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PRIME MINISTER  

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Proposed New Pollution Inspectorate

Last October you asked the Cabinet Office to undertake a detailed assessment of a proposal by the then Secretary of State for the Environment that a new Pollution Inspectorate should be formed within his Department, taking in both existing DOE units and the Industrial Air Pollution Inspectorate, currently located in the Health and Safety Executive (HSE). That work is now complete, and I attach a report, prepared in consultation with Departments, together with Volume 1 of the Efficiency Scrutiny with which we began the assessment.

2. The report recommends the creation of such a combined Pollution Inspectorate, and comes down in favour of locating the new body in DOE. The new Inspectorate would consist of the existing Industrial Air Pollution Inspectorate, which would be transferred from HSE to DOE, plus the Radiochemical Inspectorate, the Hazardous Waste Inspectorate and DOE/Welsh Office water pollution staff. The report also recommends administrative measures to ensure co-ordination between the Pollution Inspectorate and other Inspectorates remaining with HSE, and in particular to improve co-ordination on nuclear matters between DOE's Radiochemical Inspectorate and HSE's Nuclear Installations Inspectorate.

3. The first question is whether to bring together the various existing units into a combined Pollution Inspectorate. The objectives would be to create a unified source of technical expertise spanning the range of pollution issues and reflecting inspectors' knowledge of industry on the ground, to emphasise the Government's commitment to pollution control, and to improve





the United Kingdom's input to international pollution initiatives. There are considerable political attractions in such a move; the Efficiency Scrutiny came down strongly in favour; and outside Government there is support both from the Royal Commission on Environmental Pollution and from the CBI and the Chemical Industries Association. The move would be neutral in manpower terms, and I find the case for it convincing.

4. If you decide to create a combined Pollution Inspectorate, there is then the question of whether to locate it in the DOE or in the HSE. A DOE location is favoured by the Secretaries of State for the Environment and for Wales (whose responsibilities the new Inspectorate would support), for Scotland (where the existing Industrial Pollution Inspectorate is a precedent for most of what is proposed), and for Trade and Industry (supporting industry views), also by the Royal Commission on Environmental Pollution. It would mean transferring the Industrial Air Pollution Inspectorate (some 50 staff) from HSE to DOE. This could be done without new legislation.

5. When the study was commissioned last October, you were particularly concerned that any new arrangements should not add to the regulatory burdens on industry. The assessment has looked carefully at that point. Industrial processes give rise to both safety and pollution consequences, and the concern has been that, if the regulatory regimes applied to these two aspects are not well co-ordinated, firms could be faced with duplication or inconsistency. When the HSE was created in 1974, the aim was to bring together Inspectorates dealing with different aspects of the same process, and the Industrial Air Pollution Inspectorate was moved from DOE to HSE.

6. The Efficiency Scrutiny found, however, that, with measures in place to encourage co-ordination between DOE and HSE, moving the Industrial Air Pollution Inspectorate back to the DOE need not produce any increased regulatory burden. I think that is





right. No difficulty has been detected in Scotland where air pollution inspection is already carried on outside the HSE; and a relatively small number of processes will be affected by the change, which is supported by the chemical industry. Transferring the Industrial Air Pollution Inspectorate to DOE would also be consistent with your decision in 1982 to locate the new Hazardous Waste Pollution Inspectorate in DOE, rather than in HSE (whereas creating a combined Pollution Inspectorate in HSE would mean transferring the Hazardous Waste Inspectorate and other DOE units to HSE). I suggest therefore that you approve the transfer to DOE, as the report recommends, but that you ask DOE and HSE to pay particular attention to the need for continued close liaison between Pollution and HSE Inspectors, including the recommendations at paragraph 7.9 of the Scrutiny.

7. A final question is whether a new Pollution Inspectorate should include the whole of the work of DOE's Radiochemical Inspectorate. The main alternative would be to split off that part of the work which relates to licensed nuclear sites and put it with the Nuclear Installations Inspectorate under HSE management.

8. A number of Ministers currently have responsibilities relating to the regulation of nuclear power, and a number of inspectorates are involved - of which the Nuclear Installations Inspectorate is by far the largest. British Nuclear Fuels and the Central Electricity Generating Board complain that they are exposed to duplication, delay and conflict, and Lord Marshall argues that the Radiochemical Inspectorate should be transferred to the HSE.

