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U.S. NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

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

'99 DEC -1 P4 :40

OTHER...  
ADJUDICATED...  
12/1/99

**MOLYCORP, INC.'S RESPONSE TO THE AMENDMENT TO REQUEST FOR HEARING BY THE CITY OF WASHINGTON**

Molycorp, Inc. ("Molycorp") submits the following Response to the Amendment to Request for Hearing submitted by the City of Washington, Pennsylvania ("City of Washington"). The City of Washington's Amended Request should be denied because the City of Washington has failed to cure any of the deficiencies noted in Judge Bloch's Memorandum and Order, dated August 25, 1999, which granted Canton Township ("Canton") and the City of Washington, Pennsylvania the right to amend their petitions for a hearing. See Exhibit C to Amendment to Request for Hearing filed by Canton, which was adopted in its entirety by the City of Washington (the "Amended Request"). Specifically, the City of Washington has failed to allege in detail that it satisfies the following elements of standing: (a) an injury in fact within the scope of this proceeding, (b) that can fairly be traced to the challenged action, and (c) that is redressable through this proceeding.

Because the City of Washington has not provided this required detailed description, demonstrating a real possibility of radiation injury to a real person or injury to property, the City of Washington has failed to establish that it has standing to seek a hearing under Subpart L of 10 C.F.R. Part 2. Rather, the City of Washington has asserted only conclusory, unsupported and largely inaccurate allegations, which pertain almost exclusively to issues other than the subject of this proceeding, the temporary storage of York material at

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Molycorp's Canton Township site. The City of Washington's allegations center largely on its incorrect assertion that it has a right to conduct discovery of Molycorp's documents. In support of Molycorp's Response to the Amendment to Request for Hearing by the City of Washington, Molycorp states as follows:

**I. The City of Washington's Request for Hearing Goes Beyond the Scope of this Proceeding which is Limited to the Temporary Storage of York Material.**

1. This proceeding is limited to the issue of Molycorp's proposal to construct and operate a temporary storage facility for material received from York. The Commission has held that "[o]nly those concerns which fall within the scope of the proposed action set forth in the Federal Register notice of opportunity for hearing may be admitted for hearing." In re International Uranium, (Receipt of Material from Tonawanda, NY), LBP-98-21, 1998 NRC LEXIS 67 at \*12 (Sept. 1, 1998). Here, the NRC's Notice, pursuant to which the City of Washington filed its original petition for a hearing, specifically states that the proposed license amendment pertains to "the temporary (5-10 years) storage of waste from the former Molycorp rare earth processing facility (License No. SMB-1408) in York, Pennsylvania." Nuclear Regulatory Commission, "Receipt of an Amendment Request for the Temporary Storage of Decommissioning Waste from the Molycorp York, Pennsylvania Facility (License No. SMB-1408) at the Molycorp Washington, Pennsylvania Facility (License No. SMB-1393) and Opportunity for a Hearing," 64 Fed. Reg. 31,021 (June 9, 1999). Nowhere in this Notice does the NRC refer to the Molycorp Washington Decommissioning Plan, which is subject to a separate NRC proceeding.

2. Using its petition for a hearing regarding the York material as a bootstrap, the City of Washington lists areas of concerns that pertain solely to the decommissioning issue.

See, infra, ¶ 17. The City of Washington wishes to merge the two entirely separate proceedings because it failed to file a timely petition for a hearing regarding the proposed decommissioning project; however, the City of Washington should not be permitted to circumvent the regulations by merging the two proceedings.

3. The evidence indicates that only the temporary storage of the York material is at issue here. Judge Bloch, in summarizing the initial Requests for Hearing, states only that “[p]etitioners are concerned about possible health and environmental effects that may result from the transfer of certain nuclear by-products and/or waste to Molycorp, Inc.’s proposed storage site.” See Memorandum and Order, dated Aug. 25, 1999, attached as Exhibit C to the Amended Request (the “Memorandum and Order”). Similarly, in designating a presiding officer for the hearing in this matter, Chief Administrative Judge Bollwerk states that the requests for hearing submitted by Canton and the City of Washington “were filed in response to a notice of receipt by the Nuclear Regulatory Commission of a license amendment request of Molycorp, Inc., for temporary storage at its Washington, Pennsylvania facility of decommissioning waste now located at its facility in York, Pennsylvania.” See Designation of Presiding Officer, issued July 15, 1999.

