



Review of the NRCan Modernizing Canada's Radioactive Waste Policy

**Review of Natural Resources Canada:
Radioactive Waste Policy Discussion Papers on
Waste Minimization, Waste Storage Facilities,
Decommissioning, and Waste Disposal**

Manitoba Metis Federation

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Executive Summary

Natural Resources Canada (NRCan) has produced four Discussion Papers related to the minimization, storage facilities, decommissioning, and disposal of radioactive waste. Each of the four topics is outlined in separate Discussion Papers titled: Waste Minimization, Waste Storage Facilities, Decommissioning, and Waste Disposal, respectively. Outlined within each Discussion Paper are the policies and methods relating to each topic of managing Canada's radioactive waste. These Discussion Papers serve as a method to bring information focused on radioactive waste management strategies and policies to the public, stakeholders, and Indigenous peoples.

The objectives of this technical review of the four Discussion Papers were to:

- Clearly identify where the Métis Nation's Manitoba Métis rights, claims, and interests overlap with and may be impacted by the information in the Discussion Papers.
- Identify environmental, technical, or regulatory issues with the Radioactive Waste Modernization process, and provide recommendations on where and how the Manitoba Métis's rights, claims, and interests may need to be better accommodated through revisions and additions to the Radioactive Waste Modernization process; and
- Identify issues and challenges with the Discussion Papers and/or the Radioactive Waste Modernization process that will require ongoing engagement and consultation with the MMF on behalf of the Manitoba Métis.

The Manitoba Metis Federation (MMF), with support from Shared Value Solutions (SVS), has undertaken a review of the four Discussion Papers with a focus on how they interact with the rights, claims, and interests of the Manitoba Metis. We have previously retained Shared Value Solutions (SVS) to provide environmental peer review and traditional knowledge, land use, and occupancy research services to support us on various proceedings related to Whiteshell Laboratories (WL) nuclear site that is owned by Canadian Nuclear Laboratories (CNL) and regulated by the Canadian Nuclear Safety Commission (CNSC). This includes a technical review of the following Regulatory Oversight Reports (RORs) submitted to the CNSC, with a focus on the WL site:

- Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2018
- Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2019
- Review of the Canadian Nuclear Safety Commission Regulatory Oversight Report Review Discussion Paper (DIS-21-01)

Our review of the four Modernizing Canada's Radioactive Waste Policy discussion papers focused on key issues of concern to the MMF, including impacts to the section 35 rights, claims, and interests of the Manitoba Métis; and the potential project interactions with the environment that may lead to effects on the Manitoba Métis. Such effects include effects on the exercise of Métis rights through perceptions about the impacts to land use and harvesting and the related safety of water, land, traditional medicines, or country foods. As a result of this review, the MMF has identified issues with the discussion papers and the broader Modernizing Canada's Radioactive Waste Policy process and, where applicable, has provided recommendations to address these issues.



We have also identified issues with the relationship between the MMF and NRCAN when providing consultation on nuclear files, including the consultation process with respect to the following:

- The MMF is disappointed in the overall approach NRCAN has taken in engaging with the MMF. The MMF was invited to participate in stakeholder engagement sessions, which included a combination of the public, NGOs, and Indigenous rights holders. As the Manitoba Métis are rights holding Citizens, we do not believe this is an appropriate approach to the Crown's fulfillment of its Duty to Consult. Further, the MMF was not provided sufficient notice and information to be able to adequately prepare for and participate fully in the engagement sessions held to date. We request a direct bilateral meeting between NRCAN and the MMF to discuss the proposed policy changes and the full impacts on Manitoba Métis Citizens.
- Since there currently is not an established long-term site and solution for storing radioactive waste in Canada, it has led to current licensees developing interim measures and solutions, some of which do not necessarily align with the policy goals and objectives Canada has regarding the storage and management of radioactive waste. For example, the Whiteshell Laboratories in Pinawa, Manitoba is currently pursuing a waste storage solution that includes In-Situ Decommissioning (ISD) of the WR-1 Reactor despite Canada's position on ISD being that it is a decommissioning and storage approach that is not preferred and should not be pursued at this time. This is concerning to the MMF as Whiteshell Laboratories is located within the Homeland of the Manitoba Métis, in an area where our Citizens actively exercise their rights through various harvesting and land-based activities.

In addition to concerns related to ISD as a waste management approach, there is also the concern that the guidance and approaches to waste storage facilities outlined within the Discussion Papers do not provide any clear, explicit, or direct opportunities for meaningful involvement of Métis Nation. The involvement of the MMF is particularly important and relevant to:

- The consideration of methods for inspecting and monitoring waste storage facilities, and
- Aligning the radioactive waste storage facility approaches with guidance from the International Atomic Energy Agency Safety guide with respect to "[Ensuring] that both human health and the environment will be protected, both now and in the future, without imposing undue burdens on future generations."

If the MMF is to be assumed to be a "willing host" for nuclear waste within our territory, the regulator must follow the same steps and process it is taking with other Nations whose territories include candidate sites for radioactive waste repository sites. This means following the Adaptive Phased Management process used by the Nuclear Waste Management Organization (NWMO).

- As a quasi-judicial independent commission, the CNSC functions as a stand-alone regulator without any ministerial mandated oversight. In other words, the CNSC does not report to a Minister and does not require Ministerial or Cabinet input to approve projects or licenses. Ministerial oversight is an important accountability mechanism for ensuring compliance conditions are met. Although the CNSC has several lifecycle regulation mechanisms, it is important to have oversight and accountability mechanisms outside of the regulator for true independent issue resolution mechanisms to be available. It is recommended the CNSC and MMF work



together to establish a regulatory road map where appropriate accountability and issues resolution mechanisms are in place. Especially, to address matters that impact the access and exercising of rights by the Manitoba Métis.

The goal of radioactive waste minimization and the waste hierarchy are principles that the MMF agrees with, as they are focused on a reduction in the footprint and impact of radioactive nuclear waste on humans and the environment.

However, effective implementation must evaluate the impacts that approaches would have on the rights, interests, claims, and well-being of the Métis Nation, including the Manitoba Métis. This includes a process and framework for appropriately involving and considering perspectives from the MMF as the duly authorized representatives of Manitoba Métis regarding waste minimization decisions and matters occurring within our Homeland.

We recommend that issues related to key concerns expressed by MMF regarding these Discussion Papers be the focus of subsequent meetings with NRCAN. Moreover, the MMF requires continued updates on the steps that are being taken to address them.



1.0 Introduction

Natural Resources Canada (NRCan) has produced four Discussion Papers related to the minimization, storage facilities, decommissioning, and disposal of radioactive waste. Each of the four topics is outlined in separate Discussion Papers titled: *Waste Minimization*, *Waste Storage Facilities*, *Decommissioning*, and *Waste Disposal* respectively. Outlined within each Discussion Paper are the policies and methods relating to each topic of managing Canada's radioactive waste. These Discussion Papers serve as a method to bring information focused on radioactive waste management strategies and policies to the public, stakeholders, and Indigenous peoples.

The Manitoba Metis Federation (MMF), with support from Shared Value Solutions (SVS), has undertaken a review of the four Discussion Papers with a focus on how they interact with the rights, claims, and interests of the MMF. We have previously retained Shared Value Solutions (SVS) to provide environmental peer review and traditional knowledge, land use, and occupancy research services to support us on various proceedings related to Whiteshell Laboratories (WL) nuclear site that is owned by Canadian Nuclear Laboratories (CNL) and regulated by the Canadian Nuclear Safety Commission (CNSC). This includes a technical review of the following Regulatory Oversight Reports (RORs) submitted to the CNSC, with a focus on the WL site:

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The objectives of this technical review of the four Discussion Papers were to:

- Clearly identify where the Métis Nation's Manitoba Métis ("Manitoba Métis") rights, claims, and interests overlap with and may be impacted by the information in the Discussion Papers.
- Identify environmental, technical, or regulatory issues with the Radioactive Waste Modernization process, and provide recommendations on where and how the Manitoba Métis rights, claims, and interests may need to be better accommodated through revisions and additions to the Radioactive Waste Modernization process; and
- Identify issues and challenges with the Discussion Papers and/or the Radioactive Waste Modernization process that will require ongoing engagement and consultation with the MMF on behalf of the Manitoba Métis.

As part of the review, SVS considered any potential intersections with the activities and information provided in the Discussion Papers with potential risks and impacts to the Manitoba Métis.

The review:

1. Assessed the adequacy of the information provided in the four Discussion Papers; and
2. Assessed the intersection of any proposed changes in the Discussion Papers or the Radioactive Waste Modernization process on the rights, claims, and interests of the Manitoba Métis.

Using the results of the review, the MMF is providing specific recommendations to address the identified issues and concerns regarding the Manitoba Métis's rights, claims, and interests concerning the four Discussion Papers and the Radioactive Waste Modernization process.



1.1 Regulatory Process

The regulatory process which governs the management of radioactive waste, known as *Canada's Radioactive Waste Policy Framework* was established in 1996 and consists of the governing principles for the disposal of radioactive waste. This Framework outlines the responsibility of waste producers, waste owners, and the federal government. Further, this framework mandates that the federal government ensures that radioactive waste be disposed of in a safe, environmentally sound, comprehensive, cost-effective, and integrated manner. This framework is based on a “polluter pays” principle in which producers and owners are responsible for funding and carrying out disposal activities for the waste for which they are responsible. Canada has commenced a policy review to modernize Canada's radioactive waste policy. Through this modernization, Canada has established objectives to:

- Elaborate on the existing Radioactive Waste Policy and provide clearer direction and greater leadership on radioactive waste management;
- Stimulate and facilitate progress on the safe, effective, and environmentally acceptable management of radioactive waste in Canada; and
- Continue to meet international practices for the management of Canada's radioactive waste, align with best available science, and reflect the values and principles of Canadians.

The four Discussion Papers under review outline specific processes in the modernization of Canada's radioactive waste management policy. The first Discussion paper addresses methods that will be employed to minimize the amount of radioactive waste that is produced. Outlined within the Waste Minimization Discussion Paper is a framework that outlines situations where waste minimization can be achieved and how to implement methods for minimizing radioactive waste.

Proceeding the Discussion Paper on minimizing radioactive waste is a Discussion Paper on Waste Storage Facilities. Due to the nature of radioactive waste, specialized long-term storage facilities are required to ensure the safety and health of people and the environment. Outlined in the Waste Storage Facilities are the guidelines for how various levels of radioactive waste are managed and stored within Canada. Additionally, the main storage facilities across Canada are included within the Discussion Paper.

The third Discussion Paper deals with the methods utilized for decommissioning nuclear facilities. Detailed within the Discussion Paper are the phases of how nuclear facilities are decommissioned and the strategies used to minimize any potential impacts to humans and the environment.

