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**Written submission from The
Mississaugas of Scugog Island
First Nation**

**Mémoire de la Première
Nation des Mississaugas de
Scugog Island**

**Regulatory Oversight Report
for Uranium and Nuclear
Substance Processing
Facilities, Research Reactors,
and Class 1B Accelerators in
Canada: 2023**

**Rapport de surveillance
réglementaire des installations
de traitement de l'uranium et
des substances nucléaires, les
accélérateurs de particules de
catégorie IB au Canada: 2023**

Commission Meeting

Réunion de la Commission

February 26, 2025

Le 26 février 2025



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Written Intervenor Submission:

Regulatory Oversight Report for Uranium
and Nuclear Substance Processing Facilities,
Research Reactors, and Class IB
Accelerators in Canada: 2023



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Mississaugas of Scugog Island First Nation
Consultation Office

January 27, 2025



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To the attention of:

Tribunal Officer, Commission Registry

Canadian Nuclear Safety Commission

interventions@cnsccsn.gc.ca

January 27, 2025

Re: Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities, Research Reactors, and Class IB Accelerators in Canada: 2023 – Comments from the Mississaugas of Scugog Island First Nation (MSIFN) Consultation Department

The Mississaugas of Scugog Island First Nation (MSIFN) Consultation Department (“MSIFN Consultation”) is pleased to provide comments on the **Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities, Research Reactors, and Class IB Accelerators in Canada: 2023**. Comments on behalf of MSIFN Consultation are below.

Introduction

The Regulatory Oversight Report (ROR) for Uranium and Nuclear Substance Processing Facilities (UNSPF), Research Reactors, and Class IB Accelerators in Canada: 2023 provides information on the safety performance of the following licensed facilities in Canada:

Uranium Processing Facilities:

- Cameco Corporation Blind River Refinery, Blind River, Ontario
- Cameco Corporation Port Hope Conversion Facility, Port Hope, Ontario
- Cameco Fuel Manufacturing Inc., Port Hope, Ontario
- BWXT Nuclear Energy Canada Inc., Toronto, Ontario
- BWXT Nuclear Energy Canada Inc., Peterborough, Ontario

Nuclear Substance Processing Facilities:

- SRB Technologies (Canada) Inc., Pembroke, Ontario
- Nordion (Canada) Inc., Ottawa, Ontario



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- Best Theratronics Ltd., Ottawa, Ontario
- BWXT Medical Ltd., Ottawa, Ontario

Research Reactors:

- McMaster University, Hamilton, Ontario
- Royal Military College of Canada, Kingston, Ontario
- École Polytechnique de Montréal, Montréal, Québec

Class IB Accelerators:

- TRIUMF, Vancouver, British Columbia
- Canadian Light Source, Saskatoon, Saskatchewan

In addition to safety performance, the ROR provides an update on CNSC staff's regulatory activities pertaining to Indigenous engagement, public information, community engagement, and aspects of the CNSC's Independent Environmental Monitoring Program (IEMP) that relate to UNSPFs facilities, Research Reactors, and Class IB Accelerator facilities.

The CNSC uses 14 safety and control areas (SCAs) to evaluate the performance of each licensee, with the resulting performance ratings being included in the ROR. The report discusses all SCAs, but focuses on radiation protection, environmental protection, and conventional health and safety, as a good overview of safety performance at licensed facilities. The report also provides an overview of licensee operations, licence changes, major developments at licensed facilities and sites, and reportable events. In addition, the ROR includes information on engagement with Indigenous Nations and communities, and public information programs.

