

## **POLICY ISSUE NEGATIVE CONSENT**

January 23, 2001

SECY-01-0010

FOR: The Commissioners

FROM: William D. Travers  
Executive Director for Operations

SUBJECT: COORDINATION WITH U.S. ARMY CORPS OF ENGINEERS ON  
CERTAIN DECOMMISSIONING SITES

### PURPOSE:

To obtain the Commission's approval to: send a response to the U.S. Army Corps of Engineers (USACE) on procedural and jurisdictional issues concerning remediation at the Stepan Company Maywood site, a licensed site that USACE is remediating under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Formerly Utilized Sites Remedial Action Program (FUSRAP); develop a Memorandum of Understanding (MOU) with USACE, based on the response; and use this same approach for similar future cases.

### BACKGROUND:

Stepan's Maywood site is on the National Priority List (NPL) of the U.S. Environmental Protection Agency (EPA) (Superfund site) and involves FUSRAP waste. Included in this waste is radioactive material in three burial pits described in Stepan's U.S. Nuclear Regulatory Commission (NRC) license (License STC-1333). USACE has the authority to clean up FUSRAP sites, under CERCLA, with EPA oversight for NPL sites. Efforts to clean up radiological and non-radiological (chemical) contamination identified in residential and municipal properties at the Maywood site are almost complete (Phase 1). However, cleanup of the remaining commercial and government properties (Phase 2), including the licensed burial pits, has been delayed. The delay is due, in part, to clarifying the regulatory relationships among involved parties, because USACE expressed reservations about remediating the three NRC-licensed burial pits while the NRC license remains in effect.

The history and chronology of the Maywood site are described in Attachment 1. The burial pits' locations are shown in Figure 1 (Attachment 2).

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Before the expiration date (April 30, 1992) of License STC-1333, Stepan requested license renewal. In 1994, NRC informed Stepan that it would maintain the license for the burial pits until the U.S. Department of Energy (DOE) began remediation, and then terminate the license. In 1996, Stepan requested NRC's approval for postponement of the site decommissioning until DOE had fulfilled its FUSRAP obligations. NRC granted Stepan's request in February 1997. In October 1997, Congress transferred administration and management of the FUSRAP program to USACE. In December 1998, Stepan requested postponement of decommissioning pending USACE site remediation. Since that time, the staff has conducted several meetings with Stepan, but has not formally responded to the license renewal request.

#### DISCUSSION:

The Stepan site is the first site where USACE has raised the question of NRC oversight of the licensee during the USACE remediation.<sup>1</sup> In addition, the site is listed on the NPL. Although NRC was prepared to terminate the license when DOE took possession, it is not clear that this should happen with the USACE taking possession. Moreover, license termination, which would have been based on DOE's authority under the Atomic Energy Act, was being considered before the License Termination Rule (LTR) was enacted.

USACE has held discussions with the staff as to how the licensing process should proceed, and USACE has significant reservations about conducting a remediation while being subjected to the normal licensing process. The routine decommissioning process would include oversight by both NRC as the regulator, and Stepan as the licensee. To address its concerns, USACE sent NRC a letter with four questions (Attachment 3).

After conferring with NRC's Office of the General Counsel, the staff concludes that the answers to several of USACE's questions are relatively straightforward and do not involve significant policy decisions. Specifically, USACE's Questions 1, 2, and 4 in Attachment 3 can be addressed through regulations, guidance, past Agency practice, and an earlier Director's Decision under Title 10, U.S. Code of Federal Regulations, Section 2.206 (10 CFR 2.206) (see Attachment 4). The staff's proposed responses to USACE's Questions 1, 2, and 4 are described in Attachment 5. However, the answer to Question 3 raises new policy issues. In this question, USACE asks:

"If the Corps agrees to take control of the burial pits for the purposes of health and safety, and commits to seeking funds necessary to perform remediation of the burial pits, will NRC administratively suspend (or even terminate) the Stepan license? Will the NRC require the license holder to apply for suspension or termination of the license prior to taking such an action?"

In answering USACE's question, the staff considered three alternatives. NRC could:

- 1) Terminate Stepan's license;
- 2) Suspend (place in abeyance) Stepan's license; or
- 3) Maintain the license and normal decommissioning regulatory process.

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<sup>1</sup>There is at least one other site, the ABB Prospects Inc., fuel cycle facility site in Windsor, Connecticut, involving licensed material which USACE may have current responsibility for under FUSRAP. The staff does not anticipate any policy issues associated with the decontamination of the Windsor site. If policy issues arise which are not addressed by the approach outlined in this paper or the existing decommissioning process, the staff will consult with the Commission.

