

# **The Duty to Co-operate and radioactive waste management**

**NuLeAF research paper**

**Research funded by LLWR Ltd.**

## Table of Contents

Executive summary.....	3
1. Introduction .....	5
1.1 Methodology.....	5
2. The planning framework.....	6
3. The Duty to Co-operate and its implications for radioactive waste management .....	7
3.1 Use of the Duty to Co-operate to date .....	9
4. How Councils can address the Duty to Co-operate in their planning arrangements .....	10
4.1 What if there is a disagreement following engagement?.....	11
4.2 At what threshold does the Duty to Co-operate apply? .....	12
5. VLLW/LALLW management and engagement with communities and local authorities.....	12
5.1 What does the Duty to Co-operate mean for suppliers in terms of current and future contracts?.....	12
5.2 Implications for current VLLW/LALLW management.....	13
5.3 Appropriate engagement around VLLW/LALLW.....	14
6. Conclusions and Recommendations.....	15
6.1 Recommendations .....	16
An enhanced role for NuLeAF’s Radioactive Waste Planning Group.....	16
Improved engagement .....	16
Revision of Strategy and the role of NDA and Government.....	16
NuLeAF’s role.....	17

## Executive summary

NuLeAF was commissioned by Low Level Waste Repository (LLWR) Ltd to undertake research on the Duty to Co-operate (DtC) and wider changes to planning. This research considers the DtC's implications for future management of Low Level radioactive Waste (LLW) and in particular Low Activity Low Level Waste/Very Low Level Waste (LALLW/VLLW). This research has been prompted by a number of issues:

- A concern that the DtC might impact on the strategic management of LLW, particularly Very Low Level Waste/Low Activity Low Level Waste (VLLW/LALLW);
- An interest in understanding better how wider changes in planning may affect radioactive waste management; and
- A desire to develop an approach to the management of VLLW/LALLW that is acceptable to all parties – local authorities, communities, LLWR and suppliers.

With these questions in mind, the aims of the NuLeAF research are to:

- Bring clarity as to exactly what impacts the Duty to Co-operate is likely to have on LLW management;
- Set this within the context of wider changes in planning that have taken place and which will happen in the near future; and
- Assist LLWR and other interested parties in developing their plans for the future management of LLW.

This paper details the current policy and strategy framework for radioactive waste management and the implications of the Duty to Co-operate on future waste management arrangements. It suggests the means by which local authorities can meet the requirements of the Duty and outlines what the implications of the Duty are for suppliers in terms of current and future contracts, the management of VLLW/LALLW and engagement with other local authorities and by the industry.

The paper concludes with a series of recommendations. These are that:

- That **NuLeAF's Radioactive Waste Planning Group (RWPG) be used as a forum for raising and exploring issues** related to the Duty to Co-operate and the management of radioactive waste. Discussion of developments related to the DtC should become a standing item at the quarterly RWPG meetings and written into the Group's Terms of Reference. The RWPG should report to other local authorities and also to DCLG, DECC, NDA, LLWR Ltd and others on the issues raised.
- **Annual meetings be held between representatives from LLWR, Site Licensee Companies, relevant supply chain representatives and waste planning authorities** These would provide a strategic overview of LALLW/VLLW operations for the next 12 months and would cover landfill disposal, incineration and metal treatment.
- **Landfill site operators in receipt of VLLW/LALLW should demonstrate good practice in notifying and updating affected local authorities on their plans.** All sites should send updates on progress to affected local authorities at least on a quarterly basis.

It is also proposed that the revised UK Solid LLW Strategy draws on and addresses the issues raised in this paper, and that there is better integration between policy and strategy around nuclear and non-nuclear industry radioactive waste. The review in 2014 of the

nuclear solid LLW strategy should be used by NDA as an opportunity for a clearer link between this document and with the non-nuclear LLW and NORM Strategies.

NuLeAF will continue to engage with the Government, NDA, LLWR and the industry to represent the views and concerns of local authorities, and press for enhancements to strategy, policy and practice. We will work to support the capacity of local authorities to engage with radioactive waste management issues through our Radioactive Waste Planning Group, the issuing of guidance and the provision of seminars and other opportunities for local authorities to meet and share concerns and practice.

