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**Written submission from the
Kebaowek First Nation**

**Mémoire de la Première Nation
de Kebaowek**

**Regulatory Oversight Report on the
Use of Nuclear Substances in
Canada: 2023**

**Rapport de surveillance réglementaire
sur l'utilisation des substances
nucléaires au Canada : 2023**

Commission Meeting

Réunion de la Commission

November 7, 2024

7 novembre 2024

**Kebaowek First Nation Review
of the Regulatory Oversight Report (“ROR”) for the
Use of Nuclear Substances in Canada: 2023**

WRITTEN SUBMISSION

presented to
Canadian Nuclear Safety Commission

October 4, 2024

NOTE

This document is the final written submission of the Algonquin Nation of Kebaowek submitted by the Chief and Council on October 4, 2024.

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 the Use of Nuclear Substances in Canada: 2023."¹

A. Focus of this Intervention

This submission sets out a number of recommendations, information requests relevant to nuclear substance licencees (across the sectors of waste, medical, industrial, academic, research and commercial) and also includes a number of updates we wish to share with CNSC Commissioners, based on our experiences with CNSC Staff and licencees in the past year.

In providing these written comments, we also request the opportunity to address the Commission at the upcoming ROR meeting scheduled for November 7, 2024.

B. Who We Are

Kebaowek First Nation ("KFN") is an Algonquin Anishinabeg First Nation and one of the eleven communities that constitute the broader Algonquin Nation. For centuries, the Algonquin Nation occupied the length of the Kichi Sibì (Ottawa River) watershed, from its headwaters in north central Québec, all the way to its outlet in Montreal. KFN's reserve lands are on Lake Kipawa, Québec. KFN represents over 1100 registered members living on and off reserve, largely in Québec and Ontario. KFN maintains an office in Mattawa, Ontario for its members.

Algonquin peoples have long exercised our customary laws and governance, known as Ona'ken'age'win, on our traditional territory. This law is based on Algonquin peoples' mobility on the territory, to hunt, gather, and control the use of the lands and waterways for future generations. The Algonquin Nation has never ceded its traditional territory, and its rights and title have not been extinguished. As Algonquin peoples we regard ourselves as keepers of the land, with seven generations worth of responsibilities for livelihood security, cultural identity, territoriality, and biodiversity.

On January 23, 2013, Kebaowek First Nation (KFN), Wolf Lake First Nation (WLFN), and Timiskaming First Nation (TFN) jointly released a Statement of Asserted Rights (SAR)

¹ CMD 24-M17 – Canadian Nuclear Safety Commission, Industry Report "Regulatory Oversight on the Use of Nuclear Substances in Canada: 2023" [ROR]

which summarizes the Aboriginal rights, including title, which our three First Nations assert and provides detailed evidence to substantiate it including around the Chalk River nuclear site. Copies of the SAR, maps, and background documentation were transmitted to the governments of Canada, Quebec, and Ontario in January 2013.

In summary, our First Nations have not relinquished Aboriginal rights and title, over lands that straddle the Ottawa River basin on both sides of the Quebec-Ontario boundary. The importance of this information in establishing consultation processes and the responsibilities of the Crown are affirmed by existing case law. Our historical research supports, that mutuality, respect and consultation are integral to Algonquin social and political organization on a number of levels: family to family, band to band, and Nation to Nation. We are an order of government with rights and territorial jurisdiction to our lands to be addressed from a “Nation to Nation” perspective supported by articles of UNDRIP (2007).

2. COMMENTS ON THE ROR

There are a number of core issues KFN wishes to bring to the CNSC Commissioners attention. A number of our recommendations, set out below, are not only ROR specific but are also highly relevant to the Commission’s regulatory activities and role in upholding the Honour of the Crown.

A. Support for stable capacity resourcing has deteriorated

KFN continues to meet with CNSC Staff on a regular basis so that we can express our expectations for projects and advocate for the inclusion of our laws and principles when decisions are being made in our territory affecting our rights and interests. Unfortunately, the lack of resourcing and capacity supports continues to pose a barrier to KFN’s participation and goal of collaborating with the CNSC, in working together to ensure licensees are regulated in a way that respects our rights and interests.