9. The Efficiency Scrutiny concluded that there was scope for improving present arrangements. The attached report recommends seeking the improvement through administrative measures within the present structure, rather than by bringing the Radiochemical Inspectorate under HSE management. I agree that administrative





measures are the best course for the present. Common management with HSE would be likely to yield only limited benefits over and above those obtainable by administrative action, while the cost could be considerable: the Secretaries of State for the Environment and for Wales place great importance on having the Radiochemical Inspectorate in DOE, and public controversy would also have been probable even before this year's incidents at Sellafield and more recently the Chernobyl accident. But there may be a need to look again at nuclear functions in a year or two's time, if difficulty persists.

10. I am sending copies of this minute to the Lord President of the Council, the Chancellor of the Exchequer, the Secretaries of State for Employment, Energy, Environment, Trade and Industry, Scotland and Wales, the Minister for Agriculture, Fisheries and Food, and Sir Robin Ibbs. You will wish to consider any comments they may have, in the light of which I will provide you with further advice.

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ROBERT ARMSTRONG

14 July 1986



**CONFIDENTIAL**

PROPOSED NEW POLLUTION INSPECTORATE

I INTRODUCTION

1. The then Secretary of State for the Environment's minute of 23 September proposed the transfer of the Industrial Air Pollution Inspectorate (IAPI) from the Health and Safety Executive to DOE. IAPI would then form the core of a new Pollution Inspectorate to be set up within DOE and to include also the Radiochemical Inspectorate (RCI), Hazardous Waste Inspectorate (HWI) and professional staff dealing with water pollution. No 10's letter of 16 October recorded the Prime Minister's request for a detailed assessment of the likely benefits of this proposal.

2. The first stage of this review comprised an Efficiency Scrutiny of relevant parts of DOE and HSE and Volume 1 of the Scrutiny report is attached. This paper draws on the Scrutiny recommendations, and Departments' comments on them, to provide a basis for a response to the Prime Minister's request.

3. Three questions arise for decision:

- (i) whether to create a new combined Pollution Inspectorate;
- (ii) whether it should contain all or part of the present RCI; and
- (iii) whether to locate the new Inspectorate in DOE or HSE.



## II COMBINED POLLUTION INSPECTORATE

### Options

4. There are two options here:

(i) to bring together the main pollution inspection functions as a combined Pollution Inspectorate (either in DOE, as Mr Baker proposes, or in HSE); or

(ii) to continue the status quo, in which IAPI is managed by HSE and the RCI, HWI, and water pollution staff by DOE.

### Assessment

5. There would be both presentational and efficiency arguments in favour of a new combined Pollution Inspectorate. The Royal Commission on Environmental Pollution has recommended an integrated Pollution Inspectorate in four reports since 1974. Mr Baker judged that such a step would increase central government's ability to provide leadership and practical guidance to local and water authorities, and to industry, and would restate the Government's commitment to environmental protection. This view is shared by the Secretary of State for Wales, to whom such a new Pollution Inspectorate would report in respect of Welsh matters.

6. In efficiency terms the Scrutiny report argues that a combined Pollution Inspectorate would:



(i) facilitate better allocation of inspection resources to the different media (the scrutiny found an imbalance in the resources currently devoted to air pollution when compared to water and land); and

(ii) improve inspectors' technical input to the formulation of policy and guidance for enforcement officers on the ground, in particular on cross-media issues such as the transfer of pollutants from one medium to another. The CBI and Chemical Industries Association emphasise this as a means of improving the UK input to environmental initiatives developed in Brussels.

7. The existing Industrial Pollution Inspectorate for Scotland (HMIPI) is a precedent for most of what is proposed - it combines air, radiochemical and some hazardous waste inspection (but generally not water pollution) in a single inspectorate within the Scottish Development Department.

#### Conclusion

8. There are different views on whether a combined Pollution Inspectorate should be located in DOE or in HSE and these are discussed in section IV below. But if a satisfactory answer can be found to the question of location, there seems to be a good case for creating such an Inspectorate. Departments, HSE, the Royal Commission on Environmental Pollution and the scrutiny report all see benefits in integrated pollution inspection arrangements. There are two caveats:

(i) IAPI has earned industry respect by virtue of its expertise and knowledge, and it would be important to ensure that any integration of IAPI into a combined Pollution Inspectorate should not diminish these qualities.



