



CMD 26-M4.6
CMD 26-M5.14
CMD 26-M7.5

Date: 2026-01-28

**Written Submission from the
Mississaugas of Scugog Island
First Nation**

**Mémoire de la
Première Nation des Mississaugas
de Scugog Island**

In the matter of the

À l'égard du

**Regulatory Oversight Report for
Canadian Nuclear Laboratories
Sites: 2024**

**Rapport de surveillance réglementaire
des sites des Laboratoires Nucléaires
Canadiens : 2024**

**Regulatory Oversight Report for
Canadian Nuclear Power Generating
Sites for 2024**

**Rapport de surveillance réglementaire
des sites de centrales nucléaires au
Canada : 2024**

**Regulatory Oversight Report for Uranium
and Nuclear Substance Processing
Facilities in Canada: 2024**

**Rapport de surveillance réglementaire
des installations de traitement de
l'uranium et des substances nucléaires
au Canada : 2024**

Commission Meeting

Réunion de la Commission

March 2026

Mars 2026



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Written Intervenor Submission:

Canadian Nuclear Safety Commission's Regulatory Oversight Reports for 2024



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Mississaugas of Scugog Island First Nation
Consultation Office

January 28, 2026

To the attention of:

Tribunal Officer, Commission Registry

Canadian Nuclear Safety Commission

interventions@cnsccsn.gc.ca

January 28, 2026

**Re: Regulatory Oversight Reports (CMD – 26 – M5, CMD – 26 – M7, CMD – 26 – M4) –
Comments from the Mississaugas of Scugog Island First Nation (MSIFN) Consultation
Department**

The Mississaugas of Scugog Island First Nation ("MSIFN") Consultation Department ("MSIFN Consultation") is pleased to provide comments on the **Regulatory Oversight Report for Canadian Nuclear Power Generating Sites: CMD – 26 – M5, Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities in Canada: CMD – 26 – M7, and the Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: CMD – 26 – M4.** Comments on behalf of MSIFN Consultation are below.

Introduction

The 2024 Regulatory Oversight Reports (RORs) issued by the Canadian Nuclear Safety Commission (CNSC) describe CNSC oversight activities and assessments of safety performance across multiple categories of nuclear facilities in Canada during the 2024 reporting year. This submission focuses on three Reports: the Regulatory Oversight Report for Canadian Nuclear Power Generating Sites (CNPGR ROR 2024), the Regulatory Oversight Report for Uranium and Nuclear Substance Processing Facilities (UNSPF ROR 2024), and the Regulatory Oversight Report for Canadian Nuclear Laboratories Sites (CNLS ROR 2024).

The CNPGR ROR 2024 evaluates safety performance at nuclear power plants and associated waste management facilities, including major sites such as Darlington, Pickering, Bruce, Point Lepreau, and Gentilly-2, as well as related waste and radioactive material management facilities. The UNSPF ROR 2024 assesses uranium processing, nuclear substance processing, research reactors, and Class IB accelerator facilities, focusing on regulatory compliance, environmental protection, and licensee performance. The CNLS ROR 2024 reviews CNSC oversight of Canadian Nuclear Laboratories (CNL) sites, including legacy waste management, environmental remediation, and long-term stewardship responsibilities.

Across all three Reports, CNSC staff conclude that licensed facilities operated safely during the 2024 reporting

period, based on compliance verification activities conducted across the 14 safety and control areas. Overall performance is assessed as satisfactory, with findings supported by reported low rates of significant safety events, radiation exposures remaining within regulatory limits, limited non-radiological workplace injuries, environmental releases below established thresholds, and continued adherence to international safeguards and regulatory obligations.

While the Reports present a consistent regulatory assessment of facility safety and compliance, MSIFN's review focuses on how these conclusions intersect with Indigenous and Treaty rights, long-term environmental and waste risks, cumulative impacts, and the adequacy of consultation, accommodation, and consent-based decision-making within CNSC's oversight framework.

Background

The Mississaugas of Scugog Island First Nation (MSIFN) is located on the shores of Lake Scugog in Durham Region, Ontario, and is a member of the Williams Treaties First Nations (WTFNs). MSIFN's territory extends from the north shore of Lake Ontario in the south, Georgian Bay in the west, the Ottawa Valley in the east, and northward to the French River. Across this area, MSIFN's priority is the protection and preservation of the lands, waters, wildlife, and fisheries upon which its people rely.

The Mississauga people settled in the Lake Scugog basin around 1700, where the land and waters supported abundant game, waterfowl, fish, and wild rice. Long before the establishment of colonial settlements or the province of Ontario, MSIFN's ancestors moved throughout this region as caretakers, maintaining reciprocal relationships with the land and participating in a highly interconnected ecological and cultural system.

Seasonal movement across what is now known as southern Ontario was deliberate and highly organized. During warmer months, MSIFN ancestors gathered along the north shore of Lake Ontario to fish and harvest plants. In the fall and winter, families travelled north beyond the Kawarthas toward present-day Muskoka, Haliburton, North Bay, and Ottawa to hunt and trap. These movements were governed by family and clan structures and supported by the transmission of intergenerational knowledge. Specific hunting and harvesting territories were carefully managed, respected, and passed down through generations.

Lake Scugog has always been central to this seasonal round. The Scugog Carrying Place, linking Lake Ontario to Lake Scugog and present-day Port Perry, served as a critical travel corridor that facilitated movement, trade, ceremony, and cultural exchange both before and after European contact.

Colonial disruption significantly altered this relationship. In 1828, the construction of a dam in Lindsay raised Lake Scugog's water levels, permanently changing the local ecology. Wild rice beds and cranberry bogs were destroyed, and fish habitats were altered. As a result, the Michi Saagiig of Scugog Island were displaced multiple times, including temporary relocations to Balsam Lake, Coldwater, and Mud Lake. In 1843, MSIFN returned to Lake Scugog and purchased approximately 800 acres near the north end of the island, asserting the right to

return home and maintain cultural continuity.

