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THE RUSSIAN NUCLEAR INDUSTRY AND PUBLIC OVERSIGHT:

Background, Legal Regulations, Current
Circumstances and Future Prospects

A Bellona Working Paper

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Aleksandr Nikitin

The following overview deals only with public oversight of the Russian nuclear industry. We have not attempted to compare the Russian nuclear industry with other industries, analyze public oversight in other sectors or catalogue the small number of decidedly positive developments in public oversight of the nuclear sector.

The purpose of this overview is to draw attention to the fact that such an important and complex industry as the nuclear industry cannot successfully operate, evolve, and gain public acceptance without public oversight, as stipulated by Russian law. Therefore, efforts should be made in the nuclear industry to construct a system of legal regulations and means of exercising public oversight

BACKGROUND

Public oversight of the nuclear sector became crucially important after the accident at the Chernobyl Nuclear Power Plant in 1986, during perestroika and glasnost. Before the accident, the nuclear industry was a taboo subject in the Soviet Union. The general public had no input into how it was run, much less any means of exercising oversight.

In this overview, “the public” is understood to include regional and municipal authorities, grassroots organizations, scientific bodies, residents of areas surrounding nuclear energy facilities, and all concerned citizens, including the staff at nuclear facilities, and companies and organizations affiliated with the Russian nuclear industry.

The public's desire to know what is happening and exercise oversight very often arises without any connection to specific events. It becomes especially urgent, however, when the nuclear sector announces new projects, builds nuclear facilities, handles, transports, processes, and disposes radioactive waste and nuclear materials, and adopts and implements programs for emergencies and accidents.

Organizing public oversight of the Russian nuclear industry is a problematic task because, first, the Russian nuclear industry has always been nearly inaccessible to the Russian public. It is, therefore, quite hard to overcome the stereotype that everything nuclear is the prerogative of experts, and the public has no business in this area. Second, the nuclear sector does have numerous built-in safety and security limitations. Since everybody understands, however, that safety issues are quite important to the public itself, the sector cannot operate without public oversight. We should also remember another important factor: the nuclear sector is heavily subsidized by the government, that is, by the taxes paid by Russians everywhere. Taxpayers and citizens thus have the right to know how effectively their money has been spent.

Attempts by the public to organize oversight of the nuclear sector, which started immediately after the Chernobyl accident, have almost entirely failed. Currently, there is no full-fledged oversight of the Russian nuclear industry.

Before discussing legal regulation and other subjects, I should clarify that there is some controversy over what the Russia State Atomic Energy Corporation (Rosatom) is. In this overview, Rosatom (i.e., the nuclear industry) is understood as all of Rosatom's organizations, affiliated enterprises, joint stock companies, and management personnel.



Public hearings in the town of Sosnovy Bor, Leningrad Oblast. Photo courtesy of NO RAO (National Operator for Radioactive Waste Management)



Round table organized by NO RAO in Chelyabinsk. Photo by Andrei Ozharovsky

LEGAL REGULATIONS

It is impossible to construct a system of public oversight in the nuclear sector without legal regulations.

Russian Federal Law No. 170 (“On the Use of Atomic Energy,” dated 21 November 1995) contains Article 3, “The Rights of Organizations, Including Non-Governmental Organizations (Associations), and Private Individuals Concerning the Use of Atomic Energy.” It stipulates the public’s right to information, its right to be involved in shaping nuclear energy policy, and its right to be compensated for damage and injury. It does not, however, enshrine the public’s right to exercise oversight. I should note that the rights listed are quite vaguely defined and pay mere lip service to the public interest. In practice, it is nearly impossible to exercise these rights. Requests for information can always be turned down due to the alleged need for secrecy, while public involvement in shaping policy can be limited to discussions of particular issues.

Other federal laws regulating Rosatom’s operations—for example, “On the Radiation Safety of the General Public,” “On the State Atomic Energy Corporation Rosatom,” and “On the Handling of Radioactive Waste”—contain no provisions ensuring the public’s right to participation and oversight.

Thus, the main federal laws regulating the work of Rosatom, its facilities, and its affiliates do not enshrine the public’s right to exercise oversight over the nuclear sector in the ordinary sense of the word.

