

MEMORANDUM OF UNDERSTANDING

Between

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE MINISTER OF NATURAL RESOURCES

And

NUCLEAR WASTE MANAGEMENT ORGANIZATION

Preamble

- A. The Minister of Natural Resources and NWMO wish to enter into a Memorandum of Understanding to clarify the respective roles and responsibilities of Her Majesty the Queen in right of Canada as represented by the Minister of Natural Resources and NWMO in relation to the responsibility assigned to the NWMO for the long term management of Canada's used nuclear fuel under the *Nuclear Fuel Waste Act*;

And in particular to clarify any obligations for consultation with Aboriginal peoples that arise both from the Crown's common law duty to consult, and accommodate if necessary, when potential or established Aboriginal and Treaty rights may be adversely affected by Crown conduct, and from the statutory obligation of NWMO to consult with Aboriginal peoples.

- B. It is recognized that the process to determine a site for the long term management of Canada's used nuclear fuel will be led by NWMO, and that this process is just beginning, and will happen in several stages over a number of years, before an actual site is identified.
- C. The Crown has a common law duty to consult with Aboriginal peoples, and accommodate if required, when the Crown has real or constructive knowledge of potential and established Aboriginal and Treaty rights, and when such rights may be adversely affected by contemplated Crown conduct.
- D. Under the *Nuclear Fuel Waste Act*, NWMO is responsible for the long term management of Canada's used nuclear fuel.
- E. The *Nuclear Fuel Waste Act* required NWMO to study different approaches to the long term management in consultation with Canadians and in particular Aboriginal peoples and to make a recommendation to the Minister on a preferred approach.
- F. NWMO recommended Adaptive Phased Management as the preferred approach, which has as its endpoint a deep geological repository. The Government of Canada selected Adaptive Phased Management in a decision dated May 31, 2007. The *Nuclear Fuel Waste Act* requires NWMO to implement Adaptive Phased Management.

- G. A key feature of Adaptive Phased Management is that it will rely on a willing informed host community that has suitable geology for the safe long term management of used nuclear fuel in a deep geological repository.
- H. NWMO has a continuing obligation under the *Nuclear Fuel Waste Act* to consult with Canadians and Aboriginal peoples as it proceeds to implement Adaptive Phased Management. NWMO also has an obligation to report to the Minister on the results of its public consultations, amongst other things, every three years.
- I. Adaptive Phased Management will take many years to implement. During 2009, NWMO is designing its siting process and will be releasing its draft siting process document for consultation with Canadians and Aboriginal peoples.
- J. NWMO expects to finalize the design of the siting process by the end of 2009 and plans to launch the siting process in 2010.
- K. During the siting process, NWMO will work with interested communities to enhance their understanding of what it means to host a deep geological repository. The focus of the siting process is the four nuclear provinces, New Brunswick, Quebec, Ontario and Saskatchewan but NWMO will work with interested communities from other parts of Canada who come forward.
- L. Once a potential host community is identified, NWMO will take several years to carry out site characterization work. If this work establishes that the site is suitable, and the community is willing to accept the site, NWMO will begin the work to obtain the necessary approvals to proceed with the deep geological repository.

Therefore the parties agree as follows:

1. Definitions

- 1.1. "Crown" means Her Majesty the Queen in Right of Canada;
- 1.2. "MOU" means Memorandum of Understanding;
- 1.3. "NWMO" means Nuclear Waste Management Organization;
- 1.4. "Project" means a deep geological repository for the safe containment of used nuclear fuel;
- 1.5. "Crown duty to consult" means the Crown's common law duty to consult with Aboriginal peoples, and accommodate if required, when the Crown has real or constructive knowledge of potential and established Aboriginal and Treaty rights, and when such rights may be adversely affected by contemplated Crown conduct;
- 1.6. "Minister" means the Minister of Natural Resources.

Purpose

2. The purpose of this MOU is to set out the respective roles and responsibilities of the Crown and NWMO during that part of NWMO's work that precedes the identification of a site for the Project.

