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## **Oral presentation**

## **Exposé oral**

### **Written submission from the Saugeen Ojibway Nation**

### **Mémoire de la Nation Saugeen Ojibway**

In the Matter of the

À l'égard d'

#### **Ontario Power Generation Inc.**

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Applicability of the Darlington New Nuclear Project environmental assessment and plant parameter envelope to selected reactor technology

Applicabilité de l'évaluation environnementale et de l'enveloppe des paramètres de la centrale à la technologie de réacteur sélectionnée pour le projet de nouvelle centrale nucléaire de Darlington

#### **Commission Public Hearing**

#### **Audience publique de la Commission**

**January 2024**

**Janvier 2024**



**Written Submissions of the Saugeen Ojibway Nation –  
Applicability of Darlington New Nuclear Project Environmental Assessment and  
Plant Parameter Envelope to the BWRX-300**

November 20, 2023

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## **I. Request to Intervene**

Pursuant to rule 19 of the *Canadian Nuclear Safety Commission Rules of Procedure*,<sup>1</sup> the Saugeen Ojibway Nation (“SON”) requests the opportunity to intervene in the public hearing on the applicability of the Darlington New Nuclear Project (“DNNP”) environmental assessment (“EA”) and plant parameter envelope (“PPE”) to the selected reactor technology through written and oral submissions.

## **II. Contact Information**

The SON can be contacted through its Environment Office as well as its legal counsel at:

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## **III. Overview**

The purpose of this document is to provide the written submissions on behalf of SON to the Canadian Nuclear Safety Commission (“CNSC”).

### *1. Saugeen Ojibway Nation*

SON is comprised of the Anishinaabe People of the Chippewas of Nawash Unceded First Nation and Chippewas of Saugeen First Nation. Anishinaabekiiing, SON’s Traditional and Treaty Territory, encompasses much of the Saugeen (Bruce) Peninsula, extending down south of Goderich and east of Collingwood. The waters surrounding these lands and the lakebed of Lake Huron from the shore to the international boundary with the United States and to halfway across Georgian Bay are also part of SON’s Territory.

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<sup>1</sup> SOR/2000-211.

SON's ancestors have used and occupied Anishinaabekiing since time immemorial and its People continue to do so today. SON's Territory consists of everything integral to life—the lands, rivers, lakes, winds, plants, animals, and fish. Anishinaabekiing has sustained SON People physically and spiritually for countless generations and must continue to do so far into the future.

## *2. Nuclearization of Anishinaabekiing*

The development of the nuclear industry in SON Territory has played a major role in shaping the land and SON People's place within it.<sup>2</sup> Without consultation, SON became host to:

- Canada's first commercial-scale Canada Deuterium Uranium ("CANDU") reactor at Douglas Point,
- the world's largest operating nuclear facility at the Bruce site,
- the vast majority of Ontario's low and intermediate level waste ("L&ILW") at the Western Waste Management Facility ("WWMF"),
- the Western Clean-Energy Sorting and Recycling Facility, and
- 40 percent of Canada's spent fuel.

Anishinaabekiing is currently being considered as one of two potential sites for Canada's deep geological repository ("DGR"). Until recently, this meant that SON was being asked to accept all of Canada's 5.5 million bundles of spent fuel from existing CANDU reactors for permanent disposal. Following the Minister of Natural Resources Canada's recent acceptance of the Nuclear Waste Management Organization's ("NWMO") recommendation that intermediate level waste ("ILW") be co-located with spent fuel, the scope of the project is expected to expand significantly.<sup>3</sup>

The development of a small modular reactor ("SMR") industry would further upset and complicate the existing proposals for radioactive waste management, storage, and disposal. No longer would the NWMO only be required to plan for the waste produced by Canada's aging fleet of CANDU reactors, all of which will be decommissioned within the next three or four decades. The planned development and deployment of SMRs would create an entirely new and potentially endless stream of all levels of radioactive waste of a different nature than what is currently being produced in Canada.

