Appendix 10

ASSEMBLY OF FIRST NATIONS
ENVIRONMENTAL STEWARDSHIP UNIT

Background Paper

OVERVIEW OF ENVIRONMENTAL ISSUES FACING FIRST NATIONS:
CONTEXT FOR PARTICIPATION IN NUCLEAR FUEL WASTE MANAGEMENT ISSUES

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ACKNOWLEDGEMENTS

The Assembly of First Nations would like to thank the Elders who have shared their thoughts with us over the years, as their generosity of time and patience has helped us in understanding the issues, appreciating the depth of their anxiety, and the need to take action.

We also acknowledge the diversity of First Nations, both in their traditions and in their experiences. Each of the Nations is deserving of the support necessary to document their experiences and to speak for themselves. It is simply a function of the brevity of this paper that generalizations have been made.

We would also like to acknowledge the financial support of the Nuclear Waste Management Organization which assisted in the production of this report. We note that the views expressed in this report are not necessarily shared by the Nuclear Waste Management Organization.

1.0 INTRODUCTION

As part of an agreement between the Assembly of First Nations (AFN)[1] and the Nuclear Waste Management Organization (NWMO)[2], the AFN Environmental Stewardship Unit proposed to write a report on environmental issues facing First Nations in an effort to frame our potential involvement in the issue of long-term, nuclear fuel waste (NFW) management. NFW is a high-level, radioactive by-product of the generation of electricity in a nuclear power plant that is hazardous to people and the environment for a very long time if not managed properly (NWMO 2004). In Canada, the long-term storage of NFW is still a concept: potential locations and approaches have been considered, but none has been formally proposed and selected. How will First Nations be engaged in a dialogue about a concept while maintaining currency on our existing environmental issues? What challenges have we faced - and continue to face - in our efforts to address environmental issues, and how will these challenges influence our capacity to respond to the NFW management concept? Are we prepared to make decisions today that could potentially affect the next 600 million generations?[3] How will our rights and interests be protected when decisions are made to locate NFW on or near our lands, and will we be engaged as equal partners in making these decisions? This background report proposes answers to these and other related questions in an effort to inform further discussion and assist First Nations in developing strategies for dealing with this concept when it becomes a reality for our peoples and lands.

2.0 OUR RELATIONSHIP TO THE ENVIRONMENT

In order to understand the environmental issues of importance to First Nations and our capacity to address these issues, it is essential to explore our perspectives of the environment and our traditional systems of environmental stewardship. In this context, the significance and complexity of the challenges we face to resolve these issues can be appreciated.

The term “environment” from a traditional First Nations’ perspective does not distinguish between humanity and everything else. Humans are part of the environment as much as are the fish, wildlife, air and trees. Traditionally, First Nations’ use of the land recognized the impact on other species around us and we were respectful of the impact we imposed. We do not view people as the masters of the earth, but merely a part of the delicate balance of the earth’s cycle of life. We are aware that our lives depend on observing and honouring this balance.

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[1]The Assembly of First Nations (AFN) is the national representative organization of the First Nations in Canada. Through the Chiefs-in-Assembly, the AFN represents more than 633 First Nations across the country. The AFN has a broad mandate to protect the social, environmental, legal and cultural interests of First Nations. In relation to the protection of aboriginal and Treaty rights in the long-term management of NFW, this mandate derives from Resolution 51/2003 of the AFN Chiefs in Assembly.

[2]The NWMO is established under Canada’s *Nuclear Fuel Waste Act* as a non-profit corporation currently composed of representatives from Canada’s three main producers of used nuclear fuel: Ontario Power Generation, Hydro Quebec and NB (New Brunswick) Power. The NWMO is not an agent of the government of Canada.

[3]Assuming there are 25 years in a generation, and given that iodine-129 has a half-life of 15.7 million years. The half-life of a radioisotope is the time required for half the atoms in a given sample to undergo radioactive, or nuclear, decay. Different radioisotopes have different half-lives.

Our languages, cultures, belief systems, economies, social interactions, education systems and systems of customary law and governance are tied to the lands that we have inhabited throughout our history. Our traditional systems of environmental management are based on decentralized and consensus-based management authority, empirical knowledge, unwritten rules, social norms, customary practice and cultural tradition. These are highly adaptive and resilient systems which guide and direct our conduct, and are characterized by an obligation to consider the welfare of our future generations.[4]

First Nations are an integral part of the natural environment in which a proposed long-term NFW management concept would be placed. There is virtually no part of the areas that might be considered on which First Nations' ancestors have not lived, travelled, hunted, fished, trapped, gathered medicines, berries and wood for fuel and shelter, traded, raised our young and buried our dead. Respect for and recognition of our traditional philosophies and use of the land is crucial to any meaningful dialogue and consultation on long-term NFW management.

3.0 OVERVIEW OF OUR ENVIRONMENTAL ISSUES

Every First Nation in Canada faces a unique set of environmental issues, and each First Nation formulates a unique response to these issues that allows that First Nation to survive on its own terms. There are, however, some common environmental issues we have faced, and some that we continue to endure. These are explored here in an effort to highlight "where we are coming from" in the emerging issue of NFW management.

3.1 Traditional Resources

In this section, "traditional resources" refer to the fish, game, birds, eggs, plants and berries traditionally harvested and consumed by First Nation peoples. "Resource harvesting" refers to the traditional activities of hunting, fishing, trapping and gathering.

Primary environment-related concerns that First Nations have raised with respect to traditional resources and resource harvesting include scarcity of resources, and an increasing amount of evidence that these resources are unhealthy to consume. Scarcity of resources is the result of a number of factors; however, loss or degradation of habitat and increased access to traditional territories are identified as the greatest causes. Illnesses among the animals and birds and suspected chemical contamination of plants are also being reported by First Nation peoples at an

[4] According to the Haudenosaunee *Great Law of Peace*, the impact of our actions seven generations hence must be considered. The Haudenosaunee are six separate nations of people who have agreed to live under the traditional law of governance that they call the Great Law of Peace. The six nations are: the Seneca, Cayuga, Onondaga, Oneida, Mohawk and Tuscarora.

increasing rate. Observations of tumours in fish and game, noticeable differences in the taste of meat, plants and eggs, incidences of chronic wasting disease in elk, changes in the morphology of fish, and livers in moose and rabbits so toxic they are a threat to human health are just a few of the concerns shared by resource harvesters.

First Nations are concerned that our food, social and ceremonial requirements are not being met. As well, we are deeply concerned that reduced opportunities are available for our young people to pursue traditional harvesting practices. The inability to rely on traditional foods has contributed to a loss of traditional knowledge, and while specialized knowledge may exist in relation to particular skills, preferences, pursuits and responsibilities, there is no effective distinction between the knowledge of individuals and the collective knowledge of families, clans, communities and nations. Decreased consumption of traditional foods, accompanied by a reduction in resource harvesting activities, are also believed to be contributing to health issues among our peoples, such as diabetes and obesity. Therefore, the inability to rely on traditional foods has broad implications for our peoples: our customary law, languages, health and well-being, and the very sense we hold of ourselves as distinct cultural groups are being affected.

