

**POLICY ISSUE
NEGATIVE CONSENT**

SECY-01-0010

January 23, 2001

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

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

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PURPOSE:

To obtain the Commission's approval to: send a response to the U.S. Army Corps of Engineers ([USACE](#) [EXIT](#)) 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](#) [EXIT](#)) (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](#) )

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](#) [EXIT](#)) 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. ⁽¹⁾ 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.

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/

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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](#)

ATTACHMENT 1

SITE HISTORY AND CHRONOLOGY

1. [RECENT SITE HISTORY](#)
2. [CHRONOLOGY](#)

1. RECENT SITE HISTORY

The Maywood site is located at 100 W. Hunter Avenue, Maywood, New Jersey. The site includes commercial and residential properties in the Borough of Maywood and Lodi and the Township of Rochelle Park, New Jersey.

The Maywood site is a U.S. Nuclear Regulatory Commission (NRC) complex decommissioning site, listed on the U.S. Environmental Protection Agency's (EPA's) National Priority List (NPL), and is on U.S. Army Corps of Engineers's (USACE's) Formerly Utilized Sites Remedial Action Program (FUSRAP) site list. Stepan Company (hereinafter referred to as 'Stepan') owns most of the Maywood site and the U.S. Government owns a portion. In 1983, EPA listed the site on the NPL and has since issued an Administrative and a Unilateral Consent Order to Stepan for site cleanup. In 1984, pursuant to the Energy and Water Development Appropriation Act for Fiscal Year 1984, Pub. L. 98-50, Congress provided appropriations to the U.S. Department of Energy (DOE) for a decontamination research and development project at the site. DOE added the site to its FUSRAP program because contaminants on the Maywood site were similar to the contaminants found on FUSRAP sites. In 1985, Stepan and DOE entered into a Cooperative Agreement, through which DOE accepted a portion of the Stepan site in Maywood, New Jersey. Part I, Article IA of the Agreement states, in part: "This Cooperative Agreement is entered into by and between the United States of America (hereinafter referred to as the 'Government'), represented by the United States Department of Energy (hereinafter referred to as 'DOE' or the 'Department') and Stepan Company...." The Cooperative Agreement set forth the terms and conditions for the decontamination of property owned by the participant and the vicinity property owners. The property conveyed to the Government was for the purpose of creating an interim storage site to facilitate permanent disposal of radioactive waste generated as a result of decommissioning activities. The Stepan Company views this Cooperative Agreement as an obligation of the Government. The three licensed burial pits were not part of this transfer.

In 1997, Congress transferred the FUSRAP program from DOE to USACE. Currently, USACE plans to remediate the site under the Comprehensive Environmental Response, Compensation, and Liability Act with EPA oversight and NRC consent. In that regard, USACE recently submitted a letter of jurisdictional and procedural inquiry to NRC, asking four questions (Attachment 3). USACE submitted these questions after discussions and meetings it conducted with EPA, NRC, and its own project managers for the Maywood site, because of the multi-agency involvement.

There are three licensed burial pits containing thorium (Th) on the Maywood site. Burial Pit No.1 was created in 1966. It has about 6095 cubic meters (m^3) [8360 cubic yards (yd^3)], under what is currently a lawn on the east side of the property. Burial Pit No. 2 was created in 1967. It has about 1495 m^3 (2050 yd^3), at a location where a parking lot is currently located on the east side of the property. Total Th in both burial pits is about 8000 kilograms (kg) (17600 lb).

Burial Pit No. 3 was created in 1986. It has about 6269 m^3 (8600 yd^3), at the southeast corner of the property. A large warehouse was later built on Burial Pit No. 3. Total Th in Burial Pit No. 3 is about 3700 kg (8140 lb). The locations of the burial pits are shown in Attachment 2, "Figure 1. Location of Burial Sites and Monitoring Wells."