The final Discussion Paper details the framework utilized within Canada to deal with radioactive waste. The information provided explains the lifecycle of radioactive waste, how it is handled, stored, and responsibilities for monitoring stored waste. This Discussion Paper is significant due to the length of time that it takes the radioactive waste to decay, during which time it remains highly dangerous to people and the environment.

The four NRCAN Discussion Papers outlined above are seeking feedback on the process of Radioactive Waste Modernization from licensees, stakeholders, and Indigenous organizations, governments, and communities. NRCAN states its intention to engage broadly with Indigenous peoples, interested citizens, provinces and territories, and the public.



2.0 Manitoba Métis Community

2.1 History and Identity

The Métis Nation—as a distinct Indigenous people—evolved out of relations between European men and First Nations women who were brought together as a result of the early fur trade in the Northwest. In the eighteenth century, both the Hudson Bay Company and the Northwest Company created a series of trading posts that stretched across the upper Great Lakes, through the western plains, and into the northern boreal forest. These posts and fur trade activities brought European and Indigenous peoples into contact. Inevitably, unions between European men—explorers, fur traders, and pioneers—and Indigenous women were consummated. The children of these families developed their own collective identity and political community so that “[w]thin a few generations, the descendants of these unions developed a culture distinct from their European and Indian forebears” and the Métis Nation was born—a new people, indigenous to the western territories (*Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] 2 SCR 670 at para. 5; 2008 MBPC *R. v. Goodon*, 59 at para. 25; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 2).

The Métis led a mixed way of life. “In early times, the Métis were mostly nomadic. Later, they established permanent settlements centered on hunting, trading and agriculture” (*Alberta v. Cunningham*, at para. 5). The Métis were employed by both of the fur trades’ major players, the Hudson’s Bay and Northwest companies. By the early 19th century, they had become a major component of both firms’ workforces. At the same time, however, the Métis became extensively involved in the buffalo hunt. As a people, their economy was diverse; combining as it did, living off the land in the Aboriginal fashion with wage labour (*MMF Inc. v. Canada*, at para. 29).

It was on the Red River, in reaction to a new wave of European immigration, that the Métis Nation first came into its own. Since the early 1800s, the Manitoba Métis—as a part of the larger Métis Nation—has asserted itself as a distinct Indigenous collective with rights and interests in its Homeland. The Manitoba Métis shares a language (Michif), national symbols (infinity flags), culture (i.e., music, dance, dress, crafts), as well as a special relationship with its territory that is centered in Manitoba and extends beyond the present-day provincial boundaries.

The Manitoba Métis has been recognized by the courts as being a distinctive Indigenous community, with rights that are recognized and affirmed in section 35 of the *Constitution Act, 1982*. In *Goodon*, the Manitoba court held that:

The Métis community of Western Canada has its own distinctive identity [...] the Métis created a large inter-related community that included numerous settlements located in present-day southwestern Manitoba, into Saskatchewan and including the northern Midwest United States. This area was one community [...] The Métis community today in Manitoba is a well-organized and vibrant community (paras. 46-47; 52).

This proud independent Métis population constituted a historic rights-bearing community in present day Manitoba and beyond, which encompassed “all of the area within the present boundaries of southern Manitoba from the present-day City of Winnipeg and extending south to the United States” (*R. v. Goodon*, at para. 48).



The heart of the historic rights-bearing Métis community in southern Manitoba was the Red River Settlement; however, the Manitoba Métis also developed other settlements and relied on various locations along strategic fur trade routes. During the early part of the 19th century, these included various posts of varying size and scale spanning the Northwest Company and the Hudson Bay Company collection and distribution networks.

More specifically, in relation to the emergence of the Métis—as a distinct Aboriginal group in Manitoba—the Supreme Court of Canada wrote the following in the *MMF Inc. v. Canada* case:

[21] The story begins with the Aboriginal peoples who inhabited what is now the province of Manitoba—the Cree and other less populous nations. In the late 17th century, European adventurers and explorers passed through. The lands were claimed nominally by England which granted the Hudson’s Bay Company, a company of fur traders’ operation of out London, control over a vast territory called Rupert’s Land, which included modern Manitoba. Aboriginal peoples continued to occupy the territory. In addition to the original First Nations, a new Aboriginal group, the Métis, arose—people descended from early unions between European adventurers and traders, and Aboriginal women. In the early days, the descendants of English-speaking parents were referred to as half-breeds, while those with French roots were called Métis.

[22] A large—by the standards of the time—settlement developed at the forks of the Red and Assiniboine Rivers on land granted to Lord Selkirk by the Hudson’s Bay Company in 1811. By 1869, the settlement consisted of 12,000 people, under the governance of Hudson’s Bay Company.

[23] In 1869, the Red River Settlement was a vibrant community, with a free enterprise system and established judicial and civic institutions, centred on the retail stores, hotels, trading undertakings and saloons of what is now downtown Winnipeg. The Métis were the dominant demographic group in the Settlement, comprising around 85 percent of the population [approximately 10,000 Métis], and held leadership positions in business, church and government.

The fur trade was vital to the ethnogenesis of the Métis and was active in Manitoba from at least the late 1770s, and numerous posts and outposts were established along cart trails and waterways throughout the province. These trails and waterways were crucial transportation networks for the fur trade (Jones 2014; Figure 1) and were the foundation of the Manitoba Métis’s extensive use of the lands and waters throughout the province. In the early 20th century, the Manitoba Métis continued to significantly participate in the commercial fisheries and in trapping activities, which is well documented in Provincial government records.



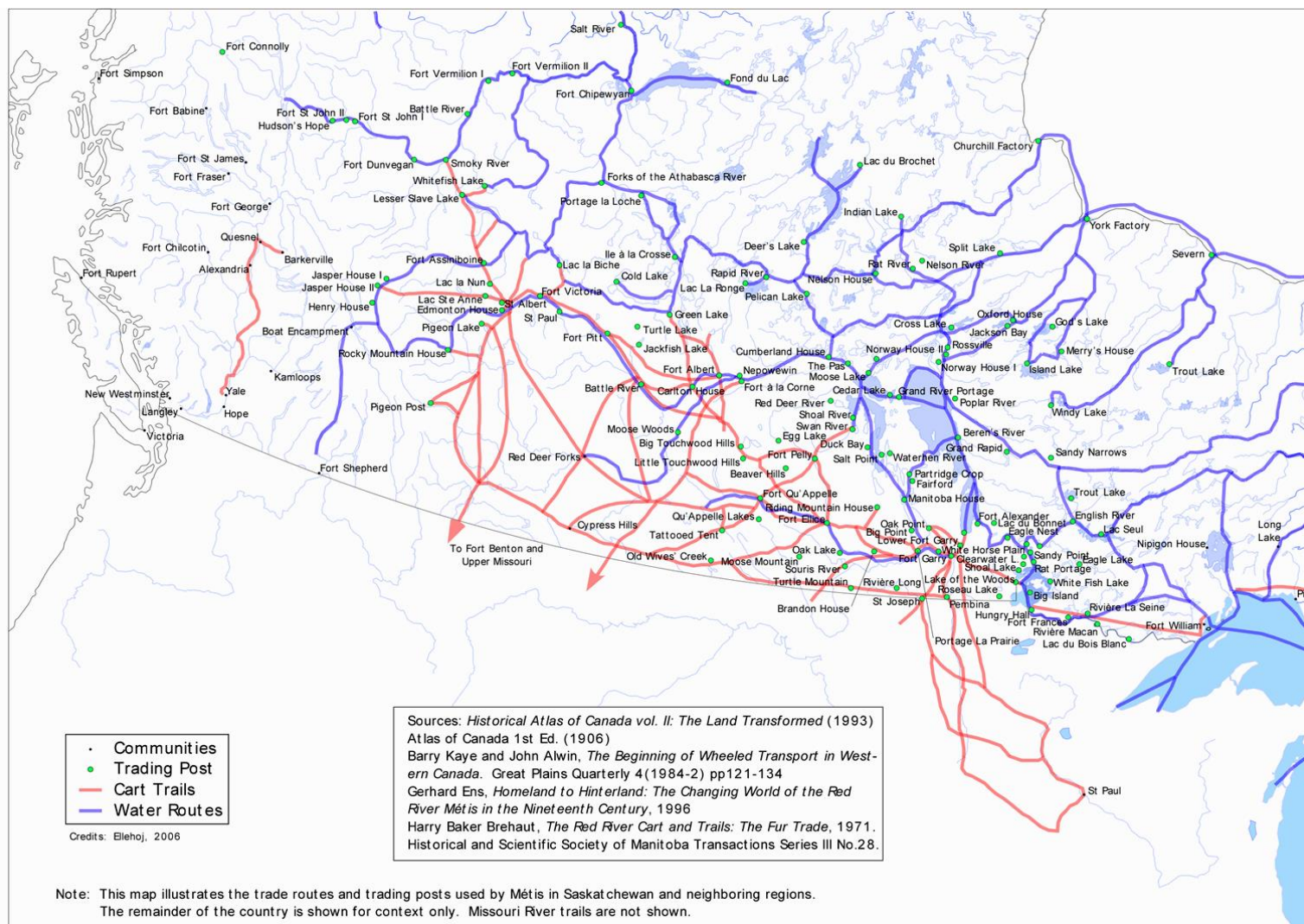


Figure 1. The Fur Trade Network: Routes and Posts Prior to 1870



2.2 Manitoba Metis Federation

The MMF is the democratically elected government of the Métis Nation's Manitoba Métis (Manitoba Métis). The MMF is duly authorized by the Citizens of the Manitoba Métis for the purposes of dealing with their collective Métis rights, claims, and interests, including conducting consultations and negotiating accommodations (as per MMF Resolution No. 8). While the MMF was initially formed in 1967, its origins lie in the 18th century with the birth of the Manitoba Métis and in the legal and political structures that developed with it. Since the birth of the Métis people in the Red River Valley, the Manitoba Métis—as a part of the larger Métis Nation—has asserted and exercised its inherent right of self-government. The expression of this self-government right has changed over time to continue to meet the needs of the Manitoba Métis. For the last 50 years, the MMF has represented the Manitoba Métis at the provincial and national levels.

During this same period, the MMF has built a sophisticated, democratic, and effective Métis governance structure that represents the Manitoba Métis at the local, regional, and provincial levels throughout Manitoba. The MMF was created to be the self-government representative of the Manitoba Métis—as reflected in the Preamble of the MMF's Constitution (also known as the MMF Bylaws):

WHEREAS, the Manitoba Metis Federation Inc. has been created to be the democratic and self-governing representative body of the Manitoba Métis.

