



F O R T W I L L I A M F I R S T N A T I O N

Impact Assessment Agency of Canada
160 Elgin Street, 22nd Floor
Ottawa, ON K1A 0H3

May 10, 2026

RE: Comments on Draft Tailored Guidelines and Draft Indigenous Engagement and Partnership Plan for the NWMO's proposed DGR project

Impact Assessment Agency of Canada,

Fort William First Nation has reviewed the Draft Tailored Impact Statement Guideline (Guidelines) and Draft Indigenous Engagement and Partnership Plan (IEPP) for the Nuclear Waste Management Organization's (NWMO) proposed Deep Geological Repository (DGR).

Fort William First Nation has several concerns with the Guidelines and the IEPP. This covering letter highlights Fort William First Nation's most pressing concerns, which relate to (1) alternative assessments, (2) the transportation of nuclear waste through traditional and treaty territories, and (3) the narrow list of Indigenous communities identified for consultation by the Impact Assessment Agency of Canada and the Canadian Nuclear Safety Commission. Additional detailed comments are included in the attached comment table.

Overview

These comments identify fundamental legal deficiencies in the Draft Guidelines and Draft Indigenous Engagement and Partnership Plan. In their current form, they fail to ensure compliance with the Crown's duty to consult and accommodate under section 35 of the *Constitution Act, 1982*, and are inconsistent with the requirements of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIP).

The draft guidelines correctly acknowledge that the long-distance transportation of nuclear waste has the potential for adverse effects under federal jurisdiction. The potential for adverse effects under federal jurisdiction requires a full assessment of

transportation activities and triggers a duty to consult and accommodate First Nations whose territories could be affected by the transportation of nuclear waste.

Yet First Nations along the transportation route are excluded from the IEPP. Moreover, the Guidelines do not require the proponent to fully assess the effects of the transportation of nuclear waste on people or the environment. The exclusion of transportation-affected Nations from the IEPP, combined with the failure to require a full assessment of the potential transportation impacts, creates a structural gap in the assessment process whereby affected Nations are neither assessed nor consulted

Alternatives Assessment

The Guidelines state that information provided in the Initial Project Description regarding alternatives to the project was sufficient and that no further information is required in the Impact Statement. Fort William First Nation disagrees with this determination and recommends the Guidelines be revised to direct the proponent to provide additional information regarding alternatives to the project.

Such additional information should include an explanation of the site selection decision amidst significant concern and opposition from First Nations in the region. The Impact Statement should explain which First Nation and treaty organizations withheld their consent to the project and how this opposition influenced the preferred alternative site-selection decision.

The proponent should also be directed to provide additional information regarding alternatives that could avoid the long-distance transportation of nuclear waste. Given the significant Indigenous and public concern with the transportation of high-level radioactive waste, the Impact Statement should describe alternatives to the project that avoid or minimize the transportation of nuclear waste and explain why these are not the preferred alternative.

Transportation, the Duty to Consult, and Free, Prior, and Informed Consent

All potential transportation corridors cut through the heart of Fort William First Nation territory. Whether by truck or by rail, nuclear waste from southern Ontario and eastern Canada will have to be transported through our territory and near our reserve lands.

Fort William First Nation is a signatory to the 1850 Robinson-Superior Treaty. Our traditional territory extends along the north shore of Lake Superior from Nipigon to Pigeon River, extends north to Treaty 9 Territory, and west to Treaty 3 territory (see Appendix A). The highway route through our traditional territory is close to 200 kilometres in length and is in close proximity to both the reserve and to many areas which are central to exercising our treaty rights.

Our harvesting rights – which are both inherent and protected under the 1850 Robinson-Superior Treaty – could be negatively affected by a serious accident, malfunction, or regular operations. Our treaty rights protect many harvesting practices engaged in across our traditional territory, including hunting, trapping, fishing, and harvesting medicines, foods, and plants. We are deeply concerned about the potential impacts of both accidents and regular operations on the health of our Nation. The long-distance transportation and disposal of nuclear waste is new to us, to Canada, and to North America.

