will be NULL and VOID. 27

279 5. Should Seller fail to submit a written corrective proposal within the time set forth in paragraph 11(D)3 of this Agreement, then Buyer, 27

280 within 5 days, will: 28

281 a. Accept the Property in writing, and agree to the RELEASE set forth in paragraph 26 of this Agreement, OR 28

282 b. Terminate this Agreement of Sale in writing, in which case all deposit monies paid on account of purchase price shall be returned 28

283 promptly to Buyer and this Agreement of Sale will be NULL and VOID. 28

284 c. Buyer's failure to exercise any of Buyer's options within the time limits specified in this paragraph shall constitute a WAIVER of 28

285 this contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 26 of this Agreement. 28

286 (E) Certification. By signing this Agreement, Buyer and Seller certify the accuracy of their respective statements, to the best of their knowledge. 28

287 12. RADON CONTINGENCY (1-98) 28

288 (A) Seller represents that: (check appropriate response(s)) 28

289 Seller has no knowledge concerning the presence or absence of radon. 28

290 Seller has knowledge that the Property was tested on the date(s), by the methods (e.g., charcoal canister, alpha track, etc.), and with the 29

291 results of all tests indicated below: 29

292 DATE METHOD RESULTS (picoCuries/liter or working levels) 29

293 _____ 29

294 _____ 29

295 _____ 29

296 COPIES OF ALL AVAILABLE TEST REPORTS will be delivered to Buyer with this Agreement. SELLER DOES NOT WARRANT 29

297 EITHER THE METHODS OR RESULTS OF THE TESTS. 29

298 3. Seller has knowledge that the Property underwent radon reduction measures on the date(s) and by the method(s) indicated below: 29

299 DATE RADON REDUCTION METHOD 29

300 _____ 30

301 _____ 30

302 _____ 30

303 WAIVED. Buyer understands that Buyer has the option to request that the Property be inspected for radon by a certified inspector (see Radon 30

304 Notice). BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 26 of this Agreement. 30

305 ELECTED 30

306 (B) Buyer, at Buyer's expense, has the option to obtain, from a certified inspector, a radon test of the Property and will deliver a copy of the test 30

307 report to Agent for Seller, if any, otherwise to Seller, within _____ days of the execution of this Agreement. (See Radon Notice.) 30

308 1. If the test report reveals the presence of radon below 0.02 working levels (4 picoCuries/liter), Buyer accepts the Property and agrees to the 30

309 RELEASE set forth in paragraph 26 of this Agreement. 30

310 2. If the test report reveals the presence of radon at or exceeding 0.02 working levels (4 picoCuries/liter), Buyer will, within _____ days 31

311 of receipt of the test results: 31

312 Option 1 31

313 a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 26 of this Agreement, OR 31

314 b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price shall be returned promptly 31

315 to Buyer and this Agreement of Sale will be NULL and VOID, OR 31

316 c. Submit a written, corrective proposal to Agent for Seller, if any, otherwise to Seller. The corrective proposal will include, but not be 31

317 limited to, the name of the certified mitigation company; provisions for payment, including retests; and completion date for correc- 31

318 tive measures. 31

319 1) Within 5 days of receiving the corrective proposal, Seller will: 31

320 a) Agree to the terms of the corrective proposal in writing, in which case Buyer accepts the Property and agrees to the 32

321 RELEASE set forth in paragraph 26 of this Agreement, OR 32

322 b) Not agree to the terms of the corrective proposal. 32

332 Option 2
333 a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 26 of this Agreement, OR
334 b. Submit a written, corrective proposal to Agent for Seller, if any, otherwise to Seller. The corrective proposal will include, but not be
335 limited to, the name of the certified mitigation company; provisions for payment, including retests; and completion date for correc-
336 tive measures. Seller shall pay a maximum of \$ _____ toward the total cost of remediation and retests, which shall be
337 completed by settlement.
338 1) If the total cost of remediation and retests EXCEEDS the amount specified in paragraph 12(B) (Option 2) b, Seller will, within
339 5 days of receipt of the cost of remediation, notify Buyer of Seller's choice to pay for the total cost of remediation and retests
340 OR not pay for the total cost of remediation and retests.
341 2) If the Seller chooses not to pay for the total cost of remediation and retests, Buyer will, within 5 days of receipt of Seller's
342 notification, notify Seller, in writing, of Buyer's choice to:
343 a) Pay the difference between Seller's contribution to remediation and retests and the actual cost thereof, in which case
344 Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 26 of this Agreement, OR
345 b) Terminate this Agreement, in which case all deposit monies paid on account of purchase price shall be returned promptly
346 to Buyer and this Agreement of Sale will be NULL and VOID.
347 (C) Buyer's failure to exercise any of Buyer's options within the time limits specified in this paragraph shall constitute a WAIVER of this
348 contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 26 of this Agreement.

349 13. STATUS OF WATER (1-98)
350 (A) Seller represents that this property is served by:
351 Public Water
352 On-site Water
353 Community Water
354 None
355

356 (B) WATER SERVICE INSPECTION CONTINGENCY
357 WAIVED. Buyer acknowledges that Buyer has the option to request an inspection of the water service for the Property. BUYER WAIVES
358 THIS OPTION and agrees to the RELEASE set forth in paragraph 26 of this Agreement.
359 ELECTED
360 1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Agent for Seller, if
361 any, otherwise to Seller, a written inspection report by a qualified, professional water testing company of the quality and/or
362 quantity of the water service.
363 2. Seller agrees to locate and provide access to the on-site (or individual) water system, if applicable, at Seller's expense, if required by the
364 inspection company. Seller also agrees to restore the Property prior to settlement.
365 3. If the report reveals that the water service does not meet the minimum standards of any applicable governmental authorities and/or fails to
366 satisfy the requirements for quality and/or quantity set by the mortgage lender, if any, then Seller shall, within _____ days of receipt of
367 the report, notify Buyer in writing of Seller's choice to:
368 a. Upgrade the water service to the minimum acceptable levels, before settlement, in which case Buyer accepts the Property and agrees
369 to the RELEASE set forth in paragraph 26 of this Agreement, OR
370 b. Not upgrade the water service.
371 4. If Seller chooses not to upgrade the water service to minimum acceptable levels, Buyer will, within _____ days of Seller's notice
372 not to correct, either:
373 a. Accept the Property and the water service and, if required by the mortgage lender, if any, and/or any governmental authority, upgrade
374 the water service before settlement or within the time required by the mortgage lender, if any, and/or any governmental authority, at
375 Buyer's expense and with Seller's permission, which shall not be unreasonably withheld, and agree to the RELEASE set forth in
376 paragraph 26 of this Agreement. If Seller denies Buyer permission to upgrade the water service, Buyer may, within 5 days of Seller's
377 denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price shall be
378 returned promptly to Buyer and this Agreement of Sale will be NULL and VOID. OR
379 b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price shall be returned promptly to Buyer
380 and this Agreement of Sale will be NULL and VOID.
381 5. Buyer's failure to exercise any of Buyer's options within the time limits specified in this paragraph shall constitute a WAIVER of
382 this contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 26 of this Agreement.

383 14. STATUS OF SEWER (1-98)
384 (A) Seller represents that Property is served by:
385 Public Sewer
386 Individual On-lot Sewage Disposal System (See Sewage Notice 1)
387 Individual On-lot Sewage Disposal System in Proximity to Well (See Sewage Notice 1; see Sewage Notice 4, if applicable)
388 Community Sewage Disposal System
389 Ten-acre Permit Exemption (See Sewage Notice 2)
390 Holding Tank (See Sewage Notice 3)
391 None (See Sewage Notice 1)
392 None Available/Permit Limitations in Effect (See Sewage Notice 5)
393

394 (B) INDIVIDUAL ON-LOT SEWAGE DISPOSAL INSPECTION CONTINGENCY
395 WAIVED. Buyer acknowledges that Buyer has the option to request an individual on-lot sewage disposal inspection of the Property. BUYER
396 WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 26 of this Agreement.
397 ELECTED
398 1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Agent for Seller, if
399 any, otherwise to Seller, a written inspection report by a qualified, professional inspector of the individual on-lot sewage disposal system.
400 2. Seller agrees to locate and provide access to the individual on-lot sewage disposal system, and, if required by the inspection company,
401 empty the septic tank, at Seller's expense. Seller also agrees to restore the Property prior to settlement.
402 3. If the report reveals defects that do not require expansion or replacement of the existing sewage disposal system, Seller shall, within
403 _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:
404 a. Correct the defects before settlement, including retests, at Seller's expense, in which case Buyer accepts the Property and agrees to
405 the RELEASE set forth in paragraph 26 of this Agreement, OR
406 b. Not correct the defects, in which case Buyer will, within _____ days of Seller's notice not to correct the defects, either:
407 1) Accept the Property and the system and, if required by the mortgage lender, if any, and/or any governmental authority, correct
408 the defects before settlement or within the time required by the mortgage lender, if any, and/or any governmental authority, at
409 Buyer's sole expense and with Seller's permission, which shall not be unreasonably withheld, and agree to the RELEASE set
410 forth in paragraph 26 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of
411 Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase
412 price shall be returned promptly to Buyer and this Agreement of Sale will be NULL and VOID. OR
413 2) Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price shall be returned
414 promptly to Buyer and this Agreement of Sale will be NULL and VOID.
415 4. If the report reveals the need to expand or replace the existing individual on-lot sewage disposal system, Seller may, within _____ days
416 of receipt of the report, submit a corrective proposal to Agent for Buyer, if any, otherwise to Buyer. The corrective proposal will include,
417 but not be limited to, the name of the remediation company; provisions for payment, including retests; and completion date for corrective
418 measures. Within 5 days of receiving Seller's corrective proposal, or if no corrective proposal is received within the given time, Buyer
419 will:
420 a. Agree to the terms of the corrective proposal, if any, in writing, in which case Buyer accepts the Property and agrees to the RELEASE
421 set forth in paragraph 26 of this Agreement, OR
422

423 Buyer Initials: PCDL A/S Residential Page 5 of 8 Seller Initials: [Signature]

429 c. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this Agreement of Sale will be NULL and VOID. 430

431 5. Buyer's failure to exercise any of Buyer's options within the time limits specified in this paragraph shall constitute a WAIVER of 431
432 this contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 26 of this Agreement. 432

433 15. NOTICES & ASSESSMENTS (1-98) 433

434 (A) Seller represents as of Seller's execution of this Agreement, that no public improvement, condominium or homeowner association assessments 434
435 have been made against the Property which remain unpaid and that no notice by any government or public authority has been served upon Seller 435
436 or anyone on Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances which remain 436
437 uncorrected, and that Seller knows of no condition that would constitute violation of any such ordinances which remains uncorrected, unless 437
438 otherwise specified here: NONE 438

439 (B) Seller knows of no other potential notices and assessments except as follows: NONE 439
440 440

441 (C) In the event notices and assessments are received after execution of this Agreement and before settlement, Seller will notify Buyer in writing, 441
442 within 5 days of receiving the notice or assessment, that Seller shall: 442

443 1. Comply with notices and assessments at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth 443
444 in paragraph 26 of this Agreement, OR 444

445 2. NOT comply with notices and assessments at Seller's expense, in which case Buyer will notify Seller within 5 days in writing that 445
446 Buyer shall: 446

447 a. Comply with the notices and assessments at Buyer's expense and agree to the RELEASE set forth in paragraph 26 of this Agreement, 447
448 OR 448

449 b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price shall be returned promptly to Buyer 449
450 and this Agreement of Sale will be NULL and VOID. 450

451 If Buyer fails to notify Seller within the given time, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 451
452 26 of this Agreement. 452

453 (D) Buyer is advised that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation. 453

454 (E) If required by law, Seller shall deliver to Agent for Buyer, if any, otherwise to Buyer, on or before settlement, a certification from the appropriate 454
455 municipal department or departments disclosing notice of any uncorrected violation of zoning, housing, building, safety or fire ordinances. 455

456 16. TITLE, SURVEYS, AND COSTS (1-98) 456

457 (A) The Property is to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER the following: existing 457
458 deed restrictions, building restrictions, ordinances, easements of roads, easements visible upon the ground, easements of record, privileges or 458
459 rights of public service companies, if any; otherwise the title to the above described real estate shall be good and marketable and such as will 459
460 be insured by a reputable Title Insurance Company at the regular rates. 460

461 (B) In the event Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Company at the regular rates, 461
462 as specified in paragraph 16(A), Buyer shall have the option of taking such title as Seller can give without changing the price or of being repaid 462
463 all monies paid by Buyer to Seller on account of purchase price and Seller shall reimburse Buyer for any costs incurred by Buyer for those items 463
464 specified in paragraph 16(C) and in paragraph 16(D) items (1), (2), (3); and in the latter event there shall be no further liability or obligation on 464
465 either of the parties hereto and this Agreement shall become NULL and VOID. 465

466 (C) Any survey or surveys which may be required by the Title Insurance Company or the abstracting attorney, for the preparation of an adequate 466
467 legal description of the Property (or the correction thereof), shall be secured and paid for by Seller. However, any survey or surveys desired by 467
468 Buyer or required by the mortgage lender shall be secured and paid for by Buyer. 468

469 (D) Buyer shall pay for the following: (1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of same, if any; 469
470 (2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; 470
471 (3) Appraisal fees and charges paid in advance to mortgage lender, if any; (4) Buyer's customary settlement costs and accruals. 471

472 17. ZONING CLASSIFICATION (1-98) 472

473 Failure of this Agreement to contain the zoning classification (except in cases where the property [and each parcel thereof, if subdividable] is 473
474 zoned solely or primarily to permit single-family dwellings) shall render this Agreement voidable at the option of the Buyer, and, if voided, any 474
475 deposits tendered by the Buyer shall be returned to the Buyer without any requirement for court action. 475

476 Zoning Classification: R-1 476

477 ELECTED. Within _____ days of the execution of this Agreement, Buyer will verify that the existing use of the Property as 477
478 _____ is permitted. In the event the use is not permitted, Buyer will, within the time given for 478
479 verification, notify Agent for Seller, if any, otherwise Seller, in writing that the existing use of the Property is not permitted and this Agreement 479
480 will be NULL and VOID, in which case all deposit monies paid on account of purchase price shall be returned promptly to Buyer. Buyer's failure 480
481 to respond within the given time shall constitute a WAIVER of this contingency and all other terms of this Agreement of Sale remain 481
482 in full force and effect. 482

483 18. COAL NOTICE 483

484 NOT APPLICABLE 483

485 APPLICABLE 484

486 THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHTS OF SUPPORT UNDERNEATH THE SURFACE LAND 486
487 DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL SUCH COAL AND 487
488 IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This 488
489 notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.) "Buyer acknowledges that he may not be obtaining the 489
490 right of protection against subsidence resulting from coal mining operations, and that the property described herein may be protected from damage 490
491 due to mine subsidence by a private contract with the owners of the economic interests in the coal. This acknowledgment is made for the purpose of 491
492 complying with the provisions of Section 14 of the Bituminous Mine Subsidence and the Land Conservation Act of April 27, 1966." Buyer agrees 492
493 to sign the deed from Seller which deed will contain the aforesaid provision. 493

494 19. POSSESSION (1-98) 494

495 (A) Possession is to be delivered by deed, keys and: 495

496 1. Physical possession to a vacant building (if any) broom clean, free of debris at day and time of settlement, AND/OR 496
497 2. Assignment of existing lease(s), together with any security deposits and interest, at time of settlement, if Property is tenant occupied at the 497
498 execution of this Agreement or unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at 498
499 time of signing of this Agreement of Sale, if Property is tenant occupied. 499

500 (B) Seller shall not enter into any new leases, written extension of existing leases, if any, or additional leases for the Property without expressed 500
501 written consent of Buyer. 501

502 20. RECORDING (3-85) This Agreement shall not be recorded in the Office for the Recording of Deeds or in any other office or place of public record 502
503 and if Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a breach of this Agreement. 503

504 21. ASSIGNMENT (3-85) This Agreement shall be binding upon the parties, their respective heirs, personal representatives, guardians and successors, 504
505 and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that Buyer shall not transfer or assign this 505
506 Agreement without the written consent of Seller. 506

507 22. DEPOSIT AND RECOVERY FUND (1-98) 507

508 (A) Deposits paid by Buyer within 30 days of settlement shall be by cashier's or certified check. Deposits, regardless of the form of payment and 508
509 the person designated as payee, shall be paid to Agent identified in paragraph 3(F), who shall retain them in an escrow account until consum- 509
510 mation or termination of this Agreement in conformity with all applicable laws and regulations. Agent may hold any uncashed check tendered 510
511 as a deposit pending the acceptance of this offer. 511

512 (B) In the event of a dispute over entitlement to deposit monies, the Agent holding the deposit is required by the Rules and Regulations of the State 512
513 Real Estate Commission (49 Pa. Code §35.327) to retain the monies in escrow until the dispute is resolved. In the event of litigation for the 513
514 return of deposit monies, Agent shall distribute the monies as directed by a final order of court or the written Agreement of the parties. Buyer 514
515 and Seller agree that, in the event any Agent herein is joined in litigation for the return of deposit monies, the attorneys' fees and costs of the 515
516 Agent(s) will be paid by the party joining the Agent. 516
517 517
518 518
519 519

520 Buyer Initials: W.D.C. A/S Residential Page 6 of 8 Seller Initials: W.D. 520



527 23. APPLICABLE 527

528 (A) Buyer acknowledges that the Property is a unit of a condominium that is primarily run by a unit owners' association. 528

529 (B) §3407 of the Uniform Condominium Act of Pennsylvania requires Seller to furnish Buyer with a Certificate of Resale and copies of the condo- 529

530 minium declaration (other than plats and plans), the bylaws, and the rules and regulations of the association. 530

531 (C) Within _____ days of the execution of this Agreement, Seller shall submit a request to the association for a Certificate of Resale and the doc- 531

532 uments necessary to enable Seller to comply with the Act. The Act provides that the association is required to provide these documents within 532

533 10 days of Seller's request. 533

534 (D) Under the Act, Seller is not liable to Buyer for the failure or delay of the association to provide the Certificate in a timely manner, nor is Seller 534

535 liable to Buyer for any erroneous information provided by the association and included in the Certificate. 535

536 (E) Buyer may declare the Agreement of Sale VOID at any time before Buyer's receipt of the Certificate of Resale and for 5 days thereafter, OR 536

537 until settlement, whichever occurs first. Buyer's notice declaring the Agreement void must be in writing; thereafter all deposit monies shall be 537

538 returned to Buyer. 538

539 24. PLANNED COMMUNITY (HOMEOWNER ASSOCIATION) NOTICE FOR PURPOSES OF RESALE ONLY (1-97) 539

540 NOT APPLICABLE 540

541 APPLICABLE 541

542 (A) Buyer acknowledges that the Property is part of a planned community as defined by the Uniform Planned Community Act. (See Definition of 542

543 Planned Community Notice for the definition contained in the Act). 543

544 (B) §5407(a) of the Act requires Seller to furnish Buyer with a copy of the Declaration (other than plats and plans), the bylaws, the rules and regu- 544

545 lations of the association, and a Certificate containing the provisions set forth in §5407(a) of the Act. 545

546 (C) Within _____ days of the execution of this agreement, Seller shall submit a request to the association for a Certificate and the documents nec- 546

547 essary to enable Seller to comply with the Act. The Act provides that the association is required to provide these documents within 10 days of 547

548 Seller's request. 548

549 (D) Under the Act, Seller is not liable to Buyer for the failure or delay of the association to provide the Certificate in a timely manner, nor is Seller 549

550 liable to Buyer for any erroneous information provided by the Association and included in the Certificate. 550

551 (E) Buyer may declare the Agreement of Sale VOID at any time before Buyer's receipt of the association documents and for 5 days thereafter, OR 551

552 until settlement, whichever occurs first. Buyer's notice declaring the Agreement void must be in writing; thereafter all deposit monies shall be 552

553 returned to Buyer. 553

554 25. MAINTENANCE AND RISK OF LOSS (1-98) 554

555 (A) Seller shall maintain the Property, grounds, fixtures, and any personal property specifically scheduled herein in its present condition, normal 555

556 wear and tear excepted. 556

557 (B) In the event any system or appliance included in the sale of the Property fails and Seller does not repair or replace the item, Seller will promptly 557

558 notify Buyer in writing of Seller's choice to: 558

559 1. Repair or replace the failed system or appliance before settlement or credit Buyer at settlement for the fair market value of the failed sys- 559

560 tem or appliance (this option must be acceptable to the mortgage lender, if any). In each case, Buyer accepts the Property and agrees to 560

561 the RELEASE set forth in paragraph 26 of this Agreement. 561

562 2. Make no repairs or replacements, and not credit Buyer at settlement for the fair market value of the failed system or appliance, in which 562

563 case Buyer will notify Seller in writing within 5 days or before settlement, whichever is sooner, that Buyer shall: 563

564 a. Accept the Property and agree to the RELEASE set forth in paragraph 26 of this Agreement, OR 564

565 b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price shall be returned promptly to Buyer 565

566 and this Agreement of Sale will be NULL and VOID. 566

567 (C) Seller shall bear risk of loss from fire or other casualties until time of settlement. In the event of damage by fire or other casualties to any prop- 567

568 erty included in this sale that is not repaired or replaced prior to settlement, Buyer shall have the option of rescinding this Agreement and 568

569 promptly receiving all monies paid on account of purchase price or of accepting the Property in its then condition together with the proceeds 569

570 of any insurance recovery obtainable by Seller. Buyer is hereby notified that Buyer may insure Buyer's equitable interest in this Property as of 570

571 the time of execution of this Agreement. 571

572 Buyer's failure to exercise any of Buyer's options within the time limits specified in this paragraph shall constitute a WAIVER of this con- 572

573 tingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 26 of this Agreement. 573

574 26. RELEASE (7-96) — Buyer hereby releases, quit claims and forever discharges SELLER, ALL AGENTS, their SUBAGENTS, EMPLOY- 574

575 EES, and any OFFICER or PARTNER of any one of them and any other PERSON, FIRM, or CORPORATION who may be liable by or 575

576 through them, from any and all claims, losses or demands, including, but not limited to, personal injuries and property damage and all of 576

577 the consequences thereof, whether now known or not, which may arise from the presence of termites or other wood-boring insects, radon, 577

578 lead-based paint hazards, environmental hazards, any defects in the individual on-lot sewage disposal system or deficiencies in the on-site 578

579 water service system, or any defects or conditions on the Property. This release shall survive settlement. 579

580 27. REPRESENTATIONS (1-98) 580

581 (A) Buyer understands that any representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller, Agents 581

582 or their employees are not a part of this Agreement, unless expressly incorporated or stated in this Agreement. 582

583 (B) It is understood that Buyer has inspected the Property before signing this Agreement of Sale (including fixtures and any personal prop- 583

584 erty specifically scheduled herein), or has waived the right to do so, and has agreed to purchase it in its present condition unless 584

585 otherwise stated in this Agreement. Buyer acknowledges that the Agents have not made an independent examination or determination 585

586 of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, or 586

587 of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the systems 587

588 contained therein. 588

589 (C) It is further understood that this Agreement contains the whole agreement between Seller and Buyer and there are no other terms, obligations, 589

590 covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this 590

591 Agreement shall not be altered, amended, changed, or modified except in writing executed by the parties. 591

592 (D) The headings, captions, and line numbers in this Agreement are meant only to make it easier to find the paragraphs. 592

593 28. DEFAULT-TIME OF THE ESSENCE (1-98) 593

594 The said time for settlement and all other times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be 594

595 of the essence of this Agreement. For the purposes of this Agreement, number of days shall be counted from the date of execution, by excluding the 595

596 day this Agreement was executed and including the last day of the time period. Should Buyer: 596

597 (A) Fail to make any additional payments as specified in paragraph 3; OR 597

598 (B) Furnish false or incomplete information to Seller, Agent for Seller, Agent for Buyer, or the mortgage lender, if any, concerning Buyer's legal or 598

599 financial status, or fail to cooperate in the processing of the mortgage loan application, which acts would result in the failure to obtain the 599

600 approval of a mortgage loan commitment; OR 600

601 (C) Violate or fail to fulfill and perform any other terms or conditions of this Agreement; 601

602 then in such case, Seller shall have the option of retaining all deposit monies and other sums paid by Buyer on account of purchase price, 602

603 whether required by this Agreement or not, only as elected below: (Check only one) 603

604 As liquidated damages. In this event Buyer and Seller shall be released from further liability or obligation and this Agreement shall be 604

605 NULL and VOID. 605

606 On account of purchase price, or as monies to be applied to Seller's damages, or as liquidated damages for such breach, as Seller may 606

607 elect. In the event of liquidated damages, Buyer and Seller shall be released from further liability or obligation and this Agreement shall 607

608 be NULL and VOID. 608

609 29. AGENT(S) (1-98) It is expressly understood and agreed between the parties that the named Agent for Seller, any Subagents, their salespeople, 609

610 employees, officers and/or partners, are Agent(s) for Seller, and that the named Agent for the Buyer, their salespeople, employees, officers and/or 610

611 partners, are Agent(s) for Buyer. If there is no Agent for Buyer, Agent for Seller or Subagent for Seller may perform services for Buyer in connec- 611

612 tion with financing, insurance and document preparation, with written disclosure to Buyer and Seller. 612

613 613

614 614

615 615

616 616

617 Buyer Initials: DC RA

Seller Initials: JL



623 (A) Buyer and Seller will try to resolve any dispute or claim that may arise from this Agreement of Sale through mediation, in accordance with the
624 Rules and Procedures of the Home Sellers/Home Buyers Dispute Resolution System. Any agreement reached through a mediation conference
625 and signed by the parties will be binding.
626 (B) Buyer and Seller acknowledge that they have received, read, and understand the Rules and Procedures of the Home Sellers/Home Buyers
627 Dispute Resolution System. (See Mediation Notice.)
628 (C) This agreement to mediate disputes arising from this Agreement shall survive settlement.

630 Buyer and Seller acknowledge that they have read and understand the notices and explanatory information regarding property condition inspec-
631 tions set forth on the back of this form.

632
633 NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT. Return by facsimile transmission (FAX) of this
634 Agreement of Sale, and all addenda, bearing the signatures of all parties, constitutes acceptance of this Agreement. Parties to this transaction
635 are advised to consult an attorney before signing if they desire legal advice.

636
637 WITNESS Barton A. Whiting BUYER Richard B. Comfort DATE 10-19-98
638 WITNESS Barton A. Whiting BUYER Richard B. Comfort DATE 10-19-98
639 WITNESS _____ BUYER _____ DATE _____

641
642 Seller hereby approves the above contract this 19th day of October A.D. 1998
643 and in consideration of the services rendered in procuring the Buyer, Seller agrees to pay the named Agent for Seller a fee of _____
644 off from the herein specified sale price. In the event Buyer defaults hereunder, any monies paid on account shall be divided 100% to TD
645 Seller, _____, Agent for Seller, but in no event will the sum paid to the Agent for Seller be in excess of the above specified
646 Agent's fee.

647
648 WITNESS Barton A. Whiting SELLER Richard B. Comfort DATE 10-19-98
649 WITNESS _____ SELLER _____ DATE _____
650 WITNESS _____ SELLER _____ DATE _____

651
652 Services to Buyer
653 In conjunction with this Agreement of Sale, by initialing below, Buyer authorizes Subagent for Seller, if any, or Agent for Seller to perform the following
654 services on Buyer's behalf:

655 _____ Order Title Insurance from any reputable Title Insurance Company.
656 Buyer's Initials _____
657
658 _____ Order Homeowner's Insurance with coverage in the amount of \$ _____
659 Buyer's Initials _____
660
661 _____ Order Fire & Extended Coverage Insurance with coverage in the amount of \$ _____
662 Buyer's Initials _____
663
664 _____ Order Flood Insurance with coverage in the amount of \$ _____
665 Buyer's Initials _____
666
667 _____ Buyer's Services _____ Fee: \$ _____
668 Buyer's Initials _____
669
670 _____
671 Buyer's Initials _____
672

673
674 Seller's Acknowledgment
675 _____ Seller acknowledges receipt of a separate Buyer's services agreement with Agent for Seller or Subagent for Seller.
676 Seller's Initials _____
677

678
679 Broker/Agent's Certifications (check all that are applicable):
680 Regarding Lead-Based Paint Hazards Disclosure: Required if Property was built before 1978: The undersigned Agents involved in this
681 transaction, on behalf of themselves and their brokers, certify that their statements are true to the best of their knowledge and belief.
682 Agents' Acknowledgment: The Agents involved in this transaction have informed Seller of Seller's obligations under The Residential Lead
683 Paint Hazard Reduction Act, 42 U.S.C. 4852(d), and are aware of their responsibility to ensure compliance.
684
685 Regarding FHA Mortgages: The undersigned Agents involved in this transaction, on behalf of themselves and their brokers, certify that the
686 terms of this contract for purchase are true to the best of their knowledge and belief, and that any other agreement entered into by any of these
687 parties in connection with this transaction is attached to this Agreement of Sale.
688
689 Regarding Mediation: The undersigned
690 Agent for Seller Agent for Buyer Subagent for Seller
691 on behalf of themselves and their brokers, agree to submit to mediation in accordance with paragraph 30 of this Agreement.
692
693

694 AGENT FOR SELLER (Company Name) _____
695 ACCEPTED BY _____ DATE _____
696 (Signature of Broker or Salesperson)

697
698
699 SUBAGENT FOR SELLER (Company Name) _____
700 ACCEPTED BY _____ DATE _____
701 (Signature of Broker or Salesperson)

702
703
704 AGENT FOR BUYER (Company Name) _____
705 ACCEPTED BY _____ DATE _____
706 (Signature of Broker or Salesperson)

707
708
709
710 Buyer Initials: RC DC A/S Residential Page 8 of 8 Seller Initials: RC
711

Please complete this form, detach, and return it to your sales associate.

DISCLOSURE ACKNOWLEDGMENT & AGENCY AUTHORIZATION

I/We RACHAEL + DAVID COMFORT, acknowledge receipt of the Consumer Guide to Real Estate Services brochure from Coldwell Banker.

Having read and understood the information about real estate agency for buyers and sellers, I/We authorize Coldwell Banker and

BARBARA WILKINSON (Agent Name) to represent me in this transaction as:

- Agent for the Seller
 Agent for the Buyer

Additional Consent to Dual Agency

We also authorize Coldwell Banker to act as agent for both seller and buyer if a property whose seller is represented by Coldwell Banker is to be presented or sold to a buyer also represented by Coldwell Banker in that transaction. We understand and consent to the dual agency relationship and limitations described in the Consumer Guide to Real Estate Services brochure.

I/We acknowledge that we have reviewed and signed this acknowledgment before signing any offer to purchase, or acceptance of an offer to purchase property.

Further, I/we have read the Affiliated Business Arrangement disclosure information and understand that Coldwell Banker may refer me/us to the settlement service providers listed in that disclosure. Coldwell Banker may receive a financial or other benefit as the result of that referral.

Sellers Signature Date
Sellers Signature Date
Agents Signature Date

Buyers Signature Date
Buyers Signature Date
Agents Signature Date

Broker's Copy

SELLER INFORMATION

Seller(s) Name(s): Kathy S Interval

Property Address (Mailing Address and Municipality of Property) (hereinafter referred to as the "Property"):

713 Weirich Ave, Washington, PA 15301Approximate Age of Property: 38-40 Years Seller has owned Property: 11 years

NOTICE TO PARTIES

A Seller must disclose to a Buyer all known material defects about the Property being sold that are not readily observable. This Disclosure Statement is designed to assist the Seller in complying with disclosure requirements and to assist the Buyer in evaluating the Property being considered.

This statement discloses the Seller's knowledge of the condition of the Property as of the date signed by the Seller and is not a substitute for any inspections or warranties that the Buyer may wish to obtain. This statement is not a warranty of any kind by the Seller or a warranty or representation by any listing real estate broker, any selling real estate broker or their agents. The Buyer is encouraged to address concerns about the conditions of the Property that may not be included in this statement. This statement does not relieve the Seller of the obligation to disclose a material defect that may not be addressed on this form.

If an item of information is unknown or not available to Seller and Seller has made an effort to ascertain it, Seller may make a disclosure based on the best information available provided it is identified as a disclosure based on an incomplete factual basis.

A material defect is a problem with the Property or any portion of it that would have a significant adverse impact on the value of the residential real Property or that INVOLVES AN UNREASONABLE RISK TO PEOPLE ON THE LAND.

1. SELLER'S EXPERTISE

The Seller does not possess expertise in contracting, engineering, architecture or other areas related to the construction and conditions of the Property and its improvements, except as follows:

2. OCCUPANCY

(a) Do you, the Seller, currently occupy this Property? Yes No If "No", when did you last occupy the Property? _____ YEAR(b) Is the Property zoned for single family residential use? Yes No Unknown

3. ROOF

(a) Date roof was installed: September 1998 Documented: Yes No Unknown (b) Has the roof been replaced or repaired during your ownership? Yes No (c) Has the roof ever leaked during your ownership? Yes No (d) Do you know of any problems with the roof, gutters or downspouts? Yes No

Explain any "Yes" answers that you give in this section: _____

4. BASEMENTS, GARAGES AND CRAWL SPACES (COMPLETE ONLY IF APPLICABLE).

(a) Does the Property have a sump pump or grinder pump? Yes No Unknown (b) Are you aware of any water leakage, accumulation or dampness within the basement, garage or crawl space? Yes No If "Yes", describe in detail: Dampness in Basement(c) Do you know of any repairs or other attempts to control any water or dampness problem in the basement, garage or crawl space? Yes No

If "Yes", describe the location, extent, date and name of the person who did the repair or control effort: _____

5. TERMITES/WOOD DESTROYING INSECTS, DRY ROT, PESTS

(a) Are you aware of any termites/wood destroying insects, dry rot or pests affecting the Property? Yes No (b) Are you aware of any damage to the Property caused by termites/wood destroying insects, dry rot or pests? Yes No (c) Is your Property currently under contract by a licensed pest control company? Yes No (d) Are you aware of any termite/pest control reports or treatments for the Property in the last five years? Yes No

Explain any "Yes" answers that you give in this section: _____

6. STRUCTURAL ITEMS

(a) Are you aware of any past or present water leakage in the house or other structure? Yes No (b) Are you aware of any past or present movement, shifting, deterioration or other problem with walls, foundations or other structural components? Yes No (c) Are you aware of any past or present problems with driveways, walkways, patios or retaining walls on the Property? Yes No (d) Have there been any repairs or other attempts to remedy or control the cause or effect of any defects or conditions described above? Yes No Unknown (e) Are you aware of any problem with the use or operation of the windows? Yes No Explain any "Yes" answers that you give in this section: When explaining efforts to control or repair, please describe the location and extent of the problem and the date and person by whom the work was done, if known: Dampness in BASEMENT - Need to Run Dehumidifier★ (f) Has there ever been a fire damage to the property? Yes No Unknown

7. ADDITIONS/REMODELING

(a) Have you made any additions, structural changes or other alterations to the Property? Yes No If "Yes", please describe: New windows, Security Windows in Basement, Add on Front Porch, New Shutters, New Roof, New Chimney, Refinished Hardwood Floor in Hall + Bedroom(b) Did you obtain all necessary permits and approvals and was all work in compliance with building codes? Yes No Unknown (c) Did any former owners of the Property make any additions, structural changes or other alterations to the Property? Yes No Unknown If "Yes", to the best of your knowledge, did they obtain all necessary permits and approvals, and was all work in compliance with building codes? Yes No Unknown

Exhibit "C"

- (b) If your drinking water source is not public: When was your water last tested? _____ What was the result of the test? _____
- Is the pumping system in working order? Yes _____ No _____ If "No", please explain: _____
- (c) Do you have a water softener, filter or other purification system? Yes _____ No If "Yes", is the system leased _____ owned _____
- (d) What is the type of sewage system? public sewer private sewer _____ septic tank _____ cesspool _____ holding tank _____ other _____
- If "Other", please explain: _____

NOTE TO SELLER AND BUYER: If this Property is NOT serviced by a community sewage system, The Pennsylvania Sewage Facilities Act requires disclosure of this fact and compliance with provisions of the Act. A Sewage Facilities Disclosure Rider should be attached to any Agreement of Sale and Purchase.