Today, MSIFN continues to uphold its responsibilities as Michi Saagiig people, guided by enduring relationships with the waters and all living and non-living beings. These responsibilities are rooted in longstanding teachings and practices that emphasize stewardship, respect, and planning for future generations.

MSIFN has never provided consent for the siting or operation of nuclear facilities or waste management activities within its territory. Contamination of lands and waters represents an irreversible infringement on MSIFN's rights and responsibilities. Nearly all stages of the nuclear fuel lifecycle—excluding uranium mining—occur within MSIFN's traditional territory, placing disproportionate risk on present and future generations. MSIFN maintains that nuclear safety is paramount and that the Crown, the CNSC, and licensees share a legal obligation to protect current and future generations.

In 2018, MSIFN became a signatory to the Williams Treaties Settlement Agreement, resolving nearly 90 years of dispute arising from the Williams Treaties of 1923. This settlement reaffirmed MSIFN's pre-Confederation treaty rights to hunt and harvest throughout its traditional territories. As outlined in the Settlement Agreement, constitutionally protected rights for hunting, fishing, and trapping were affirmed for the WTFNs across their treaty territories. These practices have been carried out sustainably since time immemorial and represent fundamental cultural markers of Indigenous identity, responsibility, and self-determination. Hunting includes trapping, snaring, and fishing, supplemented by firearm usage.

Despite these inherent and long-held rights, the Williams Treaties of 1923 facilitated decades of discrimination and legally sanctioned harassment by Crown officials, including Peace Officers, against WTFN citizens for exercising their cultural harvesting practices. The Crown only began addressing these impacts in 2018 through the Settlement Agreement. Following this prolonged struggle for recognition, MSIFN insists that the CNSC and all federal and provincial Crown authorities respect the legal, constitutional, and practical weight of this reaffirmation in all dealings with the Nation.

While the WTFNs were fighting for recognition of our rights, the Supreme Court of Canada (SCC) was concurrently shifting the legal requirements for Crown consultation with Indigenous communities. The 2004 *Haida*¹ decision ushered in a new era of formal and meaningful Crown consultation. Indigenous communities whose section 35 Rights² are potentially adversely impacted by Crown conduct are owed a duty of consultation, and if necessary, accommodation. The Crown has always owed First Nations a fiduciary duty, the *Haida* decision provides guidance on how that duty is to be fulfilled.

Part of the Crown's duty to consult and accommodate (DTCA) is integration of *United Nations Declaration on the Rights of Indigenous Peoples*³ (UNDRIP) into all aspects of consultation. UNDRIP became part of Canadian domestic positive law through the *UNDRIP Act*⁴ (the Act), which received royal assent on June 21, 2021. The SCC

¹ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] S.C.R. 511.

² Section 35 Rights refer to Aboriginal and Treaty Rights enshrined in section 35 of the *Constitution Act*, 1982.

³ UN General Assembly, *United Nations Declaration on the Rights of Indigenous People*, A/RES/61/295.

⁴ *United Nations Declaration on the Rights on Indigenous Peoples Act*, S.C. 2021, c. 14.

confirmed this integration in 2024, noting that the Act provides a framework for reconciliation and requires federal laws, including the common-law DTCA, to be consistent with UNDRIP. Recent case law further supports this consultation requirement, including the concept of free, prior and informed consent (FPIC).⁵

MSIFN is also a signatory to the Framework Agreement on First Nations Land Management, the First Nations Fiscal Management Act, and other political and legal arrangements that support MSIFN's Inherent Jurisdiction as a self-governing authority. MSIFN's Chief and Council, supported by their administrative and technical teams, is the community's regulatory authority. The processes required to fulfill MSIFN's legal obligations to its citizens and to the broader Williams Treaties community are complex and must be respected. These responsibilities cannot be rushed or disregarded. UNDRIP exists to safeguard these rights and responsibilities, and MSIFN remains committed to ensuring that its principles are upheld in practice.

Connection to MSIFN

MSIFN has a direct and ongoing interest in the facilities and activities addressed in the RORs due to their geographic proximity, cumulative impacts, and regulatory implications within MSIFN's Treaty and traditional territory. Nuclear power generating stations and associated waste management facilities at Pickering and Darlington operate upstream and within interconnected watersheds that directly affect MSIFN's lands, waters, and rights-bearing activities.

MSIFN is uniquely situated in relation to nuclear emergency planning. MSIFN is the only First Nation community located within the Ingestion Planning Zone (IPZ) (50 km) of the Pickering Nuclear Generating Station (PNGS), the Darlington Nuclear Generating Station (DNGS), and soon the Darlington New Nuclear Project (DNNP). As a result, MSIFN citizens are subject to emergency planning measures, including food and water restrictions and potassium iodide distribution, that directly affect daily life, health, and community well-being. These realities underscore the heightened risk burden borne by MSIFN relative to other communities. Decisions made therefore have long-term and intergenerational consequences for MSIFN that extend well beyond the annual reporting period.

MSIFN citizens face disproportionate and quantifiable risks. As the only First Nation within the IPZ of PNGS, DNGS, and the future DNNP simultaneously, MSIFN bears emergency management obligations and emergency dietary restrictions affecting community members. These restrictions are not temporary: they persist for the operational lifetime of both stations (potentially 40+ years) and extend to any future repositories or long-term waste storage facilities on Lake Ontario or its tributaries. MSIFN's geography concentrates multiple facility risks in a single treaty area. Additionally, MSIFN's harvesting rights under the Williams Treaties (section 35 and the 2018 Settlement Agreement) have been directly infringed by facility security restrictions preventing harvesting, and creating impacts including but not limited to fish impingement, thermal pollution, and uranium

⁵ *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319, *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430.

contamination - impacts that are irreversible and cumulative with each facility license extension.