4. Even the City of Washington has acknowledged the limited scope of this proceeding. The City of Washington’s original Request for Hearing specifically states that the NRC’s Notice pertains to the “temporary storage of waste from Molycorp’s York decommissioning operations at the Molycorp Washington Pennsylvania facility.” See Request for Hearing filed by the City of Washington, Pennsylvania.

5. Because this proceeding clearly is limited to the York issue, the City of Washington's attempts to allege "common questions of law and fact" and "administrative adjudicative economy" should be rejected. See Amended Request, ¶17. This proceeding pertains only to the temporary storage of the York material for a period of five to ten years. The ultimate disposition of that material is not at issue in this proceeding.

## **II. The City of Washington Lacks Standing.**

### **A. The Judicial Standard**

6. A request for hearing must demonstrate that the petitioner satisfies the judicial standards for standing. § 2.12.05(h); see also In re Hydro Resources, Inc., (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 1998 NRC LEXIS 21 at \*13-14 (May 13, 1998). To establish standing, a requestor must show (a) an injury in fact, (b) that the injury can fairly be traced to the challenged action, and (c) that the injury is likely to be redressed. See Hydro at \*15.

7. With respect to the first requirement, a petitioner must show that the proposed action will cause an injury in fact to an interest that is within the "zone of interests" protected by the statutes governing the proceedings. Hydro at \*17. Moreover, a governmental unit, like a city or county, must demonstrate, like any other intervenor, that its citizens or natural resources will likely suffer an injury in fact; cities and counties are not automatically deemed to have standing. See International Uranium at \*19. In International Uranium, the State of Utah petitioned for leave to intervene in a proceeding concerning a license amendment that would permit the licensee to receive and process uranium-bearing material at its Utah facility. The

Commission found that the State's failure to specify which citizens would be harmed or to describe the mechanism of injury was not sufficient to show an injury in fact. International Uranium at \*19.

8. Where the proposed action has no obvious potential for offsite impacts, as in cases where the amount of material to be added to the site is only a small fraction of that already authorized at the site, the need to prove an injury in fact is particularly critical. International Uranium at \*19-20.

9. In every case, the injury in fact also must be within the scope of the proceeding. See Shieldalloy at \*10. If the claimed injury is outside the scope of the proceeding, then the petitioner's claims of causation and redressability must fail and the overarching claim to standing must be rejected. Id. Where the proceeding involves a license amendment, the petitioner must show a harm that is "distinct and apart from that caused by the initial licensing and continued operation of the facility." See International Uranium at \*19.

#### **B. The Deficiencies Noted by Judge Bloch**

10. In his Memorandum and Order granting the petitioners an opportunity to amend their deficient requests for a hearing, Judge Bloch observed that the petitioners failed to demonstrate "sufficient knowledge" of Molycorp's proposed amendment to its license. Judge Bloch stated that "[t]o allege an injury in fact ensuing from the proposed amendment, the petitioners need to show that this specific amendment, including the safety precautions included in the proposed amendment, poses a risk to citizens of the petitioning governments." The Judge

further observed that the areas of concern alleged by the petitioners should relate to the amendment being challenged. See Memorandum and Order at p. 3.

11. In permitting the petitioners to amend their requests, the Judge instructed the City of Washington to review Molycorp's request for an amendment to its license for purposes of designating its concerns "with respect to the content of the amendment application." Id. at p. 4.

**C. The City of Washington's Failure to Cure The Deficiencies in its Original Request**

**1. Failure to include sufficiently detailed descriptions on issues related to standing**

12. In a request for a hearing, the NRC does not permit the type of "notice pleading" permitted by Article III courts; rather, the NRC requires "detailed descriptions of the petitioner's positions on issues going to both standing and the merits." In re Shieldalloy Metallurgical Corp., (Cambridge, Ohio Facility), CLI-99-12, 1999 NRC LEXIS 53, Apr. 26, 1999; 10 C.F.R. §2.1205(e) (petitioner "must describe in detail" these positions). The petitioner seeking a hearing must support this detailed description with affidavits or other forms of evidence. See Shieldalloy at \*9. In Shieldalloy, the Commission denied a petition for a hearing where the petitioner had failed to describe in detail its standing to intervene; the petitioner made only cursory assertions that were unsupported by evidence. Id.

