

Industry Comments on Generic Combined License (April 15, 2011), Comments on the Revised Generic COL [ML110310050] as modified by the errata presented by NRC on February 16, 2011[ML110630044]

Section of February 2011 Generic COL	Comment	Proposed Resolution
General	There appears to be no regulatory requirement that all NRC combined licenses include an Environmental Protection Plan (EPP).	Where EPP is mentioned in the Generic COL, use brackets to indicate that it is not clear that every COL holder will need to have an EPP.
2.B.(3) and 2.B.(4)	In Sections 2.B.(3) and 2.B.(4), the (i) subsections should be revised to clearly state that they apply prior to the 10 CFR 52.103(g) finding.	<p>Revise 2.B.(3)(i) as follows:</p> <p>"Pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use, at any time<u>prior to the finding in Section 2.D.(3)</u>, such byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required, but not uranium hexafluoride in excess of 50 kilograms in a single container or 1000 kilograms total;"</p> <p>Revise 2.B.(4)(i) as follows:</p> <p>"Pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use, <u>prior to the finding in Section 2.D.(3)</u>, in amounts not exceeding those specified in 10 CFR 30.72, any byproduct, source, or special nuclear material that is (1) in unsealed form; (2) on foils or plated surfaces, or (3) sealed in glass, for sample analysis or instrument calibration or other activity associated with radioactive apparatus or components; and"</p>

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2.C	<p>Section 1.C says there is reasonable assurance that the licensee will conduct activities in accordance with 10 CFR Chapter 1, except as exempted from compliance in Section 2.F below. It would be appropriate to add the words "except as exempted from compliance in Section 2.F below" to Section 2.C.</p>	<p>Revise Section 2.C as follows: "The license is subject to, and the licensee shall comply with, all applicable provisions of the Act and the rules, regulations, and orders of the Commission, including the conditions set forth in 10 CFR Chapter 1, now or hereafter in effect, <u>except as exempted from compliance in Section 2.F below.</u>"</p>
2.D.(1)	<p>The revised generic COL presented on February 16, 2011, included the following new Section 2.D.(1) on geologic mapping: "The licensee shall perform detailed geologic mapping of excavations for the nuclear island structures, including an assessment of the mapping findings; examine and evaluate geologic features discovered in the excavations for safety-related structures other than those for the nuclear island; and notify the Director of the Office of New Reactors, or the Director's designee, once excavations for the safety-related structures are open for examination by the NRC staff." Geologic mapping is already specified in Regulatory Guide 1.208 as follow: "It should be demonstrated that deformation features discovered during construction (particularly faults, potential soft zones, or other</p>	<p>Delete the 2.D.(1) license condition on geologic mapping.</p>

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	<p>features of engineering significance) do not have the potential to compromise the safety of the plant. The newly identified features should be mapped and assessed as to their rupture and ground motion generating potential while the excavations' walls and bases are exposed. A commitment should be made, in documents (safety analysis reports) supporting the license application, to geologically map all excavations of significant size and to notify the NRC staff when excavations are open for inspection. This should apply to excavations for construction of all Seismic Category I structures, as a minimum."</p> <p>Because this subject is appropriately addressed in guidance and because it does not rise to the level of legal, licensing, and safety concerns typically addressed in NRC license conditions, this license condition is unnecessary and should be deleted from the Generic COL.</p>	
<p>2.D.(4)(ii), 2.D.(5)(ii), and 2.D.(6)(ii)</p>	<p>This section should be modified to allow a licensee to take credit for tests performed at another unit, where appropriate.</p>	<p>Revise 2.D.(4)(ii) as follows:</p> <p>"(ii) The licensee shall perform pre-critical and criticality testing or <u>show that credit can be taken for tests performed at other units, as described in the FSAR...</u>"</p> <p>Revise 2.D.(5)(ii) as follows:</p> <p>"(ii) The licensee shall perform low-power testing or <u>show that credit can be taken for tests performed at other units, as described in the</u></p>

