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U. S. NUCLEAR REGULATORY COMMISSION

DOCKETED
USA

LICENSEE: MOLYCORP, INC.
License No. SMB-1393
Docket Nos. 040-08794 and 040-08778 - *MLA*

'99 NOV 16 12:25

ADJ.

**AMENDMENT TO REQUEST FOR HEARING
BY CANTON TOWNSHIP, PENNSYLVANIA**

Petitioner/Requestor CANTON TOWNSHIP, by its Solicitor, JOHN T. OLSHOCK, and its special counsel, SAMUEL P. KAMIN, SAMUEL R. GREGO and the law firm of GOLDBERG, KAMIN & GARVIN, hereby files the following Amendment to Request for Hearing, and in support thereof states as follows:

Procedural Background

1. Apparently by letter dated February 8, 1996, Licensee Molycorp, Inc. ("Molycorp") initially requested that its license for its Canton Township facility (License No. SMB-1393) be amended to allow temporary storage of waste from the decommissioning operations at Molycorp's York, Pennsylvania facility at Canton Township. In April 1999, Molycorp submitted a Request to amend its license regarding the schedule for submission of a revised Site Decommissioning Plan and Environmental Report for its Canton Township site (Docket No. 040-08778). It is believed that this Amendment relates to proposed permanent storage sites for radioactive material which has accumulated at the Canton Township site and the proposed temporary storage of York material. Canton Township can only aver as to the content of such Request to amend the Site Decommissioning Plan because Canton Township has not yet been able to review the actual proposed License Amendment.

2. Upon public notice, the U.S. Nuclear Regulatory Commission ("NRC") held a public meeting in Canton Township on April 15, 1999, the specific purposes of which were to "(i) discuss with the public its review of a License Amendment Request by Molycorp, Inc. to construct and operate an interim (5-10 year) storage facility at its ferro-alloy production plant in Washington, Pa.; and (ii) discuss the status of decommissioning of the Washington, Pa. site." See

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public notice printed in the Federal Register on April 6, 1999, a copy of which is attached hereto and made a part hereof as Exhibit "A."

3. A formal Notice of Receipt of an Amendment Request for temporary storage of decommissioning waste from the Molycorp York facility was issued by the NRC on May 28, 1999. This Notice of an Amendment Request was listed under Docket Nos. 040-08794 and 040-08778 and was published in the Federal Register on June 9, 1999.

4. Requestor Canton Township (and Requestor City of Washington) filed its Request for Hearing with the NRC in both Docket Nos. 040-08794 and 040-08778 on June 28, 1999, within thirty (30) days of the publication of the Notice of Amendment Request filed by Molycorp. (The 30-day deadline is set forth at 10 CFR Section 2.1205(d).) A copy of Canton Township's Request for Hearing is attached hereto as Exhibit "B" and made a part hereof.

5. Molycorp subsequently filed Responses to the Requests for Hearing of Canton Township and the City of Washington. Although Molycorp's Responses were filed untimely, Administrative Judge Peter Bloch, in an Order dated August 25, 1999 (a copy of which is attached hereto as Exhibit "C"), addressed some of the issues raised in Molycorp's Responses and ordered Requestors Canton Township and the City of Washington to amend their respective Requests for Hearing.

Settlement Discussions

6. Judge Bloch's August 25 Order required the Requestors to file Amended Requests for Hearing by September 17, 1999 unless a petition for suspension of trial was filed by the parties while settlement negotiations continued. Upon joint request by the parties, Judge Bloch subsequently extended the Requestors' filing deadline until November 1, 1999. (See Order dated September 15, 1999 attached hereto as Exhibit "D.") Molycorp thereafter consented to an additional extension of time to November 15, 1999, which agreement was memorialized in a letter dated

October 28, 1999 to current Administrative Judge Charles Bechhoefer, a copy of which letter is attached hereto as Exhibit "E."

7. Throughout the intervening time period since August 25, 1999, the Requestors have requested a number of documents from Molycorp (including the very License Amendment(s) at issue in this matter) in order to obtain the proper background and details necessary to file appropriate Amended Requests for Hearing. See letter of October 11, 1999 to Molycorp's counsel formally memorializing Canton Township's request for these necessary documents, a copy of which October 11 letter is attached hereto as Exhibit "F." Unfortunately, although Molycorp has offered to allow counsel for Canton Township to review copies of the extensive documents involved at the Molycorp plant, to date Molycorp has not forwarded copies of any of the requested documents to Canton Township to enable Requestors, its counsel, experts and consultants to fully and properly analyze the documents so as to properly prepare Amended Requests for Hearing.

8. Moreover due to this lack of full and complete documents and information, the parties have been unable to hold meaningful settlement discussions. (Representatives of Canton Township and Molycorp met formally for the first time on November 9, 1999. The parties agreed at that time that after Molycorp forwards a copy of all the requested documents to Canton Township, the parties, including the City of Washington, could schedule additional settlement meetings.)

