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Dear

Comments on NDA Draft Strategy

Attached (*Annex. 1*) are HSE's comments on the NDA's draft initial strategy. I understand that you are at present reconsidering the competition schedule in light of the recent announcement of a proposed sale of British Nuclear Group, and in response to other matters. Consequently, at this stage we do not provide a detailed response to this vital aspect. However, we look forward to an early opportunity to comment on a revised draft schedule that reflects these factors.

It is understandable that the draft strategy consultation should generate a significant number of comments from HSE, as I'm sure it will from other regulators: the proposals being put forward by NDA will have major implications for many of the UK's nuclear licensed sites for decades to come. If the NDA gets its strategy right, with buy-in from the regulators and other key stakeholders, then there is a good prospect that health and safety (as well as environmental and security) standards at these sites can be secured and improved, decommissioning and clean-up accelerated, and the liabilities discharged in a more cost-effective manner. However, there is no room for error in this, given the potential consequences of mismanagement of high hazard nuclear sites, so I am keen that we all work together to get this as right as we can from the outset.

HSE has already given its public support to the creation of the NDA, and we remain fully committed to working with the NDA and the licensees to ensure that your mission is successful. I am pleased, therefore, that many of our comments are fully supportive the aspirations set out in the NDA's draft strategy. We recognise the huge efforts that went into preparing this draft, and believe it forms the basis for a strategy to which we can provide our strongest backing. We particularly welcome NDA's:

- clear declaration of its mission as safe, cost effective, accelerated and responsible decommissioning;
- vision that its number one priority is to fund and demonstrate real progress in reducing high hazards in legacy facilities, especially at Sellafield; and
- intention to expedite decommissioning timescales, especially Magnox sites.

Not surprisingly, however, with a 'first-of-a-kind' document of such scope, we have some reservations and these are set out in our response. Key amongst these are:

- that the strategy places too much emphasis on 'value for money' and 'acceleration', without addressing, as a priority, securing and improving health and safety – particularly nuclear safety; and
- a concern over the resource implications and diversion of attention that the draft competition programme may have for HSE and for the site licensee companies, potentially to the detriment of nuclear and conventional safety.

I can assure you that HSE stands ready to work in partnership with the NDA, and will use our best endeavours to help in achieving its goals. But we will also continue to apply a clear, consistent and proportionate focus to our independent regulatory duties, to ensure that, at all nuclear sites, the health and safety of both public and workers is secured.

Yours

M W WEIGHTMAN

cc:

J. McHugh - EA
G. Hunter – SEPA
P. Hatton – OCNS
S. Conney - FSA
C. J. Pecover – DfT, RMTD
P. Waller – DTI
E. Gray – Scottish Executive
S. Vbranch – NuSAC

HSE Comments on the Draft Strategy

- 1 The Health and Safety Executive's (HSE) comments on the draft strategy have been compiled from the contributions of a wide range of staff within HSE's Nuclear Safety Directorate (NSD) and Policy Group.
- 2 Overall we found the draft document to be well structured and presented, and a major step forward in understanding the developing NDA strategy and competition programme.
- 3 However, NDA will be aware from recent discussions with HSE and fellow regulators, that we have concerns regarding the proposed competition schedule.
- 4 HSE notes that that the resource implications of the proposed restructuring and competition schedule may mean that this is unachievable - if the necessary regulatory oversight is to be maintained. We also note that there will be additional resource demands on the site licensee companies, which has the potential for being detrimental to nuclear and conventional safety.
- 5 Our more significant comments on the strategy are given below. We have a number of more detailed, mainly minor comments, which will provide separately to the NDA strategy team through our normal working contacts.

