



**Written submission from the  
Curve Lake First Nation**

**Mémoire de la  
Première Nation de Curve Lake**

In the Matter of the

À l'égard de

**Canadian Nuclear Laboratories**

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**Laboratoires Nucléaires Canadiens**

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Application to renew its waste nuclear  
substance licence for the Port Hope Project

Demande concernant le renouvellement du  
permis de déchets de substances nucléaires  
pour le projet de Port Hope

**Commission Public Hearing**

**Audience publique de la Commission**

**November 22, 2022**

**22 novembre 2022**

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October 20, 2022  
(Submitted by Email)

**RE:**

**CNSC Staff Commission Member Document on Canadian Nuclear Laboratories Application to Renew, Port Hope Long-Term Low-Level Radioactive Waste Management Project CMD 22-H13**

**Written submission from the Canadian Nuclear Laboratories CMD 22-H13.1**

Dear Registrar,

On behalf of Chief & Council and our community at Curve Lake First Nation (CLFN), we bring good thoughts to Commission members and staff at CNSC. We hope that you have found rest and recreation throughout the summer months of 2022 and look forward to what the fall may bring to all of us.

CLFN has made great strides in the last few years to build relationships and engage in open dialogue on a government to government and government to corporation basis as it relates to processes of consultation. Consultation and accommodation are critical in ensuring that the rights and interests of the Mississauga Anishinabek Nation are prioritized regarding projects in our territory.

Our Consultation Department has emphasized that environmental protection and sustainability is an integral component of the future of the Curve Lake First Nation. Working with Curve Lake to develop project concept, design, planning, assessment, potential and actual impacts, monitoring, etc. are necessary steps in our process. All plans and activities must be viewed through the lens of environmental protection and sustainability. These requirements ensure that Curve Lake First Nation's interests and rights are being protected within our territory; that

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we are able to protect the ability to exercise our rights as a people – physically, culturally, and spiritually; that we are able to foster sovereignty, cultural identity, and sustainable succession. This is central to all relationships being progressed with various regulators and proponents.

*Curve Lake First Nation is the steward and caretaker of the lands and waters within our territory in perpetuity, as we have been for thousands of years, and we have an obligation to continue to steadfastly maintain this responsibility to ensure their health and integrity for generations to come. Protection, conservation, and sustainable collaborative management are priorities for Curve Lake First Nation.*

*Curve Lake's vision statement must be central to development in the territory: "Upon the foundation of community values and vision that promotes and preserves our relationship with mother earth, which has defined and will continue to define our identity and culture as Anishnaabe People, the Consultation Department will build and secure the framework for our First Nation lands by putting into place ways and laws that will provide both the protection and the freedom for each person, their family, and the whole community to fulfill their potential. Each way and law will be given the consideration to its importance for our next seven generations."*

We would like to acknowledge CNSC staff in their dialogue and work with our Consultation Department since 2020 and throughout 2022. There are many topics and projects that have been covered; as everyone can appreciate, meaningfully consulting on and addressing each topic or project takes time, commitment, and focus. As demonstrated in 2021, we continue to be optimistic that our Terms of Reference and Work Plan for 2022 and beyond will result in progress and improvements in the coming years.

We would also like to acknowledge CNL staff in their dialogue and work with our Consultation Department since 2021. CLFN has been invited several times to visit the relevant areas of interest and has valued the face to face interactions along with the monthly virtual interactions with CNL. Most recently, today October 20, 2022, CNL visited CLFN and we spent time at the Petroglyphs and some time in the community. It was a positive relationship building day and we look forward to our evolving relationship.

Our Consultation Department is progressively building capacity to be able to match the various consultation needs in the nuclear sector. We view this submission process merely as a formal check-in point and we look forward to continuing dialogue and consultation beyond the confines of this process and lead to decision points and decision making that includes Curve Lake First Nation.

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Our comments, questions, recommendations are contained in the following Appendices. The synthesis of these are a work in progress as we build our internal team; so please excuse the fragmented nature of some of the content of these Appendices.

- Appendix A.1 Curve Lake First Nation Review of CMD 22-H13
- Appendix A.2 Curve Lake First Nation Review of CMD 22-H13.1
- Appendix B.1 4 Directions of Conservation Consulting Services Review of CMD 22-H13
- Appendix B.2 4 Directions of Conservation Consulting Services Review of CMD 22-H13.1
- Appendix C Additional Comments, Recommendations, Opportunities for Consideration

We do this work to uphold our responsibilities to care for the earth and waters, for our people, our nation, and for all our relations. Our foundational belief is balance; our values and principles are built upon the respect, care, and nurturing of all life as part of an interconnected whole and necessary for the balance and harmony required for Mino-Bimaadiziwin now and for future generations.

Sincerely,

On behalf of The Curve Lake First Nation Consultation Department

Dr. Julie Kapyrka  
Lands & Resources Consultation Liaison, CLFN

Gary Pritchard  
Representing Curve Lake First Nation  
CEO & Indigenous Conservation Ecologist  
4 Directions of Conservation Consulting Services

Francis Chua  
Support to CLFN Consultation Department

cc:

- Chief Keith Knott, Curve Lake First Nation
- Curve Lake First Nation Chief and Council
- Katie Young-Haddlesey, Chief Operating Officer, CLFN
- Kaitlin Hill, Lands & Resources Consultation Liaison, CLFN

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## **Appendix A.1 Curve Lake First Nation Review of CMD 22-H13**

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## **Canadian Nuclear Laboratories Application to Renew, Port Hope Long-Term Low-Level Radioactive Waste Management Project**

Commission Public Hearing  
Scheduled for 22 November 2022  
Submitted by CNSC Staff

### **Curve Lake First Nation Review October 2022**

Words matter. How information is expressed and conveyed matters. In contexts of federal regulating activities within the nuclear industry, it takes on an ever profound role as it forms normalized expectations of nomenclature within standardized reporting processes. Currently the narrative is exclusionary, and biased – this is demonstrated in both this submission (CNSC’s) and in CNL’s submission. Narratives and reporting styles at government levels continue to be suggestive of a larger systemic issue of prolonged colonial privilege over Indigenous lands, peoples, and knowledges.

While the CNSC has made great strides and considerable efforts and commitments have been made with regard to positive relationship building with Indigenous communities, this reality is slow to translate within reporting methodologies. Most documents that are submitted by regulators, and/or proponents, are in need of decolonization. This refers to both method and theory.

While, it is notable that the CNSC has removed the consultation and engagement sections with Indigenous communities from the heading “Other Regulatory Matters,” and made some changes to its template reporting style, there remains biased assumptions and themes, as well as an upholding of privilege towards western European epistemologies and ontologies over Indigenous Knowledge systems. There also exists omissions within the reporting in these documents that serve to erase and make vague the presence of Indigenous peoples and our rights. They tend to focus on **processes** of engagement and not on **people** who not only hold constitutionally protected rights to harvest lands upon which CNL has an impact, but also who hold vastly different knowledge systems and sets of values than does the nuclear industry.

For example, while there is one statement that acknowledges Section 35 rights of the Canadian Constitution, on page 74, as an introductory paragraph regarding consultation and engagement

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with First Nations, this declaration does not provide any expansion on context, or how this intersects with CNSC processes or CNL's operations – and why it is important. There should be clear, concise, and robust narrative here in the reporting that explains and speaks to the duty to consult and accommodate within the actual context of CNL and the Indigenous communities who may be affected by their industry. The Indigenous communities who are affected are not even named until page 74, while the Wendat and the Anishinabek Nation are named in land acknowledgements on page 1 and 4 of the document – the seven First Nation communities who actually hold treaty rights are referred to as the Michi Saagiig and Chippewa covered by the Williams Treaties. This is an omission. It serves to diminish the visibility of the First Nations who have been in relationship with these lands and waters since time immemorial, who agreed to share these lands and their knowledges with settlers, who agreed to share in the benefits derived from these lands, who were then driven off of these lands which were then subsequently poisoned with toxic nuclear wastes, while the waters were depleted of a type of Atlantic Salmon now rendered extinct. Our ancestors were literally starved off these lands by a 1923 treaty and they fought for over 95 years to have their rights recognized. In 2018, these injustices were finally addressed by the federal and provincial governments. The re-affirmation of the harvesting rights of seven First Nations across south central Ontario is profound and has real-time applications and implications for the nuclear industry operating on the shores and in close proximity to Lake Ontario.

The omission of treaty is another example of the downplaying of the importance of these covenant agreements between First Nations and the Crown. They should be highlighted and upheld as the very mechanism by which the positive relationship building endeavours currently being undertaken by both the CNSC and CNL with First Nations are guided. The treaty that includes the lands upon which the Port Hope nuclear waste management project is situated is not even named (the Williams Treaties include multiple treaties) – another omission that serves to diminish the historical presence of the Anishinaabeg upon these lands. Treaty relationships play a significant role in all Crown activities and decisions that affect First Nations rights and should be addressed and included within these narratives – even at a minimum by simply naming the treaty and the peoples involved.

How information is conveyed in these reports requires some attention. As stated above, words matter, and how they are used can also express unintended meanings which can lead to unintended consequences. Errors in wording may also lead to unintentional political statements. The order of words, how they are presented and strung together can convey meaning, particularly when acknowledging lands, treaties, and Indigenous peoples and constitutionally protected rights. The attempt at a land acknowledgement within this document is erroneous and requires some significant unpacking – a detailed response is provided below in blue font.

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There is a serious concern in general regarding the seeming lack of understanding of treaties among Crown agencies, Crown corporations, and many proponents – and how these treaties intersect with the nuclear industry. When government representation at the highest levels of Crown Agencies put pen to paper and make statements about First Nations lands and treaties and get it wrong, it can have serious implications. The Canadian public look to the government, look to the regulators for factual and expert information – and would expect documents that are submitted to be vetted and polished, but more importantly to be factually correct. It is worrisome to have such errors included in federal documents as they are used for guidance and direction by many proponents, who through emulation then engage in perpetrating the same misinformation and the same omissions. This harms the First Nations who have legitimate rights to harvest the lands and to make decisions regarding land-use planning of these areas.

With regard to CNSC's assertion that the proposed licence renewal and amendment for the PHP is unlikely to cause any new impacts on Indigenous and/or treaty rights, remains to be seen. The waste left behind by the nuclear industry will have a profound impact upon generations to come – the lands, waters, animals, and plants included. This assertion does not take into account Indigenous Knowledge systems as a result, it does not account for responsibility and accountability hundreds of years into the future. Indigenous Knowledge systems hold tenets of responsibility to at least seven generations into the future. This responsibility also includes commitments all our relations, meaning all living creatures, not just human beings. There is a framework that supports a wider vision of what the nuclear industry means within Indigenous knowledge systems. These principles form some of the underpinnings of how baseline information is gathered and understood. Indigenous Knowledge systems could never support an industry that still exhibits challenges with how to deal with the nuclear waste it produces and will continue to produce, not to mention the legacy nuclear waste sites that still exist. Nuclear waste is toxic and harmful to all living beings, and it lasts for thousands of years. How will the decisions made today, affect all living generations to come?