Regional laws on environmental protection, and nuclear and radiation safety, which have been passed in many regions where nuclear facilities are located, also contain no provisions for public oversight.

Russian Federal Law No. 212, “On the Principles of Public Oversight in the Russian Federation,” was adopted on 21 July 2014. The law established “the legal basis for the organization and implementation of public oversight concerning the work of government authorities, local governments, state and municipal agencies, and other organizations endowed with public authority, as mandated by federal law.”

Federal Law No. 212 is a model law, meaning it is not implemented directly. Instead, it is a uniform law that recommends the adoption of particular regulations and possible legal decisions. Like other such laws, its use of the term “public authority” is legally vague. Consequently, in each specific case, we would have to ascertain whether the possible target of public oversight—in this case, the nuclear sector—has “public authority” or not.

Chapter 2 of the Federal Law “On the State Atomic Energy Corporation Rosatom” lists its functions. There is no sense in listing all of them here, but we can identify those that are “public”: ensuring the rights and legitimate interests of citizens regarding the use of nuclear energy; ensuring safety and environmental protection, including informing the public of these issues; and conducting clean-up operations after nuclear accidents (Parts 2, 3, and 4 of Article 7).

If we analyze the other functions with which Rosatom has been endowed, we see that its public authority has to do with ensuring the individual, political, social, economic, environmental and cultural rights and freedoms of persons, as guaranteed by the Russian Constitution and all international conventions ratified by the Russian Federation. There can thus be no doubt that the Russian nuclear industry exercises public authority.

The law “On the Principles of Public Oversight in the Russian Federation” recommends five basic forms of public oversight:

- public monitoring
- public inspections
- public expertise
- public discussions
- public hearings

The law does not prohibit or exclude other forms of public oversight as long as they comply with Russian federal laws.

The law identifies public oversight entities, that is, bodies that have a right to initiate and exercise public oversight, including the municipal, regional, and federal public chambers, and the public advisory councils that consult with executive and legislative authorities. The law also provides for the establishment of public commissions, public inspections, public oversight groups, and other non-governmental bodies for exercising public oversight.

The conclusion we should draw is that, by adopting this law, legislators have tried to streamline or, perhaps, establish a system of public oversight that would eliminate grassroots campaigns and prevent the general public from exercising oversight whenever and however they wished. This is quite important, especially for the nuclear industry, in which it is impossible to exercise public oversight without legal regulation.



Round table in the town of Ozersk, Chelyabinsk Region, on construction of a radioactive waste storage facility. Photo courtesy of NO RAO

CURRENT CIRCUMSTANCES AND FUTURE PROSPECTS

As we have noted, above, “On the Principles of Public Oversight in the Russian Federation” is a model law and, therefore, its provisions are not binding on the nuclear industry. They are the recommendations of lawmakers in Russia’s lower house of parliament, the State Duma.

Many Rosatom affiliates, especially those involved in handling radioactive waste, have made efforts to liaison with the public, including in the realm of public oversight. These contacts have most often taken the shape of public discussions and public hearings.

Organizing full-fledged public oversight in the nuclear industry, however, would necessarily involve installing a regulatory framework that would define the legal basis for organizing and exercising public oversight. This is a complicated issue in many respects, including the reasons mentioned above, but also because Rosatom is not emotionally and institutionally ready for it. Consequently, attempts to adopt a regulatory framework have failed.

On 5 April 2016, public oversight was discussed at a session of Rosatom’s public advisory board, then chaired by Rosatom head Sergey Kiriyenko. Initially, a proposal was made to adopt a provision establishing an interregional public inspection team on behalf of the advisory board. The draft provision was sketchy. It envisioned only one of the five forms of public oversight recommended by the law “On the Principles of Public Oversight in the Russian Federation”—public inspections.

Following a discussion, the document was adopted at Kiriyenko’s suggestion, with the additional proviso that the inspection would do its work on the basis of the advisory board’s provision until a regulation on public oversight in the nuclear industry had been passed (see <https://www.rosatom.ru/on-the-board/council-documents>). By approving this wording,

Kiriyenko signaled his consent to the necessity for public oversight of Rosatom. It was a very important decision.

