

Appendix 6

First Nations Nuclear Fuel Waste Dialogue

Working Group

Meeting #1 Report



Submitted to the Nuclear Waste Management Organization: August 19, 2004

Introduction

The Assembly of First Nations (AFN) entered into a 3 year contribution agreement with Natural Resources Canada (NRCan) in September 2003 to carry out a First Nations dialogue on the issue of nuclear fuel waste management in Canada. The objectives of the dialogue are as follows:

1. Raise awareness within First Nations communities about nuclear fuel waste management and the potential impacts on their communities;
2. Build First Nations' capacity to engage in discussions and decision making on the issue of nuclear fuel waste management;
3. Promote dialogue within First Nations and between First Nations and NRCan regarding long-term management of nuclear fuel waste;
4. Facilitate First Nations engagement on the issue of nuclear fuel waste management within the broader Canadian society.

Regional Coordinators (Northern Ontario, Southern Ontario, Western and Northern Canada and Quebec and Atlantic) will travel extensively within their respective areas, meeting with First Nations communities and organizations to carry out the dialogue. Direction and support for their work will come from the overall Dialogue Coordinator, Program Manager, Regional Chiefs Panel on the Environment and the Nuclear Dialogue Working Group.

To enhance the dialogue process the AFN entered into a funding agreement with the Nuclear Waste Management Organization (NWMO) in June 2004. The funding provided in this agreement is specifically earmarked for activities designed to enhance the dialogue process such as: coordinating a First Nations art contest to promote youth involvement in the dialogue, hosting of Regional Forums, establishment of a Regional Chiefs Panel on the Environment, development of a First Nations video on nuclear fuel waste management, providing written critiques of NWMO milestone documents by a First Nations working group (this report) and other dialogue related activities.

Note, for the purposes of this report and related dialogue activities, the term “dialogue” is preferred to the term “consultation”. The Supreme Court of Canada in decisions such as *Guerin*, *Sparrow* and *Delgamuukw* have made it clear that the federal government, as part of its fiduciary duty to First Nations, is obliged to consult with First Nations when their interests are affected. There continues to be considerable disagreement and misunderstanding between First Nations and the federal government regarding the form and content of “consultations”. To avoid any possible future misunderstandings this update will use the term “dialogue” to describe the activities for the engagement of First Nations peoples on the issue of long-term nuclear fuel waste management. The following report on the findings of the working group does not represent a consultation.

Working group purpose and structure

The working group has two primary functions, both of which will serve to enhance the dialogue process. First, the working group is to provide direction to the AFN dialogue on nuclear fuel waste management. Secondly, the working group is to meet and critique milestone documents released by the NWMO.

The purpose of this report is to summarize the issues raised during the first meeting of the working group. It is hoped that by bringing attention to these issues that the NWMO will refine its approach to better suit and reflect the interests of First Nations.

The views and statements provided in this report do not speak for all participants, rather, the report serves as a collection and discussion of issues that were raised at the meeting and in written comments supplied by Lorraine Rekmans, who was unable to attend the first meeting. George Kemp and Anna Stanley attended the meeting as observers.

This report is structured into two parts. The first section of the report covers the broad discussions about the AFN dialogue which were held during the first working group meeting. The second section in the report deals with issues in the NWMO document “Asking the Right Questions” that were raised in the working group meeting and in written comments provided by Lorraine Rekmans.

The first meeting of the nuclear fuel waste dialogue working group was held in Ottawa, July 14-15, 2004.

Present:	Paul Johanson	Nuclear Waste Dialogue Coordinator
	Melissa Gus	Regional Nuclear Waste Dialogue Coordinator – S. Ontario
	Trish Collison	Administrative Support Staff – Nuclear Dialogue
	Ron Perley	Union of New Brunswick Indians
	Charles Southwind	Serpent River First Nation
	Lorraine Rekmans	
Absentees:	Suzy Basile	AFN – Quebec/Labrador
Observers:	George Kemp	Federation of Saskatchewan Indian Nations (FSIN)
	Anna Stanley	University of Guelph PhD candidate
		AFN dialogue advisor

SECTION 1. Discussions about the AFN dialogue

The first meeting of the working group generated considerable discussion about the AFN dialogue on nuclear fuel waste management. Although the meeting was beneficial in this regard, a number of significant and challenging issues were raised with respect to the dialogue process. These issues are described below.

