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

Exposé oral

**Mémoire de la Première Nation
des Algonquins de Pikwàkanagàn**

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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*Algonquins of Pikwàkanagan
First Nation*

THE ALGONQUINS OF
PIKWAKANAGAN FIRST NATION'S
SUBMISSION ON REGULATORY
OVERSIGHT REPORT FOR
CANADIAN NUCLEAR
LABORATORIES SITES: 2022

October 2nd, 2023

Prepared by the Algonquins of Pikwàkanagan First Nation. This submission was funded by the Canadian Nuclear Safety Commission's Participant Funding Program.

In addition to the following written submission, AOPFN wishes to also intervene by way of oral presentation at the Commission Meeting on November 1, 2023.

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LIST OF ACRONYMS

Acronym	Definition
AECL	Atomic Energy of Canada Ltd.
AOPFN	Algonquins of Pikwàkanagan First Nation
ARSCA Criteria	Aboriginal Rights Safety and Control Area Criteria
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada
CNL	Canadian Nuclear Laboratories
CNSC	Canadian Nuclear Safety Commission
CRL	Chalk River Laboratories
EAFMP	Environmental Assessment Follow-up Monitoring Plan
FPIC	Free, Prior and Informed Consent
IAEA	International Atomic Energy Association
IEMP	Independent Environmental Monitoring Program
NPD	Nuclear Power Demonstration Project
NSDF	Near Surface Disposal Facility Project
RIMNet	Regional Information and Monitoring Network for the Ottawa River Watershed
ROR	Regulatory Oversight Report
SCA	Safety and Control Area
SFMP	Sustainable Forest Management Plan
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples



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EXECUTIVE SUMMARY

This submission provides comments from the Algonquins of Pikwakanagan First Nation (“AOPFN”) on the Canadian Nuclear Safety Commission’s (“CNSC”) 2022 Regulatory Oversight Report (“ROR”) for Canadian Nuclear Laboratories (“CNL”) Sites¹ and Canadian Nuclear Laboratories Mid-Term Update of Licensed Activities for the Chalk River Laboratories (“CRL”) Site² (“CNL’s Mid-term Update”). This submission is based on a review of the ROR, a review of CNL’s Mid-term Update, our experiences working with CNL, Atomic Energy of Canada (“AECL”), and CNSC in 2021 and in 2022 (for comparison purposes), and our past work on and in relation to CNL sites and facilities³.

With respect to this submission, CNL operates the following AECL-controlled facilities in unceded Algonquin territory:

- the Nuclear Power Demonstration Project (“NPD”)⁴; and
- the Chalk River Laboratories facilities

This submission has two parts.

1. Part one provides detailed comments on the ROR and AOPFN’s experiences with the CNSC in 2022.
2. Part two includes a thorough review of CNL’s 2022 operations.

A high-level review of CNL’s Mid-Term Update can be found in Appendix 1. As a condition of the CNSC’s 2018 decision to grant CNL a Licence Renewal for Chalk River Laboratories, CNL developed a mid-term update on CRL’s licensed activities for the first half of the 10-year licensing period. When CNSC provided that document to AOPFN via email along with the 2022 ROR materials, AOPFN reasonably concluded that AOPFN was being asked to review that material and conducted a review of the Mid-term Update and has provided high level comments as well as a number of additional recommendations. The mid-term update document was additional material to the ROR, for which AOPFN did not receive funding from the CNSC to review. It is unacceptable for the CNSC to expect AOPFN to carry the cost of reviewing materials on CNSC’s behalf; even if the document was provided to AOPFN by CNSC as

¹ Canadian Nuclear Safety Commission. 2023. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2022*.

² Canadian Nuclear Laboratories. 2023. *Chalk River Laboratories Midterm Update 2023*.

³ Malone, M., Firelight Research Inc, & Algonquins of Pikwakanagan First Nation. 2021a. *Algonquins of Pikwakanagan First Nation Culture and Rights Study Specific to Canadian Nuclear Laboratories’ Near Surface Disposal Facility Project*. Malone, M., Firelight Research Inc, & Algonquins of Pikwakanagan First Nation. 2021b. *Algonquins of Pikwakanagan First Nation Culture and Rights Study Specific to Canadian Nuclear Laboratories’ Near Surface Disposal Facility Project*. Algonquins of Pikwakanagan First Nation. 2021a. *Algonquin Knowledge and Land Use Study: Nuclear Power Demonstration Closure Project*. Algonquins of Pikwakanagan First Nation. 2021b. *Algonquin Knowledge and Land Use Study: Near Surface Disposal Facility Project*. Fediuk, K., Gibson, G., & The Firelight Group. (2021). *Algonquins of Pikwakanagan First Nation Diet and Harvest Study Report Specific to Canadian Nuclear Laboratories’ Near Surface Disposal Facility Project*.

⁴ Please note, AOPFN will not refer to NPD as a waste facility as we have not approved it as such. Further discussion on this issue can be found in Part 1 of this submission.



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“optional” for review. AOPFN does not have the ability to self-fund its involvement in the review of documents provided to it by CNSC. **To account for this, AOPFN requests CNSC compensates AOPFN for this additional work and requests a formal written response to this request before the commission meeting for this submission occurs.**

Other than the above-noted funding gap, AOPFN appreciates the funding received through CNSC’s Participant Funding Program to participate in this regulatory review and the opportunity to conduct an advanced review of CNL’s 2022 performance at CRL and NPD. We further acknowledge the progress CNL, AECL, and CNSC have made to improve their respective relationships with our Nation in recent years.

We have developed a series of recommendations to help the CNSC and CNL further improve their collaboration and relationships with our Nations. These can be found in Table 1. Column 1 provides a recommendation theme and column 2 identifies specific in-text numbered recommendations that will be elaborated upon below.

Table 1: Recommendations Summary

Recommendation Theme	Relevant in-text recommendations
CNSC must explain how our reviews, comments and feedback are incorporated into RORs, reviews of annual work activities, and permit reviews and decisions. AOPFN and CNSC can discuss on an approach to reporting.	See Recommendations 5, 8, 11 Appendix 1 (Recommendation1)
CNSC and CNL must work to further strengthen transparency and communications. This includes more active engagement with our Nation regarding risk assessment and determination and meaningful dialogue with Nations and communities regarding risk perception and management.	See Recommendations 3, 6, 10 Appendix 1 (Recommendation 2 and 3)
CNSC must incorporate findings from our Neya Wabun Guardian monitoring program into the annual RORs and must seek to further integrate our monitoring programs into CNSC’s annual monitoring activities. This must be done in a way that is culturally appropriate and follows cultural protocols and collaboration with our monitoring programs.	See Recommendation 8, 9 Appendix 1 (Recommendation 3)
CNSC, CNL and AECL must commit to ongoing Nation-specific cultural awareness training for all CNSC, CNL and AECL staff working in AOPFN territory and with AOPFN members, and demonstrate how this is incorporated into work with Indigenous communities and ongoing monitoring activities	See Recommendation 7



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Recommendation Theme	Relevant in-text recommendations
<p>CNSC must include AOPFN’s Aboriginal Rights Safety and Control Area Criteria⁵ (“ARSCA Criteria”), into future RORs and commit to working with Indigenous Nations and communities to incorporate the recommendations provided in reviews of the 2021 and 2022 RORs into future CNSC and CNL activities and reporting.</p>	<p>See Recommendations 4, 10, 11 Appendices 1 and 2</p>
<p>CNL should incorporate the principles of reconciliation and of Free, Prior, and Informed Consent (“FPIC”) into its strategic priorities and include information in future reporting of how it is working towards these priorities in concrete and meaningful ways.</p> <p>CNSC should likewise respect reconciliation and AOPFN’s FPIC decisions, including AOPFN’s perspectives on project approvals and status (i.e., AOPFN’s stance that NPD should not yet be labeled a waste facility pending decommissioning decisions, as discussed below), and operations (i.e., AOPFN’s ratings on how CNL operates)</p>	<p>See Recommendations 1, 2 Appendix 1 (Recommendation 4)</p>

⁵ “Recommended SCAs for CNL safety metrics” in the 2021 ROR. See Appendix 2.



