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Technical Briefing

Note d'information technique

Commission Request for Information

Demande d'information de la
Commission

**Overview of the
Institutional Control
Program for
Decommissioned Mine
and/or Mill Sites in
Saskatchewan**

**Aperçu du Programme de
contrôle institutionnel
pour les sites déclassés
de mines et/ou d'usines
de concentration en
Saskatchewan**

Public Meeting

Réunion publique

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Le personnel de la CCSN

Summary

This Commission Member Document (CMD) describes the Province of Saskatchewan's Institutional Control Program (ICP) for post closure management of decommissioned uranium mine and/or mill sites located in Saskatchewan, and the Canadian Nuclear Safety Commission's role in transferring sites into the ICP.

Following the December 14, 2016 *Regulatory Oversight Report for Uranium Mines, Mills, Historic and Decommissioned Sites in Canada: 2015* presentation, Commission members raised questions regarding the ICP and the CNSC's role. It was suggested by the Commission that it would be worthwhile to document the ICP. This CMD has been prepared in response to that suggestion.

There are no actions requested of the Commission. This CMD is for information only.


Résumé

Le présent document à l'intention des commissaires (CMD) décrit le Programme de contrôle institutionnel (PCI) de la province de la Saskatchewan pour la gestion post-fermeture des sites déclassés de mines et/ou d'usines de concentration d'uranium situés en Saskatchewan, ainsi que le rôle de la Commission canadienne de sûreté nucléaire dans le transfert des sites au PCI.

Le 14 décembre 2016, suivant la présentation du *Rapport de surveillance réglementaire des mines et usines de concentration d'uranium et des sites historiques et déclassés au Canada : 2015*, les commissaires ont soulevé des questions concernant le PCI et le rôle de la CCSN. La Commission a suggéré qu'il pourrait être utile de documenter le PCI. Le présent CMD a été préparé en réponse à cette suggestion.

Aucune mesure n'est requise de la Commission. Ce CMD est fourni à titre d'information seulement.

Signed/signé le
06 September 2018



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EXECUTIVE SUMMARY

This Commission Member Document (CMD) describes the Province of Saskatchewan's Institutional Control Program (ICP) for the post closure management of decommissioned uranium mine and/or mill sites. This document also describes the Canadian Nuclear Safety Commission's (CNSC) role in the process of transferring a site into the ICP.

The ICP defines and implements a process for the long-term monitoring and maintenance of decommissioned mine and/or mill sites located on provincial Crown land in Saskatchewan. The Province of Saskatchewan states that the primary objectives of the ICP are to:

- protect human health and safety;
- protect the environment;
- ensure future generations are not burdened with the costs of long-term monitoring and maintenance for current mining development;
- be sustainable; and
- recognize federal jurisdiction, regulatory roles and responsibilities for national and international obligations.

Operation of the ICP, including monitoring and maintenance, is by the Saskatchewan Ministry of Energy and Resources. The licensee requesting the transfer of sites from their oversight to provincial oversight under the ICP must provide the province with sufficient funds to conduct long-term monitoring and maintenance and financial assurance to address unforeseen events. This requirement is separate from the financial guarantees required by the Commission. However, recent preliminary and detailed decommissioning plans submitted by licensees in Saskatchewan include estimated ICP monitoring requirements; these costs are included in the financial guarantee. The requirement to have financial guarantees both during CNSC licensing and as a condition of entry into the ICP ensures that sufficient funds are always available to carry out any necessary work on behalf of the site-holder/licensee.

A condition of acceptance by the province to transfer properties/sites into the ICP is that closed uranium mine and/or mill sites receive a release from any and all Government of Canada issued licences including those issued by the CNSC pursuant to the *Nuclear Safety and Control Act* (NSCA), thus reverting total custodial responsibility back to the province. The Commission has the authority to grant an exemption from the application of the NSCA pursuant to section 7 of the NSCA. Section 11 of the *General Nuclear Safety and Control Regulations* provides that the Commission may grant an exemption from licensing if doing so will not:

- a) pose an unreasonable risk to the environment or the health and safety of persons;
- b) pose an unreasonable risk to national security; or
- c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

When a decommissioned and reclaimed uranium mine and/or mill site enters the ICP, the province will be responsible for the long term oversight and maintenance of the property. The CNSC would no longer exercise regulatory oversight, by virtue of the exemption from the application of the NSCA.

While there is an established ICP in Saskatchewan, there are no comparable programs in other Canadian provincial or territorial jurisdictions. For CNSC-licensed locations outside of Saskatchewan, a case-specific review of the applicable legislation and the arrangements put forward by the proponent would be required. Based on the results of that review, CNSC staff would recommend the appropriate regulatory approach to the Commission for consideration.

Referenced documents in this CMD are available to the public upon request.

1 OVERVIEW

1.1 Background

The Canadian Nuclear Safety Commission (CNSC) regulates operating and decommissioned uranium mine and mill sites in Canada. The current operating uranium mine and/or mill sites are located in Saskatchewan. Following the December 14, 2016 *Regulatory Oversight Report for Uranium Mines, Mills, Historic and Decommissioned Sites in Canada: 2015* [1] presentation, Commission members raised questions regarding the Province of Saskatchewan's Institutional Control Program (ICP) and the CNSC's role. The Commission suggested CNSC staff describe the ICP at a high level. This Commission Member Document (CMD) has been prepared in response to that suggestion and provides information on the ICP and the CNSC's role in the transfer of properties into the ICP.

Institutional Control Explained

CNSC's regulatory document *Waste Management, Volume II: Assessing the Long-Term Safety of Radioactive Waste Management* (REGDOC-2.11.1) defines institutional controls as "the control of residual risks at a site after it has been decommissioned" [2]. Institutional controls can include active measures (requiring activities on the site such as water treatment, monitoring, surveillance and maintenance) and passive measures (that do not require activities on the site, such as land use restrictions, markers, etc.). The definition of institutional controls recognizes that regulatory oversight is required; however, if the appropriate mechanisms are in place then CNSC licensing may no longer be required and oversight may be given to a provincial or territorial agency.

In the absence of an IC program ongoing monitoring and maintenance of decommissioned uranium mine and/or mill sites would continue to be done by a licensee for as long as required.

Development of the ICP

In 2005, the Province of Saskatchewan initiated the development of an ICP for the long term management of decommissioned mine and/or mill sites on provincial Crown land. The ICP applies to all types of mine and/or mill sites, including uranium sites. CMD 06-M10 includes a summary of the process at the time the ICP was being proposed, and the CNSC's role (appendix C). While the CNSC supported development of the ICP, and continues to support the program, this was an initiative led by the Province of Saskatchewan to protect their interests as owners of provincial Crown land.

The ICP was established in March 2007. *The Reclaimed Industrial Sites Act* (Act – appendix A) and *The Reclaimed Industrial Sites Regulations* (Regulations – appendix B) legislate the establishment of the ICP which implements the process for the long-term monitoring and maintenance of former mine and/or mill sites located on provincial Crown land. This process occurs after mining/milling activities have ended, decommissioning has been completed and post closure monitoring has demonstrated the site is safe and stable. Sufficient funds must also be provided by the site holder for long term monitoring and maintenance and for unforeseen events.

Subsection 3(2) of the Act states that the purposes of the ICP are:

- a) “to set out the conditions by which the Government of Saskatchewan will accept responsibility for land that, in consequence of development and use, requires long-term monitoring and, in certain circumstances, maintenance;
- b) to ensure that the required monitoring and maintenance are carried out on that land;
- c) to provide a funding mechanism to cover costs associated with the monitoring and maintenance on that land; and
- d) to ensure that certain records and information are preserved with respect to that land.”

The first request for an exemption from CNSC licensing, in order to enable a transfer into the ICP, was made in 2009. Cameco requested that five properties associated with the Beaverlodge Project be exempted from the NSCA [3], [4]. The Commission issued the exemption and these five properties were accepted into the ICP, as described in section 5.1.

2 INSTITUTIONAL CONTROL PROGRAM

Saskatchewan’s ICP Act and Regulations established the ICP for the long-term monitoring and maintenance of sites when mining/milling activities have ended and site remediation has been completed and approved by the applicable regulatory agencies. Mining activities are undertaken on provincial Crown land, under mining rights granted by the province respecting that land, at the conclusion of which the land reverts to the full possession and control of the province. In the context of uranium mine sites, the ICP sets out a process for transfer of such a site from CNSC regulatory oversight to provincial responsibility at the conclusion of site remediation, and when a property may be considered appropriate for return to the provincial Crown’s responsibility. It is important to note that the ICP does not oversee or regulate the responsibility for the decommissioning and reclamation regulatory process for uranium mine and/or mill sites, it applies only once those steps are completed. A site cannot be accepted into the ICP until a period of post-decommissioning monitoring has taken place confirming properties are safe, secure and stable, and both provincial and federal regulatory authorities have issued a release or an exemption from licensing.

The ICP manages the long-term monitoring and maintenance of decommissioned mine and/or mill sites in accordance with national and international requirements. No other province or territory with decommissioned uranium mine and/or mill sites have such a program, as explained in more detail in section 7.

The CNSC was consulted during the development of Saskatchewan's ICP starting with the province's initial development of a proposed IC framework in 2005 through to the establishment of the ICP in 2007.

The program has been designed to manage a broader scope of future sites such as those on private land or industrial sites [5]. Saskatchewan Ministry of Energy and Resources (MER) is the provincial ministry assigned responsibility for implementing and managing the ICP. In May 2009, Cameco Corporation's decommissioned Contact Lake Mine, which included a gold mine, mill and tailings management facility, was the first site to be accepted into the ICP. For the purpose of this CMD, the focus is on the ICP for former uranium mine and/or mill facilities.

