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Oral Presentation

**Written submission from the
Algonquins of Pikwakanagan First
Nation**

In the Matter of the

BWXT Medical Ltd.

Application for a Class IB nuclear substance
processing facility operating licence

Commission Public Hearing

June 9, 2021

Exposé oral

**Mémoire des
Algonquins of Pikwakanagan First
Nation**

À l'égard de

BWXT Medical Ltd.

Demande pour un permis d'exploitation d'une
installation de traitement de substances
nucléaires de catégorie IB

Audience publique de la Commission

9 juin 2021

**AOPFN Written Submission on
Request for Issuance of a Class 1B Licence to BWXT Medical Ltd. for
Operation of Nordion (Canada) Inc.’s Existing Medical Isotopes
Facility**

Date Submitted: April 30, 2021

Public Hearing

Scheduled for June 9-10, 2021

Regarding: Written Submission from Intervenors for Class 1B Licence to BWXT ITG
Canada, Inc. for Operation of Nordion (Canada) Inc.’s Existing Medical Isotopes Facility

Submitted by:
Intervenor – Algonquins of Pikwàkanagàn First Nation

Contact:
Amanda Two-Axe Kohoko
Consultation, Coordinator, Algonquins of Pikwakanagan First Nation
1657A Mishomis Inamo
Pikwakanagan, ON K0J 1X0
Email: consultation@pikwakanagan.ca



*Algonquins of Pikwakanagan
First Nation*

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1.0 Introduction

In December 2018, BWXT ITG Canada Inc. (now BWXT Medical Ltd. - BWXT) submitted an application to the Canadian Nuclear Safety Commission (CNSC) requesting a Class 1B nuclear substance processing facility licence to operate a medical isotopes facility in Kanata, Ontario. The CNSC has solicited input from interested parties, including the Algonquins of Pikwàkanagàn First Nation (AOPFN) on the proposed licence. The AOPFN contracted the Firelight Research Group Inc. (Firelight Group) to perform a screening-level review of the licence application to determine if the proposed undertaking has the potential to result in significant adverse impacts to AOPFN rights and interests. The findings of the Firelight Group’s review and input from AOPFN are summarized in the current document.

The following provides AOPFN’s comments on BWXT’s licence application (the Application) as well as CNSC staff’s recommendation to the Commission, focusing specifically on the degree to which actions to date and planned actions by BWXT and CNSC meet AOPFN’s expectations regarding the Indigenous role in engagement and consultation, monitoring, and oversight of the operations.

AOPFN has received participant funding from the CNSC to prepare this written submission with technical support from the Firelight Group. The following facility is located within the territory of the AOPFN and has the potential to directly impact the lands of the AOPFN:

- BWXT Medical Ltd. (BWXT) Class 1B nuclear substance processing facility in Ottawa, formerly operated by Nordion (Canada) Inc.

AOPFN has Indigenous Knowledge and community insight relevant to the aforementioned project, as well as interests in potential project impacts on their lands and is therefore seeking deeper engagement with the licensees and CNSC through this submission.

This Written Submission is organized as follows:

1. This Introduction
2. About the Algonquins of Pikwàkanagàn First Nation
3. About the Medical Isotopes Facility
4. Anticipated Environmental Performance of the Facility
5. AOPFN Nuclear Sector Requirement and Prior AOPFN Recommendations to the CNSC re: Nuclear Substance Processing Facilities in Canada
6. The Role of Indigenous Knowledge
7. Indigenous Consultation and Engagement
8. Indigenous Involvement in Monitoring
9. Conclusion

AOPFN looks forward to receiving any response materials from the Proponent or CNSC, and reviewing other Intervenor’s written submissions. AOPFN is planning to present oral testimony during the Commission Hearing and expects that our presentation may be adapted, adjusted or may bring forward additional issues and recommendations at the Hearing based on our review of any additional submissions as well as any meetings with CNSC and/or the Licensee.

2.0 Algonquins of Pikwàkanagàn First Nation

AOPFN represents the rights and interests of our First Nation members in our traditional territory. AOPFN is currently working towards negotiating a Final Land Claim Agreement/Settlement with the Ontario Provincial Government and the Canadian Federal Government. We remain mindful that regardless of any final outcomes of that effort, the AOPFN must be prepared to independently act in support of its members’ interests and needs. As our First Nation community is a recognized band under the *Indian Act* it is our responsibility to act responsibly and take this obligation serious and therefore projects within the AOPFN territory require full direct engagement and accommodation of the AOPFN’s rights.

AOPFN members are active harvesters across their territory, and rely on species including large land mammals, fish, and birds for both consumption and cultural use. AOPFN members are concerned about the Projects and their separate and combined long-term effects on the environment and on the resources that they rely on. It is critical to understand that the consent to build and operate these facilities within AOPFN territory was never sought. AOPFN is seeking greater participation and collaboration on facility physical works and activities, monitoring and oversight, with both the Licensee and CNSC going forward.

Since the 1940s, AOPFN territory has seen the rise of Canada’s largest nuclear sector. Until recently, this has been done without AOPFN consultation as well as without AOPFN consent in every instance to date. The importation, production, use, and disposal of radioactive materials has had adverse impacts on the environment in AOPFN territory and constitutes an infringement of AOPFN rights, to a degree that has yet to be assessed let alone been recognized or compensated for. The nuclear sector has brought change to our lands and waters, closing off traditional areas to our access, real and perceived health risks, and alienation and fear associated with the wildlife, vegetation and waters that our members rely on to practice their Algonquin culture and way of life on the land.