(ii) Consideration would need to be given to the appropriate pay rates for the staff of the new Inspectorate and the pay implications of bringing together the IAPI Staff with the other environmental inspectorates. Different inspectorates are currently paid at different rates and it would be necessary to ensure that the merger did not automatically lead to a levelling-up.

### III RADIOCHEMICAL INSPECTORATE (RCI)

9. The RCI reports to the Secretaries of State for the Environment and for Wales and is organisationally part of DOE; Mr Baker proposed that, as a key inspectorate supporting his responsibility for radioactive waste, it should form part of a new Pollution Inspectorate. It seems sensible to consider first whether there is any other option which might be preferred, because the presentational impact of a new Pollution Inspectorate would be lessened and disruption increased if the RCI were first included, then removed to join some other grouping. One option advocated by Lord Marshall, the CEEGB Chairman, is that the RCI should be transferred to HSE, so as to be under common management with the Nuclear Installations Inspectorate (NII). (One third of RCI effort is devoted to licensed nuclear sites - power stations, Sellafield, etc also inspected by the NII, two-thirds to some 6,000 non-licensed sites - industry, hospitals, etc. Another is that the RCI should remain separate from either a new Pollution Inspectorate or HSE.

#### Options

10. Three main options therefore emerge from the Scrutiny and Departments' comments on it:



(i) transfer the RCI's nuclear work to the HSE (thus meeting Lord Marshall's desire for common management of NII and RCI nuclear work). The RCI's non-nuclear work could be transferred as well (D/Employment favour this, on the ground that RCI work as a whole would sit well with HSE's responsibility for regulations on ionising radiation); or it could remain in DOE as the Scrutiny envisaged in one option, which would mean splitting the RCI, with its non-nuclear work only forming part of a Pollution Inspectorate;

(ii) put the RCI as a whole into the new Pollution Inspectorate, as Mr Baker proposed, and seek to improve co-ordination between the RCI and NII by administrative means. This is the other option set out in the Scrutiny, and is supported by the Welsh and Scottish Offices;

(iii) seek improved administrative arrangements between the NII and RCI as in option (ii), but keep at least the nuclear functions of the RCI separate from the new Pollution Inspectorate (a variant postulated by the Department of Energy).

#### Assessment

11. Four separate bodies inspect the nuclear industry in England and Wales:

<u>Inspectorate</u>	<u>Staff</u>
Nuclear Installations Inspectorate (HSE)	150
RCI (DOE/Welsh Office)	35 (11-12 on nuclear work)
Fisheries Laboratory (MAFF)	4 (inspection only)
Atomic Energy Unit (MAFF)	4 (inspection only)



This structure reflects history, the availability of expertise and the present somewhat complex pattern of Ministerial responsibilities in relation to nuclear matters. The Secretary of State for Energy (in England and Wales) and the Secretary of State for Scotland are, in a policy sense, responsible for the safety of the nuclear industry. They are advised on nuclear safety matters by the NII. But nuclear site licences are issued by the NII which, as part of the HSE, is independent of the sponsoring Departments and operates under the aegis of the Secretary of State for Employment. The Secretary of State for the Environment is responsible for policy on radioactive waste management, and jointly with the Minister for Agriculture Fisheries and Food for authorising radioactive discharges and monitoring radioactivity in the environment and in food in England. They are supported by the inspection capabilities of the RCI and MAFF units respectively, and to some extent by HSE and NII.

12. The structure of Ministerial responsibilities is simpler in Scotland, as the following table shows:

	<u>ENGLAND</u>	<u>WALES</u>	<u>SCOTLAND</u>
<u>MINISTERS</u>	SOS/Energy	SOS/Energy	SOS/Scotland
	SOS/Environment	SOS/Wales	SOS/Employment
	SOS/Employment	SOS/Employment	
	Minister of Agriculture		
<u>INSPECTORATES</u>	NII	NII	NII
	RCI	RCI	HMIPI
	MAFF FL	(MAFF units	



MAFF AEU

operate at  
Welsh Office  
request

MAFF FL  
(undertakes coastal  
monitoring at  
Scottish Office  
request)

13. In theory the involvement of four inspecting bodies each under separate management, risks:

(i) omissions, where issues fall between stools;

(ii) duplication and conflict, where regulatory regimes overlap.