Acknowledgements

3. The parties acknowledge that the Crown bears responsibility for the discharge of any Crown duty to consult that may arise in relation to the Project.
4. The parties acknowledge that NWMO bears responsibility to meet its obligation under the *Nuclear Fuel Waste Act* to consult with Canadians and Aboriginal peoples as it proceeds to implement Adaptive Phased Management.
5. To the extent that the Crown duty to consult may arise, the parties acknowledge that the Crown may delegate procedural aspects of any such Crown duty to consult to NWMO, as allowed by the Courts. However, final responsibility remains with the Crown as the honour of the Crown cannot be delegated.

Responsibilities of NWMO

6. NWMO will be responsible for:
 - 6.1. Continuing its engagement activities with Aboriginal peoples regarding NWMO's work prior to the identification of a site for the Project;
 - 6.2. Informing Aboriginal peoples during engagement activities that the NWMO will keep the Crown informed on such engagement activities;
 - 6.3. Keeping the Crown informed of the engagement activities undertaken by NWMO in relation to Aboriginal peoples by providing on or before 31 March each year:
 - (a) an annual report outlining the previous calendar year's engagement activities which shall include information about any capacity assistance provided to Aboriginal peoples, what forms of assistance and to what Aboriginal communities or organizations and provide an overview and objectives of the proposed engagement activities for the NWMO for the upcoming year; and
 - (b) an electronic copy of all documentation involving engagement activities with Aboriginal peoples compiled by NWMO during the past calendar year ;
 - 6.4. Maintaining a record of the engagement activities (with all documentation) NWMO carries out in relation to Aboriginal peoples prior to the identification of a site for the Project;

- 6.5. Advising the Crown in a timely fashion of any concerns raised by Aboriginal peoples that appear to be beyond the Project and the scope and responsibility of NWMO;
- 6.6. Providing the Crown with notice of communities that formally express interest in hosting the Project in a timely fashion.
7. NWMO shall, upon request of the Crown:
 - 7.1. Provide additional information on the engagement activities being carried out by the NWMO relating to Aboriginal peoples; and
 - 7.2. Provide information about the Project.

Responsibilities of the Crown

8. The Crown will be responsible for:
 - 8.1. Monitoring the engagement activities undertaken by NWMO in relation to Aboriginal peoples prior to the identification of a site for the Project and providing such feedback and comment it may wish to;
 - 8.2. Carrying out an ongoing assessment of the need for consultation with Aboriginal peoples that may be required to meet any Crown duty to consult in relation to the Project;
 - 8.3. Obtaining the assistance of other appropriate Crown entities in relation to any issues or concerns raised by Aboriginal peoples that appear to be beyond the project and the scope and responsibility of NWMO; and
 - 8.4. Keeping NWMO informed of any interactions the Crown may have with Aboriginal peoples in relation to the NWMO's work, subject to any restrictions in applicable law.

Primary point of contact

9. Each party shall identify a person who will be the primary point of contact for the purposes of this MOU.

Reporting

10. NWMO shall provide the Crown with regular briefings on its engagement activities with Aboriginal peoples and shall provide the various reports and documents as noted in paragraph 6.3 above.

Cooperation

- 11. Each party will cooperate with the other party to the extent reasonably necessary to permit and facilitate the performance of that party's obligations under this MOU.
- 12. Upon delivery of notice under section 6.6, the parties agree to discuss the development of a new MOU to address the respective roles and responsibilities of the parties associated with the Crown duty to consult arising in the context of a community having formally expressed interest in hosting the Project, and in the context that there may still be ongoing engagement activities involving other communities and Aboriginal peoples leading to the identification of a site for the Project.
- 13. This MOU will remain in effect until superseded by another MOU or terminated upon 90 days written notice from either party.
- 14. This MOU may be amended from time to time by agreement of the parties in writing.
- 15. This MOU may be signed in counterpart with the effective date of this MOU being the later date upon which this MOU was signed.

For Her Majesty the Queen in Right of Canada
as represented by the Minister of Natural Resources

_____ Dated:

per:

For Nuclear Waste Management Organization

_____ Dated:

per: