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**Written submission from
the Sagkeeng Anicinabe
First Nation**

**Mémoire de la
Première Nation
Sagkeeng Anicinabe**

**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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Sagkeeng Anicinabe First Nation's Submission on Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021

October 3, 2022

Prepared by the Sagkeeng Anicinabe First Nation in partial collaboration with the Algonquins of Pikwakanagan First Nation. This submission was funded by the Canadian Nuclear Safety Commission's Participant Funding Program.



Sagkeeng Anicinabe First Nation’s Submission on Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021

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List of Acronyms

Acronym	Definition
AOPFN	Algonquins of Pikwakanagan First Nation
CEMP	Community Environmental Monitoring Program
CLC	Community Liaison Committee
CNL	Canadian Nuclear Laboratories
CNSC	Canadian Nuclear Safety Commission
FPIC	Free, Prior and Informed Consent
HRAP	Healing and Resiliency Action Plan
IAEA	International Atomic Energy Agency
IEMP	Independent Environmental Monitoring Program
ROR	Regulatory Oversight Report
SAFN	Sagkeeng Anicinabe First Nation
SCA	Safety and Control Area
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Sagkeeng Anicinabe First Nation’s Submission on Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021

Introduction

This submission provides comments from Sagkeeng Anicinabe First Nation (SAFN) on Canadian Nuclear Safety Commission’s (CNSC) 2021 Regulatory Oversight Report (ROR) for Canadian Nuclear Laboratories (CNL) Sites¹. With respect to this submission, CNL operates the following Atomic Energy of Canada Limited (AECL)-controlled facility in unceded Sagkeeng Anicinabe Territory²:

- **The Whiteshell Laboratories (WL)**

The submission has two parts. Part one, provides detailed comments on the content of the ROR and SAFN’s experiences with CNSC and CNL in 2021. Part two, provides joint SAFN-AOPFN recommendations for improving consultation with Indigenous Nations going forward. SAFN collaborated with the Algonquins of Pikwakanagan First Nation (AOPFN) in the preparation of certain aspects of this submission (namely, Part 2). AOPFN and SAFN have cooperated in the past on nuclear related work as both Nations have similar histories regarding nuclear projects in our territories.

We want to start by recognizing the progress our Nations have made to improve relations with CNL and CNSC. CNSC has shown an interest in involving Indigenous groups more in its work, including on seeking more Indigenous input in monitoring and on project reviews and permit renewals. CNSC has also been working to provide more capacity support to Indigenous groups to allow for our participation. CNSC staff have shown an interest in learning from Indigenous groups and incorporating our cultural protocols.

CNL has also shown a recently increased interest in working more collaboratively with SAFN. CNL has agreed to support our monitoring initiatives including SAFN’s Community Environmental Monitoring Program (CEMP). CNL has also agreed to support more ongoing and in-depth communication with our community, including by supporting the SAFN Community Liaison Committee (CLC). We note that much of this improvement has occurred in 2022 but is based on decisions from 2021 so we consider these improvements in this review of the 2021 ROR.

While we are encouraged by this growth, there is still room for improvement. Both our Nations would like to see more effort on behalf of CNSC and CNL to incorporate Indigenous perspectives in monitoring, reviews, and communication strategies. This includes:

Table 1 Recommendations for improvement

Recommendation Topics	Relevant in-text recommendations
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¹ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

² Sagkeeng has filed and is pursuing a claim for aboriginal title to that part of its territory which falls within Treaty 3, including the Whiteshell Laboratory site.

<p>CNSC must explain how our reviews, comments and feedback are incorporated into RORs, reviews of annual work activities, and permit reviews and decisions</p>	<p>See Recommendation 1</p>
<p>CNSC and CNL must commit to further transparency and communication. This includes providing more information on CNL’s performance, reporting on events, a discussion on how CNSC has implemented our comments into RORs</p>	<p>See Recommendations 1, 2, 6, 7</p>
<p>CNSC and CNL must commit to more opportunities for sharing information with our community members in a way that is collaborative, understandable, and culturally appropriate. SAFN’s CLC mentioned the importance of supporting the following communication initiatives: community feasts with CNL and CNSC present to share information on the work being done, CNL and CNSC running school outreach programs including doing presentations at school and doing on the land sampling with students, monitoring training initiatives, and preparing materials with understandable information to be shared with community members.</p>	<p>See Recommendation 2, 6, 7, and 8</p>
<p>CNSC must incorporate Indigenous perspectives on wellness and health into the ROR review and monitoring including adopt additional risk assessment parameters in collaboration with Indigenous groups.</p> <p>CNSC should also encourage CNL to incorporate Indigenous perspectives on wellness and health into CNL’s engagement activities and monitoring activities (Including support for SAFN’s Healing and Resiliency Action Plan (HRAP))</p>	<p>See Recommendations 3 and 9</p>
<p>CNSC and CNL must recognize that nuclear project developments in our territories contributes to, and exacerbates, cumulative impacts to the environment and our Aboriginal rights. Those cumulative effects (both the iterative additional effect, and the total cumulative effect load after the addition of the iterative effects) should be considered and accounted for in future RORs when assessing CNL’s operations. This should also be considered when assessing impacts to our wellness and health.</p>	<p>See Recommendation 4</p>
<p>CNSC must incorporate findings from our monitoring programs into the annual RORs and must seek to further integrate our monitoring programs into CNSC’s annual monitoring activities. This must be done in a way that is culturally appropriate.</p>	<p>See Recommendation 3, 7, 8 and 9</p>

