

Comments on the NWMO's *Dialogue on Proposed Transparency Policy: Draft Policy and Implementing Adaptive Phased Management 2008 – 2010: Draft Plan*

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Draft Transparency Policy: 2008

The opening statement regarding the dialogue on the proposed transparency policy states that the NWMO has made a commitment to being open and transparent in their *process, communication and decision-making*. In contrast, the draft policy focuses primarily on the communication of information to and from the public and interested groups, a commitment to describing how the information is used in decision-making and using the website to publish information. Although it might be the NWMO's intent to do so, specific commitments are not made to transparency regarding process and decision-making. This would require a clear statement addressing what steps the NWMO will take to make their processes and decision-making open and transparent and how/to what extent, interested stakeholders can participate and influence these proceedings. For instance, issues that the NWMO should address is the necessity of providing a long enough comment period to allow for stakeholder feedback and more open calls for participation in NWMO's various dialogue processes.

Further, although the policy states that the NWMO will describe how it has gathered and used information, we would point out that to date the NWMO has not always been clear regarding how it has used stakeholder perspectives. While the adaptive phased management approach reflects some of the views presented by stakeholders such as flexibility and monitoring, these perspectives line up quite strongly with those held by the dominant voices in the nuclear waste issue, namely the nuclear industry, and do not deviate radically from AECL's geological disposal concept. The NWMO has not clearly articulated how it incorporates or deals with views that differ from these predominant perspectives, such as those of Canada's Aboriginal peoples and environmental groups who clearly stated that geologic disposal was NOT their preferred option. Clear policy on this issue should be part of the new transparency draft.

Under implementation of the transparency policy the NWMO suggests that the website will be a main source of information. While this is certainly important, the NWMO heard through its public dialogues and surveys that web communication is a necessary but not sufficient form of information sharing. The NWMO should be much clearer regarding the range of ways that information will be communicated and should take into consideration such factors as language barriers, lack of technology access or knowledge, types of information preferred by different communities, commitment to 'plain language' documents, etc..

Implementing Adaptive Phase Management, 2008-2012: Draft Plan

We note that the NWMO reiterates its APM objectives including fairness, public health and safety, etc (page 8). While, in theory, these are admirable ‘motherhood’ statements, it is not at all clear how, when and to what extent these objectives can be operationalized. As outlined on page 14 with regards to the need for criteria against which to judge the success of the engagement process, we maintain that criteria are also required to evaluate the APM objectives. Also required is clear policy regarding how conflicts amongst the APM objectives will be resolved, and if there is a hierarchy amongst these objectives.

As a side note to the APM objectives comment, we found that the multiple use of the ‘objectives’ term in this document was confusing – there are APM objectives, strategic objectives and objectives for each strategy. This is further complicated by other frameworks that the NWMO has also outlined such as the ethical framework. Clarity regarding these various sets of criteria and their interaction and overall importance to the NWMO’s decision-making process is required. The NWMO states that it will apply the ethical and social framework and report regularly against this framework (page 15) – exactly how will this be implemented?

On page 9 the NWMO states that it has earned a “social license to proceed to implement Canada’s plan” and that Canadian believe that as an approach, APM has the potential to realise the articulated objectives (e.g. fairness, safety, well-being, etc). Then on page 11 the document states that the NWMO factored in a ‘broad spectrum of perspectives’, including those of Aboriginal Canadians. These types of statement are misleading since it is quite clear from the NWMO’s own documents that many Canadians, including the indigenous and environmental communities, do NOT agree with the APM approach. The NWMO has not been clear regarding how it takes into consideration these dissenting views nor has it accurately articulated these differing perspectives in the draft implementation plan.

The NWMO states that the first objective of its engagement program (page 11) is to ‘build trusting relationships’ with all interested parties. However, under its strategic objective regarding the construction of relationships, the idea of trust is lost and never mentioned. How will the NWMO proposed approaches develop and maintain trust? How will the NWMO develop their relationship with communities that have demonstrated that they do NOT trust the NWMO or other nuclear industry representatives? We note that the NWMO avoids dealing with these issues (page 12) when it states that communities will express more focused interests as the plans move forward. It fails to mention how it will deal with the strong positive AND negative views that will inevitably be expressed and how it will design a process that is trusted and fair by all involved.