- (e) Is there a sewage pump? Yes _____ No If "Yes", is it in working order? Yes _____ No _____
- (f) When was the septic system, holding tank or cesspool last serviced? _____
- (g) Is either the water or sewage system shared? Yes _____ No _____ If "Yes", please explain: _____

- (h) Are you aware of any leaks, backups or other problems relating to any of the plumbing, water and sewage-related items? Yes _____ No If "Yes", please explain: _____

9. PLUMBING SYSTEM

- (a) Type of plumbing: copper _____ galvanized _____ lead _____ PVC _____ mixed _____ unknown other _____
- If "Other", please explain: _____
- (b) Are you aware of any problems with any of your plumbing fixtures (including, but not limited to: kitchen, laundry or bathroom fixtures, wet bars, hot water heater, etc.)? Yes _____ No If "Yes", please explain: _____

10. HEATING AND AIR CONDITIONING

- (a) Type of air conditioning: central electric _____ central gas _____ wall _____ none _____ Number of window units included in sale: 1
- Location: MASTER BEDROOM
- (b) List of any areas of the house that are not air conditioned: _____
- (c) Type of heating: electric _____ fuel oil _____ natural gas other _____ If "Other", please explain: _____
- (d) List of any areas of the house that are not heated: _____
- (e) Type of water heating: electric _____ gas solar _____ other _____ If "Other", please explain: _____
- (f) If there are fireplaces in the Property, are they operational? Yes _____ No _____
- (g) Are you aware of any underground fuel tanks on the Property? Yes _____ No If "Yes", please describe: _____
- (h) Are you aware of any problems with any item in this section? Yes _____ No If "Yes", please explain: _____

11. ELECTRICAL SYSTEM

- Are you aware of any problems or repairs needed in the electrical system? Yes _____ No
- If "Yes", please explain: _____

12. OTHER EQUIPMENT AND APPLIANCES INCLUDED IN SALE (COMPLETE WHERE APPLICABLE):

- (a) Electrical garage door opener / Number of transmitters _____ Are they in working order? Yes _____ No _____
 - (b) Smoke detectors / How many? 2 Location: Hall upstairs + in Basement
 - (c) Security alarm system: Owned Leased _____ Lease information: _____
 - (d) _____ Lawn sprinkler Number _____ Automatic timer _____ In working order? Yes _____ No _____
 - (e) _____ Swimming pool _____ Pool heater _____ Spa/hot tub _____ List all pool/spa equipment: _____
 - (f) _____ Refrigerator _____ Range _____ Microwave Oven Dishwasher _____ Trash Compactor _____ Garbage disposal _____
 - (g) _____ Washer _____ Dryer _____
 - (h) _____ Intercom _____
 - (i) Ceiling fans 2 Number Location: 3 Bedrooms + Kitchen
 - (j) Other: _____
- Are any items in this section in need of repair or replacement? Yes _____ No Unknown _____ If "Yes", please explain: _____

13. LAND (SOILS, DRAINAGE AND BOUNDARIES)

- (a) Are you aware of any fill or expansive soil on the Property? Yes _____ No
- (b) Are you aware of any sliding, settling, earth movement, upheaval, subsidence or earth stability problems that have occurred on or that affect the Property? Yes _____ No

NOTE TO BUYER: THE PROPERTY MAY BE SUBJECT TO MINE SUBSIDENCE DAMAGE. MAPS OF THE COUNTIES AND MINES WHERE MINE SUBSIDENCE DAMAGE MAY OCCUR AND MINE SUBSIDENCE INSURANCE ARE AVAILABLE THROUGH: DEPARTMENT OF ENVIRONMENTAL PROTECTION, MINE SUBSIDENCE INSURANCE FUND, 391 WASHINGTON ROAD, MCMURRAY, PA 15317 (412) 941-7100.

- (c) Are you aware of any existing or proposed mining, strip mining or any other excavations that might affect this Property? Yes _____ No
- (d) To your knowledge, is this Property, or part of it, located in a flood zone or wetlands area? Yes _____ No
- (e) Do you know of any past or present drainage or flooding problems affecting the Property or adjacent properties? Yes _____ No _____
- (f) Do you know of any encroachments, boundary line disputes, rights of way or easements? Yes _____ No

NOTE TO BUYER: Most properties have easements running across them for utility services and other reasons. In many cases, the easements do not restrict the ordinary use of the Property, and the Seller may not be readily aware of them. Buyers may wish to determine the existence of easements and restrictions by examining the Property and ordering an abstract of title or searching the records in the Office of the Recorder of Deeds for the County before entering into an agreement of sale.

- (g) Are you aware of any shared or common areas (for example, driveways, bridges, docks, walls, etc.) or maintenance agreements? Yes _____ No
- Explain any "Yes" answers that you give in this section: _____

- (h) Do you have an existing survey of the Property? Yes _____ No

14. HAZARDOUS SUBSTANCES

(a) Are you aware of any underground tanks or hazardous substances present on the Property (structure or soil), including, but not limited to, asbestos, polychlorinated biphenyls (PCBs), radon, lead paint, urea-formaldehyde foam insulation (UFFI), etc.? Yes ___ No
(b) To your knowledge, has the Property been tested for any hazardous substances? Yes ___ No
(c) Do you know of any other environmental concerns that might impact upon the Property? Yes ___ No
If you have any "Yes" answers that you give in this section: _____

(d) Lead-Based Paint Hazard Reduction Act.

(a) Was this house constructed prior to 1978? Yes No ___ Unknown ___
(b) Is Seller aware of the presence of any lead-based paint hazards in the Property? Yes ___ No
(c) NOTE: If the house was built prior to 1978, Seller and Seller's Agent must disclose any lead-based paint information which they have, furnish a Lead Hazard Information Pamphlet to any prospective Buyer and advise Buyer of his rights under the Act.

15. CONDOMINIUMS AND OTHER HOMEOWNERS ASSOCIATIONS (COMPLETE ONLY IF APPLICABLE)

(a) Type: Condominium ___ Cooperative ___ Homeowners Association ___ Other ___ If "Other", please explain: _____

Notice regarding Condominiums and Cooperatives: According to Section 3407 of the Uniform Condominium Act (68 Pa.C.S. §3407, (Relating to resales of Units) and 68 Pa.C.S. §4409 (Relating to resales of cooperative interests), a Buyer of a resale Unit in a Condominium or Cooperative must receive a Certificate of Resale issued by the Association in the Condominium or Cooperative. The Buyer will have the option of canceling the Agreement with return of all deposit moneys until the Certificate has been provided to the Buyer and for five days thereafter or until conveyance, whichever occurs first.

(b) Do you know of any defect, damage or problem with any common elements or common areas which could affect their value or desirability? Yes ___ No ___ Unknown ___
(c) Do you know of any condition or claim which may result in an increase in assessments or fees? Yes ___ No ___ Unknown ___
If your answer to (b) or (c) is "Yes", explain in detail: _____

16. MISCELLANEOUS

(a) Are you aware of any existing or threatened legal action affecting the Property? Yes ___ No
(b) Do you know of any violations of Federal, State or local laws or regulations relating to this Property? Yes ___ No
(c) Are you aware of any public improvement, condominium or homeowner association assessments against the Property that remain unpaid or any violations of zoning, housing, building, safety or fire ordinances that remain uncorrected? Yes ___ No ___
(d) Are you aware of any judgment, encumbrance, lien (for example, comaker or equity loan) or other debt against this Property that cannot be satisfied by the proceeds of this sale? Yes ___ No
(e) Are you aware of any reason, including a defect in title, that would prevent you from giving a warranty deed or conveying title to the Property? Yes ___ No
(f) Are you aware of any material defects to the Property, dwelling or fixtures which are not disclosed elsewhere on this form? Yes ___ No
A material defect is a problem with the Property or any portion of it that would have significant adverse impact on the value of the residential real Property or that INVOLVES AN UNREASONABLE RISK TO PEOPLE ON THE LAND.
Explain any "Yes" answers that you give in this section: _____
(g) Is there any additional information that you feel you should disclose to a prospective Buyer because it may materially and substantially affect the value or desirability of the Property, e.g., zoning violation, set back violations, zoning changes, road changes, pending municipal improvements, pending tax assessment appeals, etc.? Yes ___ No Unknown ___
If your answers in this section are "Yes", explain in detail: _____

The undersigned Seller represents that the information set forth in this Disclosure Statement is accurate and complete to the best of the Seller's knowledge. The Seller hereby authorizes any agent for the Seller to provide this information to prospective Buyers of the Property and to other real estate agents. The Seller alone is responsible for the accuracy of the information contained in this statement. The Seller shall cause the Buyer to be notified in writing of any information supplied on this form which is rendered inaccurate by a change in the condition of the Property following the completion of this form.

West Penn Multi-List, Inc. has not participated, in any way, in the preparation of the answers in this statement.
Every Seller Signing Listing Contract must sign this statement.

SELLER: Garby S. H. Teruel DATE: October 8, 1998
SELLER: _____ DATE: _____
SELLER: _____ DATE: _____

EXECUTOR, ADMINISTRATOR, TRUSTEE, COURT APPOINTED GUARDIAN, RECORDED POWER OF ATTORNEY
The undersigned has never occupied the Property and lacks the personal knowledge necessary to complete this Disclosure Statement.

DATE: _____
Please Indicate Capacity / Title of Person Signing Plus Include Documentation.

CORPORATE LISTING

The undersigned has never occupied the Property. Any information contained in this Disclosure Statement was obtained from third party sources and Buyer should satisfy himself or herself as to the condition of the Property.

DATE: _____
Please Indicate Capacity / Title of Person Signing Plus Include Documentation.

RECEIPT AND ACKNOWLEDGEMENT BY BUYER

The undersigned Buyer acknowledges receipt of this Disclosure Statement. The Buyer acknowledges that this statement is not a warranty and that, unless stated otherwise in the sales contract, the Buyer is purchasing this Property in its present condition. It is the Buyer's responsibility to satisfy himself or herself as to the condition of the Property. The Buyer may request that the Property be inspected, at the Buyer's expense and by qualified professionals, to determine the condition of the structure or its components.

BUYER: _____ DATE: _____
BUYER: _____ DATE: _____

AN ADDENDUM WITH EXHIBITS

**SITE SPECIFIC ADVISORY BOARD under the
auspices of the Nuclear Regulatory Commission
RESPONSE TO COMPANY JUNE 8, 2000
PRESENTATION for The Decommissioning Plan
Washington, Pennsylvania.**

Restricted area section of the Plan

License Number: SMB-1393
Docket Number: 040-08778
July 6, 2000

PREFACE:

The SSAB wishes to state; the Molycorp comments have been taken out of context from the SSAB paper/ power point slides and presentation of May 11, 2000. The SSAB made a formal presentation of the paper and presented a power point slide presentation, utilizing a laptop computer and digital projector. A color hard copy of the presentation package (paper and the power point slides) were provided to Molycorp immediately following the live power point presentation.

The SSAB. Paper/power point presentation is a systemic approach to the four areas of consideration in the paper:

The institutional controls will provide reasonable assurance that the dose will not exceed the 25 millirem per year limit.

The controls will be enforceable:

The controls will not impose undue burden on the local community or other affected parties.

Sufficient financial assurances are provided so that, if necessary, an independent third party can carry out responsibilities for control and maintenance.

The SSAB wishes to express it included the four areas of consideration throughout its paper dated May 9, 2000, presented May 11, 2000. The SSAB provided a complete set of Citations and References on page 8 of its report. The whole SSAB report and the power point slide presentation (Dated May 9) is included in this addendum via this reference. Any attempt to divorce, separate, detach or otherwise ignore the slide presentation as a part of the report is an inaccuracy. The report, the slides and the presentation are a systemic approach to the issue. The board wishes to reiterate that one of the charges of responsibility was to listen to the community, make comments and consider the impact of the project on quality of life and stewardship issues. The board considered the regulations, Draft Guides, NUREG's, and the written Charter of the SSAB when writing its paper dated May 9 and the power point slide presentation. The fact that Molycorp excised out of context paragraphs from the SSAB paper is seen as an attempt to negate the conceptual interrelationships expressed in the May 9, 2000 paper and slide presentation architecture.

Portraying the concepts related in the SSAB paper as isolated items is incongruitous to the systemic nature of the task. Although it is not the authority of the SSAB we recommend that the Molycorp comments have no standing.

We shall attempt as lay people to refute the illogical approach each comment represents.

The architecture of this paper shall examine the out of context nature of the Molycorp Comments. Place it into a correct context, provide examples of why this concept was found necessary. We have written our responses within the Molycorp document so that

we can directly respond to their comments. We have separated their comment from the SSAB response by a double line and by typing the response in Arial type.

The SSAB is providing a series of exhibits as a part of its addendum, these shall be referred to in our refutation statements. The actual documents within the bibliographic submittals of the addendum whether they are stand alone bibliographies or bibliographies (references) as part of books or articles shall be produced upon request. This statement is inclusionary for all items including but not limited to books, articles, pamphlets or any other items herein submitted regardless of the medium utilized to convey the message including magnetic tape, or any other electronic medium, system or device.

A DOCUMENT ENTITLED; "EXHIBITS CATALOGUE" IS ATTACHED. This document provides a listing of the various exhibits, it and the exhibits are here to fore part of this addendum.

The SSAB has attempted to perform as lay people within this process given the recidivistic recalcitrance behavioral choice of the applicant.

The board wishes to bring to the attention of the reader and any and all authorities that the Molycorp document entitled: **Report of the Site Specific Advisory Board On Institutional Controls and Financial Assurances for the Molycorp Inc. Washington Decommissioning Project of May 11, 2000** is not the SSAB report. **The only report signed by the SSAB members, dated May 9, 2000 is the official report. Any other report submitted by Molycorp is not the SSAB report. THIS ADDENDUM AND ITS EXHIBITS ARE AN OFFICAL DOCUMENT OF THE SSAB PROCESS.**

MOLYCORP'S RESPONSES TO THE ADVICE AND COMMENTS OF SSAB

The Site Specific Advisory Board ("SSAB" or "Board") submitted an 18 page report (the "Report") to Molycorp at a public meeting on May 11, 2000. In preparing its responses to the SSAB's Report, Molycorp has attempted to organize the SSAB's comments in the context of the four topics upon which the SSAB was asked to provide advice pursuant to both the applicable regulations and the Board's Charter and Operating Procedures. Following each SSAB comment, Molycorp describes how it considered and/or otherwise will incorporate the Board's advice into the decommissioning plan.

A. ADVICE PERTINENT TO THE ISSUE OF WHETHER THE INSTITUTIONAL CONTROLS WILL PROVIDE REASONABLE ASSURANCES THAT THE DOSE WILL NOT EXCEED THE 25 MILLIREM PER YEAR LIMIT

Comment No. 1:

A trained staff of security, maintenance and scientific personnel should be hired on a full-time basis to perform the maintenance and monitoring of the cell.

The SSAB suggests that:

The maintenance and monitoring of the cell would require a trained staff of security, maintenance and scientific personnel. Given the controversial aspects of the cell it could not be imagined that the facility could be operated without staff. Management at a distance would seem a greater public threat over the long-term.

SSAB Report at p. 7. The SSAB's concerns regarding staffing are unjustified. Initially, it is anticipated that Molycorp, through qualified contractors and/or its own qualified employees will perform the necessary work to implement, maintain and monitor the institutional controls at the site. Accordingly, while Molycorp is still managing operations at the site, no additional permanent staff or personnel as suggested by the SSAB are necessary.

In the event that SMC must assume responsibility for maintaining and monitoring the institutional controls, SMC will be able to more effectively and efficiently perform its duties if it has the flexibility to retain the most qualified and experienced contractors available at the time to perform these tasks,

Because most of the work at the site will occur on a periodic rather than a daily basis, SMC can carry out its duties more cost-effectively through the use of qualified contractors to manage the site.

Accordingly, a full-time staff of security, maintenance and scientific personnel as recommended by the SSAB is unnecessary and unwarranted.

SSAB RESPONSE

The SSAB's context of this comment is found on page 7 of the May 9, 2000 paper. The board was discussing the lack of long term custodial care. The comment by the company is placed in the present, the company overlooked the premise that the future is the reason for the need of a fully staffed facility. The SSAB finds the offhanded approach to the matter cavalier. The SSAB has demonstrated that a full time staff is the best way to meet

the needs of the facility. The paragraph above discusses the need for security in light of the discovery by the Board that refined thorium costs an estimated \$150 per ounce. *Please refer to exhibit Number 27 regarding the evidence pertaining to this statement. If the INEEL thorium/uranium reactor project come to fruition one would believe that the value of thorium would increase from the current value.*

The company on a site tour admitted that they cannot control bikers who have been going onto the proposed cell site. The parties are using dirt bikes and other motorized or non motorized recreational vehicles. The company is unable to control the site today. The fact that Canton Township does not have a police department is an additional factor. The state police depending on their call loading cannot always meet nationally recognized standards for response times.

The Molycorp management of the current site as stated by the SSAB shows a lack of adherence to regulatory compliance with an AEC violation in 1971 and numerous Department of Environmental Protection violations from 1970 and 1995.

The Board has also learned that vandalism of other projects including wireless telephone towers where guide wires have been cut has occurred.

In light of SSAB's factual discoveries regarding thorium/uranium reactor development, security issues, international terrorism, local vandalism, the flimsy security and institutional controls suggested by Molycorp a complete reexamination of these matters is warranted.

Comment No.2:

Molycorp should provide for on-site security guards 24 hours a day, seven days a week, as well as additional lighting, signage and state-of-the-art remote sensing capabilities to prevent, among other things, terrorist action against the cell.

Although the SSAB already has addressed security staffing, at least in part, in Comment No 1 above, the SSAB further recommends:

Molycorp has proposed only periodic inspections. The SSAB believes that more attention should be given to security to the site. The security should be no less than 24 hrs. a day/7 days a week of on-site guards, with adequate lighting, warning signs and state of the art remote sensing capabilities. The reasons are as follows:

1. Cell or site inspection for damage due to vandalism, burrowing animals, erosion, etc.
2. Due to reactor design developments, radioactive thorium could be used in terrorist action.
3. Thorium is a high-energy source and in the future could become extremely valuable.

Damage to this site could occur due to terrorist action or others who wish to sell this thorium. The present estimate of refined thorium is approximately \$150. Per ounce and is expected to increase.

4. This site could be listed in The Registered Thorium National Stockpile and would need to be under secure guard.

SSAB Report at pp. 14-15.

The SSAB's recommendation for additional security appears to be based, at least in part, upon speculation that terrorists will attack the storage cell to steal the thorium-bearing slag for some as yet vaguely defined purpose.

However, there is no basis in logic or fact for this proposed scenario.

The materials to be contained within the storage cell have no military, economic or other value, and any purported need for additional security to protect against this alleged threat of terrorist activity is unwarranted and unfounded.

The SSAB provides no factual or legal support for its comment that the storage cell could be listed on the "Registered Thorium National Stockpile." Inasmuch as the decommissioning materials at issue have no value as raw materials, no further response is necessary to the SSAB's suggestion that these materials could be included in any type of stockpile listing.

The level of security suggested by the SSAB also is unnecessary in light of the institutional controls already proposed by Molycorp.

Molycorp's proposal for institutional controls involves a layering of redundant physical controls including perimeter fencing, signage and the design of the cell itself.

The cell design will also include a standard biotic layer consisting of eighteen inches of cobbles and stones. These controls are sufficient to deter and/or detect any unauthorized intrusion to the storage cell, prevent animal intrusion, and to prevent, detect and/or repair any damage or erosion to the surface of the cell, before any threat to the integrity of the cell is realized.

However, in an effort to accommodate the SSAB's concerns, Molycorp has modified its Decommissioning Plan to provide that physical inspections of the institutional controls will occur as circumstances warrant and on a more frequent periodic basis than

Molycorp initially proposed.

Pursuant to the SSAB's recommendation, security inspections will now be included as part of the quarterly replacement of the Thermoluminescent Dosimeters. Moreover, Molycorp will also arrange for four additional security inspections each year, thus resulting in regularly scheduled inspections being performed, on average, every one and one-half months.

Molycorp would like to note, however, that the SSAB's request for additional lighting and warning signs conflicts with other statements in the SSAB Report. In this regard, the SSAB Report states: "A fence maker [sic] and signs will place an undue financial and psychological burden on the community because they signal a potential danger from radioactivity. The perception of danger may cause property values to decrease, and result in extreme psychological stress for residents concerned with financial loss or health problems." SSAB Report at p. 13. Molycorp does not believe that the signage and other physical controls it has proposed will place any financial or psychological stress or hardship upon the community. Moreover, the physical and other institutional controls Molycorp already has proposed are sufficient to properly inform the public and to protect the cell from trespassers or intruders.

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SSAB RESPONSE

As part of the systemic aspects of the SSAB report/power point slide presentation this section concerned the need for a detailed operations and management plan which relates to the institutional controls.

Molycorp seems to believe that the material has no real military, economic or other value. The SSAB in exhibit No. 27 provides evidence of the value of thorium in a refined state is approximately \$150/oz. The refined capabilities of thorium are increasing, this same number was closer to \$100 an ounce in 1999.

The assertion by Molycorp that the SSAB supplies no factual or legal support for its comment that the cell be listed on the Registered Thorium National Stockpile. The SSAB has been assured that the Molycorp thorium HAS INDEED been listed as an example of Potential Thorium sources. This has been done in conjunction with or related to Exhibit **NO.29: Nuclear Energy Research Initiative – Final Proposal** Announcement LAB NE-99-1 (this document is declassified).

As to the company assertion that the material would not be a terrorist target we provide the following evidence to the contrary. Exhibits No's. 19 and 20 indeed show that thorium has been used in terrorist incidents in Tokyo, Japan. The SSAB has maintained a global perspective relative to these matters from the beginning.

Given the recent incidents relating to national security at the National Laboratories, at Los Alamos, the incidents in Japan, and the current security breeches by dirt bikers as related on recent SSAB tours of the site, underlies the need for on-site 24/7 security. The development of the thorium/ uranium 238 reactor will increase the terrorist target threat. There is potential for having an estimated 3,000 cubic yards of refined thorium on the site. This equates to an estimated \$5 billion of value to the thorium contained in the pile. We admit that this a crude estimate created by lay people. The point is that a demonstrated value of some type will become evident.

The SSAB submits the following as evidence of other facilities that have 24/7 active security. Exhibits No's 52,53,54,55

We contend that the argument to refute the psychological impacts of the site are nothing more than an argumentation an debate tactic from Molycorp.

Comment No.3:

Inspections of the cell should be performed on at least a weekly basis.

The SSAB also commented that "[a]ll regular maintenance inspections should be done no less than weekly." SSAB Report at p. 15. For the reasons stated in response to Comment No.2, above, Molycorp's proposed inspections as outlined therein will be sufficient and appropriate under the circumstances. Accordingly, more frequent inspections as proposed by the SSAB are unnecessary .

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SSAB RESPONSE

The SSAB comments regarding this matter have been taken out of context. The issue was discussed as a matter of maintenance in the physical controls section, of the May 9 paper in response to a Document , Exhibit D page # 1 of their proposed Institutional Controls Draft.

Due to security, and the reading of the Radiation Thermoluminescent dosimeters maintenance of the facility should be performed weekly.

The SSAB stated in its paper of May 9, 2000 the following:

The above increases are needed due to the following:

1. The heavy weight mass of the Thorium slag on a 3 to 1 slope of the north side of the site will cause slippage, thus exposing the atmosphere to the radiation, or contaminating the test wells.
2. Similar results could occur due to fresh water springs or mine subsidence.

Thorium is odorless and tasteless, so you cannot tell if you are being exposed to radiation. Very little is known about the specific exposure levels of Thorium radiation that results in harmful effects to people or animals. For this reason, and since this site is planned for a very densely populated area, everything must be done to protect the citizens. Preventative maintenance inspection and planning is a necessity. Due to the 7 billion year time line complete replacement of all maintained operations is a given. Given the density of the surrounding population, the maintenance needs due to climatic and ecological impacts it is requested the any reexamination of TEDE above the 25mrm level be denied. Given the precariousness of this environment any reexamination should see the TEDE reduced to 10 mrm.

The signage repair and maintenance is an important issue since reports have seen young people breaking in other facilities and causing damage.

Comment No.4:

Molycorp should provide for maintenance and replacement of certain bridges necessary to access the storage cell.

The SSAB states that: "[t]wo bridges were omitted from the Molycorp report, they will need routine and replacement maintenance schedules [sic]." SSAB Report at p. 15. In response to the SSAB's advice, Molycorp has revised the proposed maintenance task and cost estimates for not only the bridges at issue, but also the haul road and the cell itself. As a result, the annual costs were increased to a level that is sufficient to not only cover the cell and haul road maintenance, but that also provides a reasonable margin to cover contingencies. In addition, Molycorp has considered the maintenance and replacement of the bridge over Sugar Creek. The bridge over Chartiers Creek will not be required for long-term maintenance. Cell maintenance includes grass and brush mowing, hauling fill, placing and spreading fill, seeding, fertilizing, etc. Gravel road maintenance includes gravel hauling, delivery, placing, spreading, and grading, clearing drainage ditches, and snow removal. Bridge inspection includes structural inspection and appraisal report, sandblasting and painting girder ends, scaffolding rolling tower, cleaning expansion joints, repairing railings, concrete spall repairs, and hydroblasting joints and cracks. Bridge replacement is assumed to occur every 30 years.

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SSAB RESPONSE

The SSAB suggested that bridges would be needed. This was established from the last site visit.

Molycorp in their answer stated that bridge replacement was to occur every 30 years, Item 17 on page 4 of their Calculation of First year annual cost of institutional controls for onsite storage cell at the Molycorp, Inc. Washington, Pa facility #(17) states "Bridge replacement is assumed to occur every 50 years". The Molycorp cost estimates are calculated in year 2000 dollars. The SSAB believes that this is a fallacy and that calculating the amounts in rolling current year values would be more appropriate.

Comment No.5:

The design of the proposed storage cell is insufficient and should be modified.

The SSAB states that:

To all outward appearance, the cell design seems to be grossly insufficient. A seven billion year time-frame would require a much more substantive structure than that proposed. An example might be a structure well below ground (thousands of feet), insulated by reinforced concrete and wrapped in a synthetic liner, with waste in separate, multi-modality, containers prepared for possible removal via automated system to railcars. Another approach could be something much sturdier, by orders of magnitude, above ground, which might resemble the pyramids of Egypt. This would have a chance of lasting the requisite 7 billion years.

SSAB Report at p. 7,

Molycorp believes that the low potential risk from the naturally-occurring thorium and uranium in the materials to be placed in the cell does not justify the level of engineering controls suggested by the SSAB. The cell design as presented will serve to isolate the interred materials from the public and the environment, and will ensure that the dose to a member of the public will be below the NRC 25 mremlr limit. The proposed routine cell maintenance provides further assurance that the cell will continue to function as designed.

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SSAB RESPONSE

The SSAB has long contended that the cell itself is of insufficient design. The 3 to 1 slope, the disappearance of the geotex liner and later the clay liner are examples of faulty design considerations. One can assume that the cost of the cell, design and engineering are the real arbiters of the decisions with the safety of the community taking up the rear. This was clearly shown within our power point slide presentation. We reference Exhibits No's 1, 51 and 38A. The material half life combined with offsite migration issues. (note SSAB article attached to the SSAB report regarding off site migration issues the SSAB report stated:

1. The New York Times of March 21, 2000. This article discusses ground water movement through the aquifer at the Nevada Nuclear Test Site. It

acknowledges the possibility of radioactive particles becoming attached by colloids, which allows particles to become buoyant and then floats with the water through the aquifer to possibly pollute ground water off site.

In conjunction with this and everywhere else applicable the following exhibits are submitted regarding ionizing radiation and its danger to humans. The SSAB takes these works very seriously and contends that this evidence nullifies the testimony by one Dade Moeller including the fact the cell Dr. Moeller and his colleagues were referring to no longer exists. That cell was 70,000 cubic yards, contained geotex and clay liners. The cell under consideration today has no geotex liner and may not contain a clay liner. The cell is 120,000 to 125,000 cubic yards of material with orders of magnitude higher maximum levels of concentration. We include the following exhibits: No's 1, 2, 3, 4, 5, 5A, 5B, 5C, 5D, 5E, 5F, 5G, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 38A.

These exhibits are submitted in conjunction with Dr. Moeller's testimony and the 25 mrm/yr ALARA. It is the belief of the SSAB and the scientific community contained within these documents that the threshold is unsafe. This documentation, testimony and scientific evidence shows, we believe that the current cell design is wholly and completely inadequate.

As a matter of fact on July 2, 2000 a youth was seen happily going fishing in one of the creeks. Buckets and nets in hand. Youngsters have been fishing, playing, craw fishing in the streams and creeks for generations. We suggest that in light of the off site migration issues that the unrestricted zones on all MolyCorp property be physically secured and patrolled 24/7. People still have pumps and old wells which are prized aspects of their properties. As a matter of fact the pump from the old Weirich Family Barn was saved as an example, near the intersection with Weirich Avenue and Armstrong Drive.

Comment No.6:

MolyCorp should adopt a more stringent groundwater monitoring protocol and should also increase the frequency of well monitoring and replacement. The SSAB identifies four concerns regarding the potential for groundwater contamination and the adequacy of the proposed monitoring wells: (1) there may have been coal mining under the proposed site for the storage cell; (2) there is no liner in the cell design; (3) the proposed site has natural springs and water flow **from** outside the area that could drain through the cell to the natural aquifer system; and (4) radioactive particles could attach to colloids and float through the aquifer.

SSAB Report at pp. 13 and 14. Based upon these concerns, the SSAB has suggested that MolyCorp's proposal with respect to the annual monitoring of the six proposed groundwater wells is insufficient. SSAB Report p.13.

A detailed technical evaluation of the potential for infiltration of water into the cell and subsequent migration of material from the cell through groundwater is ongoing and will be submitted for NRC technical review. However the results obtained to date lead MolyCorp to believe that the potential for migration does not pose any health or environmental risks. To confirm the results of the ground water migration studies, MolyCorp has proposed that six groundwater monitoring wells be placed at locations that have the highest likelihood

of encountering any material which might possibly migrate from the cell. The locations were selected based on a detailed understanding of the site hydrogeology. These six wells provide adequate coverage of the potentially affected groundwater system and will serve to identify material, if any, that may migrate from the cell.

The frequency of groundwater monitoring initially was proposed as once per year, which is considered conservative in light of Molycorp's existing analysis and the nature of the **thorium-bearing slag. However, in response to the SSAB's comments, groundwater sampling and analysis will be increased to once per quarter for the first 2 years, followed by annual sampling thereafter. In addition, Molycorp has budgeted funds for the complete replacement of each of the monitoring wells every twenty years.**

The possibility that there has been coal mining under the site was raised a number of times during the SSAB meetings. Molycorp and the DEP are actively investigating the potential for past coal mining under the site. Investigations are continuing, but at this time, there is no indication that coal mining either was performed or is planned under the site designated for the cell

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SSAB Response

The ground water considerations were stated by the board in the section concerning the institutional controls under ground water monitoring. The New York Times Article of March 21, 2000 discusses ground water movement through the aquifer at the Nevada Nuclear Test Site. It acknowledges the possibility of radioactive particles becoming attached by colloids, which allows to particles to become buoyant and then floats with the water through the aquifer to possibly pollute ground water off site. The article is attached to Exhibit No. 1.

The movement ground water off site provides capability for particular and general injury.

There is apparently discussion within the scientific community concerning the models used to predict off site migration. The peer review panel was most unkind regarding the Nevada test site situation. The Site Characterization Report cites aquifers in the area and their are active springs on the North face of the proposed cell site.

The SSAB in its paper under Ground Water Monitoring stated that:

Molycorp does not know if this area was coal mined, if there are old oil or gas wells on site, if the proposed sandstone base of the cell is cracked or if it is even large enough or strong enough to support the weight of 90lbs/sqft. of the thorium slag in a cell with a grade of 3 to 1.

The most recent design model does not even have a clay or plastic liner to help support the cell from natural water flow which could increase considerably in the case of a catastrophic event such as flood, tornado, hurricane, earth quake or even burrowing animals or erosion.

Molycorp does not own the mineral rights to the land as of the June 8, 2000 SSAB meeting. The company is investigating this situation.

In response to the comment by Molycorp, the SSAB fails to understand how the company has a complete understanding of the ground water issues since an Environmental Impact Statement has not been performed on the cell site. In light of the data the SSAB has on ground water monitoring the latest suggested monitoring modality is insufficient by orders of magnitude. Once a year after the first two years is unacceptable to the SSAB as a modality for water monitoring. Given the population basis surrounding the proposed cell site (referred to in the SSAB slide presentation, Washington County planning department map) the SSAB believes that an increased level of groundwater monitoring is warranted due to the reasons stated on pp. 13, 14 and 15 of the May 9, 2000 report.

The SSAB further contends that ground water is an issue of importance due to the climate of the region, the Chartiers Creek Water shed and the sandstone out-croppings with springs on the property. The water in this area has been used for household, farming, gardening and drinking purposes, in the future this water will continue to have value. The concerns relative to this matter were explored in the Ground Water Monitoring section of the SSAB paper. It is evident that Molycorp did not concern themselves with DG 4006 Section 3.1.6 Additional Consideration for ground water or the applicable sections of NUREG 1549. Numerous cases of ground water issues are evident with particular injury and offsite migration. The Nevada test case cited in the SSAB paper has seen \$176MM in studies alone to examine this one site with highly questionable results according to the peer review panel (NY Times, 3.21.2000) There are current court case concerning particular injury based on ground water issues.

We repeat the statement from Comment #5. {As a matter of fact on July 2, 2000 a youth was seen happily going fishing in one of the creeks. Buckets and nets in hand. Youngsters have been fishing, playing, craw fishing in the streams and creeks for generations. We suggest that in light of the off site migration issues that the unrestricted zones on all Molycorp property be physically secured and patrolled 24/7. People still have pumps and old wells which are prized aspects of their properties. An example of these underground water sources is the pump from the old Weirich Family Barn, near the intersection with Weirich Avenue and Armstrong Drive}.

Comment No.7:

Molycorp should monitor radiation levels daily to determine whether compressed slag when commingled with other metals will result in increased energy and radiation from the waste.

The SSAB states that:

The question that is most important to us, when the 125,000 cu yd of thorium slag is compressed into the cell along with other metals such as cadmium, selenium, manganese, and magnesium, does the radioactivity increase the overall energy of radiation of the mass? If the NRC cannot answer this question, then the radiation levels at this site should be monitored on a daily basis, not quarterly.

SSAB Report at p. 14.

There will not be any increase in the energy or radiation from the slag as a result of placing the waste in the cell with other materials that may be found at the site. Accordingly, the quarterly replacement of the Thermoluminescent Dosimeters as proposed by Molycorp will provide sufficiently frequent monitoring of radiation levels at the site.

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SSAB Response

This Molycorp comment was taken out of context and actually directed to the NRC staff since we have more questions than answers regarding the mixed waste circumstances. This was clearly stated in the text on page 14 of the SSAB report dated May 9, 2000.

Comment No.8:

Molycorp should include instrument calibration to the schedule of maintenance schedule and incorporate controls of such calibration.

The SSAB, in commenting upon Molycorp's summary of maintenance costs in the proposed institutional controls states: "Molycorp should add instrument calibration to their schedule, similar to the ISO standards." SSAB Report at p. 15. In response, Molycorp notes that the calibration of any instruments used in the monitoring of the cell will be performed by the contractor performing the monitoring, the cost of which already is included in the cost estimates used by Molycorp to calculate the necessary amount of financial assurance.

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SSAB Response

The SSAB was concerned about the operations-management plan and custodial care. Since there is not an operation and management plan for the site. The operations of the cell are left to SMC management. With a management fee of \$5,000, it is highly unlikely that professional level monitoring of the cell will take place. The above amount is not enough to provide adequate contact management and administration let alone be sure that the technical aspects of maintenance are being accomplished to any standard. The exhibits No's. 35, 36, and 37 are submitted as examples of ISO standards used in industry regarding testing.

