

# Nuclear Free Local Authorities **RADIOACTIVE WASTE POLICY**

## **Briefing Number 24 – European waste consultation**

Prepared for NFLA member authorities, 20<sup>th</sup> April 2010

### **EUROPEAN UNION CONSULTATION ON PROPOSALS FOR LEGISLATION ON THE MANAGEMENT OF SPENT FUEL AND RADIOACTIVE WASTE**

#### **1. Introduction**

- 1.1 The European Commission has started a consultation on the preparation of a new Euratom Directive on nuclear waste. In the current climate with the construction of new reactors back on the agenda in many countries across Europe, and given the Commission's view on nuclear power, it is difficult to see this as anything other than an attempt to convince citizens the radioactive waste problem is solved.
- 1.2 An EU Directive on Nuclear Waste Management could, of course, be beneficial, and many countries, like the UK, have legacy waste which is going to have to be managed whether or not new reactors are built. However, a draft European Directive published in January 2003<sup>1</sup> set a worrying precedent. If it had been agreed this Directive would have committed Member States to 'disposing'<sup>2</sup> of (dumping) nuclear wastes, rather than allowing for the continued above ground storage of the waste, where it can at least be monitored and retrieved for treatment if necessary. There are concerns that the Commission will try again to force Member States to go down the deep 'Geological Disposal Facility' (GDF) route unless it gets a strong response from citizens and municipalities who support the use of strict environmental principles in the management of nuclear waste and argue for above ground, monitorable, retrievable, storage of waste at the site of production.

#### **The Deadline for consultation responses is 31st May 2010.**

- 1.3 The Commission is carrying out the consultation by way of a 7-question questionnaire on the Internet. It claims this will only take 10 – 20 minutes to answer all the questions. You can find it on:

[http://ec.europa.eu/energy/nuclear/consultations/2010\\_05\\_31\\_fuel\\_waste\\_en.htm](http://ec.europa.eu/energy/nuclear/consultations/2010_05_31_fuel_waste_en.htm)

- 1.4 The Annex to this briefing gives a guide to how you might fill in the form. However, as you might expect the space for comments is very limited (only 1000 characters), and the options to choose from are limited. The points made in square brackets in the annex can be included by sending a larger, written submission to the Commission, by e-mailing: [WASTE-CONSULTATION@ec.europa.eu](mailto:WASTE-CONSULTATION@ec.europa.eu)
- 1.5 Or writing to: European Commission  
DG ENER/Unit Nuclear energy, transport, decommissioning & waste management (DDG2.D2)  
Euroforum building  
L - 2920 Luxembourg

<sup>1</sup> COM (2003) 32 final

<sup>2</sup> COM(2004) 526 (final) defines disposal as the emplacement of radioactive waste, including spent fuel for which no further use is foreseen, in an appropriate facility without the intention of retrieval.

## **2. Commission Proposals**

- 2.1 The Commission highlights the cross-border impact of nuclear energy and increased international cooperation saying this requires the EU to maintain the highest safety, security, non-proliferation and environmental protection standards for nuclear generation. The EU therefore needs to develop a common legislative framework with respect to the safety of nuclear installations and the management of spent fuel and radioactive waste.
- 2.2 The Commission rather pre-empts the outcome of this consultation by claiming, without offering supporting evidence that “[f]inal disposal solutions are required for all existing radioactive waste, regardless of whether nuclear programmes are continued, expanded or phased out”. This statement also suggests the possibility of the Commission ruling Scotland’s current policy of supporting near surface, near site storage facilities illegal. It would surely be better to state that Member States should use the best environmental option to ensure the safe management of waste.
- 2.3 The Commission goes on to complain that “*progress on disposal solutions for high level waste and spent fuel subject to direct disposal, is noted only in a few Member States*”. It says legislation might be required to drive Member States to take the necessary decisions.
- 2.4 In 2004 the Commission released an amended Draft Directive<sup>3</sup> which removed the idea of imposing a timetable for deep disposal on Member States. However, it still required Member States to: “*study the possibility to give priority to the solution of deep geological disposal, taking due account of their specific circumstances*”. The Draft also noted that “*It is accepted among experts that, on the basis of present knowledge, geological disposal represents the most appropriate solution for long-term management of long-lived radioactive waste.*”
- 2.5 However, despite these amendments, and after long negotiations, the Council decided there should be “*extensive consultation*” with stakeholders before any instrument in this field was developed.
- 2.6 The Commission says it now intends to re-launch the process of enacting a dedicated legislative proposal on radioactive waste and spent fuel management seeking to achieve and maintain the safe management of spent fuel and radioactive waste. It says it will table a legislative proposal on this issue by the end of 2010.
- 2.7 The Commission is consulting on two possible options for binding EU legislation. The first option would be to strengthen in EU law “internationally accepted” principles and requirements laid down in the IAEA Safety standards and the Joint Convention on the management of radioactive waste and spent fuel. Member states would be required to adopt national programmes. Stakeholders are asked to give their views on possible requirements including the creation of a regulatory authority and an organisation dedicated to waste management.
- 2.8 The second option would be to adopt specific requirements for the scope, content and review of national programmes in addition to the first option. For example, the commission wants to know if the programme should include inventories of radioactive waste and spent fuel and identify disposal routes.

