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**Written submission from the
Manitoba Metis Federation**

**Mémoire de la Fédération des
Métis du Manitoba**

**Regulatory Oversight Report for
Canadian Nuclear Laboratories
Sites: 2021**

**Rapport de surveillance
réglementaire pour les sites
des Laboratoires Nucléaires
Canadiens : 2021**

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Review of CNSC Regulatory Oversight Reports

Technical Review of the Regulatory Oversight Reports for Canadian Nuclear Laboratories (CNL) Sites: 2021

Manitoba Métis Federation

September 27, 2022



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Executive Summary

The Manitoba Métis Federation (MMF) has retained Shared Value Solutions (SVS) to undertake a review of the Canadian Nuclear Safety Commission (CNSC) 2021 Regulatory Oversight Report (ROR, “the Report”) to support us in ongoing communications with the CNSC, Canadian Nuclear Laboratories (CNL), and Atomic Energy of Canada Limited (AECL). The scope of the review was limited to the ROR components related to the Whiteshell Laboratories (WL) site in Pinawa, Manitoba, however, we provided an overview and comments on our outstanding concerns raised in previous ROR review submissions. The objectives of the review were to:

- identify where the Red River Métis’ rights, claims and interests overlap with and may be impacted by the information and findings in the Report;
- identify environmental, technical, or regulatory issues with the ROR, and provide recommendations on where and how Red River Métis’ rights and interests may need to be better accommodated through revisions and additions to the Report;
- identify issues and challenges with the Report that will require ongoing engagement and consultation with the MMF on behalf of the Red River Métis; and
- identify outstanding concerns which have not yet been resolved through the Regulatory Oversight process.

Based on Métis traditional knowledge data collected from the Red River Métis and shared with the MMF, it is apparent that the WL site is within a region where the Red River Métis have a longstanding and well-established record of historic use and occupancy, as well as ongoing current use.

Using the results of the ROR review, the MMF has provided recommendations that focus on opportunities for the CNSC to improve involvement, inclusion and consultation with the Red River Métis on monitoring/oversight for the WL facilities. Where applicable, we have also provided guidance on best practice mitigations, management and monitoring.

Overall, the MMF is concerned about the continued lack of resolution to comments, issues and recommendation raised by the MMF through the ROR process in previous years. We do not believe this process functions as intended and does not adequately contribute to meaningful resolution and dialogue.

The following is a summary of our recommendations, again noting our focus on the WL site specifically:

- CNSC and CNL must identify a meaningful pathway forward to resolve the ongoing security issue at the WL facility, demonstrating transparency in this process.



- CNSC must perform an audit and assessment of methodology employed in 2020 (e.g. remote inspections and verification activities, desktop review) to identify gaps or limitations in information used in the oversight of CNL facilities, and assess the appropriateness of the 2020 remote inspection approach prior to future use.
- Discuss with the MMF the source(s) of downstream radionuclides from the WL site, as well as options for improved source control and monitoring.
- Update the Whiteshell Laboratories Comprehensive Study Report to include the impacts of decommissioning, particularly in light of the possible in situ entombment of the WR-1 reactor. The focus of the update needs to be on remaining hazards and the potential dose to the public and potential future users of the land.
- The CNSC Independent Environmental Monitoring Program needs improvement overall to fulfill its objectives, including a serious effort made to improve impartiality, the inclusion of MMF monitoring data, and consistency in monitoring. The MMF requests having input on the design, implementation and interpretation of results for the next sampling program for the WL site.
- Continue discussions between MMF and the CNSC, regarding the long-term implications of decommissioning of the Whiteshell Laboratories site, including plans for transport and storage of waste.
- The MMF's input should be an integral part of land use planning and the definition and condition of the WL site in its final state. The CNSC should ensure that MMF input is facilitated and integrated into all planning phases of decommissioning for the WL site.
- The CNSC must identify a transparent pathway to illustrate effective and meaningful issue resolution.

In summary, we suggest that the above recommendations, as well as those outlined in Appendix A-D, be the focus of subsequent meetings between the MMF and CNL, AECL and the CNSC.



1.0 Introduction

The Manitoba Métis Federation (MMF) has retained Shared Value Solutions (SVS) to undertake a review of the Canadian Nuclear Safety Commission's (CNSC) Regulatory Oversight Report (ROR or "the Report") for Canadian Nuclear Laboratories (CNL) to support the Manitoba Métis in ongoing communications with CNSC, CNL, and Atomic Energy of Canada Limited (AECL). The differentiation between these organizations is that AECL is a federal Crown corporation that receives funding for nuclear science and technology. The AECL has a long-term contract with CNL to fulfil their mandate, which is to "enable nuclear science and technology and protect the environment by fulfilling the Government of Canada's radioactive waste and decommissioning responsibilities," (AECL, 2018). AECL owns all CNL sites and liabilities, but CNL is responsible for day-to-day operations and maintenance (CNL, 2019). CNSC is a regulatory body that oversees and compels AECL, as the owner of the liability of CNL, to "regulate the use of nuclear energy and materials to protect health, safety, security and the environment," (CNSC, 2014).

The scope of the review was limited to the ROR components related to the Whiteshell Laboratories (WL) site in Pinawa, Manitoba, however, we provided an overview and comments on outstanding concerns raised in previous submissions of ROR reviews. The objectives of the current review were to:

- identify where the Red River Métis' rights, claims and interests overlap with and may be impacted by the information and findings in the Report;
- identify environmental, technical, or regulatory issues with the ROR, and provide recommendations on where and how Red River Métis' rights and interests may need to be better accommodated through revisions and additions to the Report;
- identify issues and challenges with the Report that will require ongoing engagement and consultation with MMF on behalf of the Red River Métis; and
- identify outstanding concerns which have not yet been resolved through the Regulatory Oversight Report process.

As part of the review, SVS evaluated comments and recommendations raised by the MMF in past submissions to the ROR process, noting whether issues had been Addressed, Partially Addressed or Not Addressed. Further, we provided analysis of the 2021 ROR, examining the activities and information described in the report and supplementary materials to understand how they intersect with and may impact the rights, claims, and interests of the Red River Métis. The review assessed the adequacy of the information provided, including mitigation, management, and monitoring plans; assessed the intersection of past, current and future regulated activities described in the ROR on the Red River Métis' rights, claims and interests; and evaluated the incorporation and consideration of Métis local knowledge, traditional knowledge and land use in the Report.



Using the results of the review, the MMF provided specific recommendations to address the identified issues and concerns regarding Red River Métis’ values, rights, claims and interests which stem from potential impacts from the past, present and future management of the WL site. Due to the nature of the ROR, as a high-level summary of regulated operations, our recommendations focus on opportunities for the CNSC, AECL and CNL to improve involvement, inclusion and consultation with the MMF on monitoring and oversight of the WL facilities. Where applicable, we have also provided guidance on best practice mitigations, management and monitoring as they relate to the Manitoba Métis’ rights, claims, and interests.

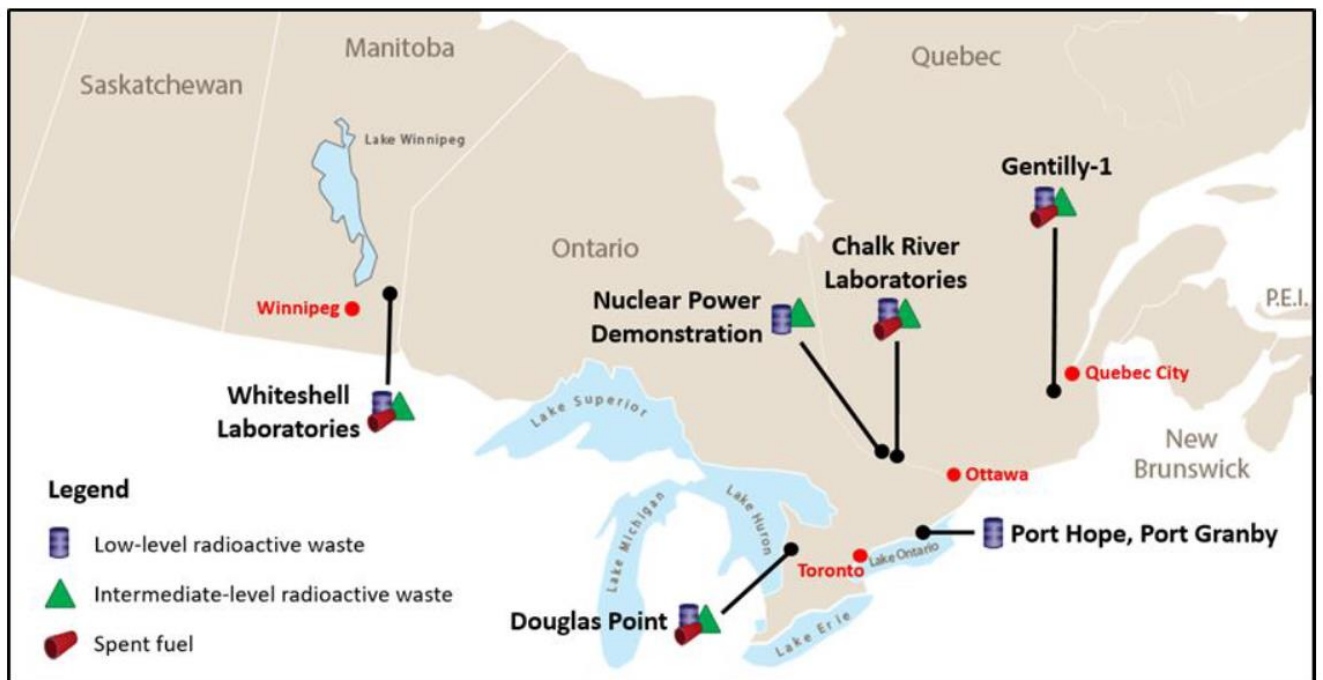


Figure 1. Nuclear sites operated by CNL (CNSC, 2019a)

1.1 Regulatory Process

All federally regulated nuclear facilities are legislated by the CNSC. The sites at which these facilities are located require licences to carry out the operations and activities of the regulated facilities. The CNSC evaluates licence applications and grants licences once the site proponent completes a licensing application and meets all regulatory requirements. CNL operates several licenced sites across central Canada focusing on research related to nuclear technologies. These include technologies and related research evaluation for nuclear power generation, waste disposal, health and safety.

Each year, the CNSC completes a ROR, which presents an assessment of performance at all CNL sites on 14 safety and control areas (SCAs). The CNSC’s assessment process focuses on radiation protection,



environmental protection, and conventional health and safety; however, all SCAs are assessed by the CNSC, including the following:

1. Management system
2. Human performance management
3. Operating performance
4. Safety analysis
5. Physical design
6. Fitness for service
7. Radiation protection
8. Conventional health and safety
9. Environmental protection
10. Emergency management and fire protection
11. Waste management
12. Security
13. Safeguards and non-proliferation
14. Packaging and transport

The CNSC bases its assessments on site inspections, technical assessments, reviews of reports from CNL, reviews of events/incidents, and ongoing communication with CNL. The CNSC intends the ROR to be a summary of its oversight activities to ensure that CNL meets all requirements of licences it currently holds.

1.2 Whiteshell Laboratories Background

CNL is responsible for the operations and management of the Whiteshell Laboratories site. CNL operates the site through a Government-Owned Contractor-Operated model, whereby the assets and facilities are owned by the AECL but the operations and management fall to the contractor (CNL). Under this model, AECL retains ownership of the lands, assets and liabilities associated with CNL's licenses, including environmental remediation and other liabilities at the site (CNSC, 2019a). Ultimately, as an agent of the Crown, the responsibilities/liabilities of AECL are the responsibilities/liabilities of the Crown.

The WL site hosts the Whiteshell Reactor #1 (WR1), SLOWPOKE demonstration reactor (SDR) and other facilities, which AECL established in the early 1960s. WR1 operated from 1965 to 1985, at which time the site was placed into a state of permanent shutdown. SDR operated from 1967 to 1990 and is also now permanently shut down. Preliminary decommissioning of the site occurred during the 1990s, when removal of nuclear fuel, coolant and moderators occurred. Removing these materials reduced the amount of radioactive materials on site and lowered the associated risk. Since this time, the site has been inactive and radioactive materials have been undergoing natural decay. Since the site has been



shut down and radioactive material is no longer being shipped to the site for operations, the majority of short half-life isotopes have decayed, leaving Sr-90 and Cs-137 as the most abundant radioisotopes on site.

CNL has indicated that it will decommission the entire WL site in accordance with the Whiteshell Laboratories Detailed Decommissioning Plan (DDP), which has been partially written (CNSC, 2019a). The decommissioning approach previously approved for WR-1 (Licence No NRTEDL-W5-8.04/2018) included the removal and remediation of all activated and contaminated components of WR-1 and associated facilities, including the reactor core, is currently being reconsidered. Instead, CNL is proposing to demolish the WR-1 building and decommission the nuclear waste in situ (ISD – In Situ Decommissioning). CNL proposes to demolish and remove above-ground buildings and facilities (two stories). CNL further proposes permanent on-site disposal of the below-ground structures and facilities, including the reactor and radiological hazards. CNL says it will protect the on-site disposal facilities with an engineered cover to prevent intrusion of soil and groundwater and allow the radioactive contaminants to decay to safe levels. A licence for the ISD proposal has not yet been applied for by CNL or granted by CNSC.

1.3 Environmental Setting

The WL site slopes toward the Winnipeg River. Groundwater on the site flows toward the river, of which a portion is discharged through an underground seep to the west of the site. Surface water runoff is also directed toward the Winnipeg River. CNL manages surface water in the vicinity of the WL site through a series of swales and ditches that direct it to the Winnipeg River. During operation of the WR-1 Reactor, CNL treated effluent and stormwater from the Whiteshell Laboratories site at the Active Liquid Waste Treatment Centre and then released the treated effluent and stormwater into the Winnipeg River through an outfall pipe located 8 m offshore. Each of these CNL treatment processes represents potential vectors for the movement of contaminants into the aquatic environment (the Winnipeg River).

At least 61 species of fish inhabit the Winnipeg River (Stewart and Watkinson, 2004). These include many fishes from the minnow (Cyprinidae) and darter (Percidae) families; important game fish, such as northern pike (*Esox lucius*), walleye (*Sander vitreus*), several suckers (e.g., white sucker, redhorse), smallmouth bass (*Micropterus dolomieu*), and lake whitefish (*Coregonus clupeaformis*); and two species at risk (SAR), the carmine shiner (*Notropis percobromus*) and lake sturgeon (*Acipenser fulvescens*).

The terrestrial ecosystem surrounding the Whiteshell Laboratories site is within the larger Boreal Shield Ecozone, Lake of the Woods Ecoregion, and Stead Ecodistrict. In general, this ecoregion has a large number of forest types characterized by tall, closed stands of jack pine (*Pinus banksiana*), trembling aspen (*Populus tremuloides*), paper birch (*Betula papyrifera*), white spruce (*Picea glauca*), eastern white cedar (*Thuja occidentalis*), black ash (*Fraxinus nigra*), and American elm (*Ulmus americana*) (Smith et al. 2001). Wildlife is diverse and characteristic of the region, and include gray wolf (*Canis lupus*), American black bear (*Ursus americanus*), moose (*Alces americanus*), white-tailed deer (*Odocoileus virginianus*),



snowshoe hare (*Lepus americanus*), hooded merganser (*Lophodytes cuculata*), turkey vulture (*Cathartes aura*), and ruffed grouse (*Bonasa umbellus*) (Smith et al. 2001). The surrounding area consists of cleared lands with areas of peat bog. Whiteshell Provincial Park, the largest provincial park in Manitoba, is located southeast of WL; Pinawa and Whitemouth Falls Provincial Parks are immediately south of the WL site.

Historically and in the present day, the Red River Métis have exercised their distinct and inherent Métis rights around and downstream of the WL site without limitation. The Métis Community values access to areas used for harvesting or other traditional land uses, as well as the quality, safety, and availability of medicinal plants and country foods for consumption, as part of their traditional culture and diet. Adverse impacts on the land or the ability of the Métis Community to access the land for traditional land use in this territory have the potential to negatively impact the rights, claims, and interests of the Red River Métis.

2.0 Red River Métis (Manitoba Métis)

2.1 History and Identity

The Red River Métis—as a distinct Indigenous people—evolved out of relations between European men and First Nations women who were brought together as a result of the early fur trade in the Northwest. In the eighteenth century, both the Hudson Bay Company and the Northwest Company created a series of trading posts that stretched across the upper Great Lakes, through the western plains, and into the northern boreal forest. These posts and fur trade activities brought European and Indigenous peoples into contact. Inevitably, unions between European men—explorers, fur traders, and pioneers—and Indigenous women were consummated. The children of these families developed their own collective identity and political community so that “[w]thin a few generations, the descendants of these unions developed a culture distinct from their European and Indian forebears” and the Métis Nation was born—a new people, indigenous to the western territories (*Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] 2 SCR 670 at para. 5; 2008 MBPC R. v. Goodon, 59 at para. 25; *Manitoba Métis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 2).

The Métis led a mixed way of life. “In early times, the Métis were mostly nomadic. Later, they established permanent settlements centered on hunting, trading and agriculture” (*Alberta v. Cunningham*, at para. 5). The Métis were employed by both of the fur trades’ major players, the Hudson’s Bay and Northwest companies. By the early 19th century, they had become a major component of both firms’ workforces. At the same time, however, the Métis became extensively involved in the buffalo hunt. As a people, their economy was diverse; combining as it did, living off the land in the Aboriginal fashion with wage labor (*MMF v. Canada*, at para. 29).

It was in the Red River, in reaction to a new wave of European immigration, that the Red River Métis first came into its own. Since the early 1800s, the Red River Métis — as a part of the larger Métis Nation—has



asserted itself as a distinct Indigenous collective with rights and interests in its Homeland. The Red River Métis share a language (Michif), national symbols (infinity flags), culture (i.e., music, dance, dress, crafts), as well as a special relationship with its territory that is centered in Manitoba and extends beyond the present-day provincial boundaries.

The Red River Métis has been confirmed by the courts as being a distinctive Indigenous community, with rights that are recognized and affirmed in section 35 of the *Constitution Act, 1982*. In *R. v. Goodon*, the Manitoba court held that:

The Métis community of Western Canada has its own distinctive identity [...] the Métis created a large inter-related community that included numerous settlements located in present-day southwestern Manitoba, into Saskatchewan and including the northern Midwest United States. This area was one community [...] The Métis community today in Manitoba is a well-organized and vibrant community (paras. 46-47; 52).

This proud independent Métis population constituted a historic rights-bearing community in present day Manitoba and beyond, which encompassed “all of the area within the present boundaries of southern Manitoba from the present-day City of Winnipeg and extending south to the United States” (para. 48).

The heart of the historic rights-bearing Métis community in southern Manitoba was the Red River Settlement; however, the Red River Métis also developed other settlements and relied on various locations along strategic fur trade routes. During the early part of the 19th century, these included various posts of varying size and scale spanning the Northwest Company and the Hudson Bay Company collection and distribution networks.