In addition, the purpose “to provide responsible and accountable governance on behalf of the Manitoba Métis using the constitutional authorities delegated by its Citizens” is embedded within the MMF's objectives, as set out in the MMF Constitution as follows:

- I. To promote and instill pride in the history and culture of the Métis people.
- II. To educate members with respect to their legal, political, social and other rights.
- III. To promote the participation and representation of the Métis people in key political and economic bodies and organizations.
- IV. To promote the political, legal, social and economic interests and rights of its Citizens.
- V. To provide responsible and accountable governance on behalf of the Manitoba Métis using the constitutional authorities delegated by its members.

The MMF is organized and operated based on centralized democratic principles, some key aspects of which are described below.

President: The President is the Chief Executive Officer, leader, and spokesperson of the MMF. The President is elected in a province-wide ballot-box election every four years and is responsible for overseeing the day-to-day operations of the MMF.

Board of Directors: The MMF Board of Directors, or MMF Cabinet leads, manages, and guides the policies, objectives, and strategic direction of the MMF and its subsidiaries. All 23 individuals are democratically elected by the Citizens.



Regions: The MMF is organized into seven regional associations or "Regions" throughout the province (Figure 2): The Southeast Region, the Winnipeg Region, the Southwest Region, the Interlake Region, the Northwest Region, the Pas Region, and the Thompson Region. Each Region is administered by a Vice-President and two executive officers, all of whom sit on the MMF's Cabinet. Each Region has an office which delivers programs and services to their specific geographic area.

Locals: Within each Region are various area-specific "Locals" which are administered by a chairperson, a vice-chairperson and a secretary-treasurer. Locals must have at least nine Citizens and meet at least four times a year to remain active. There are approximately 140 MMF Locals across Manitoba.

While the MMF has created an effective governance structure to represent the Manitoba Métis at the local, regional, and provincial levels, it is important to bear in mind that there is only one large, geographically dispersed, Manitoba Métis. As Citizens of the Manitoba Métis, we live, work and exercise our section 35 rights throughout and beyond the province of Manitoba.



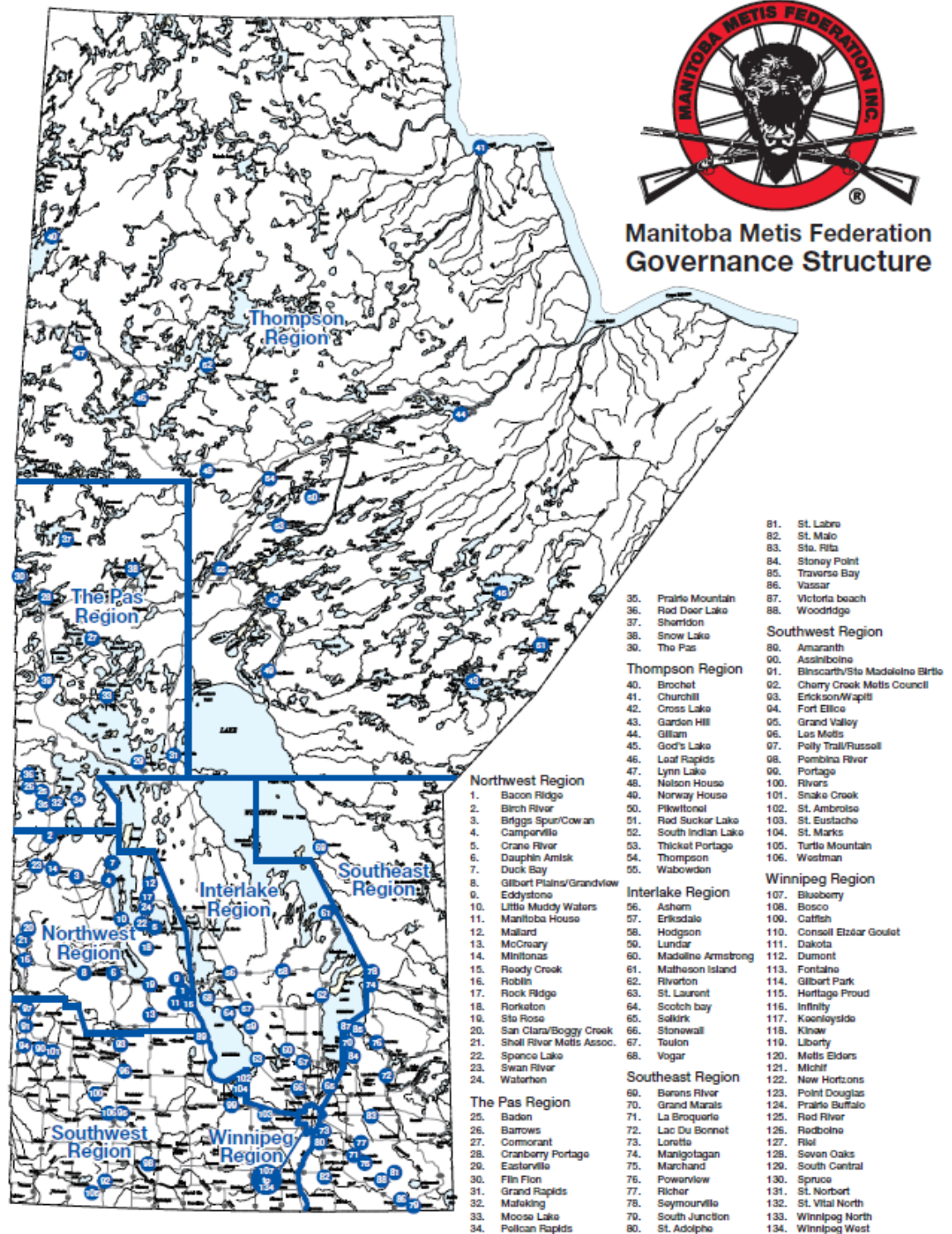


Figure 2 Manitoba Metis Federation (MMF) Regions



2.3 MMF Resolution No. 8

Among its many responsibilities, the MMF is authorized to protect the Aboriginal rights, claims, and interests of the Métis Nation's Manitoba Métis, including as related to harvesting, traditional culture, and economic development, among others.

In 2007, the MMF Annual General Assembly unanimously adopted Resolution No. 8 that sets out the framework for engagement, consultation, and accommodation to be followed by Federal and Provincial governments, industry, and others when making decisions and developing plans and projects that may impact the Manitoba Métis. Under MMF Resolution No. 8, direction has been provided by the Manitoba Métis for the MMF Home Office to take the lead and be the main contact on all consultation undertaken with the Manitoba Métis. Resolution No. 8 reads, in part that:

...this assembly continue[s] to give the direction to the Provincial Home Office to take the lead and be the main contact on all consultations affecting the Métis community and to work closely with the Regions and Locals to ensure governments and industry abide by environmental and constitutional obligations to the Métis...

The MMF Home Office works closely with the Regions and Locals to ensure the rights, interests, and perspective of the Manitoba Métis are effectively represented in matters related to consultation and accommodation.

Resolution No. 8 has five phases:

Phase 1: Notice and Response

Phase 2: Funding and Capacity

Phase 3: Engagement or Consultation

Phase 4: Partnership and Accommodation

Phase 5: Implementation

Each phase is an integral part of the Resolution No. 8 framework and proceeds logically through the stages of consultation.

2.4 Manitoba Métis Community Rights, Claims, and Interests

The Manitoba Métis possesses Aboriginal rights, including pre-existing Aboriginal collective rights and interests in lands recognized and affirmed by section 35 of the *Constitution Act, 1982*, throughout Manitoba. The Manitoba court recognized these pre-existing, collectively held Métis rights in *R. v. Goodon* (at paras. 58; 72):

I conclude that there remains a contemporary community in southwest Manitoba that continues many of the traditional practices and customs of the Métis people.



I have determined that the rights-bearing community is an area of southwestern Manitoba that includes the City of Winnipeg south to the U.S. border and west to the Saskatchewan border.

As affirmed by the Supreme Court of Canada, such rights are “recognize[d] as part of the special aboriginal relationship to the land” (*R. v. Powley*, 2003 SCC 43, at para. 50) and are grounded on a “communal Aboriginal interest in the land that is integral to the nature of the Métis distinctive community and their relationship to the land” (*MMF Inc. v. Canada*, at para. 5). Importantly, courts have also recognized that Métis harvesting rights may not be limited to Unoccupied Crown Lands (*R. v. Kelley*, 2007 ABQB 41, para. 65).

The Crown, as represented by the Manitoba government, has recognized some aspects of the Manitoba Métis’s harvesting rights through a negotiated agreement: The *MMF-Manitoba Points of Agreement on Métis Harvesting* (2012) (the *MMF-Manitoba Harvesting Agreement*). This Agreement was signed at the MMF’s 44th Annual General Assembly and “recognizes that collectively-held Métis Harvesting Rights, within the meaning of section 35 of the *Constitution Act, 1982*, exist within the [Recognized Métis Harvesting Zone], and that these rights may be exercised by Métis Rights Holders consistent with Métis customs, practices and traditions...” (*MMF-Manitoba Harvesting Agreement*, section 1). In particular, the *MMF-Manitoba Harvesting Agreement* recognizes that Métis rights include “hunting, trapping, fishing and gathering for food and domestic use, including for social and ceremonial purposes and for greater certainty, Métis harvesting includes the harvest of timber for domestic purposes” throughout an area spanning approximately 169,584 km² (the “Métis Recognized Harvesting Area”) (*MMF-Manitoba Harvesting Agreement*, section 2; *Figure 3* below). The MMF further asserts rights and interests beyond this area, which require consultation and accommodation as well.

Beyond those rights already established through litigation and recognized by agreements, the Manitoba Métis claims commercial and trade-related rights. Courts have noted that Métis claims to commercial rights remain outstanding (*R. v. Kelley* at para. 65). These claims are strong and well-founded in the historical record and the customs, practices, and traditions of the Manitoba Métis, and it is incumbent on the Crown and Proponents to take them seriously.

As noted above, the Manitoba Métis has its roots in the western fur trade (*R. v. Blais*, 2003 SCC 44 at para. 9 [*Blais*]; *R. v. Goodon* at para. 25). The Métis in Manitoba are descendants of early unions between Aboriginal women and European traders (*MMF Inc. v. Canada* at para. 21). As a distinct Métis culture developed, the Métis took up trade as a key aspect of their way of life (*R. v. Powley* at para. 10). Many Métis became independent traders, acting as middlemen between First Nations and Europeans (*R. v. Goodon* at para. 30). Others ensured their subsistence and prosperity by trading resources they themselves hunted and gathered (*R. v. Goodon* at para. 31, 33, & 71). By the mid-19th century, the Métis in Manitoba had developed the collective feeling that “the soil, the trade and the Government of the country [were] their birth rights.” (*R. v. Goodon* at para. 69(f)). Commerce and trade are, and always have been, integral to the distinctive culture of the Manitoba Métis. Today, the Manitoba Métis have an Aboriginal, constitutionally protected right to continue this trading tradition in modern ways to ensure that their distinct community will not only survive, but also flourish.