13. The City of Washington provides only the briefest description of its alleged areas of concern. It has failed entirely to specify the type of harm that its citizens will incur if the proposed amendment is approved. More importantly, the City of Washington has

failed to provide any evidence that supports its allegations regarding the alleged areas of concern. For instance, while the City of Washington alludes to “scientific studies” underway, no reports are attached to its Amended Request. See Amended Request at p. 9. Similarly, the City of Washington alleges that the “proposed locations of both the temporary York material and the permanent storage sites are in inappropriate locations.” See Amended Request at p. 11. However, the City of Washington provides no foundation whatsoever for this alleged area of concern. Similarly, although the City of Washington claims that the Pennsylvania Department of Environmental Protection already declared the proposed locations to have “inappropriate sub-structures,” the City of Washington fails to provide any supporting documents, materials or information, or to even otherwise define what is “inappropriate.”

**2. Failure to allege injury in fact resulting from Molycorp’s proposed license amendment**

14. Judge Bloch instructed the petitioners to specify the particular injury in fact that would result if Molycorp received its requested license amendment. He instructed them to show a precise risk to the citizens of the city that would arise as a result of the proposed amendment, despite the safety precautions proposed in the amendment. The City of Washington has failed to correct this deficiency in that it has failed to discuss expressly the radiation-related dangers inherent in the proposed amendment.

15. In its Amended Request, the City of Washington has provided no express discussion of the standing requirement. Like any other intervenor, however, a city must satisfy the standing requirements.

16. In this proceeding, as in International Uranium, the City of Washington has failed to specify how the addition of the York material to the Canton Township site would cause radiation injury to specific citizens who live, work or travel near Molycorp's facility or specific aspects of the environment. See International Uranium at \*20. Because the City of Washington has failed to specifically assert any potential for injury due to radiation from licensed materials, it has failed to bring its request for a hearing within the ambit of the Atomic Energy Act of 1954, as amended. See Babcock & Wilcox Co., (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-4, 39 NRC 47, 51-52 (1994).

17. Moreover, many of the City of Washington's alleged areas of concern are outside the scope of the proceedings and, accordingly, do not constitute valid "injuries in fact." Because these alleged areas of concern are outside the scope of the proceeding, they also are not germane to the subject matter of the proceeding. §2.1205(h). Specifically, the alleged "dispersion and/or migration of radioactive material," the "safety of employees of Molycorp and neighboring industries," and the "threat to wildlife and ecosystem" are harms that, even if true (which Molycorp denies), arose out of the initial licensing and/or continued operation of the facility. The City of Washington has not specifically alleged, much less provided evidence that, these areas of concern are distinctly related to the proposed license amendment and, accordingly, they are outside the scope of this proceeding. See, supra, ¶ 9.

18. The City of Washington's failure to review the request for amendment sufficiently to designate concerns regarding the content of the amendment application, including proposed safeguards relevant to the City of Washington's concerns, supports the conclusion that the City of Washington simply can not satisfy the standing requirement.

**III. The City of Washington Attempts to Excuse its Inadequate Amended Request through Gross Misstatements of the Facts.**

**A. Molycorp's Provision of Documents to the City of Washington or Canton**

19. The City of Washington alleges that any deficiencies in its Amended Request are attributable to Molycorp's purported failure to provide copies of its documents to the City of Washington. See Amended Request, ¶¶ 1,7. This assertion is patently false.

20. The City of Washington has never requested any documents from Molycorp. By adopting the Amendment to Request for Hearing Submitted by Canton, the City of Washington apparently has decided to allow Canton to gather and review all documents relevant to this proceeding on its behalf. See Amendment to Request for Hearing By The City of Washington, Pennsylvania, ¶ 6. Accordingly, the following discussion regarding the provision of documents by Molycorp to Canton applies equally to the City of Washington.