As priority rights holders under the *Constitution Act, 1982*, and as the traditional stewards of the land, these impacts on AOPFN rights and interests have always been and remain unacceptable to us as a people.

With Canada’s rising recognition that reconciliation with Indigenous peoples is essential to Canada’s future, and the embracing of the United Nations’ *Declaration on the Rights of Indigenous Peoples (UNDRIP)*, we are hopefully entering a new era. AOPFN has developed the recommendations and requirements below to reflect its expectations as a Nation, to share openly and transparently with Canada and all proponents who would seek to build, conduct, and decommission nuclear sector-related projects on AOPFN territory.

3.0 About the BWXT Class 1B Medical Isotopes Facility

The following facility is located within the territory of the AOPFN and has the potential to directly impact the lands of the AOPFN:

- BWXT Medical Ltd. (BWXT) Class 1B nuclear substance processing facility in Ottawa, formerly operated by Nordion (Canada) Inc.

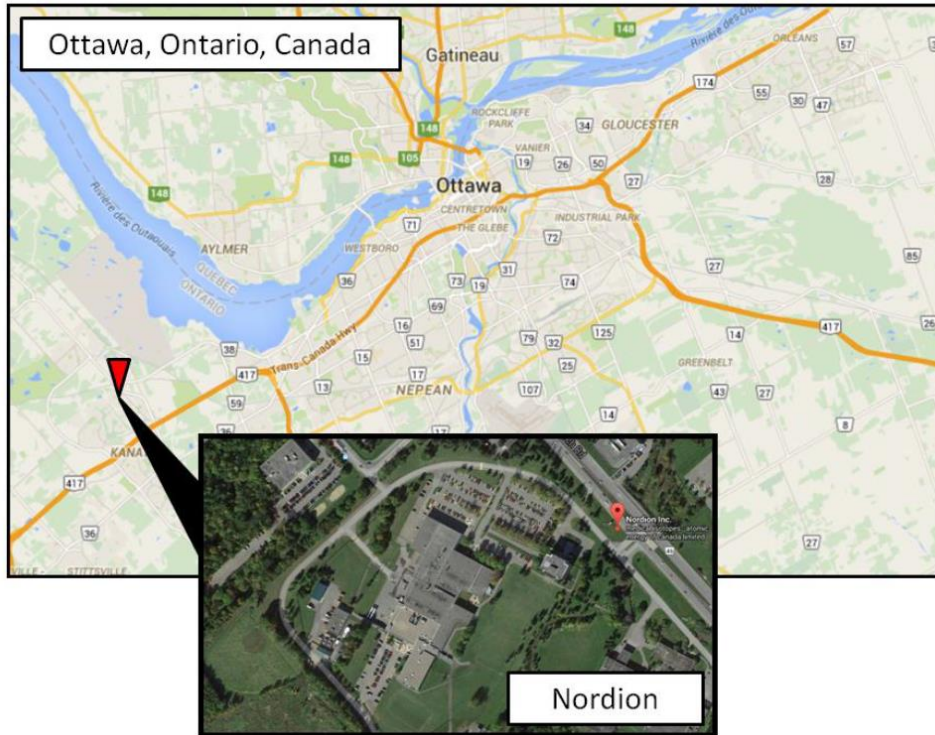
The activities described in the BWXT Class 1B licence application focus on the production of medical isotopes. All of the activities currently occur within an existing nuclear substance processing facility operated by Nordion (Canada) Inc. (Nordion) under a pre-existing CNSC licence held by Nordion. Currently, BWXT Medical workers work at the medical isotope facility as subcontractors to Nordion. If issued a licence, BWXT will be the licensee responsible for the safe operation of the medical isotope facility.

All of the licensed activities proposed by BWXT are currently authorized to be carried out at the facility (i.e., under Nordion’s existing licence). In this respect, the licence application does not involve any significant changes to the activities that occur at the site. Further, although BWXT is a new applicant, the Kanata radioisotope facility has been in operation for the last several decades. It is recognized that this facility historically produced over 60% of the global supply of medical isotopes which are used for diagnostic imaging and radiotherapy. In this regard, the facility has and will continue to play an important role in the identification and treatment of life-threatening health conditions such as cancers and heart disease. This is a beneficial activity that AOPFN members appreciate and occasionally are recipients of direct benefit from as patients in the Canadian health care system.

3.1 Project Location

As shown in Figure 1, BWXT’s facilities are located in Kanata, approximately 115 km east and downstream of AOPFN’s primary residential reserve at Golden Lake. The facilities are situated within an urban environment (refer to Figure 2 for an aerial view).

Figure 1: Location of Nordion (Canada) Inc. Class IB facility



Source: CNSC Commission Member Document 21-H5 (10 March 2021)

Figure 2: Aerial view of the Nordion facility (highlighted in blue)



Source: CNSC Commission Member Document 21-H5 (10 March 2021)

4.0 Anticipated Environmental Performance

AOPFN has done a screening level review of the proposed Application and CNSC staff recommendation materials and has determined that the Class 1B nuclear substance processing facility has a low likelihood for significant adverse impacts on AOPFN rights and interests. The screening has determined that:

- The proposed activities are required for the production of medical isotopes that will have a significant positive impact on human health;
- The proposed activities are generally consistent with activities that have been demonstrated to have negligible negative impacts on human health and the environment;
- The proponent will use a robust and effective Management System for Safety that has been proven to be effective through existing and ongoing operations; and
- The CNSC has established an adequate oversight program that is appropriate for the nature of the activities associated with the proposed license.

