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**Written submission from the
Algonquins of Pikwakanagan
First Nation**

**Mémoire de la
Première Nation des
Algonquins de Pikwakanagan**

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

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

Commission Meeting

Réunion de la Commission

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Le 2 novembre 2022

The Algonquins of Pikwakanagan First Nation's Submission on Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021

October 4, 2022

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

In addition to the following written submission, AOPFN wishes to also intervene by way of oral presentation at the Commission Meeting on November 2nd, 2022.

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The Algonquins of Pikwakanagan First Nation’s Submission on Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021

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List of Acronyms

Acronym	Definition
ALARA	As low as reasonably achievable
AOPFN	Algonquins of Pikwakanagan First Nation
CNL	Canadian Nuclear Laboratories
CNSC	Canadian Nuclear Safety Commission
CRL	Chalk River Laboratories
IAEA	International Atomic Energy Association
IEMP	Independent Environmental Monitoring Program
NPD	Nuclear Power Demonstration project
NSDF	Near Surface Disposal Facility Project
ROR	Regulatory Oversight Report
SAFN	Sagkeeng Anicinabe First Nation
SCA	Safety and Control Area
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

The Algonquins of Pikwakanagan First Nation's Submission on Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021

Introduction

This submission provides comments from the Algonquins of Pikwakanagan First Nation (AOPFN) on Canadian Nuclear Safety Commission's (CNSC) 2021 Regulatory Oversight Report (ROR) for Canadian Nuclear Laboratories (CNL) Sites¹. This submission is based on a review of the ROR, our experiences working with CNL, AECL and CNSC in 2021 and in 2022 (for comparison purposes), and our past work on CNL sites².

With respect to this submission, CNL operates the following Atomic Energy of Canada Limited (AECL)-controlled facilities in unceded Algonquin territory:

- **the Nuclear Power Demonstration Project (NPD); and**
- **the Chalk River Laboratories (CRL) facilities**

The submission has two parts. Part one, provides detailed comments on the content of the ROR and AOPFN's experiences with CNSC and CNL in 2021. Part two, provides joint AOPFN-SAFN recommendations for improving consultation with Indigenous Nations going forward. AOPFN collaborated with Sagkeeng Anicinabe First Nation (SAFN) in the preparation of certain aspects of this submission. 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 CNSC's 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

¹ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

² Malone, M., Firelight Research Inc, & Algonquins of Pikwakanagan First Nation. 2021a. *Algonquins of Pikwakanagan First Nation Culture and Rights Study Specific to Canadian Nuclear Laboratories' Near Surface Disposal Facility Project*.

Malone, M., Firelight Research Inc, & Algonquins of Pikwakanagan First Nation. 2021b. *Algonquins of Pikwakanagan First Nation Culture and Rights Study Specific to Canadian Nuclear Laboratories' Near Surface Disposal Facility Project*.

Algonquins of Pikwakanagan First Nation. 2021a. *Algonquin Knowledge and Land Use Study: Nuclear Power Demonstration Closure Project*.

Algonquins of Pikwakanagan First Nation. 2021b. *Algonquin Knowledge and Land Use Study: Near Surface Disposal Facility Project*.

Fediuk, K., Gibson, G., & The Firelight Group. (2021). *Algonquins of Pikwakanagan First Nation Diet and Harvest Study Report Specific to Canadian Nuclear Laboratories' Near Surface Disposal Facility Project*.

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 with Indigenous groups, in supporting our monitoring initiatives, and supporting more in-depth community feedback. We note that much of this improvement has occurred in 2022, but is based on decisions from 2021 so we are consider these improvements in this review of the 2021 ROR.

