CUMBRIA MWDF - 2008

FURTHER SUBMISSION BY MR S BALOGH

MATTER 6

Are the policies covering radioactive waste soundly based and consistent with the latest national and regional policy and policies of other relevant authorities and bodies concerned with the disposal and storage of radioactive wastes?

Preamble: When is a waste not a waste?

Although they pose a hazard, the material referred to as ‘Radioactive Wastes’ (radwaste) are excluded from the hazardous wastes directives of the EU. This is because their regulation is supposedly in the hands of authorities who are signatories or agencies of the Euratom treaty and its successors, Maastricht and Amsterdam. Under other treaties such as OSPAR the UK must oblige all nuclear operators who are responsible for such material to have their own indemnity or else to be underwritten by their government. The recognition here of the seriousness of the hazard is unambiguous. The policies in Cumbria’s minerals and waste plan rank hazardous & radwaste separately.

Now: A waste is a liability, which can safely be ignored and consigned to oblivion once satisfactory disposal has been accomplished.

A hazardous waste is such a liability that special measures must be adopted to arrange for satisfactory disposal. Following which, again, it can be consigned to oblivion.

No-one is going to ignore radwaste - even if it can be safely returned to the earth.

ERGO: radwaste is EITHER not a hazard, OR not a waste.

-Of course, there are exceptions: an example comes to mind of a radioactive substance that does go to waste-viz:-.

Molybdenum-99 is used to form technetium-99, which can be injected into patients and used as a tracer to help diagnose heart disease or bone cancer. It provides crucial information for diagnostic tests.

Of the six reactors that produce molybdenum-99 worldwide, four have recently been out of action. In August, a Belgian reactor suffered an uncontrolled release of radioactive iodine into the atmosphere, resulting in an emergency shutdown. Meanwhile, a French reactor is running maintenance checks, a reactor in the Netherlands has problems with its cooling system, and a nuclear plant in Canada closed temporarily last month due to a fierce electrical storm. The Canadian reactor also shut down in December, causing worldwide shortage of molybdenum-99.

The shortage will last well into the future, and doctors are advised to delay nuclear imaging for non-urgent cases. [New Scientist 15/09/2008]
Because management decided that abstraction is too expensive, Tc 99 is discharged from Sellafield to the Irish sea where it accumulates in the Green gland of lobsters and other crustacea. Given a biochemical pathway by which this precious metal can be concentrated and extracted from seawater, simply throwing it away is, indeed, a WASTE!

(i) What is the basis and justification for the approach to radioactive wastes, including the specific policies for storage/disposal of high/intermediate and low-level radioactive wastes, and is the strategy based on a robust and credible evidence base?

Cumbria’s Minerals and Waste plan will have currency for a mere ten years, but in that time it may be the only input that council taxpayers get to influence decisions that will have currency for millennia of geological time. It is because of this that I objected from the outset (April 2007 onwards) to the linkage that the planners make by reference to ‘storage/disposal’. These 2 must be distinguished in order to make any sense of the evidence with respect to either.

(ii) Are the policies covering the storage/disposal of radioactive wastes consistent with national and regional policy, and does the Core Strategy have sufficient flexibility and contingency to accommodate likely changes and developments in national and regional policy on the storage/disposal of radioactive waste?

Cumbria’s interim guardianship of the ‘Nuclear Legacy’ should not be linked with any, ultimate, ‘disposal’, which will take many decades to effect. Better to refer to their reburial because that leaves open the issues of monitoring & retrievability.

It would of course be altogether more open, democratically accountable and honest if there were a separate plan for Cumbria’s nuclear future, but that has been disallowed.

In the preceding (1999) M&W plan, explicit reference was made to the provision of facilities for the reburial of radwaste under policy 57 of the structure plan-tacit recognition that returning this material to the earth is no part of a waste plan. In reply to my representations on this, I was told-“Noone now expects a deep repository to be proposed and constructed in Cumbria within the lifetime of the next Structure Plan.”[Hetherington letter 20 07 1999].
That explains, perhaps, why the present plan has undergone so many revisions in the course of the consultation period—during which, national policies on such things as new build, emergency and anti-terror planning, and the belated production of the white paper have undergone a zigzag of changing direction enforced by rebuttals under judicial review and punctuated by setbacks of the industries’ own making.

