



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Decision

In the Matter of

Applicant

Canadian Nuclear Laboratories

Subject

Application to Renew the Nuclear Research and
Test Establishment Decommissioning Licence
for the Whiteshell Laboratories

Date of
Decision

August 1, 2018

RECORD OF DECISION

Applicant: Canadian Nuclear Laboratories

Address/Location: 286 Plant Road, Chalk River, Ontario, K0J 1J0

Purpose: Application to Renew the Nuclear Research and Test Establishment Decommissioning Licence for the Whiteshell Laboratories

Application received: March 13, 2018

Date of decision: August 1, 2018

Location: Canadian Nuclear Safety Commission (CNSC)
280 Slater St., Ottawa, Ontario

Panel of Commission: M. Binder, President

Licence: Renewed

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1.0 INTRODUCTION

1. Canadian Nuclear Laboratories (CNL) has submitted a request to the Canadian Nuclear Safety Commission¹ (CNSC), under subsection 24(2) of the *Nuclear Safety and Control Act*² (NSCA), for a one-year renewal of the Nuclear Research Test Establishment Decommissioning Licence (NRTEDL) for its Whiteshell Laboratories located in Pinawa, Manitoba. The current licence, NRTEDL-W5-8.04/2018, expires on December 31, 2018.
2. The Whiteshell Laboratories site encompasses an area of approximately 4,375 hectares and includes facilities such as the Whiteshell Reactor (WR-1), radioactive waste management facilities, research laboratories and support buildings. Whiteshell Laboratories operated as a nuclear research facility for approximately 40 years under an operating licence issued to Atomic Energy of Canada Limited (AECL). In 2002, AECL was issued a CNSC decommissioning licence and, since then, significant decommissioning and waste management activities have been carried out at the Whiteshell Laboratories site. In October 2014, the Commission approved the transfer of the Whiteshell Laboratories decommissioning licence from AECL to CNL.³
3. In 2016, CNL proposed that the decommissioning approach for the WR-1 reactor be changed to *in-situ* decommissioning (WR-1 Project), which triggered the requirement for an environmental assessment (EA) under the *Canadian Environmental Assessment Act, 2012*⁴ (CEAA 2012). As part of the CEAA 2012 process, CNL submitted a draft environmental impact statement (EIS) in September 2017. CNL received a large number of information requests regarding the proposed *in-situ* decommissioning of the WR-1 reactor from Indigenous peoples, members of the public and other government regulators, and determined that it would require additional time to address all comments. Therefore, CNL submitted an application to renew the NRTEDL for the Whiteshell Laboratories for a period of one year, under the existing terms and conditions.

Issue

4. In considering the application, the Commission was required to decide:
 - a) what environmental assessment review process to apply in relation to this application;
 - b) whether CNL is qualified to carry on the activity that the licence would authorize; and

¹ The *Canadian Nuclear Safety Commission* is referred to as the “CNSC” when referring to the organization and its staff in general, and as the “Commission” when referring to the tribunal component.

² Statutes of Canada (S.C.) 1997, chapter (c.) 9.

³ CNSC Record of Proceedings, Including Reasons for Decision – Atomic Energy of Canada Limited, “Request for Five Licence Transfers to, and Request for Two Specific Exemptions for, Canadian Nuclear Laboratories Limited”, October 22, 2014.

⁴ Statutes of Canada (S.C.) 2012, chapter (c.) 19.

- c) whether, in carrying on that activity, CNL would make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed.

Hearing

5. Pursuant to section 22 of the NSCA, I established myself to preside as a Panel of one Commission Member to hear the application. The Commission, in conducting a public hearing based on written materials only, considered written submissions from CNL (CMD 18-H103.1) and CNSC staff (CMD 18-H103 and CMD 18-H103.A). The Commission also considered written submissions from four intervenors (see Appendix A for a list of interventions).