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. These are:

Table 1 Recommendations for improvement

Recommendation Topics	Location in submission and relevant in-text recommendations
CNSC must explain how our reviews, comments and feedback are incorporated into RORs, reviews of annual work activities, and permit reviews and decisions.	See Recommendation 1
CNSC and CNL must commit to further transparency and communication . This includes more active engagement with our Nation prior to decisions being made on what is planned for facilities and activities, more funds and investment in community communications, and a focus on plain language and dialogue rather than monologue	See Recommendations 1, 2, 4, and 6
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 (such as community feasts, community monitoring outreach, school outreach programs, monitoring training initiatives, and more)	See Recommendation 2 and 7
CNSC must incorporate Indigenous perspectives on wellness and health into the ROR and monitoring including adopting additional risk assessment parameters CNSC should also encourage CNL to incorporate Indigenous perspectives on wellness and health into CNL’s engagement activities and monitoring activities	See Recommendations 3 and 9
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)	See Recommendation 4

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.	
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 and follows cultural protocols and collaboration with our monitoring programs.	See Recommendation 3, 6 and 9
CNSC and CNL must commit to further communication, collaboration, and co-approval with AOPFN for the import and transport of any off-site radioactive materials into AOPFN traditional territory.	See Recommendation 8
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	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. AOPFN's Advisory Committee (the AAC) have noted on a number of occasions that they feel like they have been repeating themselves to CNL and CNSC, and they are not seeing how their input and knowledge is being incorporated into CNL and CNSC activities and work.

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. AOPFN would also like to see CNSC provide explanation and justification regarding how and whether our Algonquin Knowledge was used in ROR findings, CNSC 2023 work, and in any decisions made. This would be in alignment with the Government of Canada's Indigenous Knowledge Policy Framework

Additionally, AOPFN 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.

Part 1. AOPFN'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, AOPFN identified no material concerns with CNL's existing environmental performance being measured through existing Safety and Control Areas (SCAs). That said, there are specific areas that require more information and elaboration, 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.³

Areas for Improvement in Future RORs

- 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 2021⁴. 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

³ While AOPFN 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 CSNC should voluntarily adopt and apply it to its own decisions.

⁴ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

unaccounted for and Event 20 states that air effluent exceeded the action level for gross beta radiation⁵. The ROR presents no further information on these events, nor a description of why the CNSC classified the events as non-significant. Yet to a lay-person (including members of AOPFN), the notion that depleted uranium went missing (for example), and the regulator deemed the incident “not significant” and not worth following up on, sounds extremely serious. It is this type of information gap that feed 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”⁶, 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 assess the effects that CNL’s facilities are having on the socio-cultural well-being of Indigenous Nations and individuals. 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”⁷. However, it does not explain whether or how the wellbeing and practice of Aboriginal rights continues to be protected, or even how that protection is measured. 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.

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

⁶ Performance is rated using a binary system of Satisfactory of Below Expectations.

⁷ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

AOPFN 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. Potential impacts to Indigenous mental health and wellness have not been accounted for, either on an iterative or cumulative impacts basis. 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.

Recommendation 3. To address this gap, CNSC must:

- 1) **provide further information on how Indigenous wellbeing and rights are being protecting on and around CNL sites with support from AOPFN;**
- 2) **work with AOPFN 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.**

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

Please note that both AOPFN rejects any argument by the CNSC that socio-cultural wellbeing are beyond the scope of its regulatory oversight. As an agent of the Crown, the CNSC owes our Nations 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. AOPFN also notes 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, AOPFN 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 more holistic lens. This means understanding how CNL's facilities contributes to cumulative effects impact AOPFN'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 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. The conclusion of CNSC's staff is incomplete. A more fulsome analysis based on Indigenous input is necessary. We have provided a review of CNSC's consultation performance in the table below.

AOPFN was disappointed to find a lack of information in the ROR on relationship building with Indigenous communities in 2021. The ROR as it stands says nothing about relations between CNSC staff and AOPFN in 2021, almost all of which is in relation to CNL facilities. AOPFN 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 for it to be mended, and both Nations would like to see more effort shown in CNSC's reporting on this relationship moving forward.

Additionally, both Nations believe that CNL has not adequately rationalized the location, nature, management, risks, transport, and removal of all radioactive waste at the CNL facilities in each Nation's respective territory, with our Nations. This is a critical gap in the way that CNL engages with us. 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. The fact that CNL transports radioactive waste into AOPFN territory on an annual basis without informing AOPFN in advance or seeking AOPFN free, prior and informed consent, is a dangerous colonial remnant that must be rectified. If the CNSC regulates this movement of waste, the Commission has a key role to play in improving this process. Better communication and actual collaboration is required moving forward. This is discussed further below.

