

Niigani

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The Duty to Consult and Accommodate... The NWMO signs Memorandum of Understanding with NRCCan

The duty to consult and accommodate is a legally recognized and enforceable fiduciary obligation of Governments to Aboriginal peoples of Canada. This obligation seems to be on the minds of most First Nation, Métis and Inuit leaders. The Duty requires the Crown to consult with, and where appropriate, accommodate, Aboriginal rights and interest when Governments consider initiating conduct that might adversely affect Aboriginal rights, interests, way of life or the sustainability of lands Aboriginal People rely on. An example is licensing.

The duty is triggered when the Crown has knowledge (real or constructive) of potential Aboriginal rights or credible claims and it contemplates conduct that might adversely affect those rights or claims.

The Duty requires appropriate consultation and accommodation with the affected Aboriginal community, with a view to substantially addressing Aboriginal concerns.

A Memorandum of Understanding between the federal Crown, represented by the Minister of Natural Resources Canada (NRCCan) and the Nuclear Waste Management Organization (NWMO) was signed on August 14, 2009. This MOU clarifies the roles

and responsibilities of the Crown and the NWMO with respect to consultations with Aboriginal peoples, pursuant to the Government's duty to consult and the NWMO's statutory obligations in relation to the *Nuclear Fuel Waste Act*.

Under the MOU, the NWMO continues to be responsible for engaging with Aboriginal peoples regarding the NWMO's work as defined by the legislation. The NWMO has also committed to provide an annual report to NRCCan outlining NWMO's engagement activities with Aboriginal peoples for the previous year and an overview of its proposed activities for the upcoming year. NWMO will provide regular briefings to NRCCan on NWMO's engagement activities.

Once the site selection process has been initiated, NWMO will also provide the Crown with notice of any community that formally expresses interest in hosting the Project in a timely fashion. NRCCan is responsible for monitoring engagement activities carried out by the NWMO in relation to Aboriginal people; assessing the need for consultations that may be necessary to meet the Government's duty to consult; and, keeping the NWMO informed of any interactions the Crown may

The NWMO and NRCCan sign a MOU clarifying roles and responsibilities related to the Duty to Consult and Accommodate...

have with Aboriginal peoples in relation to the NWMO's work.

The MOU recognizes that the Crown has a legal duty to consult with Aboriginal people and accommodate, if necessary, when an Aboriginal treaty or right may be adversely affected by conduct contemplated by the Government.

The role of Niigani and the Elders Forum will be to continue to assist the NWMO to understand the challenge, and to suggest policy and processes to work with Aboriginal peoples in the site selection process, as the NWMO initiates and conducts the site selection process and a community is selected.

As with most new areas of law this will take time as a number of consultation processes are being undertaken across Canada by the Federal and Provincial Governments.

Special points of interest:

- Niigani members are active participants in the 2009 Multi-Party Dialogues.
- NWMO is assisting the Ontario Power Generation (OPG) to get licensing for Deep Geologic Repository for low and intermediate level waste at the OPG Bruce Site.
- What is happening in other Countries?

Message from Chairperson—Gordon Williams



I would like to reminisce for a few moments to bring some thoughts from the past to a world that seems to be engulfed in the latest electronic games or other gadgets. In the 1940's when I was a child, there were no Christmas trees to adorn the log houses on the Peguis Reserve. As a child, we put our oil lamps beside the windows to light up those dark nights during the festive season. The natural

beauty of the spruce trees covered in puffs of snow were better than anything we could do. The only indication that Christmas was upon us was the usual Christmas concert put on by the school. It was a frenzied time, since all the school aged children had to do something for the concert to satisfy parents who took great pride in seeing their children perform. Of course there was the pandemonium with the arrival of Santa Claus. Goodwill gifts were handed out to all of the children. My favorite gift was the bag of sweets. New Years was a time of celebration, having made it through another year.

Again children were the centre of the day as families made it from home to home and wished everyone "HAPPY NEW YEAR". In response to their good wishes, the host would give us a bun or some other treat. Alas, those days are only memories now. I often wonder why we have given up those old customs that kept our communities together. Today, so many people seem lost in our race to possess the latest fad. I want to encourage you to remember how it still could be. Happy New Year.

Gordon Williams, Chairman of Niigani

Introducing Cynthia Jourdain

Cynthia Jourdain is from the Couchiching First Nation. Her father is also from Couchiching First Nation which is near Fort Frances, Ontario. Her mother is from Ochi'chaagwe'babigo'ining First Nation near Kenora, Ontario. Her Clan is the Bizhiw (Lynx Clan) in the Treaty #3 Territory.

