



File / dossier : 6.01.07

Date: 2020-10-21

Edocs: 6405024

## **Oral Presentation**

## **Exposé oral**

### **Written submission from the Métis Nation of Ontario**

### **Mémoire de la Métis Nation of Ontario**

In the Matter of the

À l'égard de

#### **Canadian Nuclear Laboratories, Douglas Point Waste Facility**

#### **Les Laboratoires Nucléaires Canadiens, installation de gestion des déchets de Douglas Point**

---

Application to amend the waste facility  
decommissioning licence for the Douglas  
Point Waste Facility

---

Demande de modification du permis de  
déclassement de l'installation de gestion des  
déchets de Douglas Point

## **Commission Public Hearing**

## **Audience publique de la Commission**

**November 25-26, 2020**

**25 et 26 novembre 2020**

*This page was intentionally  
left blank*

*Cette page a été intentionnellement  
laissée en blanc*

September 28, 2020

David Dusome  
Métis Nation of Ontario  
Region 7 Councillor  
Chairperson for the Métis Nation of Ontario Georgian Bay Traditional Territory Consultation Committee

**RE: Comments on the Application for Licence Amendment to Proceed with Phase 3 Decommissioning at Douglas Point Waste Facility**

---

Dear Mr. David Dusome,

As per our Scope of Work, we have reviewed the background materials related to the Canada Nuclear Laboratories (“CNL”) Limited Douglas Point Waste Facility (“DPWF”) Decommissioning application to Canadian Nuclear Safety Commission (“CNSC”) including:

- the Application for Licence Amendment to Proceed with Phase 3 Decommissioning at Douglas Point Waste Facility,
- A Licence Amendment, Canadian Nuclear Laboratories Ltd.,
- Written submission from Canadian Nuclear Laboratories Ltd. in the Matter of the Canadian Nuclear Laboratories Douglas Point Waste Facility (CMD 20-H4.1)
- A Licence Replacement Submission from CNSC Staff on CNL’s Application to Separate the Licence for Douglas Point, Gentilly-1 and Nuclear Power Demonstration into Three Licences
- the Waste Facility Licence Number WFDL-W4-332.02/2034,
- the Licence Conditions Handbook WFDL-LCH-W4-332.02/2034 for Prototype Waste Facilities – Waste Facility Decommissioning Licence for Douglas Point Waste Facility (draft)

We have also reviewed other supporting documents and legislation referenced below.

The purpose of this review was to consider the above noted documents and identify whether Métis rights, interests and way-of-life were reflected.

In July 2018, CNL requested the CNSC administratively split the Waste Facility Decommissioning Licence into three separate licences for Douglas Point, Gentilly-1 and the Nuclear Power Demonstration. This was due to the varied approach to decommissioning for each site, reactor and surrounding environment. In this licence replacement the Duty to Consult was ultimately deliberated and found to not be triggered. In February 2019, the CNSC issued individual licences to each waste facility.

For this Application for Licence Amendment to proceed with the decommissioning, CNL must be authorized by the CNSC to proceed and provided a clause-by-clause statement for the relevant excerpts from the *Nuclear Safety and Control Act* and relevant CNSC Regulations. For this Application the potential impacts on Indigenous peoples from the licence amendment are considered low but CNL is proposing new activities which could have a potential interaction with the environment and Indigenous interests.<sup>1</sup>

This forms the basis of the Application for Licence Amendment to Proceed with Phase 3 Decommissioning.

## **DUTY TO CONSULT**

Overall, the participation and consideration of Métis Nation of Ontario (“MNO”) information was guided by the determination that the Duty to Consult was at the lower end of the spectrum.

Indeed, the language within CMD20-H4 reflects this lower requirement whereby it refers to hearing and addressing Indigenous groups concerns rather than identification, assessment and mitigation of potential impacts.

Based on the above language within the Document, it can be assumed that this determination of low risk of potential impacts was based on the overall reduction in the hazards on the site and

---

<sup>1</sup> CMD20-H4

removal of contaminated waste from the region which focuses on the physical impacts (positive or negative). This is inappropriate for determining the level of the Duty to Consult as a focus on physical impacts alone has been clarified in recent case law. *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.* 2017 SCC 40 at para 45 indicated that:

“...the consultative inquiry is not properly into environmental effects *per se*. Rather, it inquires into the impact on the *right*.”