On page 37, the ROR states that the CNSC requires licensees maintain and implement public information and disclosure programs⁸. It is unclear to us if the program includes a separate initiative for Indigenous groups, that is developed in consultation with those affected groups. AOPFN should not be receiving the same treatment as non-Indigenous communities when it comes to publication information and disclosure. Indigenous rights-holders affected by nuclear industry projects are not mere "stakeholders" and should not be treated as such. CNL is operating on our traditional territory where we practice our governance rights. This means, CNSC and CNL need to ensure information is being directly shared and communicated with us in a manner that is culturally sensitive and collaborative.

Recommendation 5. AOPFN 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, AOPFN requests that this is added to yearly regulatory oversight at CNL sites for 2022 and beyond.

Additionally, the ROR states on page 56 that a total of 45 events were reported to and assessed by CNSC staff in 2021⁹. CNSC staff determined that there was no risk to the environment nor the public associated with these events. Chalk River Laboratories had 37 reportable events in 2021.

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

⁹ Canadian Nuclear Safety Commission. 2022. *Annual program report: Canadian Nuclear Laboratories Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021*.

None of these events were reported to AOPFN (or, if they were reported, they were not reported to the correct people; this would also concerning since CNL and AOPFN have an existing line of communication and CNL should know who to be communicating with). This is unacceptable and contributes to 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 6. Moving forward AOPFN requests that CNSC work with AOPFN to strengthen how events are communicated with AOPFN. AOPFN would also like CNSC to provide a detailed list of events and a list of inspections at CNL sites in AOPFN territory over the past several years, and identify whether and how AOPFN would like to be engaged in joint inspections in the future. This can be discussed at the LTRA table with the CNSC.

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 communities.

Recommendation 7. AOPFN requests that CNL and CNSC work with AOPFN to strengthen community communication to help mitigate concerns and fears and strengthen relationships. This should include developing materials, visiting the AOPFN community to talk to membership about risk and safety, school visits, educational forums, further collaboration with AOPFN's monitoring program, and more.

This includes deep geological boreholes. The ROR states on page 25:

At CRL, decommissioning of legacy deep geological boreholes commenced, with 20 of the 37 deep geological boreholes decommissioned. It is CNSC staff's conclusion that, during 2021, CNL maintained effective programs to safely manage radioactive and hazardous wastes from CNL's licensed activities and decommissioning of its facilities.¹⁰

Community members require assurances that a deep geological repository is not and will not be proposed at CRL, along with other ongoing fears regarding the NPD and CRL.

On Page 25, the ROR states that CRL received a total of 61.3 [cubic metres] m³ of radioactive waste from external organizations in 2021¹¹. Our understanding is also that the proposed Near Surface Disposal Facility Project (NSDF) is planned to house up to 100,000 cubic metres of "off-site" low-level wastes (wastes imported to CRL from other jurisdictions). AOPFN notes that this amount is 1600 times the waste that was brought in to CRL in 2021. As proposed, the NSDF won't remove any radioactive risk from AOPFN traditional territory, but it would actively import additional risks. We have been clear in previous submissions to CNSC and CNL that the importation of additional wastes as part of a project that is designed to reduce radioactive risk, is in direct opposition to the desires, expectations, and rights of AOPFN and our membership.

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*.

Recommendation 8. Going forward, CNSC and CNL must commit to further communication, collaboration, and co-approval with AOPFN for the import and transport of any off-site radioactive materials into AOPFN traditional territory.

The table below provides a further information on ways that CNSC can improve relations with AOPFN.