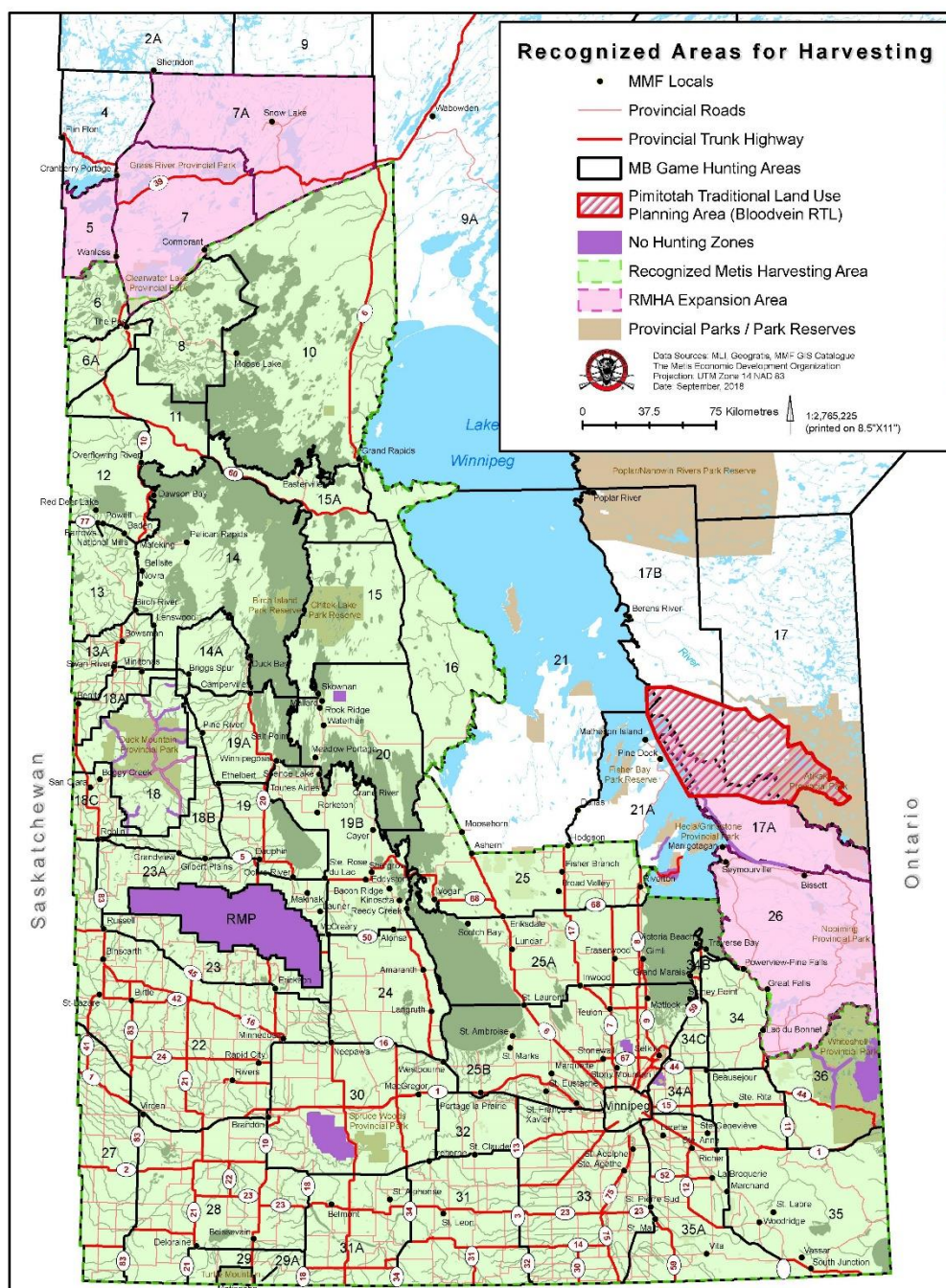


Figure 3 MMF-Manitoba Harvesting Agreement Recognized Manitoba Métis Harvesting Zones

Unlike First Nations in Manitoba, whose commercial rights were converted and modified by treaties and the *Natural Resources Transfer Agreement (NRTA)* (*R. v. Horseman*, [1990] 1 SCR 901), the Métis' pre-existing customs, practices, and traditions—including as they relate to commerce and trade—were not affected by the *NRTA* (*R. v. Blais*) and continue to exist and be protected as Aboriginal rights. First Nations' treaty rights in Manitoba are, for example, inherently limited by the Crown's power to take up lands



(*Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para 56). Métis rights, in contrast, are not tempered by the “taking up” clauses found in historic treaties with First Nations. Métis rights must be respected as they are, distinct from First Nations’ rights and unmodified by legislation or agreements.

In addition to the abovementioned rights to land use that preserve the Métis culture and way of life, the Manitoba Métis has other outstanding land related claims and interests with respect to lands. Specifically, these claims relate to the federal Crown’s constitutional promise to all Aboriginal peoples, including Manitoba Métis, as set out in the Order of Her Majesty in Council Admitting Rupert’s Land and the North-Western Territory into the Union (the “1870 Order”) which provides that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

The manner in which the federal Crown implemented this constitutional promise owing to the Manitoba Métis—through the *Dominion Lands Act* and the resulting Métis scrip system—effectively defeated the purpose of the commitment. Accordingly, the MMF claims these federal Crown actions constituted a breach of the honour of the Crown, which demand negotiations and just settlement outside of the ‘old postage stamp province’ within Manitoba as well.

The MMF also claims that the *Dominion Lands Act* and the resulting Métis scrip system were incapable of extinguishing collectively held Métis title in specific locations where the Manitoba Métis is able to meet the legal test for Aboriginal title as set out by the Supreme Court of Canada. These areas in the province, which the Manitoba Métis exclusively occupied—as an Indigenous people—prior to the assertion of sovereignty, establish a pre-existing Métis ownership interest in these lands.

The Manitoba Métis also has an outstanding legal claim within what was the ‘old postage stamp province’ of Manitoba relating to the 1.4 million acres of land promised to the children of the Métis living in the Red River Valley, as enshrined in s. 31 of the *Manitoba Act, 1870* (*MMF Inc. v. Canada* at para 154).

This land promised was a nation-building, constitutional compact that was meant to secure a “lasting place in the new province [of Manitoba]” for future generations of the Métis people (*MMF Inc. v. Canada* at para 5). This “lasting place” was to have been achieved by providing the Manitoba Métis a “head start” in securing lands in the heart of the new province (*MMF Inc. v. Canada* at paras 5-6).

Instead, the federal Crown was not diligent in its implementation of s. 31, which effectively defeated the purpose of the constitutional compact.

In March 2013, the Supreme Court of Canada found that the federal Crown failed to diligently and purposefully implement the Métis land grant provision set out in s. 31 of the *Manitoba Act, 1870* (*MMF Inc. v. Canada* at para 154). This constituted a breach of the honour of the Crown. In arriving at this legal conclusion, the Court wrote:

What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in section 35 of the Constitution Act, 1982 and underlying s. 31 of the Manitoba Act, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of



reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import. (*MMF Inc. v. Canada* at para 140)

This constitutional breach is an outstanding Métis claim flowing from a judicially recognized common law obligation which burdens the federal Crown (*MMF Inc. v. Canada* at paras 156; 212). It can only be resolved through good faith negotiations and a just settlement with the MMF (see for example: *R v Sparrow*, [1990] 1 SCR 1075 at paras 51–53; *R v Van der Peet*, [1996] 2 SCR 507 at paras 229, 253; *Haida* at para 20; *Carrier Sekani* at para 32). Lands both within the ‘old postage stamp province’ as well as in other parts of Manitoba—since little Crown lands remain within the ‘old postage stamp province’—may need to be considered as part of any future negotiations and settlement in fulfillment of the promise of 1.4 million acres, together with appropriate compensation.

On November 15, 2016, the MMF and Canada concluded a *Framework Agreement for Advancing Reconciliation* (the “Framework Agreement”). The Framework Agreement established a negotiation process aimed, among other things, at finding a shared solution regarding the Supreme Court of Canada’s decision in *MMF Inc. v. Canada* and advancing the process of reconciliation between the Crown and the Manitoba Métis. It provides for negotiations on various topics including, but not limited to, the “quantum, selection and management of potential settlement lands.” Negotiations under the Framework Agreement are active and ongoing.

3.0 Review Findings

The WL site, operated by Canadian Nuclear Laboratories (CNL), is within the Traditional Territory and Homeland of the Manitoba Métis. As outlined above, based upon the Manitoba Métis’s emergence as a distinct Indigenous community prior to any Crown assertion of sovereignty or effective European control in the area, the Manitoba Métis has distinct, collectively held Métis rights, claims, and interests that are recognized and affirmed by section 35 of the Constitution Act, 1982. These rights continue to be exercised today by Métis Nation Citizens throughout their Traditional Territory and Homeland, including on and around the WL site, without limitation. It is essential that actions or decisions—including the proposed WL site decommissioning—are undertaken in a way that protects and preserves the continued ability of the Manitoba Métis to safely use the lands, waters, and resources of their Traditional Territory and Homeland to sustain themselves now and into the future, and to do so without psycho-social impacts such as fear or uncertainty about their safety or the safety of country foods. CNL has only done the minimum in determining the baseline terrestrial and aquatic communities to inform their ecological risk assessment, relying heavily on desktop studies with insufficient field surveying. To properly understand the potential impacts of decommissioning activities at the WL site, including potential impacts to Métis claims, rights and interests, we recommend that the CNL conduct collaborative field surveys with the MMF to properly characterize the actual site baseline conditions including terrestrial and aquatic biotic communities.

Based on Traditional Knowledge data collected from the Manitoba Métis and shared with the MMF, it is apparent that this is a region where the Manitoba Métis has a longstanding and well-established record of historic use and occupancy, as well as ongoing current use. The WL site falls within the area of Manitoba where the provincial Crown has recognized section 35 Métis harvesting rights and activities and Manitoba Métis Citizens (“Manitoba Méits Citizens”) exercise their harvesting rights on and around the WL site. The



MMF has shared this information with CNL through a Métis Traditional Knowledge and Land Use Study, Métis Consumption Survey (MMF, 2017), and other reports.

