



Oral presentation

Exposé oral

**Written submission from
Kitchissippi–Ottawa Valley
Chapter, Council of Canadians**

**Mémoire du
Conseil des Canadiens, chapitre
Kitchissippi–Ottawa Valley**

In the Matter of the

À l'égard des

Canadian Nuclear Laboratories (CNL)

Laboratoires Nucléaires Canadiens (LNC)

Application from the CNL to amend its Chalk River Laboratories site licence to authorize the construction of a near surface disposal facility

Demande des LNC visant à modifier le permis du site des Laboratoires de Chalk River pour autoriser la construction d'une installation de gestion des déchets près de la surface

**Commission Public Hearing
Part 2**

**Audience publique de la Commission
Partie 2**

May and June 2022

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PEOPLE. PLANET. DEMOCRACY.



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Submission to CNSC re: CNL's application to amend its license to allow for the construction of a Near Surface Disposal Facility (Ref. 2022-H-07)

We are opposed to approval of this application for several reasons.

The name *Near Surface Disposal Facility* (NSDF) is misleading. It will start as a hole in the ground but even the applicant does not have confidence in how deep they can go because of the geology of the area, and it will ultimately rise up to seven (7) stories above ground.

The International Atomic Energy Agency says that only Very Low Level Radioactive Waste (VLLW) can be put in an above-ground landfill-type facility. CNL has publicly claimed that only "low-level" waste (LLW) will go into this landfill, but it will certainly be the repository for materials contaminated by Cobalt-60, an isotope with many medical and other applications which is a high-energy gamma-ray emitter. The IAEA says high-activity Cobalt-60 is Intermediate-Level Waste (ILW) and must be stored underground. ¹

As the Canadian laws stand now, each industry can label its waste at the classification it chooses. It is easy to see that an industry might classify its waste at a less hazardous level for economic and social license reasons. This is especially true if there is no independent oversight body that ensures industry is operating in the best interests of the current and future generations, who will have to coexist somehow with the industry's toxic legacy. As Nuclear Waste Waste says, neither the old federal framework, nor the new proposed federal radioactive waste management and decommissioning policy, establishes a "national standard for the characterization of radioactive waste and maintenance of a verified inventory." ²

If we can't trust CNL to be honest and above-board about Cobalt-60, how can we trust anything they say? There is so much mixed temporary waste already stockpiled on the Chalk River site: it is impossible to ascertain the precise materials destined to be initially loaded into the proposed "NSDF" above-ground landfill-type facility.

Despite many appeals to consider alternate sites, and the IAEA standard that the International Atomic Energy Agency (IAEA) siting is a "fundamentally important activity in the disposal of radioactive waste," ³ the "facility" is still proposed for a terrible location. To begin with, every Ottawa Valley resident knows that the site is tornado and earthquake prone. Furthermore, the proposed site is located amidst wetlands and streams that flow or seep into the Kitchissippi-

1 <https://www.theenergymix.com/2022/01/16/new-radioactive-waste-plan-poses-millennia-of-risk-for-ottawa-river-communities/>

2 https://nuclearwastewatch.weebly.com/uploads/1/4/9/1/14913256/radioactivewastepolicyreview-briefer_march2022_draft.pdf

3 https://www-pub.iaea.org/MTCD/publications/PDF/Pub1637_web.pdf

Ottawa River. There have already been industry leaks of Tritium in the upper part of the Kitchissippi-Ottawa River watershed. Although Tritium decays fairly rapidly and is a low-energy emitter, the project proposal anticipates ongoing release into the Ottawa River for many years. This radioactive material increases risk of internal physiological impacts to all life forms. Both the seepage and vapor pose risks to human, soil, air and water health.

Reviewing the materials, it is not even clear if the proposed NSDF will have space for all the waste currently at Chalk River, including that which has been transported onto the site and is being held in temporary storage. It certainly will not be adequate to accept the additional waste that will be generated and transported there during the time it takes to build the facility and clean up the existing stockpile. In short, the proposed landfill area is not big enough to solve the problem of LLW in Canada, yet the application never makes this clear.

It is important to mention that transportation of all this waste to a central location is another issue that must be taken into consideration. Management of this, and resolution of the issues it raises, are beyond the scope of the current application. This issue is being addressed separately though inadequately in two other ongoing policy development processes. At the moment, it is simply a problem with no true place in this proposal application even though it is central to the viability of the project. Transportation should have been more fully identified in the application.