CNSC and CNL must commit to further communication, collaboration, and co-approval with SAFN for the import and transport of any off-site radioactive materials into SAFN traditional territory.	See Recommendation 5
CNSC and CNL must commit to more Nation-specific cultural awareness training for CNSC and CNL staff and demonstrate how this is incorporated into work with Indigenous communities and ongoing monitoring activities. Members from the CLC mentioned the need to ensure that CNSC and CNL staff are incorporating what they learn from Indigenous groups into their monitoring work, this includes adapting sampling schedules to account for hunting and harvesting seasons ³ .	See comments in Table 4.
CNSC must include Aboriginal Rights Criteria into future RORs	See Recommendation 9

We will discuss each of these in the remainder of this submission. Before doing so, we want to emphasize the importance of CNSC providing us with feedback on how CNSC will implement these recommendations.

Recommendation 1. We ask that the CNSC provide a summary on how our comments recommendations will: 1) be reflected in CNSC’s 2023 work activities and 2) how our comments will shape future RORs. SAFN would also like to see CNSC provide explanation and justification regarding how and whether our Anicinabe Knowledge was used in ROR findings, CNSC 2023 work, and in decision-making. This would be in alignment with the Government of Canada’s Indigenous Knowledge Policy Framework

Additionally, SAFN believes that CNSC should not only be reviewing the performance of the site caretaker (CNL) but also the site controller (AECL on behalf of Canada), especially with respect to consultation with Indigenous peoples and protection of Aboriginal rights.

³ SAFN CLC meeting 13 September 2022.

Part 1. Sagkeeng Anicinabe First Nation's General Review on the Regulatory Oversight Report

Introduction

The ROR presents a high-level summary of CNL's regulatory performance during 2021. The document draws on a wide range of regulatory oversight activities performed by the CNSC, as well as the International Atomic Energy Agency (IAEA). The ROR generally provides sufficient information in a concise form to allow parties to develop a general understanding of the regulatory performance of CNL, based on the current technical focus (further discussion on the important missing layer of meaningful consultation and collaboration with Indigenous peoples is handled later in this document).

Based on the information presented by the CNSC in the ROR, SAFN identified no material concerns with CNL's existing environmental performance being measured through existing Safety and Control Areas (SCA's). That said, there is specific areas that require more information, elaboration, and consideration, including:

- 1. Further details on findings of ratings including for Reportable Events and Security**
- 2. Health and safety of Indigenous Nations from an Indigenous perspective**
- 3. Engagement and Consultation from CNSC and CNL with Indigenous groups**

These are discussed further below.

Additionally, AOPFN and SAFN are proposing additional criteria to strengthen how CNSC assesses CNL's performance from an Aboriginal rights-based perspective (discussed in Part 2), in a manner consistent with the United Nations Declaration on the Rights of Indigenous Peoples and the Government of Canada's Indigenous Knowledge Policy Framework.⁴

Areas for Improvement in Future RORs

- 1. Further details on findings of ratings including for Reportable Events and Security**

In general, there is very little information on the reasoning for CNSC's rankings of CNL's performance. It would help Indigenous groups to better understand and communicate the performance with Nation members if the ROR provided clear information and examples of CNL's performance grades that can be shared in an accessible manner.

For example, Appendix F of the ROR contains a list of reportable events at each CNL site in 2021⁵. CNSC determined that all such events were not significant and that corrective actions to prevent recurrence were satisfactory. However, the ROR presents insufficient information for a reviewer to understand the nature of the events and CNSC's rationale for determining that they are not significant. To illustrate, Event 14 from Table F-2 indicates that depleted uranium was unaccounted for and Event 20 states that air effluent exceeded

⁴ While SAFN acknowledges that the Indigenous Knowledge Policy Framework does not expressly apply to decisions of the CNSC, it undeniably represents what the Government of Canada understands to be 'best practice' in this area, and CNSC should voluntarily adopt and apply it to its own decisions.

⁵ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

the action level for gross beta radiation⁶. The ROR presents no further information on these events, nor a description of why the CNSC classified the events as non-significant. It is this type of information gap that feeds, rather than combats, the natural fear, stigma, and concern felt by our people about nuclear facilities. More detailed information on all such events should be presented in future RORs.

As another example, across all areas assessed, CNL's performance was found by the CNSC to be "satisfactory"⁷, with the exception of security, which was rated as being "below expectations". Due to the potentially sensitive and confidential nature of security findings, the ROR presents no information to determine whether the deficiencies could result in potentially significant impacts to their interests.

Recommendation 2. To address this gap, CNSC must provide further information on findings in the ROR including whether the deficiencies have a potential to cause impacts to the residents and environment within their traditional territories. CNSC must also communicate the criteria for its significance and satisfaction ratings so that the public can better understand how those ratings are reached and applied. CNSC and CNL must develop annual communication plans on how these concerns will be communicated with community members and these communication plans need to include financial and other supports for communities to take a leading role in information and risk communication.