More specifically, in relation to the emergence of the Métis—as a distinct Indigenous Nation in Manitoba—the Supreme Court of Canada wrote the following in the *MMF v. Canada* case:

“[21] The story begins with the Aboriginal peoples who inhabited what is now the province of Manitoba—the Cree and other less populous nations. In the late 17th century, European adventurers and explorers passed through. The lands were claimed nominally by England which granted the Hudson’s Bay Company, a company of fur traders’ operation of out London, control over a vast territory called Rupert’s Land, which included modern Manitoba. Aboriginal peoples continued to occupy the territory. In addition to the original First Nations, a new Aboriginal group, the Métis, arose—people descended from early unions between European adventurers and traders, and Aboriginal women. In the early days, the descendants of English-speaking parents were referred to as half-breeds, while those with French roots were called Métis.

[22] A large—by the standards of the time—settlement developed at the forks of the Red and Assiniboine Rivers on land granted to Lord Selkirk by the Hudson’s Bay Company in 1811. By 1869, the settlement consisted of 12,000 people, under the governance of Hudson’s Bay Company.

[23] In 1869, the Red River Settlement was a vibrant community, with a free enterprise system and established judicial and civic institutions, centered on the retail stores, hotels, trading undertakings and saloons of what is now downtown Winnipeg. The Métis were the dominant demographic group in the



Settlement, comprising around 85 percent of the population [approximately 10,000 Métis], and held leadership positions in business, church and government.”

The fur trade was vital to the ethnogenesis of the Red River Métis and was active in Manitoba from at least the late 1770s, and numerous posts and outposts were established along cart trails and waterways throughout the province. These trails and waterways were crucial transportation networks for the fur trade (Jones 2014; 2) and were the foundation of the Red River Métis’ extensive use of the lands and waters throughout the province. In the early 20th century, the Red River Métis continued to significantly participate in the commercial fisheries and in trapping activities, which is well documented in Provincial government records.

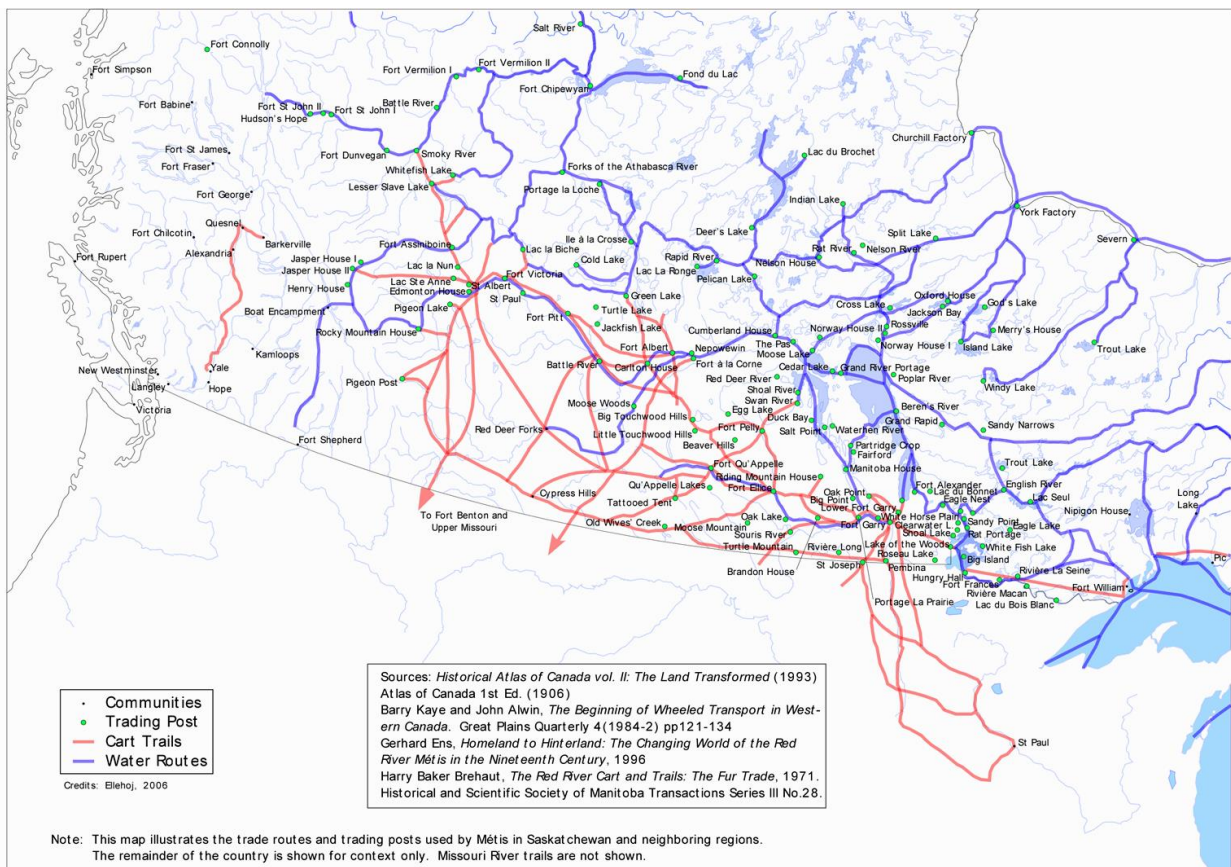


Figure 2. The Fur Trade Network: Routes and Posts Prior to 1870

2.2 Manitoba Métis Federation

On July 6, 2021, Canada and the MMF signed the Manitoba Métis Self-Government Recognition and Implementation Agreement which is the first agreement to give immediate recognition to an existing Métis government, namely, the Manitoba Métis Federation, which is the existing democratically elected



government of the Manitoba Métis – also known as the Red River Métis. This Agreement will be followed by a Treaty between the MMF and Canada and ensures that the MMF will continue to provide responsible and accountable self-government.

The MMF is the democratically elected government of the Red River Métis. The MMF is duly authorized by the Citizens of the Red River Métis for the purposes of dealing with their collective Métis rights, claims, and interests, including conducting consultations and negotiating accommodations (as per MMF Resolution No. 8). While the MMF was initially formed in 1967, its origins lie in the 18th century with the birth of the Red River Métis and in the legal and political structures that developed with it. Since the birth of the Métis people in the Red River Valley, the Red River Métis asserted and exercised its inherent right of self-government. For the last 50 years, the MMF has represented the Red River Métis at the provincial and national levels.

During this same period, the MMF has built a sophisticated, democratic, and effective Métis governance structure that represents the Red River Métis internationally. The MMF was created to be the self-government representative of the Red River Métis—as reflected in the Preamble of the MMF’s Constitution (also known as the MMF Bylaws):

“WHEREAS, the Manitoba Métis Federation has been created to be the democratic and self-governing representative body of the Manitoba Métis Community;”

In addition, the following is embedded within the MMF’s objectives, as set out in the MMF Constitution as follows:

- “1. To promote the history and culture of the Manitoba Métis, also known as the Red River Métis, and otherwise to promote the cultural pride of its Citizenship.
2. To promote the education of its Citizens respecting their legal, political, social, and other rights.
3. To promote the participation of its Citizens in community, municipal, provincial, federal, Aboriginal, and other organizations.
4. To promote the political, social, and economic interests of its Citizens.
5. To provide responsible and accountable governance on behalf of the Manitoba Métis, also known as the Red River Métis, using the constitutional authorities delegated by its Citizens.”

The MMF is organized and operated based on centralized democratic principles, some key aspects of which are described below.

President: The President is the leader and spokesperson of the MMF. The President is elected in a national Election every four years and is responsible for overseeing the day-to-day operations of the MMF.



Cabinet: The MMF Cabinet leads, manages, and guides the policies, objectives, and strategic direction of the MMF and its subsidiaries. All 23 Cabinet Members are democratically elected by Red River Métis Citizens.

Regions: The MMF is organized into seven regional associations or "Regions" throughout the province (Figure 3): The Southeast Region, the Winnipeg Region, the Southwest Region, the Interlake Region, the Northwest Region, the Pas Region, and the Thompson Region. Each Region is administered by a Vice-President and two Regional Executive Officers, all of whom sit on the MMF Cabinet. Each Region has an office which delivers programs and services to their specific geographic area.

Locals: Within each Region are various area-specific "Locals" which are administered by a chairperson, a vice-chairperson, a secretary, and a treasurer (or a secretary-treasurer, as the case may be). Locals must have at least nine Citizens and meet at least four times a year to remain active. There are approximately 140 MMF Locals across Manitoba.

The MMF has created an effective governance structure to represent the Red River Métis. It is important to bear in mind that there is only one large, geographically dispersed, Red River Métis. Red River Métis Citizens live, work, and exercise their section 35 rights throughout and beyond the province of Manitoba.



2.3 MMF Resolution No. 8

Among its many responsibilities, the MMF is authorized to protect the Aboriginal rights, claims, and interests of the Red River Métis, including those related to harvesting, traditional culture, and economic development, among others.

In 2007, the MMF Annual General Assembly unanimously adopted Resolution No. 8 that sets out the framework for engagement, consultation, and accommodation to be followed by Federal and Provincial governments, industry, and others when making decisions and developing plans and projects that may impact the Red River Métis. Under MMF Resolution No. 8, direction has been provided by the Red River Métis for the MMF Home Office to take the lead and be the main contact on all consultation undertaken with the Red River Métis. Resolution No. 8 reads, in part that:

...this assembly continue[s] to give the direction to the Provincial Home Office to take the lead and be the main contact on all consultations affecting the Métis community and to work closely with the Regions and Locals to ensure governments and industry abide by environmental and constitutional obligations to the Métis...

The MMF Home Office works closely with the Regions and Locals to ensure the rights, interests, and perspective of the Red River Métis are effectively represented in matters related to consultation and accommodation.

Resolution No. 8 has five phases:

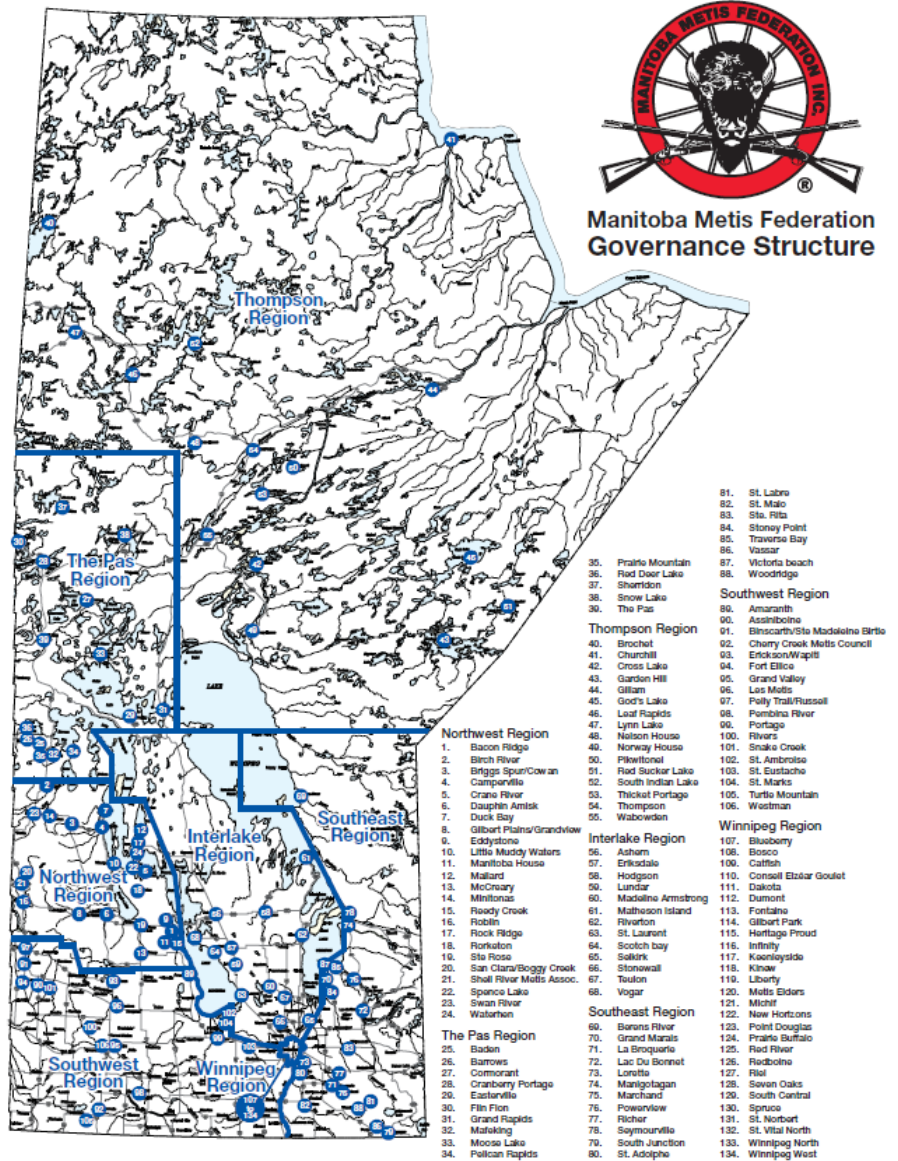


Figure 2. Manitoba Métis Federation (MMF) Regions



Phase 1: Notice and Response

Phase 2: Funding and Capacity

Phase 3: Engagement or Consultation

Phase 4: Partnership and Accommodation

Phase 5: Implementation

Each phase is an integral part of the Resolution No. 8 framework and proceeds logically through the stages of consultation.

2.4 Red River Métis Rights, Claims, and Interests

The Red River Métis possess Aboriginal rights, including pre-existing Aboriginal collective rights and interests in lands recognized and affirmed by section 35 of the Constitution Act, 1982, throughout Manitoba. The Manitoba court recognized these pre-existing, collectively held Métis rights in *R. v. Goodon* (at paras. 58; 72):

I conclude that there remains a contemporary community in southwest Manitoba that continues many of the traditional practices and customs of the Métis people. I have determined that the rights-bearing community is an area of southwestern Manitoba that includes the City of Winnipeg south to the U.S. border and west to the Saskatchewan border.

As affirmed by the Supreme Court of Canada, such rights are “recognize[d] as part of the special aboriginal relationship to the land” (*R. v. Powley*, 2003 SCC 43, at para. 50) and are grounded on a “communal Aboriginal interest in the land that is integral to the nature of the Métis distinctive community and their relationship to the land” (*MMF v. Canada*, at para. 5). Importantly, courts have also recognized that Métis harvesting rights may not be limited to Unoccupied Crown Lands (*R. v. Kelley*, 2007 ABQB 41, para. 65).



The Crown, as represented by the Manitoba government, has recognized some aspects of the Red River Métis' harvesting rights through a negotiated agreement: The MMF-Manitoba Points of Agreement on Métis Harvesting (2012) (the MMF-Manitoba Harvesting Agreement). This Agreement was signed at the MMF's 44th Annual General Assembly and "recognizes that collectively-held Métis Harvesting Rights, within the meaning of section 35 of the Constitution Act, 1982, exist within the [Recognized Métis Harvesting Zone], and that these rights may be exercised by Red River Métis Rights Holders consistent with Métis customs, practices and traditions..." (MMF-Manitoba Harvesting Agreement, section 1). In particular, the MMF-Manitoba Harvesting Agreement recognizes that Métis rights include "hunting, trapping, fishing and gathering for food and domestic use, including for social and ceremonial purposes and for greater certainty, Métis harvesting includes the harvest of timber for domestic purposes" throughout an area spanning approximately 169,584 km² (the "Métis Recognized Harvesting Area") (MMF-Manitoba Harvesting Agreement, section 2; Figure 4). The MMF further asserts rights and interests exist beyond this area, which require consultation and accommodation as well.

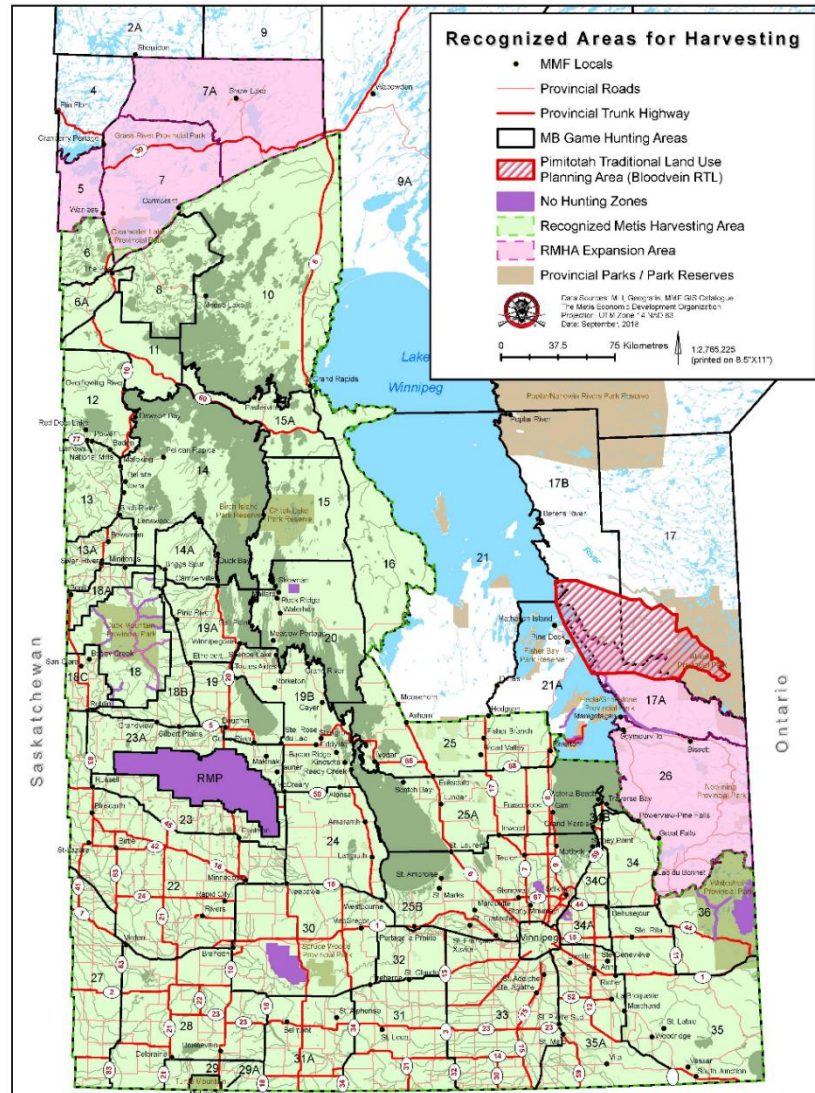


Figure 3. MMF-Manitoba Harvesting Agreement Recognized Manitoba Métis Harvesting Zones

Beyond those rights already established through litigation and recognized by agreements, the Red River Métis claims commercial and trade-related rights. Courts have noted that Métis claims to commercial rights remain outstanding (R. v. Kelley at para. 65). These claims are strong and well-founded in the



historical record and the customs, practices, and traditions of the Red River Métis, and it is incumbent on the Crown and Proponents to take them seriously.

