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## 1 – Background and Context

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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 Paper<sup>1</sup>.

1.2 The Partnership Steering Group has developed a work programme<sup>2</sup> derived from the criteria that it will use when making a recommendation on whether to participate further in the MRWS Site Selection process.

1.3 Criterion 1a 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". The specific task that the Partnership wishes to address is to consider whether "Adequate communication links between regulators and community are present and working". In this respect the Partnership have identified "Task 1a(i)- Assess the recent and current arrangements for regulatory interfaces with the community". The linkage is also noted to "Task 1a(iv)- Seek written reassurance from regulators on the nature of their engagement with a potential Community Siting Partnership".

1.4 This paper has been produced by the environment and safety regulators<sup>3</sup> in response to a request from the Partnership for an advance paper and then a presentation on 19<sup>th</sup> January 2011 covering:

- what mechanisms do the regulators use to *provide information* to the community?
- what mechanisms are in place to allow the community to *influence* regulatory decisions?
- how might the above two change if a DtP were to be taken?
- how specifically do you manage and maintain your independence from Government and NDA?
- how do the regulators see themselves relating to a potential Community Siting Partnership?

1.5 This paper focuses on the Environment Agency (EA), because of the EA's early role in regulating intrusive site investigation - for example, drilling boreholes, at a candidate site (or sites) for a geological disposal facility (GDF): for planning purposes, this might start around 2017. It also summarises the roles and responsibilities of the Health and Safety Executive (HSE) and the Department for Transport (DfT). The

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<sup>1</sup> *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.

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

<sup>3</sup> The Environment Agency, Health and Safety Executive's Nuclear Directorate and the Department for Transport.

HSE's formal regulatory role in nuclear site licensing is unlikely to begin until the developer decides to start underground excavations at a preferred site: for planning purposes, this might be around 2028. The DfT has an ongoing role in regulating transport of radioactive waste and this will continue throughout development and operation of a GDF.

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

## 2 – What mechanisms do the regulators use to *provide information to the community*?

2.1 As regulators, we see providing information to communities as an important aspect of our work. An equally important aspect is how the community can provide views and information to us. The table below illustrates some of the methods that the regulators use to support two-way communications with communities and others.

<b>Methods for involving communities and others</b>		
<b>Purpose</b>	<b>Description</b>	<b>Examples of methods</b>
<b>Providing information</b>	Providing information to help people understand an issue.	<ul style="list-style-type: none"> <li>• Leaflets</li> <li>• Newsletter</li> <li>• Briefing note</li> <li>• Displays</li> <li>• Advertising</li> <li>• Newspapers, TV, radio</li> <li>• Video</li> <li>• Site visits</li> <li>• Web-site</li> </ul>
<b>Gathering information</b>	To gain an insight into people's comments, questions or concerns to help us understand what people know and what they value.	<ul style="list-style-type: none"> <li>• Staffed displays</li> <li>• Surgeries</li> <li>• Staffed telephone lines</li> <li>• Web-site inviting feedback</li> <li>• Public meetings</li> <li>• Surveys, questionnaires, interviews</li> </ul>
<b>Involving people</b>	Providing opportunities for people involved to talk and listen to each other to build understanding of issues and concerns.	<ul style="list-style-type: none"> <li>• Workshops</li> <li>• Focus groups</li> <li>• Surgeries</li> <li>• Liaison groups (including representatives of bodies having specific interests)</li> <li>• Facilitated meetings (meeting managed by a third party unconnected to the issues)</li> </ul>

2.2 The regulators tailor their communications activities to the subject under consideration, (rather than applying all these approaches in all situations). We adopt a flexible approach to engagement that allows us to respond to the needs of communities and make good use of our resources.

2.3 In support of the Partnership's work, the regulators (EA, HSE and DfT) have:

- Provided information through briefing papers and presentations;
- Participated as observers at Partnership meetings and also, where appropriate, at some sub-group and other meetings;
- During PSE-1, commented on the Partnership's draft leaflet, and attended Neighbourhood Forums, public meetings and a Stakeholder Organisation Workshop to explain our roles and responsibilities;
- During PSE-2, provided continuing support to the Partnership, for example, by attending the Community Events and providing information on our regulatory role to members of the public.
- In addition, the EA provided comment and information to the British Geological Survey during preparation of the report identifying areas unsuitable for developing a GDF.

2.4 The regulators value these opportunities to provide information about our regulatory roles. We will continue to participate in meetings and events where our attendance is requested by the Partnership and where we consider it is appropriate for us to attend. This will include, for example, a forthcoming Stakeholder Organisation Workshop in January 2011.

