

Appendix 8

First Nations Nuclear Fuel Waste Dialogue

Working Group



Meeting #3 Report

Submitted to the Nuclear Waste Management Organization on July 25, 2005

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 and territories about nuclear fuel waste management and the potential impacts on their communities;
2. Build independent 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.

To carry out the dialogue, Regional Coordinators (Northern Ontario, Southern Ontario, Western and Northern Canada and Quebec and Atlantic) traveled extensively within their respective areas, meeting with First Nations communities and organizations to discuss the issue, gather feedback and develop a strategy to protect First Nations rights and interests as per AFN Resolution 51/2003. Direction and support for their work came from the Program Manager, Director of Environmental Stewardship, Regional Chiefs' Panel on the Environment, and the Nuclear Fuel Waste 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 that enhance the dialogue process such as: coordinating a First Nations' art contest to promote youth involvement in the dialogue, hosting of Regional Forums, support for the Regional Chiefs Panel on the Environment, development of a First Nations' video on nuclear fuel waste management and providing written critiques of NWMO milestone documents by a working group.

For the purposes of this report 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 report will refer to the activities being coordinated by the AFN by use the term "dialogue" as opposed to consultation. The following report of the Working Group does not constitute consultation.

WORKING GROUP OBJECTIVES

The working group has two primary functions, both of which will serve to enhance the AFN's dialogue on nuclear fuel waste management. First, the working group meets to critique milestone documents released by the NWMO and release a summary report on those discussions. Secondly, the working group provides suggestions for the AFN dialogue on nuclear fuel waste management.

The purpose of this report is to summarize the issues raised during the third meeting of the Working Group. The purpose of bringing attention to these issues is so that the NWMO can refine its approach to better suit and reflect the interests of First Nations. First Nations may also find the issues raised at the Working Group meetings useful in their evaluation of activities being carried out by the NWMO.

The third meeting of the nuclear fuel waste dialogue working group was held in Ottawa, June 14, 2005.

Present:

Norval Getty (alternate)	Union of New Brunswick Indians (UNBI)
Tricia Watson (alternate)	Federation of Saskatchewan Indians (FSIN)
Gene Ouellette (alternate)	Federation of Saskatchewan Indians (FSIN)
Serge Goupil-Ashini	Assembly of First Nations – Quebec and Labrador (AFNQL)
Anna Stanley	University of Guelph Ph.D candidate
Lillian Trapper	Nuclear Waste Dialogue Manager
Nancy Bobbish	Regional Nuclear Waste Dialogue Coordinator -Quebec and Atlantic
Dawn Pratt	Regional Nuclear Waste Dialogue Coordinator Western and Northern Canada
Heather Coman-Albert	Administrative Support Staff – Nuclear Dialogue
Peigi Wilson	AFN Director of Environmental Stewardship
Dr. Gordon Edwards	Canadian Coalition for Nuclear Responsibility (CCNR)
Robert Del Tredici	CCNR – Atomic Photographers Guild
David McLaren	Saugeen Ojibway Nations Nuclear Waste Liaison – Resource Person

PRELIMINARY PLANNING AND LOGISTICS

The third document titled *Choosing a Way Forward, The Future Management of Canada's Used Nuclear Fuel, Draft Study Report* was received by the AFN on May 27, 2005 following its release by NWMO on May 24, 2005. Immediately thereafter, the third document and other relevant information were sent out with the letter of invitation to the Working Group. Efforts were made to ensure that there was regional representation from the four provinces of focus identified by NWMO to assist with critiquing of the third document. In choosing a date that facilitated their participation some of the other Working Group members were not able to attend the meeting. A resource person with experience in low and intermediate nuclear waste management issues who has awareness of First Nations culture in southern Ontario was contracted to assist the Working

Group. In addition, following the suggestion in the Working Group meeting #2 held in October 2004 to invite experts in the field of nuclear fuel waste management who could make presentations and be available for questions afterward, the Canadian Coalition on Nuclear Responsibility (CCNR) was contracted to also participate.

**PRESENTATION FROM CANADIAN COALITION FOR NUCLEAR RESPONSIBILITY
DR. GORDON EDWARDS AND ROBERT DEL TREDICI**

CCNR began its presentation by distributing information kits and the press release from the NWMO to the working group members. The press release states that the primary objective of the draft recommendation on the Adaptive Phased Management is “safety for people and the environment, and fairness for this and future generations”. CCNR stated that the NWMO fails to address public health issues or environmental issues related to radioactive wastes in the draft study report which is contradicting the primary objective. CCNR further observed that nuclear energy is advertised as clean energy but it produces irradiated nuclear fuel waste, so, “how can it be called clean when it produces such toxic and highly radioactive waste?”

