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Written submission from the Kebaowek First Nation

Mémoire de la Première Nation de Kebaowek

Canadian Nuclear Laboratories

Mid-Term Update of Licensed
Activities for the Chalk River
Laboratories Site and Regulatory
Oversight Report for Canadian Nuclear
Laboratories Sites: 2022

Laboratoires Nucléaires Canadiens

Rapport de mi-parcours au sujet des
activités autorisées sur le site des
Laboratoires de Chalk River et Rapport de
surveillance réglementaire des sites des
Laboratoires Nucléaires Canadiens : 2022

Commission Meeting

Réunion de la Commission

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Kebaowek First Nation Review
of Canadian Nuclear Safety Commission Staff's Regulatory Oversight Report
for Canadian Nuclear Laboratories Sites: 2022 and CNL's mid-term update

WRITTEN SUBMISSION

presented to
Canadian Nuclear Safety Commission

October 11, 2023

NOTE

This document is the final written submission of the Algonquin Nation of Kebaowek submitted by the Chief and Council on October 11, 2023.

1. INTRODUCTION

A. Who We Are

The following submission is presented by Kebaowek First Nation (KFN) to the Canadian Nuclear Safety Commission (CNSC) in response to CNSC Staff’s Regulatory Oversight Report (ROR) for Canadian Nuclear Laboratories Sites: 2022 and Canadian Nuclear Laboratories’ (CNL) mid-term licence update.¹

Kebaowek First Nation (“KFN”) is an Algonquin Anishinaabe First Nation with lands along the Kitchi Sibi (the Ottawa River watershed) on both sides of the Québec-Ontario boundary. Our reserve is located in Quebec on Lake Kipawa, 15 km from the interprovincial border.

The Algonquin Nation is made up of eleven distinct communities recognized as Indian Act bands. Nine are based in Quebec and two are in Ontario. Since time immemorial, the Anishinaabe people have occupied a territory whose heartland is Kitchi Sibi. Our lands and waters are part of the Anishinaabe Aki, a vast territory surrounding the Great Lakes in North America. We were known as the Omamiwinniwig (travellers of the river).

For centuries we have relied on our lands and waterways for our ability to exercise our inherent rights under our own system of law and governance known to us as Ona’ken’age’win, and to fulfil our sacred obligations to these lands and waterways and the animals and rocks and resources in and on them. Our law enables and is based on our mobility on the landscape, the freedom to hunt, gather and control the sustainable use of our lands and waterways for future generations. The forest and waterways have provided the Algonquin Anishinaabeg our livelihood - food, energy and materials, landscapes, spiritual grounds, economic trade and peace of mind.

The Algonquin Nation has never ceded, nor abandoned its lands and waterways. Our rights and title have not been extinguished. Hence, we continue to exercise our rights as ‘keepers of the waterways’ while continuing to promote seven generations’ worth of responsibilities regarding livelihood, security, sacred sites, cultural identity, territorial integrity and biodiversity protection. We advocate to advance the rights and recognition of Algonquin Anishinaabeg laws and ceremonial customs in relation to the Kitchi Sibi watershed, with a special focus on affirming Anishinaabeg women’s role as water keepers. We have accumulated local, historic and current traditional knowledge and values, customary laws and wisdom that relate to the sustainable care of the lands and waterways we occupy.

¹ CMD 23-M30 – Submission from CNSC staff on the [Regulatory Oversight Report](#) for Canadian Nuclear Laboratories Sites: 2022 [**ROR**]; CMD 23-M30.1 – Submission from the Canadian Nuclear Laboratories (CNL) on the [Mid-Term Update](#) for the Chalk River Laboratories Site [**Mid-term Update**]

B. Focus of Our Submission

We make these submissions recognizing Kebaowek First Nation was never consulted on the nuclear developments and licensing of Chalk River's nuclear operations and that contamination of groundwater, released into freshwater streams and lakes at the Chalk River site, has occurred without our free and prior consent. This has been of concern to the Algonquin Anishinaabeg since the 1950s.

Despite our ongoing attempts to engage in good faith with the CNSC and the proponent, infringements on our territory continue because of the historic, ongoing and proposed activities at the Chalk Rive nuclear site. We submit that these concerns – which we reiterated most recently at the hearing for the proposed Near Surface Disposal Facility (NSDF) – remain live issues and not substantively addressed in either the ROR or mid-term update.

2. COMMENTS ON ROR AND MID-TERM UPDATE

The following comments, which are common to the ROR and mid-term update, are provided to inform the Commission's review.