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PART 1. AOPFN'S REVIEW OF THE REGULATORY OVERSIGHT REPORT AND CNSC ENGAGEMENT WITH AOPFN

Introduction

The *2022 Regulatory Oversight Report* (“ROR” or “the Report”) provides a high-level summary of CNL’s regulatory performance during 2022. The Report covers the regulatory oversight activities conducted by both the CNSC and the International Atomic Energy Agency (“IAEA”) over the course of the year and contains information for interested parties to understand the overall regulatory performance of CNL.

AOPFN has organized this section into two subsections. First, AOPFN provides a high-level review of the ROR and identifies some key concerns with the document. Second, AOPFN identifies gaps in the ROR and provides an overview of areas for revision and/or improvement.

Please note that by necessity, AOPFN’s examination of CNSC and CNL actions is limited to the 2022 calendar year. 2023 improvements will be discussed in future submissions on 2023 ROR as appropriate.

High-level Review of the ROR

The ROR presents a high-level summary of CNL’s safety performance during 2022. The document draws on a wide range of regulatory oversight activities performed by the CNSC. The CNSC evaluated CNL’s performance across its standard set of 14 Safety and Control Areas (SCAs). AOPFN’s review is focused on the NPD and the facilities at Chalk River Laboratories in unceded Algonquin territory.

The NPD refers to the facility labelled as the Nuclear Power Demonstration Waste Facility by the CNSC and CNL. **AOPFN states for the record that we do not consider the NPD to be a waste facility and so will refrain from referring to it as such. It is a nuclear reactor site that has been permanently closed and is in ongoing storage and surveillance. While it contains radiological waste products at this time, no decommissioning plan has been approved that would allow for permanent radioactive waste disposal at the site and AOPFN has not provided consent for it to be converted to a permanent waste facility. This must be recognized by the Commission and its staff, as well as CNL and AECL.** Attaching the premature “Waste Facility” moniker to the NPD does not make this facility an acceptable permanent hazardous waste disposal facility; AOPFN does not appreciate or endorse this language or sentiment.

Recommendation 1: CNSC, CNL, and AECL must respect and adhere to future AOPFN FPIC decisions on the decommissioning of the NPD facility.

Recommendation 2: CNSC, CNL, and AECL must, in the interim prior to that decision, stop referring to the NPD as if it is already a *de facto* permanent radioactive waste



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disposal facility. Specifically, AOPFN requests that it not be referred to as the NPD 'Waste Facility' unless and until permissions are given for it to become one.

The ROR is preceded by a 'Plain Language Summary' that offers an overview of some of the Report's key conclusions. However, this section lacks detail and retains a significant amount of technical language (for example, in its description of radiation exposure on p.2). A reasonably detailed document, written in clear, lay-accessible language and covering all key ROR findings would support the openness and transparency in communications which AOPFN has been seeking from CNSC. Annual ROR findings should also be shared with AOPFN through engagement activities that give the community the opportunity to better understand and ask direct questions about report methods and findings.

Recommendation 3: CNSC must provide AOPFN with detailed, plain language materials that use accessible, lay-person language and terminology, to accompany future RORs. The sharing of this documentation should be accompanied by community engagement activities, including but not necessarily limited to public meetings, to communicate ROR findings to community members and to allow community members the opportunity to ask questions, interrogate findings, and otherwise better their understanding of the ROR process and conclusions.

The CNSC has made note in the 2022 ROR of AOPFN's Aboriginal Rights Safety and Control Area Criteria⁶ ("ARSCA Criteria"), which were developed with Sagkeeng Anicinabe First Nation as part of AOPFN's submission regarding the 2021 CNL ROR. However, the ARSCA Criteria were not actually included in the Report (as evidenced on p.2 where the Report indicates that "CNSC evaluates licensees across all 14 SCAs" but does not include AOPFN's 8 recommended ARSCA Criteria in this tally). We could find only one instance where implementation of the ARSCA Criteria was indirectly in evidence: the engagement of AOPFN and other interested Indigenous communities in the Independent Environmental Monitoring Program ("IEMP") sampling activities described in section 5.1. There is little to no indication anywhere else in the ROR of how, or if, the ARSCAs have been applied to any other CNSC or CNL activities over the past year. It does not appear that the CNSC's regulatory oversight processes have meaningfully changed from previous years based on AOPFN's input. We had expected to see the ARSCA Criteria substantially reflected in this year's reporting and are disappointed to discover their absence in both reporting and application. AOPFN understands that it is possible that CNSC staff does not feel fully qualified to apply the ARSCAs, and this intuition would be correct. However, AOPFN was and remains ready to work with CNSC staff in the application of the ARSCAs prior to ROR's being developed in the future.

Recommendation 4: Going forward, the CNSC will expand its regulatory and safety lens to include Indigenous concerns and perspectives by incorporating the Aboriginal Rights Safety and Control Area safety metrics (Appendix 2) into future assessments of CNL site operations. This should be carried out through active and early engagement and collaborative ROR development with AOPFN (to be funded by the CNSC).

⁶ "Recommended SCAs for CNL safety metrics" in the 2021 ROR. See Appendix 2.



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The CNSC has provided a detailed accounting of Consultation and Engagement Activities (section 5 of the ROR) on the part of both CNSC and CNL, and AOPFN acknowledges and appreciates the work that CNSC and CNL conducted in 2022 to establish and maintain mechanisms for ongoing engagement with AOPFN. In CNSC's case, this includes the completion and signing of Terms of Reference for long-term relationship engagement between CNSC and AOPFN and collaboration on monitoring activities and the CNSC's IEMP. However, it remains unclear how specific comments, reviews, and feedback resulting from engagement efforts, and from other interventions such as AOPFN's comments on the 2021 ROR, are prioritized, assessed, and/or implemented in CNSC activities such as subsequent annual reviews and permit reviews and decisions.

For example, Appendix M ("Summary Table of the Status of Issues Concerns and Requests from Intervenor in the 2021 CNL ROR") notes the number of requests, concerns, and comments raised during the 2021 ROR intervention, as well as how many requests, concerns, and comments have been responded to by CNSC staff. This table is accompanied by a note indicating that 'responded to' can include instances where CNSC staff have provided dispositions, responded directly, or made requests with intervenors for follow-up discussions. This 'clarification' is both repetitive and vague, and only one example of concrete actions taken by the CNSC to address unspecified requests, concerns, or comments is provided. It is worth reminding the CNSC that 'responding' to concerns is not synonymous with *resolving* concerns and that AOPFN is more interested in CNSC's capacity and willingness to seek the latter.

Recommendation 5: In future RORs, activities reviews, permit reviews, and other relevant processes and documentation, the CNSC must explain, using concrete examples, how AOPFN's reviews, comments, and feedback have been addressed and/or resolved, and how AOPFN's input has been incorporated.

CNL's reported communications activities also fail to meet the expectations set out by AOPFN in comments submitted in response to the CNSC's 2021 ROR⁷. For example, in the Report CNSC indicates that CNL maintains a "current, easy to navigate, public facing website" that is regularly updated "with information on each facility/site/project" and "[CNL's] public discourse protocol and reportable events" (p.54). However, AOPFN has previously pointed out that the risk communication conducted via CNL's website is not satisfactory, that it remains unknown and inaccessible to AOPFN members, and that the information shared on the website is highly technical, making it difficult for many AOPFN members to understand and respond. No other direct communication measures with Indigenous communities are described, such as the reporting of events by telephone, in person, and/or via email.