Based on our initial review of the data provided in the Application and recommendations prepared by CNSC Staff, it appears that the existing facility is already meeting the standards set by CNSC for the protection of the health and safety of workers, the public and the environment, and with BWXT adopting the existing facility's plans, policies and programs, this can be reasonably expected to continue.

Based on these determinations, AOPFN has not identified any evidence indicating that the proposed undertaking might have significant adverse impact on the rights and interests of the AOPFN.

While we understand that none of the lines of evidence considered by the CNSC identified any concerns with the facilities, however, we are concerned that the Application and the regulatory

oversight process did not and do not make adequate steps to include or consider Indigenous Knowledge and AOPFN’s expectations regarding Indigenous consultation, engagement, and monitoring. This is discussed further in Sections 6 through 8 of our submission.

5.0 AOPFN Nuclear Sector Requirements and Previous Recommendations to CNSC

In reviewing the Application and supporting material (e.g., records of engagement with BWXT) and Commission Member Document materials from CNSC staff, AOPFN compared those materials to AOPFN’s expectations re: nuclear sector projects, as well as prior recommendations made by AOPFN to the CNSC in relation to nuclear substance processing facilities, including the Nordion/BWXT facility.

5.1 AOPFN Nuclear Sector Requirements

AOPFN territory has one of the highest concentrations of nuclear-related projects in Canada. In the past and in some cases up to the present day, the federal government and proponents of nuclear-related projects, have not meaningfully engaged AOPFN in many if any aspects of planning, assessment, monitoring or management of nuclear-related projects. This has contributed to the accumulation of multiple areas with radioactive liabilities on AOPFN territory, as well as alienation, fear, stigma, and contamination effects on our people as a result of real and perceived changes to the environment.

As a result, AOPFN has developed a strong and clear set of expectations for any nuclear-related physical works and activities in our territory. AOPFN expects that Proponents seeking to conduct a nuclear sector physical work or activity¹ in AOPFN territory, will adhere to the following requirements:

1. Adherence to AOPFN’s Consultation and Engagement Protocol, including deep engagement by the Proponent with AOPFN;
2. Commitment to cover all reasonable costs of AOPFN engagement in relation to the planning, assessment, and licencing of the proposed physical work and activity, including process and studies costs as required, through a Contribution Agreement negotiated as early as possible in the planning stage for the proposed project;
3. Commitment to conduct the environmental impact assessment according to the highest current standard of law and practice, and to respect and support AOPFN’s expectations for the Nation’s involvement in that assessment;
4. Commitment to involve AOPFN in a meaningful way in monitoring of the proposed project. This includes both independent Indigenous monitoring as well as in the CNSC’S Independent Environment Monitoring Program;
5. Adherence to the requirements of UNDRIP, including but not limited to adhering to free, prior, and informed consent decisions made by AOPFN in relation to the project;

¹ For greater clarity, this includes any new physical work and activity, or relicensing of existing facilities, that involves the importation, storage, disposal, handling, manipulation or creation of radioactive materials, whether for research, energy production, medical or other purposes, and includes decommissioning of existing facilities that meet the above criteria.

6. Proponent willingness to work with AOPFN to develop a Project-specific AOPFN Benefits Maximization Plan for employment, training and business procurement opportunities;
7. Evidence of adherence to AOPFN’s “Principles” related to nuclear sector projects (see Annex 1);
8. Financial contributions, commensurate with the scope of the proposed physical work and activity, to support AOPFN’s Guardian Program, AOPFN’s Risk Communication Program, and AOPFN cultural protection and promotion programming;
9. Strong efforts to collect and integrate Indigenous Knowledge into Project assessment materials; and
10. A role for AOPFN in planning, management (including adaptive management) and oversight of the Project, including for example a role for AOPFN in the definition of end land use goals and criteria and closure planning for the Project, and a role for AOPFN regarding how waste from the facility should be handled, if it is going to be stored on AOPFN lands.

We encourage BWXT to engage with AOPFN on the above expectations prior to the Commission Hearing. No direct engagement on these items for exception a site visit that took place in 2019 at the BWXT facility in Kanata; the engagement record with BWXT is primarily a set of email correspondence with the provision of general information by BWXT to AOPFN.