Subsequently, a working group drafted a regulation on public oversight in the nuclear industry. They used the recommendations set forth in the law “On the Principles of Public Oversight in the Russian Federation” regarding the forms and targets of public oversight. The authors of the draft regulation took into account the main laws regulating the nuclear industry, the federal law “On Environmental Impact Assessment,” and the stipulations in the provision earlier adopted by Rosatom’s public advisory board.

Unfortunately, the attempt to establish a regulatory framework for public oversight in the nuclear sector made no further progress for reasons that are not entirely clear. After Sergey Kiriyenko left Rosatom and, thus, Rosatom’s public advisory board, the subject of public oversight was taken off its agenda.

Public oversight remains, nevertheless, an important and urgent issue both for the public and Rosatom itself. It is thus nearly impossible not to resume the discussion.

Currently, public oversight in the nuclear sector has made progress as part of isolated campaigns in the regions and among certain Rosatom affiliates that cannot avoid engaging the public due to the nature of their work. At the moment, the most popular forms of public oversight are public monitoring, public hearings, and public discussions.

The attempt to organize public oversight in the nuclear sector by establishing interregional public inspections failed. The Rosatom public advisory board’s provision on interregional public inspections, adopted on 5 April 2016, has proven to be stillborn. Not a single clause in the provision has been implemented. It was clear from the beginning that the idea of establishing public inspection groups tasked with overseeing Rosatom’s work was doomed for several reasons. The most important reason was that the nuclear industry has no real stake in public inspections and does not know how to organize them. Consequently, officials at all levels came up with a dozen arguments for why nothing could be done.

Public expertise is stipulated by several federal laws and regulations, including the law “On Environmental Impact Assessment.” Theoretically, guided by existing laws and regulations, the public should be able to exercise this form of public oversight. Difficulties arise when NGOs and other parties to public oversight lack the financial, organizational, and professional resources for conducting a public environmental impact assessment. Such circumstances arise quite often.

Public discussions and public hearings are forms of public oversight that are stipulated by regulatory acts, including the federal laws regulating how nuclear energy facilities are issued operating licenses. Public discussions and public hearings are mandatory when an organization has applied for an operating license. Before applicants submit papers for an official environmental assessment of their projects, they must hold public hearings and do an environmental impact assessment.

However, discussions between the public and nuclear industry officials on how to conduct these hearings and how to make them more effective have not subsided. Russian NGOs drafted suggestions for improving public discussions and public hearings, presenting them at an open forum. The suggestions were as follows:

- The public should be notified in advance of scheduled discussions and hearings.

- The documents to be presented at public discussions and public hearings should be posted on the websites of nuclear energy entities and municipal councils.
- The quality and comprehensiveness of the documents presented at these hearings should be improved.
- Public discussions and hearings should be held not only in the municipalities where nuclear facilities are located but also in the district centers and capitals of the corresponding Russian regions.

Currently, Rosatom's facilities and affiliates take into consideration some of the public's requests and wishes, but there still remain a number of questions when it comes to public hearings.

As part of the Open Government project, the Russian nuclear industry tasked itself with designing standards for environmental transparency. These standards and the way they work could be regarded as a form of public monitoring, but only if these standards and the procedures for implementing them were real. Otherwise, we will only acquire yet another document, recommending guidelines that cannot be implemented. It is still a work in progress, and so it would be premature to assess it.

The nuclear industry's transparency and the access it grants to information are still on the agenda of the public, which periodically makes specific statements and demands. The latest communique by three Russian NGOs (Russian Social Ecological Union's Program against Radiological and Nuclear Threats, Greenpeace Russia, and Bellona Environmental Rights Center) demanded that environmentally significant information on radioactive waste should be published (see <http://bezrao.ru/z/rao-info-2018>). The main reason for the communique was the lack of a unified approach and unified standards at Rosatom's affiliates as to what information is classified and thus off limits to the public, and what information is open to the public. Rosatom's responses to public inquiries often display an arbitrary approach to information security. Of course, this could be caused by a lack of professionalism among the Rosatom officials who respond to inquiries, but a more likely explanation is that they are unwilling to release information even when it directly concerns the public. It is possible that officials are guided by the sentiment that it is easier to turn down a request for information than to get to the bottom of a complicated issue.