## **3.0 Annex 1: Suggested Questionnaire Response**

### **Q1. About You**

Are you an Individual; Organisation/Company or Public Authority?

---

<sup>3</sup> COM(2004) 526 final

[NB: The Commission does not require registration in the lobby-register for interest groups, as it normally does in other consultations!]

Region of Residence: European Union

**Q2 Your perception of the situation in your country of residence.**

Q2.1. Do you consider that the measures taken in your country of residence for ensuring the safe management of spent fuel and radioactive waste are sufficient?

A2.1. No

Q2.2. What are the main challenges related to the spent fuel and radioactive waste management with which your country of residence is still confronted?

A2.2 This is an example of a question where none of the options quite allow you to say what is necessary. Clearly it is wrong for the Government to propose allowing utilities to produce yet more waste by building new reactors when there is no solution to the problem of what to do with it]. NFLA suggest to tick the following options:

- Lack of independence of the regulatory authority. **[Because the Nuclear Decommissioning Authority is responsible for planning and delivering the geological disposal facility, and yet it also continues to produce nuclear waste].**
- Lack of a permanent and safe solution for the disposal of low and intermediate level waste.
- Lack of a permanent and safe solution for the disposal of high level waste and spent fuel.
- Lack of adequate financial resources for implementing disposal solutions.
- Insufficient involvement of the public in the decision-making process.
- Lack of transparency.

**Q3. General questions on the preferred approach for EU legislation governing the management of spent fuel and radioactive waste.**

Q3.1. Do you consider that a common approach of all the 27 Member States at EU level is needed for tackling the challenges related to the spent fuel and radioactive waste management with which your country of residence might still be confronted?

A3.1 No opinion.

**[Whilst it might be a good idea to require some member states to behave more responsibly with regard to nuclear waste management answering yes to this question could imply support for a Directive which is too prescriptive, for example, making deep disposal a legal requirement.]**

Q3.2. What would be your preferred instrument of Community intervention?

A3.2 Binding legislation (e.g. Directive)

**[Binding legislation would help to force countries which currently have an inadequate waste policy, such as Bulgaria, Slovakia, Lithuania, to sort out their mess, but as mentioned above a Directive which is too prescriptive would be counterproductive.]**

Q3.3. Do you consider that legal certainty would be enhanced if the principles of the IAEA Safety Fundamentals and the Joint Convention would become part of Community legislation?

### A3.3 Yes

**(The principles laid down in the International Atomic Energy Agency Safety Fundamentals are designed to protect people and the environment from the harmful effects of ionizing radiation. Ten safety principles cover responsibility for safety, role of government, leadership and management for safety, justification of facilities and activities, optimization of protection, limitation of risks to individuals, protection of present and future generations, prevention of accidents, emergency preparedness and response and protective actions to reduce existing or unregulated radiation risks The implementation of the IAEA Safety Fundamentals is voluntary; they are only recommended for use by States and national authorities in relation to their own activities.)**

The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management is an international convention which aims to ensure that during all stages of spent fuel and radioactive waste management there are effective defences against potential hazards in such a way that the needs and aspirations of the present generation are met without compromising the ability of future generations to meet their needs and aspiration.

