



CMD 25-H6.11

Date: 2025-05-05

**Written Submission from the
Kebaowek First Nation**

**Mémoire de la
Première Nation Kebaowek**

In the matter of

À l'égard de

Nordion (Canada) Inc.

Nordion (Canada) Inc.

Application to Renew License for the
Nordion Facility

Demande pour le renouvellement de son
permis pour l'installation de Nordion

Commission Public Hearing

Audience publique de la Commission

June 4, 2025

Le 4 juin 2025

Kebaowek First Nation
Review of
Nordion (Canada) Inc. Application to Renew Licence for the
Nordion Facility

FINAL WRITTEN SUBMISSION

presented to
Canadian Nuclear Safety Commission
May 05, 2025

Table of Contents

INTRODUCTION	3
1. UNDRIP-COMPLIANT INDIGENOUS CONSULTATION	4
CNSC's duty to consult and accommodate	4
The BWXT licence decision	6
UNDRIP-compliant consultation, including FPIC is required	6
Engagement and the CNSC's consultation process has failed to comply with UNDRIP and Canada's legal framework for consultation	9
Additional materials to be considered by the CNSC	11
2. NUCLEAR WASTE TRANSFER TO CNL, CHALK RIVER	11
3. OPERATIONS, REPORTABLE EVENTS AND JUSTIFICATION	14
4. 25-YEAR LICENCE REQUEST	16
5. INDIGENOUS LAWS AND KNOWLEDGE	18
6. CONSULTATION RESOURCES	19
7. ENVIRONMENTAL JUSTICE AND RACISM	19
CONCLUSION	20

INTRODUCTION

The following submission is presented on behalf of Kebaowek First Nation (“KFN”) to the Canadian Nuclear Safety Commission (“CNSC”) provided for under the *Nuclear Safety and Control Act* (“NSCA”) and the *United Nations Declaration on the Rights of Indigenous Peoples Act* (“UNDA”).

KFN is one of ten distinct First Nations that make up the Algonquin Nation. Nine are located in Quebec and one, in Ontario. KFN’s traditional territory lies on either side of the Ottawa River Basin and 1,000 members live, work and exercise Aboriginal rights, including Aboriginal title, in both Ontario and Quebec. KFN’s reserve is located in Quebec on Lake Kipawa, 15 km from the interprovincial border. KFN, like many Aboriginal peoples in Canada, is a trans-border community. KFN holds and exercises inherent and constitutional rights, including title, throughout our territory which are protected pursuant to the *Constitution Act, 1982*. KFN also has rights recognized and protected by the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”), as affirmed as part of Canada’s domestic law through UNDA.

Nordion currently operates a Class IB nuclear substance processing facility located at 447 March Road in Kanata, Ontario (the “Facility”). The Facility is located within KFN territory in an area over which we assert a strongly evidenced claim of Aboriginal title.

Nordion currently holds a 10-year operating license for the Facility which expires on October 31, 2025. Nordion applied to the CNSC for a renewal of its operating license for a 25-year term (the “Application”).¹

Mobility on our lands and waterways is essential to our culture and relationships. We are concerned about the Application because we want to protect the Kichi Sibi (Ottawa River) watershed from the transport and increase of nuclear waste from Nordion’s operations to the proposed Near Surface Disposal Facility at Chalk River Laboratories. Nordion waste disposal burdens Algonquin Anishinabeg lands and waterways without benefit to our communities, impacting our future generations who rely on the environment. Environmental sustainability is key to Ona’ken’age’win, our customary law and governance system.

The Application leads to important questions of the equitable distribution of long term benefits and costs for Kebaowek Nation as well as the Algonquin Nation.²

The activities contemplated in the Application stand to cause serious adverse impacts to KFN’s inherent and constitutionally protected rights. However, CNSC has failed to fulfill

¹ Nordion Inc., Nordion Written Submission in Support of License Renewal, 28 February 2025, online at <<https://api.cnscccsn.gc.ca/dms/digital-medias/CMD25-H6-1.pdf/object>> [Nordion Application]

² CNSC, Nordion (Canada) Inc., Application to Renew Licence for the Nordion Facility, Commission Member Document: 25-H6, February 25, 2025, online at <<https://api.cnscccsn.gc.ca/dms/digital-medias/CMD25-H6.pdf/object>> [CNSC CMD]

its constitutional obligation to ensure the KFN is adequately consulted and accommodated in relation to the Application. CNSC has failed to engage in an UNDRIP-aligned consultation process or to seek KFN's free, prior, and informed consent ("FPIC") in relation to the Application. Nordion has not engaged with KFN regarding Ona'ken'age'win or our Indigenous laws and practices, and CNSC staff did not take into consideration the same when preparing its staff developed Commission Member Document³ which is designed to assist CNSC in making a decision. Accordingly, CNSC does not currently possess sufficient information to issue a decision with respect to the Application and any attempt to do so would be inconsistent with the honour of the Crown and a breach of the duty to consult.