3.2 Timber Harvesting and Pulp and Paper Production

Many First Nations in Canada share concerns about the impacts of timber harvesting activities on traditional and reserve lands. Some First Nations have benefited directly from forestry operations; many have not. In those areas where First Nations have invested in native-owned and operated forestry companies and adopted company ethics that reflect traditional perspectives, such as the Central Region Nuu-chah-nulth First Nations in British Columbia (Iisaak Forest Resources, 2004), participation in the forest industry shows great potential for increasing First Nation self-sufficiency. In those areas where reserve lands have been stripped of timber resources for the sake of short-term employment or a modest increase in band funds, such as at the Nakota (Stoney) First Nations in Alberta (RCAP 1996: 663), or where timber resources have been allocated to forestry operators without an opportunity for First Nations to obtain tenure, such as in many parts of Canada, our reliance on an intact environment for our traditional systems of governance, resource harvesting activities, teachings, local economies and physical and spiritual health is jeopardized and little or no benefit is derived.

Pulp and paper production has also caused environmental problems that have resulted in high mortality and genetic deformities of birds and fish, and in some cases, have been linked to the death or illness of First Nation peoples living downstream of pulp and paper plants. The benefits derived by First Nation peoples from pulp and paper-producing industries have generally been employment opportunities and community development initiatives, such as in the case of the Opaskwayak Cree Nation located near the Tolko mill in The Pas, Manitoba.

3.3 Mining and Smelting

First Nation communities have a long history with mining and smelting operations and have been impacted during exploration, construction and production. As with forestry operations, many First Nations have been adversely affected, such as the Whitefish Lake First Nation, located southwest of Sudbury, Ontario. The land bears the scars of open pit mining, toxic tailings and acid rain from high concentrations of sulphur dioxide. Other environmental problems include changes to waterways, increased noise, dust and destruction of habitat. The loss of the traditional food supply and way of life has also had serious consequences for the health and cultural survival of First

Nation citizens living in close proximity to mines.

The boom and bust nature of mining operations has also adversely impacted First Nations across Canada. A large influx of people into an area often brings with it unwanted environmental issues, such as increasing harvesting pressure on traditional resources and water supplies. Homes are built, roads constructed and money flows into the community along with a wave of consumer goods. When the mine is closed, First Nations are often left without an income and the ability to return to a traditional lifestyle. If a mine is closed and reclamation efforts are not made, serious environmental issues such as abandoned tailings and polluted waterways also remain.

In terms of uranium mining (the first phase of the nuclear fuel chain), the Dene of Deline (north of Sahtu/Great Bear Lake), the Serpent River First Nation in Ontario, and the Lac La Hache First Nation and Clearwater River Dene Nation in northern Saskatchewan have shared their experiences, particularly with respect to serious environmental contamination and anxiety about the use of traditional foods (Kenny-Gilday 2001; Rekmans 2003). For example, up until the 1980s, mining companies in Canada dumped uranium and radium tailings directly into the lakes and rivers of First Nations' traditional lands. The lack of environmental safety regulations during early uranium mining has created what some have called "National Sacrifice Zones". These are areas on or near First Nation lands which governments have deemed an expendable environmental cost to maintain energy requirements (Churchill 2002).

In northern Saskatchewan, First Nations have been actively involved in development opportunities and community-level environmental monitoring programs in cooperation with uranium mining companies (Cameco Corporation 2004). However, this "co-existence" has not been without difficulties. First Nations have conducted road blocks to protest uranium mining (and decommissioning) activities on their lands and to reinforce the need for proper communications with their communities (Goldstick 1987; Petten 2004).

3.4 Oil and Gas

Environmental issues associated with oil and gas development are similar to those discussed in the preceding section on mining and smelting: the degradation or destruction of habitat, the release of dangerous chemicals into the environment and the boom and bust cycle of resource extraction activities. As well, the Lubicon Cree Nation in northern Alberta has been struggling for over sixty years to gain recognition of their aboriginal land rights to their traditional territory and claim that oil and gas development on or near their land has dangerously threatened their way of life, their culture, and the health of their citizens.

Other environmental issues facing First Nations in the oil and gas sector relate to offshore development. In particular, First Nations in coastal areas are concerned that exploration, development (including shore facilities) and transportation of oil disturb fish, marine mammals and wildlife populations as well as contaminate - and reduce access to - First Nations' traditional and commercial resource harvesting areas.

3.5 Water Resources

The discussion on First Nations' water resources issues is divided into concerns about the contamination of potable water (drinking water) and the management of wastewater (sewage and grey water). Primary sources of water pollution are considered to be industrial effluents, agricultural

runoff, urban runoff, forestry operations, landfill leachates, poorly treated sewage, and long-range transport of airborne pollutants.

The toxic or health-threatening contaminants from these sources of water pollution that can find their way into drinking water include: inorganic contaminants, such as arsenic and lead; organic contaminants, such as pesticides and herbicides; micro-biological contaminants, such as bacteria; radiological contaminants, including both natural and introduced sources of radiation; and turbidity which refers to small particles suspended in the water that carry contaminants (Yabsley and Freedman 1995: 2-3). Common waterborne illnesses include fever and malaise and the better known gastrointestinal symptoms such as diarrhea and stomach aches. "Boil water advisories" are commonplace in many First Nation communities and in some instances have been standard operating procedure for several years. We can no longer dip a cup into most freshwater lakes, streams and rivers in Canada with the assurance that this water is potable.

Wastewater management, particularly sewage, is especially problematic for First Nations. This problem is not just about how others dispose of their sewage and how this affects our lands and waters, but how inadequate our own wastewater systems are on our reserves. For example, in 2003, INAC conducted a study that indicated 75% of the 740 water treatment systems on reserves and 70% of the 462 wastewater treatment systems on reserves posed a medium-to-high risk to drinking water and wastewater quality (Wilson 2004). First Nations' water quality management issues have been attributed to the following causes: infrastructure is either obsolete, entirely absent, inappropriate or of low quality; not enough operators are adequately trained or certified; testing and inspection are inadequate; microbial contamination is frequent; and on-reserve distribution systems do not deliver an adequate supply of water (O'Connor 2001: 486).

3.6 Water Control, Storage and Hydroelectric Development

The construction of dams for control, storage and power generation, the draining of wetlands and diversion of water courses have had devastating consequences for First Nation peoples and lands. The flooding of traditional harvesting areas has created competition among traditional resource harvesters and has placed greater harvesting pressure on less-affected areas. An increased reliance on welfare and loss of dignity among community members has also been observed in communities affected by dams. Hydroelectric development has resulted in water fluctuations and seasonal flow reversals which create hazards to transportation and navigation, such as floating debris, "hidden" reefs, unstable ice and surface flooding along routes people have travelled all of their lives. Permanent landing sites / boat launches are lost or damaged and weirs must be constructed to control water levels. Elevated levels of mercury contamination have been detected in waters, fish, animals and First Nation peoples. Impacts to nesting sites, aquatic habitats, fish populations, shoreline vegetation and species diversity are also cited as issues of concern to First Nations. In some cases, entire communities have been displaced. "Although forcibly relocated Aboriginal people may survive in the end, our well-being will be affected for many generations while the patterns of experience and observations develop into detailed knowledge of the altered environment" (Wavey 1993).