Nuclear waste management processes and the continued nuclear operations on these lands, without a long-term national solution for safe storage of radioactive wastes, in terms of future generations and their well-being, is not being responsible here in the present. More concerted efforts need to be taken in terms of the safety of future generations of all our relations (hundreds/thousands of years into the future) with respect to the mounds of nuclear waste being housed in the Port Hope area.

There is a lack of information regarding the cumulative effects of nuclear industry and waste management activities on Lake Ontario and in the Port Hope region. There have been continual reportable events over several years, effluent releases into Lake Ontario that were not treated, as well as occasional overflowing from rain events, not to mention the legacy nuclear waste



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contamination all over the region including the Port Hope harbour. What are the cumulative effects of these activities upon the lands and waters and how do they affect harvesting and fishing in the Port Hope area (i.e., mushrooms, salmon).

The following review details comments referring to specific statements and page numbers in the report. Our comments appear in blue font:

Page 1:

## **EXECUTIVESUMMARY**

### **Land acknowledgement**

The land on which the proposed licence and activities take place is on the traditional territory of the Wendat, Anishinabek Nation, and the territory covered by the Williams Treaties with the Michi Saagiig and Chippewa Nations.

The way in which this statement reads diminishes recognition of the Michi Saagiig Anishinaabeg within our own homelands – and diminishes the profound nature of our treaties, as well as our connection to these lands and waters deep into antiquity.

Traditional territory of the Wendat and the Anishinabek Nation? What does “traditional territory” refer to in this context? The Huron-Wendat arrived in what is commonly referred to as Ontario several hundreds of years ago. And through wampum kinship alliances with the populations that already inhabited southern Ontario, engaged in a corn-growing economy within Anishinaabeg homelands. The Huron-Wendat were in Ontario for few hundred years and then retreated to the east (Quebec) and south (Oklahoma). Furthermore, new C-14 dating has recalibrated global data regarding specific long held sequences of what was once widely referred to as “ancestral Huron-Wendat” sites north of Lake Ontario – there are various published data. Some of these sites are actually contemporaneous with Huron-Wendat Confederacy villages in Huronia, and thus, cannot be ‘ancestral.’ They may, in fact, be indicative of Haudenosaunee villages. Speaking of the Haudenosaunee, why are they not included in the acknowledgement above?

Archaeology is an interpretive science at best and it relies largely on the opinions of non-Indigenous archaeological consultants who do not tend to use inclusive methodologies that would embrace Indigenous Knowledges and oral histories. Reliance on archaeological opinions to inform territorial acknowledgments is less than ideal – it is not always accurate.

Making statements such as above, within federal documents (nuclear industry regulators), legitimizes misdirected and misguided archaeological interpretations. And thus, empowers

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communities in decision-making behaviours upon treaty lands for which they have no treaty and no right to do so. This also reinforces misinformation about pre-contact relationships between First Nations communities and serves to perpetuate division and conflict. The fact that the Huron-Wendat, a nation who came and went from these lands, is acknowledged before all others is troublesome as well. The list of First Nation and Metis communities provided in the ***Indigenous and Public Consultation and Engagement*** section does not mention the Wendat at all. It does, however, mention the Mohawks of the Bay of Quinte and the Metis – why are these nations not acknowledged above as well?

The Anishinabek Nation's traditional territory? The Anishinabek Nation is a Provincial Territorial Organization (PTO) and has over 40 First Nation communities as members – including many in more northern and southwestern parts of Ontario. How is this representative of the Port Hope Area? Furthermore, Hiawatha First Nation is not part of the Anishinabek Nation, yet the Port Hope area is part of the Michi Saagiig traditional and treaty territories.

“...and the territory covered by the Williams Treaties with the Michi Saagiig and Chippewa Nation.” This above statement sets out a dichotomy between treaty territories and traditional territories and disconnects the two, when for the Williams Treaties First Nations, they are one and the same. The above statement in its entirety relays a negation of traditional territory with treaty territory, of connections to lands and waters that span thousands of years – and it does so after acknowledging 2 groups that are not adequately representative of those who actually hold treaty rights to these lands and hold the stories and knowledge of being within traditional territories since time immemorial. The “corn-growers” (Wendat and Haudenosaunee) as they were known came and went from this area of Ontario while the Michi Saagiig and Chippewa Nations were here before, during, and after these nations departed. The above statement does not even name the First Nation communities involved in the Williams Treaties – there are 7.

The Port Hope area and regions north to Rice Lake hold significant cultural value to the Michi Saagiig Nishnaabeg – and archaeological sites have been dated as far back as the last Ice Age. These are our ancestors. Our stories speak about the ice wall and of B’boon and Nanabozhoo battling out for control of the land and seasons – but this is not accounted for, nor is it documented.

The proposed licence activities will take place in Port Hope. Our treaties were signed in Port Hope. Our people interacted with the salmon who used to run up the rivers and tributaries in Port Hope. Michi Saagiig still fish there today. This place is significant. There is no mention of the actual treaty upon which whose territory the Port Hope nuclear waste management facility is located. The Williams Treaties are several treaties, involving various lands and various Michi Saagiig and Chippewa Nations – but there is only 1 treaty covering the area of lands upon which

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CFM sits, and it receives no mention whatsoever. By not at least naming the treaty or an acknowledgement that it exists, renders invisible not only the responsibilities of the parties involved, but also the benefits and privilege of the outcomes of this treaty – which ultimately enabled the nuclear industry to set up shop along the shores of Lake Ontario, resulting in huge economic benefits to proponents and large scale environmental toxification of traditional harvesting areas of Michi Saagiig Anishinaabeg.

Understanding that this submission from the CNSC is more focused on technical aspects and safety of the environment and public with respect to CNL's proposed activities for this licence renewal, there should not be a complete omission of treaties and their application and meaning to current nuclear operations. It is important to note the Williams Treaties Settlement Agreement 2018 and what that means in terms of the re-affirmation of the harvesting rights of 7 First Nations across a large part of southcentral Ontario – and how that intersects not only with CNL Port Hope operations - which includes storing nuclear waste, but also with CNSC processes as regulators. Treaties represent some of the highest levels of political activity and are legally binding agreements. The Government of Canada issued an official apology to the First Nations affected by the 1923 Williams Treaties as part of the 2018 Settlement Agreement as well as a compensation package and the re-affirmation of harvesting rights inherent to the lands of the pre-Confederation treaties. The CNSC as a Federal Regulator, a Crown Agency, must acknowledge and recognize treaty as part of regular day-to-day operations. This includes, at minimum, naming and acknowledging the treaty and the lands and peoples who are affected by the decisions made by the CNSC and the activities of CNL's Port Hope nuclear industry.

#### Page 2

“Based on the information reviewed to date, CNSC staff are satisfied that the proposed licence renewal and amendment for the PHP is unlikely to cause any new impacts on Indigenous and/or treaty rights.”

The CNSC has determined this through a one-sided knowledge-system approach – that this licence renewal is **unlikely** to cause any **new impacts** on Indigenous and/or treaty rights. The fact that nuclear waste has been stored and will continue to be stored in Port Hope in of itself is enough to have potential negative impacts to Indigenous rights – as the Canadian Government searches still for a DGR and a long-term waste storage strategy in general. Indigenous Knowledge systems hold tenets of responsibility to seven generations into the future. This responsibility also includes commitments all our relations, meaning all living creatures, not just human beings. There is a framework that supports a wider vision of what the nuclear industry means within Indigenous knowledge systems. These principles form some of the underpinnings of how baseline information is gathered and understood. How will decisions made today, affect

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all living generations to come? Nuclear waste storage will undoubtedly have impacts upon future generations of all living things, perhaps lethal, and currently there is no strategy for addressing this, not even a discussion. This is not a balanced or inclusive approach with regard to the continued creation and storage of nuclear mounds of waste.

Can the CNSC please define “unlikely” in more robust terms. What is the confidence level of the term “unlikely” within the nuclear industry? Is the CNSC partly confident there will no new impacts? Almost confident? Not completely sure? Please explain what “unlikely” means within a nuclear waste management context including criteria by which this is measured.

“...to cause any new impacts....” – What are the ‘old’ impacts? And how were they managed? What have the impacts been and what has been done to mitigate them, address them, compensate for them? This information is required to more fully understand the cumulative effects that prolonged nuclear contamination as well as temporally indeterminate nuclear waste storage has on the land and waters in the Port Hope area. If it is *unlikely* to cause any new impacts, it goes to reason then that there were previous impacts. This information should be included to ensure all communities are fully informed about the big picture. This would also support a methodology of transparency.

Page 4

## **1. OVERVIEW**

### **1.1 Background**

“The [Port Hope Area Initiative](#) (PHAI) is a Canadian Federal Government initiative requested by communities within the Municipalities of Port Hope and Clarington. The land on which the proposed licence and activities take place is the traditional territory of the Wendat, Anishinabek Nation, and the territory covered by the Williams Treaties with the Michi Saagiig and Chippewa Nations.”

Please see comments above regarding the “Land Acknowledgement” on Page 1 of this submission.

Page 4:

“The project is based on **community recommended solutions** for the cleanup and local long-term management of historic low-level radioactive waste (LLRW).”

Which community? Does this include First Nation communities? Is this referring to the Port Hope community only? This seems to indicate exclusivity.

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Page 7:

“The PHRWMF licence has an indeterminate expiry date. Following the remediation of these sites, against the clean-up criteria in the PHP licence, it is anticipated that CNL will apply to amend its licence to remove these sites from the licence, during the licence term. Prior to the licence being revoked, CNSC staff will conduct a final inspection of each site to ensure the cleanup criteria has been met and that the properties can be transferred to the Municipality of Port Hope.”

Curve Lake First Nation would like to be involved with this process when the time comes. Perhaps the invitation to participate should involve other potentially affected First Nations communities. This should be documented in writing,

Page 10:

**PHP Clean-up Criteria Change**

“CNL’s original application requested a change to the clean-up criteria for arsenic and uranium [2]. After multiple reviews and discussions with CNL on its technical document to support a change to the clean-up criteria, CNSC staff and Health Canada determined that there was insufficient evidence to support the selection or use of the proposed arsenic clean-up criteria [9]. Furthermore, reviews conducted by Ontario Ministry of Environment Conservation and Parks (MECP) [10], Ontario Public Health (OPH) [11] and Haliburton Kawartha Pine Ridge District Health Unit [12] concluded that further information was required to validate the assumptions and calculations used in the risk assessment.”