5.2 Prior AOPFN Recommendations to CNSC re: Nuclear Substance Processing Facilities

At the November 2020 CNSC Public Meeting for the *Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities in Canada: 2019*, referred to hereafter as “AOPFN’s November 2020 submission”, AOPFN provided a list of recommendations,² which are relevant to consideration of the BWXT Application:

1. AOPFN recommends that CNSC work with AOPFN and other Indigenous groups to develop methods for the meaningful inclusion of Indigenous Knowledge in regulatory oversight processes;
2. AOPFN recommends that CNSC work with AOPFN to identify more frequent and funded engagement opportunities (including involvement of AOPFN Knowledge Keepers and AOPFN leadership) concerning nuclear substance processing facilities within AOPFN territory;
3. AOPFN recommends that CNSC work with Indigenous groups to improve transparency and methods for accessing funding for post-environmental assessment engagement activities such as monitoring;
4. AOPFN recommends that CNSC work with Indigenous groups to develop indicators and metrics for reviewing effective Indigenous engagement;
5. AOPFN recommends the reporting on Indigenous participation in the Independent Environmental Monitoring Program (IEMP) in all future regulatory oversight reports;
6. AOPFN recommends that CNSC further engage with AOPFN on funded opportunities for AOPFN participation in the IEMP; and

² Algonquins of Pikwàkanagàn First Nation (2020). *AOPFN Written Submission on Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities in Canada: 2019*. Submitted to the Canadian Nuclear Safety Commission, November 16, 2020.

7. AOPFN recommends that CNSC work with AOPFN and other Indigenous Groups to develop funded meaningful roles for Indigenous monitors in CNSC compliance and verification monitoring.

In response to an email query from AOPFN in April, 2021, CNSC staff has indicated they have made some efforts to increase adherence to these recommendations in 2020-21. CNSC staff is encouraged, prior to the BWXT Hearing, to flag for AOPFN how these recommendations should or will be applied in relation to the BWXT license.

With these requirements and previous recommendations in mind, we now turn to outstanding issues that AOPFN has with the adequacy of the Application review process in relation to three main and critical themes:

- The role of Indigenous Knowledge in the Proponent’s Application and CNSC Staff Comments (section 6);
- The degree of engagement and consultation with AOPFN in the process to date (Section 7); and
- Indigenous involvement in monitoring of the Project (Section 8).

6.0 The Role of Indigenous Knowledge

No meaningful reference to Indigenous knowledge integration is provided in any of the documents on the public record for the BWXT license Application.

Neither the Proponent’s Application nor the CNSC staff filing demonstrate evidence that Indigenous Knowledge was sought or integrated into the considerations. And there are no license conditions proposed by CNSC staff related to Indigenous knowledge, for example nothing that would require the Proponent to collect or otherwise consider Indigenous knowledge on an ongoing or interval basis for the life of the proposed license.

The meaningful inclusion of Indigenous Knowledge in all stages of a Project lifecycle would improve the credibility and reliability of regulatory processes such as this for AOPFN members. We note that the safety and control areas used to evaluate projects do not include steps for collecting and considering Indigenous Knowledge, an issue flagged in AOPFN’s November 2020 submission.

AOPFN understands that Canada has indicated it recognizes the importance of Indigenous Knowledge for regulatory decisions as the 2019 discussion paper, *Indigenous Knowledge Policy Framework for Proposed Project Reviews and Regulatory Decisions* states that:

“Indigenous knowledge improves federal decision-making and strengthens the rigour of project reviews and regulatory decisions. Indigenous knowledge enables federal organizations to have a more complete understanding of Indigenous world views, Indigenous cultures, the environment, and the social, health and economic conditions of Indigenous peoples” (p.2).³

³ Government of Canada. 2019. Discussion paper: Indigenous Knowledge Policy Framework for Proposed Project Reviews and Regulatory Decisions. Available at: <https://www.canada.ca/en/impact-assessment->

We also note that another lifecycle regulator, the Canadian Energy Regulator (CER) is already taking steps to respect and improve their consideration of Indigenous Knowledge. In a recent news release the CER has acknowledged the importance of Indigenous Knowledge:

*“The CER acknowledges the inseparable connection Indigenous peoples have with the land, air, water and the animals that call them home. The collection of Indigenous Knowledge is an important part of the CER’s adjudication processes as it recognizes and provides for the sharing of the unique cultures, knowledge and histories of Indigenous peoples” (para 4).*⁴

AOPFN understands that the CNSC has recognized the importance of Indigenous Knowledge for regulatory decisions as is indicated in the 2020 draft policy, *Indigenous Knowledge Policy Framework* (the Policy), which states:

*“The Canadian Nuclear Safety Commission (CNSC) acknowledges the importance of working with and including Indigenous knowledge (IK) alongside western scientific and regulatory information contained in its assessments and regulatory processes, as appropriate. Indigenous ways of knowing and cultural context enhance the CNSC’s understanding of the potential impacts projects will have and strengthen the rigour of project reviews and regulatory oversight. This framework is intended to clearly articulate the CNSC’s approach to working with Indigenous peoples and their knowledge, and it is consistent with the federal approach and framework for working with IK” (p. 3).*⁵

The Policy needs further improvement. In March 2021, AOPFN sent the CNSC recommendations for improvement to the Policy, to which CNSC staff responded. It is AOPFN’s understanding that the Policy is in the process of being finalized, and that the document will be treated as an evergreen document; modifiable as best practices, approaches, and context on Indigenous Knowledge evolves. AOPFN would like to see greater effort by CNSC to seek, understand, and include consideration of Indigenous Knowledge in all regulatory decisions and reviews for Projects.