The scrutiny found no evidence of the first risk having occurred in practice, but some evidence of the second, together with marked dissatisfaction from the CEGB and BNFL about the relationship between the NII and RCI, in particular at Sellafield. This was in contrast to the attitude of non-nuclear industry, which generally found inspection helpful.

14. Applying common management to nuclear inspection (option (i) above) would be one way of addressing these difficulties. This would be well received by the nuclear industry and would bring some benefits of efficiency. But the scale of efficiency benefits would be limited, since:

- while the views and priorities of different inspectorates may conflict initially, there is no evidence of such initial differences enduring to the point where the industry's construction plans would be delayed;



- the scale of any duplicatory work is small given that only one third of the RCI's effort - ie some 11-12 man years - is devoted to nuclear work, while the vast bulk of nuclear inspection work - the 150 man years in the NII - is already under a single management.

And at least some of these difficulties could be addressed by administrative measures stopping short of common management.

15. Common HSE management with reporting links to the various policy Departments would also bring a number of disadvantages to set against these limited efficiency benefits:

(i) DOE Ministers are strongly of the view that they need radiochemical inspectors under their direct command if they are to discharge their responsibilities satisfactorily (a view supported by the Secretaries of State for Scotland and Wales). MAFF also consider their departmental radiological inspectors as necessary to and integrated with wider MAFF responsibilities.

(ii) as the scrutiny recognises, merging the nuclear work of the RCI into the NII in HSE could be represented - whether this was in fact the case or not - as a downgrading of radioactive waste management in comparison to the safety interest in regulation (Sometimes there is a trade-off to be made between safety and waste management objectives - for example encapsulating radioactive waste reduces risks to workers but may constrain eventual waste disposal options);

(iii) the new Pollution Inspectorate would lack one of the components envisaged for it by, for example, the Royal Commission on Environmental Pollution. It could still



serve a useful function, but would be less comprehensive and less well received by environmental organisations than would an Inspectorate including the RCI nuclear functions.

With the exception of D/Employment, Departments generally favour administrative measures to improve coordination between the NII, RCI and MAFF (options (ii) and (iii)), rather than a common management approach.

16. Locating the RCI as a whole in the new Pollution Inspectorate (option (ii) above) would not raise these difficulties (unless the new Inspectorate were located in HSE, when the first two would arise). It would be necessary to look to administrative means of improving co-ordination between the NII, RCI and MAFF units. While an administrative package can never produce the clear accountability for the management of nuclear inspection overall of a unified management structure, Departments consider that it would be capable of delivering some improvements, and the present clear accountability of individual inspectorates to individual Ministers would be continued.

17. Option (iii) above - leaving at least the nuclear inspection functions of the RCI separate from both the NII and the new Pollution Inspectorate, and (as in option (ii)) looking to administrative means to improve NII/RCI co-ordination - would avoid the disadvantages of merging RCI nuclear work into the HSE. It would also avoid any risk that, if such work became part of a new Pollution Inspectorate, the new Inspectorate's top management could add another layer of management through which communication between the NII and RCI would have to pass. It would, however, meet the full desires of neither the Royal Commission on Environmental Pollution and environmentalist organisations on the one hand, nor Lord Marshall and the nuclear industry on the other.



## Conclusion

18. Bringing all nuclear inspection functions under common management in the HSE might well be attractive if the Government were planning increased emphasis and resources for nuclear inspection perhaps via a "Nuclear Regulation Agency/Inspectorate." Any such general initiative to give Government's nuclear role a clearer focus might well rationalise not only the four present inspectorates, but also the present five independent bodies: the National Radiological Protection Board, the Advisory Committee on the Safety of Nuclear Installations, the Radioactive Waste Management Advisory Committee, the Committee on Medical Aspects of Radiation in the Environment and the Advisory Committee on the Safe Transport of Radioactive Materials. But this would add DHSS and D/Transport to the list of those whose existing responsibilities would be affected. The question would then arise as to whether a more unified structure would be perceived to yield satisfactory service to the various different Ministers with nuclear-related responsibilities, or whether Ministerial responsibilities would also have to be concentrated together in a specifically nuclear portfolio.

19. Unless part of such a wider initiative, however, a merger of RCI nuclear work into the HSE seems likely at present to be particularly at risk of an unfavourable reception. Three incidents at Sellafield during the scrutiny and now the Chernobyl reactor accident mean that any change in this area will attract great public scrutiny and, unless self-evidently a tightening of standards or their enforcement, risk hostile comment. The disadvantages of option (i) appear to outweigh the limited efficiency advantages.