The primary objectives of the ICP are to:

- protect human health and safety;
- protect the environment;
- ensure future generations are not burdened with the costs of long-term monitoring and maintenance for current mining development;
- be sustainable; and
- recognize federal jurisdiction regulatory roles and responsibilities for national and international obligations.

The conditions for acceptance into the ICP are provided in section 3 of the Regulations. The Regulations stipulate that the site holder comply with all of the following:

- “completed and complied with the conditions of any environmental assessment;
- submitted a monitoring and maintenance plan and provided the funds required for the monitoring and maintenance and unforeseen events;
- completed the required decommissioning, reclamation and transitional-phase monitoring activity requirements;
- are eligible to receive a release or exemption from any and all licences issued by the Government of Saskatchewan or any of its agencies or commissions and that are associated with the closed site;
- are eligible to receive a release from any and all licences issued by the Government of Canada or any of its agencies or commissions and that are associated with the closed site;

- if the closed site is required to be licensed pursuant to the NSCA, the CNSC has agreed, in writing, to grant the Government of Saskatchewan an exemption from the obligation to hold a licence under the NSCA for the closed site if the minister accepts the closed site into the ICP;
- are eligible to receive a release from the surface lease agreements or any portion of them associated with the closed site; and
- mineral rights have been surrendered or transferred.”

If the site performs in accordance with the decommissioning and reclamation plan, and the licensee can demonstrate the site is safe, secure, and stable, the licensee may submit an Application for a Release from Decommissioning and Reclamation to the Saskatchewan Ministry of the Environment (SMOE) and subsequently an application to MER to transfer the property into the ICP.

As highlighted above, the provincial legislation provides that a former uranium mine site can only be accepted into the ICP once the Commission has granted an exemption from the application of the NSCA with respect to that site. In order for a site to enter into the ICP, a Release from Decommissioning and Reclamation must be issued by SMOE and an exemption from licensing issued by the Commission.

2.1 ICP Components

The primary components of the ICP are the Institutional Control Registry (Registry) and two IC funds: the Institutional Control Monitoring and Maintenance Fund (ICMMF) and the Institutional Control Unforeseen Events Fund (ICUEF).

The ICP Registry includes the maintenance of records, including:

- location of closed property/site;
- description of former operator(s);
- site description;
- historical records of activities;
- description of the site monitoring and maintenance obligations; and
- description of surface land use and mineral disposition restrictions.

The ICMMF is for future monitoring and maintenance costs in perpetuity. The monies in this fund can only be used for monitoring and maintenance of the closed property to which that account is associated.

The ICUEF is for costs of unforeseen events. This fund is for any maintenance obligation, including the determination of maintenance costs that were not covered by the ICMMF.

These two IC funds, provided by the site-holder to the province, will replace the financial guarantee required by the CNSC once the site-holder/licensee is released from regulatory oversight by the Commission. Through this approach, assurance is maintained that sufficient funds are always available to carry out any necessary work on behalf of the site-holder/licensee. Recent preliminary and detailed decommissioning plans for Saskatchewan uranium mine and/or mill sites include estimated ICP monitoring requirements; these costs are included in the financial guarantee.

Because there are very few properties currently in the ICP, MER has temporarily implemented a licensee-backed financial assurance requirement for the ICUEF. The financial assurance requirement has been implemented and will remain in place until the province determines that there are sufficient funds available in the ICUEF to manage the total costs for unforeseen events. This measure is to minimize the ICP's financial risk. The assurance amount is based on the cost of a maximum failure event at a site and can only be used for the site for which it was established. The maximum failure event will depend on the residual structures and risks at a site. For example, at a mine site the event could be the premature failure of a shaft cap whereas for a mill site it could be the repair of a tailings dam or cover due to an extreme rainfall event. It is the MER's intent to return unused financial assurance once the ICUEF has reached a sufficient size. To date, no unforeseen events have occurred [6].

Payment of both the ICMMF and ICUEF are made by the site holder who requested the transfer into the ICP. The two funds are completely separate from the financial guarantees/assurances that were in place during mine and/or mill operations to ensure proper decommissioning, reclamation and closure. The ICMMF and ICUEF amounts do not require approval by the Commission. Operation of the ICP, including monitoring and maintenance is by the MER.

Further information on the ICP including Registry and status reports are available to the public on the MER's website (<http://www.saskatchewan.ca/business/agriculture-natural-resources-and-industry/mineral-exploration-and-mining/institutional-control-program>).

2.2 ICP Legislative Amendments

It is a requirement within *The Reclaimed Industrial Sites Act* to review this Act. As part of the review process, MER consulted with the site holders who have contributed to ICP funds, the Saskatchewan mining industry, industry regulators and any other person or agency that the Minister of MER considered appropriate. MER engaged with CNSC staff throughout the review process. In 2017, changes to both the Act and Regulations were proposed. The most substantive change to the legislation proposed was the ability for the Minister of MER to transfer properties out of the ICP, primarily in order to allow companies access for exploration and/or re-mining. MER is anticipating that the proclamation of the Act and approval of the Regulations by Provincial cabinet will occur in the fall of 2018.

In response to CNSC comments on the proposed amendments, MER has added the requirement to the proposed legislation that the Minister must consult with the CNSC prior to any proposed transfer of any former CNSC licensed site from the ICP to a responsible party. CNSC staff are satisfied with the proposed wording and continue to work cooperatively with MER.

3 INTERNATIONAL OBLIGATIONS

With respect to former uranium mine/mill sites, Saskatchewan has crafted the ICP with a view of Canada's obligations under the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management* (Joint Convention) [7]. Under the Joint Convention, to which Canada is a signatory, institutional measures with respect to record-keeping, monitoring and access control may be required.

For former uranium mine and/or mill sites, acceptance into the ICP, and the responsibility being taken on by the province, occurs once the CNSC has completed its regulatory oversight and is confident that the province, under the ICP, will adequately address the necessary monitoring and control on site. As outlined above, under the NSCA, once an operator completes decommissioning activities and has demonstrated to CNSC staff's satisfaction that environmental performance is as predicted, the Commission may decide under the NSCA to exempt an operator from further need to be licensed. The Commission needs to be confident that under the ICP, the province could provide adequate protection of the environment, the health and safety of persons and security.

Some of the pertinent requirements taken from the Joint Convention are:

- records of the location, design and inventory of that facility required by the regulatory body are preserved (Article 17(i));
- active or passive institutional controls such as monitoring or access restrictions are carried out, if required (Article 17(ii));
- if, during any period of active institutional control, an unplanned release of radioactive materials into the environment is detected, intervention measures are implemented, if necessary (Article 17 (iii));
- legislative and regulatory framework shall provide for...a system of appropriate institutional control, regulatory inspection and documentation and reporting (Article 19, 2(iv)); and
- financial provision is made which will enable the appropriate institutional controls and monitoring arrangements to be continued for the period deemed necessary following the closure of a disposal facility (Article 22 (iii)).

The International Atomic Energy Agency's (IAEA) *Management of Radioactive Waste from the Mining and Milling of Ores, Safety Guide* [8] also contains IC recommendations. Included in the recommendations is that "legal provision should be made for the regulatory body to withdraw or modify components of the institutional control programme, as deemed appropriate in the light of results of monitoring and surveillance. Information on the site, the required institutional controls and the rationale or need for such controls should be documented and made publically available" (section 9.4).

Section 5.4 of the IAEA's *Monitoring and Surveillance of Residues from the Mining and Milling of Uranium and Thorium* [9] outlines specific IC measures for tailings and waste rock piles. These include:

- measures to prevent unauthorized removal or use of mine wastes;
- signage to warn of potential dangers from the use or excavation of these materials;
- contact of the local authorities to ensure that they are aware of the facilities and understand their responsibilities; and
- the need to review and verify controls through inspections.

After the establishment of Saskatchewan's ICP, the IAEA developed additional guidance materials which included some recommendations related to IC. The existing ICP satisfies international recommendations and guidance, including those in IAEA's *Disposal of Radioactive Waste* [10], *Near Surface Disposal of Radioactive Waste* [11], *Release of Sites from Regulatory Control of Termination of Practices* [12] and *Decommissioning of Facilities* [13]. The IAEA is currently considering the development of a publication specific to IC. CNSC staff will continue to participate in the development of IAEA documents related to IC.

4 CNSC'S ROLE

During those life-cycle phases when the CNSC licence is in effect (site preparation, commissioning, operation and decommissioning), the site remains under CNSC regulatory control. Provision for the safe termination of licensed activities is maintained through the requirement for the licensee to maintain a financial guarantee in a form and of an amount that is acceptable to the Commission. This ensures that the CNSC or the Province of Saskatchewan (for sites located in Saskatchewan) will be able to access sufficient funds to carry out site remediation activities if the licensee is no longer able to do so. It also ensures that the licensee has set aside sufficient funds for decommissioning and site remediation, allowing for the necessary work to proceed immediately following the cessation of operations.

Once the licensee has completed operations, a detailed decommissioning plan is required to demonstrate how the licensee will complete the site remediation. As part of the licensing requirements, the licensee will submit a fully costed program of remediation and the financial guarantee required by the Commission will be based on the value associated with the work. The financial guarantee remains a requirement of the NSCA until the licensee is released from CNSC regulatory oversight by the Commission.