Recommendation #1: AOPFN recommends that the following additional updates be made to the Indigenous Knowledge and Policy Framework:

- **AOPFN and other Indigenous groups be involved as partners from the very outset in the development of the Policy;**
- **AOPFN would like to see language that reflects that Indigenous Knowledge is of equal importance to western science in CNSC processes and decision-making, and that CNSC will make reasonable efforts to balance these ways of knowing in its process decisions;**

[agency/services/policy-guidance/practitioners-guide-impact-assessment-act/indigenous-knowledge-under-the-impact-assessment-act.html](https://www.cer-rec.gc.ca/en/about/news-room/whats-new/2020/oral-indigenous-knowledge-provided-commission-in-virtual-hearing-as-part-its-consideration-trans-mountain-expansion-project-detailed-route-hearings.html)

⁴ Canadian Energy Regulator. July 2020. Oral Indigenous Knowledge provided to the Commission in virtual hearing as part of its consideration of the Trans Mountain Expansion Project detailed route hearings. Available at: <https://www.cer-rec.gc.ca/en/about/news-room/whats-new/2020/oral-indigenous-knowledge-provided-commission-in-virtual-hearing-as-part-its-consideration-trans-mountain-expansion-project-detailed-route-hearings.html>

⁵ CNSC. 2020. Indigenous Knowledge Policy Framework.

- **CNSC must make a clear statement that Indigenous Knowledge holders are subject matter experts, and that the re-interpretation of Indigenous Knowledge by non-knowledge holders is unacceptable;**
- **CNSC must include a recognition that Indigenous communities have full control over and ownership of Indigenous Knowledge as their intellectual property;**
- **CNSC must show how it will engage Indigenous Knowledge holders in decision-making processes as well as in the Indigenous Knowledge Policy Framework;**
- **Procedures for situations when Indigenous groups refuse to provide access to Indigenous Knowledge, or request that Indigenous Knowledge not be written down, and how the CNSC will go about ensuring that Indigenous Knowledge is still a part of the assessment process;**
- **CNSC staff must consult with Indigenous groups to clarify expectations and procedures if an Indigenous Knowledge protocol is not apparent;**
- **CNSC is to engage in project-specific Indigenous Knowledge and engagement plans;**
- **CNSC is to revamp the hearing process to allow for additional time for Indigenous panels to present extensively on their Indigenous Knowledge;**
- **Indigenous Knowledge must be demonstrated for all VCs unless a justifiable rationale is provided for exclusion;**
- **Indigenous Knowledge will be integrated into all phases of the assessment of relevant VCs;**
- **CNSC should identify its openness to integrating Indigenous Knowledge data collection programs into its Independent Environmental Monitoring Program (IEMP), including pre- and post-project collection of Indigenous Knowledge observations; and**
- **CNSC should set up a quality control program for how CNSC staff and third parties use Indigenous Knowledge inputs and build them into their evidentiary submissions.**

AOPFN looks forward to having these additional recommendations incorporated into the Policy in order to ensure the meaningful inclusion of Indigenous Knowledge in regulatory oversight processes.

Certain additional recommendations identified previously in the AOPFN November 2020 submission, have not been captured in changes to the way that CNSC conducts business. For example, the CNSC stated in their April 22, 2021 feedback that “the CNSC’s approach to working with Indigenous peoples and their knowledge, in a way that is consistent with the federal approach and framework for working with Indigenous Knowledge”. AOPFN would like to ensure that, in accordance with the previously made recommendations, Indigenous Knowledge is integrated in a way that aligns with AOPFN standards and practices.

Recommendation #2: AOPFN recommends that CNSC staff, BWXT and the Commission itself consider and further engage with AOPFN and other impacted Indigenous Nations on what license conditions could entrench the need to consider Indigenous knowledge alongside western scientific knowledge, in the data collection, analysis and decision-making related to Project monitoring and management moving forward.

The total absence of any such conditions in the draft license is indicative that Indigenous knowledge still is not a priority for these parties; greater efforts must be made to make room in

the CNSC’s regulatory system for Indigenous knowledge to find a home and make a difference. Only through such actions will reconciliation be made real.

7.0 Indigenous Consultation and Engagement

Section 4.1 of the CNSC Staff’s submission to the Commission on this matter (.pdf e-Doc 6496157), covers CNSC staff’s analysis of “Indigenous Consultation and Engagement”. The CNSC Staff concluded that “The CNSC conducted an engagement and outreach process in relation to this licence application with all interested Indigenous groups and is committed to meaningful, ongoing engagement with Indigenous groups that have an interest in CNSC regulated facilities and activities.” (pg. 53) The CNSC staff concludes that no license conditions related to this topic are required, and indeed we have encountered no license conditions proposed that are related to Indigenous engagement or consultation moving forward.

AOPFN is encouraged by the opportunity provided through participant funding to participate in the review of the license application. We understand that CNSC is committed to meeting its consultation obligations and continues to build relationships with Indigenous peoples with interests in Canada’s nuclear processing facilities operating within their territory.

However, AOPFN is somewhat disappointed that the portion of the CNSC staff submission on this matter is very short and lacks either detail or any recommended conditions. We would have thought that the recommendations AOPFN has made – for example our November 2020 submission recommendations noted previously, and our recommendations related to incorporation of Indigenous knowledge provided earlier this year to the CNSC, would have prompted conditions to the license that embrace additional opportunities for Indigenous involvement in CNSC regulatory processes exist. AOPFN hopes to have more involvement in the Project, that extends beyond a review of the license documents, and may require license conditions to have these expectations come to fruition. Specifically:

Recommendation #3: AOPFN seeks a license condition identifying the need for the Proponent to engage affected Indigenous groups in defining end land use goals and criteria for the facility, and in Project closure planning.