# 1. Introduction

NuLeAF was commissioned by Low Level Waste Repository (LLWR) Ltd to undertake research on the Duty to Co-operate (DtC) and wider changes to planning. This research considers the DtC's implications for future management of Low Level radioactive Waste (LLW) and in particular Low Activity Low Level Waste/Very Low Level Waste (LALLW/VLLW). While some of the analysis in this paper may also be relevant to the management of Intermediate and Higher level radioactive wastes, the paper has not considered the implications of the Duty on such waste and it should not be taken as guidance in relation to higher activity materials.

This research has been prompted by a number of issues:

- A concern that the DtC might impact on the strategic management of LLW, particularly Very Low Level Waste/Low Activity Low Level Waste (VLLW/LALLW);
- An interest in understanding better how wider changes in planning may affect radioactive waste management; and
- A desire to develop an approach to the management of VLLW/LALLW that is acceptable to all parties – local authorities, communities, LLWR and suppliers.

With these questions in mind, the aims of the NuLeAF research are to:

- Bring clarity as to exactly what impacts the Duty to Co-operate is likely to have on LLW management;
- Set this within the context of wider changes in planning that have taken place and which will happen in the near future; and
- Assist LLWR and other interested parties in developing their plans for the future management of LLW.

## **1.1 Methodology**

The research involved a literature review and interviews with key decision makers (Appendix 2) and interested parties.

The literature review involved:

- An appraisal of current legislation and guidance related to planning, the Localism Act 2011 (which includes the Duty to Co-operate) and radioactive waste management; and
- A review of Minerals and Waste Local Plans (covering the Development Scheme, Statement of Community Involvement and other documents) for English authorities that had been published since the Duty came into force. Appendix 1 provides detail on these.

The literature review was combined with a series of phone interviews with central government, local authority planners and an independent consultant who was closely involved in the North London Waste Plan, rejected at inquiry due to a failure to demonstrate the Duty.

Another important strand of the research was a workshop discussion with NuLeAF's Radioactive Waste Planning Group (RWPG) and LLWR. The RWPG is comprised of local government planners with expertise in radioactive waste management – 16 of whom attended the workshop.

## 2. The planning framework

### 2.1 Waste Planning Policy

A new **National Planning Policy Framework (NPPF)** was launched in March 2012<sup>1</sup>. It represents a significantly stripped down framework for planning. The new NPPF renders almost all Planning Policy Statements (PPSs) inactive, although **PPS10 on Planning for Sustainable Waste Management** is still 'live'.

The NPPF and PPS10 do not directly address radioactive waste issues. However they are a relevant part of the context for decisions on waste planning. Crucial is the presumption in favour of sustainable development, meaning that developments (including those related to waste management) are likely to be approved if there are not explicit policies prohibiting them. The NPPF also describes how authorities should "*effectively cooperate*" in "*a continuous process of engagement*" and demonstrate in their plans how they have done so.

A new **Waste Management Plan for England (WMPE)** was published in December 2013<sup>2</sup>. The requirements of the WMPE are set out in Schedule 1 of the **Waste (England and Wales) Regulations 2011** and article 28(3) of the 2008 revised **Waste Framework Directive (WFD)**. The Directive only addresses non-radioactive wastes.

The WMPE is a high level document setting out an analysis of the current waste management system, with links to other policy documents. These will include the recently published **Hazardous Waste National Policy Statement<sup>3</sup>** (NPS) and an updated planning policy on waste (replacing PPS10).

In line with the WFD, radioactive wastes are outside the scope of the WMPE. However, Defra has stated that '*proposals for hazardous waste facilities that might handle a relatively small proportion of low level radioactive waste alongside hazardous waste are within the scope of the (Hazardous Waste) NPS where those facilities are nationally significant infrastructure projects<sup>4</sup>*'. Thus the management of VLLW/LALLW at sites such as King's Cliffe will be covered by the NPS as it is primarily a hazardous waste site.

### 2.2 Radioactive waste planning

Current planning policy creates a separation between non-radioactive waste and radioactive waste and doesn't accept that there is continuity between the two categories. There is thus the potential for confusion as to how the NPPF, WMPE and NDA Strategy should guide waste planning policy.

In turn this raises issues for local authorities in developing waste and minerals policy and plans, and presents challenges to LLWR, suppliers and the NDA in terms of the identification of suitable sites for disposal of VLLW/LALLW.