The CNSC describes a number of actions to which they have committed to in order to improve their reporting in response to concerns from Indigenous Nations and communities, including more detailed descriptions of reportable events. While this improvement to the current and future RORs is valuable, it's not clear that the CNSC has taken steps to improve communication of reportable events to Indigenous Nations and communities at the time of their occurrence.

⁷ Algonquins of Pikwakanagan First Nation. 2022. The Algonquins of Pikwakanagan First Nation's Submission on Regulatory Oversight Report Canadian Nuclear Laboratories Sites: 2021.



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It is concerning that, despite acknowledging that AOPFN determined, in an assessment of CNL's engagement activities over 2022, that "CNL was overall operating below expectations in most of their Aboriginal Rights and engagement assessment categories for 2022" (p. 50), the ROR subsequently reports that "CNSC staff are overall satisfied with the level and quality of Indigenous engagement conducted by CNL with regards to its operations and proposed projects" (p.50). This direct contradiction of what AOPFN – a rights-holding Indigenous Nation – is observing, versus CNSC staff's conclusions on the very same issue, points to a worrying disconnect between AOPFN's and CNSC's expectations with respect to meaningful proponent engagement with Indigenous Nations.

Recommendation 6: The CNSC must describe in future RORs, using concrete examples, how CNSC and CNL are working to improve communications with Indigenous Nations and communities in response to concerns regarding the clarity and accessibility of existing channels of communication. This includes, but is not limited to, communications regarding reportable events and risk management. The CNSC must also acknowledge that AOPFN and other Indigenous Nations and communities should be given the opportunity to jointly determine whether or not engagement activities with them are satisfactory.

There is a similar sense of disconnect where the CNSC concludes, in the Plain Language Summary, that "the health and safety of Indigenous Nations and communities and the public near the CNL sites, as well as the surrounding environment, continue to be protected...and there were no releases from CNL sites that could have harmed the environment of the health and safety of people." However, while this assertion may be accurate from a western scientific perspective, it is highly partial and selective. It does not account for the long-lived and persistent reality that Indigenous community members, including AOPFN members, do not feel safe, comfortable, and/or welcome around CNL facilities. This suggests that there remains a lack of consideration for Indigenous perspectives and values in CNSC's reporting. This is also an illustration of why AOPFN recommends cultural awareness training for CNSC staff (as well as CNL and AECL). Though the Report describes instances of staff participation in cultural awareness activities in local communities, appropriate cultural awareness training does not appear to have been yet made part of CNSC's curriculum (as well as CNL and AECL).

Recommendation 7: The CNSC and CNL must report on how cultural awareness training has been developed for CNSC and CNL staff as well as how this training is achieved in CNSC and CNL's day-to-day activities on AOPFN lands, and interactions with AOPFN membership. The CNSC must also describe, using concrete examples, how CNSC and CNL have supported Indigenous Nations and communities to develop appropriate, meaningful, and nation-specific training.

Outstanding Gaps with CNSC's 2022 ROR and Areas for Improvement

There remain a number of gaps in the 2022 ROR where AOPFN's previous comments, feedback, and recommendations have not been addressed or resolved. First, AOPFN would like to acknowledge those areas where the CNSC has made efforts to address AOPFN input:



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- The CNSC has included a summary of feedback received from our Nation on CNL's engagement. This section does an adequate job at summarizing AOPFN's performance review of CNL's engagement activities in 2022. This addresses, in part, AOPFN's request for more transparent communication between the CNSC and AOPFN.
- The CNSC reports on CNL's increased efforts to involve Indigenous communities, including AOPFN, in monitoring activities, providing an informative overview of the collaborative work done related to CNSC's IEMP sampling processes the Environmental Protection Framework. The CNSC's Participant Funding Program supported AOPFN's participation and indicated CNSC's clear interest in ensuring the involvement of all interested parties. This addresses, in part, AOPFN requests for greater involvement in CNL monitoring activities. We provide a review of AOPFN's experience with the IEMP in 2022 below.
- The CNSC describes their involvement in the Regional Information and Monitoring Network for the Ottawa River Watershed ("RIMNet") alongside Environment and Climate Change Canada, environmental non-governmental organizations, and Indigenous Nations. One of RIMNet's goals is to improve the understanding of the cumulative effects of past, existing, and proposed nuclear facilities in the region. This addresses, in part, AOPFN's request for greater consideration to cumulative environmental effects.
- CNSC has provided AOPFN with more opportunities, funding, and time to review and provide feedback on plans and documents relevant to AOPFN's interests and concerns. Ongoing monthly meetings between CNSC staff and AOPFN has allowed for more timely and direct discussion of both ongoing and emergent issues. AOPFN does note, however, that these meetings are sometimes over-scheduled and attempt to cover too many topics or too much information in a short period of time. Supplemental meetings on specific topics of interest, such as ROR reporting, would allow for more fulsome and meaningful discussions.

However, there remain serious gaps in the CNSC's 2022 reporting:

- In AOPFN's submission on the 2021 ROR, AOPFN included nine recommendations for how CNSC and CNL could better and more meaningfully incorporate Indigenous concerns, perspectives, and knowledge into their future activities and reporting. Amongst the most critical of these recommendations was the integration of protections for Aboriginal rights into the assessment of site operations. AOPFN collaborated with Sagkeeng Anicinabe First Nation to develop a set of updated SCAs for CNL safety metrics which the CNSC could use to address this recommendation (see Appendix 2). AOPFN noted that the SCAs currently being used are limited to a western science perspective and do not consider how CNL's operations may impact Aboriginal rights and interests. As discussed above, there is scant evidence that these criteria, which are only given passing mention in Section 5.2 of the 2022 ROR, have meaningfully informed the CNSC's most recent reporting either explicitly or implicitly.
- The CNSC has not provided information about how Indigenous wellbeing and rights are being protected on and around CNL sites. Relatedly, the CNSC has not described any



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work done with AOPFN around additional risk assessment parameters that would allow for annual reporting on Indigenous determinants of health, including reduced willingness to harvest and consume country foods due to fear of contamination.

- Several issues remain with the IEMP.
 - The IEMP remains an almost exclusively technical, scientific program that fails to consider the value that Algonquin Knowledge can bring to all aspects of the program. For example, where available, Algonquin Knowledge is used by CNSC to help plan and implement data collection. However, this data is only then subject to scientific analysis and reporting, neglecting the much richer and deeper understanding of the data that could be developed through the application of Algonquin Knowledge observational parameters. Support needs to be provided to better integrate Algonquin Knowledge into IEMP processes; this includes funding for the analysis of Algonquin Knowledge collected during the IEMP field program and the inclusion of the results of such analysis (where confidentiality is not a barrier) in IEMP results. Under the IEMP's current form, AOPFN remains a participant rather than true collaborator in the program.
 - AOPFN collaboration is missing in other areas of the IEMP as well including in the development of sampling plans. Right now, AOPFN only has the opportunity to review draft plans developed by CNSC. In future, Algonquin Knowledge Holders and the Neya Wabun Guardian Program should be an integral part of drafting sampling plans.
 - Sampling frequency is insufficient at major sites such as CRL and NPD; it currently only occurs biannually. Similarly, the amount of time dedicated to sampling should be increased: the current half day devoted to field sampling at each site is not enough to capture comprehensive and meaningful data from all terrestrial and aquatic/riparian locations. The sampling of traditional plants and medicines is currently only occasionally done. This sampling should be a mandatory part of IEMP data collection on AOPFN territory.
 - Wider community engagement on IEMP processes and results is missing. Plain language materials relevant to the community and relating to IEMP results should be developed in collaboration with AOPFN. Additionally, an annual AOPFN community meeting should be funded to provide community members with the opportunity to learn about IEMP results (such as sampling findings) and to inform next year's data collection locations and focus. CNSC has shared how sampling results have been communicated to other Nations, but this has yet to be done with AOPFN.



