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**Written Submission from the
Sagkeeng Anicinabe First Nation**

**Mémoire de la
Première Nation Sagkeeng
Anicinabe**

In the matter of the

À l'égard du

**Regulatory Oversight Report for
Canadian Nuclear Laboratories
Sites: 2024**

**Rapport de surveillance réglementaire
des sites des Laboratoires Nucléaires
Canadiens : 2024**

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Sagkeeng Anicinabe First Nation's Submission on Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2024

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1.Introduction

Sagkeeng Anicinabe First Nation (Sagkeeng) submits these comments on the 2024 Regulatory Oversight Report (2024 ROR or the CMD¹) for Canadian Nuclear Laboratories' Whiteshell Laboratories (WL) for consideration by the Canadian Nuclear Safety Commission (CNSC). Sagkeeng has reviewed the 2024 ROR for consistency with its own perspective on Canadian Nuclear Laboratories (CNL) operations, activities and engagement as they relate to the territory and rights of Sagkeeng, as well as for its perspective on CNSC consultation activities with Sagkeeng throughout 2024.

Overall, the relationship between Sagkeeng and CNL has been growing stronger over time. When Whiteshell Laboratories was built in the 1960s, Sagkeeng was not consulted and never gave consent for a nuclear reactor and research facility to be built on Sagkeeng territory. For over half a century thereafter, there was little effort by Atomic Energy of Canada Limited (AECL) and its eventual operator, CNL, or the CNSC to have a relationship with Sagkeeng or to ensure that Sagkeeng's interests were protected through regulatory processes. In 2019, Sagkeeng participated in the renewal hearing for WL and identified that there had never been meaningful engagement/consultation between CNL or CNSC with Sagkeeng. Since that time, CNL has improved its efforts to work with Sagkeeng and Sagkeeng provided consent for the renewal of the WL Nuclear Research and Test Establishment Decommissioning Licence in 2024. While there is still work to be done, CNL has generally been engaging in a meaningful way in the last couple of years.

The relationship of CNSC with Sagkeeng still needs improvement. CNSC's consultation practices are outdated and restrictive. While other regulator consultation practices occur at a high level, which would be the Commission level in this case, CNSC consultation occurs at the staff level, which puts a low ceiling on the meaningfulness of engagement. The UN Declaration on the Rights of Indigenous Peoples requires that Indigenous people consent to the storage or disposal of hazardous materials in their territories (Article 29.2). CNSC should therefore be approaching every aspect of consultation in relation to critical aspects of the proposed decommissioning of the WL Site with the understanding that Sagkeeng consent is required and may not be given if consent measures are not followed. CNSC needs to acknowledge our concerns and address them with effective solutions.

Sagkeeng presents in-depth comments on the 2024 ROR below, which identify a need for improving how operations/activities/facilities are evaluated as well as how actions to address Indigenous concerns are being addressed. Sagkeeng notes that these comments are based on calendar year 2024 only. Improvements or failings that have occurred since January 1, 2025, are not considered herein.

¹ Commission Members Document.

Sagkeeng has included a series of numbered recommendations in our submission, in bold text. We expect CNL and CNSC (each where requested) to provide written and verbal feedback to Sagkeeng on how they will substantively implement our recommendations.

2. Sagkeeng comments on the 2024 ROR

2.1 CNL engagement on environmental risk

The 2024 ROR indicates that effluent monitoring shows the WL is posing no measurable risks to the environment or the public. The 2024 ROR provides details about pH level exceedances measured through liquid outfall monitoring. The exceedance triggered further CNL investigation that concluded the event “was attributed to natural changes in the environment” (Canadian Nuclear Safety Commission, 2024 p. 25), and resulted in an additional sampling location for monitoring the pH of the facility intake water.

1. **Sagkeeng expects timely communication about monitoring exceedances and follow-up actions taken to address them, from both CNL and CNSC. We ask that both parties follow up with us in writing about how this will occur.**
2. **Sagkeeng expects timely communication about any reportable events and Notices of Non-Compliance as well as follow-up actions taken to address them, from both CNL and CNSC. We ask that both parties follow up with us in writing about how this will occur.**

The 2024 ROR also identifies that CNL submitted Environmental Risk Assessments to CNSC for review.