9. To comply with the letter and the spirit of Judge Bloch's August 25 Order, the Requestors must review and analyze in depth the relevant documents which have been requested from Molycorp prior to the conclusion of constructive settlement discussions with Molycorp concerning the issues raised by the instant License Amendment Requests and Requests for Hearing. Only after such constructive settlement negotiations are completed can the parties legitimately address and narrow the outstanding issues as directed by Judge Bloch and Judge Bechhoefer.

History of Molycorp and Current Procedural Posture
as Independent Bases for Request for Hearing

10. There has historically been a lack of open communication from Molycorp in regards to its activities at its Canton Township site. As early as the 1970's, Molycorp was found to have been storing/dumping radioactive wastes that had accumulated at its site on its Canton Township property without any approval from any federal or state regulatory agency. By the time the NRC (then the Atomic Energy Commission) was notified of this situation, significant amounts of radioactive waste had already been stored at the site. The problem that persists today at the Molycorp site has continued from the 1970's and the decommissioning proposals currently at issue address these very problems which should never have been permitted to occur in the first place.

11. This lack of communication unfortunately persists to the current time. Molycorp has failed to date to share the details of its proposals concerning the treatment, handling and storage of its radioactive waste with Canton Township during the intervening years. In this very proceeding, representatives of Canton Township have not received copies of the specific License Amendment Request and other documents crucial to proper analyses of the issues in this proceeding. As a result, Canton Township finds itself once again in the position of being required to make formal filings without the benefit of the proper background documentation.

12. As noted above, Canton Township and Molycorp have met once for preliminary settlement discussions and it was confirmed at the November 9 meeting that the documents to which Canton Township has long been entitled and has requested would finally be copied and produced to Canton Township. Therefore to date, proper document review has not yet occurred.

13. If Canton Township's Request for Hearing is granted at this time, proper negotiation with Molycorp and the attendant proper document review will by necessity result. For this reason, Requestor Canton Township respectfully requests that its Request for Hearing be granted in order to continue the beneficial process of requiring the parties to negotiate with each other on the extremely important issues raised in this proceeding and to further require the continuing proper

document exchange which is necessary to the reasonable long-term relationship between Molycorp and Canton Township, of which Molycorp remains a corporate resident.

14. In the alternative, if these factors do not establish independent bases for the granting of Canton Township's Request for Hearing, Canton Township respectfully requests an extension of time to prepare a proper Amendment to Request for Hearing after the exchange of all relevant documentation, appropriate complete review by representatives, counsel, experts and consultants of Canton Township and the conclusion of meaningful settlement discussions between Molycorp and the Requestors.

Timeliness/Scope of Current Proceedings

15. As set forth at 10 CFR Section 2.1205(h), in addition to determining whether a requestor's areas of concern are "germane," the presiding NRC officer must also determine whether a request for hearing is timely filed. Canton Township filed its initial Request for Hearing within thirty (30) days of the publication in the Federal Register of Notice of Molycorp's Amendment Request concerning the temporary storage of its York waste material at the Canton Township site. The Request for Hearing was filed under the NRC docket numbers of both (1) the temporary storage of York material and (2) the permanent Site Decommissioning Plan. (Judge Bloch's August 25 Order does not dispute Requestors' timely filing.) As NRC Docket No. 040-08778 deals solely with Molycorp's Site Decommissioning Plan for its Canton Township facility, the docket number proceeding for the proposed transfer and temporary storage of its York waste at its Canton Township facility has already been joined with the docket number proceeding for the long-term Site Decommissioning Plan.

16. In its Response to Canton Township's Request for Hearing, Molycorp argues that most of the concerns raised by Canton Township "pertain and relate to activities which were the subject of past license amendments for which the time to request a hearing has long since expired." However, the sole issue of the adequacy and safety of the proposed transfer of the York waste to Canton Township cannot be addressed in a vacuum. As Molycorp has proposed to store its York

waste "temporarily" for only ten years, the logical follow-up issue arises as to what happens at the end of the "temporary" ten-year period. The larger long-term issues under the Site Decommissioning Plan are thereby immediately implicated.

17. There are common questions of law and fact concerning the proposed temporary storage of the York material and concerning Molycorp's proposed Site Decommissioning Plan. One of the major reasons (if not the sole reason) for Molycorp's Amendment Request concerning the schedule for the submission of its Site Decommissioning Plan relates to the temporary York material proposal. The April 15, 1999 public hearing in Canton Township specifically covered both proceedings and the Requestors have filed their initial Requests for Hearing under both docket numbers. Further, administrative adjudicatory economy warrants addressing Requestors' concerns about the temporary York material proposal in the broader context of the proposed Site Decommissioning Plan. The details of Molycorp's Site Decommissioning Plan are still in the process of being evaluated by the NRC and are still open at least partly due to issues concerning the proposed storage of the York material. (Canton Township will be able to review the actual details of the Molycorp Site Decommissioning Plan once copies of such relevant documents are produced to Canton Township.) All factors present in these proceedings support the clear conclusion that the Requestors have timely raised their concerns in both proceedings and the Requestors' concerns and evidence relating to same should not be limited solely to issues relating to the York material.