The connection is sharpened by MSIFN's legal position on unceded Lake Ontario territories. The Johnson-Butler Purchase (1787–1788) ceded only shoreline-adjacent lands. The lakebed and waters beyond this ceded zone remain unceded territory over which MSIFN retains harvesting and stewardship rights. PNGS, DNGS, the future DNNP and the proposed Port Hope New Nuclear Project require discharge of thermal effluent and treated water directly into these unceded waters, triggering an immediate Crown duty to consult and accommodate (DTCA) under *Haida*, regardless of whether the CNSC's current mandate acknowledges environmental jurisdiction. MSIFN's position is consistent with IESO Eastern Ontario Bulk Planning engagement (2025), where MSIFN asserted unceded-waters protections for underwater transmission interties and similar infrastructure works directly associated with OPG nuclear facilities. This assertion does not prevent nuclear operations; rather, it requires the Crown (through CNSC licensing conditions) to acknowledge the unceded territory, embed accommodations including, but not limited to, Indigenous-led monitoring and consent mechanisms in discharge permits, and methods to ensure that thermal/effluent pathways are disclosed and subject to Nation-led impact assessment prior to license approval.

MSIFN has consistently participated in CNSC consultation and engagement processes related to these facilities, including regulatory oversight reports, licensing proceedings, mid-term updates, and waste management amendments. However, MSIFN's participation should not be interpreted as agreement with CNSC conclusions or as confirmation that outstanding concerns have been resolved. Many issues raised by MSIFN—particularly those related to cumulative effects, thermal and effluent effects, long-term waste management, refurbishment and decommissioning planning, and consent-based decision-making—remain outstanding despite repeated engagement.

MSIFN maintains that legally, regulatory oversight must move beyond procedural engagement toward substantive consideration of Indigenous rights, responsibilities, and decision-making authority. The continued operation and expansion of nuclear facilities within MSIFN's territory directly engages MSIFN's Rights, interests and reinforces the need for meaningful, transparent, and rights-respecting regulatory processes. The Crown is unjustifiably infringing on our section 35 Rights when this continued and expanded operation moves forward without adequate and meaningful consultation which is required to rise to the standard of UNDRIP and FPIC.

CNSC Must Adhere to Canada's Radioactive Waste and Decommissioning Policy (2024)

Canada's Radioactive Waste and Decommissioning Policy (2024) requires explicit CNSC integration into RORs and licensing. This federal policy, led by Natural Resources Canada, mandates that radioactive waste generators like OPG ensure long-term management protects health, safety, and the environment while minimizing burdens on future generations—principles directly applicable to Pickering and Darlington waste expansions.

Policy Integration Demands: The 2024 ROR fails to reference or operationalize this policy, despite its relevance to PWMF/PCSS licensing and DNGS decommissioning planning. Canada's Policy explicitly requires waste owners

to develop an Integrated Strategy for Canada's Radioactive Waste that includes inventories, timelines, and national infrastructure plans – yet the ROR treats on-site storage as isolated facility issues rather than part of a federal waste management framework.

MSIFN demands the CNSC:

- Require OPG to submit its portion of the national Integrated Strategy in the next ROR *and* future CNSC with respect to OPG facilities and proceedings – and for the matters at hand – detailing PWMF capacity ceilings, Deep Geological Repository (DGR) contingency timelines, and decommissioning funding adequacy;
- Embed Policy principles in licensing conditions, including Indigenous co-governance of waste inventories, adaptive management triggers, and institutional controls in perpetuity;
- Report annually on alignment between site-specific decisions and national Policy goals (e.g., waste minimization, burden reduction), with explicit reconciliation commitments per Policy priority 3 (Indigenous partnerships, FPIC pathways).

Failure to integrate this policy perpetuates fragmented oversight and defers Crown accountability for cumulative waste burdens on MSIFN territories.

Comments on NPGS ROR – CMD-26-M5

Darlington Nuclear Generating Station

This Report does not acknowledge the impacts of fish impingement and entrainment associated with ongoing nuclear facility operations, despite these being well-documented and long-standing effects on aquatic ecosystems and on Indigenous Rights and harvesting practices. The absence of any discussion of these impacts presents an incomplete portrayal of environmental protection and regulatory oversight at nuclear generating stations.

While aspects of fish protection and habitat management may fall within the mandate of other federal authorities, such as Fisheries and Oceans Canada, reliance on parallel regulatory regimes does not relieve the CNSC of its responsibility to identify and report on all significant environmental effects arising from licensed nuclear activities, nor does it diminish the CNSC's obligation to ensure that such effects are appropriately considered within its oversight framework.

The omission of fish impingement and entrainment from the RORs further limits transparency regarding cumulative and ongoing impacts to aquatic ecosystems that are integral to Indigenous cultural practices and food systems. MSIFN is aware of ongoing impingement and entrainment of fish species in Lake Ontario at the intake of OPG's Darlington and Pickering facilities that should be reported on here. These effects are directly relevant to the exercise of Indigenous Rights and therefore warrant inclusion in CNSC reporting, as well as

meaningful consultation and accommodation of affected First Nations.

In addition, ongoing thermal pollution from PNGS and DNGS cooling water intake/outfall systems presents significant, unaddressed risks to aquatic ecosystems and MSIFN harvesting rights. Elevated discharge temperatures (historically up to 10–15°C above ambient) disrupt fish spawning, algal blooms, and dissolved oxygen levels in Lake Ontario, compounding cumulative effects from multiple nuclear discharges at OPG operations on Lake Ontario. MSIFN requests CNSC-mandated thermal plume modeling and real-time monitoring, with adaptive management tied to species at risk thresholds, as raised in prior Pickering mid-term submissions.

