



## **Supplementary Information**

## **Renseignements supplémentaires**

### **Presentation from the Canadian Environmental Law Association**

### **Présentation de l'Association canadienne du droit de l'environnement**

In the Matter of the

À l'égard des

**Canadian Nuclear Laboratories Ltd.**

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**Laboratoires Nucléaires Canadiens Ltée**

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Application for the renewal of the nuclear research and test establishment decommissioning licence for the Whiteshell Laboratories site

Demande visant le renouvellement du permis de déclassement d'un établissement de recherche et d'essais nucléaires pour le site des Laboratoires de Whiteshell

**Commission Public Hearing**

**Audience publique de la Commission**

**October 23, 2024**

**23 octobre 2024**

# Reviewing CNL's Application to Renew the Decommissioning Licence for the Whiteshell Laboratories



Hearing Ref. 2024-H-07

Sara Libman, Legal Counsel

October 23, 2024

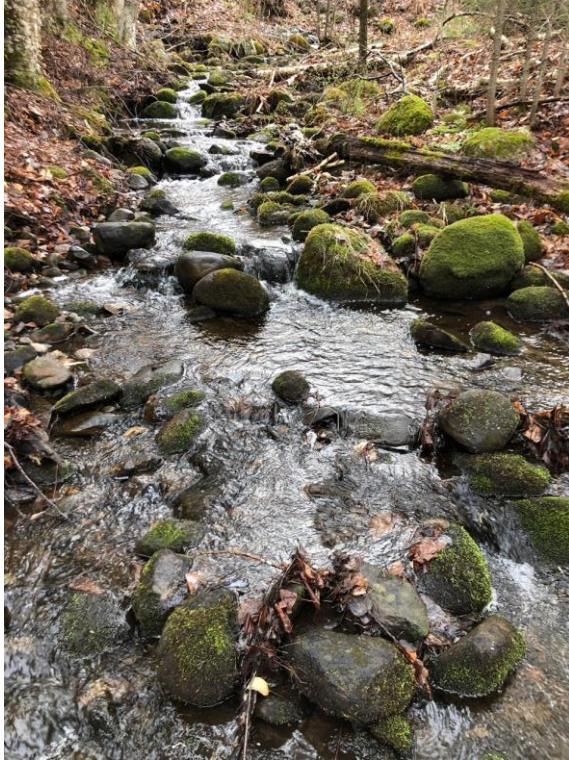


Canadian  
Environmental Law  
Association  
EQUITY. JUSTICE. HEALTH.

*Photo: Sara Libman*

[cela.ca](http://cela.ca)

# Canadian Environmental Law Association (CELA)



*Photo: Kelly Mathews*

- Specialty legal aid clinic dedicated to environmental equity, justice, and health
- Founded in 1970, funded by Legal Aid Ontario since 1978
- CELA provides free legal services relating to environmental justice in Ontario, including representing qualifying low-income and vulnerable communities in the courts and before tribunals. CELA also provides free summary advice to the public and engages in legal education and law reform initiatives.



# I. Scope of Review

- Reviewed CNL's licence application and related documentation, including CNL and CNSC Commission member documents.
- Focused on the environment and human health, best practices for environmental protection and sustainable development, and relevant international guidance.
- Considered the extent to which the CNSC, enabled by **section 24(4)** of the *NSCA* has incorporated principles of international environmental law, such as the precautionary principle, into its licensing application review.
- Review is broken into 2 Parts:
  - **Part 1**- reviews the regulatory frameworks, issues of non-compliance and regulatory oversight issues impacting the decommissioning of WL.
  - **Part 2** - provides a focus on the human health impacts linked to environmental radioactivity.

## II. Summary of Findings



*Photo: Fe de Leon*

**The CNL licence renewal application should only be approved for a period of one (1) year.**



# II. Summary of Regulatory Review Findings

## A. Concerns Surrounding SCA Noon-compliance

- Recommendations 1-7

## B. Licence Conditions Need to Reflect Shortfalls in Safety Procedure

- Recommendations 8-9

## C. Length of Licence should be 1-Year Rather than 3-Years

- Recommendations 10- 11

## D. Public Disclosure and Document Transparency

- Recommendation 12

## E. Environmental Protection Review Report

- Recommendations 13-14



# III. Detailed Findings



# Concerns Surrounding SCA Non-Compliance

## Management System

- From 2019-2023, Whiteshell received a compliance rating of “SA” as being satisfactory.
- CNL has not fostered a healthy safety culture—these ratings of “SA” are inappropriate.