21. As an initial matter, the regulations promulgated by the NRC do not permit any discovery by any party, whether by document production, deposition, interrogatories or otherwise. 10 C.F.R. §2.1231(d). Accordingly, the City of Washington's repeated allegation that Molycorp owes documents to the City of Washington is without foundation. See Amended Request, ¶¶1, 7-9, and 11-12.

22. Despite the clear statement in the regulations that the City of Washington can not require Molycorp to produce documents, Molycorp has, in the spirit of cooperation and consistent with the settlement negotiations encouraged by Judge Bloch, repeatedly offered its documents to the City of Washington.

23. In early 1997, Molycorp created a Public Document Room at its offices in Canton Township in which documents regarding Molycorp's Washington and York Decommissioning Plans were available for public inspection as those documents became available. These materials included the York Decommissioning Plan (6/99) (revision 1), the York Site Characterization Report (Volumes I and II), the Final Design Report Temporary Storage, and the Report regarding Hydrology in Temporary Storage Area (4/96). See Letter from Randolph T. Struk to Samuel R. Grego, dated Oct. 25, 1999, attached hereto as Exhibit A, and Affidavit of George Dawes, attached hereto as Exhibit B ("Dawes Aff."), ¶ 7.

24. In the Public Document Room, Molycorp also provided copies of documents pertaining to the decommissioning of the Canton Township site, including: the Washington Decommissioning Plan, the Washington Decommissioning Plan (Rev. 1, Part 1) the Washington Site Characterization Report (Volumes I, II and III), the Washington Facility Environmental Report (Volumes I and II), the Oak Ridge Associated University Washington Site Survey, the Report of Review of Decommissioning Plan for the Molycorp Washington County, Pennsylvania Site and Discussion of Associated Health Impacts on the Community, the Report on Evaluation of Potential Health Risks of Human Exposure to Radiation from Thorium-Bearing Slag Associated with the Molycorp Washington, Pennsylvania Site, and the Findlay Site Cleanup Final Report. See Exhibit B and Dawes Aff., ¶ 8.

25. In addition to making these documents available at Molycorp's offices, several years ago, Molycorp also mailed copies of certain of the documents filed in the Public Document Room directly to the Canton Township Board of Supervisors, including all three

volumes of the Washington Site Characterization Report and the Washington Decommissioning Plan. See Exhibit B and Dawes Aff., ¶ 9.

26. Copies of all of the above-listed documents also are available at the NRC's document repository in Aliquippa, Pennsylvania or can be obtained from the NRC staff on request. Indeed, Molycorp's Request for Amendment of its license to permit the temporary storage of York material was filed with the NRC and is a publicly available document. Accordingly, the City of Washington's allegation that it has not been able to review the proposed license amendment is without basis in fact. See Amended Request, ¶ 1.

27. Even though Canton and the City of Washington either had access to or received their own copies of the above-listed documents, counsel for Canton advised Molycorp's counsel that he was "surprised to discover that the Township has not yet received certain basic information and documents relevant to these Molycorp matters." See Letter from Samuel R. Grego to Randolph T. Struk, dated Oct. 11, 1999, attached hereto as Exhibit C. However, this same counsel for Canton declined Molycorp's offer to review the documents already available in the Public Document Room and instead requested that Molycorp send him copies of certain documents.<sup>1</sup> See Letter from Randolph T. Struk to Samuel R. Grego, dated Nov. 5, 1999, attached hereto as Exhibit D.

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<sup>1</sup> Curiously, while counsel for Canton claims not to have received needed documents from Molycorp, he informed Judge Bechhoefer that "documents the Petitioners have requested from Molycorp are still being reviewed." See Letter from Samuel R. Grego to Administrative Judge Charles Bechhoefer, dated October 28, 1999, attached as Exhibit E to Amended Request.