A. Process Issues

The CNSC states it ensures Indigenous Nations have “meaningful opportunities to participate in all aspects of the environmental review and licensing processes” and that “meaningful collaborative approaches to consultation and engagement” are ensured to “support the principles of reconciliation.”² Unfortunately, the process followed for the ROR and mid-term update has fallen short of what is required to seek our meaningful input and collaboration.

As we further detail in specific regard to the mid-term update in Part 3 of our comments below, we do not support CNSC Staff's characterization in the ROR that its engagement with Indigenous Nations was “meaningful.” As the ROR reads: “In 2022, CNSC staff undertook ongoing and meaningful engagement activities with Indigenous nations.”³

First, **KFN recommends** CNSC Staff ought not to rank their own performance on whether their consultation was meaningful, and instead rephrase such statements to read that ‘efforts to engage meaningfully were undertaken’ and then, an assessment of whether this was found to be effective and true, provided by the communities with whom consultation occurred.

² CNSC, Indigenous consultation and engagement, [online](#)

³ ROR, p 2

Second, **KFN finds** the assessment by CNSC Staff that engagement was “meaningful” fails to recognize and grapple with the submissions Kebaowek First Nation has provided to the CNSC about CNL’s activities at the Chalk River site, including for the NSDF and small modular reactor project proposals, and we question to what extent our outstanding concerns about the protection of our rights and adequacy of consultation have been carefully considered by the CNSC and taken into account.⁴

For instance, in terms of CNL project specific consultations, KFN, Algonquins of Barriere Lake (ABL) and Kitigan Zibi expressed their issues with the CNSC consultation process on the NSDF project at the August 10, 2023 hearing. Numerous examples of a flawed process were cited including:

- Justin Roy, Kebaowek First Nation: “Will we have the opportunity to ask the Commission questions, you know, from our end, to the Commission “-- THE PRESIDENT: That’s not how the process works, no.”⁵
- Victoria Wicks for Algonquins of Barriere Lake: “This current system of impact assessment and consultation is an imposed system. Barriere Lake has not had any meaningful opportunity to shape the rules and procedures for how consultation and environmental assessments work, so there is very little room for Barriere Lake to self-determine or make decisions in these processes”.⁶
- Verna McGregor for Kitigan Zibi: “I also often speak to different venues of the government in educating the traditional world views so to that of current understanding and systems. I think our biggest challenge today is to balance the contrasting understanding because it was foretold when Contact happened that we will be facing the challenges we are facing today. There's a tendency in the current system of governance that when minds need to come together, what often results is the blaming and shaming of each other, and the system sometimes doesn't allow the issue to be addressed. It also potentially hinders innovation for the benefit of the collective. Consultation allows for the gathering of different perspectives in a non-confrontational way.”⁷

⁴ See for instance: KFN’s Submission to the CNSC on the Scope of the Environmental Assessment for the Micro Modular Reactor Project, online: <https://www.nuclearsafety.gc.ca/eng/the-commission/hearings/cmd/pdf/CMD20/CMD20-H102-7.pdf>; Transcript from CNSC Hearing dated 2 June 2022 for the NSDF, online: <https://www.suretenucleaire.gc.ca/eng/the-commission/pdf/Transcript-Hearing-NSDF-June2-e.pdf> at p 121-144

⁵ CNSC, E-Doc 7110472-v1 transcript NSDF August 10, 2023 oral hearing, p 50

⁶ *Ibid*, p 71

⁷ *Ibid*, p 13

B. Deficient Inclusion of *UN Declaration on the Rights of Indigenous Peoples*

Section 8(2) of the *NSCA* recognizes that the CNSC acts as an agent of the Crown. Therefore, it is the CNSC acting as the Crown that must meet obligations to consult and is entrusted with the responsibility of fulfilling the Honour of the Crown. Implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁸ strengthens our ability to participate in decisions which directly affect our rights and territory, and thus can aid in fulfilling the Crown's duty to consult and accommodate.

Unfortunately, it is unclear how CNSC Staff and CNL considered UNDRIP in the ROR and mid-term update. It also remains unclear how the Commission will reflect the principles of UNDRIP in its mid-term review of CNL's licence. It has also been our experience that CNL was obstructionist to Indigenous led environmental assessment as part of the CNSC NSDF procedural order and was unable to make functional accommodations for traditional ecological knowledge transfer.⁹

In practice, UNDRIP would promote, amongst other things, transitions toward sustainable development. While CNL makes repeated reference in the mid-term update to their licensed activities providing "sustainable energy" and a "sustainable path for the future,"¹⁰ there is no analysis or information allowing these statements to be linked to Canada's Sustainable Development Goals (SDG) nor the SDG's concomitant ability to advance the human rights commitments in UNDRIP.