18. As the long-term issues raised by the Site Decommissioning Plan are now raised, the adequacy (or inadequacy) of Molycorp's past storage history and procedures are also now implicated. If errors and inadequacies are revealed to have occurred in the past, which have led to Molycorp's current problems, those inadequacies must be addressed in the future. To the extent that the Site Decommissioning Plan does not address such past errors and inadequacies, it must be analyzed, evaluated and scrutinized.

19. In summary, Molycorp should not be permitted to limit this proceeding to the sole narrow issue of the transfer of its York waste to Canton Township. Once the York waste is

located in Canton Township, in the absence of a specific proposal for the re-removal of the York waste ten years hence to other locations off-site, the York waste presents a *permanent* issue which must be addressed through Molycorp's Site Decommissioning Plan. As the NRC docket numbers for both the temporary York waste material and the Site Decommissioning Plan have already been joined, the obvious connection between these two issues has already been recognized by the NRC and was so recognized by Canton Township when it filed its initial Request for Hearing. Any further attempts by Molycorp to bifurcate these inexplicably joined issues should be soundly rejected.

Specified Areas of Concern
Germane to the Subject Matter

20. The presiding NRC officer must determine whether the concerns of the Requestors set forth in their respective Requests for Hearing and their respective Amendments to Requests for Hearing adequately set forth "specified areas of concern germane to the subject matter."

Canton Township hereby submits that its specified areas of concern are indeed germane to the subject matter of these proceedings, which areas of concern include, but are not limited to:

- the geology and topography of the proposed storage sites
- evidence of dispersion and/or migration of radioactive material outside the current storage sites to other sites (possibly on and off property owned by Molycorp)
- the unknown effects caused by the uncontrolled mixing of the thorium contained in the radioactive waste produced and stored at Molycorp with coal tar and other toxic substances already existing at the site
- the potential contamination of the water supply in the area due to the proximity of (i) a major water line which traverses the Molycorp property directly under contaminated areas and potential future storage sites; and (ii) the nearby Chartiers Creek watershed
- inappropriate and inadequate design features of the proposed permanent storage facilities
- too close proximity to residential neighborhoods

- health and safety of workers employed in the Township
- harm to wildlife and the ecosystem of the area

21. Most of these areas of concern are still in the process of being investigated and studied; complete analyses of all of these issues must await full document production from Molycorp and a more complete development of the record, which will only occur through the full hearing process. Therefore, the following summaries may be supplemented by subsequent Amended Requests for Hearing or pursuant to the complete hearing procedures warranted in this case.

Geology and Topography

(a) It is believed and therefore averred that the proposed site for the temporary storage of the York waste material is located in a flood plain in violation of pertinent regulations of the Pennsylvania Department of Environmental Protection ("Pa.DEF"). Pa.DEF has also reported its conclusion at the April 15 public meeting that the substructures underlying the proposed temporary site for the York waste material, consisting of, *inter alia*, sandstone and other permeable matter, are inappropriate for a radioactive waste site.

(b) Pa.DEF has reported its conclusion at the April 15 public meeting that the substructures of the proposed permanent storage sites are also inappropriate for radioactive waste storage.

Evidence of Dispersion and/or Migration of Radioactive Material

(a) It is believed and therefore averred that Molycorp, as recently as 1996, has been required to reclaim contaminated soil outside of the existing storage pile and/or outside of its property. Such contaminated soil is currently stored in the 194 roll-off containers currently on the Molycorp property.

(b) The report issued in 1985 by the Oak Ridge Associated Universities reports that radioactive waste was found within the public right-of-way at locations where such material was not initially placed or stored.

(c) Although Molycorp has released testing results of water samples taken from nearby Chartiers Creek, it has never released any results of analyses of the Chartiers Creek *stream beds*. Canton Township is currently in the process of taking such soil tests from the Chartiers Creek stream beds, which results will be presented at the full hearing in these proceedings.

Unknown Interactions Between Thorium and Coal Tar and Other Toxic Substances at Site

(a) The Molycorp plant is located in a historically heavy industrialized section of Canton Township. As in most older industrial sections, air and particularly water pollution was a problem in this area before the 1970's and toxic waste was often dumped by industries located here in nearby lands and in the groundwater systems. Further, extensive amounts of coal tar and other toxins were formerly produced by industries neighboring Molycorp's plant, which material was deposited throughout the area. Experts retained by Canton Township have identified this potentially volatile mix of hazardous waste and radioactive waste as issues of grave potential danger. Scientific studies have not yet been completed quantifying the extent of these dangers. Nevertheless, these extremely serious issues are distinctly raised in the current proceedings and a full hearing is warranted to explore the full extent of these dangers.