3. **Sagkeeng expects the results of Environmental Risk Assessments to be communicated quickly and effectively by CNL to Sagkeeng staff for comment, prior to them being issued to the CNSC.**

One way for improving Sagkeeng understanding of effects and risk associated with WL as well as supporting measurement of environmental indicators key to Sagkeeng understanding of health is for our Niigan Aki Guardians Program (Niigan Aki) to have a strong role in monitoring and planning at the site. This would support the integration of Indigenous Knowledge into monitoring and management of the site and help address concerns Sagkeeng land users have about effects to the land, wildlife, and traditional medicines. Sagkeeng works to protect what we call *Anicinabe Pimatziwin*, meaning “the good life”. As we do not expect CNL or CNSC to fully understand how to monitor and protect *Anicinabe Pimatziwin*, it is important that we have our Guardians out on site collecting information and interpreting it appropriately. Sagkeeng land users are concerned about effects of the WL on the land and on traditional medicines. Including the Niigan Aki Guardians in monitoring will help. CNL has been working to begin integrating Niigan Aki into its site monitoring and that work should continue. In addition, Niigan Aki should be invited to participate in CNSC inspections.

4. **Sagkeeng recommends that future regulatory oversight reports for Whiteshell Laboratories should include a summary, developed through active CNSC consultation with Sagkeeng in advance, of Niigan Aki's role in the monitoring of the site during the calendar year being assessed.**
5. **Sagkeeng recommends that Niigan Aki Guardians be invited to participate in CNSC inspections at the WL site, not only sampling activities.**

Another way for improving Sagkeeng understanding of effects and risks associated with WL is by ensuring all communications are accessible to Sagkeeng Elders who may not be familiar with technical or scientific language. The use of visuals, and translation into Anishinaabemowin would be helpful and important for explaining complex topics in straightforward, accessible ways. Visuals can help explain Environmental Risks Assessment and other environmental reporting content, any monitoring exceedances, or other information related to WL to Sagkeeng members and particularly Elders.

6. **Sagkeeng recommends that important information related to activities at WL be communicated in plain language, translated into Anishinaabemowin and with visuals, including the CNSC Staff CMDs and relevant CNL annual reports.**

2.2 Evaluation Framework

Sagkeeng has reviewed the framework CNSC utilizes to evaluate CNL's performance and finds it lacking in metrics that reflect Indigenous interests or the adequacy of engagement by CNL and the consultation by CNSC staff with Sagkeeng in relation to CNL. While the Safety and Control Areas (SCAs) used in the 2024 ROR address the function of programs for ensuring environmental and biophysical human health is protected, they do not address Indigenous risk perception or our more multi-faceted Indigenous conceptions of health and well-being, which includes physical, psychological, spiritual and other elements of health.

In SAFN's 2022 submission regarding the 2021 ROR, SAFN, in cooperation with Algonquins of Pikwakanagan First Nation, jointly proposed an additional eight Aboriginal Rights safety and control areas (ARSCAs) to be added to CNSC's existing 14 SCAs. These ARSCAs were proposed to promote and protect Aboriginal Rights and address Indigenous determinants of health and safety. The expectation was that these ARSCAs would be used in post-2021 reporting for CNL and other nuclear activities on Indigenous lands. However, the ARSCAs have not been incorporated by CNSC into 2024 reporting, which is very disappointing. They are not only not adopted, they are not even mentioned in the CNSC staff's submission. SAFN has included them again here in Table 1 as part of a renewed recommendation from SAFN that CNSC adopt the ARSCAs as an integral part of their future reporting.

