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Briefing on the Nuclear Decommissioning Authority

The Nuclear Decommissioning Authority (NDA) was established on 1st April 2005. It has taken over ownership all of British Nuclear Fuels (BNFL) sites, as well as those of the United Kingdom Atomic Energy Authority (UKAEA).¹

The original focus for the NDA, as written in the White Paper 2002 in which it was first proposed, was that it should be "*squarely on [dealing with] the nuclear legacy*"². It was also proposed the Government would fund the Authority, leaving it free to concentrate on clean up and decommissioning.

Government policy on the NDA has since changed dramatically, making it heavily dependent on waste-producing activities for its income. Half of the NDA's estimated £2bn funding for 2005-2006 is meant to be generated by commercial operations.

One of the main income generators for the NDA is the THORP spent fuel reprocessing plant at Sellafield. Originally estimated to cost £300m (and start operating in 1987) it was not completed until 1992 – at an estimated cost of £1.8 billion. With the additional costs of associated facilities, including new waste treatment buildings, the total bill reached £2.8 billion.³ The plant is currently in a prolonged shut-down following a major incident. Lost production is expected to cost £300m this year alone. Any shortfall in the NDA's budget because of the accident at THORP will have to be made up by the Government using taxpayer money.

The other reprocessing plant, B205, deals with highly radioactive spent nuclear fuel from Magnox reactors (the first generation of UK nuclear power plants). BNFL operates these ageing, loss-making reactors on behalf of the NDA. The last magnox plant will close in 2010, until then the taxpayer will continue to pay for reprocessing spent fuel from these plants and will then have to find even more money for managing the resulting wastes for decades to come.

The NDA's Annual Plan (2005) also proposes it should commission the MOX Plant (SMP) at Sellafield to produce plutonium fuel for reactors overseas. The SMP, yet to work properly at estimated production output, is also many millions over budget. Greenpeace believes operation of the SMP would not be compatible with waste legacy and non-proliferation objectives. Greenpeace is campaigning for the NDA not to commission the SMP for plutonium fuel production, but instead to utilise the plant for immobilising the UK's civil and military stocks of plutonium.

¹ See NDA website – www.nd.gov.uk

² DTI (July 2002) *Managing the Nuclear Legacy: A Strategy for Action*, para 1.12

³ Aubrey, C, *THORP: The Whitehall Nightmare*, Carpenter 1993.

As the NDA's recently published draft strategy reveals, decommissioning and clean up is going to be a massive bill for the taxpayer. The estimate for decommissioning those sites owned by the Authority has now risen from £48 billion to £56 billion. It is expected to continue to increase further over the coming years.

Despite promises in the White Paper in 2002, there is no provision in the Energy Act for an annual review of the rationale for keeping open those facilities owned by the NDA⁴. The NDA has however opened its strategy up for public consultation, allowing people to comment on the economic and environmental sense of operating reprocessing plants and old reactors. This should allow people to challenge the environmental and economic rationale behind both THORP and the SMP.

FINANCES

Is the NDA's bailout of British Nuclear Fuels legal?

As a result of a legal opinion commissioned by Greenpeace, the NDA's funding is presently under examination by the European Commission's Competition Directorate because it may constitute illegal state aid. This is because the Authority will 'relieve' BNFL of all of its financial liabilities related to nuclear waste.

In its preliminary investigation the European Commission argued that under the polluter pays principle, BNFL (a Government owned commercial company) should be liable for paying for its nuclear waste and decommissioning.

Aiding British Energy's bailout

The NDA will be used to help implement the Government's £3.9 billion bailout of the failed private nuclear company, British Energy. This huge amount is to cover the historic liabilities owned by BE. The NDA may however also be used to channel additional funds towards BE's decommissioning and nuclear waste liabilities if the company does not find the money to pay for future wastes.

Will there be more taxpayer funding on nuclear waste?

