FINDING A SOLUTION – THE IMPORTANCE OF TRANSPARENCY

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ABSTRACT

In 1997 Nirex failed to obtain planning permission to build an underground laboratory (Rock Characterisation Facility) near the Sellafield nuclear site in Cumbria, North-West England. This stopped the UK's deep disposal programme. Since then there has been much discussion on how the UK should take the issue of long-term radioactive waste management forward.

As part of its contribution to the ongoing debate, Nirex needed to reassess how its role in finding a long-term solution could be better played given its history. It has been suggested that the processes required to deal with such a contentious issue, the conduct of individuals and the structural relationships between organisations, all need to change if any progress is to be made. Specifically, one of the difficulties of the past was the lack of a mechanism to allow all stakeholders and the public to clearly see what had been decided and for what reasons. Nirex believes that central to these changes needs to be a strong ethical framework based on transparency.

In June 1998, Nirex produced its Transparency Policy. In the light of this, Nirex conducted an internal inquiry during 2000 into a number of allegations made against the Company regarding its behaviour running up to 1997. Transparency was a key feature of the way in which the investigation was carried out and the way in which the findings were reported in July 2001. The paper will summarise the lessons learned from this exercise and the initiatives put in place which led to the development of a new working ethic.

In order to assess the impact of these initiatives and its performance against them, Nirex commissioned (in 2001) an independent assessment of views from different stakeholder groups. Part of this work was to gain views on our:

- Transparency Policy;
- Corporate Responsibility Policy; and
- Environmental Policy.

The results of this assessment will be presented. In summary, this showed that there is widespread support for these policies and the approach to increased focus on dialogue with stakeholders. In this latter respect, the way in which Nirex is now operating allows the stakeholders to have a direct access to, and influence on, its work programme and this will be described.

INTRODUCTION

The Nuclear Industry Radioactive Waste Executive (NIREX) was set up in 1982 to research, develop and operate radioactive waste disposal facilities on behalf of the nuclear power industry. In 1985 it became a limited company, with shares owned by the major waste producers, and a special share held by the Government to give it safeguarding powers. The Ministry of Defence contributes funding, but is not a shareholder. Nirex's current purpose is to provide the UK with safe, environmentally sound and publicly acceptable options for the long-term management of radioactive materials.

In the UK, work on finding a solution to long-lived radioactive waste has been on-going since the 1970s. The decision to focus the search for a disposal site for intermediate-level wastes at a location close to Sellafield, Cumbria took place in 1991. This lead on to a public inquiry in 1995-96 into the planning application made in 1994 to build an underground laboratory or Rock Characterisation Facility (RCF). The outcome of the planning inquiry was rejection of the Nirex application, which effectively stopped any further work on finding a solution.

Since the rejection of the planning application in 1997, Nirex has been considering what went wrong so that any future attempt to find a solution to this difficult problem, can benefit from the mistakes of the past. This paper highlights the lessons that have been learnt.

Nirex has not been alone in the UK in considering how we move forward. The House of Lords Science and Technology Committee undertook a study (1) on radioactive waste management and reported in 1999. One of their findings was that no consensus existed and for any solution to work, there must be a degree of agreement as to the solution. They also recommended an integrated approach to waste management. One option for achieving this is the combined (co-disposal) of high-level waste and spent fuel with solid intermediate-level and low-level waste within a single facility (2). Similarly the Radioactive Waste Management Advisory Committee (RWMAC) has recognised that the "decide-announce-defend" approach to policy formulation is inappropriate (3) and that a consensus building approach involving full and open discussion of such issues must take place. The Government (Department of Environment, Food and Rural Affairs (DEFRA) and devolved administrations) also seem to have adopted this view in the consultation paper they issued in September 2001 (4).