TABLE 1: SAFN RECOMMENDED ABORIGINAL RIGHTS SCAS FOR CNL SAFETY METRICS (FIRST ISSUED IN RELATION TO 2021 ROR)

ARSCA	Description
Recognition of, protection and promotion of Aboriginal rights	<ul style="list-style-type: none"> Does the site have measures in place, co-identified with impacted Indigenous peoples, to support the protection and promotion of: <ol style="list-style-type: none"> Rights protected under Section 35 (hunting, trapping, harvesting, and fishing) and; Principles under UNDRIP (Free, Prior and Informed Consent; Self-Determination; Cultural Protections; Indigenous Health);
Risk communication with Indigenous peoples and management of public concern	<ul style="list-style-type: none"> Does the site have an effectively functioning program that communicates risks to Indigenous peoples in a timely, effective, and accepted manner? Is the information being sent through effective and accepted communication channels? Are public concerns about the facility low, moderate, or high?
Integration of Indigenous Knowledge into site monitoring and management	<ul style="list-style-type: none"> How is Indigenous Knowledge integrated into monitoring of the site and its surroundings? Do impacted Indigenous groups have a demonstrable role in identifying adaptive management measures?
Engagement of Indigenous peoples in site planning, monitoring and management	<ul style="list-style-type: none"> Is there a system in place whereby impacted Indigenous groups are integrated into site planning, monitoring and management - research, analyses, decisions, and implementation?
Contribution to reconciliation with Indigenous peoples	<ul style="list-style-type: none"> Do the site operations and the relationship between CNL and impacted Indigenous groups contribute to better relations between Canada and impacted Indigenous peoples? Are there demonstrable positive benefits to Indigenous peoples from the site? Does the site communicate effectively and regularly with impacted Indigenous Nations regarding past, present, and future operations? How is the site improving communication and relations with Indigenous Nations regarding past relationships? Do CNL and CNSC integrate Indigenous values into site monitoring, planning, and

ARSCA	Description
	reviews? (i.e., assessing risk from an Indigenous lens, accounting for past harms and traumas)
Level of knowledge and support for site waste management by Indigenous peoples.	<ul style="list-style-type: none"> Does the site maintain communication and consultation with impacted Indigenous groups regarding onsite materials management, ultimate disposal plans, import and export types and volumes, and transportation methods and protocols? How are Indigenous concerns and recommendations integrated?
Engagement adequacy with Indigenous peoples	<ul style="list-style-type: none"> Does the site meet a minimum standard of adequacy of engagement with each impacted Indigenous group by CNL in a given year? (As a Pass or Fail outcome)
Communication and management of reportable incidents	<ul style="list-style-type: none"> Were all reportable incidents promptly reported to impacted Indigenous groups and followed up on with additional communications?

The topics listed above are topics that we will comment on through ROR and other regulatory document review and process. If CNSC incorporates them into the formal evaluation framework, it will only support our (and CNLSC's) work to review CNL performance each year. This may require the CNSC staff to consult with Sagkeeng before filing its Commission Member Document (CMD) for the ROR, which would be a valuable improvement to the current process, where Sagkeeng is not consulted by CNSC staff before this document is filed.

- Sagkeeng recommends that CNSC update its ROR evaluation framework to include the above metrics that support the protection of Aboriginal Rights on CNL sites, and have its staff consult with Sagkeeng on CNL's performance against these metrics prior to the filing of CNSC staff's CMD to the Commission.**

2.3 ROR reporting adequacy and timing

An important aspect of consent is that all issues and concerns raised by communities are answered. Evidence must be provided by CNSC staff to the Commission in the CMD that the ongoing duty to consult is being met. Current reporting structures do not pass this test, especially given there is no identification of the actual issues and concerns raised by Sagkeeng (or other Indigenous Nations) in the CMD, nor is there any analysis of issues resolution status.