KFN recommends that the Commission review the sufficiency of the ROR and mid-term update in line with the principles UNDRIP and the more recently released provisions in the federal government's UN Declaration Act Action Plan (both of which are highly relevant to federal regulators and industry). We **also recommend** that all forthcoming reports and mid-term updates include mandatory chapters on how licensee activity and CNSC oversight conform to the principles of UNDRIP, including whether:

- Participation with Indigenous peoples was enhanced during the timeframe being reviewed
- Local and Indigenous knowledge was considered and included in the review of licensed activities
- Measures to prevent and address impacts to Indigenous rights were addressed, responsive to community concerns

⁸ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at:

<https://www.refworld.org/docid/471355a82.html>

⁹ CNL Reportable Event to CNSC on Kebaowek November 2022, online:

https://drive.google.com/file/d/1jXbfhYN2Ba4r_EHRyP-3mHBDFroWM43f/view?usp=sharing

¹⁰ Mid-term update, p 4 and 5

3. Informational Gaps

Section 82 Projects

KFN submits there are significant information gaps in the ROR and mid-term update such that magnitude and breadth of scope in projects occurring at the Chalk River site is downplayed. In our view, the ROR and mid-term update both provide timely opportunities to comprehensively and effectively review any environmental, socio-economic and health effects of CNL's nuclear license, in keeping with section 24(4) of the *NSCA*.

KFN requests Commissioners review all of the following projects that to our understanding, are occurring at the Chalk Rive site:

- [81139](#) Canadian Nuclear Laboratories Cask Facility Project
- [81177](#) Canadian Nuclear Laboratories Intermediate Level Waste Storage Area
- [81178](#) Canadian Nuclear Laboratories Bulk Storage Laydown Area
- [81209](#) Canadian Nuclear Laboratories Material Pit Expansion Project
- [81375](#) Canadian Nuclear Laboratories Building Demolition Project
- [81389](#) Canadian Nuclear Laboratories Waste Management Area Modification Project
- [81424](#) Canadian Nuclear Laboratories Effluent Monitoring Stations Upgrade Project
- [81443](#) Canadian Nuclear Laboratories Multi-Purpose Waste Handling Facility

KFN requests that the above noted projects be reviewed for conformance with regulatory requirements and the existing licence's parameters, noting:

- the name, form, characteristics and quantity of any hazardous substances related to or caused by the activity
- maximum quantities and concentrations, including volume and flow rate of releases of nuclear and hazardous substances caused by the activity

While the above listed projects are subject to section 82 of the *Impact Assessment Act*, KFN submits there is little to no information publicly available about the projects and both the ROR and mid-term update failed to remedy this information gap. KFN remains in conversation with CNL to seek information about all of the above noted projects but has been unsuccessful to date.

KFN strongly recommends the Commission review the scope of the above noted projects and clarify whether they are within the licensing basis and how the CNSC ensures CNL, who in these instances is both the project proponent and decision-maker for the section 82 *IAA* determinations, is in compliance with licensing obligations sets out in the *NSCA*.

Nuclear Power Demonstration Project

KFN submits CNSC Staff should not have excluded the NPD project from the ROR and **recommends** an update be provided at the upcoming meeting.¹¹ As the ROR reads, “As CNL’s proposal will be the subject of future Commission decisions on the EA and licence amendment, they are not discussed further in this report.”¹²

KFN submits the existence of other licensing and regulatory processes should not remove projects from inclusion in a report which is intended to provide a licensee-wide review of activities. This unduly narrows the information included in the ROR and forces interested participants, like KFN, to search for other documents where it may get up to date information. Instead, such information should be readily available and accessible in the ROR.

C. Inclusion of Climate Change in Nuclear Oversight

As climate impacts become more frequent and pronounced, **KFN urges and recommends** the CNSC to discuss climate change in the context of licensee oversight and review whether climate change impacts a licensee’s ability to protect human health and the environment, as required by section 24(4) of the *NSCA*.

Based on Kebaowek’s ground truthing Indigenous-led assessment of the NSDF project site, undertaken as part of the CNSC’s procedural direction, we question CNL’s Sustainability Plan as mentioned in the mid-term update, including their commitment for carbon neutrality on the CRL site by 2040. This target is aspirational at best and cannot be met when they are currently proposing 37 hectares of deforestation and biodiversity destruction. The impact on climate and biodiversity remains unassessed by both CNL and the CNSC in the ROR and mid-term update. It also was not remedied in the recent CEAA 2012 environmental assessment process.

Catastrophic weather events are becoming more frequent and **KFN recommends** climate vulnerability of nuclear operations and facilities be mandatory chapters in all RORs and mid-term licence updates, including review of frequency and scale of regional lightning strikes and related fire and blowdown events. While the ROR stated “CNSC’s oversight strategy on climate change resiliency” was among the items that CNSC Staff were taking “actions” to improve in the ROR,¹³ no further comment was provided nor description of actions being taken to review the climate vulnerability of nuclear operations and facilities.