The Crown's duty to consult Fort William First Nation therefore falls on the high end of the spectrum, necessitating deep consultation. Our rights are guaranteed in a treaty with the Crown, and an accident involving nuclear waste could have significant negative effects on the exercise of those rights. The duty to consult must also be interpreted through the lens of (UNDRIP), which was incorporated into Canadian law through the 2021 *United Nations Declaration on the Rights of Indigenous Peoples Act*.

Article 43 states that UNDRIP sets the *minimum* standards for the survival, dignity, and well-being of Indigenous peoples. Article 29 of UNDRIP requires states to obtain the consent of Indigenous peoples before storing or disposing of hazardous wastes on their territories. The purpose of UNDRIP Article 29 is to protect Indigenous communities from the environmental risks to land associated with hazardous waste. Accordingly, a purposive reading of Article 29, in combination with Article 43, suggests that consent must be sought before transporting hazardous waste through Indigenous territories.

Required Deep Consultation and the Indigenous Engagement and Partnership Plan (IEPP)

Given the deep consultation required by constitutional law and UNDRIPA, Fort William First Nation must be added to the list of Indigenous communities and Nations in the IEPP. Without these changes to the IEPP, the minimum legal standards required under s. 35 of the Constitution and UNDRIPA will not be met.

Assessing the Impacts of Transportation

The Guidelines must also be revised to require the proponent to assess the impacts of nuclear waste transportation – including both regular operations and accidents – on people and the environment. Currently, the Guidelines merely require the proponent to provide updated information about transportation. Instead, the proponent should be required to provide detailed documentation of potential environmental and social impacts, as well as a description of proposed mitigative measures. This assessment should include accident risk modelling and worst-case

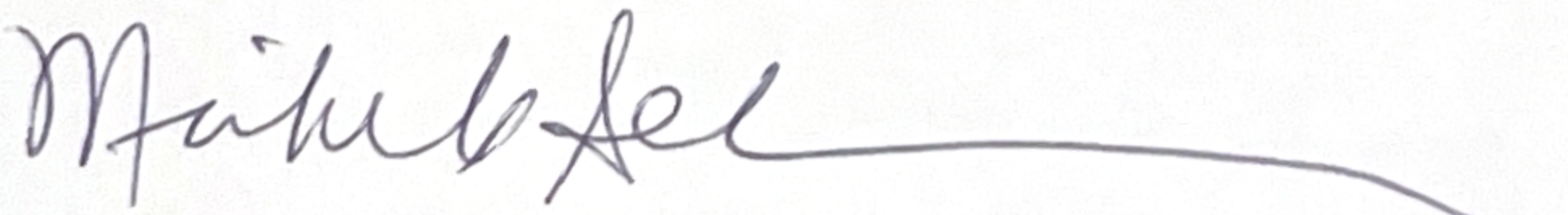
scenario analysis, as well as examining emergency response capacity along transportation corridors.

Without this information about the potential impacts of nuclear waste transportation on Fort William First Nation's treaty rights, it will be legally and practically impossible to seek free, prior, and *informed* consent from Fort William First Nation. The absence of impact assessment information would prevent Fort William First Nation from understanding the nature, scope, and risks of the proposed activities.

Conclusion

Fort William First Nation emphasizes that we have not provided our free, prior, and informed consent to the transportation of nuclear waste through our territories. Nor has our consent been sought by the proponent or the Crown. As Fort William First Nation documented in our comments on the Initial Project Description, there is significant opposition to the transportation of nuclear waste through Robinson Treaty territories. Numerous Robinson Treaty First Nations, as well as the Anishinabek Nation, have passed resolutions opposing the transportation of nuclear waste in our territories and watersheds. Moreover, we were excluded from the decision to site the proposed waste repository in northern Ontario – a decision which assumes the transportation of nuclear waste through Fort William First Nation territories.

If you have any questions or concerns, please do not hesitate to contact me directly.