In Attachment 6, the staff describes these three approaches, and the pros and cons that the staff considered in developing a response to USACE's Question 3. Based on the analysis provided in Attachment 6, the staff concludes that the preferred alternative is to suspend (place in abeyance) Stepan's license, while USACE remediates the site. License suspension is the preferred alternative because it: allows NRC to maintain a final decision on termination of the license while simultaneously minimizing EPA/NRC dual regulation; maintains the licensee's responsibility to meet the LTR requirements; and preserves the Commission's option to reinstate the license and require the licensee to submit a Decommissioning Plan, should USACE not receive sufficient funding for remediation or otherwise not meet the LTR requirements.

Unless directed otherwise by the Commission, the staff intends to suspend (place in abeyance) the Stepan license. Suspension will be contingent on USACE informing NRC, in writing, that: a) it has taken physical possession of the three licensed burial pits, to control the property for radiation purposes; b) it will be remediating the pits under CERCLA; c) it will remediate the licensed pits to meet the standards of 10 CFR Part 20, Subpart E; and, d) it has no objections to allowing NRC to observe in-process activities. After remediation, the staff will reinstate Stepan's license. If the site is adequately cleaned up, then the staff will terminate the license. That determination will be primarily based on a records review supplemented by in-process observations to the extent performed during remediation. To implement this approach, Stepan will need to submit a license amendment request to suspend its license. Alternatively, the staff could consider issuing an Order to suspend the license. Either approach would offer the opportunity for a hearing.

The staff recognizes that, once the license is suspended, USACE will be in control of the decommissioning timetable, and the decommissioning timeliness requirements will also be suspended. USACE must address significant schedule impacts, involving liability and issuance of an interagency-coordinated Record of Decision, before remediation work begins. In addition, USACE prioritizes on-site activities based on relative risk, and the radiological hazards may not necessarily present the highest near-term risk at the site. This possibility may result in protracted remediation. However, the staff is unable to predict if the other approaches would result in a more timely remediation.

In developing this paper, the staff met with Stepan representatives on September 26, 2000, in a publicly noticed meeting attended by EPA and USACE, and the staff asked for Stepan's view on the licensing options. Stepan informed the staff, by telephone call, on October 4, 2000, that it will be unable to provide its views on the licensing options, until Stepan and the Department of Justice resolve broader issues of liability for the site. These issues involve the extent of the U.S. Government's liability to decommission the site, under a 1985 cooperative agreement between DOE and Stepan, and Stepan potentially reimbursing the U.S. Government for a portion of the cost to remediate the site.

Unless directed otherwise by the Commission, the staff intends to develop an MOU with USACE, consistent with this approach of suspending the license for a FUSRAP site that USACE is remediating. The MOU will address the four contingencies noted above. In addition, the staff intends to use the approach discussed in this paper for future similar cases involving USACE remediation of FUSRAP sites licensed by NRC. The staff notes that the BWXT Shallow Land Disposal Area (SLDA) Site at Parks Township, Pennsylvania, is another licensed site that USACE will likely remediate under FUSRAP. A background information

sheet for the SLDA Site is included in Attachment 7.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objections. In addition, this issue has been discussed with the State of New Jersey Department of Environmental Protection and the State is aware of the staff's preferred option for addressing this issue.

RECOMMENDATION:

Unless otherwise directed by the Commission within 10 days, the staff proposes to send a letter to USACE explaining that, in answer to the USACE's Question 3, NRC would suspend Stepan's license while USACE decommissions the site; develop an MOU with USACE; and use the license suspension approach for future similar cases involving USACE remediation of FUSRAP sites licensed by NRC. Although, we consider these actions to be within the delegated authority of the Director, Office of Nuclear Material Safety and Safeguards, these actions will not be taken until the SRM is received.

*/RA/*

William D. Travers  
Executive Director  
for Operations

Attachments:

1. Site History and Chronology
2. Location of Burial Sites and Monitoring Wells (Figure 1)
3. USACE letter to John Greeves, dated May 19, 2000
4. NMSS Director's Decision, denying the NRDC petition (10 CFR 2.206 Petition), dtd March 26, 1999
5. USACE Questions 1, 2, and 4, and Summary of NRC's Proposed Responses
6. NRC Licensing Alternatives During USACE Remediation
7. Background Information for the Shallow Land Disposal Area, Vandergrift, PA Site

The Commission

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