(iii) Have circumstances changed since the preparation and submission of the Core Strategy such that the policies covering radioactive wastes can no longer be considered sound, particularly in terms of emerging national policy and the latest regional policy?

One of the most glaring of these, as regards the formulation of Chapter 8 policy, arises from the privatisation of Drigg. As late as November 2007, the preferred option for policy 16—as it then was, that “It could not be considered sustainable development [to make Drigg a national facility] and the County Council’s policy is that Cumbria should not be regarded as the disposal route for all the UK’s radioactive waste”iv This volte face means the present policy has not been drawn up in keeping with the Statement of Community Involvement. Nor yet with Cumbria’s own CC Planning & Consultation Code of Conductv. It has been imposed by fait accompli.

Cumbrians are no strangers to this kind of approach:

In 1994, Secretary of State Gummer amended the Joint Structure Plan, unilaterally striking out planning policy by decree as “unreasonable and unjustifiable”. This had the effect that the RCF Inquiry was an appeal and held, therefore, at the expense of Cumbrian Council Taxpayers.

In 1999, when the minerals and waste plan was last revised, I wrote to CCC’s Senior Policy Officer to point out that, in order to avoid a repetition of this kind of thing, our plan needs to be underpinned by EU laws. The waste directive is prescriptive as regards hazardous wastes, and the treaty of Maastricht dedicates an entire chapter to the problems arising from Nuclear Energy Programmes.

I append the evasive letter I received from CCCvi.

(iv) What is the appropriate nature, scope and level of detail of policies relating to the disposal/storage of radioactive wastes which should be included in the Core Strategy & Development Control Policies DPDs?

To qualify for example, to draw down EU disaster funding, should some new nuclear disaster occur at a Cumbrian site, it would need to be shown that the local plan had not in fact permitted a development that effectively courted
disaster. It is imperative, therefore that our plan qualify under EU Directive 96/29/EC 1996 L 159\textsuperscript{vii} (effective 13/05/2000) for subsidiarity under the terms of Maastricht (reaffirmed by Amsterdam). The keywords the treaty applies to this are “Integrated & Adequate” and I wish the formulation of the present DPDs had been carried forward with this in mind.

(v) Does Chapter 8 properly reflect the roles and responsibilities of other bodies/agencies responsible for planning and delivering the management of the country’s radioactive wastes (including DEFRA/Nuclear Decommissioning Authority), and do Core Strategy Policies 10-12 properly reflect the strategies and proposals of these agencies/bodies?

The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management\textsuperscript{viii}, was the first legal instrument to directly address these issues on a global scale. It entered into force on 18 June 2001. We have just learnt that Ministerial responsibilities for Energy & Environment have been reassigned so that it is now no longer clear which Department of Government will have competence to report on policy to the IAEA under the Convention. In this kind of uncertainty it appears all the more essential that the Local Plan has authority, and, that if it makes use of a precautionary principle, it could be seen to have validity in the fluid situations that such rearrangements of central Government engender.

Discharges to the Irish Sea from Cumbrian Nuclear Facilities have already attracted International litigation despite, in at least one case (Norway), the regulator having imposed limits that were breached. If treaty signatories can show that such breaches are not only the result of flagrant disregard for regulatory controls but also of a permissive local plan, CCC may well find that they incur penalties as well. But there is an eloquent silence on the whole question of effluent ‘disposals’ in the present documents. It is clearly felt that because the pipeline extends beyond Cumbrian territorial confines, what emerges from it has no relevance. This ignores the fact that it originates in a Cumbrian factory and, to a substantial extent, is washed up on Cumbrian shores. This represents neither an Integrated nor an Adequate approach to the formulation of a local plan.

The UK has made a commitment in the Sintra declaration\textsuperscript{ix}
‘to reduce discharges, emissions and losses of radioactive substances by the year 2020 to levels where the additional concentrations in the marine environment above historic levels, resulting from such discharges, emissions and losses, are close to zero’.

This stated intention must be enforcibly enshrined in our local plan, (its predecessor emerged before it could be taken into account) which will have effect throughout the period over which the reductions must take place. The omission of any reference to this declared National Policy amounts to a dereliction of duty.

(vi) Does Chapter 8 give a factually correct and up-to-date description of the current and likely future activities being undertaken in Cumbria in terms of storage/disposal of radioactive wastes, and adequately consider the full range of relevant issues relating to the disposal and storage of radioactive wastes?