Recommendation #4: AOPFN seeks greater understanding of and involvement in decisions related to how waste from the facility should be handled, if it is going to be stored on AOPFN’s traditional territory. This requires a license condition or other venue for this critical issue to be subject to compliance and enforcement.

Specifically re: the management of waste from this facility, this is an issue very important to AOPFN leadership and membership. AOPFN has previously raised concerns about importation, transportation, storage and disposal of radioactive waste in our traditional territory. To date, proponents and the CNSC have not engaged AOPFN meaningfully on this issue. AOPFN is concerned that CNSC often makes decisions regarding projects within our territory without adequate consultation with the Nation. We note that our Free, Prior, and Informed Consent have not been sought in relation to this Project, nor in relation to where radioactive wastes from it go and how they are stored and disposed of.

Recommendation #5: AOPFN recommends adherence by both CNSC and BWXT to the requirements of the United Nations *Declaration on the Rights of Indigenous Peoples*,

including Free, Prior and Informed Consent by Indigenous peoples for regarding projects that involve the management, storage and disposal of radioactive and other hazardous wastes.

While we encourage both CNSC and BWXT to engage us on these topics moving forward, the surest means to require Indigenous involvement in such project planning, monitoring and management mechanisms is for the Commission to require them through license conditions. Without such conditions, compliance and enforcement with the spirit and intent behind these conditions, which is to fully and properly engage Indigenous peoples in management of facilities within their territory, may not occur.

7.1 CNSC Staff Engagement

AOPFN appreciates that CNSC has responded to AOPFN’s recommendation that CNSC include additional funded engagement opportunities concerning nuclear substance processing facilities within AOPFN territory.

Funding capacity for engagement also remains a key area of concern. While the Participant Funding Program is usually available to help support Indigenous Participation in Hearings, accessing funding for other engagement activities can prove difficult. AOPFN is seeking involvement and engagement during the entire lifecycle of the Project located in our territory which includes participation in monitoring and regulatory oversight. AOPFN does not have the capacity to pay for these kinds of activities out of pocket. Further, not all funding opportunities are openly communicated nor is it clear how much funding is available to be applied for. The need to seek and request additional funding can be a substantial burden on a First Nation already capacity constrained.

7.2 Licensee Engagement Activities

In our November 2020 submission on nuclear substance processing facilities, including the facility in question here, AOPFN raised concerns about CNSC’s approach for reviewing Licensee engagement with Indigenous groups. Specifically, it appeared that CNSC staff only confirmed that the licensees have Indigenous engagement and outreach programs and did not review or report on the implementation or success of those programs. This same situation appears to have occurred in Section 4.1 of CNSC staff’s report to the Commission on the BWXT facility. AOPFN has not been engaged by either BWXT or CNSC as to the adequacy of engagement to date (including adequacy of engagement of AOPFN by the Project over its life cycle to date), or the likelihood that Indigenous engagement and outreach programs will be adequate moving forward. AOPFN has expressed interest that a community meeting is required, and the request is still outstanding. Such information gathering is important because, frankly, the expectations for meaningful Indigenous engagement by proponents and the Crown have changed markedly in recent years and are still evolving.

Recommendation #6: AOPFN recommends a condition to the license requiring BWXT to report on an annual basis to the CNSC on how it has engaged and supported area Indigenous groups in Project planning, monitoring and management, with that annual report subject to Indigenous groups’ verification prior to it being filed with the CNSC.

Recommendation #7: CNSC to develop deeper engagement requirements for the Proponent with Indigenous groups in its forthcoming review of REGDOC-3.2.2

Indigenous Engagement, including through a meaningful, extensive and funded consultation process with Indigenous peoples impacted by the nuclear sector.

Echoing AOPFN’s Recommendation 4 from our November 2020 submission, we would like to see greater Indigenous involvement in the development of indicators and metrics for reviewing effective Indigenous engagement. Evaluation of Indigenous engagement needs to be strengthened as part of regulatory oversight.

Recommendation #8: AOPFN recommends that CNSC work with Indigenous groups to develop indicators and metrics for reviewing effective Indigenous engagement.

AOPFN acknowledges and appreciates recent engagement opportunities provided by the Proponent. To their credit, BWXT identified in some of its correspondence that it is committed to keeping AOPFN informed as a priority and that BWXT wish to foster timely, transparent, and meaningful engagement. However, AOPFN is seeking improved engagement with the Proponent than what has generally been provided to date, which we would describe as “notification only” engagement in most instances. Better engagement for AOPFN would include the following:

- More dedicated efforts to engage on a bilateral basis, rather than providing opportunities for general webinars;
- Identification of an individual single liaison person from BWXT to engage with AOPFN, rather than multiple staff members;
- Increased engagement on Project operations and discussion of real benefits and opportunities for AOPFN members, and the identification of barriers to achieving these benefits;
- Better effort to seek input on how AOPFN wants to be involved in the facilities and be open to collaborative input on engagement activities; and
- Proactive provision of adequate funding required for real and meaningful participation in engagement activities, including the provision of funding for Traditional Knowledge studies.

AOPFN looks forward to working with BWXT to improve engagement efforts and we encourage BWXT to engage us on this prior to the Hearing so that we can update the Commission on any progress at that time.