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		<p>FSAR..."</p> <p>Revise 2.D.(6)(ii) as follows:</p> <p>"(ii) The licensee shall perform power-ascension testing <u>or show that credit can be taken for tests performed at other units</u>, as described in the FSAR..."</p>
2.D.(4)(iv), 2.D.(5)(iv), and 2.D.(6)(iv)	<p>The requirement to provide notification to the Director of the Office of New Reactors within 14 days of successfully completing testing is arbitrary and unnecessary since the licensee must provide notification before proceeding to the next power level as discussed in Sections 2.D.(5), 2.D.(6), and 2.D.(7).</p>	<p>Revise 2.D.(4)(iv) as follows:</p> <p>"The licensee shall provide written notification to the Director of the Office of New Reactors or the Director's designee, within 14 days of upon successful completion of pre-critical and criticality testing, including the design-specific tests identified in Section 2.D.(4)(ii)."</p> <p>Revise 2.D.(5)(iv) as follows:</p> <p>"The licensee shall provide written notification to the Director of the Office of New Reactors or the Director's designee, within 14 days of upon successful completion of low-power testing, including the design-specific tests identified in Section 2.D.(5)(ii)."</p> <p>Revise 2.D.(6)(iv) as follows:</p>

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2.D.(5), 2.D.(6), and 2.D.(7)	Each reference to "thermal power" should be rewritten as "rated thermal power" to be consistent with the defined term used in the technical specifications.	<p>"The licensee shall provide written notification to the Director of the Office of New Reactors or the Director's designee, within 14 days of upon successful completion of power ascension testing, including the design-specific tests identified in 2.D.(6)(ii)."</p> <p>Revise each reference to "thermal power" to be "rated thermal power."</p>
2.D.(8)	<p>The requirement to provide notification to the Director of the Office of New Reactors within 14 days of successfully completing testing is arbitrary and unnecessary since the licensee must provide notification prior to achieving full-power for the first time.</p> <p>This section should also be modified to allow a licensee to take credit for tests performed at another unit, when appropriate.</p> <p>The tests listed in Section 2.D.(8) should not duplicate tests already listed in Sections 2.D.(4), 2.D.(5), and 2.D.(6).</p>	<p>Revise 2.D.(8) as follows:</p> <p>"The licensee shall notify the Director of the Office of New Reactors or the Director's designee, in writing within 14 days after it determines that it has successfully completed the design-specific testing identified below and confirmed the design-specific testing identified below has been completed and confirms that the test results are within the range of acceptable values predicted or otherwise confirms that the tested systems performed their specified functions in accordance with the FSAR before achieving full-power for the first time."</p>

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2.D.(9)(ii)	<p>This license condition requires the licensee to report any violations of the maximum power level within 24 hours. That reporting requirement is not specifically related to initial plant startup, but is an ongoing requirement for the life of the plant. As written, 2.D.(9) conflicts with the guidance recommended by NEI [ML081750537] and endorsed in RIS 2007, Rev. 1 dated February 9, 2009. Therefore, the reference in 2.D.(9) to the maximum power level [Section 2.D.(7)] should be deleted.</p> <p>Consistent with the reference to administrative procedures for 10 CFR 50.73, where this license condition cites 10 CFR 50.72, it is recommended that "provisions" be replaced by "administrative procedures" to clearly state that the licensee should use the administrative requirements established in the regulation and not all aspects of the regulation such as the reporting criteria for one-hour, four-hour, and eight-hour reports.</p>	<p>Revise 2.D.(9)(ii) as follows:</p> <p>"(ii) The licensee shall report any violations of the requirements in Section 2.D.(3)(ii), Section 2.D.(4), Section 2.D.(5), and Section 2.D.(6) and Section 2.D.(7) (and Section 2.D.(8) if specific power levels are identified for testing,) of this license within 24 hours. Initial notification shall be made in accordance with the administrative procedures provisions of 10 CFR 50.72, with written follow up in accordance with the administrative procedures described in 10 CFR 50.73."</p>