3.7 Roads, Transmission Lines, Rail Lines and Pipelines

Transportation routes that cut through previously isolated traditional territories create several environmental issues for First Nations. Hunting grounds that have been used continuously for generations are "dying a death of a thousand cuts" (Metecheah & Jackson 2001). Natural habitats

are fragmented, animals are driven away and traplines are no longer productive. Access to traditional territories is established for non-First Nation people to use and enjoy the land, and competition is increased for scarce resources. No person or organization with a legal right to resources accessible from a road, transmission line, rail line or pipeline can be denied access. The safety of First Nation citizens, wildlife and birds is threatened on roads used by large transport trucks to haul timber, ore, construction materials and equipment. Invasive, non-native species are brought to First Nation territories and cause significant irreversible environmental and socio-economic impacts at the genetic, species and ecosystem levels. Herbicides are used to control vegetation along rights-of-way and represent a risk to the health of the people and the environment. Outdoor air quality along roads is poor due to dust, carbon monoxide, salt and other airborne particulates. Areas opened up by one development make it possible for more developments to proceed. In some cases, the direct and cumulative impacts of roads, transmission lines, rail lines and pipelines are greater than the impacts of the resource development activities associated with them.

3.8 Solid Waste Management

Most reserves in Canada rely on local landfill sites (waste dumps) to manage garbage, or household waste. Few of these sites are well-maintained, rarely fenced and frequently unsupervised. Limited recycling and hazardous waste depots exist, particularly in remote communities. As a result, recyclable materials and household hazardous wastes, such as paints, solvents, used tires and batteries are added to landfills thereby decreasing the lifespan of the landfill and increasing the risk of contamination. As materials accumulate, the landfill becomes an eyesore and a health hazard. Burning and burying garbage are also common practices, and dangerous chemicals are released into the air, land and water. Modern life generates more and more wastes of different kinds, and there is a widespread feeling that better systems are needed.

3.9 Contaminants

First Nations' concerns with respect to environmental contamination have been presented in many of the preceding sections of this report. Concerns that are discussed in this section include mould contamination, the contamination of fish and waters by aquaculture (fish farming) and hydroelectric operations, and the contamination of lands and waters by improper fuel storage and handling.

Mould contamination is a serious environmental health issue confronting First Nations in Canada. Overcrowding, annual flooding, inadequate ventilation, lack of maintenance and substandard building construction has resulted in poor indoor air quality and harmful moulds in houses. Moulds are known to contribute to several non-specific health effects, such as asthma, allergies, nosebleeds, coughing and upper respiratory problems. They can also affect the immune system, making people less resistant to infections. Problems with mould are not limited to First Nation communities, but because of potentially damaging health effects, mould is a growing concern among First Nations.

Concern also exists among First Nations with respect to the contamination of fish and waters by the aquaculture industry. Pollution from fish sewage, contamination of shellfish, and loss of access to traditional and commercial fisheries relied upon by First Nations, with increased health risks from exposure to drug residues from food collected near netcage operations are some of the concerns raised by First Nations.

High levels of mercury contamination are found in many First Nation communities located near pulp mills or hydroelectric development. Citizens of the Grassy Narrows and Wabaseemoong First Nations in northwest Ontario have been severely affected by methyl mercury poisoning, also known as Minamata disease, by consuming fish contaminated by pulp mill effluent. Informal limits have been placed on fish consumption in First Nation communities near hydro reservoirs in northern Manitoba and northwestern Quebec in order to control exposure to methyl mercury (Penn 1993). A Cree Elder from the James Bay area of Quebec remarked that "telling us we'll be OK if we don't eat fish is like telling us we will be OK if we just cut our own legs off" (Moore 1993). Symptoms of Minamata disease have also been observed by First Nation peoples in the fish-eating species living by polluted waterways.

The condition of many under- and aboveground fuel storage tanks in First Nation communities across Canada is also a source of concern with respect to contamination. Storage tanks may be underground or aboveground, and may be used to store fuel for vehicles, aircraft, for heating homes and for electricity generation. In remote communities, the number of fuel storage tanks can be significant and many of these tanks are located in close proximity to residences. Tank corrosion, leaks and inadequate spill controls have adversely affected the local environment and human health. As mentioned above, in coastal communities, contamination by offshore oil development and transportation also pose threats to human and environmental health.

To the First Nations whose traditional lands are located in the north, contaminants are a serious concern because of long-range transportation and accumulation issues. Global wind patterns and water currents transport pesticides, PCBs and other persistent organic pollutants from industrialized regions in the south to the north, where they persist far longer then they would in warmer climates. These contaminants may then biomagnify in the food web, concentrating in the fatty tissue of many Arctic animals, particularly marine mammals, which are, in turn, consumed by First Nation peoples who rely on traditional foods. We are discovering that the food which for generations nourished us physically and spiritually, is now poisoning us.

3.10 Climate Change

Traditional knowledge and long-term observations tell us that changes in our environment are happening much faster than they did in the past. We are also aware that these changes are probably here to stay: these are not changes resulting from an "unusual" event that will disappear once conditions return to "normal". These are changes resulting mainly from our consumption of fossil fuels to drive cars, heat homes and for industry as well as from the clearing of forested land. These activities influence the climate by increasing the amount of greenhouse gases in the atmosphere.

A few of the climate change-related concerns being reported by First Nations are the loss of traditional foods, medicines and livelihoods; melting permafrost causing damage to homes, rail lines and other property; shorter winter road seasons and increased reliance on air shipments of goods and services; the northward shift of plants and animals; weakening currents and changes in polynyas and sea ice; changes in the frequency and intensity of forest fires; and the inability of some plant and animal species to adapt to changing environments (Hudson Bay Programme 1995; Northern Climate Exchange 1999). The United Nations Framework Convention on Climate Change has recognized that the greatest impact of climate change will be on those with the least capacity to deal with the changes, namely poor and indigenous peoples (Canziani & Mata 2004).

Not only is our use and enjoyment of the land being affected by climate change, but so is our traditional knowledge of that land. We have a strong connection with the environment, a connection that is integral to our physical, social, economic, cultural and spiritual survival. Due to this connection, we will likely be disrupted by climate change impacts more severely than many other citizens and we will likely be among the first to mitigate and adapt to these impacts.