While the MNO holds and exercises their right to harvest, there are other rights asserted by the MNO which should have been considered in this process, including:

- The right to continue to exist as a distinct Métis community;
- The right to the protection of Métis culture, language, traditions and way-of-life;
- The right to continue to rely on the sustenance, cultural, social and economic resources within their traditional territories;
- The right to be meaningfully consulted and involved in decisions that will affect the use and future of their traditional territories; and
- The right to share in the benefits flowing from the development and use of Métis traditional territories.<sup>2</sup>

A notable way that Métis culture, language, traditions and way-of-life can be explored in a regulatory context, is through assessment of perception, attitudes and/or behaviours of Métis citizens. Indeed, the MNO has been working diligently with Bruce Power and Ontario Power Generation (“OPG”) to both execute their own studies related to intangible Métis values including perception and partnering with Bruce Power and OPG to ensure this key concept is carried through additional monitoring work. Perception, attitude and behaviours is something that can be measured, considered and applied to a broad range of Métis rights and interests. We recommend exploring Métis perceptions related to the DPWF decommissioning.

Another way impacts to Métis culture can be assessed is by using already identified biophysical components such as air quality, noise and visual quality but through a Métis lens. These components can be adapted to assess aspects of Métis rights and interests. For example, by identifying noise receptors in locales of importance to MNO harvesters which have the potential to be impacted during decommissioning activities. We recommend exploring air quality, noise and visual quality specifically in relation to Métis rights and interests.

An example of work done to explore Métis culture, language, traditions and way-of-life by the Métis Nation of Ontario is the *Valued Components Monitoring Report* which is comprised of two years of monitoring results for Valued Components of importance to the Métis community. This document illustrates trends not specifically tied to physical impacts. This ongoing monitoring looked at two specific Valued Components, Métis Lands, Resources and Water and Métis Nationhood. Those Valued Components were further broken down into six indicators and eleven indicators respectively. This allowed the MNO to track trends related to perception of OPG and Bruce Power developments specifically related to elements of importance to the Métis. The indicators were developed using previously completed Traditional Knowledge and Land Use Studies and previously submitted regulatory comments. For example, an indicator of avoidance of consuming resources in proximity to the project showed consistent concern levels from year 1 to year 2; but the majority of participants felt that the projects would not decrease the land or water available for the exercise of Métis rights year over year.

Overall, the results from Year 1 to Year 2 were consistent, can be used by the MNO, OPG and Bruce Power to guide their discussions with the Métis community, and plan for areas of focus for future consultation.

## CONSIDERATION FOR THE CNSC

There are also aspects of this process for consideration by the CNSC rather than CNL. The Douglas Point Nuclear Generating Station was Canada’s first commercial scale nuclear generating station.<sup>3</sup> Construction began on Douglas Point in 1960 and in 1967 it was powered up for the first time.<sup>4</sup> At the time of initial development, the Métis people were not consulted and were not involved in the project.

---

<sup>2</sup> The Métis Nation of Ontario, Land, Resources and Consultations Branch, Policies and Procedures, Version 2.0 (Internal Document)

<sup>3</sup> Canadian Nuclear Safety Commission, Douglas Point Waste Facility, <https://nuclearsafety.gc.ca/eng/reactors/research-reactors/other-reactor-facilities/douglas-point-waste-facility.cfm#:~:text=In%201987%2C%20the%20DPNGS%20was,Atomic%20Energy%20of%20Canada%20Ltd.>

<sup>4</sup> Bruce Power, History, <https://www.brucepower.com/about-us/history/>

The MNO understands the Supreme Court of Canada recently determined that the Duty to Consult is not triggered by historical impacts and that consultation on a specific project is not the vehicle to address historical grievances (*Clyde River (Hamlet) v. Petroleum Geo Services Inc.*, 2017 SCC 40, para. 41).

However, the Supreme Court of Canada endorsed the conclusion in *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)* 2011 BCCA 247 that cumulative effects of an ongoing project, and historical context, may inform the scope of the duty to consult [emphasis added] (*Clyde River* 2017: para 42).

Further, *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650 indicates that “[w]here the resources has long since been altered and the present government conduct or decisions does not have any further impact on the resources, the issue is not consultation, but negotiation about compensation” [emphasis added] (Para. 5).

The original construction and operation of the Douglas Point Nuclear Generating Station did not require consultation. This construction and operation caused displacement of Metis peoples from the area which has resulted in limited exercise of rights in the Project area today. The MNO should not be penalized through these current regulatory mechanisms for past wrongs of the Crown. Instead, the CNSC and Canada should acknowledge this displacement and begin discussions about accommodation related to the long-altered landscape in the spirit of reconciliation.