2.5 We also provide information through publications (including web-sites), meetings and workshops. Some examples are:

- a joint regulators' webpage (<http://www.environment-agency.gov.uk/business/sectors/111766.aspx>) that provides information about our roles and includes an e-mail address ([geological.disposal@environment-agency.gov.uk](mailto:geological.disposal@environment-agency.gov.uk)) for queries relating to geological disposal;
- HSE has developed its own web-pages on geological disposal (<http://www.hse.gov.uk/nuclear/geodisposal.htm>);
- EA has developed web-pages that provide information on its scrutiny of NDA's work on geological disposal (<http://www.environment-agency.gov.uk/business/sectors/103464.aspx>);
- DfT has web-pages relating to transport of radioactive materials (<http://www.dft.gov.uk/pgr/freight/dgt1/road/guidance/guidance/guidance7class/>);
- Model international regulations governing the safe transport of radioactive material, together with additional guidance and information on the development of those regulations, is available from the International Atomic Energy Agency (<http://www.iaea.org>);
- EA has published guidance on its requirements for authorisation of a geological disposal facility – this is aimed at a developer but plain English summaries are provided for each chapter to help non-technical readers. The guidance is available at: (<http://www.environment-agency.gov.uk/business/sectors/99322.aspx>);
- EA has developed, with the Partnership's input, a booklet "Ensuring Environmental Safety" for non-technical audiences that describes the regulatory process and how an environmental safety case might evolve during that development of a geological disposal facility. There will also be a set of briefing notes on specific topics covered in the booklet;
- EA and HSE have met special interest groups such as Nuclear Waste Assessment Associates to discuss geological disposal issues and provide information on our role and approach;

- EA, HSE and DfT held a stakeholder workshop on geological disposal in 2008. Participants at the workshop included representatives from industry, universities, and environmental pressure groups. A similar workshop in 2011 is under consideration.

2.6 The above examples relate specifically to geological disposal. More generally within west Cumbria, the EA is involved in many activities that provide information to communities, such as:

- **Flooding and Coastal Risk Management**

The EA uses a variety of approaches to communicate and engage with local communities, to help inform, prepare and where possible manage the impacts of flooding, for example:

- We run national and local campaigns to improve awareness of issues associated with flooding which can include advertorials and leaflets. We can provide information on how to prepare for flooding and how to find the latest information on flood warnings (e.g. EA website, Floodline).
- We encourage the development of flood action groups in flood warning areas and we work with them to support their activities and develop emergency plans. We also work closely in partnership with them during flooding events. There are around 30 such groups in Cumbria.
- We consult local communities on proposals related to the development of flood defences and flood schemes, often using flood action groups, but also using others such as Neighbourhood Forums.

- **Generic Design Assessment**

The work that the EA and HSE have been undertaking to assess the designs of any new nuclear power stations that would be built which has involved the following types of communication and engagement with communities

- A joint website<sup>4</sup> has been established and maintained where the EA and HSE publish updates of their work, including quarterly reports. Individuals are also able to register here for e-bulletins.
- As part of their assessment EA has developed and published an engagement plan which describes the timescales and processes that are being used to engage with communities<sup>5</sup>.
- The EA raised awareness of its 2010 consultation by various means within Cumbria and the communities closest to the nominated sites, such as advertorials in local papers and press releases, and written communications to specific local authority elected members and officers, together with MPs, Parish Councils and NGOs.

- **Regulation of process and waste industries**

The EA regulates a variety of industrial sectors in west Cumbria (e.g. chemical, food/drink, waste) and has used the following types of communication to provide information to local communities.

- The EA encourages operators of larger sites to develop local liaison groups that meet periodically with the local community and which the EA attend to support (e.g. Iggesund Paper Board, landfills around Distington).
- The EA may undertake additional activities to engage with the local communities. For example, as part of the consideration of proposals to dispose of VLLW to a landfill, the EA visited specialist group of officers in the

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<sup>4</sup> See <http://www.hse.gov.uk/newreactors/index.htm>

<sup>5</sup> See <http://www.hse.gov.uk/newreactors/reports/stakeholder-engagement-plans.pdf>

Borough Council, met with the local Parish Council and attended open days near the site.

2.7 The UK Government has placed restrictions on communications spending across all Government Departments and agencies including regulators. We shall need to take account of these restrictions when planning and implementing our communications work but we shall still aim to provide information to support work on geological disposal.