Cynthia works with the Nuclear Waste Management Organization (NWMO) as a member of the Aboriginal Engagement team.

She was raised in a single-father household with her twin sister and an older sister. "...my Father instilled in me a sense of pride in all the choices I make. ...We are a close family."

She often reflects upon her family life and her father's guidance and the profound impact it has had upon her life. It is easy to see how the pursuit of excellence has moulded her as a person and how it has assisted her with making wise education and career decisions.

Cynthia also has good work experience. Before joining the NWMO Cynthia worked with Matawa First Nations Management as the Partnership Development Advisor and Community Development Coordinator. "...My community is very important to me



and I want to use my skills and abilities to help...I am an active learner of Ojibwe and my goal is to one day be fluent in my language. I love every thing about our culture – the stories, the

....my Father instilled in me a sense of pride in all the choices I make...We are a close family.

ceremonies, the dances, and the humour, but I really love our family life."

She was brought into the circle as a jiggle dress dancer at age 12 and she dances at as many powwows as she is able to attend. When she is not dancing she is sewing regalia.

Ms. Jourdain has a Bachelor of Science in Business Administration Management from Virginia Commonwealth University and an Associate of Arts in Liberal Studies with a concentration in the Ojibwe Language from Bemidji State University in Minnesota.

She also worked as the Program Director with the National Indian Business Association in Washington, DC, and as a Program Specialist with the Virginia Council on Indians.

She works very hard in supporting the members of Niigani and she is an excellent example of the caring attitude of our people.

Message from the President of NWMO—Ken Nash



NWMO's Aboriginal engagement activities this year have been busy and productive. We continue to broaden our relationship with Aboriginal peoples in the four nuclear provinces. This

has resulted in a better understanding of Adaptive Phased Management. Through the course of 2009, NWMO sought the input of Canadians and Aboriginal peoples to collaboratively design the process that will be used to identify a safe and secure site in an informed and willing community to host Canada's long-term management facilities for used nuclear fuel. Over the

course of the year, First Nation and Métis groups convened more than 25 meetings in the nuclear provinces to build their own understanding of Adaptive Phased Management and to provide community input. With Niigani's advice and assistance, these dialogue sessions sought input from people representing community and regional perspectives and were collaboratively designed and developed with provincial Aboriginal organizations. Niigani members, attending these dialogues, provided valuable perspective to dialogue participants on the role of the Elders Forum and Niigani and the advice that has been provided to the NWMO over the past 4 years. Two important initiatives were accomplished this year. The Memorandum of Understanding (MOU) signed between

Natural Resources Canada and the NWMO to help clarify the roles and responsibilities of NRCAN and NWMO with respect to any obligations for consultations with Aboriginal people and a NWMO pledge of support over three years to the Chair in Indigenous Governance at Ryerson University.

I would like to thank all members of the Elders Forum and Niigani for all of their work, advice and assistance to us this year. As we look forward to 2010 we anticipate a new phase in our work as we prepare to initiate the process for site selection and provide support to interested communities that come forward to express interest. The NWMO will continue our important work to build our relationship with the Elders Forum.

Ken Nash, President

Niigani Members attend 2009 Multi-Party Dialogues

Stratos Consultants (www.stratos-sts.com) facilitated the NWMO 2009 Multi-Party Dialogues in the four nuclear provinces.

In 2008, the NWMO began a dialogue with interested organizations and individuals to identify principles and elements for a fair process to identify an informed and willing community to host a deep geological repository for the safe containment and isolation of Canada's used nuclear fuel for the long term. Guided by the input, the NWMO developed a discussion document outlining a *Proposed Process for Selecting a Site*.

The intent of the 2009 Multi-Party dialogues was to have a variety of people who have different perspectives and backgrounds to see if the NWMO "...got it right." Participants were asked to critique, test and refine the *Proposed Process for Selecting a Site* document.

In the words of Kathryn Shaver, Vice President of APM Engagement and Site Selection, NWMO "...this process is the next step toward identification of a ...fair, ethical and effective siting process." Those attending the Multi-Party

Dialogues included individuals with a variety of backgrounds including: Niigani membership, environmentalists, professionals, academics, industry, entrepreneur, local governments, political groups and non-government organizations to name a few.

During a day and a half long sessions participants were asked to continue the discussions begun last year.

