

November 28, 2023
Office of the Auditor General of Canada
Commissioner of the Environment and Sustainable Development

Attention: Petitions

240 Sparks Street
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Via e-mail: petitions@oag-bvg.gc.ca

RE: Federal government obligation to disclose information on presence of radioactive waste contamination

OVERVIEW

This petition is being submitted to the Office of the Auditor General of Canada in accordance with section 22 of the *Auditor General Act* by Faye More.

The Federal government has failed to appropriately disclose information about radioactive nuclear contamination on public properties in Port Hope, Ontario and elsewhere in the country to members of the public at risk of exposure.

This petition seeks a formal commitment from the Federal government to disclose to affected members of the public all information in its possession about radioactive contamination on public or private properties caused by wastes from the nuclear fuel cycle. Proactive and fulsome disclosure of information about radioactive contamination of public and private property is required to comply with Canada's international obligations under the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management* ("Joint Convention"),¹ as well as its obligations under [International Covenant on Civil and Political Rights](#) ("ICCPR")², and the [United Nations Convention on the Rights of the Child](#) ("CRC").³

(1) International Law

Canada has committed to establishing legal and institutional frameworks to protect the environment, decrease harm to the environment, and promote human rights. Central among these

¹ **Book of Documents, Tab 1:** *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*, 24 December 1997, 2153 UNTS 35 (entered into force 18 June 2001) [*Joint Convention*].

² *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 arts 9-14 (entered into force 23 March 1976, accession by Canada 19 May 1976) [*ICCPR*].

³ *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) [*CRC*].

rights is that the public is entitled to meaningful access to information. This is recognized in Canada's international commitments with respect to management of nuclear waste, as well as its broader international human rights obligations.

The preamble to the *Joint Convention* emphasizes “the importance of informing the public on issues regarding the safety of spent fuel and radioactive waste management.”⁴ The Summary Report of the Sixth Review Meeting of the Joint Convention noted that effective public information and engagement on spent fuel and radioactive waste management is crucial in gaining public confidence in the management of these facilities.⁵

Canada is a party to both the *ICCPR* and the *CRC*. Access to information is a key tenet of both treaties. There is an independent obligation to receive information of all kinds under article 19 of the *ICCPR*:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers...”.

Likewise, Article 13 of the *CRC* states that “the child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.” Article 13(2) of the *CRC* states that any restrictions to this right “shall only be such as are provided by law” and are necessary for the protection of the rights of others, national security, public order, or morals.

These commitments are crucial with respect to environmental rights, as it is essential for individuals to understand how environmental harm may undermine their rights, including the rights to life and security of the person.⁶ United Nation's Special Rapporteur John Knox's Framework Principle 7 elaborates on two dimensions of meaningful access to environmental information:

- Firstly, a state should regularly collect, update and disseminate environmental information, including up-to-date information about pollution and waste, chemicals and other potentially harmful substances introduced into the environment.⁷
- Secondly, states should provide affordable, effective and timely access to environmental information held by public authorities and provide guidance to the public on how to obtain environmental information.⁸

⁴ **Book of Documents, Tab 1:** *Joint Convention*, *supra* note 1 at preamble iv.

⁵ **Book of Documents, Tab 2:** Bismark Tyobeka, Geoff Williams & Douglas Tonkay, “Final Summary Report: Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management” (1 June 2018) at para 28.

⁶ **Book of Documents, Tab 3:** United Nations Human Rights Council, “Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment” (24 January 2018) at paras 1-2.

⁷ **Book of Documents, Tab 4:** United Nations Human Rights Council, “Framework Principles on Human Rights and the Environment” (24 January 2018) at paras 18-19 [Framework Principles].

⁸ **Book of Documents, Tab 4:** Framework Principles, *ibid* at paras 18-19.