Comment No.9:

Molycorp should use longer residency assumptions in its exposure modeling calculations.

The SSAB states that:

One of the important sociological aspects related to exposure is that persons in the area live in their houses for long-periods. This does not fit the assumptive modeling that people will live in a home for 5- 7 years and move. Thereby [sic] reducing the exposure level during a lifespan, those assumptions do not apply in this case- In Western Pennsylvania people have a tendency to own a house for much of their lifespan. It is not unusual to have the same house owned for 40 years by the same person. In light of this issue, the exposure modeling may need to be revisited.

SSAB Report at p. 10.

Molycorp did not assume an occupancy time of 5- 7 years in the dose modeling, as implied by the SSAB. In fact, the 25 mremlr NRC public dose standard that will be applied to the cell is based on a residency time of 30 years. This is consistent with the residency time assumed by the U.S. Environmental Protection Agency and is appropriate in this case.

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SSAB Response

The assumption of 30 years by Molycorp is not an item that was presented to the SSAB during the normal sessions. It is an additional example of disclosure only after a statement by the board has been made.

In light of the response and further investigation the SSAB provides the following concerning the exposure rates and outcomes.

We include the following exhibits: No's 3, 4, 5, 5A, 5B, 5C, 5D, 5E, 5F, 5G, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, adjunct No's 1, and 2.

B. ADVICE PERTAINING TO WHETHER THE CONTROLS WILL BE ENFORCEABLE

Comment No.1:

Molycorp and SMC should enter into a consent agreement with the Pennsylvania Department of Environmental Protection ("DEP").

The SSAB proposes that Molycorp enter into a consent order with the **DEP** to further delineate the DEP's and SMC's duties should SMC assume responsibility for monitoring and maintaining the institutional controls at the site. In this regard, the SSAB states:

With these comments [by Mr. Woods of the DEP] in mind, it seems reasonable to request that Molycorp enter a consent order with the DEP which would outline the duties of the Site Maintenance Corporation and the DEP. The order should be specific about the DEP duties to monitor the sight [sic], what perimeters [sic] would be monitored and what the acceptance criteria would be. It should also cover the specific duties of the Site Maintenance Corporation. This would be considered an Operation and Maintenance plan. The plan should describe the frequency of maintenance, specific items, which will be maintained, and contingencies.

SSAB Report at p. 12.

As the SSAB is aware from Molycorp's earlier presentations to the Board, because of the DEP's existing regulatory and technical expertise, Molycorp initially sought the agency's direct involvement in managing the site through a consent order with Molycorp and SMC.

However, notwithstanding Molycorp's efforts to solicit the DEP's participation in such a consent order, the DEP was and is still unwilling to enter into a consent order with Molycorp and/or SMC

The DEP's position relative to the proposed consent order was fully explained to the SSAB at the March Board meeting. However, the DEP's unwillingness to enter into a consent agreement with Molycorp and SMC does not otherwise impact the adequacy or effectiveness of the institutional controls proposed by Molycorp.

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SSAB Response

In light of the lack of a consent agreement there is no comment at this time.

C . ADVICE PERTAINING TO WHETHER THE CONTROLS WILL IMPOSE UNDUE BURDEN ON THE LOCAL COMMUNITY OR OTHER AFFECTED PARTIES.

The SSAB did not include in its Report any specific advice or recommendations pertaining whether the institutional controls posed by Molycorp will impose any undue burden on the local community or other affected parties. However, at various times during the SSAB process, certain members of the Board commented that they believe that the proposed storage cell would impose a negative economic burden upon the local community and, more specifically, upon property values. Molycorp does not believe, however, that the proposed Decommissioning Plan or any of the institutional controls thereunder, will impose any undue economic burden upon the community either generally or with particular respect to property values.

In this regard, Molycorp notes that the proposed Decommissioning Plan and construction of the permanent storage cell will represent an improved and even safer method of storing the thorium-bearing slag which is already located on Molycorp's property. Because the proposed storage cell, together with its institutional controls, will only better protect the community and the environment from any potential risks associated with the materials at issue, neither the proposed storage cell nor the institutional controls adopted in connection therewith should place any undue burden on the community or other affected parties.

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SSAB Response

The SSAB went to a great deal of time and effort within its report -slide regarding economic impacts. Copies of the report and the slide presentation were provided to Molycorp. The company was in the room when the SSAB made its presentation. It is apparent that Molycorp wishes to deny the existence of the evidence as placed in Exhibit No.1, attached as an answer to this comment.

The SSAB wishes to state that it has shown within the paper dated May 9 and the slide presentation, that economic injury particular and general, relative to the proposed cell will occur. That injury was expressed on page 4 using the words "There is also strong possibility due to the adverse economic outcomes, and legal taking, law suits will be initiated from affected property owners within an estimated 2km to 2 mile radius." The SSAB presents Exhibit No. 50 CONSUMER NOTICE, a disclaimer item from a local real estate company. The company did supply a letter from the real estate company agent. However a member of the board knows the owner of the company in Pittsburgh and while on vacation Mr. Piacenza called Hoddie Hanna. Mr. Hanna explained that he was protecting the interest of the seller and was appalled that a waste facility was to be placed so near to a neighborhood and populated area. Hoddie expressed he would help in any way. The board reads the letter from Mr. Ewart with skepticism given the display and disregard for first amendment rights as shown by company behavior during the meeting of March 23, 2000. The transcript and SSAB tape recordings show a blatant disregard for the rights of others under the first amendment. All of this was witnessed by a numbers of NRC staff: Mr. Leroy Person, Mr. Robert A. Nelson and Mr. James Lieberman of the General Council Office. A member of the audience An attorney from Pittsburgh a Mr. Coster stated that the constitutional rights of the public had been ignored at the March 23 meeting. Molycorp attempted to suppress a slide presentation by the board germane to items under old business the board voted unanimously to proceed with the slide presentation under old business instead of at the end of the meeting as protested by Molycorp. The slide presentation was about the comparative weight of the cell material, the cell design, and slope of the land. Exhibit No 51.

On Page 5 of the May 9 report and slide presentation the SSAB examines injury:
"Economic injury both general and specific from the existence of the cell is another area of

concern. In a answer to a question posed to the NRC dated January 24, 2000, the NRC indicates:

Question: *What is the Agency definition of injury? Are you and the applicant liable to cover all of the costs to everyone affected by your actions?*

Answer: *NRC regulations do not define injury. Under the Atomic Energy Act, the NRC is authorized to regulate licensees in order to protect public health and safety. NRC regulations provide adequate protection of the public health and safety. As a general matter, the NRC is not liable for the impacts of a licensee's actions. Depending on the situation, the licensee may have some responsibility for the effects of its actions. "*

The title of the slide presentation reads "Site Specific Advisory Board, Report, Molycorp Decommissioning Plan, License Number SMB-1393, Docket Number 040-08778.

The SSAB for months has categorically stated that the cell will cause particular and general injury and that the outcome of the cell will be dis investment.

The SSAB in its slide presentation showed that within a 2 mile radius, there are 3,500 manufacturing type jobs, the heaviest concentrations of population, 7,000 students, 10,300 working adults and school students, \$252,000,000 of economic value purchase power using an economic multiplier of 2.5.

The Chartier Creek water shed drains 257 sq. miles of which 18 miles are up stream of the site. The county Industrial Value of Production is \$1.4 Billion/year, Agriculture is \$37.9 Million. The Real Estate Value is \$ Billion plus. Please refer to Exhibit #1

The SSAB sees the distinct capability for law suites for particular and general injury, dis-investment and loss of tax revenue to taxing bodies.

The SSAB submits Exhibit No. 38. EXECUTIVE ORDER #12866 relative to impacts and federal policy.

D. ADVICE PERTAINING TO WHETHER SUFFICIENT FINANCIAL ASSURANCES ARE PROVIDED SO THAT, IF NECESSARY, AN INDEPENDENT THIRD PARTY CAN CARRY OUT RESPONSIBILITIES FOR CONTROL AND MAINTENANCE.

Comment No.1:

Molycorp should place \$1.1 billion in cash in an escrow account to satisfy the regulatory requirements for financial assurances.

In its Report, the SSAB states that the amount and form of financial assurance to be provided by Molycorp should be amended. In this regard, the SSAB states:

The board finds the requirements of section 30.35 defined prepayment method under 30.35 F (1) to be the best method for securing this site's financial capability .The best selection is an escrow account, in cash. This of course would require outside auditors, one for the corporation and one for the beneficiaries. This option was considered best in light of the longevity of the cell's material contents, its half-life, information from the site characterization report showing mixtures of slag containing possible hazardous substances. For

these reasons, considering the capacity for institutional and perhaps physical failure of the cell, the board believes the cash method is the most secure. In light of this circumstance the suggestion made by Canton Township that an estimated value of 10 cents per ton over a period of seven billion years is advanced. The estimated total cash equivalent is \$1.1 billion or a combination of precious metals. This amount replaces the frail structure proposed by the applicant.

SSAB Report at p. 4.

Upon consideration of the SSAB's advice, Molycorp has changed its method of financial assurance from a letter of credit to a fully-funded, non-revocable trust. Molycorp will select an independent financial institution which qualifies under the regulatory guidance to serve as a trustee. Because the trustee will be a fully independent and qualifying financial institution, additional outside auditors, as suggested by the SSAB, will be unnecessary.

Molycorp believes that it is not necessary or appropriate to fund the trust with \$1.1 billion, as proposed by the SSAB.

In determining the necessary amount of financial assurance, Molycorp followed the formula prescribed by the NRC in its Draft Regulatory Guidance DG-4006. Moreover, Molycorp used the most conservative application of this formula (i.e., the assumption of perpetual control and maintenance).

Using the most conservative application of the NRC's recommended methodology, the appropriate amount of funding for the non-recoverable trust is \$2,094,850, which will be sufficient to cover the expenses for the required institutional controls. Molycorp adds that this amount represents an increase of \$1,087,843 over the amount of financial assurance originally proposed by Molycorp, reflecting changes to the proposed institutional controls adopted pursuant to the SSAB's advice and recommendations.

While Molycorp's proposed financial assurance was determined in accordance with NRC guidelines, in contrast, the SSAB's recommended amount of financial assurance of \$1.1 billion is not based upon NRC guidance but rather, is purportedly based upon an unsupported and unexplained rationale of ten cents per ton over a period of seven billion years.

The SSAB's proposed methodology has not been sanctioned by any regulatory, scientific or engineering body, and the SSAB provides no such basis or other support for this methodology. Moreover, the level of financial assurance proposed by the SSAB is unwarranted.

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SSAB Response

In keeping with the systemic aspects of the SSAB paper/slides and physical presentation the SSAB states that the financial assurances purport to meet the regulatory minimum. It is apparent that Molycorp wishes to only perform at a regulatory minimum. The corporation attempted to meet the regulatory bar and failed. The company design of financial assurances does not provide for ambient event occurrence over a 7 billion year cycle. This is a standards failure in the design of the assurances. It is a failure to understand the operational environment that the SSAB has explained to Molycorp. The following exhibits are submitted: No's 39, 40, 40A, 41, 42, 43, 44, 45, 57.

The board in Exhibit No. 57 provides a spreadsheet analysis that if a catastrophic or ambient event occurred in year 50 we provide the following. The assumptions for the spreadsheet are: Given the cost of moving the material today is an estimated \$175,000,000, if a catastrophic or ambient event happened 50 years into the life cycle and movement of the material was required, and given a 3.5 % inflation factor this movement in 50 years would cost an estimated \$917, 330, 981. Which would create a horrendous deficit. This gives credence to the SSAB's number for financial assurances of \$1.1 Billion. The SSAB finds the Molycorp lack of planning for such an event to be reckless. We submit Exhibit # 57 regarding this matter. Exhibit # 57 provides 2 spreadsheets providing a best and worst case scenario.

One of the examples that Molycorp has used is Seguoyah Fuels this is in court at this moment regarding a cell with particular damage. For the company to ignore these realities is negligent. It certainly impinges on the fact that the SSAB is attempting to protect UNOCAL share holder value and as opposed to expose the subsidiary (Molycorp) and the parent company UNOCAL to liabilities.

Regarding the need for outside auditors the SSAB has stated that the need for such a safe guard is real. The proof of this is in recent regional scandals regarding the Allegheny Health Education Health and Research Foundation Exhibit No.17. This exhibit is an expose by the Pittsburgh Post Gazette of a major scandal in the Pittsburgh Medical and medical education community that has been in the courts.

The Ben Franklin Partnership scandal is another recent example gone awry.

The financial assurances do not consider as we mentioned above ambient occurrence. Molycorp did not perform the requisite analysis in DG 4006 Section 3.1 and following ALARA in calculating their financial assurances. There was no cost benefit analysis or other mathematical modeling run. In light of the evidence that the SSAB is supplying that number is most likely orders of magnitude higher than the inadequate \$2 MM suggested by Molycorp. We include the following exhibits: No's 3, 4, 5, 5A, 5B, 5C, 5D, 5E, 5F, 5G, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33 concerning ionizing radiation, these exhibits are included for this answer and all other areas of the paper.

The SSAB as stated in the final meeting on June 8th finds this lack of financial planning arrogant and contemptuous. The SSAB is aware of an existing legal case between private parties which is a harbinger of the legal storm. We provide Exhibit No. 38 in relation to this issue.

Comment No.2:

Molycorp should establish a separate trust fund of an amount equal to what is proposed for Site Maintenance Corporation that would be administered by the DEP and used in the event that SMC would fail.

The SSAB proposes that in addition to the \$1.1 billion in financial assurances as referenced in Comment No. 1, Molycorp also establish a second and separate \$1.1 billion trust fund as additional financial assurance at the site in the event SMC fails. In *this* regard, the SSAB Report states:

In order to insure that the necessary duties would be performed, a separate trust fund should be set up with the DEP as the authorized administrator. The fund would be used to cover the cost of maintaining the sight [sic] should the Site Maintenance Corporation fail. The monies set aside should equal those being proposed for the Site Maintenance Corporation. This item is important, as there are no guaranties (sic) that legislation will not change and budgeting for this type of facility could be cut.

SSAB Report at p. 12 (emphasis in original).

As noted in response to Comment 1, above, Molycorp followed the appropriate regulatory guidance in determining the amount of financial assurance required for maintenance of the institutional controls. This amount will be fully funded in a non- revocable trust before completion of the storage cell and, accordingly, would not be subject to any legislative or budgeting changes as speculated by the SSAB.

For the reasons stated in Molycorp's response to Comment No. 1, the amount of financial assurance proposed by Molycorp is appropriate, and the \$1.1 billion in initial financial assurance suggested by the SSAB is unnecessary and unwarranted . These reasons apply with equal validity to the SSAB's proposal for a second, additional trust fund, which in effect increases the total financial assurance recommended by the SSAB to \$2.2 billion. Such a fund is not required by the NRC's regulations, is not suggested by the NRC's guidance, and is not necessary or otherwise appropriate in this instance. Finally, the SSAB's recommendation that this second \$1.1 billion fund be administered by the DEP appears to presuppose the existence of a consent order between Molycorp and the DEP. As noted above, the DEP is unwilling to enter into such a consent order with respect to the site, and the SSAB has been so advised.

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SSAB Response

The SSAB wishes to reinitiate the concerns that the Molycorp comments are taken out of context disregarding the systemic aspects of the May SSAB paper/slides and presentation. Based on the history of former sites and the testimony related in the SSAB paper there is serious consideration regarding the future funding of the DEP.

Given the 7 billion year time frame there are no guarantees of future funding. We would like to remind the reader that the 100 year liability window is a rolling 100 year judicial envelope moving in perpetuity.

Comment No.3:

The trust agreement proposed by Molycorp is deficient, and an outside board of ombudsmen should be appointed to act on behalf of the third-party beneficiaries to oversee trust management.

The SSAB provides the following comments with respect to the management of the trust proposed by Molycorp:

The reliance on trust agreements, letters of credit and other methods may reduce this Corporation [Molycorp] into receivership. Letters of credit are faulty, difficult to interpret and may not always be payable. It is entirely possible for default to occur or for the instrument not to be renewed. The proposed stand-by trust agreement is deficient. The trustee's investment capabilities provide only a 2.2 percent return on investment (although it is within the regulations it appears to limit the long-term fiscal capability of the corporation [sic]). In an inflation environment this could jeopardize fiscal integrity. Over 25 years ago (1975) interest rates in the United States were over 20 percent. Government policy today, in the minds of some economists, is based on the 1970s mentality concerning monetary policy decisions. (Source Wall Street Week, statement by guest 4.27.2000)[.] The reliance on bonds, particularly those with ratings BBB/BAA is disturbing. Any beneficiary and trust management would most likely want to have A-AAA ratings. Various aspects of the agreements are faulty in their capacity for adequate trust management. One suggestion is to have an outside board of ombudsman to act on behalf of the 3rd party beneficiaries. A hold harmless clause has been placed in the trust agreement. This could promote nefarious behavior even though it is part of the regulatory structure.

SSAB Report at p. 6.

Molycorp believes that the statements quoted above are not valid given the structure of the proposed trust agreement. First, the SSAB provides no insight into how reliance upon a trust agreement purportedly will reduce Molycorp to receivership, and Molycorp contends that the agreement presently proposed by it will have no such effect. Second, the trust agreement as presently proposed by Molycorp is not deficient. Indeed, the trust agreement proposed by Molycorp follows the language, format and organization set forth in the NRC's Draft Regulatory Guide DG-3014, and is its functional equivalent. Furthermore, the trust agreement proposed by Molycorp provides for adequate and appropriate trust management. As noted above, the trustee of the trust fund will be an independent, third-party financial institution which is qualified to serve as a trustee under the NRC's regulatory guidance.

Only financial institutions whose trust operations are overseen or examined by a federal or state agency are so qualified. Therefore, the appointment of a separate board of ombudsman to oversee management of the trust on behalf of the third party beneficiaries, as suggested by the SSAB, is redundant.

The SSAB appears to criticize Molycorp for assuming a low rate of return on the proposed trust. However Molycorp notes that Draft NMSS Decommissioning SRP 9/22/99, § 15.2.2.1, prohibits the licensee from assuming a real (i.e., inflation adjusted):

after-tax rate of return greater than two (2%) percent per year on funds in the trust that apply to site control and maintenance. This limitation is imposed to insure that the licensee adequately funds the trust from its inception.

This limitation is merely an assumption imposed for purposes of calculating the necessary amount of financial assurance. However, this limitation does not impose any restrictions on the actual return on the trust going forward.

Furthermore, the SSAB expresses a concern regarding the trust's purported reliance on bonds with ratings of BAA or BBB, suggesting that the trustee is likely to prefer bonds with a higher rating. proposed trust agreement.

This concern may be generated by a misinterpretation of the

The trust agreement provides that all decisions made by the Trustee with respect to investing, reinvesting, selling, exchanging or otherwise managing the trust must be made solely in the interest of the beneficiary. Furthermore, although the trust agreement allows the trustee a certain amount of discretion in making investment decisions, the trust agreement appropriately imposes certain restrictions upon that discretion.

In particular, the trust agreement provides that the trustee may only invest in state or municipal bonds rated BBB or higher by Standard & Poor's or BAA or higher by Moody's Investment Services, Inc.

Trust agreement at § 6(b).

This provision does not require the trustee to invest in bonds with these ratings, as suggested by the SSAB. Rather, the Trustee certainly is free to select bonds with ratings higher than BAA or BBB

Furthermore, the trust agreement does not, as the SSAB appears to suggest, require the trustee to rely upon bonds as the primary form of investment vehicle. Rather, the trustee is free to invest in equities or other investment vehicles subject to other appropriate limitations to protect the trust corpus.

The SSAB also questions the propriety of a section in the trust agreement providing that the trustee be held harmless from personal liability.

The inclusion of the hold harmless provision, however, is provided in the form trust agreement set forth in the NRC's Draft Regulatory Guide DG-3014. As such, Molycorp's proposal complies with the regulatory guidance. Furthermore, notwithstanding the SSAB's unsupported suggestion to the contrary, it is unrealistic and unwarranted to speculate that the hold harmless clause will be viewed by the trustee as an invitation to nefarious behavior. Moreover, it is unlikely that any independent, third-party financial institution would be willing to undertake the management of the trust in the absence of such a clause.

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SSAB Response

The SSAB regarding this comment must confess some confusion. Although Molycorp begins this comment with a discussion of the ombudsman concept they proceed to examine other aspects of their trust agreement. Our confusion is with the trust agreement. The SSAB was provided one copy of a document on the 5th of May and another at the meeting of June 8th, we are unsure which document is under discussion within their comments. The SSAB wishes to note we are not responsible for this confusion Molycorp originated and provided the documents to the SSAB in a fashion that would cause confusion. This confusion was recognized in our paper regarding the submittal of the May 5, 2000 document. Molycorp provides no explanation regarding this within their comment.

The SSAB contends that upon examination whether the document is the May 5th version or the June 8th version, both are out of compliance regarding DG 3014 and DG4006. The SSAB as long contended that it does not believe it should be a consultant to Molycorp regarding the specific identification of these deficiencies, it is enough to state that we have analyzed the draft guides regarding these matters. To this end the SSAB supplied Molycorp with a set of Citations and References on Page 8 of the paper/slide presentation. Exhibit No.1.

There is no criticism of Molycorp intended regarding the low rate of return.

The issue is, that this item, (low rate of return), is seen only as a limitation by Molycorp, yet compliance with the financial assurances is seen as a regulation. One is a limitation another a hard and fast rule. The convenience of this needs to be made obvious to the reader. This item is a criticism, we state that with clear impunity and credulity. Molycorp clearly states that this limitation is imposed to insure that the licensee adequately funds

the trust from its inception, which is exactly what Molycorp has failed to do. Adequately fund the trust with \$1.1 Billion. Molycorp hides behind a regulation they find to be convenient without regard to the harm it will do themselves, UNOCAL, SMC and the community.

The SSAB suggested the ombudsman concept in regard to a number of regional scandals in (southwestern Pennsylvania) that have occurred concerning foundations. These include the Allegheny Health Education and Research Foundation. Relative to this matter the SSAB submits Exhibit No. 17, a series of articles from the Pittsburgh Post Gazette regarding the Allegheny Health Education and Research Foundation scandal. A subsequent scandal involving the Ben Franklin partnership has also been in the news within last year.

In regard to the trust agreement draft of 6. 8. 2000 the SSAB wishes to note that Molycorp does not own all of the real estate involved regarding this matter. Its draft cell drawing provided the SSAB regarding the restricted area of the permanent cell referred to the Tyderdale Railroad as a separate property, which is not controlled by Molycorp. When the SSAB asked Molycorp on June 8th regarding this matter we were advised, in essence, that the matter is still being worked on.

Molycorp questions the trust agreement section regarding the hold harmless clause. The SSAB statement in its paper of May 9 stated that this item was within the regulations, yet raised objections in light of the above-mentioned scandals.

The SSAB does find the attempt to obtain liability insurance for the officers of SMC a step in the right direction. The problem is its insufficiency. Given the litigious environment within which SMC will operate it will be very difficult to obtain liability insurance to cover all the contingencies. Hence the need for the financial assurances requested by the SSAB.

Article 16 (6.8.2000 draft) is intended to limit SMC liability there's no guarantee a court would agree. The schedule of work in listed at the end is an inadequate attempt to define an operations and management plan. The SSAB stated this was required concerning SMC operations. The document falls short of any operation management plan members are familiar with. The SSAB was unaware of any escrow documentation, agreements or other items related to in DG 3014 section 5.4 or other sections regarding the development, documentation, organizational documentation or other matters required, related or heretofore regulated concerning said matter.

The SSAB suggests caution to Molycorp and the agency regarding these affairs, in light of the fact that there is not a parent company guarantee from UNOCAL Corporation.

Comment No5

A "transition trigger" should be defined which establishes when SMC would take control of the site. The SSAB has commented that: "Criteria should be developed that if

Molycorp is unable to perform, a trigger definition be put into place as to when the SMC takes over. In essence a transition trigger needs to be established." SSAB Report at p. 7. In response, Molycorp notes that various "transition triggers" already have been defined under the proposed agreement between Molycorp and SMC. See, Article 5 of the Molycorp/SMC Agreement. The terms of this agreement clearly and unambiguously delineate those acts or

omissions by Molycorp which would constitute an event of default, and the existing provisions are both adequate and appropriate to trigger SMC's involvement and responsibilities. Any additional delineation in the agreement between Molycorp and SMC on this issue is unnecessary .

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SSAB Response

The draft of article 5 of the 6. 8.2000 agreement, is an improvement over the draft of May 5 2000.

The SSAB finds the ninety-day cure period to be faulty. It allows Molycorp to become manager, arbiter and Judge, all in one agreement. This mechanism does not allow for accountability within this time frame. It provides no window into the process.

Comment to the No.6:

Site Maintenance Corporation ("SMC") should be established as a separate entity, devoid of Molycorp influence, and with proper legal and accounting mechanisms in place to isolate SMC from any potential future legal action against Molycorp.

The SSAB submitted the following comments regarding the management of Site Maintenance Corporation:

It is felt that the SMC needs to be a completely separate organization devoid of any Molycorp influence. Legal and accounting mechanisms should be put into place to defend the SMC against the quagmire that might someday surround Molycorp.

SSAB Report at p. 7.

From this comment, it appears the SSAB has unspecified and unarticulated concerns regarding Molycorp's involvement in the management of Site Maintenance Corporation. To the extent that this comment is founded out of a concern regarding the financial stability of Molycorp and how Molycorp's financial condition impact SMC, this concern is unwarranted. Sufficient financial assurance, as proposed by Molycorp, will be put into place before the project begins to fund the cost of maintaining the institutional controls in perpetuity.

To the extent this comment raises a concern about Molycorp's involvement as the proposed initial managing member of SMC, this concern also is unwarranted.

Molycorp will perform the decommissioning and, as such, will be most familiar with the storage cell and its construction, as well as the implementation of the proposed institutional controls. Furthermore, as long as Molycorp continues to be a viable and ongoing entity (i.e., before any uncured default might occur, thus triggering SMC's responsibility to maintain the institutional controls), Molycorp as the owner of the property has a right to maintain and control the site itself. Accordingly, in light of Molycorp's superior knowledge and experience, and its ownership interest, Molycorp appropriately should be the initial managing member of SMC.

Moreover, as noted above, the agreement between SMC and Molycorp clearly delineates those acts and omissions by Molycorp which would constitute an event of default. This agreement also expressly designates both the DEP and the NRC as third-party beneficiaries in the event of any uncured default by Molycorp. Accordingly, in the event of any uncured default, both the DEP and the NRC are empowered to take any and all appropriate actions available to third-party beneficiaries under Pennsylvania law, in addition to their inherent governmental, policy and regulatory powers and authorities, to compel and enforce Molycorp's and SMC's compliance with the terms and provisions of the agreement. and to seek such other relief available to third-party beneficiaries.

Finally, Molycorp does not believe that either it or SMC would be the subject of any meritorious legal claims, as speculated by the SSAB, arising from the approval and completion of Molycorp's proposed Decommissioning Plan. Therefore, the additional unspecified legal and accounting mechanisms suggested by the SSAB are unnecessary.

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SSAB Response

The SSAB regards this comment as another example of information taken out of context. The SSAB was discussing the lack of a parent company guarantee as an instrument regarding long-term custodial care. Although Molycorp did adopt the prepayment method as suggested by the SSAB.

The board members discovered evidence showing an alleged trail of financial separation of UNOCAL from Molycorp as a financial entity. This would in essence separate UNCOAL from Molycorp and SMC. In conjunction with this statement the board Submits Exhibit No. 34,(Index to plant related documents, docket No. 40 -- 8778).

The SSAB's original suggestion concerning the total separation of SMC from Molycorp control was made in relation to protecting UNOCAL stockholder assets. The advice of the SSAB was rebuffed by Molycorp. The line of demarcation was not to separate Molycorp from UNOCAL, there by creating a Johns Manville case environment. Please refer to Exhibit No's. 46, 47.

The SSAB regards the statement by Molycorp concerning its superior knowledge and experience in these matters as related the to Washington facility disturbing. The SSAB within its slide presentation showed Molycorp has violated the Atomic Energy Act in 1971 and the Pennsylvania Department of Environmental Protection has seen violations from 1970 to 1995. There are also continuing violations with an outstanding fine being negotiated with the California Attorney General's Office, and the Lahontan Regional Water Quality Control Board concerning water quality discharge permits: fines and penalties now exceed \$100,000. The Company's behavior in New Mexico shows numerous fines and Questa Mine was formally proposed for listing on the NPL (i.e. as a Superfund site) by EPA. This has been confirmed by an executive from the Molycorp Chicago Office. In light of this history it was suggested that Molycorp be removed from SMC operations. That position has not changed.

The statement that Molycorp believes it will not be nor would SMC be the subject of legal claims as speculated by the SSAB arising from the approval and completion of the decommissioning plan and that the unspecified legal and accounting mechanisms

suggested by the SSAB are unnecessary. The SSAB believes that due to past circumstances regarding cases including but not limited to: the Allegheny Health Education and Research Foundation, The Ben Franklin partnership scandal, the John's Manville case, and recent awards from the courts in southwestern Pennsylvania the SSAB believes that Molycorp and SMC will be the definitive targets of legal action. There have already been court cases (2 cases between Molycorp and Canton Township), one granting of a limited scope hearing to Canton Township by the NRC, and one private litigation case. (Exhibit No.49) The SSAB stated within its report, where there is smoke there is fire. The SSAB feels that any business that would ignore this fact given this operating environment is engaging in Whimsy. That business advice should be seen as clearly dubious .

OTHER

Comment No.1:

Molycorp and/or the NRC Should Consider Reducing the TEDE Limit The SSAB also offered one additional comment which does not fall within any of the four prescribed areas for advice but, rather, appears to recommend that a change be made to the existing regulations. In this regard, the SSAB states:

Thorium is odorless and tasteless, so you cannot tell if you are being exposed to radiation. Very little is known about the specific exposure levels of Thorium radiation that results in harmful effects to people or animals. For this reason, and since this site is planned for a very densely populated area, everything must be done to protect the citizens. Preventative maintenance inspection and planning is a necessity .Due to the 7 billion year time line complete replacement of all maintained operations is a given. Given the density of the surrounding population, the maintenance needs due to climatic and ecological impacts it is requested the any reexamination of TEDE above the 25mrem level be denied. Given the precariousness of this environment any reexamination should see the TEDE reduced to 10 mrem.

SSAB Report at p. 15.

Molycorp believes that the 25 mrem/yr NRC limit is safe and protective of public health and the environment. It is important to note that the dose calculations used to demonstrate compliance with the 25 mrem/yr limit are based on an unlikely hypothetical future land use and conservative assumptions. In fact, Molycorp believes that the actual dose, if any, will be well below 25 mrem/yr. Accordingly, the adoption of a 10 mrem/yr TEDE as suggested by the SSAB is not necessary .

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SSAB Response

The SSAB has discovered a body of evidence that supports a complete reexamination of the standards regarding exposure of human beings to radiation. The sources of this information comes from some of the most learned universities and organization in the United States and over seas. It is due to these new (to the SSAB) information that we highly suggest that the cell design, the standards utilized in that design and the underlying science of the standards are faulty.

It is interesting to note that none of this information was supplied to the board by any party affiliated to the SSAB process. Some of this information is startling, revealing and should have been made available to the SSAB in the beginning of this process.

There are whole segments of the scientific community who disagree with the standards, The information, science, and the standards creation process. This evidently is a battle that has been going on within the broad scientific community for some time. The alternative point of view was never supplied to the SSAB and this is a fault of the process.

Molycorp may believe that the 25mrem per year limit is safe. It is apparent that many do not agree, the SSAB in conjunction with those who disagree provide the following exhibits.¹

1

***Radiation-Induced Cancer from Low-Dose Exposure :
An Independent Analysis***

The author begins this analysis with an established track-record of correct research, analysis, and forecasting -- both in this field and in his earlier work. (Bio follows table of contents.)

Within this new book, he shows readers exactly how one arrives at the following conclusions :

1 ● -- There is no safe dose or dose-rate of ionizing radiation with respect to induction of human cancer. This is proven beyond any reasonable doubt by his combination of human epidemiological data with "track analysis," which reveals how studies at tissue-doses well above zero can nonetheless be studies of the lowest conceivable doses and dose-rates at the level of the cell-nuclei.

2 ● -- It would be impossible for low total doses of ionizing radiation, received slowly from routine occupational or environmental sources, to be less carcinogenic than the same total doses received acutely.

3 ● -- There is no support for speculations about any net health benefits from exposure to low-dose ionizing radiation -- in any of the literature cited by proponents of such speculations. The author wishes there were a net benefit, but cannot ignore the overwhelming human evidence of net injury.

4 ● -- There is very strong support in the direct human evidence for recognizing that the cancer-risk is probably MORE severe per dose-unit at low doses than at moderate and high doses.

5 ● -- The cancer risk-estimates for acute-low and for slow-low exposures, provided in reports by the quasi-official radiation committees, are still seriously too low -- even though the committees have recently raised some of their estimates by 3-to-10 times.

6 ● -- Ionizing radiation may even turn out to be the MOST important single carcinogen to which large numbers of humans are actually exposed.

7 ● -- Proposals to exclude slow-low population exposures from risk-benefit analyses, and to exclude a large share of radioactive waste from any regulation at all, are based on two mistakes: (A) The erroneous idea that there may be some safe dose or dose-rate, and (B) the large underestimates of the magnitude of the risk from slow-low doses.

8 ● -- Future insights in this field are imperiled by the practice of retroactively altering the key database, and of accepting unverifiable data and analyses from nations with world-class records of distorting truth in the service of policy.

9 ● -- The handling of the low-dose radiation issue, both scientifically and socially, can be watched as the "canary" with respect to additional toxic agents -- whose AGGREGATE impact on human health may become enormous.

Due to this large body of science, and medial knowledge we must state that there are serious issues raised concerning the science and the politics of science on an international level concerning the development of standards for human exposure to radiation on a global basis. Certainly this information shows that placing radioactive material within populated areas of any nation state is a form of genocide.

We include the following exhibits: No's 3, 4, 5, 5A, 5B, 5C, 5D, 5E, 5F, 5G , 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33 concerning ionizing radiation, these exhibits are included for this answer and all other areas of the paper.

The SSAB considers the deception it has endured at the hands of Molycorp since the start of the process as a travesty. It has become obvious that the applicant has played a game with this SSAB. An example of this is that at the June 8th meeting the audience again requested the numbers on a cost to ship the material. An answer was given that they did not have it and it was being worked on. This answer had been promised for at least 60 days. An attorney from Pittsburgh a Mr. Coster stated he had talked with personnel from Oak Ridge Institute and a number of \$500 per cubic foot was provided. The following exchange paraphrases then went on....One of the Molycorp personnel stated that that was at Barnwell South Carolina, one of the Molycorp Attorney's immediately turned around stared at the employee and stated that we are unsure based on the concentrations if that was accurate. It is clear from the exchange that Molycorp knows the exact cost to ship the material. The company willfully misled the board and the public.

It is still the opinion of the SSAB that the off site removal solution for 100% of the material at the site is the solution.

The SSAB regards the County one-page document as null and void since the members of the SSAB did not sign the document nor had any hand in developing, or writing said document.

MOLYCORP'S RESPONSES TO COMMENTS OF WASHINGTON COUNTY

Washington County chose to submit separate additional written comments regarding Molycorp's proposed institutional controls and financial assurance.

Washington

County's comments are attached to the SSAB Report, which is contained within Appendix

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The following summarizes the comments and suggestions made by Washington County, as well as Molycorp's responses hereto.

Comment No.1:

Molycorp should purchase adequate liability insurance for Site Management Corporation.

Washington County has suggested that the "[a]nnual cost of institutional controls for the on-site storage cell should also include any related insurance's [sic] which are necessary for the management for a corporation, such as comprehensive commercial liability, directors and officers coverage, errors and omissions coverage etc." Washington County Report. Molycorp agrees that appropriate insurance, including liability insurance, should be provided for SMC and its members.