AOPFN also notes that the previous Recommendation #6 to have the Licensee report to the CNSC on an annual basis regarding engagement outcomes, verified by Indigenous groups, would assist in ensuring compliance with the aspirations stated by the Proponent, for timely, transparent and meaningful engagement with Indigenous peoples.

8.0 Indigenous Involvement in Monitoring Programs

AOPFN believes that monitoring inclusive of Indigenous groups is critical for multiple reasons, including better integration of Indigenous knowledge alongside western science, reconciliation through retrenchment of Indigenous governance and stewardship in their traditional territories, skill development for Indigenous monitors, and reduction in fear and stigma associated with the nuclear sector through communal learning and increased trust in the results reported by Indigenous peoples themselves. This is being recognized at other nuclear facilities in AOPFN territory, including at the Chalk River Laboratories. Despite this recognition, only minimal

opportunities for greater participation by Indigenous groups in CNSC monitoring activities have been identified to date, and BWXT has identified no role for Indigenous peoples in its monitoring programs in its filings. Neither the CNSC staff submission nor the license Application from BWXT discuss the need for Indigenous participation in CNSC’s Independent Environmental Monitoring Program (IEMP), or any commitments by BWXT to support or engage Indigenous monitoring programs.

AOPFN recommends that BWXT engage with AOPFN regarding AOPFN’s fledgling Guardian Program prior to the Hearing; we are happy to discuss opportunities for BWXT to support and integrate this Guardian Program in relation to its Project.

8.1 Independent Environmental Monitoring Program

AOPFN’s previous Recommendation 5 made in its November 2020 submission focused on the need for reporting on Indigenous participation in the IEMP in all future regulatory oversight reports. AOPFN understands from subsequent email correspondence with the CNSC staff, that CNSC staff are now committed to engaging with the AOPFN on IEMP activities moving forward and that CNSC will share future funding opportunities with regards to AOPFN participation in the IEMP. CNSC staff has indicated it would like to further discuss the development of a long-term relationship Terms of Reference for engagement with AOPFN, which would specify areas where AOPFN and CNSC staff can further collaborate, such as engagement activities and funding opportunities related to CNSC-regulated facilities within AOPFN territory. These are definitely steps in the right direction.

AOPFN understands that there may be future opportunities for AOPFN to collaborate and involve AOPFN members (inside or outside the Guardian Program) in the Commission’s IEMP. For clarity, for AOPFN, real participation involves activities beyond simply reviewing reports.

AOPFN recommends that the participation of Knowledge Keepers and Elders extend beyond the reviewing of reports and involved real on-the-land participation activities in CNSC’s IEMP. We also encourage CNSC staff to engage us in further discussion re: whether the IEMP in relation to the BWXT facility will involve AOPFN members, and in what fashion, preferably before the upcoming Hearing so that we can update the Commission on the status of this initiative.

While there is currently a CNSC IEMP, in general AOPFN would like to see that Projects include independent Indigenous monitoring programs as well. For AOPFN members, the credibility of CNSC IEMP results are not particularly high. This is in part due to mistrust that has developed from many decades of Crown-Indigenous relations. Having AOPFN members conducting their own independent monitoring, having AOPFN “eyes and ears” on the ground, can go a long way to improving the credibility of monitoring results and reducing fear and stigma associated with nuclear facilities. AOPFN recognizes that the level of involvement of AOPFN members in monitoring differs between facilities of different locations and risk profiles. The likely involvement of AOPFN required for the BWXT facility would need to reflect is relatively low risk profile.

Recommendation 9: AOPFN requests that the Commission direct CNSC staff to engage impacted Indigenous groups in a meaningful way in monitoring and management of the proposed project, and report on the results to the Commission, with reports verified by the Indigenous groups involved.

AOPFN also recommends that CNSC further engage with AOPFN on funded opportunities for AOPFN participation in the IEMP.

AOPFN also requests that BWXT provide support for our fledgling Guardian Program and engage AOPFN in dialogue on whether and what type of Guardian activities would make sense in the context of this Project.

8.2 Compliance and Verification Monitoring

AOPFN believes there are real opportunities for Indigenous involvement in CNSC compliance and verification monitoring. Providing funding for and working with Indigenous groups to develop roles for Indigenous monitors in CNSC monitoring would also support the improved consideration of Indigenous Knowledge in relation to nuclear sector projects.

AOPFN understands that the CER (another life-cycle regulator) has taken steps to include Indigenous monitors in compliance monitoring. The CER is committed to increasing Indigenous participation in their regulatory oversight of Canada’s energy infrastructure through collaboration with Indigenous Advisory and Monitoring Committees (IAMCs) and through the involvement of Indigenous groups in compliance monitoring. The CER is also starting to introduce joint training sessions so that non-indigenous CER Inspection Officers can learn from Indigenous Monitors.⁶

Recommendation #10: AOPFN recommends that CNSC work with AOPFN and other Indigenous Groups to develop funded meaningful roles for Indigenous monitors in CNSC compliance and verification monitoring, including for but not limited to the BWXT facility.

9.0 Conclusions

AOPFN appreciates the opportunity to provide our comments and recommendations in the interest of building a regulatory process for nuclear projects in our traditional territory that embraces Canada’s commitment to reconciliation with Indigenous peoples and commitments to implement UNDRIP. To address the concerns identified in this submission regarding the consideration of Indigenous Knowledge, Indigenous Consultation Engagement, and Indigenous involvement in Monitoring, AOPFN has formally recommended the following from the CNSC:

Recommendation #1: AOPFN recommends that updates be made to the Indigenous Knowledge and Policy Framework as per the 13 bulleted recommendations made at pp.10 and 11 of this submission.