As noted above, the Red River Métis has its roots in the western fur trade (*R. v. Blais*, 2003 SCC 44 at para. 9 [Blais]; *R. v. Goodon* at para. 25). The Red River Métis are descendants of early unions between Aboriginal women and European traders (*MMF v. Canada* at para. 21). As a distinct Métis culture developed, the Métis took up trade as a key aspect of their way of life (*R. v. Powley* at para. 10). Many Métis became independent traders, acting as middlemen between First Nations and Europeans (*R. v. Goodon* at para. 30). Others ensured their subsistence and prosperity by trading resources they themselves hunted and gathered (*R. v. Goodon* at para. 31, 33, & 71). By the mid-19th century, the Red River Métis had developed the collective feeling that “the soil, the trade and the Government of the country [were] their birth rights.” (*R. v. Goodon* at para. 69(f)). Commerce and trade are, and always have been, integral to the distinctive culture of the Red River Métis. Today, the Red River Métis have an Aboriginal, constitutionally protected right to continue this trading tradition in modern ways to ensure that their distinct community will not only survive, but also flourish.

Unlike First Nations in Manitoba, whose commercial rights were converted and modified by treaties and the Natural Resources Transfer Agreement (NRTA) (*R. v. Horseman*, [1990] 1 SCR 901), the Métis’ pre-existing customs, practices, and traditions—including as they relate to commerce and trade—were not affected by the NRTA (*R. v. Blais*) and continue to exist and be protected as Aboriginal rights. First Nations’ treaty rights in Manitoba are, for example, inherently limited by the Crown’s power to take up lands (*Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para 56). Métis rights, in contrast, are not tempered by the “taking up” clauses found in historic treaties with First Nations. Métis rights must be respected as they are, distinct from First Nations’ rights and unmodified by legislation or agreements.

In addition to the abovementioned rights to land use that preserve the Métis culture and way of life, the Red River Métis have other outstanding land related claims and interests with respect to lands. These include claims related to the federal Crown’s constitutional promise to all Aboriginal peoples, including the Red River Métis, as set out in the Order of Her Majesty in Council Admitting Rupert’s Land and the North-Western Territory into the Union (the “1870 Order”) which provides that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

The manner in which the federal Crown implemented this constitutional promise owing to the Red River Métis—through the Dominion Lands Act and the resulting Métis scrip system—effectively defeated the purpose of the commitment. Accordingly, the MMF claims these federal Crown actions constituted a breach of the honour of the Crown, which demand negotiations and just settlement outside of the ‘old postage stamp province’ within Manitoba as well.

The MMF also claims that the Dominion Lands Act and the resulting Métis scrip system were incapable of extinguishing collectively held Métis title in specific locations where the Red River Métis are able to meet



the legal test for Aboriginal title as set out by the Supreme Court of Canada. These areas in the province, which the Red River Métis exclusively occupied—as an Indigenous people—prior to the assertion of sovereignty, establish a pre-existing Métis ownership interest in these lands.

The Red River Métis also have an outstanding legal claim within what was the ‘old postage stamp province’ of Manitoba relating to the 1.4 million acres of land promised to the children of the Métis living in the Red River Valley, as enshrined in section 31 of the Manitoba Act, 1870 (MMF v. Canada at para 154).

This land promised was a nation-building, constitutional compact that was meant to secure a “lasting place in the new province [of Manitoba]” for future generations of the Métis people (MMF v. Canada at para 5). This “lasting place” was to have been achieved by providing the Red River Métis a “head start” in securing lands in the heart of the new province (MMF v. Canada at paras 5-6).

Instead, the federal Crown was not diligent in its implementation of section 31, which effectively defeated the purpose of the constitutional compact.

In March 2013, the Supreme Court of Canada found that the federal Crown failed to diligently and purposefully implement the Métis land grand provision set out in section 31 of the Manitoba Act, 1870 (MMF v. Canada at para 154). This constituted a breach of the honour of the Crown. In arriving at this legal conclusion, the Court wrote:

“What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in section 35 of the Constitution Act, 1982 and underlying section 31 of the Manitoba Act, remains unachieved. The ongoing rift in the national fabric that section 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import (MMF v. Canada at para 140).”

This constitutional breach is an outstanding Métis claim flowing from a judicially recognized common law obligation which burdens the federal Crown (MMF v. Canada at paras 156; 212). It can only be resolved through good faith negotiations and a just settlement with the MMF (see for example: *R v Sparrow*, [1990] 1 SCR 1075 at paras 51–53; *R v Van der Peet*, [1996] 2 SCR 507 at paras 229, 253; *Haida* at para 20; *Carrier Sekani* at para 32). Lands both within the ‘old postage stamp province’ as well as in other parts of Manitoba—since little Crown lands remain within the ‘old postage stamp province’—may need to be considered as part of any future negotiations and settlement in fulfillment of the promise of 1.4 million acres, together with appropriate compensation.

On November 15, 2016, the MMF and Canada concluded a Framework Agreement for Advancing Reconciliation (the “Framework Agreement”). The Framework Agreement established a negotiation process aimed, among other things, at finding a shared solution regarding the Supreme Court of Canada’s decision in *MMF v. Canada* and advancing the process of reconciliation between the Crown and the Red River Métis. It provides for negotiations on various topics including, but not limited to, the “quantum, selection and management of potential settlement lands.” Negotiations under the Framework Agreement are active and ongoing.



The Framework Agreement further provided guidance on the process to negotiate the MMF Self-Government Recognition and Implementation Agreement. On July 6, 2021, Canada and the MMF signed Canada's first Métis self-government agreement that gives immediate recognition to an existing Métis government. This Agreement will be followed by a Treaty between the MMF and Canada.

3.0 Review Findings

Overall, our review of the 2021 ROR built on the past comments and recommendations put forward by the MMF, evaluating not only the merit of the 2021 ROR, but also the degree to which past comments and recommendation have been meaningfully addressed. The following provides a summary of the overall concerns and recommendations of the ROR; however, our detailed comments and recommendations can be found in Appendices A - D.

3.1 Lack of Meaningful Issue Resolution on Concerns Raised Through the ROR Process

The MMF has been an active participant in the review of the annual CNL ROR for several years. Through this participation, the MMF acts in good faith to perform thorough technical reviews on the ROR document and supporting information as well as to bring forward comments and recommendations, contributing to the constructive identification and resolution of issues. However, it has been the MMF's experience that in many cases there is a lack of transparency by the CNSC regarding the meaningful resolution of issues. In presenting a response to the 2021 ROR, we re-present the comments and recommendations we have made regarding the CNL ROR review process from 2018-2020 to demonstrate that many issues previously identified by the MMF remain unresolved.

Given our experience with the ROR process, we question whether this process can result in meaningful change to future RORs and more importantly the operation of the Whiteshell Laboratories and other facilities under the oversight of CNSC that is in the collective benefit. The ROR is intended to summarize regulatory oversight activities for all CNL facilities; however, this approach results in limited information being made available to reviewers, including information on the implementation of corrective measures and issue resolution. The ROR process therefore does not create sufficient space for meaningful dialogue and action based on the comments and recommendations of the MMF and other parties.

The MMF representing the Red River Métis is responsible for ensuring that activities occurring throughout the Métis Homeland are conducted in a manner that respects the rights and interests of Red River Métis citizens and ensures an environment which is preserved for future generations. As a result, it is essential that the MMF engage with CNL, CNSC, AECL and other parties on the oversight and management of the WL facility, ensuring that issues with its decommissioning are identified and rectified in a responsible and timely manner. An essential part of this process is transparency on the part of CNSC in acknowledging, considering, and meaningfully responding to concerns raised by the MMF. Presently, there is a lack of



meaningful resolution on concerns raised by the MMF, which the MMF finds unacceptable and flaws the ROR process.

3.2 Ongoing Concerns with Security SCA at the Whiteshell Laboratories Facility

Exemplifying the ongoing concerns that the MMF has with the ROR process is the ongoing concerns related to the *Security Safety Control Areas (SCA)* at the WL, which have been evaluated as “below expectations” in 2018, 2019, and 2021. In response to past evaluations of “below expectations”, CNL was to put in place an action plan. Most recently, CNL had a deadline of May 27, 2022 to implement corrective action to resolve this situation, however, follow-up inspections in June 2022 determined that implementation was still ongoing and therefore warranted a further evaluation of “below expectations”.

There are several issues which concern the MMF regarding this SCA that continues to be evaluated as “below expectations”:

- First, as noted in the MMF’s response to the 2020 ROR, there is a lack of clarity regarding what it means for the Security SCA to be below expectations, including if there are any risks or implications that the MMF needs to be aware of given the active harvesting and land use by the Métis Community happening around the site. The 2021 ROR notes that there are no immediate risks to nuclear material, however, little information is provided beyond this statement.
- Further in 2020, CNSC rated Security at the WL as “satisfactory”, meeting the CNSC’s expected condition for this SCA. MMF is concerned about the ability of CNSC staff to adequately evaluate and subsequently revise the status of this SCA, without having conducted in-person inspections in 2020. We question in light of the SCA returning back to a “below expectations” result in 2021, whether CNSC had sufficient information from the remote inspections in 2020 to award a result of “satisfactory”, and whether sufficient information was made available to effectively evaluate other SCAs.
- Finally, as Security remains an ongoing concern at the WL facility, an issue which was first identified in 2018, we question both CNL’s commitment to resolving this issue in a timely manner, and CNSC’s ability as a regulator to compel CNL to rectify the situation. Our hope is that this issue is relatively minor, but we raise concern about the approaches which may be taken by both parties in the event that other SCAs have issues arise that may risk the environment or public safety.

The MMF must see action on this issue. Further, the MMF expects that actions taken by both CNL and the CNSC, be done transparently to demonstrate effective oversight and meaningful issue resolution. The CNSC must also take measures to independently audit and assess the effectiveness of remote inspections and the information collected in 2020 to understand whether evaluations for the 2020 ROR were sufficient, and whether remote inspections are appropriate for supplementing in-person inspections.



3.3 Environmental Monitoring

CNL, as part of its license requirements for the WL site, conducts ongoing monitoring of releases of radioactive and hazardous substances to the air, water and soil near the WL site. Additionally, the CNSC conducts monitoring activities through an Independent Environmental Monitoring Program (IEMP). Through this program, CNSC staff gather samples of air, water, sediment, soil, plants, and food from areas near the Whiteshell Laboratories site. These samples are analyzed for radiological and non-radiological contaminants, to verify and confirm that licensees' environmental protection and monitoring programs are effective. However, again, the IEMP did not conduct independent environmental monitoring around the WL site in 2021 and has not conducted IEMP monitoring at the WL facility since 2017. As a result, a significant gap of independent environmental data is widening, reducing the ability of the CNSC to verify the effectiveness of CNL's environmental management efforts. We believe that this is an area that is essential to adequately evaluate WL's operations. The MMF requests that CNSC work with the MMF to identify methods in which both the MMF can play a greater role in the IEMP at the WL site, similar to what has been carried out between the CNSC and Algonquins of Ontario at the Nuclear Power Demonstration site. Further, the MMF wishes to explore with the CNSC opportunities for the MMF to bridge capacity gaps in the IEMP to allow for annual independent sampling.

As noted in the MMF's previous submissions, we are surprised that plutonium is being released to the environment from the WL facility, given that it is a nuclear fission product. At WL, the receiving environment is the Winnipeg River which flows to Lake Winnipeg. Although the amounts are well below the Derived Release Limits, it is unclear where these particular radionuclides, especially plutonium, are coming from in the wastewater measurements. As a result, these releases are of significant concern to Métis citizens that fish in the river and fish, some commercially, in Lake Winnipeg. The CNSC should discuss the source of these nuclides on the WL site and if it is possible to remove the source or contain the nuclides by isolating the source. Without these controls, these releases will extend well into the future for uranium, plutonium, and americium isotopes. Further, the MMF raises concerns that direct discharge information on radionuclide loadings is unavailable for 2021. Loadings specifically for americium, plutonium, tritium, and particulate gross beta were observed to be elevated in 2019 and 2020 compared to observed minimums in 2017 and 2018 (Figure 5). The MMF is concerned that these radionuclides were not assessed in 2021. If this indeed is the case, the MMF request additional information on the rationale for reducing sampling while these values appear to be increasing.



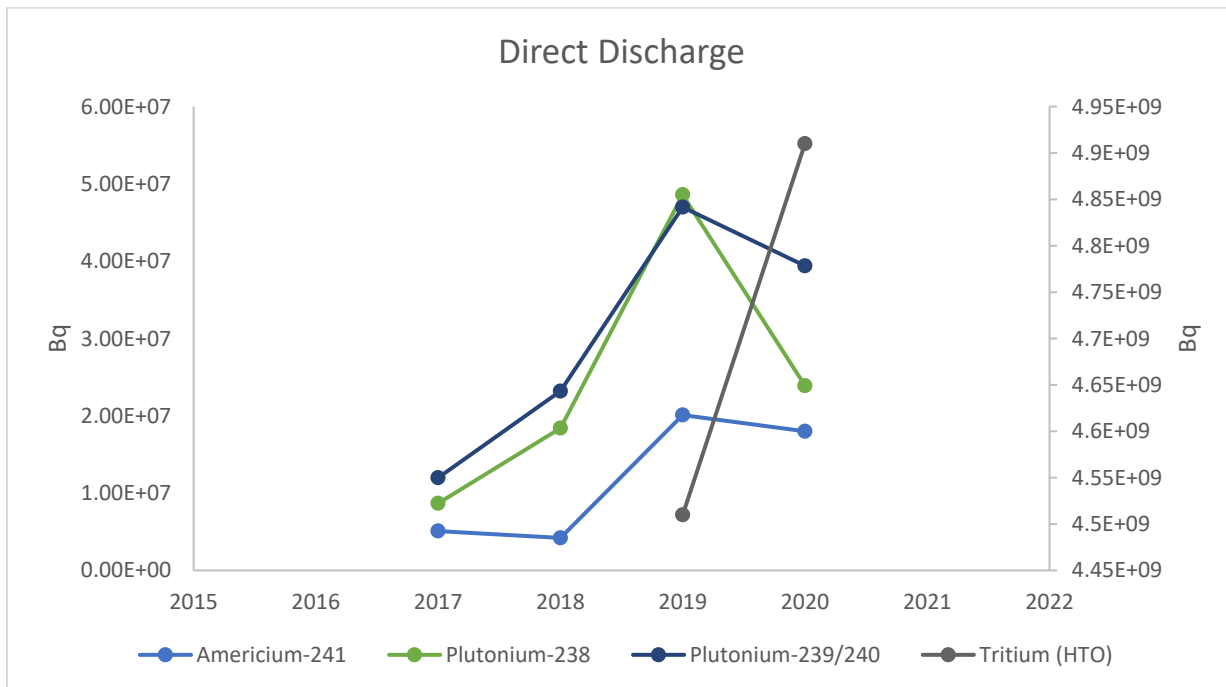


Figure 4. Total loadings for the Direct Discharge of Radionuclides at the Whiteshell Laboratories facility.¹

4.0 Conclusions and Recommendations

The MMF recognizes that both the CNSC and CNL are working to formalize agreements on the relationship with MMF which will hopefully include specific measures and protocols to ensure transparent and meaningful dialogue between all parties. However, to date this communication has been limited, especially through the ROR process. It is our intention through the response to the 2021 ROR to demonstrate the many outstanding issues that the MMF has raised since the 2018 ROR process. While progress and resolution has been seen for a number of previously raised concerns, the majority remain either unresolved, or only partially resolved. For the ROR process to be effective moving forward, it is necessary for the CNSC to demonstrate that the MMF's comments and recommendations are being not only entered into the public record, but meaningfully addressed.

Further, through our response we not only re-raise several outstanding concerns, but also demonstrate our growing concern that ongoing issues at the WL facility remain unresolved, pointing to a lack of commitment to resolution by CNL, and an inability of CNSC to compel CNL to rectify issues. This is unacceptable to the MMF.

Finally, as we have noted in past submissions, the ROR process continues to rely heavily on data collected by CNL. We believe that the CNSC must increase the amount of information collected by independent or

¹ Government of Canada. 2022. Radionuclide Release Datasets. Available from : <https://open.canada.ca/data/en/dataset/6ed50cd9-0d8c-471b-a5f6-26088298870e>



third parties, as a means of monitoring and compliance verification. The MMF collects high-quality environmental and culturally relevant information in the area surrounding the WL site, which should be included in the independent evaluation of WL compliance. We continue to be interested in having a more active role in the independent assessment and contributing to the decision-making at the WL site, similar to what has been carried out between the CSNC and Algonquins of Ontario at the Nuclear Power Demonstration site. This would facilitate a process to consider and address the MMF's stated concerns regarding outstanding impacts on the Métis Community, the exercise of Métis stewardship rights and obligations, and the need to incorporate Métis traditional knowledge into monitoring and decommissioning plans and activities.