The Energy Act allows the Government – via the Authority - to bailout future nuclear private operators if they fail to properly fund their nuclear waste and decommissioning liabilities. The Government refused to remove the provisions which allow for future nuclear bailouts from the Energy Act.⁵

The issue of segregated funds is particularly pertinent because of the case of British Energy. It failed to set aside enough money to cover its liabilities before it became virtually bankrupt – a situation that was allowed to develop because the relevant Government

⁴ DTI (July 2002) Managing the Nuclear Legacy, para 5.27

⁵ On 15 January 2004 Lord Whitty told the House of Lords (Column GC170) that “there may again be circumstances in which a private sector operator cannot meet its nuclear obligations ... we must retain the possibility of the Government meeting such costs”.

department failed to effectively monitor BE's liabilities Fund.⁶ Powers did not exist to force the company to have a fully funded, separate decommissioning and waste account.

Instead of passing legislation to minimise a recurrence of the BE debacle, the Government has passed legislation which allows for taxpayer bailout in the event of the failure of future private operators. The Government should be insisting that any company proposing new nuclear reactors can only do so on the condition that it is prepared to set up and fully fund a segregated account fund - otherwise the taxpayer could, once again, be saddled with a private nuclear operator's liabilities. (concerns were expressed about this by a House of Commons Committee⁷).

It is highly unlikely private investors would want to make such a commitment as the financing of new nuclear projects invariably goes massively over-budget. In fact it is a very real concern that the 'bailout provisions' in the Act could actually prove to be an incentive to some private investors to build new reactors who will know that they can make profits through not setting aside enough money for liabilities – safe in the knowledge the Government will pick up the tab.

New nuclear reactors under the NDA?

Former Energy Minister, Stephen Timms, said the NDA can only operate nuclear power stations pending their *decommissioning*.⁸ But the NDA can also operate facilities, including reactors, for waste treatment and the Energy Act gives the NDA powers to build new nuclear plants. As part of its waste management strategy it may propose building plutonium-burning reactors to dispose of the UK's plutonium stockpile from reprocessing. Such a programme would have major security and safety implications.

To allay these concerns Greenpeace has urged the NDA to explicitly rule out the construction of any reactors, including plutonium-burning reactors, and instead pursue a programme of research into immobilising plutonium as a waste form.

Environmental concerns and radioactive discharges

Despite lobbying by environmental groups, the Government decided against putting any environmental and human protection principles in the legislation governing the NDA. We are concerned that this failure to have to overarching environmental and health and safety protection principles could lead to:

- inappropriate methods of nuclear waste management being promoted;
- decommissioning being used as an excuse for increases in discharges of radioactivity to the environment;
- a failure to prioritise the most hazardous waste; and
- unnecessary and unethical transfers of nuclear waste from one site to another.

The UK Strategy for Radioactive Discharges 2001-2020 says that some radioactive discharges into the environment may increase as a consequence of decommissioning.

⁶ National Audit Office, 6/2/04 http://www.nao.gov.uk/publications/nao_reports/03-04/0304264.pdf

⁷ House of Commons Trade and Industry Committee 17th Report para 20. <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmtrdind/968/96809.htm>

⁸ House of Commons Standing Committee on 27th May 2004 (Column 193&4)

The Government needs to clarify that decommissioning should not automatically lead to, or be used as an excuse for, an increase in radioactive discharges into the environment.

The Government fought hard to ensure the Energy Act did not contain any firm obligations on the NDA to work within best international practice on radiation and health or promote state of the art environmental principles (even though other countries have included these in their nuclear legislation). The environment movement believes that guidance notes on these issues are not sufficient to protect the environment or human health in the event of a dispute over costs versus radiation protection at any of the NDA sites.

Conclusion – can the NDA set out to achieve its original remit?

We believe the NDA should be dealing only with legacy wastes and not be dependent on waste creating activities for any of its income. It should have been given a clearly defined objective, underscored with the environmental and organisational principles, including legal obligations to avoid or minimise waste creation – and a statutory duty to consult all stakeholders and the public at large.

Now it exists, the NDA now has the opportunity to tackle the UK's ever increasing stockpile of hazardous wastes. It should not stand by and squander this opportunity by allowing waste creating activities to continue. We hope that through the strategy consultation process it will act in an open and transparent way and apply the best principles of environmental protection – such as stopping reprocessing and not opening the MOX plant.

8 House of Commons Standing Committee on 27th May 2004 (Column 193&4)