Section 3 of the 2024 ROR indicates that "CNSC staff have established issues and concerns tracking tables for each Indigenous Nation or Community who intervenes in CNSC regulatory processes, including RORs." (Canadian Nuclear Safety Commission, 2024 p.70). Sagkeeng

notes that we are not included in this table. While we have not always participated in the ROR review process, Sagkeeng is a “most impacted Nation” in relation to the Whiteshell Laboratories. We have participated in other processes related to CNL’s WL facility; most notably, we intervened in the WL License Renewal in 2019 and 2024 and outlined several recommendations. One of those recommendations is related to our concerns about the future state and use of the site contributing positively to Sagkeeng’s practice of rights. The work that we put into that prior intervention should be reflected in the issues and concerns tracking tables built by CNSC staff.

CNSC needs to do better with communication with Sagkeeng. The relationship between CNL and Sagkeeng has improved over the last several years because CNL started to actively listen to community concerns. We would like to see CNSC do the same.

Sagkeeng would also like to note that the information presented in Appendix F of the 2024 ROR is so lacking in detail that it is impossible to determine if CNSC is adequately addressing issues identified by Indigenous Nations. Neither the issues identified nor the solutions developed to deal with the issues are presented in Appendix F. This section should be much more detailed so Nations have an opportunity to comment on the adequacy of issue resolution. We have a strong concern about the CNSC’s approach to Indigenous concerns - in the past, CNSC (at both the staff and commission levels) have dismissed Sagkeeng’s concerns without meaningfully addressing them. We would like to see the record of which of our concerns have been recognized by the CNSC and how they are being addressed.

Additionally, we should have an opportunity to identify what information is presented in public documents. Therefore, we recommend that the ROR/CNSC Staff CMD, especially those aspects that purport to speak to the adequacy of CNSC consultation and CNL engagement, be made available for comment before it is submitted to the Commission so that we may redact any details we prefer to not be public. A review carried out prior to filing will also allow for Sagkeeng to provide their perspective on the CNLs performance with SCAs and ARSCAs for integration into the final ROR filing.

- 8. Sagkeeng recommends that the ROR Issues and Concerns Tracking reflect all issues, concerns, and recommendations that CNSC has received from Indigenous Nations throughout the reporting year, along with their resolution status.**
- 9. Sagkeeng recommends CNSC engage with each Indigenous group prior to filing its CMD with the Commission, to verify the issues and concerns and their resolution status as well as integration of Sagkeeng perspective on CNLs performance with SCAs and ARSCAs.**

In addition to the low level of detail provided in the ROR, the provision of the review of 2024 at the beginning of 2026 meaning that an entire year has passed since the end of the review period. It is difficult to recall back over more than a calendar year when assessing 2024 performance in Q1 2026. Future RORs need to be conducted earlier in the following year so

that the details are more accessible. CNSC should also consider allowing for Indigenous Nations to carry out a review of their work with CNSC and proponents prior to the final filing of the CMD, this will require capacity and advanced engagement by CNSC Staff with SAFN prior to the ROR/CMD being filed.

10. Sagkeeng recommends CNSC engage with Indigenous Nations on each ROR early in the following year so that Nations can more easily access information about the year being reviewed.

3. Closing

We appreciate this opportunity to provide feedback on the 2024 CNL ROR CMD filed by CNSC staff with the Commission, and trust that our comments will be taken into serious consideration and our recommendations acted upon. The WL facility has alienated us from a piece of our unsundered title territory - one that was used extensively for the practice of our inherent aboriginal rights. We have started down a pathway to working with CNL to ensure that the land is returned to a state that supports hunting, trapping, gathering, ceremony, and our cultural practices. With the help of CNL we have developed the Niigan Aki Guardians program to further protect and promote *Anicinabe Pimatziwin* for present and future Sagkeeng generations. The recommendations we have provided in this submission support further development of the Niigan Aki Guardians and protection of *Anicinabe Pimatziwin*.

Our recommendations also ask for the CNSC to improve its practices and consultation approach to be more meaningful in future ROR processes. We have found that when there is not a major project assessment in active stages (e.g., active portions of the WR-1 decommissioning EA), CNSC consultation with Sagkeeng tends to lie dormant for long periods of time. This is not conducive to meaningful relationship building. One of, if not the primary cause of this inadequacy, is likely that RegDoc 3.2.2 is out of date and not consistent with modern best practices or the Government of Canada's own approaches to Indigenous engagement in 2026. We note that following preliminary engagement in 2023 on potential revisions to RegDoc 3.2.2, we have been following up regularly to find out what formal consultation on revisions will take place. Despite repeated promises that they would take place in 2024 and then additional promises that they would take place in 2025, those revisions and the resulting consultations have still not taken place, now nearly three years after they were first promised.