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- The CNSC has not provided greater detail regarding how SCA performance ratings are determined to allow for a better understanding on the part of the public of how ratings are reached and applied. For example, the CNSC has assessed CRL's performance in 13 of 14 SCAs as 'satisfactory'. However, one of the three criteria indicated as needed for such a rating is "Performance meets CNSC staff expectations" (p. 118); there is no further explanation of what these expectations are, or what qualifies a performance in a given SCA as having met them.
- The CNSC has failed to present sufficient information for a lay-person (including members of AOPFN) to understand the nature of reported events, or CNSC's rationale in determining whether a given event is significant.
- The CNSC has not considered or accounted for cumulative effects (either iterative additional effects or total cumulative effects after the addition of iterative effects) in assessing CNL's 2022 operations. Neither environmental impacts nor those on AOPFN's Aboriginal rights have been assessed or documented.
- The CNSC has not provided fulsome information regarding public information and disclosure programs, nor has it addressed the persistent lack of a separate program for information and disclosure for Indigenous communities.
- Though the CNSC has described CNL's engagement with AOPFN and other Indigenous Nations and communities on IEMP monitoring activities, the CNSC has not shared how engagement input will inform future monitoring activities and reporting. Specifically, the CNSC has not specified if or how Indigenous perspectives on wellness and health have been or will be incorporated into future monitoring activities and reporting. The CNSC has also not described how findings from AOPFN monitoring activities, such as the Neya Wabun Guardian Program, will be integrated into future annual RORs.
- The CNSC has described ongoing CNSC and CNL engagement with AOPFN and other Indigenous Nations and communities. However, the CNSC has not provided information on how they are ensuring that engagement activities are collaborative, accessible, and culturally appropriate. In not doing so, the CNSC has failed to demonstrate that engagement activities constitute meaningful opportunities for bilateral exchanges of information and perspectives between parties.
- The CNSC has not demonstrated, using concrete examples, how AOPFN reviews, comments, and feedback are being incorporated into activity reports, permit reviews and decisions, and other relevant CNSC and CNL activities and documentation.
- The CNSC has not indicated the incorporation of Nation-specific cultural awareness training into its training curriculum.

Given these gaps, AOPFN recommends the following:

Recommendation 8: The CNSC must demonstrate how the participation of Indigenous Nations and communities in monitoring activities will inform future monitoring activities



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and reporting, including how Indigenous monitoring activities and practitioners, such as the Neya Wabun Guardian Program, will be integrated into the CNSC’s existing monitoring activities. Additionally, CNSC must resolve issues related to the IEMP (raised by AOPFN in document 7000107) including the level of funding available, the time made available for, and level of Algonquin Knowledge integrated into, the planning, implementation, analysis and reporting of IEMP.

Recommendation 9: On an ongoing and annual basis, CNSC must commit to funding the Neya Wabun Guardian Program, the Algonquin Foods Program, the community country food testing program.

Recommendation 10: The CNSC must provide further information regarding risk assessment and determination with particular attention to potential impacts on Indigenous wellbeing and health. This will require greater transparency regarding how SCA ratings are determined, a broader assessment of reportable event impacts (including potential impacts on community risk perception and land use), and clear, practicable plans of how potential risks will be communicated to, and discussed with, Indigenous Nations and communities.

Recommendation 11: The CNSC must review and incorporate existing recommendations provided by AOPFN in the review of the 2021 ROR. CNSC must also respond, in writing, to the above listed gaps in the 2022 ROR and commit to incorporating this information into future RORs. The incorporation of these recommendations into CNSC reporting will signal, in a concrete and meaningful way, CNSC’s investment in their ongoing relationship with AOPFN and other Indigenous Nations and communities.

The table below provides further information on ways the CNSC can address AOPFN’s concerns and improve its relations with AOPFN.

Table 2 Consultation Adequacy Metrics CNSC

Issue	Considerations	Recommendations for Improvement
Information sharing and communication	Does the CNSC maintain reciprocal communication channels and good-faith relations with Indigenous groups impacted by regulated sites?	Communication has improved as the parties continue to meet monthly and quarterly on special topics. AOPFN approaches that CNSC takes notes and shares these notes with AOPFN. AOPFN believes there more room for improvement such as how information can be better communicated to AOPFN members, including how risks are communicated to



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Issue	Considerations	Recommendations for Improvement
		members. AOPFN would also like to see a tracking system and document sharing system be established to manage all of decisions and activities.
<p>Responsiveness to requests for revisions to licenses or other regulatory instruments</p> <p>Integration of Indigenous input into CNSC's work</p>	<p>How have the Indigenous recommendations and concerns in response to the previous year's Regulatory Oversight Report been addressed in the regulatory and licensing operations of the past year?</p> <p>How has the CNSC incorporated Indigenous comments and recommendations to improve this relationship?</p>	<p>CNSC has improved how AOPFN's input is included in the ROR (as explained above); however, there remains areas for improvement. This includes:</p> <p>1) the CNSC demonstrating more clearly how our recommendations are considered in annual RORs and in changes to regulatory instruments.</p> <p>2) CNSC should demonstrate how it is learning from AOPFN and expanding its approach to nuclear waste management, monitoring, and reporting.</p> <p>3) CNSC should incorporate AOPFN's ARSCA Criteria in the actual performance review.</p>
<p>Indigenous engagement in the creation of Independent Environmental Monitoring Program (IEMP)</p>	<p>Does the CNSC have an effectively functioning program to support impacted Indigenous groups in creating Indigenous-led IEMPs? What kind of support is provided (financial, technical, consultation etc.)?</p>	<p>Indigenous engagement only marginally improved under the IEMP in 2022, from a very low baseline of engagement of AOPFN in this program.</p> <p>Additionally, the IEMP remains an almost exclusively technical monitoring program without</p>



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Issue	Considerations	Recommendations for Improvement
		<p>integration of Algonquin Knowledge.</p> <p>CNSC has suggested an AOPFN-led sampling plan; AOPFN does not have the resources and funding necessary for this. Support for appropriate training is needed in order for AOPFN to take a leading role in IEMP sampling.</p> <p>Sampling is not conducted frequently enough and AOPFN is not sufficiently involved in its planning. Greater synergy with AOPFN monitoring programs is needed.</p> <p>Sampling results need to be communicated in plain language and with the support of a trusted source.</p> <p>More detailed comments re: the IEMP can be found in the above section.</p>
<p>Adequacy of CNSC support funding</p>	<p>Amount of PFP and other funding from the CNSC for Indigenous groups to engage in processes</p>	<p>CNSC has been providing funding to Indigenous groups for monitoring and document review. However, there continues to be gaps for: back and forth engagement on risk communication, IEMP, among other consultation and collaboration priorities.</p> <p>One serious funding gap is the longevity of funding for capacity positions to support on CNSC files. This takes</p>



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Issue	Considerations	Recommendations for Improvement
		<p>time and resources that AOPFN doesn't have. We need an application that supports multiple years (i.e., for the life of the nuclear facilities in our territory).</p> <p>In addition, as mentioned above, the CNSC did not provide enough funding for AOPFN to conduct the full review of the ROR and CNL's Mid-term Update.</p>
Timeliness of consultation	Does the CNSC support consultation timelines that allow for adequate consultation with nation leadership, and within nation membership?	CNSC is respectful our timelines and needs but could be more flexible when needed. AOPFN would also like to see more in-person meetings occur including community meetings.