Regulatory processes with Indigenous nations can sometimes adopt a quasi-transactional nature; whereby there are impacts to rights identified, and nations can negotiate compensation for those impacts. Where the rights have been displaced for over 60 years, as is the case of the DPWF, there has been no opportunity for the exercise of those rights, thereby removing the opportunity for this negotiation. This has disadvantaged the MNO and should be remedied by the CNSC and Canada.

This concept is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) which, at Article 28(1) indicates:

*Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. [emphasis added]*

The direction provided by UNDRIP, as well as existing Canadian case law, indicates redress or compensation for the historical taking up of land, and displacement of the MNO, may be required.

## **SELF-DETERMINATION AND SELF-GOVERNMENT**

UNDRIP codifies two principles related to self-determination and self-government in Article 3 and Article 4, which state:

### *Article 3*

*Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

### *Article 4*

*Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.*

The Métis Nation of Ontario and the Government of Canada signed the MNO-Canada Métis Government Recognition and Self-Government Agreement (“Agreement”) on June 27, 2019. This was the first time that the inherent right to self-govern was recognized.<sup>5</sup> The purpose of the Agreement was to support and advance the inherent right of self-determination and self-government of the Métis Communities as represented by the MNO through a constructive, forward

<sup>5</sup> Métis Nation of Ontario, Métis Government Recognition and Self-Government Agreement, Frequently Asked Questions, <http://www.metisnation.org/media/655314/mno-mgrsa-faq-final.pdf>

looking, and reconciliation-based arrangement between Canada and the MNO.<sup>6</sup> This process will include defining such aspects as development of a constitution; definition of legal status, role, jurisdiction, laws and authority; and definition of agreements and transitions with the Government of Canada.

This process is the beginning of the MNO peeling back the policies that have historically encroached on Métis rights through an inherently colonial relationship. It will be a process of reconciling sovereignties and defining jurisdictions. While the Agreement does not address any outstanding constitutional duties or obligations owed to the Métis Community as represented by the MNO, the transitional nature of those duties and jurisdictional changes which may occur must be considered by CNL and the CNSC. Particularly, as the MNO will have enhanced responsibility with regards to creation of their own laws and policies which could result in jurisdictional changes either during this next phase of decommissioning or through the “[m]any additional decommissioning plans and environment reviews...” required up until the removal of the reactor building and spent fuel canisters after 2030 which will require future review by the MNO.

It is our recommendation that the items contained in this letter be discussed between the MNO, CNL and the CNSC. It is our hope that through these discussions the ongoing relationship between the three parties can be maintained and improved.

Sincerely,



Germaine Conacher

MNP Consulting, Indigenous Services

P: 403.536.5535

C: 403.796.3898

E: [germaine.conacher@mnp.ca](mailto:germaine.conacher@mnp.ca)

---

<sup>6</sup> Métis Government Recognition and Self-Government Agreement, <http://www.metisnation.org/media/655331/2019-06-27-metis-government-recognition-and-self-government-agreement.pdf>