Together these principles represent the lowest common denominator. It would be better to use the clear set of environmental principles agreed at the Nuclear Free Local Authorities October 2004. (See box)

**At its Annual General Meeting in Hull in October 2004, the Nuclear Free Local Authorities Steering Committee agreed a set of clear environmental principles which should be used for the management of nuclear waste. These are:**

- \* the idea that radioactive waste can be "disposed" or be rejected in favour of radioactive waste management
- \* any process or activity that involves new or additional radioactive discharges into the environment be opposed, as this is potentially harmful to the human and natural environment
- \* the policy of 'dilute and disperse' as a form of radioactive waste management (i.e. discharges into the sea or atmosphere) be rejected in favour of a policy of 'concentrate and contain' (i.e. store safely on-site)
- \* the principle of waste minimisation be supported
- \* the unnecessary transport of radioactive and other hazardous wastes be opposed
- \* wastes should ideally be managed on-site where produced (or as near as possible to the site) in a facility that allows monitoring and retrieval of the wastes

#### **Q4. Possible approaches for binding EU legislation governing the management of spent fuel and radioactive waste.**

The Commission has identified two possible options for binding legislation governing the management of spent fuel and radioactive waste.

Q4.1. Option 1 consists of strengthening the internationally accepted principles and requirements laid down in the IAEA Safety Standards and the Joint Convention on the management of radioactive waste and spent fuel throughout the Community. It would include important requirements as to the national legislative and regulatory system and would require Member States to adopt national programmes for the management of spent fuel and radioactive waste. Which are the fundamental principles and requirements that Member States should comply with under this policy option?

#### **A4.1 Here it is recommended that all boxes are ticked apart from two which deal with deep disposal.**

- To effectively protect future generations from the dangers of ionising radiation
- **[as well as present generations].**

- To establish and maintain a national legislative, regulatory and organisational framework for spent fuel and radioactive waste ('national framework')
  - To establish and maintain a competent regulatory authority in the area of spent fuel and radioactive waste management
  - To ensure the effective independence of the regulatory authority
  - To provide to the regulatory authority the necessary legal, human and financial resources in order to fulfil its functions
  - To ensure verifications of compliance with legal obligations
  - To ensure enforcement of legal requirements
  - To ensure that the licence holder has the prime responsibility for the safety of radioactive waste and spent fuel management
- [Assuming the licence holder is the producer of the waste]**

**[Whilst spent fuel should be declared waste i.e. not reprocessed, it should not be disposed of]**

- To ensure appropriate expertise and training to all the parties concerned
- To apply the "polluters pay" principle
- To ensure adequate financial resources for the safe management of spent fuel and radioactive waste
- To ensure the establishment and implementation of quality assurance programmes
- To implement transparency arrangements
- To actively involve the public in the decision-making process

**[Geological disposal should not be foreseen as the end point for High Level Waste and Spent Fuel. It has not been proven to be the best available technology for radioactive waste. There are still too many uncertainties. Once the waste is buried in a Geological Disposal Facility, if it does not behave in the way predicted, radionuclides could return to the biosphere much more quickly than expected, breaching risk limits. Better to leave future generations with a monitorable, retrievable store, and a choice about how to manage the waste than a leaking nuclear waste dump. Research needs to continue into a wider spectrum of options including robust, terrorist resistant stores, in order to have a real choice about which is the best available technology.]**

- To ensure adequate financial resources for the safe management of spent fuel and radioactive waste
- To ensure the establishment and implementation of quality assurance programmes
- To implement transparency arrangements
- To actively involve the public in the decision-making process

Other **[Clearly minimising the amount of future radioactive waste produced by phasing out nuclear power and not building new reactors is an important way to help protect present and future generations]**

Q4.2. Option 2 would contain, in addition to option 1, specific requirements for the scope, contents and review of national programmes for radioactive waste and spent fuel management throughout the Community. This question asks which elements should be included in national programmes for spent fuel and radioactive waste management?