REGIONAL GOVERNMENT, NGO AND ROSATOM CAMPAIGNS

Russia is a very large country, spanning eleven time zones, and nuclear facilities are located nationwide. This makes coordinating public oversight of Rosatom's facilities from a single location difficult, threatening to turn it into a complicated bureaucratic procedure. It is thus necessary to pay close attention to campaigns by local NGOs, especially in regions in which the nuclear industry has a heavy presence. There is no unified approach to public oversight, just as there are no NGOs constantly engaged in campaigns around the nuclear industry. Most NGOs and individual activists raise the issue of public oversight when Rosatom implements a new project in a particular region.



Alexander Nikitin at the round table in Ozersk. Photo courtesy of NO RAO

The thrust of proposals made by the public is varied, ranging from the establishment of advisory councils in specific places (e.g., Sosnovy Bor, where two new units are under construction at the town's nuclear energy plant) to the selection of interregional public expert commissions, composed of regional and municipal officials, scientists, NGO activists, and experts not directly employed in the nuclear industry.

Proposals to establish a public oversight entity have mainly come from regional and municipal public chambers, which are selected by regional authorities and local governments

CONCLUSION

The Russian nuclear sector, on the one hand, is part of the Russian state and Russian industry, and its work lies at the crossroads of such important government-controlled areas as defense, energy, and scientific research. On the other hand, it exercises public authority, which should be subject to public oversight.

Due to the lack of transparency and public oversight, Rosatom may incur political and economic risks internationally and domestically. First of all, it might have trouble finding new international partners and signing new contracts. Surprisingly, Rosatom often adheres to double standards. For example, outside of Russia, Rosatom's projects are discussed in compliance with the Aarhus Convention. But this is not the case in Russia itself, which is considered bad form by socially responsible transnational corporations.

Lack of transparency and public oversight generate problems in cooperating with regional and municipal authorities. It is often difficult to receive approvals for the construction of new nuclear facilities from local authorities not only because these facilities are potentially hazardous but also because the local community usually has no way of getting information about what is happening at the facilities and exercise public oversight over them.

Thus, we can argue that full-fledged public oversight, as recommended in the federal law “On the Principles of Public Oversight in the Russian Federation” and other regulations, is absent with regard to Rosatom.

Meanwhile, such forms of public oversight as public expertise, public discussions and public hearings, and public monitoring are exercised to varying degrees by some NGOs and individual activists. The quality of this oversight depends completely on the resources and dedication of the entities engaged in public oversight, that is, on the NGOs and individual activists themselves.

The Russian nuclear industry’s commitment to public oversight is minimal: nobody likes inspectors, especially inspectors from the general public. Rosatom, therefore, has not sought to furnish a legal framework for establishing a system of public oversight. The issue has even removed from the agenda of Rosatom’s public advisory board. The nuclear industry tries whenever it can to put roadblocks in the way of grassroots activists who request information, want to organize environmental impact assessments involving experts or hold public hearings that are more transparent and substantial.

The lack of public oversight and secrecy are the nuclear industry’s perennial ailments. It is hard to treat them but it has to be done, step by step, while looking for new opportunities and resources to achieve this end.

We recommend taking the following steps to establish a really effective system of public oversight in the Russian nuclear industry:

1. Propose that Rosatom adopt a provision on public oversight in the nuclear sector that would adapt federal laws and other regulations to the specifics of the nuclear sector.
2. Include best international practices and standards—for example, the Aarhus Convention, with which Rosatom complies when building facilities outside Russia—in the provision.
3. The provision should also include the right of nuclear facilities and organizations located in Russia’s regions to independently engage the public in deciding how they should exercise their public authority.
4. Identify regional challenges, which may call for the establishment of public oversight entities, such as public expert assessment commissions, public inspections, public advisory councils, public oversight groups, and so on.
5. Develop methods for public oversight bodies to communicate with nuclear sector facilities and organizations, as based on the provision.

It is unlikely the nuclear sector itself will spearhead the establishment of a public oversight system. Campaigns that come from the outside, rather than from the top down, also have little prospect of succeeding. There is, however, the faint hope Rosatom’s public advisory council will revisit the issue because, according to Rosatom’s provision on the council, it is responsible for Rosatom’s engagement with the public and ensuring that the public’s needs and interests are met.

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