5.0 References

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Appendix A - Specific Comments on the 2021 Regulatory Oversight Report

| Comment Number | Reference | MMF Comment | MMF Recommendation/Request |
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| GENERAL | | | |
| 2021-1 | General | <p>The MMF is greatly concerned by the lack of meaningful dialogue and resolution regarding the concerns and recommendations that we have raised through the participation in the ROR review process. As evidenced in this report, we highlight the lack of meaningful progress made to resolve outstanding issues dating back to the 2019 ROR. While we acknowledge that during this time COVID-19 played a significant role in limiting activity associated with consultation, engagement, and the implementation of operational changes at the WL facility, we note that the MMF has made efforts to meaningfully participate in the ROR process. Without effort by the CNSC and CNL to work with the MMF to resolve outstanding issues raised repeatedly through the ROR processes, we question the effectiveness of this process, and</p> | <p>The CNSC must fulfill its obligations to the MMF and demonstrate through the ROR and similar regulatory oversight processes that it is willing to meaningfully work with the MMF and other parties to address and resolve issues raised through the ROR process.</p> <p>The MMF recommends that as part of future ROR reports a section or appendix be established to track comments, recommendations and actions resulting from issues identified in ROR interventions. This will allow for greater transparency in the process, and a manner in which all parties can demonstrate satisfactory issue resolution.</p> |



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| | | do not feel it adequately fulfills the Crown’s Duty to Consult, nor does it serve as an effective forum to make meaningful change to the oversight and operation of the WL facility. | |
| ASSESSMENT OF SAFETY AT CNL SITES | | | |
| 2021 -2 | Section 4.9 Environmental Protection | <p>A link provided in the ROR report provides information on results of radionuclide loadings to the environment. In this information package, which shows loadings dating back as far as 2013 for a range of radionuclides, the information is present without context or commentary.</p> <p>a. While it is appreciated that CNSC has made this information publicly available, no information on why increases (or decreases) to loadings are observed. As the WL facility is in a state of decommissioning, it is unclear what drivers may be involved in increasing or decreasing loadings.</p> <p>b. Direct discharge of Plutonium 238, Plutonium 239/240, Americium 241, Particulate</p> | <p>a. It is recommended that CNL and CNSC provide an additional appendix or compendium document to discuss potential drivers for increase loads, such as changes in precipitation, or activities on site. This plain language document would be important to contextualizing the document such that all parties can better understand the cause and effect of site facilities and environmental discharge.</p> <p>b. The CNSC should provide the MMF with an explanation for why 2021 Direct Discharge data for of Plutonium 238, Plutonium 239/240, Americium 241, Particulate gross beta, and Tritium are unavailable at this time. If this data is unavailable because sampling was not required, the CNSC must provide an explanation for the rationale of this decision given the observed increasing trends from 2017 to 2020.</p> <p>c. The MMF continues to be concerned by the release of fission products such as Plutonium 238, 239 and 240 from the WL facility. Information on radionuclide loadings from the facility from 2017 to 2019 show a steady increase in direct discharge, with a limited reduction in 2020. The CNSC must provide discussion on why the release of fission products has increased recently, when there should be no active fission or process occurring.</p> |



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| | | <p>gross beta, and Tritium were all observed to increase at the WL facility in 2019 and 2020 from relative lower values observed in 2017 and 2018. With the exception of Tritium, which was only measured in 2019 and 2020, all of these parameters only have reported values for 2017 to 2020. The MMF questions whether it is a matter of the 2021 data not being available, or not being sampled which is responsible for this information not being available.</p> <p>c. As noted in previous comments submitted by the MMF, the release of plutonium is unexpected, given that it is a nuclear fission product. At WL, the receiving environment is the Winnipeg River which flows to Lake Winnipeg. Monitoring of these nuclides started in 2016 but presumably, they were being released before that year. Although the amounts are well below the Derived Release Limits, it is unclear where these particular radionuclides, especially plutonium, are</p> | |
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| | | coming from the wastewater measurements. As a result, these releases are concerning for MMF citizens that fish in the river and fish, some commercially, in Lake Winnipeg. | |
| 2021 – 3 | Section 4.9.4 Independent Environmental Monitoring Program | It is noted that as a result of “challenges associated with the ongoing COVID-19 pandemic which limited interprovincial travel and resulted in deferred sampling campaigns, CNSC staff did not conduct the scheduled independent environmental monitoring around WL”. The MMF appreciates the challenges associated with public health precautions implemented as a result of COVID-19, however, we find it unacceptable that no independent monitoring has been conducted since 2017, as the independent nature of the IEMP is necessary to lend credibility to the oversight process which is largely led by the operator. | The MMF recommends that the IEMP expand the scope of independent monitoring from 2-4 times every 10 years to once annually. To accomplish this with limited independent resources, the MMF recommends that the CNSC identify methods in which parties such as the MMF located near the facilities be appropriately trained, resourced, and authorized to collect independent samples. This will ensure that independent samples examining radiological effects on fish, wildlife, plants, water and foods are collected frequently to ensure appropriate oversight and response through the life of the facility. |
| 2021-4 | Section 4.12 Security | For the third time in four years the Security safety and control area (SCA) for the WL facility has been identified as being “Below | a. and b. The CNSC and CNL must commit to transparency in the resolution of this issue. As security continues to be an issue at the Whiteshell Laboratories facility, further discussion of the issue and corrective action plan is necessary to understand the risks and challenges associated with |



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| | | <p>Expectations”. The only time during this four-year period in which security was deemed “satisfactory” was in 2020 when no in-person inspections were conducted.</p> <p>In September 2021 a security focused inspection at the WL facility identified areas of improvement related to the implementation of the security program. Although CNL committed to implementing corrective action by May 27, 2022, a June 2022 follow-up inspection found that the corrective action plan implementation was still ongoing and therefore resulted in an evaluation of “below expectation”.</p> <p>The MMF has several deep concerns regarding this ongoing issue:</p> <ul style="list-style-type: none"> a. Security concerns were first identified in the 2018 ROR. While corrective action should have resolved this issue prior to the 2019 ROR report, however, this remained outstanding until the 2020 | <p>resolving this issue. The MMF must be provided appropriate information to ensure that the Whiteshell Laboratories facility remains operationally secure and that no risk is presented to Red River Métis citizens. Further, while the MMF respects the need for confidentiality in some aspects of specific security measures at the WL facility CNSC and CNL must commit to developing a meaningful and transparent system for identifying drivers of SCA issues and corresponding corrective actions, such that all parties can understand the risks associated with facility operations.</p> <ul style="list-style-type: none"> c. The MMF requests that in-person inspections be required for the evaluation of SCAs at all CNL facilities in the future. However, as remote inspections may serve a role in supplementing in-person inspections, a broader discussion must occur regarding the effectiveness of this approach, including the limitation of a remote inspection in acquiring sufficient data to effectively evaluate operational plans. Further, the MMF requests that an independent assessment of the 2020 remote inspections be completed to audit and identify adequacy of SCA evaluations, to understand whether information from the 2020 inspections can be considered complete and reliable. |
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| | | <p>ROR report, and then reappeared as an issue in the 2021 ROR report. The MMF is concerned about CNSC’s ability to provide adequate oversight to ensure that CNL resolves this issue in a meaningful manner. While the 2021 ROR notes that there is no “immediate risk to the security of nuclear substances at WL”, it is unclear if a similar concern for another SCA, or a concern where there was risk to nuclear substances was identified, whether the issue could be satisfactorily remedied in a reasonable time.</p> <p>b. It is unclear whether the security issue identified remains the same as was first identified in 2018, or whether separate issues are resulting in the rating. Regardless, the MMF is concerned about CNL’s inability to resolve this issue, and further, the</p> | |
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| | | <p>inability to meet the May 27, 2022 deadline for implementing effective corrective action.</p> <p>c. The only year since 2018 in which the security SCA was deemed satisfactory was in 2020 when in-person inspections were not completed. During this period as a result of public health measures related to COVID-19, remote inspections were conducted by CNSC staff. Given the apparent relapse in the security SCA in 2021, it is reasonable to question the effectiveness of the remote inspection conducted in 2020 and whether sufficient information was provided to CNSC to warrant the issuance of a “satisfactory” result for the security SCA. Further, the MMF extends this concern to other SCAs which may not have had sufficient information to</p> | |
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| | | meaningfully evaluate them in 2020. | |
| INDIGENOUS CONSULTATION AND ENGAGEMENT | | | |
| 2021 - 5 | Section 5. Indigenous Consultation and Engagement | <p>The ROR states that “The CNSC’s Indigenous engagement practices include sharing information, discussing topics of interest, seeking feedback and input on CNSC processes, and providing opportunities to participate in environmental monitoring. The CNSC also makes funding support available through the CNSC’s Participant Funding Program for Indigenous peoples to meaningfully participate in Commission proceedings and ongoing regulatory activities.” While the MMF agrees that CNSC has made efforts to improve the ROR process, providing resources which allow the MMF to provide comments and recommendations, as noted in Appendix A – Comment 2021-1, this approach does not satisfy the Crown’s Duty to Consult, and further is often only a one-way flow of information. As we have noted previously, the ROR process does not allow for meaningful</p> | <p>It is essential for the CNSC, with input from CNL and other partners, to identify with the MMF appropriate measures to ensure that comments and recommendations put forward to the CNSC regarding the annual ROR are meaningfully considered and resolved. To this end, we recommend the addition of a new section or appendix to the annual ROR report which tracks issues which have been raised and the corresponding response and actions implemented to resolve these issues. This process would allow for significantly greater transparency in the oversight of CNL facilities.</p> |



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| | | <p>dialogue on longer-term issue resolution, and as evidenced by this document, the result is that many issues are raised year after year without any clarity on whether issues are resolved.</p> | | |
| 2021 - 6 | Section 5.2 CNL | <p>According to Section 5.2 on Indigenous Engagement, CNSC staff indicated they “are satisfied with Indigenous engagement conducted by CNL.” Furthermore, they provided their own self-assessment of engagement, as follows:</p> <p>“CNSC staff efforts in 2019 supported the CNSC’s ongoing commitment to meeting its consultation obligations and building relationships with Indigenous peoples. In particular, CNSC staff continued to work to meet its Duty to Consult obligations with regards to CNL’s proposed projects undergoing environmental assessments and licence amendments or renewals. CNSC staff also continued to identify opportunities for formalized and regular engagement throughout the lifecycle of CNL sites, including meetings and workshops upon request. Through this engagement, CNSC staff welcomed the</p> | <p>CNL and AECL must ensure engagement and consultation processes and deliverables, such as plans, applications, and assessments, etc. meaningfully consider, assess, and, where required, provide mutually agreeable accommodation measures of any impacts on the unique collective rights held by the Red River Métis. AECL and the CNSC, as representatives of the Crown, should use a distinction-based approach for consultation and accommodation, an approach that accounts for the distinct rights, claims, and interests of the Red River Métis, as well as their significant history with the WL site and connection to the land. AECL and the CNSC, as representatives of the Crown, must consult with the MMF, as the democratically elected self-government representative of the Red River Métis, on an ongoing basis to ensure the rights, claims, and interests of the Red River Métis are adequately considered and accommodated, and issues raised by the Red River Métis are adequately addressed. Practically speaking, this could include the following measures:</p> <ol style="list-style-type: none"> 1. Establish a Communication Protocol for informing the MMF of any regulatory oversight activities happening within the Manitoba Métis Homeland. Such a protocol should include clear timelines and processes that not only inform the MMF but solicit its feedback and allow for modification to the planned activities in light of information and | |



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| | | <p>opportunity to discuss and address all topics of interest and concern to the Indigenous communities.” (CNSC, 2020a; pg. 19)</p> <p>Although this wording suggests that CNL has met its regulatory obligations for Indigenous Engagement and has satisfied the CNSC requirements, it is unclear how obligations for Crown consultation, and where appropriate, accommodations, are included in this process. It is also unclear what the outcomes and results were from the above engagement methods with respect to the Crown’s obligations, including if the Crown has effectively addressed or accommodated any issues the MMF has in relation to the WL site. As previously noted in other MMF reports regarding the WL site and proposed decommissioning activities, while positive relationships with CNL have developed recently, there are still outstanding issues and concerns that remain unresolved. Where there are Crown actions or decisions that have the potential to</p> | <p>concerns raised by the MMF. Joint decision-making opportunities should be built into this process wherever possible.</p> <ol style="list-style-type: none"> 2. Provide adequate capacity support for the MMF to meaningfully participate in regulatory oversight programs, for example, by funding a Métis Liaison position within the MMF or an Indigenous oversight committee. 3. Develop policy guidance collaboratively with the MMF around the integration of Métis Traditional Knowledge, land, and resource use into the CNSC’s regulatory oversight programs, and AECL’s site ownership and decision-making roles, including licensing requirements. This should include how Métis Traditional Knowledge will be used to inform ongoing monitoring, environmental protection and remediation or reclamation activities in institutional and post-institutional control periods. 4. Provide the MMF with the opportunity to be involved in all aspects of regulatory oversight and safety and control framework activities, including, but not limited to, the following: <ol style="list-style-type: none"> a. environmental protection programs b. emergency planning and response c. transportation route planning d. Set out requirements within the Safety and Control Framework that compel facility operators to meaningfully involve the MMF in all aspects of the management system. | |
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| | | impact the constitutionally protected rights, claims, or interests of the Red River Métis, a meaningful consultation process to address these impacts and concerns is required. While “engagement” may be a best practice, consultation is legally required in these circumstances. | | |
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Appendix B - Specific Comments on the 2020 Regulatory Oversight Report

| Comment Number | MMF Comment | MMF Recommendation/Request | Follow-up Comment (September 2022) |
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| GENERAL COMMENTS | | | |
| 2020 - 1 | <p>The ROR process does not adequately acknowledge, recognize, or account for the rights, claims, and interests held by the Métis Community that are established and protected under s. 35 of the Constitution Act, 1982. The Métis Community’s constitutionally protected rights to the territory in which the WL site is situated are a crucial distinction between the Métis Community and the general public or other stakeholders.</p> <p>Although the wording in the 2020 ROR for Canadian Nuclear Laboratories Sites suggests that CNL has met its regulatory obligations for Indigenous Engagement and has satisfied the CNSC requirements, it is unclear how obligations for Crown consultation, and where appropriate, accommodations, are included in this process.</p> <p>Although the CNSC suggests that CNL engaged the Métis Community through a more targeted approach, it is not clear if or how the described letters, phone calls, meetings, and e-mail correspondence, site visits and tours, and workshops were distinct from the approach taken with the general public and First Nations to account</p> | <p>The CNSC, as a representative of the Crown, must require and ensure engagement, consultation, and accommodation processes, and deliverables such as plans, applications, and assessments, are developed in collaboration with the MMF and revised to reflect the MMF’s input. The CNSC should use a distinctions-based approach for consultation and accommodation, an approach that explicitly recognizes and accounts for the distinct rights, claims, and interests of the Métis Community, as well as its significant history with the WL site and connection to the land. The CNSC must consult MMF, as the democratically elected self-government representative of the Red River Métis, on how they would like to be engaged in these processes on an ongoing basis to ensure the rights, claims, and interests of the Métis Community are adequately considered and, where required, accommodated.</p> <p>In cases where impacts to the rights, claims and interests of the Métis Community cannot be avoided or mitigated, accommodations must be provided. The MMF must be consulted regarding the development of accommodation measures, where required, as part of fulfilling the duty to consult and accommodate. Such impacts to rights and interests could include but are not limited to, instances such as a reduced ability to use or access the land in restricted-access areas in and around the WL site, the timing of decommissioning activities that result in disruption to Métis harvesting practices or seasons, and decisions related to remediation or reclamation that affect whether native species or plants relied on by Métis harvesters are reintroduced into the area. Additionally, accommodations must be provided if wildlife or plant materials are found to be contaminated, impacting the ability of the Métis Community to exercise their rights to harvest and consume wild and traditional foods and medicines that are below thresholds</p> | <p>Partially Addressed</p> <p>Both CNL and CNSC acknowledge ongoing efforts to develop process and relationship agreements with the MMF to ensure that the MMF is able to actively participate in a range of activities related to the WLs facility. However, as noted in Appendix A, the CNSC have only made advancements in ensuring the MMF is able to provide comments into various regulatory processes including the ROR for CNL sites, rather than ensure that comments which have been raised by the MMF and continue to be raised by the MMF are meaningfully addressed, by CNSC, CNL, AECL, or other appropriate parties. Until the CNSC is able to demonstrate meaningful</p> |



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| <p>for the unique rights of the Métis Community. It is also unclear what the outcomes and results were from the above engagement methods with respect to the Crown’s obligations, including if the Crown has effectively addressed or accommodated any issues the MMF has concerning the WL site. As previously noted in other MMF reports regarding the WL site and proposed decommissioning activities, while positive relationships with CNL have developed recently, there are still outstanding issues and concerns that remain unresolved.</p> <p>Where there are Crown actions or decisions that have the potential to impact constitutionally protected rights, claims, or interests of the Métis Community, a meaningful consultation process to address these impacts and concerns is required. While “engagement” may be a best practice, consultation is legally required in these circumstances. While the Crown can rely on boards, agencies or commissions to discharge its duty to consult and accommodate, the responsibility for discharging the duty and upholding the honour of the Crown always remains with the Crown. No matter what process or entity is relied on to fulfill the duty, consultation and accommodation with respect to Métis rights and interests involving the WL site activities, plans and impacts must be meaningfully undertaken.</p> <p>Additionally, in the current ROR process, CNSC staff are reporting on CNSC staff</p> | <p>considered safe for human consumption at a frequency that is appropriate for citizens to exercise their rights.</p> <p>We recommend the following measures be implemented to ensure more meaningful consideration of the rights, claims, and interests of the Métis Community:</p> <p>Establish a Communication Protocol for informing the MMF of any regulatory oversight activities happening within the Métis Homeland. Such a protocol should include clear timelines and processes that not only inform the MMF but solicit our feedback and allow for modification to the planned activities in light of information and concerns raised by the MMF. Joint decision-making opportunities should be built into this process wherever possible.</p> <p>Provide adequate capacity support for the MMF to meaningfully participate in regulatory oversight programs, for example, by funding a Métis Liaison position within the MMF or an Indigenous oversight committee.</p> <p>Develop policy guidance collaboratively with the MMF around the integration of Métis Traditional Knowledge, land, and resource use into the CNSC’s regulatory oversight programs, and AECL’s site ownership and decision-making roles, including licensing requirements. This should include how Métis Traditional Knowledge will be used to inform ongoing monitoring, environmental protection and remediation or reclamation activities in institutional and post-institutional control periods.</p> <p>Provide the MMF with the opportunity to be involved in all aspects of regulatory oversight, and safety and control framework activities, including, but not limited to, the following:</p> <ul style="list-style-type: none"> (i) environmental protection programs (ii) emergency planning and response (iii) transportation route planning | <p>consideration and action resulting from the MMF’s comments and recommendations, the MMF cannot consider CNSC’s responsibilities to the MMF fulfilled.</p> |
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| | <p>performance and licensee performance, which could lead to potential unintentional biases in the regulatory oversight process. There is always a possibility that CNSC staff may unintentionally interpret licensee actions in the best light possible, as a result of their unconscious biases. Third-party audits must take place to eliminate the risk of conflicts of interest and biases in the ROR process.</p> | <p>Set out requirements within the Safety and Control Framework that compel facility operators to meaningfully involve the MMF in all aspects of the management system.</p> <p>CNL and AECL must engage the MMF to establish a decision-making process and framework that enables the MMF, to be meaningfully involved in the determination of the plans for the WL site alongside CNL and AECL.</p> <p>CNL, and AECL representing the Crown site owner, must engage the MMF to establish formal long-term relationship agreements (LTRAs) or similar agreements that enable the MMF, as the democratically elected, self-government representatives of the Métis Community, to address all of the following recommendations concerning the operation of the WL site, and all future decommissioning activities. Moreover, CNL and AECL must consult with the MMF regarding these plans so that Métis traditional knowledge, the exercise of Métis rights, and Métis land use information can be considered and incorporated into the plans during closure and post-closure periods.</p> <p>A third party must be responsible for providing audits and third-party reviews on licensee performance as part of the ROR process, to allow for a truly independent and unbiased assessment and adjudication of CNSC and licensee performance.</p> | |
| 2020 - 2 | <p>The MMF is disheartened to find that the data from their community-based water quality sampling program was not present or considered in the Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2020 Report.</p> | <p>The MMF requests that CSNC clarify if the data from the community-based water quality sampling program was considered or incorporated into the report in any way.</p> <p>If not, the MMF requests an explanation and that the data be incorporated going forward.</p> | <p>Not Addressed</p> <p>Community-based environmental monitoring is not specifically identified in the 2021 ROR. While CNL does acknowledge efforts to include Indigenous communities in the monitoring of facilities, information captured by the MMF regarding the</p> |