2. Health and safety of Indigenous Nations from an Indigenous perspective

All assessments and monitoring of CNL's operations reported in the ROR indicate that the facilities are not resulting in significant impacts to the biophysical environment. However, the document does not:

- (a) assess the effects that CNL's facilities are having on the socio-cultural well-being of Indigenous peoples;
- (b) consider how nuclear project developments in our territories contributes to, and exacerbates, cumulative impacts to the environment and our Aboriginal rights.

Based on the adverse psycho-social impacts associated with sites involving radioactivity, this represents a gap in the ROR. On page 2, The ROR states that, "Indigenous Nations and communities and the public near the CNL sites, and the surrounding environment continued to be protected"⁸. However, it does not explain whether or how the wellbeing and practice of Indigenous rights continues to be protected. Nor does it provide any evidence about whether those Indigenous communities "feel" protected. Asserting that Indigenous communities are protected without explaining the rationale and metrics for that conclusion is counterproductive, and can undermine public confidence in the ROR's findings.

SAFN has been clear in previous submissions that mental health and rights practicability does NOT continue to be protected, nor has it ever been protected at and around nuclear facilities. In 2021, a Psychosocial Impact Assessment conducted by SAFN and funded by the CNSC, presented a psychosocial baseline of the SAFN community's collective identity

⁶ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

⁷ Performance is rated using a binary system of Satisfactory or Below Expectations.

⁸ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

that has been heavily influenced by historical trauma tied to the Whiteshell site. The Psychosocial Impact Assessment explores past, present, and potential future social, psychological, cultural, and spiritual impacts from WR-1, the proposed in-situ decommissioning, and other decommissioning alternatives. The study found that “[t]he Whiteshell Laboratory Site has been a significant source of distress for members of Sagkeeng, who have found it to be responsible for environmental degradation, particularly the water, vegetation, and wildlife, on which they depend”⁹. The study strongly recommends that CNL and CNSC support the development and implementation of trauma-informed mitigation. The study found that the measures cannot undo past harm caused by the Whiteshell Laboratories but can promote healing and prevent future harm. SAFN has consistently informed CNSC and CNL that while activities at the Whiteshell site are not the sole contributor to psychosocial effects currently affecting SAFN members, it is not acceptable for CNL, AECL and CNSC to simply refuse to take action to address those effects based on an asserted uncertainty around proportional responsibility for those effects.

Potential impacts to Indigenous mental health and wellness have not been accounted for in the ROR. The mere presence of a nuclear facility within the traditional territory causes undue stress. Indigenous well-being is closely tied to the experience and perception of the lands, waters, resources, and spirit within the traditional territory. Improper consideration of effects on Indigenous well-being, such as fear, stigma, uncertainty, and the lack of agency associated with radioactive waste – is unacceptable. These effects have real world adverse health outcomes. Bearing witness to a gradual decline in the health of the water, vegetation and wildlife will continue to add anxiety and stress for as long as radioactive waste remains in Indigenous territory.

SAFN acknowledges that CNL has begun taking steps towards implementing the mitigations identified in the Psychosocial Impact Assessment. While this progress remains an ongoing project in 2022, CNL first recognized and took steps to improve how it engaged with SAFN on these issues following a very productive meeting between the leadership of CNL and SAFN’s Chief and Council in spring 2021. The outcome of this meeting was the creation of an ongoing working group and the identification of four key priorities which, once implemented, would meaningfully contribute to addressing the psychosocial impacts of the Whiteshell Lab on SAFN members. The implementation of those priorities is a work in progress, and the mitigation measures identified in the Psychosocial Impact Assessment have not yet been fully implemented. Those measures, and a brief statement on their progress towards implementation, includes:

- Building a Trauma-Informed Decision-Making Model: Identifying a working model for how all future decisions can be made, considering territorial sovereignty, SAFN values and the corporate interests and values of CNL.
 - SAFN understands that CNL staff have participated in a “Trauma-Informed Decision Making” workshop, but that a working model for decision-making has not been developed or implemented. However, CNL’s support for the Community Liaison Committee (CLC) is a good first step in supporting community information sharing and engagement.
- Building a Trauma-Informed Engagement Plan: Facilitating a process that empowers community members to find community-driven measures to address historical trauma and identify mechanisms to increase resilience and promote healing.

⁹ Narratives Inc. 2021. Sagkeeng Anicinabe Psychosocial Impact Assessment.

- SAFN understands that CNL staff have participated in a “Trauma Informed Engagement” workshop. SAFN is not aware of whether CNL has developed trauma-informed engagement plan.
- Building a Long-Term Monitoring Program: Opportunity for SAFN members to understand and communicate potential project impacts in a culturally appropriate way.
 - CNL has committed to funding SAFN’s Community Environmental Monitoring Program (CEMP). SAFN expects that program to be initiated shortly. This mitigation measure will always be a work in progress, in that for it to be meaningful, the monitoring program must be sustained over the long term. However, SAFN views CNL’s work on this measure at this time as meaningful and contributing positively to the psychosocial wellbeing of SAFN.
- Capacity and Access to Independent Expertise: Opportunity for SAFN to engage experts to assist with interpreting technical information to ensure informed decisions are made.
 - CNL has continued to provide funding when requested to facilitate SAFN’s access to independent expertise.
- Psychological Well Being: Resources be made available to ensure SAFN members have access to psychological therapy and long-term social and physical structures be built to address and prevent ongoing intergenerational trauma.
 - This recommendation has not been acted on.