Accordingly, KFN urges the Commission to:

- Deny the Application; or
- In the alternative, defer a decision on the Application for no less than 12 months to allow for the proper fulfillment of the duty to consult and accommodate that complies with UNDRIP and Kebaowek's own Indigenous laws and protocols.

Kebaowek would like to discuss the following areas of specific concern with the CNSC at the June 2025 hearing.

1. UNDRIP-COMPLIANT INDIGENOUS CONSULTATION

CNSC's duty to consult and accommodate

Regardless of the specific nuclear licensing project under review, the government of Canada has a constitutional obligation to consult Kebaowek and all First Nations within the Algonquin Nation. Section 8(2) of the *NSCA* recognizes that the CNSC acts as an agent of the Crown. Therefore, it is the CNSC acting as the Crown that must meet obligations to consult and is entrusted with the responsibility of fulfilling the Honour of the Crown.

The Crown's duty to consult is part of a process of fair dealing and reconciliation which flows from the Crown's obligation to act honourably in its dealings with Indigenous Peoples (*Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 32 [*Haida*]). The duty is triggered at a low threshold—it arises whenever the Crown has knowledge, real or constructive, of the potential existence of an Aboriginal or Treaty right and contemplates conduct which could adversely affect that right (*Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at para 55; *Haida* at para 35).

³ CNSC CMD

CNSC is abundantly aware of KFN's strongly asserted claim over, and responsibly for, our territory. CNSC is also aware that the Application has the potential to adversely impact KFN's constitutionally protected rights, as demonstrated by the Commission Member Document where CNSC identifies KFN as an Indigenous Nation with potential or established rights in relation to the Application.⁴ Accordingly, the Application triggers CNSC's duty to consult and accommodate KFN.

KFN also wishes to clarify that while the CNSC Commission Member Document references "the CNSC has signed Terms of Reference (TOR) for long-term engagement with the Algonquins of Pikwàkanagàn First Nation, Kebaowek First Nation and the Métis Nation of Ontario,"⁵ this TOR does not name Nordion nor this project and thus it cannot be relied on as evidence of ongoing consultation nor its fulfillment. We also note that while we have frequent meetings with the CNSC, and have raised concerns about Nordion - including the need for capacity supports to participate in this hearing beyond what the CNSC funding committee was willing to entertain and the need to fulfill the duty to consult, as raised at the most recent series of Regulatory Oversight Report meetings - Nordion has not factored in any guiding or leading way in the CNSC's responses to us. Nordion also has not been active in engaging KFN.

The scope of the Crown's duty to consult varies depending on the circumstances, including the seriousness of the potential adverse impact on the inherent and constitutionally protected rights at issue (*Haida* at para 39). Where consultation falls on the low end of the spectrum the Crown is still required to give notice, listen carefully to the affected First Nation, and attempt to minimize adverse effects (*Mikisew* at para 64). Where the duty to consult falls at the higher end of the spectrum, the Crown's obligations are more extensive and require providing the affected First Nation an opportunity to participate formally in the decision-making process (*Haida* at para 44). Further, the Crown must seriously consider the First Nations' concerns, integrate those concerns into the proposed plan of action wherever possible, and be willing to make changes based on information exchanged during the consultation process (*Mikisew* at para 64; *Haida* at para 54). In all cases the Crown must consult in good faith with the intention of substantially addressing the First Nation's concerns (*Mikisew* at paras 39, 42; *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, 2017 SCC 41 at para 44 [*Chippewas*]).

Lastly, the impacts of an activity, and the Crown's corresponding obligations, must be assessed within the larger context, including the cumulative effects of previous activities on the exercise of the right (*Chippewas* at para 42). Where past activities have resulted in an infringement, the relatively small impact of a new activity must be "placed within the

⁴ CNSC CMD at page 55.

⁵ *Ibid.*

context of the damage that had already been done” (*Saugeen First Nation v Ontario (MNR)*), 2017 ONSC 3456 at para 29).

The BWXT licence decision

On October 08, 2021 the Commission made a decision on the BWXT Medical licence application where in your decision CNSC staff expressed their opinion, “that the duty to consult is not engaged by this decision because the proposed license, as it does not pose a change to the footprint of the existing Nordion nuclear substance processing facility or significantly change the operations of the existing facility, would not cause any adverse impacts to any established or potential Indigenous and/or treaty rights.”⁶

This previous decision continues to be of deep concern to KFN the Nordion facility continues to package and ship nuclear waste for disposal at Chalk River. KFN strongly disagrees with this decision, and confirms its position that the duty to consult was triggered due to new impacts to our rights as a result of

The CNSC’s 2021 statement that “the duty to consult is not engaged by this decision” actively discouraged any further meaningful consultation and engagement for KFN, or advancing community trust and environmental reconciliation with First Nations. This statement is also not in compliance with the law—which requires an UNDRIP-compliant process focused on FPIC.

