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MARCH

Status Report
of the Commissioner of
the Environment and
Sustainable Development
to the House of Commons

**Previous Audits of Responses
to Environmental Petitions**

Chapter 11
Insurance for Nuclear Operators

Chapter 12
Listing of Species at Risk

Chapter 13
Military Dumpsites

Chapter 14
Genetically Engineered Fish



Office of the Auditor General of Canada

The March 2008 Status Report of the Commissioner of the Environment and Sustainable Development comprises The Commissioner's Perspective—2008, Main Points—Chapters 1 to 14, Appendices, and 14 chapters. The main table of contents for the Report is found at the end of this publication.

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Main Table of Contents

Previous Audits of Responses to Environmental Petitions

| | |
|---|----|
| Preface | v |
| Chapter 11 Insurance for Nuclear Operators | 1 |
| Chapter 12 Listing of Species at Risk | 13 |
| Chapter 13 Military Dumpsites | 29 |
| Chapter 14 Genetically Engineered Fish | 47 |



Previous Audits of Responses to Environmental Petitions

Preface

Environmental petitions reflect the environmental concerns of Canadians. The petitions process is a simple way for citizens and organizations to express their concerns about environmental problems and to ask ministers to investigate the problems, explain federal policy, or examine the enforcement of environmental legislation, among other things.

Created by an amendment to the *Auditor General Act* in 1995, the petitions process allows any Canadian resident to submit an environmental petition to the Auditor General of Canada for forwarding to the responsible federal minister or ministers. The petitioner may act alone or on behalf of an organization, business, or municipality. A petition must be in written form and address an environmental matter in the context of sustainable development. In addition, the issue must be the responsibility of a federal department or agency subject to the petitions process. Issues raised in petitions vary widely: Examples have included species at risk, human health, environmental contamination, and climate change. Federal ministers must respond in writing within 120 days of receipt. As of 4 January 2008, Canadians had submitted about 280 petitions and received about 560 responses from federal ministers. Petitions and responses are available in the online petitions catalogue on the website of the Office of the Auditor General of Canada.

The Commissioner of the Environment and Sustainable Development manages the petitions process on behalf of the Auditor General and reports on the petitions process annually to Parliament. In October 2007, in conjunction with our monitoring and reporting responsibilities, we also reported on a retrospective study conducted by our Office on the petitions process. The surveys undertaken indicated that both petitioners and department officials who responded believed that petitions have had an impact, or somewhat of an impact, on the federal management of specific environmental matters.

In 2003, with a view to promoting accountability and transparency in government, we began to audit specific commitments made by ministers in their responses. Audits of commitments allow us to

determine if ministers and departments are doing what they said they would do in response to petitioners. In each petition response audit, we select key statements and commitments made to petitioners and audit them to determine the extent to which departments have fulfilled their commitments. To date, our Office has undertaken 11 petition response audits, which have been reported in our annual petitions chapters.

Chapters 11 through 14 report on four follow-up audits. These are the first status reports we have conducted on audits of petition responses. They will allow us to determine whether ministers have met the commitments they made in response to our prior audit recommendations, as well as the commitments made in the original petition responses. Chapters 11 through 14 look respectively at the progress made by Natural Resources Canada in updating the *Nuclear Liability Act*, by Environment Canada in establishing guidelines for listing species at risk, by National Defence in managing military dumpsites, and by Fisheries and Oceans Canada in developing a policy and regulatory framework for managing genetically engineered fish.

Chapter

11

Insurance for Nuclear Operators

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by The Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.

Table of Contents

| | |
|---|----|
| Main Points | 5 |
| Introduction | 7 |
| Natural Resources Canada committed to introducing revisions to the <i>Nuclear Liability Act</i> | 7 |
| What we found in 2005 | 7 |
| Focus of the audit | 8 |
| Observations | 8 |
| Requests and intentions to revise the Act are long-standing | 8 |
| The Department has drafted new legislation | 9 |
| Conclusion | 10 |
| About the Audit | 11 |



Previous Audits of Responses to Environmental Petitions

Insurance for Nuclear Operators

Main Points

What we examined

We sought to determine whether Natural Resources Canada had made satisfactory progress in addressing a recommendation from our 2005 audit of the response to a petition submitted in 2003 on the issue of insurance for nuclear operators. In that response, the Minister agreed to bring forward revisions to the *Nuclear Liability Act* that would update insurance requirements. In 2005, we recommended that Natural Resources Canada begin preparatory work on revisions to the *Nuclear Liability Act* and submit policy proposals to the Minister by late 2005. The Department agreed to implement the recommendation.

Why it's important

The *Nuclear Liability Act* came into force in 1976. It requires that funds be available to compensate people who may have suffered injury or damage as a result of a nuclear incident at an installation, such as a nuclear power generating plant. The *Nuclear Liability Act* holds that the nuclear operator is exclusively liable for any damage arising from radioactive releases. However, the Act limits an operator's liability to a maximum of \$75 million. Our 2005 audit of the petition response on this issue found that this amount remained at a level established over 30 years ago and was considerably lower than the coverage in 12 other major industrialized nations.