A4.2 The proposed directive could include:

- Roles and Responsibilities **[keeping waste producers separate from the organisation which regulates and controls waste management]**
- Decision-making process **[requiring an open and transparent consultative process]**
- Inventories of radioactive waste and spent fuel

**And set out requirements for a:**

- Cost assessment

- Financing system

**and require:**

- Remedial actions for legacy waste

**[Going beyond that would be too prescriptive and designed to force Member States to opt for deep geological disposal].**

#### **Q5. Means to validate the implementation of binding legislation**

Q5.1. Which of the following requirements would you consider as valuable options for ensuring the implementation of binding EU legislation at the level of your country?

- To organise periodic international peer-reviews of the regulatory system (e.g. regulatory body, licensing system, enforcement)
- To organise periodic international peer-reviews of the national programme
- To report to the Commission and to the other Member States on the results of the international peer-reviews, when these are available
- To report separately to the Commission on the implementation of the legislative instrument, in addition to the national reporting under the Joint Convention to the IAEA

**[These points would enable citizens to file complaints when their Member State fails to implement the requirements of the Directive. It is better for Member States to report on implementation to the Commission as well as the Joint Convention, rather than just reporting to IAEA, because that would give fake-legitimacy, whereas reports to the Commission should require full transparency and allow citizens to complain.]**

#### **Q6. Possible impacts of binding legislation**

Q6.1. As to potential impacts, which of the following would you expect?

**A6.1** The Binding Legislation should mainly aim to enhance public involvement in the decision-making. There should certainly be no question of requiring ‘avoidance of unjustified delays of disposal solutions’ because disposal has not been shown to be the best environmental option]

#### **Q7. Additional suggestions and thoughts?**

Q7.1. Do you have additional suggestions or more specific thoughts on a potential legal EU instrument for spent fuel and radioactive waste management?

A7.1 The Directive should aim to increase awareness among decision makers, operators and the general public that there is still a huge amount of uncertainty surrounding the idea of deep geological disposal, therefore there is no final solution to the problem of how to manage radioactive waste.

Technical problems and uncertainties described by the Environment Agency (EA)<sup>4</sup>, and the European Union Joint Research Centre (EU JRC)<sup>5</sup>, in particular uncertainties regarding

<sup>4</sup> (1) Review of Nirex Report: ‘The Viability of a Phased Geological Repository Concept for the Long term Management of the UK’s Radioactive Waste’ Version 3.1 NWAT/Nirex/05/003, Environment Agency, November 2005.

(2) Technical Issues Associated with Deep Repositories for Radioactive Waste in different geological environments. EA August 2009

<http://publications.environment-agency.gov.uk/pdf/SCHO0809BQVU-e-e.pdf> See especially table 6.5 ( pp 141 - 143 ) “Summary of Major Knowledge Limitations on the Technical Issues”

Summary document: <http://publications.environment-agency.gov.uk/pdf/SCHO0809BQVV-e-e.pdf>

<sup>5</sup> Chapter Two of the Report (pp 10 – 21) entitled “The Technical Concept of Geological Disposal” shows that in fact there are a very large number of conceptual and research gaps associated with deep geological disposal. See W.E. Falck and K.-F. Nilsson “Geological Disposal of Radioactive Waste: Moving Towards Implementation”, European Union – Joint Research Centre – Reference

solubility and sorption of radionuclides and the presence as a gas, could mean estimated contamination levels calculated for a deep geological disposal facility are in error by a factor of 10,000 to 1,000,000 which clearly has implications for the risk estimates.<sup>6</sup>

The Directive should encourage Member States to reduce the production of nuclear waste to the bare minimum (i.e. only essential medical uses) as there is currently no acceptable solution for its management. This means ending plans for new reactors and phasing out existing stations.

Management of existing waste (including spent nuclear fuel) should be based on a clear set of environmental principles (see above), including the polluter pays principle.

The Directive should prescribe the highest level of security for waste stores.