The waste that will be produced by SMRs like the DNNP will be radioactive for hundreds of thousands of years. Unless circumstances change dramatically, the pressure SON will face to accept this waste for interim storage and/or final disposal will be tremendous. The

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<sup>2</sup> The history and current reality of the nuclear industry in SON Territory has been described in previous SON submissions relating to the licensing of the Western Waste Management Facility and the Joint Review Panel for Ontario Power Generation's deep geological repository for low and intermediate level wastes proposal.

<sup>3</sup> Nuclear Waste Management Organization, "Integrated Strategy for Radioactive Waste" (June 2023), available online: <https://www.nwmo.ca/ISRW>.

assumption that they will do so is already baked into the DNNP's Environmental Impact Statement ("EIS"). Whatever the future holds for the nuclear industry in this country, SON People and Territory will inexorably be at the heart of it. This is the legacy of the nuclear industry for SON.

### 3. *Inadequacy of EA Process*

SON's written submissions made as part of the preliminary engagement process of the DNNP raised concerns about the inadequacy of the original EA. None of these concerns were substantively addressed by the CNSC in determining the applicability of the EA and PPE to the proposed project. SON submits that this is the result of two key issues.

First, the 1992 *Canadian Environmental Assessment Act* ("CEAA 1992")<sup>4</sup> under which this project was assessed, does not reflect Canada's current standards for Indigenous engagement and the protection of Aboriginal rights in the regulatory assessment process. As stated by the Supreme Court of Canada, Aboriginal law is a "highly complex and rapidly evolving area of the law."<sup>5</sup> That the prior EA does not have an expiry date does not mean that the threshold for meeting Canada's constitutional and common law obligations towards Indigenous Peoples have been met. In the case of the DNNP, throughout the EA process, SON has merely been recognized as one of the Indigenous groups that have "expressed an interest in the DNNP"<sup>6</sup> rather than an Indigenous Nation with recognized Aboriginal and treaty rights that may be impacted by this project. This problematic underlying premise undermines the effectiveness of the EA and must be corrected.

Second, SON submits that the true significance of the DNNP is not captured by the original EA process as it was not recognized as being the first proposed commercial SMR. The conversion of this project to an SMR does not signal a reduction of impacts. Rather, the DNNP represents the launching of a new era in nuclear energy development that could have widespread and lasting impacts. This is what makes the chosen reactor technology "fundamentally different" from the technologies bounded by the PPE.

Now is the moment to ensure a credible, comprehensive, and public assessment is undertaken to ensure the full potential impacts of the DNNP are considered. The failure to use the EA as a planning tool and process for this new class of reactors will have consequential impacts, particularly on waste management, storage, and disposal, that are not understood and have not been properly considered.

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<sup>4</sup> SC 1992, c.37, archived version as of 06 July 2012.

<sup>5</sup> *Delgamuukw v. British Columbia* [1997] 3 SCR 1010 at para. 159.

<sup>6</sup> CNSC, "Commission Member Document for determination for Ontario Power Generation Darlington New Nuclear Project", CMD 24-H4 (September 18, 2023) at p.69. ("CMD")

#### **IV. Background**

In October 2022, Ontario Power Generation (“OPG”) submitted its DNNP Application for a Licence to Construct a Reactor Facility to the CNSC. The first phase of the application process is to determine whether the EIS and subsequent EA conducted by a federally appointed Joint Review Panel (“JRP”) adequately considered the impacts of the chosen reactor design: the General Electric Hitachi BWRX-300 (“BWRX-300”). The EA, which was conducted over a decade ago under CEAA 1992, was based on bounded technologies in a PPE. As the BWRX-300 was not among the four reactor technologies assessed in that process, the CNSC must determine whether the EA findings are still valid.

OPG states that the EA adequately addresses possible impacts because the BWRX-300 belongs to the same Light Water Reactor family as the Pressurized Water Reactor that was included in the EIS. As with the Pressurized Water Reactor, the BWRX-300 requires lightly enriched uranium (U-235 enrichment up to 5 percent) and light water as the coolant and moderator. Because OPG has opted for an SMR instead of a full-sized reactor, it argues that virtually all predicted negative impacts from the project will fall within the scope of the original EIS due to the smaller scale of the project.