Dr. Gordon Edwards and Robert Del Tredici added to the CCNR presentation with the use of photographs displayed chronologically. They began with the splitting of the uranium atom in 1938 in Berlin and ended with the three options to be considered for recommendation by the NWMO.

The following is a brief overview on the descriptions and comments made with various photographs. The presentation continued with a picture of a monument in Russia showing the splitting of an atom by fission and symbolizing energy being released and the fragments that are left over as radioactive waste materials. A tremendous amount of energy is produced when the uranium atom is split. Dr. Edwards went on further to state that uranium is used primarily for two things: boiling water and bombs.

Some photographs showed people suffering from illnesses after being exposed unknowingly to radiation from atmospheric bomb testing, Aboriginal miners from the Northwest Territories and Colorado, a man who cleaned up after a nuclear accident at Chalk River Laboratories, a lady from St. George, a Mormon town in Utah which experienced fallouts and young Russian women who were exposed to extremely high radiation levels in a nearby river. Dr. Edwards pointed out that it is difficult for an individual to prove cancer is the result from radiation exposure as there is a latency period of up to 20 years or more before the cancer develops. Furthermore, extensive studies on a population of people are required to prove that radiation exposures have caused cancers. The likelihood of an individual of proving such is minimal.

Referring to a photograph of a freezer full of radioactive reindeer carcasses, Robert Del Tredici said it was the results of the Chernobyl disaster spreading radioactive particle fallout over Sweden which caused the reindeer to become contaminated with levels of radioactivity unsafe for human consumption. The reindeer consumed contaminated lichen which resulted in bioaccumulation in the food chain in this northern region.

Other photographs displayed the various stages of the nuclear fuel chain from the mining and processing of uranium, and nuclear reactor sites, and wet and dry storage of irradiated nuclear fuel. From a photograph of radioactive mine tailings in Elliot Lake, Dr. Edwards raised the question “How come there is no uranium tailings waste management organization?” More generally, why are all types of radioactive wastes not being considered for management at the same time?

In ending the presentation, Mr. Del Tredici elaborated on the three options proposed by the government. The issue of reprocessing was raised, since the centralized storage stage may include the extraction of plutonium before deep geological burial. CCNR concluded by noting that the draft recommendation by the NWMO is still the same basic approach as that studied in the Hare report but with a 300 year implementation plan, and asking the question of why was phasing out the nuclear industry and phasing in alternative energy sources not being recommended or even seriously studied as an option.

DISCUSSION AND COMMENTS

This portion of the meeting began with opening comments stating that the NWMO process is flawed from the First Nations’ perspective. First, the Working Group members noted that the NWMO Board of Directors is affiliated with the nuclear industry and therefore had serious doubts about the credibility of the report. They concluded that NWMO is the wrong agency to be consulting on public health and safety.

Second, the NWMO is not an agent of the Crown and is not an appropriate organization to conduct a consultation process. Therefore, this negates all activities carried out by the NWMO thus far as adequate for consultation with First Nations. As such, the draft recommendations from NWMO must still be the subject of consultation by the Crown with First Nations. In this regard, meaningful consultation with reasonable timelines and sufficient funds needs to take place between the Federal and First Nation governments. The NWMO have not provided adequate funding and time for Aboriginal peoples to participate in a proper consultation process. The three month timeframe given by the NWMO for the AFN nuclear waste dialogue to receive feedback from First Nations on the draft final recommendation is unreasonable, unfair and unacceptable. The Working Group members considered that any critique of the draft study report would provide the NWMO a form of validation of their document and specifically its consultation process. The discussion led to the *Nuclear Fuel Waste Act* in regards to consultation and the possible impact of the *Haida* and *Taku River* decisions recently made by the Supreme Court of Canada. The case of *Mikisew Cree First Nation v. Sheila Copps, Minister of Canadian Heritage, et al* on the subject of consultation and treaty rights being tried at the Supreme Court of Canada was also raised for awareness to the group members.

Third, it was suggested that each province should deal with the management of nuclear waste it produces and not transport the waste to a site identified elsewhere in the country. This would be respectful of First Nations traditions of taking responsibility locally.

Fourth, the First Nations are placed by the NWMO under the heading of “... Aboriginal Dialogue” which is a pan aboriginal approach having no historical or legal foundation. Aboriginal groups

involved in the NWMO dialogue are not recognized as the distinct nations of Métis, Inuit and First Nation peoples each having their own distinct cultural, legal, historical and political situation. Also, some First Nations communities and organizations are developing or have developed consultation protocols that should be recognized and respected. The Working Group members indicated a desire to learn about the dialogue status of the Métis and Inuit groups and to work collaboratively where appropriate on a unified front.

