

Meeting:	NuLeAF Steering Group, 28 April 2009
Agenda Item:	3
Subject:	Taking Account of Public and Stakeholder Views in Decisions about Managing Radioactive Wastes
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Purpose:	To report on the role of judgements about public and stakeholder acceptability in decision-making on radioactive waste management

Introduction

Over the coming year potentially contentious siting issues are likely to come to the fore, particularly for Low Level Waste (LLW) treatment and disposal facilities (and potentially for Intermediate Level Waste (ILW) facilities). It is therefore important to consider how public and stakeholder views should be taken into account in the decision-making processes that will impact on the siting or use of such facilities. To do this, the report considers:

- the different levels and types of decision processes
- the nature of the decision processes and the role of public and stakeholder confidence or acceptability
- addressing public and stakeholder confidence or acceptability in decision making.

Recommendations

That the Steering Group:

1. Publish this report as a Policy Statement in order to promote effective and robust decision making in radioactive waste management.
2. Encourage the NDA to take account of the Policy Statement in developing its strategy for public and stakeholder engagement.
3. Encourage the NDA to follow the steps outlined in Section 3 of this report when reaching decisions about its LLW strategy, and to make explicit judgements about public acceptability in reaching those decisions.
4. Encourage the NDA to require nuclear site operators to undertake community engagement to inform their decisions about the development or use of on-site or off-site facilities for managing or disposing of LLW.

5. Ask the Environment Agency to clarify how it will reach judgements about whether a disposal to a near-surface disposal facility will be made in a way that inspires public confidence, and what role such judgements will play in decisions about authorisations.

Contribution to Achieving Strategic Objectives

The recommended actions in this report are intended to contribute to effective and robust decision-making in radioactive waste management. More specifically, the actions should contribute to the achievement of the following NuLeAF objective:

- To seek to ensure that Low Level Waste Strategy is developed and implemented in ways that can inspire local authority and public confidence.

Development of that strategy is considered in further detail in the report for item 5.

1 Levels and Types of Decision Processes

The different levels and types of decision processes include:

- National policy (UK Government and Devolved Administrations)
- National strategy (NDA and Government)
- Programmes and plans (Site Licensee Companies (SLCs))
- Regulatory authorisations (Environment Agency and in some cases the Nuclear Installations Inspectorate)
- Local waste planning policy and planning decisions (Waste Planning Authorities)

For radioactive waste management, key Government policies are in place and strategies – particularly for LLW management – are about to be consulted upon. SLC programmes and plans are in various stages of development, and may require review in the light of the strategies that are finally adopted. Some regulatory authorisations are in the pipeline, for example, for LLW disposal to landfill. There have also been some recent relevant planning decisions, including for Vault 9 at the LLW Repository near Drigg in Cumbria and for a LLW disposal facility adjacent to the Dounreay site in the north of Scotland.

2 The Nature of the Decision Processes and the Role of Public and Stakeholder Confidence or Acceptability

The different types of decisions should all be informed by the outcome of appropriate programmes of public and stakeholder engagement. For most types of decision, there is an explicit need to make judgements about the weight to place on public and stakeholder confidence or acceptability. This need can be identified in Government policy, the NDA's mission, LLW strategy documentation, and regulatory guidance. The position regarding planning policy and decisions is outlined in the Annex to this report.

a) Government Policy on Siting a Geological Disposal Facility (GDF)

The siting process for a GDF is based on a volunteer/partnership approach. Local authorities take a formal decision about participation in the early stages of the process, and are able to exercise a right of withdrawal prior to construction. Both decisions are expected to take account of community views. Government states that it will want to be satisfied that a Decision to Participate is credible (MRWS White Paper, para 6.22), and that “credibility might be demonstrated on the basis of local consultation process applying established local good practice.” It adds that “Government is not expecting, or seeking, a particular threshold of support but is keen to see evidence of appropriate community engagement and meaningful feedback on any concerns of those affected” (MRWS WP, para 6.26).

b) Government Policy on Operator Programmes and Plans for LLW Management

Government policy is that these programmes and plans should be “*developed* by including wide stakeholder engagement to allow for an equitable approach” (Policy Statement,