20. Option (iii), putting the RCI nuclear inspection functions in neither the new Pollution Inspectorate nor a common HSE management with NII, would deny the Government the possible advantages of both these options. The argument that it would facilitate NII/RCI coordination more than if the RCI were in a new Pollution Inspectorate is not incontrovertible - the RCI already reports to a top management within DOE, and it is not clear why a new Pollution Inspectorate's top management should present more of a barrier to coordination with the NII than does the existing structure. The option would only seem attractive if it were desired to avoid any change in nuclear-related areas at present.

21 Unless therefore Ministers see an overriding need to avoid any nuclear related change at this time, we recommend that the RCI as a whole should form part of the new Pollution Inspectorate, and that the DOE and HSE be asked to pursue administrative improvements in coordination as in the scrutiny report's paragraph 9.7(ii), consulting MAFF and building on discussions already planned to improve NII/RCI coordination. (The Scrutiny floated the possibility of a new Secretariat to encourage coordination. Departments doubt the need for this. The important requirement is for DOE and HSE to set down clearly for Ministerial approval the steps that they propose in order to improve coordination. The idea of a Secretariat might therefore be kept in reserve for further consideration if difficulties persist in spite of other measures).

#### IV LOCATION OF POLLUTION INSPECTORATE

##### Options

22. There are two main options for locating the Pollution Inspectorate recommended in paragraph 9:



(i) in DOE, as proposed by Mr Baker: or

(ii) in HSE, where there are two variants. The reporting line on pollution inspection could run direct from HSE to DOE Ministers, or could pass through the Health and Safety Commission. The former variant would give somewhat more direct links - though still of course less direct than for an Inspectorate in DOE itself - and would avoid the awkwardness of the Commission's tripartite structure appearing less apt to pollution issues than it is to employee safety.

### Assessment

23. Arguments relevant to a decision on locating the new Pollution Inspectorate are reviewed in Chapter 7 of the Scrutiny report; in summary the main arguments in favour of a DOE location are:

(i) DOE/WO Ministers are responsible for the areas covered by these inspectorates and they wish to discharge this responsibility via inspectors under direct DOE command (This was a principle which underlay the Prime Minister's decision in November 1982 to locate the new Hazardous Waste Inspectorate in DOE, rather than in HSE, as the Gregson Committee had recommended);

(ii) the Royal Commission on Environmental Pollution, IAPI staff themselves, the CBI and the Chemical Industries Association all argue that IAPI should be transferred from HSE to DOE;



(iii) presentationally it could look odd to have a Pollution Inspectorate outside the Department titled "Environment". And if the Pollution Inspectorate were located in HSE, there is a possibility that Welsh Office Ministers might wish to propose splitting off its Welsh functions and creating a separate Welsh Inspectorate along the lines of HMIPI in Scotland.

24. The main arguments in favour of HSE are:

(i) HSE has particular expertise and experience in managing inspectorates, and its breadth avoids the personnel difficulties which can arise in small inspectorates;

(ii) the Robens report recommended the creation of HSE (and the transfer of IAPI to it) so that there should be a single body capable of taking an overview of all the consequences arising from industrial activity and managing the safety, health and environmental standards applied. This principle would be maintained by locating a new Pollution Inspectorate in HSE, which could then manage the safety/pollution interface (e.g. installing an electrostatic precipitator reduces dust emissions but increases risks to workers);

(iii) if one accepts the argument that inspectors, while available to provide advice, should in career terms be independent of policy Ministers and Departments, HSE is a means of providing such independence. In particular an HSE location would avoid the potential for conflict inherent in DOE's current dual responsibilities for water pollution standards and sponsorship of the water industry.



25. There are also two wider considerations. The Secretary of State for the Environment's minute of 23 September proposed the formation of a Pollution Inspectorate within DOE as contributing to a broad political objective of emphasising the Government's commitment to environmental matters. On the other hand the Secretary of State for Employment's minute of 7 October queries whether failure to observe the Robens principle might not lead to inconsistent requirements from different bodies and hence an increase in the regulatory burden on industry. The weight to be attached to each of these considerations is very much a political judgment, but in the latter case the scrutiny report (para 7.9) found that with measures in place to encourage HSE/DOE co-ordination (and both DOE and HSE have expressed willingness to devote effort to coordination), there should not be an increase in the regulatory burden. This conclusion reflects the relatively small derogation from the Robens principle which would be involved, the absence of difficulty in Scotland where the separation already exists, and the support of the CBI and Chemical Industries Association for moving IAPI from HSE to DOE.