Molycorp will maintain appropriate insurance for SMC and its members, and SMC will continue such insurance coverages if it should ever assume primary authority over the institutional controls. Molycorp has revised its proposed Agreement with SMC in order to clarify that appropriate and adequate insurance coverage will be obtained for SMC.

Comment No.2:

Molycorp should ensure that all costs associated with a prospective default by Molycorp be paid by Molycorp, Site Maintenance Corporation or associated agencies.

Washington County offered the following comment regarding payment of the costs of default: "If Molycorp fails to perform and maintain the physical controls as reasonably determined by SMC or the agencies or any other default mechanism in Article 5, all cost associated with the default should be paid for by Molycorp to SMC or associated agencies. Washington County Report.

This comment appears to be directed at insuring that adequate financial assurances should be pre-funded by Molycorp so that sufficient funds exist in the event that Molycorp defaults on its obligations with respect to institutional controls.

This concern

already has been addressed by Molycorp through its proposal to establish a fully-funded, non-refundable trust, the funding for which was determined pursuant to the NRC's regulatory guidance. See, Molycorp's response to Comment No.1 of the SSAB Report regarding whether sufficient financial assurances are provided.

Comment No . 3 : Molycorp should include municipal, county and/or state representation on the board of directors for the Site Maintenance Corporation.

Washington County has suggested that a representative of Canton Township, Washington County or the Commonwealth of Pennsylvania be appointed as a Director to the Board of SMC.

Molycorp does not believe this is either necessary or appropriate. As noted in Molycorp's response to the SSAB comments, Molycorp has proposed that it be the initial managing member of SMC. This is appropriate because of Molycorp will perform

the initial decommissioning and, as such, will be most familiar with the storage cell and its construction, as well as the implementation of the proposed institutional controls.

Furthenmore, as long as Molycorp continues to be a viable and ongoing entity (i.e., before any uncured default might occur, thus triggering SMC's responsibility), Molycorp as the owner of the property has the right to maintain and control the site itself.

Accordingly, in

light of Molycorp's superior knowledge and experience, and its ownership interest, Molycorp should appropriately be the initial managing member of SMC.

Although Molycorp sought the DEP's direct involvement in managing the site through a consent order with Molycorp and SMC due to the agency's existing regulatory and technical expertise, the DEP declined. Accordingly, Molycorp has expressly **designated that the DEP, as well as the NRC, will be third-party beneficiaries of Molycorp's agreement with SMC in the event of an uncured default by Molycorp.**

In the event of an

uncured default by Molycorp, both the DEP and the NRC are empowered to take any and all appropriate actions available to third-party beneficiaries under Pennsylvania law, in addition to their inherent governmental, policy and regulatory powers and authorities, to compel and enforce Molycorp's and SMC's compliance with the terms and provisions of the agreement, and to seek such other relief available to third-party beneficiaries.

Although Molycorp has proposed that neither the Township nor the County directly participate in SMC, Molycorp's proposal does provide that both the Township and the County will be fully informed of all pertinent activities at the site.

Molycorp has agreed to provide annual reports to the Township and the County

summarizing the inspection activities and the analytical results of monitoring and maintenance activities, including all prescribed studies, investigations, remedial actions and monitoring activities.

These reports also will be made available to the general public by **providing a copy to the nearest local public library in Washington County.**

As such, the

Township, the County and the general community will have opportunities for input on institutional control and financial assurance issues in the future.

Because all municipal, county or state entities or agencies, as well as the public, will be kept fully apprised of all pertinent activities and issues pertaining to the site, and because the DEP and NRC will be third-party beneficiaries upon an uncured default by Molycorp, direct involvement in SMC by the Township or the County is not necessary or appropriate.

Comment No.4:

Molycorp should provide for an initial five-year review of the overall associated cost and make appropriate adjustments to the amount of the trust.

Washington County has commented that it "would recommend an initial five year review of the overall associated cost and appropriate adjustments to the amount of Molycorp's letter of credit or trust fund. After the first five years the same process should be repeated every ten years.

" **Molycorp does not believe that any such review is necessary,** or appropriate, or is otherwise required pursuant to the NRC's regulatory guidance.

Molycorp followed the most conservative formula specified in the NRC guidance to determine the appropriate amount of financial assurance to ensure perpetual maintenance and control of the site.

Therefore, Molycorp believes that the financial

assurances proposed by it will be more than adequate to provide sufficient funds *for*
perpetual control and maintenance of the site. Accordingly, Molycorp does not believe that
further review as proposed by Washington County is necessary or appropriate.

Comment No.5:

Molycorp should include government controls such as zoning, restrictions on land use, state registries, etc., in the layering of redundant controls.

Washington County has recommended that additional government controls
be adopted as part of the institutional controls for the site.

County states:

In this regard, Washington

Government controls such as zoning, restrictions on the use of land, state registries, etc., are not as durable as the proposed physical controls, proprietary controls and enforcement authorities, however, they do serve a purpose and should be included in the layering of redundant controls. The P A Municipal Planning Code is constantly being amended to strengthen the effect of these forms of control. If the cell is approved by the Nuclear Regulatory Commission (NRC) on this site it will always be a major contribution to future municipal and county planning in this area which is directly related to these forms of control.

Molycorp or the SMC should be responsible for monitoring legal changes related to governments [sic] controls and making the appropriate recommendation to the governing body, for the site and general area.

Washington County Report.

The additional governmental controls suggested by Washington County are
neither appropriate nor necessary. Although Molycorp initially considered adopting some

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form of governmental controls, it ultimately chose not to recommend such controls for the very reasons acknowledged by Washington County --governmental controls can be

changed or altered pursuant to the political and legislative process.

In contrast, the

proprietary controls proposed by Molycorp, which run with the land, will be permanent and enforceable, and will not require zoning or other governmental regulations to be effective.

Furthermore, the controls proposed by Molycorp will not be subject to change or revision pursuant to the political or legislative process.

Because Molycorp has chosen not to use governmental enforcement such as

zoning to enforce the controls on the site it is unnecessary for Molycorp or SMC to monitor local zoning or planning decisions.

The proprietary and contractual controls Molycorp

proposes will adequately address relevant concerns without relying on governmentally-imposed controls.

Addendum: Molycorp case, Canton Township License Number SMB-1393

EXHIBITS CATALOGUE

{Submitted by the Site Specific Advisory Board as part of its Addendum.} July, 6, 2000

LEGAL NOTE: All Bibliographic information shall be produced upon request if it has not been included with this submittal.

No. 1: Report Site Specific Advisory Board under the auspices of the Nuclear Regulatory Commission for the Molycorp Decommissioning Plan Washington, Pennsylvania: Restricted area section of the plan: License Number S. M. B-1393 Dated May 9, 2000: submitted May 11, 2000 with the slide presentation which is a part of the report as stated in the title of the presentation. The Power Point Slide Presentation Title is; Site Specific Advisory Board; Report, Molycorp Decommissioning Plan, License Number SMB-1393, Docket Number 040-08778.

No. 2: Report Site Specific Advisory Board Molycorp Case: April 19, 2000: Preliminary Site Characterization Report Analysis. By the SSAB.

No. 3: Radiation-Induced Cancer from Low -Dose Exposure: An Independent Analysis: by John W. Gofman, M.D., Ph.D.: 1990: First Edition: Committee for Nuclear Responsibility, Inc.

No. 4: Appendix B: The Safe-Dose Fallacy: Summary of Three Remarkably Similar Reports; Part 1. Gofman 1990: Proof That There Is No Threshold Dose or Dose - Rate: Part 2. UNSCEAR 1993: "Sometimes Misrepair Can Occur": Part 3: NRPB 1995 Evidence "Falls Decisively" against a Threshold: Part 4. Alpha Particles, X rays, and the Major Medical Journals.

No. 5: Executive Summary Radiation from Medical Procedures in the Pathogenesis of Cancer and Ischemic Heart Disease: Dose- Response Studies with Physicians per 100,000 Population, John W. Gofman, M.D., Ph.D., Professor Emeritus, Molecular and Cell Biology, University of California, Berkeley; Edited by Egan O'Connor; First Edition 1999.

No: 5 A: X-rays: A Patient's Right- to -Know, on the Measurement of X-Ray Dosage, During Diagnostic and Fluoroscopic (Non therapeutic) X-ray Procedures (front page)

No. 5 B: Patient's Right -to- Know Policy Statement on the Measurement of X-ray Dosage During Diagnostic and Fluoroscopic (Non therapeutic) X-ray Procedures (back page)

No. 5 C: Book review: The Effects of Low - Dose Radiation by Lynn H.Ehrle; Radiation from Medical Procedures in the Pathogenesis of Cancer and Ischemic Heart Disease. By John W. Gofman.

No. 5 D: Ramp Addition - 1: "Expectations" February 19, 2000: Demonstration, for all Causes Combined: the Findings in RAMP Are in Line With Reasonable Scientific Expectations, A Response to Claims The Findings Are Not in Line With Reasonable Expectations by John W. Gofman, M.D., Ph.D.: and Egan O'Connor Editor.

No. 5 E: RAMP in Addition 2: "Causation," Feb. 25, 2000: A Response to Comment, "Very Impressive Dose- Responses - but Dose - Responses do Not Prove Causation by Radiation Because They Cannot Rule Out Some Other Cause of The Observed Relationships." By John W. Gofman, M.D., Ph.D. and Egan O'Connor, Editor.

No. 5 F : RAMP ADD- 3: " Atherogenic Mutations", March 9, 2000; The Unified Model of Atherogenesis and Acute IHD Death: Additional Evidence Related to Monoclonality, and to Acquired Mutations, by John W. Gofman, M. D., Ph.D. and Egan O'Connor, Editor. RAMP is a short name for the book "Radiation From Medical Procedures in the Pathogenesis of Cancer and Ischemic Heart Disease; Dose - Response Studies with Physicians per 100,000 Population,." by John W. Gofman, November 1999

No. 5G: Radiation from Medical Procedures in the Pathogenesis of Cancer and Ischemic Heart Disease; Dose Response Studies with Physicians per 100,000 Population; by John W. Gofman, M.D. , Ph.D., Professor Emeritus, Molecular and Cell Biology, University of California, Berkley Edited by, Egan O'Connor

- hypothesis -- 1: Medical radiation is a highly important cause (probably the principal cause) of cancer mortality in the United States during the Twentieth Century. Medical radiation means, primarily, exposure by x-rays (including fluoroscopy and CT scans).
- Hypothesis -- 2: Medical radiation, received even at very low and moderate doses, is an important cause of death from Ischemic Heart Disease; the probable mechanism is radiation -- induction of mutations in the coronary arteries, resulting in dysfunctional clones (mini- tumors) of smooth muscle cells.

First Edition: 1999 C.N.R. Book Division

No. 6: Chapter 45: Three Part Remarkable Similar Reports on the Safe Dose Fallacy: Part 1,2,3,4.

No. 7: Letter by John W. Gofman, dated May 11, 1999; LETTER OF CONCERN.

No. 8: Preventing an exercise "self defeat": The Relevance of Medical Radiation to Nuclear Pollution: by John W. Gofman, M.D., Ph.D., Professor Emeritus of Molecular and Cell Biology University of California Berkeley; Chairman of Committee for Nuclear Responsibility, April 2000

No. 9: The Law of Concentrated Benefit Over Diffuse Injury; by John W. Gofman and Egan O'Connor, November, 1993

No. 10: Confirmation that Ionizing Radiation Can Induce Genomic Instability: What is Genomic Instability, and Why Is It So Important? By John W. Gofman M.D., Ph.D., and Egan O'Connor, Executive Director, CNR Spring 1998

No. 11: "Asleep the Wheel" : The Special Menace of Inherited Afflictions from Ionizing Radiation. Fall 1998 by John W. Gofman M.D., Ph.D., Professor Emeritus of Molecular Cell Biology, University of California Berkeley, and Egan O'Connor, Executive Director, CNR

No. 12: Berkeley Voice, Thursday, September 19, 1996 Vol. 14, No. 50; Titled Unsafe in any Dose.

No. 13: Answers to Frequently Asked Questions About "Radiation." Fall 1996: John W. Gofman, M.D., Ph.D.; Egan O'Connor, Executive Director of CNR

No. 14: No One Escapes Harm: The Essential Story of In Utero Irradiation, by John W. Gofman M.D., Ph.D., November 1992.

No. 15: Letter Dated August 3, 1999 by John W. Gofman to Maria Holt, Field Director, Citizens Monitoring Network, Safe Power for Maine.

No. 16: Report UNOCAL's, May 22nd, 2000 shareholders meeting by Maryknoll Fathers and Brothers: dated May 30th 2000

No. 17: Pittsburgh Post Gazette; Allegheny Health, Education and Research Foundation Series; AHERF Execs hit with, settle SEC fraud charges, Dated Wednesday, May 3 2000, by Pamela Gainer Post Gazette Staff Writer: Anatomy of a Bankruptcy Introduction: Here no evil, see no evil By Steve Massey, Post Gazette Staff Writer: Anatomy of a Bankruptcy Lifeline for Institution: Anatomy of a Bankruptcy, Part 1: Wake up to Break up, Saturday, Jan. 17 1999 By Steve Massey, Post Gazette Staff Writer Anatomy of a Bankruptcy Part 2: Think Globally, look locally, Tuesday Jan. 19, 1999 By Steve Massey Post Gazette Staff writer: Anatomy of a Bankruptcy Part 3: Full Steam Ahead, Wednesday, Jan. 28 1999 By Steve Massey, Post Gazette Staff Writer; Anatomy of a Bankruptcy Part 4: Running on the Edge Thursday, Jan. 21, 1999 By Steve

Massey, Post Gazette Staff Writer: Anatomy of a Bankruptcy Crying Wolf? Thursday, Jan. 21st, 1999: Anatomy of a Bankruptcy, shared the risk, share the pain, Thursday, Jan. 21, 1999: Anatomy of a Bankruptcy, Part Five: Burning Down the House, Friday Jan. 22, 1999, By Steve Massey Post Gazette Staff Writer: Anatomy of a Bankruptcy in, 20 largest creditors in Allegheny Bankruptcy, Friday, Jan. 22, 1999, Anatomy of a Bankruptcy Part 6: Last Dance, Sunday, Jan. 24, 1999 By McKenzie Carpenter, Post Gazette Staff Writer: Anatomy of a Bankruptcy: Biographical information, Steve Massey, Pamela Gainer, Christopher Z Snowbeck, and McKenzie Carpenter.

No. 18: The Committee on Biological Effects of Ionizing Radiation (B. E. I. R.) VII, Sept. 2 1999, statement of Whenonah Haunter

No. 19: CNN's story, Mystery Mailer Sends Radioactive Material to Japanese Government Offices, June 12, 2000 dateline Tokyo; CNN

No. 20: CNN Story, Japanese Leader, Government Offices Target of Radioactive Mailing, June 13, 2000, Dateline Tokyo.

No. 21: New England Journal of Medicine, Book Review, February 14, 1991, Health Effects of Exposure to Low Levels of Ionizing Radiation: BEIR V

No. 22: Volume No. 48. No. 1. January/February 1992, The Bulletin of the Atomic Scientists, Reviews, A Low - Dose Danger, Radiation-Induced Cancer From Low Dose Exposure by John Gofman; Committee for Nuclear Responsibility, 1990

No. 23: Letter of Concern, University of California Berkeley May 11, 1999 by Dr. Gofman

No. 24: Curriculum Vite of Dr. John W. Gofman, M. D. Ph.D., Preventing Breast Cancer; The Story of the Major Proven, Preventable Cause of this Disease

No. 25: Radiation -- Inducible Chromosome Injuries: Some Recent Evidence on Health Consequences -- Major Consequences by John W. Gofman M.D., Ph.D., Spring 1992

No. 26: The Periodic Table of Elements; Thorium; cost Thorium Metal (99.9%) costs about \$150.00/oz; Source, Los Alamos National Laboratory, US, DOE.

No. 27: Bibliography on Radiation Effects at Very Low Doses and Dose Rates; By Ernest J. Sternglass, Professor Emeritus of Radiology, University of Pittsburgh School of Medicine, December 1, 1997.

NO.28: Nuclear Energy Research Initiative – Final Proposal (Bibliographic Reference)

Announcement LAB NE-99-1

Submitting DOE Laboratory:

Idaho National Engineering and Environmental
Laboratory (INEEL)
P.O. Box 1625
Idaho Falls, Idaho 83415-3870

Principal Investigator:

Philip E. MacDonald
Telephone: 208-526-9634
fax: 208-526-2930
pem@inel.gov

Project Title:

Advanced Proliferation Resistant, Lower Cost,
Uranium-Thorium Dioxide Fuels for Light Water
Reactors

Field of R&D:

Engineering research and basic science in the areas of
proliferation resistant LWR reactor fuel cycles, lower
cost LWR reactor fuel cycles, and improved high level
waste forms.

No.29: Induction of a bystander mutagenic effect of alpha particles in mammalian cells; by Hongning Zhou, Gerhard Randers-Pehrson, Charles A. Waldren, Diana Vannais, Eric J. Hall, and Tom K. Hei; Center for Radiological Research. College of Physicians and Surgeons and Environmental Health Sciences, School of Public Health, Columbia University, New York, New York, 10032; and Department of Radiological Health Sciences, Colorado State University, Fort Collins, CO. 80523

NO.30: Targeted cytoplasmic irradiation with alpha particles induces mutations in mammalian cells, by Li-Jun WU, Gerhard Randers-Pehrson, An Xu, Charles A. Waldren, Charles R. Geard, ZengLiang Yu, and Tom K. Hei; Center for Radiological Research. College of Physicians and Surgeons and Environmental Health Sciences, School of Public Health, Columbia University, New York, New York, 10332 and Department of Radiological Health Sciences, Colorado State University, Fort Collins, CO. 80523, and Department of Ion Beam Bioengineering, Chinese Academy of Sciences, Hefei, Anhui, China; Edited by Theodore T. Puck, Eleanor Roosevelt Institute for Cancer Research, Denver CO, and approved January 21, 1999 (received for review December 10, 1998)

No 31: Mutagenic effects of a single and an exact number of alpha particles in mammalian cells; by Tom K. Hei, Li-Jun Wu, Su Xian Liu, Diane Vannais, Charles A. Waldren, and Gerhard Randers-Pehrson: Center for Radiological Research. College of Physicians and Surgeons, Columbia University, New York, New York, 10032 and Department of Radiological Health Sciences, Colorado State University, Fort Collins, CO. 80523

No 32: Reprinted from Mutation Research, Fundamental and Molecular Mechanisms of Mutagenesis, Radon, tobacco-specific nitrosamine and mutagenesis in mammalian cells; by Zongning Zhou, Li X. Zhu, Kaibao Li, Tom K. Hei.; Center for Radiological Research, College of Physicians and Surgeons, Columbia University, 630 West 168th Street, New York, NY 10032, Environmental Health Sciences, School of Public Health, Columbia University, 630 West 168th Street, New York, NY 10032, Laboratory of Industrial Hygiene, Ministry of Public Health, Beijing 100088, China ; Received 21 April, 1999; received revised form 23 August 1999; accepted, September, 1999

No33: Index to Plant Related Documents, Docket Number 40-8778

No. 34: Inspection and Testing Element 4.10

No. 35: Control of Inspection, Measuring and Test Equipment- Element 4.11

No. 36: ANSI/ISO 14001; 4.4.3 Communication, 4.4.4 Environmental Management System Documentation. 4.4.5 Document Control, 4.4.6 Operational Control, 4.4.7 Emergency Preparedness and Response, 4.5 Checking and corrective action. 4.5. 1 Monitoring and measurement

No. 37: THE WHITE HOUSE, Office of the Press Secretary, EXECUTIVE ORDER #12866 REGULATORY PLANNING AND REVIEW, EXECUTIVE ORDER 13085, EXECUTIVE ORDER 13132

NO 37A: Salting Away Hanford's Nuclear Waste, by Seattle Times, June 11, 2000

No. 38: Firefighters halt spread of blaze near Washington nuclear site, CNN.com, June 29, 2000

No. 39: Firefighters halt spread of blaze at Washington state nuclear site, CNN.com June 29, 2000

No. 40: U. S. Energy Secretary to tour fire-scarred Hanford nuclear waste reservation: evacuees return to homes, CNN.com, June 30, 2000

No. 41: Three Towns evacuated as fires rage through Los Alamos; blaze reaches laboratory campus, CNN.com, May 11, 2000

No 42: Flames roll across Los Alamos; Richardson; we don't think there is any danger of contamination, CNN.com, May 12, 2000

No. 43: In Body and Spirit, fire consumes Los Alamos, CNN.com, May 12, 2000

No. 44 : Fire Cleanup Crews at Los Alamos worry about contamination, CNN.com, Los Alamos

No. 45: First Fire, now Flooding: Los Alamos braces for another disaster, CNN.com June 3, 2000

No. 46: Discussion Board; Johns-Manville Corporation, Dealer in Death; Chapman, Spira & Carson- discussion, 5.4.1999

No. 47: Manville Personal Injury Settlement Trust: History

No.48: TOURO ENVIRONMENTAL LAW JOURNAL: A States Right to Recover Punitive Damages in a Public Nuisance Action; The Love Canal Case Study., by Robert Emmet Herman.

No.49: David and Rachel Comfort, his wife, 713 Weirich Avenue, Washington, PA 15301 vs Coldwell Banker Real Estate Inc, Barbara Whipkey and Kathy S. Inerval; Civil Division County of Washington, State of Pennsylvania (99-4298)

No. 50: Real Estate Company's Consumer Notice (Howard Hanna)

No. 51: SSAB slide presentation Questions and Concerns, March 23, 2000

No. 52: Security, LLNL, S300/ Existing Site Conditions/Existing Land Use

No. 53: PHMC FY97, Critical Self Assessment 4.4 Optimization of the Hanford Site Infrastructure

No. 54: The Hanford Reach, cover Reviewing Hanford Security October 11, 1999

No. 55: WSRC Procurement Department Location

No. 56: Overlay Maps site area, oil and gas, water shed

No. 57: Financial Assurance Spreadsheets; including a catastrophic or ambient event.

Report
Site Specific Advisory Board
under the auspices of the
Nuclear Regulatory Commission for
the Molycorp Decommissioning Plan
Washington, Pennsylvania

Restricted area section of the plan

License Number SMB-1393

Docket Number 040-08778

May 9, 2000

PREFACE

The Site Specific Advisory Board in this case was hampered by constantly changing applicant parameters. The applicant changed all aspects of the cell on February 24, 2000 and declined to provide information requested by the board. When provided we were told that only one copy, and in some cases two, of the amended reports would be available for review and changes continue as of this writing.

The board, as did individual members, utilized private channel resources, and worked to read thousands of pages of material to determine the real facts. The facts, once obtained independently or from the applicant, reveals: increased concentrations of radioactive material than originally provided by the applicant; a portion of the land within the cell boundary may not be owned by the applicant; material has migrated off site; and the economic impacts to the region are potentially severe.

The board also considered citizen testimony at the meetings. In this, the board heard a constant and resounding "**we do not want this in our community**". The community has many fears concerning health, economic impact, taxation and freedom of speech issues emanating from the conduct of Molycorp representatives during meetings. The community message has been constant for over one year on this issue starting with a citizens group centered in Elwood Park (testimony at an NRC public meeting on April 15, 1999). This same message has been repeated in every public meeting.

The applicant, it would appear, is reluctant to provide information to the board. At the meeting of March 23, 2000, according to a constitutional lawyer who attend the meeting, Molycorp violated the first amendment rights of citizens and elected officials. This denial of public right to comment was observed by NRC officials and a representative of the NRC Office of General Counsel.

It is a testimonial to the board members that they have worked in cooperation to produce this document attempting, as much as civilians can to stay within the regulations, draft guidelines and draft for comment NUREGS.

The most striking aspect of this paper is that people demand that radioactive waste be placed away from populated areas. The public came to the initial meetings feeling that their federal government was on their side but quickly realized that the regulations are written supporting the applicants needs without regard to the regulatory outcome. It would appear that public policy needs to be enlightened regarding its affect. In this case the cost to the community, it would appear, is already high. The regulations, if strictly administered in this case, will result in general and particular injury.

The whole application and review process needs to be rewritten and new laws

established that while not community intrusive, encourages the industry to store radioactive waste in unpopulated areas, with government underwriting of costing structures.

We found the SSAB process to be dysfunctional in both design and operation. The board shall specifically address that issue and provide an addendum to the NRC. In the meantime, let it suffice it to say that so much of this filing is based on Draft Guides for Comment is disturbing.

Financial Assurances:

One assumption is that the waste from York is to be combined with the waste present on the site. Even though they are being treated separately as legal matters, the combination is relevant considering the responses by Molycorp consultants at the SSAB meetings.

The board finds the requirements of section 30.35 defined prepayment method under 30.35 F. (1) to be the best method for securing this site's financial capability. The best selection is an escrow account, in cash. This of course would require outside auditors, one for the corporation and one for the beneficiaries. This option was considered best in light of the longevity of the cell's material contents, its half-life, information from the site characterization report showing mixtures of slag containing possible hazardous substances. For these reasons, considering the capacity for institutional and perhaps physical failure of the cell, the board believes the cash method is the most secure. In light of this circumstance the suggestion made by Canton Township that an estimated value of 10 cents per ton over a period of seven billion years is advanced. The estimated total cash equivalent is \$1.1 billion or a combination of precious metals. This amount replaces the frail structure offered by the applicant.

The cash preference is related to increased concentration levels, exposure levels, ground water issues, and mixed hazardous waste within the irradiated mass. This is essentially necessary when viewed in combination with site geometry and the operation and maintenance program presented by Molycorp. Undoubtedly, there is strong possibility that the material might migrate into the test wells on the north side of the site. There is also strong possibility due to the adverse economic outcomes and legal taking, law suits will be initiated from affected property owners within an estimated 2km to 2 mile radius. Further, if the cell is compromised either due to deficient engineering or catastrophic incident, the financial liability is certainly more than that proposed by Molycorp through its Site Maintenance Corporation. There is also a regulatory history relative to Molycorp that needs to be considered. There was an initial violation of the AEC Act in 1971, and noted Pennsylvania Department of Environment Protection violations between 1970 and 1995. There are also continuing violations with an outstanding fine being negotiated with the California Attorney General's Office, and the Lahontan Regional Water Quality Control Board concerning water quality discharge permits: fines and penalties now exceed \$100,000. Given the issues in New Mexico that the company now faces, with possible Superfund designation of the Molycorp molybdenum mine near Questa, NM. This mine is on the verge of listing by the Environmental Protection Agency (EPA) as a Superfund cleanup site, it would appear that the company's track record concerning decommissioning is suspect. In Canton there is the existing contention over the presence of a public water line under a significant waste pile. It also appears that for about 10 years or more an evaporation leaching pond containing thorium and perhaps uranium was directly over an existing water line and no attempt was

made to take corrective action. It has further come to the boards' attention, through the question of it members, that Molycorp may not own the old railroad right-of-way on the north section of the proposed cell area. It is also possible that the company does not own the mineral rights to the property. This increases the issue of undermining if it has not already occurred. All of these issues and others mentioned elsewhere provides an envelope of "potential for consequences". This envelope is a rolling envelope along with the 100 year court envelope. Therefore it is an envelope in perpetuity. It lends further credence to the potential consequences from a regulatory point of view concerning the imposition of an undue burden to the community or other affected parties. It is likewise anticipated that the SMC Corporation would be the subject of multiple lawsuits regarding the site during its existence. Insurance is not an acceptable modality; "...insurance has almost never been used by licensees and when insurance has been used, the submittals usually have not met the NRC's acceptance criteria".

Economic injury both general and specific from the existence of the cell is another area of concern. In a answer to a question posed to the NRC dated January 24, 2000, the NRC indicates:

Question: What is the Agency definition of injury? Are you and the applicant liable to cover all of the costs to everyone affected by your actions?

Answer: NRC regulations do not define injury. Under the Atomic Energy Act, the NRC is authorized to regulate licensees in order to protect public health and safety. NRC regulations provide adequate protection of the public health and safety. As a general matter, the NRC is not liable for the impacts of a licensee's actions. Depending on the situation, the licensee may have some responsibility for the effects of its actions.

While it is not presently in the scope of the regulations, one of the major public testimony issues was the anticipated adverse economic impact of the cell¹. This, combined with the aforementioned items, would appear to create an area of concern due to undue burden and hardship that should be addressed through regulation.

The reliance on the trust agreements, letters of credit and other methods may reduce this Corporation into receivership. Letters of credit are faulty, difficult to interpret and may not always be payable. It is entirely possible for default to occur or for the instrument not to be renewed. The proposed stand-by trust agreement is deficient. The trustees investment capabilities provide only a 2 .2 percent return on investment (although it is within the regulations it appears to limit the long-term fiscal capability of the corporation). In an inflation environment this could jeopardize fiscal integrity. Over 25 years ago (1975) interest rates in the United States were over 20 percent. Government policy today, in the minds

¹ To be addressed in the addendum with other subjects

of some economists, is based on the 1970s mentality concerning monetary policy decisions. (Source Wall Street Week, statement by guest 4.27.2000) The reliance on bonds, particularly those with ratings BBB / BAA, is disturbing. Any beneficiary and trust management would most likely want to have A-AAA ratings. Various aspects of the agreements are faulty in their capacity for adequate trust management. One suggestion is to have an outside board or ombudsman to act on behalf of the 3rd party beneficiaries. A hold harmless clause has been placed in the trust agreement. This could promote nefarious behavior even though it is part of the regulatory structure.

Certain aspects of the trust agreement and an agreement between SMC and Molycorp has been rewritten and it is puzzling to the SSAB as to which documents are now intended to be submitted. Since this item arrive at the board members residences on a Saturday, May 6 with no instructions as to its standing we have decided to review it like all the other documents. The caveat is that this is a quick response, we reserve the right to revisit this later in the process through other aforementioned submittals. Even though this item touches on trust management mechanisms, express powers of the trustee, includes an attorney, trustee compensation, a successor clause, and instructions to the trust the regarding amendments of the instrument. The same value level, \$1,007,700 remains. The trust agreement though increasing the operations of trust management still is faulty regarding DG 3014, DG3002, regarding the prepayment methodologies management and operations.

The prevailing law of, Pennsylvania, is recognized regarding amendments, there is a feedback loop regarding inspection worked out by Molycorp relative to SMC, a provision for specific performance, a series of items under Molycorp failure to perform as well as a default obligation by Molycorp, a schedule of work, and an escrow account. This document still falls short as illustrated in other sections of the paper, such agreements in and of themselves on an operations level without meticulous care remain faulty. Even though this agreement provides for somewhat increased management ability, the capabilities still fail regarding a complete operations and management plan which is loosely attempted on the last page. The creation of the document in and of itself relies on the supposition that Molycorp will be going out of business and is, literally, a management turnover document to SMC of Molycorp responsibilities. SMC remains an LLC chartered in Delaware.

Even though these documents attempt to meet regulations of DG3002 it still falls short. If this is the established model then various other required documents from DG 3014 are missing in their entirety.

Due to the lack of long-term custodial care, especially as related to security, and refined value of thorium there is a concern about potential terrorist activity against the site. In addition, the site characteristics leads one to suspect there needs to be increases to general maintenance, security, road and bridge

maintenance, increased well maintenance and well monitoring, and more thought to cell invasion by animals which could lead to ground water contamination.

The lack of professional on sight management, corporate operations structure, independent accounting for the corporation and for the third party beneficiaries leave serious organizational survivor capability questions regarding SMC. Furthermore, UNOCAL has not seen fit to provide a Parent Company Guarantee, which is the financial instrument of choice in such cases. This is another reason for the utilization of the prepayment method. This, combined with evidence discovered by board members showing an alleged trail of financial separation of the parent UNOCAL from Molycorp as a financial entity, provide another reason for this recommendation. Members of the board also feel that the control issue over the SMC by Molycorp should be revisited. It is felt that the SMC needs to be a completely separate organization devoid of any Molycorp influence. Legal and accounting mechanisms should be put into place to defend the SMC against the quagmire that might someday surround Molycorp. The board feels that criteria should be developed that if Molycorp is unable to perform, a trigger definition be put into place as to when the SMC takes over. In essence a transition trigger needs to be established.

The maintenance and monitoring of the cell would require a trained staff of security, maintenance and scientific personnel. Given the controversial aspects of the cell it could not be imagined that the facility could be operated without staff. Management at a distance would seem a greater public threat over the long-term.

To all outward appearance, the cell design seems to be grossly insufficient. A seven billion year time-frame would require a much more substantive structure than that proposed. An example might be a structure well below ground (by thousands of feet) insulated by reinforced concrete and wrapped in a synthetic liner with the waste in separate, multi-modality, containers prepared for possible removal via an automated system to railroad cars. Another approach could be something much sturdier, by orders of magnitude, above ground which might resemble the pyramids of Egypt, this would have a chance of lasting the requisite 7 billion years. Reference the Carlsbad New Mexico site and the preparations for the Yucca Flats site in Nevada. Granted these are for high level waste yet the time considerations in this case seem to provide parity juxtaposed to a more intense, higher grade, shorter half-life materials as opposed to materials with a much longer half life.

The potential of increased exposure rates requires additional engineering work. We will assume that this would increase the overall financial assurance required for the life of the cell. Given the circumstances other methods of waste management need to be considered. These would include shipment off-site to an approved NRC facility such as Evirocare of Utah, International Uranium (USA) Corporation of Utah, or Barnwell SC or other new facility. An alternative for the

York material under the interim storage application to the NRC was listed as alternative #3 in the Draft Environmental Assessment of proposed construction and operation of Interim Storage Structure at Washington Molycorp facility for storage of Molycorp York Decommissioning waste; License Number SMB -1393, Docket Number 040-8778, Alternative #3 page, Section 4.3, page 5. This might be one place to start. At an SSAB meeting held on 3.23.2000 a Molycorp consultant stated that some of the material slated for the proposed permanent cell would be shipped off site. The Board requested comparative figures from Molycorp regarding off site shipment as an alternative. Molycorp, however, declined to provide these figures even though that conveyed a belief that the cost to ship off site was dropping. When questioned the company stated that they believed that the cost to ship was dropping.

Citations and References:

We base these considerations on a review of: NRC regulations to 20.1402 radiological criteria for restricted use; NRC regulation 20.1403 criteria for license termination under restricted conditions; NRC regulation 30.34 terms and conditions of licenses; NRC regulation 30.35 financial assurance record-keeping for decommissioning; 30.36 expiration termination of licenses and decommissioning of site to separate buildings or outdoor areas; 40.42 expiration termination of licenses and decommissioning of site separate buildings or outdoor areas; 50.82 termination of license; 70.38 expiration termination of license and decommissioning of site separate buildings or outdoor areas; 72.54 expiration termination of licenses and decommissioning of site separate buildings or outdoor areas supplemental appendix B part 30 quantities of licensed material requiring labeling, draft regulatory guide nuclear regulatory commission D. G. 4006, demonstrate compliance with the radiological criteria for license termination; and NRC letter dated January 24, 2000, SUMMARY REPORT. In addition: Details of the Institutional Controls and Financial Assurances Applied or Planned at Various Hazardous and Radioactive Material Sites in the United States, Prepared for Site Specific Advisory Board, Molycorp . Inc. Washington PA, decommissioning Project, November 28, 1999, Radiological Services, DG 3014, Draft environmental assessment of proposed construction and operation of interim storage structure at Molycorp's Washington Facility for storage of Molycorp York Decommissioning Waste, Docket Number 040-8778, Amigos Bravos, Molycorp Washington PA Facility Decommissioning Plan, Part 1 Revision June 30.1999. Charter, Site Specific Advisory Board Molycorp, Inc., DG 3002. Standard Format and Content of Financial assurance Mechanisms required for Decommissioning Under 10 CFR parts 30, 40, 70, and 72, DG 3002

Institutional and Proprietary controls

The board through its subcommittee report brings to the attention of the applicant and the NRC that the Site Characterization Report presented by the applicant allegedly shows increased concentrations - exposure capability as well as off-site

migration, and aquifer issues. We find all aspects of the plan could be drastically increased by orders of magnitude. The slag, as illustrated in the site characterization report, has the potential to be mixed with other hazardous wastes already on site or, in fact, are mixed presently. The same report shows in the northwest segment of the main plant site radioactive material is already co-existing with selenium and cadmium. The board therefore feels all aspects of institutional controls and financial assurances need increased by orders magnitude.

