

March 11, 2026

Deep Geological Repository for Canada's Used Nuclear Fuel Project
Impact Assessment Agency of Canada
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Re: Reference No.88774 - We the Nuclear Free North Comments on Summary of Issues

We are counsel for We the Nuclear Free North (“WTNFN”) in relation to the above-noted matter.

Please be advised that WTNFN has closely reviewed the Impact Assessment Agency of Canada’s (“Agency”) Summary of Issues. Our client has instructed us to provide the Agency with the following comments in order to ensure a credible, rigorous, and evidence-based impact assessment of the Nuclear Waste Management Organization’s (“NWMO”) proposal to emplace 5.9 million used fuel bundles of high-level nuclear waste in a deep geological repository (“DGR”) at the NWMO’s proposed site in northwestern Ontario.

A. Mandatory Issues Listed in Annex ‘A’ Require a Fulsome Response from NWMO

The Agency has not provided any legal justification or environmental rationale for bifurcating issues into the Summary of Issues and Annex ‘A’. This approach is not supported by the *Impact Assessment Act*, SC 2019, c 28, s 1 (“*IAA*”) scheme and does not reflect the mandatory factors to be considered in an impact assessment pursuant to s.22 of the *IAA*. Annex ‘A’ issues should be expressly listed within the Summary of Issues and should require mandatory and comprehensive responses from the NWMO. On this point, WTNFN submits that the Agency should reject any attempt by NWMO to respond to these critical issues by simply reiterating the same unpersuasive comments about the need for or alternatives to the project that were contained in the Initial Project Description (“IPD”).

In its submissions filed with the Agency, WTNFN raised serious and unresolved concerns about the inadequacy, clarity and transparency of the IPD, which does not meet the requirements of section 10 of the *IAA* or the *Information and Management of Time Limits Regulations*, SOR/2019-283 (“*Information Regulations*”).¹ The Summary of Issues purports to list this fundamental concern in Annex ‘A’, and for “information only”, rather than treating it as a threshold question which requires the Agency to consider whether to require the proponent to create a new IPD to meet the legal requirements of the *IAA* and the *Information Regulations*, or

¹ We the Nuclear Free North, “Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project (Ref. No. 88774) – Comments on the Proponent’s Initial Project Description”, (“WTNFN Comments on IPD”), pp 3-7; *Impact Assessment Act*, SC 2019, c 28, s 1 (“*IAA*”), s. 22(d).

to require a detailed project description pursuant to s.15(2)(a) of the *IAA*.² These core threshold issues should not be treated as a mere afterthought in Annex ‘A’. To the contrary, these issues must be included within the Summary of Issues, meaningfully responded to by NWMO, and trigger a decision by the Agency on the sufficiency of the IPD.

Similarly, WTNFN is concerned about the NWMO’s attempt to omit consideration of several mandatory legal requirements of the *IAA* on the basis of the proponent’s previous non-transparent, non-public, and significant pre-determinations about fundamental aspects of the project, all of which were made well before the commencement of the participatory impact assessment process. These key – and highly contentious – project aspects include the selection of the proposed site of the DGR, the claimed need for the project, and the approach to permanent emplacement of high-level nuclear fuel in a DGR in northwestern Ontario, all of which were directly raised in the WTNFN submissions on the IPD.

Although Annex ‘A’ lists public engagement and communication as an issue raised by commenters, WTNFN urges the Agency to reject the proponent’s apparent preference to ignore mandatory requirements of the *IAA*, and the Agency must instead ensure a robust analysis of all factors listed in s.22 of the *IAA*. The proponent’s earlier consultation efforts and internal decision-making did not meet the stringent requirements of the *IAA*, did not adequately solicit or act upon public input, and did not share the same focus as the *IAA* on preventing or mitigating adverse effects in areas of federal jurisdiction.

The following issues form an integral and legally mandated part of the impact assessment going forward, and they are specifically listed as mandatory factors to be considered in an impact assessment under the *IAA*:

- The purpose of and need for the project are factors to be considered in an impact assessment of a designated project pursuant to section 22(1)(d) of the *IAA*.³ Significant concerns about the stated purpose of and the alleged need for the project were raised in WTNFN’s submissions and are key issues in this matter.⁴
- WTNFN raised serious concerns about the NWMO glossing over the required analysis of alternatives to the project in the IPD, a required factor in an impact assessment pursuant to section 22(1)(f) of the *IAA*.⁵ In particular, WTNFN recommends that the Summary of Issues should be revised or re-issued by the Agency to include consideration of the “alternatives to” permanent underground emplacement of high-level nuclear waste, for instance construction and operation of new hardened storage facilities at the interim storage sites.⁶

² Impact Assessment Agency of Canada, “Summary of Issues, Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project” (“Summary of Issues”), p. 9.