The Manitoba Métis primarily rely on what are now ‘Crown’ lands within their Traditional Territory and Homeland to exercise traditions, and cultural practices, practices which are protected under section 35. Due to increasing development and urbanization, there are limited ‘Crown’ lands available in southern Manitoba for the Métis to exercise their rights. The Manitoba Métis values access to areas used for harvesting or other traditional land uses, as well as the quality, safety, and availability of medicinal plants and country foods for consumption, as part of their traditional culture and diet. Therefore, the potential impacts and negative effects associated with the operations/management of the WL site, including decommissioning, demolition, and disposal of the associated infrastructure that occur within the Traditional Territory and Homeland of the Manitoba Métis, have the potential to impact the continued ability of Manitoba Métis Citizens to exercise their rights and maintain their distinct relationship with this area of their Traditional Territory and Homeland.

To date, the MMF is disappointed in the overall approach NRCAN has taken in engaging with the MMF. The MMF was invited to participate in stakeholder engagement sessions, which included a combination of the public, NGOs, and Indigenous rights holders. We do not believe this is an appropriate approach to the Crown’s fulfillment of its Duty to Consult. Further, the MMF was not provided sufficient notice and information to be able to adequately prepare for and participate fully in the engagement sessions held to date. We request a direct bilateral meeting between NRCAN and the MMF to discuss the proposed policy changes and the full impacts on Manitoba Métis Citizens.

Specific to the long-term storage and reduction of radioactive waste, the MMF is concerned with the absence of an established long-term site and solution for storing radioactive waste in Canada, which has led to current licensees developing interim measures and solutions, some of which do not necessarily align with the policy goals and objectives Canada has regarding the storage and management of radioactive waste. For example, the Whiteshell Laboratories in Pinawa, Manitoba is currently pursuing a waste storage solution that includes In-Situ Decommissioning (ISD) of the WR-1 Reactor despite Canada’s position on ISD being that it is a decommissioning and storage approach that is not preferred and should not be pursued at this time. This is unacceptable to the MMF, as Whiteshell Laboratories is located within the Homeland of the Manitoba Métis, in an area where Citizens actively exercise their rights through various harvesting and land-based activities, and therefore inequitably bear the long-term risks and consequences of ISD.

In addition to concerns related to ISD as a waste management approach, there is also the concern that the guidance and approaches to waste storage facilities outlined within the Discussion Paper do not provide any clear, explicit, or direct opportunities for meaningful involvement of impacted Métis Nation governments, including the MMF. The involvement of the MMF is particularly important and relevant to the consideration of methods for inspecting and monitoring waste storage facilities, and aligning the radioactive waste storage facility approaches with guidance from the International Atomic Energy Agency Safety guide with respect to “[Ensuring] that both human health and the environment will be protected, both now and in the future, without imposing undue burdens on future generations.” As stated above, our close relationship with the land means these burdens are inequitably borne by future generations of Manitoba Métis Citizens.



Finally, the MMF is concerned that NRCAN has taken such a generalized approach to modernizing Canada's radioactive waste policy, an inherently complex process. While we believe it important that the radioactive waste policy modernization process be accessible, the more technical elements should not be discounted. As a result, we view the *Modernization of Canada's Radioactive Waste Policy* process to be only an initial step and expect that NRCAN will consult directly with the MMF in a meaningful way that lends itself to an approach consistent with the Crown's Duty to Consult and United Nations principles related to the Free, Prior and Informed Consent of Indigenous peoples to matters which impact their rights.

The MMF has reviewed the four Discussion Papers and provides specific comments and recommendations based on the questions provided by NRCAN, which are outlined in Sections 3.1 to 3.4 below.



3.1 Comments and Recommendations – Waste Minimization

NRCAN has provided a list of specific questions to consider while reviewing the *Waste Minimization* Discussion Paper. Responses to these questions are provided in Table 1 below.

Table 1. Responses to question posed by NRCAN concerning the Waste Minimization Discussion Paper

Question	Comment	Recommendation
What are your views on waste minimization? Should Canada continue to use the concept of waste hierarchy?	<p>Comment 1.1: Waste minimization and the waste hierarchy generally speaking are principles and approaches that the MMF agrees with, as they are focused on a reduction in the footprint and impact of radioactive nuclear waste on humans and the environment.</p> <p>However, an important dimension to consider when employing decision-making around waste minimization practices is effectively implementing an assessment of waste minimization alternatives that evaluates the impacts these alternatives would have on the rights, interests, claims, and well-being of the Métis Nation, in particular of the Manitoba Métis. This includes a process and framework for appropriately involving and considering perspectives from the MMF as the duly authorized representatives of Manitoba Métis regarding waste minimization decisions and matters occurring within our Homeland. This includes but is not limited to:</p> <ul style="list-style-type: none"> • Implementing MMF Resolution No. 8 for waste minimization matters and decisions within the Homelands of the Manitoba Métis. • Considering the effects the waste minimization alternative will have on the current and future 	<p>Recommendation 1.1: In addition to the waste minimization and waste hierarchy principles and approaches outlined in the Discussion Paper, the MMF recommends additional considerations be part of the waste minimization framework, including:</p> <ul style="list-style-type: none"> • Implementing appropriate methods and mechanisms for fulfilling the Duty to Consult, including the application of MMF Resolution No. 8 for waste minimization matters and decisions within the Homeland of the Manitoba Métis. • Considering and addressing the effects that each waste minimization alternative will have on the current and future exercise of rights by the Manitoba Métis, including but not limited to impacts to access, gathering, fishing, hunting, cultural sites, trapping, and sites used for ceremonial purposes. • Where necessary, implementing adequate consultation, avoidance, mitigation, and accommodation measures in instances where waste minimization practices may impact the rights, interests, and claims of the Manitoba Métis.



Question	Comment	Recommendation
	<p>exercising of rights by the Manitoba Métis, including but not limited to impacts to harvesting, gathering, fishing, cultural sites, trapping, and ceremonial purposes.</p> <ul style="list-style-type: none"> Where necessary, working with the MMF to implement adequate consultation, compensation, and accommodation measures in instances where waste minimization practices may impact the rights, interests, and claims of the Manitoba Métis. <p>Comment 1.2: The guidelines outlined in the paper are vague and do not have the details necessary for reviewers to determine if waste users operate effectively to minimize the generation of radioactive waste. Any radioactive waste leads to a need for long-term storage which affects land use for generations. NRCan needs to be proscriptive by regulation in defining what steps need to be taken to minimize the amount of low-, intermediate- and high-level waste, especially since no true long-term disposal facilities exist in Canada, where radiation is isolated from the public and the environment for the future. Meanwhile, the amount of radioactive waste continues to increase.</p> <p>Waste minimization as a general principle is an important strategy for the management and handling of radioactive waste. Reducing the volume of radioactive material will reduce the number of storage facilities required, and the amount of land and resources required for monitoring and the placement of storage facilities. The Discussion Paper indicates that reducing waste is important because it reduces the</p>	<ul style="list-style-type: none"> Outlining principles and guidelines for involving the MMF in any follow-up monitoring or adaptive management programs associated with waste minimization activities. At a minimum, this would include keeping the MMF appropriately notified of activities throughout the life cycle of the undertaking. <p>Recommendation 1.2: The minimization of radioactive waste should be a priority for the government, the regulator, and the producer of the waste. Storage sites are limited and expensive to maintain and monitor. Some of these sites, such as the Waste Management Area at Chalk River, are on federal land and are licensed through the CNSC. There are limits to the amount of waste that can be stored at any site and the ability of users to manage the waste.</p> <p>Also, the public and MMF need to be aware of the waste streams present at any site and the actions taken by users to monitor and maintain a safe facility. This is particularly important for Indigenous organizations and governments that may request the ownership of the land in the future. Minimization of radioactive waste volumes will reduce the amount of storage required in the future and the amount of material that may need to be transported off-site.</p> <p>In terms of the waste hierarchy, users need to be encouraged to reduce (and recycle and reuse, if possible) through regulation and by setting specific</p>



Question	Comment	Recommendation
	<p>“impact to the environment” however does not define what that impact is.</p> <p>The paper makes general statements about the need to reduce the volume of radioactive material but does not discuss the levels of radioactivity (low-intermediate- and high-level) and its impact on waste minimization. Handling radioactive waste to separate radioactive from non-radioactive, or low-level waste from intermediate waste increases risks to workers and results in several waste streams that require different storage and management.</p> <p>The waste hierarchy as defined in the Discussion Paper is very general, with no standards to set limits on the levels of acceptable waste. Phrases such as “minimum possible or practicable”, “minimize the spread of radioactivity” and “adequate treatment technology” are very general and do not define a rigorous approach to reducing the volume of waste or its radioactivity. The principles are vague and allow the user to follow any waste minimization that they deem acceptable, and still follow IAEA guidance.</p>	<p>standards. Those regulations may include limits on the transportation of hazardous goods to storage facilities, rigorous auditing, and monitoring, as outlined by the regulator, and the reduction of the volume of waste streams. Actions required to reduce the volumes of the waste streams should be research areas for government, regulators, and industry users.</p>
<p>What should be the role of government, the regulator, and waste owners with respect to minimizing radioactive waste?</p>	<p>Comment 1.3: Maintaining alignment with the “polluter pays” principle is an advisable approach when considering the roles and responsibilities with respect to the minimizing of radioactive waste. The waste owners should ultimately be accountable for the payment and implementation of waste minimization</p>	<p>Recommendation 1.3: See recommended roles and responsibilities outlined in Comment 1.3.</p> <p>Recommendation 1.4: In addition to outlining the roles and responsibilities of government, the regulator, and waste owners, NRCAN should endeavour to also outline the roles, responsibilities,</p>



Question	Comment	Recommendation
	<p>measures.</p> <p>In addition to the roles stemming from the polluter pays principle, another important consideration when looking at the role of government and regulators, is the importance of Ministerial oversight and accountability in the regulation of minimizing radioactive waste. Ministerial oversight is important as it provides an accountability mechanism for ensuring government and regulators fulfill their decision-making and oversight responsibilities. As a result, when looking at the scope and mandate of government and regulator roles and responsibilities, this must include a clear mandate for the Minister of Natural Resources and Federal Cabinet in holding the appropriate agencies and regulators (Natural Resources Canada and Canadian Nuclear Safety Commission) accountable to fulfilling their mandate.</p> <p>With Ministerial oversight in place, this puts the role of government and regulators as setting out the rules, objectives, policy, and guidance on radioactive waste minimization, including issuing certificates, permits, and/ or licenses in relation to radioactive waste minimization activities.</p> <p>Comment 1.4: One role that this question fails to consider is the roles, responsibilities, and opportunities of Métis Nation governments impacted by these waste minimization undertakings. It is important to clearly outline these roles and responsibilities as well as how Duty to Consult considerations will be applied for these activities to ensure that the rights, interests, and claims</p>	<p>and opportunities for consultation and engagement of Métis Nation governments impacted by these waste minimization undertakings, including the MMF as the duly authorized government of Manitoba Métis Citizens. This includes ensuring proper protections of our section 35 rights and proper alignment with the principles and requirements as set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the <i>Impact Assessment Act, 2019 (IAA)</i>.</p> <p>Recommendation 1.5: The system of regulation under the Nuclear Act and the CNSC's regulatory documents have proven to be reasonably effective, but considerable waste is still generated by industry. No data are provided in the Discussion Paper, but it is assumed that the amount of all levels of radioactive waste are substantial and require resources for control and management of waste and facilities to store the waste long-term. All parties should be working to reduce the volume of radioactive material.</p> <p>The roles of the parties can best be reviewed through a rigorous auditing process by third parties to provide specific examples of improvement for the government, regulator, and users.</p>