28. Even though many of the documents requested by Canton are outside the scope of this proceeding and although Canton and the City of Washington have no right to conduct discovery, Molycorp made copies of the following documents requested by Canton, and on November 12, 1999, Molycorp hand-delivered the copies to counsel for Canton:

- Washington Decommissioning Plan;
- Washington Decommissioning Plan, Rev. 1, Part 1;
- Washington Facility Environmental Report, Volumes I and II;
- Oak Ridge Associated University Washington Site Survey;
- Findlay Site Cleanup Final Report;
- Final Design Report Temporary Storage;
- Report Regarding Hydrology and Temporary Storage Area;
- York Decommissioning Plan (6/99) (Revision 1); and
- York Site Characterization Report, Volumes I and II.

Moreover, Molycorp is continuing to respond to ongoing requests for information from Canton.

29. Molycorp's efforts to work with Canton and the City of Washington, as enumerated above, illustrate its good-faith intent to maintain open communication with Canton and the City of Washington. Accordingly, the City of Washington's suggestion that it be given a third opportunity to submit a request for hearing should be denied on the grounds that any failure by the City of Washington to draft a detailed request for hearing is due to its own refusal to review the documents available to it. See Amended Request, ¶ 14.

**B. The City of Washington's Misstatements of Facts**

30. Although Molycorp recognizes that the purpose of the instant proceeding is not to examine the merits of the City of Washington's position but to determine whether it has standing, Molycorp is compelled to correct two gross misstatements of fact made by the City of Washington in its Amended Request because these misstatements may suggest that the City of Washington has provided a sufficiently detailed description of its alleged injury in fact.

31. First, the City of Washington alleges that a 16-inch municipal water line lies under the existing stabilized soil-capped piles. See Amended Request at p. 10. The water line actually runs alongside one of the stabilized soil-capped piles and does not run either under or near the proposed temporary storage site. During a meeting on November 9, 1999, Molycorp shared this information with Canton. See Dawes Aff., ¶ 4 and Affidavit of James Dean, attached hereto as Exhibit E ("Dean Aff."), ¶ 3.

32. Molycorp's own analysis, which is contained within its Washington Site Characterization Report, indicates that the proximity of this water line to the stabilized soil-capped piles would cause no detrimental health or environmental impacts. See Dawes Aff., ¶ 5. Moreover, Molycorp has been informed that the local water company, which owns the water line, conducted its own testing which failed to reveal any radiological contamination in the water line. See Dean Aff., ¶ 6. Nevertheless, as a gesture of goodwill and to foster community relations, Molycorp informed Canton on November 9, 1999 that it would remove the water line entirely from its property. Molycorp has reached an agreement in principle with the water company to remove the water line, and Molycorp anticipates that the removal will be completed by the second quarter of the year 2000. See Dean Aff., ¶¶ 4-5.

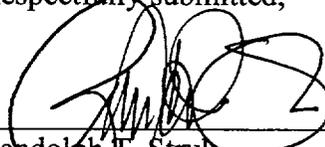
33. Notwithstanding Molycorp's notification on November 9 of both the actual location of the water line and Molycorp's intention to remove the water line entirely from its property, the City of Washington continues to assert vague and inaccurate allegations regarding the water line as a basis for requesting a hearing.

34. Second, the City of Washington alleges that Molycorp failed to test the sedimentation from the Chartiers Creek stream beds. See Amended Request at p. 9. In 1997, however, Molycorp made its Washington Site Characterization Report available to the City of Washington, which addresses, in part, the "stream bottom sediment samples" taken from Chartiers Creek. The results indicate "no significant site-related impact to the sediment." See Dawes Aff., ¶ 8; and Washington Site Characterization Report, §5.3.3.

WHEREFORE, the City of Washington is not entitled to a hearing under Subpart L of 10 C.F.R. Part 2 and, accordingly, its Amendment to Request for Hearing should be denied.

Dated: November 30, 1999

Respectfully submitted,

  
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VIA FACSIMILE

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October 25, 1999

Re: Molycorp, Inc. v. Canton Township  
C.A. No. 99-762 (Judge Cindrich)

Dear Sam:

I am writing in response to your October 11 letter proposing suggested meeting dates. Unfortunately, given when I received your letter, I did not have sufficient advance notice to clear the schedules of the UNOCAL representatives who will be attending this meeting. Accordingly, the dates you have proposed were not feasible. However, I would like to suggest the morning of November 3 as an alternative date. I understand that the representatives of the City of Washington are available on this date. Would you please check with your client to determine their availability.