INITIATIVES

It has been recognised that action would have to take place if a solution to the management of radioactive waste was to occur. Words would not be enough. A number of initiatives have been pursued including the following:

Nirex Transparency Policy

Following on from the failure in 1997, Nirex started work on developing a transparency policy. This was agreed by its Board in 1998 (see Annex 1) and states that Nirex is committed to achieving transparency through:

1. Fostering openness as a core value;
2. Listening as well as talking to people who have an interest;
3. Making information readily available under our Publications Policy and responding to requests for information under our Code of Practice on Access to Information;
4. Making key decisions in a way that allows them to be traced so that people can see and understand how they were arrived at; and
5. Enabling people to have access to, and influence on, our future programme.

Independent Transparency Review Panel

Nirex also established an Independent Transparency Review Panel to meet and review how Nirex is performing, recommend how our performance can be improved and to act as a body where appeals can be considered. The terms of reference are attached at Annex 2.

Internal inquiry

Since developing its Transparency Policy, Nirex has continued to develop and implement changes to its culture, behaviours and procedures to try and live up to the stated aims in that policy.

It is in the light of this policy that Nirex has undertaken an Internal Inquiry (5), of its own volition, during 2000, into allegations made against the Company. Although most of the allegations could not be substantiated, the Inquiry process did highlight a number of lessons that Nirex believes it must recognise and implement.

To put the lessons from the Internal Inquiry into context, a strategic analysis was carried out comparing the results of the investigation with the general lessons learned following the refusal of planning permission for the RCF in 1997.

Lessons learned

Nirex has analysed its failure in 1997 to gain planning permission for a RCF at the Sellafield site. The findings from the Internal Inquiry confirm and reinforce this analysis. The results of these reviews are far-reaching, but they can be summarised into three key issues:

- process,
- structure and
- behaviour.

The following sections outline the findings in these areas in more detail.

Process

Discussions with a wide range of stakeholders have revealed that in the years leading up to the RCF Public Inquiry, decisions taken by Nirex were not transparent and that there was a lack of stakeholder involvement. In particular, Nirex used a closed process whose pace was driven by pre-determined deadlines and not by the needs of stakeholders. To address these issues in the future there must be a clear, phased decision making process that:

- has been developed in consultation with all stakeholders;
- has clear decision points;
- explains how decisions will be taken;
- provides opportunities for stakeholders to make inputs.

The whole process must be transparent and inclusive. The pace of progress – the speed at which the process moves from one phase to the next - should be determined by the time needed to obtain stakeholder inputs, not by a project plan. The process should include 'checks and balances', so that the behaviours of all the players can be analysed and reviewed.

Structure

Everyday experience demonstrates that the structure of an industry has a large impact on:

- the way the industry needs to be regulated;
- public confidence in the organisations involved;
- the clarity of the issues that need to be addressed;
- the ability of those in authority to make decisions.

Radioactive waste management involves short-term decisions that may have very long-term impacts. It is essential that these short and long-term issues are visible, to the regulators and to others who have to make decisions. One way of achieving this visibility would be to maintain a separation between the short and long-term roles by having a separate organisation that is focused on the long-term implications of radioactive waste management.

Behaviour

In addition to a properly instituted process and structure, delivery of a long-term implementable solution for radioactive waste management would still be dependent on the behaviour of those involved in the process. Research and experience (6,7,8,9) has shown that the behaviour must be:

- *Open* – the debate must take place in the public domain and there should be free access to all the relevant information. Those involved should be open to influence from different people with different opinions and perspectives.
- *Transparent* – the reasoning behind actions, deliberations and decisions should be made available. It must be clear from the outset how stakeholders and the wider public can be involved and how their opinions will be taken into account and used.
- *Accountable* – those responsible for the process should be accountable for their actions to all parties. This includes publicising the reasoning behind decisions and giving people feedback on how their views have been taken into account.

Checking performance (feedback)

As lessons had been learnt from the failures in the past, it was felt important to see how Nirex was perceived to be performing from the view point of different stakeholder groups.