Financial guarantees required by the CNSC are separate from any funds or financial guarantees established as a condition of the Province of Saskatchewan accepting sites into the ICP. However, recent preliminary and detailed decommissioning plans for Saskatchewan uranium mine and/or mill sites include estimated ICP monitoring requirements; these costs are included in the financial guarantee.

Under the NSCA, upon closure and completion of decommissioning, release/exemption of CNSC licensed properties, or portions therein, from federal regulatory oversight (licensing) may occur through different mechanisms depending on the activities which have occurred at the site, the inventory of nuclear substances and residual risks, and the monitoring and management requirements. The types of legislative mechanisms will depend on the following characteristics of the property:

- undisturbed areas;
- remediated areas that, in accordance with section 5.1(1) of the *Nuclear Substances and Radiation Devices Regulations* [14], have an inventory of nuclear substances below exemption quantities/clearance levels;
- remediated areas that have an inventory of nuclear substances below exemption quantities/clearance levels and have residual risks, such as the presence of hazardous substances; and
- remediated areas where radioactive materials in excess of exemption quantities/clearance levels are present which require IC.

Undisturbed and remediated areas that have an inventory of nuclear substances below exemption quantities/clearance levels and that do not require IC would not require a licence under the *Nuclear Safety and Control Act* (NSCA) [15]. Therefore, these areas do not require an exemption from a licensing requirement. It can therefore be said that it is “by operation of law” that these areas can be free-released, as they do not require a licence under the NSCA.

Areas that have quantities of nuclear substances above exemption quantities/clearance levels, and that need IC would require an exemption from CNSC licensing in order for them to be transferred into the ICP. There is a well-defined process to be followed when properties or portions therein, are to be the subject of an exemption from the NSCA and transferred into Saskatchewan’s ICP.

4.1 ICP Transfer Process

A provincial requirement for the transfer of custodial responsibility back to the province by accepting a site into the IC registry is to only accept closed uranium facilities that are exempted from CNSC licensing. The Commission has the authority to grant an exemption under section 7 of the NSCA which states:

“The Commission may, in accordance with the regulations, exempt any activity, person, class of person or quantity of a nuclear substance, temporarily or permanently, from the application of this Act or the regulations or any provision thereof.”

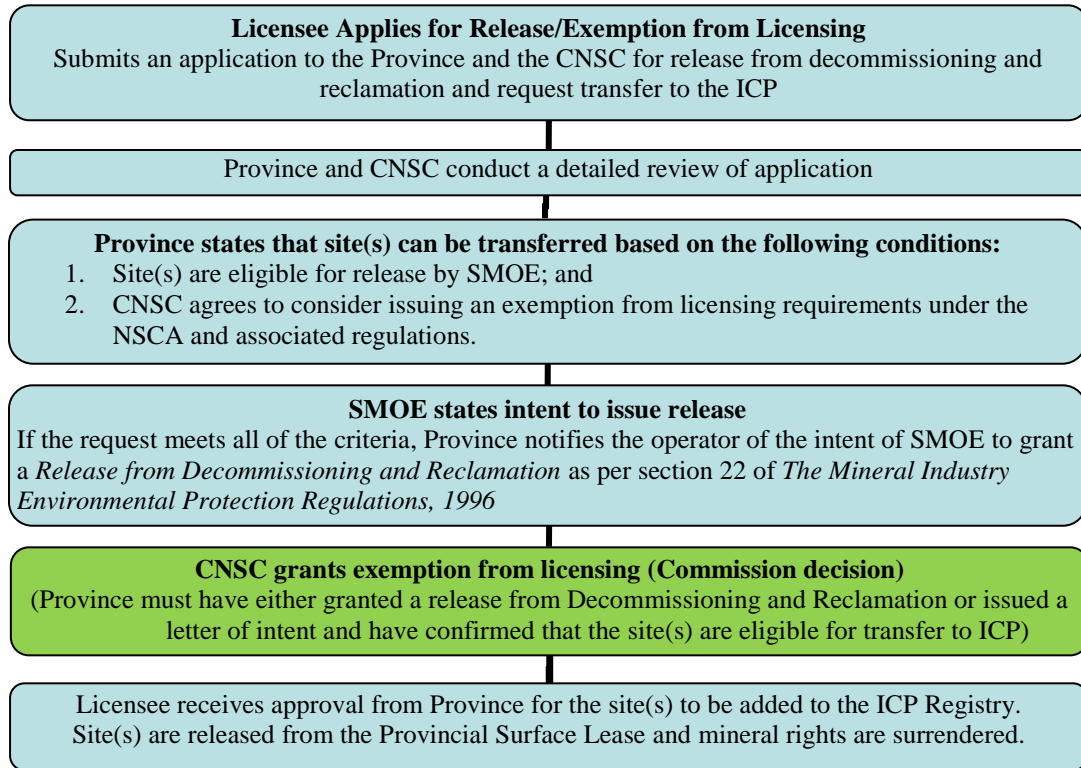
The conditions under which the Commission makes an exemption are pursuant to section 11 of the *General Nuclear Safety and Control Regulations* [16] which states:

“For the purpose of section 7 of the Act, the Commission may grant an exemption if doing so will not

- a) pose an unreasonable risk to the environment or the health and safety of persons;
- b) pose an unreasonable risk to national security; or
- c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.”

CNSC staff thoroughly assess residual risks to the public and the environment of decommissioned and reclaimed sites before an exemption from licensing is recommended to the Commission. CNSC staff review detailed environmental data and predictions in their assessment of the request to release sites to IC.

A brief summary of the ICP transfer process, upon successful completion of decommissioning and reclamation, is shown below.



After a uranium mine and/or mill site has been accepted into the ICP, the CNSC is no longer involved in the property's regulatory oversight. There are no longer any compliance reviews or independent environmental monitoring programs conducted by the CNSC. Should provincial staff, or monitoring reports, identify a concern with a property that results in an unreasonable risk to the public or the environment, it is expected that provincial authorities would address this by using the ICUEF, or if appropriate, through their authority under *The Environmental Management and Protection Act, 2010* [17]. In the highly unlikely event that a risk cannot be resolved by the province, and the property needs federal oversight, the Commission would need to re-determine its exemption decision pursuant to subsection 43(3) of the NSCA.

While the re-determination of the Commission decision to exempt is feasible, the review process when properties are transferred to the ICP and mechanisms in place under the ICP, make this very unlikely to occur.

5 MONITORING AND MAINTENANCE OF SITES IN THE ICP

As part of the CNSC staff's assessment of an application for release from decommissioning and reclamation, CNSC staff review any proposed monitoring and maintenance plans for the site. As noted previously in section 2.1, a proposed monitoring and maintenance plan, along with funds to conduct the monitoring and maintenance, must be submitted to the province prior to acceptance of the site into the ICP.

The monitoring and maintenance plan and the present value of the future costs associated with the monitoring and maintenance obligations undergo a detailed review by the Province of Saskatchewan to ensure they are sufficient and appropriate to meet the long-term environmental, health and safety objectives required of the closed site. The monitoring and maintenance plans are also reviewed by CNSC staff to ensure that present and future risks are being effectively managed. The CNSC does not approve these plans, however does provide comments on the plans to the licensee and the province.

The ICMMF contributions must be of a value to generate revenue sufficient to pay for future monitoring and maintenance costs as long as required. The licensee's contribution to the ICUEF must be of sufficient value to help build the fund to a sustainable level to cover the costs associated with unforeseen events at any of the sites in the ICP.

Maintenance is conducted to ensure sites meet the accepted environmental and safety objectives. For example, this could include the replacement of a cement cap on a mine shaft once every 75 years.

Once properties are in the ICP, regulatory oversight is managed by the Province of Saskatchewan.

5.1 Beaverlodge ICP Monitoring Results

On March 14, 2009, the Commission granted an exemption from licensing with respect to five Saskatchewan satellite properties within the decommissioned Beaverlodge Project mine/mill site [18]. The properties subsequently entered into the ICP. These properties are the only uranium mine and/or mill sites to enter the ICP. In accordance with the five year ICP monitoring schedule, an inspection of the properties was conducted in 2014 for the MER by a consulting firm and an inspection report prepared. The report concluded that there were no public safety or environment concerns at any of the properties. CNSC staff were provided a copy of the report by the MER and agree that there are no public safety or environmental concerns. The next inspection of these properties by the province is scheduled for 2019.

Additional exemption requests are anticipated in 2019 for approximately 20 properties at the Beaverlodge Project.

6 CONSULTATION

In addition to the licensee and regulatory agency public engagement, additional requirements for stakeholder consultation and Indigenous duty to consult is conducted by the Province of Saskatchewan in accordance with their *First Nation and Métis Consultation Policy Framework* [19]. The level of provincial consultation is dependent on the potential impacts to treaty and aboriginal rights and traditional uses.

The federal Crown has a legal duty to consult with Indigenous groups when its contemplated conduct may adversely impact potential or established Indigenous or treaty rights. Exemptions issued by the CNSC in the case of a transfer into the ICP are not generally expected to have adverse impacts on Indigenous or treaty rights, as an exemption decision is made only after all decommissioning and clean-up activities have been completed and the future activities by the province would entail only monitoring and maintenance. CNSC staff provide the Commission with information about Indigenous engagement and the potential for a duty to consult related to an exemption decision, as needed.

7 OTHER CANADIAN JURISDICTIONS - MINE AND/OR MILL SITES

While there is an established ICP in Saskatchewan, as of the date of this CMD, there are no comparable programs in other Canadian provincial or territorial jurisdictions.