3.11 Tourism

The impact of tourism on First Nation peoples and communities has been both a blessing and a curse. At times, tourism has brought much needed financial resources to First Nations; however, it has also brought well-intentioned - but frequently ignorant - abuse and misuse of the lands for which First Nations cared. Disturbance (and desecration) of burial grounds significant archaeological historic sites and sacred places; the denigration of traditional culture; disruption of natural habitats; over-harvesting of game, fish and plants; pollution and increased threat of wildfire; alienation of traditional lands and prime fishing areas by resorts, lodges/outcamps, and guiding and outfitting operations; allocation of traditional lands for parks and protected areas; increased pressure on local water supplies; and the construction of roads and other infrastructure to support the industry are some of the concerns cited by First Nations who have experienced tourism development in their territories. Often, tourism is concerned more with self-preservation as an industry than with the well-being of the community and the local environment.

When the proper controls are in place and First Nations are active in planning and implementing management regimes, the tourism industry has provided employment, economic development opportunities and a “cultural revival”: youth are encouraged to remain in the community and retain or learn the traditional culture while still maintaining viable employment and income generation. Additionally, First Nations are involved in educating tourists about traditional practices and philosophies, such as through interpretative programs.

3.12 Energy

First Nation communities in Canada tend to be small and remote, and are often dependent on large utilities for energy supplies whose main focus is in larger markets. Electricity costs have always been a major burden, particularly in those communities that are not connected to power grids and are served by diesel generators (AFN 1996). Often, power generation systems in remote communities are aged and inefficient and First Nation communities are vulnerable to power disruptions. Environmental issues related to energy production and consumption include those arising from mining and smelting (discussed in Section 3.3), oil and gas development (Section 3.4) large-scale hydroelectric development (Section 3.6), electricity transmission (Section 3.7), and the transportation, storage and use of heating oil and diesel fuel (Section 3.9). As well, wood burning remains a primary heat source in many homes, and First Nations are concerned about environmental issues associated with the harvesting of fuelwood for heating and cooking purposes and the air pollution that is generated by burning wood as well as fossil fuels.

With respect to nuclear energy, specific concerns raised by First Nations exist at all phases of the nuclear fuel cycle: uranium mining, processing, refining, fuel fabrication, reactor operations and

nuclear waste management. First Nations that are located in proximity to nuclear power plants and uranium mining and processing activities have been exposed to radioactive, carcinogenic pollutants and have indicated that information provided to them by the nuclear industry was often inadequate or biased (AFN 2005). First Nations have had no say in the production of nuclear fuel waste (NFW), have received little or none of the energy that accompanied the production of NFW and have neither the resources nor the expertise to assess the nature of the wastes which could be stored on or near our lands (CEAA1998). The creation of NFW is viewed as a practice that conflicts with our deeply held beliefs (CEAA 1998) and is described as "one of the most irresponsible actions that your governments have undertaken" (Whiteduck 1998) and as "a problem that will never go away" (Courchene 2004). First Nations have also expressed a concern that "because of high rates of unemployment in many First Nations communities, that First Nations lands would be targeted for hosting a nuclear waste management facility" (AFN 2005), and that little or no significant benefit would be derived from agreeing to accept NFW on our lands (CEAA 1998).

Several provincial and territorial organizations (PTOs) in Canada have raised similar concerns with respect to the management of NFW (CEAA 1998; AFN 2001).

Source reduction and elimination of nuclear waste is important to First Nations. First Nations have stressed that "no new 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." (AFN 2005: 5).

3.13 Cumulative Effects

"Cumulative effects" is a phrase used to describe the impacts of an action when added to other past, present, and reasonably foreseeable future actions; these are impacts that can result from individually minor but collectively significant actions taking place over time (Health Canada 2003; Alberta Environment 2002; U.S. Council on Environmental Quality 1993). In other words, what are the effects of all of our activities on the environment when we consider all of these effects together? This kind of thinking is not new to First Nation peoples, but has only relatively recently influenced environmental assessments and project licensing decisions. First Nations have insisted that resource developments on traditional lands should not proceed until independent and comprehensive cumulative environmental impact assessments are completed with their involvement (for example, see: Metecheah & Jackson 2001; Manitoba Clean Environment Commission 2003).

First Nations are also concerned because existing environmental programs are typically not integrated and/or not intended to solve interconnected problems. In other words, frustration exists because environmental programs are usually targeted to specific issues, not to the health of the whole environment. For example, problem-specific programs may offer inoculations against infectious disease but not the means of cleaning up contaminated drinking water sources (RCAP 1996). First Nations maintain that addressing all of the causes of a particular environmental issue is necessary to adequately resolve or mitigate that issue in the long-term.

4.0 ADDRESSING OUR ENVIRONMENTAL ISSUES

The preceding sections of this paper have shown that there are many environmental issues of concern to First Nations on-reserves and on traditional lands. How these issues have been

addressed - and continue to be addressed - is the focus of this section. The ways in which these issues are addressed are as varied as the issues themselves and therefore, this is not a complete list. Additionally, it is important to understand that the ways in which our environmental issues are being addressed do not necessarily reflect the ways in which we expect these issues to be addressed. Accordingly, the discussion is divided into two parts: Section 4.0 deals primarily with past and present approaches to addressing our environmental issues, and Section 5.0 presents some of our expectations about how our issues should be addressed. Again, this overview is brief and is intended to inform further discussion and assist First Nations in developing strategies to address the emerging issue of NFW management.

4.1 Customary Law

First Nations traditionally lived by reference to “Great Laws” bestowed by the Creator. These “Great Laws” are sustained by our spiritual and philosophical beliefs, values, principles and goals, and customary law is the sum total of our beliefs, values and norms. All combined to guide and direct the conduct of individuals, the family, the extended family, the clan and the nation. Customary law is unique to each First Nation’s cultural heritage, although tribal affiliations do exist. There are common features of customary law, such as its origins in human-environment relations and its constant evolution to encompass new and changing interactions with the environment, including interactions other than our own.

First Nations’ customary law reaches back to the beginning of time for many of our communities, and sometimes seems invisible to “outsiders”. For example, First Nations believe that people who wish to resolve differences of interest must treat each other with respect and discuss these differences in a meaningful way, and that just because a person is silent does not necessarily mean that he/she agrees. As well, according to the customary law of many First Nations, when an activity raises threats of harm to human health or the environment, precautionary measures should be taken. In the case of NFW, application of this “precautionary principle” would dictate stopping the production of nuclear waste until a solution was found (AFN 2005).

Customary law is being revived and relied upon by many First Nations in Canada, particularly in our efforts to restore our inherent sovereignty and right to self-determination. Finding ways to work with us, and establishing certainty in resource development, will involve respecting and recognizing our customary law, and balancing the relationship between our customary law and "external legislation”.

4.2 Devolution and Capacity Development

Federal government-driven initiatives to confer “authority” to First Nations and assist in developing our capacity to deal with environmental issues on-reserve are the focus of this section. This devolution of authority does not derive from our inherent sovereignty and right to self-determination, but is instead “provided” to First Nations to perform administrative functions. Basically, devolution is part of the evolution of the Department of Indian and Northern Affairs (INAC), from direct service delivery to funding agency. Even though a First Nation develops capacity and is given control over program delivery at the local level, legislative and policy control in many areas remains with the federal and provincial or territorial governments.