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PART 2 REVIEW OF CNL'S 2022 OPERATIONS

The table below provides a review of CNL's 2022 performance at CRL⁸ and NPD in relation to AOPFN's Aboriginal Rights Safety and Control Area Criteria⁹ ("ARSCA Criteria"). The table lists the metric / SCA; provides a description of the metric; reviews CNL's performance and determines whether the performance for each criterion was:

- AE (Above Expectation) – AOPFN's expectations were exceeded in 2022.
- Neutral – While marginally acceptable, there was room for improvement in meeting AOPFN's expectations in 2022.
- BE (Below Expectations) – AOPFN's expectations were not met in 2022.

Overall, CNL was operating below expectations in most of the criteria for 2022. However, we saw some improvement in 2022 as CNL invests more in its relationship with AOPFN; this continues a measurably upwards performance trend that started in 2021. **Please note that this review is for 2022 only and any changes since January 1, 2023, are not reflected in these findings.**

In addition, it is important to note that there can be improvements made between years and the ranking can still be "Below Expectations"; this is due to the very low starting point (long-term deficient practice and outcomes) for many of the ARSCA Criteria. Similarly, slight improvements may need to be recognized as year-over-year improvements and may not reflect that conditions for that criteria are adequate (i.e., Neutral). "Improvements required" listed below should not be read as comprehensive lists, but illustrative ones; AOPFN is open to further dialogue to identify gaps more fully and to develop strategies for substantive improvement.

⁸ For the AOPFN's full review of the mid-term report, see Appendix 1

⁹ "Recommended SCAs for CNL safety metrics" in the 2021 ROR. See Appendix 2.

Table 3 AOPFN's Review of CNL's 2022 Operations AOPFN's Unceded Algonquin Territory from an Aboriginal Rights-based Perspective

Metric / SCA	Description	CRL & NPD 2022 Performance	Trend 2022 vs. 2021: Recommendations for Improvement
Recognition of, protection and promotion of Aboriginal rights	Does the site have measures in place, co-identified with impacted Indigenous peoples, to support the protection and promotion of Section 35 rights and UNDRIP in the vicinity of the facility?	BE (below expectations)	<p>Slight improvement but substantial gaps remain.</p> <p>CNL increasingly recognizes our unceded rights to the project areas, but previous concerns have not been demonstrably addressed, including concerns about absence of recognition of, monitoring of, or accommodation for impacts on traditional land and resource use, culture, and Indigenous health and well-being. AOPFN notes that commitments made in relation to the Near Surface Disposal Facility (NSDF) Project have the potential to increase the engagement of AOPFN on existing and future projects or plans, but to date no co-developed policies, programs or plans have been finalized between the parties, despite CNL making commitments to this effect in 2021.</p> <p>AOPFN notes that no commitments have been made to date in relation to measures at the NPD site to protect or promote AOPFN rights.</p> <p>AOPFN notes that AECL, CNL or CNSC have not indicated that they will respect and adhere to AOPFN's Free, Prior and Informed Consent (FPIC) decisions, as detailed in the United Nation Declaration on the Rights of Indigenous People (UNDRIP), including in relation to projects that fit under the "positive consent requirements" for hazardous waste disposal facilities – UNDRIP 29.2 (NSDF and NPD both fit this definition).</p> <p>There is still no agreement between the parties on the question of whether CNL and AECL's operations are meeting AOPFN's Nuclear Principles and Requirements, which were ratified by AOPFN Chief and Council in mid-2021 and communicated to CNL and AECL at that time.</p> <p>Improvements required: Greater site access provisions for AOPFN members and Guardians required. Co-develop site access plan for all members/Guardians to have access to CRL including the members with</p>



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Metric / SCA	Description	CRL & NPD 2022 Performance	Trend 2022 vs. 2021: Recommendations for Improvement
			major employment barriers. Finalization of policies on cultural protection, promotion and recognition at the sites is required. Recognition of historic and current impacts on AOPFN traditional use, culture and well-being is a critical first step before monitoring, mitigating, and accommodating for these impacts.
Risk communication with Indigenous peoples and management of public concern	Does the site have an effectively functioning program that communicates risks to Indigenous peoples in a timely, effective, and accepted manner? Are public concerns about the facility low, moderate, or high?	BE (below expectations)	<p>Neutral; substantial gaps remain. Minimal change between 2021 and 2022.</p> <p>Currently, the only information sources are on CNL’s website, which are not generally accessible and known to AOPFN members, and which include primarily technical information that our members do not intuitively understand the implications of. Community concerns about these facilities remain high, as reported in multiple AOPFN studies in relation to the proposed NSDF and NPD decommissioning projects. A “what if” presentation discussing failure modes and risks associated with the proposed NPD Decommissioning Project was provided by CNL to the AOPFN Advisory Committee in the fall of 2021, but no additional information was provided in 2022. Indeed, at a 2022 site inventory visit by AOPFN, CNL staff provided information that was contrary to the information in the NPD Environmental Impact Statement re: risks associated with backfilling the NPD facility in a “full removal” scenario. This erroneous information had to be clarified and withdrawn by CNL at the request of AOPFN. Getting accurate and consistent information about risks is critical on a forward-moving basis.</p> <p>Funding by CNL for risk communication planning and an AOPFN Communications Specialist was first confirmed in 2021. AOPFN was able to develop an initial Algonquin Foods and Risk Communication work plan in 2022 and shared it with CNL and AECL fall of 2022. There are a number of</p>



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Metric / SCA	Description	CRL & NPD 2022 Performance	Trend 2022 vs. 2021: Recommendations for Improvement
			<p>recommendations including long term funding to implement the activities in the work plan. No confirmation was received in 2022 re: long-term funding of this program.</p> <p>CNL has shown an interest in investing in communication with our members, but more work and resources are required.</p> <p>AOPFN has put forward to CNL and AECL a detailed proposal for year 2 and annual funding to support the Communications Specialist in continuing to develop Risk Communications Strategy for nuclear projects, specifically NPD and CRL; this funding was not confirmed in 2022.</p> <p>Improvements required: Confirmed long-term funding and support for full implementation of AOPFN-led risk communication program. Confirmed long-term funding and initial application of the Neya Wabun Guardian Program at and around both facilities.</p>
Integration of Indigenous Knowledge into site monitoring and management	(How) Is Indigenous Knowledge integrated into monitoring of the site and its surroundings? Do impacted Indigenous groups have a	BE (below expectations)	<p>Neutral to slight improvement; substantial gaps remain.</p> <p>AOPFN has previously indicated it (and its' members Algonquin Knowledge) needs to be more involved in ongoing day-to-day environmental monitoring through the Neya Wabun Guardian Program. Discussions started in 2021 and initial planning on the program development was supported but a fully funded program has yet to be confirmed as of December 2022 and only very limited AOPFN monitor presence (5 site inventories, 3 at NSDF and 2 and NPD) occurred on CNL sites in Algonquin territory in 2022.</p>



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Metric / SCA	Description	CRL & NPD 2022 Performance	Trend 2022 vs. 2021: Recommendations for Improvement
	demonstrable role in identifying adaptive management measures?		<p>AOPFN notes that the CNSC has committed to more Algonquin Knowledge in its IEMP, but this has yet to be applied in a meaningful way.</p> <p>CNL has committed in relation to the NSDF Project for AOPFN to have a role in identifying adaptive management measures and to development of the Environmental Assessment Follow-up Monitoring Plan (EAFMP). AOPFN notes that progress has been slow to get AOPFN's expectations built into the EAFMP to date, nothing has been confirmed, and CNL has sought to reject some aspects of EAFMP joint monitoring that AOPFN has put forward.</p> <p>Improvements required: Finalization of jointly agreeable EAFMP for NSDF. Development of adaptive management measures (part of developing and implementing Algonquin objectives, indicators, thresholds, and responses for values of concern) for both sites. Development of clear parameters for the role for the Neya Wabun Guardian Program at both sites (CRL and NPD). Flow of funds from CNL for application of the Neya Wabun Guardian Program at both sites. Adoption by CNSC of a better funded, more intensive, and Algonquin Knowledge/western science equivalent Independent Environmental Monitoring Program to be applied at both sites.</p> <p>Overall, there needs to be an extensive increase in AOPFN "boots on the ground" at and around the CRL and NPD sites.</p>
Engagement of Indigenous peoples in site planning,	Is there a system in place whereby impacted Indigenous groups	BE (below expectations)	<p>Neutral to slight improvement; substantial gaps remain.</p> <p>Further collaboration on monitoring is required, including providing resources to AOPFN to participate in site planning, monitoring, and management. Some</p>