At this point, the resource person, Mr. McLaren joined the meeting through speaker phone. Mr. McLaren gave an overview of the low and intermediate nuclear waste management proposal by Ontario Power Generation (OPG). OPG is proposing three management approaches at the Bruce nuclear site including expanding surface storage facilities, creating shallow subsurface storage facilities, and deep geological storage in sedimentary rock at the Western Waste Management Facility (WWMF) near Kincardine, Ontario. OPG's public process failed to include the First Nations whose territories on which the WWMF is located at the beginning of the strategic planning phase. The First Nations are currently exchanging information OPG and to holding roundtable discussions while not committing to support OPG's plan. An environmental assessment to be conducted by OPG is due to start in 2007. The First Nations will have the opportunity to challenge the assessment at the Canadian Nuclear Safety Commission.

Regarding the NWMO draft final report, Mr. McLaren commented on the refusal of the NWMO to address broader societal issues caused by the energy policies of the provincial and federal governments. The NWMO confines itself to nuclear waste management options so the report does not address energy conservation measures and subsidizing green energy-producing alternatives. The NWMO's adaptive phased management recommendation was seen as merely a rearrangement of the three proposed options to result in deep geological disposal with an extended 300 year timeline. On the topic of traditional knowledge, Mr. McLaren stated that in his opinion the NWMO report suggested that NWMO had special insights from First Nations and their traditional knowledge without substantiation of the source of this knowledge.

A document titled *Position of the Assembly of First Nations of Quebec and Labrador on the energy issue in Quebec* that was prepared by the First Nations of Quebec and Labrador Sustainable Development Institute was distributed and discussed. This document was presented to the Quebec government in March 2005 by the Chiefs in Assembly of the Assembly of First Nations of Quebec and Labrador (AFNQL). References were made to portion of the document dealing with nuclear energy. The AFNQL declared that nuclear energy development was not an acceptable option. Nuclear waste storage in Innu traditional territories was not supported and was in fact in opposition to the will of the Innu Nation. The document went on further to state that the Grand Council of the Waban-Aki Nation is against the modification of the Gentilly II nuclear waste storage facilities and urges the Government of Quebec to simply close the plant. The AFNQL have a consultation protocol in place for any development being proposed in the territories of the AFNQL Nations. It is available on their website along with research protocols.

The discussion led to the 11th Conference of the Parties of the *United Nations Framework Convention on Climate Change* conference to be held in November 2005 in Montreal. It was suggested that First Nations take the opportunity to promote the use of alternative energy to replace nuclear energy at this international conference. The energy supply analysis by the

Pembina Institute was identified for consideration in addressing concerns about current energy policies. During the Kyoto Accord discussions, Canada promoted nuclear energy as clean energy to reduce greenhouse gas emissions. However, the European Union (EU) disagreed with Canada. Some members states of the EU, such as Germany, Sweden, and Belgium, are now phasing out the use of nuclear energy in their countries. On the contrary, Canada continues to entertain the proposal of refurbishing its old nuclear reactors and even building new ones.

Further discussion on consultation ensued. It was noted that the Chiefs of Ontario have developed a water policy document that includes a consultation framework that can be utilized to assist First Nations in developing their own consultation process. The group urged the AFN should encourage the development of consultation processes by First Nations and seek funding to assist in this endeavour.

The afternoon session started with a discussion on the NWMO and plutonium. The Working Group felt that the NWMO was conducting its work in bad faith and were suspicious of its agenda, as there was little mention of plutonium in connection with the possible reprocessing of the used fuel waste in the final draft document. CCNR informed the Working Group that the countries of Japan, India, France, United Kingdom, Russia and North Korea are involved in reprocessing which extracts plutonium from the used nuclear fuel. The extracted plutonium may be used not only as a nuclear explosive, but also as fuel in the future because uranium and other fuel sources will become depleted. Canada has no legislation prohibiting it from reprocessing the nuclear fuel waste unlike the United States. Canada also has no legislation against the importation of nuclear fuel waste for the purpose of reprocessing or disposal. The extraction of plutonium in this added phase of the nuclear fuel chain is the most polluting and more difficult to manage, including the glassification process required to re-solidify the liquid radioactive wastes resulting from reprocessing.

Concerns were raised about a willing host community for a disposal site eventually becoming a reprocessing facility site. It was pointed out that reprocessing requires a centralized storage facility. The Working Group commented that the NWMO draft final report failed to inform people of this potential and therefore lacked transparency on the issue of reprocessing. CCNR stated that the NWMO is not providing a clear definition of nuclear fuel recycling.

The recommendation of a new adaptive phased management was viewed by the Working Group as an illusion. First, the options presented for study by the NWMO and combined in the three phases of the phased management approach is the same approach favored in the Hare report of 1977. The NWMO dialogue process deceives Canadian citizens by suggesting that the dialogue was an opportunity to undertake a fresh look at the issue. It sets a stage for the public to think that they are engaged in a dialogue that can influence the course of action when in fact the industry approach has not changed since 1977. Further the Working Group stated that it is impossible to predict what will happen to the waste over the millions of years required for its decomposition. The plans for disposal were viewed as a panacea for this generation, leaving thousands of future generations to deal with possible consequences.

