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**Written submission from the
Kebaowek First Nation**

**Mémoire de la
Première Nation de Kebaowek**

**Regulatory Oversight Report for
Uranium and Nuclear Substance
Processing Facilities in Canada: 2022**

**Rapport de surveillance réglementaire
des installations de traitement de
l'uranium et des substances nucléaires
au Canada : 2022**

Commission Meeting

Réunion de la Commission

December 13-14, 2023

13-14 décembre 2023

**Kebaowek First Nation Review
of the Regulatory Oversight Report (“ROR”) for
Uranium and Nuclear Substance Processing Facilities in Canada: 2022**

WRITTEN SUBMISSION

presented to
Canadian Nuclear Safety Commission

October 30, 2023

NOTE

This document is the final written submission of the Algonquin Nation of Kebaowek submitted by the Chief and Council on October 30, 2023.

1. INTRODUCTION

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 Uranium and Nuclear Substance Processing Facilities in Canada: 2022.¹

This submission provides a number of forward-looking recommendations and conditions regarding the uranium and nuclear processing facilities operations affecting Algonquin Anishinaabeg lands and waters as outlined in 2022 ROR. We await further discussion of these subjects and our recommendations in the upcoming December 2023 ROR Commission meeting.

A. Who We Are

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

¹ CMD 23-M35 – Submission from CNSC staff on the Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities in Canada: 2022 [ROR]

traditional knowledge and values, customary laws and wisdom that relate to the sustainable care of the lands and waterways we occupy.

B. Focus of Our Submission

Mobility on our lands and waterways has always been central to our culture and our relations. The following KFN ROR comments on uranium and nuclear substance processing facilities on our lands and waterways arises from our growing concern that Canadian nuclear facilities and operational activities continue to introduce nuclear waste into the environment and decrease the capacity of our future generations to benefit from the environment. Environmental sustainability is central Ona'ken'age'win our system of customary law and governance.

We make these submissions recognizing Kebaowek First Nation was never consulted on the nuclear developments that impacts our lands and waters and that they continue to operate without our free and prior consent. We also recognize that the existence of nuclear activities on our lands not only brings routine releases of radionuclides into the environment, but the possibility of accidents and malfunctions. These the inequitable effects of nuclear activities that we will continue to bear in perpetuity, given the inherent danger and toxicity of nuclear materials.

We submit that these concerns remain unaddressed and neither the ROR nor actions by the Commission have grappled with the disproportionate impact we as Indigenous peoples bear because of nuclear developments.

2. COMMENTS ON THE ROR

A. Indigenous engagement characterized as 'meaningful'

KFN does 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."²

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.

Second, **KFN finds** the assessment by CNSC Staff that engagement was "meaningful" fails to recognize and grapple with the submissions Kebaowek First Nation made in last year's ROR

² ROR, p 3

where we highlighted a number of licensee specific matters where minimal procedural thresholds for consultation – such as have accessible information and ensuring our concerns were substantially addressed – had not been met.³

B. Failure to include *UN Declaration on the Rights of Indigenous Peoples*

KFN brings forward a comment made in last year’s ROR, namely that the ROR fails to consider, assess and apply the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) to the licensed activities under review.

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)⁴ 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.

While the ROR recognizes that ‘requests for CNSC to fully implement UNDRIP principles’ were a theme from last year’s ROR,⁵ beyond a commitment to ‘make changes to the report based on recommendations and feedback from intervenors,’⁶ yet another year has passed when we fail to see the CNSC seriously consider the changes that are needed to nuclear regulation and oversight necessary to recognize and respect UNDRIP.

KFN recommends that the Commission review the sufficiency of the ROR 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).

KFN also recommends that all forthcoming RORs 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

³ Kebaowek First Nation Review of the Regulatory Oversight Report (“ROR”) for Uranium and Nuclear Substance Processing Facilities in Canada: 2021, (31 October 2022) p 6 [**KFN ROR - Comments 2021**]

⁴ 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>

⁵ ROR, p 121

⁶ ROR, p 1

- Measures to prevent and address impacts to Indigenous rights were addressed, responsive to community concerns
- Consultation was undertaken which could lead to the setting of measures enabling the exercise of regulatory authority by First Nations⁷

C. Mandatory Review of Climate Vulnerability

A number of comments are made throughout the ROR which speaks to the critical and urgent need for the CNSC to directly assess the vulnerability of nuclear operations and activities to climate change. For instance, in regards to the Port Hope Conversion Facility, the ROR states:

Cameco reported uranium sanitary sewer results from the combined facility discharge that were above the daily action level...Groundwater infiltration, exacerbated by heavy precipitation events was the primary contributing factor to these exceedances.⁸

KFN recommends considering whether climate change impacts a licensee's ability to protect human health and the environment, as required by section 24(4) of the *NSCA*, is directly relevant to the CNSC's oversight and ought to be reported in the ROR.

Catastrophic weather events are becoming more frequent and **KFN recommends** climate vulnerability of nuclear operations and facilities be mandatory chapters in all RORs, including review of frequency and scale of regional lightning strikes and related fire and blowdown events.