#### **V. Comments and Recommendations**

SON staff and subject-matter experts completed a review and analysis of the project and submit the following comments and concerns.

##### *1. “Fundamentally Different”*

When the DNNP was first assessed, the Government of Canada (“Canada”) accepted the JRP’s Recommendation #1 that:

any Responsible Authority under the CEAA will need to determine whether the future proposal by the proponent is fundamentally different from the specific reactor technologies assessed by the JRP and if a new EA is required under the CEAA.

The CNSC, with the Fisheries and Oceans Canada and Transport Canada acting as the Responsible Authorities, determined that the BWRX-300 reactor technology is bounded by the EA, and the EA remains applicable for this reactor technology.

SON submits, however, that the nature of this project as the first commercial SMR at the forefront of the development of an SMR industry to be deployed across the country makes the chosen technology fundamentally different from what was originally considered. Despite the significance of this development, Canada has not proposed any strategic review

under the *Impact Assessment Act* (“IAA”)<sup>7</sup> regarding SMRs. As such, this decision regarding the DNNP may well stand as the Commission’s assessment that an IAA review is not necessary for SMR reactors, as a class or technology. In light of this reality, the question posed in these proceedings is being construed and interpreted too narrowly, leaving fundamentally important issues unaddressed and critical questions unanswered.

a) Canada’s Promotion of a Nuclear Renaissance

Government and industry have expressed exceptional enthusiasm about the promise of SMRs and the future of nuclear energy. SMRs are understood to be key to the widespread deployment of nuclear reactors across the country and into remote communities. Canada has made it clear that it intends to support and promote the development of a new SMR industry and economy.

In October 2022, the Minister of Natural Resources presented Canada’s National Statement on Nuclear Energy in Washington, D.C. Specifically, Minister Wilkinson explained that Canada intends to be an early adopter of SMRs and the government’s investment of billions of dollars to support their development and deployment “underlines the accelerating momentum in nuclear energy and highlights Canada’s desire to play a leadership role in this area.”<sup>8</sup> This announcement aligns with various other federal and provincial efforts to promote SMRs, such as Canada’s SMR Roadmap, SMR Action Plan, and the Memorandum of Understanding on the cooperation of the development and deployment of SMRs between Ontario, New Brunswick, Saskatchewan, and Alberta.

b) Regulatory “Streamlining”

As part of these efforts to promote nuclear, both industry and government have sought to ensure that SMRs benefit from “streamlined” regulatory reviews, ostensibly to allow for cheaper and faster deployment. The SMR Regulatory Readiness Working Group, established as part of Canada’s SMR Action Plan, and other SMR advocates sought to ensure that SMRs be exempted from the “Project List” in the IAA to prevent “undue timelines and costs for SMR project approval, which are likely to be an impediment to SMR deployment”.<sup>9</sup> These efforts bore fruit: SMRs with a thermal capacity of up to 200 MWth are exempted from the “Project List”.<sup>10</sup> Moreover, new reactors with the combined thermal capacity of up

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<sup>7</sup> S.C. 2019, c. 28, s.1.

<sup>8</sup> Natural Resources Canada, “Canada’s National Statement on Nuclear Energy” (October 26, 2022), available online: [www.canada.ca/en/natural-resources-canada/news/2022/10/canadas-national-statement-on-nuclear-energy--the-honourable-jonathan-wilkinson-minister-of-natural-resources--the-international-atomic-energy-agen.html](http://www.canada.ca/en/natural-resources-canada/news/2022/10/canadas-national-statement-on-nuclear-energy--the-honourable-jonathan-wilkinson-minister-of-natural-resources--the-international-atomic-energy-agen.html).