Nirex commissioned Environmental Resources Management (ERM), an independent consultancy company, to provide a snapshot of stakeholder views on its performance (10). (Stakeholders are defined in this context as all those who have an interest in Nirex or who are potentially affected by Nirex's activities.) It was felt that the following issues needed to be considered:

- The appropriateness of Nirex's current Mission Statement and Interim Objectives, that were agreed in 1997;
- Nirex's performance against this Mission Statement and Objectives;
- The content of Nirex policies on Transparency, Corporate Responsibility and Environment;
- Nirex's performance against the commitments made in these policies.

A full report detailing the objectives, approach, results and conclusions is available from the Nirex web site (www.nirex.co.uk) (11).

Results of study

Interviewees expressed general support for the Nirex Mission Statement (see Annex 3). However, there was a widespread expectation that Nirex and its mission will be reviewed following the current Government consultation process.

Three main issues were raised by interviewees in relation to the **Mission Statement and Corporate Objectives**:

- A large majority of interviewees stated that Nirex's current ownership damages Nirex's credibility with many stakeholders and limits its ability to carry out its mission and specific activities, such as providing credible endorsement of packaging proposals. Many felt that a new independent organisation needs to be formed which retains Nirex's expertise, but is set up in a different way. This issue was also raised by shareholders, who expressed the view that Nirex focuses too strongly on dialogue with stakeholders, and does not give sufficient priority to issues such as the provision of packaging advice.
- Nearly all interviewees felt that the old Mission was too constrained and should refer to radioactive waste management options rather than just geological disposal options. This has now been agreed by the Nirex Board and is reflected in the new Mission outlined above and in Annex 3.
- Almost all interviewees stated that the Mission should also be extended to cover high level radioactive waste and other radioactive materials, such as spent fuel, plutonium etc. that are not currently declared as wastes.

There was strong support for the **Transparency Policy** (Annex 1), **and Corporate Responsibility Policy** (Annex 4). There was also widespread support for Nirex's increased focus on dialogue with stakeholders, and most interviewees commented that Nirex staff are fairly open and transparent. This view was reflected across a range of interview groups, including scientists, suppliers, local communities, employees and government. These groups felt that while Nirex was previously following a purely technical mission, it is now looking at its mission in a wider sense i.e. seeking to build public consensus. However, many interviewees commented that there needs to be more reporting on Nirex's mission and activities aimed at the general public.

Strong support was voiced for the **Environmental Policy** (Annex 5), although the policy itself is seen as fairly conceptual. Several interviewees felt that in reality in may be difficult for Nirex to ensure human health and the environment are afforded the highest priority. All the interviewees felt that taking into account future generations is at the heart of what Nirex is set up to do, however there is some disagreement over what steps Nirex should take to ensure it meets this commitment.

Conclusions for Nirex from the study

As a result of the stakeholder attitudes revealed by the study, ERM recommended that Nirex needs to:

- Amend its Mission and objectives to refer to waste management options rather than disposal, and/or repositories. (The Mission has been extended to include waste management options.);
- Ensure credibility for Nirex's advice on packaging and transporting radioactive waste by either developing a more robust challenge function or strengthening the peer review process;
- Discuss with regulators and Government options for strengthening the regulatory regime;
- Initiate research on surface storage of radioactive waste;
- Publish further information surrounding the 1994 Sellafield RCF application, subject to legal constraints;
- Ensure that Nirex policies on transparency and openness are integrated fully across the company;
- Consult stakeholders on the Nirex future programme and integrate responses accordingly;
- Introduce a programme to raise awareness of the issues of radioactive waste management in general and of Nirex. This should be aimed at the general public;
- Increase the amount of information produced for the general public on Nirex's activities;
- Publish information on how the Transparency, Corporate Responsibility and Environmental Policies are translated into management processes. This should include providing a higher profile for both the Corporate Responsibility and Environmental Policies; and
- Prioritise research on the environmental implications of different radioactive waste management options.