Curve Lake First Nation (and other First Nations) also expressed concern regarding this criteria. We had also asked for further information and justification for the clean-up criteria – particularly regarding the arsenic levels. Why is Curve Lake First Nation not included here? We too had made conclusions regarding the validity of CNL’s assumptions.

Page 24-26:

Reportable events and Event Initial Reports are documented here. These sections are confusing to understand in terms of the difference between a reportable event and EIR. There is a concern for cumulative effects to the lands and waters over time. Isolated events do not seem extremely concerning, however, when put together in a larger picture, it becomes troubling. In 2021 there were 2 reportable events at the PH, one included the release of 15 cubic metres of untreated water to the inner harbour (full of dangerous chemicals). As of July 1, 2022, there were 5 reportable events at the PHP including an effluent action level exceedance for arsenic

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and another composite effluent sample that exceeded the weekly release limit for copper and the action level for zinc. In addition, in 2021 there were 3 reportable events at the PGP, one of which was an action level exceedance for copper, and another involved an underground spill of contaminated water. Although the CNSC staff concluded that the risk to human health and the environment as a result of these events was negligible there is no supporting evidence to support this conclusion. How does the CNSC measure these risks and make these conclusions? Based on what? What was the effect of 15 cubic metres of poisonous water being released into the inner harbour? Negligible to the environment? How was this determined? If at all?

How did the CNSC determine that the risk to the environment and human health is negligible when the amount of discharged water contained chromium VI, fluoranthene, pyrene and aluminum in excess of the environmental compliance approval issued by the Ontario Ministry of the Environment Conservation and Parks?

Page 25:

“CNL implemented corrective actions to ensure water sample analysis data is approved before releasing water, revised the contractor’s program and clarified that water release are not to be compared to the Provincial Water Quality Standards.”

Why are water releases not to be compared to the Provincial Water Quality Standards?

Page 74:

**INDIGENOUS AND PUBLIC CONSULTATION AND ENGAGEMENT**

**4.1 Indigenous Consultation and Engagement**

“The common-law duty to consult with Indigenous Nations and communities applies when the Crown contemplates actions that may adversely affect potential or established Indigenous and/or treaty rights. The CNSC ensures that all of its licence decisions under the *Nuclear Safety and Control Act* uphold the honour of the Crown and consider Indigenous peoples’ potential or established Indigenous and/or treaty rights pursuant to section 35 of the *Constitution Act, 1982*.”

Is it not: The duty to consult and accommodate?

“Indigenous consultation and engagement” – this is referring to consultation and engagement with Indigenous communities and Indigenous peoples. Words matter, and the contexts in which they are used express meaning. The way in which consultation with Indigenous communities is

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portrayed in the heading above diminishes the presence of Indigenous people themselves in this process.

We can say: "Consultation and engagement with the public," but it does not make sense to say: "Consultation and engagement with the Indigenous." The headings should be changed to reflect proper grammar and syntax: "Consultation and Engagement with First Nations and the Public." Or perhaps a section entitled: "The Duty to Consult and Accommodate: Engagement with First Nations." And then another section for: "Public Consultation." Another point to consider here is that 'consultation' with First Nations is framed within constitutional contexts, while 'consultation' with the public is not. This should be differentiated within reporting narratives.

The terminology: "Indigenous engagement" should be changed throughout the entire document to reflect a more respectful inclusionary language that speaks to the people who are actually being engaged.

"Indigenous" is not a noun, but rather an adjective and within reporting contexts it is being used to qualify engagement and consultation processes incorrectly. The engagement is not Indigenous, it is the people who are.

Page 74:

#### **4.1.1 Discussion**

CNSC staff have identified the Indigenous Nations and communities who may have an interest in the renewal of the PHP licence. These Indigenous Nations and communities include:

- • Alderville First Nation
- • Curve Lake First Nation
- • Hiawatha First Nation
- • Mississaugas of Scugog Island First Nation
- • Chippewas of Beausoleil First Nation
- • Chippewas of Georgina Island First Nation
- • Chippewas of Rama First Nation
- • Mohawks of the Bay of Quinte
- • Métis Nation of Ontario

"These Indigenous Nations and communities were identified due to the proximity of their communities, treaty areas and/or traditional territories to the PHP, or due to previously expressed interest in being kept informed of CNSC licensed activities occurring in or proximal to their territories."

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The Wendat are not listed here as being identified as having an interest in the renewal of the PHP licence yet are acknowledged first as having traditional territory in Port Hope (Page 1 and 4). This is inconsistent and should be addressed.

The Mohawks of the Bay of Quinte are not acknowledged, nor are the Metis Nation of Ontario with regard to traditional territory and/or treaty rights with respect to the acknowledgement on pages 1 and 4. – yet they are identified here. Also, why is the entirety of the Metis Nation of Ontario listed above – and not just the Region – as has been identified in previous CNSC submissions regarding the nuclear industry in the Port Hope area.

Page 76:

“CNL has committed to maintaining and refining the **Indigenous Communications** and Engagement Program throughout the life of the PHAI.”

Similarly in the above statement, the word “Indigenous” is used incorrectly. The communications are not Indigenous, nor is the engagement program Indigenous, but rather it is the people who are being communicated with and being engaged that are Indigenous. Communications and Engagement Program with First Nations and Indigenous communities is what is needing to be conveyed.

Page 76

“To date, CNSC staff have not been made aware of any concerns regarding potential new impacts on Indigenous and/or treaty rights specific to the licence renewal and amendment expressed by Indigenous Nations and communities through CNL’s engagement activities.”

Curve Lake First Nation has expressed concern on numerous occasions to the CNSC about our responsibilities to future generations to ALL OUR RELATIONS regarding the nuclear waste storage activities of the industry. We have also expressed concerns about the lack of information regarding cumulative effects of nuclear waste storage on our treaty territories (lands, waters, air, all living beings) and the fact that reportable events (releases) continue to occur and will continue to occur into the future.

Page 76-77:

**4.1.2 Conclusion**

The CNSC ensures that all of its licensing decisions under the *Nuclear Safety and Control Act* uphold the honour of the Crown and **reflect the broader interests of Indigenous peoples who exercise Indigenous and/or treaty rights in proximity to CNSC-regulated activities or facilities.**



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Based on the information reviewed to date, CNSC staff conclude that the proposed licence renewal and amendment for the PHP is unlikely to cause any new impacts on Indigenous and/or treaty rights.

CNSC staff conducted engagement activities with **the identified Indigenous Nations and communities** to encourage their participation in the regulatory process and to ensure their concerns are heard and addressed by CNSC staff and the Commission in a meaningful way.

Is the CNSC suggesting that the Metis Nation of Ontario has rights to harvest in the Port Hope area? Is there a historical Metis community in the Port Hope area?

The duty to consult and accommodate is intimately associated with treaty rights and Inherent/'Aboriginal' rights – constitutionally protected rights. The CNSC does not really make clear what the accommodations are within the framework of the duty to consult with First Nations and these rights. Meetings with the CNSC and meetings with proponents and funding (PFPs) are offered to all, including the public – this is consultation and engagement in general, this is not the duty to consult and accommodate. What differentiates the honour of the Crown duty to consult and accommodate obligations from typical engagement and consultation activities with non-rights' holders'?

Page iii of the Environmental Protection Review Report:

**The PHAI also lies** within the traditional territory of the Wendat, Anishinabek Nation, and the territory covered by the Williams Treaties with Michi Saagiig and Chippewa Nations. CNSC staff's EPR report focuses on items that are of Indigenous, public and regulatory interest, such as potential environmental releases from normal operations, as well as risk of radiological and hazardous (non-radiological) substances to the receiving environment.

The land acknowledgement should be placed up front. The PHAI does not ALSO lie within treaty and traditional territory, but rather the municipalities of Port Hope and Clarington themselves lie within treaty territory. The treaties that cover these lands were created in the 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup> centuries – long before the municipalities were established. The Michi Saagiig and Chippewa Nations were on these lands long before the treaties were signed. Again, the nature of the longevity and the sovereignty of First Nations upon these lands is diminished through the use of language and placement of information – it is subtle, but it is pervasive and it continues to perpetrate colonial contexts in which Indigenous peoples and our deep temporal connection to the Port Hope region, as well as our very treaty rights to harvest are downplayed.

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Please see comments above pertaining to this land acknowledgement on Page 1 of this submission. Anywhere that this above statement appears within this submission should be referred to in the same manner.

Again, the word “Indigenous” is improperly used above. The interest is not Indigenous, but rather the interests of Indigenous peoples are what is being referred to.

Page 4 of 7:

## **APPENDIX A**

### **Welcome Waste Management Facility**

The Welcome Waste Management Facility is located on lands described as all that portion of Lots 13 and 14, Concession 2, in the Municipality of Hope, in the County of Northumberland, designated as Parts 1 and 2 on a reference plan deposited in the Land Registry Office for the Registry Division of Port Hope as Plan 9R-734. The Welcome Waste Management Facility is located within the perimeter of the Port Hope Long-Term Waste Management Facility.

### **Port Hope Long-Term Waste Management Facility**

The Port Hope Long-Term Waste Management Facility will be located in Ward 2 of the municipality of Port Hope, in the County of Northumberland; bordered on the west by Brand Road, on the north by Highway 401, on the east by Baulch Road and on the south by rural and residential lots on the north side of Marsh Road. The location of the Long-Term Waste Management Facility is shown on the following figure.

When the location of the project is being described, this description should also include treaty information – which treaty covers the area, and which First Nations hold those rights. This type of omission, again, diminishes the presence of our peoples on these lands and our treaty harvesting rights that have recently been re-affirmed. Describing the lands only in terms of municipal definitions and road boundaries and negating to mention the treaty and the people perpetrates colonial biases through omission. The Michi Saagiig and Chippewa Nishnaabeg are rendered invisible yet again. There is an opportunity in this type of reporting to decolonize the narrative through simple inclusion – any statements and descriptions regarding the location of lands upon which projects are taking place should include treaty information of those lands as well. It is an opportunity to educate and to create awareness for all individuals reading these materials. Perhaps including a treaty map would be helpful.

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## **Appendix A.2 Curve Lake First Nation Review of CMD 22-H13.1**

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**Written submission from the  
Canadian Nuclear Laboratories**

In the Matter of the  
**Canadian Nuclear Laboratories**  
Application to renew its waste nuclear  
substance licence for the Port Hope Project

**Commission Public Hearing  
November 22, 2022**

**Curve Lake First Nation Review  
October 2022**

General Comments:

There is a lack of knowledge of treaties in general portrayed in this document. There are errors in identified treaty nations and land boundaries.