Clarification of the term “dialogue”

There was a great deal of concern that the AFN dialogue on nuclear waste management would be construed as a form of “consultation”, and could be used by the NWMO and the government of Canada to negate a potential challenge by an individual First Nation community if they wished to legally challenge the recommendations put forward by the NWMO. Previous examples were provided, where the government has claimed to have “consulted” with First Nations, seeking to indemnify themselves from further debate or legal challenge, arguing that First Nations had been “consulted”.

In developing the AFN dialogue on nuclear fuel waste management, the AFN has explicitly stated that the process be viewed as a “dialogue” to avoid confusion with a “consultation”. The objectives of the AFN dialogue on nuclear fuel waste management are to raise awareness about the issue and build capacity for First Nations to engage on this issue, not to consult on behalf of First Nations. These objectives do not meet the principles for consultation as outlined in AFN Resolution #4/89. Furthermore, individual First Nations always retain their right to proper consultation, based on fiduciary obligations to which the Crown must adhere. The AFN dialogue on nuclear fuel waste management is not designed or intended to replace consultations, which First Nation communities are entitled to, under their own standards for consultation.

Recognition of Aboriginal and treaty rights

There was also a great deal of concern expressed over the lack of recognition of Aboriginal and treaty rights in the *Nuclear Fuel Waste Act* and the NWMO process emerging from it. It was expressed that First Nations should be hesitant to engage in the NWMO process, because it does not acknowledge that any proposed management approach may impact Aboriginal and treaty rights. Because the protection of Aboriginal and treaty rights is of utmost importance in any discussion with governments or government appointed third parties, involvement in the NWMO process was questioned as undermining First Nations interests.

The AFN made two submissions during the drafting of the *Nuclear Fuel Waste Act*, recommending that the Act respect Aboriginal and treaty rights guaranteed under the *Constitution Act, 1982*. These recommendations were not adopted.

Structure of the NWMO

There was a considerable concern raised about the industry dominated structure of the NWMO, whose board of directors represents industries that produce and own nuclear fuel waste. It was expressed that there can not be an independent, objective, unbiased and transparent process when

it is being led by industries that are affected by the selection of a management approach. This position has been raised repeatedly, including in the Seaborn Panel review (CEAA 1998). One member expressed that there can be no confidence that the structure of the NWMO will provide transparent and objective decision making and public accountability because the NWMO is structured to represent those who have a vested interest in minimizing costs to the nuclear industry while maximizing profits. Without an objective and impartial organization leading the process, it was expressed that First Nations should be hesitant to become involved.

It was also expressed that the current funding arrangement for the NWMO is not consistent with the polluter pays principle because of the millions of dollars in public subsidies that the nuclear industry in Canada receives (Martin 2003).

Timelines

It was also expressed that First Nations should not be tied to the timelines laid out in the *Nuclear Fuel Waste Act*. Communicating with over 630 First Nations communities, on a complex issue such as nuclear fuel waste management, can not be rushed if it is to be considered a legitimate process. It was noted that the Seaborn Panel took nearly 10 years to complete its review of the AECL concept while under the *Nuclear Fuel Waste Act* the NWMO was given only three years to review three disposal/storage concepts and provide detailed recommendations on how to proceed. For some, this suggested that the outcome is already known and the current process is not being conducted in good faith. The issue was raised that by participating in the NWMO process, that First Nations may be legitimizing a suspect process.