I appreciate that this is beyond the deadline currently set by Judge Bloch's Order. However, as an accommodation, we would be agreeable to extending the Township's and City's deadline to submit an Amended Petition for Hearing until November 15, so that a meeting can take place in advance of your deadline. Consistent with Judge Bloch's directives, however, we do not believe we can push the dates back much further.

I would also like to address the request for documents contained within your letter. However, at the very outset, I would like to correct your suggestion that the Township still has yet to be provided with certain basic information regarding Molycorp's plans. This is simply false. In fact, a great deal of information and documents regarding Molycorp's decommissioning plans were made available by Molycorp quite some time ago to both the Township Board of Supervisors and the general public. These materials included the following:

1. Washington Decommissioning Plan
2. Washington Decommissioning Plan, Rev. 1, Part 1
3. Washington Site Characterization Report, Vols. 1, 2, 3

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4. Washington Facility Environmental Report, Vols. 1 & 2
5. Oak Ridge Associated University Washington Site Survey
6. Report of Review of Decommissioning Plan for the Molycorp Washington County, Pennsylvania Site and Discussion of Associated Health Impacts on the Community.
7. Report on Evaluation of Potential Health Risks of Human Exposure to Radiation from Thorium-Bearing Slag Associated with the Molycorp Washington, Pennsylvania Site
8. Findlay Site Cleanup Final Report
9. Final Design Report Temporary Storage
10. Report regarding Hydrology in Temporary Storage Area (4/96)
11. York Decommissioning Plan (6/99) (revision 1)
12. York Site Characterization Report, Vol. I & II

All of the above-listed materials have been available for inspection in the Public Document Room at Molycorp's offices in Canton Township. Moreover, it is my understanding that copies of certain of these materials, in addition to being generally available at Molycorp, were mailed directly to the Board of Supervisors. Such materials included all three volumes of the Washington Site Characterization Report, as well as the Washington Decommissioning Plan. Furthermore, Molycorp held an Open House in April of 1997, during which a variety of information pertaining to Molycorp's decommissioning plan was presented to the public. The members of the Township's Board of Supervisors attended this meeting and received materials and information at the meeting regarding Molycorp's decommissioning activities. Accordingly, it is simply incorrect to suggest that Molycorp has failed to make available, either to the Board of Supervisors or to the public, information pertaining to Molycorp's decommissioning plans.

Samuel R. Grego, Esq.  
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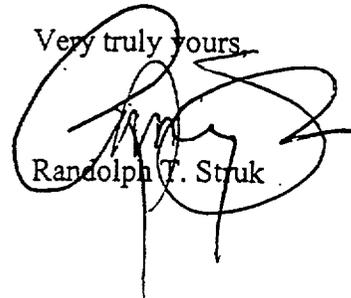
October 25, 1999

Turning to the documents requested in your letter, I would like to note that the majority of the information you are requesting has no relevance to the issues raised by the currently pending requests for hearing. While Molycorp has in the past and will in the future continue to be willing to share information pertinent to the Washington Decommissioning Plan with the Township, the appropriate scope of our meeting pursuant to Judge Bloch's Order is limited to a discussion of the proposed temporary storage of York materials at Washington. Indeed, the scope of the meeting must necessarily be limited in this fashion if we are to conclude our discussions within the timeframe contemplated by the Judge.

To save you any inconvenience associated with inspecting documents in Molycorp's offices, I am willing to pull together copies of materials pertinent to the issues relevant to the currently pending requests for hearing. Otherwise, you are certainly free to review the materials which are currently available to the public in the Public Document Room at Molycorp's offices. Moreover, once our meeting pursuant to Judge Bloch's Order has been concluded, we can then address, if the Township so desires, any additional informational meetings relative to Molycorp's Washington decommissioning plan.

Please call me at your convenience to discuss this further.

Very truly yours,



Randolph T. Struk

RTS/cag  
cc: Jeffrey Watson, Esq.