³ *IAA*, s 22(1)(d); Summary of Issues, p. 9.

⁴ WTNFN Comments on IPD, pp. 20-21.

⁵ *IAA*, s 22(1)(f); WTNFN Comments on IPD, pp. 2, 4-6.

⁶ WTNFN Comments on IPD, p. 5.

- The preamble of the *IAA* declares that the Government of Canada is committed to implementing the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”).⁷ WTNFN, along with Indigenous communities and other commenters, raised strong concerns about the lack of consideration of UNDRIP in the IPD.⁸ The requirement that the Crown and NWMO consider UNDRIP and the requirement to obtain free, prior and informed consent from all Indigenous communities whose rights are potentially affected by project components (including transportation of used fuel waste) is a key legal question and should not be a concern relegated by the Agency to Annex ‘A’ for “information only”.⁹
- The monitoring of health impacts, the radiation exposure limits, and the monitoring of effects (including the project’s impacts on groundwater and surface water) during construction and operation form an integral part of any rigorous impact assessment.¹⁰ The purpose of an impact assessment is to prevent or mitigate significant adverse effects within federal jurisdiction.¹¹ Correctly identifying, rigorously evaluating, and carefully planning for effective monitoring of such effects, if the project receives all required approvals, is necessary to ensure the prevention and mitigation of adverse effects, and should be listed as a key concern in the Summary of Issues to be addressed by the proponent at a sufficient level of detail, rather than be simply flagged for “information only” as per Annex ‘A’.

B. Issues Raised by WTNFN that Are Omitted from the Summary of Issues

WTNFN raised numerous issues in its submissions to the Agency on the IPD, but many of these issues have been inexplicably excluded from the Agency’s Summary of Issues. Our client, WTNFN, therefore requests their inclusion in an updated Summary of Issues so as to compel a direct and complete response from the NWMO.

i. Principles Applicable to Decision-Making under the IAA

WTNFN’s comments noted that the IPD failed to adequately and appropriately consider the precautionary principle, despite the requirement in s.6(2) of the *IAA* for the Agency to apply the precautionary principle in its administration of the *IAA*.¹² However, the precautionary principle is wholly absent from the Summary of Issues. WTNFN submits that the appropriate treatment of this key legal principle in the context of this project should be included in the Summary of Issues.

WTNFN’s comments likewise argued that environmental justice, in particular fairness between communities within Ontario, is a key concern for its members.¹³ However, this important principle is only briefly mentioned and narrowly framed in the Summary of Issues.

⁷ *IAA*, preamble.

⁸ WTNFN Comments on IPD, pp. 10-12.

⁹ Summary of Issues, p 9.

¹⁰ Summary of Issues, p 9.

¹¹ *IAA*, s 6(1).

¹² WTNFN Comments on IPD, pp. 12-13; *IAA*, s. 6(2).

¹³ WTNFN Comments on IPD, pp. 13-14.

Environmental justice is appropriately included in the Summary of Issues as it relates to disproportionate impacts to marginalized and/or racialized communities, but this concept should be broadened to include the concerns raised by WTNFN about the environmental inequity of transporting high-level nuclear waste through or near numerous municipalities and Indigenous communities, and siting this risky project in northern Ontario.¹⁴

ii. WTNFN Comments Omitted from the Summary of Issues

WTNFN's comments stated that the environmental risks posed by the re-location, re-packaging and loading of high-level nuclear waste into transport vehicles must be included in the project description and be fully evaluated in the impact assessment.¹⁵ WTNFN also raised related safety concerns about the proposal to re-package the high-level nuclear waste twice, once at the interim storage facilities using a currently unknown process, and again after transportation to and arrival at the DGR site.¹⁶ The NWMO has not justified why this key component of the project is not included within the IPD or why alternative means of handling and transferring the high-level waste once rather than twice have not been considered. The failure of the Agency's Summary of Issues to include this issue is both unjustified and unacceptable, and the Summary of Issues should be revised accordingly to remedy this glaring omission.

Alarming, as noted in WTNFN's comments, the NWMO's IPD is seeking to reduce the scope of the project to be assessed by suggesting that site characterization, decommissioning, closure and post-closure phases of the project are not part of the impact assessment process.¹⁷ This unmeritorious scoping of the project should be summarily rejected by the Agency and all of the foregoing matters should be expressly included in the Summary of Issues. In addition, in light of NWMO's attempted scoping, the Summary of Issues should make it abundantly clear that all environmental, radiological, health and safety impacts are to be considered at every temporal phase of the project, and for every component and physical activity incidental to the project.

