

Document No:	154
Status:	Final
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Title:	Regulators comments on NWAA's Issues Register and Genewatch RockSolid report
Notes:	Published on 21 st April 2011

1 – Background and Context

1.1 The West Cumbria MRWS Partnership ('the Partnership') exists to "make recommendations to Allerdale Borough Council, Copeland Borough Council and Cumbria County Council on whether they should participate or not in the geological disposal facility siting process, without commitment to eventually host a facility". The Partnership is therefore predominantly concerned with the siting process up to a "Decision to Participate", defined as Stage 3 of the site selection process in the Managing Radioactive Waste Safely (MRWS) White Paper¹.

1.2 The Partnership Steering Group has developed a work programme² based on the criteria that it will use when making a recommendation on whether to participate further in the MRWS Site Selection process.

1.3 Criterion 1b is that the Partnership should be "Satisfied that suitable regulatory and planning processes are in place or being developed to protect residents, workforce and the environment". Under this criterion, that the Partnership has identified a specific task "Task 1a(v) – Ask NDA and regulators for commentary on NWAA submission to Energy and Climate Change Committee, Issues Register, and Rock Solid report".

1.4 This paper has been produced by the Regulators³ to support a request from the Partnership for a presentation on Task 1a(v) at the Partnership's 14th April 2011 meeting.

1.5 The Regulators recognise that further discussion with the Partnership may be required on issues raised in this briefing paper and the associated presentation.

2 – Regulators' views on NWAA Issues Register and GeneWatch RockSolid

2.1 The Regulators have met and exchanged correspondence with Nuclear Waste Advisory Associates (NWAA) regarding its issues register.

2.2 We think it is particularly important to maintain the proper accountabilities throughout the MRWS programme. It is the responsibility of the developer to produce and maintain a safety case for any proposed geological disposal facility, and address related scientific and technical issues raised by members of the public or other stakeholders.

2.3 The Environment Agency (EA) has been operating an issues resolution process for some time and the Regulators have recently agreed and implemented a joint issues resolution process, which will focus on regulatory matters (see section 3).

2.4 EA, ONR and DfT will continue to scrutinise the Nuclear Decommissioning Authority's (NDA's) work throughout the MRWS Programme. We are working together

¹ *Managing Radioactive Waste Safely: A framework for implementing geological disposal*, A White Paper by Defra, BERR and the devolved administrations for Wales and Northern Ireland, June 2008.

² *Work programme for 2010/11 (draft)*. West Cumbria MRWS Partnership Document 13.1 draft 6th December 2010.

³ The Environment Agency, the Office for Nuclear Regulation and the Department for Transport.

as regulators to make sure that any future geological disposal facility meets the required high standards for environmental protection, safety, security, waste management and radioactive waste transportation. For example, the EA's Guidance on Requirements for Authorisation⁴ sets down its requirements to permit any future facility and it would expect a robust demonstration of compliance with these requirements, appropriate for the stage of development, would be expected before the issue of any permit.

Process Concerns in the NWAA Issues Register

2.5 Below we provide our response to some regulatory issues raised by NWAA relating to the EA's regulatory role, which NWAA refer to as 'Process Concerns'.

NWAA Process Concern 1: the EA presently has no regulatory locus in respect of the NDA

Regulators' response: The NDA must meet legislative requirements in the same way as any other business. Any activities undertaken by the NDA that would require an environmental permit or other form of environmental consent would be within the EA's regulatory remit. The NDA must also comply with health and safety legislation and transport regulations where these are applicable to its activities.

Decisions taken by the developer during early stages of the design process can affect construction, operation and closure of any future GDF. During these stages, the Regulators will provide advice to the developer on issues⁵ that may affect future granting of a permit or licence but will avoid any direct involvement in the design process. The Regulators' early engagement with a developer would also provide a basis for early dialogue with stakeholders on the Regulators' views regarding issues within their respective remits.

For a GDF, neither the EA nor the ONR has a formal regulatory locus when there is no actual activity taking place on a candidate site (or sites). This applies during the early stages of the MRWS Site Selection process leading up to a decision on selection of one or more candidate sites (Stage 4) or during the early part of Stage 5, when it is anticipated that non-intrusive studies, such as geological mapping and geophysical surveying, will be undertaken. The EA's statutory control would start at the outset of any intrusive site investigation, such as borehole drilling, if one or more candidate sites are selected.