At this time, Kebaowek requested BWXT should enter into a formal licensing process agreement to be negotiated. However, statements and the recommendation by CNSC Staff to grant the BWXT licence failed to consider KFN’s consultation concerns with significant operational changes at the site regarding the production of molybdenum-99 (Mo-99), that BWXT Medical is a first-time licensee, and the success of Nordion and BWXT Medical partnership remains to be seen.

As stated by Kebaowek in the December 2022 BWXT licensing hearing Kebaowek values collaborative processes that are clear, transparent and predictable, and where information is shared in a timely and accessible manner. This requires Nordion Inc. to have an ongoing engagement with KFN and disclose notices, changes to the licence, or the submission of revised licensing documents and activities to CNSC.

UNDRIP-compliant consultation, including FPIC is required

KFN seeks clarification on CNSC’s approach to meaningful consultation that aligns with UNDA/UNDRIP.

⁶ CNSC, BWXT Medical Ltd - Record of Decision, 8 Oct 2021, para 139.

UNDRIP is an international human rights instrument which outlines the minimum standard of rights for Indigenous peoples worldwide. UNDRIP confirms KFN's right to participate in decision-making related to matters which affect its rights based on the principle of FPIC.

For example, articles 18, 19, 29.2, and 32 provide as follows:

Article 18:

"Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."

Article 19:

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

Article 29.2:

"States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent."

Article 32 (2):

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water and other resources."

UNDRIP also confirms KFN's right to own, use, develop and control the lands within its territories, including the right to conserve and protect the environment as well as benefit economically from its lands (articles 26, 29).

CNSC under UNDA and UNDRIP must engage the above articles of UNDRIP, in the Nordion Inc. licencing effort to build constructive relationships and engagement between the commission industry and Kebaowek.

UNDRIP elevates the duty to consult with Indigenous communities to obtain their FPIC for all projects that impact our rights. The content of licensing consultations

must be tailored in accordance with the decision set out by Justice Blackhawk in *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 219.⁷⁸

In her decision, Justice Blackhawk found that the duty to consult must be discharged using the interpretive lens of UNDRIP and the standard of FPIC (paras 180, 183). The Federal Court held that UNDRIP is a contextual factor that gives rise to an enhanced duty to consult which must take into account a Nation's laws, knowledge, and processes and is aimed at achieving mutual agreement (para 183).

The Application requires consideration of multiple UNDRIP principles, including KFN's right to determine priorities and strategies for the use of its territories, and CNSC's obligation to consult and cooperate in good faith with KFN to obtain KFN's FPIC *prior* to approving the Application (article 32). Importantly, the Application also requires consideration of article 29, which requires CNSC to ensure that no storage or disposal of hazardous materials takes place within KFN's territories without our FPIC.

The Federal Court has been clear that UNDRIP must be considered with regard to these types of projects and licence applications:

Article 29(2) states that “no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.” The proposed NSDF is a project that clearly falls within the scope of Article 29(2), thus triggering the UNDRIP FPIC standard. Based on the foregoing, I am of the view that the UNDRIP FPIC standard requires a process that places a heightened emphasis on the need for a deep level of consultation and negotiations geared toward a mutually accepted arrangement. Much of the jurisprudence that has developed in the context of the duty to consult and accommodate confirms that it is not just a mere “checkbox” exercise; it must be a robust process of consultation.

[...] FPIC is a right to a robust process.⁹

The above direction by the Court is equally applicable here. Since the Application triggers multiple UNDRIP principles, CNSC must engage in an enhanced, UNDRIP-aligned consultation process, tailored “to consider Kebaowek's Indigenous laws, knowledge, and practices, and [is] directed towards finding mutual agreement.”¹⁰

⁷ *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 at paras 130-131 [*Kebaowek*].

⁸ *Kebaowek* at para 133.

⁹ *Kebaowek* at paras 130-131.

¹⁰ *Kebaowek* at para 133.

Engagement and the CNSC's consultation process has failed to comply with UNDRIP and Canada's legal framework for consultation

If approved, the Application will authorize Nordion to continue operating the Facility for another 25 years on KFN's territory, as well as possess, use, transfer, store, and dispose of nuclear substances. Given the gravity of the potential impacts of the Application on KFN's inherent and constitutionally protected rights, CNSC's consultation and accommodation obligations fall at the deepest end of the consultation spectrum.