WTNFN's comments also raised concerns about the NWMO's proposed project scope of only 160 years, especially since high-level nuclear waste will remain radioactive and continue to pose significant adverse health, safety and security risks for hundreds of thousands of years.¹⁸ The Summary of Issues lists concerns regarding the "duration" that fuel will remain radioactive and the safety of "long-term containment of waste", but the proposed limit on the scope of the project to 160 years should be explicitly listed as an issue to be responded to by NWMO.¹⁹

NWMO has committed to only proceeding with the project with an informed and willing host community. WTNFN, along with other commenters, raised concerns about who is a "host community" and whether communities are truly willing and informed at this early stage of the project and with so little detail provided in the IPD.²⁰ Widespread concerns about NWMO's claims about willing and informed hosts should be included in the Summary of Issues.

¹⁴ Summary of Issues, p. 4.

¹⁵ WTNFN Comments on IPD, p. 14.

¹⁶ WTNFN Comments on IPD, p. 6.

¹⁷ WTNFN Comments on IPD, p. 20.

¹⁸ WTNFN Comments on IPD, pp. 22-23.

¹⁹ Summary of Issues, pp. 2, 6.

²⁰ WTNFN Comments on IPD, pp. 24-25.

The Summary of Issues also does not address the widespread public and Indigenous opposition to the project. For example, WTNFN included in its supplementary submission the resolution by Treaty 3 Chiefs in Assembly opposing the project, along with a number of other resolutions opposing the project by Indigenous nations, other Indigenous groups, local municipalities, and groups representing members of the affected public.²¹ The issue of widespread and long-standing opposition to this project should be included in the Summary of Issues.

There is also no mention of the climate impacts of the full project within the IPD, despite s.22(1)(i) of the *IAA*. While the Summary of Issues lists “climate change effects on transportation” as an issue, WTNFN submits that the Summary of Issues should also include the required assessment of the climate change impacts of the full project.²²

C. WTNFN’s Additional Comments on the Summary of Issues

In addition to the above-noted concerns about Annex ‘A’ and the omission of key issues arising from the IPD, WTNFN has identified other problematic aspects of the Agency’s Summary of Issues.

i. The Summary of Issues is Ambiguous and Creates Uncertainty

The Summary of Issues provides vague and highly subjective direction to the proponent that will likely result in questionable or insufficient responses from NWMO. For example, the Summary states that:

*A high-level description is sufficient. Where relevant, the proponent is encouraged to identify if the key issues will be addressed through existing legislative and regulatory frameworks (i.e. legislation or regulation), by proponent commitments to best practices, policies or standards, or both.*²³

WTNFN submits that clarification from the Agency is needed to more clearly describe the nature and extent of the responses required by the proponent. Simply asking for “high-level” descriptions gives the proponent excessive discretion to provide superficial responses which provide no meaningful answers or useful information for the Agency, WTNFN, and other IPD commenters. This is particularly true since the proponent’s responses may be relied upon by the Agency when deciding whether an impact assessment is required, and when developing the content of the forthcoming the Integrated Tailored Impact Statement Guidelines (“the Guidelines”).

Moreover, it is inappropriate to let the NWMO itself opine on whether other legislative or regulatory regimes, or commitments to best practices, policies or standards, can address key issues. Again, this open-ended discretion will inevitably result in self-serving and

²¹ We the Nuclear Free North, “Comments from We the Nuclear Free North on the NWMO’s Initial Project Description – Calling for a Full Impact Assessment and Public Hearing”, pp. 3-7.

²² Summary of Issues, p. 6.

²³ Summary of Issues, p. 1.

unsubstantiated claims by the proponent that such issues can be addressed through other mechanisms, rather than through the impact assessment process. Any such claims by NWMO should be independently and critically reviewed by the Agency, and should be available for public review and comment before the section 16 screening decision is made by the Agency, and before the proposed Guidelines are prepared and circulated by the Agency.

Similarly, the Summary of Issues contains the following statement:

IAAC request[s] that the proponent consider issues that may not have been captured by the SOI or other submissions on the Registry, as appropriate.²⁴

While this constitutes some positive direction from the Agency, its lack of specificity and deferral to NWMO's discretion as to what is "appropriate" means that it is unlikely that additional issues will be properly identified and adequately addressed in the NWMO response to the Summary of Issues, based on WTNFN's experience to date.

ii. The Summary of Issues Inadequately Addresses Alternative Means

The Summary of Issues appears to limit the scope of the NWMO's required response in relation to alternative means of carrying out the project, one of the most significant aspects of a rigorous and fulsome impact assessment:

***Alternative means:** Concern regarding the lack of options considered as alternative means for project activities and components, including alternatives related to the vertical shafts, used fuel processing plant, used fuel containers and storage of intermediate and low-level waste.²⁵*

