



**Final submission from the  
Mitchikanibikok Inik,  
Algonquins of Barriere Lake**

**Mémoire définitif des  
Mitchikanibikok Inik,  
Les Algonquins du Lac Barrière**

In the Matter of the

À l'égard des

**Canadian Nuclear Laboratories (CNL)**

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**Laboratoires Nucléaires Canadiens (LNC)**

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Application from the CNL to amend its  
Chalk River Laboratories site licence to  
authorize the construction of a near surface  
disposal facility

Demande des LNC visant à modifier le permis  
du site des Laboratoires de Chalk River pour  
autoriser la construction d'une installation de  
gestion des déchets près de la surface

**Commission Public Hearing  
Part 2**

**Audience publique de la Commission  
Partie 2**

**May 30 to June 3, 2022**

**30 mai au 3 juin 2022**

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## NEAR SURFACE DISPOSAL FACILITY

### Final Submission of the Mitchikanibikok Inik

June 26, 2023



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## CANADIAN NUCLEAR SAFETY COMMISSION

**IN THE MATTER OF** the *Nuclear Safety and Control Act*, R.S.C. 1985, c. N-7 as amended, and the regulations made thereunder;

**IN THE MATTER OF** the *Canadian Environmental Assessment Act*, 2012, S.C. 2012, c. 37, as amended, and the regulations made thereunder;

**IN THE MATTER OF** the *United Nations Declaration Act*, 2021, as amended, and the 2022 Action Plan made thereunder;

**IN THE MATTER OF** an application by Canadian Nuclear Laboratories application to amend its Chalk River Laboratories site license to authorize the construction of a near surface disposal facility;

**IN THE MATTER OF** Hearing Order 2022-H-07 and final submissions.

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## PART 1 – CONSULTATION OVERVIEW

1. This final submission is provided by the Mitchikanibikok Inik (also known as the Algonquins of Barriere Lake “ABL”) regarding Part 2 of the Canadian Nuclear Safety Commission’s (CNSC) environmental assessment and licensing hearing for Canadian Nuclear Laboratories’ (CNL) proposed Near Surface Disposal Facility (NSDF) scheduled for August 10, 2023. We wish to intervene in response to the CNSC’s Revised Notice of Public Hearing regarding the NSDF project.
2. On June 2, 2022, the CNSC held Part 2 of the NSDF hearing, in person in Pembroke, where Indigenous groups were among those providing interventions to the Commission. During the hearing event, ABL along with Wolf Lake, Kebaowek and Kitigan Zibi Algonquin Anishinaabeg First Nations provided testimony that CNSC Staff (Staff) and CNL had thus far failed to properly consult the Algonquin First Nations on the NSDF project. At that time, both Staff and CNL insisted that attempts at consultation with the Algonquin Nation Secretariat (ANS) and Algonquin Anishinaabeg Nation Tribal Council (AANTC) had been adequate, and they urged the Commission to make a licensing decision on the record before them.
3. We remain of the view that the CNSC has not fulfilled the Crown’s duty to consult and accommodate. The duty to consult has two components: procedural and substantive. The procedural component is concerned with process and the substantive component is aimed at determining whether Aboriginal communities’ concerns have been addressed. ABL provides the following consultation overview as to how the components of the Crown’s Aboriginal consultation obligation has not been fulfilled by the CNSC to date regarding the NSDF project.
4. On June 2, 2022, ABL provided oral testimony to the CNSC in their Algonquin native language, “Anishinaabemowen Eh-shi-gii-sheh-wiin.” No translation was available at the Commission hearing and the Commission did not seek translation. The hearing transcript

only denotes (Algonquin spoken).<sup>1</sup> Due to the lack of advance planning and ensuring the requisite supports were in place to understand and receive oral evidence, the CNSC failed to hear and include in the record, key information on ABL governance, law and sacred landscapes as it relates to the proposed NSDF project and ABL's further request for meaningful consultation.