The Directive should prescribe the highest level of transparency and ensure that the public has full access to information, and that there is full public participation in all steps of planning for management of radioactive wastes. The Directive should prescribe in the preamble that guidance should be taken from the EU Directive on access to information (2001/1049/EC), the EU Directive on public access to environmental information (2003/4/EC), the EU Directive on the assessment of the effects of certain plans and programmes on the environment (2001/42/EC), the EU Directive on the application of the provisions of the Aarhus Convention to Community institutions and bodies (1367/2006/EC) and the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

#### **4. Annex 2 – Interaction with the Scottish Radioactive Waste Consultation**

- 4.1 NFLA Radioactive Waste Briefings 22 and 22 provided an overview and suggested responses to the Scottish Government's consultation on its draft higher activity radioactive waste management policy. This consultation formally closed on April 9<sup>th</sup>, though late submissions are being permitted until April 30<sup>th</sup> for Scottish Councils.
- 4.2 This European consultation may have an impact on the outcome of the final Scottish policy. As a result the NFLA Secretariat has written to the Scottish Government seeking clarification on how it sees the impact of the European consultation on its own policy. The letter is attached below as Appendix 1. NFLA member authorities may wish to write in similar terms to the Scottish Government.
- 4.3 NFLA Scotland is holding a special seminar on radioactive waste management policy on Friday June 18<sup>th</sup> in the Council Chamber, West Lothian Council, Livingston. A flyer is attached as Appendix 2. The event will be opened out to all NFLA members and officers and non-member authorities. To register for the seminar please email the NFLA Secretary – [s.morris4@manchester.gov.uk](mailto:s.morris4@manchester.gov.uk) or contact the NFLA Scotland Secretary – [cathy.birrell@glasgow.gov.uk](mailto:cathy.birrell@glasgow.gov.uk).

---

#### **Report**

[http://ec.europa.eu/dgs/jrc/downloads/jrc\\_reference\\_report\\_2009\\_10\\_geol\\_disposal.pdf](http://ec.europa.eu/dgs/jrc/downloads/jrc_reference_report_2009_10_geol_disposal.pdf)

<sup>6</sup> See evidence by Nuclear Waste Advisory Associates submitted to House of Commons Energy and Climate Change Committee "The proposals for national policy statements on Energy", Volume II, Ev 428. <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmenergy/231/231ii.pdf>

**Copy of NFLA Letter to the Scottish Government**

Elizabeth Gray  
The Scottish Government  
Environmental Quality Directorate  
Waste and Pollution Reduction Division  
1-J Dockside, Victoria Quay  
Edinburgh, EH6 6QQ

15<sup>th</sup> April 2009

**Emailed to:** radioactivewasteteam@scotland.gsi.gov.uk

Dear Elizabeth,

**SCOTLAND'S HIGHER ACTIVITY RADIOACTIVE WASTE POLICY CONSULTATION 2010 – IMPORTANT QUERY OVER EUROPEAN RADIOACTIVE WASTE CONSULTATION**

It has just come to the attention of the Nuclear Free Local Authorities (NFLA) that the European Commission have announced an important consultation on strengthening EU wide radioactive waste management strategies. I attach detail of the consultation as outlined by the European Commission for your information. I expect you have been made fully aware of it.

The NFLA are concerned how these potential anticipated changes in EU binding law will affect the Scottish radioactive waste management policies. ENDS Europe report (1):

“The European Commission is consulting on two possible options for binding EU legislation on the treatment of nuclear waste. The commission has said it [will table a legislative proposal](#) on this issue by the end of the year.

The first option would be to strengthen in EU law "internationally accepted" principles and requirements laid down in the IAEA Safety standards and the Joint Convention on the management of radioactive waste and spent fuel.

Member states would be required to adopt national programmes. Stakeholders are asked to give their views on possible requirements including the creation of a regulatory authority and an organisation dedicated to waste management.

The second option would be to adopt specific requirements for the scope, content and review of national programmes in addition to the first option. For example, the commission wants to know if the programme should include inventories of radioactive waste and spent fuel and identify disposal routes.”

Both options are likely to have a significant impact on UK and Scottish radioactive waste management policy. Although these proposed changes apply to EU Member States (ie the UK), the NFLA believes that any revision of Scottish policies on radioactive waste has to adhere closely to the Commission's proposed new legislation.