## Human Performance

- In 2023, WL received a compliance rating of “BE” (Below Expectations) for the Human Performance Management SCA
- Concerns about the deficiencies in the Systematic Approach to Training (SAT) for Whiteshell, and how this deficiency only came to light through self-inspection, and *not* through CNSC inspections.
- Numerous NNCs being issued during this 5-year licence term.



# Concerns Surrounding SCA Non-Compliance

## Human Performance (continued)

- In violation of paragraph 12(1)(a) of the General Nuclear Safety and Control Regulations (GNSCR):
  - During the stand-down, CNL was unable to verify and confirm fire response workers' training, which led to a finding of non-compliance. This violated paragraph 12(1)(a) of the GNSCR which state that every licensee shall ensure the presence of a sufficient number of qualified workers to carry on the licensed activity safely and per the Act, the regulations, and the licence.
- Violation of GNSCR calls for deeper oversight and monitoring of CNL and its Whiteshell Laboratories site—beyond the requirement of additional reports.
- A direct violation of licensee obligations under the GNSCR does **not** evoke the public's confidence that there is adequate safety measures in place.

# Concerns Surrounding SCA Non-Compliance

## Operating Performance

- 2023 saw a notable increase in the number of reportable events (15), compared to 2022 (3 reportable events).
- clarification on how frequently CNSC staff conduct site visits and on-site inspections of WL, especially considering that 2023 saw 15 reportable events associated with the site. What justifies a site visit?

## Environmental Protection

- CNSC staff did not have all the required data to fully assess CNL's performance in the Environmental Protection SCA for 2023. Required reports submitted later in 2024 calendar year, per the WL licence
- While WL was compliant with this SCA according to 2023 data, the public cannot comment on any potential releases that may have occurred in 2024.
- There were 2 reportable events during the current licence cycle

# Concerns Surrounding SCA Non-Compliance

## Emergency Management and Fire Protection

- Compliance rating of “BE” for 2022 and 2023.
  - The increased scrutiny of the WL site is welcomed by the intervenor, as emergency planning is not something to be taken lightly at any stage of a nuclear site’s operations (including one undergoing decommissioning).
    - We seek clarification and further details on this plan.
  - Additionally, with increased reporting requirements, we proposed that reports (unless subject to confidential and security-related information) be disclosed to the public in a timely manner, especially prior to any public-commenting periods related to the WL-site licence.
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# Concerns Surrounding SCA Non-Compliance

## Security

- From 2019-2021, WL received a compliance rating of “BE”. The issue of non-compliance with the Security SCA had carried over from the previous licensing term, with corrective actions only bringing WL up to compliance in 2022 and 2023
  - NNCs in August 2023 (which have now been closed) lead the public to believe that safety and security measures are not taken seriously at this site undergoing decommissioning.
    - It also brings the CNSC’s ability to fulfill its regulatory oversight duties into question, as Whiteshell seems to have created a grocery-list of non-compliance issues.
  - Because most security-related reports and documents are typically confidential, the public heavily relies on the CNSC to monitor, regulate, and enforce the NSCA at sites like WL to ensure they remain safe and secure.
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# Licence Conditions Need to Reflect Shortfalls in Safety Procedures



Photo: Ajman Ladher

- With CNSC staff recommending conditions to the Licence Conditions for WL to increase regulatory scrutiny, the intervenor submits the proposed conditions should include parameters for an increase in on-site inspections for all SCAs, especially for those SCAs with repeated instances of non-compliance (e.g., the Emergency Management and Fire Protection SCA, the Security SCA, and the Human Performance SCA).
- the Safety Analysis SCA needs to be carefully scrutinized, given the non-compliance issues suggesting an unsafe work practices
  - The timeline of 5-years is too infrequent, especially considering that this licence renewal is being recommended for a 3-year period by CNSC staff.
- Licence Condition should align with the licensing period. For instance, if this licence is renewed for a period of 3-years, then proposed Condition 4.1 should have a deadline of 3-years.



