



October 6, 2005

The Honourable John McCallum, P.C., M.P.
Acting Minister Natural Resources Canada
Natural Resources Canada
580 Booth Street, 21st Floor, Room. B7-1
Ottawa, ON K1A 0E4

Dear Minister McCallum:

Re: First Nations Nuclear Waste Dialogue

I am writing with respect to the obligation of the Nuclear Waste Management Organization (NWMO) to produce recommendations on nuclear fuel waste management by November 15, 2005. On behalf of the First Nations, as per Resolution 39/2005 (see attached) I am seeking an extension of time to review the proposed options and make suggestions for improved consideration of First Nation peoples' interests.

It is our opinion that the draft report prepared by NWMO fails significantly to address the concerns of First Nations with respect to nuclear fuel waste disposal. In particular, the process has failed to adequately involve First Nations in the public dialogue required under subsection 12(7) of the *Nuclear Fuel Waste Act*. With the funding from NWMO and Natural Resources Canada (NRCan), the Assembly of First Nations (AFN) has made its best efforts to inform First Nations of the issues under debate and to gather their views and input. However, time and again the communities informed us that they needed more time to study the proposals and to reach a decision. The NWMO dialogue process has not provided adequate time for First Nations to review and comment on the initial options proposed for study, and certainly not sufficient time to examine and reflect upon the draft report made public May 24, 2005 and closed for comment August 31, 2005.

With respect to the report itself, the NWMO draft report takes a pan-aboriginal approach to issues of concern and does not recognize the cultural, legal, historical and political distinctiveness of First Nations. First Nations are distinct from Inuit and Métis with their own cultural, legal, historical and political situations. The NWMO report must reflect these distinctions and specifically address First Nations' interests.

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Further, First Nations are seeking information on plans for monitoring nuclear plants, addressing health impacts from nuclear industry activities, and emergency response to potential nuclear accidents, including plans for capacity to First Nation communities to respond.

Finally, the draft report fails to adequately reflect traditional knowledge. One of the most fundamental teachings of First Nations is the obligation to care for the earth. We do not find this adequately reflected in the draft report, the options recommended, or in the continued support for nuclear energy generation. First Nations are seeking a review of the entire nuclear industry chain, from mining uranium to nuclear energy development to disposal of low, medium and high risk materials. We are not convinced that the short comings will be resolved in the final report due November 15, 2005.

Therefore, as per section 14(2) of the *Nuclear Fuel Waste Act*, we are seeking your support to direct NWMO to conduct further dialogues with First Nations. We recommend a one year extension to allow for more time for the First Nations to study the draft report and provide their views. We recommend that funding be provided to regional First Nation organizations to conduct their own reviews:

In addition to the significant failings of the report, we are concerned about the failure of the Government of Canada to consult directly with First Nations on all three options. It is the fiduciary obligation of the government to conduct consultation on the options because of the potential impact on First Nations' constitutional rights as guaranteed under the *Charter of Rights* and s.35 of the *Constitution Act, 1982*. The transportation and disposal of nuclear fuel waste on the land has the potential to cause devastating damage, impacting our capacity to pursue our traditions including our Aboriginal and treaty rights to hunt, trap, and fish, to practice our religions, and sustain our traditional knowledge and languages. The NWMO is not an agent of the Crown and cannot therefore fulfill the Crown's obligation to consult with First Nations. NWMO provides no evidence in the draft report that the Crown's obligation to consult with First Nations was taken into consideration in making recommendations. If Cabinet proceeds with the recommendations proposed by NWMO in its report, without first consulting with the First Nations on this matter, it is our opinion that the honour of the Crown will be brought into disrepute. I note the first principle of the *First Nations – Federal Crown Political Accord* signed between First Nations and the Government of Canada on May 31, 2005:

“Cooperation will be a cornerstone for partnership between Canada and First Nations. This requires honorable processes of negotiations and respect for requirements for consultation, accommodation, justification and First Nations’ consent as may be appropriate to the circumstances. Upholding the Crown is always at stake in the Crown’s dealings with First Nations peoples.”

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The Prime Minister stated on April 19, 2004 that "No longer will we in Ottawa develop policies first and discuss them with you later. The principle of collaboration will be the cornerstone of our new partnership." Government to government discussions on the three options are required prior to a decision to move forward on a recommendation from NWMO. The federal government needs to conduct full and effective consultations with First Nations, provide adequate funds for capacity building, ensure reasonable timeframes for discussion, and adequate involvement in decision making. Furthermore, in honouring the *Political Accord* and addressing the First Nations' interests, it is essential that NRCan, in collaboration with NWMO, provide the necessary support to conduct further research and provide support to First Nations' driven research into the long term management of nuclear waste including potential impacts on vulnerable aquifers.

Therefore Minister, it is my respectful submission that NWMO has failed significantly to meet obligations under subsection 12(7) of the Act and we urge you to use the authority under subsection 14(2) to provide an extension of time for full and effective dialogue with NWMO. I further urge the federal government to engage First Nations in full and effective consultations on the three options prior to proceeding with recommendations from NWMO.

Sincerely,



Phil Fontaine
National Chief

cc. Ms. Elizabeth Dowdeswell, President, NWMO
Mr. Jose Kusugak, President, Inuit Tapiriit Kanatami
Mr. Clément Chartier, President, Métis National Council