

NUCLEAR REGULATORY COMMISSION

Docket No. 40-09083

U.S. Army Installation Management Command

Notice of Issuance of Director's Decision

Notice is hereby given that the Director, Office of Federal and State Materials and Environmental Management Programs (FSME) has issued a Director's Decision with regard to a Petition, dated March 4, 2010, filed by Mr. Issac Harp, herein after referred to as the "Petitioner," pursuant to Title 10 of the *Code of Federal Regulations*, Section 2.206. The Petition was supplemented on April 14, 2010. The Petition concerns the possession, by the U.S. Army, of depleted uranium (DU), a source material, in spent spotting rounds from the Davy Crockett Weapon System without a valid U.S. Nuclear Regulatory Commission (NRC) license.

The Petition requested that the NRC take enforcement action against the U.S. Army by initiating an investigation into the potential violation of NRC License SUB-459, and if it was determined that a violation occurred, to apply the full penalty permissible by law. The Petition also requested that any monetary fines be used for remediation of the Schofield Barracks and Pohakuloa Training Areas in Hawaii. The basis for the request was that the U.S. Army's license, SUB-459, expired on October 31, 1964, and that any DU possessed by the U.S. Army or released into the environment after the expiration date was an unlawful act, subject to NRC enforcement policies.

The Petition raised a concern about the possession of licensable quantities of DU by the U.S. Army without an NRC license to do so. 10 CFR 40.3 states, in part, that persons may not

receive title to, own, receive, possess, use, transfer, or dispose of source material unless authorized in a specific or general license issued by the Commission. Contrary to 10 CFR 40.3, the U.S. Army is in possession of DU, a source material, in the form of spent spotting rounds (expended prior to 1968) at firing ranges located at Schofield Barracks and Pohakuloa Training Area, in Hawaii and on other U.S. Army installations, in excess of the exempt and general use limits, without authorization in a specific or general license issued by the NRC.

The Petitioner met with the FSME Petition Review Board by teleconference on April 14, 2010, to discuss the Petition. The meeting gave the Petitioner an opportunity to provide additional information and to clarify issues raised in the Petition. The transcript of this meeting was treated as a supplement to the Petition and is available in the Agencywide Document Access and Management System (ADAMS) for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the Agencywide Document Access and Management System (ADAMS) Public Library component on the NRC Web site, <http://www.nrc.gov>.

The NRC issued a proposed Director's Decision (DD-11-05) dated August 8, 2011, which granted the Petition, in part, and denied the Petition, in part. The NRC sent a copy of the proposed Director's Decision to the Petitioner and to the U.S. Army for comment on August 8, 2011. The Petitioner responded on August 21, 2011. The U.S. Army did not provide comments on the proposed Director's Decision. The Petitioner's comments and the NRC staff's responses are included in the Director's Decision.

The Director of the Office of Federal and State Materials and Environmental Management Programs has determined that the activities requested by the Petitioner have been

granted in part and denied in part. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD-11-05], the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor) Rockville Maryland, and via the NRC's Web site (<http://www.nrc.gov>) on the World Wide Web, under the "Public Involvement" icon.

The Petition requested that the NRC investigate whether, contrary to applicable law and regulations, the U.S. Army possessed or released into the environment DU from spent spotting rounds after the expiration of NRC License SUB-459. NRC conducted an investigation of the U.S. Army's possession of licensable quantities of DU and issued a Severity Level III Notice of Violation to the U.S. Army (ML11680087). Consistent with NRC Enforcement Policy (www.nrc.gov/about-nrc/regulatory/enforcement/enfore-pol.html) the NRC chose not to impose any civil penalty because: (1) the U.S. Army installations in Hawaii have not been previously the subject of escalated enforcement action; (2) the U.S. Army identified and notified the NRC of the presence of radioactive material; and (3) the U.S. Army implemented corrective actions in response to the discovery of the presence of the depleted uranium. Therefore, insofar as the NRC has undertaken certain activities requested by the Petitioner, that being the initiation of an investigation to determine whether the U.S. Army possesses DU in licensable quantities without authorization from the NRC to do so and the issuance of an enforcement action based on that investigation, the NRC granted that portion of the Petition concerned with such activities.

In addition, the Petition requested that, if the NRC determined that a violation occurred, to assess against the U.S. Army the maximum penalty permitted by law, and asked that any assessed monetary fines be applied to the environmental remediation of DU contamination at the Schofield Barracks and Pohakuloa Training Area installations in Hawaii, if the law provides

for such action. Were the NRC to have chosen to impose a civil penalty, the law does not provide for the application of that assessed civil penalty to the environmental remediation of DU contamination as requested by the Petitioner. Fines assessed for violations of NRC requirements are sent to the U.S. Treasury. Therefore, this portion of the Petition was denied.

As provided in 10 CFR 2.206(c), a copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of the Decision, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 29th day of October 2011.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA Cynthia Carpenter for/

Cynthia A. Carpenter, Deputy Director
Office of Federal and State Materials
and Environmental Management Programs