If there is a risk of significant harm to the environment or the public, the government is obligated to inform the public of this risk, regardless of whether the threats have natural or human causes.⁹

(2) Access to Information Act

The purpose of the [Access to Information Act, RSC, 1985, c A-1](#) (“ATIA”) in s.2(1) is to enhance accountability and transparency of federal institutions in order to promote an open and democratic society and to enhance public debate on the conduct of those institutions. However, contrary to the purpose of the ATIA, the legislation is a barrier to public access to information about radioactive contamination that affects them.

It is not appropriate to require members of the public to make ATIA requests for information regarding radioactive contamination, as they do not know what reports, surveys, memoranda, or other documents exist that could be relevant to their homes or other properties. The current practice is a barrier to discovering information vital to a person’s health and wellbeing. Furthermore, ATIA disclosure packages often do not disclose all relevant data and redact important information, further restricting public access to crucial information.

Disclosure of information about radioactive contamination in a community would promote informed public discussions about nuclear facilities and waste management practices and better promote public participation in decision-making about the nuclear fuel cycle.

Individuals are entitled to information that may inform their decisions about taking health risks. If an individual is experiencing health impacts from exposure to radioactive contamination, it is critical that medical practitioners can assess exposures and other factors in treating an individual.

(3) Canada’s Policy for Radioactive Waste Management and Decommissioning

Natural Resources Canada (“NRCan”) released an updated policy on managing radioactive waste and decommissioning nuclear sites in 2023. It includes a commitment to “inclusive engagement, openness, and transparency on radioactive waste management and decommissioning.”¹⁰ That commitment would be served by proactive disclosure of information on radioactive contamination to help protect the public from the impacts of radioactive waste. Current federal government practice not to disclose all relevant contamination information is contrary to this policy.

(4) Consequences of Current Government Practice

While section 13 of the [Radiation Protection Regulations \(SOR/2000-203\)](#) under the [Nuclear Safety and Control Act \(S.C. 1997, c. 9\)](#) outline effective dose limits of radiation to the public, there is no way to calculate the dose received by a member of the public without fulsome information about when and where a person has been exposed to radiation. If the federal government is aware of radioactive contamination in a playground, under a street or at a school,

⁹ **Book of Documents, Tab 4:** Framework Principles, *supra* note 7 at para 18.

¹⁰ **Book of Documents, Tab 5:** Natural Resources Canada, “Canada’s Policy for Radioactive Waste Management and Decommissioning” (2023) at 6.

a member of the public's effective dose cannot be calculated without that information. It is also extremely important for impacted individuals to know about contamination of their private properties, and the municipal frontage on their properties, so that residents can mitigate exposure.

Disclosure of all information revealing radioactive contamination that will impact an individual is of particular concern as dose limits are impacted by numerous factors including the sensitivity of the individual, the length of exposure, and the amount of the specific radioactive material present at the site. The same radioactive material could have a significantly different dose impact if, for example, it is found under a school or a residential unit, where vulnerable individuals will spend a large amount of time, as opposed to a more remote location which is not frequented regularly.

(5) Case Study: Port Hope

For decades, people in Port Hope, Ontario have been living with radioactive contamination from waste and emissions from two federally licensed nuclear industry operations located in the community.¹¹ In 2001, a Legal Agreement between the federal government and the Towns of Port Hope and Port Granby was signed in relation to remediation of contamination and removal of historical radioactive waste to two licenced temporary storage facilities to be constructed in the communities.¹²

The following three contaminated sites in Port Hope provide examples of why the lack of disclosure of information about radioactive contamination is a serious health issue that must be remedied.

(a) 64 Ward Street- Dr. Power's Public School (Kindergarten to Grade 6)

For many years, citizens of Port Hope have requested information about Dr. Power's Public School and surrounding properties through various correspondence, file reviews, meetings with Atomic Energy of Canada Limited ("AECL"), and *Access to Information Act* requests. The petitioner received information in 2023 in response to an *Access to Information Act* request regarding radiation and contamination testing conducted on the property in 2021.¹³ The information was not proactively disclosed by the government to any members of the public.