5. On June 2, 2022, the CNSC failed to confirm who was the ANS Grand Chief when Staff were attempting to consult the ANS on the NSDF project. Instead, on June 3, 2022 without Algonquin communities and/or their representatives present to respond, the CNSC suggested Chief Robinson, intervenor for Wolf Lake First Nation and current Grand Chief of the ANS, would have been aware of previous CNSC consultation requests regarding the NSDF.<sup>2</sup>
6. CNSC subsequently issued a Procedural Direction, dated July 5, 2022, stating: *“The Commission is leaving the record open in order to accommodate the information that Kebaowek First Nation and the Kitigan Zibi Anishinabeg were not adequately consulted... This additional time is to allow for the Commission to receive further evidence and/or for more engagement and consultation to take place in respect of Kebaowek First Nation and the Kitigan Zibi Anishinabeg.”*
7. The Algonquins of Barriere Lake and Wolf Lake First Nation, both members of the Algonquin Nation Secretariat (ANS), were once again effectively prevented by the CNSC process from participating in meaningful, community rights-based consultation regarding the NSDF project. Therefore, ABL maintains the NSDF consultation process has not substantively:
  - Taken into account requirements of the *Canadian Environmental Assessment Act, 2012*, (CEAA 2012), section 5(c), regarding the cultural environmental and social concerns and interests of ABL, including cumulative effects and

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<sup>1</sup> <https://nuclearsafety.gc.ca/eng/the-commission/pdf/Draft-Transcript-Hearing-NSDF-June2-e.pdf>

<sup>2</sup> <https://nuclearsafety.gc.ca/eng/the-commission/pdf/Draft-Transcript-Hearing-NSDF-June3-e.pdf>  
p.157

incorporating watershed sustainability and long-term nuclear waste effective related concerns into the evaluation of this major development.

- Taken into account traditional knowledge, Indigenous oral history, and ABL's capacity to carry out independent studies as part of environmental, social and cultural impact assessment processes with due regard to our ownership of and the need for the protection and safeguarding of Algonquin language, customs and traditional knowledge.
- Collaborated on appropriate land use, social and cultural impact methodologies and technologies providing suitable timeframes to implement studies within a mutually agreed upon consultation framework agreement.
- Identified and implemented appropriate measures to prevent, mitigate and accommodate any negative impacts of CNL studies, developments, appropriation of Algonquin culture or information. For example, ABL does not recognize the "Algonquins of Ontario"<sup>3</sup> (AOO) and does not accept any of the CNSC's consultation efforts or accommodations to the AOO as having any relevance or bearing to ABL rights and interests.
- Taken into consideration the importance of balancing Algonquin inter-relationships among cultural, environmental and social cultural elements; and non-Section 35 rights holders' participation in project assessment.
- Recognized and supported Algonquin jurisdiction to enable an independent community-led assessment.
- Taken into account the potential adverse effects of a proposed project on species at risk, pursuant to subsection 79(2) of the *Species at Risk Act* (SARA) and their critical habitat, as well as ABL's inherent rights and responsibilities for wildlife protection within their constitution.

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<sup>3</sup> See CMD 22-H7.139/22-H7. 139A

8. ABL was never consulted regarding the preferred method of engagement for the NSDF. At no point did the CNSC make meaningful efforts to remove barriers to ABL participation in the Indigenous engagement or the NSDF environmental assessment scoping process. Instead, this proceeding has pushed forward from 2016 without any participation on ABL's part. If the CNSC makes a final determination on this basis, it will violate the Crown's duty to consult and accommodate owed to ABL.

## **PART 2 – ALGONQUINS OF BARRIERE LAKE (“ABL”)**

9. ABL is a member of the Algonquin Nation, which is comprised of eleven distinct First Nations, who are recognized as bands under the Indian Act and who have traditionally used and occupied Algonquin lands where they continue to live today. Separate and apart, Aboriginal title is held at the community level within the Algonquin Nation where ABL asserts unceded Aboriginal rights including title under section 35 of the Canadian Constitution. The Algonquin Nation has never ceded or surrendered inherent title or jurisdiction to our traditional lands. Algonquin traditional lands spans over what is now the Ontario-Quebec border and includes all the waterways within the Ottawa River, watershed, which we know as Kichi Sipi (which translates to “big river”).
10. We have lived in the Kichi Sipi watershed from time immemorial. Our history is oral. Our lands and waters are part of the Anishinaabeg Aki, a vast territory surrounding the Great Lakes in North America. We have always relied on these lands and waterways in exercising our inherent rights governed by our customary law and governance known as “Ona'ken'age'win”. This law is based on principles of mobility, freedom to hunt and gather and the sustainable reliance on our territory in stewardship for future generations. ABL has no intention of ever leaving the Kichi Sipi watershed, it is our home and will continue to be for generations to come.