Decommissioned uranium mines and/or mill sites in Ontario and the Northwest Territories are currently under CNSC regulatory oversight. In the Northwest Territories, the Rayrock and Port Radium mine sites remain licensed by the CNSC. In Ontario, there are seven licences for mine and/or mill sites, including the Agnew Lake mine, Madawaska mine, Bicroft site, Dyno mine and the Elliot Lake area. The Elliot Lake area comprises three CNSC licences for the following mine/mill/tailings facilities; Stanleigh, Quirke, Panel, Spanish, American, Milliken, Lacnor, Buckels, Pronto, Denison, Stanrock and some peripheral areas. The Deloro mine, a former gold mine also in Ontario, is undergoing active remediation.

In the absence of a provincial program like Saskatchewan's ICP, the CNSC will continue to exercise regulatory authority over these sites. Ongoing monitoring and maintenance remains the responsibility of the licensee and the CNSC licences include requirements for financial guarantees to be in place, ensuring that there are funds to continue maintenance and remediation work as necessary. Regular CNSC inspections are conducted at each of these sites and CNSC staff report to the Commission, on a bi-annual basis, on the status of the sites through the regulatory oversight reports.

Should this situation change and a government were willing to take over responsibility for the site, then a case-by-case review of the safety and financial programs would be required to determine if an exemption from CNSC licensing is appropriate for sites after decommissioning and post decommissioning monitoring is complete. As with the Saskatchewan ICP, the Commission must be satisfied a site does not pose an unreasonable risk to the environment or the health and safety of persons, does not pose an unreasonable risk to national security, nor fail to achieve conformity with measures of control and international obligations to which Canada has agreed. Provided that these conditions are met, appropriate mechanisms must be in place to demonstrate this will continue to be the case in the long term.

In order to demonstrate that a site does not pose an unreasonable risk, a number of factors must be considered by the Commission prior to granting an exemption from licensing.

The initial approach is to determine if institutional control is required. If the site has been decommissioned and reclaimed, meets all decommissioning criteria, has an inventory of nuclear substances below exemption quantities/clearance levels, and does not require monitoring, maintenance, land use restrictions, or administrative controls (record keeping, etc.) then the site should not require IC. If this is the case then the proponent can be released from CNSC licensing without another jurisdiction taking responsibility for IC of the site.

If there is a need for IC and a jurisdiction is willing to take responsibility for the site, then:

- Monitoring is required in order to demonstrate that the site remains safe. Monitoring may include sampling, physical inspection of structures, condition of vegetation, evidence of recent use of the site, etc.
- Replacement or maintenance of structures over the long term will be undertaken by the jurisdiction taking responsibility. This may include water/tailings containment structures, openings to underground workings, etc.
- A form of financial guarantee/assurance needs to be in place to pay for long term monitoring and maintenance and funds available if an unforeseen event (premature structure failure, etc.) occurs. The province or territory that owns the land should accept financial responsibility for all costs.
- Land use restrictions may be required for the site. Restrictions need to be administered. For example, controls or land use restrictions to prevent the building of residences on the top of a decommissioned tailings facility need to be in place.
- Mechanisms to inform the public about the status of the site, including any monitoring and maintenance activity results, need to be in place. In addition, mechanisms for the jurisdiction to inform the CNSC if risks at the site change significantly need to exist.

8 OVERALL CONCLUSIONS

The ICP in Saskatchewan is effective in ensuring that properties accepted into the program are safe, secure and stable, and will not:

- a) pose an unreasonable risk to the environment or the health and safety of persons;
- b) pose an unreasonable risk to national security; and
- c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

Under the NSCA, the Commission may grant exemptions from licensing in order to enable transfer of properties into ICP. A well-structured, informed and sustainable program must be in place to ensure future safety and financial surety for a successful IC program. Saskatchewan has implemented such a program. The Province of Saskatchewan manages the long term monitoring and maintenance for uranium mine and/or mill sites within ICP.

For other Canadian jurisdictions, a case-by-case review is required in order to determine if an exemption from CNSC licensing is appropriate for sites after decommissioning is complete.

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GLOSSARY

CMD	Commission Member Document
CNSC	Canadian Nuclear Safety Commission
IAEA	International Atomic Energy Agency
IC	Institutional Control
ICMMF	Institutional Control Monitoring and Maintenance Fund
ICP	Institutional Control Program
ICUEF	Institutional Control Unforeseen Events Fund
MER	Saskatchewan Ministry of Energy and Resources
NSCA	<i>Nuclear Safety and Control Act</i>
Registry	Institutional Control Registry
SMOE	Saskatchewan Ministry of Environment
UMMD	Uranium Mines and Mills Division of the Canadian Nuclear Safety Commission

A. *The Reclaimed Industrial Sites Act*

The Reclaimed Industrial Sites Act

being

Chapter R-4.21 of *The Statutes of Saskatchewan, 2006* (effective March 1, 2007), as amended by the *Statutes of Saskatchewan, 2014*, c.E-13.1.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER R-4.21

An Act respecting the Monitoring and Maintenance of Industrial Sites after Reclamation

Short title

1 This Act may be cited as *The Reclaimed Industrial Sites Act*.

Interpretation

2 In this Act:

- (a) “**closed site**” means an industrial site at which all decommissioning, remediation and reclamation measures have been carried out and transitional-phase monitoring has been completed;
- (b) “**Institutional Control Monitoring and Maintenance Fund**” means the Institutional Control Monitoring and Maintenance Fund established pursuant to section 11;
- (c) “**Institutional Control Program**” means the Institutional Control Program established pursuant to section 3;
- (d) “**Institutional Control Registry**” means the Institutional Control Registry established pursuant to section 6;
- (e) “**Institutional Control Unforeseen Events Fund**” means the Institutional Control Unforeseen Events Fund established pursuant to section 12;
- (f) “**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (g) “**prescribed**” means prescribed in the regulations;
- (h) “**site holder**” means the person who is in possession of a closed site immediately before the closed site is accepted into the Institutional Control Program.

Program established

- 3(1)** The Institutional Control Program is established.
- (2) The purposes of the Institutional Control Program are:
- (a) to set out the conditions by which the Government of Saskatchewan will accept responsibility for land that, in consequence of development and use, requires long-term monitoring and, in certain circumstances, maintenance;
 - (b) to ensure that the required monitoring and maintenance are carried out on that land;
 - (c) to provide a funding mechanism to cover costs associated with the monitoring and maintenance on that land; and
 - (d) to ensure that certain records and information are preserved with respect to that land.

2006, c.R-4.21, s.3.

Prescribing conditions to accept closed site

- 4** The Lieutenant Governor in Council may prescribe conditions pursuant to which the minister may accept a closed site into the Institutional Control Program.

2006, c.R-4.21, s.4.

Acceptance of closed site

- 5** The minister may accept a closed site into the Institutional Control Program if:
- (a) the minister is satisfied that the closed site meets the prescribed conditions; and
 - (b) the site holder has paid to the minister:
 - (i) for deposit into an account of the Institutional Control Monitoring and Maintenance Fund, an amount sufficient to cover the anticipated future monitoring and maintenance costs for the closed site, determined in the prescribed manner;
 - (ii) for deposit into the Institutional Control Unforeseen Events Fund, an amount determined in the prescribed manner; and
 - (iii) the prescribed registration fee.

2006, c.R-4.21, s.5.

Institutional Control Registry

- 6(1)** The Institutional Control Registry is established for the purposes of:
- (a) registering closed sites that have been accepted into the Institutional Control Program; and
 - (b) accepting prescribed records and information.

- (2) When the minister accepts a closed site into the Institutional Control Program, the minister shall cause a description sufficient to identify the closed site to be entered into the Institutional Control Registry.
- (3) The Institutional Control Registry shall contain:
- (a) the prescribed information; and
 - (b) any other information that the minister permits to be included in the registry.
- (4) If the minister considers it to be in the public interest to do so, the minister may register prescribed information or material respecting a closed site in any other prescribed registry.
- (5) The records and information contained in the Institutional Control Registry are open for inspection by the public.

2006, c.R-4.21, s.6.

Minister to monitor a closed site

- 7(1) Subject to subsection (2), the minister shall monitor a closed site in accordance with the monitoring requirements that were accepted by the minister when the closed site was accepted into the Institutional Control Program.
- (2) The minister may amend the monitoring requirements mentioned in subsection (1) if the minister believes that circumstances at the closed site warrant changes to the monitoring requirements.
- (3) In making changes to the monitoring requirements pursuant to subsection (2), the minister may consult with other persons or agencies.

2006, c.R-4.21, s.7.

Minister to maintain site

- 8 The minister shall undertake maintenance at a closed site that has been accepted into the Institutional Control Program:
- (a) in accordance with the prescribed requirements; or
 - (b) in the absence of any prescribed requirements, in accordance with any requirements that the minister considers necessary and appropriate for the closed site.

2006, c.R-4.21, s.8.

Carrying out responsibilities

- 9(1) The minister may:
- (a) retain the services of qualified persons to carry out the responsibilities imposed on the minister pursuant to sections 7 and 8;
 - (b) request qualified employees of the Government of Saskatchewan to carry out those responsibilities; and

(c) enter into any agreement, engage the services of or retain any technical, professional or other adviser, specialist or consultant or do any other thing that the minister considers necessary to:

- (i) carry out the monitoring and maintenance of a closed site that has been accepted into the Institutional Control Program;
- (ii) manage the Institutional Control Monitoring and Maintenance Fund and its accounts; or
- (iii) manage the Institutional Control Unforeseen Events Fund.