Participants were first introduced to the Nuclear Waste Management Organization (NWMO) and were given an overview of the NWMO's mandate and work including the national dialogue and Final Study.

Participants were invited to ask questions throughout the presentation as a detailed description of Adaptive Phase Management was provided with proposed timelines and processes for implementation.

Included in the timeline presentation was a description of the NWMO engagement activities for 2009; summaries of the key inputs from the 2008 Dialogues and finally the description of the proposed site selection process.

"...this process is the next step towards the identification of a fair, ethical and effective siting process." Kathryn Shaver, VP APM Engagement and Site Selection, NWMO

The purpose of the 2009 Multi-Party Dialogues was to refine the *Proposed Process for Selecting a Site* document. The comments and the views shared in these dialogues will be used along with other input received during information sessions to create a process that is '...open, inclusive, transparent, and fair.' The NWMO created a number of opportunities so all Canadians can participate and express their views regarding the creation of a process for site selection. If you would like copies of the Dialogue materials including the Agenda, Presentation, Reports or Workbook, go to www.nwmo.ca/multipartydialogues2009.

Frequently Asked Questions

NWMO Elders Forum

How to have your voice heard. Send an email.

Website www.nwmo.ca

Webmaster Email

info@nwmo.ca

Call us Toll Free 1.866.249.6966 (within Canada) or send a letter or fax

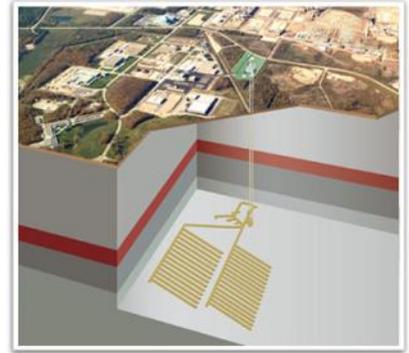
Tel 416.934.9814

Fax 416.934.9526

Nuclear Waste Management Organization

22 St. Clair Avenue East, Sixth Floor
Toronto Ontario Canada M4T 2S3

www.nwmo.ca



Are there any other Deep Geological Repositories

in Canada? Ontario Power Generation is proposing a Deep Geologic Repository for low and intermediate level waste at their Bruce Site in the Municipality of Kincardine in Ontario. The Nuclear Waste Management Organization (NWMO), on behalf of Ontario Power Generation (OPG), will be seeking regulatory approval for construction of a proposed Deep Geologic Repository (DGR) for the long-term management of OPG's low and intermediate level radioactive waste on lands adjacent to OPG's Western Waste Management Facility (WWMF) on the Bruce nuclear site. This is a picture of the planned facility which will be 660 meters below the Bruce site in a limestone formation. Limestone is ideally suited for containing radionuclides. In December, OPG submitted a project description to the Canadian Nuclear Safety Commission to start the licensing process. This year the NWMO will be hiring several major contractors to carry out intensive geotechnical investigations, to pull together the Environmental Assessment and safety cases, and further develop the project. The project will be in-service in about 10 years time. Deep Geological Repository Open Houses were held in November 2009 in the following Ontario communities: Kincardine, Ripley, Waterton, Port Elgin, Chesley, Owen Sound, and Wiarton.

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NUCLEAR WASTE
MANAGEMENT
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SOCIÉTÉ DE GESTION
DES DÉCHETS
NUCLÉAIRES

What does Community Well-being mean? It is proposed that beyond ensuring safety, the NWMO's commitment to any host community is that its long-term well-being, or quality of life, will be fostered through its participation in this project. Ultimately, the vision for the community, and the extent to which the project contributes to this vision in an acceptable way, is a matter for the community to discuss and assess. A community will need both a good understanding of the project and a good sense of the long-term vision for the community to begin to assess interest in the project.

What is happening in other Countries?

Countries around the world are developing national plans for high level waste. The following list of countries are using geological repositories: Sweden and Finland will develop a geological repository that will be operational in 2020. Both countries have already selected a willing community. France will also use a geological repository and they are targeting completion in 2025. Germany and Japan are targeting the opening of their repositories in 2030 and Switzerland in 2040. The UK is just starting siting of a geological repository. Belgium and Spain are in their research and development phase and no decision has been taken on a national plan for high level waste. In Canada, the earliest a deep geological repository will be open is 2035.

How will Used Nuclear Fuel be Transported?

