

Assembly of First Nations

Nuclear Fuel Waste Dialogue



Phase II Regional Forums Summary Report

Submitted to:

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Executive Summary

In November 2004, the Assembly of First Nations (AFN) coordinated three nuclear waste dialogue Regional Forums. The objectives of these forums were to bring together regional First Nations representatives to identify and articulate key issues surrounding nuclear fuel waste management, and to have participants provide direction to the AFN dialogue process. Regional Forums were held in Toronto, Ontario, Wauzhushk Onigum First Nation and Prince Albert, Saskatchewan. There was a general consensus among participants that as First Nations peoples they had a responsibility to protect their traditional territories for current and future generations. They felt strongly that the producers of nuclear fuel waste have an obligation to manage it safely with accountability to First Nations and the Canadian public for the entire time it was hazardous.

Participants asserted that the process being undertaken by the AFN and the Nuclear Waste Management Organization (NWMO) to engage First Nations on the issue of nuclear fuel waste management was inadequate for the following reasons: Aboriginal and Treaty rights are not recognized in the *Nuclear Fuel Waste Act*; the timeframes set out by the *Act* are too short for First Nations to meaningfully engage; First Nations do not have independent scientific/ technical capacity for advice and review; there is no mechanism to ensure proper consideration of First Nations input; and the *Act* limits the scope of discussion to high-level nuclear waste, rather than including all aspects of the global nuclear chain (e.g., mining wastes, exports of uranium and nuclear technology and low/intermediate nuclear waste).

Participants at all Regional Forums were unanimous that their participation in the AFN Nuclear Fuel Waste Dialogue does not constitute a “consultation”. Participants made it clear that any discussion or comments about a proposed management option for nuclear fuel waste must not be interpreted as an endorsement or rejection of that option.

The industry-dominated composition of the NWMO’s board of directors was thought to undermine the credibility of the process, with most participants feeling skeptical that as producers and owners of nuclear fuel waste, industry representatives could be trusted to be impartial on the subject, due to their inherent interest in recommending the cheapest method. As an example, participants found it unacceptable that the NWMO had not properly recognized and utilized First Nations involvement in the Seaborn environmental assessment panel (most of which strongly opposed the concept of deep geologic disposal of nuclear waste).

Participants felt that their responsibility towards the land and waters dictated that they look to alternatives to nuclear energy production as a means of halting the creation of more nuclear fuel waste. They felt strongly that no new nuclear reactors be built in Canada, and no refurbishments should be undertaken on existing nuclear reactors. There was agreement that renewable sources of electricity and intensive energy conservation programs should be developed instead.

Introduction

The objectives of the Nuclear Waste Dialogue Management Regional Forums were to bring together regional First Nations representatives with an interest in nuclear fuel waste management and the environment to network and share information; to identify and articulate key issues surrounding nuclear fuel waste management; and to have participants provide direction to the AFN dialogue on nuclear fuel waste. This input will be utilized by the AFN to develop a strategy to protect the long-term social, environmental, legal and cultural interests of First Nations, as mandated by AFN Resolution 51/2003.

Attendees at all Regional Forums clearly stated that their participation in the AFN dialogue on nuclear fuel waste management must not be considered as “consultation”. Participants affirmed that the Federal government’s fiduciary responsibility to consult with First Nations when their rights may be affected, must be carried out between the Federal government and First Nations governments. Participants were advised that the AFN’s position is that consultation must take place on a government to government basis. As the national advocacy organization for First Nations, the AFN dialogue on nuclear fuel waste management will serve to provide a foundation on which to advocate on behalf of First Nations rights and interests.

The purpose of this report is to identify and document First Nations concerns surrounding the long-term management of nuclear fuel waste; to identify and document deficiencies in the process; to offer suggestions for improving this process and to serve as a resource for First Nations to highlight issues of importance. Although some attendees commented on aspects of particular management approaches, this report does not endorse or reject any management option. There has not been sufficient time or resources to provide informed comments on the proposed management approaches.