It is DECC's stated view that the **2010 UK Strategy for the Management of Solid Low Level Radioactive Waste from the Nuclear industry (LLW Strategy)<sup>5</sup>** represents

<sup>1</sup> <http://www.communities.gov.uk/planningandbuilding/planningsystem/planningpolicy/planningpolicyframework/>

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/265810/pb14100-waste-management-plan-20131213.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265810/pb14100-waste-management-plan-20131213.pdf)

<sup>3</sup> <https://www.gov.uk/government/publications/hazardous-waste-national-policy-statement>

<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205568/pb13927-hazardous-waste-policy-20130606.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205568/pb13927-hazardous-waste-policy-20130606.pdf)

<sup>5</sup> –The **UK Strategy for the management of solid Low Level Radioactive Waste from the Nuclear Industry 2010** as well as the strategy for the non-nuclear industry.

national strategy. This view was shared by the Planning Inspector at the King's Cliffe inquiry<sup>6</sup>. The Planning Inspector who conducted the Hearing in Public on Somerset's Core Strategy<sup>7</sup> took the view that:

*'The NDA explained during the examination hearings that these strategies are approved by the Secretary of State for Energy and Climate Change. Some of them explicitly state that they should be used as guidance by local planning authorities when preparing and reviewing their planning strategies for waste management. In my view the NDA strategies represent national policy for the management of these wastes for the purposes of land use planning'.*

Regardless of the different emphasis that Planning Inspectors have placed on the nuclear LLW Strategy, it is clear that it must be taken on board.

The **LLW Strategy** is based on three strategic themes, namely:

- The waste hierarchy
- The best use of existing LLW management assets
- The need for new fit for purpose waste management routes

The NDA's wider [Strategy](#) sets out their overall approach to the management of the UK's nuclear waste, covering not just LLW but also Higher Activity Wastes.

Further analysis of Planning and Radioactive Waste Management is set out in NuLeAF's recently published Briefing Paper 23<sup>8</sup>.

### **3. The Duty to Co-operate and its implications for radioactive waste management**

The Duty to Co-operate (DtC) came into force through Section 110 of the **Localism Act 2011**, which amended Part 2 of the **Planning and Compulsory Purchase Act 2004**. Government views the DtC as a mechanism to drive strategic regional and national planning, balancing the greater emphasis on local planning elsewhere in the new planning framework.

Under the DtC the Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities. The DtC also requires engagement with organisations other than neighbouring local authorities and with remote sites where they will be affected by proposed plans. The Planning Advisory Service (PAS) states that the DtC is:

*a duty on **local planning authorities, county councils and other bodies with statutory functions** to co-operate with each other..... Co-operation includes constructive and active engagement as part of an ongoing process to maximise effective working on the preparation of development plan documents, other local*

---

<sup>6</sup> <http://www.nuleaf.org.uk/nuleaf/DisplayArticle.asp?ID=9719>

<sup>7</sup> [http://www.n-somerset.gov.uk/Environment/Planning\\_policy\\_and-research/localplanning/Documents/Core%20Strategy/inspector%27s%20report%20March%202012%20%28pdf%29.pdf](http://www.n-somerset.gov.uk/Environment/Planning_policy_and-research/localplanning/Documents/Core%20Strategy/inspector%27s%20report%20March%202012%20%28pdf%29.pdf)

<sup>8</sup> <http://www.nuleaf.org.uk/nuleaf/DisplayArticle.asp?ID=6516>

*development documents and marine plans in relation to strategic matters including sustainable development that would have significant wider impacts<sup>9</sup>.*

Other bodies with statutory functions include the Environment Agency, English Heritage, Natural England, the Office of the Rail Regulator, the Highways Agency, Local Enterprise Partnerships (LEPs) and local environmental organisations. These are broadly the same statutory consultees as for a planning application.

The PAS also note that:

*'A 'tick box' approach or a collection of correspondence will not be sufficient. Councils will also need to show how they have considered joint plan-making arrangements, what decisions were reached and why. Finally, councils need to report how the duty is being taking forward on an on-going basis through the Annual Monitoring Report.*

*Just because a local plan passes the legal test of the **duty**, it does not mean it will be found 'sound' in dealing with strategic matters. The policy outcomes of co-operation will need to be tested against the evidence at examination in the normal way.<sup>10</sup>*

Local authorities are required to demonstrate that they have complied with the DtC:

- **Legally** – at the independent examination of Waste Local Plans;
- **As a policy test** – a plan will only be found sound if it is deliverable and based on effective joint working on cross-boundary strategic priorities; and
- **Through reporting** – under Local Planning Regulations 2012 councils are required to report progress against DtC in their Annual Monitoring Reports (AMRs).