#	Relevant Section and Page Number	Section Text	Comment
<b>CMD20-H4</b>			
1.	Executive Summary Page 1 (PDF Page 8)	“Based on this assessment, CNSC staff conclude that CNL has made, and will continue to make, adequate provision for the protection of the environment and the health and safety of person, and that there will likely be no adverse effects on the health and safety of persons or the environment as a result of the decommissioning activities proposed by CNL at the DPWF.”	As the Duty to Consult was assessed as low, there was no consideration of Métis rights as part of the Licence Amendment Application. Please see the attached cover letter Duty to Consult section for suggested approaches to ensure Métis rights are adequately considered through this decommissioning process as it proceeds over the next 50 years.
2.	1.1 Background Page 5 (PDF Page 12)	“Phase 3, Final Decommissioning, will involve the decommissioning and dismantlement of all remaining facilities and structures, and will bring the DPWF to its final end state. Phase 3 decommissioning will be performed in a staged manner over approximately 50 years.”	As the decommissioning process progresses over the course of the next 50 years, the MNO will have embarked and potentially concluded their self-government negotiations with the Government of Canada. The MNO may have enhanced responsibility with regards to creation of their own laws and policies which could result in jurisdictional changes which must be considered through this and future phases of decommissioning.  Please see the attached cover letter Self-Determination and Self-Government Section for more details.
3.	1.1 Background Program Overview Detailed Decommissioning Plan Page 9 (PDF Page 16)	“Individual DDPs covering every PE will be developed, and submitted to the CNSC for review and acceptance, prior to executing the planned decommissioning work. The composite of these documents will form the entire DDP for the DPWF.”	The MNO requires review of the Detailed Decommissioning Plans either prior to or concurrent to the CNSC.
4.	1.3 Overall Conclusions Page 11 (PDF Page 18)	“CNSC staff have also determined, in accordance with section 67 of the CEAA 2012 [14], that carrying out of the proposed project is not likely to cause significant adverse environmental effects.”	There is no overall conclusion in relation to the Duty to Consult and accommodate. Please update this document to provide an overall conclusion related to this Duty. While the Duty was identified on the lower end of the consultation spectrum, it is still owed to the Métis Nation of Ontario and must be addressed.
5.	2.1 Environmental Assessment Page 12 (PDF Page 19)	“The proposed decommissioning activities at the DPWF are subject to the federal lands provision of CEAA 2012 because: ...  <ul style="list-style-type: none"> <li>• They are considered a “project” under section 66 of CEA 2012, i.e. physical activities proposed to be carried out on federal lands in relation to a physical work ...”</li> </ul>	While this requirement is necessary for identifying that the DPWF is subject to the federal lands provision, it is inappropriate in identifying the Duty to Consult as physical impacts alone cannot be used as a proxy for the identification of impacts to rights.  Please see the attached cover letter Duty to Consult Section for more details.
6.	3.3.2 Discussion Page 21 (PDF Page 28)	“CNL has implemented and maintained an Effluent Verification Monitoring Plan at the DPWF compliant with CSA N288.5-11, <i>Effluent monitoring programs at Class 1 nuclear facilities and uranium mines and mills</i> . This program consists of monitoring airborne and	Aspects of Métis rights can be monitored through existing monitoring plans such as this. These monitoring programs can be adapted to explore aspects of Métis rights and interests. For example, potential perceptive effects on Métis harvesters could be addressed by identifying air quality receptors in locales of importance to MNO

		waterborne releases of radiological and hazardous substances from the facility.”	harvesters which have the potential to be impacted during decommissioning activities.
7.	3.5.2 Discussion Page 26 (PDF Page 33)	“CNL has implemented a packaging and transport program in accordance with licence condition 16.1 ... This program covers elements of package design package maintenance, and the registration for use of certified packages as required by the regulations.”	The MNO requires consultation on the packaging and transport program as this is a key concern of Métis citizens.
8.	4.1.1 Discussion Page 28 (PDF Page 35)	“Based on CNSC staff’s review of the information provided by CNL to date, the risks of potential impacts as a result of the licence amendment application are low. If approved, the activities that will be undertaken by CNL will result in an overall reduction in the hazards on the site and removal of contaminated waste from the region.”	While the licence amendment and decommissioning will result in a reduction of hazards and removal of contaminated wastes, this does not directly correlate to potential effects on Métis culture, language, traditions and way-of-life. These aspects must be explored by CNL and CNSC through assessment of perception, attitudes and/or behaviours of Metis citizens.
9.	2.3 Environmental Protection Measures Page 16 of 69 (PDF Page 74)	“In addition, CNL is required to submit Annual Compliance Monitoring Reports that detail the results of the EVMP, as well as other EP-related studies (e.g., wildlife surveys).”	The MNO requires consultation on EP-related studies which may intersect or interact with Métis rights and interests as detailed within the cover letter.
10.	3.0 Status of the Environment Page 19 of 69 (PDF Page 77)	<p>“The following valued components are covered under this section, as they were deemed to be of specific interest to indigenous peoples, the public, and/or regulatory decision-making: ...</p> <ul style="list-style-type: none"> <li>• Environmental effects with respect to Indigenous peoples (i.e., changes to the environment on health and socio-economic conditions, physical and cultural heritage, current use of lands and resources for traditional purposes, any structure, site or thing that is of historical, archaeological, paleontological or architectural significance).”</li> </ul>	<p>While it is acknowledged that this Amendment is proceeding under section 67 of CEEA 2012 and therefore, requirements for consideration align with the items identified under this legislation, the original displacement of Métis from the Project site since 1960 makes many of these specified effects not applicable.</p> <p>Instead, CNL should take a broader approach to Métis rights as detailed in the cover letter (Duty to Consult) and CNSC should take a reconciliatory approach to dealings related to the displacement of Métis from the site.</p> <p>As these environmental components are reported annually, there is opportunity to update them to reflect the above noted aspects.</p>
11.	3.1.3 Conclusions Page 25 of 69 (PDF Page 83)	“Based on all of the above, CNSC staff conclude that CNL continues to provide adequate protection of people and the environment.”	The MNO requires ongoing engagement throughout decommissioning activities to ensure the MNO citizenship is fully informed of such conclusions to alleviate perceptive issues related to this Project.
12.	3.2.2.2 Effects on Terrestrial Biota Page 28 to 29 (PDF Page 86 to 87)		There is no information in this section on species of importance to the Métis. A similar table to Table 3.4 should be created which identifies species of importance to the Métis based on the species listings on and around the Bruce nuclear site.
13.	3.2.2.2 Effects on Terrestrial Biota Page 29 (PDF Page 87)	“While not all species at risk were specifically assessed in the ERA, the selected ecological receptors had similar feeding habits, and	Where species of importance to the Métis were assessed via surrogate, consultation should be undertaken with the MNO to ensure the surrogate is appropriate.