The Application stands to adversely impact KFN's rights by authorizing the Facility to continue to operate in KFN's territory for another 25 years. KFN's territory has been subject to ongoing and extensive development since the arrival of the first European settlers. KFN members have seen the land base available to us for the exercise of our constitutionally protected rights continually diminished. The Application authorizes the continued use of our lands on which the Facility stands for nuclear substance processing for another quarter century, placing it out of the reach of our community members for at least another generation. On this point, consultation must be ongoing, and that, even if the licence is issued for the proposed time frame of 25 years, consultation and UNDRIP-compliant engagement must occur within that timeframe and is not limited to this Application and potential licencing process. Any new activities after the licence has been issued that may impact or adversely affect our rights triggers a fresh duty of consultation and accommodation, and must be considered within the framework of UNDRIP.

We note that engagement with other First Nations or Indigenous organizations does not discharge the duty to consult that is owed specifically to KFN regarding this Application. Consent, agreement, non-participation, or other engagement with a non-Kebaowek entity does not translate into consultation or consent by KFN.

The Facility is constructed on and impacts lands subject to KFN's Aboriginal rights territory that we have an economic, in addition to proprietary, right to. Any economic benefit or decision-making on our lands must recognize our title, our right to FIPC, and must appropriately compensate us for the value extracted from or produced on our territory.

Further, KFN is gravely concerned that the environmental impacts to our land from the ongoing operation of the Facility will continue to compound year over year with the result that, should the land become available to KFN again in the future, it will be rendered unsafe and unusable due to the inability to fully remediate the harmful effects of the Facility's operation and the accumulation of nuclear waste at the Facility, Chalk River, and other locations within our territory. Accordingly, the potential impacts KFN is facing may

be no less than the permanent extinguishment of our inherent and constitutionally protected rights to our territory at and near the Facility.

The Commission Member Document confirms that CNSC has not met with KFN regarding the Application or engaged with KFN in a meaningful way regarding potential impacts and accommodation measures. Further, CNSC has taken no steps to align its consultation process with the requirements set out in Justice Blackhawk's decision from January. For example, none of the materials filed to-date in relation to the Application demonstrate that Nordion or CNSC considered Ona'ken'age'win when assessing potential impacts or accommodation measures, or otherwise sought to ensure KFN's free, prior, and informed consent to the renewal of the operating license for 25 years. As such, CNSC has failed to fulfill its duty to consult as informed by common law and as informed by its legal obligations under UNDA.

KFN was not provided with adequate funding to properly engage with Nordion on this Application. On March 10, 2025, KFN accepted the PFP Contribution Agreement for funding provided by the CNSC in February and noted that:

The limited funding provided, especially for legal fees, means that we cannot properly engage or participate in the hearing process. Put simply, these funds are insufficient and well below what a hearing of this nature would cost. We do not have the capacity or resources to meaningfully participate. Therefore, any decision made on this project is lacking the appropriate procedure for and participation of Kebaowek First Nation, and the duty to consult and accommodate, along with the requirements of UNDRIP, cannot be discharged or meaningfully and properly achieved.

In *Platinex Inc v Kitchenuhmaykoosib Inninuwug First Nation*, [2007] OJ No. 2214 (ON SC) Smith J stated, at para 27: "The issue of appropriate funding is essential to a fair and balanced consultation process, to ensure a "level playing field."

Our acceptance and signature on this agreement does not waive your duty to properly consult and demonstrates neither our consent for the project nor the process undertaken.

We never received a meaningful response to this email.

CNCS's failure to fulfill its consultation and accommodation obligations in conformity with UNDRIP is inconsistent with the honour of the Crown and a breach of the duty to consult.

As the hearing documents and our experience demonstrate, the threshold of consultation necessary to discharge the duty to consult in alignment with UNDRIP has not occurred.

Additional materials to be considered by the CNSC

As the CNSC is yet to release guidance on how it aims to implement the UNDA and uphold UNDRIP for decisions made under the *NSCA*, we direct a number of resources to the Commission Members. For instance, many industrial sectors support UNDRIP and the principle of FPIC:

- The International Council on Mining and Metals whose members include Rio Tinto Alcan, GoldCorp, and the Mining Association of Canada of which Agnico-Eagle is member;
 - The new Canadian FSC standard and its FPIC guidance, under which companies like Cascades, White Birch's mills and most Resolute Forest Products' facilities have been certified;
 - The Equator Principles, adopted by Canadian banks and Export Development Canada.
 - The United Nations Global Compact, the World Bank and the International Finance Corporation have standards that recognize the relevance of FPIC.
- Many international investors monitor corporate performance in this regard.

We also recommend the Commission strengthen Indigenous consultation to address components related to Canada's international commitments related to the Convention on Biological Diversity (CBD) in recognizing the benefits of incorporating Indigenous knowledge for natural resource management and conservation.