Some examples of federal government initiatives to devolve authority to First Nations and assist in developing our environmental management capacity are: the Delegated Land Management

Program (or 53/60 Program); the Regional Lands Administration Program; the Reserve Lands and Environment Management Program and the Framework Agreement on First Nation Land Management (FAFNLM).

The FAFNLM has been entered into by the federal government and a specific group of First Nations "on the initiative of those First Nations wishing to escape the land management provisions of the *Indian Act* in order to improve their capacities and opportunities for economic development" (INAC 2004 and 2004a; First Nations Alliance 4 Land Management 2005). A First Nation opting to come under the FAFNLM is required to adopt a land code. Validly adopted land codes have the effect of law, and laws enacted under the land codes may cover any matter related to reserve lands (or lands that the parties to the FAFNLM agree will become reserve lands in the future), including the granting of interests in reserve lands, land use and environmental protection.

The fact remains, however, that these devolutionary programs assist First Nations in developing capacity to manage lands and resources on reserves only, or in undertaking economic development initiatives that have an environmental component affecting residents of a reserve. A First Nation that has participated in INAC's devolution programs may have developed some capacity (for example, hired a Lands Manager) to respond to the NFW issue when - and if - it arises for that First Nation.

Our experiences with addressing environmental issues on our traditional, or "off-reserve", lands are quite different from those described in relation to our reserve lands. These experiences and the resulting capacity we have developed are discussed in the next sections.

4.3 Isolation

In many cases, particularly in the past, we have learned about resource development activities, contaminated sites, land use plans, permits and licences that affect our traditional lands "after the fact". Outcomes are predetermined, decisions have been made and activities have begun on traditional lands without any attempt by government and/or industry to even inform the First Nation peoples who would be potentially affected. First Nations' rights and interests have been infringed, and governments, industries and other stakeholders have benefited at our expense. With advances in the legal recognition of our rights and territories (largely as a result of our own actions), this is generally not sanctioned today, although some First Nation harvesters maintain that they are still informed about hunting regulations for the first time only after violating them. Many environmental issues persist in our communities and traditional lands because of decisions that were made according to this policy of exclusion.

4.4 Confrontation

Many First Nations have engaged in direct community action to resolve environmental issues - from peaceful occupations and lobbying efforts to standoffs and blockades, depending on the individuals involved and the amount of frustration, bitterness and community resources. Blockades have been conducted by First Nations across the country, such as by the Mohawk of Kanesatake and Kahnawake in Quebec to protest a golf course development on a sacred meeting place and centuries-old cemetary; by the Mathias Colomb Cree Nation in Manitoba to protest timber harvesting activity on traditional lands that this First Nation is entitled to under the terms of Treaty; by the Lac La Hache First Nation and Clearwater River Dene First Nation in Saskatchewan to protest uranium mining and decommissioning activities; by the Halfway River First Nation to protest

development of a pipeline and other natural gas developments; the Algonquins of Barrière Lake to defend the forest and their traditional way of life; and by the Grassy Narrows First Nation in Ontario to protest clear-cutting activity in their territory. These are just a few examples: unfortunately, there are many more. Such confrontations are not First Nations' "style", but are sometimes the only recourse we have to ensure our environmental issues are addressed, and our rights are protected. In most cases, progress has been made by the First Nations involved; however, in some cases, tragedy has also occurred.

4.5 Negotiation

Formal and informal agreements have been negotiated by First Nations, federal and provincial governments and industry to address environmental issues and/or to ensure First Nations benefit directly from resource development activities on traditional lands. These include: settlement agreements to mitigate and provide compensation for the adverse impacts of development activity; cooperative or joint management agreements to provide First Nations with an opportunity to participate in resource management decision-making processes; revenue-sharing and impact-benefit agreements; resource access and economic development agreements; alliances, leveraged investments, limited partnerships and joint ventures. Some of these agreements are designed to deal with past impacts; others deal with potential impacts and opportunities. Some have been negotiated to end confrontations; some have been the product of consultations; some have been ordered by the courts and administrative tribunals; and some have resulted from a desire to create economic partnerships and improve community well-being. These are discussed briefly below.

4.5.1 SETTLEMENT AGREEMENTS

Settlement agreements have been negotiated by First Nations in many parts of Canada to reconcile aboriginal and Crown title and/or to address the impacts of resource development activities on First Nation peoples and lands. Some of these agreements have been referred to as "modern Treaties", such as the James Bay and Northern Quebec Agreement (JBNQA) of 1975, the Northeastern Quebec Agreement (NEQA) of 1978 and the Northern Flood Agreement (NFA) of 1977. Some settlement agreements are described as comprehensive claims settlements, which are "constitutionalized": each final agreement is enacted into legislation and receives constitutional protection.[5] Comprehensive claims settlements in Canada include the JBNQA, the NEQA, the Inuvialuit Final Agreement, the Gwich'in Agreement, the Nunavut Land Claims Agreement, the Sahtu Dene and Metis Agreement, the Nisga'a Treaty and the final land claims agreements negotiated in the Yukon by the Vuntut Gwitchin First Nation, the Champagne and Aishihik First Nations, the Teslin Tlingit Council, the First Nation of Na-cho Ny'a'k Dun, the Selkirk First Nation, the Tr'ondëk Hwëch'in First Nation and the Little Salmon/Carmacks First Nation.

Settlement agreements define a wide range of rights and benefits to be exercised and enjoyed by claimant groups. These rights and benefits usually include full ownership of certain lands in the area covered by the settlement; guaranteed wildlife harvesting rights; guaranteed participation in

[5] Paragraph 25(b) of the *Constitution Act, 1982* provides protection to "any rights or freedoms that now exist by way of land claims agreements or may be so acquired" and subsection 35(3) of the *Constitution Act, 1982* defines "treaty rights" to include "rights that now exist by way of land claims agreements or may be so acquired." [*Constitution Amendment Proclamation, 1983*].

land, water, wildlife and environmental management throughout the settlement area; financial compensation; subsurface rights; resource revenue-sharing; a commitment to negotiate self-government; specific measures to stimulate economic development; and a role in the management of heritage resources and parks in settlement areas. However, on the negative side, the almost complete destruction of a centuries-old way of life combined with several funding failures have made some of the virtues of the agreements impossible to implement.

Therefore, any discussion of land use within a settlement area becomes a land use planning consideration and decision under the provisions of a settlement agreement. Therefore, any proposed allocation or designation of settlement lands for the long-term management and storage of NFW must be consistent with pre-existing resource management plans, land use plans and planning processes in these areas, some of which are quite complicated and involve many different parties.