#### Conclusion

26. If the new Inspectorate were to be located in DOE, DOE and HSE should be asked to implement the co-ordination measures recommended in para 7.9 of the scrutiny report. If the new Inspectorate were located in HSE, the co-ordination arrangements recommended in paragraph 7.15 of the scrutiny report should be implemented, and a direct reporting line from HSE to DOE Ministers be adopted. (If the Health and Safety Commission were included in the reporting line, the suggestion at paragraph 7.16 of appointing the Chairman of the Royal Commission on Environmental Pollution to the vacant seat on the Commission might defuse one source of criticism.) A decision between these two options is heavily dependent upon political judgments, but



the balance of advantage would appear to lie in locating the new Inspectorate in DOE, in a direct line of accountability to the responsible Minister.

## V OVERALL ASSESSMENT

27. The above analysis argues for the creation of a combined Pollution Inspectorate including IAPI, HWI, and DOE/WO water pollution staff; including also the whole of the RCI, with better administrative measures to co-ordinate RCI and NII activity; and the location of this new Inspectorate in DOE, with measures to ensure the necessary coordination between DOE and HSE.

### Benefits

28. The benefits of this would be

- the political benefit foreseen by the Secretaries of State for the Environment and for Wales in underlining the Government's interest in environmental matters;
- the operational advantages identified in chapter 5 of the Scrutiny report;
- the likelihood of a general welcome from the initiative outside Government (the main exceptions being the CEGB and BNFL, the HSC and HSE).

### Administrative Costs and Implications

29. The administrative costs of this and the other options discussed above are considered in the Annex. In general the effort required for implementation differs relatively little depending on which option is selected, so does not suggest a need to reconsider the preferred option identified in paragraph 27.



That option would involve transferring IAPI's 52 staff plus sampling and clerical support provided to local inspectors from HSE to DOE (but their physical location would not be changed), and could be implemented initially by action under the Health and Safety at Work etc Act 1974, without fresh primary legislation. DOE would then become responsible for action on the scrutiny recommendation that IAPI put its sampling and analysis requirement to competitive tender.

30. Primary legislation would provide a better long-term basis when an opportunity arose: while the transfer could be imposed under the 1974 Act against HSC's wishes, this would be a cumbersome and protracted process, and it would be preferable if possible to proceed with HSC's cooperation. That might involve retaining some residual HSC role, and there could anyway be an apparent awkwardness if in the longer term air pollution remained a primary purpose of the 1974 Act but its enforcement was entirely removed from the HSC and HSE. The opportunity to legislate in this area could arise in the "Green Bill" sought by the Secretary of State for the Environment.

31. When a decision has been taken on the appropriate organisation it will be necessary to inform the staff, and consult with the unions (mainly IPCS) on that. To the extent that staff with different pay rates are brought together we may expect difficult negotiations with strong pressures for levelling up. These would have to be resisted, as indeed they are at present, unless increases prove to be justified on grounds of recruitment retention and motivation.



32. Subject to the essentially political judgment as to the Government's desired stance on environmental and nuclear issues, the benefits of a new Pollution Inspectorate in DOE containing IAPI, HWI, water pollution and all RCI functions appear to justify the costs of change, and this option is recommended.

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July 1986



## ADMINISTRATIVE COSTS OF IMPLEMENTATION

Recommended Option

1. IAPI's 52 staff would need to transfer from HSE to DOE (but this would not involve any physical move, as IAPI's HQ is already colocated with DOE pollution staff). Arrangements would also have to be made for transfer of IAPI sampling support to DOE (DOE would become responsible for the scrutiny recommendation that this work be put to competitive tender) and for maintenance and subsequent transfer of clerical support for District Inspectors. No net addition to staff numbers would be required. The Scrutiny concluded that IAPI was generously resourced but that more resources could be used to good effect on hazardous waste and water inspectio. DOE have agreed that once the new Pollution Inspectorate were formed they would review the scope for savings in or additions to the resources devoted to its constituent parts. DOE/Welsh Office (WO) could be empowered to perform the HSC/HSE air pollution inspection functions by an agency agreement under section 13 of the Health and Safety at Work Act 1974 (the HSW Act) - a number of agency agreements already exist, including one empowering HMIPI to perform air pollution functions in Scotland.