<sup>9</sup> Regulatory Readiness Working Group, “Canadian SMR Roadmap: Regulatory Readiness Working Group, Final Report” (August 1, 2018), available online: [smrroadmap.ca/wp-content/uploads/2018/12/Regulatory-Readiness-WG.pdf?x64773](http://smrroadmap.ca/wp-content/uploads/2018/12/Regulatory-Readiness-WG.pdf?x64773).

<sup>10</sup> *Physical Activities Regulations*, SOR/2019-285, s 27(b).



to 900 MWth are also exempted if located within the licensed boundaries of an existing Class IA facility.<sup>11</sup>

SON submits that regulatory oversight should be increased rather than diminished when a proponent is proposing to place SMRs next to existing reactors. Such proximity raises important considerations that should be addressed, such as how the modular units would share support systems between themselves as well as with existing reactors. Compounding environmental effects require careful and integrated assessments. As identified during the Fukushima nuclear disaster, having many units at a single site can have unexpected consequences, such as common mode failures impacting the operations and safety of neighbouring plants.

Quite apart from these safety concerns, regulations designed to perpetuate nuclear development at existing sites threaten to exacerbate the injustices faced by SON and other affected Indigenous groups, who disproportionately bear the burden of Canada's nuclear industry. Canada's revitalized policy and programs aimed at promoting a national nuclear renaissance compromises its reconciliation commitments to these affected Indigenous Peoples. SON agrees that the need to reduce carbon emissions is critical, but Canada must be diligent about ensuring that these efforts do not further disenfranchise those Indigenous Peoples who have already paid a heavy price for the development of Canada's nuclear industry.

## 2. *Commitment to Reconciliation*

Despite these troubling aspects of the new federal regulatory assessment regime regarding SMRs, the IAA represents overall an important act of reconciliation. Largely, it more meaningfully recognizes the need to consider impacts of development on Indigenous Peoples, to uphold Aboriginal and treaty rights, and to give meaning to the right of self-determination in the assessment process. It is unsurprising that legislation from 2019 better captures and reflects the current state of the law regarding Canada's obligations towards to Indigenous Peoples than legislation drafted three decades ago.

Much has changed in recent years. In 2016, Canada finally announced its "unqualified support"<sup>12</sup> of the *United Nations Declaration on the Rights of Indigenous Peoples* ("UN Declaration"), which sets out "the minimum standards for the survival, dignity and well-being of Indigenous peoples".<sup>13</sup> In 2021, Canada enacted the *United Nations Declaration on*

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<sup>11</sup> *Ibid*, s 27(a).

<sup>12</sup> Government of Canada, "Canada Becomes a full supporter of the United Nations Declaration on the Rights of Indigenous Peoples", New Release (May 10, 2016), available online: <https://www.canada.ca/en/indigenous-northern-affairs/news/2016/05/canada-becomes-a-full-supporter-of-the-united-nations-declaration-on-the-rights-of-indigenous-peoples.html>.

<sup>13</sup> United Nations (General Assembly). (2007). Declaration on the Rights of Indigenous Peoples at Preamble. Emphasis added.

*the Rights of Indigenous Peoples Act* which recognizes that Indigenous Peoples have suffered “injustices as a result of, among other things, colonization and dispossession of their lands, territories and resources”.<sup>14</sup> In the *Principles respecting the Government of Canada’s relationship with Indigenous Peoples*,<sup>15</sup> Canada recognized that “reconciliation is a fundamental purpose of section 35 of the *Constitution Act, 1982*”.<sup>16</sup> The list of other important jurisprudential, legislative, and policy developments goes on.

Canada’s determination to bring about a nuclear renaissance is threatening to undermine its commitment to reconciliation with Indigenous Peoples. Case in point is the Minister of Environment and Climate Change Canada’s refusal to designate the Advanced Reactor Concepts sodium-cooled fast reactor (ARC-100) SMR project in Point Lepreau, New Brunswick, despite requests by First Nations and others to do so.<sup>17</sup> This refusal undermines the importance of a coordinated impact assessment as a public planning and decision-making tool to determine the positive and negative effects of a project. Moreover, it highlights the need for a proper assessment of the DNNP as the first proposed commercial SMR in Canada.

