

FEDERAL OVERSIGHT IN THE CONTEXT OF THE *NUCLEAR FUEL WASTE ACT*

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Abstract

The purpose of this paper is to clarify the meaning of federal oversight in the context of the *Nuclear Fuel Waste Act*, how the Government of Canada conducts this work, and why it is so important.

1. Introduction

Enacted by Parliament in 2002, the *Nuclear Fuel Waste Act* sets out the necessary conditions by which a comprehensive, integrated and economically sound national approach for the long-term management of nuclear fuel waste would be developed, government-selected, and subsequently implemented. This key piece of federal legislation forms the basis upon which nuclear fuel waste will be managed in Canada – essentially indefinitely.

While the Act is not overly prescriptive, it does, however, set out clear responsibilities and obligations for the Government of Canada, nuclear energy corporations (i.e., Ontario Power Generation, New Brunswick Power Corporation, and Hydro-Québec), Atomic Energy of Canada Limited, and the Nuclear Waste Management Organization (NWMO).

Upon coming into force, the Act required the nuclear energy corporations to establish a waste management organization to evaluate options for the long-term management of nuclear fuel waste, recommend a preferred option to Government, and implement the government-selected approach. In 2002, the NWMO was created to address these legislative requirements. The Act makes clear that the NWMO is not an agent of the Crown.

Under the Act, the federal government is responsible for making policy decisions in relation to the long-term management of nuclear fuel waste. Acting as the steward of the legislation, the Minister of Natural Resources is responsible for administering the Act on behalf of the Government of Canada. This means that the Minister is to ensure that all parties subject to the legislation comply with its legislative requirements. The Minister also has legislative responsibilities that must be followed. Officials within Natural Resources Canada (NRCan) support the Minister in fulfilling these legislative duties.

In 2007, the federal government made its primary policy decision under the Act by selecting the Adaptive Phased Management (APM) approach, recommended by the NWMO, as Canada's plan for the long-term management of nuclear fuel waste. In arriving at its decision, the government's review included an examination of the NWMO's study of options, *Choosing a Way Forward*, which included the three options outlined in the Act (i.e., deep geological disposal in the Canadian Shield with the possibility of retrieval; ongoing storage at the reactor sites; and above- or below-ground ongoing storage at a central site) as well as the NWMO's APM approach. The review also took into

consideration the reports from the five National Aboriginal Organizations, discussions with the nuclear provinces, and comments the government had received from Canadians and environmental non-governmental organizations from 2003 to early 2006.

This policy decision would not have been possible without federal oversight which included: an interdepartmental and central agencies review of the NWMO's work during its study phase on developing options for managing nuclear fuel waste; a review by NRCAN senior management; a Governor in Council decision on the recommendation of the then Minister of Natural Resources; and publication in the Canada Gazette.

In announcing its decision, the Government of Canada stated that it would continue to provide ongoing oversight to ensure that the public interest is protected and the requirements of the Act are fulfilled, as the NWMO moves ahead with implementation.

While the Government of Canada did not prescribe to the NWMO how specifically to implement the approach, the federal government, through its oversight role, must ensure that the organization complies with the requirements of the Act throughout implementation. In the event that a party subject to the legislation, including the NWMO, fails to meet the requirements of the Act, the Government of Canada may issue a directive for non-compliance and require that it be addressed within a timely manner.

In 2009, seven years after the Act came into force, the federal government, in particular the Minister of Natural Resources, made another important policy decision by approving the NWMO's initial funding formula and the 2008 funding contributions for each of the nuclear energy corporations and Atomic of Energy Canada Limited to set aside in trust to finance the lifecycle costs of implementation. Again, such a policy decision would not have been possible without federal oversight which included: a policy study conducted by the Organisation for Economic Cooperation and Development (OECD) Nuclear Energy Agency (NEA); an examination of the elements of the funding formula by a highly regarded actuarial firm; an interdepartmental and central agencies review; and, a review by NRCAN senior management.

The NWMO has responsibility for updating the formula every five years and establishing the amount of funds that each of the nuclear energy corporations and Atomic Energy of Canada Limited must set aside in trust to pay for the full lifecycle costs of implementation.

Although likely several years from now, the Minister of Natural Resources will be required to approve the final funding formula, proposed in the NWMO's first annual report, following the issuance of a construction and/or operating licence by the Canadian Nuclear Safety Commission, pursuant to the *Nuclear Safety and Control Act*. This will be an important policy decision, with far reaching consequences, to ensure that the cost estimates are accurate and that necessary funds are available to sustain the safe management of nuclear fuel waste over an indefinite period of time.

1.1 Oversight

While the term *oversight* is not widely used or well-understood by civil society, it is commonly cited and referred to by politicians, decision-makers, federal and provincial government officials and often appears in mainstream media. In fact, the term *oversight* can have different meanings. Therefore, it

begs the question as to whether the public really understands what it means in the context of the story being told. In all likelihood, *oversight* is vaguely understood by those hearing or reading about it for the first time – and perhaps many times thereafter. It is, therefore, not surprising that the general public lacks a good understanding of what federal oversight entails and why it is so important.

Dictionaries define oversight in the following ways: supervision, watchful care, a person responsible for the oversight of the organization, the action of overseeing something, the job of checking that a process or system is working well and, the process of supervising and monitoring a project. While these dictionary definitions are easy to understand, they lack specificity.

An article published by the American Non-Governmental Organizations Coalition for the International Criminal Court (AMICC)^[1] indicates that oversight is equated with “supervision” in management jargon as a general review of institutional performance, performed by bodies, units and processes that provide “watchful care” to an organization. The article goes on to mention that the elements of oversight include auditing, evaluating, monitoring, inspection and investigation.