(2) The minister may charge the appropriate account of the Institutional Control Monitoring and Maintenance Fund or, as the case requires, the Institutional Control Unforeseen Events Fund for any services performed by persons retained in accordance with clause (1)(a) or by employees of the Government of Saskatchewan in accordance with clause (1)(b) or for any matter authorized by clause (1)(c).

2006, c.R-4.21, s.9.

Controlling access to closed sites

10(1) The minister may restrict or prohibit access to a closed site that has been accepted into the Institutional Control Program if the minister considers it to be in the public interest to do so.

(2) No person who has knowledge of a restriction or prohibition imposed by the minister pursuant to subsection (1) shall fail to comply with that restriction or prohibition.

2006, c.R-4.21, s.10.

Institutional Control Monitoring and Maintenance Fund established

11(1) The Institutional Control Monitoring and Maintenance Fund is established.

(2) The amount paid by each site holder to the minister in accordance with subclause 5(b)(i) is to be deposited into a separate account of the Institutional Control Monitoring and Maintenance Fund.

(3) Each account of the Institutional Control Monitoring and Maintenance Fund consists of:

- (a) the amount deposited into the account pursuant to subsection (2); and
- (b) all earnings on investments of the account.

(4) The minister shall administer the Institutional Control Monitoring and Maintenance Fund and its accounts in accordance with this Act.

(5) Subject to subsections (6) and (7), each account of the Institutional Control Monitoring and Maintenance Fund shall only be used for monitoring and maintenance of the closed site that has been accepted into the Institutional Control Program and to which that account is associated.

- (6) The minister may use the account of the Institutional Control Monitoring and Maintenance Fund that is associated with a closed site to conduct the monitoring required of that closed site in accordance with section 7.
- (7) The minister may use the account of the Institutional Control Monitoring and Maintenance Fund that is associated with a closed site for:
- (a) maintenance costs anticipated at the time the closed site is accepted into the Institutional Control Program and for any other general costs that should have reasonably been anticipated at the time the closed site was accepted into the Institutional Control Program; and
 - (b) costs incurred for the purpose of determining the required monitoring and maintenance of the closed site.
- (8) The minister may invest any moneys in an account of the Institutional Control Monitoring and Maintenance Fund that are not presently required for the purposes of that account in any security or class of securities authorized for investment pursuant to *The Pension Benefits Act, 1992*.
- (9) The minister may dispose of any investment made pursuant to subsection (8), subject to the terms of the investment, in any manner and on any terms that the minister considers advisable.
- (10) The fiscal year of the Institutional Control Monitoring and Maintenance Fund and of each of its accounts is the period commencing on April 1 in one year and ending on March 31 in the following year.

2006, c.R-4.21, s.11.

Institutional Control Unforeseen Events Fund established

- 12(1) The Institutional Control Unforeseen Events Fund is established.
- (2) The amount paid by each site holder to the minister in accordance with subclause 5(b)(ii) is to be deposited into the Institutional Control Unforeseen Events Fund.
- (3) The Institutional Control Unforeseen Events Fund consists of:
- (a) the amounts deposited into the fund pursuant to subsection (2); and
 - (b) all earnings on investments of the fund.
- (4) The minister shall administer the Institutional Control Unforeseen Events Fund in accordance with this Act.
- (5) The Institutional Control Unforeseen Events Fund shall only be used for:
- (a) maintenance obligations that are not covered by the Institutional Control Monitoring and Maintenance Fund for a closed site that has been accepted into the Institutional Control Program; and
 - (b) costs incurred for the purpose of determining the maintenance obligations mentioned in clause (a).

(6) The minister may invest any moneys in the Institutional Control Unforeseen Events Fund that are not presently required for the purposes of that fund in any security or class of securities authorized for investment pursuant to *The Pension Benefits Act, 1992*.

(7) The minister may dispose of any investment made pursuant to subsection (6), subject to the terms of the investment, in any manner and on any terms that the minister considers advisable.

(8) The fiscal year of the Institutional Control Unforeseen Events Fund is the period commencing on April 1 in one year and ending on March 31 in the following year.

2006, c.R-4.21, s.12.

Audit

13 The Provincial Auditor or any other auditor or firm of auditors appointed by the Lieutenant Governor in Council shall audit the accounts and transactions of the Institutional Control Monitoring and Maintenance Fund and the Institutional Control Unforeseen Events Fund:

- (a) annually; and
- (b) at any other time that the Lieutenant Governor in Council may require.

2006, c.R-4.21, s.13.

Annual report

14(1) In each fiscal year, in accordance with section 13 of *The Executive Government Administration Act*, the minister shall cause to be prepared:

- (a) a report on the business of the Institutional Control Monitoring and Maintenance Fund and the Institutional Control Unforeseen Events Fund for the preceding fiscal year; and
- (b) a financial statement showing the business of each fund for the preceding fiscal year, in any form that may be required by Treasury Board.

(2) In accordance with section 13 of *The Executive Government Administration Act*, the minister shall lay before the Legislative Assembly each report and financial statement prepared by the minister pursuant to this section.

2006, c.R-4.21, s.14; 2014, c.E-13.1, s.62.

Institutional Control Report

15(1) The minister shall prepare a report every five years, to be known as the Institutional Control Report, concerning the condition of all closed sites accepted into the Institutional Control Program.

(2) Notwithstanding section 13 of *The Executive Government Administration Act*, the minister shall lay the Institutional Control Report before the Legislative Assembly on or before the April 1 following the end of the five-year period to which the report relates.

- (3) The first Institutional Control Report shall be laid before the Legislative Assembly on or before April 1, 2012.
- (4) If the Legislature is not in session when the minister intends to lay the Institutional Control Report before the Legislative Assembly, the minister shall submit the report to the Clerk of the Legislative Assembly.
- (5) When the Clerk of the Legislative Assembly receives the Institutional Control Report, the Clerk shall:
- (a) ensure that copies of the report are delivered to all members of the Legislative Assembly; and
 - (b) make the report available for public inspection during normal business hours of the Clerk.
- (6) If the minister submits the Institutional Control Report to the Clerk pursuant to subsection (4), the minister is deemed to have tabled the report in accordance with this Act.

2006, c.R-4.21, s.15; 2014, c.E-13.1, s.62.

Review of Act

- 16(1)** The minister shall conduct a review of this Act within five years after this Act comes into force.
- (2) In conducting the review of this Act, the minister shall consult with:
- (a) the site holders who contributed to the Institutional Control Monitoring and Maintenance Fund and the Institutional Control Unforeseen Events Fund;
 - (b) the general industry of the site holders mentioned in clause (a); and
 - (c) any other person or agency that the minister considers appropriate.
- (3) The review of this Act shall include consideration as to whether or not the moneys in the Institutional Control Monitoring and Maintenance Fund and the Institutional Control Unforeseen Events Fund are sufficient to meet future financial needs relating to closed sites that have been accepted into the Institutional Control Program.

2006, c.R-4.21, s.16.

Offence and penalties

- 17(1)** No person shall fail to comply with subsection 10(2).
- (2) Every person who contravenes subsection 10(2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000.
- (3) Every director, officer or agent of a corporation who directed, authorized, assented to, acquiesced in or participated in an act or omission of the corporation that would constitute an offence by the corporation is guilty of that offence and is liable on summary conviction to the penalties provided for the offence whether or not the corporation has been prosecuted or convicted.

2006, c.R-4.21, s.17.

Regulations

18(1) The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used but not defined in this Act;
 - (b) prescribing the conditions pursuant to which a closed site may be accepted into the Institutional Control Program;
 - (c) prescribing the manner for determining the anticipated future monitoring and maintenance costs for a closed site;
 - (d) prescribing the amount to be paid by a site holder to the minister for deposit into the Institutional Control Unforeseen Events Fund;
 - (e) prescribing the registration fee for accepting a closed site into the Institutional Control Program;
 - (f) prescribing the information that must be contained in the Institutional Control Registry;
 - (g) prescribing the records and information, or the type of records and information, that may be filed with the Institutional Control Registry;
 - (h) for the purposes of subsection 6(4), prescribing information or material and other registries and, for that purpose, prescribing different information or material for different registries;
 - (i) prescribing the requirements for maintaining closed sites that have been accepted into the Institutional Control Program;
 - (j) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;
 - (k) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.
- (2) A regulation made pursuant to subsection (1) may be made applicable to all closed sites, to all closed sites as at a certain time, or to a particular closed site.

2006, c.R-4.21, s.18.

Coming into force

19 This Act comes into force on proclamation.

2006, c.R-4.21, s.19.

B. *The Reclaimed Industrial Sites Regulations*

The Reclaimed Industrial Sites Regulations

being

Chapter R-4.21 Reg 1 (effective March 21, 2007) as amended
by Saskatchewan Regulations 109/2010.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER R-4.21 REG 1
The Reclaimed Industrial Sites Act

Title

1 These regulations may be cited as *The Reclaimed Industrial Sites Regulations*.

Interpretation

2(1) In these regulations:

- (a) “**Act**” means *The Reclaimed Industrial Sites Act*;
- (b) “**engineered structure**” means any structure built or deposited in a designed manner that results from, or is constructed to protect, all or a portion of a closed site;
- (c) “**environmental assessment**” means an environmental assessment required by the Government of Saskatchewan or the Government of Canada or any agency or commission of those governments;
- (d) “**licence**” means any licence, permit, approval or letter of authorization that is associated with an industrial site and that was issued by the Government of Saskatchewan or Government of Canada or any agency or commission of those governments;
- (e) “**surface lease agreement**” means a contractual agreement between the Government of Saskatchewan and a lessee that grants the lessee authority to occupy land owned by the Government of Saskatchewan.