¹¹ ROR, p 12

¹² ROR, p 12

¹³ ROR, p 44

3. COMMENTS ON MID-TERM UPDATE

The following comments specific to the mid-term update on are provided to inform the Commission's review.

A. Process Issues

KFN was not engaged nor consulted by the CNSC in advance of the mid-term update to weigh in on the focus or themes which ought to inform the mid-term licensing update. Instead, the topics reviewed in the mid-term update were those presumably identified by CNL alone.

KFN submits the Commission has also not clearly communicated how CNL's mid-term update will impact the CNSC's oversight and review of their existing licence. We hope that the feedback we are providing will be taken seriously and into consideration by the CNSC and **recommend** that in the CNSC's decision on the mid-term review, we see our concerns and views reflected.

KFN submits and requests that an Algonquin Stewardship Council be established to facilitate open dialogue between the CNSC and CNL for Indigenous led ground truthing on various environmental projects and concerns related to Algonquin rights and title.

KFN submits and recommends the CNSC ought to have made space for KFN to engage in the mid-term update. Not only would it have enhanced the accountability of the process, but it would provide an important opportunity to ensure respect for our inherent jurisdiction and self-determination in the oversight of activities that impact our rights and territory. In this regard, KFN would rate the mid-term update process as 'poor', as there was no direct attempt to engage with KFN and ensure a meaningful role in the mid-term update process.

Kebaowek and the Algonquin Nation also take issue with CNL and CNSC engagement with the AOO and MNO who are not Section 35 rights holders. KFN requests clarification on how non-section 35 rights holders' values and interests are considered and on what grounds, in comparison to Section 35 rights holders in licensing decisions.

KFN submits and recommends that mid-term updates ought to adhere to the same procedural and regulatory requirements as a public hearing licensing process. In this format the CNSC can opine on whether to suspend or amend the licence. Instead, KFN found the mid-term update to be purely information and provided little depth for our engagement as to whether protections for human health and the environment, as required by section 24(4) of the *NSCA*, remain upheld.

B. Informational and Regulatory Gaps

In addition to the informational gaps and lack of UNDRIP inclusion highlighted above in Part 2, KFN submits the mid-term update ought to have included an assessment of licensed activities and their conformance with:

- Canada’s modernized “Policy for Radioactive Waste and Decommissioning for Canada” that was released in the spring of 2023. There is no reference to this policy in CNL’s mid-term update despite is being directly relevant to the waste and decommissioning projects CNL is currently undertaking. **KFN recommends** an addendum to the mid-term update be provided by CNL, commenting on conformance with the Policy’s provisions specific to waste generators and owners, including sections 1.5 – 1.9, 2.4 – 2.7, and 3.7 – 3.10.¹⁴
- The purposes of the *NSCA* which provides that Canada respect “international control of the development, production and use of nuclear energy, including the non-proliferation of nuclear weapons and nuclear explosive devices.” Specifically, how this obligation will be upheld in light of CNL’s plans for a fuel recycling and fabrication laboratory at the site and activities which include the “examination and analysis of fuel components for Small Modular Reactors.”¹⁵ **KFN recommends** an addendum to the mid-term update be provided by CNSC Staff to address this purpose of Act.
- Obligations of licensees as set out at section 12 of the *General Nuclear Safety and Control Regulations* and requirements for licensed activities including sections 6 and 14 of the *Class I Facilities Regulations*. KFN specifically requests and **recommends** this prescribed information be set out in an addendum to the mid-term update for the “Intermediate-Level Waste Storage Array” and “Cask Facility” projects CNL makes passing reference to. For both projects, the mid-term update only provides very short descriptions and there was no detail regarding the nature, type or volume of waste or hazardous materials being created and stored, nor review of these activities in keeping with the existing bounds of the licence.
- Inclusion of Indigenous-led oversight and traditional knowledge. For instance, at Figure 38 of the mid-term update, a Blanding’s turtle using a human engineered EcoPassage is pictured at the CRL Site (2021).¹⁶ What this Figure and mid-term update fail to acknowledge, is the predator use of the passage and missing Blanding turtles from their SAR population inventory due to engineered predation corridors. **KFN recommends**

¹⁴ Canada’s Policy for Radioactive Waste Management and Decommissioning, [online](#)

¹⁵ Mid-term update, p 22

¹⁶ *Ibid*, p 60

there be Indigenous-led oversight, SAR inventories and traditional knowledge inputs into any onsite environmental or eco-system plans by CNL.



Figure 1: Wolf in Blanding's Turtle Eco-Passage