Kebaowek has recently made the request to ECCC under the Indigenous Led Nature Based Climate Solutions program (submitted February 28, 2025) and GHG Emissions Reductions Project Intake (submitted October 30, 2024) targets to avoid conversion of the present NSDF site. This request is supported by directions of the Federal Courts. For example, Justice Zinnin *Kebaowek First Nation v Canada (Attorney General)*, 2025 FC 472 held that the Minister needed to consider sites beyond those owed by Atomic Energy Canada, in order to properly assess whether other sites would result in reduced harm to protected species. As well, decisions made need to support the principles of the UNDRIP, the UNDA, and Anishinabeg Ona'ken'age'win in accordance with Justice Blackhawk's decision.

2. NUCLEAR WASTE TRANSFER TO CNL, CHALK RIVER

Kebaowek understands that nuclear materials used by Nordion Inc. are monitored by the International Atomic Energy Agency (IAEA) and that Nordion has a reporting framework with the CNSC.¹¹ However, lacking is full disclosure to Kebaowek of information including:

- Whether any shipments are made to/from Chalk River
- What substances are transported to/from Chalk River, including their name, characteristics, weight/volume, percentage, & change in quantity from previous years

Disclosure of this information to KFN is in keeping with the information Nordion ought to provide the CNSC as part of its Application, per s. 3 and 5 of the *General Nuclear Safety Control Regulations*. KFN submits this is not a burden Nordion has fulfilled. Broad statements from Nordion such as ‘the waste is categorized into waste types’ and no ‘substantial change’ to radioactive waste management over the proposed 25 year licence term is expected¹² does not suffice to meet the requisite requirements of the *NSCA*, its regulations, nor duties owed to KFN. Instead, there must be requisite detail and information, as we request above, clearly set out in the licensing materials.

KFN wants to play a major role in decisions about waste disposal on Algonquin lands. However, from the current Application, it is not possible to discern the benefits Nordion Inc. receives producing this waste. Another significant gap is the lack of any review of waste disposal plans - which Nordion notes will not substantially change during the next 25 years - in light of the Federal Court’s decisions, and the environmental and social impacts of Nordion Inc.’s waste disposal at Chalk River during a 25 licensing period.

Kebaowek is concerned that most of the waste going into the NSDF facility comes from Cobalt 60 waste produced by Nordion. Kebaowek is also concerned about the proposed rod reprocessing business activities at Chalk River to further support Nordion. Nordion’s profitable use of Cobalt 60 to sterilize medical equipment also provides economic benefit to CNL who stores the waste generated by the Facility at Chalk River. Meanwhile, it falls on the Algonquin Nation to accept this waste on Algonquin lands without any benefits, creating a continuous cultural and environmental liability for future generations. Article 32 of UNDRIP provides Kebaowek with the right to determine and develop priorities and strategies for the development or use of our territory and other resources, and requires CNSC to consult and cooperate in good faith with us in order to obtain FPIC prior to the issuance of the Nordion licence. Article 29 specifically requires FPIC regarding the storage and disposal of nuclear waste. We have the right to have a say about how private corporations profit off our lands, especially when those profits continue to impact the environment and our inherent rights.

¹¹ Nordion Application, p 22.

¹² Nordion Application, p 3 and 20.

It is KFN's understanding the production of Mo-99 by aqueous chemical processing of irradiated HEU or LEU targets produces the following four waste streams:

- Uranium solids (alkaline target dissolution only). These solids, which contain LEU or HEU, are placed into long-term storage for reuse or disposal.
- Processing off-gases, primarily the noble gases xenon (Xe-131m, Xe-133, Xe-133m, and Xe-135) and krypton (Kr-85). These gases are stored for several months to allow time for radioactive decay. Following storage, the gases are vented to the atmosphere.
- Process liquids from target dissolution. These liquids contain fission products and neutron activation products produced during target irradiation. These wastes are typically solidified and packaged for disposal.
- Other solid wastes produced during target processing: for example, radioactively contaminated processing equipment. These wastes are also packaged for disposal.¹³

KFN requests the Commission require Nordion to confirm and disclose the waste streams and emissions and their means of disposal. Clearly, this level of detail is not contained in the licensing documentation despite it being critical to KFN fully being informed about the project and the impacts that could result during the 25 year licence term.

