

## NRC LICENSING ALTERNATIVES DURING U.S. ARMY CORPS OF ENGINEERS REMEDIATION

In answering the U.S. Army Corps of Engineers' (USACE's) third question, in its letter dated May 19, 2000, regarding the Stepan site, the staff considered three licensing alternatives: 1) terminate Stepan's license; 2) suspend (place in abeyance) Stepan's license; and, 3) maintain the license and normal decommissioning. The pros and cons for each alternative are summarized below. Staff proposes to adopt the second alternative - - license suspension<sup>1</sup> (Alternative 2).

### Alternative 1: Terminate Stepan's License:

The U.S. Nuclear Regulatory Commission (NRC) could terminate the Stepan license, 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 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and c) it will remediate the licensed pits to meet 10 CFR Part 20, Subpart E, standards. To implement this approach, Stepan would need to submit a license amendment request to terminate its license and an exemption request to exempt itself from the NRC License Termination Rule (LTR). Alternatively, the Commission could consider issuing an Order to terminate the license. However, in either case there would be an opportunity for a hearing.

#### Pros:

- Reduces dual regulation and burden on the licensee. Reduces decommissioning delays and expenses produced by duplicative efforts.
- Promotes both interagency cooperation and consistency of remedial actions addressing radiological and non-radiological contamination identified at the site.
- Regulatory oversight for cleanup of the Maywood site will be under the Superfund program, since NRC agrees that the program being administered is adequate to protect the public and the environment from risks associated with radioactive material contamination at the site.<sup>2</sup>

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<sup>1</sup> The staff proposed a similar approach for the Shallow Landfill Disposal Area (SLDA), when the staff briefed the Commission Assistants in March 2000, concerning contemplated legislation to place that site under Formerly Utilized Sites Remedial Action Program (FUSRAP). In August 2000, the Senate Report for the Fiscal Year 2001 Energy and Water Development Appropriation included language to allow \$5 million for site assessment and initial remediation at SLDA for FUSRAP related contamination. This was confirmed in the September Conference Report. In October 2000, the Appropriation Act was passed.

<sup>2</sup> SECY-95-056, dated March 9, 1995, "Deferral of Regulatory Oversight to the U.S. Environmental Protection Agency for Two Sites with Radioactive Contamination and Landfill Disposal of Licensed Material from Remediation of a Third Site." In the associated Staff Requirements Memorandum dated April 28, 1995, the Commission concluded that, under certain conditions, it would be appropriate for NRC to defer to U.S. Environmental Protection Agency, or an authorized State environmental protection program, the oversight of remediation of contaminated sites under NRC jurisdiction.

- No Environmental Impact Statement (EIS) is required.
- Allows NRC, under 10 CFR 20.1402(c), to require additional cleanup if, based on new information, it is determined that the cleanup criteria were not met and residual activity remaining at the site could result in a significant threat to public health and safety.

Cons:

- Requires exemption from the NRC regulations.
- If USACE does not receive sufficient appropriations to complete remediation or otherwise does not meet the LTR, and if there is not a finding that the residual radioactivity remaining at the site could result in a significant threat to public health and safety, then the absence of a license may make it more difficult for NRC to enforce an order requiring further remediation.
- Decreases public's confidence in NRC's credibility regarding fulfilling its statutory responsibilities.
- Additional remediation may be necessary in the future if the USACE does not meet the LTR.
- Places decommissioning activities outside NRC's control, thereby reducing assurance of satisfactory decommissioning, from NRC's perspective, because of a lack of NRC oversight.
- If Stepan does not request license termination, it is not clear that NRC should issue an order terminating the license.

Alternative 2: Suspend (Place in Abeyance) Stepan's License:

NRC is prepared to suspend (place in abeyance) the Stepan license, 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 Part 20, Subpart E; and, d) it has no objections to allowing NRC to observe in-process activities(s). After remediation, NRC 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 observation to the extent performed during remediation. To implement this approach, Stepan would 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.

Pros:

- Maintains Stepan's responsibility to remediate the site in the event that USACE has not been able to obtain sufficient funding for the site.

- Increases public perception and credibility if NRC maintains control of the license termination.
- Provides higher level of assurance than alternative 1, because NRC will perform some review before terminating the license, i.e., that is NRC will perform a records review at the completion of remediation supplemented by in-process observation to the extent performed during remediation. In light of USACE capabilities, staff intends that the effort will be substantially less resource consuming than a normal license termination.
- No EIS, with its associated cost, is required, because NRC is not taking a major Federal action affecting the environment [i.e., the approval of a Decommissioning Plan (DP)]. An Environmental Assessment should be sufficient for license termination, after license reinstatement, assuming the USACE has adequately remediated the site.
- This approach is based on the West Valley model.

Cons:

- Results in increased costs for regulatory agencies and a burden on licensee, as compared with Alternative 1. However, it minimizes dual regulation, in comparison with Alternative 3.
- If Stepan does not request license suspension, it is not clear that NRC should issue an order suspending the license.
- Compared with Alternative 1, lengthens the amount of time that NRC maintains responsibility for the site.

Alternative 3: Maintain the License and Normal Decommissioning Regulatory Process:

NRC would not suspend nor terminate the Stepan license until the licensee decommissions the site in a manner that satisfies the LTR. NRC intends to maintain the normal NRC regulatory process (i.e., require Stepan to comply with the timeliness rule and LTR). This will require Stepan to submit a DP, in accordance with Part 20, Subpart E.

Pros:

- Provides for NRC to maintain control of decommissioning, including the review and approval of the DP and conducting routine inspection and enforcement activities. This would include conducting in-process inspections to independently verify the effectiveness and adequacy of the USACE's cleanup during remediation.
- Maintains Stepan's responsibility to remediate the site, regardless of the USACE funding.

Cons:

- Results in dual regulation since it places NRC in the role of oversight of USACE's remediation when NRC reviews/approves

the licensee's submitted DP, most likely generated by the USACE, and conducts inspection and enforcement activities.

- An EIS, with its associated costs will likely be needed if a restricted release is proposed or there is groundwater contamination.
- Results in increased costs for regulatory agencies and a burden on licensee, as compared with Alternative 1 and 2.
- The staff understands, from the USACE, that, as a matter of policy, the USACE does not desire to subject itself to dual regulation, nor does it desire to be subjected to the oversight of Stepan (as the licensee will be responsible for the quality of remediation and thus responsible for the oversight of the USACE remediation to avoid potential enforcement issues with NRC).
- If, for some reason, USACE does not remediate this site, Stepan may seek to have the license terminated under a restricted release approach, assuming EPA accepts that as a CERCLA remedy.
- Compared with Alternative 1, lengthens the amount of time that NRC maintains active responsibility for ensuring that the site is successfully remediated.

The staff has also considered the impact of the three approaches on the timing of decommissioning, in this case. Under Alternative 3, Stepan may need a DP, NRC will need to approve it, and an EIS may need to be prepared. Under Alternative 1 and 3, the USACE will also have preparatory actions that will need to be completed before remediation can begin, as well as the need to prioritize work on the site. Thus, it is difficult to predict which approach would result in more timely remediation.

Based on the above, the staff has concluded that Alternative 2 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 DP, should USACE not receive sufficient funding for remediation or otherwise not meet the LTR requirements.