Health Canada recommends taking action to reduce radon levels in air if it exceeds 200 Bq/m³, which is approximately 5.4 pCi/L.¹⁴ The disclosed records revealed that radon testing at Dr. Power's Public School in 1978 found an astonishingly high level of radon gas of **506.9 pCi/L** in

¹¹ **Book of Documents, Tab 6:** Gamma Bob Inc., "Airborne and Road Surveys of Radioactivity for the Port Hope Area Initiative" (September 2002) at 1 [Airborne and Road Surveys of Radioactivity].

¹² **Book of Documents, Tab 7:** *An Agreement for the Cleanup and the Long-Term Safe Management of Low-Level Radioactive Waste Situate in the Town of Port Hope, the Township of Hope and the Municipality of Clarington* (December 2009).

¹³ **Book of Documents, Tab 8:** Low Level Radioactive Waste Management Office and Arcadis, "Radiological Property Survey for 64 Ward Street, Port Hope Ontario" (22 June 2021) [Radiological Property Survey].

¹⁴ **Book of Documents, Tab 9:** Health Canada, "Guide for Radon Measurements in Public Buildings" (November 2021) at 2, 5.

air beneath the kindergarten and gymnasium.¹⁵ Follow-up testing confirmed the likelihood of radioactive source material below the gymnasium and kindergarten.¹⁶ However, the AECL did not disclose these test results to the public. Limited monitoring by Canadian Nuclear Laboratories only began in the 1990s in response to public concern.¹⁷

The school operated until 2007 and the property was eventually sold.¹⁸ In 2011, AECL required a Construction Monitoring Program before residential housing was built at the site and 41 m³ of radioactive material at the exterior of the property was removed.^{19 20}

In 2021, another investigation report required under AECL's Construction Monitoring Program estimated that 647 m³ of radioactive material was necessary for removal²¹, with more waste under the west wing and possibly in the mix used for the concrete floor of the wing.²² Other nearby public property still requires remediation, including Bob's Drive, a small roadway from the school to the former school playground used by children.²³

The building, which was once Dr. Power's Public School, is located at 64 Ward Street in Port Hope, Ontario and has been recently converted to residential apartments.²⁴

¹⁵ **Book of Documents, Tab 10:** Written Affidavit of Redacted Former Contracted Employee of Natural Resource's Canada Dealing with Radioactive Waste at Dr. Powers School, (15 February 2006) at 000563 [Affidavit of Redacted Contractor].

¹⁶ **Book of Documents, Tab 10:** Affidavit of Redacted Contractor, *ibid* at 000567.

¹⁷ **Book of Documents, Tab 11:** Northumberland News, "Radon Testing Begins at Port Hope School" (12 May 2004).

¹⁸ **Book of Documents, Tab 12:** Northumberland News, "New affordable housing planned for Port Hope's Dr. Powers School site" (9 October 2009).

¹⁹ **Book of Documents, Tab 13:** Canadian Nuclear Safety Commission, "Application for Amendment of Waste Nuclear Substance Licence for the Port Hope Long-Term Low-Level Radioactive Waste Management Project" (24 October 2018) at para 97.

²⁰ **Book of Documents, Tab 8:** Radiological Property Survey, *supra* note 13 at 000339.

²¹ **Book of Documents, Tab 8:** Radiological Property Survey, *supra* note 13 at 000347.

²² **Book of Documents, Tab 14:** ARCADIS Canada Inc., "Interior Delineation Work Plan" (16 January 2019) at 2-3 [Interior Delineation Work Plan].

²³ **Book of Documents, Tab 6:** Airborne and Road Surveys of Radioactivity, *supra* note 11 at Gamma Ray Spectrometer Survey; see also **Book of Documents, Tab 15:** Port Hope Community Health Concerns Committee, "Written submission from the Port Hope Community Health Concerns Committee" (22 August 2018).