2.0 DECISION

6. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Decision*, the Commission concludes that CNL satisfies the conditions of subsection 24(4) of the NSCA. Therefore,

The Commission, pursuant to section 24 of the *Nuclear Safety and Control Act*, renews the Nuclear Research and Test Establishment Decommissioning Licence issued to Canadian Nuclear Laboratories for its Whiteshell Laboratories located in Pinawa, Manitoba. The renewed licence, NRTEDL-W5-8.05/2019, is valid from January 1, 2019 until December 31, 2019.

7. The Commission includes in the licence the conditions as recommended by CNSC staff in CMD 18-H103, which are the same as the current licence.
8. The Commission expects regular updates on the performance of CNL and Whiteshell Laboratories, and notes that CNL will provide an update on this matter during the August 2018 Commission meeting. The Commission encourages Indigenous peoples, members of the public and stakeholders to participate in upcoming public Commission proceedings related to the Whiteshell Laboratories.

3.0 ISSUES AND COMMISSION FINDINGS

9. In making its licensing decision, the Commission considered a number of issues and factors relating to the CNL's qualification to carry out the licensed activities that the renewed licence would authorize. The Commission also considered the adequacy of CNL's measures for the protection of the environment and the health and safety of persons, and the proposed measures for CNL's maintenance of the national security and

international obligations to which Canada has agreed.

10. In its consideration of this matter, the Commission examined the completeness of the application and the adequacy of the information submitted by CNL, as required by the NSCA, the *General Nuclear Safety and Control Regulations*⁵ (GNSCR) and other applicable regulations made under the NSCA.
11. The Commission notes that, pursuant to section 7 of the GNSCR, this licence renewal application may incorporate by reference any information that is included in CNL's current NRTEDL.
12. Details on the Commission's consideration of information submitted by CNL in support of its application and of CNSC staff assessments and of interventions submitted in relation to this matter are provided in the following sections of the *Record of Decision*.

3.1 Application of the *Canadian Environmental Assessment Act, 2012*

13. In coming to its decision, the Commission was first required to determine whether an EA under CEAA 2012 was required.
14. The application submitted by CNL is for the Whiteshell Laboratories licence renewal only, and CNL is not requesting authorization for new projects or physical activities⁶ with this one-year licence renewal request. The Commission notes that a licence renewal is not a designated project under CEAA 2012.
15. The Commission considered CNSC staff's environmental review of CNL's licence renewal application under the NSCA. CNSC staff submitted that, as there were no proposed changes in activities in the proposed licence, there would be no changes to impacts to the environment related to this licence renewal.
16. Based on the information examined by the Commission in this matter, the Commission is satisfied that this licence renewal application does not propose any new activities and that an environmental assessment under CEAA 2012 was not required.
17. The Commission is also satisfied that CNL has made, and will continue to make, adequate provision for the protection of the environment in relation to the licensed activities throughout the licence period.

3.2 Safety and Control Areas

18. The Commission considered the completeness of CNL's application for licence renewal, as well as CNSC staff's review of that application, in regard to the 14 safety and control

⁵ SOR/2000-202.

⁶ "Projects" as defined in section 66 of CEAA 2012.

areas (SCAs).