March 07, para 26). Guiding principles from Government policy include: provision for *early* local community input into the decision-making process; openness and transparency at all stages; and use of an iterative consultation process where appropriate (para 27). As highlighted, these statements contain requirements for early community input to development of programmes and plans.

c) NDA Mission and Stakeholder Strategy

The NDA Mission includes “to deliver safe, sustainable and *publicly acceptable* solutions to the challenge of nuclear clean-up and waste management.” Similarly, the NDA’s strategic priorities include to “Gain the support and confidence of our stakeholders” and its Communications and Stakeholder Relations Strategy 2009/11 acknowledges that it is necessary to build stakeholder support and confidence if NDA is to deliver its mission.

d) NDA LLW Strategy Group

At its June 08 meeting participants unanimously agreed that “stakeholder buy-in” is a key success criterion in the development of LLW strategy.

e) Non-Nuclear Industry (NNI) Radioactive Waste Strategy

The programme board has identified “broad support for the draft strategy during the public consultation” as one of its key success criteria.

f) Regulatory Guidance on Requirements for Authorisation (Disposal to Near Surface Facilities)

February 09 guidance from the environment agencies states that the “fundamental protection objective is to ensure that all disposals ... are made in a way that protects the health and interests of people and the integrity of the environment ... *inspires public confidence* and takes account of costs (para 4.2.1). The guidance sets out five principles for solid radioactive waste disposal – the fifth is a commitment to openness and inclusivity (section 4.7). It also sets out a series of requirements that are described as “particularly important” from a regulatory perspective. Requirement 2 states that a developer should engage in dialogue with the planning authority, local community and other interested parties on its developing environmental safety case (para 5.7.1).

3 Addressing Public and Stakeholder Confidence or Acceptance in Decision Making

It is notable that at the current time Government policy on GDF siting is unique in the UK in putting in place a decision process based on voluntarism (with provision for decisions to participate and rights of withdrawal).

Nonetheless, the other types of decision-making referred to above - at the level of strategy, programmes and plans, and regulation - all have some form of explicit commitment to move forward in ways that secure or inspire public and stakeholder confidence or acceptability.

Despite these commitments, there appears to be little guidance available on how to reach judgements about whether specific proposals - be they at the level of strategy, programmes, or regulation - attract sufficient public and stakeholder confidence or acceptability to be pursued.

The Government Code of Practice on Consultation (July 2008) does, however, contain the following advice:

“All responses ... should be analysed carefully, using the expertise, experiences and views of respondents to develop a more effective and efficient policy. The focus should be on the evidence given by consultees to back up their arguments. Analysing consultation responses is primarily a qualitative rather than a quantitative exercise.” (Criterion 6, p12)

It is clearly important that this advice is followed, and seen to be followed, particularly where there is a need to make carefully reasoned judgements against commitments to:

- deliver “publicly acceptable solutions” (NDA Mission) or
- judge success against “stakeholder buy-in” (NDA LLW Strategy Group) or “broad public support” (NNI Programme Board), or
- develop operator programmes and plans by “including wide stakeholder engagement to allow an equitable approach” (Government LLW policy), or
- ensure that all disposals “inspire public confidence” (environment agencies)

Key Steps in Decision Making

In the context of radioactive waste management, robust and effective decision making at these levels can be argued to be dependent on a series of key steps:

- undertaking engagement/consultation at a time when proposals are still at a formative stage
- undertaking engagement/consultation in a way that ensures there is sufficient opportunity for information to be provided and understood, and for views to be expressed, heard and recorded
- carefully analysing the views expressed during engagement/consultation
- using the analysis to inform effective and robust decision-making and
- reporting publicly on the analysis of views and its influence in decision making.

Where decisions are taken which appear to disregard or give insufficient weight to public and stakeholder views there is a significant risk that the decision making will be seen as a form of decide-announce-defend and may be open to challenge. This risk will be exacerbated where a decision-maker sees public and stakeholder engagement as an opportunity to persuade people of the merits of its pre-determined programme, rather than

as a way of genuinely seeking views to inform decision making about development of a programme.