NWAA Process Concern 2: it is the NDA which is taking the lead on the development of the 'permissioning schedule for repository development'

Regulators' response: NDA's Radioactive Waste Management Directorate (NDA RWMD) has developed a Permissions Schedule with the stated objective "*of ensuring effective coordination of permissioning, NDA RWMD has developed the Permissions Schedule in consultation with regulators, Government departments, the devolved administrations and representatives of local government in England.*" The development of any future GDF will require approvals from the Regulators, as well as planning permission. The NDA has a duty to comply with all relevant legislation, and it is therefore appropriate for the NDA RWMD to develop such a document, setting down the proposed applications it expects to make, and their proposed timings. The Regulators provided comments during the

⁴ Geological Disposal Facilities on Land for Solid Radioactive Wastes: Guidance on Requirements for Authorisation, Feb 2009. <http://publications.environment-agency.gov.uk/pdf/GEHO0209BPJM-e-e.pdf>

⁵ The matters to be addressed during regulatory interactions are generally described as 'issues'. This term should be interpreted very broadly. It may for example include operator's proposed courses of action, new projects or activities, events and investigations of interest to regulators, including responses to regulatory requirements. Similarly, on a regulator's part, it may for example include any particular regulatory concerns, investigations and audits and their outcomes, and changes to regulatory processes.

development of the 'Permissions Schedule'. We welcome its publication by NDA because it presents the nature and extent of the permissions that NDA RWMD plans to apply for, in developing any future GDF.

NWAA Process Concern 3: the forthcoming deregulation of the Environment Agency's waste and pollution control function through the 'Environmental Permitting Programme' (EPP) is of concern due to its emphasis on the minimisation of the bureaucratic burden – rather than the optimisation of the protection of the environment.

Regulators' response: The provisions of the Environmental Permitting Programme, as enacted in the Environmental Permitting (England and Wales) Regulations 2010 (EPR2010), do not represent "deregulation of the EA's waste and pollution control function". Our rigorous standards for protecting people and the environment will be maintained. Also, EPR2010 has granted the EA a new statutory power to regulate the development of a geological disposal facility in stages, thereby further strengthening regulatory controls.

Specific comments regarding Rock Solid

2.6 The Regulators are aware of the issues that are highlighted in the RockSolid report produced by GeneWatch for Greenpeace. Some of these issues might be addressed by generic studies but many will depend on the specific setting of a candidate site, together with NDA RWMD's choice of disposal concept and the engineered barrier materials. We await the optioneering process for these. Therefore, much of the associated work would need to be done as part of an implementation programme for a GDF.

Interactions with communities

2.7 In our joint paper for the Partnership on "Regulatory interfaces with community" (Partnership doc 130), we said that "... [We] will make information widely available on our views about the environmental and operational safety of any future GDF, subject to considerations of national security. We can also provide advice and information in response to questions raised by communities on environmental protection, operational safety or radioactive waste transport matters that fall within our respective regulatory remits. We would consider points raised by communities when providing advice and comment to the Nuclear Decommissioning Authority's Radioactive Waste Management Directorate (RWMD), Government, Community Siting Partnerships, local authorities and communities – where these are related to our regulatory remits". This remains our position on our approach to interactions with communities on regulatory issues.

3 – The Regulators' joint issues resolution process

3.1 Each year the EA produces a report summarising its scrutiny of NDA RWMD's work on geological disposal. Key findings from the EA's work, in 2009/10, include:

- Some of our comments on drafts of NDA RWMD's generic planning and implementation documents aimed to improve the accessibility of the text to people. RWMD took these on board and made improvements.
- We disagreed with NDA RWMD's interpretation of disposal system design optimisation. We are working with NDA RWMD to resolve our differences.
- We want NDA RWMD to demonstrate how it will consider the options of co-location and deep borehole disposal.
- We are satisfied with NDA RWMD's progress on a generic SEA for MRWS Stages 1-3. We suggested some areas for improvement.

- NDA RWMD's R&D strategy and programme are well structured and appropriately focused. We encouraged NDA RWMD to publish its R&D programme for wider scrutiny and input.
- NDA RWMD's generic plans to characterise a site for a GDF will need to be flexible to address site-specific challenges.
- NDA RWMD has made good progress in developing as a company to hold a nuclear site licence but further steps are required. We will continue to assess RWMD's organisational developments and progress in this matter.

In future years, we will publish a joint Regulators' report covering all our scrutiny work relating to NDA RWMD's programme on geological disposal.

3.2 The full summary of the EA's advice to NDA RWMD in 2009/10 can be found in the annual review⁶.

3.3 In January 2011, the Regulators implemented a joint Issues Resolution Process as part of their assessment of RWMD's submissions supporting implementation of geological disposal. The Issues Resolution Process is intended to capture issues that the Regulators consider may impact on future regulatory decisions but cannot be addressed quickly and simply by discussing them directly with NDA RWMD. The IRP provides a means of:

- documenting issues and the basis of them, and communicating them in a simple clear way.
- defining the Regulators expectations of what NDA RWMD will need to do to resolve them, by when.
- monitoring progress and providing an audit trail towards resolution. This is important because the GDF programme, and some associated issues, will continue over period of decades.

3.5 We will describe the issue and outline why we consider it needs to be resolved (referring to regulatory guidance where appropriate) and define specific actions NDA RWMD needs to take to resolve the issue.

3.6 A description of the Issues Resolution Process, together with the associated database, is available through our joint web-page on the EA's website⁷.

⁶ Environment Agency scrutiny of NDA/RWMD's work relating to the geological disposal of higher-activity: Annual Review 2009/10, published November 2010.

⁷ Information and database are available at <http://www.environment-agency.gov.uk/business/sectors/111766.aspx>.