Molybdenum-99 —> Technetium-99

Kebaowek understands Technetium-99m is the world's most commonly used medical isotope, but since it has a very short 6-hour half-life it is derived by "milking" a molybdenum-99 "cow". Molybdenum-99 has a 66-hour half-life so it takes about a month (660 hours) for 99.9% of the Mo-99 to disintegrate. Meanwhile the Mo-99 are "disintegrating" and turned into TechnetiumTc-99m atoms, which can be extracted ("milked") from the Mo-99 cow each day. Although Tc-99m has only a 6-day half-life, when it disintegrates it turns into Tc-99 - a waste product that has a half-life of about 210,000 years. Every atom of Mo-99 or Tc-99m eventually ends up as an atom of Tc-99 which is a radioactive waste material with this 210,000 year long half-life. Kebaowek requests information on whether Mo-99 cows are refilled by Nordion Inc. and resold or if empty cow containers are shipped to Chalk River for disposal. If Mo-99 cow containers are destined to Chalk River, Kebaowek requests the total amount of Mo-99 cow containers shipped to Chalk River to date and the planned amount under a 25 year licence period.

KFN also questions to what extent BWXT Medical's licensing 2021 submission to the CNSC remains relevant and applicable to the activities Nordion now seeks a licence for. In this submission, it references that 'waste chemicals will be picked up at a

¹³ National Academies of Sciences, Engineering, and Medicine. *Molybdenum-99 for medical imaging*. National Academies Press, 2016.

licensed waste disposal company for treatment and disposal,¹⁴ and non-hazardous waste will be sent to landfill,¹⁵ while radioactive wastes will be collected and transported to a licensed radioactive waste management facility.¹⁶

KFN requests regulatory oversight including CNSC should set out in writing how waste transfer to CNL is considered and complied with Indigenous consultation and UNDRIP, specifically Article 29.2. Kebaowek submits the CNSC is proceeding with its licensing for licensees to proceed contrary to obligations with regards to our rights and responsibilities concerning the NSDF site selection under UNDRIP, including Articles, 18, 19, 29 and 32.

In advance of licensing KFN requests documentation on all waste transfers from Nordion Inc. to CNL Chalk River ON as this is located on KFN, WLFN and TFN Statement of Asserted Rights and Title Territory, and Nordion operations occur within the entire Algonquin Nation rights area Kebaowek asks the CNSC to provide the following information for each waste stream:

- Nordion Inc department of Origin
- Substance name
- Units/weight/volume
- Method of disposal and location
- Total Inventory to Chalk River; percentage change in quantity from previous years

3. OPERATIONS, REPORTABLE EVENTS AND JUSTIFICATION

Kebaowek has reviewed the Application and Commission Member Document from CNSC Staff, but it remains unclear what BWXT operations occur at Nordion Inc. In this context, the "sensitivity" of specific nuclear materials reflects two principal considerations for Kebaowek. First, in the general sense, some nuclear materials are clearly more sensitive than others. Second, in terms of a specific situation, certain nuclear materials might not be justified in operations, this may also apply to specified equipment and non-nuclear materials. Kebaowek requests more information to implement an FPICt process on Nordion Inc. licensing decisions with CNSC.

¹⁴ BWXT, [Commission Member Document](#), p 48

¹⁵ *Ibid*

¹⁶ BWXT [Commission Member Document](#), p 39

KFN acknowledges from BWXT medical's website that on June 27, 2021 BWXT executed a commercial agreement with Bayer AG (Bayer) to supply high purity Actinium 225(Ac-255). KFN requests more information on whether Ac-255 is produced at the Nordion site.¹⁷

Regarding operations it is concerning that in 2019: "Employee sustained a lower back injury when trying to open double lead doors with force. After several attempts the doors would not open. (issue with doors). An investigation into the incident was performed by the manager and it was determined that the irradiator door status was in a "fault condition" which would not allow the door to open. Technicians need to check status of cell doors."

We understand that Gamma radiation from Cobalt 60 would kill a human instantly and Kebaowek would like more information on the Nordion Inc. irradiator facilities safety and operations at Nordion Inc.

We also submit that Nordion has failed to adequately apply the radiation protection principle of justification. Justification is among the core radiation safety principles adopted by the IAEA in their Fundamental Safety Principles and International Basic Safety Standards.

According to a publication from the International Commission on Radiological Protection ("ICRP"), the justification principle requires "determining whether [...] a planned activity involving radiation is, overall, beneficial, i.e. whether the benefits to individuals and to society from introducing or continuing the activity outweigh the harm (including radiation detriment) resulting from the activity."

No discussion of this principle nor its application to the 25 year licence sought is contained in either Nordion's Application materials nor the CNSC Staff's Commission Member Document. This is a significant gap that must be remedied in the hearing materials.