A key component of the mitigation measure regarding Psychological Well Being is developing and implementing a Healing and Resiliency Action Plan (HRAP). CNL initially promised that it would support the HRAP; SAFN expects CNL to honour that commitment and expects CNSC to hold CNL to that commitment.

Recommendation 3. To address gaps with respect to Indigenous health and wellbeing, CNSC must:

- 1) provide further information on how Indigenous well-being and rights are being protecting on and around CNL sites with support from SAFN;**
- 2) work with SAFN to adopt additional risk assessment parameters that allow for annual reporting on population health/Indigenous determinants of health risk assessment that would allow for mental health factors like fear, stigma, risk-perception, reduce willingness to harvest and consume country food, loss of connection to the cultural landscape, reduced knowledge transmission and an overall loss of agency to be integrated into the system; and**
- 3) support SAFN’s work on healing and resiliency with respect to the Whiteshell site. This includes supporting SAFN’s requests to CNL to commit to developing, implementing, and funding the HRAP. Additionally, when assessing Indigenous health in future ROR’s, CNSC must consider whether and how CNL is meeting its commitments made to Indigenous groups regarding well-being and health.**

This is identified in Part 2 criteria. Our recommendations on how to assess mental well-being as a parameter going forward is in Part 2.

Please note that SAFN rejects any argument by the CNSC that socio-cultural well-being is beyond the scope of its regulatory oversight. As an agent of the Crown, the CNSC owes our Nation proper protection and promotion of all aspects of our rights that may be impacted by the physical works and activities that nuclear projects have or may have in our territories. The SAFN also note that the federal government has adopted a project review system, through the Impact Assessment Act, that emphasizes that Indigenous health, economic and social conditions are part of the federal jurisdiction, and **we expect this to be the case in relation to both federal impact assessments and federal regulatory systems moving forward.**

Furthermore, SAFN has been vocal about how nuclear project developments in our territory contributes to, and exacerbates, cumulative impacts to the environment and our Aboriginal rights. This has not been reflected in the ROR and is often not understood by proponents in general. A key aspect of evaluating the operation of CNL facilities from an Aboriginal rights-based perspective is to implement a holistic lens. This means understanding how CNL's facilities contributes to cumulative effects impact SAFN's territory and Aboriginal rights.

Recommendation 4. Cumulative effects (both the iterative additional effect, and the total cumulative effect load after the addition of the iterative effects) should be considered and accounted for in future RORs when assessing CNL's operations. This should also be considered when assessing impacts to our wellness and health.

3. Engagement and Consultation from CNSC and CNL with Indigenous groups

The ROR indicates that CNSC staff is satisfied with the level and quality of Indigenous engagement conducted by CNL with regards to its operations and proposed projects at its different sites. SAFN finds this conclusion to be incomplete; a more fulsome analysis that incorporates feedback from Indigenous groups is required. We have provided a review of CNSC's consultation performance in the table below.

SAFN were disappointed to find a lack of information in the ROR on relationship building efforts and successes with Indigenous communities in 2021. The ROR as it stands says nothing about relations between CNSC staff and SAFN in 2021, all of which is in relation to CNL facilities. SAFN feels that our relationship with the CNSC and CNL is improving, however it started from a very poor baseline. Our relationship still has a long way to go. SAFN would like to see more effort shown in reporting on this relationship moving forward.

Additionally, SAFN feels that CNL has not adequately rationalized the location, nature, management, risks, transport, and removal of all radioactive waste at the Whiteshell site, with SAFN. This is a critical gap in the way that CNL engages with our Nation. The lack of proper and detailed account to Indigenous Peoples of nuclear wastes on-site has been a major contributor to risk perception by Indigenous Nations. Our people, our staff, and our leadership remain effectively in the dark about how radioactive waste is brought in, stored, and managed in our territories.

Recommendation 5. Going forward, CNSC and CNL must commit to further communication, collaboration, and co-approval with SAFN for the import and transport of any off-site radioactive materials into SAFN traditional territory.

In general, there are a number of issues in the ROR with respect to information sharing and ongoing communication. The existing Proponent-led communication system is not making headway with Indigenous communities, and that this program should be replaced with an Indigenous-led risk communication program. This program would help improve Indigenous understanding of nuclear activities and may alter members' perception of risk.

SAFN note that it is unclear if Indigenous groups were involved in the development of the Environmental Management system, or the Environmental Risk Assessment. Our understanding is that there were no advance opportunities for SAFN to review and comment on any of these activities.

On page 37, the ROR states that the CNSC requires licensees to maintain and implement public information and disclosure programs¹⁰. It is unclear to us if the program includes a separate initiative for Indigenous groups, that is developed in consultation with those affected groups.

Recommendation 6. SAFN requests further information on the public information and disclosure programs, namely how this applies to Indigenous Nations. If the public information and disclosure program does not include a separate program for Indigenous communities, SAFN requests that this is added to yearly regulatory oversight at CNL sites for 2022 and beyond.