Page 4:

“CNL respectfully acknowledges that CNL’s Historic Waste Program Management Office and the PHAI projects are situated on the treaty lands of the Williams Treaties First Nations, specifically the treaty signed with the Mississauga First Nations of Alderville, Curve Lake, Hiawatha and Scugog Island.”

The treaty that is being referred to above is known as the Gunshot Treaty and it is a Treaty of the Chippewas of Beausoleil, Georgina Island and Rama First Nation and the Mississaugas of Curve Lake, Hiawatha, and Scugog Island First Nations (Treaty Harvesting Rights Recognized in the Williams Treaties Settlement Agreement 2018, Map, Sketch 4, Pre-confederation Treaties).

While all 7 First Nations share harvesting rights over these territories, certain communities were signatories to certain treaties. For example, Alderville First Nation holds Treaty 27, and 27 ¼. Furthermore, only specific treaties currently have finalized boundaries (I.E. Treaty 20). The precise boundaries of the remaining treaties are being determined during the implementation stages of the Williams Treaties Settlement Agreement as necessary – a process that is underway.

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As part of the Mississauga Nation, as well as proximity to Port Hope, Alderville First Nation is included as part of the Williams Treaties First Nations. The situation is complex and multi-layered, and part of the continued divisive nature of colonial constructs and the application of Western understandings of land boundaries - and the idea of reserve communities - onto Indigenous concepts of nationhood and sovereignty.

A more in-depth and well-rounded history of the treaty making process detailing the treaty history with more expanded contexts is needed here. There was a lead up to the 1923 Williams Treaties, including Pre-Confederation Treaties that covered the area of Port Hope (treaty signing occurred there). This is an opportunity to include that history and speak to the truth and realities of the past. Specifically, there is more information that should be included that details the making of what became known as the Gunshot Treaty. The Gunshot Treaty lands are a throughway to travel to and from Chippewa and Michi Saagiig shared lands.

There should be more emphasis on the Treaties and the importance of place: Port Hope. Treaties were signed in Port Hope, on the shores of Lake Ontario. That space is significant. The fish, the salmon, the tributaries, the big river mouths, places where our ancestors gathered deep into antiquity, and still do today, although many of the original species have been eradicated through European settlement activities. There is an opportunity to showcase a more enriched historical account that would offer a more well rounded and balanced interpretation of the significant events that took in Port Hope between our nations and the Crown.

There is also an opportunity for broader education in this report in terms of what occurred on these lands in the past and how that affected Indigenous realities of today. Our ancestors were driven off their lands and literally starved by the colonial governments of the day. The Pre-Confederation Treaties were not being honoured and our peoples' hunting, and trapping grounds were being encroached upon by settlers. This precipitated the Williams Treaties of 1923 – which, unfortunately actually tried to extinguish our rights to hunt and fish. The Williams Treaties Settlement Agreement 2018 addressed these injustices and served to re-affirm our harvesting rights across a wide range of territories in southern Ontario – the Port Hope area being part of that. There is an opportunity to offer a more truthful and fulsome picture of the historical past in this region.

There is also an opportunity to speak to TRUTH – and to be accountable to the past activities that devastated and severely contaminated the lands and waters upon which we hunt and fish still today. There is an opportunity for CNL to be more truthful about the exclusion of Indigenous peoples from making decisions regarding impacts to our treaty territories – to the lands and waters that feed us and sustain us.

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CNL has stated the objective of advancing Reconciliation through meaningful actions. Somehow the Truth and Reconciliation Calls to Action, have been focused solely on reconciliation by many proponents. However, it is about TRUTH and reconciliation. CNL must first come to terms with the truth. The truth must be better understood before meaningful and lasting reconciliation can occur. Actions to reconcile before understanding the truth is akin to putting the cart before the horse. A robust understanding of the truth needs to occur before strategies are devised for reconciliation. How you understand the truth will inform your methodology for reconciliation. Although CNL is moving towards increased inclusion and participation, there is a gap between the truth and the reconciliation in this case. There needs to be more truth-telling in terms of the historical legacy not only of the El Dorado activities but also of the continued nuclear industrial endeavours on our treaty lands without our input – until just recently.

Nuclear waste management is at the highest level of concern for our communities, particularly for the future generations and the health of the land and waters. While Curve Lake First Nation is pleased that CNL is involved in a large scale clean-up of contaminated soils, the continued storage in the ground of low-level waste that serves to support the larger industry that creates the highly toxic nuclear waste for which there is STILL no long-term solution is extremely troubling. The Port Hope and Port Granby low-level nuclear waste sites are connected to that bigger picture, and we have grave concerns that there is continual investment in nuclear energy when long-term storage of the most dangerous waste is still to be determined. There has not been a clear picture provided by the nuclear industry that this type of energy is the best and most sustainable form for the land and waters in light of current technologies, methodologies, and global awareness of alternatives.

Nuclear waste management processes and the continued nuclear operations on these lands, without a long-term national solution for safe storage of radioactive wastes, in terms of future generations and their well-being, is not being responsible here in the present. More concerted efforts need to be taken in terms of the safety of future generations of all our relations (hundreds/thousands of years into the future) with respect to the mounds of nuclear waste being housed in the Port Hope area.

There is a lack of information regarding the cumulative effects of nuclear industry and waste management activities on Lake Ontario and in the Port Hope region. There have been continual reportable events over several years, effluent releases into Lake Ontario that were not treated, as well as occasional overflowing from rain events, not to mention the legacy nuclear waste contamination all over the region including the Port Hope harbour. What are the cumulative effects of these activities upon the lands and waters and how do they affect harvesting and fishing in the Port Hope area (i.e., mushrooms, salmon).

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The proper use of words:

While, it is notable that CNL has dedicated a separate section for communications and engagement with Indigenous communities and has included an expanded and inclusionary section detailing individual histories of the impacted Indigenous communities and organizations, there still remains biased assumptions and themes, as well as an upholding of privilege towards western European epistemologies and ontologies over Indigenous Knowledge systems. There also exists omissions within the reporting in these documents that serve to erase and make vague the presence of Indigenous peoples and our rights. They tend to focus on **processes** of engagement and not on **people** who not only hold constitutionally protected rights to harvest lands upon which CNL has an impact, but also who hold vastly different knowledge systems and sets of values than does the nuclear industry.

Page 36:

## 2 INDIGENOUS COMMUNICATIONS & ENGAGEMENT

“Indigenous communications and engagement” – this is referring to communications and engagement with Indigenous communities and Indigenous peoples. Words matter, and the contexts in which they are used express meaning. The way in which communications with Indigenous communities is portrayed in the heading above diminishes the presence of Indigenous people themselves in this process.

We can say: “Communications and engagement with the public,” but it does not make sense to say: “Communications and engagement with the Indigenous.” The headings should be changed to reflect proper grammar and syntax: “Communications and Engagement with Indigenous communities and organizations.”

Page 46:

### 2.3 Indigenous Engagement

The terminology: “Indigenous engagement” should be changed throughout the entire document to reflect a more respectful inclusionary language that speaks to the people who are actually being engaged.

“Indigenous” is not a noun, but rather an adjective and within reporting contexts it is being used to qualify engagement and consultation processes incorrectly. The engagement is not Indigenous, it is the people who are.

Lastly,

Page 37:

“Since 2013, CNL communications staff have actively participated in Indigenous awareness

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training including sessions on effective Indigenous engagement, cultural sensitivity, cultural awareness, the Kairos blanket exercise, trauma-informed communications and sacred medicines.”

How is this knowledge applied to the work that communications staff do? How have these awareness building activities translated into methodologies and applications?



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#### **Appendix B.1 4 Directions of Conservation Consulting Services Review of CMD 22-H13**



October 7<sup>th</sup>, 2022

Attn: **Consultation Department**  
Curve Lake First Nation  
22 Winookeeda Road,  
Curve Lake ON K0L1R0  
P: (705) 657-8045

CC: **Francis Chua**

RE: CNSC Commission Member Document for CNL 10-Year Licensing Renewal: Review and Comments  
4 Directions File No: 22- 208D

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4 Directions of Conservation Consulting Services (4 Directions) is pleased to present our review and recommendations regarding documents prepared by Canadian Nuclear Safety Commission (CNSC) staff. CNSC presented these documents to Curve Lake First Nation (CLFN), regarding Canadian Nuclear Laboratories (CNL), under their Duty to Consult and Accommodate. 4 Directions' review of the report, *Canadian Nuclear Laboratories: Application to Renew, Port Hope Long-Term Low-Level Radioactive Waste Management Project*, is broken down into two main sections. Relevant statements, questions and concerns are identified in the following document under their respective headings:

- Concerns Regarding Michi Saagiig Inherent and Treaty Rights
- Concerns Regarding the Environment

Although it should be noted that 4 Directions acknowledges that the two above-mentioned topics are inextricably linked, the review has been organized under these section headings for clarity purposes. 4 Directions staff have included some comments regarding the Environmental Protection Review Report offered in Appendix F of the provided document. These questions, comments, and concerns are included in a third section titled "PHAI EPR", following the earlier two identified sections. After these sections, 4 Directions provides a brief summary of identified recommendations for CNSC and CNL, followed by closing remarks.





## Background

4 Directions staff were provided with this document, prepared by CNSC staff, in combination with CNL's provided Commission Member Document (CMD) regarding a 10-year licence renewal application. CNSC staff have provided a review of the earlier mentioned CNL CMD.

*"Based on CNSC staff's review of CNL's application, supporting information, and performance, as well as consideration of the nature of the activities being performed over the proposed 10-year licence period, CNSC staff recommend the Commission authorize CNL's request for a 10-year licence. [...]"*

*CNSC staff recommend that the Commission:*

- 1. Renew the WNSL licence to authorize CNL to continue its authorized activities at the PHP from January 1, 2023 to December 31, 2032.*
- 2. Authorize the consolidation of the 4 CNL licences issued for the remediation activities associated with the PHAI.*
- 3. Approve the proposed licence change to remove the authorization to process, package and transport radioactive material as outlined in section 3.14 and summarized in Part Two of this CMD.*
- 4. Approve the proposed liquid effluent release limits for the PHP WWTP as summarized in section 5.5 of this CMD.*
- 5. Issue the proposed WNSL for the PHAI, WNSL-W1-2310.00/2032.*
- 6. Authorize the delegation of authority as set out in subsection 5.7 of this CMD"*

*(Page 11, Highlights).*





## 1.0 Concerns Regarding Michi Saagiig Inherent and Treaty Rights

### 1.1 Quotation

When discussing the Port Hope Area Initiative (PHAI), CNSC offer a brief territorial acknowledgement:

*“The Port Hope Area Initiative (PHAI) is a Canadian Federal Government initiative requested by communities within the Municipalities of Port Hope and Clarington. The land on which the proposed licence and activities take place is the traditional territory of the Wendat, Anishinabek Nation, and the territory covered by the Williams Treaties with the Michi Saagiig and Chippewa Nations”*

(Page 4, Section 1.1).