Funding

It was also noted that the current funding structure for the dialogue was insufficient because it did not cover expenses for First Nations communities and organizations to become involved, or establish their own community level awareness raising. Given the limited resources available for most First Nations and First Nations organizations, this was perceived as a barrier to involvement. It was also noted that First Nations would benefit from hiring a scientist to help assess the alternatives independently. Without proper levels of funding, which allow for full involvement in the process, again the concern was raised that by being involved, First Nations were running the risk of legitimizing a poorly funded and ineffective process.

Summary

Much of the working group's input on the AFN dialogue centered on concerns with the process being led by the NWMO. Specifically, there was concern that the AFN dialogue would be interpreted as a "consultation", rather than a "dialogue". It was noted that the dialogue cannot be viewed as consultation because the scope and focus of the discussion has been predetermined (as outlined in the *Nuclear Fuel Waste Act*).

There was also concern expressed that Aboriginal and treaty rights were not protected under the *Nuclear Fuel Waste Act*, that the industry based structure of the NWMO prevents an impartial and objective assessment of management options, that the timelines imposed by the *Nuclear Fuel*

Waste Act are not sufficient for a comprehensive dialogue with First Nations and that there was inadequate funding available for First Nations communities to properly assess the management alternatives.

Without addressing these issues in a manner satisfactory to First Nations, it was suggested that First Nations may want to question their involvement in the process emerging from the *Nuclear Fuel Waste Act*. However, it has also been noted that the AFN dialogue represents a considerable opportunity to raise awareness and improve the ability of First Nations to engage on the issue of nuclear fuel waste management.

SECTION 2. Critique of NWMO Document #1 “Asking the Right Questions”

Although Document 1 provided some useful background information for the reader and a summary of the initial framework for assessing nuclear waste management options, there were significant issues and flaws from a First Nations perspective. These issues are elaborated upon below. Many of these issues originate from the overall structure of the used nuclear fuel waste debate, which has a narrow focus on used nuclear fuel, rather than taking a holistic approach which includes all aspects of nuclear power production. From a First Nations viewpoint, it is not valid to examine issues such as nuclear fuel waste in isolation from interrelated issues.

2.1 First Nations

2.1.1 Treatment of Aboriginal Traditional Knowledge (ATK)

Document 1 does recognize that Aboriginal Traditional Knowledge (ATK) should be used in the decision making process. This can be seen as a positive step towards recognizing the important role that First Nations should play in decision making with regard to the long-term management of Canada’s used nuclear fuel waste.

Despite the acknowledgement of ATK, Document 1 often treats ATK in a patronizing manner and does not allocate the appropriate weighting which ATK deserves. First Nations have extensive knowledge about their traditional territories and have had considerable experiences with the nuclear industry, placing them in a unique position to guide the discourse on nuclear fuel waste management.

In Question 3 (pg. 52), Document 1 asks “Have Aboriginal perspectives and insights informed the direction, and influenced the development of the management approach” and repeatedly states that aspects of Aboriginal “values” should be “considered”. By characterizing Aboriginal knowledge as “perspectives” and “values”, rather than knowledge it undermines the validity and importance of Aboriginal involvement. Document 1 is further lacking in that there is no concrete mechanism for inclusion of First Nations knowledge.

An example of how Document 1 failed to utilize ATK can be seen on pg. 62 of the document where it is stated that: “Disposal is a method of isolating used nuclear fuel from humanity and the environment.” Even a basic understanding of ATK would reveal that it is impossible to

isolate something from the environment. Whether the waste is stored in warehouses, at nuclear reactor sites, or in the Canadian Shield, it is still part of the environment.

2.1.2 Protection of Aboriginal and treaty rights

Document 1 failed to address the issue of Aboriginal and treaty rights, and how those rights must be protected and upheld during the development of any waste management approach. Without full recognition of Aboriginal and treaty rights, as guaranteed under s. 35 of the Constitution Act, no framework for the selection of a waste management approach will adequately address the concerns of First Nations.