The buried Th-contaminated material has remained in place; Stepan has monitored the burial pits, and will continue to

monitor it in accordance with the terms and conditions of the license, until such time as the remediation is initiated. Stepan continues to monitor and report groundwater sampling results. In addition to the groundwater monitoring program, Stepan has committed to conduct direct gamma radiation surveillance at each burial pit. On January 18, 2000, NRC Region I staff conducted a safety inspection of the site and the licensed activities relating to radiation safety. The Region I inspection did not identify any violations.

2. CHRONOLOGY

- 1896 Maywood Chemical Works founded.
- 1916 Th processing begins at Maywood Chemical Works.
- 1954 License R-103 issued to Maywood Chemical Works.
- 1956 Maywood Chemical Works stops Th processing.
- 1959 Stepan Chemical Company buys Maywood Chemical Works.
- 1961 License STC-130 issued, authorized possession for resale only, no processing.
- 1963 Atomic Energy Commission (AEC) inspection identifies residues and tailings behind dikes as "slurry piles." Cleanup begins.
- 1966 Waste moved from area east of Route 17 to Burial Pit No. 1 (lawn), about 6093 m³ (8358 yd³).
- 1967 Waste moved from area east of Route 17 to Burial Pit No. 2 (parking lot), about 1497 m³ (2053 yd³). AEC inspection cites licensee for unauthorized burials in Burial Pits 1 and 2.
- 1968 Licensee requests permission to relocate additional waste. AEC grants permission to relocate waste. Waste moved from South Dike to third burial site, about 6269 m³ (8600 yd³). Licensee requests certain areas be released for unrestricted use. AEC conducts closeout survey and releases two areas for unrestricted use, including the South Dike.
- 1972 License STC-130 expires.
- 1978 License STC-1333 (current license) issued to Stepan Chemical Company.
- 1980 New Jersey Department of Environmental Protection (NJDEP) receives letter from private citizen reporting radioactive contamination found in area near Route 17, west of the site. Area survey confirmed radiological contamination. EPA notifies NRC Region I of contamination in vicinity of Stepan property. NRC presents radiation survey information to mayors of Maywood and Rochelle Park, and local press, and holds public meetings. NRC learns of existence of a third burial site not authorized by License STC-1333.
- 1981 NRC Region 1 begins special announced inspection (No. 40-8610/80-01). Presence of third burial site confirmed, and elevated radiation levels in unrestricted areas identified. Congresswoman Roukema meets with NRC. Aerial radiological survey of Maywood/Rochelle Park area performed by EG&G Company. Based on the inspection, a Notice of Violation is issued to licensee for two violations:
- License STC-1333 requires that all licensed material be buried at two specific sites (Burial Pits 1 and 2). Contrary to this requirement, a third burial pit was identified.
 - Contrary to 10 CFR 20.105(b), radiation levels in unrestricted areas are found to exceed 20 microsievert/hour (2 millirem/hour) (mrem/hr), and 1 millisievert (100 mrem) in any 7 consecutive days.
 - NRC performs ground-contamination surveys in areas identified by aerial survey. Contamination is found in residential area, empty lot, and industrial area. NRC Region 1 presents survey information to NRC Headquarters staff, with representatives from Congresswomen Roukema's staff and EPA. NRC meets with the DOE, EPA, NJDEP, and Congresswoman Roukema, to discuss jurisdictional responsibility for remedial action. Civil penalty of \$20,000 is imposed on licensee for knowingly withholding information regarding the third burial pit.
- 1982 Amendment No. 1 to License STC-1333, authorizing storage of Th residues in Burial Pit No. 3, is issued. Amendment No. 2 to License STC-1333 is issued to authorize movement of contaminated residues detected on former licensee's property to fourth burial pit on site; however, material is never moved. 1983 Stepan Chemical Company (Maywood site) is added to the EPA's NPL, based solely on the presence of radioactive contamination (1990 NPL ranking is No. 157). DOE is given authority to decontaminate and select disposal option.
- 1984 DOE is given legal authority for Maywood site and vicinity properties through Energy and Water Development Appropriation Act for Fiscal Year 1984, Pub. L. 98-50. Act appropriates 2 million dollars for a decontamination research and development project at the site. DOE adds the site into the FUSRAP.
- 1985 DOE and licensee enter into cooperative agreement to decontaminate licensee's property. Under cooperative agreement, licensee maintains existing license for storage of radioactive material in the three burial pits. After waste disposal option is selected, DOE will take title to the material. The license