#### 1.1.1 Statement

4 Directions staff, in recent reviews provided to CNSC of similar nature, have outlined the contentions with utilizing territorial acknowledgements. To reaffirm 4 Directions’ stance on CNSC’s current use of territorial acknowledgements, we have provided the following summary of previous CNSC review comments:

The use of territorial acknowledgements in report writing has become increasingly popular in recent years at the institutional level. As said by Wark (2021),

“Land acknowledgement, or territorial acknowledgement, is the practice of prefacing a presentation or event with a recognition of the Indigenous people or peoples whose land one occupies. Indigenous peoples of Turtle Island (North America) have always engaged in practices of recognizing each other in terms of language, nation, territory, clan, and lineage. While pre-colonial territorial borders may have been fluid and overlapping, there was always an awareness of the demarcation of territory. [...]

Depending upon the nation, entering the territory of another people may have entailed thoughtful consideration, permission seeking, or gift giving. Hosting visitors from other nations also implied certain





responsibilities, often involving formal words, feasting, and gifting. When Indigenous peoples acknowledge one another, it is both a cultural and political practice that is fundamentally tied to nationhood. While acknowledging the territory of others may be a traditional protocol among Indigenous peoples of Turtle Island, formal land acknowledgements by state institutions appeared [...] as a result of state-led reconciliation efforts. [...]

In their original form, territorial acknowledgements were viewed as a means to educate and build relationships of solidarity with settlers. [...] In their current form, land acknowledgements appear to be firmly embedded in reconciliation politics, often citing ambiguous purposes like demonstrating respect for Indigenous peoples. This shift has seen these practices being increasingly criticized for devolving into box-ticking exercises, strictly symbolic gestures, and moves to settler innocence. They have also been accused of being lacking in critical thought regarding their purpose and as attempts to rewrite Indigenous and settler colonial history.” (Wark, 2021: pp. 193 - 195).

Under the intention of supporting further education and relationship building regarding understandings of Treaties and Indigenous Rights, 4 Directions sees that constructing and ensuring collective understanding of a meaningful land acknowledgement could be a useful starting point. Land acknowledgements, when engaged with meaningfully, can serve as impactful political tools to address and resist dominant narratives that often seek to diminish and/or erase Indigenous presence and colonial violence from the collective storyline (Robinson et al., 2019). As Treaty people, it is imperative that we begin relationship building with contextual understandings that are “accurate representations of Indigenous territorial claims, languages, and governance systems” (Wark, 2021: pp. 202).

Within CNSC’s provided report, there is a clear attempt to acknowledge the territory upon which the discussed projects are situated. It is of 4 Directions’ opinion that these attempts to acknowledge Indigenous inherent and treaty Rights are well-intentioned but unsatisfactory. Unspecific and non-





purposeful territorial acknowledgements that generalize First Nations' inherent and treaty rights risk perpetuating modern-day colonialism through the simplification and erasure of such rights both historically and today. The land acknowledgement touched on earlier in this report does not meet the expectations of 4 Directions' staff; this current acknowledgement risks underplaying the Legal Rights and obligations of WTFN. To clarify, the PHAI is situated in the 1923 Williams Treaty Clause #2 Area, and the Gunshot (Johnson-Butler Purchase) Treaty Area (1788). This means that there is a legal Duty to Consult and Accommodate Indigenous Rights holders, as affirmed by section 35 of the Constitution Act (1982).

Further research is required to better understand the purpose of a territorial acknowledgement. It is essential that individuals structuring land acknowledgements are purposive with their language and make clear there is an understanding of the specific history and current relation to the discussed land. To move forward with a journey of reconciliation, it is important that space is created to come to terms with the truth of why this journey is needed. An effective territorial acknowledgement illustrates authors' understanding of the legacies, and at times unsettling truths, intertwined with the land and peoples being acknowledged. The provided territorial acknowledgement lacks clarity and/or recognition of Indigenous Inherent and Treaty Rights. Notably, there appear to be generalizations made around Indigenous peoples that blur the lines between Rights holders, interest holders, and stakeholders, delineations which yield specific legal obligations.

### 1.1.2 Question

How have CNSC staff incorporated 4 Directions' feedback regarding the harms of non-meaningful territorial acknowledgements into their report writing?

### 1.1.3 Recommendation

4 Directions recommends that the CNSC engage with Indigenous Rights holders, as CNL has done, to collaboratively construct a meaningful territorial acknowledgement for this project.





## 1.2 Quotation

Building off of the concern raised in section 1.1 regarding the delineation of Indigenous Rights holders, 4 Directions staff note that CNSC does discuss the concept of Duty to Consult [and Accommodate] in the section titled *Indigenous Communities and Organizations*. In this section, it is further noted that:

*“CNSC staff have identified the Indigenous Nations and communities who may have an interest in the renewal of the PHP licence. [...] These Indigenous Nations and communities were identified due to the proximity of their communities, treaty areas and/or traditional territories to the PHP or due to previously expressed interest in being kept informed of CNSC-licensed activities occurring in or proximal to their territories and/or areas of interest”*

*(page 74, Sections 4.1 and 4.1.1).*

### 1.2.1 Statement

4 Directions staff would firstly like to reaffirm the last sentence of statement 1.1.1: The provided [section] lacks clarity and/or recognition of Indigenous Inherent and Treaty Rights. Notably, there appear to be generalizations made around Indigenous peoples that blur the lines between Rights holders, interest holders, and stakeholders, delineations which yield specific legal obligations.

Of focus for this section, however, is the discussion surrounding the Duty to Consult and Accommodate. CNSC staff outline the parameters that trigger the Duty to Consult in the provided document. As outlined in the Curve Lake First Nation Consultation and Accommodation Standards (2013), once the Nation has sent notification of interest to be consulted and accommodated for the project, the proponent must accommodate the Nations’ needs to meaningfully engage with the project; such as when it comes to setting timelines. As a Rights Holder, the Nation does yield authority over when and how a project proceeds once a level 2 letter has been delivered. In good faith, the Nation does try to address proponents’ needs and interests in a reasonable timeframe that does not uphold project processes;





however, it needs to be understood that Nations are often inundated with several proponents, all with competing deadlines. Under their legal Duty to Consult and Accommodate, 4 Directions staff request that CNSC staff continue to practice patience while negotiating review deadlines.

### 1.2.2 Question

How are Indigenous Rights Holders delineated from Interest holders in this project? How does CNSC ensure the Duty to Consult and Accommodate is being fulfilled?

### 1.2.3 Recommendation

It is recommended that CNSC outline Nations consulted with as Rights holders and delineate how this approach differs from those engaged with as interest holders.







## 2.0 Concerns Regarding the Environment

### 2.1 Quotation

In the SCA section titled *Environmental Protection*, CNSC staff note:

*“CNL implemented and continues to maintain an environmental protection program for the activities performed under the PHAI licences. The PHAI environmental protection program identifies, controls, and monitors all releases of radioactive and hazardous substances as a result of the licensed activities. CNSC staff conclude that CNL’s environmental monitoring programs meet regulatory requirements and are protective of the public and the environment.”*

(Page 53, Section 3.9).

#### 2.1.1 Statement

4 Directions staff are interested in further understanding how CNL’s environmental monitoring programs, approved by CNSC, are upholding Michi Saagiig Treaty Rights. As noted in Curve Lake First Nation’s Consultation and Accommodation Standards (2013), these Treaty Rights cover harvesting rights and thus maintain the protection of bioculturally significant species. Further, it should be noted that the Michi Saagiig attain their rights to make decisions regarding the protection of water, as reaffirmed in the (2008) Water Declaration. As stated in the Water Declaration of the First Nations in Ontario (2008),

*“First Nations in Ontario’s treaty-making with the Crown created a relationship of rights for all parties [...]; First Nations in Ontario’s treaty relationships make certain that decision-making processes related to use and care of the waters is a right maintained by the First Nations and not handed over with the making of Treaties”*

(Chiefs of Ontario, 2008: pp. 2).





Establishing clear responsibilities regarding water is paramount in setting the tone when approaching relationship building. Under international policy like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the right to self-determination of Indigenous Peoples leads to:

*“the right to freely determine our political status and freely pursue our economic, social, and cultural development. That means we have the right to exercise full authority as well as the responsibility given to our ancestors by the Creator to care for our relatives (creation), including the waters”*

(Chiefs of Ontario, 2008; pp. 4).

### 2.1.2 Question

How were Indigenous Rights holders engaged to ensure the ongoing protection of Indigenous Inherent and Treaty Rights through the Environmental Protection SCA?

### 2.1.3 Recommendation

4 Directions recommends that CNSC and CNL confirm that Indigenous Treaty and Inherent Rights and values are also upheld within the environmental protection SCA.





## 2.2 Table 17

On page 59 of CNSC's provided report, table 17 provides Port Granby Project's estimated maximum effective dose to the public.

### 2.2.1 Statement

Although the maximum effective dose to the public is maintained below regulatory limits for both the Port Hope Project and the Port Granby Project, Table 17 shows the annual dose for Port Granby Project increasing over the years.

### 2.2.2 Question

What are the long-term multi-generational health impacts from these doses over a long temporal frame?

### 2.2.3 Recommendation

4 Directions recommends that CNL clarify what the long-term multi-generational health impacts are from the estimated maximum effective doses estimated in the report.





## 3.0 PHAI EPR

The Following three subsections include 4 Directions' questions, comments, and concerns pertaining to the Environmental Protection Review Report for the Port Hope Area Initiative (PHAI) that was appended to the CNSC's provided document. Specifically, all three of these subsections are directly related to the Environmental Protection Review's Appendix.

### 3.1 Quotation

When considering the terrestrial environment on Page 84 of the document, it is noted that "wildlife corridors and habitat complexes within the Local Study Area will be affected." Further, when discussing the Sculthorpe Marsh, it is noted that, "should remediation take place, no net loss of wetland function would be ensured."