Councils should use the DtC as an opportunity to:

- get the evidence right (and spread the cost with partner councils);
- reach agreements with partners on joint working approaches; and
- explore the opportunity for jointly adopted policies and other strategies.

The view of some of those interviewed for this research is that the DtC was largely driven by a need for co-operation around housing and that the implications for waste management had not been fully considered. However, DECC argue that the DtC is crucial to radioactive waste management and should be taken forward in terms of actions not just principle. Strategic priorities across local boundaries will need to be properly co-ordinated and reflected in local plans.

---

<sup>9</sup> [www.pas.gov.uk/pas/aoi/2772147](http://www.pas.gov.uk/pas/aoi/2772147)

<sup>10</sup> <http://www.pas.gov.uk/pas/core/page.do?pageId=2133454>

### **3.1 Use of the Duty to Co-operate to date**

Practice is at an early stage and is evolving, based on decisions taken by Inspectors at independent examinations.

One key precedent has been the North London Waste Plan (NLWP) Examination, which was suspended following issues raised by South East Waste Planning Advisory Group (SEWPAG) and others<sup>11</sup>.

For many years London had been exporting its waste to neighbouring counties who did not want it, but the NLWP did not address the Duty to Co-operate. At examination the Mayor's office argued that the DtC didn't apply - however this was successfully challenged on the basis that effective engagement in relation to plan development had not been demonstrated.

The North London decision has had an impact across England:

- WPAs are having to show how they have addressed the DtC in waste plans;
- In turn this is requiring that they investigate further the scope for waste minimisation and the application of the waste hierarchy, driving down the waste arisings required to be disposed of in landfill; and
- There is a need to demonstrate, as far as is reasonable, the proximity principle in waste management – see box below for more discussion on this

The North London case was clear cut in that there was a failure to address the DtC at all. What is less clear at present is how the DtC is best addressed i.e. how much engagement is required, with whom, and how should this impact on decisions taken.

The evidence so far is that Planning Inspectorate appraisal of the DtC in relation to waste plans is mixed and lacking in consistency. For example, in relation to the Somerset Waste Core Strategy (CS), the Inspector found<sup>12</sup> that while he had:

*'certain reservations regarding the extent to which the Council has sought to engage meaningfully with those waste planning authorities for whom there may be spatial planning implications arising from the wording of submitted policy DM9 (on LLW).....'*

He felt that:

*'given the uncertain context in which the CS was prepared and submitted I conclude that the duty to cooperate has been discharged.'*

Looking beyond waste plans there is also a lack of consistency. Local plans submitted by Norfolk, Bedfordshire and Derbyshire were cited by those interviewed for this study as being inconsistent in their assessment of the DtC.

---

<sup>11</sup> <http://www.nlwp.net/examination/examination.html>

<sup>12</sup> [http://www.n-somerset.gov.uk/Environment/Planning\\_policy\\_and-research/localplanning/Documents/Core%20Strategy/inspector%27s%20report%20March%202012%20%28pdf%29.pdf](http://www.n-somerset.gov.uk/Environment/Planning_policy_and-research/localplanning/Documents/Core%20Strategy/inspector%27s%20report%20March%202012%20%28pdf%29.pdf)

### **The Proximity Principle**

The Proximity Principle is well established in waste management and is a key element of EU environmental and waste management policy, in particular the 2008 Waste Framework Directive (WFD). It advocates that waste should be disposed of (or managed) close to the point at which it is generated.

The **2007 Policy for the Long Term Management of Solid Low Level Waste** states '*Use of centralised facilities, such as the LLWR...may be the appropriate point of disposal for much LLW. However, depending on the intrinsic hazard of some forms of LLW, other solutions are possible. Options' assessments carried out to support the development of LLW management plans must consider these possible solutions, employing the proximity principle as a point of reference. However, ...the desire to avoid excessive transportation of materials...must be balanced with all the other relevant factors..*' (page 8). The **2010 UK Strategy for the Management of Solid Low Level Radioactive Waste from the Nuclear industry** notes the importance of the guidance on the proximity principle in PPS10, but also the need to consider local circumstances and economies of scale.

