Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

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Major Projects Office
Email: DGRComment-CommentaireDSCGP@mpo-bgp.gc.ca

Re: The Proposed Deep Geological Repository Should Not be Listed as a Project of National Interest under the Building Canada Act

Please be advised that the Canadian Environmental Law Association ("CELA") is counsel for We the Nuclear Free North ("WTNFN") in relation to the Nuclear Waste Management Organization's ("NWMO") Deep Geological Repository ("DGR") for Canada's Used Nuclear Fuel Project. This untested, unprecedented and highly controversial proposal is not a suitable project for listing as a project of national interest under the BCA.

The NWMO's proposed DGR for high-level nuclear fuel is a wholly inappropriate project to list as a project of national interest pursuant to the *Building Canada Act,* SC 2025, c 2, s 4 ("BCA"). Nuclear fuel waste is highly radioactive and inherently dangerous to all living organisms.[1] The *Impact Assessment Act,* SC 2019, c 28, s 1 ("IAA") entails a "look before you leap" approach, which is particularly important where the leap involves the permanent emplacement of dangerous materials underground for hundreds of thousands of years, and where a similar project has never been completed in Canada or anywhere in the world.

WTNFN urges the federal government to avoid any short cuts or superficial analysis that could result in harm to human health, the environment, and Indigenous rights. There has been significant and widespread opposition to this project by Indigenous nations and local communities, as evidenced by the large number of critical comments on the Impact Assessment Agency of Canada Registry to date.[2]

If granted, the BCA designation effectively "pre-approves" the DGR project under the IAA and other applicable federal environmental laws listed in Schedule 2 of the BCA. Given the unprecedented and risky nature of the project, upfront pre-approval of the project is premature, non-precautionary, and unjustified. This is particularly true since the IAA process is barely underway and has not yet identified and evaluated the project's broad range of potential adverse effects (direct, indirect, and cumulative) on areas of federal jurisdiction, nor assessed the effectiveness of proposed monitoring and mitigation measures or the acceptability of the "adaptive phase management" approach favoured by the proponent. In these circumstances, WTNFN submits that the impact assessment process must be permitted to fully run its course without a BCA designation pre-determining the outcome, and Cabinet must retain the option of refusing to grant approval to proceed with the project pursuant to the IAA.

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[1] Nuclear Waste Management Organization, Choosing a Way Forward: The Future Management of Canada's Used Nuclear Fuel, December 2005 [*Choosing a Way* Forward], p. 15.
[2] Canadian Impact Assessment Registry, "Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project", online: <https://iaac-aeic.gc.ca/050/evaluations/proj/88774?culture=en-CA>

1. The Deep Geological Repository Proposal Should Not Be Designated as a Project of National Interest

(a) What is the Project?

The proposed DGR is a vast project with many different phases and many different facilities on-site, both above ground and below ground. At a minimum, the phases of the proposed project to be assessed must include:

- Handling and re-packaging of high-level nuclear waste at the interim sites;
- Loading the re-packaged high-level nuclear waste onto vehicles;
- Transportation of high-level nuclear fuel waste from the interim sites to the DGR site;
- Construction of all the surface and sub-surface on-site facilities;
- Operations of all the surface and sub-surface on-site facilities;
- Long-term monitoring and reporting; and,
- De-commissioning of all the facilities, including the deep geological repository.

NWMO's Initial Project Description included an extensive list of facilities which in and of themselves may cause direct, indirect and cumulative adverse environmental effects. The above-ground facilities include, but are not limited to, an excavated rock management area, a used fuel packaging plant, a low-level waste storage facility, an intermediate-level waste storage facility, a main shaft complex, an exhaust ventilation shaft complex, a concrete batch plant, a water management ponds, a freshwater pumphouse and pipeline, a service water and potable water treatment plant, DGR dewatering settling pond, a warehouse and hazardous materials storage building, diesel and propane tanks, a workers accommodation camp, a rail spur connection to regional rail line, a storage yard and a helicopter pad. Some of these facilities are expected to involve novel and untested technologies and are large-scale and high-volume operations. For instance, the NWMO's Initial Project Description describes the used fuel packaging plant as including "multiple robotic/remote processing systems contained within hot cells to remove the used fuel from the transportation package and re-package it", but with little detail despite the complex and dangerous handling and re-packaging of highly radioactive materials to be performed at this industrial facility.[3] The scope of pollution from large industrial facilities such as the used fuel packaging plant must still be analyzed, minimized and mitigated.