(b) It is believed and therefore averred that no studies or analyses have yet been released by Molycorp concerning potential dangers arising from the mixing of the radioactive waste already stored or otherwise found at the Molycorp Canton Township facility with radioactive waste proposed to be transferred from the Molycorp York facility. These potentially serious issues are distinctly raised in the current proceedings and a full hearing is warranted to explore the full extent of these dangers.

(c) It is believed and therefore averred that no studies or analyses have been revealed by Molycorp on the extent of organic toxic substances already existing in the area, at both the proposed storage sites and elsewhere on the Molycorp property. Such analyses should be performed prior to any transfer of additional radioactive material not already at the Canton Township site.

Proximity of Water Line and Chartiers Creek Watershed to Proposed Storage Sites

(a) As described in greater detail in Canton Township's initial Request for Hearing, it is believed and therefore averred that a 16" municipal water line which serves Canton Township and the greater City of Washington metropolitan area lies under the existing radioactive waste burial mound located on the Molycorp site. This burial mound, as well as the proposed temporary site for the York waste material, are located in the flood plain of Chartiers Creek, which creek runs within approximately 40 feet of the existing burial mound.

(b) As noted in the section entitled "Evidence of Dispersion and/or Migration of Radioactive Material" above, experts retained by Canton Township are still analyzing soil samples outside of the current storage sites, some of which are located in the creek bed and banks of Chartiers Creek and nearby. The results of these tests are not yet known but it is believed that such tests will indicate that there has been migration from the existing storage sites. Evidence on this issue should be further developed pursuant to full hearing procedures.

(c) Canton Township reiterates that the fact that a 100-year old pipeline runs directly underneath current storage sites and that Chartiers Creek is practically contiguous to such sites *ipso facto* raises safety concerns which by themselves warrant a full hearing in this proceeding.

**Inappropriate and/or Inadequate Design Features of Proposed
Permanent Storage Sites**

(a) Although Canton Township has not yet been able to review specific documents relating to Molycorp's Site Decommissioning Plan, it is believed and therefore averred that the proposed locations of both the temporary York material and the permanent storage sites are in inappropriate locations. These locations have already been deemed inappropriate by the Pa. DEP, in part, because of the locations' inappropriate sub-structures.

Close Proximity to Residents

(a) Canton Township believes and therefore avers that it is unprecedented that the storage sites are proposed to be located within 250 ft. from residential neighborhoods. Canton Township is unaware of any other approved radioactive storage sites in this nation located this close to such populated areas.

(b) It is believed and therefore averred that residents of nearby neighborhoods located in Canton Township, closest to the existing Molycorp storage sites, appear to be suffering from an unusually high incidence of cancer and other related diseases. Specific studies and statistical analyses of such occurrences can be presented pursuant to full hearing procedures.

Safety of Employees of Molycorp and Neighboring Industries

(a) Canton Township has long been concerned with the welfare of all of the workers employed in the Township. It is believed and therefore averred that there has been a high incidence of cancer and other related diseases to the employees of Molycorp and its neighboring industries. Complete studies of such issues have not been completed but will be developed pursuant to full hearing procedures.

Threat to Wildlife and Ecosystem

(a) Canton Township is developing evidence of physical defects occurring in wildlife which populates the undeveloped portions of the Molycorp site and neighboring areas, which defects cannot be attributed to natural causes. Further investigation and analysis of this issue is warranted and the full hearing process will further develop such evidence.

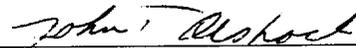
(b) Canton Township is developing evidence of damage to the ecosystem at the Molycorp site and in the neighboring areas. Further investigation and analysis of this issue is warranted and the full hearing process will further develop such evidence.

Conclusion

19. Under these circumstances and for the foregoing reasons, Canton Township submits that it has established its need for and a right to a hearing under 10 CFR Section 2.1205(h).

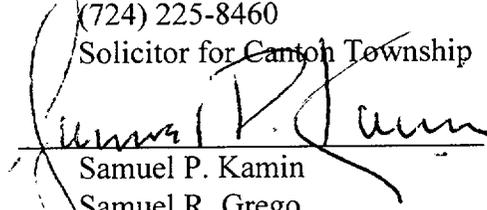
WHEREFORE, Petitioner/Requestor Canton Township, Pennsylvania hereby respectfully requests a hearing before the U.S. Nuclear Regulatory Commission on the pending Amendment Request of Licensee Molycorp, Inc.

Respectfully submitted,



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Date: November 11, 1999



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