19. CNSC staff confirmed the information provided by CNL and submitted that, as there were no proposed changes to any of the licensed activities, the licence conditions, or the LCH, there would be no new impacts to the 14 SCAs. CNSC staff further submitted that updates regarding the decommissioning activities at the Whiteshell Laboratories were brought before the Commission in 2012, 2014 and 2016 and that the next update would be presented to the Commission via a status update at the August 2018 public Commission meeting.
20. In its written intervention, Concerns Citizens of Manitoba submitted concerns regarding CNL's management of the Whiteshell Laboratories site. CNSC staff informed the Commission in written materials that those concerns were previously addressed during the January 2018 Chalk River Laboratories licence renewal hearing.⁷ CNSC staff further submitted that CNL had maintained and would continue to maintain an adequate management and organizational structure to ensure the safe operation of the Whiteshell Laboratories site. The Commission is satisfied with the information provided regarding the adequacy of CNL's management of the Whiteshell Laboratories site.
21. Based on information provided, the Commission was satisfied that CNL had maintained the appropriate organization and management structure to provide for the safe operation of the Whiteshell Laboratories site over the proposed licence period. The Commission further noted that it had previously assessed the adequacy of CNL's management structure during the transfer of licences from AECL to CNL, during a 2014 public Commission hearing.⁸
22. The Concerned Citizens of Manitoba, the Sagkeeng First Nation, and CELA expressed their concern with respect to the potential future *in-situ* decommissioning of the WR-1 reactor. CNSC staff submitted to the Commission that the decommissioning of the WR-1 reactor, as well as any factors regarding the long-term management of the site, was outside of the scope of this licence renewal hearing and that the proposed renewed licence would not authorize the in-situ decommissioning of the WR-1 reactor. CNSC staff informed the Commission through written materials that concerns regarding the potential *in-situ* decommissioning of the WR-1 reactor were being considered by CNSC staff as part of the EA process, as described in Paragraph 3 of this *Record of Decision*. The Commission noted that the proposed *in-situ* decommissioning of the WR-1 reactor would be considered at a future public Commission hearing.

⁷ CNCSC Record of Decision – Application to Renew the Nuclear Research and Test Establishment Operating Licence for the Chalk River Laboratories, January 23-25, 2018.

⁸ CNSC Record of Proceedings, Including Reasons for Decision – Atomic Energy of Canada Limited, “Request for Five Licence Transfers to, and Request for Two Specific Exemptions for, Canadian Nuclear Laboratories Limited”, October 22, 2014.

3.3 Aboriginal Engagement

23. The common law duty to consult with Aboriginal peoples applies when the Crown contemplates action that may adversely affect established or potential Aboriginal and/or treaty rights. The CNSC, as an agent of the Crown and as Canada's nuclear regulator, recognizes and understands the importance of building relationships and engaging with Canada's Aboriginal peoples. The CNSC ensures that its licensing decisions under the NSCA uphold the honour of the Crown and considers Aboriginal peoples' potential or established Aboriginal and/or treaty rights pursuant to section 35 of the *Constitution Act, 1982*.⁹
24. While CNSC staff expressed the view that no formal duty to consult was engaged by the one-year licence renewal, CNSC staff further submitted that continued communication with interested Indigenous groups was, and would continue to be, a priority for CNSC staff, and would be continued throughout the proposed licence period to ensure that the groups received all information requested and to establish, maintain and enhance relationships with the groups.
25. CNSC staff submitted that it was committed to structured and focused engagement and consultation activities with all potentially impacted First Nations and Métis communities regarding the licensed activities being carried out at the Whiteshell Laboratories site. CNSC staff also submitted to the Commission that engagement activities will continue through the collection of traditional knowledge and land use information over the proposed licence period.
26. In its written materials, CNSC staff informed the Commission about the engagement and consultation activities carried out with the Sagkeeng First Nation by CNSC staff and by CNL, and how those activities would continue throughout the proposed licence period. CNSC staff provided the Commission with information regarding its collaboration with the Sagkeeng First Nation on environmental sampling and monitoring, and reported that those sampling results would be posted on the CNSC's public Independent Environmental Monitoring Program website. CNSC staff also reported that it had committed to continued engagement with Indigenous communities for future environmental monitoring campaigns.
27. The Sagkeeng First Nation and the Manitoba Metis Federation expressed concern with respect to the proposed activities for the WR-1 project and the associated EA. In its written materials, CNSC staff informed the Commission that it had carefully considered the concerns expressed by the intervenors, and provided further details regarding the engagement and consultation activities with the Sagkeeng First Nation and the Manitoba Metis Federation in that regard. CNSC staff submitted that it had provided the Sagkeeng First Nation and Manitoba Metis Federation with additional information regarding participant funding, the regulatory process, the future Commission hearing on the proposed *in-situ* decommissioning of the WR-1 reactor, and further submitted that CNSC

⁹ *Constitution Act, 1982*, Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).

staff would work to better understand their concerns in relation to the WR-1 Project with respect to any potential impacts to Aboriginal and/or treaty rights.