Below ground, the facilities include but are not limited to, central service areas, placement arms, placement panels and placement rooms, a main shaft, an exhaust ventilation shaft, a service shaft, an underground demonstration facility, an explosives magazine, and auxiliary facilities.[4] A generic layout of the "extensive underground DGR facility" is included in the NWMO's Initial Project Description provided as part of the impact assessment.[5] The used fuel is to be encased in rectangular, highly compacted bentonite blocks and requires shielding and remote handling to prevent radiation exposures to humans.[6] Because of the danger and safety risks, the proposal is to

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[3] Nuclear Waste Management Organization, *Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project*, December 2025 [IPD], p. 59 (PDF p. 86) and PDF p. 1220.
[4] IPD, pp. 48-49 (PDF pp. 75-76).
[5] IPD, p. 62. (PDF p. 89).
[6] IPD, p. 67 (PDF p. 94).

perform all underground emplacement related activities remotely by battery powered vehicles due to the high levels of radiation that will be present during emplacement.[7] A lot of the detail, and ongoing study, are outstanding.

WTNFN notes with concern that the Gazette Notice description of the project is inaccurate and must be amended. The Gazette Notice appears to adopt the rejected NWMO proposal to exclude scrutiny of the transportation of high-level nuclear waste.[8] The Gazette Notice also appears to improperly incorporate the rejected NWMO proposal to limit scrutiny of the project to 160 years. The Impact Assessment Agency of Canada appropriately determined that the transportation of high-level nuclear waste from the interim sites to the DGR site was included in the project and that the time scale of the analysis should include the post-closure period that could last up to a million years.[9] The re-location, re-packaging and loading of high-level nuclear waste is also an integral part of the project and was not mentioned in the Gazette Notice.

(b) The Government of Canada's Proposed Designation of the Project is Totally Inconsistent with Adaptive Phased Management under the Nuclear Fuel Waste Act

The proposed DGR is governed by the *Nuclear Fuel Waste Act*, SC 2002, c 23 ("NFWA"). The complexity of safely managing high-level nuclear waste created by nuclear facilities has always been a highly contentious and technically difficult environmental challenge, as demonstrated by the passage of the NFWA, legislation created specifically to address this unique environmental hazard.[10]

The NWMO's study Choosing a Way Forward was published over twenty years ago in 2005. Although NWMO did an early and preliminary analysis of three alternatives, (1) deep geological disposal in the Canadian Shield, (2) storage at nuclear reactor sites, or (3) centralized storage, above or below ground, the approach that was ultimately recommended and adopted was "Adaptive Phased Management".[11] The approach was based in part on a desire to actively review and change course as appropriate, especially by future generations.[12] The NWMO stressed that a key feature of adaptive phased management was to ensure that it provides a **"genuine choice**". [emphasis added][13] Any designation of the proposed DGR as a project of national interest is fundamentally at odds with adaptive phased management and the approach determined by NWMO and the government to be most appropriate for this project under the NFWA.

The lack of adaptability of the deep geological repository approach was determined to be a weakness.[14] The NWMO also admitted that there is uncertainty about how a DGR will perform over time and it provides comparatively little opportunity for future generations to influence the

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[7] IPD, p. 68 (PDF p. 95) and pp. 73-74 (PDF pp 100-101).
[8] Impact Assessment Agency of Canada, "*Integrated Tailored Impact Statement Guidelines, Deep Geological Repository (DGR) for Canada's Used Nuclear Ful Project*" [Integrated Guidelines], section 12, pp. 88-90.
[9] Integrated Guidelines, section 6.1, p. 23.
[10] *Nuclear Fuel Waste Act,* SC 2002, c 23 [NFWA]
[11] *Choosing a Way Forward,* pp. 21-23.
[12] *Choosing a Way Forward,* p. 23.
[13] *Choosing a Way Forward,* p. 45.
[14] *Choosing a Way Forward,* p. 31.

way in which the used fuel is managed.[15] The weaknesses and inflexibility of the proposed DGR remain an issue, particularly in comparison to other alternatives. There is no justification for the government to now pre-determine, without any new evidence or analysis, that the proposed DGR in Northwestern Ontario is a suitable project for the permanent emplacement of high-level nuclear waste.