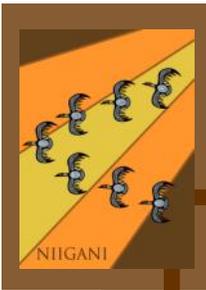
The project requires transportation of used nuclear fuel from where it is currently stored at reactor sites to the deep geological repository. Transportation of nuclear waste is stringently regulated by Transport Canada and the Canadian Nuclear Safety Commission (CNSC). While used nuclear fuel has not been transported widely in Canada, government, regulators, and commercial organizations around the world have extensive experience transporting radioactive and nuclear materials, and regulating it for safety and security. It has been estimated by the International Atomic Energy Agency that about 20 million shipments of radioactive materials are made every year throughout the world. Transportation containers are built to withstand a wide variety of 'what if' scenarios without breach of containment or increase in radiation level.

How does the NWMO define an Interested Community?

The proposed definition of community is defined as a political entity interested in the proposed siting process like a city, town, village, municipality, Aboriginal government, region or other municipal structures, or a combination of these. For Crown land and unorganized territory, the provincial government would be considered as an "interested community" in consultation with potentially affected Aboriginal Peoples.

Who can express willingness?

It is proposed that in the initial steps of the siting process that an accountable political authority expresses interest on behalf of the community. Ultimately, a compelling demonstration of willingness will be required, including residents.



Niigani

Niigani Elders attend Chiefs in Ontario Nuclear Energy Session...

Niigani Elders were invited to attend the November 17, 18 and 19, 2009 Nuclear Energy Session hosted by the Chiefs in Ontario at the Obashkaandagaang First Nation near Kenora, Ontario. The Chiefs in Ontario, in conjunction with the NWMO, hosted a number of meetings with their communities in 2009 to discuss the NWMO *Proposed Process for Selecting a Site* for a deep geological repository for Canada's Used nuclear fuel.

Regional meetings were held in the Nigigoonsiminikaaning First Nation, Whitefish River First Nation, Oshewakan, Moose Factory, Batchewana First Nation and Obashkaandagaang First Nation. The wrap-up meeting was held in Obashkaandagaang First Nation near Kenora, Ontario.

The goal was to bring together all their ideas for the development of their final report to the NWMO. The meetings provided an excellent forum for dialogue with leaders and community members and illustrated the diversity of opinions related to nuclear energy and nuclear waste management.

At least 250 people from many areas of Ontario attended the meeting in Obashkaandagaang First Nation at their Band Hall. Opening ceremonies included a welcome by Chief Alfred Sinclair and Elder Fred Kelly. Both spoke very passionately about the importance of protecting the land and water. Although most of the meetings were held in Ojibwe, immediate translation was available for other First Nation people and visitors.

Niigani Elders were invited to lead a 1/2 day discussion on the work of the Elders Forum and Niigani. The key message of the Niigani Elders was to encourage leaders and community members to take the opportunity to become informed on the subject. Jim Sinclair began the Niigani session by introducing the Elders and reviewing the work of Niigani.

"...This is a complex issue and our people need to be informed...Some of our people are against nuclear development and they do not want the nuclear waste buried in their territory....Some of our people are for nuclear development and want the economic development opportunities....meetings like this are necessary to educate and inform so people can make an informed decision based on correct and complete information." Jim Sinclair said.

After Jim Sinclair spoke, Gordon Williams, Chair of Niigani gave an overview of the history, the work and the development of Niigani and the Elders Forum. Once the presentations

Niigani Elders attend Chiefs in Ontario Nuclear Energy Session in Washagamis Bay (near Kenora, Ontario.)...

were made the floor was opened for questions. It became evident very quickly that the concerns people held relate to protecting Mother Earth and particularly the water. What was impressive was the quality of the youth who attended the session. The youth were articulate, obviously well-read and had specific ideas related to the discussions.

Manuel Pino, Professor of American Indian Studies Social and Behavioral Studies from Scottsdale Community College, Scottsdale Arizona made a presentation and highlighted his research and work on the effects of open-pit mining of uranium. Mr. Pino is from the Acoma Nation in New Mexico, U.S.A. Mr. Pino works with "...former American Indian uranium miners in New Mexico, Arizona, Washington, and South Dakota on health issues related to radiation exposure and in Indigenous communities opposing nuclear waste storage and mining on their lands." (Source: www.treatycouncil.org/pdf/bios%/20final%20final%final.pdf) His presentation highlighted his research and work.