4.5.2 CO-MANAGEMENT

In addition to the land and resource use plans and processes created under settlement agreements, there are a number of "co-management" arrangements with First Nations in Canada. Also referred to as "co-operative management", "joint management", or "joint stewardship" arrangements, co-management arrangements are less formal than those created under settlement agreements. They are usually resource-specific (for example, concerned with the management of a moose population within a specified game hunting area) and crisis-oriented (restoring an endangered species), and vary widely in the amount of decision-making authority that is shared. Co-management has also been used to describe the process of combining western scientific knowledge and traditional environmental knowledge for the purpose of improving resource management.

A "cooperative" approach to natural resources management attempts to balance the exercise of resource use rights by First Nation peoples, the powers of governments and the legislated privileges awarded to resource developers and commercial and recreational resource harvesters (Haugh 1994: 3). However, efforts to achieve this balance usually focus more on managing the people who use natural resources than the resources being utilized. Allocation strategies, mandatory and voluntary hunting suspensions, harvesting reductions, restrictions on harvesting methods to reduce success rates and information and education programs are some of the approaches followed by co-managers to mitigate conflict in the use of resources. However, in many cases, local resource users have yet to exercise influence over decisions about broad government policy on habitat protection and co-manage resources on a regional (as opposed to sectoral) basis (Campbell 1996; Haugh 1994: 261).

One important element of co-management is that it stresses negotiation rather than litigation as a means to resolve conflict (Campbell 1996). In theory, involving all resource users in the decision-making process - from the identification of issues to their resolution, from the design of management plans to their implementation, and from the creation of management functions to their administration - will minimize conflict and opposition and result in "more appropriate, more efficient and more equitable management" (Pinkerton 1989: 4-5).

Again, any decision or proposal to use lands for a development purpose, such as the long-term

storage of NFW, should be made in accord with pre-existing arrangements that involve the people who use and occupy those lands.

4.5.3 RESOURCE REVENUE-SHARING AND IMPACT BENEFIT AGREEMENTS

Resource revenue-sharing agreements refer to agreements between First Nations and federal and/or provincial governments to share revenues collected from companies by the federal and/or provincial government for resources extracted from First Nation lands. For example: in the Northwest Territories, a March 2004 Framework Agreement is guiding negotiations to develop a land and resource management regime in which governments (including First Nations' governments) share responsibilities, decision-making authorities and resource revenues; in British Columbia, a Cost-Sharing Understanding was entered into in October, 2003 by the governments of Canada and British Columbia to set out how these governments will fund the costs of sharing resource revenues with First Nations as part of treaty settlements; and in Ontario, Bill 97 (the *First Nations Resource Revenue Sharing Act*) was introduced to the Legislative Assembly as a private member's bill to establish a procedure by which "resource companies that intend to extract natural resources from First Nations traditional lands in Northern Ontario negotiate a comprehensive revenue-sharing agreement with the First Nations and the Government of Ontario".

In Saskatchewan, Alberta and British Columbia, some First Nations have entered into project-specific revenue-sharing agreements with respect to oil and gas developments on or near traditional lands. However, decision-making processes are still largely controlled by Indian Oil and Gas Canada (IOGC), an agent of the Crown. IOGC regulates production and audits royalty payments making sure that petroleum-producing First Nations receive a fair share. Each nation has an account set up in Ottawa into which IOGC deposits oil and gas earnings as either revenue or capital. Currently, under the *Indian Act*, there are provisions as to how First Nations can access that money through INAC.

Impact benefit agreements (IBAs) have also been negotiated by companies doing business in First Nations' territories and the First Nations affected by these enterprises. IBAs can include a commitment by the company to consult the First Nation or provide benefits like employment and business opportunities, compensation or training. For example, under an IBA, a First Nation could receive preferred employment, and/or business opportunities as a form of compensation.

In British Columbia, the Tahltan Nation has negotiated IBAs with mining companies operating in Tahltan territory that resulted in rerouting an access road, providing a role for the Tahltan Nation Development Council as project subcontractors and contributed to a dramatic increase in the employment rate on the two reserves (Asp 2004). However, frustration still exists in the communities, particularly among the Elders, about a perceived lack of separation between business and politics and a sense of disregard for traditional values. Traditional forms of governance -- as they have been in the Nisga'a Treaty -- must also be acknowledged and respected by government and industry in the negotiation of IBAs (Hume 2005).

Resource revenue-sharing and impact-benefit arrangements are not presently required by Canada by policy or as a statutory condition of federal approvals or licences for natural resource developments in the prairie provinces. The Manitoba Keewatinook Ininew Okimowin, which represents the 30 First Nations in northern Manitoba, has called on the government of Canada to "develop policies and enact legislation to ensure that Resource Revenue Sharing, Benefit Sharing

and Resource Access arrangements with First Nations are an enforceable condition of any federal government financial support, approvals or licences related to energy, water and natural resource developments" (MKO 2005).

4.5.4 ECONOMIC DEVELOPMENT AND RESOURCE ACCESS NEGOTIATIONS

INAC has provided funding to First Nations under a number of different programs to stimulate economic development and assist in negotiating agreements with government and/or industry to access resources on traditional lands (INAC 2004b). These programs include: the Economic Development Opportunity Fund; the Regional Partnership Fund; the Resource Acquisition Initiative; the Resource Access Negotiation Program; and the Marshall Strategy.

As well, INAC has provided funding to First Nations under the Northern Contaminants Program to assist in developing First Nations' capacity to address the issue of contamination of traditional foods, primarily through education/communications, project implementation and monitoring programs.

These programs have assisted First Nations in developing capacity to negotiate benefits and facilitate partnerships with government and industry. However, in many respects, these programs are structured to support the hiring of specialists and/or legal counsel to assist in research and negotiations for project-specific purposes. As noted above, the capacity that is developed through these programs, however limited, can be used by a First Nation to address a new issue like NFW management.

4.5.5 ALLIANCES, LEVERAGED INVESTMENTS, LIMITED PARTNERSHIPS AND JOINT VENTURES

These types of agreements have been negotiated by First Nations and private industry to address our concerns regarding existing and potential effects of resource developments and to ensure that we have the opportunity to obtain both short term and long term benefits from such developments in our territories.

An alliance is defined as an arrangement whereby partners share complementary skills, risk or technology to obtain an interest or benefit (Lewis 2004). Alliances have been formed by mining companies and First Nations in Canada during mineral exploration programs. Leveraged investments are also made in the mines and minerals sector to increase exploration expenditures for every dollar spent. However, in a leveraged investment, a company must concede some equity in the partnership.

Other types of arrangements in which First Nations are willing to partner with private industry include limited partnerships and joint ventures. A limited partnership is a partnership with at least one general partner and any number of limited partners. The limited partner(s) provide financial backing and have little role in management and no personal liability and the general partner(s) are responsible for managing the entity and have unlimited personal liability for its debts. The proposed Wuskwatim Power Partnership between the Nisichawayasihk Cree Nation and Manitoba Hydro, if approved, will be owned through a limited partnership structure. The NCN will share in future

profits and Manitoba Hydro must obtain NCN's consent before it can change fundamental features of the proposed project. The project currently requires the approval of the federal and provincial governments as well as the approval of a majority of NCN voters to ratify a Project Development Agreement.