Proposed Forward Programme

As part of the Transparency Policy there is a commitment to enable people to have access to, and influence on, Nirex's future programme. The Nirex Proposed Forward Programme has been produced (12), sent to key stakeholders and placed on the Nirex web site. This ensures that all have access to this document.

Unfortunately, a limited response has been received to date and further activities are being discussed to attempt to obtain a greater level of input to the proposed forward programme. This work is important in attempting to get an increased influence on the Nirex proposed programme.

Conclusions

Radioactive waste exists and in order for the UK to find a solution to the management of it a consensus must be reached by society. Such an approach will provide the best chance of identifying a policy that can ultimately be delivered.

A range of different bodies (House of Lords, RWMAC, Department of Environment, Food and Rural Affairs (DEFRA)) have agreed that in order to find a solution to the problem of radioactive waste in the UK a different policy formulation process must be used. Whatever this process is, it must be underpinned by the principles of openness and transparency so that all stakeholders including the public, see the process as legitimate.

Transparency alone will not provide the answer, but can be used as a foundation on which to build the process and set the values for the behaviour of all individuals involved. The structure of the industry will also be critical as to how it is perceived by the public.

References

(1) House of Lords Select Committee on Science and Technology *Management of nuclear waste,* March 1999.

(2) S.J. King *Issues associated with the co-disposal of ILW/LLW and HLW/SF* Tucson Conference, February 2002.

(3) The Radioactive Waste Management Advisory Committee's *Advice to Ministers on the establishment of scientific consensus on the interpretation and significance of the results of science programmes into radioactive waste disposal*, Department of the Environment, Transport and the Regions, April 1999.

(4) Department of the Environment, Food and Rural Affairs et al *Managing radioactive waste safely,* September 2001

(5) C. Murray, D. Wild, R. Millard, A. Littleboy and S. Tucker *Report on the Nirex Internal Inquiry January – December 2000*, July 2001

(6) Environmental Protection Agency [USA], *EPA's Communication Plan for the Waste Isolation Pilot Plant,* 1995.

(7) A. Armour, Modernizing Democratic Decision-making processes from Conflict to Co-operation in Facility Siting, *The Environment in the 21st Century: Environment, Long-term Governance and Democracy*, Abbey de Fontevraud, France, September 1996.

(8) P. O'Sullivan, B. McKirdy, M. Askarieh, A. Bond and S. Russell, Environmental Impact Assessment and Geological Repositories for Radioactive Waste, *VALDOR: VALues in Decisions On Risk: A Symposium in the RISCOM Programme Addressing Transparency in Risk Assessment and Decision Making*, Stockholm, Sweden, June, 1999.

(9) B. Rabe, Beyond the NIMBY Syndrome in Hazardous Waste Facility Siting: The Albertan Breakthrough and the Prospects for Co-operation in Canada and the United States, *Governance: An International Journal of Policy and Administration*, **4**(2), 184-206, 1991.

(10) Environmental Resources Management *Independent stakeholder review of Nirex*, Report to Nirex, July 2001

(11) Nirex web site, *www.nirex.co.uk*

(12) Nirex *The proposed Nirex forward programme,* Nirex Report N/025*,* March 2001

Annexes

Annex 1 - Transparency Policy

The Transparency Policy is as follows:

Nirex believes that to achieve its mission it must be an open and transparent organisation.

Nirex strives to be transparent and accountable in all its activities.

Nirex is committed to achieving transparency through:

- fostering openness as a core value
- listening as well as talking to people who have an interest
- making information readily available under our Publications Policy and responding to requests for information under our Code of Practice on Access to Information
- making key decisions in a way that allows them to be traced so that people can see and understand how they were arrived at
- enabling people to have access to and influence on our future programme

Nirex will monitor, evaluate and report regularly on its implementation of this policy.