Regarding the second strategic objective about building knowledge, on the one hand, we would like to applaud the NWMO for their commitment to appointing a technical review committee and to the very specific and clear set of objectives and ideas regarding the implementation of the technical research. The one exception here would be #8 – the commitment to the incorporation of ATK into technical research. We would like more specific details regarding how this will be accomplished.

On the other hand, we found the section about social research to be far less complete and detailed. First, many of the objectives and ideas are vaguely stated. For example, “Begin to identify the needs of communities with respect to the understanding of transportation issues” (why not – “With respect to the understanding of transportation issues, identify communities of interest and outline key issues”) and “Contribute to the identification of the capacity building needs of interested individuals and organizations in order to engage in NWMO dialogue and decision-making activities” (capacity is not defined; is this only about identification of needs, not meeting those needs?). Among other things, it is difficult to imagine how the success in meeting these objectives could be measured or evaluated. Second, the work plan states that there will be an annual review, but no details are provided. When will the review occur, who will undertake the review, how will it be evaluated, etc? This leads to our third point – why is there a technical review committee but not a social science review committee? Seaborn was quite adamant that this was lacking in AECL’s work and we agree. Leaving the social research so abstract and vague, without clearly stated objectives and measurement criteria means that stakeholders cannot ascertain exactly what the NWMO plans to do nor can they evaluate the outcomes of that work program.

In the document, the NWMO also states that it must consider the implications of ‘changes in nuclear energy policy’ (page 10) and ‘nuclear new build’ (page 18), but that these policy changes will not be made by the NWMO. While strictly speaking this is narrowly true, Seaborn and many respondents in the NWMO’s dialogue process clearly articulated that it will be very difficult for the NWMO to be seen as a legitimate implementing agency unless the issue of energy policy is addressed. Moreover, as the NWMO outlines on the very next page, their governance structure is such that the board of directors guiding the NWMO is comprised of the nuclear industry. Thus, the NWMO’s narrow position regarding involvement in energy policy is disingenuous; it can easily be seen as a way for the nuclear industry to advance their agenda without accountability. The NWMO is a part of the nuclear establishment.

In this and other documents, the NWMO selectively reports the results of its very broad and unprecedented public participation program. While we certainly laud the effort that the NWMO has undertaken to contact Canadians about nuclear waste, we also stress that they have a responsibility to fairly represent what Canadians have said to them. For example, on page 13, the NWMO state that “Citizens and specialists alike have told us of the need for significant and ongoing investments so that Canadians will have the benefit of leading technological innovation and assurance that institutional memory and the technical capacity of the nuclear workforce are not eroded”. This we argue is a very biased assessment of what was said to the NWMO. Our experiences and participation in matters related to the NWMO and nuclear waste in Canada could easily lead us to conclude that Canadians (citizens or “specialists”) do not want further investment in the nuclear edifice and infrastructure and would rather see the billions of dollars go into renewable energy and efficiency initiatives. It is incumbent on the NWMO to avoid these sweeping (self-laudatory) generalizations and present a balanced view of what Canadians say.

With regard to siting

The Draft Plan concludes with a discussion about developing a siting process, or more accurately, developing a process to develop a process to site a facility to be implemented by the

NWMO. As we have noted elsewhere, the NWMO has shown trepidation when entering into the siting component of nuclear waste management. This has still not changed. Whilst claiming that it seeks public input, the NWMO and the industry has been quietly making the major decisions of how and where a site will be found with little or no public input. What the public is asked to do is to provide “dialogue” on the design of a process for site selection. For many people, this is just too abstract and vague, particularly as the NWMO claims we are dealing with a process that can take 300 years to complete! The NWMO have committed to the volunteer siting approach and that structures fundamentally their approach to siting.