### 3. *Need for an Impact Assessment under the IAA*

At present, the effectiveness of the EA for the DNNP is undermined by the fact that it was undertaken under the CEAA 1992. In the EIS, SON were not identified as having rights and interests that could be impacted by the project and therefore were not considered. As such, even though SON will likely be asked to host the waste produced by the DNNP *forever*, SON was not mentioned once in the 1168-page EIS report. Despite SON’s written submissions as part of the preliminary engagement process, this attitude persists.

In the Commission Member Document (“CMD”), SON are listed as one of the Indigenous groups “that have expressed an interest in the DNNP”<sup>18</sup> rather than a potentially impacted Indigenous Nation with constitutionally protected rights. This is because under the EA, Indigenous groups with interests were identified as only those with “rights in the area where the DNNP is proposed” not those with rights in the area where impacts from the project may occur. Presumably as a result of this inadequate characterization of who must be consulted deeply, SON’s concerns have not been meaningfully addressed.<sup>19</sup> If deferred

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<sup>14</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14. (UN Declaration Act)

<sup>15</sup> Government of Canada, “Principles respecting the Government of Canada’s relationship with Indigenous Peoples” (2018), available online: [www.justice.gc.ca/eng/csj-sjc/principles.pdf](http://www.justice.gc.ca/eng/csj-sjc/principles.pdf)

<sup>16</sup> The recent *Reference re Impact Assessment Act*, 2023 SCC 23 and any consequential future amendments to the IAA should not impact projects such as the DNNP, which fall squarely within federal jurisdiction regarding nuclear energy, navigable waters, and Indigenous People.

<sup>17</sup> Government of Canada, “Minister’s Response – Small Modular Reactor Demonstration Project” (December 22, 2022), available online at: [iaac-aeic.gc.ca/050/evaluations/document/145836?culture=en-CA](http://iaac-aeic.gc.ca/050/evaluations/document/145836?culture=en-CA).

<sup>18</sup> CMD at p. 69.

<sup>19</sup> CMD at p.68.

impacts are not considered then it is certain significantly affected Indigenous Nations will not be properly consulted with respect to the proposal.

The risk of this occurring could be reduced if available IAA processes had been applied in this context, including an individual impact assessment as well as regional and strategic assessments. These tools are recognized by Canada as being key to protecting Aboriginal rights and to fostering reconciliation.<sup>20</sup> The proposed development of the first commercial SMR in the country warrants a comprehensive and public review. The many serious and novel issues raised by the development and deployment of SMRs, and the very real and permanent impacts this could have on SON must be understood and meaningfully addressed.

Without the support of strategic and regional assessments to determining the impacts of this project and of SMRs generally, this current outdated EA is the only process under which these significant issues are being considered. It is unacceptable and irresponsible for SON to hope that such reviews will be undertaken as there have been no commitments or plans to undertake them. Consequently, we are left with no valid assessment of the potential implications of this project on SON as the current EA fails to even acknowledge this is a matter to be considered. As such, it is imperative the assessment for the DNNP now before the Commission be as thorough as possible and for there to be a recognition that the impacts of SMRs extend well beyond the footprint of the operating reactor.

#### *4. Concerns regarding new Fuel Source*

Another connected issues that was not properly addressed in the EA was the impact of the proposed SMR fuel. There are nuclear criticality safety concerns related to the use of lightly enriched uranium as the nuclear fuel that must be carefully scrutinized. That lightly enriched uranium can go critical in normal water—unlike CANDU fuel—means that CNSC will have to ensure more safety controls are in place. That some of these controls include the use of neutron absorber (poison) in the rack design and borated water are cause for concern from a human safety and environmental protection point of view. These safety concerns will impact the entire fuel cycle from production, to transportation, to storage and disposal. These criticality issues and concerns are far different from the past rhetoric about the added safety for CANDU reactors because of the use of natural uranium as the fuel.

