

February 28, 2001

Colonel William H. Pearce
Department of the Army
New York District, Corps of Engineers
Jacob K. Javits Federal Building
New York, NY 10278-0090

SUBJECT: RESPONSE TO THE U.S. ARMY CORPS OF ENGINEERS' LETTER FOR
REMEDiation OF THE STEPAN COMPANY SITE

Dear Colonel Pearce:

On June 25, 2000, the U.S. Nuclear Regulatory Commission (NRC) acknowledged the receipt of your letter dated May 19, 2000, concerning the U.S. Army Corps of Engineer's (USACE's) activities to remediate the Stepan Company Maywood site under the Formerly Utilized Sites Remedial Action Program (FUSRAP), as directed by the Energy and Water Development Appropriation Acts of 1998-2000, and in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Stepan Company holds an NRC license (STC-1333) and is subject to the NRC License Termination Rule (LTR), as described in 10 CFR 20, Subpart E. The subject site is also on the U.S. Environmental Protection Agency's (EPA's) National Priority List, and EPA has named the Stepan Company as a Potentially Responsible Party, under the CERCLA, with potential liabilities.

In your letter, you raised four questions relating to jurisdictional and procedural issues at the Stepan Maywood site, in relation to the decommissioning of the licensed area. Our answers follow:

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

Answer: Yes. The NRC supports USACE's use of the radiological criteria for license termination, in Part 20, Subpart E, as the Applicable or Relevant and Appropriate Requirement to decommission the onsite licensed burial pits. Use of the current version of RESRAD, as proposed by the USACE, to show compliance with the 0.25 mSv/yr (25 mrem/yr) dose requirement of Subpart E, will be acceptable. In addition, the "as low as reasonably achievable" (ALARA) requirement in 10 CFR 20.1402 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?

Answer: Yes. The NRC does not propose to license USACE in light of section 121e(1), of CERCLA, which is implemented by 40 CFR 300.400(e). This position is consistent with the attached March 26, 1999, Director of the Office of Nuclear Material Safety and Safeguards, Director's Decision, denying the Natural Resources Defense Council's 10 CFR 2.206 petition to impose licensing and regulatory conditions on the USACE.

Question 3: 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?

Answer: NRC is prepared to suspend (place in abeyance) the Stepan license, contingent on USACE informing the 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 Part 20, Subpart E standards; and, d) it has no objection to allowing NRC to conduct in-process activity observations. After remediation, NRC will reinstate Stepan's license. NRC will then perform an administrative review of records and will determine whether the burial pits were adequately cleaned up to NRC guideline levels and then initiate license termination. To implement this approach, Stepan would need to submit a license amendment to suspend its license. Alternatively, the Commission could consider issuing an order to suspend the license. However, in either case there would be an opportunity for a hearing.

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?

Answer: As we understand the question based on further discussions with USACE, USACE is seeking NRC's view on whether the 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 licensee of the Commission, is required to meet the decommissioning timeliness rule, 10 CFR 40.42, and the LTR Part 20, Subpart E, which require the licensee to decommission the three licensed burial pits in a timely fashion. Compliance with these requirements has been deferred pending resolution of the FUSRAP and CERCLA issues. If the licensed portions of this site were no longer under CERCLA, such that the government was no longer responsible for the remediation of the NRC-licensed areas, then Stepan, as the licensee, would be required to meet the Commission's regulations and decommission the three licensed burial pits.

In light of the regulatory complexity of this matter and the potential for other NRC licensed sites to be remediated by USACE, development of a Memorandum of Understanding (MOU) with USACE is warranted. Please let us know who we should contact at Headquarters USACE to proceed in developing a MOU between our agencies.

Colonel Pearce

-3-

If you have any questions on this matter, please contact Amir Kouhestani, the NRC project manager for the Stepan license, at (301) 415-0023.

Sincerely,

/RA/

Larry W. Camper, Chief
Decommissioning Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-8610
License No. STC-1333

Attachment: As stated

Colonel Pearce

-4-

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