First, there is no avenue for KFN to meet with Commissioners outside of licensing hearings - which can be spaced decades apart - and regulatory meetings, whose agendas are not responsive to our concerns and are instead, industry-performance specific. We do not know to what extent, if any, our correspondence with the CNSC is shared with Commissioners and we **ask** that Commissioners confirm and provide a list of all correspondence they are aware of, from Kebaowek, during the past year.

Second, there has been a downturn in support to provide resourcing to KFN, so that it has the financial and person-hours to fully engage with CNSC content and issues. KFN **requests** the

individuals who comprise the funding committee be disclosed. Funding for RORs has not been stable and this is critical, if we are to build and sustain our capacity to engage and communicate our knowledge and concerns. In prior years, KFN has been awarded approximately \$20,000 per ROR review. However, this year, the funding committee originally committed \$5000 in funds, on the basis that the ROR was informational only, posed no legal ramifications, and a 'strong rationale' from KFN supporting our involvement was not apparent.

It appears necessary and of utmost importance that we again **reiterate** that KFN has a *high degree of interest* in the activities reviewed in the ROR because of the impacts to our section 35 rights the activities at Chalk River pose. Chalk River is located on lands included within KFN's Statement of Asserted Rights and Title Territory.² We were never consulted when the first nuclear developments occurred, forever impacting our lands and waters. The operations and activities continue to this day at Chalk River, absent our free and prior consent. 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. We continue to bear the inequitable effects of nuclear activities in perpetuity, given the inherent danger and toxicity of nuclear materials.

The limited capacity the funding committee is willing to agree to without a concerted effort on our part to seek a decision review and make a 'case' for our involvement, directly impedes our ability to engage. We **recommend** the CNSC intervene and ensure stable funding is made available so that it - as the Crown - is in a position to:

- **fully consider** KFN's rights and interest, including our Indigenous knowledge and whether our free prior and informed consent has been sought in response to any activity or decision being made with potential impacts to our rights
- **respond** to KFN concerns and ensure there are fair and procedurally robust mechanisms in place so that these concerns can be raised
- **recognize and respect** KFN as a rights-bearing community

While CNSC Staff have stated they wish to 'ensure our participation' in ROR proceedings, we submit the threshold to be met is the protection of our rights. To protect our rights, we must first understand the interactions of the 2000+ nuclear substance licensees with sites in our territory, namely Chalk River. To this end, we have set out a number of information requests in **Section E** below seeking this information.

² Timiskaming, Wolf Lake and Eagle Village Members of the Algonquin Nation Statement of Assertion of Aboriginal Rights & Title, (11 Jan 2023), [online](#)

The protection of our rights also necessitates we ascertain if any of the activities reviewed in the ROR engage the duty to consult, *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) and its action plan, the Honour of the Crown, and other relevant laws like the *Species at Risk Act*, *Fisheries Act* and *Kunming-Montreal Global Biodiversity Framework*. With the amount of resourcing provided for our participation in this ROR, only a cursory review of relevant legal frameworks was possible and any omission on our part to highlight a gap or concern should not be read as an admission of compliance with legal standards nor the sufficient upholding of our rights.

KFN **recommends** the CNSC ought to be striving for a nation-to-nation relationship with KFN. To this end, if the CNSC wants to facilitate KFN's ability to engage, participate and intervene in a way that reflects our experiences with licencees and CNSC Staff throughout the year, stable funding must be provided. KFN does not have access to the ROR in advance of submitting a request for funding and nor are we privy to discussions which inform the scope and contents of the ROR. However, as we are among the most nuclearized territories in the country, we take great exception to the funding committee presupposing the level of resourcing and funding required if we are to, even minimally, participate in this process.