Methodology

Initially, the AFN Nuclear Waste Dialogue Coordinators for each region contacted Tribal Councils, the AFN Youth Council, Provincial/ Territorial Organizations and independent/unaffiliated First Nations. First Nations in close proximity to nuclear reactor sites, who had significant prior involvement in nuclear fuel cycle issues, or who had previously requested involvement in the nuclear fuel waste dialogue were also specifically approached. Subsequent efforts to approach participants were done through networking and postings at post-secondary Aboriginal student associations, Friendship Centres, Elders lodges and through displays at various gatherings. The AFN nuclear fuel waste dialogue has also been advertised in the AFN Echo, a monthly newsletter sent to all First Nations in Canada.

There were a wide range of participants at the Regional Forums. They included Elders, Chiefs, First Nation community members, representatives of Provincial Territorial Organizations (PTOs) and Tribal Councils, youth representatives, post-secondary

students, lawyers and environmental technicians. There was an equal distribution of female and male representation.

Discussions at the Regional Forums were facilitated by the Nuclear Waste Dialogue Regional Coordinator for that area. Support was provided by other nuclear dialogue staff and ideas were recorded on flipcharts visible to all participants. The Regional Coordinator for each Regional Forum compiled these findings into a summary report which was forwarded to all participants for review. The final report for each of the Regional Forums was then posted on the AFN website and sent to all participants.

Key Issues

Aboriginal & Treaty Rights

Consistently, participants expressed concern over the lack of specific protections for Aboriginal and treaty rights, as guaranteed in s. 35 of the Canadian *Constitution Act* of 1982. First Nations are seeking assurances that their Aboriginal and treaty rights will be respected in the consideration of how to manage nuclear fuel waste. As there is a potential to affect their rights, First Nations agree that there is a legal obligation on the part of government to consult the First Nations and ensure their concerns are adequately addressed.

The *Nuclear Fuel Waste Act* states that all reasonable efforts will be made to ensure that the NWMO Advisory Council includes representatives nominated by local and regional governments and Aboriginal governments that are affected because their economic region is specified for the approach that the Governor in Council selects under section 15 or approves under subsection 20(5). Participants stressed that traditional First Nations territories, not economic regions as defined by Statistics Canada, should be used to determine which First Nations sit on the NWMO Advisory Council once a region is selected. This is because First Nations traditional territories do not coincide with economic boundaries and could potentially result in the exclusion of First Nations whose territories could be affected.

Participants made it clear that if, or when, decisions regarding nuclear fuel waste management are to be made that affect their traditional territories, First Nations must have an equal say in the decision making process. Some participants felt that First Nations must have veto power over proposed nuclear waste management activities to ensure that they can protect their lands from irreparable damage.

Consultation/ Decision-Making Authority/ Protocols

There was a general distrust of the current process being undertaken by the Federal government and the NWMO. Some participants expressed discomfort at the idea that the AFN was there to promote NWMO objectives and obtain ‘buy in’ to the current process. Many were suspicious that their involvement in the Regional Forum would be perceived as “consultation” with them. Currently, this word has serious implications in the

Canadian legal system as a component of Aboriginal rights litigation (pursuant to the *Delgamuukw* and *Haida* decisions handed down by the Supreme Court of Canada). Participants consistently asserted that their participation in the Regional Forum must not be perceived as a consultation in any way. If consultations with First Nations are to occur in the future, it must be on a government-to-government basis, according to First Nations' policies and protocols, where they exist. In the case where First Nations' protocols do not exist, time must be allowed to develop new protocols. Timeframes, resources and methodology would have to be agreed upon in advance by both governments for true and meaningful consultation to proceed.

There was a sense amongst many participants that the outcome of the current process was predetermined, given the nuclear industry's long history in favouring deep geological disposal. Because participants felt that the decision had already been made, there were numerous questions pertaining to the use of their feedback and its true impact and purpose. More specifically, participants were concerned that the feedback and recommendations contained within the Regional Forum report would be ignored or manipulated by those with real decision-making authority on nuclear waste management issues.

The reasons given for these sentiments were largely due to the lack of meaningful response to First Nations input in the Seaborn environmental assessment panel, prior protests, petitions and the 1999 Mixed Oxide (MOX) fuel blockade, as well as submissions put forward in the drafting of Bill C-27, now the *Nuclear Fuel Waste Act*. It was also noted that many nuclear activities, for example, construction of reactors, took place on First Nations lands without consultation. There was a strong perception amongst participants that the *Nuclear Fuel Waste Act* was an invalid framework to operate within for the dialogue process.

Participants stated that the membership of the NWMO Board of Directors - as comprised of industry representatives - put them in an obvious conflict of interest regarding the long-term management of nuclear fuel waste. Participants felt that the decision would largely be driven by cost considerations, because Board members and the industries they represent have a financial interest at stake. Many suggested that a restructuring of the NWMO to include non-industry representatives was required for the process to move forward in an open, transparent and unbiased fashion.

Independent Capacity/ Resources

Capacity to meaningfully engage in the process was highlighted again and again. Independent First Nations research and data collection on the effects of the nuclear energy chain as well as prior experiences of First Nations with the nuclear fuel chain overall were given as examples of initiatives that should be undertaken. Participants were very clear that they did not trust the information supplied by the NWMO, feeling that it contained a strong pro-industry bias.

Education and awareness were identified as key activities that should be pursued by the AFN. There was a strong sense that First Nations needed to be communicating with each other to present a 'unified front', as resources and capacity are often scarce. Independent data collection and scientific expertise were identified as a necessary complement to traditional ecological knowledge and stories of prior First Nation involvement with the nuclear fuel chain across Canada. There was also interest in learning more about the international experiences of indigenous peoples with respect to the nuclear industry.

It was suggested that a 'toolkit' be developed for First Nations which would be accessible to everyone. This toolkit could include template letters, visuals, fact sheets and contact lists to reach other groups that have raised similar concerns. Culturally appropriate materials are needed for First Nations to raise awareness about potential adverse affects of radiological contamination, because many First Nations people still rely heavily on traditional foods.

Energy Policy/ Source Reduction

The need for more renewable energy and intensive energy conservation programs was a theme raised at all Regional Forums. Participants felt that the first step in dealing with the management of nuclear fuel waste was source reduction and elimination. Many felt that the correct interpretation of the "precautionary principle" would dictate stopping the production of nuclear waste *until* a "solution" was found. Participants were in consensus that no new nuclear reactors should be built, that no refurbishments of existing nuclear reactors be undertaken, and that renewable forms of electricity such as wind be pursued aggressively in the alternative along with energy conservation. This position has also been raised by the NWMO Roundtable on Ethics, which stated in its draft Ethical Framework (June 2004): "For the creation of new wastes to be ethically justified, an ethically sound waste management method must exist, not just a least-bad one".

It was also suggested that the Federal and Provincial governments should be providing more assistance to First Nation communities to develop renewable sources of energy. Participants also felt that the development of renewable energy sources would be suppressed if a "solution" to the nuclear waste problem is found and deemed acceptable by the current NWMO process because nuclear power production would expand.

Low & Intermediate Level Waste

Participants felt strongly that it was necessary to examine all aspects of the nuclear energy chain for a valid discussion to occur. The issues of low and intermediate level waste, as well as future production of nuclear waste were emphasized.

Some participants had prior involvement with low and intermediate level waste storage issues, given their communities' proximity to nuclear power plants and uranium mining and processing activities, and indicated that information provided to them by the nuclear industry was often inadequate or biased. Furthermore, upon receiving this information, it

was felt that industry perceived this as adequate ‘consultation’ or that First Nations somehow approved of it.