Question	Comment	Recommendation
	<p>of impacted nations, including the Métis Nation, are protected throughout the process.</p> <p>Comment 1.5: The current system of waste management with the government setting standards is consistent with international practices with the user conducting and paying for waste management activities for low- intermediate- and high-level waste. In Canada, much of the waste is generated by AECL, a Crown Corporation, or is historic waste from government activities (Elliott Lake, Port Hope, Bancroft, Port Radium, etc.). The system is reasonable as long as the regulator is consistent with random inspections and proscriptive with implementing new methods to reduce (and reuse or recycle, where possible), and the user also follows continuous improvement and adaptive management to reduce the volume of radioactive streams.</p>	
<p>Are there other principles, beyond those identified by the International Atomic Energy Agency, that you feel are important to consider when designing and implementing a waste minimization program?</p>	<p>Comment 1.6: In addition to the principles set out by the International Atomic Energy Agency, it will be important to consider the principles reflected in the CNSC's regulatory documents (REGDOCS), especially in REGDOCS 2.11 Framework for Radioactive Waste Management and Decommissioning in Canada. In addition, to the existing guidance offered by the CNSC, other important principles for consideration include the values and perspectives of importance to the Métis Nation, including the MMF as the authorized representatives of the Manitoba Métis.</p> <p>Comment 1.7: The IAEA does not include public consultation and oversight in its guidance document. This leads to the perception that the nuclear industry is</p>	<p>Recommendation 1.6: Alongside the principles set out by the International Atomic Energy Agency, it is important to consider the principles reflected in the CNSC's regulatory documents (REGDOCS), especially in <i>REGDOCS 2.11 Framework for Radioactive Waste Management and Decommissioning in Canada</i>. Some of the principles within that REGDOC that are of particular importance and significance to consider when designing and implementing a waste minimization program are:</p> <ul style="list-style-type: none"> • The generation of radioactive waste is minimized to the extent practicable by the implementation of design measures, operating procedures, and decommissioning practices.



Question	Comment	Recommendation
	<p>self-regulating. The public is not aware of many of the actions of industry and the regulators and the roles of the parties. Sites, such as the WMA at Chalk River continue to receive waste almost by default because of the amount of waste already there. A national disposal facility is required.</p>	<ul style="list-style-type: none"> • The management of radioactive waste is commensurate with the waste's radiological, chemical, and biological hazards to the health and safety of persons, to the environment, and national security. • The assessment of future impacts of radioactive waste on the health and safety of persons and the environment encompasses the period during which the maximum impact is predicted to occur. • The measures needed to prevent unreasonable risk to present and future generations from the hazards of radioactive waste are developed, funded, and implemented as soon as reasonably practicable. <p>In addition to the above principles outlined, there are values and principles of importance to the MMF that ought to be considered. In general, the MMF maintains that the sustainability and future prosperity of Canada relies upon and is intertwined with the future sustainability and prosperity of the Métis Nation. How this applies to the design and implementation of a waste minimization program is through the consideration of how such a program will both impact and contribute to the environmental, social, cultural, and economic sustainability of the Métis Nation. This includes but is not limited to considering how the program will affect both current and future generations of Manitoba Métis Citizens, including our ability to act as stewards and guardians of the lands and waters within the Métis Nation Homeland. It also includes considering how such a</p>



Question	Comment	Recommendation
		<p>program may impact the ability of Manitoba Métis Citizens to exercise our rights and ensure those rights, as well as our interests and claims, are protected throughout the life of this program.</p> <p>Recommendation 1.7: Government needs to make a concerted effort to develop a method of oversight of all facets of the nuclear industry by the public, including Indigenous organizations and governments and the MMF, to aid in understanding the roles of the parties and processes behind activities such as the use of radiation by industry. Other activities include waste minimization, storage, and ultimately disposal. Presently, decisions on issues such as waste minimization and storage are often made without significant public input which leads to resistance in the later stages of projects.</p>



3.2 Comments and Recommendations – Waste Storage Facilities

NRCAN has provided a list of specific questions to consider while reviewing the *Waste Storage Facilities* Discussion Paper. Responses to these questions are provided in Table 2 below.

Table 2. Responses to question posed by NRCAN in relation to the Waste Minimization Discussion Paper

Question	Comment	Recommendation
What are your views on how radioactive waste is currently stored in Canada?	<p><i>Disclaimer Note: Since the primary site of concern with respect to radioactive waste storage for the MMF is the Whiteshell Laboratories site, our comments and recommendations will be more focused on that site. However, some of the recommendations may be applicable to and advisable to consider for other sites and approaches being considered Canada-wide.</i></p> <p>Comment 2.1: The current absence of an established long-term site and solution for storing radioactive waste in Canada, has led to current licensees developing interim measures and solutions, some of which do not necessarily align with the policy goals and objectives Canada has regarding the storage and management of radioactive waste. For example, the Whiteshell Laboratories in Pinawa, Manitoba is currently pursuing a waste storage solution that includes In-Situ Decommissioning (ISD) of the WR-1 Reactor despite Canada's position on ISD being that it is a decommissioning and storage approach that is not preferred and should not be pursued at this time. This is concerning to the MMF as Whiteshell Laboratories is located within the Homeland of the Manitoba Métis, in an area where</p>	<p>Recommendation 2.1: While a long-term waste storage facility solution is being developed via the Nuclear Waste Management Organization's (NWMO) efforts toward adaptive phased management and moving towards the development of a Deep Geological Repository, Canada needs to establish clear guidance on the interim and phased approaches to waste storage facilities in Canada. This includes a clear decision statement and policy regarding the use of ISD for waste storage purposes, as is being contemplated at the WR-1 site. If Canada intends to honour its current stance to avoid pursuing ISD as an approach, alternative means and methods for preferred radioactive waste storage facilities need to be identified and communicated to site operators and waste owners so appropriate plans can be developed and licensed.</p> <p>The interim and long-term solutions and regulatory guidance for radioactive waste storage facilities needs to include a clear indication of how impacted Métis Nation governments, including the MMF, are to be involved in the ongoing monitoring and inspections of these facilities. In the case of the MMF, this includes ongoing involvement of MMF monitors and Métis Nation Citizen scientists in these activities, as well as ongoing, clear, effective communication with Métis</p>



Question	Comment	Recommendation
	<p>Citizens actively exercise their rights through various harvesting and land-based activities.</p> <p>In addition to concerns related to ISD as a waste management approach, there is also the concern that the guidance and approaches to waste storage facilities outlined within the Discussion Paper do not outline any clear, explicit, or direct opportunities for meaningful involvement of impacted Métis Nation governments, including the MMF. The involvement of the MMF is particularly important and relevant to:</p> <ul style="list-style-type: none"> • The consideration of methods for inspecting and monitoring waste storage facilities, and • Aligning the radioactive waste storage facility approaches with guidance from the International Atomic Energy Agency Safety guide with respect to “[Ensuring] that both human health and the environment will be protected, both now and in the future, without imposing undue burdens on future generations.” <p>Comment 2.2: The Discussion Paper requests views on how radioactive waste is stored in Canada yet does not provide details of how it is currently stored, the volumes and mass of amounts currently stored, or the amount generated annually. The Discussion Paper also does not identify what the alternatives are to methods presently used for waste storage or what</p>	<p>harvesters who exercise their rights in and around any radioactive waste storage facilities in the Manitoba Métis Homeland.</p> <p>If the MMF is to be assumed to be a “willing host” for nuclear waste within our territory, the regulator must follow the same steps and process it is taking with other Nations whose territories include candidate sites for radioactive waste repository sites. This means following the Adaptive Phased Management process used by the Nuclear Waste Management Organization (NWMO).</p> <p>Recommendation 2.2: The storage of radioactive waste has been deemed acceptable because of few accidents and few leakages to the environment but the amount of waste continues to increase. There is currently no process in place to dispose of waste and remove it from the biosphere, where the risk to the public and the environment is low.</p> <p>Canada has been working on a disposal solution for well over a decade but does not appear to have advanced toward implementation. As a result, risks to humans and the environment continue to increase as the volume and mass of waste increase and the number of sites requiring management and monitoring increase. A long-term disposal solution must be a priority to reduce the risks to the public and the environment associated with surface storage of low-, intermediate- and high-level waste.</p>



Question	Comment	Recommendation
	<p>the options are for future storage if the current system is deemed unsatisfactory.</p> <p>The Discussion Paper States: “waste owners are responsible for the funding, organisation, management and operation of disposal and other facilities required for their radioactive waste”. This may be accurate, but the waste owners act within the regulations as defined by the CNSC. True disposal, with waste isolated from possible exposure to the public and the environment for thousands of years, is currently not an option and waste must be stored until disposal is possible. It appears that “disposal” options are the federal government’s responsibility because of the resources and time required to construct a facility. Meanwhile, the volumes of low-, intermediate and high-level waste continue to grow.</p> <p>The map in the Discussion Paper shows that radioactive waste is presently stored at old and currently operating reactor sites and a few remote sites. The uranium mines, many of which have been remediated, also contain a large amount of natural and processed uranium ore as waste. Other than the presently operating reactors, all the waste storage sites are in places with historic contamination (e.g., Blind River, Bancroft, Elliot Lake, etc.) or old reactors in the process of being decommissioned (e.g., Whiteshell, Rolphton). It is unlikely that the sites were selected following a process that included input from the public, as well as Indigenous organizations and governments such as the MMF who express ownership of the land. The sites were probably</p>	