²⁴ **Book of Documents, Tab 14:** Interior Delineation Work Plan, *supra* note 22.

Figure 1: Former Dr. Power’s Public School and new housing on the west side of the property.²⁵



²⁵ Google Maps, “64 Ward St., 15 Hope St. N., Port Hope, Ontario” online: <<https://www.google.com/maps/@43.9564968,-78.2888735,3a,75y,252.29h,87.19t/data=!3m6!1e1!3m4!1s8XnruunpMdxLAsdgG7gjSg!2e0!7i13312!8i6656?entry=ttu>>.

Figure 2: Apartments (Former Dr. Power’s School) aerial view of neighbouring properties.²⁶



²⁶ Google Maps, “TVM Port Hope Apartments, 64 Ward St., Port Hope ON) online:
<<https://www.google.com/maps/@43.9564968,-78.2888735,157m/data=!3m1!1e3?entry=ttu.>>.

Figure 3: ARCADIS Design and Consultancy Survey of Radioactive Contamination on the North Side of 64 Ward Street.²⁷



Pursuant to Figure 3, contamination is found in the top northwest corner of Section A (illustrated by the red arrow).²⁸ According to Figure 2, the top northwest corner is close to neighbouring lands that are used for residential purposes, raising health concerns for those residents. Along with the contaminations found under the west wing, the 2021 Remedial Action Plan identified additional areas of concern.²⁹

Vulnerable children spend a lot of time at school. There is an urgent need for proactive disclosure by the government of information in its possession about radioactive contamination of schools or other public properties.

(b) Cavan Street and Cavan Park Areas - roadway, public park

The requestor received information in 2022 through *Access to Information Act* requests. The information received in response to these *ATIA* requests related to historical contamination on Cavan Road and Cavan Park, and was not proactively disclosed to the public.

Canadian Nuclear Laboratories corresponded with the Municipality of Port Hope in 2021 about detailed investigations on Cavan Street and at Cavan Park and planned remediation.³⁰ These are

²⁷ **Book of Documents, Tab 14:** Interior Delineation Work Plan, *supra* note 22 at 6.

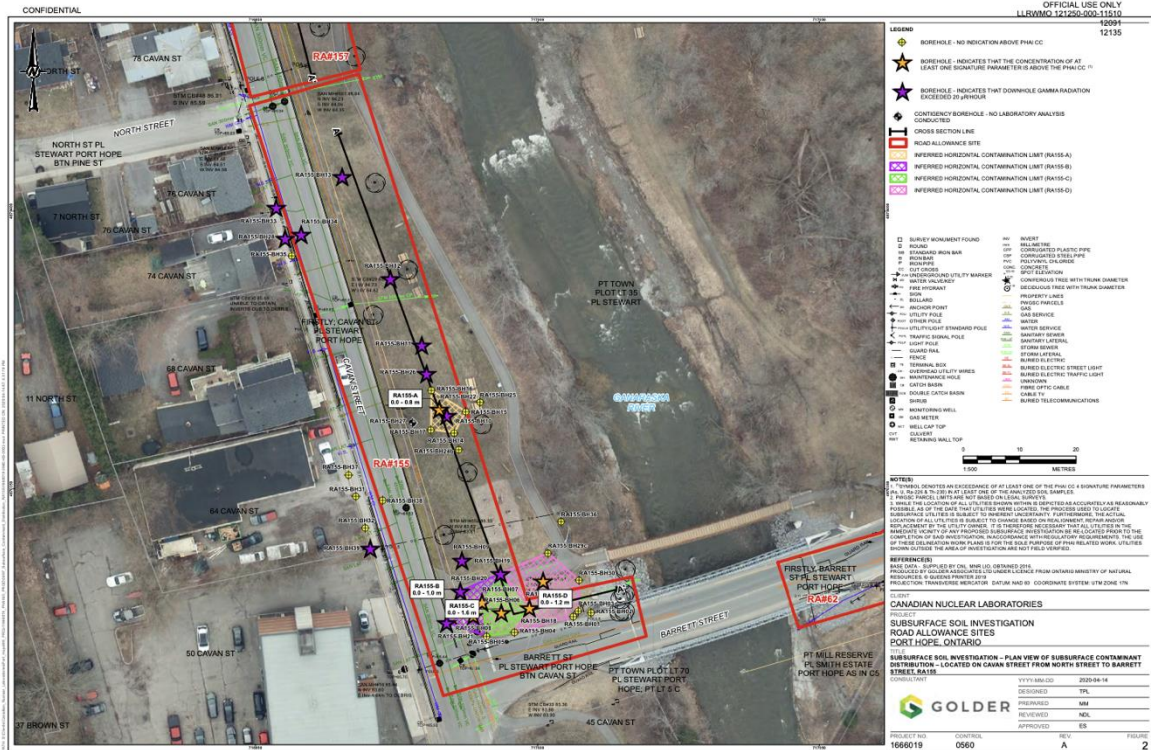
²⁸ **Book of Documents, Tab 14:** Interior Delineation Work Plan, *supra* note 22 at 6