On page 28 the ROR states that Indigenous Nations and communities were also provided updates on ongoing licensed activities at the Whiteshell Laboratories site. In 2019, SAFN recommended in its Licence Extension Submission that the CNSC require the involvement of SAFN in the development and review of the final safety assessment "for the final in situ disposal of 21 or 22 of the underground LLW trenches", currently planned for sharing with CNSC staff for approval. It is unclear in the 2021 ROR if consultation with Indigenous groups addressed the development and review of the final safety assessment. **Further clarification is needed to determine whether our recommendation was adopted by either CNSC or CNL. This ties back to recommendation 1, regarding reporting on how our inputs are being incorporated into CNSC's work.**

Additionally, the ROR states on page 56 that a total of 45 events were reported to and assessed by CNSC staff in 2021¹¹. CNSC staff determined that there was no risk to the environment, nor the public associated with these events. Table F-1 in the ROR identifies Whiteshell Laboratories had six reportable events in 2021; it is unclear how these events were reported to SAFN. It is important to have a clear reporting structure in place for such events to manage risk perception of nuclear facilities within the membership, as there is a pre-existing lack of trust within the community in Crown agencies. The absence of clear reporting and follow up protocols for reportable incidents with Indigenous communities is highly problematic.

Recommendation 7. Moving forward SAFN requests that CNSC work with SAFN to strengthen how events are communicated with SAFN. SAFN would also like CNSC to provide a detailed list of events and a list of inspections at CNL sites in SAFN territory over the past several years and identify whether and how SAFN would like to be engaged in joint inspections in the future. This can be discussed at the LTRA table with the CNSC.

¹⁰ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

¹¹ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

There are ongoing concerns amongst community members regarding the risks of CNL operations in our territory. CNSC and CNL must continue to improve communication with our community.

SAFN believes there needs to be better integration of our Anicinabe Knowledge and values, and improved collaboration in monitoring at and around Whiteshell Laboratories. SAFN held a Community Liaison Committee (CLC) meeting to discuss the ROR and their experiences with Whiteshell Laboratories in 2021 and 2022. Members were appreciative of the work conducted by CNSC so far in 2022 on sampling but indicated that the sampling timeframe was too short and that CNSC's sampling must do more to adapt to Indigenous values including the seasonality of sampling:

[The] sampling timeframe is too short... [we] got sage and cedar, wanted to get animals, the time for animal collection is in the fall... we need more flexibility to hunt. Animals are hard to find, you have to know where they are.¹²

There are certain times of the year where our people will do the harvesting, even animals and medicines. We can't just restrict it to spring to summer and that's it. I think they have to expand and take into consideration the seasonal aspects of what we do in certain seasons.¹³

Fall is the proper time to harvest some plants and medicines, because they are full of nutrients and minerals for the winter.¹⁴

Further improvements could be made by expanding the area that is monitored and adjusting sampling techniques to account for our Anicinabe Knowledge and values.

CNSC staff don't know what medicines are, so SAFN used their own names for plants. CNSC can incorporate Indigenous names and medicines in their research. CNSC did a lot of soil and water testing, [we] need to expand the area to test... for soil sampling. We used a tool to collect soil down to four inches, just under grass and clay. [They] looked for sediments, lots of places had rocks and riprap, so it was hard to get sediment... Contaminants have been there a long time, didn't test in the middle of the river. Spills are four feet deep, but the dams opening up may have stirred up sediments.¹⁵

[We] need to improve this sampling, look at layers where fish are, need to go deeper in water and soil.¹⁶

That was one of my concerns, the depth of sampling. The water flows underneath, and everything will go to the bottom [of the river] ... [and] will move stuff downriver. You also have to consider the rain and the snow, and it sinks everything down further into the ground. Things are not going to sit on the top 4 inches when there's rain or snow melt off, it's going to go in deeper. The testing has to be done deeper, because eventually it'll make

¹² CLC member. 2022. SAFN CLC meeting 13 September 2022.

¹³ CLC member. 2022. SAFN CLC meeting 13 September 2022.

¹⁴ CLC member. 2022. SAFN CLC meeting 13 September 2022.

¹⁵ CLC member. 2022. SAFN CLC meeting 13 September 2022.

¹⁶ CLC member. 2022. SAFN CLC meeting 13 September 2022.

its way to the waters. It's all connected and serves a purpose. That's how Mother earth is, everything works together.¹⁷

The CNSC must adapt its sampling program to meet the requirements of SAFN protocols. Adequate time and resources must be provided to support SAFN in monitoring activities in and around Whiteshell Laboratories. When asked how the CNSC can improve its engagement process with SAFN, one member identified:

Consult and work with our Elders to educate themselves, Knowledge holders on medicines. We have to train them. They have to provide financial support for that. Culture and environment, training on the connections of the world.¹⁸

The CLC agreed that there should be more collaboration between SAFN's Community Environmental Monitoring Program (CEMP) and CNSC sampling program as well as CNL's monitoring work. The CLC believe that the best way to adapt CNSC's sampling program is to bring in CEMP monitors and to create synergies between the programs.

Recommendation 8. SAFN requests that CNL and CNSC work with SAFN to strengthen community communication to help mitigate concerns and fears and strengthen relationships. This should include developing materials, visiting the SAFN community to talk to membership about risk and safety, school visits, educational forums, further collaboration with SAFN's monitoring program, and more.

The table below provides a further information on ways that CNSC can improve relations with SAFN. The "review" column is based on input from SAFN's CLC¹⁹. The SAFN CLC met on September 13, 2022, to discuss the Nation's experience engaging with CNSC and CNL.