#### 3.1.1 Statement

It should be noted that all wetlands are afforded protection under the Treaty Rights of the Michi Saagiig (CLFN, 2013; Williams, 2018). Wetlands are culturally significant systems for medicines, as well as food sources such as the American Bull Frog; a Michi Saagiig cultural keystone species (Williams, 2018). In particular, the Sculthorpe Marsh is a known harvesting area for the Michi Saagiig. The subwatershed of the wetland is critical to the Michi Saagiig. The adjacent watercourse of Gages Creek is also a known Indigenous fishery and harvesting area. Failure to implement mitigation measures for any environmental impact to these areas directly infringes on the Michi Saagiig Treaty Rights (CLFN, 2013; Williams, 2018).

#### 3.1.2 Question

Were Indigenous Rights Holders included in the assessment of impacts to the Sculthorpe Marsh?

#### 3.1.3 Recommendation

4 Directions recommends that CNSC and CNL confirm how Michi Saagiig Inherent and Treaty rights are upheld as it pertains to impacts to and monitoring of wetlands.





### 3.2 Quotation

On Page 85 of the provided report, in the Appendix of the Environmental Protection Review, it is noted that there are “no likely residual adverse effects anticipated” toward Indigenous interests.

#### 3.2.1 Question

Were Indigenous Rights Holders included in assessing the likelihood of these adverse effects occurring?

#### 3.2.2 Recommendation

4 Directions recommends that the proponent clarify how, exactly, no likely residual adverse effects were calculated regarding Indigenous interests, specifically, as these impacts pertain to Michi Saagiig Treaty Rights and the 2008 Water Declaration.

### 3.3 Quotation

In Appendix B of the Environmental Protection Review, it is noted that there are “some residual adverse environmental effects on the ability of current and future generations to exercise inherent Indigenous and Treaty Rights” (Page 90).

#### 3.3.1 Question

If residual adverse environmental effects on the ability of current and future generations to exercise inherent Indigenous and Treaty rights have indeed been identified, how are these impacts being addressed and mitigated?

#### 3.3.2 Recommendation

4 Directions recommends that the proponent offer further context regarding how identified environmental effects on the ability of current and future generations to exercise inherent Indigenous and Treaty rights have been mitigated.





## Summary of Recommendations

- 4 Directions recommends that the CNSC engage with Indigenous Rights holders, as CNL has done, to collaboratively construct a meaningful territorial acknowledgement for this project.
- It is recommended that CNSC outline Nations consulted with as Rights holders and delineate how this approach differs from those engaged with as interest holders.
- 4 Directions recommends that CNSC and CNL confirm that Indigenous Treaty and Inherent Rights and values are also upheld within the environmental protection SCA.
- 4 Directions recommends that CNL clarify what the long-term multi-generational health impacts are from the estimated maximum effective doses estimated in the report.
- 4 Directions recommends that CNSC and CNL confirm how Michi Saagiig Inherent and Treaty rights are upheld as it pertains to impacts to and monitoring of wetlands.
- 4 Directions recommends that the proponent clarify how, exactly, no likely residual adverse effects were calculated regarding Indigenous interests, specifically, as these impacts pertain to Michi Saagiig Treaty Rights and the 2008 Water Declaration.
- 4 Directions recommends that the proponent offer further context regarding how identified environmental effects on the ability of current and future generations to exercise inherent Indigenous and Treaty rights have been mitigated.





## Closing Remarks

4 Directions staff are generally satisfied with the information provided within the Commission Member Document (CMD) from Canadian Nuclear Safety Commission (CNSC) staff. As noted in the summary of recommendations, 4 Directions encourages CNSC to revisit their use of territorial acknowledgements and to provide further clarity regarding how Indigenous Inherent and Treaty rights are upheld throughout the environmental monitoring of this project.

We trust that this information aids in your engagement process and the next steps forward. If you have any questions, please do not hesitate to contact us.

Miigwetch,

A handwritten signature in blue ink that reads "Brodie Schmidt".

**Brodie Schmidt, BAH, MA.**

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**Appendix B.2 4 Directions of Conservation Consulting Services Review of CMD 22-H13.1**



October 7<sup>th</sup>, 2022

Attn: **Consultation Department**  
Curve Lake First Nation  
22 Winookeeda Road,  
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P: (705) 657-8045

CC: **Francis Chua**

RE: CNL Commission Member Document for 10-Year Licensing Renewal: Review and Comments  
4 Directions File No: 22- 208C

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4 Directions of Conservation Consulting Services (4 Directions) is pleased to present our review and recommendations regarding documents prepared by Canadian Nuclear Laboratories (CNL). These documents were presented to Curve Lake First Nation (CLFN) from CNL under their Duty to Consult and Accommodate. 4 Directions' review of the report, *Commission Member Document for Licensing Decisions*, is broken down into two main sections. Relevant statements, questions and concerns are identified in the following document under their respective headings:

- Concerns Regarding Michi Saagiig Inherent and Treaty Rights
- Concerns Regarding the Environment

Although it should be noted that 4 Directions acknowledges that the two above-mentioned topics are inextricably linked, the review has been organized under these section headings for clarity purposes. After these sections, 4 Directions provides a brief summary of identified recommendations for CNL, followed by closing remarks.





## Background

CNL's Waste Nuclear Substance Licence (WNSL) for the Port Hope Project (PHP) is expiring on December 31<sup>st</sup>, 2022. Given this, CNL is seeking to renew its licence for a 10-year period while simultaneously consolidating this (WNS)Licence with 3 other WNSLs in the Port Hope Area Initiative (PHAI). CNL's provided report, titled *Commission Member Document for Licensing Decisions*, was reviewed under the provided context:

*“The PHAI is a community-requested project designed to develop and implement a safe, local, long-term management solution for historic low-level radioactive waste within the municipalities of Port Hope and Clarington. CNL is implementing both projects on behalf of Atomic Energy of Canada Limited (AECL), a federal Crown corporation. The PHAI is defined by An Agreement for the Cleanup and Long-Term Safe Management of Low-Level Radioactive Waste Situated in The Town of Port Hope, The Township of Hope and the Municipality of Clarington [5] (The Town of Port Hope and the Township of Hope have since merged to form the Municipality of Port Hope). The agreement stipulates that Canada will clean up properties contaminated with historic LLRW so that all such properties can be used for all current and foreseeable unrestricted uses. [...]*

*The PHAI includes two distinct and separate projects:*

***The Port Granby Long-Term Low-Level Radioactive Waste Management Project** (Port Granby Project, or PGP) comprises the [1.] construction of a new long-term waste management facility, [2.] removal of LLRW from the former Port Granby Waste Management Facility and the [3.] safe transportation and storage of the waste at the new facility constructed 700 m north of the lakeshore for safe, long-term storage.*

***The Port Hope Long-Term Low-Level Radioactive Waste Management Project** (Port Hope Project, or PHP) includes the [1.] construction of a new long-term waste management facility [...] on lands comprised of, and adjacent to, the former Welcome Waste Management Facility and [2.] the relocation of the historic waste located at the former Welcome Waste Management Facility to the new facility. The Port Hope Project will also [3.] excavate, transport and restore various [...] sites within the Municipality of Port Hope”*

(Page 5, Executive Summary).





## 1.0 Concerns Regarding Michi Saagiig Inherent and Treaty Rights

### 1.1 Quotation

On page 6 of the provided document, it is noted that “CNL’s objective [is] to advance Reconciliation through meaningful actions to move toward increased inclusion and participation.” However, it is later stated that,

*“The Port Hope Area Initiative (PHAI) represents the Government of Canada’s commitment to respond to the community-requested solution for the cleanup and safe, long-term management of historic low-level radioactive waste (LLRW) in the municipalities of Port Hope and Clarington in southern Ontario. **The waste is the result of the refining practices of the former Crown corporation Eldorado Nuclear Ltd. (Eldorado) and its private sector predecessors. The original Eldorado refining operation and plant were established in the 1930s without consultation with Indigenous peoples of the area”***

(Page 21, Introduction).

#### 1.1.1 Statement

Although 4 Directions staff do see value in CNL’s intentions with using the term Reconciliation, we would also like to draw the proponents’ attention to the works of Wylie (2017), where the idea of ideological reconciliation is introduced. Wylie (2016) points to the ways in which the term reconciliation,

*“is widely contested on several fronts, including opposition to the implication of a return to a formerly harmonious relationship that may not have existed. Thus, some suggest a focus on conciliation rather than on reconciliation”.*





Although it is stated that Eldorado Nuclear Ltd. did not consult with Indigenous Rights Holders, it should be noted that Port Hope is indeed situated in the 1923 Williams Treaty Clause #2 Area, and the Gunshot (Johnson-Butler Purchase) Treaty Area (1788). This means that the Government of Canada (and thus the PHAI) have a legal Duty to Consult and Accommodate Indigenous Rights holders as affirmed by section 35 of the Constitution Act (1982).

### 1.1.2 Question

How are the infringements on Indigenous Treaty rights by Eldorado being [re]conciled for?

How are the consistent concerns raised by Indigenous communities identified in section 2.3 (page 46) of the provided report addressed through the proposed licence renewal?

### 1.1.3 Recommendation

4 Directions recommends that the proponent outline how Eldorado's infringements on Indigenous Treaty Rights are now being (re)conciled for; specifically, how Indigenous Inherent and Treaty Rights are being upheld through all three outlined phases (planning, implementation, maintenance and monitoring) of the PHAI.





## 1.2 Quotation

In the section titled *Indigenous Communities and Organizations*, it is noted that,

*“soon after the PHAI moved into Phase 2 in 2012, the Mississauga communities of the Williams Treaties First Nations began receiving regular updates about the projects at their request”*

*(page 37, Section 2.1).*

### 1.2.1 Statement

When approaching meaningful engagement with Indigenous Knowledge Systems (IKS), it is important that partnerships are formed at the beginning of a project. To “plugin” Indigenous Knowledge as an afterthought is paternalistic and not leading to ethical spaces of engagement. As noted by Littlechild et al (2021), “teaching[, and engaging with] Indigenous content requires an approach grounded in transformational change, not one focused on an “add Indigenous and stir” pedagogy.” Ensuring that Indigenous knowledge systems are ethically engaged with from the beginning of project planning is paramount for beginning meaningful work in a good way (Ermine, 2007).

### 1.2.2 Question

Why were Williams Treaties First Nations not involved in the planning phase of the PHAI?

### 1.2.3 Recommendation

4 Directions recommends that CNL clarify if and how Indigenous Rights holders were identified and invited to participate in the planning phase of the PHAI.





### 1.3 Quotations

Under the Section titled *Phase 3: Maintenance and Monitoring Phase*, it is noted that:

*“Maintenance and monitoring will be conducted as required and will include such aspects as groundwater and leachate management, site control and access features (security fence maintenance), environmental effect monitoring and site and engineering performance monitoring”*

(Page 33, Section 1.4.3).