B. The ROR is a missed opportunity to collaborate with KFN

While KFN is told by CNSC Staff that our comments from prior years 'are being addressed,' the scope of the ROR is very specific and no opportunity is yet provided for KFN to provide input on what goals or information sharing ought to inform the review of nuclear substances licencees. While KFN frequently shares upwards of 40+ recommendations on an ROR, we question the value of participating when we do not see reforms made reflective of our concerns having been heard. While we appreciate efforts made by CNSC Staff to track how our recommendations are being 'actioned,' we still have not seen a change in how we participate in the ROR process.

Ideally, we **recommend** the ROR ought to be:

- **empowering and cooperative** such that goals and scope of the ROR is mutually defined and outcomes and the information provided, of value to KFN. Currently, the magnitude of risk that we face as well as the perpetual and potential for increased harm, is not reflected in the ROR
- **timely, open and transparent** so that assessments made by CNSC Staff - lacking any independent, third party review - are well-documented and visible to the public

C. The multitude of nuclear-related activities occurring in KFN territory highlights the need for a cumulative effects review

KFN submits any assessment of the cumulative effect of nuclear activities on our lands, water and health are being left behind because of the licensee-specific approach adopted by the CNSC and this ROR. Broader watershed and ecosystem-level would be most helpful in understanding the interaction among licensees and their activities. Environmental sustainability is central Ona'ken'age'win our system of customary law and governance and therefore **recommend** the Commission to direct staff to undertake a cumulative effects review of the nuclear substances class of licences.

D. The CNSC's regulatory approach remains out of step with UNDRIP, the UNDA and its Action Plan

KFN reiterates the ROR ought to review and assess how the principles of *UNDRIP* have been upheld within the class of nuclear substance licensees and how it informs the CNSC's oversight and regulation of these licensees. Currently, there is no mention of UNDRIP, nor the *UNDA* and its accompanying Action Plan in the ROR.

For over a year, KFN has been requesting the CNSC oblige our proposal to undertake a review of systemic issues within the CNSC regulatory processes as it relates to UNDRIP and Indigenous Knowledge (IK). To date, CNSC Staff have been avoidant in accepting the due diligence owed by CNSC in implementing UNDRIP and are not cooperative with our wishes to undertake this study, which we submit is foundational to the incorporation of KFN's knowledge *prior* to the CNSC undertaking any project specific or regulatory work (such as this ROR or the development/review of any RegDoc).

Accordingly, we are seeking funding from the Commission for the following research study to review the following three key areas:

1. Indigenous knowledge policy review

KFN wishes to review and report on the CNSC's and federal government's Indigenous Knowledge Policy Frameworks to assess whether they adequately address KFN's concerns regarding the incorporation of Algonquin Anishinaabeg knowledge in the CNSC regulatory process. KFN wishes to consider how the policies are being applied, identify gaps in the incorporation of KFN's knowledge with examples of failures in the NSDF review process and propose policy revisions or other solutions. The proposed review will also assess whether CNSC's approach to Indigenous knowledge is consistent with UNDRIP provisions

regarding Indigenous Peoples' rights related to our knowledge, including Indigenous laws and languages.

2. UNDA implementation project

KFN wishes to review and report on the state of UNDRIP implementation in the CNSC regulatory process, including the implementation of *UNDA* Action Plan measures. KFN wishes to consider how UNDRIP is being applied, identify gaps and provide guidance on ensuring CNSC's regulatory process is consistent with the Crown's commitments to implementing UNDRIP. In particular, the proposed work will consider *UNDA* Action Plan measures related to the joint exercise of regulatory authority. The objective is to ensure the systemic issue of UNDRIP implementation is meaningfully addressed prior to carrying out project-specific work.

3. Regulatory Document 3.2.2 review

KFN wishes to review and report on Regulatory Document 3.2.2, including the CNSC's policy on Indigenous consultation and engagement. In particular, KFN will assess the CNSC's approach to consultation and accommodation, identify gaps and propose revisions to the Regulatory Document to ensure it is consistent with the latest developments in the law. The objective is to ensure the CNSC implements its constitutional obligations to KFN throughout the regulatory process.