Background on the Mississaugas of Scugog Island First Nation (MSIFN)

MSIFN's reserve community is located on the shores of Lake Scugog in Durham Region, Ontario. MSIFN has a long history in this part of Ontario and is part of the Williams Treaties First Nations (WTFNs). The WTFNs' territory extends from the shore of Lake Ontario in the south, Georgian Bay in the west, the Ottawa Valley in the east, and as far north as the French River. Lake Ontario and its lakebed adjacent to the WTFN treaty lands and south to the border with the United States are unceded lands and waters. Within these Treaty territories and unceded lands and waters, MSIFN's priority is the protection and preservation of the lands, waters, wildlife, and fisheries that we rely on. The first Mississauga people settled in the basin of Lake Scugog around 1700. Game and fur animals, waterfowl and fish abounded, and wild rice grew in profusion in the shallow waters. The people flourished in this paradise for nearly a century until the British



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arrived with their insatiable appetite for Aboriginal land. Having just lost the American War of Independence, British refugees came flooding north into Upper Canada seeking new land.

Crown government officials were soon conducting land acquisition treaties, including the "Gunshot Treaty" with Anishinaabe, made up of the Michi Saagiig and Chippewa people, who neither understood the language of these powerful strangers nor fully grasped the revolutionary concept of permanently selling their Mother Earth. Millions of acres of valuable native lands were given up through these treaties with very little received in return. Unfortunately, fair dealings were not the order of the day. In one instance, a 160 kilometer stretch of land about 20 kilometers wide along Lake Ontario from roughly Trenton to Toronto was ceded, but the treaty was so flawed, government officials later privately agreed that it was invalid. Mississauga people, however, were not so informed, and that land was quickly taken up by non-native settlers.

In another case, the Crown completely ignored and by-passed MSIFN when it granted the land west of Lake Scugog north to Lake Simcoe to non-native settlers who promptly chopped down the forest for their farms. With increasing settlement at Scugog, the only land available was an 800-acre landlocked parcel on Scugog Island. And despite the thousands of acres west of Lake Scugog earlier taken from them, Mississauga people were required to purchase these 800 acres with their own money.

MSIFN are cultural partners of the Michi Saagiig (Mississauga) Nation, with traditional territories expanding through most of southeastern Ontario, including lakebeds, tributaries, and watersheds. MSIFN contested Crown hunting regulations into the 1980s when Supreme Court decisions began recognizing Aboriginal harvesting rights.

In 2018, MSIFN became a signatory to the Williams Treaties of 1923, which after 90 years of dispute came to a final settlement agreement that reaffirmed our pre-confederation treaty rights to hunt and harvest. MSIFN is also signatory to the Framework Agreement for First Nations Lands Management, the First Nations Fiscal Management Act, and other political Aboriginal arrangements all of which support our Inherent Right as a self-governing authority. After a 90-year fight to have our rights recognized, MSIFN insists the CNSC and other federal and provincial Crown authorities respect the weight of this recognition in dealing with us.

As outlined in the 2018 Settlement Agreement, constitutionally protected rights for hunting, fishing, and trapping were affirmed for the WTFNs across their traditional territories. These ways of life have been practiced sustainably since time immemorial and represent fundamental cultural markers of Indigenous identity and self-determination. Hunting includes trapping, snaring and fishing supplemented by firearm usage. Despite inherent and long-held rights, the Williams Treaties of 1923 opened the door for decades of discrimination and legally sanctioned



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harassment by officers of the Crown, including Peace Officers, against First Nations for exercising their cultural harvesting practices. The Crown only began addressing these impacts on MSIFN and the other WTFNs in 2018 with the Settlement Agreement.

Connection to MSIFN

MSIFN and the Williams Treaties First Nations are hosts to several Uranium Processing Facilities, Nuclear Substance Processing Facilities, and Research Reactors assessed within the 2023 UNSPF ROR. For decades, MSIFN has lived with Cameco Fuel Manufacturing and its predecessors in Port Hope and BWXT Nuclear Energy Canada and its predecessors in Peterborough, processing uranium and manufacturing fuel bundles within their traditional and treaty territory. These facilities process uranium to power reactors around the world, and manufacture nuclear fuel bundles for power reactors in Canada – including Ontario Power Generation's Pickering and Darlington nuclear generating stations. MSIFN's treaty lands are also host to the only uranium conversion facility in Canada in the Cameco Port Hope Conversion Facility which manufactures fuel for CANDU heavy water nuclear reactors in Canada, and exports to companies around the world for light water nuclear reactors. Many of these facilities have been here for decades, playing a key role in establishing Canada's nuclear energy landscape, all of which involved lands taken up by the Crown, with construction and operations proceeding prior to 2018 without consultation or accommodation of MSIFN's rights and interests.