Table 2 CNSC consultation adequacy metrics by SAFN

Issue	Measure	Review
Information sharing and communication	Does CNSC maintain reciprocal communication channels and good-faith relations with Indigenous groups impacted by regulated sites?	CNSC is improving its communication efforts with SAFN. Going forward, CNSC must invest in on-the-ground communication with community members as well as day-to-day reporting with SAFN staff. CNSC should consider co-funding (with CNL), a full-time permanent "nuclear projects liaison" position at SAFN.
Responsiveness to requests for revisions to licenses or other regulatory instruments	How have the Indigenous recommendations and concerns in response to the previous year's Regulatory Oversight Report been addressed in the regulatory	CNSC has not provided clear indication on how SAFN's input is being integrated into RORs. Going forward, CNSC should demonstrate more clearly how our recommendations are considered

¹⁷ CLC member. 2022. SAFN CLC meeting 13 September 2022.

¹⁸ CLC member. 2022. SAFN CLC meeting 13 September 2022.

¹⁹ SAFN CLC meeting 13 September 2022.

<p>Integration of Indigenous input into CNSC's work</p>	<p>and licensing operations of the past year?</p> <p>How has CNSC incorporated Indigenous comments and recommendations to improve this relationship?</p>	<p>in annual RORs and in changes to regulatory instruments.</p> <p>CNSC should also demonstrate how it is learning from SAFN and expanding its approach to nuclear waste management, monitoring, and reporting.</p> <p>CNSC should voluntarily adopt, for all of its proceedings and regulation of nuclear industry activities, the Government of Canada's Indigenous Knowledge Policy Framework, and should work with the Government of Canada to have the <i>Nuclear Safety and Control Act</i> amended to expressly incorporate the Indigenous Knowledge provisions added to other environmental regulatory statutes in 2019.</p>
<p>Indigenous engagement in the creation of Independent Environmental Monitoring Program (IEMP)</p>	<p>Does CNSC have an effectively functioning program to support impacted Indigenous groups in creating Indigenous-led IEMP's? What kind of support is provided (financial, technical, consultation etc.)?</p>	<p>Indigenous engagement has improved under the IEMP. Community members would like to see more day-to-day collaboration and more synergies with the IEMP and the CEMP.</p>
<p>Adequacy of CNSC support funding</p>	<p>Amount of PFP and other funding from CNSC for Indigenous groups to engage in processes</p>	<p>CNSC has been providing funding to Indigenous groups for monitoring programs. However, CNSC needs to seriously expand the amount provided to allow for more back and forth engagement on risk communication, the IEMP, among other consultation and collaboration priorities.</p>
<p>Timeliness of consultation</p>	<p>Does the CNSC support consultation timelines that allow for adequate consultation with nation leadership, and within nation membership?</p>	<p>CNSC is respectful of our timelines and needs, but could be more flexible when needed, especially with respect to sampling based on seasons and harvesting.</p>

Part 2. Sagkeeng Anicinabe First Nation and Algonquins of Pikwakanagan First Nation Joint Statement on the Required Inclusion of Aboriginal Rights Criteria

Introduction to the New Criteria

The CNSC uses 14 safety and control areas (SCAs) to evaluate each site for the annual ROR²⁰. These SCAs focus on the management, facility and equipment, and core control processes of the site. The ROR focuses on 3 SCAs, and it is understood that these are broad enough to give an overview of safety at each site, which are: Radiation Protection, Conventional Health and Safety, and Environmental Protection. These SCAs are limited, as they only address safety from a western science perspective and do not consider how CNL’s operations may be impacting Aboriginal rights and interests.

The CNSC needs to expand its regulatory and safety lens to integrate Indigenous concerns and world views by incorporating the protection of Aboriginal rights in the assessment of site operations. In so doing, the CNSC would be implementing a “two-eyed-seeing” approach. “Two-Eyed-Seeing” refers to viewing the world through Indigenous and Western eyes and minds. The concept was developed by Mi’kmaq Elder Albert Marshall with the goal of emphasizing the importance of using intercultural collaboration and multiple perspectives to achieve more positive and innovative outcomes. The objective of this principle is to always seek out another perspective to find a better way to accomplish our goals. Equally applying Western Science and Indigenous Knowledge will benefit CNL, CNSC and affected Indigenous groups by incorporating multiple perspectives, understandings, relationships with the lands and waters, ways of viewing and experiencing the world, and more. All parties can and should work in collaboration to co-develop criteria and measures to ensure that CNL’s operations are approached from a “two-eyed” perspective.

SAFN and AOPFN believe it is high time that the CNSC adopt (and require itself and proponents to report on) additional SCAs to reflect gaps in the current system. To address these gaps, we are proposing several SCAs that protect and promote Aboriginal rights, as well as addressing Indigenous determinants of health and safety. These SCAs should be used in future RORs for CNL, as well as other nuclear activities on Indigenous lands.

Table 3 lists the new SCA criteria (Column 1) and provides a description for what this SCA entails. AOPFN and SAFN would like to see CNSC implement these criteria in future RORs through collaboration with Indigenous groups. We have provided a description for how the measure the status of the criteria which can be applied to the annual operations of CNL.

Recommendation 9. The CNSC should expand its regulatory and safety lens to integrate Indigenous concerns and world views by incorporating the protection of Aboriginal rights in the assessment of site operations (outlined in Table 3).