Michele Solomon
Chief, Fort William First Nation

Fort William First Nation Comment Table

Reference	Summary	Issue	Recommendation
<p><i>Draft Tailored Impact Statement Guidelines</i>, page 9, section 2.3.3 (Alternatives to the Project)</p>	<p>The IAAC determined that information provided in the Initial Project Description regarding alternatives to the project was sufficient and that no further information is required in the Impact Statement.</p> <p>Fort William First Nation disagrees with this determination and recommends the Guidelines be revised to direct the proponent to provide additional information regarding alternatives to the project.</p>	<p>As the majority of Indigenous comments on the Initial Project Description make clear, the process the NWMO used to examine alternatives was deeply contentious. The site-selection process in particular was mired in controversy and is the subject of ongoing Aboriginal rights litigation.</p> <p>Key concerns include the exclusion of many Indigenous peoples whose rights and interests could be affected, including First Nations with overlapping territorial claims to the repository site, First Nations on/near potential transportation corridors, First Nations near reactor sites where waste will be handled and packaged, and treaty-scale governance structures.</p> <p>Many concerns with this project hinge on the long-distance transportation of nuclear waste through Indigenous territories. Yet the proponent provided insufficient information about alternatives to the project that could avoid or minimize transportation through Indigenous territories.</p>	<p>The proponent should be required to provide additional details regarding potential alternatives to the project. Discussion of alternatives to the project should include:</p> <ul style="list-style-type: none"> • An explanation of the site selection decision amidst significant concern and opposition from First Nations in the region. The Impact Statement should explain which First Nation and treaty organizations withheld their consent to the project and how this opposition influenced the preferred alternative site-selection decision. • Further consideration of alternatives that could avoid the long-distance transportation of nuclear waste. Given the significant Indigenous and public concern with the transportation of high-level radioactive waste, the Impact Statement should describe alternatives to the project that avoid or minimize the transportation of nuclear waste and explain why these are not the preferred alternative.