When speaking directly about the Port Granby Project, CNL staff note:

*The PGP will transition from Phase 2 (Implementation Phase) to Phase 3 (Maintenance and Monitoring Phase) within the 2022/2023 calendar year.*

*Restoration and rehabilitation activities, including tree planting activities, began in early spring 2022 and will continue until all restoration and rehabilitation activities are complete.*

*Phase 3 objectives will be accomplished through the implementation of the Port Granby Project – Phase 3 – Long-Term Management Plan. This plan [...] documents CNL’s long-term care requirements for the PG LTWMF, specifically, maintenance of the East Gorge collector system which collects the groundwater in that area [...].”*

(Page 66, Section 4.2.5).





### 1.3.1 Statement

As stated in the Water Declaration of the First Nations in Ontario (2008),

*“First Nations in Ontario’s treaty-making with the Crown created a relationship of rights for all parties [...]; First Nations in Ontario’s treaty relationships make certain that decision-making processes related to use and care of the waters is a right maintained by the First Nations and not handed over with the making of Treaties”*

*(Chiefs of Ontario, 2008; pp. 2).*

Establishing clear responsibilities regarding water is paramount in setting the tone when approaching relationship building. Under international policy like the United Nations Declaration on the Rights of Indigenous Peoples ([UNDRIP](#)), the right to self-determination of Indigenous Peoples leads to:

*“the right to freely determine our political status and freely pursue our economic, social, and cultural development. That means we have the right to exercise full authority as well as the responsibility given to our ancestors by the Creator to care for our relatives (creation), including the waters”*

*(Chiefs of Ontario, 2008; pp. 4).*

### 1.3.2 Question

How were Indigenous Rights holders included in the restoration and rehabilitation of the land? How will Indigenous Rights holders be involved in the monitoring of environmental and cultural effects?

### 1.3.3 Recommendation

4 Directions recommends that the proponent clarify how Indigenous Rights Holders will be involved in the monitoring and restoration phases of both the PHP and PGP, specifically as it pertains to groundwater, leachate, and environmental effect monitoring. Furthermore, clarification regarding how Indigenous Rights are engaged with and upheld through the discussed environmental protection requirements in section 6.9.3 (page 158) would be helpful.







## 2.0 Concerns Regarding the Environment

### 2.1 Quotation

*“During fall 2021, it was determined that actual conditions related to daily inputs of water to the inner harbour during dredging were different than anticipated during the EA, which resulted in a different set of conditions. Specifically, **levels of total and dissolved arsenic and uranium exceeded predicted levels in the water column.**”*

*CNL engaged the regulators [...] to ensure transparency and solicit feedback in the development of a path forward to ensure the ongoing protection of Lake Ontario and the Ganaraska River. This has resulted in the creation of a robust monitoring program to ensure the protection of the aquatic environment while dredging activities continue at Port Hope Harbour”*

(Page 142, Section 6.9.2).

#### 2.1.1 Statement

It is noted that CNL engaged with several governing bodies regarding water regulations for this particular case. As noted in section 1.3.1, and affirmed in Curve Lake First Nation’s Consultation and Accommodation Standards (2013), the Michi Saagiig attain their rights to make decisions regarding the protection of water, as reaffirmed in the (2008) Water Declaration.

#### 2.1.2 Question

How were Indigenous Rights holders engaged to ensure the ongoing protection of Lake Ontario and the Ganaraska River during the dredging of Port Hope Harbour?

#### 2.1.3 Recommendation

4 Directions recommends that further clarification is provided regarding how CNL engaged with and upheld Michi Saagiig Water Rights during the past dredging performance in Port Hope Harbour.





## 2.2 Quotation

*“As of July 1, 2022, 674,720 m<sup>3</sup> of historic LLRW has been transported and placed into storage at the PH LTWMF. A listing of the sites, their estimated waste volume as of July 1, 2022, and the revised estimate to be completed are provided below in Table 4. As can be shown in Table 4, waste volumes have increased significantly from original project estimates driven largely by the significant increase in small-scale site volumes, which have increased by 309 % over original estimates”*

*(Page 71, Section 5).*

CNL offers further discussion regarding these small-scale sites (SSS) later in the provided document, when it is stated:

*The Small-Scale Site (SSS) project involves the investigation of 5,878 sites in Port Hope, primarily residential properties, municipal roads and some commercial sites. As of April 2022, 1,111 exterior properties, 218 interiors and 98 road segments have confirmed historic LLRW requiring remediation under the current project cleanup criteria. Fewer than 100 sites have undergone remediation and the current projections for SSS is approximately 600,000 m<sup>3</sup> of historic LLRW waste to be transported and safely stored in the PH LTWMF.*

*In 2014, characterization surveys were initiated in five geographic campaigns to further define project scope. This Property Radiological Survey includes interior radon testing, interior and exterior gamma testing and soil sampling. As the survey advanced, it became apparent that the number of impacted sites had been significantly underestimated at approximately 375 properties.*

*(Page 88, Section 5.4).*





### 2.2.1 Statement

4 Directions staff raise some concern regarding the provided estimate discrepancies. The PHP's 300% increase in volume in and of itself is substantial; compounding this, it is noted in the executive summary that the LLRW levels at the PGP were also 25% greater than expected (Page 5). Given the level of uncertainty demonstrated by CNL, it is unclear how combining these projects will better improve preparedness for these extremely large margins.

### 2.2.2 Question

If it is realized that the initial estimate of impacted sites was significantly underestimated, by threefold, has it been proposed that the initial investigation parameters (e.g., scope of historic LLRW impacts) could have also been underestimated?

### 2.2.3 Recommendation

4 Directions recommends that CNL clarify how lessons learned regarding initial underestimations are being critically reflected on for this project, particularly considering the scope of impacts from historic LLRW.





## 2.3 Quotation

Throughout the report, there are several discussions regarding radiological monitoring of the PHAI.

*“Between 2017 and 2021, the new PH WWTP has discharged approximately 821,000 m<sup>3</sup> to Lake Ontario. PH WWTP effluent is monitored for a number of licensed parameters, including Total Suspended Solids, pH, Radium-226, total Aluminum, Arsenic, Copper, Lead, Uranium, and Zinc, as well as toxicity”*

(Page 86, Section 5.3).

Further, in sections 6.9.2.1 (Port Granby Project, Page 146) and 6.9.2.2 (Port Hope Project, Page 149), CNL discusses radiological monitoring in relation to the environmental effects of the PHAI projects.

### 2.3.1 Question

What are the long-term multi-generational health impacts from exposure to the identified contaminants (e.g., Radium-226, aluminum, arsenic, copper, lead, uranium, and zinc)?

### 2.3.2 Recommendation

4 Directions recommends that further transparency and clarification is provided regarding the long-term multi-generation health impacts from exposure to contaminants identified throughout CNL’s report.





## Summary of Recommendations

- 4 Directions recommends that the proponent outline how Eldorado's infringements on Indigenous Treaty Rights are now being (re)conciled for; specifically, how Indigenous Inherent and Treaty Rights are being upheld through all three outlined phases (planning, implementation, maintenance and monitoring) of the PHAI.
- 4 Directions recommends that CNL clarify if and how Indigenous Rights holders were identified and invited to participate in the planning phase of the PHAI.
- 4 Directions recommends that the proponent clarify how Indigenous Rights Holders will be involved in the monitoring and restoration phases of both the PHP and PGP, specifically as it pertains to groundwater, leachate, and environmental effect monitoring. Furthermore, clarification regarding how Indigenous Rights are engaged with and upheld through the discussed environmental protection requirements in section 6.9.3 (page 158) would be helpful.
- 4 Directions recommends that further clarification is provided regarding how CNL engaged with and upheld Michi Saagiig Water Rights during the past dredging performance in Port Hope Harbour.
- 4 Directions recommends that CNL clarify how lessons learned regarding initial underestimations are being critically reflected on for this project, particularly considering the scope of impacts from historic LLRW.
- 4 Directions recommends that further transparency and clarification is provided regarding the long-term multi-generation health impacts from exposure to contaminants identified throughout CNL's report.





## Closing Remarks

4 Directions staff are generally satisfied with the information provided within the Commission Member Document (CMD) from Canadian Nuclear Laboratories (CNL). As noted in the summary of recommendations, 4 Directions encourages CNL to provide further clarity regarding how Indigenous Inherent and Treaty rights are upheld throughout the planning, implementation and monitoring phases of this project.

We trust that this information aids in your engagement process and the next steps forward. If you have any questions, please do not hesitate to contact us.

Miigwetch,

A handwritten signature in blue ink, reading "Brodie Schmidt".

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## **Appendix C Additional Comments, Recommendations, Opportunities for Consideration**

The support team at Curve Lake First Nation (CLFN) would first like to acknowledge the level of engagement that has been ongoing between CNL staff working for the Port Hope Project and CLFN since 2021. Initially, the main reason for CLFN to have discussions with CNL was to discuss the potential change to the Port Hope Area Initiative (PHAI) clean-up criteria (which will not be covered in this licence application), but over the months, discussions have broadened and involvement of CLFN into the Port Hope project activities have increased.

In 2021, CNL and CLFN have started monthly meetings, which has been an opportunity for both CNL and CLFN to build the relationship. CNL has also hired more staff to help lead consultation activities with Indigenous communities, created a new position of Director of Indigenous Relations in 2021 and a new position of Senior Advisor in January 2022. CLFN is eager to know more about these roles and what are CNL plans for building a stronger Indigenous relations team. More and more, CLFN is involved in the review of documents, like the PHAI Indigenous and Communications and Engagement Reports, and in activities at the site, like archeology and environmental monitoring.

We are confident that the relationship will keep deepening over time and that CNL is eager to work with the Nation, Elders and Knowledge Keepers in order to improve CNL processes and plans.

### **1. CMD22-H13-1 Review of Canadian Nuclear Laboratories (CNL) Application to renew its waste nuclear substance licence for the Port Hope Project.**

We appreciate the effort made in the land acknowledgement as well as the level of details that is provided in the executive summary; however, more critical feedback is provided in Appendix A. CLFN appreciates section **1.2.1 Management Structure** which explains the different roles of AECL, CNL, CNSC as well as CNEA.

We acknowledge that section **1.3 PHAI Project Description** provides historical context about the site and previous radium refining activities. This type of information allows us to understand the reason for CNL to conduct the PHAI today, and it also provides transparency about past wrongs.

The fact that the PHAI is a community-requested project makes it socially needed, and CLFN appreciates the efforts that are made by CNL with property owners and community members to have their feedback. We also appreciate that CNL is not stopping there, and that it continues to engage Indigenous communities who, although not living in proximity to Port Hope, have used the lands and waters around the site for time immemorial, and will continue to do so for generations to come.