28. The Sagkeeng First Nation proposed in their written materials three additional licence conditions regarding reporting requirements, environmental monitoring, and community health and safety monitoring with respect to the proposed in-situ decommissioning approach in the draft 2017 EIS. The Commission noted that the draft 2017 EIS was outside the scope of this licence renewal application, however CNSC staff informed the Commission regarding its efforts to address the concerns of the Sagkeeng First Nation with respect to CNL's draft 2017 EIS as an example of CNSC staff's ongoing consultation and engagement activities. CNSC staff submitted that it had gathered information on cancer rates in the vicinity of the Whiteshell Laboratories as requested by the Sagkeeng First Nation, and would continue to engage with the Sagkeeng First Nation regarding that initiative. CNSC staff further stated that it had encouraged CNL to continue to build relationships with the Sagkeeng First Nation.
29. The Manitoba Metis Federation expressed its expectation for the continued engagement and consultation actions from both CNL and the CNSC. CNSC staff informed the Commission through written materials that the CNSC was committed to formalized, structured engagement, and to strengthening their relationships with all interested Indigenous communities. CNSC staff further submitted that it had also encouraged CNL to continue to build relationships with the Manitoba Metis Federation.
30. Based on the information examined by the Commission, the Commission is satisfied that this licence renewal will not result in changes to the Whiteshell Laboratories decommissioning operations, and that the one-year licence renewal would not cause adverse impacts to any potential or established Aboriginal and/or treaty rights. The Commission is satisfied that the duty to consult was not triggered in this matter and is also of the opinion that the engagement activities undertaken for the review of Whiteshell Laboratories licence renewal application had been adequate.¹⁰
31. Based on the information presented for this hearing, the Commission is satisfied that Aboriginal engagement activities carried out for this licence renewal were adequate. The Commission anticipates that CNL and CNSC staff will continue to expand upon their Aboriginal engagement activities, as submitted during this hearing.

3.4 Cost Recovery

32. The Commission examined CNL's standing under the *Cost Recovery Fees Regulations*.¹¹ (CRFR) requirements for CRL. Paragraph 24(2)(c) of the NSCA requires that a licence application be accompanied by the prescribed fee, as set out by the CRFR and based on the activities to be licensed.

¹⁰ *Rio Tinto Alcan v. Carrier Sekani Tribal Council*, 2010 SCC 43[2010] 2 S.C.R. 650 at paras 45 and 49.

¹¹ SOR/2003-212.

33. CNSC staff submitted that after conducting a thorough review of CNL's records, CNSC staff had verified that CNL was in good standing with respect to the CRFR requirements.
34. Based on the information submitted by CNL and CNSC staff, the Commission is satisfied that CNL has satisfied the requirements of the CRFR for the purpose of this licence renewal.

3.5 Financial Guarantee

35. The Commission requires that CNL maintain a financial guarantee for the decommissioning of the Whiteshell Laboratories site pursuant to paragraph 3(1) of the *General Nuclear Safety and Control Regulations* (GNSCR).¹²
36. CNSC staff submitted to the Commission that G-206, *Financial Guarantees for the Decommissioning of Licensed Activities*,¹³ stated that an expressed commitment from a federal or provincial government was an acceptable form of financial guarantee, and that this commitment was expressed in a letter from the Federal Minister of Natural Resources to the CNSC dated July 31, 2015. CNSC staff also submitted that this letter stated that AECL would retain ownership of all lands, assets and liabilities associated with CNL's licences, including those of the Whiteshell Laboratories and that all liabilities of AECL were the liabilities of Her Majesty in Right of Canada.
37. After considering the information submitted for this hearing, the Commission is satisfied that the proposed financial guarantee is adequate to provide for the future decommissioning of the Whiteshell Laboratories.