Analysing Evidence and Views

In addition to adopting the key steps above, there is probably a need for more guidance on how to go about the analysis of the evidence and views gathered through engagement or consultation. For example, decision makers could pursue the following:

- Carefully assess what proportion of responses can genuinely be taken as 'broad support' for the proposals.
- Identify and take on board any suggestions that will make the proposals more effective, efficient or robust
- Check whether there are any showstopper arguments
- Identify whether there are any stakeholder organisations with a role in implementation which disagree with important elements of the proposals and seek to resolve the disagreements through direct discussion
- Identify the views that cannot be accommodated and publish a clear explanation of the reasons why this is the case.

4 Recommendations

That the Steering Group:

- Publish this report as a Policy Statement in order to promote effective and robust decision making in radioactive waste management.
- Encourage the NDA to take account of the Policy Statement in developing its strategy for public and stakeholder engagement.
- Encourage the NDA to follow the steps outlined in Section 3 above in reaching decisions about its LLW strategy, and to make explicit judgements about public acceptability in reaching those decisions.
- Encourage the NDA to require nuclear site operators to undertake community engagement to inform their decisions about the development or use of on-site or off-site facilities for managing or disposing of LLW.
- Ask the Environment Agency to clarify how it will reach judgements about whether a disposal to a near-surface disposal facility will be made in a way that inspires public confidence, and what role such judgements will play in decisions about authorisations.

Annex: Planning Policy and Planning Decisions

Planning operates through two interlinked processes: provision of policy frameworks in regional strategies and local plans, and control of development. The policy adopted in plans is the predominant “material consideration” in determining a planning application for a specific development.

In England and Wales, national planning policy is set out in Planning Policy Statements (PPS). The primary focus of plan making is then at regional and local levels. Regional Spatial Strategies (RSSs) set out a spatial plan for the region that must conform with Government policy. Local Development Frameworks (LDFs) are a series of documents that outline local planning strategy, identify specific sites for development or conservation, and criteria against which specific development proposals will be judged. The LDF defines a local authority's policy on the development of land. A particular type of LDF – the Minerals and Waste Development Framework (MWDF) - covers minerals and waste policy. In two tier areas minerals and waste matters are the responsibility of the County Planning Authority. The statutory development plan for any particular location includes the relevant RSS and LDF. A LDF will consist of a suite of documents. These include a Local Development Scheme (setting out the schedule for development of key documents), Development Plan Documents (which state policy for spatial development of the area taking into account national policy and conforming with the RSS) and a Statement of Community Involvement. Development Plan Documents are examined independently by a Planning Inspector to determine if they are “sound”, for example, in relation to Sustainability Appraisal.

Government advice is that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons (PPS1, para 27). There are a range of cases where planning decisions have been taken to appeal and public opinion has been found to have legitimately influenced the planning decision¹.

A review of such cases has concluded that: public safety and its perception are material considerations; fears and concerns by members of the public may constitute a material consideration if they relate to a matter which in itself is material, or they are objectively justified; public opposition can be a material consideration even if found not to be merited; it is a matter for the decision maker to assess the weight to be given to public opposition; and where public fears and concerns are baseless, it must be demonstrated that a decision maker has not been influenced to an unreasonable degree in taking such concern into account (DCP Online, ‘Public Opinion and Personal Pleas’).

¹ Examples include: refusal of permission for three wind farms, where the Inspector reasoned that a convincing overall picture of public opposition was a powerful material consideration (Highland 19/07/99, DCS 038-982-538 and 038-534-414); refusal of permission for manufacture of water soluble polymers, where the Inspector thought that a great number of people would constantly feel extremely ill-at-ease even though there was considerable evidence that the process was safe (Calderdale MBC 30/5/85, DCS 048-874-206); refusal of permission for extension of a clay quarry and landfill site, where the Inspector considered that the fear of local residents about health impacts was so strong and genuinely held that it represented a material consideration (North Somerset 07/10/99 DCS 032-596-092); and refusal of permission for a chemical waste treatment plant, where the Court of Appeal allowed refusal on the basis that a local authority can take into account perceived fears as a material consideration in determining the effect on an area and this could be used to refuse permission (Newport BC v SOS for Wales 18/6/97).