(2) For the purposes of the Act and in these regulations:

- (a) “**industrial site**” means that portion of a mine site or a mill site located on land owned by the Government of Saskatchewan that requires monitoring and possibly maintenance and includes other land owned by the Government of Saskatchewan that the site holder and the minister may agree to include;
- (b) “**transitional-phase monitoring**” means the post-decommissioning and post-reclaiming monitoring program that demonstrates that an industrial site is in compliance with the decommissioning and reclamation requirements set out in *The Mineral Industry Environmental Protection Regulations, 1996*.

Conditions for acceptance into the Institutional Control Program

3 For the purposes of section 4 of the Act, the following are the prescribed conditions for the minister to accept a closed site into the Institutional Control Program:

- (a) the site holder satisfies the minister that the site holder has completed and complied with the conditions of any environmental assessment;
- (b) the site holder has submitted a monitoring and maintenance plan that is satisfactory to the minister and that identifies:
 - (i) the monitoring and maintenance obligations that need to be undertaken when the closed site is accepted into the Institutional Control Program; and
 - (ii) the present value of the future costs associated with the monitoring and maintenance obligations mentioned in subclause (i);
- (c) the site holder satisfies the minister that the site holder:
 - (i) has completed the required decommissioning, reclamation and transitional-phase monitoring activities requirements imposed pursuant to *The Mineral Industry Environment Protection Regulations, 1996*;
 - (ii) is eligible to be released from the decommissioning, reclamation and transitional-phase monitoring requirements pursuant to *The Mineral Industry Environmental Protection Regulations, 1996*; and
 - (iii) will be released pursuant to *The Mineral Industry Environmental Protection Regulations, 1996* from the requirements or obligations set out in a decommissioning and reclamation plan on the closed site entering the Institutional Control Program;
- (d) the site holder satisfies the minister that the site holder is eligible to receive a release or exemption from any and all licences that are issued by the Government of Saskatchewan or any of its agencies or commissions and that are associated with the closed site;
- (e) the site holder satisfies the minister that the site holder is eligible to receive a release from any and all licences that are issued by the Government of Canada or any of its agencies or commissions and that are associated with the closed site;
- (f) if the closed site is required to be licensed pursuant to the *Nuclear Safety and Control Act* (Canada), the Canadian Nuclear Safety Commission has agreed, in writing, to grant the Government of Saskatchewan an exemption from the obligation to hold a licence under the *Nuclear Safety and Control Act* (Canada) for the closed site if the minister accepts the closed site into the Institutional Control Program;

- (g) the site holder satisfies the minister that:
 - (i) the site holder is eligible to receive a release from the surface lease agreements or any portion of them associated with the closed site; and
 - (ii) the site holder will receive the release at the time the minister accepts the closed site into the Institutional Control Program;
- (h) if the site holder owns the mineral rights associated with the closed site, the site holder surrenders or transfers those mineral rights to the minister at the time the minister accepts the closed site into the Industrial Control Program.

30 Mar 2007 cR-4.21 Reg 1 s3.

Prescribed amounts to be deposited in funds

- 4(1) Pursuant to subclause 5(b)(i) of the Act, the prescribed amount that a site holder must deposit into the account of the Institutional Control Monitoring and Maintenance Fund is the sum of:
- (a) the present value of the future costs associated with the monitoring and maintenance obligations mentioned in clause 3(b); and
 - (b) the amount determined in accordance with section 5.
- (2) Pursuant to subclause 5(b)(ii) of the Act, the prescribed amount that a site holder must deposit into the Institutional Control Unforeseen Events Fund is:
- (a) in the case of a closed site without tailings or engineered structures, 10% of the present value of the future costs associated with the monitoring and maintenance obligations mentioned in clause 3(b); or
 - (b) in the case of a closed site with tailings or engineered structures, 20% of the present value of the future costs associated with the monitoring and maintenance obligations mentioned in clause 3(b).
- (3) For the purposes of subclause 5(b)(iii) of the Act, the prescribed registration fee is \$500.

30 Mar 2007 cR-4.21 Reg 1 s4.

Assurance fund

- 5(1) In this section, “**expiry date**” means, with respect to an assurance fund:
- (a) the date that is five years, or any longer period that the site holder and the minister may agree to, after the date the site holder provided the assurance fund; or
 - (b) the date that occurs every five years after the date mentioned in clause (a).

- (2) As a condition of being accepted into the Institutional Control Program, a site holder must undertake to provide the minister with an assurance fund for a closed site:
- (a) in an amount that is agreed to between the site holder and the minister and that reflects the costs of dealing with a maximum failure event that could occur at the closed site; or
 - (b) in any lesser amount than that described in clause (a) that is acceptable to the minister.
- (3) The assurance fund required pursuant to subsection (2) must:
- (a) be in the amount required by subsection (2); and
 - (b) consist of cash, cheques, negotiable instruments or any the following instruments or securities that is satisfactory to the minister:
 - (i) government bonds, government guaranteed bonds, debentures, term deposits, certificates of deposit, trust certificates or investment certificates;
 - (ii) corporate guarantees, irrevocable letters of credit, performance bonds or surety bonds;
 - (iii) any other financial instrument or security.
- (4) The minister shall use the assurance fund provided by a site holder pursuant to this section:
- (a) only to the extent that the minister considers it necessary to do so; and
 - (b) only if:
 - (i) in the opinion of the minister, the minister is obligated to undertake significant maintenance obligations at the closed site and withdrawing the funds for the required maintenance will unduly deplete the amount standing to the credit of the closed site in the Institutional Control Monitoring and Maintenance Fund or the Institutional Control Unforeseen Events Fund; or
 - (ii) the minister determines that an instrument or security provided to the minister as part of the assurance fund is about to expire and that no replacement instrument or security has been provided.
- (5) On or before every expiry date, if the assurance fund has not been returned to the site holder, the minister shall:
- (a) review whether or not the assurance fund is still required; and
 - (b) if, in the opinion of the minister:
 - (i) the assurance fund is still required, inform the site holder that the minister intends to continue the assurance fund;

- (ii) the assurance fund is still required but in a lesser amount:
 - (A) inform the site holder that the minister intends to continue the assurance fund in the lesser amount; and
 - (B) return to the site holder any amount in the assurance fund that the minister considers no longer necessary; or
 - (iii) the assurance fund is no longer required, return the assurance fund to the site holder.
- (6) At any time, a site holder may request that the minister review whether or not the assurance fund is required, and the minister may make that review if the minister is satisfied that it is appropriate to do so.
- (7) After a review pursuant to subsection (6), if, in the opinion of the minister:
- (a) the assurance fund is still required, inform the site holder that the minister intends to continue the assurance fund;
 - (b) the assurance fund is still required but in a lesser amount:
 - (i) inform the site holder that the minister intends to continue the assurance fund in the lesser amount; and
 - (ii) return to the site holder any amount in the assurance fund that the minister considers no longer necessary; or
 - (c) the assurance fund is no longer required, return the assurance fund to the site holder.
- (8) In conducting the review pursuant to subsection (5) or (6), the minister shall consider:
- (a) the condition of the closed site;
 - (b) the amount standing to the credit of the closed site in the Institutional Control Monitoring and Maintenance Fund; and
 - (c) the financial solvency of the site holder.
- (9) For the purposes of this section, after conducting a review pursuant to subsection (5) or (6), the minister shall return to a site holder any remaining portion of the financial assurance provided by the site holder unless the minister is of the opinion that all or part of the assurance fund is still required because:
- (a) the closed site poses a risk that is not adequately protected by:
 - (i) the funds held to the credit of the closed site in the Institutional Control Monitoring and Maintenance Fund or the amount contributed by the site holder to the Institutional Control Unforeseen Events Fund; and
 - (ii) any income earned on the funds or amounts mentioned in subclause (i); and

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RECLAIMED INDUSTRIAL SITES

- (b) the financial solvency of the site holder is not sufficient to pay the estimated cost of a maximum failure event mentioned in clause (2)(a).
- (10) As soon as reasonably possible after conducting a review pursuant to subsection (5) or (6), the minister shall provide the site holder with written reasons for the minister's decision.

30 Mar 2007 cR-4.21 Reg 1 s5.

Confirmation letter

5.1 Notwithstanding section 5, the minister may accept a closed site into the Institutional Control Program if:

- (a) the site holder is:
 - (i) an agent of the Crown in right of Saskatchewan or in right of Canada; or
 - (ii) a corporation that satisfies the minister that it has a history and credit rating to ensure that the corporation is able to pay the costs of a maximum failure event and to fulfil its obligations at the closed site; and
- (b) the site holder provides a letter of confirmation satisfactory to the minister and containing any terms or conditions or guarantees that the minister may require to confirm the legal responsibility of the site holder and that the site holder is able to pay the costs of a maximum failure event and to fulfil its obligations at the closed site.