Part I: Preface

- 6 HSE/NSD welcome NDA's:
- 7 clear declaration of its mission as: safe, cost effective, accelerated and responsible decommissioning;
- 8 vision that its number one priority is to fund and demonstrate real progress in reducing high hazards in legacy facilities, especially at Sellafield; and
- 9 intention to expedite decommissioning timescales, especially Magnox sites.
- 10 However, we consider that the draft strategy overemphasises the priority to be given to achieving 'value for money' and 'acceleration', without addressing, as a concomitant priority, the need to for securing and improving health and safety – particularly nuclear safety.
- 11 We are also disappointed that the strategy makes little reference to the proposals set out in the White Paper *'Managing the Nuclear Legacy'*, for working in partnership with the regulators. Although close working with the regulators may be taken for granted, we would recommend that the final Strategy (and other NDA documents, e.g. the Annual Plan) - should emphasise the importance of such close, or partnership, working.
- 12 Similarly, we are surprised that the draft strategy makes little reference to the successful decommissioning and clean-up that has already been achieved on some sites, and the actions of the regulators in driving that forward.
- 13 Here and throughout the draft document, there are statements (such as the feasibility of the 25 year Magnox decommissioning timetable) that we consider would

carry more weight if they were backed up by references or detailed reasoning (for instance, in an annex).

Part II: Executive Summary

14 We are pleased to see many areas where the strategy aligns with HSE views, for example: passive safety; accelerated decommissioning; skills retention; national nuclear archive; integrated waste strategy; the need for an early decision on CoRWM recommendations, etc.

15 It is noted that delivery of the strategy is heavily dependent on progress in a number of areas of Government policy. There is no doubt that the NDA's voice will be influential in encouraging progress on these policy issues. It would be useful for the strategy to indicate when key policy decisions need to be made and any action NDA proposes to take to ensure they are addressed.

16 Unrealistic expectations may arise from the NDA's assumption that a repository will be available by 2025 – which could perhaps be seen as pre-empting CoRWM's recommendations. Nonetheless, we welcome and support the NDA's intention to encourage the Government to reach an early decision on CoRWM's recommendations.

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17 We note the intention to focus on decommissioning and clean up of high hazard installations (which perhaps should be 'high hazard potential installations'). Whilst welcoming this, we would like to see some statement of the need to address high-risk installations.

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18 *Commercial Operations and Assets* – the text may be read as implying that the NDA will be acting as the 'controlling mind' for safety-related operations. Phrases such as 'we will continue to run' and 'we will continue to operate' could send the wrong signals on this matter, not least to the licensees. The responsibility for ensuring the safe operation of the sites should be clearly stated as being that of the nuclear site licensee.

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19 Some issues which are not addressed here nor in the remainder of the draft Strategy include:

- a consideration and identification of the provision of key national facilities, particularly replacement plant at Sellafield;
- the potential value of decontamination and the subsequent ability to deal with the waste at a lower level;
- the value of maximising materials for free release; and
- reference to the benefits of drawing from the wider European and world experience, as well as the US approach.

Section 1 Decommissioning

20 We suggest that the strategy should refer to the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (EIADR99). EIADR Consent is required from HSE before a decommissioning project for a reactor can start, and there are implications if there is a change or extension to a project.

Section 1.1

21 HSE supports the proposals to seek the views of all stakeholders on the site end state and when this should be achieved. In particular, HSE has an interest in how an agreed end state is defined, e.g. what constitutes a 'brown field' end state?

Section 1.5

22 Although HSE supports the NDA's proposed approach for expediting the defuelling, decommissioning and release of the Magnox sites, we consider that it would be helpful if the purported 'main advantages' (e.g. fewer interim ILW stores; the extension of the approach to non-Magnox sites) were given greater substantiation.

Section 2 Waste

23 In view of the large quantities of very low-level waste (VLLW) and non-radioactive hazardous wastes on various sites it would be helpful to make reference to their management in this Section.

24 It would be appropriate for the paragraph on HLW to emphasise the importance of HSE's Direction regarding storage of HAL, as this could place a significant constraint on future reprocessing options.

Section 2.2

25 HSE considers that further criteria (e.g. 'dose impacts on the workforce and the public' and 'hazard reduction gains') should be added to the list that will be used to evaluate options for interim ILW storage. Similarly, we would like the strategy to clarify how the criteria will be evaluated and the how the regulators will be engaged in the decision process.

Section 3 Operations

Section 3.6

26 This section could usefully be expanded to take account of the financial restructuring agreements which give NDA responsibilities for BE liabilities, including control of the use of the Nuclear Liabilities Fund. As the fund is also designed to cover the historic liabilities held at Sellafield, this presents an opportunity for NDA to develop a unified strategy.