In keeping with s 8(2) of the *Nuclear Safety and Control Act* that recognizes that the CNSC as an agent of the Crown in meeting obligations to consult and accommodate, we **recommend** the Commission direct CNSC Staff to accept KFN's proposal for the above noted study, which strengthens our ability to participate in decisions which directly affect our rights and territory, and thus aids the CNSC in fulfilling its Crown's duty to consult and accommodate.

As we have stated in prior RORs, KFN also again **recommends** the Commission direct CNSC Staff to ensure all RORs have mandatory chapters on how licensee activity and CNSC oversight conform to the principles of UNDRIP and *UNDA* implementation, including whether:

- Participation with Indigenous peoples was enhanced during the timeframe being reviewed
- Local and Indigenous knowledge was considered and included in the review of licensed activities

- Measures to prevent and address impacts to Indigenous rights were addressed, responsive to community concerns
- Consultation was undertaken which could lead to the setting of measures enabling the exercise of regulatory authority by First Nations³

E. Gaps in information should be remedied in an addendum to this ROR or at the upcoming ROR meeting

There are a number of gaps in the ROR that prevent KFN from fully understanding impacts to our lands and waters. Therefore, in keeping with UNDRIP Articles, 1, 7, 29 and 32, **KFN requests** the following information be provided by CNSC Staff as an addendum to the ROR within 30 days or presented at the upcoming ROR meeting.

While KFN has made similar requests for information in the prior two years of RORs, we never received responses. We again **ask** the Commission to compel CNSC Staff to provide unredacted documents setting out the following information:

1. For each sector of nuclear substance licensee (medical, industrial, academic, research, commercial and waste) Kebaowek **asks** the CNSC to provide the following information:
 - a. whether any shipments are made to/from Chalk River
 - b. what substances are transported to/from Chalk River, including their name, characteristics, weight/volume, percentage, & change in quantity from previous years
 - c. a map setting out location of nuclear substance licence holders and their activities (i.e. for industrial practices, the mineral exploration and mining sites where nuclear gauges are in use or have been used)

2. Provide a clear breakdown of all waste nuclear substance licences, including their:
 - a. name and place of origin
 - b. summary of their licenced activities, should they interact with Chalk River
 - c. summary of risks including emissions to environment and the potential for environmental releases

³ United Nations Declaration on the Rights of Indigenous Peoples Act [Action Plan](#), 30 and 34 [UNDA Action Plan]

3. Provide a description of decommissioning and waste management plans for all nuclear substance sectors (as noted above) for those proposing to store, dispose or manage wastes at Chalk River
4. Detail how the complaints process works and how the 12 external complaints mentioned in the ROR were:
 - a. reviewed and assessed
 - b. actioned and followed-up on
5. Are any nuclear substance licences anticipated to result based on CNL's proposed Modernized Combined Electrolysis and Catalytic Exchange facility?⁴ As CNL anticipates that by processing heavy water, 'nuclear and other industries' will be able to reuse and recycle the materials, we ask the Commission to require information be provided about any potential nuclear substance licencees, including the substance in question, thresholds and allowances.

F. Other Comments

KFN also makes the following additional requests to the Commission:

- There is no mention of climate impacts in this ROR. We **recommend** the Commission direct CNSC Staff to report on climate change impacts to a licensee's ability to protect human health and the environment, as required by section 24(4) of the *NSCA*, and the adequacy of measures in place to adapt to and mitigate climate impacts. This is directly relevant to the CNSC's oversight and ought to be reported in the ROR.
- KFN submits licensees ought to be required to report radionuclide data via the National Pollutant Release Inventory (NPRI)⁵ for ease of use, review, accessibility and rigour of reporting. To further environmental protections and our right to know about emissions to our air, land and water, we **request** the Commission direct all licensees to report radionuclide data via the NPRI.

⁴ IAAC Registry, <https://iaac-aeic.gc.ca/050/evaluations/proj/85759>

⁵ National Pollutant Release Inventory, <https://www.canada.ca/en/services/environment/pollution-waste-management/national-pollutant-release-inventory.html>