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| | | | WL facility is not provided in the ROR. |
| 2020 - 3 | <p>“CNSC staff’s work to ensure safety and protection of people and the environment”. The performance of CNL’s management of sites such as Whiteshell is assessed in these RORs by CNSC staff, however how effective that approach is and whether staff are accurately evaluating CNL performance is open to question. This affects the credibility of the ROR evaluation process.</p> | <p>The CNSC should seriously consider using a third party to examine the ROR process and how well staff evaluate CNL performance. IAEA inspections are for the sites only and not the full CNSC evaluation process. An independent auditor should help improve the credibility of the process with the public.</p> | <p>Not Addressed</p> <p>CNSC continues to rely heavily in the self monitoring by CNL for its sites. While the MMF acknowledges that given the security and technical needs related to the monitoring of nuclear facilities CNL is uniquely positioned to be responsible for monitoring, a mechanism for independent oversight is necessary to improve credibility in the ROR evaluation process. This is exemplified by the lack of Independent Environmental Monitoring Program sampling for the WL facilities which has not occurred since 2017.</p> |
| 2020 - 4 | <p>“In 2020, CNSC staff performed a total of 15 inspections across the CNL sites.” There was no inspection at WL in 2020.</p> | <p>The lack of CNSC inspection at WL in 2020 should be acknowledged here as the later evaluations in the report rely entirely on desktop evaluations that are not as strong as on-site inspections.</p> | <p>Addressed</p> <p>The MMF is encouraged that four inspections were conducted in 2021 at the Whiteshell Laboratories facility. These in person inspections are crucial for providing regulatory oversight of activities and operations.</p> |



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| 2020 - 5 | In the site description, there should be an acknowledgement that the site is on traditional and/or treaty territories. | This information should be added to the site summary. | Addressed |
| MÉTIS ENGAGEMENT | | | |
| 2020 - 6 | “In 2020, the activities undertaken by CNSC staff supported their ongoing commitment to meeting consultation and accommodation obligations, and to continuing to build relationships with Indigenous peoples in proximity to CNL sites.” Efforts to improve communication and transparency in the review process are good but should be continuing to improve. Efforts to incorporate input from the MMF should start much sooner in project design and development. | Given the use of the land by MMF citizens and the need to leave the land in pristine shape at the end of decommissioning, MMF input should be an integral part of land use planning and the definition and condition of the site in its final state. The CNSC should ensure that input is present in all planning phases of decommissioning. | Partially Addressed While the terms of decommissioning of the WL facility are beyond the scope of the ROR report, engagement and consultation by CNL and CNSC remain within the scope of the ROR. The MMF recognizes ongoing discussions with CNL and CNSC in the development of a process and relationship agreement, ultimately, regardless of whether an agreement is in place, it remains the responsibility of the CNSC to ensure that it meaningfully responds to the concerns of the MMF and demonstrates meaningful action. |
| 7 | “CNSC staff also seek out other opportunities to engage with the public and Indigenous groups, often participating in meetings or events in communities with interest in nuclear sites.” This is the minimum of public outreach that should be conducted by CNSC staff. Greater efforts should be encouraged by the CNSC | The CNSC should encourage through site operating licences and other means to include MMF citizens, as potential future land users, in the planning and design of projects with long-term time frames. | Not Addressed While engagement with CNSC and CNL are ongoing, limited pathways for citizen engagement have been identified. It is essential that the CNSC |



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| | to include the MMF in the planning process for projects, rather than informing them after completion of the project. | | and CNL fully and meaningfully engage with the MMF to understand the long-term end use for the WL facility, reflecting the needs and values of the Red River Métis. |
| 2020 - 8 | “As environmental monitoring is often a topic of interest, CNSC staff have increasingly involved Indigenous groups in the IEMP.” | This is one area that the MMF is willing to participate and will continue to be involved. It is important that the IEMP review its sampling program and significantly improve the design (e.g., sampling types, numbers, locations and analysis) for any future work at WL. | Partially Addressed Engagement with the MMF has occurred to understand how to implement the 2022 IEMP for the WL Facility. While we are encouraged by this step, overall we remain concerned regarding the infrequency of independent monitoring at the WL Facility which has not occurred since 2017. |
| 2020 - 9 | The changes to the ROR are appreciated, in particular the acknowledgement of traditional lands and the use of a plain-language summary. The binary rating system can be improved for situations where neither option is best (see note below). Much of the oversight by the CNSC in 2020, and probably 2021, was by “document review” only which raises questions about how effective the process was. | The changes mentioned should also include a recognition that the regulated companies (e.g., CNL) should also follow similar steps in dealing with Indigenous groups and in communicating with the public. The recognition of traditional lands and plain language summaries in all reports should be mandatory. | Partially Addressed We thank CNL and the CNSC for providing greater recognition of the lands and territories in which CNL facilities are located. Following the 2021 <i>Manitoba Métis Self-Government Recognition and Implementation Agreement</i> , CNSC should continue to direct CNL to engage with the MMF appropriately as a |



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| | All further comments relate specifically to the Whiteshell laboratories site. | | government, and respect the terms of this agreement and recognition. |
| REGULATORY COMPLIANCE | | | |
| 2020 - 10 | “While remote compliance verification activities were leveraged to the extent possible, the reduction in compliance effort can be directly attributed to the lower number of on-site compliance activities because of health and safety-related restrictions implemented in response to the COVID-19 pandemic...”. It is not clear how these staffing changes relate to compliance inspections at WL. Is there an assessment of whether these changes had an impact on the management of the WL site? | Section 5.5 mentions that oversight of the sites, including WL, was conducted by “(remote inspections and verification methods, desktop review of documents and licensee submissions, etc.)”. More details of how these changes related to WL, which had no on-site inspections in 2020, should be provided. Please define “remote compliance verification activities”. | Partially Addressed The MMF considers this matter to be partially addressed as a result of a reduced need for remote compliance verification activities, due to presently relaxed COVID 19 measures. However, it is possible that remote compliance verification activities may be re-introduced in the future as part of inspection measures. While the MMF does not support the use of remote or virtual inspection in place of in-person inspections, there remains an outstanding need for education of all parties on the limitations associated with remote or virtual inspections prior to future use. |
| 2020 - 11 | “For 2020, the ratings that were used for CNL sites were either “satisfactory” (SA) or “below expectations” (BE).” There needs to be another category of NA (not | Consider expanding the options to include situations in which not enough high-quality information is available to make a valid assessment of the performance at a site. | Not Addressed No further discussion has been provided on minimum data quality |



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| | available) or NP (not possible). Due to COVID, inspections and regular review of site operations were disrupted, compromising the information that the CNSC needs for performance rating assessment. | | associated with assessments. The MMF continues to request that in addition to the evaluation on whether performance is satisfactory or below expectations, a measure of data quality also be provided. |
| 2020 - 12 | Does this SCA section include educating staff on the need to include input from the public, including the Métis community, on the end state and assessment of the site? | In addition to acknowledging land ownership, the CNSC should ensure that steps are taken within CNL to include input by potential land users, such as the MMF. | Not Addressed There remains limited connectedness between CNL or CNSC and individual land users/harvesters. It is recommended that the CNSC and CNL continue to work with the MMF in identifying educational and informational resources for land users/harvesters, as well as the development mechanisms for Red River Métis citizens to provide input in the long term potential use of the WL facility. |
| 2020 - 13 | “collective occupational dose of the proposed accelerated decommissioning compared to the deferred decommissioning assessed in the original Comprehensive Study Report.” The CSR for WL is 20+ years old and needs to be updated, given the large physical changes | There needs to be an update to the WL CSR to include the impacts of decommissioning, particularly in light of the possible in situ placement of WR-1. The focus of the update needs to be on remaining hazards and the potential dose to the public and potential future users of the land. | Not Addressed No additional information on the possible update to the CSR was provided in the 2021 ROR. |



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| | that have taken place during decommissioning. | | |
| 2020 - 14 | “Workers, whose job functions do not present a reasonable probability of receiving an occupational dose greater than 1 mSv/y are considered non-NEWs.” | Please clarify if MMF citizens that might work on the WL site have the same occupational dose limits as the general public. | Not Addressed No information has been provided to discuss whether there is a need for culturally specific dose limits, given the unique context of the Red River Métis and our interaction with the lands and resources surrounding the WL facility. |
| 2020 - 15 | “CNSC staff received the ERA for the lagoon and landfill areas in 2021 and are expecting to receive a site-wide ERA in 2022.”. This provides an excellent opportunity for the MMF citizens to be included in the ERA process to ensure that VECs of importance to the community are explicitly considered. | MMF citizens should be included in the development of ERA models and ensure valued species are included. MMF citizens should also be included in the development of human health exposure and dose assessment models. | Not Addressed The 2021 and 2022 revisions to the ERA have yet to be released and therefore cannot be assessed at this time. |
| 2020 - 16 | WL security was considered to be deficient in 2018 and 2019 and then judged to be “Satisfactory” in 2020, without any site inspection. Was this based solely on a “corrective action plan” and “Based on information provided by CNL,”? | More plain-language details of the nature of the deficiency and corrective actions need to be supplied. | Not Addressed Few details have been provided about the ongoing security concerns at the WL sites and why it has yet again been assessed a score of below expectations. The CNSC and CNL need to provide transparency on the ongoing security concerns at this facility as well as |



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| | | | demonstrate action to rectify the situation. |
| 2020 - 17 | No site inspections at WL in 2020 (and presumably the first half of 2021). | Were any special activities put in place by the CNSC to ensure that the equivalent of inspections took place at WL? Was the MMF informed of these alternative activities to ensure that conditions remained safe at WL? | Partially Addressed The MMF considers this matter to be partially addressed as a result of relaxing COVID 19 measures. However, in the event site inspections are decreased, it is essential that CNSC engage the MMF beforehand to understand the impacts of this decision. |
| 2020 - 18 | The Safety Control Areas (SCA) rating for Security at the WL site had a “below expectations” rating in 2018 and 2019. There is a lack of clarity regarding what it means for the Security SCA to be below expectations, including if there are any risks or implications that the MMF needs to be aware of given the active harvesting and land use by the Métis Community happening around the site. The nature of security issues that prompted the low SCA rating and the reasoning for the enforcement action order made in 2018 and associated with the low rating is not reported in the ROR and has still not been provided to the MMF to our knowledge. Without this information, it is unclear if or how the enforcement action order may have or will impact the Métis Community, or how the enforcement action was addressed by CNL or attended to by AECL | It is unlikely that CNSC staff can adequately evaluate the SCAs for WL with COVID restrictions and without a site inspection in 2020. A third option of “not enough information” or “not possible to evaluate” should be included. The CNSC must provide greater detail on what a below expectations score means for the Security SCA and what measures it required CNL to take at the site to improve the security performance at the site. Additional information is required to determine if Métis rights and interests were considered in the security enforcement order and what impacts on the Métis Community may result that require additional or responding actions to address. This information would be facilitated by having a Communication Protocol in place, that could be used if there are any implications or risks for the Métis Community to be aware of, especially to alert citizens who are active harvesters in the area about changes in access or other security measures they should be aware of. We recommend that the current rating system be enhanced to provide more transparent information on the criteria and decision-making process for the SCA ratings. The current definitions for the SCA ratings are vague at best (e.g., satisfactory performance correlates to "compliance within the safety and control area or specific area meets | Not Addressed The MMF is disappointed to see that the SCA rating for security at the WL facility is “below expectations” as it was in 2018 and 2019. As a satisfactory evaluation was given for 2020 based on remote inspections, the MMF questions whether the remote inspection had sufficient information to make the determination of a “satisfactory” rating. Ultimately, there are three parallel concerns emerging as a result of this issue: first being the ongoing issues of security |



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| | <p>as the site owner. This information is particularly important given the continuing below-expectations performance of the security SCA at WL site again in 2019, and the evidence that Métis Citizens use and rely on the area of and surrounding the WL site to exercise their harvesting and other s.35 rights. Security at the site has a direct connection to access and as such any enforcement action orders related to security may impact Métis Citizens' access to exercise their rights.</p> | <p>requirements and CNSC's expectations." For each of the SCA ratings at a site, it should be clearly outlined how specifically each site has rated for each SCA, and what it constitutes to "meet CNSC's expectations". Additionally, it would be ideal to also consider the MMF's evaluation of performance for SCA ratings based on Métis Liaison observations (once a position has been established and funded) and on the MMF's perspectives of performance over the past year. Such a process would allow for a more robust and impartial evaluation process.</p> <p>As stated above, CNL, AECL and the CNSC must keep the MMF informed regarding enforcement actions and orders at the WL site to ensure any incidents that may have an impact on the rights, interests, and claims of the Métis Community are communicated to the MMF promptly so that the MMF and the Métis Community can respond accordingly to minimize risks or impacts on Métis Citizens. The MMF recognizes that there may be emergencies that require an immediate response from the CNSC, however, in other circumstances advance communication with the MMF regarding enforcement actions and orders that could potentially impact Métis Citizens and s. 35 Métis rights is required. This could include sharing the results of inspections with the MMF and providing draft enforcement action orders to the MMF for review and comment regarding how the proposed action or order may affect Métis rights-holders.</p> | <p>at the WL facility, which has been flagged as an issue in 3 of the last 4 RORs. Second is the potential inability for the CNSC to accurately evaluate security as a SCA in 2020 through remote measures, which calls into question the sufficiency of other SCA evaluations. Third, the lack of transparency regarding the specific issue and why it has not yet been rectified even after the CNSC issuing orders, and parties such as the MMF identifying this SCA as a concern.</p> <p>Combined, the MMF is very concerned about the effectiveness of the CNSC to provide adequate oversight to the WL facility and is concerned about the potential response of both CNL and the CNSC if other SCAs are found to be below expectation or otherwise deficient in the future.</p> |
| 2020 - 19 | Whiteshell Laboratories. The effective dose (mSv/y) for workers in Figure I-2 shows an increase from 2016 to 2020, and an annual maximum effective dose of | More details of the exposure scenarios and reasons for increasing effective dose from 2016 to 2020 would be useful and should be included in the text for review. | <p>Partially Addressed</p> <p>Doses at the WL facility were decreased in 2021,</p> |



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| | <p>roughly 3 in 2019 and 2020, the constraint dose to the public. Does the CNSC expect the doses to continue to increase and is there an explanation for the increase (e.g., decommissioning active buildings)? What is the explanation by CNL for the increase?</p> <p>This section uses a different standard (500 mSv/y for skin and extremities) than in the main text (50 mSv/y or 100 over 5 years). There is no explanation as to what accounts for the dose to hands and feet and why this is significant. It follows that whole-body dose, with an explanation of the reasons why the values are above background, is more useful.</p> | | <p>however, it is important that CNL provide information of future scenarios as decommissioning continues.</p> |
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ENVIRONMENTAL MONITORING OF WHITESHELL LABORATORIES SITE

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| 2020 - 20 | <p>“monitoring shows that the food grown nearby is safe to eat and that the water is safe to drink”. Is this based on the monitoring by CNL or by the CNSC’s IEMP program which is not effective?</p> | <p>Given the disruptions to schedules and work plans in 2020 due to COVID, there should be a statement here that there was no impact on routine monitoring and that this conclusion is based on sound monitoring programs.</p> | <p>Not Addressed</p> <p>Similar claims are not made in the 2021 ROR, however, the MMF notes that the only information on consumption end points (e.g., food, plants, fish, wildlife, water), were from the 2017 IEMP which is dated.</p> |
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| 2020 - 21 | <p>This is an area in the CNSC that requires vast improvement. The IEMP sampling program at WL in 2017 was seriously below industry standards and was not performed in a manner consistent with</p> | <p>The CNSC Independent Environmental Monitoring Program needs overall improvement and a serious effort made to improve operations to fulfill its objectives. The next sampling program at WL could be improved with input from the MMF.</p> | <p>Partially Addressed</p> <p>The MMF has been engaged to discuss the 2022 IEMP for WL, however, as the result of the 2022 sampling data</p> |
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| | verifying the CNL monitoring program (that is generally good). | | not yet available it is unclear whether meaningful improvements to the program were made. |
| 2020 - 22 | <p>CNSC states that: “In 2020, CNSC staff did not conduct independent environmental monitoring around CNL sites as no activities were scheduled in 2020 as part of the IEMP plan.” The MMF recognize that the last IEMP at Whiteshell Laboratories occurred in 2017 and that Sagkeeng First Nation participated by sampling a Northern Pike from the Winnipeg River, caught downstream from the Whiteshell Laboratories site².</p> <p>Also, on CNSC’s website, they state that: <i>“The Algonquins of Ontario (AOO) also collaborated with the CNSC to provide locations and plants of interest for sampling. It is a priority for the CNSC that IEMP sampling reflects Indigenous traditional land use, values and knowledge where possible so that our IEMP results are meaningful for the community.</i></p> <p><i>CNSC staff collected water, soil and vegetation samples, and with the assistance of AOO Knowledge Holders also collected traditional food and medicinal plants such as sumac leaves and berries, balsam, white pine, wintergreen, choke</i></p> | <p>The MMF requests that CNSC provides the date for the next IEMP.</p> <p>The CNSC should engage the MMF in having a more active role in the IEMP at the WL site, similar to what has been carried out between the CSNC and AOO at the NPD site. This would facilitate a process to consider and address the MMF’s stated concerns regarding outstanding impacts on the Métis Community, the exercise of Métis stewardship rights and obligations, and the need to incorporate Métis traditional knowledge into monitoring and decommissioning plans and activities. This could include collaboratively developing sampling plans for the WL site with the MMF, integrating MMF sites of importance into the sampling program, and having MMF harvesters accompany the CNSC in the sample collection around the WL site.</p> <p>In addition, CNSC and CNL should be required to provide safety reports to the MMF so that the MMF can monitor them and consider implications for the Métis Community and harvesters who will access and use the site to exercise their harvesting and other rights following decommissioning activities. This would increase transparency regarding the decommissioning activities and exposure doses, and allow the MMF to provide information and feedback from the perspective of the use of the land by the Métis Community and their rights and interests that can be considered in these reports.</p> <p>Due to the importance of natural resources for subsistence and cultural use by the Métis Community, it is critical that monitoring of relevant country food and medicinal plant tissues for radiological and non-radiological contaminants conducted by CNL, AECL and the CNSC occur in a manner that will detect any potential impacts on the natural resources that are used by the Métis Community. Moreover, as the WL site is decommissioned and improved access is permitted, it will be just</p> | <p>Partially Addressed</p> <p>See Appendix B – Comment 2020 – 1</p> <p>See Appendix B – Comment 2020 – 21</p> |

² <http://www.nuclearsafety.gc.ca/eng/resources/maps-of-nuclear-facilities/iemp/whiteshell.cfm#r2017>



