

March 31, 2022

TO: Natural Resources Canada (NRCan)

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Dear Policy Review Team,

Having participated in the Radioactive Waste Policy Modernization engagement process (as a municipal staff member), I eagerly read the “what we heard” summaries. These documents were extensive and thorough, identifying many key themes. Accordingly, I had high hopes for the draft policy. Unfortunately, the draft released in February 2022 is disappointing in its sparseness, lack of connection to the inputs from the engagement process, and failure to recognize and be responsive to host jurisdictions.

### Document structure:

At a most basic level, the document would benefit from a more coherent structure of subsections and page numbers. Although the background section defines the four classes of radioactive waste, this section does not appear to be part of the core policy and should be. No definitions are provided for **interim waste storage** or **long-term (permanent?) waste storage** or of **storage** versus **disposal** or for **decommissioning**. The meaning of these terms must be clear so that the public and communities understand what is being discussed and the time frames associated with the terms.

A **set of principles** is alluded to but never explicitly listed, though “three key areas” and “policy priorities” are outlined. Later in the policy, these three “areas” become headlines for segments of the core policy. Are principles, priorities and areas used interchangeably here?

The title is confusing, as it refers to the process rather than the result, which this document constitutes.

### Recommendations:

1. Change the title to “Canada’s 2022 Draft Policy for Radioactive Waste Management and Decommissioning”.
2. Add more structure within the document via subsections with subtitles i.e., Background, Purpose, Scope, Vision, Principles, Definitions of Key Terms, Roles, Program Objectives, Timelines, Oversight and Accountability, Evaluation Criteria, etc.
3. Clearly list the principles.

4. To improve transparency and accountability, and to link back to the engagement process, add an appendix to the policy that shows how key concerns heard in the public consultation have been addressed in the policy. If these concerns are to be addressed elsewhere, there should be an indication of where and when.

## Roles and responsibilities

The draft policy describes roles and responsibilities only for the federal government and waste producers/owners in a rather vague manner. It does not outline how provinces, territories, municipalities, or Indigenous communities or public are envisioned as participating in the policy processes, (decision making, oversight, evaluation, etc. that will be involved). There were many comments in the “what we heard” document that pointed to the need for elaboration and clarity of roles in a way that respects/fulfills the policy principles such as collaboration.

An objective of the policy should be to allow the reader to easily understand roles and accountabilities of the various federal agencies, the waste producers/owners and other participants.

### Federal roles should be clearer

This policy suffers as a standalone item because Canada lacks an up-to-date overarching Canadian nuclear energy policy. What are the roles of the minister and ministry? The perceived conflict of NRCan in both regulating and promoting nuclear energy and its by-products is barely addressed. While resolving this conflict may be beyond the scope of the radioactive waste policy, the question remains. If it is not answered in this policy, refer to where it is answered.

Which body will be responsible for working with/overseeing the owners/producers on public engagement? That does not seem like a typical or current role of the Canadian Nuclear Safety Commission (CNSC) and the Nuclear Waste Management Organization (NWMO) shouldn't be overseeing itself.

If there is to be a new oversight body/council to support industry and communities, the policy should establish that role. For example, would that body undertake the policy review?

How does the NWMO fit in? During the public engagement, there was substantial criticism of having waste policy and strategy developed by the waste producers/owners. How will this policy address the perception that an integrated waste strategy developed by the waste owners will not be driven primarily by the public good? These are key points raised in the engagement submissions. Overcoming the perception of “cozy

relationships” among the regulators and the regulated in an industry where “everyone knows everyone” is a critical challenge. Cooperative relationships are not necessarily a bad thing, but integrating outside perspectives and ensuring transparency will be vital.

Nor does the policy acknowledge that the federal government is also a producer/owner of substantial quantities of radioactive waste. How will it “oversee” itself to protect the safety of Canadians and ensure that there is no political interference over the very long term involved with nuclear waste? The federal government’s past behaviour with respect to contamination at Port Hope is a clear example of how this can go wrong. For years, the federal government used its power to protect its legal and corporate interests at the expense of host community interests before finally coming to a settlement. Avoiding such a situation in future will be critical to building the confidence of potential host communities.

#### Recommendation:

The policy must describe how the various roles of federal entities for regulation, oversight, energy policy, research and resource development will be separated and allow for independent advice to government and decision-making. Roles must be differentiated and explicit so that the public can hold the agents in the process accountable and so that the independence of oversight is real and credible.

#### Recognize provincial/territorial roles

Provincial/territorial governments are not explicitly mentioned even though they play a key role in determining what mining and nuclear facilities will exist in their geography and whether nuclear energy will be part of their electricity supply. Recent provincial announcements in support of SMR development demonstrate this role. Provincial agencies are the largest generators of nuclear power and related waste in Canada. Other provincial ministries and agencies are responsible for property tax policy and assessment, worker health and safety, environmental monitoring and land use planning. The policy should acknowledge these roles and the potential for both cooperation and conflict among the provincial agencies and ministries with respect to nuclear facilities. It should also outline the respectful relationship that a province/territory which owns/operates/supports nuclear operations is expected to have with its nuclear host communities, whether Indigenous or municipal.