<p><i>Draft Tailored Impact Statement Guidelines</i>, page 11, section 3 (Description of Engagement with Indigenous Nations and communities)</p>	<p>The Guidelines require the proponent to describe its approach to seeking the free, prior, and informed consent (FPIC) of Indigenous Nations and communities.</p> <p>Fort William First Nation believes that the current requirements for the proponent to describe its approach to FPIC are inadequate. The Guidelines should be revised to require the proponent to identify instances where consent was withheld or withdrawn, as well as describe and explain the proponent's response when consent is withheld.</p>	<p>As comments on the Initial Project Description made clear, there is an expectation among Indigenous Nations and communities that the proponent and the Crown will seek consent broadly, inclusive of all First Nations whose rights and interests could be affected by project operations.</p> <p>Comments on the Initial Project Description also indicated that there is significant Indigenous opposition to the NWMO's decision to site a nuclear waste facility in northwestern Ontario.</p> <p>The Guidelines merely require the proponent to describe its attempts at seeking consent from Indigenous Nations and communities. This will inevitably result in a 'check-box' list of engagement activities that provides little useful information about the substance of consultations with Indigenous Nations and communities.</p>	<p>The Guidelines should be revised to require the proponent to:</p> <ul style="list-style-type: none"> • Identify instances where consent was withheld or withdrawn. • Describe and explain the proponent's response when consent was withheld or withdrawn.
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<p><i>Draft Tailored Impact Statement Guidelines</i>, page 60, section 8.4 (Rights of Indigenous Peoples)</p>	<p>The Guidelines direct the proponent to include information about how Indigenous peoples' rights have already been impacted by cumulative effects, as well as how reasonably foreseeable future activities could limit the ability of Indigenous peoples to meaningfully exercise their rights.</p> <p>However, the Guidelines do not provide a clear definition of "reasonably foreseeable future activities."</p> <p>Reasonably foreseeable future activities must not be limited to proposed activities that have been submitted for regulatory approval.</p>	<p>The NWMO's proposed deep geological repository is a unique proposal in terms of its temporal and geographic scope. It is important that the definition of "reasonably foreseeable future activities" is appropriate for the temporal scope of NWMO's proposed activities.</p>	<p>The Guidelines should be revised to clarify the IAAC's definition of "reasonably foreseeable future activities" in relation to the NWMO's proposed deep geological repository.</p> <p>Given the large temporal scope of the NWMO's proposal, it is important that the definition of "reasonably foreseeable future activities" should be broad enough to encompass projects that have not yet been submitted to regulatory authorities.</p> <p>Cumulative effects should include existing and future forestry (including chemical spraying), mining, transportation, regional development (including settlement), fragmentation, sensory disturbance, and climate change.</p>
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<p><i>Draft Tailored Impact Statement Guidelines</i>, page 65, section 10 (Planning for Transportation)</p>	<p>The IAAC determined that project-related transportation has the potential to result in adverse effects within areas of federal jurisdiction, and is incidental to the project.</p> <p>The Guidelines require the proponent to submit an update to its Preliminary Transportation Plan as part of the IA process. The updated plan must include plans to “engage and educate” the public and Indigenous nations on the transportation of nuclear waste. The Guidelines also require the proponent to provide an emergency management and response plan that describes measures should an accident or malfunction occur.</p> <p>The Guidelines do not address Fort William First Nation’s concerns with nuclear waste transportation through its territory. Fort William First Nation recommends the Guidelines be revised to require the proponent to provide additional details regarding the transportation of nuclear waste and Indigenous <i>consultation</i>.</p>	<p>As comments on the Initial Project Description made clear, there is significant Indigenous and public concern with the proposed long-distance transportation of high-level radioactive waste.</p> <p>The Crown has a duty to consult and accommodate Indigenous nations whose territories intersect with potential transportation corridors. The duty to consult cannot be satisfied by proponents ‘educating’ First Nations on the transportation of nuclear waste. Instead, genuine dialogue on the issue is required, including direct Crown engagement and seeking the free, prior, and informed consent of transportation-affected First Nations.</p> <p>The Guidelines only require the proponent to provide general and preliminary plans for transportation of nuclear fuel, and do not include identification of transportation affected First Nations and the impacts that might occur as a result of the transportation of nuclear waste.</p>	<p>The Guidelines should require the proponent to provide additional details regarding the transportation of nuclear waste, including:</p> <ul style="list-style-type: none"> ● A detailed documentation of potential environmental and social impacts (such as those outlined in section 6 of the draft guidelines) of the transportation of nuclear waste through Fort William First Nations territory, including the implications for our inherent and treaty rights. The analysis should include the impacts of routine operations, as well as a major accident or malfunction. The analysis should consider whether an accident, or the simple presence of nuclear waste in transit, could cause fear of an area such that rights holders would be prevented from using their harvesting grounds. ● As with other sections of the Guidelines, the IAAC should provide direction to the proponent as to where guidance can be found for approaches to collecting information about Treaty rights with affected communities. ● A list of First Nations and Treaty Nations whose territories could be affected by the transportation of nuclear waste to the proposed DGR site. ● A plan to seek the free, prior, and informed consent of these nations, including an explanation of what the proponent will do if one or more nations withhold their consent to the transportation of nuclear waste.