Table 3 Recommended SCAs for CNL safety metrics

Proposed SCA	Description
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²⁰ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021.*

<p>Recognition of, protection and promotion of Aboriginal rights</p>	<ul style="list-style-type: none"> • Does the site have measures in place, co-identified with impacted Indigenous peoples, to support the protection and promotion of: <ol style="list-style-type: none"> 1. Rights protected under Section 35 (hunting, trapping, harvesting, and fishing) and; 2. Principles under UNDRIP (Free, Prior and Informed Consent; Self-Determination; Cultural Protections; Indigenous Health);
<p>Risk communication with Indigenous peoples and management of public concern</p>	<ul style="list-style-type: none"> • Does the site have an effectively functioning program that communicates risks to Indigenous peoples in a timely, effective, and accepted manner? • Is the information being sent through effective and accepted communication channels? • Are public concerns about the facility low, moderate or high?
<p>Integration of Indigenous Knowledge into site monitoring and management</p>	<ul style="list-style-type: none"> • How is Indigenous Knowledge integrated into monitoring of the site and its surroundings? Do impacted Indigenous groups have a demonstrable role in identifying adaptive management measures?
<p>Engagement of Indigenous peoples in site planning, monitoring and management</p>	<ul style="list-style-type: none"> • Is there a system in place whereby impacted Indigenous groups are integrated into site planning, monitoring and management - research, analyses, decisions and implementation?
<p>Contribution to reconciliation with Indigenous peoples</p>	<ul style="list-style-type: none"> • Do the site operations and the relationship between CNL and impacted Indigenous groups contribute to better relations between Canada and impacted Indigenous peoples? • Are there demonstrable positive benefits to Indigenous peoples from the site? • Does the site communicate effectively and regularly with impacted Indigenous nations regarding past, present and future operations? • How is the site improving communication and relations with Indigenous nations regarding past relationships? • Do CNL and CNSC integrate Indigenous values into site monitoring, planning, and

	reviews? (i.e., assessing risk from an Indigenous lens, accounting for past harms and traumas)
Level of knowledge and support for site waste management by Indigenous peoples.	<ul style="list-style-type: none"> • Does the site maintain communication and consultation with impacted Indigenous groups regarding onsite materials management, ultimate disposal plans, import and export types and volumes, and transportation methods and protocols? • How are Indigenous concerns and recommendations integrated?
Engagement adequacy with Indigenous peoples	<ul style="list-style-type: none"> • Does the site meet a minimum standard of adequacy of engagement with each impacted Indigenous group by CNL in a given year? (As a Pass or Fail outcome)
Communication and management of reportable incidents	<ul style="list-style-type: none"> • Were all reportable incidents promptly reported to impacted Indigenous groups and followed up on with additional communications?

The criteria proposed here help expand the focus of CNSC’s regulatory oversight process and proposes metrics that will support a better relationship between Indigenous people and the CNSC, which includes open communication and trust. A vital way to increase confidence in the safety and wellness of Indigenous people is to improve communication channels, mainly when it comes to the reporting and explanation of incidents and risk. A lack of information and understanding regarding the safety of the waters, plants and animals around nuclear sites contributes to a sense of distrust and alienation of the lands around sites, affecting the health and wellbeing of the Indigenous people on their traditional territories. Also important is the reasonable and respectful use of Indigenous Knowledge, and this requires cooperative engagement where Indigenous concerns and recommendations have sufficient responses and incorporation into site monitoring and management.

These categories will contribute to the recognition and protection of Aboriginal Rights. These Rights are protected under Section 35 of the *Constitution Act 1982*²¹, and they include Aboriginal title, rights to occupy and use lands and resources, right to self-government, and cultural and social rights. The right to occupy and use the lands around nuclear sites is being infringed upon by a general mistrust of these areas, and the right to self-government and decision-making regarding traditional territory is also not being respected. Canada has recently committed to adopting the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)²² in all aspects of legislation and policy. UNDRIP’s 42 articles cover a wide range of rights, but notably it includes the

²¹ Government of Canada. 1982. *Constitution Act, 1982*. https://laws-lois.justice.gc.ca/PDF/CONST_TRD.pdf.

²² UN, United Nations. 2007. *United Nations Declaration on the Rights of Indigenous Peoples*. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

Willing Host Principle, being that Indigenous people have a right to Free, Prior and Informed Consent (FPIC) regarding the movement and storage of hazardous materials on their traditional territories. This has not been the case in recent decades, and the CNSC and CNL need to work to improve this.

SAFN Aboriginal Rights Criteria Review: 2021

The table below provides a review of CNL’s performance based on SAFN’s experience. The table lists the metric / SCA; provides a description of the metric; ranks CNL’s performance as either “Below Expectation = BE”, “Neutral”, or “Above Expectation = AE”; and explains whether SAFN has seen improvement since 2020 and the reason for the ranking. Overall, CNL was operating below expectations in most of the rights categories for 2021; however, we are seeing some improvement as CNL invests more in its relationship with SAFN. The grading and review is based on input from the CLC²³.