Table 2 CNSC consultation adequacy metrics with the AOPFN

Issue	Measure	Recommendations for Improvement
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 AOPFN. Going forward, CNSC must invest in on-the-ground communication with community members as well as day-to-day reporting with AOPFN staff.
Responsiveness to requests for revisions to licenses or other regulatory instruments Integration of Indigenous input into CNSC's work	<p>How have the Indigenous recommendations and concerns in response to the previous year's Regulatory Oversight Report been addressed in the regulatory and licensing operations of the past year?</p> <p>How has CNSC incorporated Indigenous comments and recommendations to improve this relationship?</p>	<p>CNSC has not provided clear indication on how AOPFN's input is being integrated into RORs. Going forward, CNSC should demonstrate more clearly how our recommendations are considered in annual RORs and in changes to regulatory instruments.</p> <p>CNSC should also demonstrate how it is learning from AOPFN 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></p>

Issue	Measure	Recommendations for Improvement
		amended to expressly incorporate the Indigenous Knowledge provisions added to other environmental regulatory statutes in 2019.
Indigenous engagement in the creation of Independent Environmental Monitoring Program (IEMP)	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.)?	Indigenous engagement has improved under the IEMP. Community members would like to see more day-to-day collaboration and more synergies with our own monitoring programs. AOPFN has provided comment on the IEMP and how to improve it; we recommend incorporating our feedback into future IEMP work.
Adequacy of CNSC support funding	Amount of PFP and other funding from CNSC for Indigenous groups to engage in processes	CNSC has been providing funding to Indigenous groups for monitoring and document review. However, CNSC needs to seriously expand the amount provided to allow for more back and forth engagement on risk communication, IEMP, among other consultation and collaboration priorities.
Timeliness of consultation	Does the CNSC support consultation timelines that allow for adequate consultation with nation leadership, and within nation membership?	CNSC is respectful our timelines and needs, but could be more flexible when needed

Part 2. Algonquins of Pikwakanagan First Nation and Sagkeeng Anicinabe 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 ROR¹². 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 integrating 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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¹² 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*¹³, 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)¹⁴ in all aspects of legislation and policy. UNDRIP’s 42 articles cover a wide range of rights, but notably it includes the Willing Host Principle, being that Indigenous people have a

¹³ Government of Canada. 1982. *Constitution Act, 1982*. https://laws-lois.justice.gc.ca/PDF/CONST_TRD.pdf.

¹⁴ 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.

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.

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The table below provides a review of CNL’s performance based on AOPFN’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 AOPFN 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 AOPFN.

Table 4 AOPFN’s review of CNL’s Operations from a Rights-based Perspective

Metric / SCA	Description	CRL and NPD Performance	Trend 2021 vs. 2020: Recommendations for Improvement
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 and UNRIP in the vicinity of the facility?	BE (below expectations)	Neutral to slight improvement. CNL understands our rights to the area, but previous concerns have not been addressed, and there has been little to no engagement on existing or future projects or plans.
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 low, moderate or high?	BE (below expectations)	Neutral to slight improvement. CNL has shown an interest in investing in communication with our members, but more work and resources are required.
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 to slight improvement. We would like to see more ongoing day-today collaboration between Indigenous knowledge

Metric / SCA	Description	CRL and NPD Performance	Trend 2021 vs. 2020: Recommendations for Improvement
			holders and CNL in monitoring
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 to slight improvement. Further collaboration on monitoring is required, including providing resources to AOPFN to participate in site planning, monitoring and management.
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 demonstrable positive benefits to Indigenous peoples from the site?	BE (below expectations)	Neutral to slight improvement. CNL has shown interest in reconciliation with AOPFN and resolving past harms, but further commitments are required. This includes providing resources to hire more staff at AOPFN to help manage work connected to the CNL facilities.
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 or slight worsening CNL has yet to commit to Free, Prior and Informed Consent (FPIC) for nuclear waste storage and transport on our lands. CNL and AOPFN need to work together to develop a communication method regarding transport of waste through our territory.
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	Neutral to improving AOPFN appreciates the efforts CNL is making to meet with AOPFN at both leadership and staff levels. To

Metric / SCA	Description	CRL and NPD Performance	Trend 2021 vs. 2020: Recommendations for Improvement
			further improve, AOPFN recommends that CNL commit to further following-up and follow-through with commitments made during discussions.
Communication and management of reportable incidents	With Indigenous Nations. Were all reportable incidents promptly reported to impacted Indigenous groups and followed up on with additional communications?	BE (below expectations)	BE Communication of incidents is inadequate; reports, if they are being sent, are not going through the proper channels.

Conclusions

Overall, the AOPFN has seen CNL and AECL make some 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. That said, CNL and AECL have much 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-to-day 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.**

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

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