The operation of the institutional controls are dependent solely upon the capacity of the organization, they are creatures of legality and of operating systems. The underlying assumptions are that the systems will be in place or remain in a steady-state capability. Since change is one of the main forces of history (especially over a 7 billion year half life) we can only assume the governmental institutions, organizations and other systems may be caught in this constant change.

Given the insufficiency of institutional and propriety controls, the board finds it is difficult to prevent unauthorized access to the cell without some form of permanent security on-site, twenty-four hours a day, year round. This type of security should include adequate security lighting encompassing both restricted and unrestricted areas.

It is possible, given the Securities and Exchange Commission 10k report submitted as evidence, that Molycorp may not be a long-lived system. As stated, there is no parent company guarantee. The parent company would seem to be separating itself financially from Molycorp. Therefore the emphasis on long-term responsibility must be upon the SMC. Given the fact that the NRC and DEP will be third party beneficiaries of the SMC under any agreement, we believe that the financial assurance (the prepayment option) would protect the third party agreement against liabilities regarding the cell's existence. If the SMC fails the NRC does not have financial responsibility. If failure occurs the site will become an EPA Superfund site. In light of this issue the board requests the financial assurance as stated above utilizing the cash option be implemented so the SMC operates in a strong fiscally managed environment.

The proposed criteria of controls for the Site Maintenance Corp. leave the board with the conclusion that enforceability aspects of land use restrictions and sufficient public notice to prevent unintended disturbance of the storage cell fall short. In order to provide a scenario where institutional and financial controls could be compromised we illustrate the following scenario:

*Dateline 2094
Canton Township*

Today Elmur Fudd II, supervisor, with his children Proton and Gamma accept the SMC site as parkland. This due to the petition by friends of nuclear science (some of whom are SMC board members) who petitioned that the land was to be deemed safe.

SMC sold to Kentucky Associated an off shore corporation located on the Island of Trougas.

2 years later, Elmur Fudd II of Trougas (no extradition treaty with U.S.), formerly of Canton Township ,Pa, today was awarded the Trougas cup for his polo team's win, his children, Proton and Gamma, are members of the team.

3 years later; Government reports massive clean up of former waste site seen to cost \$1.8 billion. Known as the site from which the deadly Canton Andromeda Strain started, the site has been quarantined and a 3 mile perimeter established.

Although somewhat dramatic in its prose, the above metaphoric example relates one method under which the proposed institutional controls and financial assurances could be broken. The use of failure engineering is practical in protecting the capability of a modality. This simple example is provided as a means for illustrating the capability to breaking the institutional controls. Given the lack of oversight it is possible that a site could be deemed safe and the material wealth of the SMC placed into an non-accessible offshore corporation. Many countries and newly formed nation states do not have an extradition treaty with the United States. Seeking criminal accountability against an individual or individuals would be extremely difficult.

One of the important sociological aspects related to exposure is that persons in the area live in their houses for long periods, 20-30 years. This does not fit the assumptive modeling that people will live in a home for 5-7 years and move. Thereby reducing the exposure level during a life span, those assumptions do not apply in this case. In Western Pennsylvania people have a tendency to own one home for much of their life span. It is not unusual to have the same home owned for 40 years by the same person. In light of this issue, the exposure modeling may need to be revisited.

The use of covenants, conditions and restrictions is a management issue. Under the proposed structure a set of CC&R's can be broken. The other concept associated with this type of legal instrument is that that it is only as good as its ability to be managed. The word "enforcement" is used in this respect, as has

the phrase "self-zoning". We believe that this is erroneous, enforcement and self-zoning implies police powers and that is the sovereign capability of the government. Municipal, state and federal governments are capable of enforcement. Most CC&R's are set up to protect the asset value of a common system and do not attract special treatment unless for some reason the asset to be protected is declared a dangerous instrument.

We would all like to believe that order rules over disorder in the universe. That is unfortunately not always true. The life span of this cell is measured in the life of a star. As a matter of fact our sun is due to go nova in 5 billion years, 2 billion years before the material reaches its half life.

One of the critical aspects of the SSAB process is to examine stewardship and quality of life issues. As subjective as these may sound they in many ways create the fabric of a community. It is apparent the impact of such a facility as the one under discussion here is a detriment to the quality of life in the Greater Washington region. Quite simply, just as one would not expect a citizen to place a potential hazard next to his neighbors the same is true here. A mature and responsible decision and regulatory process does not place material of this variety, for the proposed period, in populated areas. Stewardship brings with it responsibility **and that responsibility is not to take from others while saving corporate costs.**

NRC and DEP roles

With regard to The Department of Environmental Resources (DEP) having control over the facility, the SSAB has the following comments and concerns.

During the March 23, 2000 meeting the committee had specific conversations with Mr. Woods who was attending the meeting on the behalf of the DEP. During that conversation Mr. Woods indicated that the DEP would be the responsible authority for monitoring the sight after the NRC portions of the cleanup where completed. He stated that the DEP in part was created to perform oversight of such facilities and the budget process ensures that it will have the staff to do it. The DEP, therefore, would not be interested in maintaining the facility, as it would be a conflict of interest.

Mr. Woods also stated that if the proposed Site Maintenance Corporation became defunct for some reason that the DEP would have the authority to assign another company to care for the site and ensure the duties are performed. Mr. Woods said the DEP would require there be funds in place so that the taxpayers would not have to pay for the maintenance of the site. However, the DEP would ultimately drive a remediation if all parties failed and actions were required, i.e. it would become a Superfund site.

With these comments in mind it seems reasonable to request that Molycorp enter a consent order with the DEP which would outline the duties of the Site Maintenance Corporation and the DEP. The order should be specific about the DEP duties to monitor the sight, what perimeters would be monitored and what the acceptance criteria would be. It should also cover the specific duties of the Site Maintenance Corporation. This would be considered an Operation and Maintenance plan. The plan should describe the frequency of maintenance, specific items, which will be maintained, and contingencies. For example, industrial sites are required to have a *Preparedness Prevention and Contingency Plan*. These plans outline likely modes of failure, contact persons and the likely steps, which would be used to mitigate a failure.

In order to insure that the necessary duties would be performed, a separate trust fund should be set up with the DEP as the authorized administrator. The fund would be used to cover the cost of maintaining the sight should the Site Maintenance Corporation fail. **The monies set aside should equal those being proposed for the Site Maintenance Corporation. This item is important, as there are no guaranties that legislation will not change and budgeting for this type of facility could be cut.**

Items the board suggested.

1. There is no guarantee the legislature and the executive at the commonwealth level would adequately fund a line item in the budget funding the DEP role.
2. Several of the board members also remember Mr. Woods stating that if the cell did fail or if some catastrophic event occurred and the financial assurances are inadequate the government is the financial party in essence of last resort. i.e. health safety and welfare issues
3. The board discussed the need for an operations and management plan within paragraph #4
4. The board discussed the discussion of a reference to there being no insurance, since insurance; " ...insurance has almost never been used by licensees and when insurance has been used, the submittals usually have not met NRC's acceptance criteria".
5. The board applauded the last paragraph

Institutional Controls

Physical Controls

Storage Cell

Without consultation with an independent third party qualified to evaluate the efficacy of the storage cell to prevent radioactive emissions, the board cannot provide advice on whether the storage cell will comply with regs. 1 and 3.

Fence, Markers, and Signs

A fence maker and signs will place an undue financial and psychological burden on the community because they signal a potential danger from radioactivity. The perception of danger may cause property values to decrease, and result in extreme psychological stress for residents concerned with financial loss or health problems.

Cap

The cap is part of the storage cell. Please see comments above under storage cell.

Ground Water Monitoring:

Molycorp has proposed annual monitoring of 6 wells in order to guarantee detection of Radioactive Thorium and other heavy metals if the ground water carries these materials through the aquifer and out of the site area. This proposal is not adequate for the following reasons.

1. There has not been a thorough study of the geological structure under the proposed cell

Molycorp does not know if this area was coal mined, if there are old oil or gas wells on site, if the proposed sandstone base of the cell is cracked or if it is even large enough or strong enough to support the weight of 90lbs/sqft. of the thorium slag in a cell with a grade of 3 to 1.

2. The most recent design model does not even have a clay or plastic liner to help support the cell from natural water flow which could increase considerably in the case of a catastrophic event such as flood, tornado, hurricane, earth quake or even burrowing animals or erosion.
3. The cell base is expected to be approximately 20 to 30 feet below the present ground level. This hill has many natural springs and water flow

from outside the cell area, could in time drain through the cell and down through the natural aquifer system and carry radioactive particles off site and into the local water system. This relates to the liability issues as stated in the Financial Assurance section.

4. Please refer to the attached article from The New York Times of March 21, 2000. This article discusses ground water movement through the aquifer at the Nevada Nuclear Test Site. It acknowledges the possibility of radioactive particles becoming attached by colloids, which allows to particles to become buoyant and then floats with the water through the aquifer to possibly pollute ground water off site.

Because of the above, and in compliance with DG_4006 section 3.1.6_a much more stringent testing protocol must be used.

Direct Radiation Thermoluminescent Dosimeters

Molycorp has proposed quarterly replacement and readout of radiation testing devices and TLD enclosure replacement every 5 years.

The SSAB Board finds this to be outside of their expertise, however, there are some unanswered questions as to the 25 mrem per year limit. The question that is most important to us is, when the 125,000 cu yd of thorium slag is compressed into the cell along with other metals present such as Cadmium, Selenium, Manganese and Magnesium, does the radioactivity increase the overall energy or radiation of the mass? If the NRC cannot answer this question, then the radiation levels at this site should be monitored on a daily basis, not quarterly.

Surveillance/Inspection

Molycorp has proposed only periodic inspections. The SSAB believes that more attention should be given to security to the site. The security should be no less than 24 hrs. a day/7 days a week of on-site guards, with adequate lighting, warning signs and state of the art remote sensing capabilities. The reasons are as follows:

1. Cell or site inspection for damage due to vandalism, burrowing animals, erosion, etc.
2. Due to reactor design developments, radioactive thorium could be used in a terrorist action.
3. Thorium is a high-energy source and in the future could become extremely valuable.

Damage to this site could occur due to terrorist action or others who wish to sell this thorium. The present estimate of refined thorium is approximately \$150. Per ounce and is expected to increase.

4. This site could be listed in The Registered Thorium National Stockpile and would need to be under secure guard.

Maintenance of Physical Controls & Monitoring

The following are the SSAB's remarks regarding the maintenance summary of costs as reported in Exhibit D page #1 of the "Proposed Institutional Controls Draft" of March 23, 2000.

1. Molycorp should add instrument calibration to their schedule, similar to the ISO Standards.
2. All regular maintenance inspections should be **done no less than weekly**.
3. Two bridges were omitted from the Molycorp report, they will need routine and replacement maintenance schedules.
4. Management fee will have to be increased to support the above increases.

The above increases are needed due to the following:

1. The heavy weight mass of the Thorium slag on a 3 to 1 slope of the north side of the site will cause slippage, thus exposing the atmosphere to the radiation, or contaminating the test wells.
2. Similar results could occur due to fresh water springs or mine subsidence.

Thorium is odorless and tasteless, so you cannot tell if you are being exposed to radiation. Very little is known about the specific exposure levels of Thorium radiation that results in harmful effects to people or animals. For this reason, and since this site is planned for a very densely populated area, everything must be done to protect the citizens. Preventative maintenance inspection and planning is a necessity. Due to the 7 billion year time line complete replacement of all maintained operations is a given. Given the density of the surrounding population, the maintenance needs due to climatic and ecological impacts it is requested the any reexamination of TEDE above the 25mrm level be denied. Given the precariousness of this environment any reexamination should see the TEDE reduced to 10 mrm.

The signage repair and maintenance is an important issue since reports have seen young people breaking in other facilities and causing damage.

Signature Page

Jim Brison
Jim Brison

5/10/00
Date

Mike Bench
Mike Bench

5/10/00
Date

Elmer Gregor
Elmer Gregor

May 10 - 2000
Date

Jeff Leithauer
Jeff Leithauer

5/11/2000
Date

Chuck Neff
Chuck Neff

5/10/2000
Date

Barry Piacenza
Barry Piacenza

5.10.2000
Date

Mark Remcheck
Mark Remcheck

5/10/00
Date

BY MARTIN FORSTNER

When the federal government conducted 429 underground nuclear tests at the Nevada Test Site from 1956 to 1992, its scientists knew that ground water beneath the site would become contaminated. They have never said the underground water barely moved, and that radioactive particles would be sealed into caves by the blisters or else absorbed by underground rock.

But studies in recent years have found that radioactive particles like long-lived plutonium 239 can travel with water, and that water is flowing more rapidly beneath the site than was once believed. Scientists now agree that contaminated plumes have the potential to flow beyond the borders of the 1,573 square-mile test site in south-central Nevada, toward populated areas.

So many bomb tests, so little data on the mess they left.

They have already traveled or what ever by they contain. Scientists from the United States Geological Survey and the University of Nevada say that a witch's brew of radionuclides could take as little as a decade to reach well water in Beatty, a town of 1,500 people in the Gasia Valley about 25 miles from the heavily contaminated northwest corner of the test site.

"Could it show up there in the next 10 years?" Randall Lutzrak, a Geological Survey hydrologist and a co-author of a 1996 report on ground water at the test site, said in an interview. "There's that possibility. Will it show up at a dangerous level? I don't know."

Spokesmen for the Department of Energy, which administers the test site, were more conservative. Bob Bangerter, manager of the Energy Department's program handling the ground water issue, said that because some underground tests occurred near the test site's western boundary at the heavily contaminated Pahute Mesa area and the water was moving toward the southwest, there is a high potential that it will move off of the test site toward the Gasia Valley. But he would not estimate when this might happen. Another Energy Department official

agreed, said there was no evidence that the contamination had yet left the site and that it would not be likely to reach a populated area even 100 years from now.

The department has spent \$176 million to evaluate the ground water problem at the test site, but some experts say the agency has gone about it the wrong way. An early draft of a ground water model that tried to determine how far contaminants could travel at one section of the test site was heavily criticized last September by a review panel of ground water experts who said that the model lacked enough data to make it meaningful.

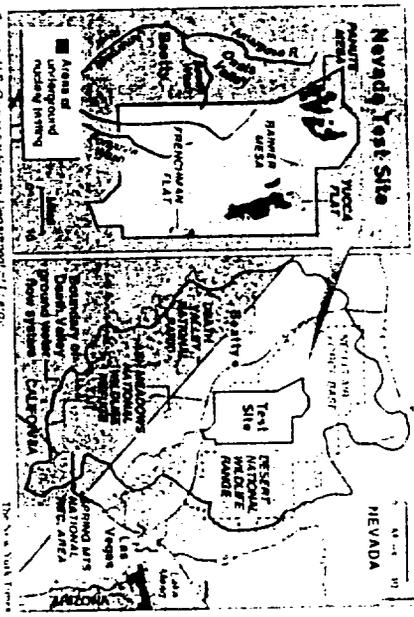
"It was severely data limited," said Dr. Lynn W. Gelhar, a ground water expert and professor of civil and environmental engineering at the Massachusetts Institute of Technology, who led the six-member peer review panel.

Another panel member, Dr. Don Weiber, a physicist and ground water researcher at the University of Nevada at Las Vegas, said the agency relied on one of its own previous ground water models in place of gathering real data about the problem. "They tried to do this without taking data," Dr. Weiber said. "Your models are only as good as your data."

The model, which the agency is now revising, predicted that ground water at the Frenchman Flat area of the site could travel only about three-fifths of a mile in 1,000 years, but the panel said that it did not take into account the "plausible" possibility that the water could drop into a lower aquifer, where it could travel much more rapidly.

"The testing was not actually done down in the primary aquifer, which is a limestone-type aquifer, but in a zone above that," Dr. Gelhar said. "The question is to what extent there is connection between the upper zone and this deeper, very permeable aquifer."

The Energy Department has already drilled dozens of monitoring wells both on and outside the test site and is installing eight wells northeast of Beatty. But agency critics say they are of limited value because they are not designed to find and define the contaminant plumes.



Source: U.S. Geological Survey, Department of Energy.

"They should design monitoring systems to intercept the contaminants from some of the critical large or detonations so that they learn more about the plumes, where they are going and how fast they are going," Dr. Weiber said.

Mr. Geritz of the Energy Department, though, said new wells were not necessarily cost effective. "Do you put a well every five miles?" Mr. Geritz asked. "Every six miles?" We have a site bigger than the state of Rhode Island. To go down to 6,000 feet, where we think you have to go in the northern part of our site, they're about \$2 million a well. What is the appropriate cost to taxpayer?"

Some scientists emphasize that even if ground water was to travel off the site, it does not mean that the radioactive contaminants would necessarily travel with it. It was once believed that plutonium 239 could not travel in ground water, but in 1997, scientists from the Los Alamos National Laboratory concluded that plutonium 239 had traveled nearly a mile from the location of an underground blast by attaching itself to colloids, insoluble particles suspended in water.

It is still not known whether the element, which has a half-life of 24,100 years, can move in ground water over distances that would be miles in concentrations that would be harmful. But the finding increased

concern among scientists about the potential health threat from the ground water.

The one radionuclide at the site that is known to travel freely with water is tritium, a hydrogen isotope that becomes part of water molecules. Although it decays in only 12.3 years, tritium can remain dangerous to humans for hundreds of years when found in the kinds of large concentrations that the test site holds, Dr. Weiber said. Other elements that contaminate the site include neptunium and americium, but little is known about their ability to travel in ground water.

Because Death Valley National Park is the end point of ground water flow for the region, scientists said that water from the test site would probably reach there eventually and could threaten the park, although most believe that it would take longer than a hundred years.

For residents near the test site, the focus on contaminated ground water

has compounded fears about the Yucca Mountain nuclear waste repository, which the federal government plans to build near the western border of the Nevada Test Site, not far from Beatty and other populated areas.

By making the idea of contaminated ground water less abstract, it has sharpened public worries about what might happen if radioactive material leaked from the site, which would hold tons of high-level radioactive waste from around the country.

There is no feasible way to clean the ground water of contaminants or divert it from flowing toward a particular place. But to prepare for the possibility that contaminants might someday reach a populated area, the Energy Department has studied a variety of costly, experimental plumes, including trying to mine out contaminants at the test site, which would cost trillions of dollars and prevent serious health risks to workers, diverting the ground water back onto the test site, and piping or trucking water to affected communities.

In Beatty, the issue has been a leading topic of discussion. "I'm concerned for a lot of reasons," said LaRhone Youngblood, who owns a ranch just north of Beatty. "We wanted to stay here until we died, and we'll probably have to move."

Such worries spiked in late February when Nye County officials reported that a very high level of radiation was found in one monitoring well south of the Gasia Valley. The report prompted calls to the Energy Department from county residents and spurred emergency meetings of town and county officials, but it turned out to be a false alarm: the initial well analysis was faulty.

Some scientists who have studied the issue believe that the Energy Department has never really tried to learn much about the contaminated ground water in order to keep public pressure off the agency.

"They haven't drilled wells with the intention of finding the plumes," Dr. Weiber said. "They didn't want to know."

A spokesman for the department, Nancy Harkey, responded, "We are banking and we do want to find it if it's moving. Our No. 1 priority is to protect the public."

ON THE WEB

The Natural World

More articles about pollution, drought and nature

www.nytimes.com/environment

OK 11/21/01
E-11
-209

Site Specific Advisory Board

Report

Molycorp Decommissioning Plan

License Number SMB- 1393

Docket Number 040-08778

An overview

- Impact area and regional economics
- Populations
- Water Shed
- The Cell
- Issues Related to the Cell
- Liabilities
- Lack of indemnity

Over View Continued

- Faulty Assumptions
- Dysfunctional Operations
- Third Party Beneficiaries
- Monitoring and Maintenance
- Case Offsite Migration

Meeting the 25 mrem per year limit

- pCi/g 1218.82 at 1 Foot Down
- pCi/g 2070.05 at 0 Feet Down
- pCi/g 1331.60 at 0 Feet Down
- Source: Molycorp Decommissioning plan
June.30.1999

Exposure

5 mrm/ hr reading

April 1999

Comfirmed

Increase the mechanisms

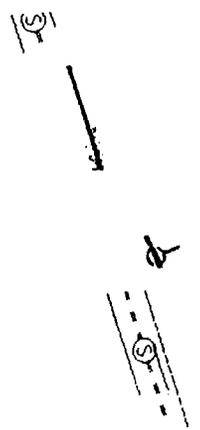
- Due to the increases in the levels of concentration and exposure
- Increase all aspects of the project relative to reducing the exposure to the community
- Increasing the Level of Financial Assurances and Institutional Controls

The Cell
120,000-125,000 Cubic Yards

The Time Frame
7 Billion Years

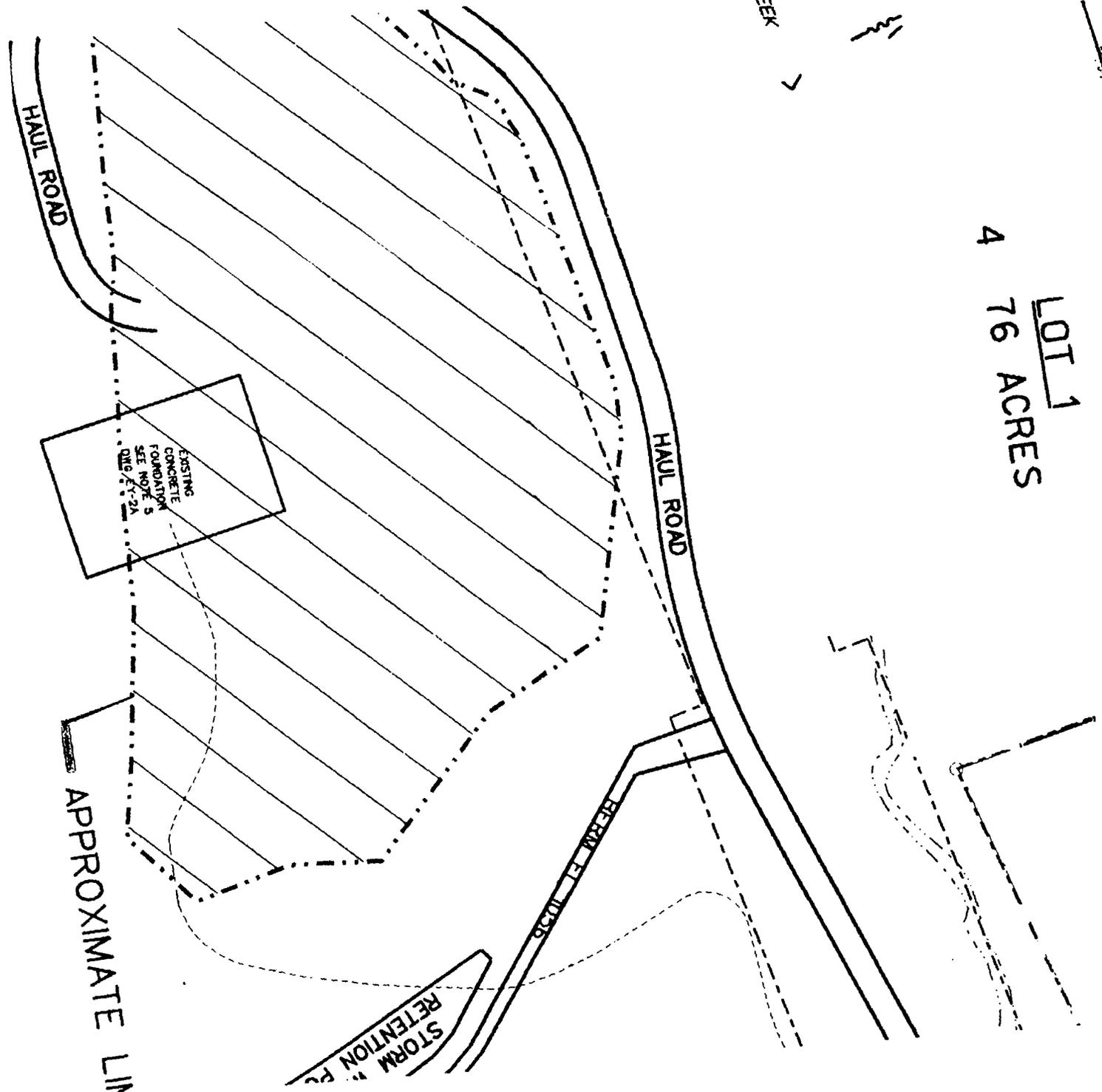
Cell Information

- Dimensions 700x300
- Slope 3 to 1 grade
- 120,000 to 125,000 cubic yards of radioactive material
- Mixed waste site
- 5 acres



LOT 1
4 76 ACRES

REEK



APPROXIMATE LIN

STORM RETENTION POND

HAUL ROAD

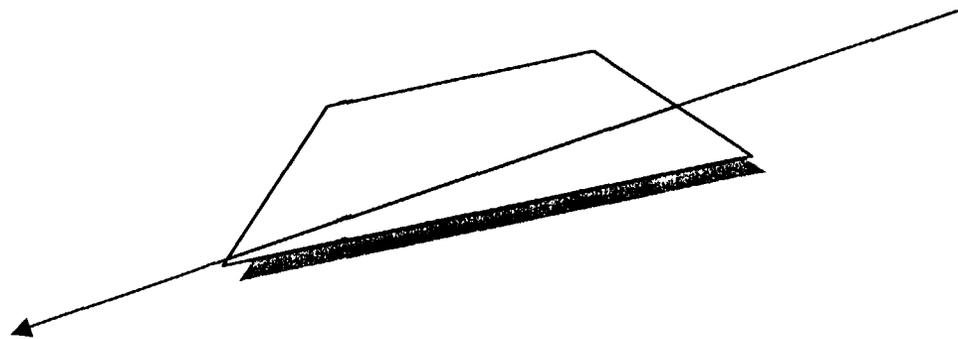
HAUL ROAD

SERIAL # 1038

EXISTING
CONCRETE
FOUNDATION
SEE NOTE 5
QMG 1-2A

SLOPE 3to1

- What would Newton Say?



All things made by man can be
undone by man

Institutional controls

Financial assurances

All things can be broken

- Given the longevity of the project it is possible for the controls to break down or be corrupted
- Nothing is steady state (Molycorp assumption)
- The dark ages relative to this time line happened .0000003 of a year ago or .000000001 of a day ago.
- The sun will go nova in 5 billion years 2 billion years short of the half life

The controls are precarious

- The enforcement aspects are only enforceable if a petition is made to a government authority, a judiciary.
- They are dependent on the quality of an unknown management in perpetuity
- There are no criteria for the quality of the management
- No criteria for organizational functional capacity

Enforceability is a responsibility of government

- Enforcement falls under the envelope of authority of the sovereign, I.e.government
- That means that the highest status SMC can obtain is that of a plaintiff in a case.
- Enforcement and self zoning are conceptual facades.

Cost-Benefit

- The cell and its controls are a burden to the community
- There are no direct benefits derived by Washington County Residents.
- Dis-investment is a result from a facility of this type
- Site selection criteria by quality businesses will negate the area as a prospect.

Liability does not = benefit

Injury Issue

Question: What is the Agency definition of injury? Are you and the applicant liable to cover all of the costs to everyone affected by your actions?

Injury continued

Answer: NRC regulations do not define injury, under the Atomic Energy Act, the NRC is authorized to regulate licensees in order to protect public health and safety, NRC regulations provide adequate

Injury continued

protection of the public health and safety. As a general matter, the NRC is not liable for the impacts of a licensee's actions depending on the situation the licensee may have some responsibility for the effects of its actions.

No Insurance

- “insurance has almost never been used by licensees and when insurance has been used, the submittals usually have not met the NRC's acceptance criteria”.

Liability: General and Particular

Possible Law Suits; type; class action
and particular injury relative on
taking of value in real estate

Liability: General and Particular Continued

- Cell design to to possible failure
- Poor custodial care due to deficiency in SMC operations
- Failure of SMC due to Deficiencies in underlying design model.

Class Action Suit Scenario

- Recent Judgment Washington County
\$18million
- 100 families at 18 million each
- \$1.8 Billion in judgments

Plans Missing

- Operations and Management
- Preparedness,
- Prevention
- Contingency

Third Party Beneficiaries

- NRC
- DEP
- Need for Controls
- Auditors

Beneficiaries Underwriting

- Set aside a fund equal to that for Site Maintenance Corporation
- No Guarantee that legislation will not change and budgeting for this type of facility could be cut.

Worst Case

- Total Failure
- Government is the funding party of last resort

Monitoring and Maintenance Groundwater

- No through study of geological structure
- Mining?
- Case of the evaporating liner
- Natural Springs especially on the north side

The figures

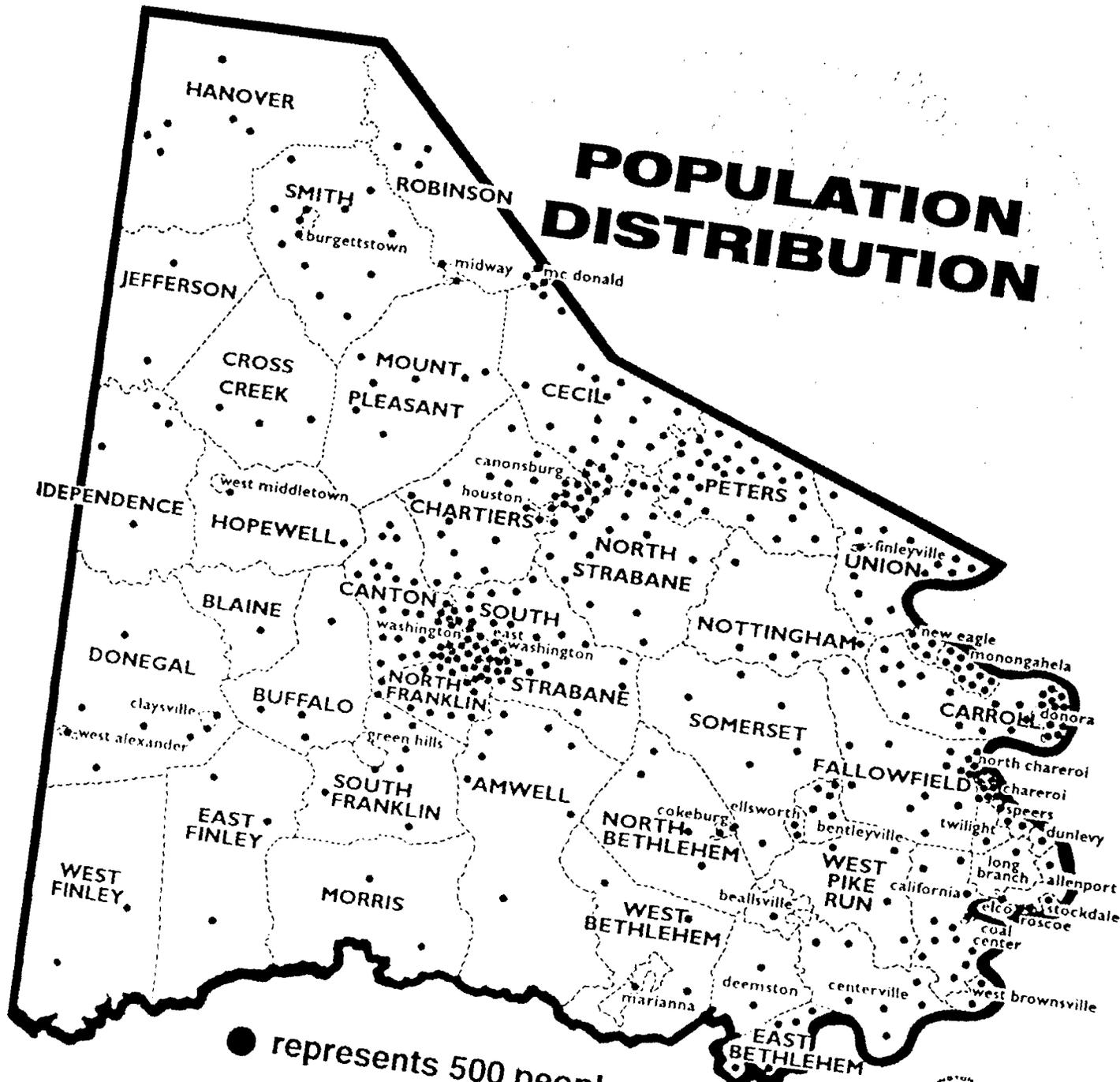
A quick primer on the local economy

Washington County Economics

Number of Manufacturing Jobs in a
2 mile radius above 3,500

Source; Molycorp Site
Characterization Report

POPULATION DISTRIBUTION



1996

Appendix G

Appendix D

Appendix

Populations within a 2km to 2 mile radius

- Students approximately 7,000
- Estimated 10,300 working adults and school students would be impacted by the Cell site
- Estimated 3,500 workers not including faculty or staff at educational institutions given a \$30,000 per year average salary and a modest economic multiplier of 2.5 total approximately \$252.500,000.

Chartiers Water Shed

- Drains 257 Square Miles
- 18 square miles are up gradient of the site
- 239 square miles are down stream
- It is one of the largest watersheds in Southwestern Pennsylvania

County Industrial Value of Production

- Coal, Primary and Fabricated Metals, Electric Machinery
- \$1.4 Billion Annually
- Agriculture
- \$37.9 Million Annually
- Real Estate; Assessed Value of taxable real estate; Over \$1 Billion
- Source;Molycorp Environmental Report 4/97

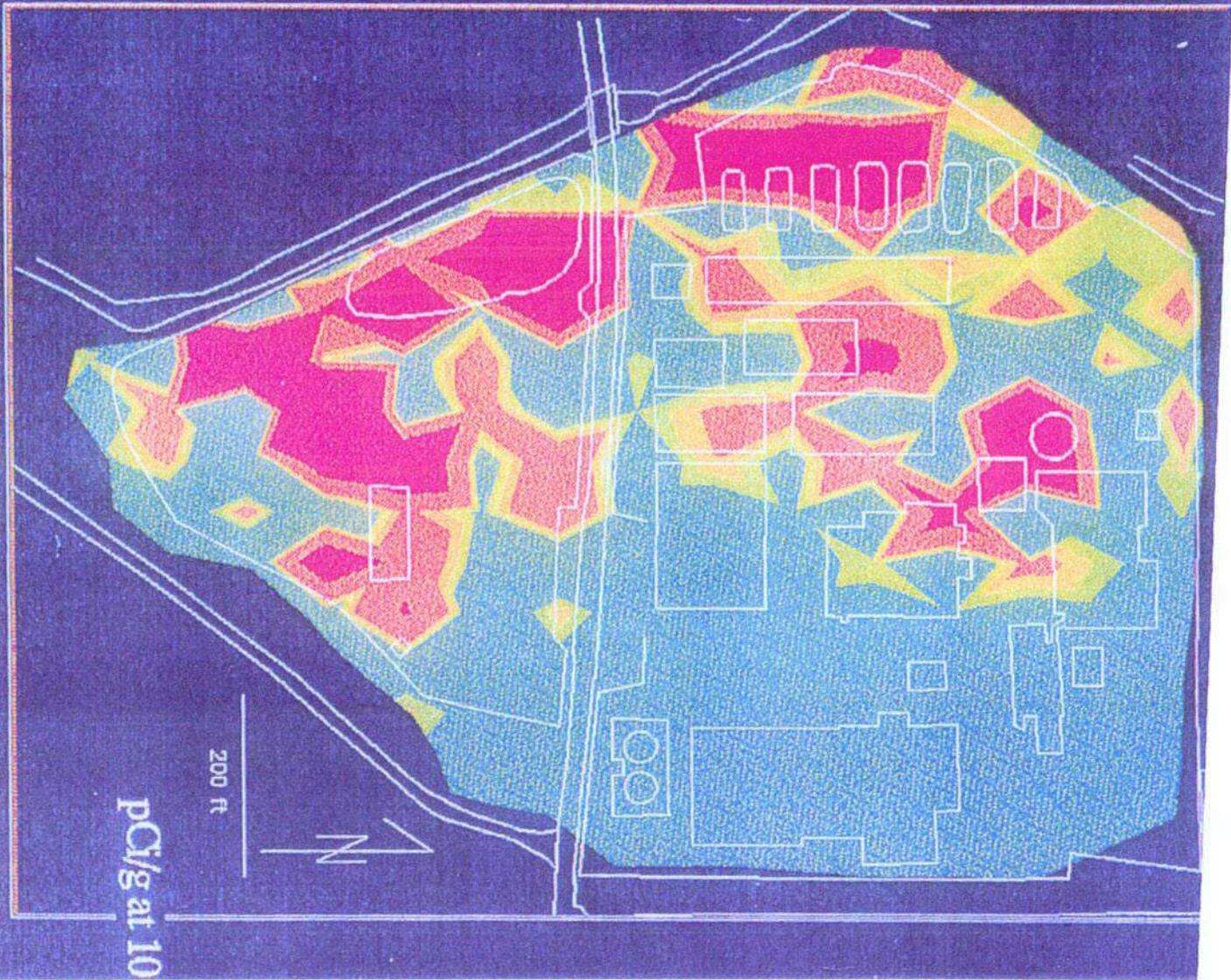
An Environmental History

Past is prologue
a historian once said.