D. Disclosure of Information regarding Waste Transfer to CNL

In keeping with UNDRIP, including Articles, 1, 7, 29 and 32, **KFN seeks confirmation** and documentation of waste transfers from any of the uranium and nuclear substance facilities included in the ROR to CNL's Chalk River site.

We also ask the CNSC review and inform of us potential waste transfers, whether from operations or eventual decommissioning, that could result at Chalk River from the licensed uranium and nuclear substance processing facilities, as Chalk River is located on lands included within KFN's Statement of Asserted Rights and Title Territory.⁹

For each waste transfer, **Kebaowek asks** the CNSC to provide the following information:

- Facility of Origin

⁷ United Nations Declaration on the Rights of Indigenous Peoples Act [Action Plan](#), 30 and 34 [UNDA Action Plan]

⁸ ROR, p 26

⁹ Timiskaming, Wolf Lake and Eagle Village Members of the Algonquin Nation Statement of Assertion of Aboriginal Rights & Title, (11 Jan 2023), [online](#)

- Substance name
- Units/weight/volume
- Method of disposal and location
- Percentage change in quantity from previous years

E. BWXT Consultation Remains Lacking

Regardless of the specific nuclear project or ROR under review, the government of Canada has a constitutional obligation to consult Kebaowek and all First Nations within the Algonquin Nation. Section 8(2) of the *Nuclear Safety and Control Act (NSCA 1997)* 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.

On October 08, 2021 the Commission made a decision on the BWXT Medical licence application where in your decision CNSC staff expressed their opinion, “that the duty to consult is not engaged by this decision because the proposed license, as it does not pose a change to the footprint of the existing Nordion nuclear substance processing facility or significantly change the operations of the existing facility, would not cause any adverse impacts to any established or potential Indigenous and/or treaty rights.”

This 10 year licencing decision is of deep concern to KFN as we expect to be further consulted regarding all operations inside and outside the Nordion facility including the development of new nuclear technologies and the packaging and shipping of nuclear waste and the potential impacts of these operations on our current and future socio-cultural and environmental well-being. The CNSC carte blanche opinion statement that “the duty to consult is not engaged by this decision” actively discouraged any further meaningful engagement between BWXT and KFN that is necessary in building positive relationships, advancing community trust and environmental reconciliation with First Nations.

“The Supreme Court of Canada has said that deep consultation will typically include the following elements:

- Meaningful and accessible information about the project: *Information about a project should come in a form that is useful and digestible to the Indigenous community affected. For instance, where community members speak their Indigenous language, translation of the project materials into that language may be required.*
- Formal participation in the decision making process: *This will usually include the opportunity to submit evidence and make submissions about the impacts of the project.*

- Funding to enable the participation of the Indigenous community in the decision-making process: *Without adequate funding, it can be difficult for a community to participate meaningfully in the decision-making process.*
- Written reasons to show how Aboriginal concerns were considered and the impact they had on the decision. *This should include a specific assessment of the impact of the project on the asserted right, not just a consideration of the environmental impacts of a project generally.*

See, generally, *Hamlet of Clyde River v Petroleum Geo-Services Inc*, 2017 SCC 40 at paras 47-52.

This is not a rigid checklist, however. A reviewing court will look at each case on its facts to determine whether the standard of “deep consultation” is met. The overarching requirement is to engage in a meaningful process of consultation that attempts to substantially address Indigenous concerns about the project. Simply providing a forum for an Indigenous community to air their concerns, or to exchange information about the project is not deep consultation. Nor is it acceptable if consultation begins from the premise that no accommodation can be made to address Indigenous concerns (*Haida Nation*, paras 42, 44; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at para 55). In other words, reasonable accommodations to address Indigenous concerns should be made as part of the consultation process.

F. Other Comments

KFN also makes the following specific requests to the Commission, including clarifications for CNSC Staff:

- Table 4-1 sets out the number of IAEA-led safeguard inspections and CNSC-led safeguard inspections and the facilities.¹⁰ **KFN requests** the procedure or policy guiding each inspection to be cited in the ROR and a copy provided for our review.

For BWXT Medical, Best Theratronics and Nordion, we **request** the after-inspection reports from the IAEA and a **clarification** from the CNSC as to how any follow up actions are being tracked and overseen.

- The ROR states Best Theratronics had 3 NNCs related to “frivolous posting of radioactive symbols.”¹¹ We ask CNSC Staff further describe this occurrence and what follow up actions were taken. We also ask that NNC be spelled out in full.

¹⁰ ROR, p 16

¹¹ ROR, p 21

- KFN has reviewed the release of radionuclide data provided on the Open Government Portal.¹² The data is neither accessible nor presented in a way that can be easily compared to data provided on the National Pollutant Release Inventory (NPRI).¹³ We **request** licensees report radionuclide data via the NPRI for ease of use, review, accessibility and comparison.

¹² ROR, p 64

¹³ National Pollutant Release Inventory, <https://www.canada.ca/en/services/environment/pollution-waste-management/national-pollutant-release-inventory.html>