Government has recently published a new **Waste Management Plan for England (WMPE)**. This is intended to draw together existing guidance rather than establish new guidance. The WMPE notes the 2008 WFD and states that waste networks '*must enable waste to be disposed of, or be recovered, in one of the nearest appropriate installations...(and).... Shall be designed in such a way as to enable Members States to move towards the aim of self-sufficiency in waste disposal.*' The proximity principle '*must be applied when decisions are taken on the location of appropriate waste facilities.*'

While radioactive waste is not directly covered by the WMPE the management of waste at facilities such as Kings Cliffe is, indirectly, through the Hazardous Waste NPS (See Section 2 above). There is ambiguity as to the extent to which the LLW Strategy or the WMPE (with its stronger definition of the proximity principle) apply in the case of VLLW/LALLW. This is an issue that government should clarify – it should also be addressed through the planned refresh of the LLW Strategy due in 2014.

## **4. How Councils can address the Duty to Co-operate in their planning arrangements**

Waste Planning Authorities (WPAs) will have to demonstrate how they have addressed the Duty to Co-operate in all future plan iterations. There are 5 key elements to this. These, and their implications for management of VLLW/LALLW, are set out in table 1 below.

<b>Requirement</b>	<b>Implications for Radioactive Waste Management</b>
Demonstrate awareness of the amount of waste arisings and how the amount of waste produced is likely to change over coming years	<p>The inventory for waste must be as accurate as possible in terms of the timing and scale of future arisings. Data is available in the public domain from a number of sources such as the UK Radioactive Waste Inventory 2013, LLWR Ltd and the SLCs.</p> <p>There are on-going efforts to refine and improve the accuracy of the inventory for radioactive waste, but this is proving challenging and it is accepted that there is a degree of uncertainty about the timing and amount of waste likely to be produced, as well as its level of radioactivity.</p>
Understand where waste is currently going	Clear data on where waste is currently going is needed. In terms of VLLW/LALLW the waste may be managed on the nuclear site (such as at Sellafield) or disposed of at one of the three sites licenced to take such material (King's Cliffe, Lillyhall or Clifton

	Marsh). Waste is also transported for thermal treatment or metal recycling at sites around the UK. LLW may also be transported to the National LLW Repository in Cumbria for disposal. Some waste is transported to facilities outside of the UK for treatment.
Assess whether the current arrangements can continue based on the length of existing authorisations and what additional routes may be required.	<p>Consideration should be given to the availability of required routes over the timeframe being considered. As some permissions are time limited, further authorisations may need to be granted for some landfills that currently accept VLLW/LALLW if they are to continue to accept waste.</p> <p>Consideration should be given to the likelihood of this occurring and the potential implications if it does not. Requirements for additional capacity should be clearly outlined and underpinned by a credible plan.</p> <p>There should be a demonstration of the consideration of local options (i.e. within the WPA) for the disposal of VLLW/LALLW.</p>
Show application of the proximity principle and the waste hierarchy	<p>Plans for LLW should show that the waste management hierarchy has been appropriately considered. The proximity principle is one consideration to be balanced against all other factors. It is recognised that (as with hazardous waste) there are only a small number of specialised facilities across the UK authorised to manage such wastes and hence transporting waste considerable distances is inevitable. Furthermore, due to differences in acceptance criteria between facilities it may not be possible to use the closest facility.</p> <p>Despite this, there may be scope for the use of a wider range of more local facilities for the management and disposal of VLLW/LALLW. These opportunities should be properly investigated.</p>
Show they have engaged with all authorities in receipt of waste (now and in the future) and demonstrate the need for waste to be transported outwith their area	There should be engagement between local authorities covering areas that are producing waste, and those that are hosting treatment and disposal facilities for LLW. This will need to be addressed in future iterations of waste plans.

**Table 1: The Duty and implications for VLLW/LALLW**

#### ***4.1 What if there is a disagreement following engagement?***

One important question is what is meant by a Duty to *Co-operate*. If one waste authority wishes to send waste to another, is there a need simply to inform and discuss with the recipient authority, or is there actually a need to *agree* that this is the right course of action?

Experts from national and local government interviewed for this study felt that it was too early to be definitive about this matter, with clarity only likely through test cases. The general view is that this is indeed a *duty to co-operate*, not a *duty to receive waste*. However, consultation should be on-going, early and **a two way** process. This last point is crucial – just as it is vital for a local authority to engage with other local authorities with potential waste facilities, it is important that areas with potential host facilities are reasonable about accepting waste. If a local authority can demonstrate that they have no

suitable facilities for the disposal of certain types of waste, there would be an expectation that reasonable alternative sites should accept it.