MSIFN is now actively engaged with Cameco, collaborating on project-specific matters including participation in an environmental working group. While we currently do not have regular engagement with BWXT, we welcome the opportunity to strengthen this relationship. MSIFN staff have participated in the Independent Environmental Monitoring Program (IEMP) with the CNSC for public spaces near both Cameco Port Hope and BWXT Peterborough due to their close proximity to our community.

MSIFN is highly involved in consultation on the proposed Darlington New Nuclear Project (DNNP), the proposed refurbishment and decommissioning of select reactors at the Pickering Nuclear Generating Station (PNGS), the proposed relicensing of the Darlington Nuclear Generating Station (DNNGS), and early discussions regarding the proposed new OPG nuclear generation at Wesleyville. Additionally, MSIFN actively engages with operators of nuclear facilities within the treaty areas, including Atomic Energy of Canada Limited (AECL) and Canadian Nuclear Laboratories (CNL), in relation to the Port Hope Area Initiative.

We recognize that the facilities evaluated in this ROR produce fuel and other nuclear substances for use in these Nuclear Generating Stations, making the safety of these facilities critically



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important. MSIFN has a rights-holding position with respect to these nuclear facilities and operations.

The Williams Treaties and the 2018 Williams Treaties Settlement Agreement are silent on the lakebed and water in the WTFN's traditional territory. The CNSC has acknowledged Crown-Indigenous Relations and Northern Affairs Canada affirmation of this, and that Canada does not have a position on this. The waters and lakebeds in the WTFNs treaty areas and traditional territories have never been ceded. As such MSIFN claims jurisdiction to the lakebed and water adjacent to all current and future CNSC regulated nuclear facilities along the shoreline of Lake Ontario. Any activity which impacts these lands and water requires consultation, not simply a process of sharing information, and the consent of MSIFN. Any Uranium Processing Facilities, Nuclear Substance Processing Facilities, and Research Reactors operating on, or with connections to, the waters and lakebeds in these areas are taking place on MSIFN's unceded territory. Any Uranium Processing Facilities, Nuclear Substance Processing Facilities, and Research Reactors operating on the lands in these areas are taking place on MSIFN's Treaty lands and traditional territory.

MSIFN's reserve community is just over 44km from BWXT Peterborough, and just over 50km from Cameco's Port Hope Conversion Facility. MSIFN members have expressed concerns and uncertainty surrounding the safety, management, and security of the nuclear facilities and operations within their treaty area, regulated by the CNSC. MSIFN members, employees, and businesses are active in and around these nuclear operations in many ways.

Nuclear safety is paramount to MSIFN. Nearly every aspect of the nuclear fuel lifecycle occurs within our territory, except for uranium mining. These post-colonial activities will continually impact our community. It is the future generations who will bear this burden and MSIFN. The CNSC and the Uranium Processing Facilities, Nuclear Substance Processing Facilities, and Research Reactors it regulates have legal obligations to ensure our safety.

MSIFN's Chief and Council, in conjunction with their teams, act as their community's regulatory body. The process MSIFN must undertake to discharge their legal obligations to their citizens and the WTFN community is complex and not something that the Crown can legally rush or disregard. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) exists to protect this, and our duty is to ensure it is upheld.



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UNDRIPA and FPIC

Section 8.1 of the Staff Submission reports on the CNSC's Indigenous Consultation and Engagement. The submission outlines the CNSC's common-law duty to consult which is rooted in the Honour of the Crown and protected by section 35 of the *Constitution Act, 1982*.