As one member noted, there is no discussion in the “questions” about a comprehensive analysis of the impact of all nuclear wastes on the use and availability of treaty lands. From a First Nations perspective, the availability of public or Crown lands is an issue of paramount importance. Land area availability is essential in order to ensure that First Nations peoples are able to practice Aboriginal and treaty rights as guaranteed by the Canadian Constitution. Each time land is sequestered for use, it is removed from the total land base, which was available at the signing of the treaties. Likewise, the questions do not address how the Crown will fulfill its legal duties to First Nations under the treaties.

2.1.3 Web based activities

Document 1 states that “Central to the organization’s outreach to the public will be web-based activities...” Using web-based technology as a primary means of communication will result in the exclusion of many First Nations peoples who do not have access to this technology.

2.1.4 Aboriginal representation

The process which was used to ensure the Advisory Council membership reflects expertise in traditional Aboriginal knowledge, under s. 8(2)(b.1) of the *Nuclear Fuel Waste Act*, was not mentioned. To allow for proper involvement by Aboriginal organizations, the individual or individuals with expertise in Aboriginal traditional knowledge should have been nominated by an Aboriginal organization or community, with clear rules for nomination and participation. Although the *Nuclear Fuel Waste Act* does not *require* that there be an Aboriginal representative on the Advisory Council until an economic region is specified for the approach that the Governor in Council selects under s. 15 or approves under subsection 20(5), direct Aboriginal involvement on the Advisory Council would seem to be keeping with the intent of engaging Aboriginal organizations on this issue. In this regard, the current structure of the Advisory Council fails to properly engage First Nations.

2.2 Presentation of information

2.2.1 Compartmentalization of issue

There continues to be concern from a First Nations viewpoint that the issue of nuclear *fuel* waste management is being evaluated in isolation from other very relevant aspects of the nuclear industry (e.g., mining wastes). This issue relates to both the technical and economic aspects of nuclear energy production.

The manner in which the issue of nuclear fuel waste management is portrayed in Document 1 does not provide the reader with a comprehensive understanding of the waste related aspects of nuclear energy production. Presentation of the material in this manner is both misleading and inappropriate because it does not provide the contextual framework necessary for an inclusive evaluation.

For those with little previous knowledge on the issue, this document would create the illusion that nuclear energy is “clean”, with the exception of the used nuclear fuel waste. Clearly this is not the case, as uranium mining and processing has had considerable environmental and social effects as demonstrated by the experiences at Serpent River First Nation in Ontario (Rekmans 2003), the Lac la Hache Band in Saskatchewan (Goldstick 1987), and the Dene of Deline in the Northwest Territories (Simmons 2004, WISE 1999). For many readers, knowing that there are ongoing health and environmental concerns related to uranium mining and decommissioning would likely influence their confidence in the nuclear industry to carry out any of the waste management approaches listed in Document 1. Therefore, to allow for informed decision making on the part of the reader, it is necessary to include an inclusive view of all aspects of nuclear power production, rather than a narrow view of simply the end product.

Likewise, by compartmentalizing the issue with a narrow focus on used nuclear fuel, the reader is not informed of the economic costs of mine decommissioning, management of low level radioactive waste, public subsidies to the nuclear industry and loss or impairment of traditional gathering areas (hunting and fishing).

2.2.2 Importation of waste

In any evaluation of management alternatives for used nuclear fuel waste a key question is: “How much waste will need to be dealt with?” A given management option may be suitable for a relatively small volume of waste, but may be entirely unacceptable for a large volume of waste. Document 1 discusses only the volume of waste produced by Canadian reactors and does not acknowledge the potentiality of waste importation from other countries. This is an important factor, since the *Nuclear Fuel Waste Act* does not prohibit the importation of used nuclear fuel waste to Canada from other countries, despite numerous submissions during drafting of the Act that called for a ban on the importation of waste from other countries. For a comprehensive understanding of the issue there needs to be full disclosure of information and discussion of potential waste volume scenarios (including importation of waste).