Where co-operation is not forthcoming, PINS is likely to consider the extent to which the request to co-operate is 'reasonable' based on the evidence. Thus a local authority must be able to show that decisions are made based on clear evidence. In terms of radioactive waste this relates to the timing, amount and nature of waste arisings expected and the validity of the appraisal of the different options for the management of that waste. Nuclear sites, LLWR and NDA all have a role in assisting in this process as do facilities responsible for non-nuclear industry radioactive waste and those generating naturally occurring radioactive materials (NORM).

If PINS consider that the legal requirement to co-operate has been met through joint working but there is disagreement about the policy outcome then this will need to be resolved through the examination process based on the evidence.

The significance of not gaining agreement of an authority where engagement had taken place would depend on the extent to which this affected the delivery of the strategy. The significance of the DtC varies according to the type of waste involved.

#### ***4.2 At what threshold does the Duty to Co-operate apply?***

Another issue of concern is whether it is necessary for a local authority to consult on small amounts of waste, for example radioactive waste from a local hospital or university.

While practice is still evolving, the general view of those interviewed is that all waste needs to be considered but that the response should be proportionate. The danger is that the process becomes unduly burdensome with complex and time consuming engagement with every possible end site. This should be avoided. As a rule of thumb, it is suggested that the DtC should only apply in instances where the failure to gain the agreement of another authority would significantly affect the delivery of the waste plan.

That said, for even small quantities of waste it will be important to demonstrate the application of the waste hierarchy and that local disposal options have been properly considered if rejected in favour of a more remote site.

## **5. VLLW/LALLW management and engagement with communities and local authorities**

### ***5.1 What does the Duty to Co-operate mean for suppliers in terms of current and future contracts?***

The DtC has the potential to change the landscape for waste management, as the North London Waste Plan example has shown.

Key issues for waste suppliers and LLWR are:

- The planning regime needs to support the development of facilities to provide enough capacity for industry needs;
- There is a risk that local waste plans will be held up due to legal challenges around the Duty to Co-operate; and

- There will be a need to ensure that waste data is as accurate as is possible in terms of quantity, timing and category.

Most importantly, the DtC, and the wider changes to waste planning, place a greater emphasis on the delivery of local solutions based on sustainable waste management and the proximity principle. The Department of Communities and Local Government (DCLG) are of the view that the presumption, in terms of radioactive waste, must be that areas with nuclear facilities should plan for disposal within their area if possible. It should, however, be recognised that (as with hazardous waste) there are only a small number of specialised facilities across the UK authorised to manage such wastes and hence transporting waste outside of an area may be appropriate. Waste generators and their local authorities will have to demonstrate that they have explored all realistic local options and that there are good reasons for exporting waste to another location.

In terms of VLLW/LALLW this may lead to greater pressure for disposal in local, conventional landfill sites. While local authorities cannot make waste site operators come forward in their area, they can make policies which would enable facilities to be built should an operator wish to do so.

## ***5.2 Implications for current VLLW/LALLW management***

It is acknowledged that at present there is a tension around the extent to which certain local authorities and communities should be responsible for making a contribution to VLLW/LALLW management for the whole country as opposed to providing for local needs.

At present three Permitted landfill sites at Kings Cliffe in Northamptonshire, Lillyhall in Cumbria and Clifton Marsh in Lancashire have the relevant Permits and Consents to take VLLW/LALLW. Communities around the three Permitted sites are concerned about the negative impacts of these facilities and about their area being required to accept waste not generated in their area. In addition such wastes can also go to one of three thermal treatment plants situated across the UK.

The industry view is that there is ample capacity at these three sites for all VLLW/LALLW that will be generated over coming years. It is unclear whether any other operators are interested in coming forward. The industry believes that there may not be a sufficient quantity of waste to make it economically viable for new operators, although the potentially significant impact of VLLW/LALLW NORM (Naturally Occurring Radioactive Material) arisings in coming years may affect this. The cost of obtaining the necessary authorisations means that it may not be economic for an operator to be restricted to receiving waste from within its own area only.