11. Our members can trace their ancestry and uninterrupted use and occupation of the land to time immemorial. We continue to engage with our traditional ways, retain our cultural base and speak our native language, “Anishinaabemowen Eh-shi-gii-sheh-wiin”. We also continue to use our lands and the resources it provides to hunt, fish and gather for sustenance. We rely on the land for our life and our livelihoods.
12. The community of Barrière Lake was created in 1929 but it was not until 1961 that it was recognized by the federal government as the official residency of the Algonquins of Barriere Lake. Our community is very authentic, our people thrive on preserving our culture, traditions and language. Our way of life is based on the land and we continue to pass on our skills of hunting, trapping and fishing, and our traditional knowledge and skills to the younger generation. There are many traditional stories of the land and sacred sites that still resonate with our community members today.
13. ABL is governed by a council comprised of Chief Casey Ratt and six elected councillors. We are located within the boundaries of the Parc La Vérendrye Wildlife Reserve that is 374 km north of Montreal, 271 km north of Ottawa and 158 km south of Val-d’or. Our reserve at Rapid Lake is on the Cabonga reservoir. We have over 750 members. Our reserve community is only 29,7 hectares. Many of our members live off reserve including in communities along the Ottawa River, for example, in Gatineau and Pembroke.
14. As noted by an ABL member, “Anishinaabeg have the right to go anywhere they please. Water is something that can bring different people together. There is the three-figure wampum which places English speaking, French speaking, and Algonquin speaking all on equal terms.”

### **PART 3 – DEFICIENCIES IN THE NSDF ASSESSMENT**

15. The Crown’s consultation obligations for this environmental assessment and licensing matter include a positive duty to ensure ABL’s concerns and impacts to our rights and interests are seriously considered and demonstrably integrated into the environmental



impact statement guidelines. This has not even begun to occur. Therefore, changes to the Project location and project alternatives, among other considerations, may be required to accommodate ABL's concerns which at this point, remain outstanding.

16. As an ABL member shared, "Everyone is affected by water. We will always protect the waterway that sustains us...If we are going to make changes or protections to watershed, we need to be involved in the beginning."
17. To date, at most, the CNSC has provided ABL the opportunity for exchange of information. For example, in the June 2, 2022 hearing, ABL set out the community as rights holders were owed the duty to consult and that the Algonquin Nation has its own protocols for consultation family to family, band to band and Nation to Nation and the CNSC NSDF consultation process should be harmonized to this effect. Also, the scope and nature of the CNSC's NSDF environmental assessment and licensing matter, which excludes alternative project locations away from the Ottawa River, further illustrates the failure to adequately consult and be responsive to ABL's concerns and interests.
18. A fulsome examination of the CNL environmental impact statement (EIS) is required by ABL. We have heard from other First Nations that there appears to have been a lack of baseline studies and proper survey methodologies for species at risk and non-species at risk carried out by qualified Staff to adequately consider the significant disturbance to terrestrial and aquatic biodiversity caused by the project. We understand a good portion of the proposed mountain slope will be blasted away and the mountain will never be the same again. Further, it is our understanding from the May 30 and June 1, 2022 Part 2 NSDF Hearing intervenors that the EIS also lacks proper information around Forest Management Planning and Federal commitments to International Climate Change and Biodiversity Agreements.<sup>4</sup>

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<sup>4</sup> <https://nuclearsafety.gc.ca/eng/the-commission/pdf/Draft-Transcript-Hearing-NSDF-May30-e.pdf>  
p.266-274  
<https://nuclearsafety.gc.ca/eng/the-commission/pdf/Draft-Transcript-Hearing-NSDF-June1-e.pdf> p.279-283

19. ABL has serious, outstanding concerns about the proposed NSDF Project siting, including the devastating transformation of a mountain into a nuclear waste disposal site along the Ottawa River. The proposed Project poses significant adverse risks to ABL's inherent rights and interests, including our regional sacred landscapes and Perch Lake and beyond, due to the toxic mix of nuclear waste and water, emissions from the site, and unplanned events, like accidents.

#### **PART 4 – PROTECTING WHAT IS SACRED**

20. Land and water are sacred to ABL members. As we have heard from our community:
21. “When it comes to the water, you just can’t ask about the water. There are tree roots that used to be miles long, big round birches. All edges of the water are what you need to look at. In our day here, the roots don’t go too far. They’re shallow and barely reach the water. That’s why the land erodes, from the trees not having any roots. The sides and riverbanks need to be protected,” as an ABL member shared.<sup>5</sup>
22. “They’ve been cutting up old growth for a long time, this logging affects spawning areas for the fish, sturgeon but also others,” according to another ABL member.<sup>6</sup>
23. “The government does not respect our way of living-water, land, air, we do whatever it takes but they do not respect us. When we say we are against something, it’s not for the sake of being against. For example, logging. It’s not just about the tree- we need to explain the full story of the tree, and how it is not just about ourselves. It’s the same way with water. Trees feed into the water and they take care of each other,” shared an ABL member.<sup>7</sup>
24. “Neme sibi- the river was known as Neme-Sibi because the sturgeon travelled everywhere. The fish and the animals provided the medicines. Today they are threatened and suffering. When the earth suffers everything suffers.” ABL member<sup>8</sup>