Along with the concerns raised about the need for the project and alternatives to the project, there is also an alarming paucity of detail in the IPD about alternative means and potential adverse effects of several of the proposed phases and facilities included directly or incidentally as part of the overall project, such as the used fuel packaging plant proposed on-site.²⁶ The Summary of Issues appropriately highlights that alternative means to the used fuel packaging plant should be considered, as well as potential accidents at the facility.²⁷ In WTNFN's view, this facility poses some of the greatest radiological, environmental, human health and occupational safety risks, and should therefore receive much more serious consideration and critical scrutiny in the impact assessment. While some adverse effects of the used fuel packaging plant operation are presumably captured in other sections (i.e. Radiological Conditions, Ground and Surface Water, etc.), WTNFN is concerned that the Summary of Issues does not more explicitly identify issues raised with respect to the used fuel packaging plant, aside from "alternative means".

Moreover, the Agency should confirm or clarify that this direction in the Summary of Issues captures and/or includes alternative means of used fuel waste processing at reactor stations,

²⁴ Summary of Issues, p. 1.

²⁵ Summary of Issues, p. 4.

²⁶ WTNFN Comments on IPD, p 6.

²⁷ Summary of Issues, pp. 4, 5.

including the alternative means of placing the used fuel into multi-purpose containers (suitable for both transportation and emplacement) at the reactor station, and includes options of “in air” transfer (i.e. in hot cells) and “in water” transfer (i.e. in the irradiated fuel bay).

iii. *The Summary of Issues Does Not Adequately Characterize the Issue of What Will be Stored in the DGR*

WTNFN raised serious concerns about the NWMO’s IPD with respect to the volume and type of waste proposed to be emplaced in the DGR. The IPD states that the project does not include any capacity beyond 5.9 million bundles of fuel, which is understood to encompass only high-level nuclear fuel from the current nuclear fleet.²⁸ However, at the same time, the NWMO seeks to leave itself open-ended flexibility with respect to: (1) whether low-level and intermediate-level waste will also be stored in the DGR, (2) whether the volume of high-level waste will be increased beyond 5.9 million fuel bundles, and (3) whether high-level waste crated by different nuclear technologies, other than Canada deuterium uranium (“CANDU”) reactors, will be included in the DGR.²⁹

Although the Summary of Issues lists “future modifications for accepted waste in the DGR” as an issue, the Agency has improperly sought further information about the NWMO, as opposed to seeking certainty about what project is before it for review.³⁰

*Future modifications for accepted waste in the DGR: Need more information on the type of waste that would be accepted in the DGR, the length of time it would remain radioactive and the potential for future project scope modifications that could change the types or volumes of waste managed in the DGR.*³¹

For the public to meaningfully participate in an impact assessment of this project, the NWMO cannot leave itself open-ended flexibility to significantly alter the volume and types of wastes to be stored in the DGR after the impact assessment is complete. WTNFN is not seeking more information about this issue. It is instead raising this issue to ensure that the NWMO is not avoiding scrutiny of the adverse environmental effects of the full project by expanding and changing the project after the impact assessment process is complete.

iv. *The Summary of Issues Ignores Some Project Effects on the Environment*

The Summary of Issues outlines the following direction to NWMO:

*Seismicity: Concerns that seismic activity (e.g. earthquakes) in the proposed project location could affect the structural stability of design features to contain radioactive waste.*³²

²⁸ WTNFN Comments on IPD, p. 23

²⁹ WTNFN Comments on IPD, p. 23.

³⁰ Summary of Issues, p. 4.

³¹ Summary of Issues, p. 4.

³² Summary of Issues, p. 6.

WTNFN submits that the effects of the project on the environment with respect to seismicity must also be addressed, including the potential effect of heat, radiation, and Excavation Damage Zones which can reduce the stability of the host rock formation, increase the potential for migration of pollutants, and decrease the retention time of the radionuclides in the repository.

Similarly, the Summary of Issues states that:

*Long-term containment of waste: Concerns regarding natural events or disasters affecting the structural stability of design features to contain radioactive waste for millions of years e.g. earthquakes, glaciation.*³³

While natural events or disasters must be considered, WTNFN submits that effects on the structural stability of the containers is not limited to major events or disasters. Accordingly, consideration must also be given to the degradation of containers due to design failures, and the synergistic effects of heat, radiation, corrosion, microbial activity, and other factors.

Thank you for your consideration of WTNFN's comments on the Agency's Summary of Issues, arising from its submission of comments filed on the IPD. Please contact the undersigned if you have any questions or require further information about this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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Counsel

³³ Summary of Issues, p. 6.