Clearly, what is needed is a more comprehensive and much better solution. As residents of Renfrew County, we can't help suggesting that there would be far greater economic benefits to the surrounding community if the proposal goes back to the drawing board. There is certainly a better location and an improved design, if the proposal had not been based on finding the cheapest, quickest solution. ⁴ A more environmentally and socially fiduciary option would also mean a much greater chance of social license.

Meanwhile, the industry is conducting its own public relations campaign urging Canadians to speak up to your Commission about how much they support this proposed, so-called "Near Surface" nuclear waste dump.

This public relations campaign is totally misleading because the most controversial elements of CNL's current proposal are not shared with the public. Other known facts not discussed include, for example: their construction is designed to stand up for a few hundred years at most, while some anticipated waste will be toxic much longer, and there is a real threat that the functionality of the cover could diminish over time, resulting in something called "the Bathrub Effect," where the dump fills up and all contents spill out into the surrounding wetlands and streams. Our neighbours in Concerned Citizens of Renfrew County and Area have produced an excellent document that shortlists major hidden facts about the problems with this proposal. ⁵ We have investigated their findings and are in accord. Given the long life of some of this highly hazardous and toxic waste, and the shoddiness of some aspects of the

4 <https://concernedcitizens.net/2020/11/03/aecl-cnl-contract-excerpt-all-wastes/>

facility's design, as well as the poor choice for location, the entire public information campaign is desperately opaque and extremely undemocratic.

Why is CNL getting away with this? That the CNSC has **not** condemned CNL's public marketing campaign reinforces the widely felt view that the Commission is a captured regulator.⁶ That the parliamentary administrative and oversight entity for the CNSC, Natural Resources Canada, has not rebuked the proponent and the regulator for apparently deceiving the public reinforces the widely felt view that NRCan is not capable of fulfilling its double mandate of supporting the industry, while also being a true advocate for human and environmental health in regards to the highly dangerous wastes produced by this industry.⁷

Nowhere is it more evident that both CNSC and NRCan are failing to protect human and environmental rights than in the area of Indigenous Peoples' rights. The Algonquin Anishinabeg are the rightful title holders of the land on which it is proposed to construct this nuclear waste landfill facility. In fact, their territory is entirely untreated and unceded, and they were never even consulted when the nuclear industry set up shop in the Kitchissippi watershed. They are fully entitled to rely on the Honour of the Crown insofar as their right to valid, respectful and fulsome engagement and consultation, which is intended to fulfil the promise of "Free, Prior and Informed Consent" identified in the 2018 *Ten Principles* policy document prepared by the current government.⁸ Their rights are further strengthened by the passage of the *United Nations Declaration on the Rights of Indigenous Peoples Act*, (2021) (Canada's UNDRIP Act).⁹

In our recent brief to the Minister of Natural Resources Canada concerning his *Draft Radioactive Waste Management and Decommissioning Policy*, we discussed at length the issue of valid engagement and consultation with Indigenous Peoples as a prerequisite for any Crown entity. **Given this government's commitment to Reconciliation, we particularly critiqued *your agency's* continued reliance on the discredited *Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult - March 2011 (2011 Guidelines)*.**¹⁰ These *2011 Guidelines* promote a tick-the-boxes, log-the-attempts-to-communicate approach to consultation. This approach totally disrespects Indigenous culture and Peoples in their own territories. It undermines any form of dialogue aimed at a "Free, Prior and Informed Consent" process, which ***might otherwise*** generate a positive win-win outcome.¹¹ It also contradicts a body of case law precedents.

5 <https://concernedcitizens.net/2022/02/21/critical-flaws-errors-and-omissions-in-cnsc-staffs-ea-report-and-case-to-approve-the-chalk-river-mound-2/>

6 <https://www.youtube.com/watch?v=qlRI-3eWp7s>

See also: <https://canadians.org/analysis/dont-let-nuclear-industry-decide-how-manage-radioactive-waste>

7 <https://kovcouncil.files.wordpress.com/2022/04/submission-from-kitchissippi-ottawa-valley-chapter-coc-to-nrcan-re-draft-rad-waste-decompolicy.pdf> Pgs 12 -13.