As a Crown agency the CNSC is also bound by federal law. In 2021 the *United Nations Declaration on the Rights of Indigenous Peoples Act*¹ came into force. *UNDRIPA* embeds the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*² into Canadian positive law. A subsequent Action Plan³ was released to help facilitate the integration of *UNDRIPA* throughout Canadian federal Ministries and agencies, including Natural Resources Canada, the governing Ministry of the CNSC.

The Declaration Articles 18, 19, 26, 29(2) and 32(2) pertain to the CNSC.

- Article 18 provides for the right to partake in decision-making on matters affecting MSIFN rights;
- Article 19 provides that States consult Indigenous peoples and get their consent before adopting measures that will affect them;
- Article 26 provides for Indigenous control over traditional lands and the State's respect of those lands;
- Article 29(2) says "States shall 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;" and
- Article 32(2) provides that "States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their land or territories and other resources..." ("FPIC").

The CNSC's UNSPF ROR 2023 submission is silent on the Declaration, *UNDRIPA* and the Action Plan. In the submission, 'UNDRIP' is mentioned only once, within Table P-2: *Overview of Key Thematic Categories*. This table summarizes requests and comments received on the ROR, including the frequency with which each topic category was raised across interventions. UNDRIP is grouped under the category "Other" (which includes UNDRIP amongst nation-specific

¹ *The United Nations Declaration on the Rights of Indigenous Peoples Act* SC 2021, c 14 [*UNDRIPA*].

² *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, A/RES/61/295 (2 October 2007). ["UNDRIP" or "the Declaration"]

³ Government of Canada, "The *United Nations Declaration on the Rights of Indigenous Peoples Act* Action Plan" (2023), online (pdf): Justice Canada < <https://www.justice.gc.ca/eng/declaration/ap-pa/ah/pdf/unda-action-plan-digital-eng.pdf>>. ["Action Plan"]



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concerns, waste management, access to information, and similar issues) and is noted as being raised four times across last year's submissions.

This categorization suggests that the Commission is not treating these requests or concerns with the seriousness they deserve. By grouping UNDRIP with unrelated issues under a broad category, the significance of its inclusion is diminished. This is made even more clear when the current ROR reports UNDRIP as a concern within this table, but does nothing to include it in the report and fails to take any steps to incorporate its principles. This reflects how the CNSC perceives its commitments to UNDRIP and reconciliation, highlighting a lack of meaningful action in addressing these critical issues. For more detailed comments on UNDRIP, please see the MSIFN Consultation Office January 27, 2025 Written Intervenor Submission for the Regulatory Oversight Report for Canadian Nuclear Power Generating Sites: 2023.

REGDOC 3.2.2, which outlines the CNSC's Indigenous Engagement, is also silent on the Declaration, *UNDRIPA* and the Action Plan. There is no official CNSC document which incorporates any of the Declaration's Articles.

The official silence from the CNSC regarding the Declaration, *UNDRIPA*, and the Action Plan in their regulatory documents and regulatory report is troubling. It is inconsistent with the state of current law and with the CNSC's repeated promise of reconciliation. At the DNNP Licence to Construct (LTC) Hearing Part 1 in October 2024, Adam Levine characterized the CNSC Staff approach to consultation as being *mindful* of the Declaration articles including FPIC. However, being mindful is not the legal requirement. The CNSC's approach to the Declaration during Indigenous consultation and engagement has been consistent with their regulatory documents; silent.

Free, prior and informed consent is the basic foundation for creating any long-term relationship. MSIFN has been requesting this approach for many years. A healthy and positive long-term relationship needs a power balance which respects the position of each party and one that is built on trust. As a Treaty partner and title holder, FPIC is the standard First Nations require for long-term relationships.

Miigwech,

Mississaugas of Scugog Island First Nation

Consultation Department