Annex 2 – Independent Transparency Review Panel Terms of Reference

Background

If an applicant is dissatisfied with Nirex's response to a request for information and the issue has not been resolved through further contact with Nirex, a formal complaint can be made to the Independent Review Panel. Complaints should be sent to the Chair of the Panel and must contain the original request for information, the response from Nirex, and the reasons for complaint. The Panel will investigate the complaint promptly and in accordance with its written Terms of Reference. Subsequently Nirex, with the consent of the applicant, will publish details of the complaint, the Panel's recommendations and any action in response to the recommendations.

Membership

The Panel shall be appointed by Nirex and comprise three independent external specialists in freedom of information or/and open government. The current membership is:

Jennifer Watson (Chair)

James Amos

Professor Patrick Birkinshaw

The Address of the Panel is:

Jennifer Watson
Independent Transparency Review Panel
C/o UK Nirex Ltd
Curie Avenue
Harwell
Didcot
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COMPLAINTS

(i) The role of the Panel is to investigate written complaints raised by persons or bodies who have applied for information held by Nirex. The complaint might be in relation to a refusal to disclose or (by way of example only) response time, response format, extent of usage rights or reasonableness of charging.

(ii) Nirex will provide the Panel with:

- all information in the possession of Nirex which is relevant to the complaint,
- by arrangement, such access to Nirex premises and to staff as may be appropriate,
- by arrangement, such access to third parties as may be appropriate.

(iii) The Panel shall conduct its investigations through meetings, correspondence or telephone conversations as appropriate.

(iv) Access to the confidential information relevant to a complaint will be provided at Nirex's premises and shall not be posted to members or otherwise removed from Nirex premises.

(v) Nirex will advise the Panel in advance of any information associated with a complaint that is covered by the Official Secrets Act.

(vi) At the Panel's request, Nirex will provide the Panel with legal advice in relation to the information concerned with a complaint, particularly any commercial, national or international obligations applying to the information.

(vii) The Panel shall be entitled to call for further information from the complainant and, if appropriate, the complainant and/or representatives of Nirex may be invited to attend the proceedings of the Panel in person and make representations.

(viii) The Panel shall conclude its investigations promptly and shall then make written recommendation to the Nirex Managing Director, copied to the complainant.

(ix) The proceedings and recommendations of the Panel shall be limited to the subject matter of the complaint and shall comply with the Code of Practice. In particular, the Panel cannot receive or release information in the course of its proceedings or recommend the release of information where this would cause a breach of law or other legal obligation, a breach of Government direction or policy, a breach of personal privacy or third party confidentiality or where information is protected by legal privilege.

(x) The Panel reserves the right to refuse to investigate a complaint by an applicant if in the opinion of the Panel the complaint is the same or similar to a complaint previously submitted by that applicant.

(xi) The Panel reserves the right to refuse to investigate a complaint if in the opinion of the Panel the complaint is frivolous or vexatious.

(xii) These Terms of Reference are without prejudice to any statutory rights in relation to the provision of information.

Annex 3 - Mission Statement and Objectives

Nirex's Mission

To provide the UK with safe, environmentally sound and publicly acceptable options for the long-term management of radioactive materials.

To deliver this mission, Nirex must secure three strategic imperatives:

Coherent Concepts

Develop coherent concepts which include a range of options for the long-term management of radioactive waste. This includes the phased deep geological disposal of ILW and some LLW and evaluating options for the long-term management of these and a broader range of radioactive materials.

This requires that Nirex:

- Develops waste management concepts which are coherent – addressing the needs of packaging, siting, transport, operation and long-term safety and environmental protection
- Develops and maintains the UK National Inventory of radioactive wastes and associated materials;
- Provides the waste producers with advice on packaging and transport and credible third party endorsement of waste producers' waste packaging proposals;
- Develops and implements an active science research programme and co-operates with other organisations;
- Conducts an active engineering and technology development programme;
- Keeps abreast of world-wide developments in science, regulation, technology and politics for radioactive waste management.

Acceptable

Through effective dialogue and engagement, build open and constructive relations with all stakeholders to develop acceptance of the concepts.