Additional Liability

- History of Alleged Environmental Negligence
- Lahontan Regional Water Quality Control Board concerning water quality discharge permits: fines and penalties now exceed \$100,000

Off Site Migration



its pCi/g
50.0
15.0
10.0
5.0

200 ft

pCi/g at 10

Off site Migration from Cell

- The Nevada Case aquifer migration moving off site at underground bomb test site
- \$176 million spent to evaluate the ground water problem
- Testing methods dubious
- Los Alamos scientists in 1997 concluded Plutonium 239 traveled nearly a mile from the location underground blast by attaching itself to colloids, insoluble particles suspended in water.
- It was once believed that plutonium 239 could not travel in ground water.(source 3.21.2000 New York Times)

Draft Super Fund Listing, New Mexico

In order for draft Superfund listing for the Molycorp mine to become official, New Mexico Governor Gary Johnson must submit formal approval to EPA by mid-February, 2000. The governor is receiving pressure from many parties opposing Superfund approval, and it's critical that he hear from Superfund supporters as well. Please contact the governor's office by any means as soon as possible and urge him to approve Superfund listing for Molycorp immediately.

Source: Amigos Bravos Web Site

• Action Alerts

• Oral Histories NEW

• Background

• Location

• Press Releases

• Technical Information

• Articles and Bulletins

• Uncol:

Environment and
Human Rights Offenses

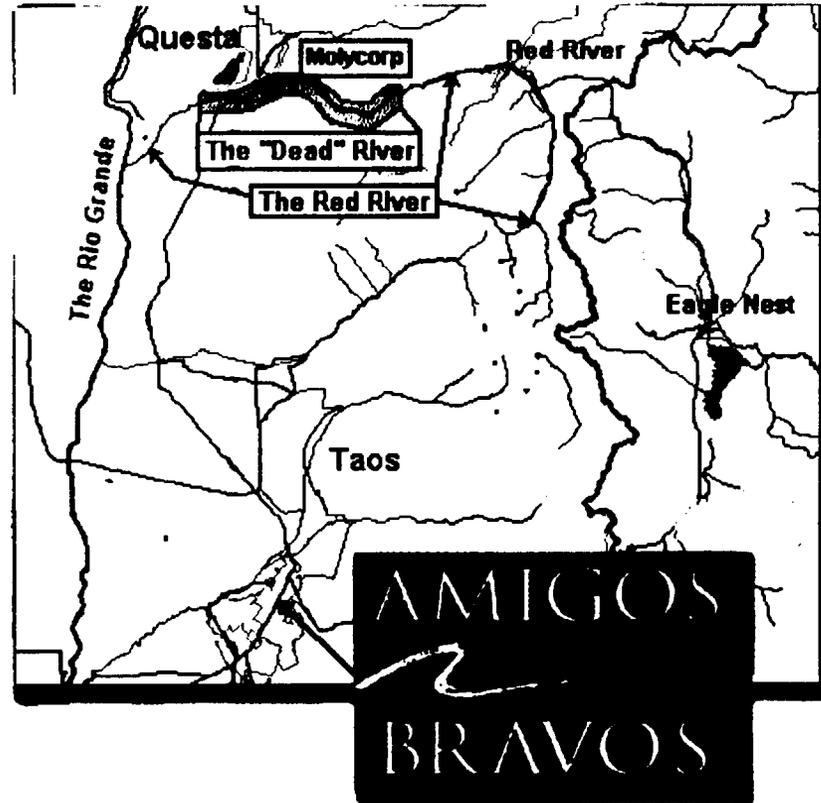
• EPA, NM Environment

Abandoned Mine



as a long-term extension of
against the MolyCorp. (fingal).molybdenum mine on the Red
River

A Dead River



Questa Demographics | Molycorp/The "Dead" River
Turquoise Lake - 1998 | Amigos Bravos
Molycorp Watch Page

Financial Assurances

- Prepayment Method
- Funds in Cash
- 1.1 Billion Dollars

It is not nice to litter

- Stewardship brings with it responsibility and that responsibility is not to take from others while saving corporate costs.

Another Point of View

THE OFF SITE MANAGEMENT ALTERNATIVE

ADVANTAGES

- (1) OFF SITE DISPOSAL WOULD SATIFY
CURRENTLY ACCEPTED NRC REQUIREMENTS

- (2) PUBLIC CONCEN OVER THE ULTIMATE
DISPOSITION OF THE THERIUM BEARING MATERIAL
WOULD BE ALLEVIATED.

What is Good Public Policy?

- If Public Policy is made in light of outcomes, in this case;
- Who wins, who loses and who pays?
- The injury will be General and Particular

April 19, 2000

Report Site Specific Advisory Board

Molycorp case.

Preliminary Site Characterization Report Analysis.

The purpose of this document is to provide information to the board as a summary, reference guide of the Site Characterization Report dated, January 1995.

To the Reader:

The Site Specific Advisory Board requested a copy of the Site Characterization Report from the NRC applicant Molycorp at the February 24, 2000 meeting. The subcommittee members appointed by the Board were, Board Members Jim Brison, and Barry Piacenza. Molycorp made copies available on Friday March 17, 2000. We were informed of the availability by a representative of William Green Associates, the Public Relations firm Molycorp contracted. The subcommittee members Mr. Brison and Mr. Piacenza pickup 3 of the 4 volumes of the report from the Molycorp plant on Caldwell Avenue at approximately 10 AM Eastern time from the guard office at the plant..

The subcommittee immediately met to examine the report and begin its work.

The committee is releasing this report to the board as a benchmark summary for the site characterization report.

Preliminary Report Summary:

The site characterization report shows a number of revelations. The report contains evidence of heavy metals in the earth, past legal infractions by the Company, and reveals thorium levels of about 200 pCi per gram (Pico curries per gram) and higher. Report shows gross anomalies in a letter from In-Situ Inc Corp. (Vol2 of 3 attachment 1 to Appendix E) concerning possible heavy electromagnetic field concentrations that affected the capability of equipment to function properly for testing in this case. The report shows that the regulatory environment and the standards relative to these matters are in a state of flux, changes over the last several years gives cause for concern for the role of outcomes relative to sites of this type. The report also indicates" slag material is not represent a threat to the public health and safety or to the environment. Additionally low concentrations of thorium are present in the slag mixed with the these soils, there is no evidence that any of the thorium is migrating off the site. This is counter balanced by report from Oakridge University Associates relative to site migration issues on Caldwell Avenue side the Molycorp environment. The report shows that concentrations of thorium on the plant site exceeding 50Pci/g cover substantive areas of the facility and vary as to their depth. There also additional issues concerning on site contaminations and other issues relative to figures in Volume 1 Section 5 relating to issues concerning the concentrations of thorium. The graphics produced by Earth Vision System by Dynamic Graphics of Alameda, California which show off site migration at various depths. These shall are submitted as exhibits. The impact area selected was a 2 km radius had a two-mile radius been selected a vast majority of the economic infrastructure of the Washington, Canton and North Franklin would be included. This is noted relative to references in the report where organizations near the 2km outer rim were noted. The extend areas have impact within the report. *The fact that a 2km radius was selected as opposed to a 2 mile radius creates a level of concern relative to the total economic impacts of the site and the community.* The best example of the actual impact zone was figure 2-8 with a 5KM radius. This extends into South Strabane, Chartiers, and Buffalo Townships. The revelations concerning heavy metals such as Molybdenum, Selenium, Cadmium, Uranium 235, Uranium 238 and other types of heavy metals and or concentrations provide cause for concern in this case. It could be suggested these heavy metals are equally as important as the radioactive elements. This importance was triggered by the facts that the company related to Site Specific Advisory Board on February 24, 2000 that the volume of the site had almost doubled and that the poundage per cubic foot was 90 pounds. Materials of this weight would lead one to conclude it contains more than thorium. It is important to re-examination all assumptions in light of the heavy metal issues.

Body of preliminary report:

A word to the reader. The report architecture follows closely as possible to that of the site characterization report itself. At certain times this report will take into consideration sidebar issues and that will deviate from the architecture. Our apologies in advance relative to this matter.

The site characterization report for the Molycorp site is important not only for what it says, it is also important for what it does not say. It is apparent that the developers of the report were allegedly very skillful in trying to not necessarily hide information but to make it more difficult for the reader to obtain clarity relative to the importance of this information. Some portions of the report do show the capability to reduce the alleged portrayal of thorium concentrations. The information is put forth in such a way that is conceivable that the reader may not be willing to delve closely into the actual facts of this case. This report will show in that that the issues and facts presented have serious implications relative to the outcomes of the case.

In order to best understand the case a little history may be of assistance. The site characterization report is part of a decommissioning process pursuant to a Source Materials License SMB- 1393, and all subsequent filings and or issues. Under the Nuclear Regulatory Commission's 1990, Site Decommissioning Management Plan, otherwise known as the S. D. M. P. the NRC requested a comprehensive strategy to deal with sites that required closure. In this case Molycorp been producing Ferrocolumbium alloy from Brazilian ore, (pyrochlore) between years 1964 in 1970. This particular ore contained thorium as accessory metal. The concentrations of thorium require a source materials license obtained in December 19, 1963. A section of the site (to the south of Caldwell Avenue) were used as a repository area for evaporation ponds. An unplanned site area on the West portion of the plant bordering Chartiers Creek also contained 8 evaporation ponds for a number of decades. The report delineates a number of relevant guidelines and criteria. In the objectives for the site include the following: to determine the extent of the distribution of thoriated residues on the site, in the structures and in the environmental media. To determine the rates of migration, if any, of thorium and or its daughters through various pathways to man. To assess associated nonradiological constituents and determine their effects on the radiological constituents and potential impact on decommissioning. To quantify parameters effect potential human exposure to the existing site radiological materials. To support evaluation of alternative decommissioning actions and detailed planning of a preferred approach for decommissioning, decontamination, and waste disposal.

In the relevant guidelines included in options 1 and 2 Branch Technical Position "Disposal of on site storage of thorium or uranium waste from past operations," 46 FR 52601, Oct. 23, 1981. "Termination of byproduct, source and special nuclear material licenses," policy and guidance directive FC 83 - 23, division of

industrial and medical nuclear safety, November 4, 1983. "Termination of operating licenses for nuclear reactors," regulatory guide 1.80, June 1974. Letter to Stanford University from James R. Miller, chief, standardization and special projects branch, division of licensing, office nuclear reactor regulation, NRC docket No. 50- 141, April 21, 1992. "National primary drinking water standards," 40 CFR 141. "Health and terminal protection standards for uranium and thorium meal tailings," 40 CFR 192.

Comments to the board: it may be beneficial for us to obtain these standards. It is important to note from that when this Site Characterization report was developed a 15 mrem per year total effective dose equipment standard was in place. And the other NRC regulations relating to decommission draft guidelines including; NUREG 1500, NUREG1496, NUREG/CR 5512, NUREG/CR 5512 were all under consideration as well as 5849. All of this is on pages 1-2 and 1-3.

The report states that the total of acreage involves that 55 acres. This raises the question since some land was sold off to the Canton Township Fire Department does this truly remain 55 acres or was that 55 acres included in the original boundary survey? It may be prudent to ask since the board has never seen the deeds to the land, Does Molycorp own all of the land that they say they own? One revelation came about on the site tour of April 13, 2000, it was apparent that Molycorp does not own the old railroad right of way within the northern portion of the property. It was further noted that the company had not considered a permanent bridge over Sugar run as part of the financial assurances and Institutional controls. The board members suggested that it would be prudent to have a bridge there for fire fighting purposes, since a brush fire for example might break out on the property. These land ownership issues should be examined. The section 2.1.2.1 Physical site development and processes include statements that the pile on the south side of Caldwell Avenue contains 27,700 cubic yards of the slag materials. There have been various reports that this is a higher level cubic yardage and needs to be reconfirmed. On page 2 - 14 an Atomic Energy Commission Compliance inspection June of 1971 showed evidence that Molycorp had buried in violation the terms and conditions of their license from the AEC thorium bearing slags had been buried on the site in violation of the license. This discovery from the report begs the question who gave permission to dump this material. The report stated it was speculated that the burial occurred during a large-scale cleanup of settling basins by a private contractor that was unaware of restrictions on landfilling Ferro Colombian slags it is obvious this was a grossing breach of AEC/ now NRC protocol. The AEC did issue a Notice of Violation and requested remedial actions be taken by Molycorp to excavate these materials and dispose of them in accordance with AEC regulations and guidance documents. Some materials were shipped with AEC license disposal facility operated by Nuclear Fuel Services Inc. of West Valley New York. The solution implemented created the 27,700 cubic yard pile cover with vegetation itself in the site currently sitting in the Chartiers Creek floodplain. The pile contains 1,250pCi/g. Vol1, Page 2-15. This figure is most

disturbing. An NRC contractor Oak Ridge Associated Universities conducted a radiological survey of the site in 1985 which identified elevated (twice background or greater levels) thorium in the dikes which separated the surface impoundments and indicated the potential of subsurface thoriated slags in the western portion of the site. Figure 2-7 showed elevated contact radiation levels. The report reveals the southern section of plant the site across Caldwell Avenue was at one time an area for evaporation pond or ponds that were then slag compiled into a domed mound just east Chartiers Creek. Further evidence shows that there were at least 8 settling ponds on the main site plant bordering Chartiers Creek. There are various other sites of interest located throughout and under the buildings of the main plant itself. These may very well contain higher concentration areas. It is interesting to note on Vol. 1, page 2 - 17 that RCRA part B for the ponds was rejected for a permit in 1985 and a general permit for the above ground storage tank was issued in 1990 the 1995 there was a solid waste permit for RCRA accepted in 1981. The report states on Vol. 1, page 2 - 17 that data exists for previous ground and surface water on-site sampling for the last 12 years. It appears information was not examined relevant to this report. *Note to the Board: it may be of interest to examine this information.,*

As part of section 3 dose assessment the report developers used the RESRAD code a Department of Energy tool for assessing the impact of residual radioactive soil contamination following the contamination sites and or formally utilized site remedial action program. At this time there is no comment on the RESRAD method because we need to examine further. In the report section discussing potentially exposed populations and demographic parameters within residents located 1 km from the site and extending from one - two km from site in radius is included sensitive populations; schools, classrooms, day-care centers, hospitals and lands adjacent to the site extending 2 km also included was land use zoning of the site and extending to 2km. Future land use, zoning at the site and up to 1/2 km from the site and also population projections. It is important to ask if the populations expressed in Section 3.2.3 are still in existence and at the same levels as exhibited in the report.

Section 4 Physical and Demographic site characteristics. Section 4.3 geology is important to note the report shows a in the region with within which the site is proposed is part of the Appalachian Plateau physiologic province system which consists of sandstone shale, limestone, claystone, and it can conglomerate. These units contain rich coal seams and numerous natural gas and oil deposits which represent the major natural resources of the region. Washington County is a leading coal producing county in Pennsylvania according to the U.S. Department of Energy 1983. As a part of this report we need to ask questions concerning the substrate, mining, gas wells, water wells, Springs and other geologic substrata formations.

These are important to note as part of the surface water hydrology and aquifer regional hydrology. Chartiers Creek drains 257 square miles, 18 square miles are up gradient of the site. This leaves 239 square miles downstream of the site. The Chartiers watershed is one of the largest watersheds in southwestern Pennsylvania. It should be noted for this report that the Chartiers Creek does not empty into the Ohio River at Carnegie. This another additional example that the NRC cannot check every fact that an applicant provides. This is should not be in any way construed to insult the NRC. This relates to a budgetary and related staffing issues. The hydrology here show that the creek flows to the north or at .001 feet per feet measured during September to November 1991 and it's over 8000 gal. per minute of flow. The report states that 28 gal/minute is from the plant site of which 7- 8 gp/m are base flow from groundwater. The substantiation of this is to open to question. It is important to note that the Alluvium is generally permeable and where saturated may yield moderate to large supplies of water to wells . Permeability does change typically over short distance because of changes in the degree of sorting. Without getting into detail at this time the evidence shows that the drawdown rates and tests into the aquifer are of significance. One can say that the statement by Ross Perot: relative to NAFTA, one can hear the sucking sound, is quite evident. This is indicated on a number of exhibits included in Section 4.

The site hydrology includes discovery of an underground aquifer below the site. We shall explore this concept and its implications further in the final report. It is however apparent that there is a very strong drawdown rate relative to the aquifer exploration. It is also possible that the aquifer may be part of aquifer system which leads to believe that the importance of the underground aquifer concerning this case is elevated. The importance of underground aquifers relates not only to the plant site both north and south of Caldwell it also relates to the propose storage site itself. These are of significant importance to this case. Apparently the geological, Hydrological and man-made implications surrounding the plant sites and proposed cell are of significant importance to the decision-making process. It is also apparent that heavy metals are a part of water both in the stream (Chartiers Creek) and in the aquifer, During the April 15, 1999 NRC Public Meeting testimony revealed that samples taken in Chartiers Creek produced radioactive material and counts.

The report goes on to examine the existing land uses in section 4.6.1 the 2Km radius covers 3,106 acres, if this was a two-mile radius minimum it would include large sections of City Washington, Canton Township, and North Franklin. The land use consists of median to low density and urban structures with other being a substantive portion of the usage. This area includes much of the infrastructure of the City of Washington including schools, churches, hospitals, military reservations, highways roads, utility infrastructure, colleges, malls, and government institutions. In essence everything that makes up the Greater Washington Economy. Figure 4 - 30 included Washington Crown Center, Route 40 (Chestnut Street) The 2km impact analysis showed over 3000 acres

impacted by the site. These do include old Reservoirs No. 1 and No. 2 in North Franklin and the vast majority residential area for North Franklin including the Washington Crown Center as well as large portions Canton Township and the economic infrastructure of the City Washington. As previously stated the 5km (figure A-8) Impact area includes the above jurisdictions plus portions of South Strabane, Chartiers and Buffalo Townships. The economic impacts of the site are to be taken seriously. It has been estimated that in Canton Township within less than one mile of the proposed waste cell the economic impacts will exceed \$20 million in property value losses.

In section 4.7.1 the report examines transient vs. permanent populations. The report shows that within the 2 km, is Washington High School. And just beyond the radius is Washington Jefferson College Campus. The Campus is basically a residential campus with over 1100 students. The land area in the 2km radius 59 % is in Canton Township, 26% in North Franklin Township, and The City of Washington 15%. Although the City has the smallest portion of the land mass it is the most densely populated and contributes a significant population to the study area, estimated to be 1 and one half times that of Canton Township which is also situated in the study area.

Agriculture is a major industry in the area. One of the interesting aspects of the report relates to the amount of milk produced in the impact area. The report shows that by assuming that the total farm acreage in Washington County (1,590 farmsx137 acres per farm) produces 120,000 pounds of milk (550lb/acre, multiplied by 177 acres of pasture in the 2 km radius to total 97,1500 pounds of milk per year in the study area. (Pg. 4-59). This raises some potentially serious unanswered questions concerning cows milk and smoke tack plume outfalls and past ground water contamination, cloud and rain drop development issues from the old Molycorp stack.

The transient population is mainly from Washington and Jefferson College and there are not many large parks in the impact zone. The largest transient population although not in the report is generated from the Washington Crown Center, I-70 and the Chestnut Street Corridor. The old reservoirs in North Franklin add to the resort, recreation facilities.

Washington Hospital is not located within the 2km study area although it is just outside the 2km area. There are many doctors offices and other types of medical facilities within the 2 km radius. As far as daily trip generators the following companies including Washington Steel Allegheny Ludlum, Allegheny Ludlum Jessop facility, Cerdec Corp., Washington Hospital, the Tylerdale business district, and Washington Crown Center, are generators. Jefferson Avenue/ Route 844, Chestnut Street are all within the 2km zone. Page 4-68

Total employees impacted is well above 3,500. This number does not include faculty or administrators at The Trinity area School District, Washington School District, or Washington Jefferson College. If those professionals were included it would increase the total number impacted employees by an additional 390 to 3,890. It would most likely increase the estimated average salary. It can be estimated (not including the educators and educational staff) that the economic impacts include an estimated averaging income of \$30,000 yearly salary. This yearly income figure multiplied by the non-teaching institutions personnel, of 3500 impacted employees and using, a conservative economic multiplier of 2.5, totals an estimated \$252,500,000. This number is related to salaries and a modest economic impact multiplier. It does not include retail sales, wholesale sales, transient sales, and or other economic impacts. It is enough to say that the heart of the economic infrastructure Washington County lies within two miles of the proposed Decommissioning Plant and proposed site for the cell. There are a number of sensitive populations including the Washington School District, Trinity Area School District, the total number of students, faculty and staff within or just outside the 2km zone exceeds 7,000. Included in the sensitive population impacts of vol 1. figure 4 - 33. All groups including day-care centers, nursing personal care homes, hospitals, group quarters and schools need to be reexamined to see if those are still impacted or the members have increased. This analysis shows that a total working population composed of working adults and school children of over 10,300 men, women, and children would be impacted by the site. This does not include, non working residents. i. e. retired or very young children. Sensitive populations from nursing homes, personal care day-care centers, hospitals, and group quarters are not included in this number. At this writing the number of residential units impacted is unknown. It is to be noted populations within two miles includes portions of Canton Township, The City Washington and North Franklin Township.

The study goes on to examine the current zoning and land uses surrounding the site, paying particular attention to a 1/2km radius. The study shows that by the 1 and 2 km areas includes; heavy industrial (I-2), other sections are Residential; R-2, R- 1 and Commercial; C-1 and C-2. The primary heavy industries border Chartiers Creek on the west and Green Street to the east.

Note to the Board; Maps at the 2km, 2mile and 5km levels are included for reference.

Township is preparing as stated in section 4.6.4 a comprehensive plan. Since this Site Characterization Report, Canton Township, continues zoning, land development and subdivision reviews and a rails to trails program to enhance the quality of life for the residents.

In light of this as an attachment a copy of the Recent Federal Court Ruling relative to this case is submitted.

Sub conclusion

The economic impacts of the cell on the greater Washington Area economy is serious. The numbers show that \$252,000,000 alone in manufacturing and related jobs would be impacted. This includes an economic multiplier of 2.5 which is closer to a resort community multiplier. Left out of the employment number are all teachers and school administrators, this number would increase the total substantially. These numbers do not include retail sales, wholesale sales, transient sales, and or other economic impacts. The severity of the site has alleged detrimental impacts on the retail market within the 2 mile impact zone which includes the City of Washington CBD and minor business enclaves as well as the Washington Crown Center. The economic ramifications are allegedly substantive.

The sensitive populations include 7,000 students within or just beyond the 2 mile zone.

Site Contamination

Section 5 of the site characterization report covers the extent and concentration of slag, soil and water contamination. The thoriated slag was a byproduct of Ferro columbium. The alloy was produced beginning in 1964, using an **aluminothermic reduction with pyrochlore concentrates. The use of pyrochlore** as the source of ferrocolumbium became prevalent after 1945. By 1964 production of ferrocolumbium from pyrochlore was equivalent to other raw columbium ores.

A review of the available records of the Araxa Mine (Brazil) concentrates indicates a silicon dioxide weight percentage of about 10 percent with a range from 3.1 percent to 17.6 percent, similar to the USSR material. The sulfur and phosphorus content is about an order of magnitude a less than presented, e.g. .01 percent for phosphorus and .02 percent for sulfur. Thorium Oxide ranged from 1.87 percent to 2.08 percent while uranium "yellow cake" reflected a low-grade ore i.e. .04% to .06 percent. (source personal communication Molycorp, 1994). This last statement may or may not be valid since there is no direct scientific evidence to vouch for its accuracy.

The Oakridge Institute for Science and Education stated in their 1985 report stated that the report concentrations of thorium 232 up to 1,380 \pm 20 pCi/g in surface soils with elevated surface radiation levels. On the south property with the slag pile, the maximum concentration of thorium 232 was 1,890 pCi/gram. (vol1, pg 5-5)

The elements evident in the slag include the following: Silicon 4.72 percent, Aluminum 25.77 percent, iron .45 percent, manganese .24, magnesium .17(magnesium readily ignites upon heating in air and burns with a dazzling white flame) Calcium 22.9 percent, Chlorine, 2.96 percent, Sulfur 2.01 percent, Oxygen, 40.76 percent. Vol. 1, pg 5-11.

The results of the Density Separation

Element	Tailing (86%)	Conc.(14%)
TH	.21	.23
U	.01	.09
FE	1.31	3.08
S	10.65	7.23

More concentration information is also contained in Volume 2 of 3 and 3 of 3.

The site contamination issue breaks down to two areas of relevancy. These are in the areas of the plant site contaminated from manufacturing of Ferrocolumbium alloys and leaching ponds. The second is the subsequent leaching pones on the south side of property as well as the old leaching ponds to the west of the manufacturing facility site bordering Chartiers Creek . Contamination evidence is contained in volumes one, No. 2, and No. 3,. This will include information relative to the areas of contamination, a light analysis of the core borings themselves plus areas not included in the core borings. In light of the fact that multiple volumes contain information we shall do the best we can to relate the information relative to each volume. Where relevant references to information in other volumes will be made it will be done to subsequent identification of the source. The bulk of the information is relevant to soils, slag, water and air. Volume 1 section 5 begins with the slag. In light of ease of readability we shall start at this point.

The slag is primarily contained on the south portion of the site, are a mix and combination of elements mentioned in the above paragraph. They are a conglomerate of various items combined into slag material due to the manufacturing process. It would appear that they are fused in nature and can only be separated by immersing these slag within an acid bath to separate the various metals and substances. It is apparent that beside the thorium elements mentioned above that are also residual elements of uranium, radium, perhaps other radioactive and hazardous waste sources.

Figure 5 -- 7 section 5 portrays concentrations in the pCi/g's at the surface level and is included as an exhibit. (reader we have included figure 2-7 as a ready location reference). The heavier concentrations in Fig. 5-7 the northern border with Findlay Clay and in the approximate area of the current mound on the south property and in the southeastern section near RT I-70 and building 39 and near

the bag house in Northeastern section of the plant site. There are also substantial sections between 10-15pCi/G in these same areas as mentioned above but broader in coverage area. The heaviest concentrations are figure 5-8 at a depth of 1034 feet shows an area of concentration near the bag house. In Fig 5-10 at 1026 feet concentrations are primarily located within areas of the manufacturing facility near building 26 and the south area of the plant across Caldwell Avenue near building 39 extending from there in a strip across Caldwell Avenue and including Caldwell Avenue. If we are interpreting this correctly there is alleged off site contamination under Caldwell Avenue. The southwest corner and figure 5 -- 11 concentrations at 1,022 feet include capabilities within the center of the plant area (at or near bldg.'s. 29, 28, 30, process buildings, shop and extending Northwest to the border with Findlay Clay), as well as strong concentrations in the southeastern corner of the south side in a wedge shape. The 1018 feet figure 5 -- 12 concentrations 50 pCi per gram are included in the leaching ponds of which there were 8 on the manufacturing facility. The company claims during a walking tour of the proposed cell site that the 8 ponds have been cleaned up and filled with clean fill material. There is no substantiating basis of independent fact regarding this statement. Only this verbal statement. If interpreted correctly one could allege that part of this extends to Chartiers Creek. If interpreted correctly there is off-site contamination in Caldwell Avenue this extends from the plant site across Caldwell Avenue to the mound along the south and southwest side of property along Chartiers Creek. This south property area is where Canton Township alleges that the 16 Inch, Pennsylvania American Water Company line is located. This is the old main water line from the processing plant in North Franklin that was fed by dams 1-4, It correlates with the location of the former leaching ponds. This information leads one to allege that the large south property leaching pond was directly over the water line for an extended period. This pond contained over the years hundreds of thousands of gallons of thorium and perhaps uranium effluent that leached and evaporated. It is the material, that when the water evaporated, was bulldozed into the current mound. There is a very large area that allegedly have been one of the leaching ponds on the southern portion of property. It extends from about Building 39 northwest, west and southwest to the border with Chartiers Creek. I had one man tell me that he went swimming in this leaching pond. There is a smaller area to the south of building 39 at 5-pCi/g this broadens out into an area of 15pCi/G larger in area including building 39 and to its north. If one examines the figure 5-12 it could be alleged that it extends to Chartiers Creek in the southwestern corner. Within figure 5-12 there is a large area on the plant site near to and including building 36 and a round pond like area. There is one small area near Chartiers Creek outside of the 8 old ponds on the main plant site at 50pCi/G right near the border with the creek. Figure 5 - 13 at 1016 feet shows heavy concentrations in the area of the south section of the property directly where the alleged Pennsylvania American Water Company waterline is located from the standpoint of Canton Township. This corresponds with figure 5-12. The area extends from Caldwell Avenue into the mound to the south extending in a curve to building 39. There is another large area to the east

within about 200 feet that also extends from Caldwell Avenue back toward the mound. This area of contamination extends to the south center portion of the southern portion of property. Caldwell Avenue appears to be an area of alleged off-site migration. Within the plant site itself concentrations are located near the old 8 leaching ponds and also the manufacturing facility. There is a small area in the Northwest section of the mound near Chartiers Creek it could be alleged it extends to the Creek. There is another section at 15pCi/g in the southeastern section of the property near I-70. At 1014 feet figure 5 - 14 the concentrations reduce to 15 pCi per gram or greater are located along the creek to the center of Caldwell Avenue, the south section of the property across Caldwell Avenue there is an area to the east of the mound within 200 feet and near the mound on the east border area. There are two areas one extending from building 39 to the southeast and another to the southwest of building 39. In the North by Eastern section of the manufacturing facility near the border with Findlay Clay is an area at 15pCi/g. Scattered throughout the plant section are areas at 10pCi/g. At 1010 feet figure 5 - 15 concentrations of 15 pCi per gram or greater are located in the south section of the property near the center to slightly east of the mound within about 50 feet of it and on the manufacturing facility along the border with the Findlay Clay. At 1006 feet figure 5 -16 concentrations of 15 pCi per gram or greater are located the center of the south section of property the old ponds of the manufacturing facility and the border the Finlay Clay Refractories. The hexagonal cuts as shown in figure 5 -- 18 includes heavy concentrations at 1015 to 1025 have concentrations of 50 pCi per gram at the middle and East/West's section. On figure 5 -19 concentrations are at the 1015 to 1020 ft. level of 50 pCi per gram or greater and also several at 15 pCi per gram. In figure 5 - 20 the heaviest concentrations began alongside Chartiers Creek to the mound into Caldwell Avenue at a deep section 1015 to approximately 1020 depth. If this is so then off site migration can be further alleged as it has been above under Caldwell Avenue. This contradicts the Site Characterization Report finding that no migration has taken place vertically or horizontally (Vol1 pg5-40) A large portion of the cross section is below 5 pCi/g. On figure 5 -- g21 we see a heavy concentration of the center the south portion of the site for approximately 1015 to 1027 of estimated basis within the cross section. The cross section examination shows that there are some very substantive contamination areas that need further examination. What is most disturbing is that it appears that some material allegedly has migrated off-site as well as a heavy concentration just over where Canton Township alleged waterline is located. These issues are of concern as are the cross sections located close to Chartiers Creek both on the main plant site were eight ponds were located and on the current mound on the south section of site along the West border with Chartiers Creek. It is apparent that heavy concentrations are or were located with in the these areas. The evidence for the above descriptions as stated in Page 5-17 of volume 1 were developed from the Earth Vision System by Dynamic Graphics of Alameda, California. The spatial software system provided the ability to map the site from a three dimensional perspective.

On page 5 - 25 volume 1, states the majority of the elevated thorium concentration is evident in the shallow areas both North and south of Caldwell Avenue. Figure 5 -- 13, at the 1016 level, indicates the highest concentrations, greater than 50 pCi per gram, rapidly decreasing the northern sector within two feet. Figures 5 - 10, 5-11, 5-12, 5-13,5-14, In 5-14 show areas of contamination that allegedly cross Caldwell Avenue, at the mound on the south portion of the site is a large area of contamination in the center of the south section and in the south center area of on the southern most portion. On the plant site there are areas near the former ponds and on the north boundary with Findlay Clay. In 5-15 there are area of contamination on the south parcel to the east of the mound and on the plant site near to the border with Findlay Clay. On Figure 5-16 there are areas of contamination in the center of the south parcel and plant site near the former ponds and an area from the north west corner in 3 areas extending to under building 25 on the border area with Findlay Clay. corresponding to 1014 feet, 1010 feet and 1006 feet above sea level.

Sub Conclusion: This discussion allegedly contradicts the Site Characterization Report finding that no migration has taken place vertically or horizontally (Vol1 pg 5-40). It is therefore alleged that such off site migration has indeed taken place under Caldwell Avenue.

Nor can we say that the thoriated material was randomly distributed since there are patterns to some of the material it is possible that some of the material was placed on the ground by use of tow -motors, or some other intra plant mechanized transportation of goods or raw materials device. It is apparent that ores may have come from the area of building 39 in rectangular metal containers, been transported across Caldwell Avenue to the main plant site and transported between buildings by motorized or non motorized means. The material appears to occur in bands however its approximate depths are shown from the slides in the report. Yet since these questions have been raised from the material, this question begs examination as well. It may be best to question former employees, persons in the neighborhood, truckers, and passing motorists who are familiar with the area for further details. It is recommended that further testing by independent parties also take place. If some of the thoriated material is near or at the surface this raises the question that in dry weather or during wind storms some of the material may become airborne.

In a chart located on Pg 5 - 40 volume 1 shows the estimated volume of the Thoraited materials vs. concentration table 5 - 8 the shows that the concentration of 500 pCi to per gram to 1000 pCi per gram there are 330 cubic feet maternal, from 100 to 500 pCi per gram there are 223,309 cubic feet material. From 50 pCi per gram to 100 pCi per gram there are 341,069 cubic feet material. From 15 pCi per gram to 50 pCi per gram there are 1,296,149 cubic feet material. From

10 pCi per gram to 15 pCi per gram there are 617,592 cubic feet material. From 5 pCi per gram to 10 pCi per gram there are 1,110,737 cubic feet material. According to the chart the highest concentration are in the 15-500 pCi/g range. This does not cover the fact that all the material is radioactive in one manner or that large volumes of material are above 50 pCi per gram; this is estimated at 564,708 cubic feet does bring some serious questions to bear. The total cubic feet of material is an estimated 3,589,186 (cubic feet), or an estimated 484,540 Tons.

Surface water, sediments and storm sewer 5.3

Surface water, sediments and storm sewer samplings are represented in section 5.3 Surface Water samplings were collected concurrently with ground water samples from the stream bank and analyzed for TAL metals and radionuclides. In round one's streambank area sampling as coincidence with round two of groundwater samples. Round two of streambank area sampling is a separate round consisting of the Chartiers Creek's surface water samples and 5 monitoring wells, M --2 and, M -- 3,M -- 4,M -- 5, and M-6. Both sets of surface water samples were collected during the period without precipitation. In stream sediments were collected between the surface water around and analyzed four-story enough to free to. Storm sewer water samples were collected on Nov. 1, a separate event or during another period without precipitation.