### **Section 1.4.3 Phase 3: Maintenance and Monitoring Phase**

**Question:** We would like to know more on the Special Circumstances Protocol developed for this license, mentioned on pg. 34 of this CMD. How will indigenous communities be involved in relation to the development of this program?

### **Section 2 Indigenous communications and engagement**

We would like to mention that some of the Indigenous communications and engagement section was shared with us prior to its submission in the format of a PHAI Indigenous Communications and Engagement Supplementary Report. Even though most of CLFN comments have not been integrated into this CMD, we understand that CNL plan is to do so.

We appreciate the transparency that is provided in this section about where CNL is in terms of engagement now, and where they plan to go in the future, for instance, by integrating Indigenous knowledge into CNL project planning and activities. CNL is already doing some of this work: CLFN has participated in identifying trees of importance to the Nation before tree removal at the Lions Recreation Park in Port Hope. We also recognize that CNL is going above and beyond regulatory requirements by following the requirements of REGDOC-3.2.2, even though the PHAI is not a Class 1 or Class 2 nuclear facility.

**Comment:** Before presenting Indigenous communities and organizations in section 2.1, we would appreciate CNL to provide a rationale about the communities identified, and the different levels of involvement based on Indigenous rights.

**Comment:** Sections 2.1.1 to 2.1.11 describe activities with Indigenous communities. We would appreciate CNL to differentiate rights holders, interest holders, and Indigenous organizations.

**Comment:** We appreciate that CNL noted the concerns that have been raised by CLFN and other Indigenous communities in section 2.3 Indigenous Engagement. In this same section, under Archeology Program, CNL mentions that in 2019 CLFN participated in the launch of CNL's training program on the archeology protocol. CNL should also add the involvement that is ongoing between CLFN and CNL on the Archeology program and future participation of CLFN in archeological investigations.

### **Section 4.2.2 Design**

**Comment:** We are concerned regarding the 4:1 slope change for the engineering containment mound. A large reduction in the safety factor of the engineered design slope is not ideal and increases the safety risk to the environment and the future of the lands, waters, and peoples surrounding the area. (pg. 57)



**Question:** Does CNL plan on making similar engineering design changes to compensate for the increased waste volume anticipated for Port Hope? If so, it is important to ensure proper dissemination of this design change, to the public and Indigenous communities in a timely manner.

**Question:** Are designs based on past proven designs for this project? (pg. 57)

We appreciate the information provided in section **4.2.4 Remediation of the former Port Granby Waste Management Facility**, where CNL describes lessons learned, like the unanticipated waste types and rainfall events, and operational changes that have been made to mitigate the impacts and risks associated with these issues.

**Comment:** We would appreciate to have more information on the unanticipated increase in waste volume and how they plan to mitigate this for the Port Hope project. (pg. 60)

## **Section 5 Port Hope Project**

### **5.2 PH LTWMF**

**Question:** How does this engineered design differ from that of Port Granby? (pg. 74)

**Question:** How much, proportionally out of the total amount of waste received, is expected to be radioactive material waste at the Port Hope LTWMF? (pg. 81)

**Question:** Will Indigenous rightsholders be consulted during the design decision making for restoration end of phase 2 and site utilization phase 3? (pg. 82) CNL only mentions 'stakeholders' being consulted.

#### **5.3.2.1 Discharge Criteria**

**Question:** Why is CNL using monthly mean concentration as a representative limit comparison, should release limits not be a maximum concentration? How are these sampling discharges measured? (pg. 86) If CNL is using averaged samples, then there should be inclusion of standard deviations and outliers for the dataset, to strive for full dissemination of scientific information collected.

## **Section 6.9 Environmental Protection**

**Question:** Could CNL explain the difference between action levels and trigger levels?

**Comment:** CNL mentions a potential burial site but refers to this information as 'anecdotal' (pg. 146). Referring to oral history, or any disseminated information that is not 'western science'

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as ‘anecdotal’ undermines Indigenous knowledge and moves away from the need to incorporate Indigenous knowledge systems with western science in a meaningful way.

#### **6.9.2.2. Port Hope Project**

**Question:** We would like to better understand the sampling methods by CNL. How many samples are obtained at each location, and how many sampling events happen per calendar year? (pg. 153)

#### **6.9.2.3 WNSL-344 Site Historic Radiological Measurements**

**Question:** What is the administrative level referring to in Figure 61?

**General comment:** In almost all instances, figures provided in this technical document need to be enhanced with visual aids such as labels, arrows, etc. as well as more thorough caption descriptions to help readers, including the public and Indigenous peoples, have a strong understanding of the material.



## **2. CMD22-H13 Review of Canadian Nuclear Safety Commission Member Document for the application to renew the Port Hope Long-Term Low-Level Radioactive Waste Management Project**

### **Executive Summary**

**Comment:** CNSC uses cubic metres referring to PH waste and tonnes for PG waste (pg. 2). For consistency, waste should be measured and referred to at both project sites using the same units.

### **3.3 Operating Performance**

**Question:** When will CNL be replacing the reverse osmosis membrane? This type of corrective activity should be done right away for the practice of ALARA, and the protection of lands, waters, and peoples. (pg. 25)

**Question:** How did CNL determine that the original toxicity sample results were an anomaly and invalid? (pg. 26) For transparency and scientific best practice, sampling results must be taken as is unless there is proven malfunction with the equipment/reader.

**Question:** How often will CNSC review CNL's environmental monitoring program results if they are no longer obligated to submit quarterly reports? (pg. 28)

### **3.5 Physical Design**

**Comment:** We recommend CNSC use arrows, labels, and more descriptive figure captions to enhance visual aids (pg. 32).

### **3.7 Radiation Protection**

**Comment:** CNSC mentions radiological doses 'at the PHAI', CNSC should clarify which license they are referring to when discussing radiological doses. (pg. 40)

### **3.9 Environmental Protection**

**Comment:** In review of both CMD's relevant to this license renewal, there may be discrepancies of dates (years) between CNL and CNSC in reference to when there was use of the old WW treatment systems during heavy rainfall events (pg. 54).

**Question:** It is difficult to comprehend the inclusion of monthly mean and maximum monthly mean, could CNSC provide an overview of how the effluent is monitored and sampled? (pg. 55)



**Comment:** There are discrepancies between annual averages presented for certain COPC's but cross-referenced against monthly mean limits, these should be presented in the same units/time-scale (Table 13 and 15) (pg. 56).

### 3.14 Packaging and Transport

**Question:** CNSC mentions that prescribed routes were established in consultation with residents of Port Hope but were Indigenous rightsholders also consulted? (pg. 71)

### 4.0 Indigenous and Public Consultation

**Comment:** There is no mention of Truth and Reconciliation actions or Indigenous knowledge systems throughout this section. This section provides CNSC with a great opportunity to discuss how both CNSC and licensee plan on incorporating Indigenous Knowledge Systems in their future work, relevant to this licensing period.

**Comment:** There is a disconnect between the paragraph under section 4.1 Indigenous Consultation and Engagement and the rest of the text of that section. The first paragraph mentions duty to consult and accommodate requirements as well as section 35 of the Constitution Act. However, the rest of the section contains no information about whether this licence renewal raises the Duty to Consult and Accommodate and whether the licence could adversely impact Indigenous and/or Treaty Rights.

**Comment:** In section 4.1.1 CNSC mentions that "Based on the information received in the proponent's application, this licence renewal with amendments could be of concern or direct interest to Indigenous Nations and communities. CNSC staff determined that CNSC's REGDOC-3.2.2 would apply to this licence renewal." Please provide more details on why REGDOC-3.2.2 applies to this licence renewal. Is it because some of the activities undertaken by CNL in this licence renewal could have potential impacts on Aboriginal and/or treaty rights? CNL mentions on pg. 36 of their licence application that "although the PHAI is not a Class 1 or Class 2 Nuclear Facility, the PHAI Indigenous Communications & Engagement Program will be guided by the requirements in CNSC regulatory document REGDOC-3.2.2 Indigenous Engagement". In this regard, it seems that REGDOC-3.2.2 does not apply to CNL, but that CNL decided to raise the bar in terms of engagement with Indigenous communities.

**Comment:** In section 4.1.1, CNSC mentions that "CNL has indicated that topics of interest and concerns brought up to date include environmental protection and monitoring, the cleanup criteria amendment, economic opportunity, and heritage resource protection. To date, CNSC staff have not been made aware of any concerns regarding potential new impacts on Indigenous and/or treaty rights specific to the licence renewal and amendment expressed by Indigenous Nations and communities through CNL's engagement activities."



This statement indicates that CNL has been made aware of concerns raised by Indigenous communities, but CNSC staff has not verified whether concerns have been responded to or not. Please add information on how CNSC staff is making sure that concerns are appropriately responded to by CNL, and if not, how CNSC staff plans to ensure that they will be addressed. CNSC staff mentions that there is no concern regarding potential new impacts. Could CNSC explain what are those potential new impacts?

Whether or not this licence raises new potential impacts, the fact remains that PHAI activities still create impacts on CLFN rights. As long as nuclear activities are happening on CLFN territory, there will always be potential adverse impacts to Indigenous and/or treaty rights. Instead of stating that the licence will not have new potential impacts, CNSC should rather insist on how the current impacts will diminish over time, and what measures CNSC and CNL put in place to mitigate those impacts.

## **Appendix F: PHAI EPR Report**

### **2.2.3 Effluent and emissions control monitoring**

**Question:** How does the diffuser interact with the environment around it? How much water is used in the dilution process? Are there any adverse effects on the surrounding aquatic environment from the diffuser technology/process? CLFN would like to learn more information on the diffuser technology (pg. 17).

#### **3.2.1.2 Port Hope Harbour**

**Comment:** The use of controls to compare results would be beneficial to understand the cause and effect, in terms of isolating the effect (pg. 24). This seems to be an issue where sampling results are abnormal, CNL and CNSC commonly conclude that it is due to an unrelated cause and effect, however there is no scientific evidence in these conclusions.

**Comment:** Please indicate on the map (Figure 3.2) where most of the dredging is occurring, seems as though the sampling location nearest the dredging is much more elevated, therefore should sampling not be confined to this area? Could other areas be used as a control? (pg. 25)

### **Terrestrial and aquatic environment**

**Comment:** We would appreciate more information on maximum uranium concentrations in Brand Creek as only Lake Ontario data is shared here (pg. 35).

#### **3.2.2. Port Granby Project**

##### **Aquatic and Terrestrial Environment**

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**Comment:** The Bluff seepage is a concern, where it is exceeding provincial and federal guidelines. We would strongly suggest that sampling should continue beyond a year if sampling results are still exceeding guidelines (pg. 55).