(c) The International Framework does not Support Listing the DGR as a Project of National Interest

Listing of the DGR as a project of national interest would not follow international guidance recommending a cautious and stepwise process to evaluate proposed permanent emplacement of high-level nuclear waste. International Atomic Energy Association Safety Requirements SSR-5 make step-by-step development and evaluation of disposal facilities a formal requirement.[16] The companion guide, SSG-14, describes a stepwise approach to developing a geological disposal facility. It treats the safety case as a comprehensive evaluation that includes a statement of confidence in the safety assessment's findings.[17] Under this framework, confidence in safety is developed over the life of the project rather than established without proof at the outset.

International Commission on Radiological Protection Publication 122 applies the Commission's system of radiological protection to geological disposal. It recognizes a role for stakeholder involvement and distinguishes periods of direct oversight, indirect oversight and no oversight. The Commission recommends preserving oversight for as long as possible because oversight contributes to the overall effectiveness of protection.[18]

(d) The Impact Assessment Act Process is Critical Where Adverse Effects are not well Understood

On March 23, 2026, the Impact Assessment Agency of Canada determined that a further assessment of the DGR is required pursuant to s.16 of the IAA. The Agency determined that carrying out the project "may cause adverse effects within federal jurisdiction or direct or incidental adverse effects, including effects on the environment or to health, social or economic conditions".[19] This decision was rendered after the Agency reviewed the proponent's initial project description, its response to the summary of issues, the possible adverse effects on the rights of Indigenous Peoples of Canada, and comments received from Indigenous Peoples, the public, federal authorities, the Canadian Nuclear Safety Commission and other jurisdictions.[20] There is nothing to support undermining this Agency decision by listing the project as a project of national interest under the BCA.

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[15] *Choosing a Way Forward,* p. 31.
[16] International Atomic Energy Agency, *Disposal of Radioactive Waste: Specific Safety Requirements*, IAEA Safety Standards Series No SSR-5 (Vienna: IAEA, 2011) at p. 20.
[17] International Atomic Energy Agency, *Geological Disposal Facilities for Radioactive Waste: Specific Safety Guide*, IAEA Safety Standards Series No SSG-14 (Vienna: IAEA, 2011) at p. 29.
[18] International Commission on Radiological Protection, "Radiological Protection in Geological Disposal of Long-lived Solid Radioactive Waste", ICRP Publication 122 (2013) 42:3 Annals of the ICRP 1.
[19] Impact Assessment Agency of Canada, "Notice of Early Decision with Reasons", March 23, 2026 [Notice of Early Decision]. Online at: <https://iaac-aeic.gc.ca/050/evaluations/proj/88774/document/165573>
[20] *Notice of Early Decision*

Criticism and opposition to the project are very high. Approximately 1,499 comments have been submitted to the Impact Assessment Agency of Canada to date, most of them highly critical of the proposal.[21] WTNFN, along with other non-governmental organizations, Indigenous communities, and members of the public, are gravely concerned about the adverse environmental, social and health impacts that may be caused by all aspects of the NWMO proposal, including the long-distance transportation of used fuel waste to the DGR facility. A credible, evidence-based and rigorous analysis of the direct, indirect, and cumulative effects of this risk-laden project is urgently needed.

2. The Factors in Section 5(6) of the *Building Canada Act* do not Support Designation of the DGR as a Project of National Interest

When the BCA was introduced, Parliamentary Secretary Turnbull stated that "the intention is for projects to be evaluated on whether they meet all the following criteria" and acknowledged that "that is a high standard."[22] The proposed DGR does not meet that high standard and the factors in s.5(6) of the BCA do not support the listing of this project.