#### Recommendation:

1. Provincial/territorial roles and responsibilities should be clarified in regard to waste and decommissioning policy, especially since provinces (and potentially territories) both make energy policy and are the sole shareholders of waste producing entities. Clarify the extent to which provinces/territories also have

general regulatory roles relating to the siting, operation, and decommissioning of facilities that store nuclear waste.

2. Provincial/territorial ministries and agencies should also be required to regularly engage with their nuclear host jurisdictions to review and update policies related to nuclear waste facilities within their geographic area (labour, taxation, land use, emergency planning, environmental monitoring, etc.).

### Formally recognize the roles played by host jurisdictions.

Federal nuclear policies, including radioactive waste management policy, should recognize the role of host communities, whether they are Indigenous communities, single tier or two-tier municipalities, and treat them as respected partners. In the case of Bruce Power and OPG operations in Durham Region, there is no specific requirement in the policy requiring the waste producers/owners to fund or formally engage with these communities with respect to waste that has been, and will continue to be, managed and stored there for decades. The property tax payments associated with the waste sites relate to types of buildings (e.g., warehouse) and do not properly compensate the communities for ongoing and growing presence of radioactive wastes at these locations. Increasingly, municipalities have little ability to seek relief from provincial policies that disadvantage their citizens.

Host municipalities have legislated responsibilities in relation to nuclear facilities located in their communities. Lumping host municipalities in with “interested communities” or the “public” is not acceptable. Communities with existing nuclear operations have no choice but to live with the nuclear waste on their doorstep and make the best of it. For example, Durham Region recently released a nuclear sector strategy. It outlines an approach of optimizing the opportunities related to the decommissioning of the Pickering nuclear plant while understanding and mitigating closure impacts. The federal policy must acknowledge host municipalities as partners in planning, development, review, implementation and ongoing safe operations and eventual decommissioning and clearly acknowledge the decades-long timeline involved.

The policy does not address the lack of intervenor funding for municipalities to participate in the ongoing regulatory processes with respect to development or expansion of waste facilities in their communities.

### Recommendations:

1. The third bullet under the vision statement speaks to collaboration and transparency and should specifically acknowledge host municipalities. The requirement for the federal government and waste producers to work with the

municipalities throughout the waste facilities planning, development, and lifecycle must be specified in the policy.

2. Section 2 of the policy commits the government to “openness, transparency and inclusive engagement with...”. Host municipalities should be recognized in this section with clear obligation of the federal government and waste producers/owners to engage them and **be responsive**, not just early on, but throughout the facility life cycle.
3. This section should also commit the federal government to funding host jurisdictions (Indigenous and municipal) to participate in the engagement process and require owners/producers to sign community agreements with the host jurisdiction.
4. A mechanism to fund host/potential host communities to participate in the ongoing regulatory processes also must be added to the policy.

## Waste infrastructure

Within the lengthy vision statement on page 3, the phrase “By 2050, key elements of Canada’s waste disposal infrastructure are in place...” begs policy and practical questions.

What key elements are envisioned? Who does this “visioning”? How does this process line up with the current NWMO plan for a single deep geological repository (DGR)? What “remaining facilities” are contemplated? What constitutes “well underway”? The NWMO reports “progress” but has not selected a site after 20 years of planning and there is no guarantee that a willing host community for the DGR will emerge from their process. This policy should require that a contingency strategy be outlined for that eventuality.

2050 is a long way off – when will progress in the developing the infrastructure be evaluated? Are there interim targets for action? For example, when is the Integrated Radioactive (RA) Waste strategy that also includes low and intermediate level waste expected to be released? What about an elaboration of the radioactive waste policy by 2030 with respect to Small Modular Reactor (SMR) wastes or centralized versus dispersed waste facilities?

### Recommendation:

Either add this information to the policy or indicate how/when it might be provided and by whom if other documents should be referenced.

## Policy integration and evaluation

The wording in the blue call-out box on the third page is confusing and vague. Suggest simplifying to say “advance three key federal priorities” or “three key federal commitments”, whichever is more accurate.

The next paragraph states that existing acts and regulations will support the implementation of the draft policy. Since these acts and regs already exist, what will be different/improved now that we have this overarching policy? It states that these “policy tools are regularly reviewed and updated” and that this new policy for Radioactive Waste Management and Decommissioning will be reviewed “as appropriate”. What are the triggers for review? Is the only framework for review the alignment with International Atomic Energy Agency guidance? What about assessing how well the policy is serving Canadians? Or whether it is meeting its objectives or living up to its principles?

### Recommendation:

There should be a five-year review of how well the policy is meeting its objectives and satisfying Canadians, given that major decisions are coming up (i.e., NWMO selection of DGR site in 2023, likely approvals of SMRs).