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Metric / SCA	Description	CRL & NPD 2022 Performance	Trend 2022 vs. 2021: Recommendations for Improvement
monitoring and management	are integrated into site planning, monitoring and management - research, analyses, decisions, and implementation?		<p>commitments made in 2021 for NSDF; associated actions (plan and policy development, etc.) yet to be finalized, implemented or time tested.</p> <p>End state planning progress has been slow and unilateral. Currently our understanding is that CNL plans to provide a draft end state plan or planning process document at a future date for one or more of the sites, which can then be reviewed and commented on by AOPFN and other parties. This does not reflect good practice of collaboration. AOPFN's clearly stated expectation is that end state planning for these sites will be co-developed in nature, given this is unceded Algonquin territory.</p> <p>Lack of substantive progress on CNL implementing AOPFN's requested inputs to a Sustainable Forest Management Plan (SFMP), two culture/physical heritage related plans, and the EAFMP suggest limited internal organizational inertia by CNL around the concept of "co-development"; a lack of willingness to embrace a future where Algonquin Knowledge has equivalency in effort, funding, and value to western science.</p> <p>Improvements required: Finalized SFMP, cultural plans, and EAFMP, that are properly co-developed with AOPFN. Revisiting approach to end state planning to make sure that Indigenous inputs are being gathered from the outset and "inside the tent". Recognition of AOPFN as a partner with joint decision-making role on site planning, monitoring and management items that are not restricted due to "national security" concerns.</p>
Contribution to reconciliation	Does the site and the relationship	BE (below expectations)	Slight improvement; substantial gaps remain. Initial improvements occurred in 2021 with the Memorandum of Understanding implementation between CNL,



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Metric / SCA	Description	CRL & NPD 2022 Performance	Trend 2022 vs. 2021: Recommendations for Improvement
with Indigenous peoples	between CNL and impacted Indigenous groups contribute to better relations between Canada and impacted Indigenous peoples? Are there demonstrable positive benefits to Indigenous peoples from the site?		<p>AECL and AOPFN, but progress was relatively slow in 2022. Exceptions to this were CNL support for AOPFN cumulative effects work and planning work for the Neya Wabun Guardian Program and Algonquin Foods Program.</p> <p>CNL and AECL have shown verbal interest in reconciliation with AOPFN, but meaningful commitments are required, and implementation of existing commitments (from NSDF to date) are required. This includes providing resources to hire more staff at AOPFN to help manage work connected to the CNL facilities.</p> <p>CNL and AECL have largely deferred discussions on past harms to Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). AECL also has a key role to play here and needs to be fully engaged; quite often delegates its responsibilities to CNL in a way that is not suitable – the primary relationship between rights holding Algonquin Nations and Crown owners of the land needs to be substantially strengthened.</p> <p>Initial funding has been provided by CNL and AECL to AOPFN in 2022 to conduct studies and research such as Year 1 of the Cumulative Effects Assessment at the site, funds for AOPFN dedicated relationship-implementation employment positions, and development of plans for the Algonquin Foods Program and Neya Wabun Guardian Program. As these funds started flowing in 2021, 2022 did not see substantial improvements. 2022 saw additional funds identified for 2022 NSDF commitment implementations, much of which was subsequently deferred to 2023.</p>



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Metric / SCA	Description	CRL & NPD 2022 Performance	Trend 2022 vs. 2021: Recommendations for Improvement
			<p>AOPFN has called for “True Benefits” to be shown to AOPFN for past and existing risks and alienation that is associated with these sites, but these benefits have not been realized in 2022.</p> <p>Currently, the lack of transparency about waste import, management, storage, and disposal at the sites (especially CRL) means that trust levels are low between AOPFN members and CNL and AECL. These sites remain a source of substantial fear, stigma, and concern, and that does contribute negatively to reconciliation efforts and to overall community well-being.</p> <p>Improvements required: Confirmation of funds for Year 2 of the Cumulative Effects Study. Agreeable long-term relationship elements need to be developed between AECL, CNL and AOPFN. CRL and NPD-related employment, procurement, and program funding for AOPFN needs to be improved and properly monitored as part of evidence of “true benefits”. Implementation of a greater monitoring, stewardship, and governance (joint decision-making) role for AOPFN on certain aspects of activities at the sites is important to improve this current condition.</p>
Level of community knowledge and support for site waste management	This can relate to onsite materials management, ultimate disposal plans, import and export types and volumes, and transportation	BE (below expectations)	<p>Neutral (no change from 2021); very poor.</p> <p>CNL has yet to commit to FPIC for nuclear waste storage, transport, and disposal on AOPFN unceded traditional territory; CNL’s position in 2022 was stated as an unwillingness to do this.</p> <p>CNL and AOPFN need to work together to develop a communication method regarding transport of waste through AOPFN unceded traditional territory. No such communication, planning or reporting process was developed in 2022.</p>



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Metric / SCA	Description	CRL & NPD 2022 Performance	Trend 2022 vs. 2021: Recommendations for Improvement
and waste transport	methods and protocols. In other words, community awareness of transport and storing.		<p>AOPFN members know virtually nothing about what type, how much, when, and how radioactive materials are transported into, through, or out of AOPFN territory, or how they are managed, stored, or disposed of within AOPFN territory. This is a cause of psychosocial impacts on the community. Most, if not all, AOPFN staff are also not aware of what is going on with radioactive materials. CNL and AECL have indicated information is available in public documents on the Internet, but this is not generally helpful. What AOPFN needs and requires is not to search the Internet for information, but to be treated as a rights-holding partner that is provided timely, meaningful, consistent and (eventually, as a result) trusted plain language information. CNL commitments to support AOPFN through a Communications Specialist is an important step in this direction; 2022 did not see extensive improvement as this position was just being established.</p> <p>CNL continues to import different varieties of waste into AOPFN traditional territory from other Canadian jurisdictions without informing or seeking AOPFN permission, despite AOPFN providing notice to AECL and CNL in 2021 that AOPFN's Nuclear Sector Principles and Requirements indicate AOPFN opposition to the importation of radioactive waste. In 2022, CNL confirmed that this practice of importation of waste will continue, despite AOPFN's opposition.</p> <p>AOPFN was provided funding by CNL to conduct a Nation-specific Alternative Means Assessment of CNL's decommissioning plans at the NPD site. AOPFN's preference in this study was for full removal of the waste. CNL</p>



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Metric / SCA	Description	CRL & NPD 2022 Performance	Trend 2022 vs. 2021: Recommendations for Improvement
			<p>declined to reconsider its preference for in-situ decommissioning despite this clearly stated AOPFN preference.</p> <p>Improvements required: Communication in advance with AOPFN of plans to import radioactive waste, and a role for AOPFN in planning for, monitoring of, and management planning for storage of wastes brought into AOPFN territory. AOPFN's position remains that AOPFN should be able to give consent to any proposed import of waste; the parties have not reconciled this against CNL's practice. AOPFN's position remains that in-situ decommissioning of the NPD Project is not preferred; the parties have not reconciled this against CNL and AECL's proposed decommissioning approach.</p>
Engagement adequacy with Indigenous peoples	This is a qualitative determination of the adequacy of engagement by CNL with AOPFN in a given year	Neutral	<p>Improving.</p> <p>AOPFN appreciates the efforts CNL is making to meet with AOPFN at both leadership and staff levels. Meetings are on a more regular basis.</p> <p>To further improve, AOPFN recommends that CNL commit to further following-up and follow-through with commitments made during discussions. In addition, discussions need to shift from a focus on Project-specific discussions to more relationship-level implementation.</p> <p>[AOPFN notes that extensive negotiations towards a Long-term Relationship Agreement occurred between the parties in 2022 but that no such agreement was finalized in 2022]</p>