8 <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

9 <https://laws-lois.justice.gc.ca/eng/acts/u-2.2/page-1.html>

10 <https://www.rcaanc-cirnac.gc.ca/eng/1100100014664/1609421824729>

11 <https://kovcouncil.files.wordpress.com/2022/04/submission-from-kitchissippi-ottawa-valley-chapter-coc-to-nrcan-re-draft-rad-waste-decompolicy.pdf>

As a non-governmental Canadian organization that strongly supports Indigenous rights, justice and Reconciliation, we are ashamed that CNL followed your advice and employed those backward *2011 Guidelines*. **Your agency, CNSC, recommends these 2011 Guidelines to proponents as a foundation for conducting “Duty to Consult” processes with Indigenous Peoples on your behalf to fulfil your “Honour of the Crown.”** Your reliance on this policy can be seen in your *REGDOC 3.2.2, Indigenous Engagement*. Reliance on this REGDOC is specifically referenced in the Introduction to CNL’s *Indigenous Engagement Report: Near Surface Disposal Facility (NSDF) Project (232513130 REPT001, Revision 5; May 28, 2021)*.¹² A mere glance at the tables and content of that CNL report shows just how extensively they employed the ticked-boxes/logbook approach to Indigenous so-called “engagement and consultation.”

It is no wonder that your agency (the CNSC) and CNL have been cold-shouldered by the Algonquin Anishinabeg Nation Tribal Council (AANTC). AANTC speaks on behalf of the vast, vast majority of the legitimate title-holders of the territory on which CNL and Chalk River Laboratories, and all related previous nuclear industry operators in that area of Renfrew County are or have been located. They reject your flawed process.^{13 14 15}

In our chapter’s submission to the Minister of Natural Resources Canada cited above, we discuss, at some length, issues that Indigenous leaders have had with both the Nuclear Waste Management Organization and your agency, CNSC, as well as the failure of the Natural Resources Canada to ensure that these two organizations uphold the Honour of the Crown. We also delve extensively into some pertinent case law decisions and opinions that relate to Duty to Consult and the principles of Free, Prior and Informed Consent, as they intersect with the social and political priority of Reconciliation.

In reviewing these cases, we rely heavily on the work of Bruce Mclvor, an Indigenous Rights law expert of national and international renown, who has recently published a book on this topic called *Standoff: Why Reconciliation Fails Indigenous People and How to Fix It*.¹⁶

Mclvor also comments on case law that has some bearing on the CNL proposal and its less-than-desirable efforts at engagement and consultation. At the outset of this work, Mclvor goes back and forth on precedents related to “cumulative” effect prior to new “substantial” development, and whether that creates an imperative for a rigorous consultation process. He promotes the view that this imperative exists, because at the heart of all these efforts is the continuing obligation of the Crown to demonstrate true Honour in all its dealings with Indigenous Peoples, especially in light of the national objective of Reconciliation. This situation of cumulative impact exacerbated by substantial new development is precisely what

12 <https://www.cnl.ca/wp-content/uploads/2022/02/NSDF-Indigenous-Engagement-Report-Rev-5.pdf>

13 <https://cela.ca/wp-content/uploads/2021/02/Request-Regulation-Enable-Indigenous-Jurisdiction-under-IAA-Ltr-Min-Wilkinson.pdf>

14 <https://ceaa-acee.gc.ca/050/evaluations/document/135033>

15 <https://kovcouncil.files.wordpress.com/2022/04/04012022-abl-to-samure.pdf>

16 Mclvor, Bruce. *Standoff: Why Reconciliation Fails Indigenous People and How to Fix It*. Nightwood Editions.

Kebaowek Algonquin First Nation highlights in their October 2019 submission “*Kebaowek First Nation Comments on the CNSC’s Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2018.*”

Elsewhere in *Standoff*, Mclvor drops the other shoe:

“It is no longer acceptable for governments and companies to take a minimalist approach to the duty to consult on the assumption that a First Nation is unlikely to challenge them in court, and that even if a court decides against them, they will get a second chance to make it right. They now face the real possibility of projects being cancelled and all the loss and uncertainty that would result.”¹⁷

It is not too late for your Commission to consider the request of the Kebaowek FN and the Algonquins of Barriere Lake. It is the right thing to do. We support suspending all proceedings on developments at Chalk River, and that CNSC/CNL sit down and talk with the rightful titleholders, the Algonquin Anishinabeg Nation and all its communities.¹⁸ Relying on consultation efforts with the primarily nonstatus, newly formed Algonquins of Ontario is both wrong and destined to create trouble.