(a) The Project does not have a High Likelihood of Successful Execution

The project does not have a high likelihood of successful execution.[23] This is a new, untested proposal that has never been completed in Canada or anywhere else. Any NWMO claims that it is following "best practices"[24] are misleading and should be firmly rejected. This is a nascent field, there are no established best practices, and there are no operating deep geological repositories for high-level nuclear waste anywhere in the world.

Furthermore, there are several significant differences between the NWMO proposal and the DGR-type facilities proposed (but not operating) in other jurisdictions. France has insisted that retrievability and reversibility of the permanent placement of waste be integrated as an essential design feature, which does not form part of the NWMO proposal.[25] Likewise, other jurisdictions, such as Scotland, have adopted the "proximity principle," which posits that radioactive waste should be managed as close as possible to the site where it was generated.[26] The NWMO proposal firmly rejects the proximity principle and instead contemplates long-distance transportation of high-level radioactive waste to a facility located thousands of kilometres away from current storage sites.

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[21] Impact Assessment Agency of Canada, "Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project: View Comments", Date Viewed October 15, 2026. Online at <https://iaac-aeic.gc.ca/050/evaluations/proj/88774/contributions>.
[22] *House of Commons Debates*, 45-1, No 16 (16 June 2025) at 1725 (Ryan Turnbull).
[23] *Building Canada Act,* SC 2025, 2, s 4 ("BCA"), s.5(6)(c).
[24] IPD, p. viii (PDF p. 9), p xii (PDF p. 13), pp. 260-261 (PDF pp. 287-288).
[25] European Union, Council Directive 2011/70/Euratom (19 July 2011), *Community Framework for the Responsible and Safe Management of Spent Fuel and Radioactive Waste,* para 23; French Republic, ASN Opinion 2016-AV-0267 of 31st May 2016 on the reversibility of deep geological disposal of radioactive waste, 31 May 2016, p. 3; Andra, "Retrievability of the Waste Package Disposed of in Cigéo".
[26] Scotland, *Scotland's Higher-Activity Radioactive Waste Policy,* 20 January 2011, s. 2.01.04, 2.01.06.

There is also a dearth of detail about the activities to be conducted at the DGR site, including in particular the used fuel packaging plant and the placement of the re-packaged high-level waste in the underground repository. The IAA process requires thorough consideration of alternative means to conduct each phase of the project, which is critical in this case.[27]

(b) The Project does not Advance the Interests of Indigenous Peoples

The project does not advance the interests of Indigenous Peoples pursuant to section 5(6)(d) of the BCA.

When the BCA was introduced, government speakers repeatedly presented Indigenous consultation as a condition of listing. Parliamentary Secretary Blois stated that any listed project "would have to have involved deep consultation with indigenous people."[28] He also said that "projects would not be listed if there were not adequate consultation or if section 35 rights and UNDRIP were not recognized."[29] Parliamentary Secretary Turnbull said a project "would only be designated following full consultation with affected Indigenous people."[30]

Minister Alty said projects without Indigenous support would not advance urgently, because the government was looking for projects that can "get going". She named successful execution and advancing Indigenous interests as the key factors.[31]

Wabigoon Lake Ojibway Nation ("WLON") agreed to enter the next phase of the assessment of the DGR. However, in its Press Release explaining its decision, it stated that it expected the project to begin what is likely to be the largest and most strenuous impact assessment in Canadian history:

> Now that NWMO has rendered their site selection decision, **the project will begin what is likely to be the largest and most strenuous impact assessment in Canadian history**. The project will be subject to a rigorous regulatory process as set out by the Impact Assessment Agency of Canada (IAAC) and the Canadian Nuclear Safety Commission (CNSC). In addition, the project will be subject to a determination from WLON's Sovereign regulatory decision-making process: the WLON Regulatory Assessment and Approval Process (WLON-RAAP)."[32]

Wabigoon Lake Ojibway nation stressed that both an impact assessment and its own Regulatory Assessment and Approval process were forthcoming.