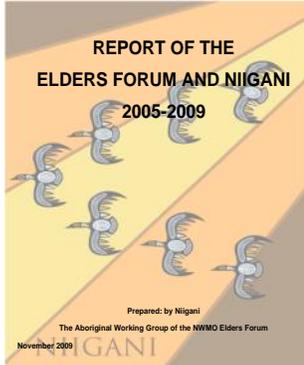
Pat Patton and Paul Gierszewski of the NWMO also presented on the NWMO *Proposed Process for Selecting a Site* and invited questions and comments on the document. There were a number of technical and process oriented questions relating to the work of NWMO.

During 2010 the NWMO will take the information collected at meetings, written submissions, papers, etc. and they will refine the site selection process document.

As the Elders from the Elders Forum and Niigani attend meetings throughout the country they are getting more of an idea of the complexity, range of opinions and diversity related to this subject. Attendance provided an excellent opportunity to educate others on the work of the Elder's Forum and will provide valuable insights to assist them in their work with the NWMO.

Niigani Prepares Paper to Highlight the Work of the Elders Forum

"...Elders want to give the best advice they can to NWMO so they requested a written report be completed to record the highlights of their advice....It is our view that a written text will document our legacy and will protect the credibility of the relationship between the Elders Forum and the NWMO." Gordon Williams 2009. The preparation of a report by Niigani was requested at the sixth Elders Forum (2009) held in Oromocto, New Brun-



swick and is written to highlight the past few years of work, and advice of the Elders Forum and Niigani to the Nuclear Waste Management Organization (NWMO).

"...It is recognized that the Elders in the Aboriginal community make significant contributions in the teaching and the guiding of the people. The influence of the Elders permeates all aspects of physical, emotional, mental, and spiritual life and activities; however, their influence depends on their credibility. All Aboriginal people feel that the relationship with Elders is important, but it is incumbent on the Elders to sustain the legacy of their life's work." The Elders Forum was formed after a series of meetings and dialogues between Aboriginal organizations and their members that NWMO held between 2003 and 2005. After discussions with Aboriginal Organizations, NWMO allocated financial resources to them so that they could gather to discuss approaches for the safe storage of used nuclear fuel. The NWMO asked the national and provincial Aboriginal Organizations to recommend names of Elders

who might be interested in participating on an Elders Forum.

"...This Forum would provide ongoing advice to the NWMO." Each Elder is invited to select a youth to assist him/her as required. Over the years since the formation of the Elders Forum the youth have become an integral part of the Elders Forum. In the past two years, the youth have requested and received opportunities to meet by themselves so that they had time to hold discussions and articulate their own priorities.

"...Early in the discussions, the Elders advised NWMO that they did not want to be viewed as 'mere puppets' of a process, but wanted to be active contributors to influence the decision making process of the NWMO. Central to all discussion, and the advice given to the NWMO, is the respect for Treaty and Aboriginal Rights as expressed in the *Constitution Act* of 1982...The relationship between the Elders and NWMO is based on trust, which comes from: mutual respect; independence of the Elders; respect of cultures, Aboriginal Rights and Treaties; respect for land claim areas, sacred sites and burial sites; traditional and intellectual knowledge and the associated traditional processes."

In order to keep a focus on their role and responsibility to Mother Earth, their communities and their families, their respective First Nations and overall cultures, the Elders developed a mission statement that would guide their relationship and advice to the NWMO. Elders wanted to keep a strong cultural element in the mission statement and to acknowledge the responsibility all Aboriginal people have to each other and the environment. Elders also wanted a clear statement to guide their ongoing involvement. The Elders mission statement is as follows:

"... ..To protect and preserve all creation air, land, water, fire, plants, medicines, animals and human kind

"...a written text will document our legacy and will protect the credibility of the relationship between the Elders Forum and the NWMO."

--- guided by the seven universal teachings of love, trust, sharing, honesty, humility, respect and wisdom."

The report includes a brief discussion of the Elder's Forum and Niigani meetings, the work of the Elders and NWMO responses to the Elders advice.

Six Elders Forums were held at different locations in three of the four nuclear provinces since 2005. The nuclear provinces are New Brunswick, Quebec, Ontario and Saskatchewan. At the request of the Elders, three of the Forums meetings were held in First Nation Communities. Reports of these Forums are publicly available through the NWMO.

The report is now being sent to all members of the Elders Forum in draft so the Elders can review and comment. After the edits are received, they will be included in a final report which will be given to the Elders at the next Elders Forum Meeting.

Once the report is approved it will be presented to the NWMO. The preparation of this report provides the Elders with a written legacy of their involvement with the NWMO and a written record of their contribution and accomplishments.