Transportation

There was a great deal of concern over the transportation of nuclear fuel waste. Key issues were appropriate communication and internal capacity to respond to emergency situations. Participants suggested that responsibility lay with the producers and transporters of nuclear fuel waste to train, equip and maintain emergency response capacity within communities along transportation routes. It was pointed out that First Nations cannot rely on external groups to do this because of slow response times and jurisdictional issues. It was also noted that in the past, the Federal and Provincial governments have had abysmal records in dealing with contamination and clean-up on First Nation lands.

Participants felt there was a significant communication gap between First Nations, the Federal government and the nuclear industry. In 1999, many First Nations along the proposed transportation route for a shipment of MOX fuel from the USA to Chalk River, Ontario united in opposition. Participants explained that First Nations were not told about the government’s plan to ship MOX fuel across their traditional territories, and proper consultation was denied. First Nations were outraged when the MOX fuel was eventually flown over the territories to circumvent the protest.

Voluntarism

Many participants were concerned with the NMWO’s concept of “voluntarism”. It was emphasized that First Nations have their own autonomous governments, and therefore any development activity, nuclear fuel related or not, must be done in full partnership with First Nations. Neighbouring communities that may volunteer to host a waste disposal site would also have to consider the traditional territories of First Nations and their Aboriginal and treaty rights, and involve First Nations in any decision-making that may affect these rights. Participants felt that the NWMO must define what they mean by a “voluntary” siting process and that this must include neighbouring communities and communities along transportation routes that feel they may be affected.

Environmental Racism

Several participants noted that because of the high rates of unemployment in many First Nations communities, that First Nations lands would be targeted for hosting a nuclear waste management facility. The idea that an economically-depressed First Nation may be approached to host a facility, and thus assume a large risk to the health of their land, in exchange for a one time payment was deemed a form of environmental racism.

Importation of Waste

Participants expressed that importation of waste from other countries was not acceptable. Participants wanted to know why this was not explicit in the *Act*. There was concern that if Canada were to find a “solution” to the problem of managing nuclear fuel waste that this may open the door, for example, under the *North American Free Trade Act*, to accept other countries’ nuclear waste. Of specific concern was waste from the 103 nuclear reactors located in the United States. Given industry’s apparent predilection for “remote areas” for deep geological disposal, this added concern that Canada could become host to an international repository for nuclear fuel waste given its ‘sparsely’ populated land mass. All participants rejected the notion that First Nations lands are more suitable for a waste management facility because they are “remote”.

Conclusion

Participants expressed that proper and meaningful consultations with First Nations are paramount, along with full recognition of Aboriginal and treaty rights. In addition to open and respectful communications between Federal and Provincial governments, the nuclear industry and First Nations; education, awareness and independent scientific and legal advice for First Nations is a necessary precursor to engagement in nuclear waste management issues. Any process to select and implement a management practice for nuclear fuel waste must provide First Nations with decision making authority so that traditional territories can be protected. Future consultations with First Nations must be done according to agreed upon protocols between the Federal government and First Nations governments. This is essential, given the Federal government’s fiduciary duty to Aboriginal peoples.

The current process being undertaken was not seen as meaningful or respectful to First Nations. The timeframes and parameters for discussion set out in the *Nuclear Fuel Waste Act*, as well as the close relationship between government and the nuclear industry was felt to preclude a full and open discussion of the issues surrounding nuclear fuel waste management. There was also a great deal of concern that the NWMO had not drawn upon and provided information on previous involvement by First Nations with the uranium and nuclear industry, including submissions to the Seaborn Panel.

Source reduction and elimination of nuclear waste was seen as crucial. Renewable forms of energy, along with intensive energy conservation programs should be pursued as an alternative to the refurbishment of aging nuclear reactors and the construction of new reactors. First Nations have a responsibility to protect and maintain the lands within their traditional territories, and this requires that First Nations take a proactive role in energy conservation and alternative energy production.