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<sup>5</sup> Kitchi Sibi Ikidowin Anishinabe People Powered Governance Model for the Ottawa River Watershed, ANS community Submission to Ministry of Environment and Climate Change Canada(2018)

<sup>6</sup> Ibid.,

<sup>7</sup> Ibid.,

<sup>8</sup> Ibid.,

25. “Get started on clean up and then talk to me. Everyone has a role to play if they want to enjoy the water. We know there is cleanup that is needed- I was born on the Ottawa River me. At one time it was fine to just pick up a cup and drink. They talk about minimizing pollution but I’ll be happy when I start hearing about what’s being done to clean it up,” shared an ABL member.<sup>9</sup>
26. “A long time ago, the beaver population was kept down by natural relationships. Now they say there are too many beavers and the beavers are a nuisance but the beavers belong there and we can see the land is out of balance,” shared an ABL member.<sup>10</sup>
27. “The fish used to be in separate lakes- pike lake-trout lake, there used to also be underground rivers. The water used to develop natural whirlpools,” shared an ABL member.<sup>11</sup>
28. In the slow-moving swampy areas, logging processes block those places and the water gets spoiled, smelly, and it can’t move. A lot of what’s important to know is far beyond just the river. We are talking about the land and water together,” shared an ABL member.<sup>12</sup>
29. “Clear cutting is causing much damage to the land. Our animals, lakes, and our trees is not the same. It don’t grow the same way....chemicals go into blueberries nearby, we see the animals getting sick, we see what happens to the land, water, animals, birds etc...Everything the white man has brought to the land for cutting, extraction like trees, minerals, gold, diamond you name it they will destroy whatever there is just for money even our way of life,” shared an ABL member.<sup>13</sup>
30. “They don’t consult us, they do come around, tells us what they won’t do and do it anyway. They go ahead and just do what they want,” shared an ABL member.<sup>14</sup>
31. “I don’t like what I see happening these days, it just don’t affect us, it affects our animals, our beavers are starving, it’s sad to see everything the white man brings to our

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<sup>9</sup> Ibid.,

<sup>10</sup> Ibid.,

<sup>11</sup> Ibid.,

<sup>12</sup> Ibid.,

<sup>13</sup> Ibid.,

<sup>14</sup> Ibid.,

land, it cause damages, I see the damages. We are losing a lot these days,” shared an ABL member.<sup>15</sup>

32. “I see a lot to be worried about. The land our water, all being destroyed, our animals getting sick. We can’t even get our traditional medicine, we have to be careful where we get our drinking water, there is machines everywhere. These non- natives, they don’t care what they destroy as long as they get what they want. We need the forest, oxygen, we need water, survival... It’s unbelievable how much they can destroy for greed. When will they realize that?”<sup>16</sup>
33. “A long time ago it was the same thing, blankets laced with diseases were given free to our ancestors, and many were killed, same thing today, our way of life is changing, we can’t lose our water, water is life.,” shared an ABL member.<sup>17</sup>
34. For generations, Algonquins have actively and regularly used and occupied the Upper Allumette Island area. This region of the Kichi Sibi continues to support Lake Sturgeon populations that once sustained generations of yearly family gatherings, celebrations and ceremonies that occurred in this area. Protecting biodiversity and cultural sites remains critically important to ABL, as it has for generations. The region is a sacred landscape on many levels.
35. ABL supports the intervention Final submissions of Kebaowek and Kitigan Zibi First Nations, as well as the many expert intervenors and former Atomic Energy Canada Limited employees who have questioned the development.<sup>18</sup> Water is too essential to leave to chance with the proposed NSDF waste disposal project.

#### **PART 5 - POTENTIAL AND CUMULATIVE IMPACTS OF THE NSDF**

36. Construction of the Chalk River Nuclear Site on Algonquin territory, in an area central to Algonquin traditional way of life, began in 1944. For over seventy years Algonquins have been denied land access to the site as well as consultation on this major industrial

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<sup>15</sup> Ibid.,

<sup>16</sup> Ibid.,

<sup>17</sup> Ibid.,

<sup>18</sup> <https://www.nuclearsafety.gc.ca/eng/the-commission/hearings/cmd/pdf/CMD22/CMD22-H7-63B.pdf>

nuclear complex in the heart of Algonquin territory. Access and spiritual connection to Pointe au Bapthème and Oiseau Rock has diminished as a result of development.