# Length of Licence should be 1-Year Rather Than 3-Years

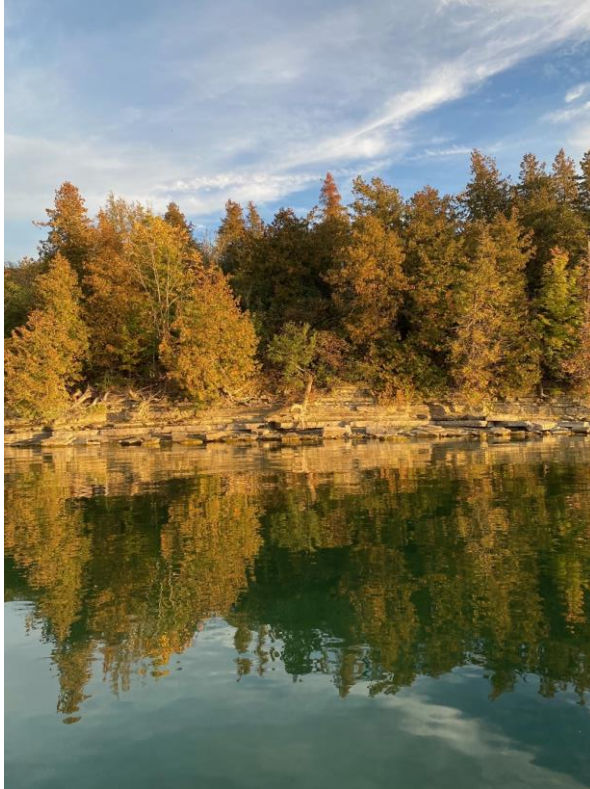


Photo: Rick Lindgren

- In 2019, CELA has previously emphasized adhering to the precautionary principle in licensing hearings.
- In circumstances of potentially serious or irreversible environmental harm, the CNSC must only licence decommissioning activities which prioritize environmental protection, and human health and safety. The close monitoring of WL is key to ensure compliance does not fall to the wayside; we submit the CNSC must uphold its regulatory oversight obligations, and regularly inspect the operations and updates at Whiteshell.
- Having an annual review of the licence would be the most thorough form of regulatory oversight for Whiteshell, having a more frequent review of compliance.



# Public Disclosure and Document Transparency

- While it has also become common practice for the CNSC to mandate compliance with **CSA N294-09, *Decommissioning of facilities containing nuclear substances***, and other CSA standards by adding a condition to the licenses issued to major nuclear facilities, CSA standards are privately developed standards, which are not subject to the same level of public scrutiny as the legislative process for public laws and regulations.
- The CNSC's reliance on CSA standards inappropriately delegates the setting of regulatory standards to an industry body, not easily accessible by the public.
- The CNSC should cease reliance on CSA standards for any matters relevant to nuclear licensing, and instead conduct all standard setting and guidance with the CNSC's processes.

# Environmental Protection Review Report



Photo: Breanne Finnigan

- The EPR report provides an assessment of documents related to the WL site, which consists of the main research campus and the waste management area.
- Along with radiological hazardous emissions, the EPR report discusses the emissions of non-radiological hazardous emissions at Whiteshell.
- In 2022, the total particulate matter (PM 10 & 2.5) emissions was 46.9 Mg/year, with the PM10 emissions being 11.97 Mg/year, and the PM2.5 emissions being 1.21.
  - The National Pollutant Release Inventory (NPRI) reporting thresholds for these emissions are 20 Mg/year; 0.5Mg/year; and 0.3Mg/year, respectively.
- The EPR Report does not discuss whether there are preventative measures in place to reduce the total particulate emissions during decommissioning activities, or how CNL intends to address these emissions
- The particular activities associated with decommissioning may increase the risk of certain pollutant emissions. This does not however, exempt CNL from reducing and preventing these releases from happening.





# Order Requested

For the foregoing reasons provided in this submission, we request the CNSC issue an order:

- a) Only approving the CNL licence renewal application for a period of one (1) year.
- b) In the alternative, approving the CNL licence renewal for a period of three (3) years, on the condition that any reporting obligations set out within the Licence Conditions Handbook not exceed a submission deadline of three years.