### 3 – What mechanisms are in place to allow the community to influence regulatory decisions?

#### *Early engagement with the communities and the GDF developer*

3.1 The EA and HSE have no decision-making role during the early stages of the MRWS Site Selection process leading up a decision on selection of one or more candidate sites (Stage 4) or during the early part of Stage 5, when it anticipated that non-intrusive studies, such as geological mapping and geophysical surveying, will be undertaken (see Figure 1). DfT has an ongoing role in regulating the safety of radioactive waste transport; this is not directly related to possible development of a GDF (not shown in Figure 1). The EA’s role, prior to any formal application for an environmental permit, is to provide advice and comment on regulatory matters to Government, the developer, local authorities, Community Siting Partnerships, communities and the public.

**Figure 1 Regulatory roles and interfaces with communities**

Managing Radioactive Waste Safely Process				
Stage 4 Desk-based studies		Stage 5 Surface-based investigation		Stage 6 Underground operations
		Non-intrusive site studies	Intrusive site investigation	
<b>Start date (planning purposes)</b>	2012	2015	2017	2028
<b>No formal regulatory role</b> Regulatory advice and comment provided to, for example: <ul style="list-style-type: none"> <li>• Community Siting Partnerships</li> <li>• Communities</li> <li>• Local authorities</li> <li>• Government</li> <li>• Developer</li> <li>• Public</li> </ul>		<b>Environment Agency:</b> <ul style="list-style-type: none"> <li>• Start of environmental permitting process</li> <li>• Public consultation</li> <li>• Engagement with local communities</li> </ul> <b>Dialogue with Community Siting Partnership(s)</b> <b>Continuing regulatory advice and comment</b>		<b>Environment Agency:</b> <ul style="list-style-type: none"> <li>• Environmental permitting continues</li> <li>• Public engagement activities</li> </ul> <b>Health and Safety Executive:</b> <ul style="list-style-type: none"> <li>• Start of nuclear site licensing process</li> </ul> <b>Dialogue with Community Siting Partnership</b> <b>Continuing regulatory advice and comment</b>

3.2 During these early stages of the MRWS process, the regulators 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.

3.3 We can ask RWMD to provide further information to help communities understand how their concerns are to be addressed in its work programme.

3.4 The regulators have arrangements in place for early engagement with RWMD. RWMD can seek the regulators' views about RWMD's programme with a view to:

- improving safety, environmental protection and transport of radioactive waste;
- reducing the risk of unnecessary expenditure or delays by identifying, and if possible resolving, any significant regulatory issues at this early stage of developing a GDF.

3.5 Early engagement with RWMD helps us to develop a better understanding of its proposals and we can use this understanding to inform any comments or advice that we provide to communities.

3.6 The regulators will make sure that advice provided to a developer or information provided in dialogue with communities and others during the early stages of developing a geological disposal facility will not compromise their independence.

### ***Staged regulation of a GDF***

3.7 In April 2010, the Environmental Permitting (England and Wales) Regulations 2010 (EPR 10)<sup>6</sup> came into force: these regulations provide the EA with the power to implement staged regulation for a geological disposal facility. Staged regulation is a new process that provides regulatory control from the start of intrusive site investigation, such as borehole drilling, at a candidate site (or sites). The new power addresses the lack of early environmental regulatory control that was criticised in the past.

3.8 The developer of any future GDF would need to submit an appropriate environmental safety case to support an application for an environmental permit before starting intrusive site investigation and to support applications to progress to the next stage in developing a GDF.

3.9 An important element of staged regulation is that the EA would consult publicly on any decision on whether to grant an environmental permit to allow a developer to start intrusive site investigation at a candidate site (or sites) or, in the longer term, to go ahead with any development at a preferred site. Public consultation would allow communities to ask questions about the proposed decision and raise any concerns relating to environmental matters.

3.10 In addition to the formal public consultation process, the EA might for example decide to hold meetings or drop-in sessions in communities affected by the proposed development of a GDF. This would allow people to seek information, provide comments or raise concerns. Any comments or concerns arising during the public consultation would be considered by the EA in finalising its decision on whether to grant an environmental permit.

3.11 Staged regulation is designed to link with the land-use planning process and will provide a sound basis for dialogue between planning authorities and the EA. The land-use planning process would provide opportunities for communities to comment on any proposed development of a GDF.

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<sup>6</sup> See <http://www.defra.gov.uk/environment/policy/permits/guidance.htm>

## ***Environment Agency's consultation arrangements for environmental permit applications***

3.12 The EA's public participation statement – 'Working together: your role in environmental permitting'<sup>7</sup> explains how you can participate in our decisions on applications for environmental permits.