The counter view, held by many local authorities, is that there should be a clearer application of the proximity principle and a need for LLWR and the industry to be pro-active in encouraging more local disposal wherever possible – either on site or at local landfill sites. They believe that the Low Level Waste Strategy should encourage other landfill sites to come forward, enabling the proximity principle to be applied more appropriately. When developing onsite disposal facilities, consideration should be given to the potential impact on the site end state (e.g. ability to de-licence) and any impacts on potential future land use.

Cumbria County Council, for example, has objected to waste transportation from nuclear sites in Scotland. The Council also objected to plans for a new waste site at Keekle Head, as it argues that the site will not be dealing with locally generated waste (from Sellafield) and that much of the material intended for the site could be disposed of in sites closer to where

waste is arising. Proposals for radioactive waste disposal at Keekle Head in Cumbria were rejected at Public Inquiry in December 2013<sup>13</sup>.

As noted above, the Duty to Co-operate is likely to be a driver for plans that are more clearly based on application of the waste hierarchy, the proximity principle and the provision of local waste facilities where appropriate. This reinforces existing guidance, such as in PPS10, which states in Paragraph 3 that communities should take responsibility for their own waste<sup>14</sup>.

The industry should be aware of this. Looking forward, the revision of the nuclear and non-nuclear industry LLW Strategies in 2014 is an opportunity to develop a better framework for the management of VLLW and LALLW. In particular Strategy should address the issues around engagement. As highlighted in this paper, there are significant areas of ambiguity around the implications of the NPPS, WMPE and any replacement of PPS10 on radioactive waste management. The LLW Strategy revision will not be able to clarify all of these independently, and it does not reference the Duty to Co-operate. However it is hoped that Government will be able to engage with the nuclear industry and others to ensure that the revised strategy enhances the clarity of guidance.

### **5.3 Appropriate engagement around VLLW/LALLW**

Underpinning this issue is a debate as to the appropriate level of engagement that nuclear sites and operators of radioactive waste management facilities should undertake with host local authorities and communities. Policy requires sites to engage with local authorities in the early stages of drawing up their waste plans. The tension arises due to different interpretations of how the engagement requirements outlined in the 2010 LLW Strategy<sup>15</sup> can be delivered in practice and who should be responsible.

The Strategy notes that effective community involvement and stakeholder engagement is vital to the successful delivery of the strategy and that *'it will be essential to undertake careful and considered engagement with local communities early in the waste management and decision making process...such engagement needs to be open and transparent in order to build confidence and credibility.'*(p31)

These requirements, as currently written, place obligations on waste producers to engage with communities that will be impacted by their waste plans. However, due to the uncertainty as to the eventual disposal route for individual waste streams it is difficult to identify who should be engaged and, LLWR would argue, is not necessarily practicable because of multiple disposal options. For instance, there are 28 local authorities with nuclear facilities across the UK covered by 20 WPAs (waste is governed centrally in Wales). If District and Parish Councils are also engaged the requirements become very significant.

LLWR and DECC believe that engagement and consultation by a prospective facility operation at the planning and permitting stage may be the most appropriate and effective vehicle. In addition, there is currently an obligation for operators to notify local authorities

---

<sup>13</sup> <http://www.timesandstar.co.uk/former-cumbrian-open-cast-mine-cannot-store-radioactive-waste-says-government-1.1104891>

<sup>14</sup> <https://www.gov.uk/government/publications/planning-for-sustainable-waste-management-planning-policy-statement-10>

<sup>15</sup> <http://www.nda.gov.uk/news/llw-strategy.cfm>

and regulators upon receiving waste from a new site for the first time. There is no requirement for subsequent notifications for each and every shipment thereafter.

Some local authorities are concerned at what they see as the disconnect between permitting and planning: Capacity should not be the only criteria, but also the willingness for a community to accept the waste. Some believe that nuclear sites should engage on individual waste streams. While there are a number of fora (such as the relevant NDA Delivery Overview Group and Theme Overview Group meetings) where there is a strategic exchange of information, specific engagement around waste streams is limited.

One possible solution is to utilise NuLeAF's Radioactive Waste Planning Group (RWPG) as a forum for raising and exploring issues related to the Duty to Co-operate and the management of radioactive waste. Discussion of developments related to the DtC could become a standing item at the quarterly RWPG meetings and be written into the Group's Terms of Reference. The RWPG could report to other local authorities and also to DCLG, DECC, NDA, LLWR Ltd and others on the issues raised.