As well, WTNFN is very concerned that the clearly and repeatedly stated opposition to the project by many Indigenous Peoples in the vicinity of the proposed site and on the transportation

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[27] *Impact Assessment Act,* SC 2019, c. 28, s. 1, s. 22(1)(e).
[28] *House of Commons Debates*, 45-1, No 16 (16 June 2025) at 1225 (Hon Kody Blois).
[29] *House of Commons Debates*, 45-1, No 16 (16 June 2025) at 1227 (Hon Kody Blois).
[30] *House of Commons Debates*, 45-1, No 16 (16 June 2025) at 1726 (Hon Ryan Turnbull).
[31] *Debates of the Senate,* 45-1, vol 154, No 12 (17 June 2025) at 1619 (Hon Rebecca Alty).
[32] Wabigoon Lake Ojibway Nation, "Press Release: NWMO to Proceed with Site Characterization Process in Wabigoon Lake Ojibway Nation Territory", November 28, 2024. Online: <https://www.wabigoonlakeon.ca/_files/ugd/04fe7b_2ec4c7b04a2b45c0bdf8c78ce967478a.pdf>

route are being ignored, contrary to Article 29(2) of *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP") and section 35 of the *Constitution Act, 1982*.[33] The NWMO is already proceeding without appropriately acknowledging the opposition of many Indigenous rights-holders and peoples. A BCA designation exacerbates this legal error.

For instance, Grand Council Treaty #3 resolved that the Chiefs in Assembly continued to support the Elders Declaration that states that a Deep Geological Repository for the storage of nuclear waste will not be developed at any point in the Treaty #3 Territory and that their decision-making and mandate must be respected.[34]

Anishinabek Nation stated that "in their Reconciliation Policy, the NWMO commits to "seeking free, prior, and informed consent of impacted Indigenous peoples before proceeding with development of a deep geological repository", but are proceeding without having sought or received the consent of Anishinabek First Nations," including neither seeking nor receiving the consent of First Nations of Anishinabek Nation along the transportation route.[35] Anishinabek Nation states:

1. Restate our opposition to the transportation and burial of radioactive wastes including the transportation of high-level nuclear fuel waste through our territories; and

2. Direct the Grand Council Chief to call upon the federal Minister of the Environment and Climate Change, the federal Minister of Energy and Mines and the Impact Assessment Agency to ensure that the transfer, transportation, and processing of nuclear fuel waste – which is integral and incidental to the NWMO's nuclear waste project – is fully described and examined as part of the federal Impact Assessment Process.[36]

The Chiefs of Ontario's *Resolution Against Nuclear Waste Transportation and Burial,* Resolution 25/33S states that although the NWMO commits to seeking the free, prior and informed consent of impacted Indigenous peoples before proceeding with development of a deep geological repository, it is "proceeding without having sought or received consent of many First Nations that could be affected by the proposed repository".[37] The resolution also highlights the widespread opposition to the transportation and burial of nuclear waste.[38] The Chiefs of Ontario therefore resolved that the Chiefs in Assembly:

1. Are opposed to the transportation and burial of radioactive wastes in First Nations territory without free, prior, and informed consent of all of the impacted First Nations, including the transportation of high-level nuclear fuel waste in Ontario.

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[33] *The Constitution Act, 1982,* Schedule B to the Canada Act 1982 (UK), 1982, c 11 ("*Constitution Act, 1982*"), s. 35.
[34] Grand Council Treaty #3, *Resolution of the Grand Council Treaty #3,* Position on Nuclear Waste and Resource Development in Treaty #3, Resolution CA-24-14, October 3, 2024, Resolutions 1-2.
[35] Anishinabek Gimaag-Maawnjidiwaa, *Nuclear Waste Transportation and Burial in Anishinabek Nations Lands, Naaknigan - #2005-25,* paras 4-5. ("Anishinabek Nation Resolution")
[36] Anishinabek Nation Resolution, Resolutions 1-2.
[37] Chiefs of Ontario, *Resolution Against Nuclear Waste Transportation and Burial,* Resolution 25/33S, November 18-19, 2025, para 3. ("Chiefs of Ontario, *Resolution Against Nuclear Waste"*)
[38] Chiefs of Ontario, *Resolution Against Nuclear Waste,* para 4.