3.13 The EA has a national approach of increased consultation on applications at sites where we consider there is, or is likely to be a high degree of public interest. Our approach is tailored to specific local circumstances and may include one or more of:

- extending consultation beyond 20 working days
- wider advertising, e.g. in local newspapers
- consulting on the draft permit and decision document.

3.14 It is likely that the EA will apply this approach to the development of a GDF but, given the possible length of time which could elapse before the start of the formal regulatory process, there might possibly be some changes during the intervening years.

3.15 Under EPR 10, an organisation that wishes to be consulted on applications for environmental permit can seek a "Working Together Agreement" with the EA. These agreements set out what applications organisations want to see and how they will respond.

### ***Stakeholder influence in developing regulatory guidance***

3.16 In 2006, the UK environment agencies started a process for updating their regulatory guidance on the requirements for authorisation of solid radioactive waste disposal facilities (the GRA). An important first stage of the process was to hold two stakeholder workshops (involving the representatives from Government, regulators, the nuclear industry, local authorities, universities, NGOs and the wider public) to consider the draft specification for the updated guidance. The workshops provided a helpful and informative cross-section of views on the draft specifications and clearly indicated that separate versions of the guidance for near-surface disposal facilities and for geological facilities were needed.

3.17 In mid 2007, the UK environment agencies held two further workshops to seek stakeholder input to inform development of the content of the guidance. These workshops provided valuable direction on stakeholders' expectations of the guidance in terms of, for example, the information the guidance should contain and how it should be presented. The environment agencies took account of these further stakeholders' views in developing final versions of the guidance.

3.18 The workshops also helped inform our development of the staged regulation process particularly in terms of its links with the land-use planning process and our approach to engaging with communities and other stakeholders.

## **4 – How might the above two change if a DtP were to be taken?**

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4.1 If a Decision to Participate were to be taken, we would continue to provide support, advice and comment on environmental protection and operational safety within our regulatory remit, if requested. In doing so we would be mindful of the need to maintain our independence. There will be no change in our approach until the developer submits an application to start intrusive site investigations, for example,

<sup>7</sup> Available at: [http://www.environment-agency.gov.uk/static/documents/Business/Working\\_together\\_PPS\\_v2.0.pdf](http://www.environment-agency.gov.uk/static/documents/Business/Working_together_PPS_v2.0.pdf)

drilling boreholes, at one or more candidate sites during MRWS Stage 5. At this point, the EA shall start its formal regulatory process and this will include appropriate consultation arrangements.

## **5 – How specifically do you manage and maintain your independence from Government and NDA?**

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### ***Independence from Government***

5.1 The EA and the HSE are set up by legislation<sup>8</sup> as independent regulators separate from Government. Under the relevant legislation, both the EA and the HSE are governed by Boards with independent chairs and independent non-executive directors.

5.2 DfT is part of Government but acts as an independent competent authority for regulating transport of dangerous goods including radioactive waste. During the first half of 2011 the Radioactive Materials Transport Regulator will transfer from DfT to HSE.

5.3 The EA is a non-departmental public body, which means that it is not part of a Government Department. Legally, the EA's Board constitutes the EA and is directly responsible to Government Ministers for all aspects of its organisation and performance. Ministers expect the Board to ensure that the EA fulfils its statutory duties, in the light of the guidance and directions which they provide, and to ensure that the organisation operates with propriety, regularity, economy, efficiency and effectiveness. The Board delegates the EA's day-to-day management to its Chief Executive and staff. The EA's Board provides an important separation from Government and helps ensure the EA can act an independent regulator.

5.4 HSE's independence as a regulator is ensured under the Health and Safety at Work etc. Act 1974, where HSE is given direct responsibility for the enforcement of the nuclear safety regulatory system. There are also governmental mechanisms in place to maintain the regulatory independence. HSE is sponsored by the Department for Work and Pensions, which has no role in promoting nuclear technology or responsibilities for facilities or activities. However, the Secretary of State for Energy and Climate Change is answerable to Parliament for nuclear safety in Great Britain. In this respect, the Chief Inspector can provide factual information and advice to this Minister on matters of nuclear safety regulation, but this Minister is not responsible for HSE's nuclear regulatory actions.

5.5 The regulatory processes implemented by the EA and the HSE under the legislation also provide clear separation from Government's role in policy-making and enable the regulators make permitting decisions based on their own knowledge and judgement. The EA and the HSE can also seek independent expert advice to inform their decision-making.