Recommendation #2: AOPFN recommends that CNSC staff, BWXT and the Commission itself consider and further engage with AOPFN and other impacted Indigenous Nations on what license conditions could entrench the need to consider Indigenous knowledge alongside western scientific knowledge, in the data collection, analysis and decision-making related to Project monitoring and management moving forward.

Recommendation #3: AOPFN seeks a license condition identifying the need for the Proponent to engage affected Indigenous groups in defining end land use goals and criteria for the facility, and in Project closure planning.

⁶ Canadian Energy Regulator. September 2020. Indigenous Monitoring. Available at: <https://www.cer-rec.gc.ca/en/consultation-engagement/indigenous-engagement/indigenous-monitoring.html>

Recommendation #4: AOPFN seeks greater understanding of and involvement in decisions related to how waste from the facility should be handled, if it is going to be stored on AOPFN’s traditional territory. This requires a license condition or other venue for this critical issue to be subject to compliance and enforcement.

Recommendation #5: AOPFN recommends adherence by both CNSC and BWXT to the requirements of the United Nations *Declaration on the Rights of Indigenous Peoples*, including Free, Prior and Informed Consent by Indigenous peoples for regarding projects that involve the management, storage and disposal of radioactive and other hazardous wastes.

Recommendation #6: AOPFN recommends a condition to the license requiring BWXT to report on an annual basis to the CNSC on how it has engaged and supported area Indigenous groups in Project planning, monitoring and management, with that annual report subject to Indigenous groups’ verification prior to it being filed with the CNSC.

Recommendation #7: CNSC to develop deeper engagement requirements for the Proponent with Indigenous groups in its forthcoming review of REGDOC-3.2.2 Indigenous Engagement, including through a meaningful, extensive and funded consultation process with Indigenous peoples impacted by the nuclear sector.

Recommendation #8: AOPFN recommends that CNSC work with Indigenous groups to develop indicators and metrics for reviewing effective Indigenous engagement.

Recommendation 9: AOPFN requests that the Commission direct CNSC staff to engage impacted Indigenous groups in a meaningful way in monitoring and management of the proposed project, and report on the results to the Commission, with reports verified by the Indigenous groups involved.

Recommendation #10: AOPFN recommends that CNSC work with AOPFN and other Indigenous Groups to develop funded meaningful roles for Indigenous monitors in CNSC compliance and verification monitoring, including for but not limited to the BWXT facility.

AOPFN has also made less formal (i.e., not numbered) recommendations and requests to CNSC staff and BWXT in the material discussed in this submission. We encourage both parties to engage with us on these topics prior to the forthcoming hearing.

AOPFN looks forward to discussing our recommendations further at the Commission Hearing in June 2021 and to hearing from CNSC staff and BWXT on issues flagged herein, in the interim.

Annex 1 – AOPFN Principles Related to Nuclear Sector Projects

AOPFN Principle
1. As a self-governing Indigenous Nation, AOPFN’s right of free, prior and informed consent for nuclear projects will be respected
2. AOPFN, as a government retrenching its rightful stewardship and governance responsibilities, will have a co-management role for nuclear projects in AOPFN territory
3. All projects will contribute positively to educational opportunities critical to AOPFN self-sufficiency, governance and relationships with other parties
4. To meet the value of sustainable development, risks will not be passed on to future generations; radioactive materials cannot ever be abandoned and forgotten in AOPFN territory
5. AOPFN will have a meaningful role in monitoring the effects of nuclear projects in AOPFN territory
6. Indigenous knowledge (IK) will be used alongside western science in planning, monitoring and management of nuclear facilities; Indigenous monitors will require access to skills in both IK and technical monitoring fields
7. Water must be clean, readily accessible, and trusted by AOPFN members
8. No nuclear wastes will be moved into or out of AOPFN territory without AOPFN explicit permissions
9. AOPFN members’ rights and connection/relationship to the lands and waters will be protected and promoted, and AOPFN will play a key role in this process
10. Wildlife and wildlife habitat will be protected and promoted, and AOPFN will play a key role in this process
11. AOPFN will be meaningfully involved in all aspects of decision-making related to nuclear project planning
12. AOPFN’s cultural and spiritual values and resources will be vigilantly protected and promoted, and AOPFN will play a leading role in this process
13. AOPFN will be accommodated for Project-specific and cumulative impacts that do occur as a result of nuclear projects, on biophysical and human environmental values and AOPFN rights
14. AOPFN must be provided adequate and timely access to funding and resources for exercise of its jurisdiction in relation to nuclear projects
15. AOPFN has the right to preferentially economically benefit from projects that occur on its territory; in order to do so, systemic barriers need to be proactively removed
16. Nothing is more important to AOPFN members than safe and plentiful country foods and resources. Impacts on these will be monitored and communicated to AOPFN members in ways that have meaning to them
17. Reconciliation between Indigenous peoples and Canada will underpin the Nation-to-Nation relationship; each proponent to present to AOPFN and work to refine a "Reconciliation Plan", showing how they will contribute to making life better and a healthy and mutually beneficial relationship with AOPFN.