3.6 Public Participation

38. The Commission noted that while participant funding was not offered through the CNSC's Participant Funding Program (PFP) for this licence renewal application, participant funding was offered with respect to the CEAA 2012 EA and the *in-situ* decommissioning proposal for the WR-1 decommissioning application, and that participant funding was awarded to both the Sagkeeng First Nation and the Manitoba Metis Federation. The Commission noted that the CEAA 2012 EA for the proposed *in-situ* decommissioning of the WR-1 reactor, and a future licence renewal application for the Whiteshell Laboratories site will be addressed at a public hearing of the Commission that will allow public participation in 2019. The Commission expects participant funding to be offered for that licence renewal hearing in 2019.

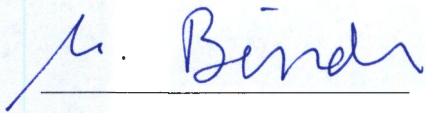
¹² SOR/2000-202

¹³ CNSC Regulatory Guide G-206, *Financial Guarantees for the Decommissioning of Licensed Activities*, 2000.

4.0 CONCLUSIONS

39. The Commission has considered the information and submissions from CNL and CNSC staff as set out in the material available for reference on the record, as well as the written interventions submitted for this the hearing.
40. The Commission is satisfied that CNL meets the test set out in subsection 24(4) of the *Nuclear Safety and Control Act*. That is, the Commission is of the opinion that CNL is qualified to carry on the activity that the proposed licence will authorize and that it will make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed.
41. Therefore, the Commission, pursuant to section 24 of the *Nuclear Safety and Control Act*, renews the Nuclear Research and Test Establishment Decommissioning Licence issued to Canadian Nuclear Laboratories for the Whiteshell Laboratories located in Pinawa, Manitoba. The renewed licence, NRTEDL-W5-8.05/2019, is valid from January 1, 2019 until December 31, 2019.
42. The Commission includes in the licence the conditions as recommended by CNSC staff in CMD 18-H103.
43. The Commission is satisfied that this licence renewal application does not propose any new activities and that an EA under CEAA 2012 was not required for the Whiteshell Laboratories licence renewal application. The Commission notes that the NSCA provides a strong regulatory framework for environmental protection and is satisfied that CNL has made, and will continue to make, adequate provision for the protection of the environment and the health of persons throughout the proposed licence period.
44. The Commission wishes to make clear that the proposed licence does not provide for the *in-situ* decommissioning of the WR-1 reactor. The Commission further expresses that the concerns raised by Indigenous peoples, members of the public and other government regulators regarding the decommissioning of the WR-1 reactor, as well as the EA for the proposed decommissioning method, will be considered by the Commission at a future public Commission hearing(s), following an application from CNL.
45. The Commission notes that CNSC staff can bring any matter to the Commission as applicable. The Commission directs CNSC staff to inform the Commission on an annual basis of any changes made to the Licence Conditions Handbook (LCH).
46. The Commission encourages interested members of Indigenous groups and members of the public to participate in future public Commission proceedings regarding the licence renewal for the Whiteshell Laboratories and for the EA in respect of the *in-situ* decommissioning of the WR-1 reactor.

47. The Commission is satisfied that Aboriginal engagement activities carried out for this licence renewal were adequate. The Commission anticipates that CNL and CNSC staff will continue their expansion of Aboriginal engagement activities as submitted in the materials for this hearing.
48. The Commission expects CNSC staff to continue engaging and consulting with First Nations and Métis communities in regard to the proposed *in-situ* decommissioning of the WR-1 reactor, as submitted in the information presented for this hearing.



Michael Binder
President,
Canadian Nuclear Safety Commission

AUG 01 2018

Date

Appendix A – Intervenors

Concerned Citizens of Manitoba	18-H103.2
Sagkeeng First Nation	18-H103.3
Canadian Environmental Law Association	18-H103.4
Manitoba Metis Federation Inc.	18-H103.5