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Metric / SCA	Description	CRL & NPD 2022 Performance	Trend 2022 vs. 2021: Recommendations for Improvement
Communication and management of reportable incidents	Were all reportable incidents promptly reported to AOPFN and followed up on with additional communications?	Unknown	<p>Unknown.</p> <p>The CNSC should identify any reported incidents in 2022 to AOPFN and AOPFN will review our records to see if they were communicated to AOPFN; serious concerns remain about whether AOPFN is promptly informed of such incidents or receives opportunity to observe – let alone help plan for and implement – responses to such incidents.</p> <p>The very fact that CNL’s performance in 2022 was “unknown” to AOPFN is suggestive of the fact that this system was inadequate re: communication of reportable incidents to AOPFN at this time.</p> <p>Improvement required: Protocols agreed to between CNL, AECL, CNSC and AOPFN regarding reporting of incidents and AOPFN’s role in incident response, monitoring and recovery.</p>



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CONCLUSIONS

Overall, the CNSC and CNL continue to make progress to improve relations with our Nation and have made more of an effort to respect our rights and interests to our lands and waters, starting around 2020-21. We are optimistic with the upwards trend in our relationship with both the CNSC and CNL.

The CNSC has taken our feedback to seek AOPFN's insights in the development of documents like the ROR and has acknowledged AOPFN's ARSCA Criteria. However, there remain areas for improvement for CNSC's performance as described throughout this submission. To summarize, AOPFN would like to see CNSC commit to:

- Furthering transparency and communication development;
- Information sharing with our community members in a way that is collaborative, understandable, and culturally appropriate;
- Providing explanations on how our reviews, comments and feedback are incorporated into RORs, reviews of annual work activities, and permit reviews and decisions;
- Incorporating Indigenous perspectives on wellness and health into the ROR review and monitoring;
- Incorporating findings from our monitoring programs into the annual RORs and day-today activities and approaches to monitoring;
- More Nation-specific cultural awareness training with CNSC and CNL staff; and
- Actually incorporating AOPFN's ARSCAs into future RORs in collaboration with our Nations.

With encouragement from AOPFN, CNL has improved engagement with us and continues to learn from our relationship with our lands and waters. AOPFN appreciates that CNL is putting a greater priority on meeting with AOPFN at leadership and staff levels. That said, CNL needs to commit further to clearly respecting our rights, which means committing to FPIC for all proposed major projects it proposes in Algonquin territory. CNL also must improve how and when it communicates with us and that it does so in a way that respects Indigenous perspectives and rights.

After conducting a review of CNL's performance in 2022, we have identified that CNL was still mostly operating below our expectations in most Aboriginal Rights Criteria. AOPFN has the responsibility to care for our unceded territory, and to preserve and protect the lands, waters, and wildlife. As such, AOPFN must be recognized as a rightful, respected, and principled steward of the environment.

We have developed a list of commitments to further improve the relationship between the Parties. AOPFN would like to see CNL commit to:



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- Greater CRL site access provisions for AOPFN members and Guardians;
- Agreements on cultural protection, promotion, and recognition at CRL sites;
- Develop and implement measures for recognition of, monitoring of and accommodation for impacts on traditional land and resource use, culture, and Indigenous health and well-being;
- Confirm funding for full implementation of AOPFN-led risk communication program;
- Confirm long-term funding and work with AOPFN to complete the initial successful application of the Neya Wabun Guardian Program at and around CRL and NPD facilities;
- Implementation of joint decision-making role for AOPFN on certain activities and planning and monitoring exercises at the sites;
- Agreement on a procurement and employment benefits program at the sites; and
- Greater communication and information sharing, including but not limited to reportable incidents;

We ask that CNSC incorporate our input from this AOPFN Aboriginal Rights Criteria Review Table into its forthcoming Regulatory Oversight Report for CNL Sites.



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CITATIONS

- Algonquins of Pikwakanagan First Nation. 2021a. *Algonquin Knowledge and Land Use Study: Nuclear Power Demonstration Closure Project.*
- Algonquins of Pikwakanagan First Nation. 2021b. *Algonquin Knowledge and Land Use Study: Near Surface Disposal Facility Project.*
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- Canadian Nuclear Safety Commission. 2023. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2022.*
- Fediuk, K., Gibson, G., and Firelight Research Inc. (2021). *Algonquins of Pikwakanagan First Nation Diet and Harvest Study Report Specific to Canadian Nuclear Laboratories' Near Surface Disposal Facility Project.*
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- Malone, M., Firelight Research Inc, and Algonquins of Pikwakanagan First Nation. 2021b. *Algonquins of Pikwakanagan First Nation Culture and Rights Study Specific to Canadian Nuclear Laboratories' Near Surface Disposal Facility Project.*



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APPENDIX 1: REVIEW OF CNL MIDTERM REPORT WITH RECOMMENDATIONS

In accordance with the Canadian Nuclear Safety Commission's (CNSC) 2018 decision to grant a Licence Renewal for Chalk River Laboratories (CRL), Canadian Nuclear Laboratories (CNL) has developed a Midterm Update on CRL's licensed activities for the first half of the 10-year licensing period. The Algonquins of Pikwàkanagan (AOPFN) here provides a high-level review of this document.

AOPFN also notes that CNL did not engage with AOPFN in the development of the Midterm Update document until recently, which is itself a sign of the inadequate import given to Indigenous engagement by CNL to date.

Prior to 2020, CNL and CNSC were primarily engaging and consulting regarding the Near Surface Disposal Facility (NSDF) with the Algonquins of Ontario. Only since 2020 has the CNL engaged with AOPFN on the topic, an oversight which is nowhere noted in the reviewed document.

Overall, AOPFN is disappointed that the midterm update reads like a public relations document rather than a balanced portrayal of actual performance by CNL to date. For example, on page 4 in the Executive Summary, CNL states:

To help the Government of Canada achieve its national target of net-zero emissions by 2050, CNL is advancing clean energy technologies for today and tomorrow, including small and advanced nuclear reactors, hydrogen, and fusion technologies. Given CNL and its predecessor's historical involvement with CANDU® reactor technology, CNL has the necessary skills, facilities, and expertise to pursue next generation energy solutions to fight climate change and bring energy security to all Canadians. CNL's researchers were pioneers in nuclear medicine and leaders in Cobalt-60 and Molybdenum-99 radioisotopes, both crucial in the collective effort to save lives and fight cancer. Now, CNL's teams are working on new targeted radiopharmaceuticals that kill cancer at the source without exposing patients to chemotherapy, avoiding some of the negative effects of nuclear medicine. And importantly, CNL is doing all this while safely addressing the nuclear industry's early environmental legacy and building a cleaner and more sustainable path for the future.

All of the beneficial realities and possibilities mentioned above need to be counter-balanced against the long-term impacts on AOPFN territory caused by CRL at and around the facility. The essence of impact equity is making sure that the party most impacted does not shoulder an unreasonable burden so that others can flourish. That has not been the case in relation to CRL for some 80 years now. Recognition of, and reconciliation in relation to, this reality are critical next steps. The lack of recognition, let alone reconciliatory measures, in the five-year review document is not a step in the right direction.