2. Call upon the responsible federal Ministries to meet with the Nations that are affected and remain opposed.

3. Call upon the federal Crown and its agents, including the IAAC, to ensure that First Nations along potential transportation routes are adequately resourced and supported to participate in all stages of the Impact Assessment and licensing processes, with sufficient technical and administrative capacity to engage its membership, technical experts, and the Crown and its agencies.[39]

In addition, in its *Final Report on 2024 Dialogue Sessions and Recommendations to the Nuclear Waste Management Organization*, the Assembly of First Nations highlighted the significant concerns of First Nations using the same watershed as the project, and First Nations along the transportation routes. The report recommends that "it is essential that the perspectives of all First Nations who rely on the same watershed as the proposed site, as well as those along the transportation route, be respected and fully integrated, in a manner that honors their inherent right to self-determination".[40] The Assembly of First Nations also states that free, prior, and informed consent from all impacted First Nations is imperative.[41]

(c) The Project Does Not Meet Any of the Other Factors under Section 5(6) of the BCA

The project also does not meet any of the other factors in s.5(6) of the BCA.

The proposed DGR does not strengthen Canada's autonomy, resilience and security. There are serious security risks involved with removing high-level nuclear waste from interim storage, re-packaging it, transporting it long distances to the proposed site, and re-packaging it again at the used fuel packaging plant. The chosen site is remote and may become a new target for malevolent acts. The Impact Assessment Agency of Canada has required NWMO to describe the proposed security measures it will use to reduce the potential for vandalism or other malicious acts, such as terrorism, that could lead to accidents or malfunctions.[42] That analysis has not yet occurred.

There are also no demonstrated economic benefits from this proposal for the permanent emplacement of high-level nuclear fuel. There has been no analysis of the economic benefits from this proposal as opposed to any alternatives, including alternative locations. The project is also projected to take many decades to complete. There is no economic benefit to bypassing critical environmental assessment at this stage where the timelines for completion are so far into the future.

Finally, despite NWMO's controversial and dubious claims that the project contributes to Canada's climate change commitments, an impact assessment process would require evidence

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[39] Chiefs of Ontario, *Resolution Against Nuclear Waste,* Resolutions 1-3.
[40] Assembly of First Nations, *Final Report on 2024 Dialogue Sessions and Recommendations to the Nuclear Waste Management Organization* ("*Final Report on 2024 Dialogue Sessions*"), p. 12.
[41] *Final Report on 2024 Dialogue Sessions,* p. 12.
[42] Integrated Guidelines, p. 86 (PDF p. 92)

and testing of that claim, along with an analysis of climate change impacts from the project itself, including from choosing alternative means or locations. Pursuant to the requirements of s.22(1)(i) of the IAA, the Impact Assessment Agency of Canada will analyze the project's likely effects in the context of Canada's environmental obligations relevant to this project, as well as the project's greenhouse gas emissions.[43] That analysis has not yet occurred.

3. Conclusion

The listing of the proposed DGR as a project of national interest is incompatible with a project which is untested and highly dangerous. The factors in s.5(6) of the BCA do not support listing of the project. NWMO has not yet demonstrated it can safely operate these facilities or whether this is a preferred alternative, let alone that effective mitigation of adverse effects are possible.

Under the NFWA, the government chose adaptive phased management as its approach to consideration of a proposal to permanently emplace high-level nuclear waste because it preserved flexibility and provided future generations with genuine choice. This proposal to list the DGR as a project of national interest under the BCA wholly undermines that decision.

There is very extensive and significant opposition to the proposed project by Indigenous peoples and local communities. The government should firmly reject the proposal to list the proposed DGR as a project of national interest and ensure that a thorough, robust and fulsome impact assessment is conducted.

Please contact the undersigned if you have any questions or require further information about this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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[43] Integrated Guidelines, p. 93 (PDF p. 99).