Lake Sturgeon (*Acipenser fulvescens*), recently confirmed in Lake Ontario offshore of OPG's PNGS, holds profound cultural significance for MSIFN as a keystone species in Anishinaabe teachings and traditional fisheries. As a species at risk under SARA, sturgeon populations are particularly vulnerable to thermal pollution, entrainment, and habitat disruption from nuclear cooling systems. The ROR's omission of sturgeon-specific data undermines effective oversight; MSIFN demands baseline population studies, intake velocity reductions, and FN-led monitoring to protect this sacred relative.

Beyond operational oversight, the ROR omits any discussion of Darlington's end-of-life planning or decommissioning scenarios. DNGS Units 1–4 received a 20-year license renewal (to November 2045) with no concurrent decommissioning funding strategy, timeline, or site-end-use roadmap disclosed. MSIFN notes that the CNSC license approval in 2025 triggered Crown consultation obligations; however, MSIFN was not presented with:

- a) Scenarios for decommissioning (immediate, delayed, or in-situ entombment);
- b) Estimated timelines and costs (deferred to future Crown budgets);
- c) Site end-use alternatives (industrial, remediated agricultural, or ecosystem restoration);
- d) Cumulative waste management during the 20-year license term and post-decommissioning.

MSIFN insists that the CNSC's next regulatory update (2027 mid-term or equivalent), and future CNSC decisions on OPG facilities, must include a binding commitment to decommissioning planning with First Nation rights-holder co-governance. This planning must address:

- OPG's funding assurance (adequacy and escalation);
- Environmental remediation standards aligned with Michi Saagiig stewardship principles;
- MSIFN and Michi-Saagiig - Williams Treaties Nations' authority to approve site end-use; and
- Long-term monitoring and adaptive management roles for Michi Saagiig – Williams Treaties Nations.

Absent such planning, the 20-year license constitutes an indefinite deferral of Crown accountability and an open-ended waste burden on MSIFN territories.

Darlington Waste Management Facility

Following a two-part public hearing held in March and June 2025, the CNSC issued its Record of Decision renewing OPG's Power Reactor Operating Licence for the DNGS for a period of 20 years, from December 1, 2025 to November 30, 2045.

The Michi Saagiig WTFNs (MS-WTFN), raised concerns that the DTCA was triggered but not fulfilled, particularly given the unprecedented duration of the proposed licence. Central concerns included the long-term implications of extended reactor operation, the increased generation and on-site storage of radioactive waste, cumulative effects across multiple nuclear projects at the Darlington site, and the absence of a confirmed long-term waste disposal solution.

The MS-WTFNs further raised concerns regarding the lack of implementation of UNDRIP, including the absence of free, prior and informed consent (FPIC), and the reliance on non-delegated proponent-led engagement rather than Crown-directed consultation. They also emphasized that decisions related to waste generation and storage have intergenerational consequences and directly engage constitutionally protected rights and responsibilities within their traditional territories.

Going forward, MSIFN expects CNSC and OPG to move beyond procedural engagement toward substantive, rights-based consultation and accommodation. This includes:

- Crown-led consultation that meaningfully incorporates Indigenous perspectives in regulatory decision-making, particularly where long-term and cumulative impacts are present.
- Transparent discussion of long-term waste management scenarios, including contingencies should a permanent disposal facility not be realized.
- Engagement processes that align with UNDRIP, including early, ongoing, and consent-based dialogue on matters affecting Indigenous lands, waters, and future generations.
- Clear mechanisms to demonstrate how Indigenous input influences outcomes, not merely how it is recorded.

The periodic updates directed by the Commission must provide a genuine opportunity for Indigenous Nations to assess risks, raise concerns, and influence future decisions related to Darlington's continued operation and associated waste management.

Pickering Nuclear Generating Station

While the Report confirms that PNGS continues to meet CNSC regulatory requirements, it does not demonstrate that MSIFN's concerns in Intervenor Submission: Mid-term Update for Ontario Power Generation's Pickering

Nuclear Generating Station regarding aging infrastructure, calandria tubes, and the absence of refurbishment have been addressed. Continuing operations of an aging facility without replacement of core reactor and safety systems ignores the concerns identified by MSIFN in its Mid-Term Update submission, and MSIFN's request for substantive response or mitigation remains outstanding.

In parallel with the concerns outlined above, OPG has now formally applied to the CNSC for refurbishment of the PNGS, seeking to extend operations beyond the current 2026 end-date for Units 5-8 and to consolidate PNGS and the PWMF under a single 10-year power reactor operating licence. The CNSC has scheduled a two-part public hearing to consider this application, including its obligations, as an agent of the Crown, to consult and accommodate MSIFN and other rights-holding First Nations.

While the refurbishment application represents a material shift from continued operation without reinvestment in critical systems, and responds in part to MSIFN's longstanding concerns regarding aging infrastructure, the regulatory process remains inadequate. No full and comprehensive Impact Assessment has been conducted, despite the unprecedented scale of proposed refurbishment activities, cumulative waste generation, and the potential extension of risks into the 2040s.

MSIFN understands that OPG's refurbishment application (Units 1–4 and potentially Units 5–8) could constitute **a major physical work** under the *Impact Assessment Act* (IAA). The scale of proposed activities – comprehensive replacement of calandria tubes, steam generators, pressurizer heaters, and associated systems – meets or exceeds the dollar thresholds that would normally trigger a federal Impact Assessment. Additionally, the refurbishment will:

- Generate many tonnes of additional radioactive waste requiring on-site storage;
- Extend operational risk into the 2040s, affecting long-term decommissioning scenarios; and
- Trigger cumulative effects when assessed alongside DNGS refurbishment, DNNP construction, and PWMF expansion.