- would then be terminated subject to NRC approval.
- 1987 Amendment No. 3 to License STC-1333 is issued. Amendment No. 3 extends the expiration date of the license to April 30, 1992. License renewal application will be due at this time.
- 1990 DOE and EPA Region II sign a Federal Facilities Agreement on the cleanup of the Maywood site.
- 1992 Licensee submits letter to NRC for three changes: 1) rename Stepan Chemical Company to Stepan Company; 2) supersede environmental monitoring program; and 3) replace wells. Licensee requests renewal of license that expires April 30, 1992.
- 1997 Licensee requests postponement of decommissioning activities, based on the fact that DOE has responsibility for cleanup of FUSRAP sites. NRC approves postponement of decommissioning activities, and adds license condition for environmental monitoring. Congress, by the Energy and Water Development Act for Fiscal Year 1998, transfers the administration and management of the FUSRAP from DOE to USACE.
- 1998 Licensee submits letter to NRC confirming that license renewal is not required.
- 2000 NRC Region 1 conducts safety inspection (No. 040-08610/00-001). No violations are identified; however, NRC finds licensee failed to perform isotopic analysis on groundwater sample exceeding 0.55 becquerel/liter (15 picocurie/liter). NRC meets with EPA and USACE project managers and staff, to discuss options to proceed with decommissioning at the Maywood site. As a result, USACE sends letter to NRC, asking questions on jurisdictional and procedural requirements for remediation. NRC acknowledges receipt of USACE letter.

ATTACHMENT 5

**U.S. ARMY CORPS OF ENGINEERS (USACE) QUESTIONS 1, 2, & 4
and
SUMMARY of NRC'S PROPOSED RESPONSES**

The U.S. Army Corps of Engineers (USACE) submitted four questions in its letter dated May 19, 2000, regarding the Stepan site⁽²⁾. The answers to Questions 1, 2, and 4 are relatively straight forward and are summarized below:

Question 1: Will NRC support USACE cleanup of the NRC-licensed Stepan burial pits under CERCLA? 10 CFR 20 Subpart E [Part 20, Subpart E] will be cited as an ARAR [Applicable or Relevant and Appropriate Regulation] and the substantive requirements would be achieved.

Response: The staff does support the USACE's use of the radiological criteria for license termination in 10 CFR Part 20, Subpart E, as the Applicable or Relevant and Appropriate Regulation to decommission the onsite licensed burial pits. Use of the RESRAD version 5.95, as proposed by USACE, to show compliance with the 0.25 sievert/yr (25 mrem/yr) dose requirement of Subpart E, will be acceptable. In addition, the as low as is reasonably achievable requirement will need to be met.

Question 2: USACE believes the permit exemption under 40 CFR 300.400(e) would allow USACE to remediate the licensed material without obtaining a license. Does NRC support that position?

Response: The staff does support the position that permit exemption under 40 CFR 300.400(e) would allow USACE to remediate the licensed material without obtaining a license. The staff does not propose to license the USACE in light of Section 121(e)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This position is consistent with the March 26, 1999, Director's Decision, by the Director of the Office of Nuclear Material Safety and Safeguards, denying the Natural Resources Defense Council's 10 CFR 2.206 petition to impose licensing and regulatory conditions on the USACE (Attachment 4).

Question 4: If USACE would attempt to negotiate with EPA to have the NRC-licensed burial pit material removed from the definition of FUSRAP waste (remove the NRC-licensed material from the definition of the CERCLA site, thus eliminating the government's responsibility for the remediation of the licensed material under the Federal Facilities Agreement for the Maywood Site), would NRC require the licensee to terminate the license through decommissioning?