2. The above assumes that HSC and HSE would participate in the implementation of the option as willing partners. This cannot be guaranteed: while HSE staff are civil servants, both HSC and HSC are non-departmental bodies with their own statutory existence and functions. If HSC/HSE were not prepared to co-operate in transferring IAPI to DOE/WO, it appears that this could still be achieved without primary legislation, but would be time consuming and not entirely free from the risk of legal challenge: the procedure would be



(i) Secretary of State to make regulations under section 15(3)(c) of the HSW Act 1974 appointing DOE as the enforcing authority for the relevant provisions, having first consulted HSC (IAPI inspectors appointed by HSE would then cease to be able to exercise their powers);

(ii) Secretary of State to direct HSC (under section 12(b) of the HSW Act 1974) to direct HSE (under section 11(4) of the 1974 Act) to dismiss the IAPI staff;

(iii) DOE to exercise its powers as an enforcing authority to appoint the IAPI staff to posts in DOE (those appointed as inspectors would then again be able to exercise enforcement powers). (Sections 18(7) and 19(1) of the 1974 Act.)

4. There seems [a good chance - Departments to comment] that recognising the Government's ability to impose the transfer of IAPI by this means, HSC and HSE could be persuaded not to insist on this formal procedure but to enter into an agreement under section 13 of the 1974 Act. Nonetheless securing an agreement would doubtless require negotiation and the outcome might not be entirely clear cut. Because of this, and the awkwardness of a situation where the control of noxious or offensive emissions remained one of the basic purposes of the 1974 Act but the HSC and HSE no longer had any role in it, new primary legislation seems likely to be the better longer-term solution: while IAPI could be moved to DOE without primary legislation, and this might bring forward the timescale in which a new Pollution Inspectorate could be created in DOE, some awkwardness would remain which could be removed only by new legislation.



## Other Options

5. Implementation of the other options for change discussed would require the following:

(i) transfer of RCI nuclear work to join NII under common HSE Management. Some 11-12 RCI staff would be transferred to HSE. DOE (and MAFF, if as the scrutiny envisaged HSC were to take on MAFF nuclear inspection functions too) and HSC would enter into an agency agreement under Section 13(1)(b) of the 1974 Act whereby the function of appointing inspectors under section 12 of the Radioactive Substances Act 1960, would become exercisable by HSC, who would then direct HSE under section 11(4)(a) of the 1974 Act to exercise these powers on the Commission's behalf.

If desired HSE, rather than DOE and MAFF, and WO in Wales, could also be made responsible for authorising radioactive discharges from nuclear sites, under sections 6 and 8 of the Radioactive Substances Act 1960. This would parallel the position on nuclear safety, where the HSE grants the site licence; and Mr Baker then Secretary of State for the Environment commented that it would be difficult for him to retain responsibility for granting authorisation if the RCI were moved into HSE. However while authorisation functions could in principle be the subject of an agency agreement under section 13(1)(b) of the 1974 Act in the same way as the power to appoint inspectors, such a move could well be challenged as removing the present safeguard in section 8 of the 1960 Act whereby two Ministers are required to authorise. Primary legislation might therefore be required, and this would be likely to be controversial.



(ii) transper of all RCI work to join NII under common HSE management as above but all 35 RCI staff would be transferred.

(iii) location of Pollution Inspectorate in HSE Some 46 RCI, HWI and water pollution staff would transfer to HSE. DOE, WO and HSC would enter into an agreement under section 13 of the 1974 Act empowering HSC to perform RCI and water functions (the HWI is non-statutory).

Since these options would be welcome to HSC/HSE there would not be the danger of their refusing to co-operate in implementation; on the other hand the staff transfers would be likely to present greater difficulty, for example because the DOE TUS argues for RCI, HWI and water staff to remain in DOE and so would probably oppose a transfer to HSE. A decision that they should remain in HSE might also give rise to morale problems in IAPI, whose staff wants to see the inspectorate located in DOE.



ENV. AFFAIRS

ACID RAIN

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