It is not an accident that a layman has difficulty to engage with the language in which these plans have been couched. The UK adopts a position ‘in line with the definition of radioactive waste in the Joint Convention’, i.e.

"radioactive waste means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the Contracting Party or by a natural or legal person whose decision is accepted by the Contracting Party, and which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of the Contracting Party”.

If Humpty Dumpty decisions determine when and by whom a radioactive material shall be defined as radwaste, there is no rationale for planning outcomes. At a stroke, for example, powers have been conferred on the new owners of the Drigg site to determine what is Low Level Waste and what Plutonium Contaminated Material. The Operators at Sellafield have been ‘redefining’ radwastes for expedience to the point that the regulators have been obliged to licence each plant and each radionuclide one by one. There is no chance that an up to date, factual account would read as plain English. While spent fuel and other accumulating nuclear hazards are an ever-increasingly Cumbrian problem, calling them wastes allows Cumbria's local government to make provision for them only in a Minerals and Wastes plan.

The purpose of the planning enforcement provisions in the Town and Country Planning Act 1990 is to protect the integrity of the planning system and development control process, by enabling local planning authorities to remedy any harm to amenity or other interest of acknowledged importance which may result from unauthorised development.

The language of the proposed MWDF adopts wholesale the terminology that has been evolved in order to obfuscate. To inspire confidence in the planning system it must carry the conviction that the minerals and wastes policies will
give CCC the right of decision over more than just what to do with spoil from a deep repository, rather than being required to ‘show the flexibility’ to accommodate likely changes in emerging policy.

The Sellafield Mixed Oxide plant was an unauthorised development which was given retrospective licence rather than being the subject of enforcement. That is why it is not merely the cumbrian public that takes a deeply sceptical view of the planning process as it applies to the UK Nuclear Industry.

(vii) Does Core Strategy Policy 10 set out a sound and appropriate approach to the storage of high and intermediate radioactive wastes, in line with national and regional policy?

Two changes have been recently added to policy 10 to include international standards and best practice, and to publish the review process that oversees. This may go some way to convince our EU neighbours that community laws will be respected without the need for their intervention in local planning applications. Policy 10, for the duration of the present plan, alone applies:-

Spent fuel from putative new build reactors will not even have been irradiated. Processed radwaste will not have reached suitable state for reburial. The eyes of the world will be turning a careful scrutiny on how Cumbria interprets this conformity with International law, with a view to enforcing it themselves when it comes to successor plans.

(viii) Does Core Strategy Policy 11 set out a sound and appropriate approach to the process of selecting a site for the disposal of high/intermediate level radioactive waste; and should it also refer to the need for off-set community benefits packages?

Under Policy 11 we are invited to consider a fanciful process by which the white paper outlines the steps by which a deep repository may be proposed and commissioned. Reference is made to collaboration between NDA and the regulators, but none of the specific research that must have proven rigorous answers for the many questions this procedure begs are spelled out.

Ominously we are told that core strategy policy may be subject to review. Does this mean that the plan may, summarily, undergo revision before it has expired?
The Nuclear installations on Cumbrian soil are civilian facilities, serviced by an infrastructure for which Cumbrians pay; their local authority must have the right to enforce their local plan!

(ix) Does Core Strategy Policy 12 set out a sound and appropriate approach to the storage/disposal of low-level radioactive wastes, and should it allow alternative sites to be considered?

Others will put the case with regard to the deletion of CCC policy from the original published core strategy more forcibly than I: I am not a lawyer nor a planning expert, my remarks cannot bear the professional authority the questions demand, but as a Council Taxpayer, they put trenchant arguments that have been overlooked but nonetheless carry authenticity. I have tried to highlight the deficiencies of planning for nuclear issues in the context of a waste plan.

Cumbrias Council Taxpayers are not best served in this.

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i New Scientist September 2008-10-20
iii supporting documentation to this submission
iv Cumbria MWDF – Changes to the preferred options Core Strategy – Nov.2007
v http://www.cumbria.gov.uk/elibrary/Content/Internet/535/632/395199450.doc
vi Balogh representation to MWDF May 2008
viii www.iaea.org/Publications/Documents/Conventions/jointconv.html