In 2020, Canada responded to the 2019 IRRS Report noting:

Parliament has given the CNSC the statutory authority to regulate the nuclear industry in Canada. The CNSC achieves this through its licensing regime and the promulgation of regulations. Before authorizing an activity or the operation of a facility, the Commission is required to exercise judgment and to use its expertise to determine if an applicant satisfies the requirements under the *Nuclear Safety and Control Act* (NSCA). The Commission is guided in its decision making by its

¹⁷ Online; <https://www.bwxt.com/bwxt-medical/news>

mandate, as provided for in the NSCA. This mandate is, in part, to regulate the development, production and use of nuclear energy in order to prevent unreasonable risk, to the environment and to the health and safety of persons, associated with that development, production, possession or use. Licensing under subsection 24(4) of the NSCA fundamentally involves assessing what risks are reasonable and therefore what risks are acceptable. This discretionary decision of reasonable vs. unreasonable risk is an exercise of justification and embodies SF-1, Principle 4.[emphasis added] ¹⁸

In June of 2024 IRRS team completed a follow-up mission to Canada in which they made it clear that they did not accept the rationale offered by the government for not accepting their suggestion to make the justification principle legally binding.

The IRRS team highlighted remaining areas identified by the initial mission for alignment with the IAEA safety standards. These include:

- Explicit justification of facilities and activities whereby radiation risks must be considered in terms of the overall benefit, in line with IAEA safety standards;
- Full alignment of Radiation Protection Regulations with IAEA safety standards;
- Implementation of constraints on dose or on risk, to be used in the optimization of protection for members of the public for nuclear facilities."

This clearly indicates that IAEA does not accept or agree with the governmental position (urged by CNSC) that justification can be regarded as already implemented in CNSC's existing procedures. Regardless, we see no discussion of justification, which is among key globally recognized principles of radiation safety. While the term 'justification' does appear repeatedly in Nordion's materials, it is *not* in regard to the principle but rather their arguments in support of a 25 year licence. This is an unfortunate and critical gap in their licence. On this basis alone, KFN submits that the CNSC cannot proceed with issuing the licence as requested by Nordion.

4. 25-YEAR LICENCE REQUEST

In addition to concerns and gaps highlighted throughout our written comments, Kebaowek is also strongly opposed to Nordion's requested 25-year licence. This

¹⁸ Online:

<https://www.cnsccsn.gc.ca/eng/resources/international-cooperation/irrs/canada-response-irrs-2019/#sec1-2>

position is based on a number of interrelated substantive and procedural concerns, including:

1. **Removal of licensee ‘checkpoints’:** More frequent licensing hearings allow the CNSC to implement nuanced, circumstance specific licensing conditions and exercise supervision over the facility and activities.

Removing the requirement to have a hearing for 25 years would have ripple effects on the CNSC’s ability to have checkpoints, tailored to the licensee, tailored to the facility, on a more frequent basis. Despite the trend by the CNSC for longer, ten year licensing terms, KFN submits there should be licensing hearings at least every three years.

2. **Removal of public oversight, ensuring compliance with s 24(4) of the NSCA:** In making a licensing decision pursuant to section 24(4) of the *NSCA*, the CNSC must be satisfied that the licensee is qualified to undertake the proposed licenced activity licensee is qualified to make adequate protection for the protection of the environment and human health. The past performance of this facility cannot be used to demonstrate that a licensee. It is pivotal that to maintain this level of review and oversight, a licence term of not longer than 5 years be permitted.

While in this instance we find the Application and consultation record to be severely deficient - preventing the issuance of a licence - we also note our position that no licence beyond a period of 5 years should be granted.

3. **Erosion of information sharing, disclosure:** Kebaowek has actively engaged on a range of significant infrastructure and energy projects. Frequent, proactive information sharing about a company’s environmental plans and Indigenous engagement for instance, are necessary in building positive relationships, advancing community trust and economic reconciliation with First Nations. Currently though, we have a very incomplete picture of the movement of Nordion’s wastes offsite.

While Kebaowek is generally able to view off site transfers and accompanying emissions for non-radioactive transfers on the National Pollutant Release Inventory for other companies and facilities in Algonquin territory,⁸ an equivalent is not available for radioactive materials. A licence should not be granted in this instance when such a significant information gap remains.

4. **Reducing questioning and weakening the ability of the CNSC to regulate:** allowing longer licences would directly and adversely impact the CNSC's regulatory oversight. As this licensing hearing shows, claims by the licensee must be confirmed with sufficient evidence to render them credible. Without more frequent hearings, there is no opportunity to do so. While the CNSC may point to other proceedings like frequent Regulatory Oversight Reports as providing this opportunity, they are very narrowly scoped as to exclude a detailed look at activities. Nor do they attract the same rules of procedure as a "hearing" per section 24(4) of the NSCA.

The impact of a 25-year licence would be profound, both on KFN's right to be consulted and engaged and the CNSC's ability to publicly demonstrate active oversight and protection of the environment and human health from nuclear substances. Granting a 25-year licence in this instance would be precedent setting and for the reasons noted throughout our remarks, we urge the CNSC to reject Nordion's request for this licensing term.

