

NUCLEAR REGULATORY COMMISSION

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the Public of the issuance of a Confirmatory Order Modifying License No. STC-1333, held by the Stepan Company (Stepan or Licensee). The Order set forth below was issued to the Licensee on October 21, 2008, and includes an opportunity to request a hearing. Although the Order indicates any person adversely affected by the Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance, the public has 20 days from the publication of the Order in the Federal Register, in which to request a hearing.

FOR FURTHER INFORMATION CONTACT: Amir Kouhestani, Project Manager, Special Projects Branch, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001. Telephone: (301) 415-0023; fax number: (301) 415-5369; e-mail; amir.kouhestani@nrc.gov.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 40-8610
STEPAN COMPANY)	License No. STC-1333
MAYWOOD, NEW JERSEY)	EA-07-164

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

Stepan Company (Stepan or Licensee) is the holder of U.S. Nuclear Regulatory Commission (NRC or Commission) License No. STC-1333 (License) issued by the NRC pursuant to 10 CFR Part 40. The License authorizes Stepan to possess thorium tailings in underground storage in three burial pits at Stepan Company, 100 West Hunter Avenue, Maywood, New Jersey. The license was issued on April 4, 1978, was most recently amended on November 5, 1987, and remains in effect. This possession only license is in timely renewal.

II

In accordance with the "Settlement Agreement - United States and Stepan Company," dated November 12, 2004, on-site decontamination and remediation of the burial pits will be performed by the U.S. Army Corps of Engineers (USACE), as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP), and pursuant to the Energy and Water Development Appropriations Acts for Fiscal Years 1998-2001 (Public Laws 105-62, 105-245, 106-60, and 106-377, respectively). Section 611 of Public Law 106-60 requires USACE to remediate FUSRAP sites in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300. USACE, as provided for in section 121(e) of CERCLA and 40 CFR 300.400(e), is not required to obtain an NRC license for its on-site remediation activities conducted under its CERCLA authority.

In accordance with Article III of the "Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and The U.S. Army Corps of Engineers for Coordination of Cleanup & Decommissioning of the Formerly Utilized Sites Remedial Action Program (FUSRAP) Sites With NRC-Licensed Facilities," 66 FR 36606 (July 12, 2001), at the request of USACE, NRC will initiate action for the suspension of Stepan's License or portions thereof, contingent

upon USACE notifying NRC in writing, at least 90 days prior to USACE's expected date of initiation of a site response action, that USACE is prepared to take possession of all or part of the licensed site for purposes of control of radiation from FUSRAP materials subject to NRC jurisdiction. Upon taking possession, USACE will be responsible for the protection of the public health and safety from those materials consistent with 10 CFR Part 20, "Standards for Protection Against Radiation."

Article III of the Memorandum of Understanding (MOU) further provides that USACE agrees to provide notification to NRC that it is prepared to take possession of the burial pits after USACE issues its final Record of Decision (ROD), and that USACE agrees to remediate the licensed site to meet at least the requirements of CERCLA and 10 CFR 20.1402. USACE issued its ROD for Soil and Buildings at the FUSRAP Maywood Superfund Site, Maywood, New Jersey in August 2003. The NRC has reviewed the ROD and concludes that the planned decommissioning and disposal of the burial materials in an NRC-licensed disposal facility, as proposed in the ROD, are consistent with the applicable provisions of the MOU between NRC and USACE.

Article III of the MOU further provides that NRC licensing action for suspension of the License or portions thereof, will be effective subject to written notification by USACE to NRC that USACE has taken physical possession of the licensed site for purposes of radiation control and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20. Article III further states that USACE has no objection to, and will facilitate, NRC observing USACE in-process remediation activities. Finally, Article III of the MOU provides that following completion of its response action at the site, USACE shall provide NRC with a copy of the CERCLA Administrative Record.

Article III of the MOU provides that NRC will reinstate the License or portions thereof, if USACE no longer controls the FUSRAP-related portion of the site for radiation protection

purposes, is no longer proceeding with a response action under CERCLA, or has otherwise completed its response action. Article III of the MOU also provides that USACE will notify NRC in writing, at least 90 calendar days prior to USACE terminating its physical possession for purposes of control of radiation, so that NRC can initiate the process for reinstating the License.

III

By letter dated September 29, 2008, the Licensee agreed that:

1. The Licensee shall provide radiation protection for all material in its possession, whether contained in the three burial pits or elsewhere, as required by 10 CFR Part 20. This provision does not apply to material for which the license is suspended.
2. The License shall be suspended with respect to each burial pit after USACE takes physical possession of the burial pit. License suspension shall be effective upon the date of the written notification to NRC by USACE that it has taken physical possession of the burial pit for purposes of radiation control, and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20.
3. The License shall be reinstated with respect to each burial pit:
 - (a) After USACE notifies NRC in writing that USACE intends to terminate its physical possession of the burial pit for the purpose of radiation control; and
 - (b) After USACE is no longer controlling the FUSRAP-related portion of the burial pit for radiation protection purposes, is no longer proceeding

with a response action under CERCLA or has otherwise completed its response action at the burial pit; and

(c) License reinstatement shall be effective when the Licensee reestablishes physical possession of the burial pit. The Licensee shall establish physical possession of the burial pit immediately after USACE vacates the burial pit. Within two business days after the Licensee establishes physical possession of the burial pit, the Licensee shall send written notification to NRC that it has done so and indicate when it did so. The Licensee shall send such notices to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the Chief, Special Projects Branch, Division of Waste Management and Environmental Protection at the same address.

In addition, the Licensee consented to issuance of this Order with the commitments, as described above. The Licensee further agreed that this Order shall be effective upon issuance, and that it waives its right to a hearing with respect to this Order.

Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that the Licensee's commitments as set forth above, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 81, 83, 84, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 40, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. STC-1333 IS MODIFIED AS FOLLOWS:

- A. The Licensee shall provide radiation protection for all material in its possession, whether contained in the three burial pits or elsewhere, as required by 10 CFR Part 20. This provision does not apply to material for which the License is suspended.
- B. The License shall be suspended with respect to each burial pit after USACE takes physical possession of the burial pit. License suspension shall be effective upon the date of the written notification to NRC by USACE that it has taken physical possession of the burial pit for purposes of radiation control, and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20.
- C. The License shall be reinstated with respect to each burial pit:
 - (1) After USACE notifies NRC in writing that USACE intends to terminate its physical possession of the burial pit for the purpose of radiation control; and

- (2) After USACE is no longer controlling the FUSRAP-related portion of the burial pit for radiation protection purposes, is no longer proceeding with a response action at the burial pit under CERCLA, or has otherwise completed its response action for the burial pit; and
- (3) License reinstatement shall be effective when the Licensee reestablishes physical possession of the burial pit. The Licensee shall establish physical possession of the burial pit immediately after USACE vacates the burial pit. Within two business days after the Licensee establishes physical possession of the burial pit, the Licensee shall send written notification to NRC that it has done so and indicate when it did so. The Licensee shall send such notices to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the Chief, Special Projects Branch, Division of Waste Management and Environmental Protection at the same address.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be

made in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 Federal Register 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGSDOCKET@NRC.GOV, or by calling (301) 415-1677, to request: (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or; (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be

submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the “Contact Us” link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the

extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

/RA/

Charles L. Miller, Deputy Director
Office of Federal and State Materials
and Environmental Management Programs

Dated this 21st day of October 2008