A joint venture is where two or more persons (either individual people or companies) enter into an agreement to undertake a business venture for joint profit. The joint venture can be simply an agreement between the parties as to who does what, invests what and gets what at the end, or it can be an entirely new company set up for the specific purpose of pursuing the joint business. In southern Alberta, the Piikani Utilities Corporation, established by the Piikani Nation, and EPCOR, a City of Edmonton power company, run a 72-metre-tall wind turbine as a joint venture. This project has proven so successful that a multi-tower, 100-megawatt wind farm is currently being planned by the partners in this joint venture. In northwestern Alberta, the Dene Tha' First Nation, EnCana Corporation and Lakota Drilling Limited Partnership are launching a joint venture in the oil and gas drilling business. Dene Tha' will benefit financially through the acquisition of a 50% interest in two oil and gas drilling rigs.

Partnerships such as these have benefited First Nations in terms of shared profits, jobs, expanded business expertise, capital, and training initiatives that provide transferable job skills beyond the present partnerships. As well, the process of forming a partnership agreement compels the discussions that partners should have, and provides a document to refer to when disagreement emerges or significant change in direction appears necessary after launching the business. Creation of a partnership agreement establishes certainty for the First Nation(s) and industry involved and provides a First Nation with an opportunity to benefit directly from the development of resources on traditional lands.

4.6 Consultation

As a result of recent court decisions in Canada, governments are now required to consult First Nations *before* taking action that might impact on aboriginal and Treaty rights. These court decisions have implications for consultation processes under existing legislation, agreements, informal arrangements and proposed activities, such as the siting and management of NFW.

The obligation to consult First Nations has been described as the "Section 35 process" or the process of "fiduciary consultation", owing to the protection of aboriginal and Treaty rights under section 35(1) of the *Constitution Act, 1982.*[6] First Nations must be consulted If an infringement of an aboriginal or Treaty right is established, and this infringement must be justified according to the tests outlined by the Supreme Court of Canada (*R. v. Sparrow* 1990). A public consultation process is not sufficient to discharge the duty of consultation toward First Nations: a distinct consultation process is required by virtue of s. 35 (Woodward 2002: 5-34).

The duty to consult means that the federal and/or provincial/territorial government must be sensitive to our perspective(s) on the meaning of the right(s) at stake (*R. v. Sparrow* 1990: 179) and must be fully informed of the practices and of the views of the First Nation affected. "In so doing, it must ensure that the group affected is provided with full information with respect to the proposed

[6]Subsection 35(1) of the *Constitution Act, 1982* provides that "the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."

legislation or decision and its potential impact with Aboriginal rights." (*Halfway River First Nation v. British Columbia* 1997: 71).

Resource companies may be delegated procedural aspects of consultation and they may be liable if they "act negligently in circumstances where they owe aboriginal peoples a duty of care or if they breach contracts with aboriginal peoples or deal with them dishonestly" (*Haida Nation v. British Columbia* 2004, para. 53-56).
The existence of the obligation to consult does not determine what type of consultation or accommodation must take place. However, in cases where the right is limited or the potential for infringement minor, the only duty on the government may be to give notice, disclose information and discuss any issues raised in response to the notice. In cases where there is a strong case and the potential for infringement is serious, the consultation process may have to be quite "deep" and include "the opportunity to make submissions, for consideration, formal participation in the decision-making process and provision of written reasons to show that aboriginal concerns were considered and to reveal the impact they had on the decision. ... The government may wish to adopt dispute resolution procedures like mediation or administrative regimes with impartial decision-makers in complex or difficult cases" (*Haida Nation* 2004, para. 44; Imai 2004).

In situations where a development decision constitutes a "taking up" of lands within the meaning of Treaty, the Federal Court of Appeal has determined that there is no continued Treaty right to hunt on the land taken up for the development; there is no violation of section 35 of the *Constitution Act, 1982*, and therefore no constitutional obligation to consult the affected First Nation (*R. v. Mikisew* 2004). This case is currently being appealed to the Supreme Court of Canada.

In response to the Supreme Court's decisions in *Haida Nation* (2004), *Taku River Tlingit First Nation v. British Columbia* (2004), and the Federal Court of Appeal decision in *Mikisew* (2004), federal government representatives are currently meeting to evaluate and recommend the way in which to proceed with consulting First Nations. In an open letter to First Nations' leaders in Canada, the AFN British Columbia Regional Chief has described the federal government's "unilateral, top-down approach to setting these important guidelines and protocols" as "unacceptable" (Atleo 2005). How the federal government's consultation guidelines are being developed and how they will be implemented will likely influence the consultation process required under Canada's *Nuclear Fuel Waste Act* (NFWA). The NFWA consultation process is the focus of the next section.

4.7 The *Nuclear Fuel Waste Act* Process

Under the *Nuclear Fuel Waste Act* (NFWA), the Nuclear Waste Management Organization (NWMO) must propose approaches to the government of Canada for the long-term management of NFW in a study by November 15, 2005.[7] The NWMO must then carry out consultations with the "general public, and in particular aboriginal peoples, on each of the proposed approaches".[8] As well, the NWMO must create an Advisory Council to review and comment on the study, and "reasonable efforts" must be made by the NWMO to ensure that the Advisory Council's membership "reflects expertise in traditional aboriginal knowledge" and "includes representatives

[7] subsection 12.(1) of the NFWA.

[8] subsection 12.(7) of the NFWA.

nominated by ... aboriginal organizations that are affected because their economic region is specified" for the selected approach.[9]

[9] section 8. of the NFWA.

In addition, "the Minister may engage in such consultations with the general public on the approaches set out in the study as the Minister considers necessary."[10] The Governor in Council is then authorized to make a decision on the choice of approach for long-term NFW management to be implemented by the NWMO.[11] If the NWMO "is unable, for technical reasons beyond its control, to implement the approach that was selected by the Governor in Council", the NWMO must propose a new approach, solicit the comments of the Advisory Council and begin the consultation process again.[12]

This approach to consultation was criticized by the AFN in a November 2001 presentation to the Parliamentary Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources on Bill C-27, the *Nuclear Fuel Waste Act* (AFN 2001). The AFN recommended that a provision be made in the NFWA to provide resources to First Nation governments and organizations to facilitate our participation on the Advisory Council, including support for research and discussion. AFN also recommended that traditional territories of First Nations be included in section 8.(2)(c), 12.(3) and 12.(4), as economic regions may or may not coincide with the traditional territories of First Nations. These recommendations were not accepted by the Committee.