## Add community education and engagement

The policy fails to outline how communities will be supported to participate in engagement on the planning, development, operation of waste management facilities and infrastructure and on decommissioning across the long timeframe of these projects/facilities. During the NWMO engagement sessions, it became clear that even interested citizens in current host communities have limited understanding of nuclear waste management and responsibilities in the sector and their own region. There may be a role for academia to play in this objective, as a trusted source.

### Recommendation:

The policy must describe how communities directly affected by radioactive wastes and decommissioning (resulting from past federal decisions and future implementation of this policy) are to be supported in the long-term. This should include public education and engagement as policy priorities. This is a conspicuous omission.

## Additional suggestions:

1.2 The wording needs to be clarified - “centred on an independent nuclear regulator” or “relying on”. Also, it is not clear who approves the waste disposal and decommissioning plans. Are any changes being contemplated to the current regulatory,

oversight and approvals structures? If these kinds of details are, or will be, available in other documents, the policy should direct the reader to those sources.

1.3 The federal government “may” accept responsibility for…historic waste liabilities for which a producer no longer exists.” This wording is not acceptable. These host communities that had no say in the approval of the “historic” use. Change “may” to “shall”.

1.4 “other levels of government” could be enlisted to help maintain institutional controls. If this includes municipalities, the role must come with resources outlined in a negotiated agreement (maintenance, training, funding indexed to inflation). Local taxpayers should not bear costs for ongoing work or unexpected events (e.g., leaks).

1.5 “respect for environmental considerations” related to reprocessing must be clarified. Would there be an impact assessment before reprocessing was allowed in an existing or new facility? Will a municipality have a right of refusal for such activities?

1.8 How will this policy enforce the best practice of planning waste and decommissioning from the outset of nuclear projects? The only allusion to this is in 1.8 “prevent and minimize, as far as practicable…”. “Practicable” can’t be a purely economic or engineering concept. Specific discussion of waste management with affected communities must be a key part of early discussion prior to project approval. The impact assessment stage should examine how the project will be designed to minimize and safely manage the waste and how host communities can hold the producers to account.

2.2. requires waste owners to advance waste management and decommissioning solutions “in a timely manner to avoid shifting responsibilities …to future generations”. A relative timeline for these solutions to be confirmed should be specified, e.g., “before an operating licence will be granted” in the case of a new facility or “before next licence renewal” in the case of an existing facility. A “plan to plan” a solution is not sufficient.

2.4 requires “early input” from those affected but says nothing about how the owner must integrate that input, make changes to the project, or respond to those who gave the input. It does not require a two-way dialogue to improve the project for the community.

2.5 Along with Indigenous rightsholders, waste producers/owners should engage existing and future host municipalities in a respectful partnership on siting, construction, operation and monitoring of radioactive waste management and decommissioning activities. In some cases, these two communities will intersect, but each has their own responsibilities to the citizens and members they represent.

2.6 puts the entire job of engaging “Indigenous peoples, provinces, territories, etc.” in developing and maintaining “an integrated strategy for waste management and decommissioning” on the waste producers and owners. The federal government will “require, oversee” and presumably approve this strategy. No timing for the engagement or what constitutes an acceptable engagement or response to the community is described.

## Conclusion

In general, the policy is too vague to be meaningful to citizens. It lacks clear objectives and timelines. It does not adequately describe the intended relationships between the various participants in the nuclear policy and regulatory regime, including host communities. There is no timing or framework outlined for evaluating the effectiveness of the policy.

It is not clear how this policy will address the significant gaps of the previous policy. If this policy is to be the guiding document for the integrated waste and decommissioning strategies, it should contain, at minimum, a list of expectations for those strategies.

There are various other omissions. The policy does not:

- outline or require a visioning process that engages the community in determining the end state desired as a result of waste management and decommissioning, beyond the need for monitoring.
- clearly state that *in situ* decommissioning is a last resort or offer guidance on the acceptable timing or approaches for dealing wastes and decommissioning. This provides little assurance to current or potential host communities.
- indicate how the creation of, and subsequent need to manage, radioactive wastes will be/should be balanced with other factors in the original decision to create a regulated facility. How will risks/benefits to the present and future economy, community well-being and broader ecosystem be balanced in these decisions?
- incorporate the possibility that government-to-government negotiations may be needed to secure a waste facility siting agreement with Indigenous people.
- transparently address many points raised in the “what we heard document.

Regulating industry seems to be the focus in this draft but this is not the only purpose of a Canadian policy on radioactive waste management and decommissioning. The policy is also a vehicle to communicate with citizens and others about how the nuclear industry will operate with respect to wastes. A key purpose of the policy is to create clarity and confidence for citizens and communities about how their interests and wellbeing will be protected in the short and long term. Assigning a responsibility to do

something and saying there will be "oversight" is not sufficient. Indigenous rights holders, host municipalities, and people in general need to know what that looks like in practice and how independence or success will be assessed.

The opportunity to provide feedback on the draft policy is appreciated and hopefully the responses you receive will result in meaningful improvements, greater clarity and broader scope in the final policy.

Best wishes for success in this challenging task.

Sincerely,

[REDACTED]

[REDACTED] Whitby

ON [REDACTED]