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| | <p><i>cherries, wild sarsaparilla root, pearly everlasting and lichen samples.</i>³</p> <p>The work that the CNSC is doing to engage the Algonquins of Ontario at the NPD site noted above is positive and sets an excellent example of how the CNSC should be engaging with the Métis Community around the CNL sites. These are the kinds of opportunities the CNSC should pursue with the MMF concerning the CNL WL site.</p> <p>In contrast, Section 4 (Protection of Workers at Site) of the 2018 ROR is based on exposure limits for workers and does not account for exposure by Métis land users. Based on monitoring of radiation doses to workers on the WL site (Section 4.2 and Appendix E of the ROR), average and maximum effective doses to workers increased slightly since 2014 as work progressed and decommissioning activities increased. Although doses increased, the amounts are still far below the annual effective dose of 50 mSV. This is understandable, as workers are exposed during demolition and transport of materials. These doses are indicative of doses to the public if they had full access to the site but should decline as the sources of radiation are removed or controlled. CNSC and CNL will undoubtedly continue to monitor doses to workers, which should decline at the completion of decommissioning. Doses that cannot be distinguished from</p> | <p>as important to ensure that ongoing liabilities associated with the site are managed appropriately for the type of use that the Métis Community will have. CNL must consult with the MMF regarding the development of the monitoring plans so that the distinct circumstances of the Métis Community and Métis harvesters are appropriately being considered and Métis traditional knowledge and stewardship rights are included in the plans.</p> <p>To ensure that monitoring accurately captures the data required (i.e., the locations, species, and parts of plants/animals consumed by the Métis Community) and that transparency of results is occurring, it is recommended that CNL and CNSC engage with the MMF to identify a Métis Liaison who can comment on monitoring design, review data, examine reports (e.g., Annual Environmental Monitoring Reports from CNL), then share information back to the MMF and Métis Community. This liaison should be involved in the management structure (i.e., committee) for the implementation of the IMP and IEMP. This liaison should also be able to participate in field-based data collection or identify Métis Citizens from the surrounding area who would be interested in participating.</p> <p>The MMF has limited resources and capacity to undertake the needed oversight of the WL site and support long-term monitoring and the unique stewardship challenges that are raised by decommissioning of the WL site and nuclear facility. Therefore, the role of the Métis Liaison should be funded by AECL, the CNSC and/or CNL as part of a long-term relationship agreement.</p> <p>As Métis Citizens of the Métis Community harvest around the project site, the MMF must be consulted about remediation and specifically revegetation objectives and plan for the site to ensure that native species relied on by the Métis Community for harvesting are used in remediation and revegetation plans wherever possible. In addition, traditional Métis knowledge should inform these plans and revegetation processes, including the potential for Métis Citizens to be involved in implementing or carrying out these activities. Furthermore,</p> | |
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³ <http://www.nuclearsafety.gc.ca/eng/resources/maps-of-nuclear-facilities/iemp/cnl-nuclear-power-demonstration-waste-facility.cfm>



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| | <p>background would be one indication that the site had returned to close to natural conditions.</p> <p>The Métis Community has Crown-recognized, s. 35 harvesting rights, including to fish, hunt, trap, and gather plants, firewood and other resources, that must be protected and preserved for future generations. Potential impacts on these rights, including contamination of the species relied on, must be minimized through meaningful consultation and accommodation with the MMF. The CNSC and CNL undertake ongoing environmental monitoring at the WL site through the IEMP and the Integrated Monitoring Program (IMP), respectively. This includes monitoring of effluent, environmental components, and groundwater, the results of which are reported annually. As demonstrated through the Métis Knowledge and Land Use Study (MMF, 2017), Métis harvesters have an abundance of historic and ongoing use in proximity to the WL site. Harvesters fish on the Winnipeg River, upstream and downstream of WL, hunt in the surrounding forests, and gather a range of natural materials for food, fire and fibre. As subsistence users of the land, with Crown-recognized s. 35 harvesting rights, the Métis Community are at higher risk to exposure than the general public. Moreover, as stewards of the land, the Métis Community plays an important role</p> | <p>CNL and AECL should incorporate site revegetation strategies into the closure of the site that is informed by this consultation with the MMF and Métis Community.</p> <p>CNL and AECL must engage the MMF for engagement and participation opportunities in any environmental protection, monitoring, awareness training programs about the WL site. This includes the opportunity for the MMF to provide feedback and input into the content of the environmental awareness training programs to ensure Métis traditional knowledge is adequately and appropriately integrated into these programs. This could be achieved through an ongoing Issues Resolution and Dialogue Table established between the MMF, CNL and AECL related to the WL site that includes the provision of capacity funding for a liaison staff position within the MMF (i.e., a Métis Liaison) to sit at this Table with CNSC/CNL/AECL.</p> <p>For the CNSC to truly conduct a comprehensive review of the ROR process, it must consider a formal technical review by an independent third party. Comments accepted from the public and stakeholders, while important, may not be able to adequately capture the detail required to fully address the issues.</p> | |
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| | <p>in the protection of the lands and waters. For this reason, it is important that the CNSC and CNL meaningfully include the MMF, on behalf of the Métis Community, in the collection, implementation and evaluation of the environmental monitoring completed through the IEMP and IMP.</p> <p>Finally, according to the assessment and monitoring subsection of Section 4.9.3 (The Environment and the Public) of the 2020 ROR:</p> <p><i>“Through compliance activities conducted during 2020, CNSC staff concluded that all the releases to the environment in 2020 remained a small fraction of their respective derived release limits (DRLs) at all CNL sites and met the regulatory requirements.”</i></p> <p>Although it is positive that CNSC concluded that regulatory requirements were met for CNL’s environmental monitoring programs there is a lack of representation and involvement by the MMF in these programs. Given the Métis Community’s long-standing relationship to the land at and around the WL site, including knowledge of the land and access to areas used for harvesting or other traditional land uses, MMF’s involvement in these programs is critically important. Including the MMF in environmental protection and monitoring would increase transparency, build trust,</p> | | |
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| | and foster partnerships with the MMF regarding the WL site. | | |
| 2020 - 23 | <p>CNSC states: “CNSC staff assess CNL’s performance in the waste management SCA through desktop reviews of documents and reportable events (Appendix F) and also through the course of inspections (Appendix E).” The MMF note that not a single inspection took place at the Whiteshell Laboratory in 2020. The Whiteshell Laboratory is the only CNL site that had no inspections in 2020.</p> <p>This lack of on-site oversight is concerning for the MMF. Especially since one of the four reportable events at the Whiteshell Laboratory was “<i>Non-Compliance to the WL Waste Management Area Facility Authorization.</i>”</p> | <p>The MMF request that CNSC provide a reason to justify why no inspections took place at the Whiteshell Laboratory while they continued at other CNL sites.</p> <p>MMF requests details regarding the “<i>Non-Compliance to the WL Waste Management Area Facility Authorization</i>” reportable event and a summary explaining the impacts of the non-compliance to human health and the environment.</p> <p>The MMF request that CNSC provide the date of inspections that have occurred so far in 2021 if any.</p> <p>CNL, AECL and the CNSC must keep the MMF informed regarding enforcement actions and orders at the WL site using the Communication Strategy and Protocol to ensure any incidents that may have an impact on the rights, interests, and claims of the Métis Community are communicated to the MMF promptly so that the MMF and the Métis Community can respond accordingly to minimize risks or impacts on Métis Citizens. The MMF recognizes that there may be emergencies that require an immediate response from the CNSC, however, in other circumstances advance communication with the MMF regarding enforcement actions and orders that could potentially impact Métis Citizens and s. 35 Métis rights is required. This could include sharing the results of inspections with the MMF and providing draft enforcement action orders to the MMF for review and comment regarding how the proposed action or order may affect Métis rights-holders. We recommend that a formal and mutually agreeable Communication Protocol be established between CNSC, CNL, AECL and the MMF to ensure the prompt notification of any releases, incidents, site security concerns, or enforcement actions associated with the WL site. Part of this Communication Protocol must also include an issue resolution and oversight process that is mutually agreeable.</p> | <p>Partially Addressed</p> <p>See Appendix B – Comment 2020 – 17</p> <p>See Appendix B – Comment 2020 - 18</p> |
| 2020 - 24 | CNL is now reporting levels of total uranium, plutonium, americium, strontium-90 and cesium-137 released to | The CNSC should discuss the source of these nuclides on the WL site and if it is possible to remove the source or contain the nuclides by isolating the source. Without these controls, these releases will extend | Not Addressed |



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| | <p>surface waters. The release of uranium and americium is not surprising given the state of operations at the WL site. However, the release of plutonium is unexpected, given that it is a nuclear fission product. At WL, the receiving environment is the Winnipeg River which flows to Lake Winnipeg. Monitoring of these nuclides started in 2016 but presumably, they were being released before that year. Although the amounts are well below the Derived Release Limits, it is unclear where these particular radionuclides, especially plutonium, are coming from in the wastewater measurements. As a result, these releases are concerning for MMF citizens that fish in the river and fish, some commercially, in Lake Winnipeg.</p> | <p>well into the future for uranium, plutonium, and americium isotopes (strontium and cesium will decay over several decades).</p> <p>Where sufficient information is not available, further monitoring and investigation are required to identify the sources. In light of the limited monitoring data available, additional monitoring as part of the decommissioning and post-decommissioning phases may also be required to verify that measures remain below acceptable levels over time. We recommend that a fulsome update to the 2001 Comprehensive Study report be completed, that adequately examines the potential risks associated with the site as a whole (including WR-1, the waste management area, the landfill, and the lagoon). The MMF must have a full account of the environmental status and potential risks associated with the entire site as a whole, not just the immediate area associated with WR-1.</p> | <p>a. The MMF continues to be concerned by the release of fission products such as Plutonium 238, 239 and 240 from the WL facility. Information on radionuclide loadings from the facility from 2017 to 2019 show a steady increase in direct discharge, with a limited reduction in 2020. CNSC must provide discussion on why the release of fission products has increased recently, when there should be no active fission or process occurring.</p> <p>b. The MMF is concerned that measurements of plutonium and other (e.g. Tritium) radionuclides were not required to be collected in 2021, which has occurred while these radionuclides are elevated above observed minimums.</p> |
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DECOMMISSIONING AND LONG-TERM WASTE STORAGE



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| 2020 - 25 | <p>CNSC indicates that “Decommissioning activities at WL commenced in 2003.” The MMF is particularly interested in the CNL’s current decommissioning activities at the WL site, as well as plans for the site, given that Métis Citizens currently exercise their Aboriginal rights and harvesting activities within 100 m of the site, including use of downstream areas of the Winnipeg River. This proximity of land use to the site by the Métis Community means that it is vitally important that CNL, AECL, and the CNSC provide information to the MMF promptly regarding the current decommissioning activities and plans for the site. As noted above, the Métis Community has distinct, constitutionally protected rights and interests that are potentially impacted by the current activities and future use of the WL site that are not adequately considered in a general public engagement or communications approach. A process for meaningfully continuing to consult with the MMF regarding proposed decommissioning activities and plans and involving the MMF in decision-making matters related to CNL and AECL’s plans for the site is required.</p> | <p>CNL, and AECL and the CNSC representing the Crown, must engage the MMF in developing a mutually agreeable Communication Strategy for the current site decommissioning activities. This Communication Strategy should include a process to inform the MMF on an ongoing basis about decommissioning and demolition activities and potential adverse effects, as well as a process for soliciting feedback and making revisions to the planned activities in light of MMF’s feedback and concerns. The Communications Strategy should also include a process for proactive communication with the MMF regarding proposed activities, including shared decision making regarding the timing of such activities to minimize impacts on Métis harvester’s access to the WL site and area. It should also follow a distinctions-based approach that recognizes the unique governance structure of the MMF and processes for communication with Métis Citizens. This will allow for clearer, more meaningful communication and engagement between CNL, AECL, CNSC and the MMF throughout the full decommissioning process at the WL site.</p> <p>CNL and AECL must engage the MMF to establish a decision-making process and framework that enables the MMF, as the democratically elected, self-government representative of the Métis Community, to be meaningfully involved in the determination of the plans for the WL site alongside CNL and AECL. This would include, among other things, requiring the consideration and integration of Métis traditional knowledge, land use, and occupancy information at and around the site in the monitoring and mitigation measures and plans, including during closure and post-closure periods. This decision-making process and framework should also explicitly include a role for the MMF in collaboratively determining the plans, use, and access to the site post-closure. The mechanism for this engagement should be mutually agreed on between CNL, AECL, and the MMF, but may include the creation of a Métis Liaison role, Indigenous oversight committee, and CNSC regulatory involvement.</p> | <p>Not Addressed</p> <p>CNL continues to pursue a long-term decommissioning approach using in-situ methods rather than complete decommissioning. This approach does not align with the ultimate vision for the site of the MMF, which hopes that one day the WL site can be returned to a pre-development condition, for harvest and other opportunity.</p> <p>The MMF recognizes that the talks regarding a relationship agreement between the MMF and CNL, and CNSC are ongoing, however, to date mutually agreeable solutions for the long term fate of the site have not been identified, and continue to fall short of the MMF’s overall expectations on meaningful dialogue and communication.</p> |
| 2020 - 26 | <p>A critical aspect of CNL and AECL’s plans for decommissioning the WL site is that sufficient waste storage space will be available at the AECL-owned Chalk River</p> | <p>The CNSC must provide additional information regarding the suitability of CNL’s plans to transport and store low- and intermediate-level waste at Chalk River Laboratories in Ontario. The feasibility of these transport and long-term storage plans are of the utmost importance in</p> | <p>Partially Addressed</p> <p>CNL and the CNSC must fully engage the MMF in</p> |



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| | <p>site (the expected destination for the waste) for contaminated materials removed from the AECL-owned WL site. However, no discussion or analysis of the availability/suitability of storage at the AECL-owned Chalk River site is provided in the RORs. Furthermore, there is no discussion or analysis of the alternative methods for transporting the waste. These plans are highly relevant to the oversight of the WL site as they will determine the nature and level of risk for future management of the site. While CNL is considering a possible In-Situ Decommissioning (ISD) plan for the WL site, this plan has not yet been approved by CNSC. Regulatory oversight and the ROR must align with the existing and currently licenced plan, not a potential future contemplated approach that has not been approved.</p> <p>Although the specifics on decommissioning the WL site are outside of the scope of the ROR, the MMF has provided several comments, including issues and suggested recommendations on how to address these issues concerning the WL site decommissioning process. CNL, AECL, and the CNSC must thoughtfully consider and incorporate all of the issues and recommendations the MMF has brought forward to date into future planning and decisions regarding the decommissioning of the site.</p> | <p>decision making and management of the WL site and will impact the ability of the Métis Community to utilize the site in the future.</p> <p>The MMF requests that CNSC, CNL, and AECL thoroughly review the issues and recommendations that have been brought forward by the MMF to date regarding the decommissioning of the WL site with the perspective of what is required to comply with the Crown’s duty to consult and accommodate, advance reconciliation, and uphold the honour of the Crown related to these activities occurring within the Métis Community’s Traditional Territory and Homeland. The MMF acknowledges that the CNSC, CNL, and AECL have already communicated and engaged with the MMF to some degree on these matters. However, unaddressed issues are remaining that the CNSC, CNL, and AECL must address in future planning and decision making regarding the WL site.</p> | <p>meaningful consultation regarding the transport of radioactive waste through the harvest area of the Red River Métis. The transportation of radioactive material is of particular concern because it increases the geographic scope of risk from the WL site to the entire transportation route between the WL site and the Chalk River Laboratories site.</p> <p>It is essential that CNL, AECL, CNSC, and all other relevant parties have in place appropriate communication protocols with Red River Métis citizens, as well as mitigation measures and resources able to respond to any incident which may occur during the transportation of radioactive material to or from the WL site.</p> |
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Appendix C - Specific Comments on the 2019 Regulatory Oversight Report

| Comment Number | MMF Comment | MMF Recommendation/Request | Follow-up Comment (September 2022) |
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| 2019 - 1 | <p>The ROR does not adequately acknowledge, recognize, or account for the rights, claims, and interests held by the Community that are recognized and affirmed under s.35 of the Constitution Act, 1982. It simply includes the MMF in a list of “Indigenous Communities And Groups Whose Traditional And/Or Treaty Territories Are In Proximity To CNL Sites” (Appendix I of the ROR). Although the CNSC suggests that they engaged the [Red River Métis] through a more targeted approach, it is not clear if or how the described letters, phone calls, meetings, and e-mail correspondence was distinct from the approach taken with the general public and First Nations to account for the unique rights of the [Red River Métis]. While the Crown can rely on boards, agencies, or commissions to discharge its duty to consult and accommodate, the responsibility for discharging the duty and upholding the honour of the Crown always remains with the Crown. No matter what process or entity is relied on to fulfill the duty, consultation and accommodation</p> | <p>a. AECL and the CNSC, as representatives of the Crown, must require and ensure engagement, consultation, and accommodation processes, and deliverables such as plans, applications, and assessments, are developed in collaboration with the MMF, and revised to reflect the MMF’s input. AECL and the CNSC should use a distinction-based approach for consultation and accommodation, an approach that explicitly recognizes and accounts for the distinct rights, claims, and interests of the [Red River Métis], as well as their significant history with the WL site and connection to the land. AECL and the CNSC must consult MMF, as the democratically elected self-government representative of Métis Citizens in Manitoba, on how they would like to be engaged in these processes on an ongoing basis to ensure the rights, claims, and interests of the [Red River Métis] are adequately considered and, where required, accommodated.</p> <p>b. In cases where impacts to the rights, claims, and interests of the [Red River Métis] cannot be avoided or mitigated, accommodations must be provided. The MMF must be consulted regarding the development of accommodation measures, where required, as part of fulfilling the duty to consult and accommodate. Such impacts to rights and interests could include, but are not limited to, instances such as a reduced ability to use or access the land in restricted-access areas in and around WL, timing of decommissioning activities that result in disruption to Métis harvesting practices or seasons, and decisions related to remediation or reclamation that affect whether native species or</p> | <p>Partially Addressed</p> <p>See Appendix B – Comment 2020 - 1</p> |



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| | <p>with respect to [Red River Métis]’s rights and interests involving the WL site activities, plans, and impacts must be meaningfully undertaken.</p> | <p>plants relied on by Métis harvesters are reintroduced into the area. Additionally, accommodations must be provided if wildlife or plant materials are found to be contaminated, impacting the ability of the [Red River Métis] to exercise their rights to harvest and consume wild and traditional foods and medicines that are safe and uncontaminated.</p> <p>c. CNL and AECL must consult with the MMF regarding all plans, applications, and assessments so that Métis Traditional Knowledge, exercise of Métis rights, and Métis land use information can be considered and incorporated into the plans during closure and post-closure periods</p> | |
| <p>2019 - 2</p> | <p>In section 2.2 of the report, the CNSC indicates that “the public and Indigenous groups in the WL area continue to show a high level of interest in CNL’s current decommissioning activities at WL, and in CNL’s future plans for the site.” The MMF is particularly interested in the CNL’s current decommissioning activities at the WL site, as well as future plans for the site, given that Métis Citizens currently exercise their Aboriginal rights and harvesting activities within 100 m of the site, including use of downstream areas of the Winnipeg River. This proximity of land use to the site by the [Red River Métis] means that it is vitally important that CNL, AECL, and the CNSC provide information to the MMF in a timely manner regarding the current decommissioning activities and future plans for the site. As noted above, the [Red River Métis] has distinct, constitutionally protected rights and interests that are</p> | <p>a. CNL, and AECL and the CNSC representing the Crown, must engage the MMF in developing a mutually agreeable Communication Strategy for the current site decommissioning activities. This Communication Strategy should include a process to inform the MMF on a timely ongoing basis about decommissioning and demolition activities and potential adverse effects, as well as a process for soliciting feedback and making revisions to the planned activities in light of MMF’s feedback and concerns. The Communications Strategy should also include a process for proactive communication with the MMF regarding proposed activities, including shared decision making regarding the timing of such activities to minimize impacts on Métis harvesters’ access to the WL site and area. It should also follow a distinctions-based approach that recognizes the unique governance structure of the MMF and processes for communication with Manitoba Métis Citizens. This will allow for clearer, more meaningful communication and engagement between CNL, AECL, CNSC, and the MMF throughout the full decommissioning process at the WL site.</p> <p>b. CNL and AECL must engage the MMF to establish a decision-making process and framework that enables the MMF, as the</p> | <p>Partially Addressed</p> <p>See Appendix B – Comment 2020 - 25</p> |