The NWMO study is currently in its third and final year of development, and the organization wants to ensure that "aboriginal ideas, insights, wisdom and values are factored into the final NWMO recommendation to government" (NWMO 2005). Several "Nuclear Fuel Waste Dialogue" processes have been ongoing which involve aboriginal organizations at national, regional and local levels.[13] In developing the AFN dialogue, the AFN has explicitly stated that the process is viewed

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[10]subsection 14.(1) of the NFWA. "Minister" means the federal Minister of Natural Resources or such member of the Privy Council for Canada as the Governor in Council may designate as the Minister for the purposes of the NFWA.

[11]section 15. of the NFWA.

[12]section 20. of the NFWA.

[13]National organizations currently conducting dialogue processes are: AFN, the Inuit Tapiriit Kanatami, the Metis National Council, the Congress of Aboriginal Peoples, the Native Women's Association of Canada and the Pauktuutit Inuit Women's Association; regional/local organizations are: Atlantic Policy Congress of First Nations Chiefs (APC), Eabametoong First Nation, Fort Hope, Ontario, East Coast First People's Alliance, Ontario Métis Aboriginal Association (Ontario affiliate of CAP), Sakitawak Metis Society, Northwestern Saskatchewan and the Western Indian Treaty Alliance (WITA).

as a “dialogue” to avoid confusion with “consultation”. The objectives of the AFN dialogue on NFW 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. “As always, individual First Nations will retain decision-making authority when, or if, a nuclear waste management facility is proposed for their area” (AFN 2004a).

However, First Nations are deeply concerned that when decisions regarding NFW management are made that affect traditional lands, First Nations will not have had an equal say in the decision-making process. Some participants in the dialogue process indicated that a veto power was needed “to ensure that they can protect their lands from irreparable damage” (AFN 2005).

Academics of the nuclear fuel industry have also criticized the “position, place, and timing” of consultation in the NFWA process: “The contribution of First Nations ... should not be cast solely in terms of traditional knowledge and values. It seems to us that this perspective is paternalistic. Perhaps more than any other group in Canada, First Nations have been affected by and have lived with the impacts of the nuclear industry. We have much to learn from them besides the aboriginal sense of responsibility or their relationship with the natural environment. ... We strongly suggest following the lead of recent supreme court rulings and seriously considering the experiences and judgements of First Nations groups (especially those with experience with the nuclear fuel cycle) to be as important as the perspectives of the nuclear industry.” (Murphy, Stanley and Kuhn 2004).

5.0 HOW WE EXPECT OUR ENVIRONMENTAL ISSUES TO BE ADDRESSED: SUMMARY AND CONCLUSIONS

This paper has shown that there are significant environmental concerns among First Nations in Canada and serious deficiencies in many of the approaches being used to address these concerns. This section considers the ways we expect our concerns to be addressed, either directly or through initiatives that empower us to manage our own affairs. Much of the discussion that follows is generalized: the expectations of First Nations are as varied as the issues we face and as diverse as our historical, cultural, political, geographic and economic circumstances. There are, however, some common principles that are acknowledged by First Nations, some of which are presented in Section 4.1, above, and some of which are explored here in an effort to frame our involvement in the NFW management issue and to guide those who engage us in addressing our environmental issues.

The environmental issues highlighted in this report are not unique to First Nations; non-First Nation peoples are equally affected by such issues as water quality, contaminants, climate change, mining, smelting, timber harvesting and pulp and paper production. However, what is unique to First Nations is that we are self-determining, sovereign nations with constitutionally-protected rights to use and enjoy our traditional lands. Each First Nation has its own customary law, and each First Nation decides for itself the best way to approach its environmental issues.

There can be no assumption that if First Nations share similar environmental issues, we must act together in addressing these issues. This is a decision that only the affected First Nations can make. Government and industry must be aware that there is no simple or “secret” way to consult First Nations; there is no consultation “checklist” that can be completed and applied to all First Nations. “Public” and “pan-aboriginal” consultation processes are not enough to discharge the constitutional obligation toward our peoples. Consultation processes must be community-based

and community-paced to be legitimate and effective.

We are encouraged by recent court decisions that call for meaningful and enforceable consultation processes, but are distrustful of the way in which the government is attempting to define these processes. As part of these consultation processes, we would insist (among other things) that we are able to obtain and review all available information, that we have an opportunity to fully consult with our communities, that we are provided realistic timelines for response, adequate funding and in-house expertise, and that we are participating in a partnership of equals from the outset. We do not wish to be "co-opted" and enter into arrangements that create processes and institutions into which our participation is channelled. We require a "hand up", not a "hand-out": capacity development is about helping us help ourselves.
First Nations have also indicated that any development proposal that potentially affects our traditional lands must be assessed in terms of its cumulative effects and must proceed according to the principle of precautionary action. This direction is consistent with our holistic view of the environment and our duty to consider the welfare of our future generations. Assessment processes must also involve an examination of the full range of alternatives, including no action. Our responsibility to care for the land the way our ancestors taught us extends far beyond the conduct of project-specific assessments of risk and benefit and cause and effect relationships.

Our inherent authority to control our lands and resources must be recognized to extend beyond initiatives that empower us to develop approaches that supplant existing federal and provincial/territorial ones. Exceptions exist among a few First Nation governments that have negotiated legislation and settled comprehensive claims that have allowed these First Nations to constitute their own governments under federal and provincial authority other than that delegated through existing legislation. However, for many First Nations in Canada, new approaches, or approaches in new areas must be acknowledged and accommodated.

Within the limits imposed on our inherent authority, financial resources and capacity to care for our lands, we have managed to deal with what may seem like an overwhelming number of environmental issues to most people. We are resourceful and have used the "tools" that are available to us in this constrained environment. However, the limits, or challenges that we face have precluded us from fully resolving our environmental issues. Often, we are at a comparative disadvantage: we do not have a complete "toolkit" or enough resources to access the tools, information and skills we need to be on equal footing with the public and private sectors and other select groups. As well, capacity development initiatives must be accompanied by guarantees from government and/or industry that this capacity will actually be used.

Most importantly, First Nations require assurances that our contributions during consultative processes will influence decisions and outcomes. First Nations also seek to be engaged with integrity and dignity, and with respect for and recognition of our rights, inherent authority and traditional lands. We must be dealt with in good faith and with the intent to uphold our rights, respect our beliefs, recognize our authority and protect our lands. We need far more than "glowing government propaganda and industrial public relations" (Hume 2005). Governments and industry must learn to listen as well as talk, and must involve us at every level of decision-making. We must be permitted to share our intimate knowledge of our environments: these are our homelands. A trust relationship, mutual respect and common ground must be defined before any deals can be made.

If the citizens of a First Nation were asked to inventory past and present environmental issues of concern, the long-term management of nuclear fuel waste would likely not be mentioned. This is simply because the long-term management of NFW in Canada is still a concept, and the capacity and limited resources that First Nations do have are typically dedicated to addressing existing environmental issues. When the long-term management of NFW becomes a reality for our people and lands, this issue will be approached with the same resourcefulness we are accustomed to in addressing the environmental issues we already face.

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