²⁹ **Book of Documents, Tab 16:** ARCADIS, “Remedial Action Plan” (3 September 2021) at Figures.

³⁰ **Book of Documents, Tab 17:** Letter from Steve Whillier et al., (Canadian Nuclear Laboratories) to the Municipality of Port Hope, “Notification of Low-Level Radioactive Waste and Non Low-Level Radioactive Waste for Road Allowance” (15 November 2021) at p 000173 [CNL Letter of November 15, 2021].

public areas which are accessible and widely used by residents of all ages. They are not marked in any way to warn the public about contamination or elevated radiation levels.

Figure 4: Golder Associates Ltd. survey of radioactive contamination along Cavan Street, Cavan Park frontage, and the Barrett Street bridge over the Ganaraska River, as referenced by the Low Level Radioactive Waste Management Office in 2021.³¹



(c) 16 Ralston Drive - Frontage on Front Lawn of Private Residence

The petitioner was previously the owner of 16 Ralston Drive in Port Hope, Ontario. Information about contamination of the municipal frontage of her former home was received only through an *Access to Information Act* request. It was never proactively disclosed.

A photo of the front lawn of 16 Ralston Drive is included as Figure 5. There is no sidewalk between the property previously owned by Ms. More and the municipal frontage property with radioactive contamination.

³¹ **Book of Documents, Tab 17: CNL Letter of November 15, 2021, supra note 30 at Figure 2.**

Figure 5: View of 16 Ralston Drive, Port Hope from the frontage of 14 Ralston Drive, Port Hope, Ontario. ³²



³² **Book of Documents, Tab 18:** Memorandum from Canadian Nuclear Laboratories, “Boulevard at 16 Ralston Drive Port Hope, Ontario, CMP Report” (11 July 2017) at 2 [CMP Report at 16 Ralston Drive].

After a 2014 *Access to Information Act* request for data on municipal roads and frontages, Ms. More became aware of a 2001 aerial radiological survey report by Gamma Bob Inc. which found contamination on the municipal frontage of 16 Ralston Drive and on Ralston Drive, and which included estimates of the levels and types of contamination.³³ A 2002 report regarding gamma radiation anomalies on municipal frontages was sent to Ms. More as part of the same *ATIA* package and included an anomaly on the municipal frontage of 16/18 Ralston Drive.³⁴

In 2017, detailed investigations were undertaken on the municipally owned-frontage of this home due to a municipal water main project planned on Ralston Drive.³⁵

The municipal frontage of 16 Ralston Drive was remediated to remove the radioactive contamination in 2017, after Ms. More sold the house.³⁶

As the federal government chose not to provide Ms. More with information related to radioactive contamination on the municipal frontage of her property, Ms. More and her family were put at risk. Those risks could have easily been mitigated by disclosure about the contamination and Ms. More and her family could have used that knowledge to make different choices about exposing themselves to radioactive waste for decades. Figure 6 is a picture of Ms. More's young children playing on the municipal frontage of 16 Ralston Drive.