Question	Comment	Recommendation
	<p>selected for the storage of low-level waste and spent fuel due to convenience, and not following a contemporary process that includes input from the public, as well as Indigenous organizations and governments.</p> <p>The Discussion Paper cites three principles of CSA standard N292 and the technical aspects of International (IAEA) guidance but it does not mention the need for public consultation and oversight for the selection of sites and the types of material that will be stored. For example, in the event a site is used for low-level waste and the government decides to store intermediate waste. Changes should be discussed with the public as well as Indigenous organizations and governments in the area and the risks explained.</p>	
<p>What should be the roles and responsibilities of government, the regulator, and waste owners with respect to radioactive waste storage?</p>	<p>Comment 2.3: In addition to the issues and recommendations raised in Comment/ Recommendations 1.3 and 1.4, the following roles and responsibilities need to be contemplated for government, the regulator, waste owners, and impacted Métis Nation governments, including the MMF:</p> <p>Government needs to be responsible for ensuring appropriate policy, guidance, and regulatory frameworks are set out and followed by parties involved. This includes, as previously mentioned, appropriate Ministerial oversight by the Minister of Natural Resources to ensure appropriate government-to-government and Nation-to-Nation relationships on matters related to radioactive waste storage are established between Canada and the</p>	<p>Recommendation 2.3: Implement the measures outlined in Comment/ Recommendation 1.3 as well as Comment 2.3.</p> <p>Recommendation 2.4: The roles and responsibilities of the three parties are not presented in detail in the Discussion Paper. Those roles and responsibilities need to be periodically reviewed and audited by independent third parties to continually improve the management of all levels of radioactive waste management. The audits should include the input of the public, Indigenous organizations and governments, including the MMF, and users of the land surrounding the storage areas for their views on the evolving risk from the storage of radioactive, and possibly other hazardous, wastes.</p>



Question	Comment	Recommendation
	<p>Métis Nation, including the Manitoba Metis Federation.</p> <p>The regulator, in this case CNSC and where applicable, the Impact Assessment Agency of Canada (IAAC), as set out under the IAA, needs to facilitate the appropriate hearing and licensing processes for site operators and waste owners regarding waste storage alternatives and activities. This includes acting as the agency providing lifecycle regulation and oversight of these facilities and ensuring site operators are consistently abiding by the conditions set out in their licenses.</p> <p>The waste owner, which is often also the site operators, needs to be the party ultimately responsible for the design, implementation, and financing of the storage of the radioactive waste until a long-term solution via a DGR is developed. Once a DGR facility is operational, it must be the responsibility of the waste owner to design, plan, and finance the route and method of transportation to the waste storage facility. In both cases, the waste owner and government need to work collaboratively to ensure consultation, engagement, and accommodation of impacted Métis Nation governments, including the MMF occurs as part of the waste disposal and storage process.</p> <p>The role of impacted Métis Nation governments, including the MMF, must include opportunities to be informed, consulted, and accommodated in</p>	



Question	Comment	Recommendation
	<p>alignment with Nation-specific requirements. In the case of the MMF, that includes abiding by MMF Resolution No. 8 and ensuring the Nation-to-Nation relationship with Canada and the MMF is being honoured and maintained throughout the process. This includes involving MMF monitors and Métis Nation citizen scientists in inspection and monitoring activities related to radioactive waste storage throughout the life of the facility.</p> <p>Comment 2.4: The Discussion Paper outlines the current system of radioactive waste storage management with the government setting standards consistent with international practices and the industry user conducting and paying for waste management activities for low-, intermediate-, and high-level waste. Much of the waste was generated historically through the activities of government departments. Activities of industry are overseen by the CNSC who should conduct random inspections and be proscriptive with implementing new methods to reduce (and reuse or recycle, where possible), and the user should also follow continuous improvement and adaptive management to reduce the volume of radioactive streams.</p>	



3.3 Comments and Recommendations – Decommissioning

NRCAN has provided a list of specific questions to consider while reviewing the *Decommissioning* Discussion Paper. Responses to these questions are provided in Table 3 below.

Table 3. Responses to question posed by NRCAN in relation to the *Decommissioning* Discussion Paper

Question	Comment	Recommendation
What do you feel are important policy considerations that should influence the choice of decommissioning strategies by nuclear operators and should be considered as part of Canada's radioactive waste policy?	<p>Comment 3.1: There are several policy considerations the MMF believes should influence the selection of a decommissioning strategy.</p> <p>First and foremost, there needs to be some clarity via a more formal policy on In-Situ Decommissioning (ISD) before it is pursued further as a viable decommissioning strategy. This includes implementing the strategic assessment on ISD that was requested to Minister Wilkinson by Sagkeeng First Nation on February 8, 2021, in this letter. In addition to the measures in this letter, the MMF advises that we be granted separate and specific membership from any other party- in reference to Canada's distinctions-based approach to consultation and reconciliation- if a committee is struck for conducting a strategic assessment on ISD.</p> <p>In addition to clearer policy direction and guidance on the use of ISD as a decommissioning strategy in Canada, there needs to be a clear demonstration that a fulsome alternatives assessment will be conducted when selecting a decommissioning strategy.</p>	<p>Recommendation 3.1: Please carefully review, consider, and incorporate the policy and assessment considerations articulated in Comment 3.1. This includes providing a formal response to the MMF in writing outlining how these considerations were assessed and incorporated into Canada's updated Radioactive Waste Policy.</p> <p>Recommendation 3.2: It is important to note that the number of sites that have reached Phase 4 (Completion of Decommissioning) as defined in the discussion paper is low, possibly zero. Sites such as Elliot Lake, Bancroft, and Port Radium are still in the monitoring phase and have not been released from institutional control. All decommissioned sites across Canada will require resources for management and monitoring which will continue to increase well into the future. There are no decommissioned sites where computer models have been verified and engineered systems have been monitored for hundreds of years to determine how accurate the estimates of future releases are.</p>



Question	Comment	Recommendation
	<p>This demonstration should include the following details and considerations:</p> <ul style="list-style-type: none"> • Meaningful and appropriate consultation and involvement of impacted Métis Nation governments, including the MMF where appropriate; • Inclusion of Métis knowledge and land use information, including providing adequate capacity resources for a community-led study to be undertaken as part of the process; and • Implementing appropriate avoidance, mitigation, and compensation measures identified by the MMF to ensure Manitoba Métis Citizens are appropriately consulted and where necessary, accommodated for the selected alternative. <p>Comment 3.2: As stated in the Discussion Paper, decommissioning of old reactors and contaminated sites is a responsibility of the generators of waste, but since some sites (e.g., Whiteshell, Rolphton, etc.) are licensed to AECL, the government holds the responsibility for decommissioning and regulating the clean-up. This is also the case for places like Port Hope.</p> <p>The Discussion Paper indicates that “waste owners” are responsible for funding and organization for the decommissioning of their facilities. For old reactors and sites such as Port Hope, the government (e.g., through AECL) is the owner of the sites and funds the cleanup and remediation of the site. The</p>	



Question	Comment	Recommendation
	<p>activities are regulated by the CNSC. Hence the government is responsible for the cleanup and definition of the end state of the site.</p> <p>The decommissioning of these sites raises several questions related to estimating and categorizing risks to the public and the environment far into the future (e.g., 5,000+ years) and the acceptable levels of burden to place on future generations. Decommissioned sites will need resources to monitor and maintain the sites to ensure that estimates of releases of radioactivity and risks to the public and the environment remain low and within the design estimates of the decommissioned site.</p>	
<p>In what ways should Canada's policy address the setting of end-state objectives for decommissioning?</p>	<p>Comment 3.3: When setting end-state objectives for decommissioning, Canada needs to consider the Aboriginal rights and title that are recognized and asserted in the area of the decommissioned facility. More specifically, the recognition of these rights and title, or in the case of the MMF of rights, interests, and claims, is important for ensuring appropriate measures for notification, communication, and engagement with the MMF when sites in our Homeland reach an end-state.</p> <p>Comment 3.4: Due to questions about land ownership and land use after the active monitoring phase, the government needs to develop a strategy of consultation and partnership. There is currently no acceptable method to develop objectives for the long-term land use questions (extending 1000's</p>	<p>Recommendation 3.3: Concerning end-state objectives for decommissioning, Canada should establish an engagement protocol with the MMF. This protocol should identify how end-state decommissioning information, including in the case of restricted sites or sites with institutional controls, will be shared, as well as identify how MMF monitors and Métis Citizen scientists will be involved in monitoring activities throughout the life of the decommissioned period, including the institutional control phase. In addition, this engagement protocol should identify:</p> <ul style="list-style-type: none"> • How any releases or exceedances recorded at the site will be communicated to Manitoba Métis Citizens; • How these releases or exceedances will be abated and cleaned up; and



Question	Comment	Recommendation
	<p>years into the future) in consultation with the public and Indigenous organizations, including the MMF. These issues are fundamental to convincing the public and Indigenous organizations and governments of the safety of the site and unrestricted use of the site far into the future.</p>	<ul style="list-style-type: none"> • How rights impacts, including psycho-social effects to Métis harvesters, will be properly addressed. <p>Recommendation 3.4: Parties involved with the decommissioning of a site need to develop objectives for the end-use and desired end state for the site before the decommissioning begins. Decisions related to the decommissioning would then be focused on the site remediation objectives not just the most expedient or inexpensive option for decommissioning. For example, the removal of all radioactive sources to minimize the risk to land users and the environment post-closure grossly oversimplifies a reasonable range of possible remediation objectives. These site objectives need to be determined by all affected parties but must include provisions for participation by the MMF as a rights-bearing Nation. Being involved with the process from the beginning of the decommissioning process and not just informed at the end, would build capacity at the MMF and develop a stronger partnership for the management of the site in the future.</p>



3.4 Comments and Recommendations – Waste Disposal

NRCAN has provided a list of specific questions to consider while reviewing the *Decommissioning* Discussion Paper. Responses to these questions are provided in Table 4 below.