The matrix presented by CNL (Figure 5, page 14) does not include Aboriginal Rights, only Indigenous relations. This is highly problematic as it does not acknowledge the rights-holder status of Indigenous Nations and communities and instead treats them as just another



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stakeholder group. Any meaningful engagement between CNL and Indigenous Nations and communities must start from a recognition of the latter's unique Aboriginal and, where appropriate, Treaty Rights.

AOPFN is disappointed with CNL's reporting on Indigenous engagement (Section 3) which again reads like a public relations document rather than as an honest interpretation of gaps in prior engagement and how those gaps have since been addressed. AOPFN members have expressed extensive alienation from, and fears about, the CRL site, as well as concerns regarding loss of use of parts of their traditional lands, in multiple Algonquin Knowledge studies provided to CNL. AOPFN has also raised substantial concerns about the importation of radiological waste to the CRL site without AOPFN knowledge, input, or consent. The disregard of the issues and perspectives that AOPFN has previously shared with CNL from the Mid-term Update is of great concern.

Recommendation 1: CNL must revise the mid-term update to acknowledge and incorporate the concerns and perspectives AOPFN has provided CNL regarding the CRL site and operations. Such a revision would help more accurately represent CNL's successes and failures with regards to Indigenous engagement and would lend more credibility to CNL's stated commitments to improvement.

CNL reports that it has identified a need for a modern Intermediate-Level Waste Storage Array within the current boundaries of existing Waste Management Areas. AOPFN (staff involved in nuclear) has received no information on this new proposed storage facility and no engagement between CNL and AOPFN on the topic has been conducted to date. AOPFN requires that CNL engage with relevant Indigenous Nations and communities (including AOPFN) about this proposed work and other waste-management decisions in a timely fashion, i.e., as early in the planning process as possible. This is not the only project that AOPFN has not been provided with timely and detailed information; in fact, AOPFN is lacking information regarding the vast majority and possibly all of the proposed major activities listed in Figure 9 (p.18) which are scheduled to begin between 2024 and 2028.

Recommendation 2: CNL must provide AOPFN with timely, detailed, and accessible information regarding all proposed major CRL activities, including new facility construction and waste transfer plans. CNL must also commit to timely and meaningful engagement with AOPFN regarding these proposed projects and implement engagement activities as early in the respective planning processes as possible.

The lack of information shared regarding new and ongoing activities at CRL unfortunately characterizes CNL's Midterm Update. For example, AOPFN has not received detailed information regarding the decommissioning of unsafe buildings on the CRL campus. Though CNL has expressed that it will involve AOPFN in the Over-view Decommissioning and Cleanup Plan, there has been no meaningful engagement on this topic. CNL reports that waste shipments into CRL have been occurring and AOPFN is strongly concerned that most if not all of its members were unaware about these waste material shipments into AOPFN territory until 2022-23; a substantial increase in engagement of AOPFN in future planning and implementation of waste transportation activities is critical.



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AOPFN has not been informed regarding the potential or real contamination of groundwater requiring remediation activities on the part of CRL. CNL states that,

For most contaminated areas, more detailed soil and groundwater characterization will be required to determine the extent of cleanup efforts required or the type of mitigation measures that will be needed to allow safe future land use of those contaminated areas. (p.43)

Such statements are of great concern to AOPFN as they suggest that contamination is already resident in an unknown geographic distribution and intensity and represents an active environmental risk of a currently unknown magnitude at the site.

Recommendation 3: CNL must engage with AOPFN regarding what is currently known, and what remains to be learned, about the location, extent, management, and monitoring of contaminated, and potentially contaminated, groundwater. This engagement must include a role for AOPFN Guardians in monitoring activities; Guardians must be meaningfully involved in all environmental risk assessment and monitoring activities.

Section 4 of the Midterm Update provides an update on CNL's strategic priorities; these were originally established in 2018 at the time of the licensing decision. AOPFN notes the absence of reconciliation with Indigenous Peoples as one of CNL's strategic priorities. The incorporation of this goal into CNL's core priorities would demonstrate CNL's commitment to be guided by the concerns, perspectives, and needs of Indigenous communities and Nations in its operational strategies and future activities.

Recommendation 4: CNL should adopt an additional strategic priority – that of reconciliation with Indigenous peoples and a commitment to meaningful engagement and collaboration with Indigenous Nations and communities. AOPFN also expects CNL to adopt and implement the principles of Free, Prior, and Informed Consent (FPIC) in its engagement with Indigenous peoples regarding proposed and ongoing projects and activities. CNL must then report (e.g., in future activities reports) on how it is working to achieve this strategic goal in concrete ways.



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APPENDIX 2: AOPFN’S RECOMMENDED SCAS FOR CNL SAFETY METRICS (2021 SUBMISSION)

In AOPFN’s submission regarding the 2021 ROR, AOPFN and Sagkeeng Anicinabe First Nation proposed a set of eight safety and control areas (SCAs) to be added to CNSC’s existing 14 SCAs to promote and protect Aboriginal Rights and address Indigenous determinants of health and safety. The expectation was that these new SCAs (the “ARSCA Criteria”) would be used in post-2021 reporting for CNL and other nuclear activities on Indigenous lands. However, the ARSCA Criteria are not in evidence in CNSC’s 2022 reporting. They have been included again here as part of a renewed recommendation on the part of AOPFN that CNSC adopt the ARSCA Criteria as an integral part of their future reporting.

Proposed SCA	Description
Recognition of, protection and promotion of Aboriginal rights	<ul style="list-style-type: none"> • Does the site have measures in place, co-identified with impacted Indigenous peoples, to support the protection and promotion of: <ol style="list-style-type: none"> 1. Rights protected under Section 35 (hunting, trapping, harvesting, and fishing) and; 2. Principles under UNDRIP (Free, Prior and Informed Consent; Self-Determination; Cultural Protections; Indigenous Health);
Risk communication with Indigenous peoples and management of public concern	<ul style="list-style-type: none"> • Does the site have an effectively functioning program that communicates risks to Indigenous peoples in a timely, effective, and accepted manner? • Is the information being sent through effective and accepted communication channels? • Are public concerns about the facility low, moderate, or high?
Integration of Indigenous Knowledge into site monitoring and management	<ul style="list-style-type: none"> • How is Indigenous Knowledge integrated into monitoring of the site and its surroundings? Do impacted Indigenous groups have a demonstrable role in identifying adaptive management measures?
Engagement of Indigenous peoples in site planning,	<ul style="list-style-type: none"> • Is there a system in place whereby impacted Indigenous groups are integrated into site planning, monitoring and management -



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Proposed SCA	Description
monitoring and management	research, analyses, decisions, and implementation?
Contribution to reconciliation with Indigenous peoples	<ul style="list-style-type: none"> • Do the site operations and the relationship between CNL and impacted Indigenous groups contribute to better relations between Canada and impacted Indigenous peoples? • Are there demonstrable positive benefits to Indigenous peoples from the site? • Does the site communicate effectively and regularly with impacted Indigenous nations regarding past, present, and future operations? • How is the site improving communication and relations with Indigenous nations regarding past relationships? • Do CNL and CNSC integrate Indigenous values into site monitoring, planning, and reviews? (i.e., assessing risk from an Indigenous lens, accounting for past harms and traumas)
Level of knowledge and support for site waste management by Indigenous peoples.	<ul style="list-style-type: none"> • Does the site maintain communication and consultation with impacted Indigenous groups regarding onsite materials management, ultimate disposal plans, import and export types and volumes, and transportation methods and protocols? • How are Indigenous concerns and recommendations integrated?
Engagement adequacy with Indigenous peoples	<ul style="list-style-type: none"> • Does the site meet a minimum standard of adequacy of engagement with each impacted Indigenous group by CNL in a given year? (As a Pass or Fail outcome)
Communication and management of reportable incidents	<ul style="list-style-type: none"> • Were all reportable incidents promptly reported to impacted Indigenous groups and followed up on with additional communications?