37. The impacts of the existing Chalk River Nuclear Site, its historic nuclear accidents and legacy waste on the Territory and Algonquin rights and interests have been significant and will remain in perpetuity, given the long lived hazardous nature of nuclear energy and radionuclides. Redress of these wrongs are not accounted for in the present day environmental assessment and licensing hearing. This suggests that the impacts of the proposed NSDF Project will also be significant. Considering the accrued legacy nuclear waste on lands and waters the Algonquin Nation relies on for its rights and practices that has occurred in the Ottawa River since the 1950s, the impacts of the proposed NSDF Project on ABL may be even greater into the future.
38. ABL is concerned about potential risks of the NSDF to future generations. We are concerned about the possibility of seismic and climate events, and major accidents related to flooding and things that may go out of control. We are also concerned about what ABL will be able to do in the event of further radionuclide and heavy metal contamination in the Ottawa River.
39. The NSDF poses various risks and will have different impacts on ABL, yet these impacts have not been fully studied, nor addressed in a way which engages ABL. The CNSC must find that the duty to consult with ABL has not been discharged.

#### **PART 6 - RE-EXAMINATION OF NSDF AND UNDA REQUIRED**

40. The [United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan](#) was released on June 21, 2023. The Action Plan has a number of initiatives that fall under Natural Resources Canada's mandate, namely:
  - **Action Plan Measure #1.12:** addressing issues pertaining to the safety and security of Indigenous women, girls and 2SLGBTQIA+ people at all stages of resource project development.

- **Action Plan Measure #1.32:** developing guidance for engaging with Indigenous Peoples on natural resources projects, including free, prior, and informed consent.
- **Action Plan Measure #1.33:** strengthening the economic participation of Indigenous Peoples and their communities in natural resource development, including through the National Benefits-Sharing Framework.
- **Action Plan Measure #1.34:** enhancing Indigenous Peoples' participation in decision-making processes related to projects and other matters that are currently regulated by the Canada Energy Regulator (co-led by Natural Resources Canada and the Canada Energy Regulator).

41. **Action Plan Measure 51** also sets out a number of objectives to ensure impact assessment aligns with the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration). These considerations are directly relevant to the matter before the CNSC, as the authority overseeing this environmental assessment. We therefore request the CNSC have regard to Action Plan Measure 51 which states the following minimum measures be implemented:

- Carrying out impact assessments in a manner that emphasizes the need to seek free, prior, and informed consent
- Maximizing Indigenous collaboration and partnership
- Early, consistent, and meaningful engagement and participation through all phases of impact assessment
- Respect for Indigenous rights, culture and jurisdiction
- Mandatory consideration of Indigenous Knowledge in impact assessment
- Continually building Crown-Indigenous relations
- Supporting Indigenous capacity in impact assessment
- Consideration of health, social and economic factors, including impacts to women, youth and Elders
- Consideration of any cumulative effects that are likely to result from a designated project in combination with other physical activities that have been or will be carried out.

42. The CNSC has not conducted its environmental assessment and licensing matter in a way that has upheld or respected the UN Declaration. Now, the nonconformity of the CNSC's process with the principles and objects of the UN Declaration further exposed, in light of the recent Action Plan. We submit the CNSC cannot recommend approval of the Project without a complete re-examination of the NSDF under the Action Plan Measures under the UNDA 2021.

## **PART 7 – CONCLUSION**

43. The Commission is not in a position to make either of the determinations required in order to approve CNL's application. The CNSC has not fulfilled the duty to consult and accommodate as owed to ABL, in upholding the Honour of the Crown. In fact, the CNSC has not engaged with us at all, overlooking our voice and contributions, and consequently it cannot satisfy itself that the requirements under the CEAA 2012 or the *Nuclear Safety and Control Act* have been met.
44. We submit the Commission has no option at this point but to either deny CNL's application or defer its decision to allow for the proper fulfillment of its duty to consult and accommodate through the creation of an engagement framework that properly recognizes ABL as an equal partner and jurisdiction in this matter. Proceeding otherwise would result in the Commission's violation of the Crown's constitutional obligations and potentially resulting in greater and unknown impacts to both the environment and our inherent, protected rights.