Under the IAA, MSIFN understands that a federal IA would include:

- Cumulative effects analysis (Pickering + Darlington refurb + DNNP + PWMF expansion);
- Indigenous rights and interests impact assessment (led by Michi Saagiig Nations);
- Long-term waste storage and decommissioning scenarios (tied to NWMO timelines);
- Thermal/effluent impact modeling on Lake Ontario aquatic ecosystems and Indigenous harvesting rights; and

- Socio-economic and health impacts on MSIFN and other affected First Nations.

The Crown must ensure that Crown decision-making for OPG's refurbishment application includes Indigenous consent mechanisms consistent with UNDRIP and FPIC, and consistent with the above considerations that would be part of an IA. Absent such a Crown assessment process or equivalent, the CNSC license approval will perpetuate the Crown's failure to discharge its consultation and accommodation duties, and will defer accountability for cumulative impacts to future generations.

For clarity, MSIFN's outstanding concerns, including long-term decommissioning planning, expanded on-site waste storage, and the implementation of FPIC, remain unresolved, underscoring the need for Crown-led consultation beyond proponent engagement.

Pickering Waste Management Facility

MSIFN acknowledges that the Report identifies OPG's application to amend the PWMF licence and to construct and operate the Pickering Component Storage Structure (PCSS). As outlined in the Request for Redetermination of the Commission's Decision to Amend WFOL-W4-350.01/2028, MSIFN raised concerns regarding the expansion of nuclear waste storage at the Pickering site, including the lack of complete and transparent information on decommissioning plans, long-term waste storage solutions, cumulative impacts, and the absence of consent-based decision-making. These concerns extend beyond procedural engagement and go to the core of safety, rights protection, and long-term risk borne by MSIFN as a rights-holding First Nation.

While the Request for Redetermination documents that CNSC staff and OPG engaged with MSIFN through meetings, correspondence, and information-sharing processes, it does not demonstrate that the outstanding concerns identified by MSIFN were adequately addressed. In particular, the Report does not explain how MSIFN's concerns regarding increased nuclear waste storage capacity, incomplete long-term storage and decommissioning plans, or cumulative impacts across PNGS, the PWMF, and other regional nuclear facilities were considered in regulatory decision-making, nor does it identify any accommodations or changes to regulatory outcomes resulting from MSIFN's input.

Further, MSIFN maintains that the consultation processes described in the Report does not reflect the implementation of UNDRIP or the requirement for FPIC. MSIFN and the other MS-WTFNs have not provided consent for the construction or operation of the PCSS, and CNSC and OPG engagement has remained largely information-driven, with decision-making authority retained by CNSC staff and the Commission. Significant safety, planning, rights, and consent-related issues remain outstanding, and MSIFN continues to assert that meaningful resolution requires full disclosure, a comprehensive regulatory roadmap, and consideration of cumulative impacts.

The ROR documents that OPG has applied to expand the PWMF through construction of the PCSS. The

expansion accommodates projected waste from refurbishment and extended operations (potentially through the 2040s). However, MSIFN notes the absence of any discussion of:

- The total storage capacity of PWMF post-PCSS expansion (tonnes of intermediate-level waste; storage duration);
- Off-ramp scenarios if NWMO's DGR is not operational by December 31, 2045;
- Limits on storage duration or regulatory trigger points for remediation if the DGR is delayed.

MSIFN demands that the CNSC establish, as a binding license condition:

- 1) **Storage Capacity Ceiling:** In consultation with the Michi Saagiig Williams Treaties First Nations, determine a maximum tonnage the PWMF shall not exceed for intermediate-level waste. Any proposal to exceed this threshold will require amended licensing and Crown consultation with affected First Nations.
- 2) **DGR Contingency Timeline:** If the NWMO DGR is not operational by December 31, 2045, OPG shall, within 6 months:
 - Report to the Crown and affected First Nations;
 - Propose alternatives (reprocessing, international disposal, enhanced on-site remediation);
 - Seek Crown approval for remedial action or accelerated decommissioning of the generating station.
- 3) **Reasonably Funded Indigenous-Led Monitoring:** MSIFN and Williams Treaties Nations shall have authority to conduct independent monitoring of waste storage conditions, including radiation levels, structural integrity, and environmental releases. Monitoring reports shall be public and subject to adaptive management protocols. This demand is rooted in MSIFN's stewardship responsibilities and in the principle that indefinite deferral of waste accountability is incompatible with intergenerational equity or Crown consultation standards.

Cumulative Effects Analysis Across MSIFN Treaty and Territory

The ROR addresses PNGS and DNGS independently, assessing each facility's safety compliance within its own regulatory perimeter, and does not consider the future DNNP. This approach masks the cumulative burden borne by MSIFN and obscures the Crown's duty to consult on cumulative impacts under *Haida*. When assessed cumulatively, several risks converge on MSIFN's territory (refer to **Table 1**).

Table 1: List of cumulative effects on MSIFN's territory.

Risk Category	PNGS	DNGS	PWMF	Future DNNP	Proposed Port Hope New Nuclear	Cumulative Effect
Thermal discharge (Lake Ontario)	10–15°C elevation	Similar	N/A	TBD	TBD	Synergistic warming; spawning habitat loss
Fish impingement/entrainment	Annual	Annual	N/A	Projected Increase	TBD	Cumulative fish population decline; harvesting restriction
Radiation exposure (operational)	<50 mrem/a (public)	<50 mrem/a	N/A	TBD	TBD	Additive; exceeds low-dose thresholds for sensitive populations and First Nation members who harvest in the vicinity of the facilities and/or work at the facilities
Radiation exposure (operational)	X Tonnes	X Tonnes	X Tonnes (proposed expansion)	Y Tonnes	TBD	Indefinite storage footprint; decommissioning complexity
Emergency planning burden	IPZ 50 km (Pickering)	IPZ 50 km (Darlington)	Overlapping	Expanded	TBD	MSIFN subject to 2 or 3 overlapping emergency protocols; no opt-out

Harvesting rights infringement	Facility security restrictions preventing harvesting; Fish, waterfowl, aquatic plants	Facility security restrictions preventing harvesting; Waste access restriction	Facility security restrictions preventing harvesting; Waste access restriction	Facility security restrictions preventing harvesting	Existing facility security restriction preventing harvesting	Multiple facility security restrictions preventing harvesting; Cumulative restriction on Williams Treaties harvesting rights; cumulative fish, waterfowl, aquatic plant impacts
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Note: Table is not a comprehensive list of cumulative effects. A true cumulative effects assessment will likely reveal additional cumulative effects.