Table 4. Responses to question posed by NRCAN in relation to the Waste Disposal Discussion Paper

Question	Comment	Recommendation
What do you feel are important policy considerations that should influence the choice of disposal approaches by waste owners and should be considered as part of Canada's radioactive waste policy?	<p>Comment 4.1: In instances where an ISD facility involves long-term disposal and/or storage of radioactive waste, then the same policy considerations outlined in Comment 3.1 should be considered and applied.</p> <p>In addition to the considerations outlined in 0, the following additional policy considerations need to be made regarding the selection of waste disposal approaches:</p> <ul style="list-style-type: none"> • The impact the approach may have on current and future exercising of Métis rights in our Homeland, including but not limited to: harvesting, medicinal plant gathering, access to the land and waters for economic, ceremonial, and well-being purposes, and proximity to sites of cultural significance for the Manitoba Métis; • The collection and consideration of Métis knowledge and land use information, as well as input from technical experts retained by the MMF to assess the adequacy of the disposal approach; 	<p>Recommendation 4.1: Please carefully review, consider, and incorporate the policy considerations articulated in Comment 3.1. This includes providing a formal response to the MMF in writing outlining how these considerations were assessed and incorporated into Canada's updated Radioactive Waste Policy.</p> <p>Recommendation 4.2: Any proposed disposal approach which affects the rights or potential land use of Manitoba Métis Citizens must include active participation by the MMF. For disposal sites considered on our territory and of mutual benefit to Canada and the MMF, Canada must allow for the establishment of capacity and trust over several years before expecting an informed decision to proceed with approvals. Independent funding should be provided for us to discuss the technical issues with youth, elders, leadership, and other Manitoba Métis Citizens. Further, provisions must be made to allow for independent and objective experts to be brought in as necessary and as requested by the MMF to support our understanding.</p>



Question	Comment	Recommendation
	<ul style="list-style-type: none"> • The impact the waste disposal approach will have on current and future generations of Manitoba Métis Citizens, including a demonstration of how the approach minimizes the undue burden on future generations as required by principles, set out by the IAEA; and • The efforts taken to avoid, offset, manage, mitigate, and compensate any impacts experienced, both anticipated and unforeseen to Manitoba Métis Citizens, as identified through ongoing consultation and engagement with the MMF. <p>Comment 4.2: Disposal of radioactive material is defined in the Discussion Paper as placement without the intention of retrieval. Instead, the disposal should be viewed as isolation from the biosphere with little chance of radioactivity entering the biosphere in the future and no additional burden on future generations for maintenance or special consideration.</p> <p>It has been shown through years of research at Whiteshell Laboratories that this isolation is feasible by deep disposal in geological structures in the Canadian Shield. Other forms termed “disposal” (e.g. landfill disposal, near-surface disposal, borehole disposal, and ISD) should not be considered permanent disposal because of the</p>	<p>Government agencies involved with the implementation of any disposal concept will include NRCAN, Health Canada, ECCC, CIRNAC, CNSC, DFO, and other departments. The government should speak with a single voice and work with the MMF to address issues and build capacity to understand the concept. The process will take several years.</p>



Question	Comment	Recommendation
	<p>likelihood of radioactivity entering the biosphere, with increased risk to the public and the environment. Two proposals for ISD show releases of tritium a few decades after closure, followed by other nuclides through time. This should be considered a form of storage that might impact the use of the lands and adjacent ground and surface waters well into the future.</p>	
<p>What should be the roles and responsibilities of government, the regulator, and waste owners with regards to radioactive waste disposal facilities, including:</p> <ul style="list-style-type: none"> • Funding • Closure of a disposal facility and its institutional control, and • Indigenous and Public Engagement and involvement in site selection and post-closure? 	<p>Comment 4.3: Maintaining alignment with the “polluter pays” principle is an advisable approach when considering the roles and responsibilities with respect to radioactive waste disposal. The waste owners should ultimately be accountable for the payment and implementation of waste disposal measures.</p> <p>In addition to the roles stemming from the polluter pays principle, another important consideration when looking at the role of government and regulators, is the importance of Ministerial oversight and accountability in the regulation of radioactive waste disposal. Ministerial oversight is important as it provides an accountability mechanism for ensuring government and regulators fulfill their decision-making and oversight responsibilities. As a result, when looking at the scope and mandate of government and regulator roles and responsibilities, this must include a clear mandate for the Minister of Natural Resources and Federal Cabinet in holding the appropriate agencies and regulators (Natural Resources Canada and Canadian Nuclear Safety Commission) accountable</p>	<p>Recommendation 4.3: See recommended roles and responsibilities outlined in Comment 2.3 and provide a formal response to the MMF in writing outlining how these considerations were assessed and incorporated into Canada’s updated Radioactive Waste Policy.</p> <p>In addition to outlining the roles and responsibilities of government, the regulator, and waste owners, NRCAN should endeavour to also outline the roles, responsibilities, and opportunities for consultation and engagement by Métis Nation governments impacted by these waste disposal facilities and activities, including the MMF as the duly authorized representatives of Manitoba Métis Citizens. This includes ensuring avoidance or accommodation or impacts to our section 35 rights, and alignment with the principles and requirements as set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the <i>Impact Assessment Act, 2019 (IAA)</i>.</p> <p>Recommendation 4.4: If the MMF is to be assumed to be a “willing host” for nuclear waste within our territory, the</p>



Question	Comment	Recommendation
	<p>to fulfilling their mandate regarding the safe disposal of radioactive waste.</p> <p>With Ministerial oversight in place, this puts the role of government and regulators as setting out the rules, objectives, policy, and guidance on radioactive waste disposal, including issuing certificates, permits, and/ or licenses in relation to radioactive waste disposal activities.</p> <p>One role that this question fails to consider is the roles, responsibilities, and opportunities of Métis Nation governments impacted by these waste disposal activities. It is important to clearly outline these roles and responsibilities as well as how Duty to Consult considerations will be applied for these activities to ensure that the rights, interests, and claims of impacted Nations, including the Métis Nation, are protected throughout the process. In the case of the MMF, this means adequately aligning measures with those set out in MMF Resolution No. 8.</p> <p>Comment 4.4: The Discussion Paper does not discuss the roles and responsibilities of the parties in terms of radioactive waste disposal. The volumes of low-, intermediate- and high-level waste are expanding, and safety would be improved by consolidating all the waste remotely. The government is the only party with the resources to be able to construct a large disposal facility and needs to be in charge since several of its departments have a role in the environmental and</p>	<p>regulator must follow the same steps and process it is taking with other Nations whose territories include candidate sites for radioactive waste repository sites. This means following the Adaptive Phased Management process used by the Nuclear Waste Management Organization (NWMO).</p>



Question	Comment	Recommendation
	<p>human health risk assessment, the development of the safety case, and regulation of activities.</p> <p>A major question that needs to be addressed is the fate of the land after post closure and institutional control. The land should revert to rights-bearing Nations. If radioactivity is still present on the site, it may lead to restrictions on access. Removal of all radiation sources from the site will lessen the burden on future generations and allow unrestricted access. Otherwise, such loss of access and the resulting impacts to Aboriginal rights and their exercise must be accommodated and quantified based on the very long time horizon associated with site risks.</p>	



4.0 Conclusion

Our review of the four Modernizing Canada's Radioactive Waste Policy Discussion Papers focused on key issues of concern to the MMF, including impacts to the section 35 rights, claims, and interests of the Manitoba Métis; and the potential project interactions with the environment that may lead to effects on the Manitoba Métis. Such effects include effects on the exercise of Métis rights through perceptions about the impacts to land use and harvesting and the related safety of water, land, traditional medicines, or country foods as described in Section 3.0 of this report. As a result of this review, the MMF has identified issues with the Discussion Papers and the broader Modernizing Canada's Radioactive Waste Policy process and, where applicable, has provided recommendations to address these issues.

We have also identified issues with the relationship between the MMF and NRCAN when providing consultation on nuclear files, including the consultation process with respect to the following:

- The MMF is disappointed in the overall approach NRCAN has taken in engaging with the MMF. The MMF was invited to participate in stakeholder engagement sessions, which included a combination of the public, NGOs, and Indigenous rights holders. As the Manitoba Métis are rights holding Citizens, we do not believe this is an appropriate approach to the Crown's fulfillment of its Duty to Consult. NRCAN has a responsibility to consult specifically with the MMF. Further, the MMF was not provided sufficient notice and information to be able to adequately prepare for and participate fully in the engagement sessions held to date. We request a direct bilateral meeting between NRCAN and the MMF to discuss the proposed policy changes and the full impacts on Manitoba Métis Citizens.
- Since there currently is not an established long-term site and solution for storing radioactive waste in Canada, it has led to current licensees developing interim measures and solutions, some of which do not align with the policy goals and objectives Canada has set out regarding the storage and management of radioactive waste. For example, the Whiteshell Laboratories in Pinawa, Manitoba is currently pursuing a waste storage solution that includes In-Situ Decommissioning (ISD) of the WR-1 Reactor. This is contrary to Canada's position on ISD that it is not a preferred option for decommissioning and storage and should not be pursued at this time. This site is located within the Homeland of the Manitoba Métis, in an area where Manitoba Métis Citizens actively exercise their rights through various harvesting and land-based activities. If the MMF is to be assumed to be a "willing host" for nuclear waste within our territory, Canada must follow the same steps and process it is taking with other rights-bearing Indigenous peoples whose territories include candidate sites for radioactive waste repository sites. This means following the Adaptive Phased Management process used by the Nuclear Waste Management Organization (NWMO).
- In addition to concerns related to ISD as a waste management approach, there is also the concern that the guidance and approaches to waste storage facilities outlined within the Discussion Papers do not outline any clear, explicit, or direct opportunities for meaningful involvement of impacted



Métis Nation governments, including the MMF. The involvement of the MMF is particularly important and relevant to:

- The consideration of methods for inspecting and monitoring waste storage facilities, and
- Aligning the radioactive waste storage facility approaches with guidance from the International Atomic Energy Agency Safety guide with respect to “[Ensuring] that both human health and the environment will be protected, both now and in the future, without imposing undue burdens on future generations.”
- As a quasi-judicial independent commission, the CNSC functions as a stand-alone regulator without any ministerial mandated oversight. In other words, the CNSC does not report to a Minister and does not require Ministerial or Cabinet input to approve projects or licenses. Ministerial oversight is an important accountability mechanism for ensuring compliance conditions are met. Although the CNSC has several lifecycle regulation mechanisms, it is important to have oversight and accountability mechanisms outside of the regulator for true independent issues resolution mechanisms to be available. The CNSC and MMF must work together to establish a regulatory road map where appropriate accountability and issues resolution mechanisms are in place. Especially, to address matters that impact access and the future exercise of rights by the Manitoba Métis.

The goal of radioactive waste minimization and the waste hierarchy are principles that the MMF agrees with, as they are focused on a reduction in the footprint and impact of radioactive nuclear waste on humans and the environment.

However, in their implementation, consideration must be made first and foremost to avoid or accommodate any impacts their application would have on the rights, interests, claims, and well-being of the Métis Nation, including the Manitoba Métis. This includes a process and framework for appropriately engaging, involving, and consulting with the MMF as the duly authorized representatives of the Manitoba Métis regarding waste minimization decisions and matters occurring within our Homeland.

We request that the issues and recommendations we have raised throughout this document be the focus of subsequent meetings with NRCan. Moreover, the MMF must be provided with regular updates on the steps that are being taken to address them.



5.0 References

Natural Resources Canada. 2021. Decommissioning Discussion Paper

Natural Resources Canada. 2021. Waste Disposal Discussion Paper

Natural Resources Canada. 2021. Waste Minimization Discussion Paper

Natural Resources Canada. 2021. Waste Storage Facilities Discussion Paper

Manitoba Metis Federation. 2019. Technical Review of the Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2018.

Manitoba Metis Federation. 2020. Technical Review of the Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2019.