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2.D.(10)	The license condition described in Section 2.D.(10) includes inspections, tests, analyses, and acceptance criteria (ITAAC), which, unlike other license conditions, expire. To avoid any potential confusion, industry believes it would be helpful to highlight the distinction between ITAAC and the other license conditions that remain in effect after the 10 CFR 52.103(g) finding.	Revise 2.D.(10) as follows: "The ITAAC, Technical Specifications, [and Environmental Protection Plan] contained in Appendices A, B, [and C], respectively, of this license are hereby incorporated into this license. <u>After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements either for licensees or for renewal of the license, except for specific ITAAC, which are the subject of a Section 103(a) hearing and which expire upon the final Commission action in such proceeding.</u> "
2.D.(11)	This license condition should apply only to those items in [FSAR Table 13.4-XXX] that are identified as implemented per a license condition. Some are implemented per regulation and should not be duplicated in the license condition.	Revise 2.D.(11) as follows: "The licensee shall implement the programs or portions of programs identified in [FSAR Table 13.4-XXX] to be implemented by license condition on or before the associated milestones in [FSAR Table 13.4-XXX]." The applicant may indicate as a footnote in the [FSAR Table 13.4-XXX] the items to which this license condition applies.
2.D.(12)	The subject matter in 2.D.(12) (scheduling NRC inspections on operational programs and updating that schedule) does not rise to the level of legal, licensing, and safety concerns typically addressed in NRC license conditions. Therefore, 2.D.(12) should be deleted from the generic COL.	Delete Section 2.D.(12)

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2.E	<p>During the meeting on February 16, 2011, NRC presented a more complex version of this condition than what was contained in the generic COL. The new version proposed a scheduling sequence similar to that required for ITAAC. That type of scheduling approach is unnecessary and confusing. Unlike ITAAC, which occur over time and where timing is important for the inspection activities, 10 CFR 50.54(hh)(2) commitments and strategies are linked to commitments established by applicant/licensee reports and commitments. The generic COL should retain the previous version on 2.E.</p>	<p>Maintain the following version of 2.E: "The licensee shall maintain the guidance and strategies developed in accordance with 10 CFR 50.54(hh)(2)."</p>
2.F	<p>The reference to "VIII.C" should be "VIII.C.4."</p>	<p>Change "VIII.C" to "VIII.C.4."</p>
2.H	<p>The revised draft generic COL included the following Section 2.H: "This license is effective as of [insert actual date of license issuance] and shall expire at midnight on the date 40 years from the date that the Commission finds that the acceptance criteria in the combined license are met in accordance with 10 CFR 52.103(g). [Placeholder for expiration of the 10 CFR 50.109 provisions if the requirements of 10 CFR 52.103(g) have not been met within 10 years from the date of license issuance.]" For the reasons set forth below, the industry strongly disagrees with the placeholder sentence on expiration of 10 CFR 50.109 backfit provisions and requests that this sentence be deleted from the generic COL.</p>	<p>Revise 2.H as follows: "This license is effective as of [insert actual date of license issuance] and shall expire at midnight on the date 40 years from the date that the Commission finds that the acceptance criteria in the combined license are met in accordance with 10 CFR 52.103(g)."</p>

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	<p>This proposed license condition is inconsistent with current NRC regulations, which do not establish a deadline for beginning construction under a COL or indicate how long a COL may remain in effect prior to the Commission's finding under 10 CFR 52.103(g). Nor is the absence of such restrictions an oversight. In the 2007 amendments to 10 CFR Part 52, the Commission explained that it had removed from the final rule a proposed requirement for a COL to state the earliest and latest dates for completion of construction and provide for forfeiture of the COL if the construction or modification were not completed by the stated date. That requirement was deleted from Part 52 because the AEA Section 185(a) provisions that pertain to a CP do not apply to COLs; see AEA Section 185(b).</p> <p>More generally, we oppose this license condition because it is inappropriate to limit the applicability of an NRC regulation through a license condition. The Commission's processes require that regulations be amended through rulemaking. Additionally, this license condition is unnecessary given the mechanisms already in place in 10 CFR 50.109, 10 CFR 52.63, and the design certification rule appendices to ensure that necessary changes are made. Nor has NRC provided any legal or regulatory rationale for inclusion of this punitive license condition. 10 CFR 50.109 already allows NRC to impose backfits as necessary to achieve compliance with</p>	
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	<p>NRC regulations or adequate protection of safety. In essence, the license condition suspending Section 50.109 would enable the NRC to impose backfits that do not result in a substantial increase in safety or that are not cost-justified. This appears to be inconsistent with NRC's Principles of Good Regulation ("Efficiency"), which states that "Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted."</p> <p>For all of these reasons, we request that this proposed license condition be deleted from the Model COL and from any facility-specific COLs issued before the Model COL is finalized.</p>	
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