# Appendix A - Summary of Recommendations

**RECOMMENDATION NO. 1:** CNSC Commission members need to delve into better understanding of the CNSC regulatory oversight role, or lack thereof, whereby this situation at Whiteshell managed to get to the state that it did on the very matters that are most critically important to the public and the environment.

**RECOMMENDATION NO. 2:** The Commission should seek clarification on how frequently CNSC staff conduct site visits and on-site inspections of Whiteshell, and what justifies a site visit?

**RECOMMENDATION NO. 3:** The scheduling of public hearing dates and the respective submission deadlines should take into account licence condition deadlines for a proponent to submit reports to the CNSC. This ensures that the public have access to the most updated and accurate information on compliance with SCAs, such as the Environmental Protection SCA.

**RECOMMENDATION NO. 4:** All documents and reports related to WL—without compromising security—should be publicly available and posted online on CNL’s designated Whiteshell website.

**RECOMMENDATION NO. 5:** When an environmental release occurs at a site like Whiteshell, follow-ups by CNSC staff ought to be in person, rather than by desktop to ensure the clean-up campaign is satisfactory, and that preventative measures are communicated and practiced on site to prevent repeat incidents.

# Appendix A - Summary of Recommendations

**RECOMMENDATION NO. 6:** To ensure the WL-focused compliance verification plan is a robust regulatory oversight mechanism, there must be an increase in the scope and frequency of inspections. Most, if not all, inspections of WL under this plan be in person. On-site inspections on a more frequent basis would provide a more thorough look at the site's operations, and would also encourage CNL staff on-site to carefully follow protocols to avoid CNSC staff scrutiny.

**RECOMMENDATION NO. 7:** Any required reports (unless subject to confidential and security-related information) need to be disclosed to the public in a timely manner, especially prior to any public-commenting periods related to the WL-site licence.

**RECOMMENDATION NO. 8:** To ensure WL is thoroughly monitored during the next licencing cycle, there should be licencing conditions for each SCA to include parameters for an increase in on-site inspections for all SCAs, especially for those SCAs with repeated instances of non-compliance (e.g., the Emergency Management and Fire Protection SCA, the Security SCA, and the Human Performance SCA). For instance, each SCA section of the Licence Conditions should require that the licensee shall be subject to at least one on-site inspection per year.

**RECOMMENDATION NO. 9:** Proposed Licence Condition 4.1 should reflect the length of the licence term. For example, if the licence is renewed for a period of 3-years, then condition 4.1 should have a deadline of every 3-years. Preferably, this condition should be subject to every 1- year.

# Appendix A - Summary of Recommendations

**RECOMMENDATION NO. 10:** The Commission must ensure its decision-making aligns with the precautionary principle and only licence decommissioning activities which prioritize environmental protection, and human health and safety.

**RECOMMENDATION NO. 11:** The licence for the Whiteshell Laboratories site should be renewed for a period no longer than 1-year.

**RECOMMENDATION NO. 12:** The CNSC should cease reliance on CSA standards for any matters relevant to nuclear licensing, and instead conduct all standard setting and guidance with the CNSC's processes.

**RECOMMENDATION NO. 13:** The act of decommissioning and excavating a nuclear site does not justify the release of non-radiological hazardous emissions. We request an update on what CNL is doing to reduce the release of total particulate matter during decommissioning activities.

**RECOMMENDATION NO. 14:** The CNSC needs to pay attention to the NPRI's report and its thresholds when monitoring sites such as Whiteshell.

**RECOMMENDATION NO. 15:** CNL immediately to appoint a senior director who is a CNL Board member and whose sole responsibility is health and safety.

# Appendix A - Summary of Recommendations

**RECOMMENDATION NO. 16:** CNL to draw up a written policy on health and safety matters which places substantial emphases on finance to improve matters.

**RECOMMENDATION NO. 17:** CNL to introduce a site safety committee chaired by a Board Director, which meets at least monthly.

**RECOMMENDATION NO. 18:** CNL to introduce safety representatives among the workforce to be given paid time off work to attend to their safety functions, and to be protected from arbitrary discrimination.

**RECOMMENDATION NO. 19:** CNL to incentivise safety among its directors.

