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Please see attached.

--Ray Vaughan

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1. I request a time extension for comments on NUREG-1757, Supplement 1. The following incomplete comments are submitted at this time, but additional time should be provided so that I and others may submit more complete comments.

2. The Glossary, p. xi, defines *Robust engineered barrier* as a “man-made structure that is designed to mitigate the effect of natural processes or human uses that may initiate or accelerate release of residual radioactivity through environmental pathways. The structure is designed so that the radiological criteria for license termination (10 CFR 20, Subpart E) can be met. Robust engineered barriers are designed to be more substantial, reliable, and sustainable for the time period needed without reliance on active ongoing maintenance.” The last sentence of this definition is important and appropriate; it specifies that such a barrier is expected to be sustained “without reliance on active ongoing maintenance.”

3. Page II-2 refers to the possibility of a “long-term control (LTC) license (a new type of possession-only license that functions as a legally enforceable institutional control)” and also refers to “restricted use sites that cannot arrange legally enforceable institutional controls...” There are two problems or potential problems with these concepts. First, depending on how it is structured and issued, an LTC license may not be legal. An LTC license should not provide a means for avoiding or evading otherwise applicable license requirements that must be met, for example, for near-surface disposal of radioactive waste. Second, the concept of “restricted use sites that cannot arrange legally enforceable institutional controls...” appears faulty. The option of restricted use becomes available if and only if certain requirements are met, as set forth in the LTR. “Restricted use” is not a *given* or guaranteed option for decommissioning under the LTR, and NRC guidance should not offer suggestions about ways to proceed with restricted-use decommissioning at any site that cannot show compliance with the regulatory requirements for restricted use.

4. On page II-5, the list of information needed to support the use of alternate criteria (“If the licensee is requesting license termination using the alternate criteria provisions of 10 CFR 20.1404...”) should also include the information recited in the *prior* paragraph. In particular, any license termination using the alternate criteria provisions of 10 CFR 20.1404 will need to show compliance with the “cap” requirements of 10 CFR 20.1403(e). This is a point that I have previously raised and resolved with NRC. Simply stated, the use of “alternate criteria” is not a complete alternative to 10 CFR 20.1403; it provides only for dose criteria that can serve as an alternative to the 25 mrem/yr criterion given in sections 20.1402, 20.1403(b), and 20.1403(d)(1)(i)(A). Other requirements of 20.1403 remain applicable, assuming restricted use.

5. The proposed (highlighted) insertion of the phrase “in 10 CFR 20.1403” on page II-5 may

increase the confusion about whether the use of "alternate criteria" and 10 CFR 20.1403 are mutually exclusive. They are *not* mutually exclusive, and the phrase "in 10 CFR 20.1403" should not be inserted on page II-5 without the type of clarification outlined here in my paragraphs 4 and 5. Granted, the necessary type of clarification does appear on page IV-40; its appearance there may be sufficient. ("An alternative release proposal in accordance with 10 CFR 20.1404 may allow a dose of up to 1.0 mSv/y (100 mrem/y) with restrictions in place. However, if the restrictions fail, the dose may not exceed the values in 10 CFR 20.1403(e). Furthermore, all of the other provisions of 10 CFR 20.1403 must be met.")

6. On page II-6 ff., the LTC license discussion ("If a licensee cannot establish acceptable institutional controls or independent third party arrangements, the licensee may propose one of the two new options involving NRC: an NRC Long-Term Control (LTC) license or an NRC Legal Agreement and Restrictive Covenant (LA/RC)....") encounters the same problems discussed above in my paragraph 3. The same problem occurs again on pages II-13, II-14, and subsequent pages where the LTC license is offered as an option. The statement of page II-56 ("a licensee proposing to use the LTC license needs to comply with all the criteria of 10 CFR 20.1403, even though the license will not be terminated.") provides an important safeguard but does not address other licensing requirements that may need to be met.

7. Figure 17.1 (page II-10) and the discussion on pages II-7 through II-9 are wrong; they mischaracterize the role of 10 CFR 20.1403(e). Section 20.1403(e) is a *requirement* that must be met in order for a site to be eligible for restricted release (with or without the use of alternate criteria). In Figure 17.1 and in the text on page II-7, 10 CFR 20.1403(e) should be shown as an eligibility criterion in step 2. Alternatively, if NRC believes that 10 CFR 20.1403(e) is not an eligibility requirement in the strictest sense, given the paragraph structure of 1403(a) and (e), then 10 CFR 20.1403(e) is an absolute regulatory mandate to reduce residual radioactivity such that the "cap" would be met if institutional controls were no longer in effect at any site eligible for restricted release. In any case, compliance with 10 CFR 20.1403(e) is mandatory for restricted release. Figure 17.1 should not indicate that compliance with 10 CFR 20.1404 is available as an alternative to compliance with 10 CFR 20.1403(e).

8. Compliance with 10 CFR 20.1403(e) is improperly omitted from the long discussion of Restricted Use, Eligibility Demonstration, and Acceptance Criteria on page II-11 ff. The only apparent references (pages II-12 and II-13) are too vague and make the 10 CFR 20.1403(e) dose "cap" sound optional, or subsidiary to other requirements, which is not the case. This lack must be corrected in accordance with the LTR and in accordance with the discussion above in paragraphs 4-7. Compliance with 10 CFR 20.1403(e) is mandatory for restricted release, and its applicability needs to be described clearly in this guidance document. The overview of Alternate Criteria in Appendix M (pages II-49 to II-50) should also clearly indicate the applicability of 10 CFR 20.1403(e).

9. On page II-37, it is unreasonable and unprotective for NRC to add the following proposed language: "The licensee is not required to reach consensus with the affected parties on the various aspects of the proposed institutional controls." At the very least, the phrase "not required to reach consensus" needs to be clarified, or, preferably, the regulatory language ("shall seek advice") will be allowed to prevail, with some presumption that the advice will not only be

sought but heeded to some extent. Similarly, on page II-39, it is unreasonable and unprotective for NRC to strike out the following language: "As required by 10 CFR 20.1403(d)(1), the advice to be sought is whether the institutional controls proposed by the licensee will have the following qualities:

- provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv/y (25 mrem/y);
- be enforceable;
- not impose undue burden on the local community or other affected parties; and
- be backed by sufficient financial assurance for any necessary control and maintenance of the site by an independent third party." Public input on institutional controls is needed.

10. The concept of Partial Restricted Release (page II-57 ff.) needs a more comprehensive review and implementation process than is provided by this comment period on a draft guidance document.

11. Finality of Decommissioning Decisions (page II-61 ff.) needs a more comprehensive review and implementation process than is provided by this comment period on a draft guidance document.

12. On page II-74, where "NRC proposes that the following [three] assumptions be used when applying engineered barriers to achieve decommissioning at a site," NRC should clearly state whether *active maintenance* of engineered barriers falls within the definition of institutional controls.

13. Procedures for onsite disposal of radioactive waste, page III-1 ff., need a more comprehensive review and implementation process than is provided by this comment period on a draft guidance document. Procedures for onsite disposal should not provide a means for avoiding or evading otherwise applicable license requirements that must be met, for example, for near-surface disposal of radioactive waste.