Along with the long-time exposure of her family to this contaminated area, the AECL's refusal to provide confirmation about contamination information may have impacted Ms. More's ability to gain compensation from the CNL Property Value Protection Program when she sold her home.

³³ **Book of Documents, Tab 6:** Airborne and Road Surveys of Radioactivity, *supra* note 11; see also **Book of Documents, Tab 19:** Faye More, "Submissions of Faye More" (22 August 2018 and 22 November 2022).

³⁴ **Book of Documents, Tab 20:** Low-Level Radioactive Waste Management Office, "Investigation of Anomalies Identified by the Roadway Gamma Radiation Survey within the Port Hope Area Initiative Geographical Area" (July 2002).

³⁵ **Book of Documents, Tab 21:** Memorandum from Canadian Nuclear Laboratories, "Ralston Drive, Victoria Street North to Scriven Boulevard Port Hope, Ontario, CMP Report - Water Main Construction" (11 August 2017) at 1.

³⁶ **Book of Documents, Tab 18:** CMP Report at 16 Ralston Drive, *supra* note 32.

Figure 6: Ms. More's children playing on the front lawn of 16 Ralston Drive in Port Hope, Ontario, near the radioactive contamination.³⁷



Conclusion

The Port Hope, Ontario case study is an illustration of how the federal government's current non-disclosure policy is harmful. Members of the public in Port Hope may have attended a public school with contamination, attended events at Cavan Park, or lived with contaminated municipal frontage on their properties, all without their knowledge. Requiring members of the public to make *Access to Information Act* requests to gain information, when they would have no way of knowing that there is a request to be made, is a fundamentally deficient approach. It is crucial that the federal government change its longstanding practice and disclose information about radioactive contamination to affected members of the public.

Questions

We seek responses to the questions below from the Minister of Natural Resources Canada. As the matters discussed in this petition have important implications for the health of Canadians and their environment, we ask that this petition also be shared with the Prime Minister of Canada, Minister of Health and with the Minister of Environment and Climate Change.

³⁷ Faye More, untitled, photograph, (circa. 1995).

1. What commitments will be made by federal government departments and agencies to ensure that information regarding the location, volume, and type of radioactive contamination is proactively disclosed to affected members of the public?
2. What are the federal government's rules and guidance when it makes a decision about disclosure of information to the public related to public property that is contaminated with radioactive material? What criteria are used to determine whether radioactive contamination should be proactively disclosed to the public? What is the rationale for the criteria?
3. How is the effective dose in the *Radiation Protection Regulations* calculated for members of the public that may be exposed to radioactive waste at public or private sites?
4. How is information about radioactive contamination at public properties shared between federal government departments and agencies?
5. On what basis are government agencies like the Atomic Energy of Canada Limited (AECL) withholding information about contaminated sites such as schools and municipal frontage of private property?
6. How does the AECL or any other federal government department or agency inform the public about how they can acquire information related to site contamination on public property? How do affected members of the public find out that they may need to seek information from the federal government about radioactive contamination because of exposures at public sites?
7. Will the Government of Canada commit to disclosing information to affected members of the public relating to sites contaminated with radioactive materials?
8. Does AECL, CNL, the Port Hope Area Initiative, or any other federal government department or agency have any files relating to contamination of public or private lands that are considered exempt from the Access to Information Act disclosure process?
9. Will the Minister commit to comprehensive investigations of the three sites in Port Hope, Ontario that are discussed in this petition? (i.e. 64 Ward Street, Cavan Street and Cavan Park, and 16 Ralston)