The European Commission consultation ends on May 30<sup>th</sup>. Given that, as I understand it, the Scottish Government's consultation has been extended to April 30<sup>th</sup>, I would like to inquire what measures the Government is going to take to consider the Commission's announcement. Is the Scottish Government going to extend the consultation deadline to allow Councils and other interested parties the opportunity to consider this new development and allow such organisations additional time to include addendums to their own submissions to the Scottish radioactive waste consultation? The NFLA submission was sent to you prior to the original 9<sup>th</sup> April deadline.

I am informing NFLA Scotland authorities of the European Commission's consultation and the NFLA Secretariat will be submitting a full response to it.

To reiterate, the NFLA would like to know the Scottish Government's view on the Commission's consultation, and how it affects its own draft policy, and if it will extend the consultation date into May to allow additional comments to be made.

Yours sincerely,  
Sean Morris  
Secretary, UK and Ireland Nuclear Free Local Authorities

(1) ENDS Europe <http://www.endseurope.com/23713>  
EU Commission consults on nuclear waste proposal Appendix 1

(2) Wednesday 14 April 2010  
European Union consultation on radioactive waste – taken from the European Commission website

## NFLA Scotland seminar on radioactive waste

**Scotland's updated radioactive waste policy – is near site, near surface 'disposal' better than retrievable storage or a deep repository?**

Friday June 18<sup>th</sup> 2010, Council Chamber, Livingston Civic Centre, West Lothian, Scotland

Between January and April 2010 the Scottish Government published and consulted on its draft policy on higher activity radioactive waste management.

The Scottish Government policy, since June 2007, has been to support the long-term management of higher activity radioactive wastes arising in Scotland using long-term 'near surface, near site' storage facilities so that waste is both monitorable and retrievable, and transporting it over long distances is minimised. This was announced at the same time as rejecting plans to develop a deep geological disposal facility for this type of waste, which is currently being progressed in England and Wales.

The Scottish Government's draft updated Policy now also includes near surface, near site **disposal**. Furthermore, the documents make clear that **disposal will take priority over storage**. Is this change sensible and practical, or does it create long-term health and safety concerns? How will the Scottish policy interact with the quite different policy for a Geological Disposal Facility (GDF) in England? Should the updated policy be supported by Scottish Councils? How will the Scottish Government respond to the recent consultation? This **FREE** seminar will consider these issues in detail and is open to councillors and appropriate nuclear policy groups.

**DRAFT PROGRAMME (may be subject to change)**

- |         |   |
|---------|---|
| 10.30am | NFLA Scotland business meeting ( <i>NFLA members only – to 12pm in the nearby Howden Park Centre</i> ) followed by lunch  |
| 12.40pm | <b>Registration:</b> Tea/Coffee   |
| 1.00pm  | <b>Welcome:</b> Councillor Euan McLeod, NFLA Scotland Convenor  |
| 1.05pm  | Richard Lochhead MSP, Environment Minister for the Scottish Government – why Scotland's radioactive waste management policy has been updated and how it will be delivered (invited)                     |
| 1.30pm  | Professor Brian Clark, Committee on Radioactive Waste Management – CoRWM's view on Scotland's radioactive waste management policy (confirmed)   |
| 1.55pm  | Ian Fairlie, independent nuclear policy consultant and adviser to the Scottish Councils Committee on Radioactive Substances – SCCORS view on Scotland's radioactive waste management policy (confirmed) |
| 2.20pm  | Pete Roche, NFLA Scotland Policy Adviser – NFLA Scotland's view on Scotland's radioactive waste management policy (confirmed)   |
| 2.40pm  | Panel discussion  |
| 3.15pm  | <b>Conclusion</b>   |

**Nuclear Free Local Authorities Scotland, c/o Cathy Birrell, NFLA Scotland Secretary, City Chambers, Glasgow G1 3DL.**

**Nuclear Free Local Authorities UK and Ireland Secretariat, c/o Sean Morris, Room 6005, Town Hall, Manchester, M60 3NY Website: <http://www.nuclearpolicy.info>**