While the CNSC has previously considered 25-year licence requests, including most recently by NB Power for the Point Lepreau Nuclear Generation Station, it was rejected and a shorter licence term granted. While in the context of that hearing CNSC Staff reassured First Nations that they would have other means of discussing the licensee and its facilities without more frequent hearings, we do not accept these assurances, as no CNSC mechanism equivalent (both procedurally and substantively) to a hearing pursuant to the *NSCA* exists.

Furthermore, given the ongoing absence for a broad range of nuclear projects from federal impact assessment, we strongly request the CNSC consider licensing terms of not more than 5 years, should the licensee meet the requisite Application requirements.

5. INDIGENOUS LAWS AND KNOWLEDGE

As stated above, our Indigenous laws and knowledge must be included in the hearing documents and decisions rendered by the CNSC. Kebaowek's laws and traditional knowledge provides a comprehensive view of ecosystems as interconnected systems. They help identify problems in local environments and assess ecosystem health. This strong connection to the environment allows for changes in land use, provided these changes do not endanger sustainability and renewability. KFN is concerned that the CNSC's regulatory oversight does not align with our laws and traditional knowledge, nor with modern environmental science.

As confirmed by Justice Blackhawk, “the duty to consult and accommodate must be informed by the UNDRIP and the principles of FPIC, which require robust consultation that is informed by Indigenous perspectives, laws, knowledge, and practices.”¹⁹ FPIC, which is required here, means engaging in a “significant robust processes tailored to consider the impacted Indigenous Nations laws, knowledge, and practices and employs processes that are directed toward finding mutual agreement.”²⁰

6. CONSULTATION RESOURCES

If KFN and other Algonquin Anishinaabeg First Nations are going to establish a legitimate consultation and review processes over its territory that engages the Algonquin as assessors of projects, not simply passive participants, there needs to be an adequate transfer of resources from both the regulator and the proponent.

While KFN received some funding to participate in this matter, it was severely deficient and not on par with other projects of similar magnitude and impact. Articles 29.1 and 39 of UNDRIP expressly provides for the right to financial assistance when it comes to these matters. We are concerned that the CNSC funding panel is pre-determining the level of involvement that KFN ought to undertake, and not being responsive to our needs, which includes our right to self determination and ability to make decisions about projects we know are adding to the nuclear footprint on our lands and waters.

7. ENVIRONMENTAL JUSTICE AND RACISM

KFN submits the Application ought to include description of whether, and to what extent, the licence will inhibit Canada’s ability to meet its commitments set out in the *National Strategy Respecting Environmental Racism and Environmental Justice Act*.

In 2024, Canada passed Bill C-226 “*An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice*”. The Act recognizes “a disproportionate number of people who live in environmentally hazardous areas are members of an Indigenous, racialized or other marginalized community” and that “establishing environmentally hazardous sites, including landfills and polluting industries, in areas inhabited primarily by members of those communities could be considered a form of racial discrimination”. The Act also requires the federal government to meaningfully involve affected communities in addressing environmental racism and promoting real change.

Even before this Act was passed, there were other Canadian legal principles that could have promoted environmental justice. At its heart, environmental justice requires that the benefits and adverse impacts of projects be borne equitably amongst all people – principles that have arguably always been required by Canadian law. The unique (sui

¹⁹ *Kebaowek* at para 177.

²⁰ *Kebaowek* at para 183.

generis) legal relationship between Canada and Indigenous Peoples, the constitutional Duty to Consult, section 35 of the Canadian Constitution, and the Charter of Rights and Freedoms (section 7 which protects individuals' security of the person and section 15 that protects against unequal treatment) should have protected against the environmental racism evident in the siting of nuclear facilities.

The Application currently lacks any environmental justice lens and we submit it ought to apply throughout. This requires, among other things, consideration of burden imposed on KFN from legacy nuclear operations and wastes in the territory and adverse impacts and whether they are borne equitably amongst all people.

CONCLUSION

Moving forward KFN insists that ethical frameworks for consultation and nuclear waste management for nuclear facilities on our lands be worked out in a nation-to-nation fashion. This request must be construed in a manner consistent with Canadian Constitutional obligations to consult our First Nation community and our rights as recognized by UNDRIP. Therefore, the Ministry of Natural Resources Canada (NRCAN) shall also consult First Nation communities separately if the circumstances warrant.

KFN remains committed to develop a mutually agreeable consultation process with regard to CNSC –led regulatory processes of interest to KFN. KFN remains committed to consultation framework agreements with uranium and nuclear substance process facilities on Unceded KFN rights and title lands.

In requesting that the licence not be granted for the requested 25 year period, this submission provides a number of forward looking recommendations and conditions regarding the Nordion Inc. facilities operations affecting Algonquin Anishinaabeg lands and waters. We await our further discussion of these subjects and our recommendations in the upcoming June 2025 Commission hearing.