		therefore, were used as surrogate species for the species at risk potentially present around the DPWF.”	
14.	3.2.6 Environmental Effects with Respect to Indigenous Peoples Page 35 to 36 of 69 (PDF Page 93 to 94)	<p>“An assessment of potential effects on Indigenous peoples consists of assessing whether the proposed decommissioning activities could result in environmental effects, in accordance with Section 5 of CEEA 2012 [15], from any change that may be cause to the environment on:</p> <ul style="list-style-type: none"> <li>• Health and socio-economic conditions</li> <li>• Physical and cultural heritage</li> <li>• The current use of lands and resources for traditional purposes</li> <li>• Any structure, site or thing that is of historical, archaeological, paleontological or architectural significance”</li> </ul>	See comment #10
15.	3.2.6.1 Effects with respect to Indigenous peoples Page 36 (PDF Page 94)	“All potential impacts, if any, are expected to occur within the fenced and controlled Bruce nuclear site, which restricts access to the land.”	<p>The original construction and operations of the DPWF within lands under Bruce Power lease did not require robust consultation at their establishment. The original construction and ongoing operations have resulted in the displacement of Métis harvesters from the area resulting in limited exercise of rights at the site today.</p> <p>The Métis Nation of Ontario must not be penalized by current regulatory mechanisms for these systemic issues in the past.</p> <p>Instead, this displacement should be acknowledged and discussions about the long-altered landscape and accommodation for those changes should be undertaken in the spirit of reconciliation.</p> <p>While the continued Bruce Power lease has created a legal restriction of Métis rights in the Project area; Métis rights remain. Should the leasehold cease, Métis rights can be exercised in the area in the future. Therefore, Project impacts on Métis rights must be considered and displacement of Métis rights accommodated.</p>
16.	3.2.6.1 Effects with respect to Indigenous peoples Page 36 (PDF Page 94)	“Furthermore, the implementation of mitigation measures proposed by CNL for the environmental components described in earlier sections of this report, will ensure that any potential adverse environmental effects, while negligible, are avoided or further reduced and controlled.”	Effects on Indigenous peoples and Indigenous rights requires assessing impacts beyond the physical effects (see cover letter Duty to Consult Section).
<b>CMD20-H4 .1</b>			
1.	1.4 Facility Description Page 5 (PDF Page 16)	“Land use in the immediate vicinity of the Bruce site is consistent with rural development throughout the township, consisting primarily of agriculture, recreation and rural residential development.”	Metis rights are also exercised in the vicinity of the project.

2.	1.4 Facility Description Page 6 (PDF Page 17)	“A variety of the wildlife species have been reported on and around the Bruce Power site, however, no threatened wildlife species (including Barn Swallows) have been discovered on the DPWF site.”	While threatened species are of great importance, species of importance to the Métis should also be considered and described.
3.	18.1 Indigenous Engagement	“CNL initiated engagement with First Nation and Métis communities in 2019 October on activities related to the DPWF Decommissioning Project. These engagement activities with the Indigenous communities are ongoing and conducted in accordance with the CNSC Indigenous Engagement Regulatory Document REGDOC-3.2.2 [36]”	As per CMD20-H4, CNL has been delegated procedural aspects of consultation by the CNSC as per REGDOC-3.2.2. This should be specified.