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| | <p>potentially impacted by the current activities and future use of the WL site that are not adequately considered in a general public engagement or communications approach and require more specific action. A process for meaning fully continuing to consult with the MMF regarding proposed decommissioning activities and future plans and involving the MMF in decision-making matters related to CNL and AECL’s future plans for the site is required.</p> | <p>democratically elected, self-government representative of the [Red River Métis], to be meaningfully involved in the determination of the future plans for the WL site alongside CNL and AECL. This would include, among other things, requiring the consideration and integration of Métis Traditional Knowledge, land use, and occupancy information at and around the site in the monitoring and mitigation measures and plans. This decision-making process and framework should also explicitly include a role for the MMF in collaboratively determining the future plans, use, and access to the site post-closure. The mechanism for this engagement should be mutually agreed on between CNL, AECL, and the MMF, but may include the creation of a Métis Liaison role (see comment #5), Indigenous oversight committee, and CNSC regulatory involvement.</p> | |
| <p>2019 - 3</p> | <p>According to Section 5.3 on Indigenous Engagement, CNSC staff indicated they “are satisfied with Indigenous engagement conducted by CNL.” Furthermore, they provided their own self-assessment of engagement, as follows:</p> <p>“CNSC staff efforts in 2019 supported the CNSC’s ongoing commitment to meeting its consultation obligations and building relationships with Indigenous peoples. In particular, CNSC staff continued to work to meet its Duty to Consult obligations with regards to CNL’s proposed projects undergoing environmental assessments and licence amendments or renewals. CNSC staff also continued to identify opportunities for formalized and regular</p> | <p>CNL and AECL must ensure engagement and consultation processes and deliverables, such as plans, applications, and assessments, etc. meaningfully consider, assess, and, where required, provide mutually agreeable accommodation measures of any impacts on the unique collective rights held by the [Red River Métis]. AECL and the CNSC, as representatives of the Crown, should use a distinction-based approach for consultation and accommodation, an approach that accounts for the distinct rights, claims, and interests of the [Red River Métis], as well as their significant history with the WL site and connection to the land. AECL and the CNSC, as representatives of the Crown, must consult with the MMF, as the democratically elected self-government representative of the [Red River Métis] on an ongoing basis to ensure the rights, claims, and interests of the [Red River Métis] are adequately considered and accommodated, and issues raised by the [Red River Métis] are adequately addressed. Practically speaking, this could include the following measures:</p> <ol style="list-style-type: none"> 5. Establish a Communication Protocol for informing the MMF of any regulatory oversight activities happening within the Manitoba Métis Homeland. Such a protocol should include | <p>Partially Addressed</p> <p>See Appendix B – Comment 2020 - 1</p> |



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| | <p>engagement throughout the lifecycle of CNL sites, including meetings and workshops upon request. Through this engagement, CNSC staff welcomed the opportunity to discuss and address all topics of interest and concern to the Indigenous communities.” (CNSC, 2020a; pg. 19)</p> <p>Although this wording suggests that CNL has met its regulatory obligations for Indigenous Engagement and has satisfied the CNSC requirements, it is unclear how obligations for Crown consultation, and where appropriate, accommodations, are included in this process. It is also unclear what the outcomes and results were from the above engagement methods with respect to the Crown’s obligations, including if the Crown has effectively addressed or accommodated any issues the MMF has in relation to the WL site. As previously noted in other MMF reports regarding the WL site and proposed decommissioning activities, while positive relationships with CNL have developed recently, there are still outstanding issues and concerns that remain unresolved. Where there are Crown actions or decisions that have the potential to impact on the constitutionally protected rights, claims, or interests of the [Red River Métis], a meaningful consultation process</p> | <p>clear timelines and processes that not only inform the MMF but solicit its feedback and allow for modification to the planned activities in light of information and concerns raised by the MMF. Joint decision-making opportunities should be built into this process wherever possible.</p> <ol style="list-style-type: none"> 6. Provide adequate capacity support for the MMF to meaningfully participate in regulatory oversight programs, for example, by funding a Métis Liaison position within the MMF (see Comment #5) or an Indigenous oversight committee. 7. Develop policy guidance collaboratively with the MMF around the integration of Métis Traditional Knowledge, land, and resource use into the CNSC’s regulatory oversight programs, and AECL’s site ownership and decision-making roles, including licensing requirements. This should include how Métis Traditional Knowledge will be used to inform MMF – CNSC REGULATORY OVERSIGHT REPORT (ROR): 2019 CNL SITES TECHNICAL REVIEW 36 ongoing monitoring, environmental protection and remediation or reclamation activities in institutional and post-institutional control periods. 8. Provide the MMF with the opportunity to be involved in all aspects of regulatory oversight and safety and control framework activities, including, but not limited to, the following: <ol style="list-style-type: none"> a. environmental protection programs b. emergency planning and response c. transportation route planning 9. Set out requirements within the Safety and Control Framework that compel facility operators to meaningfully involve the MMF in all aspects of the management system. | |
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| | to address these impacts and concerns is required. While “engagement” may be a best practice, consultation is legally required in these circumstances. | | |
| 2019 - 4 | CNSC continues in this ROR to provide no detail on the reasoning for the enforcement action order made in 2018 and associated with the low rating on the Security SCA for the WL site. Without this information, it is unclear if or how the enforcement action order may have or will impact the [Red River Métis], or how the enforcement action was addressed by CNL, or attended to by AECL as the site owner. This information is particularly important given the continuing below-expectations performance of the security SCA at WL site again in 2019, and the evidence that Métis Citizens use and rely on the area of and surrounding the WL site to exercise their harvesting and other s.35 rights. Security at the site has a direct connection to access and as such any enforcement action orders related to security may impact [Red River Métis] Citizens’ access for the purposes of exercising their rights. | CNL, AECL, and the CNSC must keep the MMF informed about all enforcement actions and orders at the WL site. This should be done through and based on the communication strategies and protocols we have requested be established above. This approach will ensure any incidents that may have an impact on the rights, interests, and claims of the [Red River Métis] are communicated to the MMF in a timely manner so that the MMF and the Community can communicate accordingly to minimize risks or impacts on Métis Citizens. The MMF recognizes that there may be emergency situations that require an immediate response from CNSC; however, in other circumstances, advance communication with the MMF regarding enforcement actions and orders that could potentially impact Métis Citizens and s.35 Métis rights is required. This could include sharing the results of inspections with the MMF and providing draft enforcement action orders to the MMF for review and comment regarding how the proposed action or order may affect Métis rights-holders. | Not Addressed See Appendix B – Comment 2020 - 18 |
| 2019 - 5 | The [Red River Métis] has Crown-recognized, s.35 harvesting rights, including to fish, hunt, trap, and gather plants, firewood, and other resources, that must be protected and preserved for future generations. Potential impacts on these rights, including contamination of | a. Due to the importance of these natural resources for use by the Community, it is critical that monitoring of relevant country food and medicinal plant tissues for radiological and non-radiological contaminants conducted by CNL, AECL, and the CNSC occur in a manner that will detect any potential impacts on the natural resources that are used by the [Red River Métis]. Moreover, as the WL site is decommissioned and improved access is permitted, it | a. Partially Addressed See Appendix B – Comment 2020 – 21 b. Partially Addressed |



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| | <p>the species relied on, must be minimized through meaningful consultation and accommodation with the MMF. The CNSC and CNL undertake ongoing environmental monitoring at the WL site through the IEMP and the Integrated Monitoring Program (IMP), respectively. This includes monitoring of effluent, environmental components, and groundwater, the results of which are reported annually. As demonstrated through the Métis Knowledge and Land Use Study (MMF, 2017), Métis harvesters have an abundance of historic and ongoing use in proximity to the WL site. Harvesters fish on the Winnipeg River, upstream and downstream of WL, hunt in the surrounding forests, and gather a range of natural materials for food, fire and fibre. As subsistence users of the land, with Crown-recognized s.35 harvesting rights, the [Red River Métis] are at higher risk to exposure than the general public. Moreover, as stewards of the land, the [Red River Métis] play an important role in the protection of the lands and waters. For this reason, it is important that the CNSC and CNL meaningfully include the MMF, on behalf of the Community, in the collection, implementation and evaluation of the environmental monitoring completed through the IEMP and IMP.</p> | <p>will be just as important to ensure that ongoing liabilities associated with the site are managed appropriately for the type of use that the Community will have. CNL must consult with the MMF regarding the development of the monitoring plans so that the distinct circumstances of the Community and Métis harvesters are appropriately being considered and Métis Traditional Knowledge and stewardship rights are included in the plans.</p> <p>b. To ensure that monitoring accurately captures the data required (i.e., the locations, species, and parts of plants/animals consumed by the [Red River Métis]) and that transparency of results is occurring, it is recommended that CNL and CNSC engage with the MMF to identify a Métis Liaison who can comment on monitoring design, review data, examine reports (e.g., Annual Environmental Monitoring Reports from CNL), then share information back to the MMF and the Community. This liaison should be involved in the management structure (i.e., committee) for implementation of the IMP and IEMP. This liaison should also be able to participate in field-based data collection or identify Métis Citizens from the surrounding area who would be interested in participating. We acknowledge that in 2020 correspondence associated with the environmental assessment process for the WR-1 In-Situ Decommissioning project, that CNL offered to involve an MMF monitor in the ditch water sampling program around the WL waste management area. However, this is only a small piece of the larger recommendation presented here and previously in our comments in 2019.</p> <p>c. The MMF has limited resources and capacity to undertake the needed oversight of the WL site and support long-term monitoring and the unique stewardship challenges that are raised by decommissioning of the WL site and nuclear facility. Therefore, the role of the Métis Liaison should be funded by AECL, the CNSC, and/or CNL.</p> | <p>See Appendix B – Comment 2020 – 21</p> <p>c. Partially Addressed</p> <p>See Appendix B – Comment 2020 – 1</p> <p>d. Not Addressed</p> <p>See Appendix B – Comment 2020 - 25</p> |
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| | | <p>d. As Métis Citizens of the [Red River Métis] harvest around the project site, the MMF must be consulted about remediation and specifically revegetation objectives and plan for the site to ensure that native species relied on by the Community for harvesting are used in remediation and revegetation plans wherever possible. In addition, Traditional Métis Knowledge should inform these plans and revegetation processes, including the potential for Métis Citizens to be involved in implementing or carrying out these activities. Furthermore, CNL and AECL should incorporate site revegetation strategies into the closure of the site that are informed by this consultation with the MMF and the Community.</p> | |
| 2019 - 6 | <p>It is not clear from the ROR Section 4.1 subsection titled “Estimated dose to the Public” nor from the more detailed explanation in Appendix E, where radiation exposure to the Public is comparable to that of Métis land users.</p> | <p>Work with the MMF to determine whether the dose to the Public is comparable to the dose to the Métis land users, and if it is expected to be different, calculate and report to the MMF on the dose to Métis land users relative to safety limits.</p> | <p>Not Addressed See Appendix B – Comment 2020 - 14</p> |



Appendix D - Specific Comments on the 2018 Regulatory Oversight Report

| Comment Number | MMF Comment | MMF Recommendation/Request | Follow-up Comment (September 2022) |
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| RIGHTS, CLAIMS, AND INTERESTS OF THE MANITOBA MÉTIS COMMUNITY | | | |
| 1 | <p>The ROR does not adequately acknowledge, recognize, or account for the rights, claims, and interests held by the [Red River Métis] that are established and protected under s. 35 of the <i>Constitution Act, 1982</i>. The [Red River Métis]’s constitutionally protected rights to the territory in which WL is situated are a crucial distinction between the [Red River Métis] and the general public or other stakeholders. Although the CNSC suggests that they engaged the [Red River Métis] through a more targeted approach, it is not clear if or how the described letters, phone calls, meetings, and e-mail correspondence was distinct from the approach taken with the general public and First Nations to account for the unique rights of the [Red River Métis]. While the Crown can rely on boards, agencies or commissions to discharge its duty to consult and accommodate, the responsibility for discharging the duty and upholding the honour of the Crown always remains with the Crown. No matter what process or</p> | <p>Recommendation 1a: CNL, and AECL representing the Crown site owner, must engage the MMF to establish binding, long-term relationship agreements (LTRAs) or similar agreements that enable the MMF, as the democratically elected, self-government representatives of the [Red River Métis], to address all of the following recommendations with respect to the operation of the WL site, and all future decommissioning activities. Moreover, CNL and AECL must consult with the MMF regarding these plans so that Métis traditional knowledge, exercise of Métis rights, and Métis land use information can be considered and incorporated into the plans during closure and post-closure periods.</p> <p>Recommendation 1b: AECL and the CNSC, as representatives of the Crown, must require and ensure engagement, consultation, and accommodation processes, and deliverables such as plans, applications, and assessments, are developed in collaboration with the MMF, and revised to reflect the MMF’s input. AECL and the CNSC should use a distinction-based approach for consultation and accommodation, an approach that explicitly recognizes and accounts for the distinct rights, claims, and interests of the [Red River Métis], as well as their significant history with the WL site and connection to the land. AECL and the CNSC must consult MMF, as the democratically elected self-government representative of Métis Citizens in Manitoba, on how they would like to be engaged in these processes on an ongoing basis to ensure the rights, claims, and interests of the [Red</p> | <p>a. Partially Addressed See Appendix B – Comment 2020 – 1</p> <p>b. Partially Addressed See Appendix B – Comment 2020 – 1</p> <p>c. Not Addressed See Appendix B – Comment 2020 – 1</p> <p>See Appendix B – Comment 2020 – 25</p> |



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| | <p>entity is relied on to fulfill the duty, consultation and accommodation with respect to [Red River Métis]’s rights and interests involving the WL site activities, plans and impacts must be meaningfully undertaken.</p> | <p>River Métis] are adequately considered and, where required, accommodated.</p> <p>Recommendation 1c: In cases where impacts to the rights, claims and interests of the [Red River Métis] cannot be avoided or mitigated, accommodations must be provided. The MMF must be consulted regarding the development of accommodation measures, where required, as part of fulfilling the duty to consult and accommodate. Such impacts to rights and interests could include, but are not limited to, instances such as a reduced ability to use or access the land in restricted-access areas in and around WL, timing of decommissioning activities that result in disruption to Métis harvesting practices or seasons, and decisions related to remediation or reclamation that affect whether native species or plants relied on by Métis harvesters are reintroduced into the area. Additionally, accommodations must be provided if wildlife or plant materials are found to be contaminated, impacting the ability of the [Red River Métis] to exercise their rights to harvest and consume wild and traditional foods and medicines that are safe and uncontaminated.</p> | |
| 2 | <p>In section 2.2 of the report, the CNSC indicates that <i>“The public and Indigenous groups in the WL area continue to show a high level of interest in CNL’s current decommissioning activities at WL, and in CNL’s future plans for the site.”</i> The MMF is particularly interested in the CNL’s current decommissioning activities at the WL site, as well as future plans for the site, given that Métis Citizens currently exercise their Aboriginal rights and harvesting activities within 100 m of the site, including use of</p> | <p>Recommendation 2a: CNL, and AECL and the CNSC representing the Crown, must engage the MMF in developing a mutually agreeable Communication Strategy for the current site decommissioning activities. This Communication Strategy should include a process to inform the MMF on an ongoing basis about decommissioning and demolition activities and potential adverse effects, as well as a process for soliciting feedback and making revisions to the planned activities in light of MMF’s feedback and concerns. The Communications Strategy should also include a process for proactive communication with the MMF regarding proposed activities, including shared decision making regarding the timing of such activities to minimize impacts on Métis harvesters access to the WL site and area.</p> | <p>a. Partially Addressed</p> <p>See Appendix B – Comment 2020 – 1</p> <p>d. Partially Addressed</p> <p>See Appendix B – Comment 2020 – 1</p> |



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| | <p>downstream areas of the Winnipeg River. This proximity of land use to the site by the [Red River Métis] means that it is vitally important that CNL, AECL, and the CNSC provide information to the MMF in a timely manner regarding the current decommissioning activities and future plans for the site. As noted above, the [Red River Métis] has distinct, constitutionally protected rights and interests that are potentially impacted by the current activities and future use of the WL site that are not adequately considered in a general public engagement or communications approach. A process for meaningfully continuing to consult with the MMF regarding proposed decommissioning activities and future plans and involving the MMF in decision-making matters related to CNL and AECL’s future plans for the site is required.</p> | <p>It should also follow a distinctions-based approach that recognizes the unique governance structure of the MMF and processes for communication with Manitoba Métis Citizens. This will allow for clearer, more meaningful communication and engagement between CNL, AECL, CNSC and the MMF throughout the full decommissioning process at the WL site.</p> <p>Recommendation 2b: CNL and AECL must engage the MMF to establish a decision-making process and framework that enables the MMF, as the democratically elected, self-government representative of the [Red River Métis], to be meaningfully involved in the determination of the future plans for the WL site alongside CNL and AECL. This would include, among other things, requiring the consideration and integration of Métis traditional knowledge, land use, and occupancy information at and around the site in the monitoring and mitigation measures and plans. This decision-making process and framework should also explicitly include a role for the MMF in collaboratively determining the future plans, use, and access to the site post-closure. The mechanism for this engagement should be mutually agreed on between CNL, AECL, and the MMF, but may include the creation of a Métis Liaison role (see comment #5), Indigenous oversight committee, and CNSC regulatory involvement.</p> | |
| 3 | <p>According to Section 5.3.2 on Indigenous Engagement at Whiteshell Laboratories,</p> <p><i>“CNSC staff observed that CNL has a dedicated Indigenous engagement program that covers their operations and activities at the WL site.</i></p> | <p>CNL and AECL must ensure engagement and consultation processes and deliverables, such as plans, applications, and assessments, etc. meaningfully consider, assess, and where required provide mutually agreeable accommodation measures of any impacts on the unique collective rights held by the [Red River Métis]. AECL and the CNSC, as representatives of the Crown, should use a distinction-based approach for consultation and accommodation, an approach that accounts for the distinct rights, claims, and interests of the [Red River Métis], as well as their significant history with the WL site and</p> | <p>Partially Addressed</p> <p>See Appendix B – Comment 2020 - 1</p> |