26 Nov 2010 SR 109/2010 s2.

Institutional Control Registry

6(1) For the purposes of clause 6(3)(a) of the Act, the Institutional Control Registry is to contain the following records and information submitted by a site holder:

- (a) location of the closed site;
- (b) identification of the site holder of the closed site;
- (c) a description of the closed site and the activities that were conducted on the closed site;
- (d) the release from decommissioning and reclamation issued pursuant to *The Mineral Industry Environmental Protection Regulations, 1996*;
- (e) a reference to and the location of the documents provided by the site holder pursuant to *The Mineral Industry Environmental Protection Regulations, 1996* for the purposes of applying for the release mentioned in clause (d), including a reference to and the location of a full and complete set of 'as-built' reports;
- (f) a description of the monitoring and maintenance obligations mentioned in subclause 3(b)(i);
- (g) a reference to and the location of the documentation provided to the site holder when the site holder is released from any surface lease agreement that governed the closed site;
- (h) in the case of a closed site that was a uranium facility, a reference to and the location of Canadian Nuclear Safety Commission licensing documentation and all Canadian Nuclear Safety Commission decisions related to the closed site;

- (i) a notation of the location of all documentation that the minister considers applicable to the closed site and that is in the control of the site holder;
 - (j) surface and underground plans submitted pursuant to *The Mines Regulations, 2003* or any predecessor to those regulations.
- (2) For the purposes of clause 6(3)(a) of the Act, the Institutional Control Registry is to contain the following records and information respecting a closed site that are submitted by the Government of Saskatchewan, the Government of Canada or any agency or commission of those governments:
- (a) notation of the location of all documentation that the minister considers applicable to the closed site and that is in the control of the site holder and that is in control of the relevant Government, agency or commission;
 - (b) a description from the department of the Government of Saskatchewan responsible for the management of the surface lands that are part of the closed site and that are owned by the Government of Saskatchewan, identifying and specifying any surface land use restrictions for the closed site;
 - (c) a description from the department of the Government of Saskatchewan responsible for the management of mineral lands that are part of the closed site and that are owned by the Government of Saskatchewan, identifying and specifying any mineral disposition restrictions for the closed site;
 - (d) in the case of closed site that was a uranium facility, a reference to and location of Canadian Nuclear Safety Commission licensing documentation and Canadian Nuclear Safety Commission decisions related to the closed site;
 - (e) a note indicating whether the property is registered as a land disposition administered by the minister responsible for *The Environmental Management and Protection Act, 2002*;
 - (f) reference to and location of any final surface lease agreement respecting the closed site provided by the department of the Government of Saskatchewan responsible for the management of the surface land;
 - (g) a copy of any surface, underground and final closure plans respecting the closed site that are provided to any department of the Government of Saskatchewan responsible for management of those plans.
- (3) The records and information mentioned in this section must be submitted to the minister:
- (a) in a form acceptable to the minister; and
 - (b) containing the detail the minister may require for the purposes of the Act and these regulations.

30 Mar 2007 cR-4.21 Reg 1 s6.

Coming into force

7 These regulations come into force on the day on which they are filed with the Registrar of Regulations.

30 Mar 2007 cR-4.21 Reg 1 s7.

C. CMD 06-M10 – Information from CNSC Staff regarding IC Management of Decommissioned Mine/Mill Sites Located on Saskatchewan Provincial Crown Land

**Information from
Canadian Nuclear Safety
Commission Staff**

**Renseignements du personnel
de la Commission canadienne
de sûreté nucléaire**

Regarding

À l'égard de

**Institutional Control Management of
Decommissioned Mine/Mill Sites
Located on Saskatchewan Provincial
Crown Land**

**Gestion de la surveillance institutionnelle
des sites miniers déclassés, situés sur les
terres publiques provinciales de la
Saskatchewan**

Describes the Province of Saskatchewan's development of a policy framework for the institutional control of decommissioned mine and mill sites on provincial Crown land.

Décrit l'élaboration du cadre stratégique de la Saskatchewan concernant la surveillance institutionnelle des sites miniers déclassés, situés sur les terres publiques provinciales.

Commission Meeting

Réunion de la Commission

February 16, 2006

Le 16 février 2006

Summary

In June 2005, the Province of Saskatchewan formally initiated the development of a policy framework for the institutional control of decommissioned mine and mill sites on provincial Crown land, including uranium mines. Currently, there is no formal framework to guide the transfer of custodial responsibility and long-term monitoring and management of mining and milling sites to ensure future impacts are minimized and controlled. Specifically for uranium sites in Saskatchewan, the institutional control framework must recognize the constitutional jurisdiction of the *Nuclear Safety and Control Act* (NSCA) as implemented by the Canadian Nuclear Safety Commission (CNSC), in accordance with Canada's international obligations.

The Province undertook development of a detailed background paper and public discussion paper, and performed consultations on implementation details of the framework in 2005 with all stakeholders. This included recognition of the CNSC's exclusive jurisdiction over uranium sites, and how our respective processes can be complimentary to the outcome. The Province's next step is to enshrine the institutional control framework in proposed provincial legislation in 2006, (*The Institutional Control Act*), along with an Institutional Control Registry, to which all stakeholders would have information access.

Résumé

En juin 2005, la Saskatchewan a officiellement entamé l'élaboration d'un cadre stratégique pour la surveillance institutionnelle des sites miniers déclassés sur les terres publiques provinciales, y compris les mines d'uranium. Actuellement, il n'existe aucun cadre officiel qui guide le transfert de la responsabilité de garde ainsi que la surveillance et la gestion à long terme des sites miniers en vue de réduire au minimum et de contrôler les impacts futurs. En ce qui a trait aux sites d'uranium en Saskatchewan, le cadre de la surveillance institutionnelle doit reconnaître la compétence constitutionnelle de la *Loi sur la sûreté et la réglementation nucléaires* (LSRN), telle que mise en oeuvre par la Commission canadienne de sûreté nucléaire (CCSN), conformément aux les obligations internationales du Canada.

La province a entrepris l'élaboration d'un document d'information détaillé et d'un document de discussion public et a tenu des consultations sur les détails de la mise en oeuvre du cadre, en 2005, avec toutes les parties intéressées. Cela comprenait la reconnaissance de la compétence exclusive de la CCSN sur les sites d'uranium et de la façon dont nous pouvons harmoniser nos processus respectifs afin d'en arriver aux résultats escomptés. La prochaine étape consiste à enchâsser le cadre de surveillance institutionnelle dans la législation provinciale proposée en 2006 (*Loi sur la surveillance institutionnelle*), avec un Registre de surveillance institutionnelle, auquel toutes les parties intéressées auraient accès.

Signed / Signé le
2006-01-31

Greg Lamarre
A/Director General
Directorate of Nuclear Cycle and Facilities Regulation
Le directeur général par intérim de la Direction de la réglementation du cycle
et des installations nucléaires

Institutional Control Management of Decommissioned Mine/Mill Sites Located on Saskatchewan Provincial Crown Land

1. INTRODUCTION

In June 2005, the Province of Saskatchewan formally initiated the development of a policy framework for the institutional control of decommissioned mine and mill sites on provincial Crown land. Currently, there is no formal framework to guide the transfer of custodial responsibility and long-term monitoring and management of mining and milling sites to ensure future impacts are minimized and controlled. The institutional control framework must also recognize exclusive federal jurisdiction under the *Nuclear Safety and Control Act* (NSCA) over uranium mines as implemented by the Canadian Nuclear Safety Commission (CNSC), in accordance with Canada's international obligations. For example, this is described under the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management* (2001) [1].

The Province of Saskatchewan established an interdepartmental Institutional Control Working Group (ICWG) comprised of senior representatives from the Departments of Environment, Industry and Resources, Northern Affairs, Justice, Finance and Executive Council. The ICWG initiated the formal development of a policy framework for the institutional control of decommissioned mine and mill sites on provincial Crown land, including uranium mines. The policy framework was intended to ensure the health, safety and well-being of future generations, recognize past stated obligations by the Province, provide certainty and closure for the mining industry, as well as address national and international obligations for the management of radioactive materials.

To that end, the ICWG met formally with CNSC officials on four occasions in 2005 and 2006. With respect to uranium mine sites, the Province confirmed the option that the Commission could exempt a Saskatchewan uranium site from the licence requirement under the NSCA on a case-by-case basis, once the site has met closure requirements of the regulatory agencies and is eligible for transfer into provincial custody. The ICWG has sought advice and direction from the CNSC officials on how to accomplish this objective within jurisdictional mandates, with the intent towards future harmonization comparative to the initiative underway with the Administrative Agreement between the CNSC, Saskatchewan Labour, and Saskatchewan Environment [2].

2. BACKGROUND

In establishing and implementing an institutional control policy, the Province has acknowledged that a formal process is required for the long-term monitoring and management of provincial Crown lands when a surface lease has ended, and mining activities have been completed. Under this framework, the Province has reaffirmed their position that once all decommissioning, reclamation measures and transition phase monitoring has been completed to the satisfaction of the regulators, and the site can revert to the provincial Crown. The implication regarding uranium mine sites involves additional federal regulatory requirements, which is the main focus of this Commission Member Document (CMD).

The institutional control policy completes the framework of policies the Province intended to address in the interests of industry, stakeholders, federal regulators and international requirements regarding institutional control. The institutional control policy was specifically requested by the uranium industry, and is recognized as being necessary for the effective and sustainable regulation of the mining industry in Saskatchewan. A formalized institutional control framework will be an integral part of the Province's response to the mining industry's request for more clarity regarding their resource investments, and will be a fundamental component of a sustainable mining industry in Saskatchewan.

The challenge to return provincial Crown land held under a surface lease back to the Province after mining activities, decommissioning and reclamation were complete, was a task that not only industry, but the public, expressed interest in. The public, particularly neighboring communities, also wanted to know who will be responsible for the site once the company is gone. Currently, there is no formal framework to guide the transfer of custodial responsibility and long-term management of these sites to the Province.

The ICWG determined that the transfer of custodial responsibility for a site back to the Province would have to:

- protect human health and safety;
- protect the environment;
- ensure future generations are not burdened with the costs of long-term monitoring and maintenance and for unforeseen future events for mining development decisions taken today;
- be consistent with the principles of sustainability and the development of a green and prosperous economy; and,
- in the case of uranium, meet the NSCA's requirements and Canada's international obligations.