The surface water and concurrent ground water samples were analyzed for TAL metals, Molybdenum, chloride, phenols, sulfate, TDS, TOC and TOX . Molybdenum, Selenium, Cadmium, and TOX, are considered indicator compounds of impact from or refining activities. Molybdenum is also considered because of its elevated levels, the other three because of environmental concerns.

Cadmium was below the detection limited I'll surface water sampling locations and stream bank monitoring wells except in sample M -- 5 at 32.2 ug/l during groundwater sampling Round 1. In sporadic locations in the northwest portion of the site in the low ug/l range. I.e. M-1 at 7 ug/l (both rounds) and M-5 at 32ug/l (Round II, duplicate was "non detect", i.e. less than 30ug/l). However, M-18S had concentrations of 28 and 29ug/l, and M-15S (considerably upgradient) 9 and 6ug/l (respective rounds). Selenium tended to be undetected or insignificant except for the northwestern portion of the site. However spotty upgradient occurrences were as high as 204 ug/lk (Round I) in M-15S. TOX showed a reading of a maximum of 40 ug/l at M-4 and M015S showed 10ug/l (both rounds) Molybdenum concentrations ranged from 17,000 ug/l at M- 3 2 to 285,000 ug/l at M - 5 for the wells along the bank. Page 5 -- 44 volume 1. Molybdenum concentrations were incrementally high ranging from the hundreds to the thousands of the ug/l's.

northwest corner along Chartiers Creek and/or an area over 2000 umhos/cm. in the northeast portion are consistent with high levels observed for Molybdenum, cadmium, and selenium. The sand gravel specific connectivity indicates an analogous but smoother pattern and than the fill unit data. These data show a consistent exceedance of 2000 umhos/cm except in the vicinity of Caldwell Avenue along the upper gradient north-eastern edge. There is a gradual increase to over 4000 umhos/cm some cases and over 6500 umhos/cm in the southwestern corner along Chartiers Creek. A comparable area inside the northeastern portion exceeds 4000 umhos/cm with a reading as high as 6,620 umhos/cm.

There are indications on page 5 -- 65 in summary these data indicate possible impact from site related activities and buildings 32, 34 and 36. It is evident in light of this perhaps further concentrations of band high outlays may be capable underneath buildings or having migrated from buildings in the subsurface stratum.

Section 6 summary and conclusions

It is important to note that the conclusion itself feels that real-time confirmatory sampling will need to be a part of any alternative for sure waste minimization inadequate remediation. Additionally, as material inside buildings will be excavated final surficial will clean up and survey would take place after the interior work is complete.

It may also be seen from this report the confirmation of a number of the readings would appear to be warranted.

The summary goes on this data rates of migration of thorium and its daughters or determine to be negligible. That is, neither thorium nor any of its daughters migrated off-site to any appreciable degree. This includes the groundwater, surface water and air pathways, with all due respect to this paragraph it does appear that the material has allegedly migrated off-site and it is recommended that this be determined by outside authorities. This is a serious situation that needs immediate attention given the traffic on Caldwell Avenue and the nearness to Chartiers Creek as related to the radioactive sources of material. It is possible that migration beyond those we are exhibiting has allegedly taken place.

The report summary states: Non radiological constituents have no effect on the radiological constituents. They will potentially have impact on the D&D and will be considered at that time. It is becoming increasingly obvious that non radiological constituents may have impact on other aspects related to these matters. Certainly their existence and outside testing of same needs to be considered. If other constituents and elements are active within the area and have impacted then site remediation and enforcement needs to be considered.

The report goes on to state, human exposure for the no action alternative was evaluated for the resident farmer scenario and industrial scenario. The conclusion that was that while the site is currently not a threat to humans or the environment, the no action alternative is likely unacceptable due to foreseeable future doses under these scenarios.

The final conclusion is at the objectives set out in section 1.1 habitat, resulting in a solid basis for further valuation alternative decommissioning actions and detailed planning for preferred approach for decommissioning, decontamination AMD licensing. It is becoming increasingly obvious that certain aspects of this case had definitive impacts well beyond considerations of the site characterization report. Further examination, of those impacts including off-site migration, potential damage to the community, including an undue burden to the community far beyond the proposed cell and the existing conditions at the plant site and other Molycorp locations seems warranted.

Volume Two of Three

In relation to the attached letter from In Situ Corp. on page E., - 2 of volume 2 of 3 the following was in the record;

Some transducer data exhibited the erratic patterns which are unexplained that may be related to on-site electromagnetic interference (see letter from manufacturer, attachment one of this appendix). {copy enclosed} The Hermit data logger that stored the water level data received by the pressure transducers indicated patterns of noise which made it difficult to discern small trends in water levels. However, transducer user data from wells showed significant drawdown and recovery showed less erratic behavior. Measurable precipitation did not occur during pumping periods and back ground wells showed little variation (e.. g. wells in tables E. -- 2 and E. -- 4 outside of the radius of influence).

This unusual situation occurs, an energy source would be needed to create an electromagnetic field that affected a shielded piece of test equipment. Radioactive material is the only alleged source that close to the test equipment.

It is apparent in examining the information contained and portions of attachment known as appendix E strong drawdown rates were observed relative to the mechanics of the aquifer. It is entirely possible that the aquifer condition in this area is stronger and more active than hereby assumed. It is also entirely possible that due to the drawdown considerations and other information content that this is part of an active aquifer system. This is the head water of a rather distinctive and important watershed one would think that strong aquifer activity would be an item for consideration.

The aquifer considerations are important, Reference; New York Times article March 21, 2000 by, Author; Martin Forstenzer: with the Title: Concerns Arise

Over Aquifer Near Nuclear Test Site. This article in the New York Times relates to the Nevada test site it shows that water is carrying Plutonium 239 via colloids, insoluble particles suspended in water, {information found by scientists at Los Alamos}, beyond the 1,573 sq. mile test site in south central Nevada. The aquifer plume will be under Beatty, (town outside the test site area) NV in 10 years or so, and could drop into a lower aquifer and travel more rapidly. This article illustrates the importance of consideration of aquifer relative to any radioactive source storage. It also indicates that the model utilized in aquifer extrapolation testing should be closely examined. The assumptions of those models are critically important to outcomes downstream. In the Nevada case there may be a dual aquifer one writing on top of the other separated by stratum. As stated in the article if summaries stratum carrying plutonium 239 should find its way into a lower aquifer the migration speed would increase. Such parameters are not uncommon. Article attached.

The random factor effect has an impact on Radioactive/Nuclear waste policy. In this case the modeling was wrong. This appears to be all that much more important in this case due to the length of cell life. Within a 7 billion year time horizon groundwater contamination is a realistic threat. Other threats include; erosion from wind and water. It is possible that the entire surrounding cell area will be eroded away within less than 2 million years.

Appendix F; storm sewer base flow measurements

According to page F-1 flow rates for major locations are provided. The sewer pipe was constructed in such away the bucket to be placed under the pipe to capture the into our flow water from white. The major flow bucket was placed under the pipe the timer card fill the bucket was measured the cornea water was measured by transferring the water tour graduated cylinder. Each measurement was repeated fourteen times that each station on Sept. 9 and 7 times at each station on Nov. 3rd. It was determined after analysis of the first round that 7 times provided sufficient data. It is important to note the pipe flowed from various sites to Chartiers Creek at the north storm sewer outfall. The plant sewer system is not connected to a storm sewer system or water treatment system. The average flow rates were as follows for station one on Sept. 9 1994 the rating gallons per minute with 3.85 on Nov. 3rd 1994 the rating gallons per minute with 3.51 is station was 0 1 -- 5 on Sept. 9 1994 the flow rate was 7.29 gallons per minute on Nov. 3rd 94 it was 7.76 gallons per minute at station that 0 2 -- 0 1 on Sept. 9 1994 the gallons per minute flow rate was 2.03 on Nov. 3rd 94 was 2.53 on station 0 2 -- 0 2 on Sept. 903.65 gallons permit on Nov. 3rd 94 3.92 gallons per minute is important to note that according to report outcomes suggested a significant percentage of the long groundwater may be discharged into storm sewers. The storm sewer lines appear to be at or near the water table of many locations. It is possible that some locations the excavated sound around the pipe may intercept deeper groundwater from the semi confines sand and gravel unit particularly on the South storm sewer. In summary, it appears that a significant

percentage of the base flow from the site to Chartiers Creek may be intercepted by the storm stores.

The above paragraph seems to indicate an active groundwater situation that has significant groundwater excursions into the storm stores that then flow into Chartiers Creek. The aquifer information above shows an active aquifer with sand and gravel near the surface. Such an active aquifer near a storm sewer and so close to radioactive materials gives cause for concern. This should also be true for the South site where a thorium pile is located. Given the fact that thoriated material extends a minimum of 10 feet below the surface level from provides definitive cause for concern relative to aquifer intrusion.

Appendix H.

Review of Gamma Logging in site characterization at Molycorp, Inc. and the objectives of this section include to assess the appropriateness of the use of the NaI count rate to exposure rate and exposure rate to thorium concentration conversion factors. To experimentally derive the exposure rate to concentration conversion factor and comparative backs conversion factor and compare it to Beck's conversion factor used by Molycorp consultant RSA. To discuss the utility of gamma logging as performed to assist in site characterization.

Exposure rate to thorium concentration conversion this report states of the normal exposure rate to Thorium concentration conversion factor as calculated in table H. -- 5 is 5.4 plus .5 (uR/hr)/(pCi/g) 4π . This agrees with RSA's (Becks) to exposure rate to thorium concentration factor of 5.64 It's concluded that the use of above ground calibration factors for underground measurements does not have a significant impact on the accuracy of the results relative to other uncertainties involved in such measurements. It is also concluded that our RSA's use of Beck's exposure rate to concentration factor rather than experimentally derived factor also does not have a significant impact on the accuracy of the results (i.e. 5.4 vs. 5.6 (u/hr)/(pCi/g))

In order to cross correlate one would need to check a number of the appendixes concerning the core borings are relative to these circumstances as well.

Yet all of this is allegedly debunked by the readings performed by Russ which was 5 mrm/hr of only one roll off box the Public exposure rate is 100 mrm/yr. The reading by Russ were confirmed by the NRC at the April 15, 1999 public meeting. (The Board was provided by the Coroner a letter dated March 15, 2000 to the Washington County Commissioners) He was questioned by the NRC regarding the calibration of his Geiger counter and the NRC confirmed that they had taken a reading that same morning and it was at 5mrm/hr. With this reading from one roll off box and there being 194 of them the total cumulative read out is 8,497,200 mrm per yr. or 23,280 per day. This is coming from the ro'l off boxes themselves. This combined with the In-Situ anomalies which is an

electromagnetic field as underscored on E.. - 2 of volume 2 of 3 and by the statement on page {Some transducer data exhibited the erratic patterns which are unexplained that may be related to on-site electromagnetic interference (see letter from manufacturer, attachment one of this appendix). *{copy enclosed} The Hermit data logger that stored the water level data received by the pressure transducers indicated patterns of noise which made it difficult to discern small trends in water levels. However, transducer user data from wells showed significant drawdown and recovery showed less erratic behavior. Measurable precipitation did not occur during pumping periods and back ground wells showed little variation (e.. g. wells in tables E. -- 2 and E. -- 4 outside of the radius of influence).}* All of this is surprising and disturbing. It has implications related to the institutional controls and financial assurances.

Background subtraction there are two types of back round to be subtracted from the photopeak of interest: Compton and peak.

Compton background is due to the scatter or escape of photons from higher energy gamma rays originating mostly from the sample itself. It was calculated by performing a least square or straight line fit of the Compton continuum under the photopeak see Figure J-2). The calculated content background was then subtracted from the gross photopeak count to obtain the net photopeak count.

Peak background is due to naturally occurring radium and thorium in the surroundings of counting system. It was determined by performing account of EDI and eyes water sample in analyzing the resultant spectrum. The net count rate reach background photopeak was subtracted from the corresponding sample photopeak after Compton background was attracted.

Standardization check

The thorium 232 check source was counted daily to ensure proper operation on a routine basis all standardization results were within + -10 percent of the initial reference calibration value.

It is understandable that a report can be counter acted by an outside party. In this case it is entirely possible that the readings are much higher than reported in this Site Characterization Report.

Sub Conclusion #2

Due to the reading by Russ included in the Coroner's letter Dated March 15, 2000 to the Washington County Commissioners and provided to the Site Specific Advisory Board; Item #1 the letter seems to challenge the results of the Site Characterization report on current exposure levels. It

that the radiological aspects of the Site Characterization report may need to be reexamined. This report allegedly mixed the exposure information and the concentration information in a skillful manner. This combined with the fact that if you stood on the existing pile(south side of Caldwell Avenue) you would get the equivalent of a chest x-ray every three days. 340 mrm = one chest x-ray (Source 12.29.1999 site tour tape side B)

Given the above information the pile provides a minimum alleged exposure of 41, 366.67 mrm per year. If you combine the 8,497,200 mrm per yr. from the roll off boxes the yearly rate is 8,538,566.67 mrm/yr. That is a daily rate of 23,393.33 mrm. Or 68.8 chest x-rays per day. All of this is very disturbing.

Volume three of three

When a cursory examination of the concentrations for downhole gamma logging indicates in that there is a core concentration area in a thorium derivatives at relatively high pCi per gram occurring in a band there are however anomalies occurring from the ground surface through level 10151 some concentrations exceeded 50 pCi per gram others are rather alarming going up and above 481 pCi per gram while others are concentrated in areas below 50 pCi per gram however disturbingly high levels of a number of the readings would indicate that there is more to the high concentration levels. Some of which are near to the surface particularly those on page 52 the gamma logging one reading with 128.2 113.96 and pg. 64 122.61, 135.21 just near the surface. There hasn't been a scatter-graph created of the CPI per gram so one this would assist in comparing the original cross-sectional drawings. To date the best example of concentration levels on site. However page 71 does have indications of levels above the standard norm near 296.47pCi per gram and another at 314.4. The without a graphical plotting the specifics of these items, it does make it somewhat difficult to realize the full levels that maybe involved.

It is apparent that there are alleged substantive levels of concentration of pCi per gram with possible increased exposure capability. Which gives rise to consideration that this material does not belong in a populated area that has an active ecological system, with an aquifer that includes an active stream, with active ground water springs.

This combined with old unidentified oil wells and their accompanying uncharted underground pipeline leads one to wonder about the suitability of any site within this region.

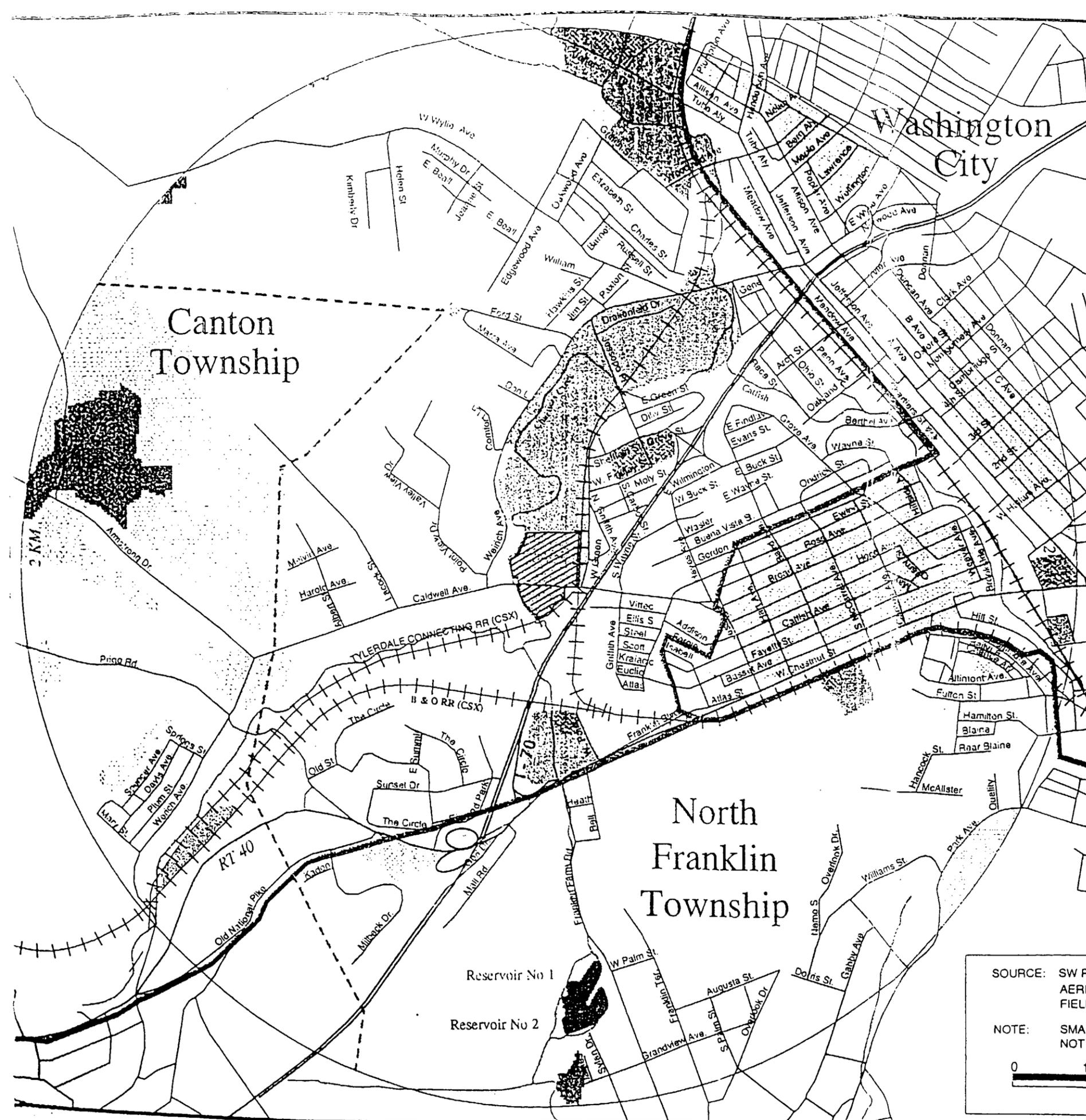
This small report places great emphasis on the institutional controls and financial assurances.

Addendum:

Given the probable increase in general exposure from the March 15, 2000 letter provided by the Coroner, concentration issues, alleged off site migration, sub surface geological factors, and the negative economic impacts, all provide weight to the seriousness of the matter.

It is becoming clear that one could allege the company information needs critical attention as to its alleged validity.

The only advice we can provide is that as a board we must do our best understanding that all of lives will be impacted by the related facts within the report.



2 KM RADIUS EXISTING LAND USES
(3105.5 Total Acres)

Use	Percent
Residential	48.81
Industrial	6.42
Commercial	7.87
Cropland	1.44
Pasture, Open, Grasses	5.70
Public/Private Open Space	0.96
Other (vacant, institutional, schools, etc.)	28.80
TOTAL	100.00 %

LEGEND

- Resid-L Density
- Agriculture/Croplands
- Resid-M Density
- ▨ Pasture/Open Areas/Grasses
- ▤ Resid-H Density
- Public/Private Open Spaces
- Light Industrial
- Other
- Heavy Industrial
- ▨ Project Site
- Commercial
- - - Power Line

SOURCE: SW PA REGIONAL PLANNING COMMISSION LANDSAT 1990
AERIAL PHOTOGRAPHS, 1990
FIELD VERIFICATION, 1994

NOTE: SMALLER LAND USE AREAS MAY NOT BE ACCURATE

0 1000 2000 3000
SCALE IN FEET



MOLYCORP, INC.
300 CALDWELL AVENUE
WASHINGTON, PA

FIGURE 4-30

2 KM EXISTING LAND USE

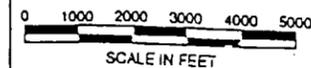
FOSTER WHEELER ENVIRONMENTAL CORPORATION



LEGEND

-  Residential
-  Industrial
-  Commercial
-  Agriculture
-  Other
-  Project Site

SOURCE: SW PA REGIONAL PLANNING COMMISSION
 LAND USE MAP DERIVED FROM LANDSAT 1990



MOLYCORP, INC.
 300 CALDWELL AVENUE
 WASHINGTON, PA

FIGURE 2-8
5 KM GENERALIZED
LAND USE

FOSTER WHEELER ENVIRONMENTAL CORPORATION

SENSITIVE POPULATION IDENTIFICATION

DAY CARE CENTERS (Map Key: DC-#)

- DC-1 148 Scott Ave. Family Day Care Center (Cynthia Bayus)
- DC-2 Scotties Day Care Center (Family Day Care)
- DC-3 Rainbow's End Day Care and the United Cerebral Palsy Adult Center
- DC-4 Happy Face Learning Center - Washington Center
- DC-5 Gwen's Montessori & Day Care Center
- DC-6 Cheryl Walsh Family Day Care Center
- DC-7 Saturday's Child Day Care Center
- DC-8 Neighborhood House Association (Brownson House)
- DC-9 Magic Time, Baptist Church

NURSING & PERSONAL CARE HOMES (Map Key: N-#)

- N-1 Kade Nursing Home
- N-2 Century Plaza (under construction)
- N-3 Maiden Pines Personal Care Home
- N-4 Lincoln Manor

HOSPITALS & CLINICS* (Map Key: H/C-#)

- H/C-1 Stat Care Emergency Clinic
- * There are no hospitals in the 2 km radius; Washington Hospital is approximately 3,000' outside the 2 km radius.

GROUP QUARTERS (Map Key: GQ-#)

- GQ-1 Belvedere Acres
- GQ-2 Group Quarters Home for Retarded Adults
- GQ-3 Woodlands Apartments

SCHOOLS (Map Key: S-#)

- S-1 Washington High School
- S-2 Trinity West Elementary
- S-3 St. Hilary School
- S-4 Intermediate Unit 1 - Clark School

PRISONS

There are no prisons in the 2 km radius. The closest prison is located at the County Courthouse.

LEGEND

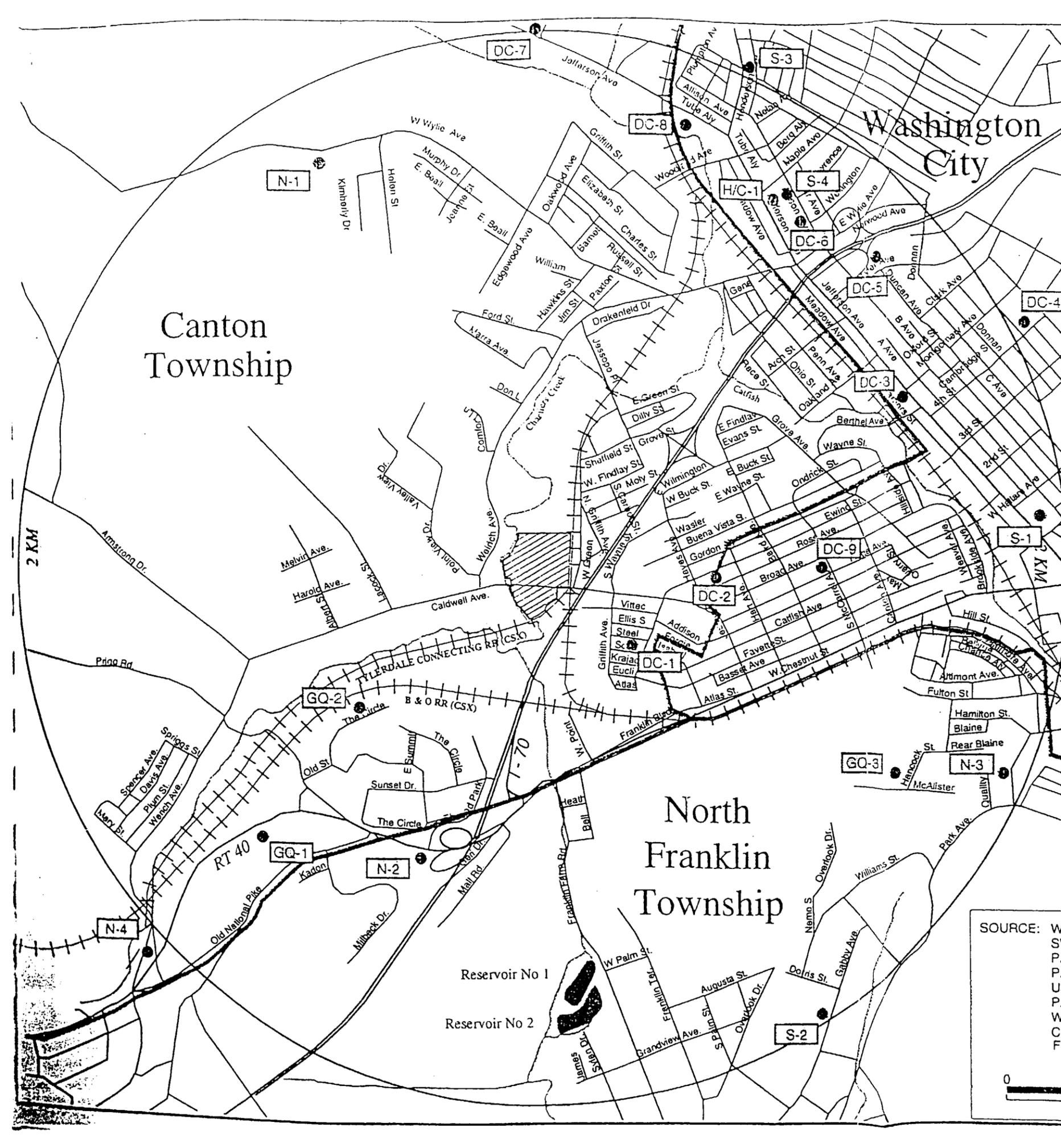
- | | |
|--|--|
| <ul style="list-style-type: none"> ● Day Care Facilities (DC-#) ● Nursing Homes (N-#) ● Hospitals/Clinics (H/C-#) | <ul style="list-style-type: none"> ● Group Quarters (GQ-#) ● Schools (S-#) ▨ Project Site |
|--|--|

SOURCE: WC LOCAL MANAGEMENT AGENCY
 SW PA AREA AGENCY ON AGING
 PA DEPARTMENT OF PUBLIC WELFARE
 PA HOUSING FINANCE AGENCY
 US CENSUS OF POPULATION AND HOUSING
 PA DEPARTMENT OF HIGHER EDUCATION
 WC REDEVELOPMENT AUTHORITY
 COMMUNITY ACTION SOUTHWEST
 FIELD VERIFICATION 7/94



MOLYCORP, INC.
 300 CALDWELL AVENUE
 WASHINGTON, PA

FIGURE 4-33
 2 KM SENSITIVE
 POPULATION GROUPS





210 S. Third Street
P.O. Box 1
Laramie, WY 82070-0920 USA

Tel. (307) 742-8213
(800) 446-7488 (4IN-SITU)
FAX: (307) 721-7598

Enserch Environmental Corporation
Mr George Markt
Mr Tom Fowler
Et al
1290 Wall Street West
P.O. Box 661
Lyndhurst, NJ 07071-0661

September 29 1994

Dear Sirs:

At your request I reviewed the data collected by Enserch personnel using our rental equipment to collect pump test data at the Moly Corp location. The data exhibited anomalies in correlation against hand data collected during the test. These anomalies were a background 'noise' that caused the readings to vary by hundredths of a foot around the general trend exhibited by the hand measurements, and on some wells a drift of the readings from hand measurements that increased over time.

These problems were first brought to our attention by Mr. Fowler during the first pump test. At that time we sent out another data logger to your site in an attempt to rectify what we believed was an equipment problem. The second data logger unfortunately also collected data that exhibited the same behavior. The equipment involved is listed as follows:

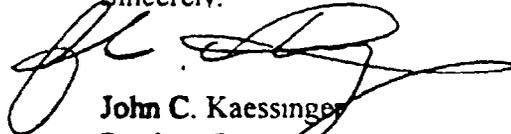
Original equipment	2K-195 Transducers 200708, 203206, 203719 203822, 204329, 204565 2501DI, 2543DI
Replacement logger	2K-436

Upon the receipt of the equipment it is tested for operation and serviceability and all the units passed these tests. The units have gone on subsequent rentals with no reported problems.

The only conclusion we can draw from the fact that the problem was exhibited by two different data loggers that have subsequently been tested and exhibited no problems is that the problem was a site specific interference of some variety. The equipment is shielded against normal radio frequency interference so the exact nature of the interference causing these problems is at this point unknown.

If we can be of assistance in any way please feel free to call.

Sincerely,



John C. Kaessinger
Product Support

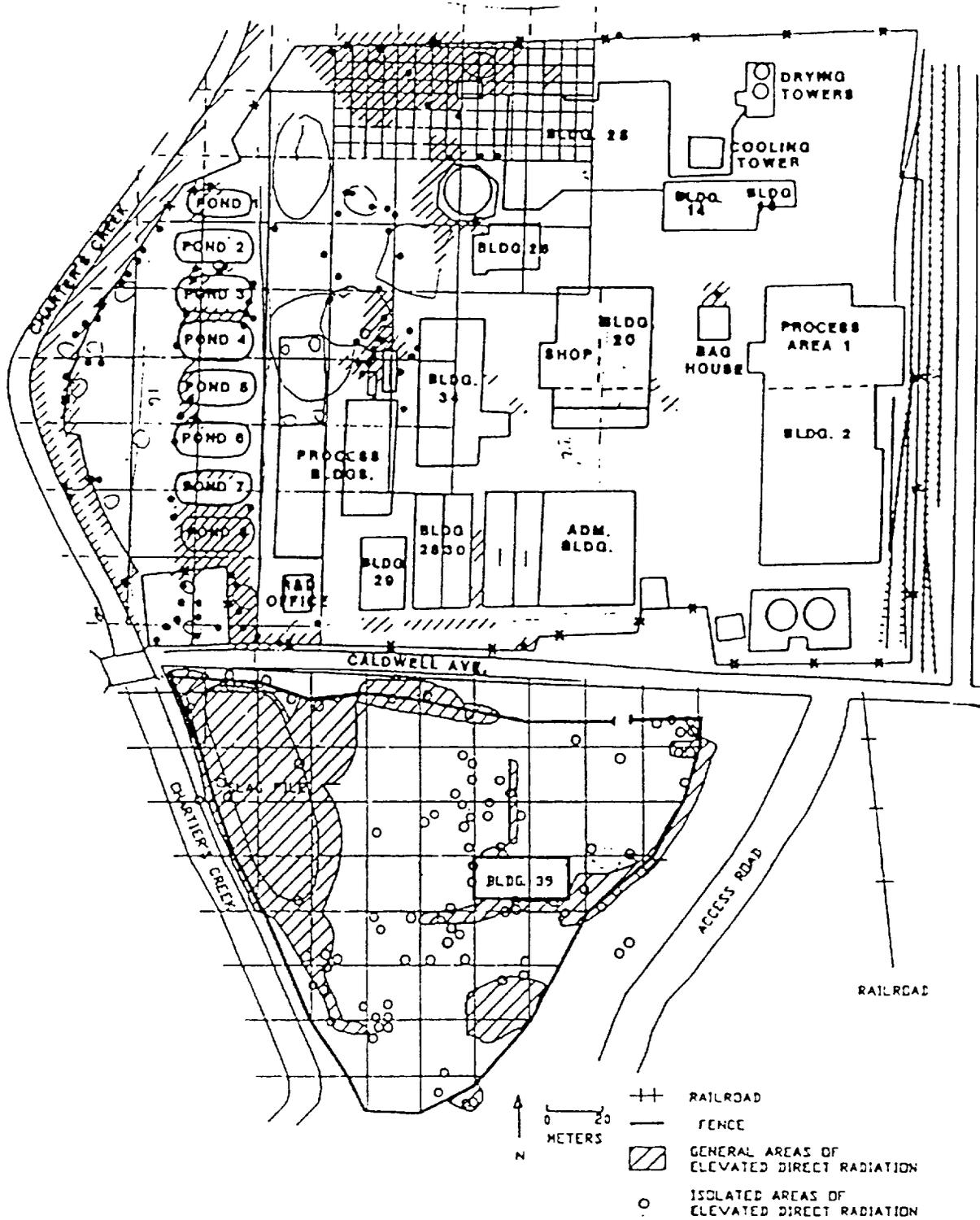
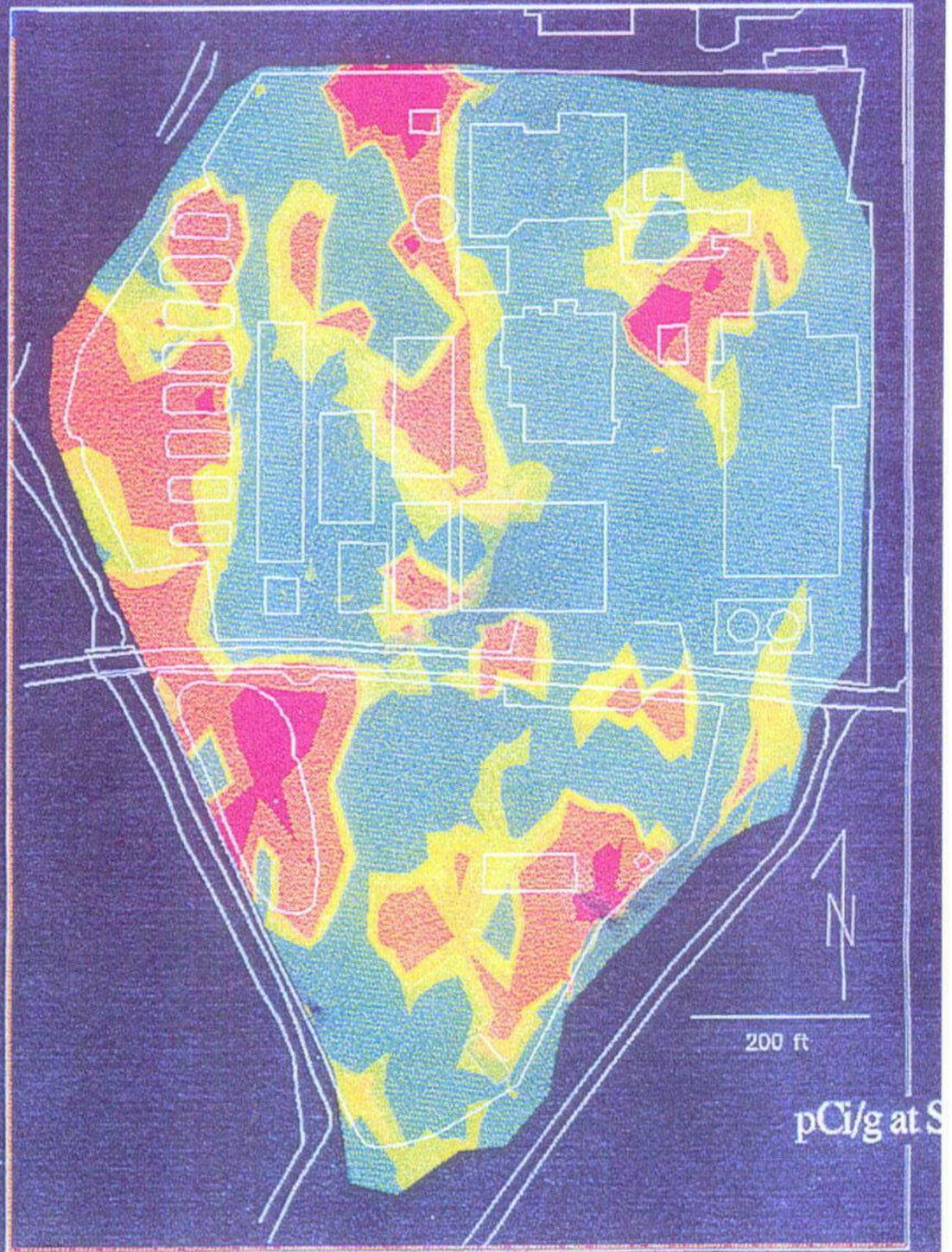
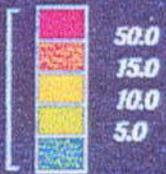


Figure 2-7 Active Plant Site and South Property with Locations of Elevated C. Radiation Levels, 1985

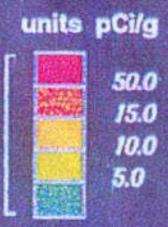
Source: Oak Ridge Associated Universities, Radiological Survey of Molybdenum Corporation of America, Washington, PA 1985.