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<p><i>Draft Tailored Impact Statement Guidelines, page 66, section 10 (Planning for Transportation)</i></p>	<p>The Guidelines defer key issues with the transportation of nuclear fuel to Canadian Nuclear Safety Commission (CNSC) and Transport Canada (TC) regulatory and licensing processes.</p> <p>As Fort William First Nation explained in its comments on the Initial Project Description, deferring transportation to future regulatory processes constitutes project splitting, which undermines effective consultation with Indigenous Nations and communities.</p>	<p>The Guidelines only require “general” information about transportation that “would apply everywhere that transportation may occur but do not specifically refer to any geographic extent.”</p> <p>The Guidelines also state that CNSC and TC processes would “ensure that impacts to the environment and human health are minimized when the used nuclear fuel would be shipped during operations.”</p> <p>This effectively defers consideration of the impacts of the transportation of nuclear fuel waste on Fort William First Nation’s Inherent Aboriginal and Treaty rights. Transportation is treated as an abstract concept, disconnected from the context of Fort William First Nation rights and practices.</p> <p>Fort William First Nation is concerned that future regulatory processes will not involve the same levels of participant funding, the same degree of accessible information, and the same opportunities for First Nations to collect and table evidence.</p>	<p>The guidelines should be revised to require concrete analysis of the potential effects of transporting nuclear fuel waste on the rights, territories, health, and interests of Fort William First Nation. The transportation route will cut through the heart of our traditional territory. Meaningful consultation requires that these potential effects be properly assessed and information be made available, with the aim of seeking our free, prior, and informed consent.</p> <p>The IAAC should provide detailed information about the CNSC and TC regulatory and licensing processes and how they compare to a federal IA, including opportunities for participant funding, opportunities for First Nations to collect and table evidence, accessibility of information, and the opportunities to incorporate Indigenous knowledge, practices, and processes.</p>
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<p><i>Draft Tailored Impact Statement Guidelines, page 67, section 10.2 (Movement of materials and people)</i></p>	<p>The Guidelines state the roads and highways on which used nuclear fuel would travel are under municipal and provincial jurisdiction, and as a result are not included in the impact assessment.</p> <p>Fort William First Nation disagrees with scoping out transportation in the manner. Fort William First Nation is concerned about the transportation of used nuclear fuel on municipal and provincial highways that cut across its traditional territory.</p>	<p>While the operation and maintenance of roads and highways may fall under provincial and municipal jurisdiction, the transportation of nuclear fuel waste on these highways could have serious implications for inherent and Treaty rights, which are an area of federal jurisdiction.</p> <p>A proper assessment of the potential impacts of transporting nuclear fuel on inherent and Treaty rights must consider the quality and safety of municipal and provincial roads that cut across First Nations territories, as road quality can affect the risk of an accident or malfunction.</p>	<p>The IAAC must assess the adverse impacts on Fort William First Nation's inherent and Treaty rights that could result from an accident or malfunction related to transporting nuclear waste on provincial and municipal highways. This assessment should consider the quality and safety of municipal and provincial roads and highways.</p>
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<p><i>Draft Indigenous Engagement and Partnership Plan</i>, page 7, section 3.1 (Indigenous Nations and communities)</p>	<p>The IEPP provides a narrow list of First Nations and Metis organizations to consult and accommodate. Notably, this list excludes First Nations that will be affected by the transportation of nuclear waste.</p> <p>Fort William First Nation disagrees with this approach to consultation and accommodation. Given the temporal and geographic scope of the proposed activities, a more inclusive approach to consultation is required to meet the minimum standards established by the <i>Constitution Act (1982)</i> and <i>United Nations Declaration of the Rights of Indigenous Peoples Act (2021)</i>.</p> <p>Fort William First Nation asserts its right to be consulted and accommodated regarding the transportation of nuclear waste through its territories.</p>	<p>This is a unique proposal in terms of its temporal and spatial scope, requiring more extensive consultation than is often the case for proposed infrastructure or industrial projects. The duration of project activities, and the length of time that the waste will remain dangerous, differ significantly from most industrial and infrastructure projects considered by the IAAC. Moreover, the proposal involves activities covering a vast expanse of land, encompassing handling and repackaging waste at reactor sites, transporting waste to the repository site, handling and repacking waste at the repository site, excavating the deep geological repository, and disposing of waste at the repository site. These activities intersect with the territories and watersheds of many First Nations, as well as regional and treaty organizations, all of which should be included as potentially affected rights-holders.</p> <p>The IAAC has recognized that the transportation of nuclear waste has the potential for adverse effects. Yet the IAAC does not recognize the right of transportation-affected First Nations to be consulted.</p>	<p>The IEPP should be revised to expand the list of Indigenous nations and communities to include all nations whose territories intersect with project activities, as well as relevant regional and treaty organizations. Fort William First Nation must be added to this list.</p> <p>The Indigenous engagement plan should include specific details about how the IAAC and CNSC will consult with (and seek the content of) First Nations regarding the potential handling, repackaging, and/or transportation of nuclear waste through their territories.</p>
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