

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 site¹. 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.

1 See Attachment 3.