Table 4 SAFN Review of CNL Operations from a Rights-based Perspective

Metric / SCA	Description	Whiteshell Laboratories	Trend: 2021 vs. 2020
Recognition of, protection and promotion of Aboriginal rights	Does the site have measures in place, co-identified with impacted Indigenous peoples, to support the protection and promotion of Section 35 rights in the vicinity of the facility?	BE (below expectations)	Neutral to slight improvement. CNL is seeking to understand our rights to the area, but previous concerns have not been addressed, with little to no engagement on existing or future plans for the site. This includes following through with commitments such as investing into community healing with the HRAP. This also includes to committing to FPIC for storage and transport of radioactive wastes.
Risk communication with Indigenous peoples and management of public concern	Does the site have an effectively functioning program that communicates risks to Indigenous peoples in a timely, effective, and accepted manner? Are public concerns about the facility	BE (below expectations)	Improving. CNL has shown an interest in investing in communication with our members, such as providing plain language documentation and funding the Community Liaison Committee (the CLC) but more work is required including

²³ SAFN CLC meeting 13 September 2022.

Metric / SCA	Description	Whiteshell Laboratories	Trend: 2021 vs. 2020
	low, moderate or high?		commitments to developing a communication plan with SAFN.
Integration of Indigenous Knowledge into site monitoring and management	(How) Is Indigenous Knowledge integrated into monitoring of the site and its surroundings? Do impacted Indigenous groups have a demonstrable role in identifying adaptive management measures?	BE (below expectations)	Neutral. While CNL is improving in its incorporation of Anicinabe Knowledge into its regulatory documents, we are not seeing it being applied to day-to-day operations and monitoring. We would like to see more ongoing day-to-day collaboration between Indigenous knowledge holders and the CEMP and CNL and CNSC's monitoring work.
Engagement of Indigenous peoples in site planning, monitoring and management	Is there a system in place whereby impacted Indigenous groups are integrated into site planning, monitoring and management - research, analyses, decisions and implementation?	BE (below expectations)	Neutral, improvement anticipated. For most of 2021 this measure was neutral, but with the impending initiation of the CEMP, significant improvement is anticipated in the medium term. Further collaboration on monitoring is required between CNSC, CNL and SAFN, this should be done through the CEMP.
Contribution to reconciliation with Indigenous peoples	Does the site and the relationship between CNL and impacted Indigenous groups contribute to better relations between Canada and impacted Indigenous peoples? Are there	BE (below expectations)	Neutral to slight improvement. CNL has shown interest in resolving past harms, but commitments are required, this includes commitments to supporting HRAP and FPIC. CNL and CNSC must avoid

Metric / SCA	Description	Whiteshell Laboratories	Trend: 2021 vs. 2020
	demonstrable positive benefits to Indigenous peoples from the site?		compartmentalizing impacts caused by the Whiteshell site and attempting to offload responsibility for cumulative impacts to others.
Level of community knowledge and support for site waste management and waste transport	This can relate to onsite materials management, ultimate disposal plans, import and export types and volumes, and transportation methods and protocols. In other words, community awareness of transport and storing.	BE (below expectations)	Neutral to Slight Improvement. The creation of the Community Liaison Committee has and will continue to improve community knowledge, but CNL has yet to commit to FPIC for nuclear waste storage on Indigenous lands.
Engagement adequacy with Indigenous peoples	This is an overall pass/fail on adequacy of engagement with each impacted Indigenous group by CNL in a given year	Neutral	Improving. The CLC members are encouraged by both CNL and CNSC's efforts to engage more with SAFN. To improve further, CNSC and CNL need to invest more on ongoing communication efforts with our members and work to approach monitoring with an SAFN perspective.
Communication and management of reportable incidents	Were all reportable incidents promptly reported to impacted Indigenous groups and followed up on with additional communications?	BE (below expectations)	Neutral. Communication of incidents is inadequate, reports, if they are being sent, are not going through the proper channels.

Conclusions

Overall, SAFN has seen CNL and AECL make reasonable progress in recent years to improve relations with our Nation and begin to make more of an effort to respect our rights and interests to our lands and waters. Largely at our prompting, CNL and AECL have started to talk to us about how we would like to be engaged and to learn about how we manage our lands and waters. SAFN recognizes that while outcomes remain a work in progress, CNL and AECL have demonstrated a clear intention to improve the ways in which they engage with us, and to more meaningfully address our concerns. SAFN expects CNL and AECL to continue to engage in that productive and meaningful way, and to demonstrate their commitment to reconciliation through their actions.

That said, CNL and AECL have room for growth. Namely, CNL and AECL need to commit further to respect our rights, which means committing to FPIC. CNL also must improve how and when it communicates with us and that it does so in a way that respects Indigenous perspectives and rights.

While we are encouraged by this progress, there is still room for improvement. We developed a series of recommendations to help CNSC and CNL further improve their collaboration and relationships with our Nations.

Further commitments to each of the following are necessary:

- **transparency and communication;**
- **information sharing with our community members in a way that is collaborative, understandable, and culturally appropriate;**
- **providing explanations on how our reviews, comments and feedback are incorporated into RORs, reviews of annual work activities, and permit reviews and decisions;**
- **incorporating Indigenous perspectives on wellness and health into the ROR review and monitoring;**
- **incorporating findings from our monitoring programs into the annual RORs and day-today activities and approaches to monitoring;**
- **more Nation-specific cultural awareness training with CNSC and CNL staff; and**
- **incorporating Aboriginal Rights Criteria into future RORs in collaboration with our Nations.**

SAFN asks that CNSC meaningfully respond to all the recommendations through collaboration with SAFN. We also ask that CNSC meaningfully integrate our recommendations and feedback into future RORs.

Reference list

Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

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