LLWR has also proposed annual meetings between representatives from LLWR, landfill operators, Site Licensee Companies, and relevant waste planning authorities. These would provide a strategic overview of operations for the next 12 months. District Councils and Parish Councils covering the affected areas could also be invited.

As noted earlier, NuLeAF also views the revision of the LLW Strategy in 2014 as a significant opportunity to develop a better framework for engagement around VLLW and LALLW.

## **6. Conclusions and Recommendations**

The research has shown that the DtC and wider changes in planning have scope for significant impacts on LALLW/VLLW management. Our understanding of the DtC is still at an early stage though implications for local authorities are that:

- The DtC will mean local authorities will have to engage earlier and it may take longer to finalise waste plans;
- Data requirements are likely to increase, enabling the justification of decisions based on a fair appraisal of the evidence. Over time it is therefore likely that our understanding of the radioactive waste inventory and the amount of LALLW/VLLW arising over time will have to increase. LLWR and NDA will be central to this process as potential providers of data;
- Councils should, as a priority, seek to meet the needs of their own communities through local waste management solutions. For waste where it is not practical to accommodate locally then a decision on where to send it should be based on a proper appraisal focussed on a sustainable outcome; and
- Appropriate engagement of local authorities impacted by such arrangements should be undertaken.
- There are significant questions as to how far one would go in geographic and consultation terms. However, robust and effective engagement around all significant waste streams will be required.

Those interviewed felt that the DtC gives a firm underpinning for local authorities in assessing what the current situation is, looking for improvements in terms of waste

management, and considering alternatives. There remain differences of opinion in terms of how other authorities impacted by LALLW/VLLW management should best be engaged.

The challenge will be to ensure that the DtC enables a more coherent strategic framework for waste management – in this case VLLW/LALLW – to develop over time, based on effective engagement and underpinned by sustainable waste management principles. At the same time it is important that the DtC is applied in a proportionate way that does not impose excessive burdens on stretched local authority resources, and also enables local authorities to work with waste suppliers and LLWR to deliver solutions that are acceptable to all and to local communities.

Possible elements of a framework for addressing the DtC in relation to VLLW/LALLW are set out below.

## ***6.1 Recommendations***

### ***An enhanced role for NuLeAF's Radioactive Waste Planning Group***

It is proposed that **NuLeAF's Radioactive Waste Planning Group (RWPG) be used as a forum for raising and exploring issues** related to the Duty to Co-operate and the management of radioactive waste. Discussion of developments related to the DtC should become a standing item at the quarterly RWPG meetings and written into the Group's Terms of Reference. The RWPG could report to other local authorities and also to DCLG, DECC, NDA, LLWR Ltd and others on the issues raised.

### ***Improved engagement***

Enhanced engagement between the industry and local authorities is also vital to success. It is proposed that:

- **Annual meetings be held between representatives from LLWR, Site Licensee Companies, relevant supply chain representatives and waste planning authorities** These would provide a strategic overview of LALLW/VLLW operations for the next 12 months and would cover landfill disposal, incineration and metal treatment.
- **Landfill site operators in receipt of VLLW/LALLW should demonstrate good practice in notifying and updating affected local authorities on their plans.** All sites should send updates on progress to affected local authorities at least on a quarterly basis.

### ***Revision of Strategy and the role of NDA and Government***

Given the current developments in waste planning and LLW Strategy it is recommended that:

- The **revised NDA LLW Strategy draws on and addresses the issues raised in this paper.** The Strategy should be informed by effective engagement with the rest of government and with local authorities as well as the industry.
- There is **better integration between policy and strategy around nuclear and non-nuclear industry radioactive waste.** The revision in 2014 of the nuclear LLW strategy and the development of a NORM strategy should be used by NDA as an opportunity for a clearer link between these documents and with the non-nuclear LLW Strategy.
- **DECC, Defra and DCLG should work together to give greater clarity to local planning authorities** on how the nuclear industry LLW Strategy, the WMPE and any

replacement of PPS10 should be used in assessing issues around LLW management. In particular there should be clarity on the application of the proximity principle.

### ***NuLeAF's role***

NuLeAF will:

- Continue to **engage with the Government, NDA, LLWR and the industry to represent the views and concerns of local authorities** and press for enhancements to strategy, policy and practice.
- **Build the capacity of local authorities to engage with radioactive waste management issues** through our Radioactive Waste Planning Group, the issuing of guidance and the provision of seminars and other opportunities for local authorities to meet and share concerns and practice.