2.2.3 Economics

Concern was also raised over the flattering portrayal of the economics of nuclear energy production and waste management. It is clearly stated in Document 1 that the NWMO will pay for the management of used nuclear fuel waste through the establishment of industry established trust funds, as specified in the *Nuclear Fuel Waste Act*. However, it is not mentioned that the nuclear industry in Canada has received billions of dollars in publicly funded subsidies (Martin 2000), which may in fact be equal or greater to the amounts being allocated for waste management.

This creates the illusion that the nuclear industry is self-sufficient economically and that the public is not subsidizing waste management activities. Again, to make a fully informed decision,

there must be a full disclosure of information, including the level of publicly funded subsidies. By limiting the scope of discussions surrounding nuclear fuel waste management, participants are not provided a forum to express their opinions (which may go beyond simply waste management). For example, if a reader becomes informed of the extent of subsidies, they may not support the production of any further waste products.

2.2.4 Uses of nuclear technology

Document 1 promotes the peaceful uses of nuclear technology (energy and medicine), but fails to acknowledge the role Canada has played in the proliferation of weapons programs in countries such as India and the controversy surrounding the sale of nuclear technology by AECL to countries such as Romania and Argentina. Likewise, there is little mention of Canada's role as the largest exporter of uranium in the world.

Again, by maintaining a narrow focus on the issue of nuclear fuel waste management, the reader is steered away from more controversial issues of nuclear energy production and technology. For those who consider the issue of nuclear fuel waste management as a global issue, the current framework for assessing management alternatives is lacking.

2.2.5 Energy policy

In its review of the AECL concept, the Seaborn Panel spoke to a number of issues outside of its original mandate, including energy policy, fuel reprocessing and military applications of nuclear technology. It was stated that: "these issues were very important to some participants, who believed that several or all of them greatly affected public acceptance of any waste management approach. For these participants, compartmentalizing aspects of nuclear power production created significant difficulties in the review. In their opinion, the scope of the review was limited and future steps in waste management could not be determined until after a public discussion of these subjects." (CEAA 1998).

As with the issue of importation of waste, energy policy is an integral part of the debate on the selection of a management approach since it affects the volume of waste to be managed. It is mentioned in Document 1 that "where the NWMO feels that assumptions around future energy scenarios are critical to the assessment of alternatives, these will be reported". For many readers the debate over energy policy is paramount in their consideration of waste management alternatives because this is a key factor in determining the amount of waste to be managed. For the NWMO to state that issues of energy policy will only be examined where the NWMO feels it is appropriate is a method of controlling the debate. It has also been suggested that by limiting the debate on energy policy, the NWMO is serving its own interests as owners of nuclear energy producing facilities.

The lack of information and dialogue on alternative energy technologies speaks to the issue of a need for further research. In order for comprehensive decision-making, there must be an analysis of the environmental and health trade-offs involved in the use of nuclear energy. There is a need to assess the true costs of this technology for the benefit of future generations. Many people have died as the result of health impacts resultant from uranium mining. Many hectares of land and many lakes are contaminated as a result of uranium mining for energy. These costs must be calculated into the total equation when assessing the benefits and risks associated with the

production of nuclear energy. To talk only about nuclear fuel bundles is irresponsible and will provide only a limited understanding of the entire problem of long-term disposal.

2.2.6 Transportation

The issue of transporting highly radioactive material is acknowledged throughout the document, however, it was noted that Document 1 failed to supply sufficient details regarding potential transport methods (e.g, will waste be shipped by truck, rail, ship or combination of mechanisms?) and the associated risks of those methods. Because transportation is a key component to any form of centralized storage or disposal, it was expressed that more attention and detail was required to help assess the management options discussed. This is of particular importance given the potentially significant distances which waste may need to be transported, depending on where a site is eventually located.

2.2.7 Precautionary principle

Document 1 appears to promote the use of the “precautionary principle” in decision making with regard to environmental issues. Definitions vary, but in general the precautionary principle states that if the consequences of an action are unknown, but potentially injurious to human or environmental health, that it is better to not carry out the action until outstanding issues are resolved.