What we found

Progress is satisfactory. This follow-up audit found that Natural Resources Canada has drafted legislation that was introduced in Parliament in October 2007 as Bill C-5. Among other things, the proposed legislation updates the mandatory insurance requirements for nuclear operators.

Introduction

11.1 The *Nuclear Liability Act* came into force in 1976. It requires that funds are available to compensate people who may have suffered injury or damage as a result of a nuclear incident at a nuclear installation, such as a nuclear power generating plant. Natural Resources Canada is responsible for federal policy concerning liability in the case of nuclear incidents and for the Act itself.

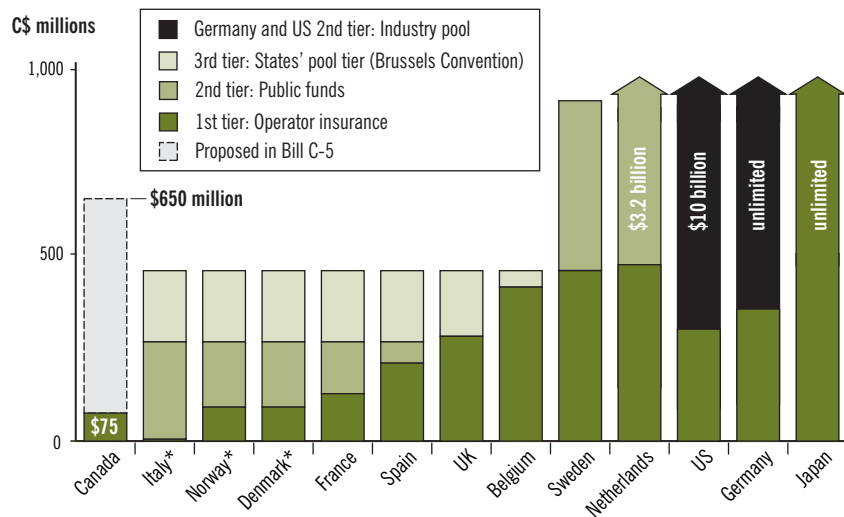
11.2 The *Nuclear Liability Act* holds that the nuclear operator is exclusively liable for any damage arising from radioactive releases. No other person who may have contributed to the incident can be held liable. However, the Act limits an operator's liability to a maximum of \$75 million. If the amount of damage from an accident exceeded \$75 million, it is understood that the federal government and ultimately taxpayers would be responsible for the balance.

Natural Resources Canada committed to introducing revisions to the *Nuclear Liability Act*

11.3 In 2002 and 2003, the Office received environmental petitions 60A and 60B from the same individual. One of the petitioner's concerns was that the amount of insurance coverage required under the *Nuclear Liability Act* was insufficient. In March 2003, the Minister of Natural Resources responded, "It is time to bring forward revisions to the *Nuclear Liability Act* to update it and bring it up to international standards."

What we found in 2005

11.4 In Chapter 8 of the 2005 Report of the Commissioner of the Environment and Sustainable Development (CESD) to Parliament, we assessed the progress made toward revising the Act. We found that insurance requirements for nuclear operators in Canada have not changed or been adjusted for inflation since the Act came into force more than 30 years ago. We also found that nuclear liability limits are lower in Canada than in 12 other major industrialized nations with nuclear facilities (Exhibit 11.1). Natural Resources Canada had recognized the need to revise the Act, but officials in the Department could not provide a timeline for revision. We recommended that Natural Resources Canada begin preparatory work on revisions to the *Nuclear Liability Act* and submit policy proposals to the Minister by late 2005 to fulfill the commitment to bring forward revisions to the Act. The Department agreed with the recommendation and committed to implementing it.

Exhibit 11.1 Canada's nuclear liability limit is lower than 12 other nations with nuclear facilities

*These countries operate research reactors only.

Source: Adapted from Natural Resources Canada

Focus of the audit

11.5 We sought to determine whether Natural Resources Canada had made satisfactory progress in addressing our recommendation from Chapter 8 of the 2005 Commissioner's Report.

11.6 More details on the audit objectives, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Observations

11.7 We expected that Natural Resources Canada would follow through on its commitment to introduce policy proposals to amend the *Nuclear Liability Act* by late 2005.

Requests and intentions to revise the Act are long-standing

11.8 In the 1985 Report of the Auditor General of Canada, we noted that the insurance agreement covering civil liability for nuclear damage within the *Nuclear Liability Act* was deficient and that a review by Parliament of the *Nuclear Liability Act* would be appropriate. In 2001, the Senate Committee on Energy, the Environment and Natural Resources recommended that the government take immediate action to amend the *Nuclear Liability Act* and increase and maintain insurance coverage at a minimum of \$600 million to be in line with international conventions.

Nuclear power is expanding in Canada and worldwide

In Canada, Ontario and New Brunswick have recently approved plans to refurbish existing nuclear facilities; in 2008, Quebec plans to decide whether to refurbish its reactor. Nuclear power is also expanding worldwide. Globally there are over 435 nuclear reactors in operation. As of August 2007, over 300 additional nuclear reactors were in the proposal, planning, or building phases.



Gentilly-2 nuclear generating station.