2. Oversight in the *Nuclear Fuel Waste Act*

Generally speaking, these definitions could be used to describe oversight in the context of the Act. Federal oversight is the ongoing careful work, through activities such as monitoring, observing, reviewing, assessing, verifying, investigating, advising, and recommending to make sure that the Act is being upheld, all parties comply with their responsibilities under the Act, and the public interest is protected.

Oversight is not about being involved or participating in the day-to-day activities of an organization.

2.1 Reports by the NWMO

The Act makes clear that the NWMO must submit an annual report to the Minister on its activities during that year. It is the responsibility of the Minister of Natural Resources to table the NWMO’s annual reports and triennial reports in both Houses of Parliament, within the first 15 sitting days of that House after the Minister has received the report. Tabling the NWMO’s annual reports is an important responsibility for the Minister, ensuring that Parliamentarians and Canadians are being kept apprised of the NWMO’s progress. Once tabled, the NWMO’s reports become a record of the Library of Parliament, to be available for the benefit of current and future generations.

Under the Act, the Minister of Natural Resources is also required to make a public statement on the NWMO’s annual report within 90 days of their receipt. This period provides valuable time, between the tabling of the report in Parliament and making the statement public, for the Minister to take into consideration the public’s comments and concerns regarding the report.

2.2 Minister’s statements

One of the most important responsibilities of the Minister of Natural Resources in regards to administering the legislation is the Minister’s annual public statement on the NWMO’s annual reports, the first of which was posted in 2003. Ongoing federal oversight of the NWMO’s activities provides context for the Minister to issue a public statement that is thoughtful, reflective of the NWMO’s work

and progress, and considerate of the public interests. Great care and attention is taken in the preparation and issuance of these public statements which are made public on the Government of Canada's website.

To assist the Minister of Natural Resources in meeting the obligations under the Act, including the publication of the Minister's statement, NRCan officials provide ongoing oversight support by: carefully monitoring the activities of the NWMO to ensure it complies with the Act as it implements Canada's plan; meeting regularly with the NWMO to remain current on developments; taking great care by accurately and regularly reporting to the Minister and the Parliamentary Secretary on the NWMO's activities; keeping abreast of and reporting on nuclear fuel waste management activities in other countries; providing policy advice and recommendations to the Minister; reviewing and preparing responses to inquiries from Parliamentarians and the Canadian public; and, representing Canada on international committees (e.g., OECD NEA, Radioactive Waste Management Committee and Forum for Stakeholder Confidence). These oversight activities ensure legislative compliance is being achieved.

The Minister's statement is important for a number of reasons: (1) it is an opportunity for the Minister of Natural Resources, acting on behalf of the federal government, to send a clear message to Canadians that the government is keeping a watchful eye on the NWMO and its members to ensure that they comply with the legislation; (2) it provides an opportunity for the government to provide general policy direction to the NWMO, taking into account comments it has received from Canadians during the year; and, (3) it enables the government to re-iterate its support for and underline the need to find a long-term management solution for all of the nuclear fuel waste produced in Canada, which is vital to the future development of nuclear energy in Canada and its role in reducing greenhouse gas emissions.

Ministers' statements also play an important role in encouraging engagement by Canadians, including Aboriginal peoples. The statements have consistently encouraged Canadians to learn more about Canada's plan by reading the NWMO's annual reports and visiting its website. Most recently, statements have also called upon Canadians to become involved in the decision-making process and to openly discuss their views with the NWMO.

Ministers' statements also provide valuable feedback on the NWMO's work and progress. Over the years, the statements have commented on the great strides that the NWMO has made. And of course, with the assistance of departmental officials, the Minister of the day will continue to monitor the activities of the NWMO with great care and attention to ensure that the organization fulfills its responsibilities under the Act.

2.3 Expectations for the NWMO

While there are a number of explicit policy decisions to be made by the Government of Canada at various times as outlined in the *Nuclear Fuel Waste Act*, there are, however, a number of implicit expectations that the Government has articulated in the Minister's annual public statements.

Over the years, some of the key federal expectations of the NWMO's work include requirements to:

- Enable productive public consultations to take place in developing long-term management solutions;

- Demonstrate leadership and commitment towards implementing a long-term solution for managing nuclear fuel waste;
- Implement a consultative and inclusive process involving Canadian stakeholders, including Aboriginal peoples;
- Explore and develop new and creative ways to inform and engage Canadians;
- Engage young people in the consultative process;
- Work with appropriate organizations and entities involved in the transportation to enhance understanding among stakeholders of the safe and secure transportation of nuclear fuel waste;
- Work in close collaboration with citizens, community leaders, and different levels of government – all of whom will be critical to the success of this project;
- Enhance education and outreach activities to interested communities;
- Build and strengthen strong, solid relationships and communications with provincial, local and Aboriginal governments;
- Attract and retain highly skilled personnel to meet current and future challenges for the long-term management of nuclear fuel waste;
- Improve public awareness and social acceptance of nuclear fuel waste management;
- Address the socio-economic effects associated with a waste management facility in a community; and,
- Work in an open and transparent manner at all times.

3. Conclusion

Oversight is an effective tool used by legislatures, regulators and other bodies. It requires due diligence on the part of individuals who are committed to ensuring compliance with the spirit and intent of the law through a number of actions, such as monitoring and reviewing information, attending meetings, receiving and responding to inquiries from organizations, community leaders, Canadians, and interest groups.

Great care and attention to accurately reporting and reflecting on activities regarding nuclear fuel waste management must be heeded at all times. Clear, succinct and accurate policy advice requires individuals to provide effective oversight of this important public policy issue.

4. References

- [1] American Non-Governmental Organizations Coalition for the International Criminal Court, “Questions and Answers on an Independent Oversight Mechanism for the International Criminal Court”, February 6, 2008.