Response: Based on further discussions with the USACE, it appears that USACE is seeking the U.S. Nuclear Regulatory Commission's (NRC's) view on whether NRC will require Stepan to decommission the three licensed burial pits and have its license terminated if, for some reason, the USACE does not remediate these pits. Stepan, as a Commission licensee, is required to decommission, in a timely fashion, the three licensed burial pits, to meet the decommissioning timeliness rule, 10 CFR 40.42, and License Termination Rule, Part 20, Subpart E. Compliance with these requirements has been deferred pending resolution of the Formerly Utilized Sites Remedial Action Program (FUSRAP) and CERCLA issues. If the licensed portions of this site were no longer under FUSRAP/CERCLA, such that the government were no longer responsible for the remediation of NRC-licensed areas, then Stepan, as the licensee, would be required to meet the Commission's regulations and decommission the three licensed burial pits.

ATTACHMENT 6

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⁽³⁾ (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.⁽⁴⁾

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.

**BACKGROUND INFORMATION FOR THE
SHALLOW LAND DISPOSAL AREA
PARKS TOWNSHIP, PENNSYLVANIA SITE**

The BWX Technologies (BWXT) is the current owner of the Shallow Land Disposal Area (SLDA) located in Parks Township, in Armstrong County, PA, approximately 37 kilometers (23 miles) east-northeast of Pittsburgh. The site encompasses approximately 16 hectares (40 acres) and consists of 10 trenches that were used to dispose of wastes, scrap, and trash from a nearby fuel fabrication facility. Principal contaminants at the site are natural, enriched, and depleted uranium, and lesser quantities of americium, plutonium, and thorium. This site has been the subject of significant public and Congressional interest for many years.

BWXT holds an active license (SNM-2001) for this site. BWXT, by its license condition, is required to submit a decommissioning plan for the SLDA on or before December 6, 2000. In the past, the licensee indicated that it intended to request license termination, with restrictions on future site use, after stabilizing the wastes in-place, and initiated efforts to comply with the requirements in 10 CFR 20.1403(d).

In mid-2000, U.S. Nuclear Regulatory Commission (NRC) staff was informed that efforts were underway to include the SLDA in the U.S. Army Corps of Engineers' (USACE's) Formerly Utilized Sites Remedial Action Program (FUSRAP). In a letter dated May 25, 2000, U.S. Department of Energy (DOE) Deputy Assistant Secretary for Site Closure, Mr. James Fiore, stated to Major General Hans Van Winkle, Director of Civil Works, USACE, that DOE did not object to the SLDA being included in the USACE's FUSRAP program because material disposed of in the SLDA was generated during nuclear fuel production and research as part of the United States' early atomic energy program.

On August 23, 2000, Mr. Larry Davis, President of BWXT, discussed delaying obtaining input from affected parties pursuant to 10 CFR 20.1403, until Congress finalized the FY2001 Energy and Water Development Appropriation legislation and the President signed the bill.

The Energy and Water Development Appropriations Bill for the Fiscal Year 2001 (FY 2001) includes an appropriation in the amount of \$5 million for the USACE to determine and initiate the appropriate response actions, under the Comprehensive Environmental Response, Compensation, and Liability Act, for the FUSRAP-related waste at the SLDA site.

In September and November, 2000, staff discussed placing the SLDA in the FUSRAP program with BWXT, as well as the timing impact of the appropriation on the December 6, 2000, decommissioning plan submission due date. After conferring with the NRC staff on November 14, 2000, BWXT requested a 180-day extension of the decommissioning plan submission date, to determine the impact that placing the site in the FUSRAP program will have on the decommissioning of the site. During this time, NRC staff will work to resolve policy issues associated with the Congressional appropriation.

1. 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.

2. See Attachment 3.

3. 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.

4. 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.