#### *5. Waste Management, Storage, and Disposal*

As described above, SON's greatest concern regarding the DNNP and SMR development generally is the waste management, storage, and disposal issue. The CMD summarizes the concerns SON expressed in its submissions during the preliminary engagement process as follows: "the EA did not consider the transportation of waste to the Western Waste

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<sup>20</sup> IAA at preamble.

Management facility located in their territory, nor did it consider the impact of new sources of waste to their territory”.<sup>21</sup> Unfortunately, the CNSC did not then go onto meaningfully address these concerns. Utilizing the tools available under the current IAA would provide important processes for addressing these concerns effectively in ways that the original EA did not.

In OPG’s EIS review for the BWRX-300, it recognized that the original process for addressing radioactive waste products still applies to the chosen reactor, namely that L&ILW will be “shipped to an off-site OPG licensed facility” and that the spent fuel is to be addressed off-site by NWMO.<sup>22</sup> In its 2022 Licence to Construction Application, OPG lists the following possible waste disposal paths:

- Solid radioactive waste shipped to a licenced off-site facility for incineration, decontamination, volume minimization, and/or storage; and
- Radioactive liquid chemicals are likely to be incinerated or solidified and stored at an OPG licenced facility.<sup>23</sup>

Shipping “off-site” to be stored in an “OPG licensed facility” means shipping it to SON Territory. Unless OPG has some as yet undisclosed plans to develop another centralized processing and storage facility, all this waste is destined for the WWMF—the only central storage facility for OPG’s L&ILW. The intense nuclearization of SON Territory has made it the obvious destination for permanent and future waste management and disposal projects. OPG’s proposed plan of siting its L&ILW DGR on SON Territory, adjacent to its current surface storage facility was to be expected as it offered the most efficient and economical choice.

The NWMO’s planned DGR for spent fuel—and now ILW—is no different. SON Territory has been a targeted site for nuclear waste management for as long as there has been waste to manage. And so, as with all prior radioactive waste storage and disposal plans, unless dramatic change occurs, all paths for future waste disposal point to SON Territory. Canada is in danger of repeating the mistakes of its past as the waste problem remains unresolved. As this problem grows, so too will the pressure to compromise SON’s rights for the “public interest”.

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<sup>21</sup> CMD at p. 75.

<sup>22</sup> OPG submission, *Darlington New Nuclear Project Report for the Review of the Environmental Impact Statement for Small Modular Reactor BWRX-300*, revision 0, NK054-REP-07730-00055, (October 5, 2022) at p. 21-22.

<sup>23</sup> OPG, *Darlington New Nuclear Project: Application for a Licence to Construct a Reactor Facility* (October 2022) at 224.

#### a) Unanswered Questions

That the NWMO has been issued a mandate to solve the nuclear waste problem does not guarantee that it will manage to do so. The NWMO does not have a site selected for a DGR project, let alone a DGR project under development. This is a fact that cannot simply be ignored. Nor can it be ignored that the current NWMO DGR project was based on the disposal of spent fuel from existing CANDU reactors. Dealing with a new and potentially endless stream of waste produced from an SMR industry is an entirely novel dimension to this project. Given the changing landscape of the nuclear industry, many questions have not been answered, such as:

- Will the NWMO seek to expand its currently planned DGR project to deal with this new waste?
- Will the introduction of lightly enriched uranium impact the design specifications of the DGR project?
- Will additional DGRs be required to accommodate this new waste stream? If so, where will they be sited? And according to what time frames?
- How will waste management from a new nuclear industry be funded?
- How can the NWMO be asking SON, or any other Nation or community, to accept a DGR when the bounds of that project are so poorly defined or understood by the industry itself?

It is unclear whether the NWMO has had the opportunity to investigate these questions deeply. It certainly has not provided publicly accessible analyses that address the issue of new SMR waste streams. Nor does the NWMO's Integrated Strategy for Radioactive Waste address these issues. It is simply unacceptable to defer the asking and answering of these questions to some future unspecified date. Canada cannot repeat the mistakes of the past by rushing into a new era of nuclear development without having a solution for the resulting waste. SON has paid heavily for this lack of planning already—it is profoundly unjust to ask them to continue to do so.