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| | <p><i>Consistent with the requirements and guidance of CNSC REGDOC 3.2.2: Aboriginal Engagement, throughout 2018, CNL met and shared information with interested Indigenous communities and organizations. These efforts have included emails, letters, meetings, site visits and tours, community visits, and workshops among others with a major focus being on WR-1...CNSC staff continue to be satisfied with the level and quality of Indigenous engagement conducted by CNL with regards to their operations and proposed projects at WL and continue to adhere to the guidance of REGDOC 3.2.2.”</i></p> <p>Although this wording suggests that CNL has met its regulatory obligations for Indigenous Engagement and has satisfied the CNSC requirements, it is unclear how obligations for Crown consultation, and where appropriate, accommodations, are included in this process, nor how the described CNL letters, phone calls, meetings, e-mail correspondence, site visits and tours, and workshops were distinct from the approach taken with the</p> | <p>connection to the land. AECL and the CNSC, as representatives of the Crown, must consult with the MMF, as the democratically elected self-government representative of the [Red River Métis] on an ongoing basis to ensure the rights, claims, and interests of the [Red River Métis] are adequately considered and accommodated, and issues raised by the [Red River Métis] are adequately addressed. Practically speaking, this could include the following measures:</p> <ol style="list-style-type: none"> 1) Establish a Communication Protocol for informing the MMF of any regulatory oversight activities happening within the Manitoba Métis Homeland. Such a protocol should include clear timelines and processes that not only inform the MMF but solicit their feedback and allow for modification to the planned activities in light of information and concerns raised by the MMF. Joint decision -making opportunities should be built into this process wherever possible. 2) Provide adequate capacity support for the MMF to meaningfully participate in regulatory oversight programs, for example, by funding a Métis Liaison position within the MMF or an Indigenous oversight committee. 3) Develop policy guidance collaboratively with the MMF around the integration of Métis traditional knowledge, land, and resource use into the CNSC’s regulatory oversight programs, and AECL’s site ownership and decision-making roles, including licensing requirements. This should include how Métis traditional knowledge will be used to inform ongoing monitoring, environmental protection and remediation or reclamation activities in institutional and post-institutional control periods. | |



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| | <p>general public and First Nations to account for the unique rights of the [Red River Métis]. It is also unclear what the outcomes and results were from the above engagement methods with respect to the Crown’s obligations, including if the Crown has effectively addressed or accommodated any issues the MMF has in relation to the WL site. As previously noted in other MMF reports regarding the WL site and proposed decommissioning activities, while positive relationships with CNL have developed recently, there are still outstanding issues and concerns that remain unresolved. Where there are Crown actions or decisions that have the potential to impact on the constitutionally protected rights, claims, or interests of the [Red River Métis], a meaningful consultation process to address these impacts and concerns is required. While “engagement” may be a best practice, consultation is legally required in these circumstances.</p> | <p>4) Provide the MMF with the opportunity to be involved in all aspects of regulatory oversight, and safety and control framework activities, including, but not limited to, the following:</p> <ul style="list-style-type: none"> a) environmental protection programs b) emergency planning and response c) transportation route planning d) Set out requirements within the Safety and Control Framework that compel facility operators to meaningfully involve the MMF in all aspects of the management system. | |
| 4 | <p>Appendix A of the ROR provides a list of inspections that have occurred at all of the CNL managed facilities, including the number of enforcement actions issued by the CNSC at each site. At the WL site, there were two inspections and one</p> | <p>CNL, AECL and the CNSC must keep the MMF informed regarding enforcement actions and orders at the WL site using the communication strategies and protocols recommended in Recommendations 2a and 2b to ensure any incidents that may have an impact on the rights, interests, and claims of the [Red River Métis] are communicated to the MMF in a timely manner so that the MMF</p> | <p>Not Addressed</p> <p>See Appendix B – Comment 2020 - 18</p> |



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| | <p>enforcement action order related to security. However, the CNSC provides no detail on the reasoning for the enforcement action order and the subsequent process for resolution. Without this information, it is unclear if or how the enforcement action order may have or will impact the [Red River Métis], or how the enforcement action was addressed by CNL, or attended to by AECL as the site owner. This information is particularly important given the below-expectations performance of the security SCA at WL site and the evidence that Métis Citizen use and rely on the area of and surrounding the WL site to exercise their harvesting and others. s. 35 rights. Security at the site has a direct connection to access and as such any enforcement action orders related to security may impact [Red River Métis] Citizens access for the purposes of exercising their rights.</p> | <p>and the [Red River Métis] can respond accordingly to minimize risks or impacts on Métis Citizens. The MMF recognizes that there may be emergency situations that require an immediate response from CNSC, however, in other circumstances advance communication with the MMF regarding enforcement actions and orders that could potentially impact Métis Citizens and s. 35 Métis rights is required. This could include sharing the results of inspections with the MMF and providing draft enforcement action orders to the MMF for review and comment regarding how the proposed action or order may affect Métis rights-holders.</p> | |
| ENVIRONMENTAL MONITORING OF WHITESHELL LABORATORIES SITE | | | |
| 5 | <p>The [Red River Métis] has Crown-recognized, s. 35 harvesting rights, including to fish, hunt, trap, and gather plants, firewood and other resources, that must be protected and preserved for future generations. Potential impacts on</p> | <p>a. Due to the importance of these natural resources for use by the [Red River Métis], it is critical that monitoring of relevant country food and medicinal plant tissues for radiological and non-radiological contaminants conducted by CNL, AECL and the CNSC occur in a manner that will detect any potential impacts on the natural resources that are used by the [Red River Métis].</p> | <p>a. Partially Addressed See Appendix B – Comment 2020 – 21</p> |



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| | <p>these rights, including contamination of the species relied on, must be minimized through meaningful consultation and accommodation with the MMF. The CNSC and CNL undertake ongoing environmental monitoring at the WL site through the IEMP and the Integrated Monitoring Program (IMP), respectively. This includes monitoring of effluent, environmental components, and groundwater, the results of which are reported annually. As demonstrated through the Métis Knowledge and Land Use Study (MMF, 2017), Métis harvesters have an abundance of historic and ongoing use in proximity to the WL site. Harvesters fish on the Winnipeg River, upstream and downstream of WL, hunt in the surrounding forests, and gather a range of natural materials for food, fire and fibre. As subsistence users of the land, with Crown-recognized s. 35 harvesting rights, the [Red River Métis] are at higher risk to exposure than the general public. Moreover, as stewards of the land, the [Red River Métis] play an important role in the protection of the lands and waters. For this reason, it is important that the CNSC and CNL meaningfully include the MMF, on behalf of the [Red River Métis], in the collection, implementation and evaluation of the</p> | <p>Moreover, as the WL site is decommissioned and improved access is permitted, it will be just as important to ensure that ongoing liabilities associated with the site are managed appropriately for the type of use that the [Red River Métis] will have. CNL must consult with the MMF regarding the development of the monitoring plans so that the distinct circumstances of the [Red River Métis] and Métis harvesters are appropriately being considered and Métis traditional knowledge and stewardship rights are included in the plans.</p> <p>b. To ensure that monitoring accurately captures the data required (i.e., the locations, species, and parts of plants/animals consumed by the [Red River Métis]) and that transparency of results is occurring, it is recommended that CNL and CNSC engage with the MMF to identify a Métis Liaison who can comment on monitoring design, review data, examine reports (e.g., Annual Environmental Monitoring Reports from CNL), then share information back to the MMF and [Red River Métis]. This liaison should be involved in the management structure (i.e., committee) for implementation of the IMP and IEMP. This liaison should also be able to participate in field-based data collection or identify Métis Citizens from the surrounding area who would be interested in participating.</p> <p>c. The MMF has limited resources and capacity to undertake the needed oversight of the WL site and support long term monitoring and the unique stewardship challenges that are raised by decommissioning of the WL site and nuclear facility. Therefore, the role of the Métis Liaison should be funded by AECL, the CNSC and/or CNL as part of a long-term relationship agreement.</p> <p>d. As Métis Citizens of the [Red River Métis] harvest around the project site, the MMF must be consulted about remediation and</p> | <p>b. Partially Addressed</p> <p>See Appendix B – Comment 2020 – 21</p> <p>c. Partially Addressed</p> <p>See Appendix B – Comment 2020 – 1</p> <p>d. Not Addressed</p> <p>See Appendix B – Comment 2020 - 25</p> |



| Comment Number | MMF Comment | MMF Recommendation/Request | Follow-up Comment (September 2022) |
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| | environmental monitoring completed through the IEMP and IMP. | specifically revegetation objectives and plan for the site to ensure that native species relied on by the [Red River Métis] for harvesting are used in remediation and revegetation plans wherever possible. In addition, traditional Métis knowledge should inform these plans and revegetation processes, including the potential for Métis Citizens to be involved in implementing or carrying out these activities. Furthermore, CNL and AECL should incorporate site revegetation strategies into the closure of the site that are informed by this consultation with the MMF and [Red River Métis]. | |
| 6 | <p>According to the assessment and monitoring subsection of Section 4.1 The Environment and the Public,</p> <p><i>“CNSC staff confirmed that CNL, in accordance with its environmental protection and monitoring programs, successfully carried out required effluent and environmental monitoring, site inspections, environmental awareness training and program implementation for the sites covered by this ROR. Through compliance activities conducted during 2018, CNSC staff concluded that environmental monitoring conducted at CNL sites and the discharge of treated effluent from CNL sites both met regulatory requirements.”</i></p> | <p>CNL and AECL must engage the MMF for engagement and participation opportunities in any environmental protection, monitoring, awareness training programs in relation to the WL site. This includes the opportunity for the MMF to provide feedback and input into the content of the environmental awareness training programs to ensure Métis traditional knowledge is adequately and appropriately integrated into these programs. This could be achieved through an ongoing Issues Resolution and Dialogue Table established between the MMF, CNL and AECL related to the WL site that includes the provision of capacity funding for a liaison staff position within the MMF (i.e., a Métis Liaison – see Comment #5) to sit at this Table with CNSC/CNL/AECL.</p> | <p>Partially Addressed</p> <p>See Appendix B – Comment 2020 – 1</p> <p>See Appendix B – Comment 2020 – 21</p> |



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| | <p>Although it is positive that CNSC concluded that regulatory requirements were met with respect to CNL’s environmental monitoring, awareness, and training programs, there is a lack of representation and involvement by the MMF in these programs. Given the [Red River Métis]’s long-standing relationship to the land at and around the WL site, including knowledge of the land and access to areas used for harvesting or other traditional land uses, MMF involvement in these programs is critically important. Including the MMF in environmental protection and monitoring would increase transparency, build trust, and foster partnerships with the MMF regarding the WL site.</p> | | |
| 7 | <p>According to Section 4.1.1 Independent Environmental Monitoring Program – Results,</p> <p><i>“It is a priority for the CNSC that IEMP sampling reflects Indigenous traditional land use, values and knowledge where possible. As part of the CNSC’s ongoing relationship building with Indigenous communities, CNSC staff collaborated with the Algonquins</i></p> | <p>The CNSC should engage the MMF in having a more active role in the IEMP at the WL site, similar to what has been carried out between the CSNC and AOO at the NPD site. This would facilitate a process to consider and address the MMF’s stated concerns regarding outstanding impacts on the [Red River Métis], exercise of Métis stewardship rights and obligations, and the need to incorporate Métis traditional knowledge into monitoring and decommissioning plans and activities. This could include collaboratively developing sampling plans for the WL site with the MMF, integrating MMF sites of importance into the sampling program, and having MMF harvesters accompany the CNSC in the sample collection around the WL site.</p> | <p>Partially Addressed</p> <p>See Appendix B – Comment 2020 – 1</p> <p>See Appendix B – Comment 2020 – 21</p> |



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| | <p><i>of Ontario (AOO) in the development of the sampling plan for the NPD [Nuclear Power Demonstration] Waste Facility. CNSC staff included many of AOO requested locations in the sampling plan conducted in August. Additionally, in October, CNSC staff collected a variety of samples with the aid of AOO Knowledge Holders. This included traditional and medicinal plants. The results were provided to the AOO in May 2019.”</i></p> <p>The work that the CNSC is doing to engage the Algonquins of Ontario at the NPD site noted above is positive and sets an excellent example of how the CNSC should be engaging with the [Red River Métis] around the CNL sites. These are the kinds of opportunities the CNSC should pursue with the MMF in relation to the CNL Whiteshell Laboratories site.</p> | | |
| 8 | <p>Section 4 Protection of Workers at Site is based on exposure limits for workers and does not account for exposure by Métis land users. Based on monitoring of radiation doses to workers on the WL site (Section 4.2 and Appendix E of the ROR), average and maximum effective doses to workers has increased slightly since 2014</p> | <p>CNSC and CNL should be required to provide safety reports to the MMF so that the MMF can monitor them and consider implications for the [Red River Métis] and harvesters who will access and use the site to exercise their harvesting and other rights following decommissioning activities. This would increase transparency regarding the decommissioning activities and exposure doses and allow the MMF to provide information and feedback from the</p> | <p>Not Addressed</p> <p>See Appendix B – Comment 2020 – 1</p> <p>See Appendix B – Comment 2020 – 21</p> |



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| | <p>as work has progressed and decommissioning activities have increased. Although doses have increased, the amounts are still far below the annual effective dose of 50 mSV. This is understandable, as workers are exposed during demolition and transport of materials. These doses are indicative of doses to the public if they had full access to the site but should decline as the sources of radiation are removed or controlled. CNSC and CNL will undoubtedly continue to monitor doses to workers, which should decline at the completion of decommissioning. Doses that cannot be distinguished from background would be one indication that the site had returned to close to natural conditions.</p> | <p>perspective of the use of the land by [Red River Métis] and their rights and interests that can be considered in these reports.</p> | <p>The MMF encourages CNL and the CNSC to identify pathways of sharing relevant and meaningful information to ensure the MMF is aware of ongoing decommissioning efforts as well as overall risks to the environment and Red River Métis citizens. This includes transparency surrounding ongoing opportunities or challenges with implementation of programing and resolution of issues.</p> |
| GENERAL COMMENTS | | | |
| 9 | <p>Table D-2 in the ROR summarizes the performance of different SCAs for the Whiteshell Laboratories site from 2014 to 2018. According to the summary table, all SCAs satisfied requirements, with the exception of the security SCA, which was graded as below expectations. However, there is a lack of clarity regarding what it means for the security SCA to be below expectations, including if there are any</p> | <p>The CNSC must provide greater detail on what a below expectations score means for the security SCA and what measures it requires CNL to take at the site to improve the security performance at the site. Additional information is required in order to determine if Métis rights and interests were considered in the security enforcement order and what impacts on the [Red River Métis] may result that require additional or responding actions to address. This information would be facilitated by having a communication protocol in place, that could be used if there are any implications or risks for the [Red River Métis] to be aware of, especially to alert citizens who are active harvesters in</p> | <p>Not Addressed</p> <p>See Appendix B – Comment 2020 – 16</p> <p>See Appendix B – Comment 2020 - 18</p> |



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| | risks or implications that the MMF needs to be aware of given the active harvesting and land use by the [Red River Métis] happening around the site. | the area about changes in access or other security measure they should be aware of. | |
| 10 | A critical aspect of CNL and AECL’s plans for decommissioning the WL site is that sufficient waste storage space will be available at the AECL-owned Chalk River site (the expected destination for the waste) for contaminated materials removed from the AECL-owned WL site. However, no discussion or analysis of availability/suitability of storage at the AECL-owned Chalk River site is provided in the ROR. Furthermore, there is no discussion or analysis of the alternative methods for transporting the waste. These plans are highly relevant to the oversight of the WL site as they will determine the nature and level of risk for future management of the site. While CNL is considering a possible ISD plan for the WL site, this plan has not yet been approved by CNSC. Regulatory oversight and the ROR must align with the existing and currently licenced plan, not a potential future contemplated approach that has not been approved. | CNSC must provide additional information regarding the suitability of CNL’s plans to transport and store low- and intermediate-level waste at Chalk River Laboratories to the MMF for review. The feasibility of these transportation and long-term storage plans is of the utmost importance in decision making and management of the WL site, which will impact the ability of the [Red River Métis] to utilize the site in the future. | Partially Addressed See Appendix B – Comment 2020 - 26 |



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| 11 | <p>Section 5.9 of the ROR on Waste and Decommissioning states the following regarding the decommissioning activities planned at the Whiteshell Laboratories site,</p> <p><i>“The CNSC has received formal proposals from CNL to accelerate decommissioning at NPD and the WR-1 reactor at WL. Both of these proposals involve ‘in-situ decommissioning’, where major underground structures would be left in place, filled with grout, and capped. In both cases, in-situ decommissioning is not permitted by the current licensing basis, nor is it the end-state documented in CNL’s current CNSC staff-accepted decommissioning plans.</i></p> <p><i>For each of the NPD and WR-1 projects, CNL has submitted a licence application to the CNSC and prepared a draft EIS for comment by the public, the CNSC and other provincial and federal departments. CNSC staff undertook a review of CNL’s draft EISs and conducted licensing reviews pursuant to the NSCA and its associated regulations. As the</i></p> | <p>The MMF requests that CNSC, CNL, and AECL thoroughly review the issues and recommendations that have been brought forward by the MMF to date regarding the decommissioning of the WL site with the perspective of what is required in order to comply with the Crown’s duty to consult an accommodate, advance reconciliation, and uphold the honour of the Crown related to these activities occurring within the [Red River Métis]’s traditional territory. The MMF acknowledges that the CNSC, CNL, and AECL have already communicated and engaged with the MMF to some degree on these matters. However, there are unaddressed issues remaining that the CNSC, CNL, and AECL must address in future planning and decision making regarding the WL site.</p> | <p>Not Addressed</p> <p>See Appendix A – Comment 2021 - 1</p> |



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| | <p><i>responsible authority, and working with other federal departments, CNSC staff have identified a number of areas where additional information will need to be included in the final EISs and other technical supporting documentation. For each project, complete licensing and EIS submissions are required before CNSC staff can complete their assessment and proceed to public hearings.</i></p> <p><i>For each project, following receipt of a complete licensing submission and final EIS, CNSC staff will write a CMD containing staff's assessment of the licence amendment and the EA report, in support of a hearing on the topic. This CMD will be available to the public and Indigenous groups prior to the Commission's public hearing, the date of which has not been set. The public will be offered the opportunity to submit written and/or oral interventions. Because there will be separate Commission decisions on these projects, they are out of the scope of this ROR."</i></p> | | |



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| | <p>Although the specifics on decommissioning the WL site are outside of the scope of the ROR, the MMF has provided several comments, including issues and suggested recommendations on how to address these issues in relation to the WL site decommissioning process. CNL, AECL, and the CNSC must thoughtfully consider and incorporate all of the issues and recommendations the MMF has brought forward to date into future planning and decisions regarding the decommissioning of the site.</p> | | |
| 12 | <p>According to Table H-4 which described WL annual radionuclide releases to surface water for 2014–2018, uranium, plutonium, and americium are all released at the site. The release of uranium and americium are not surprising given the state of operations at the WL site. However, the release of plutonium is unexpected, given that it is a nuclear fission product. Further to that point, these nuclides have only been monitored in wastewater for the last couple of years, but the reactor was shut down in 1985. Although the amounts are well below the Derived Release Limits, it is unclear where these particular radionuclides, especially plutonium, are</p> | <p>CNSC must provide more information regarding the source of the radionuclides, particularly the plutonium, alpha, and beta in the wastewater at the WL site to provide greater clarity on the sources contributing to certain levels of radionuclides being reached, despite the current stage of activity of the WL site. Where additional information is not available, further monitoring and investigation are required in order to identify the sources. In light of the limited monitoring data available, additional monitoring as part of the decommissioning and post-decommissioning phases may also be required in order to verify that measures remain below acceptable levels over time.</p> | <p>Not Addressed See Appendix B – Comment 2022 - 24</p> |



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| | coming from in the wastewater measurements. | | |