The Working Group members discussed why the study of alternative energy sources was not required in the mandate given the NWMO as an option that would help in addressing the nuclear

waste production issue. The discussion ended with the Working Group members indicating that the *Nuclear Fuel Waste Act* was founded on a misunderstanding of the nature of the problem, and was therefore an unjust and irrational law. “You can not settle a 10 million year problem by imposing a three year deadline”.

As for the AFN nuclear waste dialogue, the Working Group members expressed concern that the AFN was in danger of being co-opted by the NWMO. The AFN Nuclear Waste Dialogue has been effective in creating awareness to a certain number of First Nations. However, it has been a top-down approach. The nuclear waste dialogue needs to flow from the First Nation communities up instead of from the national level down. Furthermore, AFN should be lobbying to the government to finance such a dialogue at the First Nations level.

OPTIONS

There were two directions identified by the Working Group that the AFN Nuclear Waste Dialogue can take. The first direction is to continue with the NWMO dialogue process and critique the draft final study report within the short timeframe. The following comments were delivered with this direction in mind.

First, it must be clearly pointed out that the NWMO and AFN dialogues are not a proper consultation and therefore, the NWMO reports are invalid and not in good faith. The NWMO report fails to address all nuclear waste production issues and this also shows bad faith. Moreover, the NWMO report fails to provide any relevant public health information. The Working Group noted that there is no health or environment entity within the NWMO infrastructure to assist in this matter. The NWMO report seems to reduce Aboriginal knowledge to a series of “slogans” which indicates a misunderstanding and a misuse of traditional knowledge. Indigenous knowledge needs the proper recognition and application. The NWMO Advisory Council needs to incorporate First Nation members immediately if “traditional knowledge” is to be utilized.

Second, it was suggested that the AFN submit a “minority report with press coverage” stating that First Nations are not stakeholders and NWMO is wrong to treat them as such because of their unique status as holders of Aboriginal and treaty rights. A minority report would be an additional deliverable to NWMO stating the inefficiencies, inadequacies, and unacceptable activities or plans being pursued by the NWMO. Consultation should occur at the First Nation community level using the community’s own process; this may require assistance to allow for the development of a community consultation process.

Third, in addressing indigenous knowledge, the Working Group suggested an independent First Nation Nuclear Waste Management Organization be established separate from the NWMO and government that would be funded by the nuclear industry. In keeping with the application of traditional knowledge, this independent First Nation organization would be mandated to address questions of energy policy, allowing for consideration of phasing out nuclear energy resulting in the reduction of nuclear fuel waste and endorsing alternative energy sources initiatives. The independent organization would also be authorized to recommend legislation on nuclear waste importation and reprocessing. Also, this organization would recommend that the Government of

Canada address and ensure the clean up of uranium mines, mills, refineries, and other nuclear waste sites and continue research on nuclear fuel waste management.

The second direction suggested was to withdraw from the NWMO dialogue process and not critique the final study draft report. AFN would dialogue with the federal government only on the nuclear waste issue and provide a letter to the NWMO informing them of this decision. The Working Group recommended that a resolution be developed and passed by the Chiefs in Assembly stating that the NWMO dialogue is not to be construed as a legal consultation as the NWMO is not the proper body to carry out the fiduciary duty of the government to consult with First Nations, and that AFN is not to be considered as a consultative body by participation in the NWMO Aboriginal Dialogues. One suggestion of the Working Group members was that AFN lobby government to amend the *Nuclear Fuel Waste Act* to provide for time and resources to conduct a proper consultation between First Nations and the government. Other suggestions given were for AFN to utilize the media to present the position of the AFN on the nuclear waste issue. Finally, it was suggested that First Nations should strategically position themselves in the upcoming Climate Change conference and assist in meeting the Kyoto protocol by advocating the end of nuclear power and by supporting alternative energy sources such as wind and solar power.

SUMMARY

In holding this Working Group meeting, the CCNR presentation and photographs brought home the realization that the most detrimental effects of radioactive wastes have been experienced by “normal people that are living in mostly rural locations, throughout the world, that have been impacted by either nuclear power or nuclear waste”. The group felt there was too little time dedicated to this meeting. The late release of the final draft study report condensed the dialogue process and provided too little time for thorough consideration by First Nations. Furthermore, the unavailability of some of the Working Group members was a concern but Group agreed the meeting had to proceed. Overall, the Working Group members expressed their discomfort in providing detailed comments on the draft final study report because of the possibility that their participation in the NWMO process may be improperly construed as consultation. They concluded that the AFN should refrain from providing detailed comments on the report. The Working Group members did not view this meeting as fulfilling any requirements for consultation.