#### b) No New Waste

Until a decision has been made by SON membership as to whether they are willing to host the proposed DGR and until the parameters of such a project are determined, SON will not accept fuel waste from newly approved SMR projects on SON Territory. The fundamental change in circumstances regarding the scope of the DGR project calls for the resetting of discussions between SON and the NWMO. The NWMO has been engaging with SON regarding whether SON will agree to become a willing and informed host to existing CANDU reactors' spent fuel. The ground is shifting beneath us, and the original project description no longer reflects the reality of what will be required of a DGR project.

On May 30, 2016, the NWMO committed to the SON Chiefs that it would not select the DGR site in SON Territory without SON consent. This commitment has since been repeated time and again. While SON remains committed to participating in that process in a principled and good faith manner, the changing nature of the project and the many complex nuclear issues facing SON have further complicating the decision-making process.

Similarly, SON will not accept the L&ILW from these projects at the WWMF for interim storage without these larger issues being addressed. There need to be provisions made for permanent solutions at sites outside of SON Territory, if SON consent has not been provided.

If any SMRs are approved and licenced for operation, SON expects licenses issued to include the condition that radioactive waste produced by the SMR remain on site at the facility until an acceptable waste disposal solution has been reached. If that solution is to involve Anishinaabeking, then SON consent will be required. The CNSC will have a critical role in working with Canada and the necessary federal departments and institutions to ensure that SON's position is addressed in the assessment process and incorporated in any licenses issued. Government, regulators, and proponents must not assume or make plans on the basis that SON will continue accepting radioactive waste on its Territory indefinitely. SON's long-lasting nuclear legacy issues have yet to be properly recognized by Canada, let alone meaningfully addressed or resolved.

## **VI. Conclusion**

The CNSC is being asked to respond to the question of whether the original EA adequately addresses the considered impacts of the BWRX-300 reactor technology or whether it is "fundamentally different" from what was described in the PPE. As the first commercial SMR in the country to seek approval on the eve of what Canada hopes will become an SMR nuclear renaissance, the BWRX-300 is fundamentally different from what was originally considered. Moreover, the CEAA 1992 is outdated with respect to Canada's obligations towards Indigenous Peoples and does not meet current standards.

For over 60 years, without consent, SON have been at the heart of the development of the nuclear industry in this country. This project threatens to perpetuate this history. Longstanding legacy issues remain unresolved. Understood in this context, it becomes clear that any decision the CNSC makes regarding the DNNP stands to impact SON's rights, interests, and future in profound and lasting ways. The DNNP could set a precedent that ultimately affects SON Territory and its People's place within it.

Despite strong statements about adopting the UN Declaration without qualification, Canada has remained conspicuously vague about its commitment to upholding article 29(2). By

virtue of this provision, Canada committed to “take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent”. Given that significant amounts of radioactive waste are already being stored on SON Territory without SON consent, it is wholly unacceptable that proposed projects include assumptions that future wastes will make their way to SON Territory as well.

Until SON membership has determined whether it will accept the proposed DGR and other future waste disposal facilities sited within its Territory, and until the parameters of such projects are determined, SON will not accept wastes from any newly approved SMR projects. Accordingly, SON will work with all responsible parties to ensure that radioactive waste produced by SMRs remain on site at the facility where they are generated until acceptable waste disposal solutions have been reached.

SON expects that the CNSC will have a critical role in this work and in ensuring that Canada and the responsible federal departments and institutions understand and accommodate SON’s concerns in this regard. These concerns can best be addressed through the undertaking of an impact assessment under the IAA of the DNNP, at least as they pertain to impacts of this project on Indigenous Peoples. Understanding the full scope of impacts of this project and of SMR development and deployment more broadly is critical to upholding Canada’s commitment to reconciliation with Indigenous Peoples.