Canada continued to produce nuclear fuel waste for many years, and continues to do so now, without a long-term solution to the management of used nuclear fuel waste. Moreover, there was considerable public debate and concern over the continued production of nuclear fuel waste, placing Canada’s policy, for many people, in direct contravention of the precautionary principle. A clear and transparent process would acknowledge that the continued production of nuclear waste, without a known and satisfactory method of dealing with this waste, is not consistent with the precautionary principle.

2.2.8 Misleading language and information

Document 1 is replete with examples of patronizing and misleading language and information. This is particularly of concern, because for many readers Document 1 will provide the baseline information they use in their evaluation of the issue. Some examples of patronizing and inappropriate/biased messaging are provided below.

- On page 4, the document states that “This is an issue that requires the best of science and technology. But to respond to the fears and insecurities of Canadians, the unknowns and the complexities, as well as the optimism and hope demands a broader framework for analysis”. This statement clearly belittles the legitimate concerns that Canadians and First Nations have about the future of nuclear fuel management and sets up a paternalistic structure where the NWMO will simply “educate” the public, rather than engage in a meaningful debate on the issue.
- On page 15, the document describes the bombing of Hiroshima and Nagasaki as the means that brought an end to World War II. History reveals that the war was virtually over when the USA decided to use these horrific weapons of mass destruction in retaliation for the bombing of Pearl Harbour. It is offensive and disturbing that the

NWMO would continue to make this type of misrepresentation about the use of nuclear weapons. This appears to be an advocacy for the use of nuclear weapons to end conflict. This section of the document has been brought to the attention of the National Association of Japanese Canadians.

- On page 19 of the document, the Port Hope case study is described, in relation to the successful management of low-level nuclear waste. Considering the existence of other situations where low-level radioactive waste has not been dealt with appropriately (e.g., Serpent River First Nation) it would appear that issues were selected purposely in favour of the nuclear industry, rather than providing positive and negative examples.
- On page 22 the document states that “Canada’s post World War II decision to set aside its capacity to manufacture nuclear arms, in favour of the peaceful use of nuclear energy and the non-proliferation of nuclear weapons, continues to be a significant feature of our foreign policy”. Although Canada has not produced nuclear weapons, it has played a role in the development of India’s nuclear weapons program and has supplied uranium to nuclear weapons producing countries, including France which has conducted nuclear weapons testing in the South Pacific.
- On page 48 the document states that “The environment is a public good. To be effective, environmental governance must be characterized by transparency, lack of bias, accessibility, competence and public accountability”. To imply that the NWMO is free from bias is inconsistent with the structure of the NWMO which is led by industry, a fact which continues to undermine people’s willingness to engage in the process emerging from the *Nuclear Fuel Waste Act*.

Summary

The current approach being taken by the NWMO, as reflected in Document 1 “Asking the Right Questions?” did not adequately address the rights and needs of First Nations. Many of these fundamental problems arise out of shortcomings in the *Nuclear Fuel Waste Act*, from which the NWMO derives its mandate. The AFN made submissions to the *Parliamentary Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources* on Bill C-27 in November 2001, and to the *Standing Senate Committee on Energy, The Environment and Natural Resources* in May 2002 to address many of these concerns. The issues raised in these submissions (e.g., recognition of Aboriginal and treaty rights and the need for an accountable public waste management organization) were not addressed in the legislation and remain significant barriers to First Nations involvement in the dialogue process.

In general, Document 1 was found to provide a flattering portrayal of the nuclear industry and omitted or misrepresented information pertinent to First Nations, for example, ongoing contamination issues at Serpent River First Nation and the experiences of the Dene of the Northwest Territories. Furthermore, the lack of a clear and concrete mechanism for inclusion of First Nations input, beyond “consideration” by the NWMO continues to undermine people’s willingness to participate in the dialogue process.

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