Fig 5-7

units pCi/g



CVA

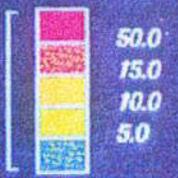


pCi/g at 1034 Feet

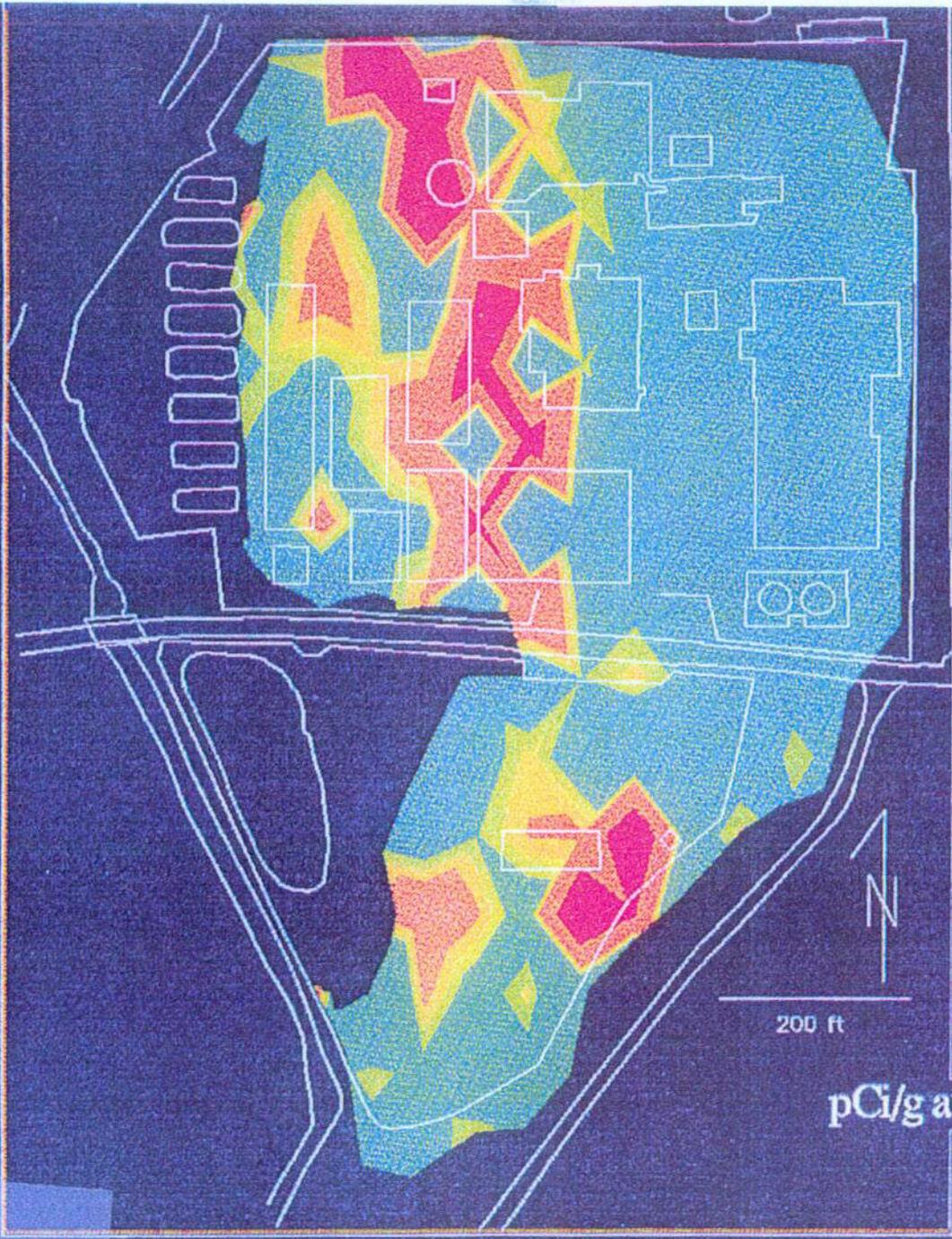
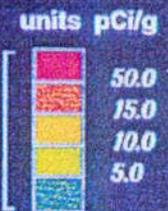
FIGURE 5-8

29

units pCi/g



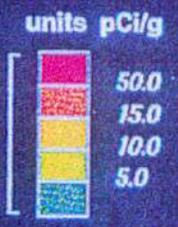
pCi/g at 1026 Feet



200 ft

pCi/g at 1022 Feet

FIGURE 5-11

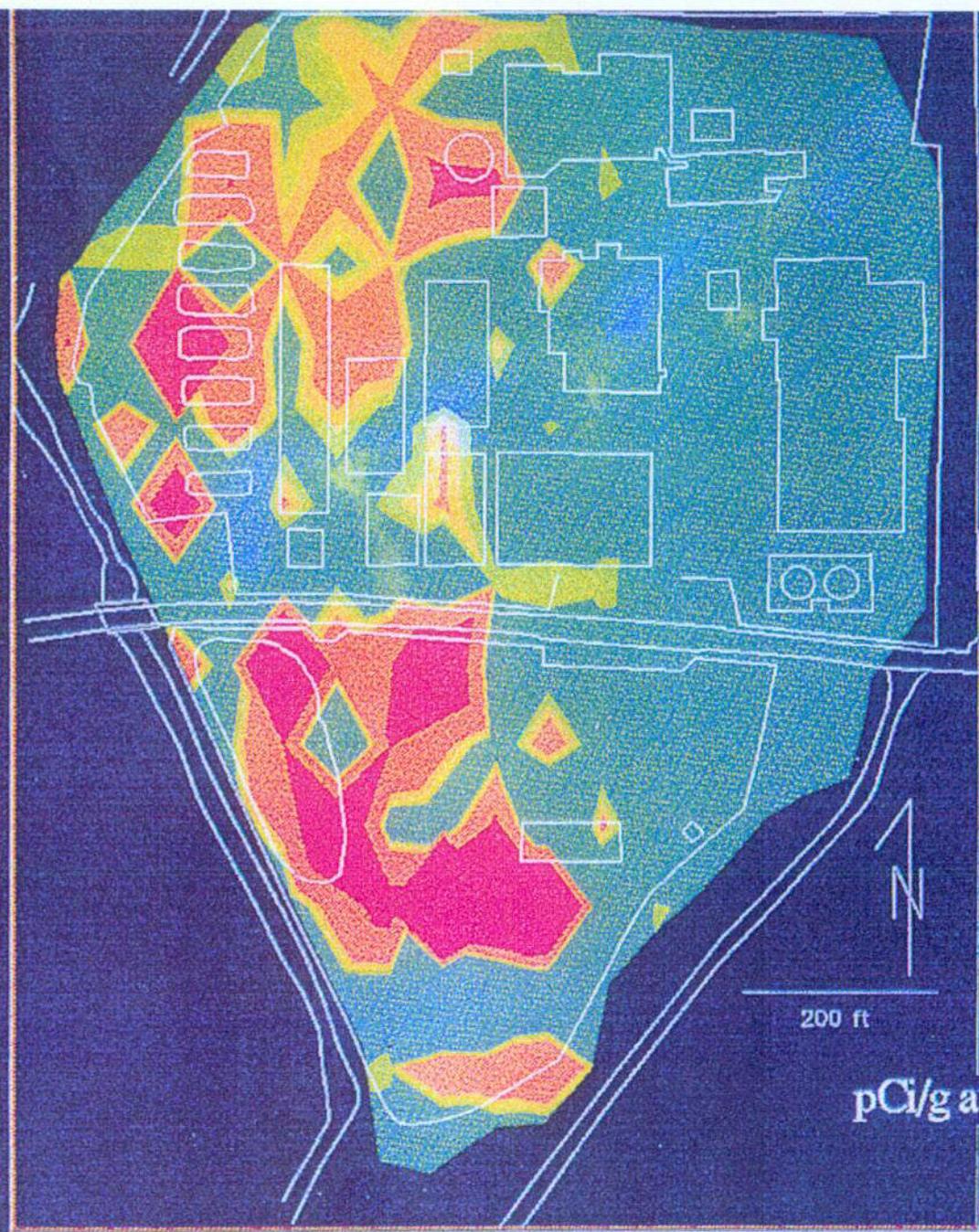


pCi/g at 1018 Feet

FIGURE 2-12

C5

units pCi/g



pCi/g at 1016 Feet

FIGURE 5-13

West-East X-Section

N = 10640



Z exaggeration: 20

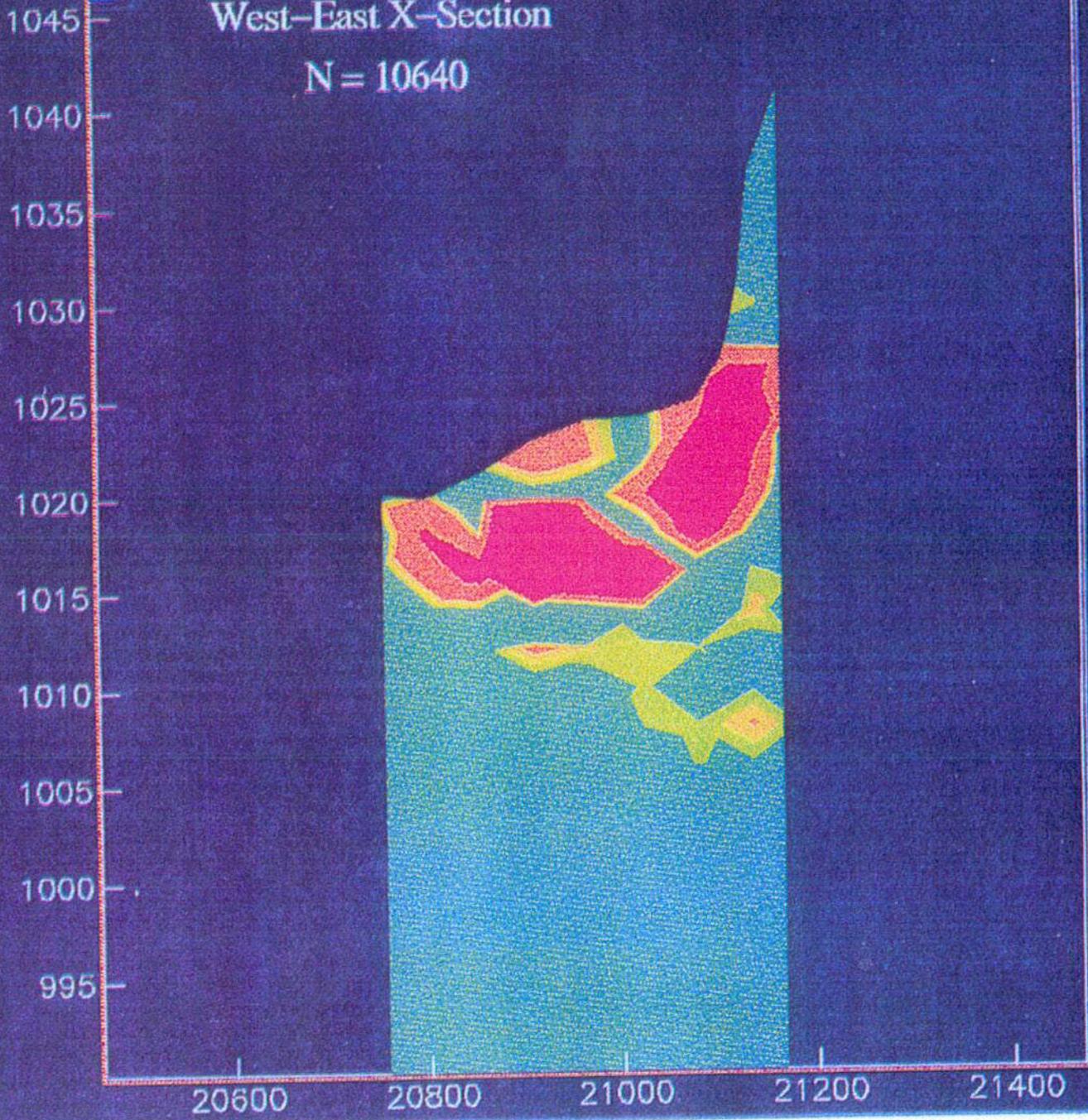
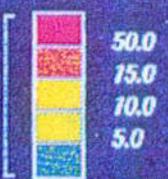


Figure 5-18
10

37

West-East X-Section
N = 10895

units pCi/g



Z exaggeration: 20

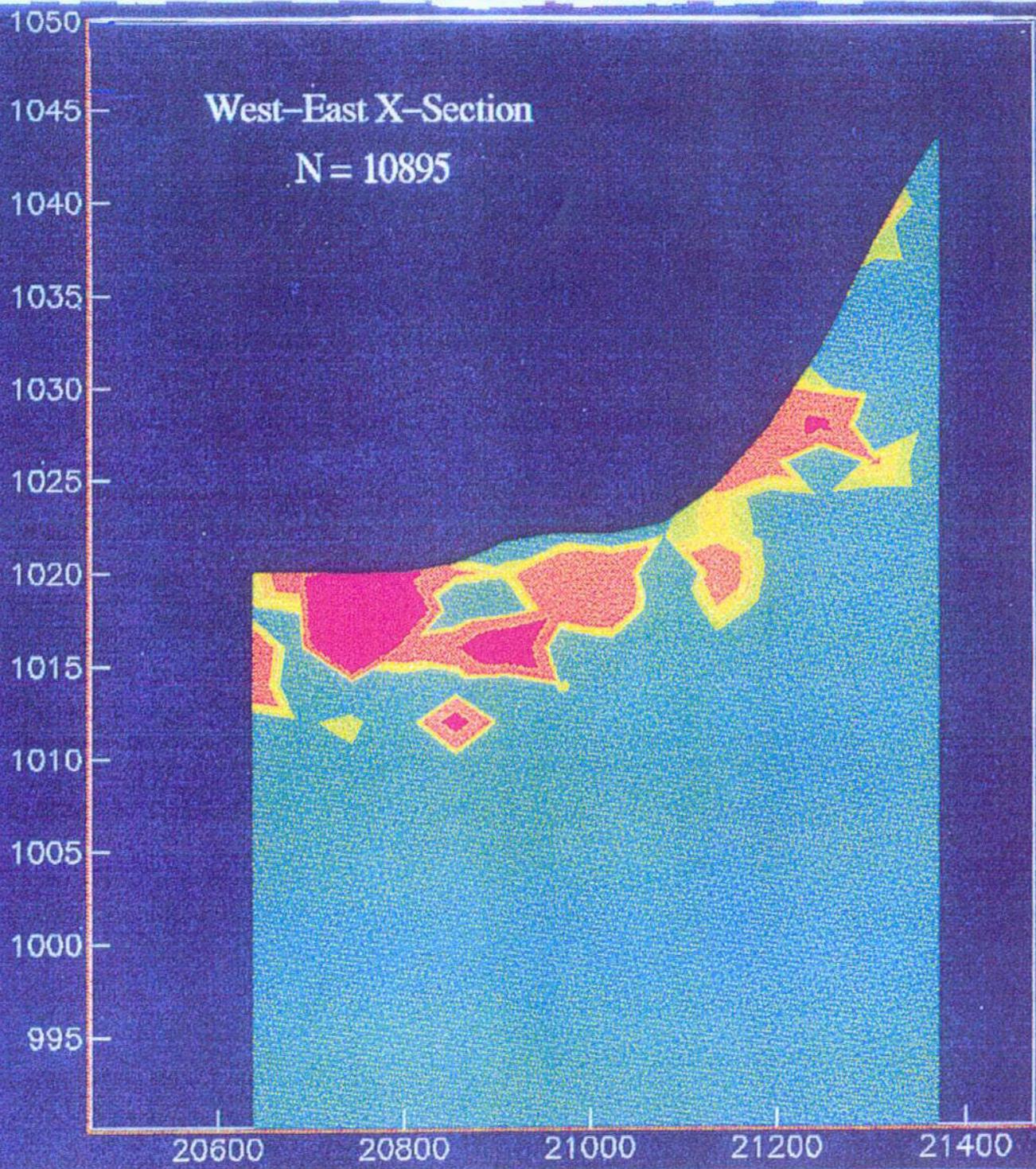
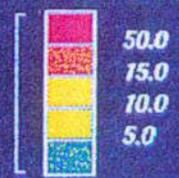


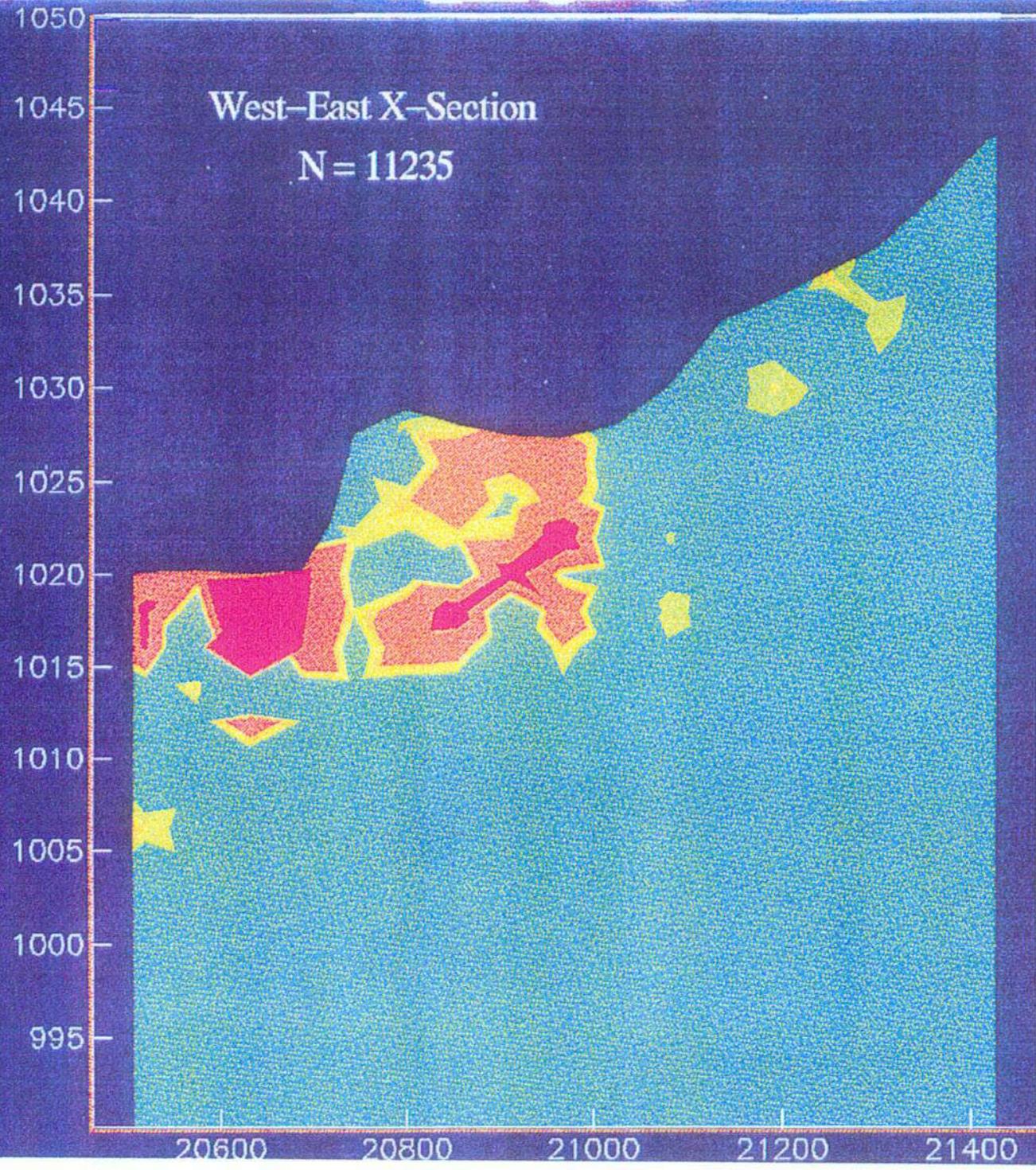
fig 5-20

West-East X-Section
N = 11235

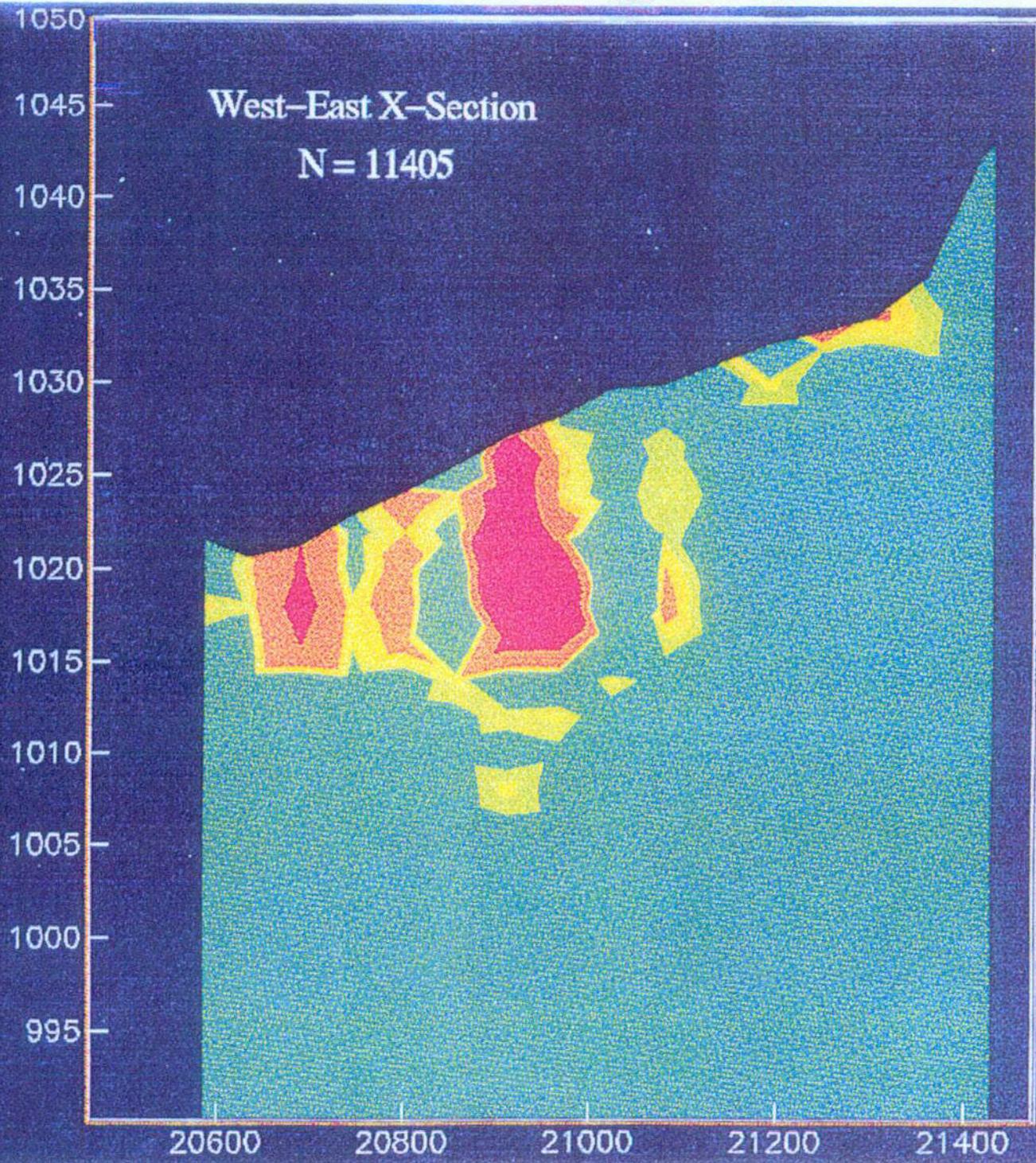
units pCi/g



Z exaggeration: 20



C9



IRE

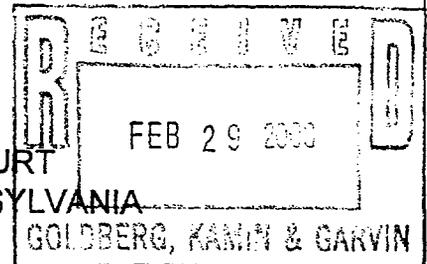
79915-21

119

Table 5-8		
Estimated Volume of Thoriated Material versus Concentration		
Concentration Range		Volume
From pCi/g	To pCi/g	ft ³
>1000		0
>500	1000	330
>100	500	223,309
>50	100	341,069
>15	50	1,296,149
>10	15	617,592
>5	10	1,110,737

These volumes will be used as the basis in the selection of the alternatives and their evaluation.

Conc. = 65.920



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOLYCORP, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 99-762
)	
CANTON TOWNSHIP,)	
)	
Defendant.)	

MEMORANDUM ORDER

I. Background

This is a declaratory judgment action by a corporation ("Molycorp") seeking to fend off the unwanted attentions of local public officials in the township ("Canton") where Molycorp has a plant. Molycorp is a metals company. In the 1960s it produced an ingredient for steel. One of the byproducts of this process was thorium, a naturally radioactive element. Molycorp alleges that a letter from Canton in February 1999 caused it to fear that Canton would impose some form of regulation or penalty on its handling of radioactive materials at its Canton plant, including its plan for decommissioning, or taking the plant out of service. This decommissioning includes storage of thorium-bearing soil. Canton has no right to take any such action, Molycorp contends, because regulation of all matters at the intersection of public safety and radioactive materials is the province of the federal Nuclear Regulatory Commission; state and local regulation of the area is preempted.

Molycorp promptly moved for summary judgment on its preemption claim.

Molycorp's motion relies in part on the fact that summary judgment was granted in its favor on the same issue in an earlier case between the same parties, where the company was a defendant. The court suspended the briefing schedule on Molycorp's motion, however, in favor of deciding a dispositive motion by Canton. Canton claims that this case is not ripe, and is therefore beyond the court's jurisdiction. Since Canton's motion implicates the court's jurisdiction, we must decide it first. The motion to dismiss is briefed and ready for decision.

A fuller description of the relations between these parties can be found in Magistrate Judge Benson's report and recommendation dated April 30, 1998 in Civil Action No. 97-330, which the court adopted on June 5, 1998. See Exhibit C to Complaint. In that decision the court made several findings important here. First, Canton did not dispute any facts surrounding Molycorp's handling of its radioactive materials. Second, Canton did not dispute the NRC's exclusive authority over the possession, use, and storage of all radioactive materials. Instead, Canton's position in that case was that it is not preempted from regulating non-radiation hazards, to the extent the two forms of hazards were separable.¹ Canton's position did not carry the day, however, because, whatever regulatory authority it might have over Molycorp

¹ This point is indisputable under the governing statutory scheme. See 42 U.S.C. § 2021(k) ("Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards."); see, e.g., Pacific Gas & Elec. v. Energy Resources Comm'n, 461 U.S. 190, 75 L.Ed.2d 752, 766 (1983) (in public utilities context, "States retain their traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost, and other related state concerns").

regarding non-nuclear issues, its complaint was found to involve only concerns about radioactive material. Moreover, it was undisputed that the decommissioning only involves radioactive materials.

Since that time the only happening of note, and the event that prompted Molycorp's pursuit of declaratory relief, was the transmission of a letter from Canton's counsel to Molycorp's counsel in February 1999, attached to the Complaint as Exhibit

D. The relevant portion of the letter states:

The Canton Township Board of Supervisors . . . directed me to inform Molycorp that its intention to store hazardous materials at its Canton Township facility is in direct violation of the Canton Township Zoning Ordinances. Please refer to Mr. Pettit's letter of February 26, 1997

. . . .
We would expect Molycorp to immediately begin taking action required by Mr. Pettit's letter

Id. The Pettit letter, attached to the Complaint as Exhibit E, concerns Canton's interest in supervising certain aspects of the decommissioning pursuant to its zoning ordinances. We surmise that it is one of the communications the precipitated the 1997 lawsuit.

II. Standard of Decision

In its motion to dismiss, Canton argues that the February 1999 letter does not create the case or controversy necessary for this court to exercise jurisdiction, because this particular episode has not ripened into justiciable form. The United States Court of Appeals for the Third Circuit has addressed this issue in similar contexts on several occasions.

"The existence of a case and controversy is a prerequisite to all federal actions, including those for declaratory or injunctive relief."

Presbytery of New Jersey of Orthodox Presbyterian Church v. Florio, 40 F.3d 1454, 1462 (3d Cir. 1994). One aspect of justiciability is ripeness which "determines when a proper party may bring an action." Travelers Ins. Co. v. Obusek, 72 F.3d 1148, 1154 (3d Cir. 1995) (quoting Armstrong, 961 F.2d at 411). The function of the ripeness doctrine is to prevent federal courts, "through avoidance of premature adjudication, from entangling themselves in abstract disagreements." Abbott Labs v. Gardner, 387 U.S. 136, 148, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967), overruled on other grounds, Califano v. Sanders, 430 U.S. 99, 105, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977). Further, "[w]e presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record." Renne v. Geary, 501 U.S. 312, 316, 111 S.Ct. 2331, 115 L.Ed.2d 288 (1991) (internal quotations marks and citations omitted). It is the plaintiffs' responsibility to clearly allege facts that invoke the court's jurisdiction. See id.

In Abbott Labs, the Supreme Court established a two-part test for determining whether a prayer for a declaratory judgment is ripe. A court should look to (1) "the fitness of the issues for judicial decision," and (2) "the hardship to the parties of withholding court consideration." 387 U.S. at 149, 87 S.Ct. 1507; Texas v. United States, --- U.S. ---, ---, 118 S.Ct. 1257, 1260, 140 L.Ed.2d 406 (1998).

Philadelphia Feder'n of Teachers v. Ridge, 150 F.3d 319, 322-23 (3d Cir. 1998). The court of appeals in a footnote in Philadelphia Teachers distinguished the Supreme Court's two part Abbott Labs test from a three part test that the Third Circuit had developed and followed in a number of cases. 150 F.3d at 323 n.4. The court suggested that the two tests were interchangeable, though it had earlier called its three part test a refinement. See, e.g., Pic-A-State Pa., Inc. v. Reno, 76 F.3d 1294, 1298 (3d Cir. 1996), cert. denied, 517 U.S. 1246 (1996). The court applied the two-part test because the court found that it "better accommodates our analysis." Id.²

In any event, we will use the court's three part test because it was developed

² In this regard, one wonders how the court could perform an analysis without first selecting the test it would use.

specifically for declaratory judgment actions, Pic-A-State, 76 F.3d at 1298, and has been used in pre-enforcement regulatory cases such as this one, Freehold Cogeneration Assocs. v. Bd. of Regulatory Comm'rs, 44 F.3d 1178, 1188 (3d Cir. 1995), cert. denied, 516 U.S. 815 (1995). The elements of this inquiry focus on: (1) the adversity of the parties' interests; (2) the conclusiveness of the judgment; and (3) the utility of the judgment. Step-Saver Data Sys., Inc. v. Wyse Technology, 912 F.2d 643, 647 (3d Cir.1990).

III. Discussion

A. Adversity of Interests

With regard to the adversity of the parties' interests, they have historically been adverse, but do not appear to be on this particular occasion. To satisfy this element where a plaintiff seeks protection against a future injury,

the plaintiff must demonstrate that the probability of that future event occurring is real and substantial, "of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." . . . ripeness requires that the threat of future harm must remain "real and immediate" throughout the course of the litigation.

Travelers Ins. Co. v. Obusek, 72 F.3d 1148, 1154 (3d Cir. 1995) (citations omitted).

Against the backdrop of this element it is appropriate to cite two facts which distinguish this case from the reported cases. It is true that the letter which created in Molycorp the fear of regulation said that Canton expected Molycorp to take action "immediately." On the other hand, there is no dispute that no enforcement action has been taken against Molycorp since the date of the letter -- February 1999. Besides not taking any action, Canton has not threatened any action since that time. Under these circumstances, after the passage of a year with no change or threatened change in the

status quo, it is doubtful that the harm Molycorp seeks to prevent is real and immediate.

The second fact that distinguishes this case is the previous litigation on the same issue. The declaratory relief that Molycorp seeks seems to duplicate the legal conclusion the court has already reached -- Canton has no authority over the decommissioning process; while it has regulatory authority over other aspects of plant operation, it has not deduced a way to exercise these powers without encroaching on the NRC's authority. The need for an affirmation of this conclusion, in the company's eyes, was raised anew by the February 1999 letter. But the court doubts that the letter can be cast in terms of real and immediate harm when the regulatory impulse it proposes has already been decided against the regulator by this court.

B. Conclusiveness

A declaratory judgment "must also be conclusive. That is, the legal status of the parties must be changed or clarified by the declaration." Obusek, 72 F.3d at 1155. For the reasons mentioned above, we are not confident that a declaration will do much to change the legal status of the parties. Molycorp has a ruling from the court and admissions from Canton about the NRC's control over decommissioning. This would seem to fix the parties' legal status fairly well. Given this apparently settled path, the court would not think it necessary to referee the propriety of correspondence traded between the parties. Under the circumstances of radioactive waste disposal, it would not be surprising that the parties' relationship could reach considerable levels of tension -- with strong words, posturing, and threats -- before serious legal rights were implicated. Unless the relationship reached the point of some new, real, and immediate harm, we would not think that a justiciable case is presented. We thus do

not find that a ruling based on the February 1999 letter would result in a conclusive judgment.

C. Utility

The utility of a declaratory judgment means that it "must be of some practical help to the parties." Obusek, 72 F.3d at 1155. This element goes to "whether the parties' plans of actions are likely to be affected." Step-Saver, 912 F.2d at 649 n.9. Again, we have doubts about how much a new judgment will affect the parties' plans. Canton seems determined to persist in its attempts to control the decommissioning process, and has regulatory rights it may eventually determine how to validly use. But it has done nothing more than try to resurrect an old threat of control, the prior version of which the court has examined and rejected. Molycorp has made assertions of the potential costs and difficulties of being compelled to adhere to some defective exercise of Canton's zoning authority, but has not demonstrated in sufficiently concrete terms how it will be harmed by the withholding of judgment here. Indeed, unless and until Canton actually attempts to exercise some authority pursuant to 42 U.S.C. § 2021(k), we will not be in a position to make an intelligent determination of whether that exercise is within or without the power reserved to it. We thus conclude that the declaration of rights and duties requested by Molycorp's Complaint would add little that the parties do not already know. While a monitor over the situation would reassure Molycorp, the court cannot perform that function.

IV. Conclusion

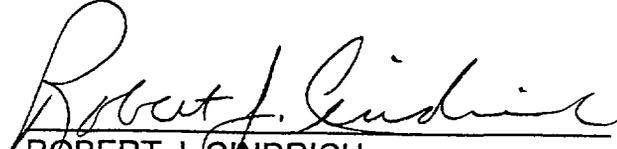
In closing, the court is left to wonder why the February 1999 letter was sent. Given the court's previous ruling, it is indeed a mystery. One would expect that the risk

of a finding of contempt would be sufficient to deter such conduct. See 18 U.S.C. § 401; United States v. Pozsgai, 999 F.3d 719, 735 (3d Cir. 1993), cert. denied, 510 U.S. 1110 (1994). In short, while we find that this case falls short of the jurisdictional requirements necessary for the parties to proceed to the merits, it brought to light an exercise of judgment that Canton should carefully consider in its future decisions about the plant.

In accordance with the foregoing, the Motion of Defendant Canton Township to Dismiss for Lack of Subject Matter Jurisdiction, Doc. No. 3, is GRANTED.

The clerk is directed to mark this case closed.

SO ORDERED this 28 day of February, 2000.


ROBERT J. CINDRICH
United States District Judge

cc:

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