5.6 Regulators must have regard for Government policy in their decision-making but do not consult Government when making regulatory decisions such as deciding whether to grant an environmental permit or a nuclear site licence.

5.7 The HSE, DfT and the EA make sure that any advice that they provide to Government would not compromise their independence as regulators of any future GDF.

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<sup>8</sup> EA – Environment Act 1995 (<http://www.legislation.gov.uk/ukpga/1995/25/contents>); HSE – Health and Safety at Work etc. Act 1974 (<http://www.legislation.gov.uk/ukpga/1974/37>);

## Environmental Permitting – Secretary of State's powers

5.8 Under the EPR 10 (see 3.7), the Secretary of State or the Welsh Ministers can require any application to be sent to them for determination (regulation 62). This would be an exceptional step and likely to be taken only if the application involves issues of more than local importance – for example, if the application:

- is of substantial regional or national significance
- is of substantial regional or national controversy, or
- may involve issues of national security or of foreign governments.

Any decision on the need for determination by the Secretary of State or Welsh Ministers would be made solely on those grounds, with no consideration of the substantive merits of the application itself.

5.9 The Secretary of State or the Welsh Ministers will deal with these cases as soon as possible. The regulator must consult as normal, but should send any representations to the Secretary of State or the Welsh Ministers. The Secretary of State or the Welsh Ministers may choose to arrange a hearing, and would normally do so if the regulator or the operator asks for one. The Secretary of State or the Welsh Ministers may then direct the regulator to:

- grant a permit, stating which conditions should be included, or
- refuse the permit.

## Charging

5.10 Much of regulators' work is funded through direct charges to the industries that we regulate. Charges provide an income stream that is independent from any Government grants that we might receive. For the EA, this approach is consistent with the "polluter pays" principle. The EA's proposed charges are subject to annual public consultation and people can clearly see what we are charging industry for and how much we propose to charge. DfT do not currently charge for their regulatory services, although this situation is under review.

## ***Independence from NDA***

5.11 As regulators, we treat RWMD in a similar way to any other business that we regulate, and ensure that any advice or comment that we provide does not compromise our regulatory independence. Under a formal written agreement between the two organisations, NDA must pay the EA for the pre-application regulatory advice that the EA provides: the document makes it very clear that we are not acting as consultants and that we will provide advice on matters that fall within our regulatory remit. A similar arrangement is in place between the HSE and RWMD. Subject to national security restrictions, we aim to operate in a transparent and open manner, and we make our advice publicly available so that stakeholders can see what we are saying to RWMD.

5.12 As future regulators of a possible geological disposal facility, we recognise that it is important that we work closely with RWMD, to ensure that RWMD can prepare to meet regulatory requirements when it seeks an environmental permit to start intrusive site investigation at one or more candidate sites. The EA/HSE/DfT report on our joint regulatory review of RWMD's organisational management arrangements<sup>9</sup> demonstrates that we take an independent regulatory approach. In our report, we present a clear set of recommendations on how RWMD needs to change to become an organisation capable of holding an environmental permit and eventually a nuclear site

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<sup>9</sup> <http://www.environment-agency.gov.uk/business/sectors/114335.aspx>

licence. The recommendations represent joint regulatory views and were not influenced by NDA or RWMD.

5.13 As regulators we have published independent guidance on our requirements that we would expect RWMD to meet in developing and operating a geological disposal facility:

- The EA has published guidance that sets out the requirements that the developer would need to meet when applying for an environmental permit to develop or operate a geological disposal facility. This includes a requirement for an environmental safety case that we would be subject to our independent regulatory review.
- HSE has published '*Safety Assessment Principles for Nuclear Facilities*' that apply to the assessment of safety cases for nuclear facilities. The principles apply to nuclear safety and radioactive waste management. The Principles provide a framework for making consistent regulatory judgments on nuclear safety cases. Similarly, DfT has published guidance on the requirements for safe transport of radioactive material. All this guidance is available to the public and provides a sound basis for our regulatory independence.

## **6 – How do the regulators see themselves relating to a potential Community Siting Partnership?**

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6.1 We would support the activities of a Community Siting Partnership (CSP) if invited to do so. We would provide information on our role and responsibilities and any matters of regulatory interest that arise from the work of the CSP. We would be transparent and open in our dealings with the partnership, while ensuring that we maintain our independence as regulators. We would seek early views from a Community Siting Partnership on an appropriate method and level of engagement.