Section 5 Competition & Contracting

27 From previous discussions, NDA will be aware of HSE concerns about aspects of the draft competition strategy. We understand that the NDA are at present reconsidering the competition timescale for the sites in light of the recent announcement of a proposed sale of British Nuclear Group, and in response to other matters. Consequently, at this stage we do not provide a detailed response to this vital aspect. However, we look forward to an early opportunity to comment on a revised draft competition schedule that reflects these factors.

28 The draft competition schedule will mean significant restructuring and reorganisation of the existing licensees, accompanied by the relicensing of a number of sites to new corporate bodies. There was intense regulatory activity involved in the restructuring and relicensing of the BNFL/Magnox sites in preparation for the start-up of the NDA. Such processes are demanding of both regulator and licensee resources and, if safety is to be secured, cannot be short-circuited or rushed.

29 In view of this, it is vital for the NDA to engage in early discussions with HSE and other regulators to establish an agreed, competition schedule and associated project programmes.

30 In particular, we recommend that any necessary restructuring and relicensing takes place as long as possible before the relevant site packages are competed. We consider that the risks to successful competition arising from unresolved regulatory issues will be significantly reduced by allowing for such a 'period of stability' before competing management contracts.

Section 5.1

31 HSE is cautious over the translation of the USDoE model, which is largely based on the site owner both placing contracts and regulating the contractor and takes place in a heavily contractorised environment, into the UK situation. In particular we will need to be assured as to how safety standards will be maintained by the licensees through both the preparatory phase and throughout the bidding/contracting process.

32 The statement that "the role of the NDA is to manage the contract, not the contractor" is supported by the HSE. However we shall continue to monitor the operations of the licensees to ensure that the NDA is not exercising undue control over licensable activities.

Section 5.2

33 A specific issue, which the document acknowledges has yet to be agreed with the regulators, is the splitting of the existing Magnox Electric Ltd licensed sites into 3 new entities. This will require existing licensee resources to be divided and relicensed – which may require recruitment and training of technical staff, and that tasks currently discharged within central support functions could, in the future, be delivered at sites.

Section 6 Innovation

34 HSE notes and supports the NDA proposals to maintain the necessary skills to undertake the decommissioning and clean up programme. However, we would also like to see NDA's strategic view on how the skills needed to carry on commercial operations safely will be similarly maintained, including the necessary backup technical, engineering and R&D capabilities.

Section 6.3

35 HSE supports innovation where it delivers safer and earlier decommissioning but, where high hazards are involved, due account has to be taken of the need for conservative decision taking in securing nuclear safety.

Section 6.5

36 We look forward to working in partnership with the NDA Research Board in developing a programme for waste management and decommissioning research.

Section 7 Finance

37 Although the strategy gives some indication of how funding may be allocated, HSE would like to see more explicit reference to the prioritisation work being developed by the NDA and the regulators. The agreed prioritisation procedure should be foremost in NDA's work programme to ensure that hazard potentials are reduced and risks appropriately managed.

Section 7.4

38 It would be helpful to make clear that the outcome of NDA's prioritisation process may not always match the requirements of the regulators. However, one benefit of the work being done to develop a common methodology and consistent metrics is that differences of views can be discussed on the basis of a common understanding.

Section 8.4

39 HSE strongly supports the initiative to establish a structured system for stakeholder engagement. HSE will seek to provide continued input into the Site Stakeholder Groups (SSG) and, where appropriate, the national stakeholder group.

Appendix 3

Capenhurst

40 HSE has concerns over the ongoing storage of large amounts of Uranium Hexafluoride ("Hex Tails") at Capenhurst and we would wish to see the strategy accelerating the minimisation of potential detriments of this hazard.

Sellafield

41 HSE would have major concerns if the suggestion to 'compete' different parts of the site were to be submitted as a definite proposal.

Windscale

42 We would appreciate clarity on whether NDA intends to apply the same strategy to the Windscale piles decommissioning that is proposed for the Magnox fleet, i.e. get it done in 25 years.

HSE

November 11th 2005