Source: Hydro-Québec

11.9 Natural Resources Canada officials first developed draft policy proposals in 1996 for comprehensive amendments to the Act. The policy proposals designed to revise the insurance requirements for nuclear operators have been in draft form since 1999. The first set of comprehensive policy proposals to revise the Act was submitted to the Minister in 2001.

11.10 Department officials advised us that major nuclear operators consulted generally support the proposed amendments to the Act. They said the operators recognize that these amendments are necessary for continued nuclear development and that the current Act is out of step internationally. Department officials also said the operators recognize that higher insurance requirements would reduce the exposure to litigation that they face in light of the current insurance limit of \$75 million.

11.11 Given this long history of requests and commitments, the growth of nuclear power in Canada and worldwide, and the agreement of government officials and stakeholders consulted, we expected that Natural Resources Canada would follow through on its commitment to develop policy proposals to amend the *Nuclear Liability Act*.

The Department has drafted new legislation

11.12 Progress is satisfactory. In November 2006, Natural Resources Canada officials submitted policy proposals to the Minister to amend the *Nuclear Liability Act*. On 26 October 2007, the Minister of Natural Resources introduced Bill C-5, *An Act respecting civil liability and compensation for damage in case of a nuclear incident*, in the House of Commons. This bill includes provisions to revise the amount of insurance required for nuclear operators and bring the requirements for nuclear operators more in line with international standards. The proposed legislation requires nuclear operators to have \$650 million in insurance coverage instead of the \$75 million currently required under the existing Act. The revisions also require the responsible minister to review the amount of liability coverage at regular intervals of no more than five years.

11.13 Although the bill was still before the House of Commons when we completed our audit, we can conclude that the Minister of Natural Resources has made satisfactory progress on the commitment made to the petitioner in 2003 and, further, that the Department has achieved satisfactory progress in addressing the recommendation from our 2005 audit (Exhibit 11.2).

Exhibit 11.2 Progress in addressing our recommendation on policy proposals to amend insurance requirements under the *Nuclear Liability Act* is satisfactory

| Recommendation | Progress |
|---|--------------|
| Natural Resources Canada should begin preparatory work on revisions to the <i>Nuclear Liability Act</i> and submit policy proposals to the Minister by the end of 2005, in order to advance the commitment to bring forward revisions to the Act. (2005 Report of the Commissioner of the Environment and Sustainable Development, Chapter 8, paragraph 8.29) | Satisfactory |

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue and the time that has elapsed since the recommendation was made.

11.14 This is an example of a petition that had an impact on the federal management of an environmental matter. Although we cannot directly attribute the government's action on an issue to the submission of a related petition, in this case both the petitioner and the department officials agree that revisions to the *Nuclear Liability Act* resulted, in part, from issues raised in this petition.

Conclusion

11.15 Natural Resources Canada has made satisfactory progress in developing policy proposals for amending the *Nuclear Liability Act* to bring mandatory insurance requirements for nuclear operators more in line with international standards. In 2006, department officials submitted policy proposals to the Minister of Natural Resources that were designed to advance the commitment to bring forward revisions to the Act. The Minister then introduced Bill C-5, *An Act respecting civil liability and compensation for damage in case of a nuclear incident*, in the House of Commons on 26 October 2007. The purpose of subsections 21(1) and 23(1) of this bill is to revise the amount of insurance required for nuclear operators from \$75 million to \$650 million. Natural Resources Canada has acted on its 2003 commitment to the petitioner in this regard and has made satisfactory progress in addressing our 2005 recommendation.

About the Audit

Objective

Our objective was to determine whether Natural Resources Canada had achieved satisfactory progress in addressing commitments made in response to a recommendation in our 2005 audit of insurance for nuclear operators.

Scope and approach

Since 2003, the Commissioner of the Environment and Sustainable Development (CESD) has conducted 11 petition response audits on a wide variety of subjects. To identify which of the 11 were suitable for follow-up audit, we examined the information available in our recommendations database, consulted staff involved in the original audits, and conducted research. To rank the audits for potential follow-up audit work, we developed criteria based on internal guidance for performance audits.

We also considered criteria pertaining to auditability, sensitivity, risk, and availability of resources. On the basis of assessments against these criteria, an advisory committee considered the top-ranked issues and selected four. The results for each of these audits are individually reported in four chapters—11 (this chapter), 12, 13, and 14.

In this audit, we evaluated the progress made by Natural Resources Canada on the recommendation in our 2005 CESD Report, Chapter 8, paragraph 8.29. In order to do so, we reviewed documentation and interviewed department officials and external stakeholders.

Criteria

The criteria for the audit were derived from the findings and recommendations of our 2005 audit on insurance for nuclear operators, and in particular, Natural Resources Canada's response to the above-noted recommendation in that audit (Chapter 8, paragraph 8.29). We expected that

- Natural Resources Canada would have developed policy proposals for revisions to the operator liability limit under the *Nuclear Liability Act*; and
- the Department would have prepared recommendations and provided them to the Minister for consideration, by the end of 2005.

Audit work completed

Audit work for this chapter was substantially completed on 29 October 2007.

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