11. Sagkeeng recommends that the Commission direct CNSC staff to immediately prioritize updates and revisions to RegDoc 3.2.2, to be developed collaboratively with Sagkeeng (and other interested First Nations).

As noted above, we expect CNL and CNSC (each where requested) to provide written and verbal feedback to Sagkeeng on how they will substantively implement our recommendations. The recommendations for future CNSC RORs and expectations for CNL include:

- 1. Sagkeeng expects timely communication about monitoring exceedances and follow-up actions taken to address them, from both CNL and CNSC. We ask that both parties follow up with us in writing about how this will occur.**
- 2. Sagkeeng expects timely communication about any reportable events and Notices of Non-Compliance as well as follow-up actions taken to address them, from both CNL and CNSC. We ask that both parties follow up with us in writing about how this will occur.**
- 3. Sagkeeng expects the results of Environmental Risk Assessments to be communicated quickly and effectively by CNL to Sagkeeng staff for comment, prior to them being issued to the CNSC.**
- 4. Sagkeeng recommends that future regulatory oversight reports for Whiteshell Laboratories should include a summary, developed through active CNSC consultation with Sagkeeng in advance, of Niigan Aki's role in the monitoring of the site during the calendar year being assessed.**
- 5. Sagkeeng recommends that Niigan Aki Guardians be invited to participate in CNSC inspections at the WL site, not only sampling activities.**
- 6. Sagkeeng recommends that important information related to activities at WL be communicated in plain language, translated into Anishinaabemowin and with visuals, including the CNSC Staff CMDs and relevant CNL annual reports.**
- 7. Sagkeeng recommends that CNSC update its ROR evaluation framework to include the above metrics that support the protection of Aboriginal Rights on CNL sites, and have its staff consult with Sagkeeng on CNL's performance against these metrics prior to the filing of CNSC staff's CMD to the Commission.**
- 8. Sagkeeng recommends that the ROR Issues and Concerns Tracking reflect all issues, concerns, and recommendations that CNSC has received from Indigenous Nations throughout the reporting year, along with their resolution status.**
- 9. Sagkeeng recommends CNSC engage with each Indigenous group prior to filing its CMD with the Commission, to verify the issues and concerns and their resolution status as well as integration of Sagkeeng perspective on CNLs performance with SCAs and ARSCAs.**
- 10. Sagkeeng recommends CNSC engage with Indigenous Nations on each ROR early in the following year so that Nations can more easily access information about the year being reviewed.**

11. Sagkeeng recommends that the Commission direct CNSC staff to immediately prioritize updates and revisions to RegDoc 3.2.2, to be developed collaboratively with Sagkeeng (and other interested First Nations).

Overall, Sagkeeng would like to see big improvements on both the metrics of the ROR and the details within it. The metrics need to better reflect our interests: risk communication, involvement in planning and monitoring, inclusion of Indigenous Knowledge in monitoring and management decisions. The reporting needs to more clearly explain how our concerns are being addressed. The recommendations we have put forward will support the protection of *Anicinabe Pimatziwin* while the facilities remain on our territory.

Reference list

Canadian Nuclear Safety Commission (CNSC). 2024. Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2024.

Canadian Nuclear Safety Commission (CNSC). *REGDOC-3.2.2, Indigenous Engagement, Version 1.2*. Ottawa: CNSC, 2022.

Sagkeeng Anicinabe First Nation and Algonquins of Pikwakanagan First Nation. 2021. Sagkeeng Anicinabe First Nation's Submission on Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021

United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14, Article 29.2 <<https://canlii.ca/t/56fdv>> retrieved on 2026-01-27.