Major decisions taken to date without major public involvement (or “decision making”) that have an enormous influence on siting include:

1. The decision by the NWMO to ignore the requirement of the NFWA that it specify an economic region and appoint representatives from that region to its Advisory Committee.
2. The decision by the NWMO to approve and proceed with geologic disposal was determined by a nine member NWMO appointed Assessment Team (in fact three of the nine members were from the NWMO; see the NWMO publication *Assessing the Options*, 2005).
3. the decision by the NWMO over the inclusion of Ordovician sedimentary rock as viable for the location of a nuclear waste repository. This was not addressed in the Seaborn Panel and emerged relatively late in the process based primarily of a background paper commission by the NWMO. What this siting decision allows is the inclusion of southern Ontario as a potential host of the repository (it was excluded under the initial geologic concept which was limited to the Canadian Shield).
4. The consideration by the NWMO of nuclear provinces only as potential hosts of a nuclear waste repository (Saskatchewan as a provider of uranium; Ontario, Quebec and New Brunswick as nuclear electricity generators). Interestingly, the NWMO excluded Manitoba, a province that has a major role in Canada’s nuclear waste management regime as host of the Underground Research Laboratory and the Whiteshell Research Laboratory. Manitoba did pass legislation stating that it would not host a permanent disposal facility. As an aside, will the NWMO acknowledge and honour By-laws and Resolutions passed by communities that do not want to be considered as potential hosts either for a repository or a transportation corridor (e.g. Timmins, North Bay)? Will Alberta now be a candidate province in light of the fact that Bruce Power is seeking approval from the CNSC to prepare a site in the Peace River District?
5. The fundamental bases for a siting strategy are already in place and accepted by the NWMO. It is only specific details that remain to be worked out. Indeed, the NWMO siting strategy is articulated in the NWMO’s report *Choosing a Way Forward*: “Decisions will be guided by principles, objectives and processes that are developed collaboratively between the NWMO and interested communities (CWF, 2005 p. 146). Further, “It is up to the potential host community to determine how it will demonstrate its

willingness to host the facility. It will also be up to the potential host community to establish how it will invite its citizens to express their view.” (CWF, 2005, p. 229).

The NWMO’s offer for public involvement in the design and implementation of a siting process should be clearer. There is no *tabula rasa* as far as siting is concerned. The fundamental tenets of a siting approach are already established. Certainly there remain crucial decisions to be made regarding siting. The primary problem, as we see it, is that the NWMO continues to be reticent about the specificity of siting. Preferring instead to keep the repository “abstract and placeless” public contributions to the process are minimalized or, at worse, trite (e.g. “assure that best knowledge and expertise is applied”; “continue to build new knowledge”; *NWMO Annual Report 2007* p. 29). Without a focus or acknowledgement of place (or location), public comments, local knowledge, traditional knowledge, insights, fears, concerns, desires, expertise and the like are disassociated from place and thus abstracted. Some of the most tangible comments from the public and a spectrum of communities and groups are routinely ignored because they are too specific or because of the NWMO’s claim that they are beyond their jurisdiction (e.g. a moratorium on new build; a phase out of nuclear power).

Rather than focusing on developing an abstract process to develop a process to be implemented at a later date, we believe that the NWMO would be better off and truer to its goal of siting a repository if it simply acknowledged this clearly and got on with it. Its reticence to appear proactive, when in fact it is continually making important siting decisions, is disingenuous.

A few more observations:

1. The Nuclear **Waste** Management Organization came into being with the promulgation of the Nuclear Fuel **Waste** Act. Why is “nuclear waste” not used in the document and not defined in the glossary?
2. On page 9, it is stated that “APM is flexible and the timeframe is not fixed”. However, on page 10, it is stated that “... The NWMO [will be] ready to start the technical and socio-economic assessment of a site ... at the end of the five year period [2008 -2012]”. Thus, it seems as if there is a fixed timeframe.
3. On page 12, the NWMO states that “An Aboriginal Policy will be developed to guide our work”. It seems to us that the NWMO already has such a policy, given its efforts at contacting First Nations, setting up an Elder’s Council, holding workshops and the like. These efforts are commendable. The development of an Aboriginal Policy may best be directed towards the NWMO itself so it can state clearly and unambiguously how it will incorporate Aboriginal perspectives, how the NWMO will honour what the Aboriginal communities say to them, and how the NWMO will respect Aboriginal decisions even if they go against the wishes of the nuclear industry.

As usual, we hope you find the comments useful.

BLM, RGK