MSIFN asserts that the CNSC has failed to assess, report on, or accommodate these and potentially other cumulative impacts. The 2024 ROR's separate analysis of each facility perpetuates this blind spot. MSIFN demands that:

- 1) The CNSC commission an independent **Cumulative Effects Assessment** (CEA) covering all OPG nuclear facilities, waste sites, and associated infrastructure within MSIFN's territory and the Lake Ontario watershed.
- 2) The CEA shall be Indigenous-led, with Michi Saagiig Williams Treaties Nations defining assessment methodology, baseline data, and impact thresholds.
- 3) The CEA shall assess impacts on **Crown consultation duties**: whether cumulative effects trigger heightened accommodation obligations under *Haida* and UNDRIP.
- 4) CEA findings shall inform **licensing conditions** for any renewal, refurbishment, or new facility (e.g., DNNP). License approvals shall not proceed without CEA completion and accommodation of identified impacts.

Absent a cumulative assessment, CNSC decisions perpetuate the Crown's failure to fulfill its section 35 duties.

Lakebed and Waters of Lake Ontario

MSIFN asserts that the lakebed and waters of Lake Ontario south of the Michi Saagiig Gunshot Treaty (Johnson-Butler Purchase, 1787–1788) remain uncaded, as historical records and oral histories confirm the treaty ceded only shoreline-adjacent lands to the distance a gunshot could be heard. Nuclear operations at PNGS discharge

effluents and warm water directly into these unceded waters, triggering the DTCA and requiring FPIC for any activities causing infringement. This position aligns with prior MSIFN CNSC submissions on Pickering licensing (e.g., CMD25-M9-22) and recent IESO engagements on Eastern Ontario Bulk Planning, where MSIFN emphasized that underwater/near-shore works (e.g., transmission interties) traverse unceded territories, demanding Nation-led impact assessments and consent. CNSC must address these concerns by integrating unceded waters protections into licensing conditions, including avoidance of discharges and full disclosure of thermal/effluent pathways.

For CNSC licensing purposes, MSIFN's unceded-waters assertion means that any discharge, thermal release, or infrastructure in Lake Ontario lakebed/open waters constitutes a Crown action affecting Aboriginal rights and triggers consultation.

Comments on UNSPF ROR – CMD-26-M7

MSIFN acknowledges that the UNSPF ROR 2024 reflects incremental improvements in policy language and formal recognition of Indigenous rights and UNDRIP compared to the 2023 edition. Notably, it states that CNSC licensing decisions uphold the honour of the Crown, Indigenous and treaty rights pursuant to section 35 of the Constitution Act, 1982, and the principles of UNDRIP—a shift from the prior Report, which contained limited reference to these statutory and constitutional obligations.

The Report identifies CNSC engagement practices as being guided by its [Commitment to Indigenous Consultation and Engagement](#) and its [Statement on Reconciliation](#). However, MSIFN notes a continuing misalignment between CNSC's public-facing policy materials and the stronger commitments articulated in the Report, including inconsistent framing of Indigenous and treaty rights as being “considered” rather than upheld. This inconsistency underscores the need for clearer institutional alignment between stated commitments and operational standards.

Appendix P summarizes engagement related to MSIFN's Long-term Engagement Terms of Reference, confirming ongoing dialogue and work planning between MSIFN and CNSC. While this demonstrates continuity of communication, references to UNDRIP and FPIC remain limited and largely confined to discussion topics, rather than reflected in implemented commitments or revised regulatory approaches. The Report records MSIFN's requests for enforceable agreements, environmental safeguards, economic inclusion, and enhanced participation in regulatory processes, but does not indicate that these requests have resulted in changes to governance structure, decision-making authority, or regulatory outcomes.

Appendix Q further notes that MSIFN's concerns from the 2023 UNSPF ROR continue to be tracked through CNSC-managed issue tables and regular meetings. While this signals ongoing engagement, it also confirms that key concerns remain in progress rather than resolved. The Report characterizes progress in terms of outreach, documentation, and process, without demonstrating how MSIFN's prior recommendations have been

implemented, accommodated, or translated into substantive regulatory change.

Overall, MSIFN recognizes improvements in terminology, transparency, and engagement reporting within the Report. However, the core issues raised in MSIFN's 2023 UNSPF submission, particularly those related to operationalizing UNDRIP commitments, institutional accountability, and the influence of Indigenous input on regulatory outcomes, remain outstanding.

Implementation and Accountability Mechanisms: While the UNSPF ROR 2024 reflects improved language acknowledging UNDRIP and FPIC, MSIFN notes the absence of **enforcement mechanisms or accountability structures** ensuring that commitments translate to regulatory outcomes. To move beyond "performative" acknowledgment, MSIFN proposes that the CNSC establish:

- 1) **Outcome Tracking:** For each CNSC licensing decision affecting MSIFN or other MS-WTFNs, the CNSC shall publicly report:
 - a. What Indigenous concerns were raised;
 - b. How CNSC staff addressed or rejected each concern;
 - c. What regulatory changes or accommodations resulted;
 - d. If no accommodation, the Crown's written rationale.This reporting shall occur in RORs and licensing decisions (CMD documents), creating a public record of Crown consultation performance.
- 2) **Dispute Resolution:** If MSIFN disputes that CNSC consultation adequately addressed outstanding concerns, MSIFN shall have access to:
 - a. Independent Crown review (e.g., Federal Intervenor funding for legal/technical support);
 - b. Formal mediation with CNSC senior leadership and affected Crown agencies;
 - c. Escalation to federal cabinet if material *Haida* duty violations are identified.
- 3) **Periodic Review:** Every 3 years, the CNSC shall commission an **independent audit** of its consultation practices, conducted by a third-party evaluator (jointly selected by CNSC and MSIFN). The audit shall assess whether UNDRIP commitments are operationalized and shall recommend corrective actions.
- 4) **FPIC Trigger:** If CNSC licensing decisions demonstrably conflict with FPIC principles (i.e., decision proceeds without Indigenous consent despite material rights impacts), the CNSC shall be required to justify the decision in writing to the Crown (Minister of Natural Resources) and to seek further Crown authorization before implementing. These mechanisms are consistent with international best practices (e.g., IFC Performance Standards, World Bank safeguards) and reflect the intent of the **UNDRIP Act**.

MSIFN acknowledges that the CNLS ROR 2024 expands upon Indigenous engagement, relationship-building, and alignment with UNDRIP. The Report describes CNSC and CNL's efforts to engage Indigenous Nations through meetings, monitoring programs, capacity funding, and participation in initiatives.

While these activities reflect continuity of engagement and Indigenous participation, the Report does not demonstrate a significant shift toward rights-based or consent-based regulatory decision-making. Engagement continues to be largely characterized as information sharing, feedback solicitation, and program participation, with decision-making authority retained by CNSC staff and licensees.

The Report references UNDRIP and FPIC as guiding principles; however, FPIC is framed as a concept to be understood, supported, or respected, rather than as a binding requirement that directs licensing decisions. The CNLS ROR 2024 does not provide evidence that Indigenous Nations exercise shared authority over regulatory approvals, nor does it demonstrate how Indigenous concerns have resulted in measurable changes to oversight decisions, project conditions, or risk mitigation measures.

Further, the Report does not meaningfully assess potential impacts to Indigenous or Treaty rights, including harvesting, land stewardship, water protection, or long-term intergenerational risks associated with nuclear operations, waste management, and site decommissioning. Environmental monitoring initiatives that include Indigenous participation remain CNSC-designed, rather than Nation-led or co-led, limiting First Nation's ability to embed Indigenous laws, knowledge systems, and responsibilities into project designs.

Indigenous-Led Environmental Monitoring at CNL Sites

MSIFN acknowledges CNSC and CNL efforts to include Indigenous Nations in monitoring programs. However, MSIFN notes a persistent governance gap: Indigenous Nations are participants in CNSC-designed monitoring, not authorities over monitoring design, data interpretation, or adaptive management responses. This gap reflects a fundamental misalignment with UNDRIP Article 32 (consent for projects affecting Indigenous lands) and Article 26 (rights to lands and resources). True implementation requires Indigenous-led or co-led governance of environmental monitoring at nuclear sites, including:

- 1) Co-Design: MSIFN and affected First Nations shall jointly design monitoring protocols with CNL/CNSC, including:
 - a. Which parameters are monitored (e.g., fish populations, water quality, soil radionuclides, traditional use indicators);
 - b. Baseline thresholds and trigger points for intervention;
 - c. Indigenous knowledge integration (e.g., plant/animal behavior as bioindicators);

- d. Acceptable detection limits and reporting timelines.
- 2) Data Ownership and Access: Indigenous Nations shall own and control monitoring data generated by or with their participation. Data shall be shared openly with CNSC/CNL but remain subject to Indigenous intellectual property protocols. MSIFN shall have authority to conduct independent analysis and publish findings.
 - 3) Adaptive Management Authority: If monitoring detects adverse environmental trends (e.g., species decline, radiation elevation, habitat loss), MSIFN and affected Nations shall have authority to recommend adaptive management actions (e.g., accelerated remediation, operational limits, or decommissioning acceleration). CNSC/CNL shall respond to recommendations in writing and implement agreed actions.
 - 4) Capacity Funding: CNSC shall provide multi-year, capacity-building funding for MSIFN to maintain independent technical expertise (hydrogeologists, radiation specialists, ecological scientists) to support monitoring and adaptive management decisions. These governance reforms reflect global best practices (e.g., co-management agreements in Australian Indigenous land management, Inuit Tapiriit Kanatami environmental governance in the Arctic) and are consistent with UNDRIP implementation.

Other

Outstanding Concerns

This section reviews concerns from MSIFN's prior Table 1 comments on the 2023 ROR (CMD 25-M9), assessing progress in the 2024 Report. While incremental language improvements (e.g., UNDRIP/FPIC references) are noted, these changes remain largely performative - rhetorical acknowledgements without substantive shifts in authority, outcomes, or accommodations. Engagement continues as information-sharing rather than consent-based decision-making, leaving core issues like cumulative waste, refurbishment IAs, and unceded waters unresolved. True implementation requires the CNSC to demonstrate how MSIFN's input alters regulatory paths, not merely records it.

MSIFN acknowledges that the RORs reflect incremental changes in language and recognition compared to previous years. In particular, the RORs now state that CNSC licensing decisions uphold the honour of the Crown, uphold Indigenous and treaty rights pursuant to section 35 of the Constitution Act, 1982, and uphold the principles of UNDRIP. The Report also explicitly references UNDRIP, the UNDRIP Act, and FPIC as guiding principles, and documents ongoing engagement activities with MSIFN, including regular meetings, issue tracking, participation in monitoring programs, capacity funding, and the incorporation of MSIFN feedback into regulatory documents.

While these changes represent progress at the level of acknowledgement and process, MSIFN's core concerns

remain unaddressed. Throughout the RORs, FPIC is framed as a principle to be understood, supported, or respected, rather than as a binding requirement that informs or constrains regulatory outcomes. Decision-making authority continues to rest entirely with CNSC staff and the Commission, who retain discretion over how Indigenous input is interpreted and applied. The Report does not acknowledge MSIFN's position that, as a Treaty partner, Canada is required to seek and obtain MSIFN's consent where treaty rights may be infringed.

Descriptions of consultation and communication in the RORs consistently characterize engagement as notifications, information sharing, and opportunities to provide feedback. This confirms the continuation of a consultation-and-accommodation model in which Indigenous Nations respond to information provided by CNSC staff, who then determine outcomes. Despite repeated references to UNDRIP and FPIC, the RORs provide no evidence that MSIFN's consent has been sought or obtained on any issue, including matters where long-term and cumulative impacts are present.

This omission is particularly concerning given CNSC staff's assertions that UNDRIP principles, including FPIC, are incorporated into CNSC processes, and confirms that there are currently no CNSC decisions or processes over which First Nations exercise control. Appendix D and the *Long-term Engagement Terms of Reference* further demonstrate that, notwithstanding repeated requests, UNDRIP and FPIC have not been operationalized in practice.

The Performativity Problem: Evidence and Examples

MSIFN's critique of "performative" UNDRIP/FPIC language rests on observable evidence:

Example 1: Fish Impingement and Entrainment

MSIFN raised concerns about fish impingement at PNGS/DNGS in its 2023 ROR submission. The 2024 ROR mentions CNSC engagement with MSIFN but provides no evidence that CNSC recommended operational changes, intake design improvements, or FN-led monitoring. Instead, the ROR states that "impacts fall within Fisheries and Oceans Canada jurisdiction" and moves on. This is performative consultation: MSIFN's concern was heard, documented, and then administratively shelved. No regulatory accommodation resulted.

Example 2: Lake Sturgeon and Species-at-Risk

MSIFN identified Lake Sturgeon (*Acipenser fulvescens*) as a culturally significant species at risk, directly vulnerable to thermal pollution and entrainment. The ROR does not respond to this identification. CNSC staff did not (to MSIFN's knowledge) conduct baseline population studies, consult DFO on sturgeon-specific protections, or propose intake design amendments. Again, the concern was acknowledged as part of MSIFN engagement and recorded in this ROR, but no regulatory action followed.

Example 3: Cumulative Effects and Decommissioning

Since 2023, MSIFN has repeatedly requested:

- A cumulative effects assessment across PNGS, DNGS, PWMF, and DNNP;
- A decommissioning roadmap for DNGS with Indigenous co-governance;
- A long-term storage timeline for intermediate-level waste.

The 2024 ROR records that MSIFN raised these concerns. However, the ROR does not indicate:

- Whether CNSC staff evaluated a cumulative effects assessment;
- Whether CNSC considered decommissioning planning a licensing obligation;
- Whether CNSC revised its mandate or resource allocation in response.

Instead, the ROR describes ongoing "engagement" and notes that concerns are "tracked" in issue tables.

Tracking ≠ resolution. MSIFN's concerns remain in progress, year after year, while nuclear operations continue.

The Pattern:

MSIFN raises concern → CNSC documents concern in ROR → ROR states concern

is being "considered" or "tracked" → Next ROR repeats the same concern → Cycle repeats.

This is performative consultation: a process that creates the appearance of responsiveness without substantive regulatory change.

What Evidence of Non-Performativity Would Look Like:

- Licensing conditions amended to address Indigenous concerns (e.g., intake velocity reduction for Sturgeon protection);
- Regulatory decisions explicitly cite Indigenous input as a factor (e.g., "Commission approval is conditioned on OPG implementing sturgeon monitoring as requested by MSIFN");
- New capacity or resources allocated to Indigenous oversight (e.g., CNSC hiring Indigenous technical experts, or funding FN monitors);
- CNSC regulatory strategy documents or board papers citing Indigenous consultation as shaping CNSC priorities.

Absent such evidence, UNDRIP and FPIC references remain **performative rhetoric without regulatory teeth**.

MSIFN's participation in CNSC regulatory processes, consultation meetings, and ROR submissions should not be construed as consent to nuclear facility operations, refurbishment, or waste storage within MSIFN's territory. **As of the date of this submission, MSIFN has NOT provided FPIC to:**

- The continued operation of PNGS beyond its current license term;
- The refurbishment of PNGS Units 1–4 and potential extension of Units 5–8;
- The continued operation of DNGS beyond its 2045 license expiry;
- The construction or operation of the DNNP;
- The expansion of on-site waste storage at PWMF through the PCSS;
- Any discharge of thermal effluent or treated water into Lake Ontario;
- The indefinite storage of intermediate-level or spent nuclear fuel on MSIFN territory.

MSIFN has made clear, through legal submissions, intervenor filings, and direct correspondence with the Crown and CNSC, that consent is contingent on:

- 1) Crown-led (not proponent-led) consultation that incorporates Indigenous consent mechanisms;
- 2) Binding commitments to long-term decommissioning, waste management, and Indigenous co-governance;
- 3) Accommodation of MSIFN's cumulative impacts, harvesting rights, and territorial interests.

The Crown and CNSC are on notice that MSIFN's engagement reflects a duty to participate in Crown processes and to advance MSIFN's interests and rights – not an endorsement of nuclear expansion or operations. This position is consistent with MSIFN's statement in its 2023 ROR submission and with the principles MSIFN has articulated regarding an FPIC Framework. In summary, while the RORs reflect improved language, transparency, and continuity of engagement, they do not address the substantive governance issue raised by MSIFN and remain performative: the absence of consent-based decision-making consistent with UNDRIP, the UNDRIP Act, and MSIFN's treaty-partner status. Engagement continues to occur within a framework that documents Indigenous concerns without altering regulatory authority or outcomes.

Miigwech,

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Consultation Department