As noted above, we have already written to Natural Resources Canada Minister Jonathan Wilkinson to ask him to demonstrate the Honour of the Crown by embarking in discussion with your agency about the need to enhance your cultural competency. There is need for a better fit between your knowledge of Indigenous rights and culture, relevant jurisprudence, current engagement and consultation policies, and other matters, with the current government’s stated “highest priority” of Reconciliation between Canada and the original Indigenous Peoples of this land.

The deficits in valid Indigenous consultation should be sufficient to abort this hearing. Up to now, the Commission has rejected that request but you can still do the right thing. **At a minimum, the shortfall we have outlined should overturn CNSC’s staff endorsement of the project, because nothing is more important than the Honour of the Crown and this has not been demonstrated through leaning on discredited policy.** An overhaul of the Commission’s policy and practice of Indigenous engagement and consultation is required, moving towards implementation of the Reconciliation-centred *Ten Principles* policy guidelines, which include “Free, Prior and Informed Consent” as a centrepiece of the United Nations’ *Declaration of the Rights of Indigenous Peoples*.

Nonetheless, before we close, we want to draw your attention to some other cogent material that underscores the need for this proposal to go back to the drawing board. These pertain to Canada’s commitment to uphold the standards established by the IAEA. We are not experts in radioactive nuclear waste science regulation, however we honour the validity of the conclusions reached by our colleagues at Concerned Citizens of Renfrew County and Area

17 Mclvor, Bruce. Op.Cit. Pg. 119.

18 <https://kovcouncil.files.wordpress.com/2022/04/136150e.pdf>

(CCRCA). CCRCA has been advocating for decades on behalf of us and our Ottawa Valley neighbours regarding human and environmental health on nuclear industry waste issues.

CCRCA's research documents that an earlier inventory of the waste destined for this above-ground facility "is well described in *Annex III, Origin and Types of Radioactive Waste*, in the IAEA's *General Safety Guide GSG-1, Classification of Radioactive Waste*." ¹⁹ That inventory indicates that research reactor waste, disused radioactive materials, and waste from research facilities are on site, and that this material is intended for the proposed (and misnamed) NSDF. Further, this inventory includes some long-lived alpha emitting waste from experimental research projects that is substantially different from "the typical waste generated by industrial plants." Much of this material should be classified as Intermediate Level Waste (ILW), which the IAEA says must be secured tens of meters or more below the ground surface. Some of the landfills' anticipated contents should be labelled "High Level Waste," nearly all of which (by volume) will remain hazardous and radioactive for more than 100,000 years.in some circumstances." The CCRCA communication continues:

"It is evident that the NSDF Project was conceived in the absence of consideration of the characteristics and quantities of the radioactive waste at CRL and other federal nuclear research facilities. Neither the license application nor CMD 22-H7 contains information required under Section 3(1)(j) of the General Nuclear Safety and Control Regulations to wit: 'the name, quantity, form, origin and volume of any radioactive waste or hazardous waste' to be disposed of." Approval of the NSDF could result in a major waste of public funds, adverse health and environmental impacts, and embarrassment for Canada at the international level.' " ²⁰

We trust you will duly consider the arguments we have laid out and decide to send CNL back to the drawing board to do a valid engagement and consultation process, as well as find a better location, practice full transparency, establish certainty on waste classifications and materials that might be placed in this disposal facility, develop a safe transportation plan, and address all issues mentioned in this submission as well as the submission from the Concerned Citizens of Renfrew County and Area.

We would like to have the opportunity to meet with you in person at the hearing on May 31st, so we can discuss further with you why we – as Canadian settlers concerned about Indigenous rights and justice – are determined to do our bit to realize ReconciliAction. We see the nuclear industry's regulator having a crucial role in this highest of high Canadian social and political priorities. The practice of valid engagement and consultation with the true titleholders of this land is central to peace, order and good government, and to upholding the Honour of the Crown.

19 <https://concernedcitizens.net/2022/03/21/request-for-adjourment-of-nsdf-hearing-letter-to-cnsc-president/>

20 Concerned Citizens, Op.Cit. Footnote 4. Also CRL in this quote refers to Chalk River Laboratories, the intended property location for the CNL nuclear landfill dump, aka NSDF,