This requires that Nirex operates in an open, accountable and transparent manner; and

- Puts in place mechanisms for more effective dialogue with all stakeholders and the wider public;
- Contributes to Government policy reviews;
- Contributes to the development of the UK legislative framework;
- Investigates and identifies what is needed to gain public acceptance;
- Creates appropriate communication materials.

Resources

Maintain and develop Nirex as an effective, efficient and socially responsible organisation able to deliver these objectives.

This requires that Nirex:

- Maintains and develops its core competence (know-how, people and systems);
- Is recognised as the UK's "learned body" on long-term radioactive waste management;
- Ensures adequate funding and demonstrates good stewardship;
- Develops and safeguards the necessary intellectual property, records and information;
- Provides the required infrastructure, facilities and support.

Annex 4 - Corporate Responsibility Policy

The Corporate Responsibility Policy is as follows:

Our Principles

We believe that the building of understanding and trust in society are essential prerequisites to achieving our mission.

We are committed to developing this understanding and trust by being open, accountable and socially responsible.

We believe our stakeholders have the right to be informed, consulted and engaged in all aspects of our work.

Our Stakeholders

In undertaking our mission we believe we have obligations to the present and future generations of a wide range of groups from across society, including:

- the general public
- waste producers and other customers
- Government and associated agencies
- local communities affected by our activities
- scientific and technical community
- non-government organisations
- our shareholders
- our employees
- our suppliers.

Our Commitments to our Stakeholders

In fulfilling our mission, we will continually work to:

(a) welcome, respect and actively encourage the participation and contributions of all our stakeholders to the debate on radioactive waste management

(b) ensure our decision making is transparent and traceable

(c) provide open access to information on our activities by publishing our plans and work programmes in a way that is accessible

(d) actively engage with our stakeholders and seek their influence on our work programme

(e) regularly report progress to our stakeholders in an open and honest manner.

We will regularly review and report our performance against these policy commitments in our Annual Report.

Annex 5 - Environmental Policy

Nirex's Environmental Policy says:

Our Mission

To provide the United Kingdom with safe, environmentally-sound and publicly-acceptable options for the long-term management of radioactive materials.

Our Principles

Nirex believes solutions for radioactive waste management should be developed through careful consideration of a full range of options and by balancing the demands of four principles derived from the concept of sustainable development applied to radioactive waste:

- The predicted impacts from radioactive waste on human health and the natural environment of future generations should be no greater than those which are permitted today.
- This generation should take responsibility for the management of radioactive wastes without imposing undue burdens on future generations.
- Solutions for radioactive waste management should be implemented in a staged manner, to develop confidence and extend a degree of choice and responsibility over alternatives to future generations.
- Solutions for radioactive waste management should not presume indefinite institutional stability, or adequate resources, being available to future generations to maintain safety.

Our Commitments

In fulfilling our mission we will:

1. Ensure the protection of human health and the natural environment are given the highest priority in evaluating options and developing concepts for radioactive waste management.
2. Put environmental concerns at the heart of our decision making processes and be open and transparent in the assumptions we make and the uncertainties that exist with respect to environmental protection.
3. Maintain an active dialogue with our stakeholders to ensure we understand and take full account of their concerns, and keep them fully informed of the environmental implications of our work.
4. Work with waste producers to ensure radioactive waste is packaged in a safe and environmentally-sound manner taking into account issues of sustainable development.
5. Make a positive contribution to our local environments and minimise the adverse environmental impacts of the Company's operations by seeking to reduce our consumption of resources and our production of waste.
6. Promote our environmental principles and commitments to our suppliers.
7. Operate an environmental management system which complies with ISO 14001, and comply with all relevant environmental legislation and other applicable requirements.
8. Submit our work to effective peer review and scrutiny.
9. Continually seek to improve the way we address environmental concerns within our work and regularly report our progress in an open and transparent manner.