The key issues the ICWG recognized included:

- the appropriate management structure for the institutional control of sites for which the Province is willing to accept custodial responsibility;
- the implications of the regulatory roles of the Government of Canada through the NSCA, and the CNSC and the Province of Saskatchewan over uranium mining and milling sites on institutional control;
- the appropriate mechanism and responsibility to fund the monitoring and potential maintenance of sites and the funding of future unanticipated costs associated with the custodial responsibility of such sites; and,
- the most appropriate legislative instrument to enable the Institutional Control Management Framework.

3. INSTITUTIONAL CONTROL MANAGEMENT FRAMEWORK

In June 2005, the provincial Cabinet approved in principle the institutional control management framework and directed the Departments of Environment, Industry and Resources, and Northern Affairs to develop the framework and undertake stakeholder consultation. This work was undertaken by the ICWG. The ICWG developed a detailed background paper, a public

discussion paper, and entered consultations with stakeholders on the requirements for, and implementation of such an initiative [3].

The ICWG initiated consultations with the CNSC, the mining industry, the Northern Saskatchewan Environmental Quality Committee, the public open house meetings, and with other key stakeholders. The ICWG discussed the proposed approach and sought feedback on the options for the funding of monitoring, maintenance and unanticipated future costs of sites for which the Province would accept custodial responsibility. The ICWG then prepared a formal Institutional Control Management Framework (ICMF) for final approval by the provincial Cabinet. The recommended ICMF would:

- confirm that the Province will manage the long-term liability for those sites that have successfully met regulatory requirements as detailed in a company's decommissioning and reclamation plan and confirmed as required transition phase monitoring;
- clarify that companies, still in existence, will continue to bear long-term liability for unanticipated future costs and for environmental conditions declining below regulatory release requirements;
- commit the Province to providing criteria that will have to be met before allowing a company to surrender its surface lease; and,
- establish the structure and criteria for operating an Institutional Control Registry.

Under the recommended option, the Province would enshrine the ICMF in new provincial legislation, *The Institutional Control Act* (Act) along with the Institutional Control Registry (Registry) to which the public would have information access.

The Province's Registry would maintain a formal record of decommissioned and reclaimed sites that have met their transition phase monitoring and regulatory objectives as defined, for uranium mines, by the *Licence to Abandon* issued by the CNSC, and the *Release from Decommissioning and Reclamation* issued by Saskatchewan Environment, and for which the Province has accepted custodial responsibility. Registry records would include the location and former operator, site description and historical activities, site maintenance, monitoring and inspection documentation and future allowable land use(s) for the site. In the case of a uranium site, it will reference the related CNSC licensing documentation and decisions. Each site included in the Registry would be inspected on a frequency prescribed by the site-specific schedule recorded in the Registry. Monitoring and maintenance work would be managed by the Registry. The Registry would also perform the function of conforming to Canada's international obligation requirements.

The Act will be designed to not encroach on federal jurisdiction. It will also be designed to meet national and international obligations [1, 4], and the requirements to fulfill those obligations is under discussion with CNSC officials. In order for a uranium mine to be eligible for entry into the Registry, the site must either not be licensed, or exempted from a CNSC licence. A decision on a site must be made on a site-by-site basis. Consistent with harmonization activities between the jurisdictions on uranium mining, no site will enter the Registry unless both parties reach an agreement on the path forward, and all stakeholders have been consulted.

The Act will also establish two funds: one to pay for long-term monitoring and maintenance; and the other for unforeseen future events. The Act will ensure that the funds will not impair the Province's "polluter pay" requirements under *The Environmental Management and Protection Act, 2002* (EMPA). EMPA provides for absolute liability of a person responsible for a discharge

to continue indefinitely and this will not be changed. To address the risk of accepting sites into provincial custodial responsibility and the costs of future monitoring and maintenance and unforeseen future events, dedicated funds would be established by the party responsible for an individual site. Fund management will be overseen by industry and the Province based on established models to ensure openness and transparency.

4. IMPLICATIONS UNDER THE *NUCLEAR SAFETY CONTROL ACT* (NSCA)

The CNSC has consistently identified to the Province that the CNSC, constitutionally and legally, maintains the jurisdictional responsibility for nuclear activities in Canada, which includes uranium production under the NSCA. The Province recognizes the statutory mandate of the CNSC and the federal and constitutional jurisdiction of the NSCA. The Province consulted with the CNSC such that they may develop an ICMF with attendant legislation and regulations that does not result in jurisdictional conflict, and is constitutionally, legally and operationally sound and effective. In each meeting with CNSC officials, the goal of the ICWG was to work towards a mutually-acceptable solution that meets all requirements in a cooperative, cohesive and coordinated fashion.

One of the Province's requirements for the transfer of custodial responsibility back to the Province, and to accept a site into the Registry, is to only accept closed sites that are either not licensed or are exempted from licensing. CNSC officials have advised the ICWG that this objective could be achieved through statutory options. This could include the granting by the Commission of an exemption under section 7 of the NSCA, which states:

The Commission may, in accordance with the regulations, exempt any activity, person, class of person or quantity of a nuclear substance, temporarily or permanently, from the application of this Act or the regulations or any provision thereof.

The conditions under which the Commission could be asked to make an exemption would be where the site does not pose an unreasonable risk to environment, health, safety or national security. In other words, the ICMF would be aligned with section 11 of the *General Nuclear Safety and Control Regulations* which states that:

For the purpose of section 7 of the Act, the Commission may grant an exemption if doing so will not

- (a) pose an unreasonable risk to the environment or the health and safety of persons;*
- (b) pose an unreasonable risk to national security; or*
- (c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.*

Once a site is exempted from licence requirements under the NSCA, it would revert to the control of the provincial authorities. In such cases, it is unlikely to ever be subject to licensing unless a significant event would result in the exemption being revoked. In addition, the authority to issue an order under subsections 46(3) and 47(1) of the NSCA allows the Commission to

make an order it considers necessary to reduce the level of contamination, or protect the environment and health and safety of persons.

Should the Commission need to issue an order, the Province would need to comply with the order and the related processes afforded under the NSCA, i.e., hearings. There may also be a case where future changes in regulatory standards for site rehabilitation could arise, and thus cause a “change” to the status of the exempted site. The Province has categorized a change of regulatory standard as an unforeseen event, and costs for such clean-up would be provided for from that specific fund.

The option to include uranium mine sites that were exempted by the Commission, and that pose low risk to the public or the environment, will fit the option for Registry eligibility. A list of these Saskatchewan sites exempted from CNSC licensing for an indefinite period can be found referenced in the November 17, 2004 decision issued by the Commission at their Meeting on that same day (Agenda item 5.2). The exemptions granted by the Commission were based on staff recommendations presented in CMD 04-M47. In terms of current CNSC licensed uranium mine sites located on Crown land in Northern Saskatchewan, CNSC staff and the Commission have already discussed the future implications in terms of low risk sites that may be eligible for eventual release to institutional control, based on CMD 04-H23 [5].

The Province also expressed that continued cooperative and complementary development between the CNSC and the Province could achieve increased harmonization between the jurisdictions. CNSC officials believe that once Saskatchewan’s *Institutional Control Act* has proven that it can achieve the objectives for which it has been developed, there might be potential for incorporation by reference of the provincial legislation under the NSCA.

If the Commission prefers, CNSC staff will periodically update the Commission on the status of the Province’s ICMF, following the key milestones noted above in Section 3.

5. CONCLUSIONS AND RECOMMENDATION

CNSC officials have agreed with the ICWG that the appropriate conditions and guidelines could be developed under the leadership of federal and provincial authorities, to achieve the ultimate goal of long-term care and management of uranium mine and mill sites on provincial Crown land, which is in the best interest of Canada.

CNSC staff and provincial officials have also agreed there is joint benefit in continuing to work together to ensure that the development of legislation for the proposed institutional control management framework respects the constitutional division of powers, and is in the best interest of all stakeholders. Prior to the Provincial Cabinet introducing their proposed new legislation and framework to the Saskatchewan Legislature early on in 2006, they are seeking some further confirmation from CNSC staff and the Commission on the proposed path forward.

In terms of application to the Commission, the return of low risk, former uranium mine sites back to the Province under institutional control is not a new concept, and has been previously proposed in staff CMDs for the Commission Members consideration and discussion at Commission Meetings and Hearings, i.e., CMD 04-M6 and CMD 04-H23.

Though no specific decision on Saskatchewan's ICMF or its implications on a CNSC licensed facility is proposed at this time, CNSC staff notes the Province is seeking acknowledgment from the Commission on the proposed path forward.

6. REFERENCES

- [1] Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, International Atomic Energy Agency (2001).
- [2] Government of Canada and Government of Saskatchewan, CNSC-Saskatchewan Administrative Agreement for the Regulation of Health, Safety and the Environment at Saskatchewan Uranium Mines and Mills, Regina/Ottawa (2003).
- [3] Institutional Control Management Framework, (Provincial Public Consultation Document, September 2005).
- [4] Management of Radioactive Waste from the Mining and Milling of Ores, Draft Safety Guide, Safety Standards Series No. WS-G-1.2, DS277, International Atomic Energy Agency, Vienna (March 2002).
- [5] CNSC Record of Proceedings, Including Reasons for Decision, In the Matter of Cameco Corporation Inc., Application for a Waste Facility Operating Licence at the former Beaverlodge uranium mine site, (April 5, 2005).